U.S. Congress.

CONGRESSIONAL RECORD:

CONTAINING

THE PROCEEDINGS AND DEBATES

OF THE

FORTY-FOURTH CONGRESS, SECOND SESSION.

VOLUME V.

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VOLUME V, PART I.

CONGRESSIONAL RECORD.

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CONGRESSIONAL RECORD.

PROCEEDINGS AND DEBATES OF THE FORTY-FOURTH CONGRESS.

SECOND SESSION.

IN SENATE.

MONDAY, *December* 4, 1876.

The first Monday of December being the day prescribed by the Constitution of the United States for the annual meeting of Congress, the second session of the Forty-fourth Congress commenced this day. The Senators assembled in the Senate Chamber at the Capitol, in the city of Washington.

SENATORS PRESENT.

The following Senators were present: From the State of—
Maine—Hannibal Hamlin.
New Hampshire—Aaron H. Cragin and Bainbridge Wadleigh.
Vermont—George F. Edmunds and Justin S. Morrill.
Massachusetts—George S. Boutwell and Henry L. Dawes.
Rhode Island—Henry B. Anthony and Ambrose E. Burnside.
Connecticut—William H. Barnum and William W. Eaton.
New York—Roscoe Conkling and Francis Kernan.
New Jersey—Frederick T. Frelinghuysen and Theodore F. Randolph.
Pennsylvania—Simon Cameron and William A. Wallace.
Delaware—Thomas F. Bayard
Maryland—George R. Dennis and William Pinkney Whyte.
Virginia—Robert E. Withers.
North Carolina—Augustus S. Merrimon and Matt. W. Ransom.
South Carolina—John J. Patterson.
Georgia—Thomas M. Norwood.
Florida—Simon B. Conover and Charles W. Jones.
Alabama—George E. Spencer.
Mississippi—Blanche K. Bruce.
Louisiana—J. R. West.
Texas—Morgan C. Hamilton and Samuel B. Maxey.
Arkansas—Powell Clayton and Stephen W. Dorsey.
Missouri—Lewis V. Bogy and Francis M. Cockrell.
Tennessee—Henry Cooper and David M. Key.
Kentucky—Thomas C. McCreery and John W. Stevenson.
West Virginia—Henry G. Davis.
Ohio—Allen G. Thurman.
Indiana—Joseph E. McDonald and Oliver P. Morton.
Illinois—John A. Logan.
Michigan—Isaac P. Christiancy and Thomas W. Ferry.
Wisconsin—Angus Cameron.
Iowa—William B. Allison and George G. Wright.
Minnesota—William Windom.
Kansas—James M. Harvey and John J. Ingalls.
Nebraska—Phineas W. Hitchcock and Algernon S. Paddock.
California—Newton Booth and Aaron A. Sargent.
Oregon—John H. Mitchell.

The PRESIDENT *pro tempore* (THOMAS W. FERRY, of Michigan) called the Senate to order at twelve o'clock m., there being a quorum of Senators present.

PRAYER.

Rev. BYRON SUNDERLAND, D. D., Chaplain to the Senate, offered the following prayer:

O, Thou, Almighty and Everlasting God, in Whom we live, and move, and have our being, we come here together this day to lift up to Thee our united prayer in worship and adoration. We come to thank Thee for the kindness of that providence which has gone over us and over all the land during the months that are past. We thank Thee that in Thy goodness Thou hast preserved the lives of so many of these, Thy servants, and brought them hither again to greet each other and to resume their serious labors in this place. We thank Thee for that great measure of mercy which Thou hast vouchsafed to our country during this centennial year. We thank Thee for the success of those wonderful arrangements by which it has been commemorated. We thank Thee that in the midst of a momentous political contest so much of right sense and good order has prevailed among the people. And we come to confess and to deplore before Thee and before the nations whatever of evil, in any quarter or upon any side, may have been in the violation or abuse of the great franchise of freemen. And now that we and this whole nation are in the midst of this vital business, which has yet to be concluded, we humbly entreat Thee to remember all those who have any part to take in the solemn juncture of our national affairs.

We beseech Thee to remember and bless Thy servant, the President of the United States, and his Cabinet; Thy servants, the officers and members of the Congress now convened; the judges and magistrates of the land; the officers and men of the Army and Navy; and all those who have any rule or authority to bear over us.

O, we beseech Thee, grant to these, Thy servants, special wisdom and understanding, that they may be able to determine and to do that which is right in accordance with Thy most gracious will and in furtherance of the welfare of all the people. O, Thou Father of Light, may they see light in Thy light. O, Thou Author of all Peace, suffer us not for our sins to fall into confusion, but breathe peace and stability over all the land. And forasmuch as the members of this Congress first came together under the shadows that yet lingered about these halls for the death of him who once presided here, and forasmuch as they parted away in the anticipation of the same sad event for him who presided yonder, and whose memory yet claims our reverent attention, we entreat Thee, O Lord, that these united voices, speaking from the grave, may give tender counsel to all the living; and we beseech Thee that there may be a continual effort to understand and to know the way of right, and truth, and justice.

O, Thou God of our fathers, keeping covenant and mercy for thousands of them that love Thee and obey Thy law, forsake us not, we beseech Thee, before the eyes of all the nations in such a time as this; but do Thou be graciously pleased to preside over us in all our affairs, and do not, for any single instant, let go Thy care upon us. Through Jesus Christ, our Lord. Amen.

SWEARING IN OF SENATORS.

The PRESIDENT *pro tempore* presented the credentials of Jerome B. Chaffee, elected by the Legislature of the State of Colorado a Senator from that State; which were read.

He also presented the credentials of Henry M. Teller, elected by the Legislature of the State of Colorado a Senator from that State; which were read.

The PRESIDENT *pro tempore*. The Senators-elect who are present will please advance to the desk and take the constitutional oath.

Messrs. Chaffee and Teller advanced to the desk.

The PRESIDENT *pro tempore*. The Chair understands there are other Senators-elect present, who will please advance to the desk to be sworn at the same time.

James G. Blaine (whose credentials of appointment by the governor of Maine as Senator from that State to fill until the next meeting of the Legislature the vacancy occasioned by the resignation of Lot M. Morrill were presented at the last session) advanced to the desk.

The oaths prescribed by law having been administered by the Presi-

dent *pro tempore* to Messrs. BLAINE, CHAFFEE, and TELLER, they took their seats in the Senate.

Mr. DAVIS presented the credentials of Samuel Price, appointed by the governor of the State of West Virginia a Senator from that State to fill, until the next meeting of the Legislature thereof, the vacancy caused by the death of Allen T. Caperton.

The credentials were read; and, the oaths prescribed by law having been administered to Mr. PRICE, he took his seat in the Senate.

CLASSIFICATION OF COLORADO SENATORS.

Mr. HITCHCOCK submitted the following resolution and order; which were considered by unanimous consent, and agreed to:

Resolved, That the Senate now proceed to ascertain the classes to which the Senators from the State of Colorado shall be assigned, in conformity with the resolution of the 14th of May, 1789, and as the Constitution requires—

Ordered, That the Secretary put into the ballot box two papers of equal size, one of which shall be numbered *two* and the other shall be a blank. Each of the Senators of the State of Colorado shall draw out one paper, and the Senator who shall draw the paper numbered *two* shall be inserted in the class of Senators whose term of service will expire the third day of March, 1879.

That the Secretary then put into the ballot box two papers of equal size, one of which shall be numbered *one* and the other shall be numbered *three*. The other Senator shall draw out one paper. If the paper drawn be numbered *one* the Senator shall be inserted in the class of Senators whose terms of service will expire the 3d day of March, 1877, and if the paper drawn be numbered *three* the Senator shall be inserted in the class of Senators whose terms of service will expire the 3d day of March, 1881.

The Secretary having put into the ballot-box two papers, one numbered two and the other a blank, Mr. CHAFFEE drew the paper numbered two, and is accordingly in the class of Senators whose terms of service will expire on the 3d day of March 1879.

The Secretary having then put into the ballot-box two papers, one numbered *one* and the other numbered *three*, Mr. TELLER drew the paper numbered one, and is accordingly in the class of Senators whose terms of service will expire on the 3d day of March, 1877.

NOTIFICATION TO THE HOUSE.

Mr. ANTHONY offered the following resolution; which was considered by unanimous consent, and agreed to:

Resolved, That the Secretary inform the House of Representatives that a quorum of the Senate is assembled and that the Senate is ready to proceed to business.

NOTIFICATION TO THE PRESIDENT.

Mr. ANTHONY offered the following resolution; which was considered by unanimous consent, and agreed to:

Resolved, That a committee consisting of two members be appointed to join such committee as may be appointed by the House of Representatives, to wait upon the President of the United States and inform him that a quorum of each House is assembled, and that Congress is ready to receive any communication that he may be pleased to make.

By unanimous consent, the President *pro tempore* was authorized to appoint the committee on the part of the Senate; and Messrs. ANTHONY and MCCREERY were appointed.

HOUR OF MEETING.

On motion of Mr. ANTHONY, it was

Ordered, That the hour of the daily meeting of the Senate be twelve o'clock meridian until otherwise ordered.

RECESS.

Mr. THURMAN, (at twelve o'clock and twenty minutes p. m.) I move that the Senate take a recess for three-quarters of an hour.

The motion was agreed to; and at the expiration of the recess (at one o'clock and five minutes p. m.) the Senate re-assembled.

ANNUAL REPORTS.

The PRESIDENT *pro tempore* laid before the Senate the report of the Secretary of the Senate, communicating, in obedience to law, a statement of the receipts and expenditures of the Senate from July 1, 1875, to June 30, 1876; which was ordered to lie on the table and be printed.

He also laid before the Senate the annual report of the Sergeant-at-Arms of the Senate, communicating, in obedience to law, a statement of property belonging to the United States in his possession December 4, 1876; which was ordered to lie on the table and be printed.

He also laid before the Senate the report of the clerk of the Court of Claims, communicating, in obedience to law, a statement of all judgments rendered by that court for the year ending December 4, 1876; which was ordered to lie on the table and be printed.

VOTERS IN CERTAIN STATES—ELIGIBILITY OF ELECTORS.

Mr. EDMUNDS submitted the following resolutions; which were ordered to lie on the table and be printed:

Whereas it is provided in the second section of the fourteenth article of the amendments to the Constitution of the United States that "Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State;" and

Whereas it is alleged that in several of the States, and particularly in the States of South Carolina, Georgia, Florida, Alabama, Louisiana, and Mississippi, the right of male inhabitants of said States, respectively, being twenty-one years of age, and citizens of the United States, to vote at the late elections of the electors for President and Vice-President of the United States, and for Representatives in Congress, and for the executive and judicial officers of such States, and for members of the Legislatures thereof, has been denied or greatly abridged: Therefore,

Resolved, That the Committee on Privileges and Elections, when appointed, be and it hereby is instructed to inquire and report as soon as may be—

1. Whether in any of the elections named in said amendment, in said States, in the years 1875 or 1876, the right of any portion of such inhabitants and citizens to vote as aforesaid has been in any wise denied or abridged.

2. To what extent such denial or abridgment has been carried.

3. By what means such denial or abridgment has been accomplished.

4. By whom has such denial or abridgment been effected.

5. With what motives and for what purposes has such denial or abridgment been carried on.

6. By what authority or pretended authority has such denial or abridgment been exercised.

Resolved further, That the said committee have power to employ such number of stenographers as shall be needful, and to send for persons and papers, and have leave to sit during the sessions of the Senate, and to appoint subcommittees with full power to make the inquiries aforesaid, and report the same to the committee.

Resolved further, That said committee, in order to the more speedy performance of its duties, have power to provide for the taking of affidavits on the subjects aforesaid before any officer authorized by the laws of the United States to take affidavits; and to receive and consider the same.

Resolved further, That the said committee be, and is hereby, instructed to inquire into the eligibility to office under the Constitution of the United States of any persons alleged to have been ineligible on the 7th day of November last, or to be ineligible as electors of President and Vice-President of the United States, to whom certificates of election have been or shall be issued by the executive authority of any State as such electors, and whether the appointment of electors, or those claiming to be such in any of the States, has been made either by force, fraud, or other means otherwise than in conformity with the Constitution and laws of the United States and the laws of the respective States; and whether any such appointment or action of any such elector has been in anywise unconstitutionally or unlawfully interfered with; and to inquire and report whether Congress has any constitutional power, and, if so, what, and the extent thereof, in respect of the appointment of, or action of, electors of President and Vice-President of the United States, or over returns or certificates of votes of such electors; and that said committee have power to send for persons and papers, and to employ a stenographer, and have leave to sit during the session of the Senate.

PROPOSED CONSTITUTIONAL CONVENTION.

Mr. INGALLS. I offer a joint resolution, and ask that it be read, laid on the table, and printed.

By unanimous consent, leave was granted to introduce a joint resolution (S. R. No. 27) recommending a convention to revise and amend the Constitution of the United States; which was read twice, and ordered to lie on the table and be printed. It is as follows:

Whereas article 5 of the Constitution empowers Congress to call a convention for proposing amendments to the Constitution, on the application of the Legislatures of two-thirds of the several States; and whereas it is apparent that there are important defects in the system of the Federal Government which render the situation of the United States at this time delicate and critical, calling for an exertion of the combined virtue and wisdom of all the people: Therefore,

Be it resolved, &c., 1. That in the opinion of Congress a convention of delegates from the several States should be held for the sole and express purpose of revising the Constitution of the United States and reporting such alterations and amendments in the nature of an entire instrument as shall, when ratified as provided in said article 5, render the Federal Constitution adequate to the exigencies of the Government and the preservation and support of the Union.

2. That in the opinion of Congress each State should be represented in said convention by as many delegates as it is entitled to Senators and Representatives in Congress; two of said delegates from each State to be chosen by the Legislature thereof, and one to be elected from each congressional district by the qualified voters thereof, at such time and places as the Legislature may prescribe; and that no person holding an office of honor, trust, or profit under any State or under the United States should be eligible as a delegate to said convention.

3. That in the opinion of Congress said convention should be held at Columbus, in the State of Ohio, on the second Monday in May, 1877, and sit without unnecessary interruption till its deliberations are concluded.

4. That in the opinion of Congress the Chief Justice of the Supreme Court should be the presiding officer of said convention, and that each delegate should receive compensation at the rate of $20 per day, with mileage at the rate of twenty cents for each mile necessarily traveled in going to and returning from the place of meeting, and that all the expenses of said convention should be defrayed from the Treasury of the United States.

5. That in the opinion of Congress the revised and amended Constitution should be reported to the President of the United States upon the adjournment of said convention, and that it should thereupon immediately be submitted by the President to a convention of delegates chosen in each State by the people thereof, under the recommendation of its Legislature, for their assent and ratification.

6. That it is recommended to the Legislatures of the several States of the Union to apply to Congress without delay to call a convention as aforesaid, as provided in article 5 of the Constitution.

Mr. WRIGHT. I move that the Senate do now adjourn.

The motion was agreed to; and (at one o'clock and thirteen minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

MONDAY, *December* 4, 1876.

This being the day designated by the Constitution for the meeting of Congress, the members of the House of Representatives of the Forty-fourth Congress assembled in their Hall for their second session.

At twelve o'clock m. the Clerk, Hon. GEORGE M. ADAMS, called the House to order in the following words:

The time for the meeting of the second session of the Forty-fourth Congress having arrived, the Speaker of the House having since the last session of Congress departed this life, the Clerk, in conformity with the rules of the House, now requests the House to be in order. If there be no objection, the roll will be called to ascertain whether there be a quorum of members in attendance.

CALL OF THE ROLL.

The roll was called, and the following members answered to their names:

MAINE.

John H. Burleigh.
William P. Frye.
Harris M. Plaisted.

NEW HAMPSHIRE.

Frank Jones.
Samuel N. Bell.
Henry W. Blair.

VERMONT.

Charles H. Joyce.
Dudley C. Denison.

MASSACHUSETTS.

William W. Crapo.
Benjamin W. Harris.
Henry L. Pierce.
Josiah G. Abbott.
Nathaniel P. Banks.
Charles P. Thompson.
John K. Tarbox.
William Wirt Warren.
George F. Hoar.
Julius H. Seelye.
Chester W. Chapin.

RHODE ISLAND.

Benjamin T. Eames.
Latimer W. Ballou.

CONNECTICUT.

George M. Landers.
James Phelps.

NEW YORK.

Henry B. Metcalfe.
Simeon B. Chittenden.
Archibald M. Bliss.
Edwin R. Meade.
Samuel S. Cox.
Smith Ely, jr.
Fernando Wood.
Abram S. Hewitt.
Benjamin A. Willis.
George M. Beebe.
John H. Bagley, jr.
Charles H. Adams.
Martin I. Townsend.
Andrew Williams.
Henry H. Harborn.
Samuel F. Miller.
George A. Bagley.
Elias W. Leavenworth.
Clinton D. MacDougall.
Elbridge G. Lapham.
Charles C. B. Walker.
John M. Davy.
George G. Hoskins.
Nelson I. Norton.

NEW JERSEY.

Miles Ross.
Robert Hamilton.
Augustus W. Cutler.
Frederick H. Teese.
Augustus A. Hardenbergh.

PENNSYLVANIA.

Chapman Freeman.
Charles O'Neill.
Samuel J. Randall.
John Robbins.
Washington Townsend.
Alan Wood, jr.
Hiester Clymer.
A. Herr Smith.
William Mutchler.
Francis D. Collins.
James B. Reilly.
John B. Packer.
Joseph Powell.
Sobieski Ross.
John Reilly.
William S. Stenger.
Levi Maish.
L. A. Mackey.
Jacob Turney.
James H. Hopkins.
Alexander G. Cochrane.
John W. Wallace.
George A. Jenks.
James Sheakley.
Albert G. Egbert.

DELAWARE.

James Williams.

MARYLAND.

Philip F. Thomas.
Charles B. Roberts.
William J. O'Brien.
Thomas Swann.
Eli J. Henkle.
William Walsh.

VIRGINIA.

Beverly B. Douglas.
John Goode, jr.
Gilbert C. Walker.
William H. H. Stowell.
William Terry.
George C. Cabell.
John Randolph Tucker.
John T. Harris.
Eppa Hunton.

NORTH CAROLINA.

Jesse J. Yeates.
John A. Hyman.
Alfred M. Waddell.
Joseph J. Davis.
Alfred M. Scales.
Thomas S. Ashe.
William M. Robbins.
Robert B. Vance.

SOUTH CAROLINA.

Alexander S. Wallace.
Robert Smalls.

GEORGIA.

Julian Hartridge.
Philip Cook.
Henry R. Harris.
Milton A. Candler.
James H. Blount.
William H. Felton.
Alexander H. Stephens.
Benjamin H. Hill.

ALABAMA.

Jere Haralson.
Jeremiah N. Williams.
Taul Bradford.
Charles Hays.
John H. Caldwell.
William H. Forney.

MISSISSIPPI.

Lucius Q. C. Lamar.
G. Wiley Wells.
Hernando D. Money.
Otho R. Singleton.
Charles E. Hooker.
John R. Lynch.

LOUISIANA.

Randall L. Gibson.
E. John Ellis.
Chester B. Darrall.
William B. Spencer.

OHIO.

Milton Sayler.
Henry B. Banning.
John S. Savage.
John A. McMahon.
Americus V. Rice.
Frank H. Hurd.
Lawrence T. Neal.
William Lawrence.
Earley F. Poppleton.
Charles Foster.
John L. Vance.
Ansel T. Walling.
Milton I. Southard.
Jacob P. Cowan.
Nelson H. Van Vorhes.
Lorenzo Danford.
Laurin D. Woodworth.
James Monroe.
Henry B. Payne.

KENTUCKY.

Andrew R. Boone.
John Young Brown.
Charles W. Milliken.
J. Proctor Knott.
Henry Watterson.
Thomas L. Jones.
Joseph C. S. Blackburn.
Milton J. Durham.
John D. White.

TENNESSEE.

George G. Dibrell.
Haywood T. Riddle.
John F. House.
Washington C. Whitthorne.
John D. C. Atkins.
William P. Caldwell.
Casey Young.

INDIANA.

Benoni S. Fuller.
Jeptha D. New.
WilliamS. Holman.
Morton C. Hunter.
Thomas J. Cason.
William S. Haymond.
Milton S. Robinson.
Franklin Landers.
James L. Evans.
Andrew H. Hamilton.
John H. Baker.

ILLINOIS.

Bernard G. Caulfield.
Carter H. Harrison.
John V. Le Moyne.
Stephen A. Hurlbut.
Horatio C. Burchard.
Thomas J. Henderson.
Greenbury L. Fort.
Richard H. Whiting
John C. Bagby.
Scott Wike.
William M. Springer.
Adlai E. Stevenson.
Joseph G. Cannon.
John R. Eden.
William A. J. Sparks.
William R. Morrison.
William Hartzell.
William B. Anderson.

MISSOURI.

Edward C. Kehr.
Erastus Wells.
William H. Stone.
Robert A. Hatcher.
Richard P. Bland.
Charles H. Morgan.
John F. Philips.
Benjamin J. Franklin.
David Rea.
Rezin A. De Bolt.
John B. Clark, jr.
John M. Glover.
Aylett H. Buckner.

ARKANSAS.

Lucien C. Gause.
William F. Slemons.
William W. Wilshire.
Thomas M. Gunter.

MICHIGAN.

Alpheus S. Williams.
Henry Waldron.
William B. Williams.
George H. Durand.
Omar D. Conger.
George Willard.
Allen Potter.
Nathan B. Bradley.
Jay A. Hubbell.

FLORIDA.

Jesse J. Finley.

TEXAS.

John H. Reagan.
David B. Culberson.
James W. Throckmorton.
Roger Q. Mills.
John Hancock.

IOWA.

George W. McCrary.
John Q. Tufts.
Lucien L. Ainsworth
Henry O. Pratt.
James Wilson.
Ezekiel S. Sampson.
John A. Kasson.
Addison Oliver.

WISCONSIN.

Charles G. Williams.
Lucien B. Caswell.
Henry S. Magoon.
William Pitt Lynde.
Samuel D. Burchard.
Alanson M. Kimball.
Jeremiah M. Rusk.
George W. Cate.

CALIFORNIA.

William A. Piper.
Horace F. Page.
John K. Luttrell.

MINNESOTA.

Mark H. Dunnell.
Horace B. Strait.
William S. King.

OREGON.

Lafayette Lane.

KANSAS.

William A. Phillips.
John R. Goodin.
William R. Brown.

WEST VIRGINIA.

Benjamin Wilson.
Charles J. Faulkner.
Frank Hereford.

NEVADA.

William Woodburn.

NEBRASKA.

Lorenzo Crounse.

The CLERK. Two hundred and fourty-eight members have answered to their names, more than a quorum to transact business, and the Clerk is now prepared to receive nominations for the office of Speaker.

Mr. HOLMAN. I offer the following memorandum and move its adoption by the House.

Mr. BLACKBURN. I desire, Mr. Clerk, to have entered the reason for the absence of my colleague, Mr. CLARKE, who, as I am informed by telegram, is detained at home by serious illness in his family.

Mr. HOLMAN. I move the adoption of the order which I have sent to the Clerk's desk.

Mr. BANKS. I rise to a question of privilege, Mr. Clerk. I hold the certificate of the election of the member from the State of Colorado, which State was admitted——

Mr. WIKE. I object.

Mr. BANKS. It is a question of privilege.

Mr. HOLMAN. The highest privilege is the organization of this House by the election of a Speaker.

The CLERK. The gentleman from Indiana was recognized by the Clerk to submit a motion.

Mr. BANKS. The motion I have made is of higher privilege than the one in reference to the organization of the House.

Mr. WIKE. I object.

Mr. BANKS. I desire to say that the right of a member to vote is the highest possible privilege which can be presented to the House. The election of Speaker is a secondary matter which can be determined only after the right of members to vote has been decided. The *prima facie* right of a member, that upon which we were all admitted, is the certificate of the governor of a State.

Mr. WIKE. I object.

Mr. BANKS. I send the credential of the member from Colorado——

Mr. COX. There is nobody to administer the oath to the member from Colorado until we organize by the election of a Speaker.

Mr. BANKS. The oath can be administered by any member of the House.

Mr. HOLMAN. The administration of the oath is not necessary. The statute prescribes in reference to the proceedings in the organization of the House the manner in which the roll of members shall be made out, and who shall participate in the organization of the House. Under that law the Clerk of Congress has prepared the roll of members which has just been called, and he has announced the presence of a quorum for the transaction of business. I therefore submit, Mr. Clerk, that the highest step in the progress of the House at this moment is its complete organization, which is effected, upon the basis of the roll made out in pursuance of law, by the election of Speaker. No gentleman is prejudiced by this action.

Mr. BANKS. Yes; he loses his vote.

Mr. HOLMAN. But he could not be placed on the roll of the House in conformity with law. The Clerk could not place him there. The law does not authorize the placing of a gentleman on the roll representing a State not represented in the preceding Congress.

Mr. BANKS. I desire the privilege of saying, in reply to the gentleman from Indiana, that the election of a Speaker, which is necessary to the completion of the organization of the House, is a matter secondary to the determination of who is to participate in the vote upon that election. Now, sir, the making up of the roll which the Clerk has read, and to which members have responded when their names were called, is, as far as the Clerk is concerned, a mere ministerial duty. He receives the certificates of governors of States as to the election of members, and upon the *prima facie* evidence he placed the names upon the roll. That does not prevent the House from changing it, if in the intermediate time another member should be elected.

Now, sir, I think there are half a dozen members here from different States of the Union whose seats are uncontested, about which no question can be made, who are ready to be sworn. The executive officers of the States, according to the Constitution of the United States and the laws of the several States, have certified to their election; and they should not be deprived of their right to vote in this case. But I say to the gentleman from Indiana that in the history of this House he cannot find a single instance where a certificate of a governor of a State has been presented to the House certifying to the proper and legal election of a member, and that election has been undisputed, that that certificate has not been received as *prima facie* evidence of this election and he has not been permitted to vote.

Mr. LUTTRELL. I desire to ask the gentleman from Massachusetts one question: What evidence have we of Colorado being a State?

Mr. BANKS. The President has proclaimed it a State. I hold the President's proclamation in my hand. I ask that the credentials of the Representative elected from that State shall be received; and I would ask that the oldest member of the House should administer the oath to him, and also to other members who have credentials and who have not been sworn.

Mr. HOLMAN. Mr. Clerk, the administration of the oath is not a prerequisite of the right to vote in the election of Speaker. That is not a prerequisite.

Mr. BANKS. I do not think it is.

Mr. HOLMAN. The gentleman from Massachusetts himself [Mr. BANKS] was not sworn as a member before he voted in the organization of the present House. The only prerequisite to the act of electing a Speaker of the House is the preparation of the roll under the law. And the gentleman from Massachusetts must bear in mind that since the enactment of the present law upon the subject declaring who shall be placed upon that roll, and providing in effect that the persons so placed upon the roll shall alone participate in the organization of the House, the question to which he has referred has never arisen.

There is at present no House organized. There is no person to determine whether the gentleman from Colorado is entitled to have his name placed upon the roll or not. The embarrassment in the way is that the law does not provide for a case such as that of Colorado. The Clerk has not the right to place upon the roll the name of the gentleman claiming to represent Colorado; but he is not prejudiced, except in the particular act of the organization of the House.

Mr. BANKS. And that is the most important act of all. The law, Mr. Clerk——

Mr. HOLMAN. I believe I have the floor.

Mr. BANKS. I trust the gentleman will permit me one remark in reply.

Mr. HOLMAN. Very well.

Mr. BANKS. The law to which the gentleman from Indiana refers is for the instruction of the Clerk of the House alone, in the performance of a ministerial duty. It is for his instruction alone. He can do nothing except what the law specifies and provides he may do. But the Constitution of the United States gives to this House the power to determine who are its members and who shall vote on this very question of the election of Speaker. Now, sir, there is not a precedent in the history of this House—I venture to say there is not one single precedent, where the certificate of the governor of a State has been presented, certifying to the election of a member of this House, there being no dispute and no contest in regard to it, that it has not been received.

Mr. HAMILTON, of New Jersey. Will the gentleman allow me to correct him?

Mr. BANKS. In a moment. In this case it is essential that the member presenting the certificate should vote in what may be the most important act of the session. I will now hear the gentleman from New Jersey.

Mr. HAMILTON, of New Jersey. I beg to remind the gentleman that in the New Jersey case in 1838 those holding the certificates were not admitted. In that case the members had received certificates from the proper officer of the State.

Mr. BANKS. The gentleman from New Jersey is mistaken, I think, upon that point. A part of the members-elect from the State of New Jersey had the governor's certificate and a part of the members had certificates from the secretary of the State. The governor who had given the certificates stated in an argument which was presented to the House of Representatives that he regretted that under the laws of the State of New Jersey he was not able to do justice to the contestants by giving them certificates.

Mr. WADDELL. Allow me to correct the gentleman from Massachusetts in regard to what has been the former practice of this House. I will state what occurred in my own case. I came here with a certificate from the governor of the State of North Carolina to the Forty-second Congress, and when I went up to be sworn in, Mr. Maynard, of Tennessee, objected and I was made to stand aside.

Mr. BANKS. That was on account of disabilities.

The CLERK. The gentleman from Indiana [Mr. HOLMAN] is entitled to the floor.

Mr. WIKE. Mr. Clerk——

Mr. HOLMAN. The gentleman from Massachusetts [Mr. BANKS] must perceive that the precedents to which he refers have no application to the present law and the present rule of the House.

Mr. COX. I call for the reading of the resolution now pending.

Mr. WIKE. What is before the House?

The CLERK. The gentleman from Indiana [Mr. HOLMAN] submitted a resolution, which has not yet been read.

Mr. HOLMAN. Before it is read——

Mr. WIKE. I call for the reading of the resolution.

Mr. HOLMAN. Before it is read I desire to submit two points in reply to what the gentleman from Massachusetts [Mr. BANKS] has said.

Mr. BANKS. I desire to have it stated by the Clerk that I have presented a question of privilege involving the right of a member of this House to take part in its organization.

The CLERK. The RECORD will show what the gentleman from Massachusetts has submitted.

Mr. HOLMAN. I desire to have read the present rule of procedure in the organization of this House. I will then ascertain the views of the House, so far as one member can do so, by calling the previous question on the resolution which I have submitted. I ask that so much of the thirty-first section of the Revised Statutes as I have marked be now read, together with that portion of the rules of this House relating to the subject.

The following was read:

> In making up of said roll, he is directed to place thereon the names of all persons claiming seats as Representatives-elect from States which were represented in the next preceding Congress, and of such persons only, and whose credentials show that they were regularly elected in accordance with the laws of their States respectively, or the laws of the United States.—(*Laws Second Session Thirty-ninth Congress. Session Laws*, page 28.) Having ascertained whether or not a quorum is present, he announces the fact to the House. If a quorum shall have answered, it is then usual for some member to move "that the House do now proceed to the election of a Speaker *viva voce*."

Mr. HOLMAN. It will be perceived from these provisions, the one of the statutes found as section 31 of the present Revised Statutes, and the other a rule of this House, that, avoiding the very question which the gentleman from Massachusetts now seeks to raise, it is made clearly the duty of the Clerk to proceed as he has done in conformity with that statute and with that rule of the House in making up the roll. I therefore call the previous question on the pending resolution.

Mr. BANKS. I trust the gentleman will allow me——

Mr. COX. I call for the reading of the resolution offered by the gentleman from Indiana.

The CLERK. The Clerk begs to state the condition of the two questions submitted here that the House may properly understand them. The gentleman from Indiana submitted a resolution which has not yet been read.

Mr. WIKE. I claim the floor, Mr. Clerk.

The CLERK. By what right?

Mr. WIKE. I submit to the Clerk the question whether I have the floor or not?

The CLERK. The Clerk does not understand that the gentleman is entitled to the floor.

Mr. WIKE. I want to state my understanding of the question. I rise here to object to the introduction of Colorado as a State into the Union.

The CLERK. The Clerk does not understand that that question is now pending.

Mr. WIKE. I want to make my objection in time.

The CLERK. The Clerk will state the question before the House. When it was announced by the Clerk that a quorum had answered to their names and the Clerk was ready to receive any motion which the House might be pleased to entertain, the gentleman from Indiana rose and submitted a resolution, which has not yet been read. Pending that question, the gentleman from Massachusetts arose to a question of privilege and presented the certificate of a member-elect to the present Congress. The House must perceive that it is impossible for the Clerk to make any decision upon any question of privilege or as to which question shall take precedence, that of the gentleman from Indiana [Mr. HOLMAN] or that of the gentleman from Massachusetts, [Mr. BANKS,] until the Clerk and the House have heard read the resolution of the gentleman from Indiana, [Mr. HOLMAN.] That resolution will now be read:

The resolution was read, as follows:

The House being informed that since its last adjournment Hon. Michael C. Kerr, who at the commencement of the present Congress was elected Speaker of the House, has departed this life, creating a vacancy in the office of Speaker, it is therefore ordered that the House do now proceed to the election of a Speaker *viva voce*.

Mr. HOLMAN. This being a question of the highest privilege, and a necessary result of proceedings already had, the reading of the roll made out in conformity to law, it not being contended but what every gentleman entitled by virtue of the present law to have his name placed on the roll has had his name placed on that roll, I call the previous question on the adoption of the resolution.

Mr. BANKS. I hope the gentleman from Indiana [Mr. HOLMAN] will allow me to say only this, that the law to which he refers concerns only the opening of a new Congress; it has nothing to do with the case now presented. Even if it had it is only an instruction to the Clerk in regard to his performance of a ministerial duty. The Constitution of the United States gives to a man who has the certificate of his election from the governor of the State which he has been chosen to represent—the Constitution gives to him, until the question is decided otherwise, the *prima facie* right to vote upon this very question of the organization of the House.

Mr. HOLMAN. Does not the gentleman see that it is far better to act under the law and the rule of the House in these preliminary proceedings than to go into questions upon which there may be diversity of opinion? I have, myself, no doubt that the gentleman referred to as representing the new State of Colorado is entitled to be sworn in as a member of this House. But under the law he is not entitled to have his name placed on this roll, and the persons whose names are placed on this roll are those who are entitled to take part in the election of Speaker of this House.

Mr. BANKS. The House can direct that his name shall be placed on the roll.

Mr. HOLMAN. I insist upon the previous question.

Mr. BANKS. I desire to say, Mr. Clerk——

Mr. WILLIS and others called for the regular order.

Mr. FRYE. I rise to a question of privilege.

The CLERK. What question of privilege?

Mr. FRYE. I hold in my hand the certificate of the governor of the State of Maine of the election of Edwin Flye in place of JAMES G. BLAINE, resigned.

Mr. WOOD, of New York. I rise to a question of order. Until the pending question is disposed of, that involved in the resolution submitted by the gentleman from Indiana, [Mr. HOLMAN,] any other proposition is clearly out of order. The organization of the House is a question of the highest privilege, and this is the question now pending.

Mr. FRYE. Mr. Clerk, this is a proposition to proceed to the election of a Speaker. Under the rule read at the instance of the gentleman from Indiana [Mr. HOLMAN] the case of Edwin Flye clearly demands that his name should be placed upon the roll, and that he be permitted to vote upon the question of the election of Speaker. I therefore ask that the name of that gentleman may be placed on the roll.

Mr. WOOD, of New York. There are four or five cases in which since the last session of this Congress elections have been held to fill vacancies. I propose that the ordinary course of procedure of this House from time immemorial shall be followed in those cases. We should first elect a Speaker, commencing as it were *de novo*, according to the roll made up by the Clerk under the law, from the credentials filed in his office. After the Speaker shall have been elected, his first duty will be to swear in those members who have the proper credentials and present themselves at the Clerk's desk for that purpose. It does appear to me that this attempt to interpose objections and dilatory proceedings—I do not accuse gentlemen of any such intention, but such is the effect of their propositions—before we organize the House by the election of a Speaker, is, to say the least, unnecessary and inopportune. I suggest therefore that if those gentlemen will wait twenty minutes or a half an hour, until we have organized the House, these other proceedings will be clearly in order. But taking precedence of all other questions, as a matter of the highest privilege, is the organization of this House. We now have no Speaker, no properly constituted official organ or presiding officer of the House.

Mr. HOLMAN. I must insist upon my demand for the previous question. The Clerk has made up the roll in conformity to law from the data furnished to him from the several States of the Union. There is no pretense to the contrary. If the question was raised whether the Clerk had properly performed his duty, I admit that it would be a very grave question. But no such question is raised. He has made up the roll according to law, upon official documents furnished to him and on file in his office. I insist upon the previous question.

Mr. FRYE. The Clerk has——

Several MEMBERS. Regular order!

Mr. BANKS. I want the regular order.

The CLERK. Does the gentleman from Indiana [Mr. HOLMAN] demand the previous question?

Mr. HOLMAN. I have been demanding the previous question with great patience.

Mr. BANKS. I rise to a question of order. I submit that this question should be submitted to the House. The Clerk cannot decide that a member, with a certificate of his State government that he is a member, has not a right to vote on this question of the choice of Speaker. Mr. Clerk, you should submit the question to the House.

Mr. HOLMAN. Does not the gentleman from Massachusetts know very well that, since the unhappy contest in the opening of the Thirty-sixth Congress, the present rule, conferring upon the Clerk the power to administer the rules of the House, has operated with admirable effect in the public interest and in maintaining the peace and order of this body? On an occasion like this, the Clerk administers the rules as the Speaker would administer them. I therefore call upon him to administer that rule which gives effect to the demand for the previous question.

Mr. FRYE. One moment——

The CLERK. The gentleman from Massachusetts has risen to a question of order. Questions of order must be decided, as the gentleman from Maine [Mr. FRYE] very well understands, without debate.

Mr. FRYE. I wish to say that the question of order——

The CLERK. Questions of order are not debatable. The point of order raised by the gentleman from Massachusetts is, as the Clerk understands, the first thing under consideration. That point was that the Clerk had no right to decide this question. For the information of the House, the Clerk begs to call attention to Rule 146, which reads as follows:

All elections of officers of the House, including the Speaker, shall be conducted in accordance with these rules, so far as the same are applicable; and, pending the election of a Speaker, the Clerk shall preserve order and decorum, and shall decide all questions of order that may arise, subject to appeal to the House.

Mr. BANKS. I am perfectly aware of that rule. I remember very well the fact that at the opening of a previous Congress the Clerk presided for nine weeks. But I understood the position of the gentleman to be that there was to be no decision upon the question I made, and that it was not to be submitted to the House in such a way that the House could pass its judgment upon it. If the Clerk decides the question, then I am perfectly satisfied; for upon his decision we can take an appeal and thus have a vote of the House.

The CLERK. If the gentleman from Massachusetts will allow, the Clerk will say that he understands it to be his duty to decide these questions of order as they may arise.

Mr. BANKS. Yes, sir.

The CLERK. The gentleman from Indiana has submitted a resolution, pending which the gentleman from Massachusetts rose to a question of privilege. The Clerk is of opinion that the resolution submitted by the gentleman from Indiana, looking to the organization of the House, is also a question of privilege, and that it takes precedence of the question of privilege submitted by the gentleman from Massachusetts. These are, however, questions which the House can decide for itself. If any member is dissatisfied with the ruling of the Clerk in this regard, he can of course appeal to the House.

Mr. BANKS. I make that appeal on the ground that the right of a member to participate in this election is a question of higher privilege than the election of Speaker.

Mr. HOLMAN. It is not a question higher than the law or the rules of the House.

Mr. COX. I move to lay the appeal on the table. This motion, I am aware, is not debatable; but I would like to say one word upon it.

Several members objected.

The CLERK. The gentleman from Massachusetts [Mr. BANKS] appeals from the decision just made, and the gentleman from New York [Mr. COX] moves to lay that appeal on the table. The question will be upon laying on the table the appeal taken by the gentleman from Massachusetts.

Mr. BANKS, and Mr. TOWNSEND of New York, called for the yeas and nays.

The yeas and nays were ordered.

Mr. BLACKBURN. I ask that the Clerk will again state the question.

The CLERK. Before the roll-call begins the Clerk begs to state again the question under consideration. It has been ruled by the Clerk that the motion submitted by the gentleman from Indiana relating to the organization of the House is a question of privilege, and that it takes precedence of the questions of privilege raised by the gentleman from Massachusetts [Mr. BANKS] and the gentleman from Maine [Mr. FRYE] respectively. From that decision the gentleman from Massachusetts appeals; and the gentleman from New York [Mr. COX] moves to lay the appeal upon the table. The yeas and nays have been ordered.

Mr. LUTTRELL. Before the vote is taken I ask for the enforcement of the rule in regard to admission to the floor, so that all persons who are not entitled to the privilege of the floor shall be excluded.

Several MEMBERS. That is right.

The CLERK. For the information of persons who may be upon the floor without authority, the rule in reference to admission to the floor will be read.

Mr. STONE. And let the rule be enforced.

The CLERK. The Clerk will now read the one hundred and thirty-fourth rule.

The Clerk read as follows:

No person except members of the Senate, their secretary, heads of Departments, the President's Private Secretary, foreign ministers, the governor for the time being of any State, Senators and Representatives elect, judges of the Supreme Court of the United States and of the Court of Claims, and such persons as have by name received the thanks of Congress—*March* 15, 1867—shall be admitted within the Hall of the House of Representatives—*March* 19, 1869—or any of the rooms upon the same floor or leading into the same—*March* 2, 1865; provided that the ex-members of Congress who are not interested in any claim pending before Congress, and shall so register themselves, may also be admitted within the Hall of the House; and no persons except those herein specified shall at any time be admitted to the floor of the House.—*March* 15, 1867.

Mr. STONE. I demand the enforcement of that rule before the roll-call proceeds.

The CLERK. Persons not entitled to the privilege of the floor are requested to retire. The Doorkeeper has been requested to remove all such persons, but the Clerk himself sees a number of persons present who are not entitled to the privilege of the floor, and the roll-call will not be proceeded with until they retire.

Mr. CONGER. I wish to inquire of the Clerk whether his ruling includes the motion of the gentleman from Maine [Mr. FRYE] as well as the motion of the gentleman from Massachusetts, [Mr. BANKS?]

The CLERK. The pending question is on the motion to lay on the table the appeal from the decision of the Clerk, on which the yeas and nays have been ordered.

The question was then taken; and it was decided in the affirmative—yeas 165, nays 84, not voting 37; as follows:

YEAS—Messrs. Abbott, Ainsworth, Anderson, Ashe, Atkins, Bagby, John H. Bagley, jr., Banning, Beebe, Bell, Blackburn, Bland, Bliss, Blount, Boone, Bradford, John Young Brown, Buckner, Samuel D. Burchard, Cabell, John H. Caldwell, William P. Caldwell, Candler, Cate, Caulfield, Chapin, John B. Clark, jr., of Missouri, Clymer, Cochrane, Collins, Cook, Cowan, Cox, Culberson, Cutler, Davis, De Bolt, Dibrell, Douglas, Durand, Durham, Eden, Egbert, Ellis, Ely, Faulkner, Felton, Finley, Forney, Franklin, Fuller, Gause, Gibson, Glover, Goode, Goodin, Gunter, Andrew H. Hamilton, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Haymond, Henkle, Hereford, Abram S. Hewitt, Hill, Holman, Hooker, Hopkins, House, Hunton, Hurd, Jenks, Frank Jones, Thomas L. Jones, Kehr, Knott, Lamar, Franklin Landers, George M. Landers, Lane, Le Moyne, Lord, Luttrell, Lynde, Mackey, Maish, McMahon, Meade, Metcalfe, Milliken, Mills, Money, Morgan, Morrison, Mutchler, Neal, New, O'Brien, Odell, Payne, Phelps, John F. Philips, Piper, Poppleton, Powell, Rea, Reagan, John Reilly, James B. Reilly, Rice, Riddle, John Robbins, William M. Robbins, Roberts, Miles Ross, Savage, Sayler, Scales, Sheakley, Singleton, Slemons, Southard, Sparks, Spencer, Springer, Stenger, Stevenson, Stone, Swann, Tarbox, Teese, Terry, Thompson, Thomas, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Waddell, Charles C. B. Walker, Gilbert C. Walker, Walling, Walsh, Warren, Watterson, Erastus Wells, Whitthorne, Wike, Alpheus S. Williams, James Williams, Jeremiah N. Williams, Willis, Wilshire, Benjamin Wilson, Fernando Wood, Yeates and Young—165.

NAYS—Messrs. Adams, George A. Bagley, John H. Baker, Ballou, Banks, Blair, Bradley, William R. Brown, Horatio C. Burchard, Burleigh, Cannon, Cason, Caswell, Chittenden, Conger, Crapo, Cromise, Danford, Darrall, Davy, Denison, Dunnell, Eames, Evans, Fort, Foster, Freeman, Frye, Haralson, Benjamin W. Harris, Hathorn, Henderson, Hoar, Hoskins, Hunter, Hurlbut, Hyman, Joyce, Kasson, Kimball, King, Lapham, Lawrence, Leavenworth, Lynch, Magoon, MacDougall, McCrary, Miller, Monroe, Norton, Oliver, O'Neill, Packer, Page, William A. Phillips, Pierce, Plaisted, Potter, Pratt, Robinson, Sobieski Ross, Rusk, Sampson, Seelye, A. Herr Smith, Strait, Martin I. Townsend, Washington Townsend, Tufts, Van Vorhes, Waldron, Alexander S. Wallace, John W. Wallace, G. Wiley Wells, White, Whiting, Andrew Williams, Charles G. Williams, William B. Williams, James Wilson, Alan Wood, jr., Woodburn, and Woodworth—84.

NOT VOTING—Messrs. William H. Baker, Bass, Bright, Campbell, John B. Clarke of Kentucky, Dobbins, Garfield, Hale, Hays, Hendee, Goldsmith W. Hewitt, Hoge, Hubbell, Kelley, Levy, Lewis, McDill, McFarland, Nash, Platt, Purman, Rainey, Randall, Schleicher, Schumaker, Simpkinson, Smalls, William E. Smith, Stowell, Thornburgh, Watt, Ward, Wheeler, Whitehouse, Wigginton, and Willard—37.

So the appeal was laid on the table.

During the vote,

Mr. LUTTRELL stated that his colleague [Mr. WIGGINTON] was detained at home by sickness in his family.

Mr. COX. I move to dispense with the reading of the names.

Mr. TOWNSEND, of New York. I object.

The reading of the roll was concluded.

The vote was then announced as above recorded.

The previous question was seconded and the main question ordered; and under the operation thereof Mr. HOLMAN'S resolution was adopted.

ELECTION OF SPEAKER.

Mr. COX. I propose the name of Hon. SAMUEL J. RANDALL, of the third district of Pennsylvania, as Speaker of this House.

Mr. MCCRARY. I place in nomination Hon. JAMES A. GARFIELD, of the nineteenth district of Ohio.

The CLERK. There being no further nominations, the Clerk requests that Mr. CLYMER of Pennsylvania, Mr. BANNING of Ohio, Mr. BANKS of Massachusetts, and Mr. WILSON of Iowa, act as tellers, and the tellers will please take their places.

The House then proceeded to vote *viva voce* for Speaker, with the following result; which was announced by Mr. CLYMER on behalf of the tellers:

Whole number of votes cast, 246; necessary to a choice, 114; of which—

SAMUEL J. RANDALL received	162
JAMES A. GARFIELD received	82
CHARLES G. WILLIAMS received	1
W. R. MORRISON received	1
GEORGE F. HOAR received	1

The following is the vote in detail:

For Mr. Randall—Messrs. Abbott, Ainsworth, Ashe, Atkins, Bagby, John H. Bagley, jr., Banning, Beebe, Bell, Blackburn, Bland, Bliss, Blount, Boone, Bradford, John Young Brown, Buckner, Cabell, John H. Caldwell, William P. Caldwell, Candler, Cate, Caulfield, Chapin, John B. Clark, jr., of Missouri, Clymer, Cochrane, Collins, Cook, Cowan, Cox, Culberson, Cutler, Davis, De Bolt, Dibrell, Douglas, Durand, Durham, Eden, Egbert, Ellis, Ely, Faulkner, Felton, Finley, Forney, Franklin, Fuller, Gause, Gibson, Glover, Goode, Goodin, Gunter, Andrew H. Hamilton, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Haymond, Henkle, Hereford, Abram S. Hewitt, Hill, Holman, Hooker, Hopkins, House, Hunton, Hurd, Jenks, Frank Jones, Thomas L. Jones, Kehr, Knott, Lamar, Franklin Landers, George M. Landers, Lane, Le Moyne, Lord, Luttrell, Lynde, Mackey, Maish, McMahon, Meade, Metcalfe, Milliken, Mills, Money, Morrison, Mutchler, Neal, New, O'Brien, Odell, Payne, Phelps, John F. Philips, Piper, Poppleton, Powell, Rea, Reagan, John Reilly, James B. Reilly, Rice, Riddle, John Robbins, William M. Robbins, Roberts, Miles Ross, Savage, Sayler, Scales, Sheakley, Singleton, Slemons, Southard, Sparks, Spencer, Springer, Stenger, Stevenson, Stone, Swann, Tarbox, Teese, Terry, Thompson, Thomas, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Waddell, Charles C. B. Walker, Gilbert C. Walker, Walling, Walsh, Warren, Watterson, Erastus Wells, Whitthorne, Wike, Alpheus S. Williams, James Williams, Jeremiah N. Williams, Willis, Wilshire, Benjamin Wilson, Fernando Wood, Yeates, and Young—162.

For Mr. Garfield—Messrs. Adams, George A. Bagley, John H. Baker, Ballou, Banks, Blair, Bradley, William R. Brown, Horatio C. Burchard, Burleigh, Cannon, Cason, Caswell, Chittenden, Conger, Crapo, Cromise, Danford, Darrall, Davy, Denison, Dunnell, Eames, Evans, Fort, Foster, Freeman, Frye, Haralson, Benjamin W. Harris, Hathorn, Henderson, Hoar, Hoskins, Hunter, Hurlbut, Hyman, Joyce, Kasson, Kimball, King, Lapham, Lawrence, Leavenworth, Lynch, MacDougall, McCrary, Miller, Monroe, Norton, Oliver, O'Neill, Packer, Page, William A. Phillips, Pierce, Plaisted, Pratt, Robinson, Sobieski Ross, Rusk, Sampson, A. Herr Smith, Strait, Martin I. Townsend, Washington Townsend, Tufts, Van Vorhes, Waldron, Alexander S. Wallace, John W. Wallace, G. Wiley Wells, White, Whiting, Willard, Andrew Williams, Charles G. Williams, William B. Williams, James Wilson, Alan Wood, jr., Woodburn, and Woodworth—82.

For Charles G. Williams—Mr. Magoon—1.

For George F. Hoar—Mr. Seelye—1.

For William R. Morrison—Mr. Potter—1.

The Clerk announced that SAMUEL J. RANDALL, one of the Representatives from the State of Pennsylvania, having received a majority of all the votes given, was duly elected Speaker of the House of Representatives for the remainder of the Forty-fourth Congress.

Mr. COX, of New York, and Mr. MCCRARY, of Iowa, having been nominated by the Clerk for that purpose, conducted Mr. RANDALL to the chair amid applause, when he addressed the House as follows:

Gentlemen of the House of Representatives:

Called to this position because of the death of the late Speaker, Mr. Kerr, of Indiana, I only express the universal sentiment in saying that he was a good and great man, whose public and private life was characterized by purity, patriotism, and unswerving integrity.

Nobody can more completely appreciate than I do the high honor of presiding over the deliberations of the Representatives of the American people, and for this mark of your esteem and confidence I return my profound and heart-felt acknowledgments.

In the discharge of the important duties confided to me I shall endeavor to be absolutely fair and impartial. While enforcing the rules and upholding the constitutional prerogatives of this body I shall at the same time protect each and every member in the rights and privileges to which he may justly be entitled.

In the exercise of the parliamentary powers of the Chair it will be my duty and my pleasure to give true expression in the appointment of committees to the opinions and wishes of the House upon every question presented, believing myself, as I really am, no more than the voice of the House itself.

We stand in the presence of events which strain and test to the last degree our form of government. Our liberties, consecrated by so many sacrifices in the past and preserved amid the rejoicings of an exultant people to our centennial anniversary as one among the nations of the earth, must be maintained at every hazard. [Loud applause.] The people look confidently to your moderation, to your patient, calm, and firm judgment, to your wisdom in this time fraught with so much peril. Let us not, I beseech you, disappoint their just expectations and their keen sense of right, but by unceasing vigilance let us prevent even the slightest departure from the Constitution and the laws, forgetting in the moment of difficulty that we are the adherents of party and only remembering that we are American citizens with a country to save which may be lost if unauthorized and unconstitu-

tional acts of executive officers be not frowned down at once with relentless and unsparing condemnation. [Great applause.]

I am now ready to take the oath of office, and the gentleman from Indiana [Mr. HOLMAN] will be kind enough to administer it.

Mr. HOLMAN then administered to the Speaker-elect the oath prescribed by law.

MESSAGE FROM THE SENATE.

A message from the Senate was announced; when Mr. SYMPSON, one of its clerks, said: I am directed by the Senate to inform the House that a quorum of the Senate has assembled and that the Senate is ready to proceed to business; also that a committee has been appointed by the Senate to join such committee as may be appointed by the House to wait upon the President of the United States and inform him that a quorum of each House has assembled, and that Congress is ready to receive any communication that he may be pleased to make, and that Mr. ANTHONY and Mr. MCCREERY have been appointed as such committee on behalf of the Senate.

SWEARING IN OF MEMBERS.

Mr. WOOD, of New York. I rise to a question of privilege. I move that the gentleman from Georgia, Mr. Alexander H. Stephens, a member of this House, be now sworn in.

The motion was agreed to.

Mr. WOOD, of New York. I request that, for reasons which will be obvious to the House, the gentleman from Georgia be permitted to remain in his seat while the oath is administered.

The SPEAKER. If there be no objection, the gentleman will be allowed to remain in his seat.

Mr. A. H. STEPHENS was then qualified by taking the modified oath provided in the act of July 11, 1868.

Mr. LANDERS, of Connecticut. I ask leave to present the credentials of Mr. Levi Warner, Representative-elect from the fourth congressional district of Connecticut, to fill the vacancy caused by the resignation of Mr. W. H. BARNUM.

Mr. FRYE. I also rise to a question of the same privilege, and present the credentials of Mr. Edwin Flye, Representative-elect from the second district of Maine, to fill the vacancy caused by the resignation of Mr. JAMES G. BLAINE.

Mr. BANKS. I present the credentials of James B. Belford, Representative-elect from the State of Colorado.

Mr. HOLMAN. I present the credentials of Mr. Andrew Humphreys, Representative-elect from the second district of Indiana, and move that he be sworn in as a member of the House.

The SPEAKER. The Chair suggests that these credentials should be all forwarded to the Clerk; that they should be read, that the members to whom there is no objection be sworn in, and that those to whom there are objections, if any, shall stand aside until the judgment of the House shall be determined thereon.

Mr. HOLMAN. The more usual practice, I think, has been where there has been no objection, and the reading of the certificate is not called for, not to require its reading.

The SPEAKER. The Chair thinks that the certificates should be read.

Mr. CLYMER. I present the credentials of Mr. W. H. Stanton, Representative-elect from the twelfth district of Pennsylvania, to fill the vacany created by the resignation of Mr. Winthrop W. Ketcham.

The various credentials presented were then read.

When the credentials of Mr. James B. Belford, Representative-elect from the State of Colorado, were read,

Mr. SPRINGER said: I object to the swearing in of the member from Colorado. I ask that he stand aside till the other members have been sworn.

Mr. BANKS. I am entitled to the floor on that question; and I move that the oath be administered to Mr. Belford.

Mr. HOLMAN. I rise to a further question of privilege, and present the credentials of Mr. Nathan T. Carr, Representative-elect from the third congressional district of Indiana.

The credentials of Mr. Carr were read.

Mr. MCCRARY. I present the credentials of Mr. Charles W. Buttz, Representative-elect from the second district of South Carolina.

The credentials of Mr. Buttz were read.

Mr. MORRISON. There is a protest on file from sundry citizens of this congressional district, and, for the present, I object to the swearing in of this gentleman.

The SPEAKER. The Clerk will read the protest.

Mr. HOLMAN. I presume it is more in accordance with precedent that the gentlemen to whom there is no objection shall now come forward and be sworn.

The SPEAKER. The Chair will state that after all the certificates have been read he will then suggest that those to whom there is no objection shall qualify. No advantage will be taken in any respect as to those to whom there is objection.

Mr. MCCRARY. I suppose I will have the floor at the proper time to move that the gentleman from South Carolina be sworn in.

The SPEAKER. The gentleman shall have no advantage whatever taken of him.

Mr. HOLMAN. It is not necessary, then, to read this protest at this time.

The SPEAKER. If there is no call for the reading of the protest, it will be postponed until that case is before the House.

Mr. FLYE, Mr. WARNER, Mr. STANTON, Mr. CARR, and Mr. HUMPHREYS then presented themselves and were duly qualified by taking the oath prescribed by the act of July 2, 1862.

COLORADO ELECTION CASE.

Mr. SPRINGER. In reference to the credentials which have been presented from Colorado, I submit a resolution, which I send to the desk.

Mr. BANKS. I believe I have the floor upon that matter.

The SPEAKER. The Chair will recognize the gentleman from Massachusetts [Mr. BANKS] to make any motion that he sees fit.

Mr. BANKS. I move that the gentleman presenting credentials from the State of Colorado be sworn in.

The SPEAKER. The gentleman from Massachusetts [Mr. BANKS] moves that the gentleman presenting credentials from Colorado be sworn in, and the gentleman from Illinois [Mr. SPRINGER] moves a substitute, which the Clerk will read.

The Clerk read as follows:

Resolved, That the credentials of James B. Belford be referred to the Judiciary Committee, and that said committee be instructed to inquire and report at as early a day as possible whether Colorado is a State in the Union, and that until such report is received no person claiming to be a Representative from Colorado be sworn in as a member of this House.

Mr. SPRINGER. I now move the previous question on the substitute which I have offered.

Mr. BANKS. I desire to say that I was entitled to the floor upon my motion that the oath be now administered to the gentleman presenting credentials as a member from the State of Colorado.

The SPEAKER. The gentleman from Massachusetts will bear with the Chair a moment. The gentleman will remember that when the credentials were read objection was made to the swearing in of the person claiming to be the Representative-elect from the State of Colorado. It was therefore the duty of the Speaker first to recognize the gentleman from Massachusetts [Mr. BANKS] to make his motion, and then to recognize the gentleman from Illinois [Mr. SPRINGER] to submit his objection in the form of a substitute. The Chair would suggest to the gentleman from Illinois [Mr. SPRINGER] that he allow a reasonable time to the gentleman from Massachusetts——

Mr. BANKS. I think the Chair misunderstands the precise state of the question. I moved that the oath be administered, and I have the floor upon that question. Of course there will be time for the proposition of the gentleman from Illinois, [Mr. SPRINGER,] but he cannot submit it while I have the floor. I am entitled upon this question to the floor for one hour if I desire to use that time; of course I do not intend to do so. But I submit to the Chair that that is the position of the question, and that is my right.

The SPEAKER. The Chair would suggest to the gentleman from Illinois to withdraw temporarily his motion for the previous question, so as to allow the gentleman from Massachusetts to be heard.

Mr. SPRINGER. In deference to the wishes of the Chair, I will withdraw for the present my motion for the previous question.

Mr. BANKS. The motion for the previous question could not be made by the gentleman from Illinois, because I am entitled to the floor upon this question.

The SPEAKER. The gentleman from Massachusetts [Mr. BANKS] is recognized by the Chair as now entitled to the floor.

Mr. BANKS. I have been requested to present these credentials for the gentleman claiming to be a Representative-elect from the State of Colorado. I have very little acquaintance with the historical part of the question, so far as the election or the circumstances connected with the election are concerned. I present these credentials as a question of privilege. Congress passed a statute which was approved March 3, 1875, authorizing the people of the Territory of Colorado to form a State government, with certain conditions to be embodied in ordinances to be passed by the convention, which was authorized at the same time to frame a constitution for the State. Upon that being properly certified to the President of the United States by the executive officer of the Territory, the President was authorized and directed to issue a proclamation declaring the State of Colorado admitted into the Union "without further action of Congress."

Now I have not the slightest objection to any possible inquiry that can be made into the history of this election. I simply state here in my place, as a member of the House, that there is not a precedent for the rejection of the credentials of the gentleman claiming a seat as a member of this House from the State of Colorado. I do not believe that there can be found one single precedent where the House has ever, under the same circumstances, refused to recognize such certificate as entitling a person *prima facie* to his seat. If a question of any kind arises in regard to the legality or propriety of any proceeding connected with this election, it can be referred by the House to any committee hereafter and full and complete investigation had thereof.

The reason for taking this course is one of great importance and ought to weigh upon the minds of members of the House. The reason is this: if any member is entitled to object to any person who presents himself with the certificate of the governor of a State that he has been elected, and upon that objection the question is sent to a committee for investigation, it may be, as very often it has been, a year or perhaps more before the question will be decided, and in that event there will be no person to represent the State. And such objection and action can be repeated in as many instances as the House may choose

to enforce so arbitrary a rule, and thus effectually to impair if not defeat the right of a State to be represented in this House.

It is upon this principle, laid down by most of the writers upon this subject, that, wherever the officers of a State who are authorized to perform that duty by the constitution or the laws of the State certify that a member has been elected, that certificate is received as *prima facie* evidence of his right to a seat, and he is admitted without further question. After that, of course every avenue of inquiry is open. That is all I ask of the House in this case, and I believe it is perfectly in accordance with the precedents of the House, with the Constitution of the United States, and with the laws and constitution of the State of Colorado.

The precedents of the House with one single exception are uniform in favor of the admission of a member to his seat upon the certificate of the governor of the State. The case of New Jersey is perhaps the most remarkable exception to this rule that can be shown. In the text of parliamentary writers, especially in the text of the work by the distinguished gentleman from Iowa, [Mr. McCRARY,] which is so often quoted here on both sides of the House, it is laid down as a rule of procedure that wherever a certificate is presented in proper form it is received as *prima facie* evidence upon the question of the right of the member to take the oath of office.

In the case of New Jersey, which was a remarkable contest growing out of the equally balanced condition of parties at that time, the certificates were sent to a committee; but there were two sets of contestants present in the House claiming seats: one set upon the certificates of the governor of the State, while the other set, with one exception, had certificates of the secretary of state of New Jersey. Therefore a question arose upon the right of the claiming members to the seats which they claimed. But, in addition to that, it appears to have been stated by the governor of New Jersey, in an argument upon that subject, that he regretted the laws of his State required him to give the certificates which he did give to one set of persons claiming seats, and that he was not able to do justice by giving certificates to the other parties. So that, upon the very evidence presented from the governor himself, the authority of the credentials in those cases was assailed. It was upon that ground, if upon any ground whatever, that the reference of those certificates to a committee was made.

There have been one or two other cases in which it has appeared upon the face of the certificate itself that there was a doubt of the election—a doubt of the right of the member to the seat. In such cases the certificate has been referred to a committee. But with exceptions of this kind, where the evidence impeaching the integrity or the truth of the certificate has been found in the circumstances attending its receipt by the House or upon the face of the certificate itself—with these exceptions, the practice has been uniform and unvarying; so that there is scarcely a single exception to the rule even upon the grounds which I have just indicated.

Now I do not know what may have been the condition of affairs in the State of Colorado which resulted in the election upon which Mr. Belford claims a seat. I do not express any opinion upon that point. I see here a certificate of the State of Colorado—a State that was authorized by the Congress of the United States to be formed, and which has complied with the conditions imposed by Congress in forming its constitution and adopting the proper ordinances; and the Congress of the United States, in the statute itself, has declared that, without any further proceedings by Congress—upon the declaration of the President of the United States that these conditions have been complied with—Colorado shall be admitted as a State of the Union upon an equal footing with all other States.

Now, under the laws of the United States, the House in view of the admission of this State has the right to add another member to its roll. This is the privilege which the House has of increasing its membership upon the admission of this State. All the circumstances being completely verified and every condition being complied with, there can be no objection—no just or proper objection—to the admission of a member claiming the right to a seat as Representative from the State of Colorado.

I send to the Clerk's desk and ask to have read a copy of the proclamation of the President of the United States upon this subject.

The Clerk read as follows

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A Proclamation.

Whereas the Congress of the United States did, by an act approved on the 3d day of March, 1875, authorize the inhabitants of the Territory of Colorado to form for themselves out of said Territory a State government with the name of the State of Colorado, and for the admission of such State into the Union on an equal footing with the original States upon certain conditions in said act specified; and

Whereas it was provided by said act of Congress that the convention elected by the people of said Territory to frame a State constitution should, when assembled for that purpose and after organization declare on behalf of the people that they adopt the Constitution of the United States, and should also provide by an ordinance, irrevocable without the consent of the United States and the people of said State, that perfect toleration of religious sentiment shall be secured, and that no inhabitant of said State shall ever be molested in person or property on account of his or her mode of religious worship, and that the people inhabiting said Territory do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within said Territory, and that the same shall be and remain at the sole and entire disposition of the United States, and that the lands belonging to citizens of the United States residing without the said State shall never be taxed higher than the lands belonging to residents thereof, and that no taxes shall be imposed by the State on lands or property therein belonging to or which may hereafter be purchased by the United States; and

Whereas it was further provided by said act that the constitution thus formed by the people of the Territory of Colorado should by an ordinance of the convention forming the same be submitted to the people of said Territory for ratification or rejection at an election to be held in the month of July, 1876, at which election the lawful voters of said new State should vote directly for or against the proposed constitution and the returns of said election should be made to the acting governor of the Territory, who with the chief justice and United States attorney of said Territory, or any two of them, should canvass the same, and if a majority of legal votes should be cast for said constitution in said proposed State, the said acting governor should certify the same to the President of the United States together with a copy of said constitution and ordinances; whereupon it should be the duty of the President of the United States to issue his proclamation declaring the State admitted into the Union on an equal footing with the original States without any further action whatever on the part of Congress; and

Whereas it has been certified to me by the acting governor of said Territory of Colorado that within the time prescribed by said act of Congress a constitution for said proposed State has been adopted, and the same ratified by a majority of the legal voters of said proposed new State in accordance with the conditions prescribed by said act of Congress; and

Whereas a duly authenticated copy of said constitution and of the declaration and ordinance required by said act has been received by me.

Now, therefore, I, Ulysses S. Grant, President of the United States of America, do, in accordance with the provisions of the act of Congress aforesaid, declare and proclaim the fact that the fundamental conditions imposed by Congress on the State of Colorado to entitle that State to admission to the Union have been ratified and accepted and that the admission of the said State into the Union is now complete.

In testimony whereof I have hereunto set my hand and have caused the seal of the United States to be affixed.

Done at the city of Washington, this first day of August, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of [SEAL.] the United States of America the one hundred and first.

U. S. GRANT.

By the President:
HAMILTON FISH,
Secretary of State.

Mr. BANKS. Mr. Speaker, this proclamation is in accord with the directions given to the President upon this subject in section 5 of the act of March 3, 1875, to enable the people of Colorado to form a constitution and State government. That section provides that—

If a majority of legal votes shall be cast for said constitution in said proposed State, the said acting governor shall certify the same to the President of the United States, together with a copy of said constitution and ordinances; whereupon it shall be the duty of the President of the United States to issue his proclamation declaring the State admitted into the Union on an equal footing with the original States, without any further action whatever on the part of Congress.

The record is therefore complete. The State of Colorado is admitted by the Congress of the United States. It is a State. A Representative from that State has been legally elected. He has the certificate of the governor and secretary of the State. Such a certificate under circumstances similar to these has never been disregarded by this House, and it ought not to be in this case. Desiring that the fullest possible inquiry may be made hereafter into this subject, I trust that the usual course may be adopted in reference to this member claiming a seat under his certificate and that the oath of office may be administered to him.

I now yield the floor for ten minutes to my colleague, [Mr. HOAR.]

Mr. HOAR. My colleague [Mr. BANKS] has very well stated the law and usage of the House, if this were a mere question of the sufficiency of credentials of the due election of a member. But no such question is made. The gentleman from Illinois [Mr. SPRINGER] bases his objection on the extraordinary suggestion that he desires a legal inquiry to be made as to what country he belongs to—as to the question who constitute the States of the American Union. Now, Mr. Speaker, he might as well refer to the Judiciary Committee the question whether the Declaration of Independence ever took effect, whether the Constitution of the United States was ever adopted by the proper number of States, what amendments have been ingrafted upon it since, or any other question which goes to that simple fundamental inquiry what makes up the country called the United States of America—a matter which every American citizen and every American law-giver is conclusively presumed to take notice of as of right, without proof from any other quarter.

The Congress of the United States (the present House of Representatives concurring in the act) directed the President to signify to the American people at large by executive proclamation, the highest evidence known to legislative or judicial processes, the addition of this State to the number which make up the American Union—the same formality which has always conclusively attested and proved the changes which have taken place in the Constitution of the United States itself.

Now it is utterly idle and trivial. The territorial government of Colorado, as a matter of history, is ended. The State government, the State judiciary, the State legislature, the State executive have taken its place. The Senators from Colorado are already sworn and in their seats at the other end of the Capitol. In what attitude would the suggestion of the gentleman from Illinois place the House, to refer to a committee to take evidence as to the constituent parts which make up the country of whose Legislature we form a branch?

Mr. BANKS. I now yield for ten minutes to the gentleman from Illinois, [Mr. HURLBUT.]

Mr. HURLBUT. Mr. Speaker, this question is altogether too important to pass on suddenly, and, in order to be passed upon with care and with consideration, there is or ought to be in business of all kinds some final adjudication, some complete testimony.

Now, under the law of the 3d of March, 1875, in the fifth section, I

find certain things required to be done by the territorial convention and the territorial officers as evidences of the fact that the action of the people of that Territory had converted under this law their territorial condition into a State condition. The Congress of the United States made the President by that law their organ to put forth the final determination, not of the law question, but of the fact. The fifth section, after prescribing various things to be done, concludes, "whereupon it shall be the duty of the President of the United States to issue his proclamation declaring the State admitted into the Union on an equal footing with the original States," without any further action whatever on the part of Congress. That is the law; that is the direction given by the joint action of the two Houses exercising the legislative sovereignty of the United States to the President of the United States; and his proclamation which has been read to you is the assertion by the agent whom you constituted that all those facts had taken place, and that the great fact of the change of territorial condition in Colorado was accomplished without requiring any further legislation on the part of Congress.

Nor is that assertion capable of being questioned in any court or in any body of Congress. It is final and conclusive upon the people, and upon the courts, and upon Congress.

There is no new State in this Union but what stands precisely upon the same grounds. It is just as competent for any one to challenge the right of my comrade to sit from the State of Illinois, as it is for him to make this question in regard to the Delegate from Colorado, because both States stand upon the same consummation of authority—the power given by Congress, completed by the act of the Executive.

Now, sir, if Colorado became a State, that is a fact, and a fact we are presumed to know. If Colorado became a State, she is entitled under the Constitution to her Representative, and when that Representative comes and presents the regular form of certificate, such as we all hold, it is not competent to refuse him, unless upon attacking the validity of the election; and that, as a rule, has always taken place as a secondary thing, in the nature of contest.

I can imagine no possible ground upon which the proposition made by my colleague can stand. I know him to be a man of infinite ingenuity, but I think it would puzzle all the ingenuity of all the perverse men of the world to get clear of that plain statement of fact, and that completes the action of both Houses of Congress.

I do not know, because he has not yet stated upon what grounds he bases it, but believing as I do that the absolutely final action has taken place, that the Congress of the United States authorized the people of that Territory to do certain things, and upon their doing certain things and reporting in the regular way to the President of these United States that they had done certain things it authorized the President by proclamation, the highest evidence, as stated by my friend from Massachusetts, to put that fact officially before the country. Now, sir, the day when that proclamation took place the territorial government of that State had disappeared. Its territorial Delegate has no right here, and the State can be and must be represented, and in justice ought to be represented, by the man whom the people of that State under the forms of law have selected to perform that duty.

Mr. BANKS. I have only a few words to say in addition.

This State, as has been stated, has been admitted by the Congress of the United States, and the people of the State of Colorado, and nobody else, has anything to do with it. It is in exact accordance with the conditions of the Constitution for the admission of new States. The Constitution requires that every State of the Republic shall give full faith and credit to every act of this State of Colorado, and we are bound to do the same thing ourselves. We cannot require of other States that recognition which we refuse ourselves.

It is quite possible, I suppose, to discuss the question of the destructibility of a State. I do not know whether it can be done or not; whether a State that has been created by the act of the Congress of the United States, and by the people of the State itself, can be destroyed by Congress or by any other power in the Government. That is a question which is involved in the proposition of the gentleman from Illinois. It has been tried once in another field; but it is believed, and I think justly believed by the people of this country, and it is a recognized principle in regard to the governments in every part of the world, that a government once established and recognized cannot be destroyed. It may encounter defeat in war; it may be subjected to misfortunes of various kinds; but so long as there is anybody to represent it the State has an existence. It is indestructible; and this State of Colorado is indestructible. Its star is upon the flag of our country. That place cannot be made vacant by anything that is within the power of the House of Representatives.

These questions are involved in the proposition of the gentleman from Illinois. I do not propose to enter upon the discussion of them now, because the question that is presented to the House does not involve considerations of that character. Here is a State, made so by the Congress of the United States and the act of the people of the Territory, declared upon the instructions given to the President by Congress as a conceded and completed fact. The member has been elected by the people of that State and claims his seat. He has a certificate from the governor of the State in the form required by the Constitution and laws of the United States, and by the constitution and the laws of the State of Colorado. And where there is no contestant, where no one else is contending for the seat, there is no precedent for the rejection of the motion now before the House, which is that the member shall be permitted to take his oath upon the presentation of these credentials. If afterward the House shall think proper to institute an inquiry into the history connected with the organization of the State it has full power to do so. This will not interfere with it in any degree whatever. We recognize the fact that there is *prima facie* evidence of the election of the member, and for the time being will give him the seat upon the credentials presented.

The SPEAKER. Does the gentleman from Massachusetts yield the floor?

Mr. BANKS. I do.

Mr. SPRINGER was recognized, and yielded ten minutes to Mr. WOOD, of New York.

Mr. WOOD, of New York. I do not propose in this preliminary discussion of this matter to follow the gentleman from Massachusetts [Mr. BANKS] and the gentleman from Illinois [Mr. HURLBUT] in discussing the questions they have referred to. But I submit, sir, that this House is made the judge of the qualifications of its own members; and that implies that we have the full right to consider not only whether a man presents a *prima facie* case, but to go behind that case and institute an inquiry into the election, and into every thing appertaining to the claim which he sets up to become a member of this body. That involves in this case not only a consideration as to the regularity and form of the credentials he may present, but also the question what constituency he claims to represent.

Now, sir, I agree with these gentlemen that Congress did pass an act authorizing the Territory of Colorado to become a State under certain conditions. I also admit that the President of the United States has issued his proclamation in which he declares certain facts, and upon those alleged facts he proclaims Colorado a State. I go further. I admit that this person who is presented by the gentleman from Massachusetts [Mr. BANKS] may, in form, present a proper certificate signed by the so-called governor of that so-called State. But are we to be deprived of the privilege of examining the records? Is this House in judging of the qualification of this person, who claims the right to sit here as our peer, to be deprived of the right of knowing whether he is entitled to sit here or not?

The gentleman from Massachusetts [Mr. BANKS] tells us, give him his seat and inquire afterward. Does the gentleman from Massachusetts not know that in giving him his seat we give full recognition to his position that Colorado is a State, and are precluded from investigation into that fact afterward? Now, sir, I am quite sure that there is no disposition on this side of the House to exclude this gentleman from his seat if he be entitled to it. But as Colorado when we adjourned last August was a Territory represented by a Delegate without the right to vote, it is our right and duty to institute an inquiry as to the facts whether Colorado as a Territory has been converted into a State in pursuance of the Constitution and laws of the United States; whether she has adopted a constitution for the State which is republican in form. We have no proof of that fact. A few years ago our republican friends were exceedingly anxious that every State should have a government republican in form. And now, sir, I hold it is entirely legitimate and appropriate, preliminary to swearing in this gentleman, that we shall institute an inquiry into all these questions. And if Colorado be a State, then I am certain we shall not object to this gentleman being sworn in as a member.

Mr. SPRINGER. I now yield ten minutes to the gentleman from Pennsylvania, [Mr. JENKS.]

Mr. JENKS. Before deciding on the regularity of the election of the gentleman who comes from Colorado, it is first necessary that it shall be determined that there is a State in existence in this Union known as Colorado. Next, the question arises, is Colorado a State in this Union. Before speaking further on that question, I would remark that there is sufficient doubt to justify the reference of this question to the Judiciary Committee.

I do not propose to commit myself upon the question whether Colorado is or is not now a State of this Union. But I propose to show that there are questions of doubt surrounding the case sufficient to justify the reference of the subject to a committee for inquiry. The act under which it is claimed that Colorado has been admitted provides in the fifth section as follows:

> And if a majority of legal votes shall be cast for said constitution in said proposed State, the said acting governor shall certify the same to the President of the United States, together with a copy of said constitution and ordinances; whereupon it shall be the duty of the President of the United States to issue his proclamation declaring the State admitted into the Union on an equal footing with the original States, without any further action whatever on the part of Congress.

Now, by that provision of the fifth section it is devolved upon the President to admit the State of Colorado when it shall have been established that a certain state of facts exists. The President of the United States is to be the judge of those facts. Suppose a law should be passed to authorize the President to admit as a State any portion of the territory of the United States when the inhabitants thereof shall petition to be so admitted, provided they have framed and adopted a constitution of a given form. That would only be extending this act a little farther than it goes, for the principle would be identically the same. It would be a delegation to the President of

legislative powers or judicial powers, or of both. The third section of the fourth article of the Constitution of the United States provides that—

New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State, &c.

This act, from which I have read, provides that the President shall admit Colorado as a State. Now, before a new State can be admitted the Constitution of the United States provides that the constitution of said State shall be republican in form. Judicial action or legislative action is required to determine whether said constitution is republican in form.

Now, if Congress has power to delegate any portion of its legislative functions to the President it may delegate them all, and if Congress may delegate all its legislative functions to the President, we may then dissolve this Congress and allow the President of the United States to rule this country by his mere proclamations.

Taking this view of the question, it seems to me to be sufficiently doubtful to justify its reference to the Committee on the Judiciary to determine whether the provisions of the act have been complied with, and whether Congress can delegate to the President any of its legislative or judicial functions, as the case may be.

Mr. SPRINGER. I do not know that it is necessary for me to say anything in behalf of the motion I have made, in addition to what has been said by the gentleman from New York [Mr. WOOD] and the gentleman from Pennsylvania, [Mr. JENKS.]

In reference to the remark of the gentleman from Massachusetts [Mr. BANKS] that this question has been settled and that Colorado is now as much a State of the Union as is Illinois, and that it is now too late to raise that question, I desire to say that it is not too late for this House now and at all times to judge of the election returns and qualifications of its own members, and one of the chief qualifications of a member of this House is that he shall have a State behind him to represent.

As has been remarked by the gentleman from Pennsylvania, [Mr. JENKS,] certain formalities have passed between the President of the United States and the Legislature of the late Territory of Colorado. The Territory of Colorado has formed what purports to be a State constitution. Who has seen that instrument? Who has read it? Who knows one of the provisions of that instrument which is to be received as the constitution of one of the States of this Union? Is it republican in form? Have the boundaries of that State been fixed in conformity with that provision of the Constitution of the United States which requires that no new State shall be formed or erected within the jurisdiction of any other State? And have the other provisions of the Constitution been complied with? No one knows. I do not know; nor do I know what will be the result of the proposed investigation by the Judiciary Committee.

As the gentleman from Pennsylvania [Mr. JENKS] has well said, the facts will justify an inquiry on the part of the Committee of the Judiciary of this House to determine whether the law of Congress has been complied with, and whether the President of the United States may exercise legislative powers which by the Constitution, in the third section of the fourth article, have been committed to Congress alone, and whether new States should be admitted into this Union by the Congress and not by a proclamation of the President of the United States.

I think, therefore, that no injustice can be done to the territory of Colorado, which in point of population is smaller than any congressional district represented upon this floor. That territory is now claiming the right to have two representatives in the Senate Chamber and one upon this floor, and to cast three votes in the electoral college for President and Vice-President of the United States. I say that no injustice can be done to that handful of population about to be endowed with so important prerogatives by having the question determined by the highest judicial power of this House, and in the mean time requiring the Representative to wait as Representatives from other States have long waited about the lobbies of this House, before being admitted upon an equality with other members upon this floor.

I ask that this resolution be adopted in the form in which I have modified it by the addition of a provision directing the committee to inquire whether the election has been held in pursuance to the acts of Congress. I ask that the resolution, as modified, be read.

The resolution, as modified, was read, as follows:

Resolved, That the credentials of James B. Belford be referred to the Judiciary Committee, and that said committee be instructed to inquire and report at as early a day as possible whether Colorado is a State in the Union, and whether an election has been held therein in pursuance to law for a Representative in Congress; and that until such report is made no person claiming to be a Representative from Colorado be sworn in as a member of this House.

Mr. CONGER. I make the point of order that the reference proposed is irregular under the rules; that this matter should go to the Committee of Elections.

Mr. SPRINGER. I move the previous question.

The SPEAKER. The gentleman from Michigan [Mr. CONGER] is raising a point of order.

Mr. SPRINGER. Excuse me; I did not hear it.

Mr. CONGER. I make the point of order that under the rules of the House this question can only be referred, except by a suspension of the rules, to the Committee of Elections.

The SPEAKER. The Chair overrules the point of order. It is competent for the House to make any reference it may choose of a legal question of this sort: either to the Committee of Elections or to the Committee on the Judiciary or to any other committee.

Mr. CONGER. Then I move an amendment so as to refer the question to the Committee of Elections.

Mr. SPRINGER. I have the floor and do not yield it. I call for the previous question.

Mr. CONGER. I made my motion before the call of the previous question.

Mr. SPRINGER. The gentleman took the floor upon a point of order, which has been overruled by the Chair.

The SPEAKER. The gentleman from Illinois moves the previous question.

Mr. BANKS. I hope the gentleman will not press the demand for the previous question.

The SPEAKER. The Chair would suggest to the gentleman from Illinois to allow the motion of the gentleman from Michigan to be made, so that if the majority of the House wish to adopt it they may have an opportunity to do so. That course may facilitate business.

Mr. SPRINGER. What is the amendment? I did not hear it.

The SPEAKER. The amendment of the gentleman from Michigan is to strike from the resolution "the Committee on the Judiciary" and insert instead "the Committee of Elections."

Mr. SPRINGER. I think the Judiciary Committee is the proper committee to make this examination; and I prefer not to yield for the amendment.

The SPEAKER. The gentleman from Illinois declines to yield and demands the previous question upon his resolution.

Mr. BANKS. I hope he will not press the demand for the previous question.

Mr. SPRINGER. I will yield for the amendment and then move the previous question.

Mr. CONGER. If the gentleman does not yield to allow me to speak upon the proposition, I withdraw the amendment.

Mr. BANKS. Let us have a little time for debate.

The SPEAKER. The gentleman from Michigan withdraws the amendment and the gentleman from Illinois renews the demand for the previous question.

Mr. BANKS. I hope that the call for the previous question will not be pressed.

The question being taken, the previous question was seconded; there being—ayes 120, noes 71.

The question then recurring on ordering the main question, there were—ayes 116, noes 73.

Mr. CONGER. I demand the yeas and nays on ordering the main question, because gentlemen wish to speak further upon this subject and the opportunity is refused.

The yeas and nays were ordered.

The question was taken; and there were—yeas 147, nays 95, not voting 48; as follows:

YEAS—Messrs. Abbott, Ainsworth, Ashe, Atkins, Bagby, John H. Bagley, jr., Banning, Beebe, Bell, Blackburn, Bland, Bliss, Boone, Bradford, John Young Brown, Buckner, Cabell, John L. Caldwell, William P. Caldwell, Candler, Carr, Cate, Caulfield, Chapin, John B. Clark, jr., of Missouri, Clymer, Cochrane, Collins, Cook, Cowan, Culberson, Cutler, Davis, De Bolt, Dibrell, Douglas, Durand, Eden, Egbert, Ellis, Ely, Faulkner, Felton, Finley, Forney, Franklin, Fuller, Ganse, Gibson, Glover, Goode, Goodin, Andrew H. Hamilton, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Haymond, Hereford, Abram S. Hewitt, Hill, Hooker, Hopkins, House, Humphrey, Hunton, Hurd, Jenks, Frank Jones, Thomas L. Jones, Knott, Lamar, Franklin Landers, George M. Landers, Luttrell, Lynde, Mackey, Maish, McMahon, Meade, Metcalfe, Milliken, Mills, Money, Morrison, Mutchler, New, Odell, Payne, Phelps, John F. Philips, Piper, Poppleton, Powell, Reagan, John Reilly, James B. Reilly, Rice, Riddle, William M. Robbins, Roberts, Miles Ross, Savage, Scales, Seelye, Sheakley, Singleton, Slemons, Southard, Sparks, Spencer, Springer, Stanton, Stenger, Tarbox, Teese, Terry, Thompson, Thomas, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Waddell, Charles C. B. Walker, Gilbert C. Walker, Walling, Walsh, Warner, Warren, Erastus Wells, Whitthorne, Wike, Alpheus S. Williams, James Williams, Jeremiah N. Williams, Willis, Benjamin Wilson, Fernando Wood, Yeates, and Young—147.

NAYS—Messrs. Adams, George A. Bagley, John H. Baker, Ballou, Banks, Blair, Blount, Bradley, William R. Brown, Horatio C. Burchard, Samuel D. Burchard, Burleigh, Cannon, Cason, Caswell, Chittenden, Conger, Cox, Crapo, Crounse, Danford, Darrall, Davy, Denison, Dunnell, Durham, Eames, Evans, Fort, Foster, Freeman, Frye, Haralson, Benjamin W. Harris, Hathorn, Henderson, Hoar, Holman, Hoskins, Hunter, Hurlbut, Hyman, Joyce, Kehr, Kimball, King, Lapham, Lawrence, Leavenworth, Le Moyne, Magoon, MacDougall, McCrary, Miller, Monroe, Morgan, Neal, Norton, O'Brien, Oliver, O'Neill, Packer, Page, William A. Phillips, Pierce, Plaisted, Potter, Pratt, John Robbins, Robinson, Sobieski Ross, Rusk, Sampson, A. Herr Smith, Strait, Stevenson, Martin I. Townsend, Washington Townsend, Tufts, Van Vorhes, Waldron, Alexander S. Wallace, John W. Wallace, Watterson, G. Wiley Wells, White, Whiting, Willard, Andrew Williams, Charles G. Williams, William B. Williams, James Wilson, Alan Wood, jr., Woodburn, and Woodworth—95.

NOT VOTING—Messrs. Anderson, William H. Baker, Bass, Bright, Campbell, John B. Clarke of Kentucky, Dobbins, Flye, Garfield, Gunter, Hale, Hays, Hendee, Henkle, Goldsmith W. Hewitt, Hoge, Hubbell, Kasson, Kelley, Lane, Levy, Lewis, Lord, Lynch, McDill, McFarland, Nash, Platt, Purman, Ramey, Rea, Sayler, Schleicher, Schumaker, Sinnickson, Smalls, William E. Smith, Stephens, Stone, Stowell, Swann, Thornburgh, Wait, Ward, Wheeler, Whitehouse, Wigginton, and Wilshire—48.

So the main question was ordered to be now put.

During the vote,

Mr. JOYCE stated that his colleague, Mr. HENDEE, was absent on account of sickness.

The vote was then announced as above recorded.

The question then recurred on the adoption of Mr. SPRINGER's substitute for the resolution.

Mr. HOLMAN demanded a division.

The House divided; and there were—ayes 133, noes 88.

So the substitute was agreed to.

Mr. BANKS demanded the yeas and nays on the resolution as amended.

The yeas and nays were ordered.

The question was taken; and it was decided in the affirmative—yeas 142, nays 99, not voting 49; as follows:

YEAS—Messrs. Abbott, Ainsworth, Ashe, Atkins, Bagby, John H. Bagley, jr., Banning, Beebe, Bell, Blackburn, Bland, Bliss, Boone, Bradford, John Young Brown, Buckner, Samuel D. Burchard, Cabell, John H. Caldwell, William P. Caldwell, Candler, Carr, Cate, Caulfield, Chapin, John B. Clark, jr., of Missouri, Clymer, Cochrane, Collins, Cook, Cowan, Culberson, Cutler, Davis, De Bolt, Dibrell, Douglas, Durand, Eden, Egbert, Ellis, Ely, Faulkner, Felton, Finley, Forney, Franklin, Gause, Gibson, Goode, Goodin, Gunter, Andrew H. Hamilton, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hatcher, Haymond, Hereford, Abram S. Hewitt, Hill, Hooker, Hopkins, House, Humphreys, Hunton, Hurd, Jenks, Frank Jones, Thomas L. Jones, Knott, Lamar, Franklin Landers, George M. Landers, Lane, Luttrell, Lynde, Mackey, Maish, McMahon, Meade, Metcalfe, Milliken, Mills, Money, Mutchler, New, Odell, Payne, Phelps, John F. Philips, Poppleton, Powell, Reagan, John Reilly, James B. Reilly, Rice, Riddle, John Robbins, William M. Robbins, Roberts, Miles Ross, Scales, Sheakley, Singleton, Slemons, Southard, Sparks, Spencer, Springer, Stanton, Stenger, Swann, Terry, Thomas, Thompson, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Waddell, Charles C. B. Walker, Gilbert C. Walker, Walling, Walsh, Warner, Warren, Whitthorne, Wike, Alpheus S. Williams, James Williams, Jeremiah N. Williams, Willis, Wilshire, Benjamin Wilson, Fernando Wood, and Yeates—142.

NAYS—Messrs. Adams, Anderson, George A. Bagley, John H. Baker, Ballou, Banks, Blair, Blount, Bradley, William R. Brown, Horatio C. Burchard, Burleigh, Cannon, Cason, Caswell, Chittenden, Conger, Cox, Crapo, Crounse, Danford, Darrall, Davy, Denison, Dunnell, Durham, Eames, Evans, Flye, Fort, Foster, Freeman, Frye, Haralson, Benjamin W. Harris, Hartzell, Hathorn, Henderson, Hoar, Holman, Hoskins, Hunter, Hurlbut, Hyman, Joyce, Kasson, Kehr, Kimball, King, Lapham, Lawrence, Lynch, Magoon, MacDougall, McCrary, Miller, Monroe, Morgan, Neal, Norton, O'Brien, Oliver, O'Neill, Packer, Page, William A. Phillips, Pierce, Plaisted, Potter, Pratt, Rea, Robinson, Sobieski Ross, Rusk, Sampson, Savage, Seelye, A. Herr Smith, Strait, Stevenson, Martin I. Townsend, Washington Townsend, Tufts, Van Vorhes, Waldron, Alexander S. Wallace, John W. Wallace, Watterson, Erastus Wells, G. Wiley Wells, White, Whiting, Willard, Andrew Williams, Charles G. Williams, William B. Williams, James Wilson, Alan Wood, jr., and Woodworth—99.

NOT VOTING—Messrs. William H. Baker, Bass, Bright, Campbell, John B. Clarke of Kentucky, Dobbins, Fuller, Garfield, Glover, Hale, Hays, Hendee, Henkle, Goldsmith W. Hewitt, Hoge, Hubbell, Kelley, Leavenworth, Le Moyne, Levy, Lewis, Lord, McDill, McFarland, Morrison, Nash, Piper, Platt, Purman, Rainey, Sayler, Schleicher, Schumaker, Sinnickson, Smalls, William E. Smith, Stephens, Stone, Stowell, Tarbox, Teese, Thornburgh, Wait, Ward, Wheeler, Whitehouse, Wigginton, Woodburn, and Young—49.

So the resolution, as amended, was adopted.

Mr. SPRINGER moved to reconsider the vote by which the resolution as amended was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

MEMBER-ELECT FROM SOUTH CAROLINA.

Mr. McCRARY. I rise for the purpose of making a privileged motion, that the member from the second district of South Carolina be sworn in. The motion will call for some debate, and as it is quite late I will yield to a motion to adjourn if gentlemen desire it.

Mr. HOLMAN. I move the House adjourn.

Mr. HEWITT, of New York. I ask the gentleman to yield to me a moment.

The SPEAKER. The Chair will not allow the gentleman from Indiana to yield to any other motion to interrupt the gentleman from Iowa.

Mr. HAMILTON, of Indiana. I ask my colleague to yield to allow me to introduce a resolution in reference to the death of Mr. Kerr.

The SPEAKER. The Chair will entertain a motion to adjourn, but will not permit the mover of that motion to yield to any other motion that will interfere with the motion of the gentleman from Iowa.

Mr. HOLMAN. The gentleman from New York desires to submit a request to the House of general importance, and I think there will be no trouble about it.

The SPEAKER. If the gentleman from Iowa will hear the motion of the gentleman from New York, the Chair has no objection.

Mr. HEWITT, of New York. My motion will require unanimous consent.

The SPEAKER. The Chair will state to the gentleman from Iowa that the motion of the gentleman from New York, whatever it may be, will require unanimous consent, so that by hearing it read he will not lose any of his rights.

ELECTION INVESTIGATION.

Mr. HEWITT, of New York. I ask unanimous consent to introduce the following resolution.

Mr. CONGER. While there is a member waiting to be sworn in I object to anything.

The SPEAKER. The Clerk will read and then the gentleman can make his objection.

Mr. CONGER. I object to its being read.

The SPEAKER. The gentleman from Iowa has yielded to have it read.

The Clerk read as follows:

Resolved, That three special committees, one of fifteen members to proceed to Louisiana, one of six members to proceed to Florida, and one of nine members to proceed to South Carolina, shall be appointed by the Speaker of the House to investigate recent elections therein and the action of the returning or canvassing boards in the said States in reference thereto, and to report all the facts essential to an honest return of the votes received by the electors of the said States for President and Vice-President of the United States, and to a fair understanding thereof by the people, and whether the electoral votes of the said States should be counted; and that for the purpose of speedily executing this resolution the said committee shall have power to send for persons and papers, to administer oaths, to take testimony, and, at their discretion, to detail subcommittees, with like authority to send for persons and papers, to administer oaths, and to take testimony, and that the said committees and their subcommittees may employ stenographers, clerks, and messengers, and be attended each by a deputy sergeant at arms; and said committees shall have leave to report at any time, by bill or otherwise.

The SPEAKER. Does the gentleman from Iowa [Mr. McCRARY] yield that that resolution may be offered.

Mr. McCRARY. I do not.

Mr. HEWITT, of New York. Is it in order to move a suspension of the rules?

The SPEAKER. The Chair understands the gentleman from Iowa [Mr. McCRARY] is on the floor for a question of privilege; and the Chair would therefore rule that a motion to suspend the rules is not in order.

Mr. McCRARY. I agreed to yield to the gentleman from Indiana, [Mr. HOLMAN,] if he proposed to move an adjournment.

THE LATE HON. M. C. KERR.

Mr. HAMILTON, of Indiana. I ask the gentleman from Iowa to yield to me that I may offer a resolution in regard to the death of the late Speaker, Mr. Kerr.

Mr. McCRARY. I yield for the purpose of hearing it read.

The Clerk read as follows:

Resolved, That the special order for Saturday, December 16, at two o'clock, shall be the presentation of suitable resolutions on the death of Hon. M. C. Kerr, Speaker of this House during its last session, and the expression by the members of the esteem in which he was held for his unblemished character, for his eminent services as a representative, and for his ability and impartiality as a presiding officer.

Mr. McCRARY. I have no objection to that resolution if the gentleman will add at the end of it, "and that, as a mark of respect for the memory of the deceased Speaker, the House do now adjourn."

The SPEAKER. Does the gentleman from Iowa yield for that resolution?

Mr. McCRARY. I do not, unless with the amendment I have stated.

Mr. HAMILTON, of Indiana. I do not accept the gentleman's amendment.

Mr. McCRARY. I wish to understand whether it is proposed to adjourn immediately upon the adoption of this resolution?

Mr. HOLMAN. No, sir.

Mr. McCRARY. Then we will proceed with the other matter.

The SPEAKER. The gentleman from Iowa [Mr. McCRARY] is entitled to the floor.

SECOND DISTRICT OF SOUTH CAROLINA.

Mr. McCRARY. The credentials of the member-elect from the second district of South Carolina, now submitted to the House, are under the great seal of that State. They are in due form, and while it may be a matter of very little consequence to this House, or to the country, whether that member shall be sworn in to-day or at some future time, the precedent which will be established by refusing to swear him in on these credentials is one that, I trust, the House will pause long before it establishes. There is a long but unbroken line of decisions in this House which hold that it is the absolute and imperative duty of the House in all cases to respect credentials that come here from the various districts of the country bearing the great seal of the State and certified in due form of law, so far as to swear in persons holding these credentials, and leaving to the future action of the House anything in the nature of a contest as to the legality, the fairness, the regularity of the election. There is scarcely in the history of the country an exception to this rule, and I submit to the House that it is of the utmost importance that this rule and this long-established principle shall be adhered to in this case. A departure from it, Mr. Speaker, may lead to the most serious consequences in the future.

What is it that is proposed here on this occasion? Here is a gentleman who presents the usual certificate under the seal of the State of South Carolina. He asks to be sworn in. He has presented such credentials as we have all presented. The proposition is to antagonize this certificate, to go behind it, to consider a protest, signed by some half dozen or more citizens of the State of South Carolina, alleging something against the regularity or legality of this election. Now, sir, what are we doing when we establish a precedent like that? We are saying that in all future cases, when we come to organize a Congress, when the credentials of members are presented at the Clerk's desk bearing the great seal of a State in due form of law, if a gentleman upon the floor may rise in his place and present an unsworn and unattested petition, or protest, or paper of any kind purporting to come from some citizen or citizens of a State, that thereupon the House may refuse to swear the member in and give him a voice in the organization of the House, or, it may be, may refuse to swear him in, and thereby deny to the people he represents a voice in the election of a President of the United States.

Sir, when a case shall arise, as a case may arise in any Congress when parties are equally divided, when two or three votes on one side or the other will determine the organization and control of the House of Representatives, it is proposed here to establish a precedent

by which by mere petition, by mere protest, a number of members may be kept out of their places and denied a voice in the organization of the House. There is no case on record that begins to establish any such precedent as will be established here by refusing to swear in this gentleman. The case from New Jersey is not like this; and that is the strongest case that can be found against the doctrine that a man shall always be sworn in when he presents the proper credentials under the proper seal and executed by proper authority. That certainly was not a case where the governor of a State certified to the election of Representatives, and where citizens sent in a protest against it. Not at all, sir. It was a case where the governor had certified the election of one set of members, and the secretary of state had certified the election of another set of members. And even as regards that case it has been ever since universally conceded that the House made a grave mistake in it in going behind the certificate given by the governor of the State. But now it is proposed, not that we shall act upon the certificate of the secretary of state; not that we shall decide between two certificates coming from officials of the State, but that we shall set aside the regular and formal certificate of the governor of South Carolina under the great seal of that State, and shall refuse to swear in a member on this floor, upon the petition or protest of some citizens of South Carolina.

Sir, you open the door if you establish this precedent, and at the organization of the very next Congress, if the two parties shall be divided almost evenly, with but a small majority on the one side or the other, you establish a precedent whereby members may be kept out of their places upon this floor until the House has been organized and the power of legislation placed in the hands of a Speaker and of committees of this House that represent only a minority of the legally elected members. This is what is proposed; and, in the presence of a proposition to establish a precedent like this, the claims of individuals, the claims of parties ought to sink out of sight. There is no safety for us but to stand by the precedents so often repeated, that in the swearing in of members in the first instance we will not go behind the regular credentials from the governor of a State.

If we ever establish the doctrine that the House may do this upon any pretense, especially upon the mere petition or protest of a citizen, from that day on we are at sea, and it may be that in some cases the House could not be organized at all. If you may keep one man out of his seat by the presentation of a protest from private citizens against the regularity or legality of his election, calling upon the House to go behind the credentials, issued by the governor of a State, you may keep all men out of their seats upon this floor in the same way, because it is not required by this proposition that there should be proof that the objection is well founded. There is no evidence filed in this case, nothing but the protest of certain citizens, not even under oath, a protest setting forth false grounds of contest.

Mr. WOOD, of New York. Will the gentleman allow me to ask him a question?

Mr. McCRARY. Certainly.

Mr. WOOD, of New York. I would ask the gentleman whether Mr. Pinchback, of Louisiana, did not come here with credentials of the same character and he was refused admission?

Mr. McCRARY. The gentleman from New York [Mr. WOOD] knows very well that when that claimant came here there were two governments in the State of Louisiana, two gentlemen claiming to be the governor of that State. One set of claimants came here with the certificates of Governor Kellogg and the other set of claimants came with the certificates of Mr. McEnery, and the question was unsettled as to who was the governor of the State. In such a case as that there may be some reason for pausing and instituting an investigation.

Mr. WOOD, of New York. I would ask the gentleman whether he himself or his political friends had any doubt as to who was then the governor of Louisiana?

Mr. McCRARY. We are not now, I believe, discussing the Louisiana question, and I do not wish to be drawn off into a discussion of it. But I say that the refusal to swear in Mr. Pinchback was put upon the ground that there was another gentleman here claiming to have the certificate of the governor of Louisiana; and also upon another ground, that Mr. Pinchback also held a certificate for a seat in the Senate of the United States.

I challenge the gentleman from New York, [Mr. WOOD,] or any other member upon this floor, to find one single case in the whole history of Congress where the regular certificate was set aside, and the House went behind it and refused to swear in a member who was certified to be elected, merely upon the protest of a half dozen private citizens of any State of this Union.

I beg the House to pause before it establishes any such precedent. It does seem to me that the House will not take this step; I cannot believe the House will do it. Why, sir, at the beginning of this very Congress a similar objection and protest was made against the swearing in of Mr. Morey, of Louisiana. After debate, this House, with its large democratic majority, ordered that he be sworn in, and under the lead of the honorable gentleman from Indiana [Mr. HOLMAN] confirmed the doctrine for which I contend here to-day, that we cannot, we must not go behind the regular credentials in determining whether a man shall be sworn in or not.

I trust that the usual course will be taken; that this regular credential shall be respected; that the great seal of the State of South Carolina shall be respected, and that this man shall be sworn in. If any gentleman has cause to contest his election, the way is open for him to do it. But there is no contestant here; there is nothing upon which the House can act as against this credential except the protest of some private citizens of South Carolina.

The fact is that this gentleman has a majority, I believe, of about 8,000 votes; that he carried every county in his district; that there is no question made in the State of South Carolina as to his right to a seat in this House; that no objection was made that any votes were thrown out, and that there is not a particle of ground for claiming that he is not entitled to his seat even upon the merits of the case, and that question is not now here.

What I ask is that the House will not depart from this simple and necessary rule. It is a right, and I claim it here as the right of the people of that district of South Carolina under the Constitution to be represented upon this floor by the man who comes here and presents the credentials which the Constitution and laws of the land require.

Deny that right in this case, deny it to this claimant, and you have opened a door whereby you may deny it in the future to anybody and everybody who comes here with similar credentials. I trust, I say, that the House will not take this step, but that the usual course will be observed.

The gentleman from Illinois [Mr. MORRISON] desires, I believe, to offer a resolution; and I yield to him for that purpose.

Mr. MORRISON. I desire that the protest in this case be read, which is all the speech I have to make on the subject. When that has been read, I desire to offer a resolution.

The Clerk read as follows:

To the honorable the House of Representatives of the United States:

The memorial and protest of M. P. O'Conner, Edward McCrady, G. L. Buist, C. R. Miles, F. W. Dawson, T. G. Barker, Henry E. Young, Aug. T. Smythe, H. A. M. Smith, T. R. McGahan, and C. H. Simonton, on behalf of themselves and others, citizens of South Carolina and voters in the second congressional district thereof, respectfully showeth unto your honorable body that upon the 3d day of November, 1874, there was had in the State and district aforesaid, a general election for the choice of a member of Congress for the said second congressional district.

That E. W. M. Mackey and C. W. Buttz were candidates thereat, the said E. W. M. Mackey receiving a majority of the votes cast.

That the said C. W. Buttz protested the election of the said Mackey, and, the said protest having been heard before the Committee of Elections, the said committee reported to the House of Representatives the following resolution, which was adopted by the House of Representatives upon the 19th day of July, 1876:

Resolved, That neither C. W. Buttz nor E. W. M. Mackey was lawfully elected to the Forty-fourth Congress from the second congressional district of South Carolina, nor is either of them entitled to a seat in said Congress.

By the adoption of which resolution a vacancy was created in the representation of said second congressional district of South Carolina.

And your petitioners further show that the said C. W. Buttz now claims to have been elected to fill such vacancy, and to take his seat under a certificate from the secretary of state of the State of South Carolina, forwarded to your honorable body, and purporting to be a legal certificate of said election, whereas no such legal election has ever been had, and the said certificate is null and void for the following reasons:

1. The Constitution of the United States, section 2, article I, provides, "When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancy." But in this case of vacancy the executive authority of the State of South Carolina failed and neglected to issue any writ of election to fill such vacancy.

2. That the vacancy created and declared by the resolution of the House of Representatives was a vacancy in the representation of the second congressional district of South Carolina composed by law of the counties of Charleston, Orangeburgh, Clarendon and Lexington, while the said pretended election was held only in the counties of Charleston, Orangeburgh, and Clarendon, altogether omitting the county of Lexington.

3. By the election law of the State of South Carolina it is provided (chapter viii, section 24, Revised Statutes) that the board of State canvassers "shall upon certified copies of the statements made by the board of county canvassers proceed to make a statement of the whole number of votes given at such election for the various officers, and for each of them voted for, distinguishing the several counties in which they were given. They shall certify such statements to be correct, and subscribe the same with their proper names."

"SEC. 25. They shall make and subscribe on the proper statement a certificate of their determination, and shall deliver the same to the secretary of state."

By section 32 it is provided that the secretary of state "shall prepare a general certificate, under the seal of the State, and attested by him as secretary thereof, addressed to the House of Representatives of the United States in that Congress for which any person shall have been chosen, of the due election of the person so chosen at such election as Representative of this State in Congress, and shall transmit the same to the said House of Representatives at their first meeting."

But the certificate issued in this case by the said board of State canvassers in pretended obedience to this law was issued in defiance and contempt of a prohibitory order of the supreme court of the State of South Carolina, prohibiting them to take any action thereunder until the decision of said court of certain questions then properly pending before it, and that for such contempt of the order of said court the said board of State canvassers was duly and lawfully committed to custody by the said supreme court and have not by purging said contempt been discharged therefrom. Wherefore the said certificate and the certificate of the said secretary of state based thereon are null and void.

And your petitioners pray that your honorable body will therefore refuse to receive said credentials, and declare said pretended election null and void.

M. P. O'CONNER,
ED. McCRADY,
G. L. BUIST,
C. R. MILES,
F. W. DAWSON,
T. G. BARKER,
H. E. YOUNG,
A. T. SMYTHE,
H. A. M. SMITH,
T. R. McGAHAN,
C. H. SIMONTON,
By WM. HENRY TRESCOT,
Attorney for Petitioners.

Mr. MORRISON. As a substitute for the proposition of the gentleman from Iowa, [Mr. McCRARY,] I offer the following resolution:

Resolved, That the credentials of C. W. Buttz, claiming to be a member-elect to fill the vacancy which under a resolution of this House has occurred in the second congressional district of South Carolina, together with the protest on behalf of certain citizens of said congressional district, which has been filed with the Clerk of the House, alleging that the said credentials are null and void, and all the papers relating to said matter in the possession of the Clerk, be referred to the Committee of Elections, with instructions as early as possible to report upon the *prima facie* right of the said C. W. Buttz to a seat on the floor of this House as the representative of said second congressional district of South Carolina.

On this resolution I move the previous question, if I have the floor.

Mr. McCRARY. I will yield to the gentleman in a moment for that purpose; but before doing so I wish to make one suggestion. I desire simply to call the attention of the House to the fact which is very apparent, even if the statements in this protest be true from beginning to end, that everything in it is a matter for subsequent inquiry and investigation, and forms nothing more than the basis for an ordinary contest of a seat on this floor. It does not relate to the *prima facie* case at all, but goes altogether to the question of the merits. The *prima facie* case stands upon the face of the certificate; and the gentleman makes no objection to the *prima facie* case.

I say furthermore, however, that it is a matter of public history that the mandamus about which that protest speaks had nothing to do with the election of members of Congress. That mandamus commanded the issuing of certificates in accordance with the votes as actually cast; and if it applied at all to this case it would support this very certificate, because there was a majority of 8,009 votes in favor of Mr. Buttz.

I yield to the gentleman from Illinois to demand the previous question.

Mr. MORRISON. I desire to call the attention of the gentleman to the fact that the election claimed by this man is by only a portion of the district in which the vacancy existed.

Mr. McCRARY. My friend from Illinois is mistaken. At the last session of the Legislature of South Carolina, that defect was remedied; and the district is now entirely contiguous. The question which arose in the other case does not arise here at all.

Mr. MORRISON. The district is the same in number.

Mr. McCRARY. It is the same in number, but not in territory.

Mr. MORRISON. When the original election was held before the contest, four counties voted; now only three vote; so that the admission of this man is the disfranchisement of one county.

Mr. McCRARY. Does the gentleman from Illinois claim that the Legislature could not make a district containing only three counties? If so, I think he is mistaken.

Mr. MORRISON. I do not claim that; but the vacancy existed in the second congressional district as it was then formed, and not in the district as newly made.

Mr. HOAR. Will the gentleman from Illinois be kind enough to inform the House whether that change was not made by the Legislature to remedy the defect in the original districting of the State, upon the recommendation of the Committee of Elections of this House? In the original arrangement of the districts, the Legislature being required to form each district of contiguous territory, failed in this one instance, so that a portion of the district was separated from the remainder of it by another district.

That case went before the Committee of Elections of this House, and was fully argued, and thereupon they held that the original district was a void district, so that it could not be represented in this House, not being composed of contiguous territory, and the Legislature, in pursuance of their opinion, accepted by this House, remedied the defect in this way.

Mr. MORRISON. I do not know what the exact facts are, but I know that the counties composing the district from which these gentlemen were contesting are not the same as those composing the present district.

Mr. HOAR. Any democratic member of the Committee of Elections of this House will inform the gentleman from Illinois, unless I am mistaken——

Mr. HARRIS, of Virginia. I will inform the gentleman from Massachusetts that he is wrong.

Mr. HOAR. Perhaps the gentleman will be good enough to state the facts.

Mr. MORRISON. I demand the previous question.

The previous question was seconded and the main question ordered.

Mr. McCRARY. I demand the yeas and nays.

The yeas and nays were ordered.

Mr. HOAR. I should like to have the gentleman from Virginia answer my question.

Mr. HARRIS, of Virginia. I desired to answer the question of the gentleman from Massachusetts.

The SPEAKER. The main question having been ordered, it can only be done by unanimous consent.

Mr. HARRIS, of Virginia. I expected to have had time to do so before the previous question.

Mr. CONGER. I object.

The question was taken; and it was decided in the affirmative—yeas 111, nays 89, not voting 60; as follows:

YEAS—Messrs. Abbott, Ainsworth, Ashe, Atkins, Bagby, John H. Bagley jr., Banning, Blackburn, Bland, Bliss, Blount, Boone, Bradford, John Young Brown, Cabell, John H. Caldwell, William P. Caldwell, Candler, Carr, Cate, Caulfield, Chapin, John B. Clark, jr., of Missouri, Clymer, Cochrane, Collins, Cook, Cowan, Cox, Cutler, Davis, Bidwell, Douglas, Durham, Eden, Egbert, Ellis, Ely, Faulkner, Felton, Finley, Flye, Franklin, Fuller, Gause, Gibson, Glover, Goode, Gunter, Andrew H. Hamilton, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Haymond, Hereford, Hill, Holman, Hooker, House, Humphreys, Hunton, Hurd, Jenks, Frank Jones, Thomas L. Jones, Knott, Lamar, Franklin Landers, George M. Landers, Lane, Luttrell, Mackey, Malsh, McMahon, Meade, Metcalfe, Milliken, Mills, Money, Morgan, Morrison, Mutchler, Neal, New, O'Brien, Payne, Phelps, John F. Philips, Poppleton, Powell, Rea, Reagan, John Reilly, Rice, Riddle, John Robbins, William M. Robbins, Roberts, Miles Ross, Scales, Singleton, Siemons, Southard, Sparks, Spencer, Springer, Stanton, Stenger, Stevenson, Tarbox, Teese, Terry, Thomas, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Waddell, Charles C. B. Walker, Gilbert C. Walker, Walling, Warner, Warren, Watterson, Erastus Wells, Whitthorne, Wike, Alphens S. Williams, James Williams, Jeremiah N. Williams, Willis, Benjamin Wilson, Fernando Wood, and Yeates—111.

NAYS—Messrs. Adams, Anderson, George A. Bagley, John H. Baker, Ballou, Banks, Beebe, Bell, Blair, Bradley, William R. Brown, Buckner, Horatio C. Burchard, Samuel D. Burchard, Burleigh, Cannon, Cason, Caswell, Chittenden, Conger, Crapo, Crounse, Darrall, Davy, Denison, Donnell, Eames, Evans, Forney, Foster, Freeman, Frye, Haralson, Benjamin W. Harris, Hathorn, Henderson, Hoar, Hopkins, Hoskins, Hunter, Hurlbut, Hyman, Joyce, Kasson, Kimball, King, Lapham, Lawrence, Leavenworth, Lord, Lynch, Magoon, MacDougall, McCrary, Miller, Monroe, Norton, Oliver, O'Neill, Packer, Page, William A. Phillips, Pierce, Plaisted, Potter, Pratt, James B. Reilly, Robinson, Rusk, Sampson, Seelye, A. Herr Smith, Strait, Thompson, Martin I. Townsend, Washington Townsend, Tufts, Van Vorhes, Waldron, Alexander S. Wallace, John W. Wallace, G. Wiley Wells, White, Whiting, Andrew Williams, Charles G. Williams, William B. Williams, James Wilson, and Alan Wood jr.—89.

NOT VOTING—Messrs. William H. Baker, Bass, Bright, Campbell, John B. Clarke of Kentucky, Culberson, Danford, De Bolt, Dobbins, Durand, Fort, Garfield, Goodin, Hale, Hays, Hendee, Henkle, Abram S. Hewitt, Goldsmith W. Hewitt, Hoge, Hubbell, Kehr, Kelley, Le Moyne, Levy, Lewis, Lynde, McDill, McFarland, Nash, Odell, Piper, Platt, Purman, Rainey, Sobieski Ross, Savage, Sayler, Schleicher, Schumaker, Sheakley, Sinnickson, Smalls, William E. Smith, Stephens, Stone, Stowell, Swann, Thornburgh, Wait, Walsh, Ward, Wheeler, Whitehouse, Wigginton, Willard, Wilshire, Woodburn, Woodworth, and Young—60.

So Mr. MORRISON's resolution was adopted.

Mr. MORRISON moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

ELECTION INVESTIGATIONS.

Mr. HEWITT, of New York. I ask unanimous consent to introduce some resolutions for adoption at this time.

Mr. HURLBUT. I demand the regular order of business.

Mr. HEWITT, of New York. Then I move to suspend the rules and pass the resolutions.

Mr. HURLBUT. It is not in order to suspend the rules.

Mr. HOLMAN. If there has been no morning hour and these resolutions cannot be introduced——

Mr. BLACKBURN. The motion to suspend is in order one hour after the reading of the Journal and not after the morning hour.

The SPEAKER. The Clerk will read the fifty-first and fifty-second rules.

Mr. KASSON. I ask particularly for the reading of the one hundred and thirtieth rule, to which I call the attention of the Speaker.

The Clerk read as follows:

51. As soon as the Journal is read, and the unfinished business in which the House was engaged at the last preceding adjournment has been disposed of, reports from committees shall be called for and disposed of; in doing which the Speaker shall call upon each standing committee in regular order, and then upon select committees; and if the Speaker shall not get through the call upon the committees before the House passes to other business, he shall resume the next call where he left off—*September* 15, 1837—giving preference to the report last under consideration: *Provided*, That whenever any committee shall have occupied the morning hour on two days, it shall not be in order for such committee to report further until the other committees shall have been called in their turn.—*December* 7, 1857.

52. Reports from committees having been presented and disposed of, the Speaker shall call for resolutions from the members of each State and Delegate from each Territory, beginning with Maine and the Territory last organized, alternately; and they shall not be debated on the very day of their being presented, nor on any day assigned by the House for the receipt of resolutions unless where the House shall direct otherwise, but shall lie on the table to be taken up in the order in which they were presented; and if on any day the whole of the States and Territories shall not be called, the Speaker shall begin on the next day where he left off the previous day: *Provided*, That no member shall offer more than one resolution, or one series of resolutions, all relating to the same subject, until all the States and Territories shall have been called.

Mr. HOSKINS. Rule 51 has no relation to the business of Monday. I call attention to Barclay's Digest, page 150, in reference to Rule 130.

The Clerk read as follows:

130. All the States and Territories shall be called for bills on leave and resolutions every Monday during each session of Congress; and, if necessary to secure the object on said days, all resolutions which shall give rise to debate shall be over for discussion, under the rules of the House already established; and the whole of said days shall be appropriated to bills on leave and resolutions, until all the States and Territories are called through.—*February* 6, 1838. And the Speaker shall first call the States and Territories for bills on leave; and all bills so introduced during the first hour after the Journal is read shall be referred, without debate, to their appropriate committees: *Provided, however*, That a bill so introduced and referred, and all bills at any time introduced by unanimous consent and referred, shall not be brought back into the House upon a motion to reconsider.—*March* 16, 1860, *and January* 14, 1852. And on said call, joint resolutions of State and territorial legislatures for printing and reference may be introduced.—*January* 11, 1867.

Mr. HURLBUT. I call the Speaker's attention to Rule 145.

The SPEAKER. The Chair rules that as there has been no reading of the Journal to-day there is no morning hour and that a motion can be entertained to suspend the rules.

Mr. HEWITT, of New York. I renew my motion to suspend the rules and adopt the resolution which I have sent to the desk.

Mr. HOAR. I rise to a privileged motion. I submit the following resolution:

Resolved, That a committee of three members be appointed on the part of the House, to join such committee as has been appointed on the part of the Senate, to wait upon the President and inform him that a quorum of both Houses has assembled, and that Congress is ready to receive any communication he may be pleased to make.

The SPEAKER. That resolution is not in order pending a motion to suspend the rules. The gentleman from New York [Mr. HEWITT] moves to suspend the rules and adopt a resolution, which the Clerk will read.

Mr. HOAR. My proposition is that, under the usage which has prevailed since the foundation of the Government, this resolution which I submit takes precedence of any other business under the rules.

The SPEAKER. This is a motion to suspend the rules.

Mr. BANKS. It is not in order until we have had the morning hour.

The SPEAKER. The Chair has ruled upon that point.

Mr. KASSON. I appeal from the ruling of the Chair, because it is in violation of the one hundred and thirtieth rule of the House.

The SPEAKER. The gentleman will submit his appeal in writing.

Mr. HURLBUT. Pending that I ask the Clerk to read Rule 145 on page 295 of the Digest.

Mr. HOSKINS. I submit to the Chair that, without reference to the reading of the Journal, Rule 130 says that—

All the States and Territories shall be called for bills on leave and resolutions every Monday during each session of Congress.

The SPEAKER. That relates to the morning hour on Monday.

Mr. HOSKINS. That rule is imperative; and in Barclay's Digest, on page 150, in the paragraph relating to Rule 130, it is also there made imperative. The morning hour shall be held on every Monday, whether there be any journal to read or not, for the reference of bills on a call of the States and Territories. Barclay's Digest says:

On every Monday it is made the duty of the Speaker to call the States and Territories, *first* for bills on leave for reference only, and without debate, and not to be brought back by motions to reconsider, at which time joint resolutions of State and territorial Legislatures may be introduced for reference and printing; *then* for resolutions, at which time bills on leave may be introduced; and all resolutions which shall give rise to debate shall lie over for discussion.

The SPEAKER. The gentleman from New York [Mr. HOSKINS] will notice that the morning hour is the hour after the reading of the Journal. There has been no Journal read to-day; and this is a motion to suspend all rules, including the very rule to which the gentleman has just called the attention of the Chair.

Mr. HOSKINS. The morning hour is not necessarily one hour after the reading of the Journal on Monday. The Digest says:

On every Monday it is made the duty of the Speaker to call the States and Territories.

The Speaker shall call the States and Territories without reference to whether there has been a reading of the Journal or not. It is imperative. The question whether there is a Journal or not has nothing to do with it.

Mr. BURCHARD, of Illinois. Rule 145 forbids the Speaker to entertain a motion to suspend the rules until one hour after the Journal is read.

Mr. LAWRENCE. Let Rule 145 be read.

Mr. WOOD, of New York. I submit, Mr. Speaker——

The SPEAKER. If gentlemen will preserve order each will have an opportunity of being heard in order. The gentleman from New York [Mr. WOOD] is now upon the floor.

Mr. WOOD, of New York. I rise to a question of order. The Chair has ruled on this question. The gentleman from Iowa [Mr. KASSON] has taken an appeal from the decision of the Chair and has been requested to submit his appeal in writing. Pending that, I hold that the introduction of references to these various rules is out of order, unless the Chair desires to reconsider its decision.

The SPEAKER. The Chair will say that the gentleman from Iowa appealed from his decision; that the Chair then requested the gentleman from Iowa to submit his appeal in writing; and pending that, and while the gentleman from Iowa was preparing that statement of his appeal in writing, the Chair did, for the time being, allow and still allows the gentleman from New York on the left [Mr. HOSKINS] to call the attention of the Chair to other rules, for the reason that he wants to be well informed.

Mr. WOOD, of New York. The Chair will pardon me for saying that a number of gentlemen around me desire to know if the appeal of the gentleman from Iowa has been reduced to writing; and we desire that the House shall act upon that appeal so that we may not be kept here the whole night.

The SPEAKER. The Clerk will read the appeal of the gentleman from Iowa.

The Clerk read as follows:

Mr. KASSON appeals from the decision of the Chair just rendered as a violation of the rule of the House, No. 130.

Mr. KASSON. I believe that under the rules I am entitled to be heard. I desire only to make a very brief explanation.

The SPEAKER. The gentleman can be heard, but will confine himself to the question of order.

Mr. KASSON. Certainly; I have no other purpose.

I regret the necessity of taking an appeal from the decision of the Chair; but as it is the first time such a ruling has been rendered in the history of the House, I think it should not be allowed to pass into a precedent without, at least, having it also on record that the House deliberately sustained that ruling. This is the first day of the second session of Congress. Touching that day there is no provision in the rule whatever that distinguishes it from any other corresponding day during the session. It is Monday, and being Monday it comes under the general provision of the rule which says that a certain order of business shall be pursued on Monday, binding of course upon the House as well as upon the Speaker. That order of business is to devote one hour to the calling of the States and Territories for bills on leave and joint resolutions.

The question, therefore, for the Speaker to decide is, Whether there is any authority under the rules that takes that Monday, being the first instead of the second Monday of the session, out of the ordinary rules of the House. I thought if the attention of the Speaker and the House was directed to that question they might in the absence of all precedents to the contrary adhere to the usual course of procedure in the House, and hold that the rules of the House applied to this Monday as to other Mondays during this session. At any rate I have myself found no precedent or authority for distinguishing the first Monday of the second session of Congress, after it has had a first session, and has adopted rules and put them in force, from any other Monday of the session.

It is for that reason that I have desired to take this appeal, that the House may not inadvertently consent to a precedent which to many of its members seems to violate the written rules of the House, which I know the Speaker is as anxious to respect as any members of the House. I will add to my exception Rule 145, the latter rule simply prohibiting the entertainment of a motion to suspend the rules until the expiration of the morning hour.

Mr. CONGER. I ask that Rule 145 be read.

The SPEAKER. The Clerk will read Rule 145.

The Clerk read as follows:

No standing rule or order of the House shall be rescinded or changed without one day's notice being given of the motion therefor; nor shall any rule be suspended, except by a vote of at least two-thirds of the members present; nor shall the order of business, as established by the rules, be postponed or changed, except by a vote of at least two-thirds of the members present; nor shall the Speaker entertain a motion to suspend the rules, except during the last six days of the session, and on Monday of every week at the expiration of one hour after the Journal is read, unless the call of States and Territories for bills on leave and resolutions has been earlier concluded, when the Speaker may entertain a motion to suspend the rules.

Mr. KASSON. One single word further. It is proper to call for the regular order, this being a continuation of the former session of Congress. The Journal of the last day never having been read and approved, under the call for the regular order the reading of that Journal would now be in order.

The SPEAKER. The Chair desires to state that as a matter of fact there has been no Journal read to-day, and the rule provides that the morning hour shall be the hour after the reading of the Journal. The Chair entertains the motion of the gentleman from New York [Mr. HEWITT] to suspend the rules and decides that motion is in order. The gentleman from Iowa [Mr. KASSON] appeals from that decision of the Chair.

Mr. HEWITT, of New York. I move to lay that appeal upon the table.

Mr. WILSON, of Iowa. Will the Chair allow me to make one suggestion.

The SPEAKER. Certainly.

Mr. WILSON, of Iowa. The Chair bases his ruling upon the fact that there has been no reading of the Journal to-day. Now, it is quite a common practice of the House when business presses to dispense with the reading of the Journal. The ruling of the Chair, if it passes into a precedent, as it undoubtedly will, would put it in the power of every member, on a Monday when the reading of the Journal has been dispensed with, to move to suspend the rules and pass a resolution while a State was being called for bills; for it is a well-established practice of the House that when it is in order to suspend the rules the motion to do so will take any member from the floor; consequently I am afraid that this decision of our Speaker will lead us into this complication.

The SPEAKER. The Chair would state in reply to the gentleman from Iowa [Mr. WILSON] that, in the first place, dispensing with the reading of the Journal is not a practice of this House, and if it was it could only be done by unanimous consent, which is equivalent to the Journal having been approved without reading. So that, even under the statement of the case as presented by the gentleman from Iowa, [Mr. WILSON,] the Journal is practically approved and agreed to.

Mr. HURLBUT. I understand the Chair to base his right to entertain this motion to suspend the rules upon the fact that there has been no Journal read to-day. If that is so, then Rule 145 unquestionably defeats the doctrine of the Chair, because under that Rule 145 the rules cannot be suspended, even on a Monday, until the Journal has been read.

The SPEAKER. This is a motion to suspend that rule with all others.

Mr. HURLBUT. And by that rule the Speaker is expressly forbidden to entertain such a motion. "Nor shall the Speaker enter-

tain a motion to suspend the rules, except during the last six days of the session and on Monday of every week at the expiration of one hour after the Journal is read." If the Journal is not read, the Speaker cannot entertain any such motion.

[Cries of "Regular order."]

The SPEAKER. The pending question is upon the motion of the gentleman from New York [Mr. HEWITT] to lay on the table the appeal of the gentleman from Iowa [Mr. KASSON] from the decision of the Chair.

Mr. HURLBUT. Upon that question I call for the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 145, nays 73, not voting 72; as follows:

YEAS—Messrs. Abbott, Ainsworth, Ashe, Atkins, Bagby, John H. Bagley, jr., Banning, Beebe, Bell, Blackburn, Bland, Blount, Boone, Bradford, John Young Brown, Buckner, Samuel D. Burchard, Cabell, John H. Caldwell, William P. Caldwell, Candler, Carr, Cate, Caulfield, Chapin, John B. Clark, jr., of Missouri, Clymer, Cochrane, Collins, Cook, Cowan, Cox, Cutler, Davis, De Bolt, Dibrell, Douglas, Durham, Eden, Egbert, Ellis, Faulkner, Felton, Finley, Forney, Franklin, Fuller, Gause, Gibson, Glover, Gunter, Andrew H. Hamilton, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Haymond, Hereford, Abram S. Hewitt, Hill, Holman, Hooker, Hopkins, House, Humphreys, Hunton, Hurd, Jenks, Frank Jones, Thomas L. Jones, Kehr, Knott, Franklin Landers, George M. Landers, Lane, Le Moyne, Lord, Luttrell, Mackey, Maish, McMahon, Meade, Metcalfe, Milliken, Mills, Money, Morgan, Morrison, Mutchler, Neal, New, O'Brien, Payne, Phelps, John F. Philips, Popleton, Powell, Rea, Reagan, John Reilly, Rice, Riddle, John Robbins, William M. Robbins, Roberts, Miles Ross, Scales, Singleton, Slemons, Southard, Sparks, Spencer, Springer, Stenger, Stevenson, Tarbox, TERRY, Thompson, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Waddell, Charles C. B. Walker, Gilbert C. Walker, Walling, Warner, Warren, Watterson, Erastus Wells, Whitthorne, Wike, Alpheus S. Williams, James Williams, Jeremiah N. Williams, Willis, Benjamin Wilson, Fernando Wood, and Yeates—145.

NAYS—Messrs. Adams, George A. Bagley, Ballou, Banks, Blair, Bradley, William R. Brown, Horatio C. Burchard, Cannon, Cason, Caswell, Conger, Crapo, Crounse, Davy, Denison, Dunnell, Eames, Evans, Flye, Foster, Freeman, Frye, Benjamin W. Harris, Hathorn, Henderson, Hoar, Hoskins, Hunter, Hurlbut, Hyman, Joyce, Kasson, Kimball, King, Lapham, Lawrence, Leavenworth, Lynch, Magoon, MacDougall, McCrary, Miller, Monroe, Norton, Oliver, O'Neill, Packer, Page, William A. Phillips, Pierce, Plaisted, Pratt, Robinson, Rusk, Sampson, Seelye, A. Herr Smith, Strait, Martin I. Townsend, Washington Townsend, Tufts, Van Vorhes, Alexander S. Wallace, John W. Wallace, G. Wiley Wells, White, Whiting, Andrew Williams, William B. Williams, James Wilson, Alan Wood, jr., and Woodworth—73.

NOT VOTING—Messrs. Anderson, John H. Baker, William H. Baker, Bass, Bliss, Bright, Burleigh, Campbell, Chittenden, John B. Clarke of Kentucky, Culberson, Danford, Darrall, Dobbins, Durand, Ely, Fort, Garfield, Goode, Goodin, Hale, Haralson, Hays, Hendee, Henkle, Goldsmith W. Hewitt, Hoge, Hubbell, Kelley, Lamar, Levy, Lewis, Lynde, McDill, McFarland, Nash, Odell, Piper, Platt, Potter, Parman, Rainey, James B. Reilly, Sobieski Ross, Savage, Sayler, Schleicher, Schumaker, Sheakley, Sinnickson, Smalls, William E. Smith, Stanton, Stephens, Stone, Stowell, Swann, Teese, Thomas, Thornburgh, Wait, Waldron, Walsh, Ward, Wheeler, Whitehouse, Wigginton, Willard, Charles G. Williams, Wilshire, Woodburn, and Young—72.

So the motion to lay on the table was agreed to.

Mr. KASSON. I beg to submit a point of order.

The SPEAKER. The Chair will hear the gentleman's point.

Mr. KASSON. It is that the first business now in order is the reading of the Journal; and I desire to say a word in support of this point. By the first rule of the House it is made the duty of the Speaker to cause the Journal of the preceding day to be read. It thus appears by the rules to be the duty of the Speaker (when there is one) to make that the first business of the day. The other business that has come in to-day by the consent of the Speaker, and also because it involved questions of very high privilege relating to the organization of the House and the admission of persons authorized to vote and authorized also to call for the reading of the Journal, is all the business that has yet been transacted prior to the points of order which have been made. Inasmuch as the interpretation given to the rule by the Speaker, and from which we on this side have dissented, rests upon the fact that the Journal has not been read, and as it thus appears that there has been a neglect to do a thing which the rule calls for, I desire to submit that it is now in order for any member to call for the reading of the Journal, the reading of which has simply been postponed without any order of the House and by the intervention of certain business of high privilege.

I find that at the second session of the Forty-third Congress (and this is one of the precedents to which I alluded when I was up before) a point like that which the House has been considering was distinctly made. I read from the proceedings of the first day of the second session——

Mr. LUTTRELL. I rise to a question of order.

The SPEAKER. The gentleman from California [Mr. LUTTRELL] will allow the Chair to ask him not to interrupt the gentleman from Iowa, because the Chair is desirous beyond all measure to be right in all these decisions. He therefore wants to hear everything that the gentleman from Iowa has to say.

Mr. LUTTRELL. I supposed that the House had voted upon the question and the case had been decided.

Mr. KASSON. The point to which I am now speaking has not been decided, so far as I know. In addition to that, as I understand, it is the usage for the Chair to hear an explanation of any point of order submitted.

The SPEAKER. It has been the usage, and, more than that, it is the wish of the present occupant of the chair to do so.

Mr. KASSON. I was going to say that the reason the point is now made is because of the importance which the fact assumes in the recent ruling of the Chair. On turning to the first day's proceedings of the second session of the Forty-third Congress, I find this record:

ORDER OF BUSINESS.

Mr. BUTLER, of Massachusetts. I demand the regular order of business. I think the rules require that the States shall be called for bills and joint resolutions.

The SPEAKER. If the regular order be demanded, that is the regular order of business.

Then the gentleman from Pennsylvania [Mr. KELLEY] insisted on a motion to adjourn, which the House supported.

It thus appears that at the second session of the Forty-third Congress there was a decision of the Speaker (there may have been others previously; I have not had time to examine further back) that this business was in the regular order of business for Monday. Now, as I say, the Speaker having stated as a reason for a different opinion, overruling precedents of the House heretofore, that the Journal has not been read, I desire to present to the Chair and to the House the point that it is in order for any member to call for the reading of the preceding day's Journal at any time during the day on which it is in order to make corrections, if, by inadvertence or by anybody's neglect of the duty pointed out by the ruling of the Chair, the Journal has not been read. And the rule requiring it—I simply make the point that we have the right to the reading of the Journal, that we may know whether it is to be approved or not.

The SPEAKER. The Chair states the fact that the last session of Congress was adjourned without day, *sine die*, and that there is not, therefore, any preceding day's Journal to be read.

Mr. KASSON. Then the reason of the Chair's ruling fails.

Mr. HEWITT, of New York. I now renew my motion to suspend the rules and pass the resolution.

Mr. PAGE. I now move the House adjourn.

The SPEAKER. One motion to adjourn is in order pending the motion to suspend the rules.

Mr. PAGE demanded the yeas and nays.

The yeas and nays were ordered.

The question was taken, and decided in the negative; yeas 75, nays 145, not voting 70; as follows:

YEAS—Messrs. Adams, George A. Bagley, John H. Baker, Ballou, Banks, Blair, Bradley, William R. Brown, Horatio C. Burchard, Cannon, Cason, Caswell, Conger, Crounse, Darrall, Davy, Denison, Dunnell, Eames, Evans, Flye, Fort, Freeman, Frye, Haralson, Benjamin W. Harris, Hathorn, Henderson, Hoar, Hoskins, Hunter, Hurlbut, Hyman, Joyce, Kasson, Kimball, King, Lane, Lapham, Lawrence, Leavenworth, Lynch, Magoon, MacDougall, McCrary, Miller, Monroe, Norton, Oliver, O'Neill, Packer, Page, William A. Phillips, Plaisted, Robinson, Rusk, Sampson, Seelye, A. Herr Smith, Strait, Martin I. Townsend, Washington Townsend, Tufts, Van Vorhes, Alexander S. Wallace, John W. Wallace, G. Wiley Wells, White, Whiting, Andrew Williams, Charles G. Williams, William B. Williams, James Wilson, Alan Wood, jr., and Woodworth—75.

NAYS—Messrs. Abbott, Ainsworth, Ashe, Atkins, Bagby, John H. Bagley, jr., Beebe, Blackburn, Bland, Bliss, Blount, Boone, Bradford, John Young Brown, Buckner, Samuel D. Burchard, Cabell, John H. Caldwell, William P. Caldwell, Candler, Carr, Cate, Caulfield, Chapin, John B. Clark, jr., of Missouri, Clymer, Cochrane, Collins, Cook, Cowan, Cox, Cutler, Davis, De Bolt, Dibrell, Douglas, Durand, Durham, Eden, Egbert, Ellis, Faulkner, Felton, Finley, Forney, Franklin, Fuller, Gause, Gibson, Goode, Gunter, Andrew H. Hamilton, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Henkle, Hereford, Abram S. Hewitt, Goldsmith W. Hewitt, Hill, Holman, Hooker, Hopkins, House, Humphreys, Hunton, Jenks, Frank Jones, Thomas L. Jones, Kehr, Knott, Lamar, Franklin Landers, George M. Landers, Lord, Luttrell, Mackey, Maish, McMahon, Meade, Metcalfe, Milliken, Mills, Money, Morgan, Morrison, Mutchler, Neal, New, O'Brien, Payne, Phelps, John F. Philips, Piper, Popplelon, Powell, Rea, Reagan, John Reilly, James B. Reilly, Rice, Riddle, John Robbins, William M. Robbins, Roberts, Miles Ross, Scales, Singleton, Slemons, Sparks, Spencer, Springer, Stanton, Stenger, Tarbox, Terry, Thompson, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Waddell, Charles C. B. Walker, Gilbert C. Walker, Walsh, Warner, Watterson, Erastus Walling, Wells, Whitthorne, Wike, Alpheus S. Williams, James Williams, Jeremiah N. Williams, Willis, Benjamin Wilson, Fernando Wood, and Yeates—145.

NOT VOTING—Messrs. Anderson, William H. Baker, Banning, Bass, Bell, Bright, Burleigh, Campbell, Chittenden, John B. Clarke of Kentucky, Crapo, Culberson, Danford, Dobbins, Ely, Foster, Garfield, Glover, Goodin, Hale, Haymond, Hays, Hendee, Hoge, Hubbell, Hurd, Kelley, Le Moyne, Levy, Lewis, Lynde, McDill, McFarland, Nash, Odell, Pierce, Platt, Potter, Pratt, Purman, Rainey, Sobieski Ross, Savage, Sayler, Schleicher, Schumaker, Sheakley, Sinnickson, Smalls, William E. Smith, Southard, Stevenson, Stephens, Stone, Stowell, Swann, Teese, Thomas, Thornburgh, Wait, Waldon, Ward, Warren, Wheeler, Whitehouse, Wigginton, Willard, Wilshire, Woodburn, and Young—70.

So the House refused to adjourn.

The question then recurred on the motion of Mr. HEWITT, of New York, to suspend the rules and pass the resolution.

Mr. KASSON. Let the resolution be again read.

The resolution was again read.

Mr. KASSON. I ask the gentleman from New York to modify his resolution so as to confine it to Federal officers.

Several MEMBERS. Regular order!

The SPEAKER. The question now is on the motion of the gentleman from New York to suspend the rules and pass the resolution as it has been just read. Debate and amendment are out of order.

Several MEMBERS. Regular order!

Mr. KASSON. I ask, according to the usual custom heretofore, to suggest a modification of the resolution, if the gentleman is willing to accept it.

Mr. HEWITT, of New York. I insist on the resolution as presented.

Mr. COX. I object to any modification or debate.

Mr. KASSON. It refers to State elections and State officers, and I ask it be limited to Federal officers, as it is now an encroachment upon State rights in that respect.

Mr. BLACKBURN. I demand the regular order of business, which

is on the motion to suspend the rules and pass the resolution, and on that motion I demand the yeas and nays.

The yeas and nays were ordered.

Mr. LYNCH. I wish to make an inquiry.

The SPEAKER. It is not in order.

Mr. LYNCH. But the gentleman from New York has a right to yield.

The SPEAKER. For what purpose does the gentleman rise?

Mr. LYNCH. I merely wish to ask the gentleman from New York to yield to allow Mississippi to be included.

The SPEAKER. The motion to suspend the rules cannot be amended.

Mr. LYNCH. But he can modify his motion.

Mr. COX. Let the roll-call proceed.

The question was taken; and it was decided in the affirmative—yeas 156, nays 78, not voting 56; as follows:

YEAS—Messrs. Abbott, Ainsworth, Ashe, Atkins, Bagby, John H. Bagley, jr., Banning, Beebe, Bell, Blackburn, Bland, Bliss, Blount, Boone, Bradford, John Young Brown, Buckner, Samuel D. Burchard, Cabell, John H. Caldwell, William P. Caldwell, Candler, Carr, Cate, Caulfield, Chapin, John B. Clark, jr., of Missouri, Clymer, Cochrane, Collins, Cook, Cowan, Cox, Cutler, Davis, De Bolt, Dibrell, Douglas, Durand, Durham, Eden, Egbert, Ellis, Faulkner, Felton, Finley, Forney, Franklin, Ganse, Gibson, Glover, Goode, Gunter, Andrew H. Hamilton, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hatcher, Henkle, Hereford, Abram S. Hewitt, Hill, Holman, Hooker, Hopkins, House, Humphreys, Hunton, Hurd, Jenks, Frank Jones, Thomas L. Jones, Kehr, Knott, Lamar, Franklin Landers, George M. Landers, Lane, Le Moyne, Lord, Luttrell, Mackey, Maish, McMahon, Meade, Metcalfe, Milliken, Mills, Money, Morgan, Morrison, Mutchler, Neal, New, O'Brien, Payne, Phelps, John F. Philips, Pierce, Poppleton, Powell, Rea, Reagan, John Reilly, James B. Reilly, Rice, Riddle, John Robbins, William M. Robbins, Roberts, Miles Ross, Savage, Scales, Scelye, Singleton, Slemons, Southard, Sparks, Spencer, Stanton, Springer, Steiger, Stevenson, Tarbox, Terry, Thompson, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Waddell, Charles C. B. Walker, Gilbert C. Walker, Walling, Walsh, Warner, Warren, Watterson, Erastus Wells, Whitthorne, Wike, Willard, Alpheus S. Williams, James Williams, Jeremiah N. Williams, Willis, Wilshire, Benjamin Wilson, Fernando Wood, and Yeates—156.

NAYS—Messrs. Adams, George A. Bagley, John H. Baker, Ballou, Banks, Blair, Bradley, Willard Brown, Horatio C. Burchard, Cannon, Cason, Caswell, Conger, Crapo, Crounse, Danford, Darrall, Davy, Denison, Dunnell, Eames, Evans, Flye, Fort, Foster, Freeman, Frye, Haralson, Benjamin W. Harris, Hathorn, Henderson, Hoar, Hoskins, Hunter, Hurlbut, Hyman, Joyce, Kasson, Kimball, King, Lapham, Lawrence, Leavenworth, Lynch, Magoon, MacDougall, McCrary, Miller, Monroe, Norton, Oliver, O'Neill, Packer, Page, William A. Phillips, Pratt, Robinson, Rusk, Sampson, A. Herr Smith, Strait, Martin I. Townsend, Washington Townsend, Tufts, Van Vorhes, Waldron, Alexander S. Wallace, John W. Wallace, G. Wiley Wells, White, Whiting, Andrew Williams, Charles G. Williams, William F. Williams, James Wilson, Alan Wood, jr., Woodburn, and Woodworth—78.

NOT VOTING—Messrs. Anderson, William H. Baker, Bass, Bright, Burleigh, Campbell, Chittenden, John B. Clarke of Kentucky, Culberson, Dobbins, Ely, Fuller, Garfield, Goodin, Hale, Raymond, Hays, Hendee, Goldsmith W. Hewitt, Hoge, Hubbell, Kelley, Levy, Lewis, Lynde, McDill, McFarland, Nash, Odell, Piper, Plaisted, Platt, Potter, Purman, Rainey, Sobieski, Ross, Sayler, Schleicher, Schumaker, Sheakley, Simmekson, Smalls, William E. Smith, Stephens, Stone, Stowell, Swann, Terse, Thomas, Thornburgh, Wait, Ward, Wheeler, Whitehouse, Wigginton, and Young—56.

So (two-thirds having voted in favor thereof) the rules were suspended and the resolution was adopted.

During the call of the roll the following proceedings took place:

Mr. CONGER. The name of my colleague, JAY A. HUBBELL, a republican Representative from Michigan, was read by the Clerk as voting in the affirmative; he is not in the city.

The SPEAKER. The clerks have informed the Chair that there was a mistake in the reading of the name of Mr. HUBBELL. He is not recorded as voting at all. His name was read by mistake for that of Mr. HUMPHREYS, which is inserted on the roll-call in writing.

Mr. STRAIT. My name was read in the affirmative and also in the negative vote.

The SPEAKER. That, of course, cannot be allowed. [Laughter.]

Mr. STRAIT. I voted in the negative.

Mr. CONGER. I ask that the names be read again.

Mr. SPRINGER. I call for the regular order. Let the vote be announced.

Mr. WHITE. I understand that my name was read on both sides.

The SPEAKER. The gentleman from Kentucky [Mr. WHITE] is recorded as voting in the negative.

The Chair will now announce the vote. On the motion to suspend the rules and adopt the resolution submitted by the gentleman from New York [Mr. HEWITT] the yeas are 156 and the nays 78. Two-thirds having voted in the affirmative, the rules are suspended and the resolution adopted. [Applause.]

ORDER OF BUSINESS.

Mr. DURHAM. I rise to a question of privilege.

The SPEAKER. The House will come to order. Gentlemen will please take their seats. [After a pause.] The gentleman from New York [Mr. WOOD] is recognized. The Chair will afterward recognize the gentleman from Kentucky.

NOTIFICATION OF ORGANIZATION.

Mr. WOOD, of New York. I move the adoption of the following resolution:

Resolved, That a committee of three be appointed on the part of the House, to join such committee as may be appointed on the part of the Senate, to wait on the President of the United States and inform him that a quorum of the two Houses has assembled and that Congress is ready to receive any communication that he may be pleased to make.

Mr. KASSON. I ask if there has not been a message from the Senate announcing the appointment of the committee on the part of that body. If so, I would suggest that the language of the resolution be modified so that it shall read: "Such committee as has been appointed."

Mr. WOOD, of New York. That is a technical matter, but I have no objection to modifying the resolution in the way suggested.

The resolution, as modified, was adopted.

The SPEAKER. The Chair announces as the committee to wait upon the President of the United States, under the resolution just adopted, Mr. WOOD of New York, Mr. CLYMER of Pennsylvania, and Mr. HOAR of Massachusetts.

Mr. MORRISON. I offer the following resolution:

Resolved, That a message be sent to the Senate to inform that body that a quorum of the House of Representatives has assembled and that Hon. SAMUEL J. RANDALL, one of the Representatives from the State of Pennsylvania, has been chosen Speaker, and that the House is now ready to proceed to business.

Mr. HOLMAN. I believe, sir, that the law requires that the President of the United States shall be notified of the election of the Speaker. If so, I submit the following resolution:

Resolved, That the Clerk of the House inform the President of the United States that Hon. SAMUEL J. RANDALL, one of the Representatives from the State of Pennsylvania, has been elected Speaker of the House of Representatives.

Mr. HOAR. I would suggest that both that resolution and the last one be modified by the addition of the words "in room of Hon. Michael C. Kerr, deceased."

Mr. HOLMAN. I think that is hardly necessary.

The resolution was agreed to.

CORRECTION OF THE JOURNAL.

Mr. DURHAM. I rise to a question of privilege. On the last day of last session a vote was taken on the report of the conference committee on the bill (H. R. No. 4146) to authorize the President to accept the services of volunteers to aid in the suppression of Indian hostilities. I was reported as voting in the affirmative on that bill. I desire to state that I voted in the negative. I did not know that I was recorded as having voted in the affirmative on that proposition until I saw it so announced in the Louisville Courier of August 17. I immediately addressed a letter to the Clerk of the House, asking him to make the correction. He wrote to me that it was not in his power to make that correction of the Journal. I take this the first opportunity I have to set myself right on the record.

The SPEAKER. The Journal cannot now be corrected, but the Chair supposes the gentleman has accomplished his object by making his statement.

Mr. DURHAM. Yes, sir; that is all I desire.

ORDER OF BUSINESS.

Mr. HOLMAN. I move that the House do now adjourn.

Mr. MACDOUGALL. I hope the gentleman will yield to me that I may offer a resolution.

Mr. HAMILTON, of Indiana. I desire to offer the resolution which I submitted some time ago.

The SPEAKER. Does the Chair understand the gentleman from Indiana [Mr. HOLMAN] to yield?

Mr. HOLMAN. I presume that by unanimous consent the resolution of my colleague may be adopted.

The SPEAKER. If the gentleman from Indiana [Mr. HOLMAN] does not yield, the question is on his motion that the House do now adjourn.

Mr. MACDOUGALL. I ask the gentleman to yield to me for this resolution. I think it is a little early to begin these tactics. I have been on my feet for some time with the promise of the Chair that I should be permitted to offer this resolution.

The SPEAKER. The Chair will say to the gentleman from New York [Mr. MACDOUGALL] that he has no power to prevent a member from making a motion to adjourn.

Mr. HOLMAN. Without withdrawing the motion to adjourn, as it seems to be the wish of gentlemen that a resolution should be adopted fixing a day upon which proper respect may be shown to the memory of the late Speaker of this House, I will yield for that resolution. I suppose there will be no objection to that.

Mr. MACDOUGALL. We have no objection to that. We were willing to adjourn some time ago out of respect to the late Speaker, but there was no respect for him then. All I desire is to submit the resolution which I have in my hand.

Mr. HOLMAN. I cannot yield for any other resolution than the one I have indicated. I hope that it will be read and considered without my withdrawing the motion to adjourn.

Mr. MACDOUGALL. I object to the reading of any resolution until——

Mr. HOLMAN. Then I insist upon the motion to adjourn. And in order to comply with the rule I will move that the House now adjourn until twelve o'clock to-morrow, inasmuch as no time has been fixed for the regular meeting of the House.

The SPEAKER. The Chair understands that that is the regular hour of meeting.

Mr. HOLMAN. By the rule the regular hour of meeting must be fixed by the House. As it has not yet been fixed, I move that the House now adjourn to twelve o'clock to-morrow.

ELECTION IN SOUTH CAROLINA.

The SPEAKER. Before putting the motion to adjourn, the Chair will announce as the select committee authorized by the resolution this day adopted to investigate the late election in South Carolina, Mr. SAYLER, of Ohio; Mr. ABBOTT, of Massachusetts; Mr. STENGER, of Pennsylvania; Mr. EDEN, of Illinois; Mr. JONES, of Kentucky; Mr. PHILLIPS, of Missouri; Mr. BANKS, of Massachusetts; Mr. HALE, of Maine, and Mr. LAWRENCE, of Ohio.

Mr. HOAR. Mr. HALE, of Maine, as I am informed, is not in this city. Putting him on that committee will deprive the republicans of this House of one of their number.

The SPEAKER. That is not the wish of the Chair, who will appoint Mr. WILLARD, of Michigan.

Mr. CONGER. I wish there might be a republican appointed in place of Mr. HALE.

Mr. SPRINGER. Is not Mr. WILLARD a republican?

Mr. CONGER. He voted with the other side.

Mr. WILLARD. I am already on an important committee, which will employ all my time during this entire month. I therefore ask to be excused.

The SPEAKER. Then the Chair will appoint Mr. LAPHAM, of New York.

The motion of Mr. HOLMAN was then agreed to; and accordingly (at seven o'clock and thirty minutes p. m.) the House adjourned till twelve m. to-morrow.

IN SENATE.

TUESDAY, *December* 5, 1876.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

JAMES L. ALCORN from the State of Mississippi, GEORGE GOLDTHWAITE from the State of Alabama, TIMOTHY O. HOWE from the State of Wisconsin, JOHN W. JOHNSTON from the State of Virginia, JOHN P. JONES from the State of Nevada, SAMUEL J. R. MCMILLAN from the State of Minnesota, and RICHARD J. OGLESBY from the State of Illinois, appeared in their seats to-day.

The Journal of yesterday's proceedings was read and approved.

MESSAGE FROM THE HOUSE.

A message was received from the House of Representatives, by Mr. GEORGE M. ADAMS, its Clerk, as follows:

Mr. President, I am directed by the House of Representatives to inform the Senate that a quorum of the House of Representatives has assembled, and that SAMUEL J. RANDALL, one of the Representatives from the State of Pennsylvania, has been chosen Speaker, and that the House is now ready to proceed to business.

Also that a committee of three on the part of the House has been appointed, to join such committee as may be appointed on the part of the Senate, to wait on the President of the United States and inform him that a quorum of each House has assembled and that Congress is ready to receive any communication which he may be pleased to make, and that the Speaker has appointed Mr. FERNANDO WOOD of New York, Mr. HEISTER CLYMER of Pennsylvania, and Mr. GEORGE F. HOAR of Massachusetts the said committee on the part of the House.

EXECUTIVE COMMUNICATION.

The PRESIDENT *pro tempore* laid before the Senate a report of the Secretary of the Interior, communicating, in obedience to law, an inventory of the property belonging to the United States in the buildings and grounds in the District of Columbia under the charge of the Interior Department; which was ordered to lie on the table and be printed.

PETITIONS AND MEMORIALS.

Mr. WRIGHT presented a resolution of the board of supervisors of Woodbury County, Iowa, in favor of dividing the State of Iowa into two judicial districts, to be known as the northern and southern districts, and fixing Sioux City as one of the places at which sessions of the United States courts shall be held in the northern district; which was ordered to lie on the table, to be referred to the Committee on the Judiciary when appointed.

He also presented the petition of T. A. Walker, a citizen of Iowa, praying to be re-imbursed for the amount of certain money paid by him for clerk hire while acting as register of the United States land office at Des Moines, Iowa; which was ordered to lie on the table, to be referred to the Committee on Public Lands when appointed.

BILLS INTRODUCED.

Mr. SPENCER asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1048) to establish the Territory of the Black Hills, and to provide a temporary government therefor; which was read twice by its title, and ordered to lie on the table and be printed.

POPULAR VOTE FOR PRESIDENT.

Mr. MORTON. I offer a joint resolution, which I ask to have printed and laid on the table until committees are appointed, and then referred to the Committee on Privileges and Elections.

The joint resolution (S. R. No. 28) proposing an amendment to the Constitution of the United States, so as to elect the President and Vice-President by the direct vote of the people, was read at length, as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of each House concurring therein,) That the following article is hereby proposed as an amendment to the Constitution of the United States, and, when ratified by the Legislatures of three-fourths of the several States, shall be valid, to all intents and purposes, as a part of the Constitution, to wit:

ARTICLE —.

I. The President and Vice-President shall be elected by the direct vote of the people in the manner following: Each State shall be divided into districts, equal in number to the number of Representatives to which the State may be entitled in the Congress, to be composed of contiguous territory, and to be as nearly equal in population as may be; and the person having the highest number of votes in each district for President shall receive the vote of that district, which shall count one presidential vote.

II. The person having the highest number of votes for President in a State shall receive two presidential votes from the State at large.

III. The person having the highest number of presidential votes in the United States shall be President.

IV. If two persons have the same number of votes in any State, it being the highest number, they shall receive each one presidential vote from the State at large; and if more than two persons shall have each the same number of votes in any State, it being the highest number, no presidential vote shall be counted from the State at large. If more persons than one shall have the same number of votes, it being the highest number in any district, no presidential vote shall be counted from that district.

V. The foregoing provisions shall apply to the election of Vice-President.

VI. The Congress shall have power to provide for holding and conducting the elections of President and Vice-President, and to establish tribunals for the decision of such elections as may be contested.

VII. The States shall be divided into districts by the Legislatures thereof, but the Congress may at any time by law make or alter the same.

Mr. MORTON. I desire to state that that is the identical proposition reported by the Committee on Privileges and Elections two years ago.

The PRESIDENT *pro tempore*. The joint resolution will lie on the table and be printed, being considered as read twice.

MANNER OF COUNTING ELECTORAL VOTES.

Mr. MORTON. Mr. President, I have here a compilation prepared by Major McDonald, our very able and experienced Chief Clerk, containing the action of the Senate and House of Representatives in regard to the manner of counting electoral votes for President and Vice-President from 1789 to 1873, with a statement in detail of the electoral votes for President and Vice-President for the same period. I think that the information contained in this compilation is very important and will be of great interest to Congress and to the country at this time. In this matter, Major McDonald has simply carefully and accurately compiled the action taken, and has given no opinion of his own. I move that 10,000 copies of this compilation be printed for the use of the Senate. The cost will be $327.72.

The PRESIDENT *pro tempore*. The Senator from Indiana moves that the compilation presented by him be printed. The question is on that motion.

Mr. CONKLING. Mr. President, I should like to inquire whether this compilation was not made in pursuance of a resolution adopted by the Senate two or three years ago.

The PRESIDENT *pro tempore*. The Chair understands that two or three years ago there was a similar statement made in response to a resolution, but that there was no resolution inviting the present compilation.

Mr. CONKLING. It may not be important; but I am quite sure there was a resolution adopted by the Senate, I think in 1873 or 1874——

Mr. EDMUNDS, (to Mr. CONKLING.) Which was offered by yourself.

Mr. CONKLING. As my friend from Vermont reminds me, and that is my recollection, I had the honor to offer myself the resolution which was adopted by the Senate. It directed this compilation, and directed it to be made by the gentleman who has made it; and for that reason, as well as for others, it seems to me a matter of course that it should be printed. Although I speak from recollection, I am quite sure I am not mistaken.

The PRESIDENT *pro tempore*. The Chair is advised, in answer to the Senator from New York, that the Chief Clerk reported a statement, which was printed, in answer to the resolution referred to by the Senator, but it was not so full as the present compilation.

Mr. CONKLING. That is quite possible.

The PRESIDENT *pro tempore*. That is the statement of the Chief Clerk.

Mr. THURMAN. What is the motion?

The PRESIDENT *pro tempore*. The motion is to print 10,000 copies of the compilation.

Mr. THURMAN. That motion will have to go to the Committee on Printing, will it not?

The PRESIDENT *pro tempore*. It will, unless the motion be considered by unanimous consent.

Mr. THURMAN. I have no doubt of the general accuracy of the compiler of this statement, but I have not seen it at all and know nothing whatsoever about it. I should like to see it before ordering 10,000 copies of it to be printed for distribution among the people, of course. Ten thousand copies cannot be needed for the use of the Senate. I say this the more freely because I have seen what purport to be com-

pilations by other persons which my own researches have shown me to be extremely inaccurate; in some cases, inaccurate by way of omission, and in other cases inaccurate by way of misstatement; and while no one is more ready to bear testimony to the integrity, and assiduity, and ability of the compiler of this compilation than I am, yet I should like to see for myself what it is before distributing it among the people in the profuse manner that the Senator from Indiana proposes. If his motion were only for the printing of the ordinary number for the Senate, I would not have a word to say; but to order the printing of 10,000 copies of this work without knowing what it is, without anybody having examined it in the Senate or in committee, strikes me as being, in these times, rather unadvised. I may be wrong about it; but I should prefer very much myself to see it in print before ordering an extra number of copies.

Mr. HAMLIN. Mr. President, I think that by the rules of the Senate, under the construction which has been given, a motion to print an extra number must go to the Committee on Printing, such being the law, and we have no authority here to order it in violation of law; but the ordinary number we may order to be printed without such a reference. We shall then have it before us; and I agree with the Senator from Ohio entirely that it is well we should have it before us, so that each member for himself may examine it and test its accuracy, before we order an extra number. I hope therefore the usual number will be printed, and let the motion for an extra number stand until after we shall have examined it.

Mr. MORTON. I will move, then, Mr. President, that there be fifteen hundred copies printed for the use of the Senate, and I will subsequently submit another motion which can go to the committee to print eighty-five hundred extra copies.

The PRESIDENT *pro tempore*. The question is upon the motion of the Senator from Indiana as modified, that fifteen hundred copies be printed for the use of the Senate.

The motion was agreed to.

Mr. MORTON. I move now that eighty-five hundred extra copies be printed, and let that motion go to the Committee on Printing.

The PRESIDENT *pro tempore*. Is there objection to that course? The Chair hears none; and the motion to print extra copies will go to the Committee on Printing, when appointed.

VOTERS IN CERTAIN STATES—ELIGIBILITY OF ELECTORS.

Mr. EDMUNDS. I move that the Senate proceed to the consideration of the resolutions I offered yesterday directing the Committee on Privileges and Elections to make certain inquiries.

Mr. BAYARD. Let the resolutions be read for information.

The PRESIDENT *pro tempore*. The resolutions will be reported.

The Chief Clerk read as follows:

Whereas it is provided by the second section of the fourteenth article of the amendments to the Constitution of the United States that "Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State."

And whereas it is alleged that in several of the States, and particularly in the States of South Carolina, Georgia, Florida, Alabama, Louisiana, and Mississippi, the right of male inhabitants of said States, respectively, being twenty-one years of age and citizens of the United States, to vote at the late elections of the electors for President and Vice-President of the United States, and for Representatives in Congress, and for the executive and judicial officers of such States, and for members of the Legislature thereof, has been denied or greatly abridged: Therefore,

Resolved, That the Committee on Privileges and Elections, when appointed, be, and it hereby is, instructed to inquire and report as soon as may be—

1. Whether in any of the elections named in said amendment in said States in the years 1875 or 1876 the right of any portion of such inhabitants and citizens to vote as aforesaid has been in anywise denied or abridged.

2. To what extent such denial or abridgment has been carried.

3. By what means such denial or abridgment has been accomplished.

4. By whom has such denial or abridgment been affected.

5. With what motives and for what purposes has such denial or abridgment been carried on.

6. By what authority or pretended authority has such denial or abridgment been exercised.

Resolved further, That the said committee have power to employ such number of stenographers as shall be needful, and to send for persons and papers, and have leave to sit during the sessions of the Senate, and to appoint subcommittees with full power to make the inquiries aforesaid and report the same to the committee.

Resolved further, That said committee, in order to the more speedy performance of its duties, have power to provide for the taking of affidavits, on the subjects aforesaid, before any officer authorized by the laws of the United States to take affidavits, and to receive and consider the same.

Resolved further, That the said committee be, and is hereby, instructed to inquire into the eligibility to office under the Constitution of the United States of any persons alleged to have been ineligible on the 7th day of November last, or to be ineligible as electors of President and Vice-President of the United States, to whom certificates of election have been or shall be issued by the executive authority of any State as such electors; and whether the appointment of electors or those claiming to be such in any of the States has been made, either by force, fraud, or other means, otherwise than in conformity with the Constitution and laws of the United States and the laws of the respective States; and whether any such appointment or action of any such elector has been in anywise unconstitutionally or unlawfully interfered with; and to inquire and report whether Congress has any constitutional power, and, if so, what, and the extent thereof, in respect of the appointment of or action of electors of President and Vice-President of the United States, or over returns or certificates of votes of such electors, and that said committee have power to send for persons and papers, and to employ a stenographer, and have leave to sit during the session of the Senate.

The PRESIDENT *pro tempore*. The question is on taking up these resolutions for present consideration.

Mr. BAYARD. Mr. President, owing to my temporary absence from the Senate Chamber yesterday, when these resolutions were presented, I was not made aware of their purport until this morning. I have heard them read now for the first time. The subject-matters to which they relate are not only of the most fundamental character and of the deepest importance to our very system of government, but they are also, as plainly appears, exceedingly multifarious, touching not simply the existence of the forms of constitutional republican government in seven of the States of the Union, but also another and very different matter—the question of the eligibility of persons for the office of elector of President and Vice-President of the United States.

I need not say, sir, how deeply interesting and important are these subjects at any time, and perhaps never more than now, and I shall be most glad for every information and all light that can be given to my mind upon any and all of these subjects. If, therefore, it is the purpose of the honorable Senator from Vermont to discuss the origin of powers under which it is proposed that this committee shall act, and if indeed he shall discuss and give us in some way the result of his own study and opinion upon these important and as I say multifarious questions, I shall be a most willing and obedient listener. But I rose for the purpose of asking him, (unless he desire to discuss these matters at this time, and if so, as I said I shall be one of the most willing of his hearers,) to allow the resolutions to pass over, because I think there are many members, or, I was going to say, most members of this body, who would desire to be heard upon the subjects involved.

I do not now suggest objections or make a suggestion even of the separation of these questions, which might well perhaps occur, but merely ask the honorable Senator if he will consent to a postponement of the consideration of his resolutions for a short period, that there may be some preparation for a discussion, the importance of which can scarcely be exaggerated. I shall leave it to his own convenience and discretion as to what day he would prefer to postpone this discussion to, and not make any motion of my own on the subject, although I am one of those who desire to be heard upon the subject-matters of the resolutions.

Mr. EDMUNDS. Mr. President, nothing would give me greater pleasure personally than to yield to the wishes of my honorable friend; but in my opinion the condition of public affairs is such that the inquiries which I propose in these resolutions ought to be ordered at once; and my purpose in moving to take up these resolutions now was that the Senate should pass them to-day, with such changes and corrections as the wisdom of the Senate may think fit to introduce. But in the present attitude of public affairs and in the present movements of political inquiries in other quarters, I think the Senate of the United States would be wanting in its duty to the States and the people, and the Constitution, and peace, and justice if it spend much time in discussing the questions which these resolutions open, in advance of the report of the committee. If the Senate should be willing to take up the resolutions now, I think I can point out in a moment to my honorable friend, and to all other Senators, that, so far as the substance is concerned, the Senate commits itself to no opinion whatever; but I do not go into that now, because the resolutions are not up, and I prefer to adhere to the wise rule of the Senate that we are not to discuss the substance of a proposition until we have it before us. I hope therefore the Senate, without any objections from any quarter, will take up the resolutions now.

Mr. BAYARD. Mr. President, I regret that the suggestion made by me to the honorable Senator does not appear to meet his views and his sense of public duty at this time. It is perfectly plain that these resolutions open up anew the whole question of the relation of certain States of this Union to the Federal Union itself. They open up anew the whole question of the duty and powers of Congress to make inquisition into the domestic and internal affairs of the States themselves. It proceeds upon an allegation, unsupported by petition or even affidavit, that there is an occasion for the exertion of this power by the Government of the Union of inquisition anew into the condition of affairs in several of the States.

Mr. President, the preamble of these resolutions is copied in the words themselves from the second section of the fourteenth article of amendment, which provides for the appointment of representation among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. It declares that "when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State."

Now, sir, it will be observed that this amendment is addressed to the States and is an inhibition upon the States as separate political communities. Article 15, not referred to here, is in the same language prohibiting the denial or abridgment by the United States or any

State of the right to vote for certain causes. This is addressed to States; it is addressed to States as communities; and therefore, when it comes to be ascertained whether this abridgment or denial has been made, it will be ascertained by the examination of the State action; it will be ascertained by the examination of the State constitution, and the examination of the State laws. It is the action of the State as a political community which it is contemplated shall be made to control the question of the ratio of her representation in the popular branch of Congress. The State shall be deprived of her representation, and for what? By the State's refusal to grant equality of the right to vote, except where crime or participation in rebellion shall have authorized the denial and withholding of the right to vote. But, Mr. President, to suppose that the abridgment of the right of one man or the right of ten or a hundred men, or even more, by the wrongful act of fraud or violence of individual citizens of a State is to control the right of the State and to disfranchise the people of that State *pro tanto*, is to my mind the clearest abuse and perversion of the language and the meaning of this amendment to the Constitution. It was addressed to the States as political communities. It said to them, "You shall not abridge or deny this right; if you do your representation shall be shortened to that extent." How is that to be ascertained? It is the State, the community, whose representation is to be abridged in proportion to the denial which the laws and constitution and authority of that State shall have made in violation of the intendment and language of the Constitution of the United States. But if you proceed on the basis now suggested, this will be a never-ending question.

There is not an election held in any State in the Union, and never will be until some political millenium shall come, in which officers of election willfully or ignorantly will not accept and receive votes which should not be accepted, or will not refuse votes which ought to be received. The experience of every man who hears me, the common sense and common experience of political affairs in this country assure it in the mind of every man who hears me, that there are errors made or willful abridgments made of the right to vote by partisan feeling or sometimes by the ignorance of those in whose charge is the receiving of votes; nay, further, that men are prevented from voting or their votes changed by inducements of a pecuniary and corrupt nature. That is often done, and men are prevented from exercising their free choice by the promise of office, by the promise of employment, by the withholding of employment, by a thousand of those reasons that cannot be defined, which influence the mind and the action of the citizen about to vote. There is that general name which seems of late to have been imported into our political dictionary, intimidation, whatever it may arise from, to whatever degree it may have been exerted; and that undefined and undefinable fact is sought to be created now into a cause of congressional inquisition. All these things have occurred and will occur while men are men, and subject to the hopes and the fears of humanity. And yet, if there be an abridgment of the right to vote, if votes be rejected wrongfully or received wrongfully, this power will exist if the construction contained in these resolutions be approved by the Senate, and this power will ever exist and we shall never have an end to the continual inquisition by Congress into the domestic and internal affairs of the States. The opportunities for the examination given to Congress would be, in the first place, most incomplete and unsatisfactory; and, in the second place, they are not within the spirit or the meaning of our form of government, or the charter of powers under which we act.

Therefore it is, Mr. President, that I think it most important that this Senate should pause before committing itself to such a doctrine as lies within the language of the first part of the preamble to these resolutions, that it is in the power of Congress, and it is the duty of Congress, to inquire, and by legislation to amend the ratio of representation of a State, because of the abridgment or denial of the right of suffrage to a greater or less extent, of the individual voters who reside within that State. Mr. President, no such power was ever given, and no such power was ever intended to be given. The constitutional amendment addresses itself to political communities which we call States, and which form this Union. It forbids them under penalty of decreased representation *pro tanto*, to abridge or deny suffrage for certain reasons, and if they do abridge or deny it must be by State authority, and that is expressed in the usual and only manner by which States can express their voice, to wit: by the Constitution of the State or by the statutes of the State. Why, sir, to adopt any other construction of this constitutional amendment would make us sit here the whole year round, and forever ascertaining how far at any given election the officers of election had honestly or justly, according to the laws of the State, conducted the election, and received or rejected votes.

I merely wished to point out to the Senate what a never-ending task they are now invited to. Need I say further that such powers are fatal to our Federal system? The exertion of such powers is incompatible with the performance of our regular and constitutional duties. We have no right to undertake this duty, and we cannot in reason, either in the years allotted to man to live or in the hours which are necessary for our other duties, embark upon this system which is nothing more nor less than that of contested election for every one of the officials mentioned in this preamble; for such is the necessary and logical result, that we must sit here to contest elections for the choice of electors for President and Vice-President, of Representatives in Congress, of the executive and judicial officers of a State, because we must examine the basis upon which that choice is declared, the mass of the vote which was given, how it was given, how it was received, or how and why it was rejected.

Mr. President, this is a step beyond any that we yet have had. It is a step that undoes all that has been claimed to be done and is a confession of the worse than worthlessness of the congressional action of the last eleven years in relation to the States named and others. May not and will not the Senate pause to consider this question gravely and with more deliberation? These unprepared remarks fall from me on the first reading of these resolutions. My objection seems to me to be justified by that which appears upon "the very head and front" of the resolutions themselves, and I cannot shut my eyes to the consequences of assuming such a jurisdiction. I cannot shut my eyes to the fact that such a jurisdiction is forbidden. It is impracticable, if not forbidden, and it cannot be carried out and carried into effect without more than absorbing the time fixed by law for the continuation of this session of the Senate or any other session or any number of sessions of the Senate, because here are the elections of two years, 1875 and 1876, to be followed by the elections of 1877 and 1878, and so on *in æternam*, and of course we shall then become at all times the tribunal for the adjustment of all contests of elections where there has been any abridgment or denial of the right to vote.

Now, sir, the case is perfectly plain. The material for judgment on this subject is all at hand; it is here in the manner provided for by law and contemplated by the Constitution. It is here in your census upon which was based your ascertainment of the number of citizens and people of every sex and grade and age in every State and Territory of this Union. Upon that tabulation of the population your laws for the apportionment of Representatives have been duly approved according to the Constitution. When therefore——

Mr. MORTON. I should like to put an inquiry to the Senator from Delaware.

Mr. BAYARD. Allow me to finish the sentence, and then I will listen to the Senator with pleasure. When, therefore, these facts being before the country and the ratio of representation to which any State has been entitled having been ascertained and fixed by law, there shall arise the question whether that State has violated the letter and the spirit of the second section of the fourteenth amendment to the Constitution, that inquiry can be answered immediately by the production of the State's constitution and her statutes, and if upon them is found a denial and the State has assumed to deprive herself of the right of representation by excluding any class who were not to be excluded except under this penalty, the fact can be perceived and the information sought by these resolutions will be fully and accurately ascertained, and it can be ascertained in no other manner.

Mr. MORTON. I rise to inquire whether it is in order to discuss the constitutional power to pass these resolutions or the merits of them, on the mere motion to take up?

The PRESIDENT *pro tempore*. It is not.

Mr. MORTON. I make that point of order.

The PRESIDENT *pro tempore*. The Senator from Indiana has made the point of order indicated by him. The Chair sustains the point of order.

Mr. BAYARD. Mr. President, if I have in any degree passed beyond the question of taking up into the merits of the resolutions themselves, it has been unwittingly. I thought it was, and I still think it was, eminently proper to appeal to the Senate as a reason for not taking up or acting on these resolutions now, the importance of the questions involved and their far-reaching nature upon us and our present and future duties. In that I have sought to give some reasons, and perhaps I have been betrayed in some degree into a discussion of what may be called constitutional merits and powers in this matter.

I do not think it necessary to pursue this further; but I have said enough, and I think enough that is regular, to show why the consideration of these resolutions ought not to be pressed to a hasty determination, and therefore, to show why they should be allowed to remain over until such time as opportunity for their examination shall have been given. I do not know that this ever has been refused before at the opening of a session, and in a time like the present. I do trust that what I have said may have impressed the minds of those who have heard me to reach the determination that I have come to, that time should be given for the proper discussion of the important matters embraced in these resolutions.

Mr. EDMUNDS. Mr. President, I will not violate the rules by making any reply to the observations of the Senator from Delaware upon the subject-matter of these resolutions at this time. I will simply ask for the yeas and nays on the motion to take them up, as I wish to place myself—for one, on record, in the present state of the country, as to whether we are going to be forever in making this inquiry or not.

The PRESIDENT *pro tempore*. The Senator from Vermont asks for the yeas and nays on the motion to take up the resolutions.

The yeas and nays were ordered, and the Secretary proceeded to call the roll.

Mr. BAYARD, (when Mr. SAULSBURY'S name was called.) I desire to state that my colleague is detained from his seat by the death of a member of his family.

The roll-call having been concluded, the result was announced—yeas 39, nays 22; as follows:

YEAS—Messrs. Alcorn, Allison, Booth, Boutwell, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Chaffee, Christiancy, Clayton, Conkling, Cragin, Dawes, Dorsey, Edmunds, Ferry, Frelinghuysen, Hamlin, Harvey, Hitchcock, Howe, Ingalls, Jones of Nevada, Logan, McMillan, Mitchell, Morrill, Morton, Oglesby, Paddock, Patterson, Sargent, Spencer, Teller, Wadleigh, West, Windom, and Wright—39.

NAYS—Messrs. Bayard, Bogy, Cooper, Davis, Dennis, Eaton, Goldthwaite, Johnston, Jones of Florida, Kernan, Key, McDonald, Maxey, Merrimon, Price, Randolph, Ransom, Stevenson, Thurman, Wallace, Whyte, and Withers—22.

ABSENT—Messrs. Anthony, Barnum, Blaine, Cockrell, Conover, Gordon, Hamilton, Kelly, McCreery, Norwood, Robertson, Saulsbury, Sharon, and Sherman—14.

The PRESIDENT *pro tempore*. The resolutions are before the Senate.

Mr. EDMUNDS. Mr. President, I wish to modify the language of the resolutions in several particulars at the suggestion of some Senators. I believe I have the power of modification, which will save putting the question to the Senate. I will add after the word "abridged," in the first clause after the preamble, the words "and that said committee be authorized to extend this inquiry to the elections of 1874." I make this modification because it has been suggested to me that in several State elections occurring in the year 1874 important circumstances, either under State authority or without it, occurred, which it is desirable that the committee should be authorized to look into.

[Mr. ANTHONY and Mr. MCCREERY, the committee appointed to wait upon the President of the United States and inform him that the two Houses were ready to receive any communication he had to make, appeared below the bar of the Senate.]

Mr. ANTHONY. Mr. President, the committee appointed by the two Houses of Congress to wait upon the President of the United States and inform him that the two Houses were organized and ready to receive any communication he might have to make have performed the duty with which they were charged, and the President replied that he would communicate to the two Houses of Congress forthwith in writing.

Mr. EDMUNDS. There are one or two other modifications which have been suggested to the mere phraseology of the latter resolutions, which I will make.

At the top of page 2 of the document print of the resolutions, lines 2 and 4, I strike out the word "affidavits" and insert the word "depositions" in each line, and after the word "made," in the last resolution, line 8, I wish to insert the words "declared or returned" before the comma and after the word "made," so as to leave no ground for doubt of the fullness of the power of the committee to make a complete inquiry. Then in line 11, I wish to strike out the word "such" where it first occurs, so as to read "whether any appointment or action of any such elector has been in any wise," &c.; and in line 14 after the word "Congress" to insert "or either House thereof." These modifications, I think, correct the phraseology to my present satisfaction.

Now, I merely wish to say, in reply to my honorable friend from Delaware, that I am greatly surprised at the views which he seems to entertain touching these resolutions. His points appear to be two: the first of which is that the Senate has no power to make inquiry into the fact whether there has been a denial or abridgment of the right of citizens of the several States to vote as provided in this section of the fourteenth article of amendments to the Constitution. I confess I am greatly surprised at that. The very phraseology itself declares, not what we can find in the statutes of the States or in their constitutions, but that representation shall be based upon the whole number of the inhabitants of a State, except when in any State there shall be either denial or abridgment to any class of citizens who ordinarily are voters, males over twenty-one years of age, and the ratio of that State shall be diminished in that proportion of denial or abridgment. Ever since the foundation of the Government, the Senator knows just as well as I do that the ascertainment of the amount of representation fixed by the Constitution, where this fixes it, has to be left to the legislative will. The Constitution cannot do it; and the legislative will, therefore, always has ascertained as a fact the whole number of inhabitants in the respective States; and, upon that ascertainment, it has fixed the proportion of members of the House of Representatives to which each State shall be entitled. Now, this Constitution says that, in a certain event, the whole number of inhabitants in a particular State shall not be the rule that fixes its representation, but that that whole number shall be diminished to a certain number, to be ascertained how? By the Constitution? No; by law of course; and the very article itself (if it were necessary to refer to it on a question of this kind) provides that Congress is to have the power to enforce this article by appropriate legislation. How are we to know what legislation is appropriate, whether any is needed, whether any such case in fact exists as is stated in half the newspapers of the country, as has been stated over and over again by petitions and memorials addressed to Congress and to this body of it, as appears from the testimony of committees more than once taken and reported to this body, unless we have a careful inquiry into the facts. We get at it by investigation. When we do get at it and know exactly what the truth is, then the question will come up—and it appears to me not before—whether the particular sort of abridgment or denial, if there be any, that has occurred in a particular State is that sort of abridgment and denial that the Constitution refers to.

The PRESIDENT *pro tempore*. If the Senator will suspend a moment, the Chair will receive a message from the President of the United States.

At one o'clock and eleven minutes p. m., Mr. U. S. GRANT, jr., Secretary to the President of the United States, appeared below the bar of the Senate and said:

Mr. President, I am directed by the President of the United States to deliver to the Senate a message in writing.

Mr. EDMUNDS. When we ascertain these facts, Mr. President, it may be—I wish I could believe it would be—that in every State there has been the free, unabridged, and undenied right of every citizen entitled to vote, in the exercise of that privilege. It may be unhappily, Mr. President, that in some one State, or two or three or six or seven, there has been, by law, by executive action or otherwise, a real revolution of that dark power whose crime heaves upward in perpetual turbulence, and that the net result of the constitutional amendments which have given representation, as a rule, based upon the total population of States, has been to increase the representation of certain States in Congress and in the electoral college to the number of 15 or 20 votes, while it has not been to increase the effective franchise of the citizens of those States; and that, therefore, the tendency of the government in those States has been toward an increase of aristocratic power, where the political franchises are in the hands of the few, rather than to a diminution of it. I say I wish I could believe that the report of this committee, if the Senate should order the inquiry, will show that any such fear is wholly ungrounded. But the way to ascertain the truth, let it hit where it will, in the interest of peace, order, and good government, in the interest of liberty under the law and not above it, is for the Senate of the United States, the representative of all the States, to inquire and learn what the real condition is. When we ascertain it, as I have said, there will be time enough to discuss whether the facts ascertained warrant or require any species of legislative or other action whatever.

I do not propose to be drawn into a discussion of hypothetical cases at this time. I only wish to say enough to show to my honorable friends who voted against taking up these resolutions, that an inquiry into the state of the country, under this article of the Constitution, to ascertain, for public information, and for the information of this responsible body, what the truth is upon matters that have been so much asserted, so much stated in petitions and in newspapers and in public speeches—sometimes denied; sometimes admitted and justified and defended—in order that we may give peace to this country, either by such legislation as shall be fit under the circumstances, or by making public to all the people of the country that these allegations are either the spurious statements of dishonest demagogues and politicians, or the mistaken opinions of people who have mistaken their rights.

As to the last resolution, or the last branch of the subject, no suggestion has yet been made in opposition to it. That resolution, like the first, does not commit this body to any opinion whatever in respect of our powers, the powers of Congress, the powers of the House of Representatives, of the whole Government together, or of any one of its political or judicial branches. It only, under the Constitution, which does provide for the election of a President and a Vice-President by general methods pointed out, assumes that it is desirable that we should know, in the present condition of affairs more perhaps than any other time that has recently occurred, what has taken place in respect of the subject to which this resolution refers; that is, the eligibility of the persons elected or claiming to have been elected electors of President and Vice-President. It has been stated in the newspapers, and I believe it to be true, that steps of various kinds have been taken and are being taken to question the eligibility, perhaps upon good grounds, perhaps upon grounds that are not good, (I do not say, for I do not know,) of various of these electors, some because they are office-holders, some because they are under disabilities imposed by the Constitution for participation in rebellion in spite of the oaths they had taken to support the Constitution, and some for other reasons. Other allegations are made which this resolution covers as an inquiry and not as a judgment, that these electors in some States have not been lawfully appointed; that returning boards or whatever they are called have given certificates to the men who did not get the majority of votes and that they threaten to give them to others. Other allegations have been made that terror, violence, coercion, fraud, the purchase of the votes of electors in the interest of one candidate or another, has been going on. Is it not fit, therefore, that the Senate of the United States, under the Constitution, should inquire into the truth of these allegations that so much agitate the country, and justly agitate it, in order that, if there be any foundation for any of these allegations upon either side of the political contest that is going on, some lawful and peaceable means shall be ascertained to cure whatever of wrong has occurred upon either side?

Mr. CONKLING. As this discussion seems likely to proceed, and as I learn that the annual message of the President is on the table, I hope everybody will consent that the pending resolution may be laid aside informally while the Chair opens the message of the President and allows it to be read, that it may be printed and found on our tables.

Mr. EDMUNDS. There is no possible objection to that.

Mr. THURMAN. I wish the Senator from Vermont would let the

resolutions go over until to-morrow morning, so that they may be printed with the amendments. The annual message probably will take up nearly the rest of to-day's session in reading, and I should like to see the resolutions, as they have been modified, in print before we act on them.

Mr. EDMUNDS. I regret extremely that I cannot oblige my friend by consenting to that course. The amendments that I have made to the resolutions are purely phraseological. My friend has a note of them. They are only two or three words. As I said before, the present condition of affairs, the interval of time between this day and the second Wednesday in Febraary, when, if ever, it is desirable that we shall know something about the state of this case, makes me feel it to be my duty to ask the Senate, if it will, to act upon these resolutions to-day.

Mr. THURMAN. I made the suggestion not to waste any time upon the resolutions; I do not propose to waste a moment of time upon them. I have some few observations to make, and they are but few, before the vote is taken, and I should like very much to see them in the modified shape before doing so. I have no disposition whatsoever to prolong the debate.

Mr. EDMUNDS. I will send the resolutions over to my friend in the modified shape now.

Mr. THURMAN. Well, I should like to study them.

Mr. MORTON. I hope we shall hear the message read and then resume the consideration of the resolutions and not adjourn until they are disposed of.

The PRESIDENT *pro tempore*. Is there objection to laying aside the resolutions informally in order to hear the annual message of the President read? The Chair hears no objection. The Chair lays before the Senate the annual message of the President of the United States, which the Secretary will read.

PRESIDENT'S ANNUAL MESSAGE.

The Secretary of the Senate, Hon. GEORGE C. GORHAM, read the message, as follows:

To the Senate and House of Representatives:

In submitting my eighth and last annual message to Congress, it seems proper that I should refer to, and in some degree recapitulate, the events and official acts of the past eight years.

It was my fortune, or misfortune, to be called to the office of Chief Executive without any previous political training. From the age of seventeen I had never even witnessed the excitement attending a presidential campaign but twice antecedent to my own candidacy, and at but one of them was I eligible as a voter. Under such circumstances it is but reasonable to suppose that errors of judgment must have occurred. Even had they not, differences of opinion between the Executive, bound by an oath to the strict performance of his duties, and writers and debaters must have arisen. It is not necessarily evidence of blunder on the part of the Executive because there are these differences of views. Mistakes have been made, as all can see and I admit, [illegible], it seems to me, oftener in the selections made of the assistants appointed to aid in carrying out the various duties of administering the Government, in nearly every case selected without a personal acquaintance with the appointee, but upon recommendations of the representatives chosen directly by the people. It is impossible, where so many trusts are to be allotted, that the right parties should be chosen in every instance. History shows that no administration, from the time of Washington to the present, has been free from these mistakes. But I leave comparisons to history, claiming only that I have acted in every instance from a conscientious desire to do what was right, constitutional within the law, and for the very best interests of the whole people. Failures have been errors of judgment, not of intent.

My civil career commenced, too, at a most critical and difficult time. Less than four years before, the country had emerged from a conflict such as no other nation had ever survived. Nearly one-half of the States had revolted against the Government, and of those remaining faithful to the Union a large percentage of the population sympathized with the rebellion and made an "enemy in the rear" almost as dangerous as the more honorable enemy in the front. The latter committed errors of judgment, but they maintained them openly and courageously. The former received the protection of the Government they would see destroyed and reaped all the pecuniary advantage to be gained out of the then existing state of affairs, many of them by obtaining contracts and by swindling the Government in the delivery of their goods.

Immediately on the cessation of hostilities, the then noble President, who had carried the country so far through its perils, fell a martyr to his patriotism at the hands of an assassin.

The intervening time to my first inauguration was filled up with wranglings between Congress and the new Executive as to the best mode of "reconstruction," or, to speak plainly, as to whether the control of the Government should be thrown immediately into the hands of those who had so recently and persistently tried to destroy it, or whether the victors should continue to have an equal voice with them in this control. Reconstruction as finally agreed upon means this, and only this, except that the late slave was enfranchised, giving an increase, as was supposed, to the Union-loving and Union-supporting votes. If free, in the full sense of the word, they would not disappoint this expectation. Hence at the beginning of my first administration the work of reconstruction—much embarrassed by the long delay—virtually commenced. It was the work of the legislative branch of the Government. My province was wholly in approving their acts, which I did most heartily, urging the Legislatures of States that had not yet done so to ratify the fifteenth amendment to the Constitution. The country was laboring under an enormous debt contracted in the suppression of rebellion, and taxation was so oppressive as to discourage production. Another danger also threatened us—a foreign war. The last difficulty had to be adjusted and was adjusted without a war and in a manner highly honorable to all parties concerned.

Taxes have been reduced within the last seven years nearly $300,000,000 and the national debt has been reduced in the same time over $435,000,000. By refunding the 6 per cent. bonded debt for bonds bearing 5 and 4½ per cent. interest, respectively, the annual interest has been reduced from over $130,000,000 in 1869 to but little over $100,000,000 in 1876. The balance of trade has been changed from over $130,000,000 against the United States in 1869 to more than $120,000,000 in our favor in 1876.

It is confidently believed that the balance of trade in favor of the United States will increase, not diminish, and that the pledge of Congress to resume specie payments in 1879 will be easily accomplished, even in the absence of much desired further legislation on the subject.

A policy has been adopted toward the Indian tribes inhabiting a large portion of the territory of the United States which has been humane and has substantially ended Indian hostilities in the whole land, except in a portion of Nebraska, and Dakota, Wyoming, and Montana Territories—the Black Hills region and approaches thereto. Hostilities there have grown out of the avarice of the white man, who has violated our treaty stipulations in his search for gold. The question might be asked why the Government has not enforced obedience to the terms of the treaty prohibiting the occupation of the Black Hills region by whites. The answer is simple: The first immigrants to the Black Hills were removed by troops, but rumors of rich discoveries of gold took into that region increased numbers. Gold has actually been found in paying quantity, and an effort to remove the miners would only result in the desertion of the bulk of the troops that might be sent there to remove them. All difficulty in this matter has, however, been removed, subject to the approval of Congress, by a treaty ceding the Black Hills and approaches to settlement by citizens.

The subject of Indian policy and treatment is so fully set forth by the Secretary of the Interior and the Commissioner of Indian Affairs, and my views so fully expressed therein, that I refer to their reports and recommendations as my own.

The relations of the United States with foreign powers continue on a friendly footing. Questions have arisen from time to time in the foreign relations of the Government, but the United States have been happily free during the past year from the complications and embarrassments which have surrounded some of the foreign powers.

The diplomatic correspondence submitted herewith contains information as to certain of the matters which have occupied the Government.

The cordiality which attends our relations with the powers of the earth has been plainly shown by the general participation of foreign nations in the exhibition which has just closed, and by the exertions made by distant powers to show their interest in and friendly feelings toward the United States in the commemoration of the centennial of the nation. The Government and people of the United States have not only fully appreciated this exhibition of kindly feeling, but it may be justly and fairly expected that no small benefits will result both to ourselves and other nations from a better acquaintance and a better appreciation of our mutual advantages and mutual wants.

Congress at its last session saw fit to reduce the amount usually appropriated for foreign intercourse, by withholding appropriations for representatives of the United States in certain foreign countries and for certain consular offices, and by reducing the amounts usually appropriated for certain other diplomatic posts, and thus necessitating a change in the grade of the representative.

For these reasons, immediately upon the passage of the bill making appropriations for the diplomatic and consular service for the present fiscal year, instructions were issued to the representatives of the United States at Bolivia, Ecuador, and Colombia, and to the consular officers for whom no appropriation had been made, to close their respective legations and consulates and cease from the performance of their duties; and in like manner steps were immediately taken to substitute chargés d'affaires for ministers resident in Portugal, Denmark, Greece, Switzerland, and Paraguay.

While thoroughly impressed with the wisdom of sound economy in the foreign service as in other branches of the Government, I cannot escape the conclusion that in some instances the withholding of appropriations will prove an expensive economy, and that the small retrenchment secured by a change of grade in certain diplomatic posts is not an adequate consideration for the loss of influence and importance which will attend our foreign representatives under this reduction. I am of the opinion that a re-examination of the subject will cause a change in some instances in the conclusions reached on these subjects at the last session of Congress.

The court of commissioners of Alabama claims, whose functions were continued by an act of the last session of Congress until the 1st day of January, 1877, has carried on its labors with diligence and general satisfaction. By a report of the clerk of the court, transmitted herewith, bearing date November 14, 1876, it appears that within the time now allowed by law the court will have disposed of all the claims presented for adjudication. This report also contains a statement of the general results of the labors of the court to the date thereof. It is a cause of satisfaction that the method adopted for the satisfaction of the classes of claims submitted to the court, which are of long standing and justly entitled to early consideration, should have proved successful and acceptable.

It is with satisfaction that I am enabled to state that the work of the joint commission for determining the boundary line between the United States and British Possessions from the northwest angle of the Lake of the Woods to the Rocky Mountains, commenced in 1872, has been completed. The final agreements of the commissioners, with the maps, have been duly signed, and the work of the commission is complete.

The fixing of the boundary upon the Pacific coast by the protocol of March 10, 1873, pursuant to the award of the Emperor of Germany by article 34 of the treaty of Washington, with the termination of the work of this commission, adjusts and fixes the entire boundary between the United States and the British Possessions, except as to the portion of territory ceded by Russia to the United States under the treaty of 1867. The work intrusted to the commissioner and the officers of the Army attached to the commission has been well and satisfactorily performed. The original of the final agreement of the commissioners, signed upon the 29th of May, 1876, with the original "List of astronomical stations observed," the original official "List of monuments marking the international boundary line," and the maps, records, and general reports relating to the commission, have been deposited in the Department of State. The official report of the commissioner on the part of the United States, with the report of the chief astronomer of the United States, will be submitted to Congress within a short time. I reserve for a separate communication to Congress a statement of the condition of the questions which lately arose with Great Britain respecting the surrender of fugitive criminals under the treaty of 1842.

The Ottoman government gave notice under date of January 15, 1874, of its desire to terminate the treaty of 1862, concerning commerce and navigation, pursuant to the provisions of the twenty-second article thereof. Under this notice the treaty terminated upon the 5th day of June, 1876. That government has invited negotiations toward the conclusion of a new treaty.

By the act of Congress of March 23, 1874, the President was authorized, when he should receive satisfactory information that the Ottoman government or that of Egypt had organized new tribunals likely to secure to citizens of the United States the same impartial justice enjoyed under the exercise of judicial functions by diplomatic and consular officers of the United States, to suspend the operation of the act of June 22, 1860, and to accept for citizens of the United States the jurisdiction of the new tribunals. Satisfactory information having been received of the organization of such new tribunals in Egypt, I caused a proclamation to be issued upon the 27th of March last, suspending the operation of the act of June 22, 1860, in Egypt according to the provisions of the act. A copy of the proclamation accompanies this message. The United States has united with the other powers in the organization of these courts. It is hoped that the jurisdictional questions which have arisen may be readily adjusted and that this advance in judicial reform may be hindered by no obstacles.

The necessary legislation to carry into effect the convention respecting commercial reciprocity concluded with the Hawaiian Islands in 1875 having been had, the proclamation to carry into effect the convention as provided by the act approved August 15, 1876, was duly issued upon the 9th day of September last. A copy thereof accompanies this message.

The commotions which have been prevalent in Mexico for some time past, and which, unhappily, seem to be not yet wholly quieted, have led to complaints of citizens of the United States of injuries by persons in authority. It is hoped, however, that these will ultimately be adjusted to the satisfaction of both governments. The frontier of the United States in that quarter has not been exempt from acts of violence by citizens of one republic on those of the other. The frequency of these is supposed to be increased and their adjustment made more difficult by the considerable changes in the course of the lower part of the Rio Grande River, which river is a part of the boundary between the two countries. These changes have placed on either side of that river portions of land which by existing conventions belong to the jurisdiction of the government on the opposite side of the river. The subject of adjustment of this cause of difficulty is under consideration between the two republics.

The government of the United States of Colombia has paid the award in the case of the steamer Montijo, seized by authorities of that government some years since, and the amount has been transferred to the claimants.

It is with satisfaction that I am able to announce that the joint commission for the adjustment of claims between the United States and Mexico, under the convention of 1868, the duration of which has been several times extended, has brought its labors to a close. From the report of the agent of the United States, which accompanies the papers transmitted herewith, it will be seen that within the time limited by the commission one thousand and seventeen claims on the part of citizens of the United States against Mexico were referred to the commission. Of these claims, eight hundred and thirty-one were dismissed or disallowed, and in one hundred and eighty-six cases awards were made in favor of the claimants against the Mexican Republic amounting in the aggregate to $4,125,622.20. Within the same period nine hundred and ninety-eight claims on the part of citizens of the Mexican Republic against the United States were referred to the commission. Of these claims eight hundred and thirty-one were dismissed or disallowed, and in one hundred and sixty-seven cases awards were made in favor of the claimants against the United States amounting in the aggregate to $150,498.41. By the terms of the convention the amount of these awards is to be deducted from the amount awarded in favor of our citizens against Mexico, and the balance only to be paid by Mexico to the United States, leaving the United States to make provision for this proportion of the awards in favor of its own citizens. I invite your attention to the legislation which will be necessary to provide for the payment. In this connection I am pleased to be able to express the acknowledgments due to Sir Edward Thornton, the umpire of the commission, who has given to the consideration of the large number of claims submitted to him much time, unwearied patience, and that fairness and intelligence which are well known to belong to the accomplished representative of Great Britain, and which are likewise recognized by the representative in this country of the republic of Mexico.

Monthly payments of a very small part of the amount due by the government of Venezuela to citizens of the United States on account of claims of the latter against that government continue to be made with reasonable punctuality. That government has proposed to change the system which it has hitherto pursued in this respect by issuing bonds for part of the amount of the several claims. The proposition, however, could not, it is supposed, properly be accepted, at least without the consent of the holders of certificates of the indebtedness of Venezuela. These are so much dispersed that it would be difficult, if not impossible, to ascertain their disposition on the subject.

In former messages I have called the attention of Congress to the necessity of legislation with regard to fraudulent naturalization and to the subject of expatriation and the election of nationality.

The numbers of persons of foreign birth seeking a home in the United States, the ease and facility with which the honest immigrant may after the lapse of a reasonable time become possessed of all the privileges of citizenship of the United States, and the frequent occasions which induce such adopted citizens to return to the country of their birth render the subject of naturalization and the safeguards which experience has proved necessary for the protection of the honest naturalized citizen of paramount importance. The very simplicity in the requirements of law on this question affords opportunity for fraud, and the want of uniformity in the proceedings and records of the various courts and in the forms of the certificates of naturalization issued affords a constant source of difficulty.

I suggest no additional requirements to the acquisition of citizenship beyond those now existing; but I invite the earnest attention of Congress to the necessity and wisdom of some provisions regarding uniformity in the records and certificates, and providing against the frauds which frequently take place, and for the vacating of a record of naturalization obtained in fraud. These provisions are needed in aid and for the protection of the honest citizen of foreign birth, and for the want of which he is made to suffer not infrequently. The United States has insisted upon the right of expatriation and has obtained after a long struggle an admission of the principle contended for by acquiescence therein on the part of many foreign powers and by the conclusion of treaties on that subject. It is, however, but justice to the governments to which such naturalized citizens have formerly owed allegiance, as well as to the United States, that certain fixed and definite rules should be adopted governing such cases and providing how expatriation may be accomplished. While immigrants in large numbers become citizens of the United States, it is also true that persons, both native-born and naturalized, once citizens of the United States either by formal acts or as the effect of a series of facts and circumstances, abandon their citizenship and cease to be entitled to the protection of the United States, but continue on convenient occasions to assert a claim to protection in the absence of provisions on these questions.

And in this connection I again invite your attention to the necessity of legislation concerning the marriages of American citizens contracted abroad and concerning the status of American women who may marry foreigners and of children born of American parents in a foreign country.

The delicate and complicated questions continually occurring with reference to naturalization, expatriation, and the status of such persons as I have above referred to induce me to earnestly direct your attention again to these subjects.

In like manner I repeat my recommendation that some means be provided for the hearing and determination of the just and subsisting claims of aliens upon the Government of the United States within a reasonable limitation, and of such as may hereafter arise. While by existing provisions of law the Court of Claims may in certain

cases be resorted to by an alien claimant, the absence of any general provisions governing all such cases and the want of a tribunal skilled in the disposition of such cases upon recognized, fixed, and settled principles, either provide no remedy in many deserving cases or compel a consideration of such claims by Congress or the Executive Departments of the Government.

It is believed that other governments are in advance of the United States upon this question, and that the practice now adopted is entirely unsatisfactory.

Congress, by an act approved the 3d day of March, 1875, authorized the inhabitants of the Territory of Colorado to form a State government with the name of the State of Colorado, and therein provided for the admission of said State, when formed, into the Union, upon an equal footing with the original States.

A constitution having been adopted and ratified by the people of that State, and the acting governor having certified to me the facts as provided by said act, together with a copy of such constitution and ordinances as provided for in the said act, and the provisions of the said act of Congress having been duly complied with, I issued a proclamation upon the 1st of August, 1876, a copy of which is hereto annexed.

The report of the Secretary of War shows that the Army has been actively employed during the year in subduing, at the request of the Indian Bureau, certain wild bands of the Sioux Indian Nation, and in preserving the peace at the South during the election. The commission constituted under the act of July 24, 1876, to consider and report on the "whole subject of the reform and re-organization of the Army," met in August last, and has collected a large mass of statistics and opinions bearing on the subject before it. These are now under consideration and their report is progressing. I am advised, though, by the president of the commission, that it will be impracticable to comply with the clause of the act requiring the report to be presented through me to Congress on the first day of this session, as there has not yet been time for that mature deliberation which the importance of the subject demands. Therefore I ask that the time of making the report be extended to the 29th day of January, 1877. In accordance with the resolution of August 15, 1876, the Army regulations prepared under the act of March 1, 1875, have not been promulgated, but are held until after the report of the above-mentioned commission shall have been received and acted on.

By the act of August 15, 1876, the cavalry force of the Army was increased by 2,500 men, with the proviso that they should be discharged on the expiration of hostilities. Under this authority, the cavalry regiments have been strengthened, and a portion of them are now in the field pursuing the remnants of the Indians with whom they have been engaged during the summer. The estimates of the War Department are made up on the basis of the number of men authorized by law, and their requirements, as shown by years of experience, and also with the purpose, on the part of the bureau officers, to provide for all contingencies that may arise during the time for which the estimates are made. Exclusive of engineer estimates (presented in accordance with acts of Congress calling for surveys and estimates for improvements at various localities) the estimates now presented are about six millions in excess of the appropriations for the years 1874-'75 and 1875-'76. This increase is asked in order to provide for the increased cavalry force (should their services be necessary) to prosecute, economically, work upon important public buildings, to provide for armament of fortifications, and manufacture of small-arms, and to replenish the working-stock in the supply departments. The appropriations for these last named have, for the past few years, been so limited that the accumulations in store will be entirely exhausted during the present year, and it will be necessary to at once begin to replenish them.

I invite your especial attention to the following recommendations of the Secretary of War:

First. That the claims under the act of July 4, 1864, for supplies taken by the Army during the war, be removed from the offices of the Quartermaster and Commissary Generals and transferred to the southern claims commission. These claims are of precisely similar nature to those now before the southern claims commission, and the War Department bureaus have not the clerical force for their examination, nor proper machinery for investigating the loyalty of the claimants.

Second. That Congress sanction the scheme of an annuity fund for the benefit of the families of deceased officers and that it also provide for the permanent organization of the Signal Service both of which were recommended in my last annual message.

Third. That the manufacturing operations of the Ordnance Department be concentrated at three arsenals and an armory, and that the remaining arsenals be sold and the proceeds applied to this object by the Ordnance Department.

The appropriations for river and harbor improvements for the current year were $5,015,000. With my approval, the Secretary of War directed that, of this amount, $2,000,000 should be expended, and no new work should be begun and none prosecuted which were not of national importance. Subsequently this amount was increased to $2,237,600, and the works are now progressing on this basis.

The improvement of the South Pass of the Mississippi River under James B. Eads and his associates is progressing favorably. At the present time there is a channel of 20.3 feet in depth between the jetties at the mouth of the pass and 18½ feet at the head of the pass. Neither channel, however, has the width required before payments can be made by the United States. A commission of engineer officers is now examining these works and their reports will be presented as soon as received.

The report of the Secretary of the Navy shows that branch of the service to be in condition as effective as it is possible to keep it with the means and authority given the Department. It is, of course, not possible to rival the costly and progressive establishments of great European powers with the old material of our Navy, to which no increase has been authorized since the war, except the eight small cruisers built to supply the place of others which have gone to decay. Yet the most has been done that was possible with the means at command, and, by substantially rebuilding some of our old ships with durable material and completely repairing and refitting our monitor fleet, the Navy has been gradually so brought up that, though it does not maintain its relative position among the progressive navies of the world, it is now in a condition more powerful and effective than it ever has been in time of peace. The complete repairs of our five heavy iron-clads are only delayed on account of the inadequacy of the appropriations made last year for the working bureaus of the Department, which were actually less in amount than those made before the war, notwithstanding the greatly enhanced price of labor and materials and the increase in the cost of the naval service growing out of the universal use and great expense of steam-machinery. The money necessary for these repairs should be provided at once, that they may be completed without further unnecessary delay and expense.

When this is done, all the strength that there is in our Navy will be developed and useful to its full capacity, and it will be powerful for purposes of defense, and also for offensive action, should the necessity for that arise within a reasonable distance from our shores. The fact that our Navy is not more modern and powerful than it is, has been made a cause of complaint against the Secretary of the Navy, by persons who at the same time criticise and complain of his endeavors to bring the Navy that we have to its best and most efficient condition; but the good sense of the country will understand that it is really due to his practical action that we have at this time any effective naval force at command.

The report of the Postmaster-General shows the excess of expenditures (excluding expenditures on account of previous years) over receipts for the fiscal year ended June 30, 1876, to be $4,151,988.66. Of

Estimated expenditures for the fiscal year ending June 30, 1878, are	$36,723,432 43
Estimated revenue for same period is	30,645,165 00
Leaving estimated excess of expenditure to be appropriated as a deficiency of	6,078,267 43

The Postmaster-General, like his predecessor, is convinced that a change in the basis of adjusting the salaries of postmasters of the fourth class is necessary for the good of the service as well as for the interests of the Government, and urgently recommends that the compensation of the class of postmasters above mentioned be based upon the business of their respective offices, as ascertained from the sworn returns to the Auditor, of stamps canceled.

A few postmasters in the Southern States have expressed great apprehension of their personal safety, on account of their connection with the postal service, and have specially requested that their reports of apprehended danger should not be made public, lest it should result in the loss of their lives. But no positive testimony of interference has been submitted, except in the case of a mail messenger at Spartanburgh, in South Carolina, who reported that he had been violently driven away while in charge of the mails, on account of his political affiliations. An assistant superintendent of the railway mail service investigated this case, and reported that the messenger had disappeared from his post, leaving his work to be performed by a substitute. The Postmaster-General thinks that this case is sufficiently suggestive to justify him in recommending that a more severe punishment should be provided for the offense of assaulting any person in charge of the mails, or of retarding or otherwise obstructing them by threats of personal injury.

"A very gratifying result is presented in the fact that the deficiency of this department during the last fiscal year was reduced to $4,081,790.18, as against $6,169,938.88 of the preceding year. The difference can be traced to the large increase in its ordinary receipts (which greatly exceeded the estimates therefor) and a slight decrease in its expenditures."

The ordinary receipts of the Post-Office Department for the past seven fiscal years have increased at an average of over 8 per cent. per annum, while the increase of expenditures for the same period has been about 5.50 per cent. per annum, and the decrease of deficiency in the revenues has been at the rate of nearly 2 per cent. per annum.

The report of the Commissioner of Agriculture accompanying this message will be found one of great interest, marking as it does the great progress of the last century in the variety of products of the soil, increased knowledge and skill in the labor of producing, saving, and manipulating the same to prepare them for the use of man; in the improvements in machinery to aid the agriculturist in his labors, and in a knowledge of those scientific subjects necessary to a thorough system of economy in agricultural production, namely, chemis-

try, botany, entomology, &c. A study of this report by those interested in agriculture, and deriving their support from it, will find it of value in pointing out those articles which are raised in greater quantity than the needs of the world require, and must sell therefore for less than the cost of production; and those which command a profit over cost of production, because there is not an over-production. I call special attention to the need of the Department for a new gallery for the reception of the exhibits returned from the centennial exhibition, including the exhibits donated by very many foreign nations, and to the recommendations of the Commissioner of Agriculture, generally.

The reports of the District commissioners and the board of health are just received, too late to read them and to make recommendations thereon, and are herewith submitted.

The international exhibition held in Philadelphia this year in commemoration of the one hundredth anniversary of American independence has proved a great success, and will, no doubt, be of enduring advantage to the country. It has shown the great progress in the arts, sciences, and mechanical skill made in a single century and demonstrated that we are but little behind older nations in any one branch, while in some we scarcely have a rival. It has served, too, not only to bring peoples and products of skill and labor from all parts of the world together, but in bringing together people from all sections of our own country, which must prove a great benefit in the information imparted and pride of country engendered.

It has been suggested by scientists interested in and connected with the Smithsonian Institution, in a communication herewith, that the Government exhibit be removed to the capital and a suitable building be erected or purchased for its accommodation as a permanent exhibit. I earnestly recommend this; and, believing that Congress would second this view, I directed that all Government exhibits at the centennial exhibition should remain where they are, except such as might be injured by remaining in a building not intended as a protection in inclement weather or such as may be wanted by the Department furnishing them, until the question of permanent exhibition is acted on. Although the moneys appropriated by Congress to enable the participation of the several Executive Departments in the international exhibition of 1876 were not sufficient to carry out the undertaking to the full extent at first contemplated, it gives me pleasure to refer to the very efficient and creditable manner in which the board appointed from the several Departments to provide an exhibition on the part of the Government have discharged their duties with the funds placed at their command. Without a precedent to guide them in the preparation of such a display, the success of their labors was amply attested by the sustained attention which the contents of the Government building attracted during the period of the exhibition from both foreign and native visitors. I am strongly impressed with the value of the collection made by the Government for the purposes of the exhibition, illustrating as it does the mineral resources of the country, the statistical and practical evidences of our growth as a nation, and the uses of the mechanical arts and the applications of applied science in the administration of the affairs of government. Many nations have voluntarily contributed their exhibits to the United States to increase the interest in any permanent exhibition Congress may provide for. For this act of generosity they should receive the thanks of the people, and I respectfully suggest that a resolution of Congress to that effect be adopted.

The attention of Congress cannot be too earnestly called to the necessity of throwing some greater safeguard over the method of choosing and declaring the election of a President. Under the present system there seems to be no provided remedy for contesting the election in any one State. The remedy is partially, no doubt, in the enlightenment of electors. The compulsory support of the free school and the disenfranchisement of all who cannot read and write the English language—after a fixed probation—would meet my hearty approval. I would not make this apply, however, to those already voters, but I would to all becoming so after the expiration of the probation fixed upon. Foreigners coming to the country to become citizens who are educated in their own language would acquire the requisite knowledge of ours during the necessary residence to obtain naturalization. If they did not take interest enough in our language to acquire sufficient knowledge of it to enable them to study the institutions and laws of the country intelligently, I would not confer upon them the right to make such laws, nor to select those who do. I append to this message for convenient reference a synopsis of administrative events and of all recommendations to Congress made by me during the last seven years. Time may show some of these recommendations not to have been wisely conceived, but I believe the larger part will do no discredit to the administration.

One of these recommendations met with the united opposition of one political party in the Senate and with a strong opposition from the other, namely, the treaty for the annexation of Santo Domingo to the United States, to which I will specially refer, maintaining, as I do, that if my views had been concurred in the country would be in a more prosperous condition to-day, both politically and financially.

Santo Doming is fertile, and upon its soil may be grown just those tropical products of which the United States use so much and which are produced or prepared for market now by slave labor almost exclusively, namely: sugar, coffee, dye-woods, mahogany, tropical fruits, tobacco, &c. About 75 per cent. of the exports of Cuba are consumed in the United States. A large percentage of the exports of Brazil also find the same market. These are paid for almost exclusively in coin, legislation, particularly in Cuba, being unfavorable to a mutual exchange of the products of each country. Flour shipped from the Mississippi River to Havana can pass by the very entrance to the city on its way to a port in Spain; then pays a duty fixed upon articles to be re-exported; transferred to a Spanish vessel and brought back almost to the point of starting, paying a second duty, and still leave a profit over what would be received by direct shipment. All that is produced in Cuba could be produced in Santo Domingo. Being a part of the United States, commerce between the island and main-land would be free. There would be no export duties on her shipments nor import duties on those coming here. There would be no import duties upon the supplies, machinery, &c., going from the States.

The effect that would have been produced upon Cuban commerce, with these advantages to a rival, is observable at a glance. The Cuban question would have been settled long ago in favor of "Free Cuba." Hundreds of American vessels would now be advantageously used in transporting the valuable woods and other products of the soil of the island to a market and in carrying supplies and emigrants to it. The island is but sparsely settled, while it has an area sufficient for the profitable employment of several millions of people. The soil would have soon fallen into the hands of United States capitalists. The products are so valuable in commerce that emigration there would have been encouraged; the emancipated race of the South would have found there a congenial home, where their civil rights would not be disputed and where their labor would be so much sought after that the poorest among them could have found the means to go. Thus in cases of great oppression and cruelty, such as have been practiced upon them in many places within the last eleven years, whole communities would have sought refuge in Santo Domingo. I do not suppose the whole race would have gone, nor is it desirable that they should go. Their labor is desirable—indispensable almost—where they now are. But the possession of this territory would have left the negro "master of the situation" by enabling him to demand his rights at home on pain of finding them elsewhere.

I do not present these views now as a recommendation for a renewal of the subject of annexation; but I do refer to it to vindicate my previous action in regard to it.

With the present term of Congress my official life terminates. It is not probable that public affairs will ever again receive attention from me further than as a citizen of the Republic, always taking a deep interest in the honor, integrity, and prosperity of the whole land.

U. S. GRANT.

EXECUTIVE MANSION, *December 5, 1876.*

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A Proclamation.

Whereas, by the first section of an act entitled "An act to authorize the President to accept for the citizens of United States the jurisdiction of certain tribunals in the Ottoman dominions, and Egypt, established, or to be established, under the authority of the Sublime Porte, and of the government of Egypt," approved March twenty-third, eighteen hundred and seventy-four, it was enacted as follows:

That whenever the President of the United States shall receive satisfactory information that the Ottoman government, or that of Egypt, has organized other tribunals on a basis likely to secure to citizens of the United States, in their dominions, the same impartial justice which they now enjoy there under the judicial functions exercised by the minister, consuls, and other functionaries of the United States, pursuant to the act of Congress approved the 22d of June, 1860, entitled "An act to carry into effect provisions of the treaties between the United States, China, Persia, and other countries, giving certain judicial powers to ministers and consuls, or other functionaries of the United States in those countries, and for other purposes, he is hereby authorized to suspend the operations of said acts as to the dominions in which such tribunals may be organized, so far as the jurisdiction of said tribunals may embrace matters now cognizable by the minister, consuls, or other functionaries of the United States in said dominions, and to notify the government of the Sublime Porte, or that of Egypt, or either of them, that the United States during such suspension will, as aforesaid, accept for their citizens the jurisdiction of the tribunals aforesaid over citizens of the United States which has heretofore been exercised by the minister, consuls, or other functionaries of the United States.

And whereas satisfactory information has been received by me that the government of Egypt has organized other tribunals on a basis likely to secure to citizens of the United States in the dominions subject to such government the impartial justice which they now enjoy there under the judicial functions exercised by the minister, consul, or other functionaries of the United States, pursuant to the said act of Congress, approved June 22, 1860:

Now, therefore, I, Ulysses S. Grant, President of the United States of America, by virtue of the power and authority conferred upon me by the said act, approved March 23, 1874, do hereby suspend, during the pleasure of the President, the operation of the said act approved June 22, 1860, as to the said dominions, subject to the government of Egypt in which such tribunals have been organized, so far as the jurisdiction of said tribunals may embrace matters now cognizable by the minister, consuls, or other functionaries of the United States in said dominions, except as to cases actually commenced before the date hereof.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this twenty-seventh day of March, in the year of our Lord one thousand eight hundred and [SEAL.] seventy-six, and of the Independence of the United States of America the one hundredth.

U. S. GRANT.

By the President:
HAMILTON FISH,
Secretary of State.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A Proclamation.

Whereas the Congress of the United States did, by an act approved on the 3d day of March, one thousand eight hundred and seventy-five, authorize the inhabitants of the Territory of Colorado to form for themselves out of said Territory a State government with the name of the State of Colorado, and for the admission of such State into the Union, on an equal footing with the original States upon certain conditions in said act specified;

And whereas it was provided by said act of Congress that the convention elected by the people of said Territory to frame a State constitution should, when assembled for that purpose and after organization, declare on behalf of the people that they adopt the constitution of the United States, and should also provide by an ordinance irrevocable without the consent of the United States and the people of said State, that perfect toleration of religious sentiment shall be secured, and that no inhabitant of said State shall ever be molested in person or property on account of his or her mode of religious worship, and that the people inhabiting said Territory do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within said Territory, and that the same shall be and remain at the sole and entire disposition of the United States, and that the lands belonging to citizens of the United States residing without the said State shall never be taxed higher than the lands belonging to residents thereof, and that no taxes shall be imposed by the State on lands or property therein belonging to or which may hereafter be purchased by the United States;

And whereas it was further provided by said act that the constitution thus formed for the people of the Territory of Colorado should by an ordinance of the convention forming the same be submitted to the people of said Territory for ratification or rejection at an election to be held in the month of July, 1876, at which election the lawful voters of said new State should vote directly for or against the proposed constitution, and the returns of said election should be made to the acting governor of the Territory, who, with the chief-justice and United States attorney of said Territory, or any two of them, should canvass the same, and if a majority of legal votes should be cast for said constitution in said proposed State, the said acting governor should certify the same to the President of the United States, together with a copy of said constitution and ordinances; whereupon it should be the duty of the President of the United States to issue his proclamation declaring the State admitted into the Union on an equal footing with the original States without any further action whatever on the part of Congress;

And whereas it has been certified to me by the acting governor of said Territory of Colorado that within the time prescribed by said act of Congress a constitution for said proposed State has been adopted, and the same ratified by a majority of the legal voters of said proposed new State in accordance with the conditions prescribed by said act of Congress.

And whereas a duly authenticated copy of said constitution and of the declaration and ordinance required by said act has been received by me:

Now, therefore, I, Ulysses S. Grant, President of the United States of America, do, in accordance with the provisions of the act of Congress aforesaid, declare and proclaim the fact that the fundamental conditions imposed by Congress on the State of Colorado to entitle that State to admission to the Union have been ratified and accepted, and that the admission of the said State into the Union is now complete.

In testimony whereof I have hereunto set my hand and have caused the seal of the United States to be affixed.

Done at the city of Washington this 1st day of August, in the year of our Lord one thousand eight hundred and seventy- [SEAL.] six, and of the Independence of the United States of America the one hundred and first.

U. S. GRANT.

By the President:
HAMILTON FISH,
Secretary State.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A Proclamation.

Whereas, by article 5 of a convention concluded at Washington upon the 30th day of January, 1875, between the United States of America and His Majesty the King of the Hawaiian Islands, it was provided as follows, viz:

The present convention shall take effect as soon as it shall have been approved and proclaimed by His Majesty the King of the Hawaiian Islands and shall have been ratified and duly proclaimed on the part of the Government of the United States, but not until a law to carry it into operation shall have been passed by the Congress of the United States of America. Such assent having been given and the ratifications of the convention having been exchanged as provided in article 6, the convention shall remain in force for seven years from the date at which it may come into operation; and further, until the expiration of twelve months after either of the high contracting parties shall give notice to the other of its wish to terminate the same; each of the high contracting parties being at liberty to give such notice to the other at the end of the said term of seven years or at any time thereafter.

And whereas such convention has been approved and proclaimed by His Majesty the King of the Hawaiian Islands, and has been ratified and duly proclaimed on the part of the United States, and a law to carry the same into operation has been passed by the Congress of the United States, and the ratifications of the convention have been exchanged as provided in article 6 thereof;

And whereas the Acting Secretary of State of the United States and His Majesty's envoy extraordinary and minister plenipotentiary at Washington have recorded in a protocol a conference held by them at Washington on the 9th day of September, 1876, in the following language:

Whereas it is provided by article 5 of the convention between the United States of America and His Majesty the King of the Hawaiian Islands concerning commercial reciprocity, signed at Washington on the 30th day of January, 1875, as follows:

"ARTICLE V. The present convention shall take effect as soon as it shall have been approved and proclaimed by His Majesty the King of the Hawaiian Islands, and shall have been ratified and duly proclaimed on the part of the Government of the United States, but not until the law to carry it into operation shall have been passed by the Congress of the United States of America. Such assent having been given and the ratifications of the convention having been exchanged as provided in article 6, the convention shall remain in force for seven years from the date at which it may come into operation; and further, until the expiration of twelve months after either of the high contracting parties shall give notice to the other of its wish to terminate the same; each of the high contracting parties being at liberty to give such notice to the other at the end of the said term of seven years or at any time thereafter;"

And whereas the said convention has been approved and proclaimed by His Majesty the King of the Hawaiian Islands, and has been ratified and duly proclaimed on the part of the Government of the United States;

And whereas an act was passed by the Senate and House of Representatives of the United States of America in Congress assembled, entitled "An act to carry into effect a convention between the United States of America and His Majesty the King of the Hawaiian Islands, signed on the 30th day of January, 1875," which was approved on the 15th day of August in the year 1876;

And whereas an act was passed by the Legislative Assembly of the Hawaiian Islands, entitled "An act to carry into effect a convention between His Majesty the King and the United States of America, signed at Washington on the 30th day of January, 1875," which was duly approved on the 18th day of July in the year 1876;

And whereas the ratifications of the said convention have been exchanged as provided in article 6;

The undersigned, William Hunter, acting Secretary of State of the United States of America, and Hon. Elisha H. Allen, chief justice of the supreme court, chancellor of the kingdom, member of the privy council of state, and His Majesty's envoy extraordinary and minister plenipotentiary to the United States of America, duly authorized for this purpose by their respective Governments, have met together at Washington, and having found the said convention has been approved and proclaimed by His Majesty the King of the Hawaiian Islands and has been ratified and duly proclaimed on the part of the Government of the United States, and that the laws required to carry the said treaty into operation have been passed by the Congress of the United States of America on the one part and by the Legislative Assembly of the Hawaiian Islands on the other, hereby declare that the convention aforesaid concluded between the United States of America and his Majesty the King of the Hawaiian Islands on the 30th day of January, 1875, will take effect on the date hereof.

Now, therefore, I, Ulysses S. Grant, President of the United States of America, in pursuance of the premises, do declare that the said convention has been approved and proclaimed by His Majesty the King of the Hawaiian Islands, and been ratified and duly proclaimed on the part of the Government of the United States, and that the necessary legislation has been passed to carry the same into effect, and that the ratifications of the Convention have been exchanged as provided in article 6.

In testimony whereof I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done in the city of Washington this ninth day of September, in the year of our Lord one thousand eight hundred and seventy- [SEAL.] six, and of the Independence of the United States of America the one hundred and first.

U. S. GRANT.

By the President:
W. HUNTER,
Acting Secretary of State.

The diplomatic correspondence referred to in the message being in print will be so transmitted to the Senate and House of Representatives.

RECOMMENDATIONS AND EVENTS.

FIRST ANNUAL MESSAGE, DECEMBER 6, 1869.

Gradual return to specie payments.

"I earnestly recommend to you, then, such legislation as will insure a gradual return to specie payments and put an immediate stop to fluctuations in the value of currency."

Six and 5 per cent. United States bonds due and coming due "may be replaced by bonds bearing a rate of interest not exceeding 4½ per cent.," and also suggesting the "propriety of redeeming currency at market value, at the time the law goes into effect, increasing the rate at which currency shall be bought and sold, from day to day, or week to week, at the same rate of interest as Government pays upon its bonds."

Renewal of income tax.

"I also suggest the renewal of the tax on incomes, but at a reduced rate, say of 3 per cent., and this tax to expire in three years."

Enslavement of Chinese.

Advising "such legislation as will forever preclude the enslavement of the Chinese upon our soil under the name of coolies, and also prevent American vessels from engaging in the transportation of coolies to any country tolerating the system."

Recommending that the mission to China be raised to one of the first class.

Total repeal of tenure-of-office acts.

Indian policy.

Management of a few reservations of Indians given to Society of Friends, and selection of agents thrown upon them. For superintendents and Indian agents, not on reservations, officers of the Army selected. As a substitute for old system, suggests, the placing of all Indians on large reservations, giving them absolute protection there, and inducing them, as soon as they are fitted for it, to take their lands in severalty and to set up territorial governments for their own protection.

Special attention of Congress called to recommendation of the Postmaster-General for total abolition of franking privilege; and also to that of Secretary of War for repeal of act March 3, 1869, prohibiting promotions and appointments in staff corps of the Army.

SECOND ANNUAL MESSAGE, DECEMBER 5, 1870.

San Domingo.

Treaty for annexation of, rejected, and suggesting that by joint resolution of Congress the Executive be authorized to appoint a commission to negotiate a treaty for the acquisition of the island.

Tien-Tsin massacre.

France and North Germany invited to make an authorized suspension of hostilities in the East, and to act together for the future protection in China of the lives and properties of Americans and Europeans.

Slave trade.

Ratifications of treaty with Great Britain for abolishing the mixed courts for suppression of slave trade, and of the naturalization convention between that country and the United States—exchanged.

Boundary line.

Boundary line between the United States and British Possessions discovered to be 4,700 feet south of true position of forty-ninth parallel, leaving Hudson's Bay Company at Pembina within territory of the United States. Joint commission of the two governments proposed, to fix definitely the boundary line.

Alabama claims.

Regrets that no conclusion has been reached for the adjustment of Alabama claims, and recommends that Congress authorize appointment of a commission to take proof of amounts and ownership of claims, &c.

Anticipating that an attempt may possibly be made by Canadian authorities in the coming season to repeat unneighborly acts toward American fishermen; recommends that authority be conferred upon the Executive to suspend by proclamation operation of laws authorizing transit of goods, &c., in bond across United States territory to Canada, and should an extreme measure become necessary, the suspension of the operation of any laws whereby Canadian vessels are permitted to enter the waters of the United States.

Manifestation on the part of Canada to exclude United States citizens from the navigation of the Saint Lawrence. It is hoped that Great Britain will see the justice of abandoning the narrow and inconsistent claim to which her Canadian provinces have urged her adherence.

Recommends a liberal policy toward American steamers plying between the Pacific States and China and Japan, and encouragement, even if it should be at some cost to the national Treasury, of American ship-building.

Recommends an appropriation for the construction of a building for the State Department.

Recommends the transfer from State to Interior Department of all powers and duties in relation to the Territories, and from the Interior to the War Department the Pension Bureau.

Recommends the payment of naval pensions by one of the bureaus of Navy Department.

Congress should look to a policy which would place our currency at par with gold at no distant day.

Taxes.

Tax collected from the people reduced more than $80,000,000 per annum.

Suggests that revenue-stamps be dispensed by postmasters, and a tax on liquors and tobacco, and the imposition of duty only on luxuries.

Recommends an appropriation for a new War Department building, and a reform in the entire civil service of the country.

The experiment of making the management of Indian affairs a missionary work found to work most advantageously. Submits as a question worthy of serious consideration whether the residue of our national domain should not be wholly disposed of under the provisions of the homestead and pre-emption laws.

Land-grant subsidies.

"The United States should not loan their credit in aid of any enterprise undertaken by States or corporations, nor grant lands in any instance, unless the projected work is of acknowledged national importance. I am strongly inclined to the opinion that it is inexpedient and unnecessary to bestow subsidies of either description; but should Congress determine otherwise, I earnestly recommend that the rights of settlers and of the public be more effectually secured and protected by appropriate legislation."

Untrammeled ballot.

Where every man entitled to cast a vote may do so, just once, at each election, without fear of molestation or proscription on account of his political faith, nativity, or color.

THIRD ANNUAL MESSAGE.

"I recommend Congress at an early day to make the necessary provision for the tribunal at Geneva, and for the several commissioners, on the part of the United States, called for by the treaty."

* * * * * * *

"I recommend the legislation necessary on the part of the United States to bring into operation the articles of the treaty relating to the fisheries, and to the other matters touching the relations of the United States toward the British North American possessions, to become operative so soon as the proper legislation shall be had on the part of Great Britain and its possessions."

* * * * * * *

"I have addressed a communication * * * to the governors of New York, Pennsylvania, Ohio, Indiana, Michigan, Illinois, and Wisconsin, urging upon the governments of those States, respectively, the necessary action on their part to carry into effect the object of the article of the treaty which contemplates the use of the canals, on either side, connected with the navigation of the lakes and rivers forming the boundary, on terms of equality by the inhabitants of both countries."

* * * * * * *

"I renew the recommendation for an appropriation for determining the true position of the forty-ninth parallel of latitude where it forms the boundary between the United States and the British North American possessions, between the Lake of the Woods and the summit of the Rocky Mountains. The early action of Congress on this recommendation would put it in the power of the War Department to place a force in the field during the next summer."

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"The resumption of diplomatic relations between France and Germany has enabled me to give directions for the withdrawal of the protection extended to Germans in France by the diplomatic and consular representatives of the United States in that country."

* * * * * * *

"The ratifications of the consular and naturalization conventions with the Austro-Hungarian Empire have been exchanged."

"The ratifications of the new treaty of commerce between the United States and Italy have been exchanged. The two powers have agreed in this treaty that private property at sea shall be exempt from capture in case of war between the two powers."

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"The Forty-first Congress at its third session made an appropriation for the organization of a mixed commission for adjudicating upon the claims of citizens of the United States against Spain growing out of the insurrection in Cuba. That commission has since been organized."

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"It has been made the agreeable duty of the United States to preside over a conference at Washington between the plenipotentiaries of Spain and the allied South American republics, which has resulted in an armistice, with the reasonable assurance of a permanent peace."

"The intimate friendly relations which have so long existed between the United States and Russia continue undisturbed."

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With Japan we continue to maintain intimate relations.

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Our minister at Peking instructed to endeavor to conclude a convention with Corea, Admiral Rodgers to accompany him. The party were attacked, and after punishing the criminals, the expedition returned, not concluding the convention. Subject left for such action as Congress may see fit to take.

"The Republic of Mexico has not yet repealed the very objectionable laws establishing what is known as the Free Zone," &c.

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"I recommend some action by Congress regarding the overdue installments under the award of the Venezuelan claims commission of 1866."

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"The ratification of an extradition treaty with Nicaragua has been exchanged."

Congratulation that Brazil has taken steps to abolish slavery.

Regrets that Spain has failed to carry out its promised reforms in this direction.

Attention directed to the fact that citizens of the United States are large holders of slaves in foreign lands.

Recommends that Congress provide a remedy against the holding, owning, &c., of slaves by citizens of the United States.

Disturbed condition of affairs in the island of Cuba.

Recommends that an appropriation be made to support four American youths, to serve with our ministers in Japan and China, and liberal support to American lines of steamers now plying between San Francisco and Japan and China, and the Australian line.

Extent of reduction of the national debt. Modification of tariff and revenue laws recommended: "I recommend that all taxes from internal sources be abolished, except those collected from * * * liquors, tobacco, * * * and from stamps."

Suggestions—in view of a re-adjustment of the tariff.

Attention invited to subject of moieties.

Continued fluctuations in gold: "If the question can be met as to how to give a fixed value to our currency * * * a very desirable object will be gained."

Recommendations for filling vacancies in the staff corps of the Army.

The suggestions in report of Secretary of the Navy as to the necessity for increasing and improving the *matériel* of the Navy, and the plan recommended for reducing the *personnel* of the service to a peace standard, &c., deserve the thoughtful attention of Congress.

"I also recommend that all promotions in the Navy above the rank of captain be by selection instead of by seniority."

Suggestions of the Postmaster-General for improvements in his Department recommended to special attention.

"I recommend * * * plan for uniting the telegraphic system of the United States with the postal system."

Execution of act approved April 20, 1871, known as the Ku-Klux law in South Carolina.

Suggestions in relation to polygamy in Utah.

"I recommend liberal appropriations to carry out the Indian peace policy," * * * and granting a territorial government to Indians in Indian Territory.

"I renew my recommendation that the public lands be regarded as a heritage to our children."

Attention invited to subject of compensation to heads of bureaus and officials holding positions of responsibility, &c.

The removal of disabilities imposed by the fourteenth amendment.

Organization of territorial government in the District of Columbia, act of February 21, 1871. Liberal appropriations recommended.

Appropriation recommended for purchase of remainder of square in Chicago on which burned public buildings stood, and for erection of new buildings.

Congressional action suggested for protection of immigrants.

Civil service reform.

FOURTH ANNUAL MESSAGE, DECEMBER 2, 1872.

Alabama claims.

The tribunal which convened at Geneva on the 14th of September last (1872,) awarded the sum of $15,500,000, in gold, as the indemnity to be paid by Great Britain for the satisfaction of all claims referred to its consideration.

Treaty of Washington, June 15, 1846—United States and Great Britain boundary line.

Treaty of Washington, United States, and Great Britain, construction of treaty of June 15, 1846, defining the boundary line between their respective territories, submitted to the arbitration and award of His Majesty the Emperor of Germany, who, on the 21st of October last (1872,) signed his award in writing to the effect that it should be drawn through the Haro Channel, which leaves us for the first time in the United States as a nation, without a question of disputed boundary between our territory and the possessions of Great Britain on this continent.

Treaty of Washington May 8, 1871, relating to fisheries, &c.

"In my last annual message, I recommended the legislation necessary on the part of the United States to bring into operation the articles of the Treaty of Washington, of May 8, 1871, relating to the fisheries, and to other matters touching the relations of the United States toward the British North American Possessions, to become operative so soon as the proper legislation should be had on the part of Great Britain and its possessions. This question has since been disposed of, the imperial parliament and the legislatures of the provincial governments have passed laws to carry the provisions of the treaty on the matters referred to, into operation. I therefore recommend your early adoption of the legislation in the same direction necessary on the part of this Government."

Boundary line between Lake of the Woods and Rocky Mountains, United States and British possessions.

Recommends that the force be increased in order to the completion of the survey and determination of the boundary line between the United States and the British Possessions, between Lake of the Woods and the Rocky Mountains.

"To this end I recommend a sufficient appropriation be made."

Depredations on Texan frontier.

"The commissioners appointed pursuant to joint resolution of Congress on the 7th of May last (1872) to inquire into the depredations upon the Texan frontier have diligently made investigations in that quarter. Their researches were necessarily incomplete, partly on account of limited appropriation made by Congress."

"I recommend that a special appropriation be made to enable the commissioners on the part of the United States to return to their labors without delay."

Cuba.

"It is with regret that I have again to announce a continuance of the disturbed condition of the Island of Cuba. * * * The parties stand apparently in the same relative attitude which they have occupied for a long time past. * * * I cannot doubt that the continued maintenance of slavery in Cuba is among the strongest inducements to the continuance of this strife. A terrible wrong is the natural cause of a terrible evil. The abolition of slavery and the introduction of other reforms in the administration or government of Cuba could not fail to advance the restoration of peace and order." * * *

"In my last annual message I referred to this subject, and I again recommend such legislation as may be proper to denounce and, if not prevent, at least to discourage American citizens from holding or dealing in slaves."

Venezuela.

"It is with regret, however, I announce that the government of Venezuela has made no further payments on account of the awards under the convention of April 25, 1866. This subject is again recommended to the attention of Congress for such action as may be deemed proper."

Japan and China.

"Our treaty relations with Japan remain unchanged. The embassy which visited this country during the year (1872) that is passing, being unprovided with powers for the signing of a convention in this country, no conclusion in that direction was reached. In this connection, I renew my recommendation of one year ago, that 'to give importance and to add to the efficiency of our diplomatic relations with Japan and China, and to further aid in retaining the good opinion of those peoples, and to secure to the United States its share of the commerce destined to flow between those nations and the balance of the commercial world, an appropriation be made to support at least four American youths in each of those countries, to serve as a part of the official family of our ministers there.' Our representatives would not even then be placed upon an equality with the representatives of Great Britain and of some other powers. As now situated our representatives in Japan and China have to depend for interpreters and translators upon natives of those countries who know our language imperfectly, or procure for the occasion the services of employés in foreign business houses or the interpreters to other foreign ministers."

"I renew the recommendation made on a previous occasion of the transfer to the Department of the Interior of all the powers and duties in relation to the Territories with which the Department of State is now charged by law or by custom."

Congressional appropriation recommended for the relief of citizens of the United States in distress abroad.

"Congress, from the beginning of the Government, has wisely made provision for the relief of distressed seamen in foreign countries. No similar provision, however, has hitherto been made for the relief of citizens in distress abroad, other than seamen. A similar authority, and an appropriation to carry it into effect, are recommended in the case of citizens of the United States destitute, or sick, under such circumstances.

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War Department.

"The report of the Secretary of War, showing expenditures of the War Department for fiscal year ending June 30, 1871, and for fiscal year ending June 30, 1872, showing a reduction in favor of the last fiscal year of $427,834.62."

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"The attention of Congress will be called during its present session to various enterprises for the more certain and cheaper transportation of the constantly increasing surplus of western and southern products to the Atlantic seaboard."

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Navy Department.

"I recommend careful consideration by Congress of the recommendations made by the Secretary of the Navy."

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Interior Department.

Territories: "I recommend a careful revision of the present laws of the Territory of Utah, and the enactment of such a law (the one proposed in Congress at its last session, or something similar to it,) as will secure peace, the equality of all citizens before the law, and the ultimate extinguishment of polygamy."

Civil service.

Hopes that "Congress may reach a satisfactory solution of this question, and secure to the public service, for all time, a practical method of obtaining faithful and efficient officers and employés."

FIFTH ANNUAL MESSAGE, DECEMBER 1, 1873.

Geneva award.

"The money awarded to the United States by the tribunal of arbitration at Geneva was paid by Her Majesty's government a few days in advance of the time when it would have become payable according to the terms of the treaty. In compliance with the provisions of the act of March 3, 1873, it was at once paid into the Treasury, and used to redeem, so far as it might, the public debt of the United States; and the amount so redeemed was invested in a 5 per cent. registered bond of the United States for $15,500,000, which is now held by the Secretary of State, subject to the future disposition of Congress."

Alabama, Florida, and Shenandoah losses.

"I renew my recommendation, made at the opening of the last session of Congress, that a commission be created for the purpose of auditing and determining the amounts of the several 'direct losses growing out of the destruction of vessels and their cargoes' by the Alabama, the Florida, or the Shenandoah, after leaving Melbourne, for which the sufferers have received no equivalent or compensation, and of ascertaining the names of the persons entitled to receive compensation for the same, making the computations upon the basis indicated by the tribunal of arbitration at Geneva; and that payment of such losses be authorized to an extent not to exceed the awards of the tribunal at Geneva."

Northwest water-boundary of the United States.

"By an act approved on the 14th day of February last, Congress made provision for completing, jointly with an officer or commissioner to be named by Her Britannic Majesty, the determination of so much of the boundary line between the territory of the United States and the possessions of Great Britain as was left uncompleted by the commissioners appointed under the act of Congress of August 11, 1856. Under the provisions of this act the northwest water-boundary of the United States has been determined and marked in accordance with the award of the Emperor of Germany. A protocol and a copy of the map upon which the line was thus marked are contained in the papers submitted herewith."

The Ottoman government and Egypt.

"The Ottoman government and that of Egypt have latterly shown a disposition to relieve foreign consuls of the judicial powers which heretofore they have exercised in the Turkish dominions, by organizing other tribunals. As Congress, however, has by law provided for the discharge of judicial functions by consuls of the United States in that quarter under the treaty of 1830, I have not felt at liberty formally to accept the proposed change without the assent of Congress, whose decision upon the subject, at as early a period as may be convenient, is earnestly requested."

Protectorate for Santo Domingo.

"I transmit herewith for the consideration and determination of Congress an application of the republic of Santo Domingo to this Government to exercise a protectorate over that republic."

Expatriation and the election of nationality.

"I invite Congress now to mark out and define when and how expatriation can be accomplished; to regulate by law the condition of American women marrying foreigners; to fix the status of children born in a foreign country of American parents residing more or less permanently abroad, and to make rules for determining such other kindred points as may seem best to Congress."

"I invite the earnest attention of Congress to the existing laws of the United States respecting expatriation and the election of nationality by individuals. Many citizens of the United States reside permanently abroad with their families. Under the provisions of the act approved February 10, 1855, the children of such persons are to be deemed and taken to be citizens of the United States, but the rights of citizenship are not to descend to persons whose fathers never resided in the United States."

Virginius seizure.

"Pending negotiations between the United States and the government of Spain on the subject of this capture, I have authorized the Secretary of the Navy to put our Navy on a war footing, to the extent, at least, of the entire annual appropriation for that branch of the service, trusting to Congress and the public opinion of the American people to justify my action."

Constitutional amendments.

"Assuming from the action of the last Congress, in appointing a 'Committee on Privileges and Elections,' to prepare and report to this Congress a constitutional amendment to provide a better method of electing the President and Vice-President of the United States, and also from the necessity of such an amendment that there will be submitted to the State Legislatures, for ratification, such an improvement in our Constitution, I suggest two others for your consideration:

"First. To authorize the Executive to approve of so much of any measure passing the two Houses of Congress as his judgment may dictate, without approving the whole, the disapproved portion, or portions, to be subjected to the same rules as now, to wit, to be referred back to the House in which the measure, or measures, originated, and if passed by a two-thirds vote of the two Houses, then to become a law without the approval of the President. I would add to this a provision that there should be no legislation by Congress during the last twenty-four hours of its sittings, except upon vetoes, in order to give the Executive an opportunity to examine and approve or disapprove bills understandingly.

"Second. To provide, by amendment, that when an extra session of Congress is convened by Executive proclamation, legislation during the continuance of such extra session shall be confined to such subjects as the Executive may bring before it, from time to time, in writing.

"The advantages to be gained by these two amendments are too obvious for me to comment upon them. One session in each year is provided for by the Constitution, in which there are no restrictions as to the subjects of legislation by Congress. If more are required, it is always in the power of Congress, during their term of office, to provide for sessions at any time. The first of these amendments would protect the public against the many abuses, and waste of public moneys, which creep into appropriation bills, and other important measures passing during the expiring hours of Congress, to which, otherwise, due consideration cannot be given."

Specie payments—Elastic currency—Panic of 1873.

"My own judgment is that, however much individuals may have suffered, one long step has been taken toward specie payments; that we can never have permanent prosperity until a specie basis is reached; and that a specie basis cannot be reached and maintained until our exports, exclusive of gold, pay for our imports, interest due abroad, and other specie obligations, or so nearly so as to leave an appreciable accumulation of the precious metals in the country from the products of our mines.

"Elasticity in our monetary system, therefore, is the object to be attained first, and next to that, as far as possible, a prevention of the use of other people's money in stock and other species of speculation. To prevent the latter, it seems to me that one great step would be taken by prohibiting the national banks from paying interest on deposits, by requiring them to hold their reserves in their own vaults, and by forcing them into resumption, though it would only be in legal-tender notes. For this purpose I would suggest the establishment of clearing-houses for your consideration.

"To secure the former many plans have been suggested, most, if not all, of which look to me more like inflation on the one hand, or compelling the Government, on the other, to pay interest, without corresponding benefits, upon the surplus funds of the country during the seasons when otherwise unemployed.

"I submit for your consideration whether this difficulty might not be overcome by authorizing the Secretary of the Treasury to issue, at any time, to national banks of issue, any amount of their own notes below a fixed percentage of their issue, say 40 per cent., upon the banks depositing with the Treasurer of the United States an amount of Government bonds equal to the amount of notes demanded, the banks to forfeit to the Government, say 4 per cent. of the interest accruing on the bonds so pledged during the time they remain with the Treasurer, as security for the increased circulation, the bonds so pledged to be redeemable by the banks at their pleasure, either in whole or in part, by returning their own bills for cancellation to an amount equal to the face of the bonds withdrawn. I would further suggest for your consideration the propriety of authorizing national banks to diminish their standing issue at pleasure, by returning for cancellation their own bills, and withdrawing so many United States bonds as are pledged for the bills returned.

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"In any modification of the present laws regulating national banks, as a further step toward preparing for resumption of specie payments, I invite your attention to a consideration of the propriety of exacting from them the retention, as a part of their reserve, either the whole or a part of the gold interest accruing upon the bonds pledged as security for their issue. I have not reflected enough on the bearing this might have in producing a scarcity of coin with which to pay duties on imports to give it my positive recommendation. But your attention is invited to the subject."

Interstate canals—with Government aid.

"There is one work, however, of a national character, in which the greater portion of the East and the West, the North and the South, are equally interested, to which I will invite your attention.

"The State of New York has a canal connecting Lake Erie with tide-water on the Hudson River. The State of Illinois has a similar work connecting Lake Michigan with navigable water on the Illinois River, thus making water-communication inland, between the East and the West and South. These great artificial water-courses are the property of the States through which they pass, and pay toll to those States. Would it not be wise statesmanship to pledge these States that if they will open these canals for the passage of large vessels the General Government will look after, and keep in navigable condition, the great public highways with which they connect, to wit, the overslaugh on the Hudson, the Saint Clair Flats, and the Illinois and Mississippi Rivers? This would be a national work; one of great value to the producers of the West and South in giving them cheap transportation for their produce to the sea-board and a market; and to the consumers in the East in giving them cheaper food, particularly of those articles of food which do not find a foreign market, and the prices of which, therefore, are not regulated by foreign demand. The advantages of such a work are too obvious for argument. I submit the subject to you, therefore, without further comment."

Exploration of Amazon and Madeira Rivers.

"In attempting to regain our lost commerce and carrying-trade, I have heretofore called attention to the states south of us offering a field where much might be accomplished. To further this object I suggest that a small appropriation be made, accompanied with authority for the Secretary of the Navy to fit out a naval vessel to ascend the Amazon River to the mouth of the Madeira; thence to explore that river and its tributaries into Bolivia, and to report to Congress at its next session, or as soon as practicable, the accessibility of the country by water, its resources, and the population so reached. Such an exploration would cost but little; it can do no harm, and may result in establishing a trade of value to both nations.

"In further connection with the Treasury Department I would recommend a revision and codification of the tariff laws, and the opening of more mints for coining money, with authority to coin for such nations as may apply.

"While inviting your general attention to all the recommendations made by the Secretary of War, there are two which I would especially invite you to consider: First, the importance of preparing for war in time of peace by providing proper armament for our sea-coast defenses. Proper armament is of vastly more importance than fortifications. The latter can be supplied very speedily for temporary purposes when needed; the former cannot. The second is the necessity of re-opening promotion in the staff corps of the Army. Particularly is this necessity felt in the Medical, Pay, and Ordnance Departments.

"I invite the favorable consideration of Congress to the suggestions and recommendations of the Postmaster-General for an extension of the free-delivery system in all cities having a population of not less than ten thousand; for the prepayment of postage on newspapers and other printed matter of the second class; for a uniform postage and limit of weight on miscellaneous matter; for adjusting the compensation of all postmasters, not appointed by the President, by the old method of commissions on the actual receipts of the office, instead of the present mode of fixing the salary in advance upon special returns; and especially do I urge favorable action by Congress on the important recommendations of the Postmaster-General for the establishment of United States postal savings depositories.

"Your attention is also again called to a consideration of the question of postal telegraphs, and the arguments adduced in support thereof, in the hope that you may take such action in connection therewith as in your judgment will most contribute to the best interests of the country."

Utah.

"To prevent anarchy there, it is absolutely necessary that Congress provide the courts with some mode of obtaining jurors, and I recommend legislation to that end; and also that the probate courts of the Territory, now assuming to issue writs of injunction and *habeas corpus*, and to try criminal cases and questions as to land-titles, be denied all jurisdiction not possessed ordinarily by courts of that description."

Bankruptcy and fictitious claims.

"I recommend that so much of said act as provides for involuntary bankruptcy on account of the suspension of payment be repealed.

"Your careful attention is invited to the subject of claims against the Government, and to the facilities afforded by existing laws for their prosecution. Each of the Departments of State, Treasury, and War have demands for many millions of dollars upon their files, and they are rapidly accumulating. To these may be added those now pending before Congress, the Court of Claims, and the southern claims commission, making in the aggregate an immense sum. Most of these grow out of the rebellion, and are intended to indemnify persons on both sides for their losses during the war; and not a few of them are fabricated and supported by false testimony. Projects are on foot, it is believed, to induce Congress to provide for new classes of claims, and to revive old ones through the repeal or modification of the statute of limitations, by which they are now barred. I presume these schemes, if proposed, will be received with little favor by Congress, and I recommend that persons having claims against the United States, cognizable by any tribunal or department thereof, be required to present them at an early day, and that legislation be directed as far as practicable to the defeat of unfounded and unjust demands upon the Government; and I would suggest, as a means of preventing fraud, that witnesses be called upon to appear in person to testify before those tribunals having said claims before them for adjudication. Probably the largest saving to the national Treasury can be secured by timely legislation on these subjects of any of the economic measures that will be proposed."

Support of Indians east of Rocky Mountains.

"As a preparatory step for this consummation, I am now satisfied that a territorial form of government should be given them, which will secure the treaty rights of the original settlers, and protect their homesteads from alienation for a period of twenty years."

Census.

"It is believed, however, that a regular census every five years would be of substantial benefit to the country, inasmuch as our growth hitherto has been so rapid that the results of the decennial census are necessarily unreliable as a basis of estimates for the latter years of a decennial period."

Colorado—and irrigation from eastern slope of Rocky Mountains to Missouri River.

"I would recommend for your favorable consideration the passage of an enabling act for the admittance of Colorado as a State in the Union. It possesses all the elements of a prosperous State, agricultural and mineral, and, I believe, has a population now to justify such admission. In connection with this, I would also recommend the encouragement of a canal for purposes of irrigation from the eastern slope of the Rocky Mountains to the Missouri River. As a rule, I am opposed to further donations of public lands for internal improvements, owned and controlled by private corporations, but in this instance I would make an exception."

Civil-service reform.

"In three successive messages to Congress I have called attention to the subject of 'civil-service reform.'

"Action has been taken so far as to authorize the appointment of a board to devise rules governing methods of making appointments and promotions, but there never has been any action making these rules, or any rules, binding, or even entitled to observance where persons desire the appointment of a friend, or the removal of an official who may be disagreeable to them.

"To have any rules effective they must have the acquiescence of Congress as well as of the Executive. I commend, therefore, the subject to your attention, and suggest that a special committee of Congress might confer with the civil-service board during the present session for the purpose of devising such rules as can be maintained, and which will secure the services of honest and capable officials, and which will also protect them in a degree of independence while in office.

"Proper rules will protect Congress, as well as the Executive, from much needless persecution, and will prove of great value to the public at large."

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"I renew my previous recommendation to Congress for general amnesty. The number engaged in the late rebellion yet laboring under disabilities is very small, but enough to keep up a constant irritation. No possibly danger can accrue to the Government by restoring them to eligibility to hold office.

"I suggest for your consideration the enactment of a law to better secure the civil rights which freedom should secure, but has not effectually secured, to the enfranchised slave."

SIXTH ANNUAL MESSAGE, DECEMBER 7, 1874.

Resumption of specie payments.

"In view of the pledges of the American Congress when our present legal-tender system was adopted, and debt contracted, there should be no delay—certainly no unnecessary delay—in fixing, by legislation, a method by which we will return to specie. To the accomplishment of this end I invite your special attention. I believe, firmly, that there can be no prosperous and permanent revival of business and industries until a policy is adopted—with legislation to carry it out—looking to a return to a specie basis. It is easy to conceive that the debtor and speculative classes may think it of value to them to make so-called money abundant until they can throw a portion of their burdens upon others. But even these, I believe, would be disappointed in the result if a course should be pursued which will keep in doubt the value of the legal-tender medium of exchange. A revival of productive industry is needed by all classes; by none more than the holders of property, of whatever sort, with debts to liquidate from realization upon its sale. But admitting that these two classes of citizens are to be benefited by expansion, would it be honest to give it? Would not the general loss be too great to justify such relief? Would it not be just as honest and prudent to authorize each debtor to issue his own legal-tenders to the extent of his liabilities? Than to do this would it not be safer—for fear of over-issues by unscrupulous creditors—to say that all debt obligations are obliterated

in the United States, and now we commence anew, each possessing all he has at the time free from incumbrance? These propositions are too absurd to be entertained for a moment by thinking or honest people. Yet every delay in preparation for final resumption partakes of this dishonesty, and is only less in degree as the hope is held out that a convenient season will at last arrive for the good work of redeeming our pledges to commence. It will never come, in my opinion, except by positive action by Congress, or by national disasters which will destroy, for a time at least, the credit of the individual and the state at large. A sound currency might be reached by total bankruptcy and discredit of the integrity of the nation and of individuals. I believe it is in the power of Congress at this session to devise such legislation as will renew confidence, revive all the industries, start us on a career of prosperity to last for many years, and to save the credit of the nation and of the people. Steps toward the return to a specie basis are the great requisites to this devoutly to be sought for end. There are others which I may touch upon hereafter."

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"It is the duty of Congress to devise the method of correcting the evils which are acknowledged to exist, and not mine. But I will venture to suggest two or three things which seem to me as absolutely necessary to a return to specie payments, the first great requisite in a return to prosperity. The legal-tender clause to the law authorizing the issue of currency by the National Government should be repealed, to take effect as to all contracts entered into after a day fixed in the repealing act; not to apply, however, to payments of salaries by Government, or for other expenditures now provided by law to be paid in currency in the interval pending between repeal and final resumption. Provision should be made by which the Secretary of the Treasury can obtain gold as it may become necessary from time to time from the date when specie redemption commences. To this might and should be added a revenue sufficiently in excess of expenses to insure an accumulation of gold in the Treasury to sustain permanent redemption.

"I commend this subject to your careful consideration, believing that a favorable solution is attainable, and if reached by this Congress that the present and future generations will ever gratefully remember it as their deliverer from a thraldom of evil and disgrace."

"With resumption, free banking may be authorized with safety, giving the same full protection to bill-holders which they have under existing laws. Indeed, I would regard free banking as essential. It would give proper elasticity to the currency. As more currency should be required for the transaction of legitimate business, new banks would be started, and, in turn, banks would wind up their business when it was found that there was a superabundance of currency. The experience and judgment of the people can best decide just how much currency is required for the transaction of the business of the country. It is unsafe to leave the settlement of this question to Congress, the Secretary of the Treasury, or the Executive. Congress should make the regulation under which banks may exist, but should not make banking a monopoly by limiting the amount of redeemable paper currency that shall be authorized. Such importance do I attach to this subject and so earnestly do I commend it to your attention that I give it prominence by introducing it at the beginning of this message."

Chinese immigration.

"In connection with this subject I call the attention of Congress to a generally-conceded fact: that the great proportion of the Chinese immigrants who come to our shores do not come voluntarily to make their homes with us and their labor productive of general prosperity, but come under contracts with head-men who own them almost absolutely. In a worse form does this apply to Chinese women. Hardly a perceptible percentage of them perform any honorable labor, but they are brought for shameful purposes, to the disgrace of the communities where settled and to the great demoralization of youth of those localities. If this evil practice can be legislated against, it will be my pleasure as well as duty to enforce any regulation to secure so desirable an end."

Japanese indemnity fund.

"I submit the propriety of applying the income of a part if not of the whole of this fund to the education in the Japanese language of a number of young men to be under obligations to serve the Government for a specified time as interpreters at the legation and the consulates in Japan. A limited number of Japanese youths might at the same time be educated in our own vernacular, and mutual benefits would result to both governments. The importance of having our own citizens, competent and familiar with the language of Japan, to act as interpreters and in other capacities connected with the legation and the consulates in that country, cannot readily be overestimated."

Claims of aliens against the United States.

"In this connection, I renew my recommendation, made at the opening of the last session of Congress, that a special court be created to hear and determine all claims of aliens against the United States arising from acts committed against their persons or property during the insurrection. It appears equitable that opportunity should be offered to citizens of other states to present their claims, as well as to those British subjects whose claims were not admissible under the late commission, to the early decision of some competent tribunal. To this end, I recommend the necessary legislation to organize a court to dispose of all claims of aliens of the nature referred to, in an equitable and satisfactory manner, and to relieve Congress and the Departments from the consideration of these questions."

Boundary between the United States and British Possessions.

"A copy of the report of the commissioner appointed under the act of March 19, 1872, for surveying and marking the boundary between the United States and the British Possessions, from the Lake of the Woods to the summit of the Rocky Mountains, is herewith transmitted. I am happy to announce that the field-work of the commission has been completed, and the entire line, from the northwest corner of the Lake of the Woods to the summit of the Rocky Mountains, has been run and marked upon the surface of the earth. It is believed that the amount remaining unexpended of the appropriation made at the last session of Congress will be sufficient to complete the office-work. I recommend that the authority of Congress be given to the use of the unexpended balance of the appropriation in the completion of the work of the commission in making its report and preparing the necessary maps."

Expatriation and the election of nationality.

"I have again to call the attention of Congress to the unsatisfactory condition of the existing laws with reference to expatriation and the election of nationality. Formerly, amid conflicting opinions and decisions, it was difficult to exactly determine how far the doctrine of perpetual allegiance was applicable to citizens of the United States. Congress by the act of the 27th July, 1868, asserted the abstract right of expatriation as a fundamental principle of this Government. Notwithstanding such assertion and the necessity of frequent application of the principle, no legislation has been had defining what acts or formalities shall work expatriation or when a citizen shall be deemed to have renounced or to have lost his citizenship. The importance of such definition is obvious."

Fraudulent naturalization.

"Without placing any additional obstacles in the way of the obtainment of citizenship by the worthy and well-intentioned foreigner who comes in good faith to cast his lot with ours, I earnestly recommend further legislation to punish fraudulent naturalization and to secure the ready cancellation of the record of every naturalization made in fraud."

Means of increasing the revenue.

"The Secretary of the Treasury in his report favors legislation looking to an early return to specie payments, thus supporting views previously expressed in this message. He also recommends economy in appropriations; calls attention to the loss of revenue from repealing the tax on tea and coffee, without benefit to the consumer; recommends an increase of ten cents a gallon on whisky, and, further, that no modification be made in the banking and currency bill passed at the last session of Congress, unless modification should become necessary by reason of the adoption of measures for returning to specie payments. In these recommendations I cordially join."

"I would suggest to Congress the propriety of re-adjusting the tariff so as to increase the revenue and, at the same time, decrease the number of articles upon which duties are levied. Those articles which enter into our manufactures, and are not produced at home, it seems to me should be entered free. Those articles of manufacture which we produce a constituent part of, but do not produce the whole, that part which we do not produce should enter free also. I will instance fine wool, dyes, &c. These articles must be imported to form a part of the manufacture of the higher grades of woolen goods. Chemicals, used as dyes, compounded in medicines, and used in various ways in manufactures, come under this class. The introduction, free of duty, of such wools as we do not produce would stimulate the manufacture of goods requiring the use of those we do produce, and, therefore, would be a benefit to home production. There are many articles entering into "home manufactures" which we do not produce ourselves, the tariff upon which increases the cost of producing the manufactured article. All corrections in this regard are in the direction of bringing labor and capital in harmony with each other, and of supplying one of the elements of prosperity so much needed."

Treaties ratified.

"Since my last annual message the exchange has been made of the ratification of treaties of extradition with Belgium, Ecuador, Peru, and Salvador; also of a treaty of commerce and navigation with Peru, and one of commerce and consular privileges with Salvador; all of which have been duly proclaimed, as has also a declaration with Russia with reference to trade-marks."

Wants and necessities of the Army.

"All the recommendations of the Secretary of War I regard as judicious, and I especially commend to your attention the following: The consolidation of Government arsenals; the restoration of mileage to officers traveling under orders; the exemption of money received from the sale of subsistence stores from being covered into the Treasury; the use of appropriations for the purchase of subsistence stores without waiting for the beginning of the fiscal year for which the appropriation is made; for additional appropriations for the collection of torpedo material; for increased appropriations for the manu-

facture of arms; for relieving the various States from indebtedness for arms charged to them during the rebellion; for dropping officers from the rolls of the Army without trial for the offense of drawing pay more than once for the same period; for the discouragement of the plan to pay soldiers by checks; and for the establishment of a professorship of rhetoric and English literature at West Point. The reasons for these recommendations are obvious, and are set forth sufficiently in the reports attached. I also recommend that the status of the staff corps of the Army be fixed, where this has not already been done, so that promotions may be made and vacancies filled as they occur in each grade when reduced below the number to be fixed by law. The necessity for such legislation is specially felt now in the Pay Department. The number of officers in that department is below the number adequate to the performance of the duties required of them by law."

Certain operations of the Navy.

"Much has been accomplished during the year in aid of science and to increase the sum of general knowledge and further the interests of commerce and civilization. Extensive and much-needed soundings have been made for hydrographic purposes and to fix the proper routes of ocean telegraphs. Further surveys of the great isthmus have been undertaken and completed, and two vessels of the Navy are now employed, in conjunction with those of England, France, Germany, and Russia, in observations connected with the transit of Venus, so useful and interesting to the scientific world."

Education of the people essential to general prosperity.

"Education of the people entitled to exercise the right of franchise I regard essential to general prosperity everywhere, and especially so in republics, where birth, education, or previous condition does not enter into account in giving suffrage. Next to the public school, the post-office is the great agent of education over our vast territory."

Unsettled condition of affairs in some of the Southern States.

"I regret to say that, with preparations for the late election, decided indications appeared in some localities in the Southern States of a determination, by acts of violence and intimidation, to deprive citizens of the freedom of the ballot, because of their political opinions. Bands of men, masked and armed, made their appearance; White Leagues and other societies were formed; large quantities of arms and ammunition were imported and distributed to these organizations; military drills, with menacing demonstrations, were held; and, with all these, murders enough were committed to spread terror among those whose political action was to be suppressed, if possible, by these intolerant and criminal proceedings. In some places colored laborers were compelled to vote according to the wishes of their employers, under threats of discharge if they acted otherwise; and there are too many instances in which, when these threats were disregarded, they were remorselessly executed by those who made them. I understand that the fifteenth amendment to the Constitution was made to prevent this and a like state of things, and the act of May 31, 1870, with amendments, was passed to enforce its provisions, the object of both being to guarantee to all citizens the right to vote and to protect them in the free enjoyment of that right. Enjoined by the Constitution "to take care that the laws be faithfully executed," and convinced by undoubted evidence that violations of said act had been committed, and that a wide-spread and flagrant disregard of it was contemplated, the proper officers were instructed to prosecute the offenders, and troops were stationed at convenient points to aid these officers, if necessary, in the performance of their official duties. Complaints are made of this interference by Federal authority; but if said amendment and act do not provide for such interference under the circumstances as above stated, then they are without meaning, force, or effect, and the whole scheme of colored enfranchisement is worse than mockery, and little better than a crime. Possibly Congress may find it due to truth and justice to ascertain, by means of a committee, whether the alleged wrongs to colored citizens for political purposes are real, or the reports thereof were manufactured for the occasion.

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"The whole subject of Executive interference with the affairs of a State is repugnant to public opinion, to the feeling of those who, from their official capacity, must be used in schh interposition, and to him or those who must direct. Unless most clearly on the side of law, such interference becomes a crime; with the law to support it, it is condemned without a hearing. I desire, therefore, that all necessity for Executive direction in local affairs may become unnecessary and obsolete. I invite the attention, not of Congress, but of the people of the United States, to the causes and effects of these unhappy questions. Is there not a disposition on one side to magnify wrongs and outrages, and on the other side to belittle them or justify them? If public opinion could be directed to a correct survey of what is, and to rebuking wrong, and aiding the proper authorities in punishing it, a better state of feeling would be inculcated, and the sooner we would have that peace which would leave the States free indeed to regulate their own domestic affairs. I believe on the part of our citizens of the Southern States—the better part of them—there is a disposition to be law-abiding, and to do no violence either to individuals or to the laws existing. But do they do right in ignoring the existence of violence and bloodshed in resistance to constituted authority? I sympathize with their prostrate condition, and would do all in my power to relieve them; acknowledging that in some instances they have had most trying governments to live under, and very oppressive ones in the way of taxation for nominal improvements, not giving benefits equal to the hardships imposed; but can they proclaim themselves entirely irresponsible for this condition? They cannot. Violence has been rampant in some localities, and has either been justified or denied by those who could have prevented it. The theory is even raised that there is to be no further interference on the part of the General Government to protect citizens within a State where the State authorities fail to give protection. This is a great mistake. While I remain Executive all the laws of Congress, and the provisions of the Constitution, including the recent amendments added thereto, will be enforced with rigor, but with regret that they should have added one jot or tittle to Executive duties or powers. Let there be fairness in the discussion of southern questions, the advocates of both, or all political parties, giving honest, truthful reports of occurrences, condemning the wrong and upholding the right, and soon all will be well. Under existing conditions the negro votes the republican ticket because he knows his friends are of that party. Many a good citizen votes the opposite, not because he agrees with the great principles of state which separate parties, but because, generally, he is opposed to negro rule. This is a most delusive cry. Treat the negro as a citizen and a voter—as he is and must remain—and soon parties will be divided, not on the color line, but on principle. Then we shall have no complaint of sectional interference."

Increase of judicial districts.

"I respectfully suggest to Congress the propriety of increasing the number of judicial districts in the United States to eleven, the present number being nine, and the creation of two additional judgeships. The territory to be traversed by the circuit judges is so great, and the business of the courts so steadily increasing, that it is growing more and more impossible for them to keep up with the business requiring their attention. Whether this would involve the necessity of adding two more justices of the Supreme Court to the present number I submit to the judgment of Congress."

Management of Indian affairs.

"I commend the recommendation of the Secretary for the extension of the homestead laws to the Indians, and for some sort of territorial government for the Indian Territory. A great majority of the Indians occupying this Territory are believed yet to be incapable of maintaining their rights against the more civilized and enlightened white man. Any territorial form of government given them, therefore, should protect them in their homes and property for a period of at least twenty years, and before its final adoption should be ratified by a majority of those affected."

Pensions to survivors of war of 1812 residing in southern States.

"The act of Congress providing the oath which pensioners must subscribe to before drawing their pensions cuts off from this bounty a few survivors of the war of 1812 residing in the Southern States. I recommend the restoration of this bounty to all such. The number of persons whose names would thus be restored to the list of pensioners is not large. They are all old persons who could have taken no part in the rebellion, and the services for which they were awarded pensions were in defense of the whole country."

Civil service.

"The rules adopted to improve the civil service of the Government have been adhered to as closely as has been practicable with the opposition with which they meet. The effect, I believe, has been beneficial on the whole, and has tended to the elevation of the service. But it is impracticable to maintain them without direct and positive support of Congress. Generally the support which this reform receives is from those who give it their support only to find fault when the rules are apparently departed from. Removals from office without preferring charges against parties removed are frequently cited as departures from the rules adopted, and the retention of those against whom charges are made by irresponsible persons and without good grounds is also often condemned as a violation of them. Under these circumstances, therefore, I announce that, if Congress adjourns without positive legislation on the subject of 'civil-service reform,' I will regard such action as a disapproval of the system, and will abandon it, except so far as to require examinations for certain appointees, to determine their fitness. Competitive examinations will be abandoned."

District of Columbia.

"In my opinion the District of Columbia should be regarded as the grounds of the national capital, in which the entire people are interested. * * * I think the proportion of the expenses of the government and improvements to be borne by the General Government, the cities of Washington and Georgetown, and the county should be carefully and equitably defined."

SEVENTH ANNUAL MESSAGE, DECEMBER 7, 1875.

Compulsory education by constitutional amendment.

"As the primary step, therefore, to our advancement in all that has marked our progress in the past century, I suggest for your earnest

consideration, and most earnestly recommend it, that a constitutional amendment be submitted to the Legislatures of the several States for ratification, making it the duty of each of the several States to establish and forever maintain free public schools adequate to the education of all the children in the rudimentary branches within their respective limits, irrespective of sex, color, birthplace, or religions; forbidding the teaching in said schools of religious, atheistic, or pagan tenets; and prohibiting the granting of any school funds, or school taxes, or any part thereof, either by legislative, municipal, or other authority, for the benefit or in aid, directly or indirectly, of any religious sect or denomination, or in aid or for the benefit of any other object of any nature or kind whatever."

Taxation of church property.

"I would suggest the taxation of all property equally, whether church or corporation, exempting only the last resting-place of the dead, and, possibly, with proper restrictions, church edifices."

Virginius indemnity.

"In March last an arrangement was made through Mr. Cushing, our minister in Madrid, with the Spanish government, for the payment by the latter to the United States of the sum of $80,000 in coin, for the purpose of the relief of the families or persons of the ship's company and certain passengers of the Virginius. This sum was to have been paid in three installments at two months each. It is due to the Spanish government that I should state that the payments were fully and spontaneously anticipated by that government, and that the whole amount was paid within but a few days more than two months from the date of the agreement, a copy of which is herewith transmitted. In pursuance of the terms of the adjustment, I have directed the distribution of the amount among the parties entitled thereto, including the ship's company and such of the passengers as were American citizens. Payments are made accordingly, on the application by the parties entitled thereto."

Cuba.

Recognition of its independence deemed impracticable and accordance of belligerent rights regarded indefensible as a measure of right. Mediation and intervention of other nations apparently the only alternative to be invoked for the termination of strife.

Depredations by armed bands from Mexico on the people of Texas.

"The military force of this Government disposable for service in that quarter is quite inadequate to effectually guard the line even at those points where the incursions are usually made. An experiment of an armed vessel on the Rio Grande for that purpose is on trial, and it is hoped that, if not thwarted by the shallowness of the river and other natural obstacles, it may materially contribute to the protection of the herdsmen of Texas."

Claims of aliens against the United States.

"I recommend that some suitable provision be made, by the creation of a special court or by conferring the necessary jurisdiction upon some appropriate tribunal, for the consideration and determination of the claims of aliens against the Government of the United States which have arisen within some reasonable limitation of time, or which may hereafter arise, excluding all claims barred by treaty provisions or otherwise. It has been found impossible to give proper consideration to these claims by the Executive Departments of the Government. Such a tribunal would afford an opportunity to aliens other than British subjects to present their claims on account of acts committed against their persons or property during the rebellion, as also to those subjects of Great Britain whose claims, having arisen subsequent to the 9th day of April, 1865, could not be presented to the late commission organized pursuant to the provisions of the treaty of Washington."

Occupation of New State Department.

"In the month of July last the building erected for the Department of State was taken possession of and occupied by that Department. I am happy to announce that the archives and valuable papers of the Government in the custody of that Department are now safely deposited and properly cared for."

Treasury—partial repeal of legal-tender act, &c.

A repeal of so much of the legal-tender act as makes these notes receivable for debts contracted after a day to be fixed in the act itself, say not later than the 1st of January, 1877.

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Second, that the Secretary of the Treasury be authorized to redeem say not to exceed $2,000,000 monthly of legal-tender notes, by issuing in their stead a long bond, bearing interest at the rate of 3$\frac{65}{100}$ per cent. per annum, of denominations ranging from $50 up to $1,000 each. This would in time reduce the legal-tender notes to a volume that could be kept afloat without demanding a redemption in large sums suddenly.

"Third, that an additional power be given to the Secretary of the Treasury to accumulate gold for final redemption, either by increasing revenue, curtailing expenses, or both—it is preferable to do both; and I recommend that reduction of expenditures be made wherever it can be done without impairing Government obligations, or crippling the due execution thereof. One measure for increasing the revenue—and the only one I think of—is the restoration of the duty on tea and coffee. These duties would add, probably, $18,000,000 to the present amount received from imports, and would in no way increase the prices paid for those articles by the consumers."

Annuities for families of deceased Army officers.

"The enactment of a system of annuities for the families of deceased officers by voluntary deductions from the monthly pay of officers. This, again, is not attended with burden upon the Treasury, and would for the future relieve much distress which every old Army officer has witnessed in the past—of officers dying suddenly or being killed, leaving families without even the means of reaching their friends if fortunate enough to have friends to aid them."

Signal-service corps.

Permanent organization of Signal-Service Corps recommended.

Centennial celebration.

"The powers of Europe, almost without exception, many of the South American states, and even the more distant eastern powers, have manifested their friendly sentiments toward the United States, and the interest of the world in our progress, by taking steps to join with us in celebrating the centennial of the nation, and I strongly recommend that a more national importance be given to this exhibition by such legislation and by such appropriation as will insure its success. Its value in bringing to our shores innumerable useful works of art and skill, the commingling of the citizens of foreign countries and our own, and the interchange of ideas and manufactures, will far exceed any pecuniary outlay we may make."

Geological explorations in Colorado, Utah, and New Mexico Territories.

"The geological explorations have been prosecuted with energy during the year, covering an area of about forty thousand square miles in the Territories of Colorado, Utah, and New Mexico, developing the agricultural and mineral resources, and furnishing interesting scientific and topographical details of that region."

Utah—Polygamy.

"In nearly every annual message that I have had the honor of transmitting to Congress, I have called attention to the anomalous, not to say scandalous, condition of affairs existing in the Territory of Utah, and have asked for definite legislation to correct it. That polygamy should exist in a free, enlightened, and Christian country, without the power to punish so flagrant a crime against decency and morality, seems preposterous. True, there is no law to sustain this unnatural vice, but what is needed is a law to punish it as a crime, and at the same time to fix the status of the innocent children, the offspring of the system, and of the possibly innocent plural wives. But, as an institution, polygamy should be banished from the land."

Importation of Chinese women.

"While this is being done, I invite the attention of Congress to another, though perhaps no less an evil, the importation of Chinese women, but few of whom are brought to our shores to pursue honorable or useful occupations."

Necessity for amendment of public land and mining laws.

"Observations while visiting the Territories of Wyoming, Utah, and Colorado, during the past autumn, convinced me that existing laws regulating the disposition of public lands, timber, &c., and probably the mining laws themselves, are very defective, and should be carefully amended and at an early day. In territory where cultivation of the soil can only be followed by irrigation, and where irrigation is not practicable the lands can only be used as pasturage, and this only where stock can reach water, (to quench its thirst,) cannot be governed by the laws as to entries as lands every acre of which is an independent estate by itself.

"Land must be held in larger quantities to justify the expense of conducting water upon it to make it fruitful or to justify utilizing it as pasturage. The timber in most of the Territories is principally confined to the mountain regions, which are held for entry in small quantities only and as mineral lands. The timber is the property of the United States for the disposal of which there is now no adequate law. The settler must become a consumer of this timber whether he lives upon the plain or engages in working the mines. Hence every man becomes either a trespasser himself or knowingly a patron of trespassers.

"My opportunities for observation were not sufficient to justify me in recommending specific legislation on these subjects, but I do recommend that a joint committee of the two Houses of Congress—sufficiently large to be divided into subcommittees—be organized to visit all the mining States and Territories during the coming summer, and that the committee shall report to Congress at the next session such laws or amendments to laws as it may deem necessary to secure the best interests of the Government and the people of these Territories, who are doing so much for their development."

Summary of questions deemed of vital importance.

"As this will be the last annual message which I shall have the honor of transmitting to Congress before my successor is chosen, I will repeat or recapitulate the questions which I deem of vital importance, which may be legislated upon and settled at this session:

"First. That the States shall be required to afford the opportunity of a good common-school education to every child within their limit-

"Second. No sectarian tenets shall ever be taught in any school supported in whole or in part by the State, nation, or by the proceeds of any tax levied upon any community. Make education compulsory, so as to deprive all persons who cannot read and write from becoming voters after the year 1890, disfranchising none, however, on grounds of illiteracy who may be voters at the time this amendment takes effect.

"Third. Declare church and State forever separate and distinct, but each free within its proper spheres, and that all church property shall bear its own proportion of taxation.

"Fourth. Drive out licensed immorality, such as polygamy and the importation of women for illegitimate purposes. To recur again to the centennial year, it would seem as though now, as we are about to begin the second century of our national existence, would be a most fitting time for these reforms.

"Fifth. Enact such laws as will insure a speedy return to a sound currency, such as will command the respect of the world."

Mr. CONKLING. I move that the message lie on the table and be printed; and I also offer the customary motion, for reference under the laws to the Committee on Printing, for the printing of a number of extra copies.

Mr. EDMUNDS. Your first motion is to print the accompanying documents.

The PRESIDENT *pro tempore*. The law authorizes the number.

Mr. CONKLING. Of course I mean the message and all that accompanies it.

The PRESIDENT *pro tempore*. The reference of the motion to print extra copies will be made to the Committee on Printing, when appointed, and the usual number authorized by law will be printed.

FINANCE REPORT.

The PRESIDENT *pro tempore* laid before the Senate the annual report of the Secretary of the Treasury on the state of the finances; which was ordered to lie on the table and be printed.

WITHDRAWAL OF PAPERS.

On motion of Mr. DAWES, it was

Ordered, That James Schoutter have leave to withdraw from the files a paper being a commission of Abram How; also certain letters on file with the William T. Eustis case, to which they do not belong.

FEDERAL TROOPS IN VIRGINIA.

Mr. WITHERS. I offer the following resolution:

Resolved, That the President be, and he is hereby, requested to inform the Senate, if not incompatible with public interest, under what authority and for what purpose troops of the United States occupied the city of Petersburgh, in the State of Virginia, on the 7th of November, 1876, the day of the general election.

Mr. EDMUNDS. That will lead to debate. Let it lie over.

The PRESIDENT *pro tempore*. The resolution will lie over under the rule.

Mr. WITHERS. I ask that it be printed.

The PRESIDENT *pro tempore*. The Chair hears no objection, and the resolution will be printed.

VOTERS IN CERTAIN STATES—ELIGIBILITY OF ELECTORS.

The Senate resumed the consideration of the resolutions yesterday submitted by Mr. EDMUNDS and modified by him this morning.

Mr. THURMAN. Mr. President, I shall not take up much of the time of the Senate in submitting some views and observations on these resolutions. I have nothing to say in any spirit of faction. It is not a time for faction. I voted against considering the resolutions to-day because I thought more time ought to be given to their study by those who are to be called to vote upon them. The majority of the Senate thought otherwise, and I submitted, and I shall say, therefore, what occurs to me on reading them for the first time this morning, and without that study which I should like to give them. I shall not be drawn into anticipating any question that may arise hereafter. "Sufficient unto the day is the evil thereof." I shall hold myself perfectly free whenever questions shall arise calling upon us for their determination, in the progress of events, then to give my best judgment upon those questions. But now we are called upon to vote on these resolutions, and we have to decide as we are informed to-day. That makes it necessary that we should see what the resolutions are. The first thing that strikes one is that every inquiry proposed here is an inquiry in relation to a matter of fact. The Senator from Vermont said, if I understood him correctly, that these resolutions commit no Senator to any particular doctrine or dogma. It will be found upon examining them, and it certainly was the purport of the remarks he made, that if they be adopted the Senate is committed to a particular doctrine and dogma.

The preamble to the first resolution goes upon the assumption that, although there may be not one word in the constitution of a State, not one word in the statute law of a State denying suffrage to any class of male citizens, although that State may have been in the control of the party to which the Senator belongs ever since the close of the war, yet that it may be deprived of a portion of its representation in Congress, and consequently of a portion of its vote in the electoral college, if by unlawful means, means denounced by the State government, means punished by the State government, any number of men have been deprived of their right to vote. That is said to be based upon the fourteenth amendment to the constitution. I suppose there is no amendment to the constitution that cannot be practically executed; and I want the attention of my friend from Vermont to see how he would practically execute this new idea that we are to inquire whether the Ku-Klux, or some White League, or some other organization has intimidated voters in the six States he has mentioned in order that we may ascertain what shall be the representation of those States in the House of Representatives and what shall be their vote in the electoral college. What is this fourteenth amendment? What does it say? It provides that—

> When the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens—

That is, the number of such as are denied the right of suffrage—

> shall bear to the whole number of male citizens twenty-one years of age in such State.

We have an act of Congress, passed on the 2d of February, 1872, fixing the representation of the six States that are named in this resolution; providing that Georgia shall have nine Representatives, Alabama eight Representatives, South Carolina five, Louisiana six, and so on. The Senator from Vermont proposes that the Committee on Privileges and Elections shall find out whether, in the year 1875, there were citizens of those States denied the right of suffrage. Denied by the constitutions of the States? No; the Senator knows there is no such denial there. Denied by the statutes of the States? No; the Senator knows there is no such denial there. Denied by the judgments of the courts of those States? No; the Senator knows there is no such denial. Denied how, then? Denied by violence and intimidation of lawless individuals; for that is all that is complained of in the memorials and petitions and newspaper articles to which the Senator referred and upon which he bases his resolutions.

Suppose this committee should go into an investigation in six States; six States which used to be called sovereign States; six States that in common with other States the Supreme Court of the United States has fifty times in solemn decisions called sovereign States; suppose the Senate, by its Committee on Privileges and Elections, inquires how many persons in those six States have been unlawfully denied the right of suffrage by intimidation or other foul means; and suppose the committee make a report on that subject, and a committee of one single branch of Congress makes a report that 10,000 men in the State of South Carolina, in the year 1875, were deprived by intimidation of the right to vote; are you going to change the representation of South Carolina upon that report? Are you going to amend this act of Congress which says that South Carolina shall have five representatives? Suppose the same committee report that in 1876 anybody was intimidated there; that anybody was denied the right of suffrage; what are you going to do? Are you going to assume further that, because there was violence in 1875 or 1876, there will be violence in 1877 and in 1878, when the Forty-fifth Congress will have its existence? And are you then, upon the assumption of continued violence, of continued disregard of law, to proceed to reduce the representation of that State in the Congress and reduce its influence in the electoral college at the next presidential election? Does not any one see how utterly impossible it is to proceed upon any such basis? It is the same way with each of the States. Let the committee make their report; and how are we to get a census, pray, upon which Congress can act of all persons who were intimidated in Georgia, or Alabama, or Louisiana, or Arkansas, or Texas? How are you to get a census of the men, so that you can make the calculation required by the fourteenth amendment and find "the proportion which the number of such male citizens" who are thus denied the right of suffrage "shall bear to the whole number of male citizens twenty-one years of age?" How are you to do it? Does not every one see that it is an impossibility? Does not every one see at once that such an idea as that never entered into the minds of the people when they adopted the fourteenth amendment? It could not have entered into the minds of the people. It is utterly impossible that any such idea could have had place in their minds. As the Senator from Delaware has very properly stated, the fourteenth amendment is a direction to the States as States. No one can be denied the right of suffrage within the meaning of this provision of the Constitution unless he is denied it by the constitution or by the law of a State, if the Constitution permits it to be denied by the law.

The fourteenth amendment held out to the Southern States this alternative, and gave it to them freely: "Admit the negroes to vote and have an increased representation, or deny them the right to vote and have a reduced representation." The alternative was offered to them. They had a right to choose between the two. It is very true they cannot prevent a man's voting by reason of race, color, or previous condition of servitude under the fifteenth amendment. Under the fourteenth they might have done so, for the fourteenth confers the right of suffrage on nobody, and the fifteenth only prevents a man's exclusion on account of race, color, or previous condition of servitude; but it was still perfectly within their competency to make a property qualification or an educational qualification that would exclude nine-tenths of the colored people in the South. By the fourteenth and fifteenth amendments the people of the United States said to them: "You may have your choice; you may by requiring an educational qualification or a property qualification exclude the bulk

of these colored people from the ballot-box; but if you do it, you reduce your representation in the Congress, and your power in the electoral college shall be diminished in the same proportion that those excluded persons bear to the whole number of white inhabitants in the State. On the other hand, you may give the suffrage to all these people without any such restrictive qualifications that would deny it to any; and if you do give it to them all, then, instead of the old representation under the old Constitution of two-fifths of the colored population, you shall have representation for the whole of them. The choice was fairly offered to the people of those States. In perfect good faith they accepted the alternative of giving the suffrage to everybody, colored as well as white. They put it in their constitutions. They denied to their Legislatures the power to deprive the colored people of suffrage. They took that horn of the dilemma. And now after having thus chosen as you authorized them to choose, it is said that we can get up an inquiry here, outside of the Constitution in fact, to ascertain whether, by fraud, by violence, by intimidation, or the like, some people have been denied the right of suffrage, and, if so, then the representation of those States shall be diminished and their weight in the electoral college shall also be diminished.

Mr. EDMUNDS. Will the Senator allow me to ask him a question?

Mr. THURMAN. Yes, sir.

Mr. EDMUNDS. I ask the Senator to point out to the Senate whereabouts it is in these resolutions that there is any such declaration or assumption as he speaks of. He says that the resolutions assume and foreclose the question that Congress has power to deal with, by diminishing representation, any illegal or fraudulent or violent deprivation of suffrage, whether the government of the State has had anything to do with it or not. Now, I wish him to point out whereabouts it is in the resolutions that anything of that kind is either said or implied.

Mr. THURMAN. Why, Mr. President, it is implied by the fact that there is not one word in the preamble nor one word in the instructions that requires the committee to investigate any constitution of those States, any law of those States, any judicial decision of those States, or any action of any governmental person in those States.

Mr. EDMUNDS. Will the Senator allow me to suggest to him that he had better read the language again. The first branch of the preamble recites the words of the Constitution. I believe that the Senator has not denied that. The second branch of the preamble states again the very words of the Constitution, by the statement that it is alleged that in these States the very descriptions of citizens named have been denied or abridged of their rights, using the very language of the Constitution, no more and no less. Therefore, the first resolution goes on to provide that we shall inquire into the condition of the thing, and then we shall be able to ascertain whether there has been a violation of the Constitution or not.

Mr. THURMAN. What are the things which the committee are to inquire into?

Mr. EDMUNDS. Exactly the things that the Constitution requires.

Mr. THURMAN. Let me speak. What are the things they are to inquire into? Whether the constitution of South Carolina denies the right of suffrage to any man there? Whether the constitution of Georgia does it, or that of Alabama or Louisiana?

Mr. EDMUNDS. That is one of the things.

Mr. THURMAN. No, sir; nothing of the kind. The Senator knows and every Senator knows that there is not one word of denial in either of those constitutions.

Mr. EDMUNDS. I do not know anything of the kind.

Mr. THURMAN. The Senator ought to know it, if he does not.

Mr. EDMUNDS. That may be. I doubt if the Senator from Ohio knows it.

Mr. THURMAN. The Senator ought to take judicial notice of that fact. But there is no inquiry to be made by the committee as to that. Then as to the statutes; is there any inquiry to be made whether the statutes of the States deny the right of suffrage to any of these people? Not one word of that. What was the foundation given by the Senator in his speech for this resolution? That half the newspapers in the land said that men had been denied the right of suffrage down there; that there had been reports of committees to this body that men had been denied the right of suffrage down there; that there had been petitions and memorials. Now, I put it to the Senator, has he ever seen in a newspaper, if that is sufficient authority, any assertion that a constitution of any of those States, or a statute of any of those States, denied the right of suffrage to any of the class of people to whom he refers?

Mr. EDMUNDS. Does the Senator want an answer now? If he does he can have it.

Mr. THURMAN. I should like to have an answer. The Senator can give it to me categorically.

Mr. EDMUNDS. Yes. I give it categorically; yes.

Mr. THURMAN. That the Senator has seen that the constitution of one of those States denied it?

Mr. EDMUNDS. I have not spoken of their constitutions. I have said that I have seen it, as the Senator put it to me, that the laws and governmental provisions of several of those States do operate to deny suffrage.

Mr. THURMAN. I should like to see such a statute. No one has ever shown such a statute. No one ever can show such a statute. I defy the Senator to point to a single statute of any one of those States that does not bear alike upon the white man and the colored man with perfect equality and with perfect justice. There cannot be one shown. No, sir; that is not it at all. What are the memorials that the Senator speaks of? Memorials against any statute law of those States? No, sir; he cannot find one. Memorials against their constitutions? He cannot find one. What are the reports of the committees to which he refers? Reports that there are constitutions which deny the right of suffrage? No, sir. Reports that there are laws which deny the right of suffrage? No, sir; not at all. Does he talk about the laws of those States? Who has had possession of South Carolina ever since the close of the war but the republican party? Who has had possession of Louisiana ever since the close of the war but the republican party? Who has had possession of Alabama until two years ago, for the greater part of the time, at least, but the republican party? No, sir; that will not do at all. It is simply to go into this "intimidation" business. It is simply to furnish a pretense for returning boards vetoing the voice of the people and electing other men than those whom the people have chosen—a thing that can always be alleged, however false, and with such judges as have acted upon the so-called proofs, a thing that will always have precisely the same effect and the same result. Let us see what this committee are to inquire into:

1. Whether, in any of the elections named in said amendment in said States, in the years 1875 or 1876, the right of any portion of such inhabitants and citizens to vote as aforesaid has been in any wise denied or abridged.

2. To what extent such denial or abridgment has been carried.

3. By what means such denial or abridgment has been accomplished.

Not whether there is a statute or a constitution that denied it, but what are the means by which the denial has been accomplished.

4. By whom has such denial or abridgment been effected.

Not whether by the people in the framing of their constitution; not whether by the legislature in the enactment of their laws; not whether by the judiciary in their interpretation of the constitution and the laws; but by whom, in its most general sense, has this denial been effected.

5. With what motives and for what purposes has such denial or abridgment been carried on.

What has that to do with the question of reducing their representation? If their motives had been as pure as those of angels, and they had framed a constitution containing educational clauses or property qualifications that would necessarily exclude a large portion of these people, the effect would necessarily be to reduce their representation in the House and to give them a reduced weight in the electoral college; but what would we have to do with their motives? Again:

6. By what authority or pretended authority has such denial or abridgment been exercised.

It is not sufficient to ask for authority, but by what "pretended authority" has this denial taken place. O, Mr. President, there is no concealing the fact that this is not an inquiry warranted by the Constitution for the purpose of basing upon it any action to reduce the representation of those States, or for the purpose of affecting their weight in the electoral college. The Constitution deals with certainties and not with uncertainties. When it says that the representation shall be in proportion to the number of male inhabitants it means that; and when it says that persons excluded from the right of suffrage shall not be counted in fixing the representation it means persons denied by the State the right of suffrage; and that can be well ascertained. It means nothing less than that, and nothing more than that. It does not propose to us an inquiry which shall be shifting with every year, as was well said by the Senator from Delaware. The State to-day, owing to a fact which is past, not an existing fact, owing to the denial of suffrage in 1875, a year ago and more, is to be shorn, forsooth, of a portion of its representation. I should like to know how you would execute such a provision. Suppose you say the State of Georgia shall not have nine Representatives but only seven Representatives in Congress, because it is alleged that men have been denied the right of suffrage there; but Georgia has, pursuant to your laws, elected nine Representatives. Which two of those nine are to vacate their seats in the House of Representatives? Who is to select the two and turn them out? Georgia has voted for presidential electors. Her electors of President and Vice-President will cast her vote to-morrow. She has voted in pursuance of your Constitution and in pursuance of your laws. How are you to razee her votes and cut them down accordingly, by making a calculation of the proportion which the number of the people who are kukluxed or intimidated down there bears to the whole population of that State? And that is to be done by the second Wednesday of February!

That leads me to another feature. Six States are involved in this business. Why did not the Senator from Vermont extend it everywhere? Did the Senator never hear of the operatives in great manufactories being marched up to the polls while their employers stood at the window and saw every man of them deposit the ticket which his employer dictated to him he should deposit? Has the Senator never heard of such intimidation as that? Does the Senator propose to go into that matter?

Mr. EDMUNDS. I have heard of but one instance, and that was where a Democrat in Connecticut issued a notice to all his employés that he would turn them off if they did not vote his way.

Mr. THURMAN. Then the Senator is the most ignorant man who lives in New England, without exception. [Laughter.]

Mr. EDMUNDS. That may be. I agree with the Senator. [Laughter.]

Mr. THURMAN. I do not except those who have not the educational qualification, the Senator is the most ignorant man who lives in those six States. Let him go around on election day, when there is high excitement, in New England, in a manufacturing district, and he will not need to be reminded here of intimidation. But the Senator does not propose to inquire into that. No, sir; these Southern States are to be in the Union like the State of Georgia according to that famous resolution which was once passed, to vote if they will not change the result, but not to vote if their vote will change the result. The same game that was played then is to be played again, or its play is to be attempted.

Sir, you cannot tell, even by this resolution of the Senator, what States are to be embraced in this inquiry. We know that six are, but how many more, pray? Let me call the attention of the Senate to that.

> And whereas it is alleged that in several of the States, and particularly in the States of South Carolina, Georgia, Florida, Alabama, Louisiana, and Mississippi, the right of male inhabitants of said States, respectively, being twenty-one years of age and citizens of the United States, to vote, * * * has been denied or grossly abridged: Therefore,
>
> *Resolved*, That the Committee on Privileges and Elections, when appointed, * * * inquire and report as soon as may be—
>
> 1. Whether in any of the elections named in said amendment in said States in the years 1875 or 1876——

What does that "said" refer to? To the six named States? If it does it falls short of the very reason which is given in the preamble, for the preamble only notices those States as particularly guilty. It says that in several of the States, and particularly in these six States—that is intensified—the thing has run more flagrant than elsewhere, but it exists elsewhere; it exists outside of these States. Now where is this committee to make its investigation? Is it limited to these six States or is it to go all over the United States to find whether in any State in this Union there has been a denial of the right of suffrage? Nobody can tell; under this resolution it is impossible to tell.

But now, what kind of a task is this that is to be imposed on this committee limited to the six States? What kind of a task is this that is to be imposed on this committee composed of nine Senators? Nine Senators are to investigate, find out, and take a census of the number of persons who are denied the right of suffrage in six States of the Union, six States, too, of such magnitude, both in territory and population, as Georgia, Alabama, Mississippi, and Louisiana. How can they do it? How can they make any satisfactory report, this single committee of nine persons, attending to their duties here in the Senate all the time, or the greater part of the time, and sitting here in Washington? It is practically impossible for them to do it; every man must see that it is impossible. We are to have this report by the second Wednesday of February, we are told, when the electoral votes are to be counted. How is this committee, unless the Almighty shall endow it with the power of being ubiquitous, of being everywhere at the same time, to discharge this duty? It cannot do it at all.

But you can have depositions or you can have affidavits; and it does not better it much to strike out "affidavits" and insert "depositions." Who is to be served with notice to cross-examine, I should like to know? A deposition is an examination of a witness and reducing his testimony to writing, where both parties have opportunity to participate in the examination. It is not an *ex parte* thing at all. It is not *ex parte* even in the Federal courts, where a deposition *de bene esse* may be taken, because the other party has a right to cross-examine after having notice of the time and place when the deposition is to be taken. A deposition is the regular taking of testimony with parties to the examination who can examine and cross-examine. Who are to be the parties to be served with notice here of the taking of these depositions?

Why, Mr. President, it does seem to me that it can hardly be necessary to pursue this further. This whole thing goes upon a hypothesis which the Constitution does not warrant. I am speaking about the first resolution. As to the last resolution, I do not know that as it has been amended I should object to it. I should like to study it a little more before I commit myself to vote for it. But I do not know that I should object to it, for if there is one man in all this broad land who wants the very truth to be ascertained—if there is one man in all this broad land who wants it to be shown, if it can be shown, that these returning boards that overthrow majorities shown by the official returns of eight and ten thousand in a State were warranted in what they did, for the credit of the American people and the American nation I want it to be shown, and if it cannot be shown I want the villainy to be exposed. I want the facts to be known. So far as we have any right to examine them, so far as the Constitution authorizes us to examine, so far as it may authorize us to examine—and I am willing to hear argument on that—I want the truth, and the naked truth, hurt whom it may, benefit whom it may. I want it, as I said, for the institutions of my country. I want it for the peace of my country. I want it for the credit of the American name. I want it for the credit of republican institutions. But I do not want or care one straw about electioneering documents that are *ex parte* out and out, only designed to inflame the public mind and divert it from a consideration of the constitutional law and the real truth of the case.

I cannot vote for the first resolution, but I can vote, perhaps—at least I am inclined so to think, though I want a little more time to study it—for the last. The first one goes upon a false assumption, and I cannot vote for it.

Mr. EDMUNDS. Mr. President, I hope I shall not be obliged to speak again on this subject; but while it is fresh in my mind I wish to say a word or two.

My honorable friend from Ohio began by laying down a very good rule, and that was that he did not wish to foreclose this question in any of its aspects until we should know the facts, and then he proceeded, as some wise men have sometimes done before him, to take a straight departure from his own rule, and to decide, without waiting for a report of the committee, what the Constitution of the United States exactly means, what is exactly the power, or rather the want of power, of Congress under the fourteenth amendment, and so to dismiss the whole subject. It is a peculiar circumstance, that has sometimes been noticed before, that my honorable friend from Ohio and a good many of those who agree with him in their general politics have never yet found an occasion when any one of the three amendments to the Constitution last adopted was thought to be capable of being effectuated by any possible action of Congress. Neither the liberty of the thirteenth, nor the equal rights and fair play of the fourteenth, nor the security against distinctions of class and color of the fifteenth have sufficient value to them to enable them on any occasion, either in debate or by vote, to suppose that Congress has any power whatever to carry them into effect. I, of course, do not question the sincerity of the honorable gentlemen; but I am surprised at their attitude because, as they are not the most ignorant persons in New England, whatever else may be said of the rest of the country, I should have supposed that, when the Constitution itself in its general clause and each one of these amendments in their particular provisions say, in what appear to be plain terms, that Congress shall be invested with full power by appropriate legislation, to see that they are made effectual, they would not be unable to perceive, under any possible state of circumstances, either by vote or in debate, even by inquiry, that it is competent for either House of Congress to inquire into the state of this Union, and to let the Senate know its condition in order that we may then consider in calmness under the law whether we have any power or not.

The honorable Senator from Ohio said that the first resolution and what I stated before undertook to put a construction upon this clause in the Constitution. I asked him to point out whereabouts it was in the resolution, and he went into a generality and did not point it out. It cannot be pointed out. The resolution states what the Constitution is. It states that it is alleged that that provision of the Constitution has been violated, and directs the committee to inquire whether that violation has occurred or not, in the very language of the Constitution, and then it proceeds under subdivisions, referring in each one to the first clause, which recites the language of the Constitution, to classify all reasonably conceivable methods by which such a denial may have occurred. It would be just as sound for the Senator to say that, if we had the constitutional power to inquire who was elected President on the 7th of November, a resolution of that kind immediately committed the Senate to the result that Mr. Hayes or Mr. Tilden, according to our political views and opinions, I suppose, had been elected. Nobody would maintain that. If the Senator will give me leave to say so, it is absurd in my opinion. The resolution directs this committee to make an inquiry. The language of the resolution, I admit, is broad enough, and I intended it should be, to cover every attitude in which the case may be presented when the report comes in, in order that we may know whether the state of facts reported is one within the reach of constitutional redress by legislation or not. But the Senator objects to such an inquiry as that; he always has objected to it; he always will. It seems impossible to refer to any one of these amendments without immediately exciting the mind of my honorable friend and some of his associates with the supposition that there is at once great danger to the country, and great danger of a violation of the Constitution, when we are taking the only earthly means in the world to find out whether it has been violated or not.

The Senator says that this resolution must be directed to the denial of suffrage in fact instead of by constitutions and laws, because the mover of the resolution knows that no one of the constitutions, statutes, or judicial decisions of any one of these States in any manner interferes with suffrage. I stated that I did not know it, and I repeat that statement. On the contrary, I believe that the laws of more than one of these States do deny or abridge the right of suffrage of some of its male citizens above the age of twenty-one years. The Senator seems to have fallen into the error that this resolution is directed to race or color or previous condition of servitude. Not at all alone. It would embrace that, to be sure; but this article of the Constitution does not refer to a denial by one means or for one reason; it refers to every means, in language that has no limitation, by which in any State of this Union the free right of the people that he professes to desire to see maintained in their liberties and in their right of suffrage has been interfered with; and when we ascertain that it has been interfered with, that will be time enough to inquire whether the particular kind of interference, whether by statute or constitu-

tion or courts or otherwise, is one that this Constitution authorizes us by legislation in some measure to redress by an abridgment of representation.

Mr. THURMAN. Will the Senator tell us what State and what law he refers to?

Mr. EDMUNDS. No, Mr. President, I will not. Inasmuch as I am set down as the most ignorant man in New England, which I admit, the Senator ought not to ask me any such question. [Laughter.] As I suppose my honorable friend is perhaps not the most ignorant man in Ohio, it is just possible that if he would devote a part of his valuable time to studying the constitutions and the laws of the several States of this Union—if he should think that would not be unconstitutional; I do not know how he would feel about that—the most learned man in Ohio would find out, as the saying is, something to his advantage in that respect.

Mr. President, my honorable friend said that it is well known—I think he said that—that in New England it is frequent, even general, that artisans and operatives in manufacturing and industrial establishments are, against their will, by some species of coercion, marched to the polls in the interest of their employers and compelled to vote for a particular candidate.

Mr. THURMAN. I did not say "general."

Mr. EDMUNDS. Well I will say "particular" then; I do not wish myself to overstate what in any other place than this I should say was something in the nature of a libel upon the working classes of the six New England States. I wish to tell my honorable friend from Ohio, although I am the most ignorant man in New England, that the artizans and operatives of that hilly and somewhat inhospitable climate are men of intelligence, as a whole, men of education, men of property, men of independence, men of self-respect, and it is only now and then a very hardy man indeed, and he so far as I have ever heard, a democrat, who even ventures to suggest to his employés, much less to force them, how they shall exercise the supreme right of an American citizen in the elective franchise. They are the men who earn money by honest labor and know how to preserve it and expend it in the education of their children, in the payment of their taxes, income and all. They are the men who build churches and school-houses, and sometimes carry, as they have in days gone by, their industry, their education, their institutions to the western country, even to Ohio. But, Mr. President, I need not waste your time to-day in vindicating the character of the laboring classes of that part of the Union from which I happen to come. They do not need it.

My honorable friend has said that this is an impossible inquiry, that it cannot be effectuated, that we must have the report before the second Wednesday in February. He is entirely mistaken about that. I hope he does not imagine that this first resolution, which refers to the clause of the Constitution to which I have alluded, is designed, or that I conceive it possible under it, that it can have any effect upon the present representation of any of these States in Congress, or upon the present electoral vote of any such States. The resolution does not bear any such construction. It is a resolution of inquiry in order to get at facts connected with the state of the Union in one of its most vital respects, in order that if there be an evil which we may constitutionally redress by legislation in fixing the next representation in the House of Representatives, it may be done, and that is all. And yet the Senator sees in it some fearful assault upon the liberty of the country. He seems to be afraid from what he has said, that it will turn out that there has been, to use his own expression, kukluxing and intimidation in order to control votes in the States referred to, and in others. I am very much afraid that it will turn out to be true also, Mr. President. My fears go hand-in-hand with his in that respect. If it does turn out so, whether we shall have the power by legislation under this article to correct it or to protect the people of the whole Union against a representation which is thus made false and untrue, I do not profess to say at this time. I reserve my opinion upon that subject until I shall hear the report of that committee and be prepared to consider it. But I am surprised that any Senator should refuse to hear the truth of this thing and the naked truth, as the Senator says about the other branch of the resolution, because he is afraid that it will turn out that we cannot do anything about it if it is true. The truth merely inquired for and obtained will not hurt any honest man or any honest and just party. It may, it is true, affect the intelligent public opinion of the people of these United States as to the general situation of this Union; and whatever the truth is it ought to affect their intelligent opinion. Ought it not? If the truth turns out to be that there is peace, justice, equal rights, and no denial of this essential and most sacred right of citizenship in any of these States, then the people of the whole Union will rejoice and be exceeding glad. If it turns out to be exactly the reverse, it will be time for the people of this Union to consider whether the institutions under which they live ought not to be brought in some constitutional way into an exercise of protection to the people of this country against wrongs of that kind. And yet the Senator objects to it all; he says "no, shut out the light; do not let us look into this matter; whether the Constitution means one thing or another, never have an inquiry; keep away from the truth as far as possible." Well, it is a question of choice. The Senator is entitled to his way, and I am entitled to mine. I prefer to get at the truth. When we do get at it, I hope we shall all be ready to act in a spirit of justice and of constitutional law. I have no doubt we shall.

As to the last resolution, Mr. President, my honorable friend thinks he is in favor of that, although he is not quite sure. I am glad he is in favor of the last resolution. I do not know that we have any constitutional power to do anything about it; I do not say that we have; nor does the resolution; but it is based, exactly like the first resolution, on the ground that here is a matter arising under the Constitution of the United States, or said to be arising in both these respects, that deeply affects the institutions and the peace and the good order of our country; and yet as to one branch of it he is indisposed to know the truth, and as to the other he is graciously willing. Well, sir, I must express my obligation for that. I hope we shall pass both resolutions.

Mr. MORTON. Mr. President, I will occupy the attention of the Senate but a few moments. The preamble to these resolutions recites one provision of the fourteenth amendment. After thus reciting it it proceeds as follows:

"*Resolved*, That the Committee on Privileges and Elections, when appointed, be, and it hereby is, instructed to inquire and report as soon as may be—

1. Whether in any of the elections named in said amendment in said States in the years 1875 or 1876, the right of any portion of such inhabitants and citizens to vote as aforesaid has been in any wise denied or abridged.
2. To what extent such denial or abridgment has been carried.
3. By what means such denial or abridgment has been accomplished.
4. By whom has such denial or abridgment been effected.

If you cut off the preamble entirely, is there any doubt about the power of the Senate to adopt the rest of the resolution; and if there is not, what difference does the preamble make? It does not control the body of the resolution, and could not unless there was some doubtful phrase in that which might be interpreted by reference to the preamble. But if there is any doubtful phrase in the body of the resolution, you can cut off the preamble without affecting the duties to be performed by the committee under the body of the resolution. The preamble is there, doubtless, for information, and in the nature somewhat of directing the examination; but if you cut it off you do not, in any respect, affect the body of the resolution.

Mr. President, I suppose that we have, on a great many grounds, the right to pass this resolution. If the right of suffrage has been denied, we have a right to inquire into the cause of that denial, and to inquire into the remedy for it; or if any State is enjoying a representation in the other House, or is enjoying a representation in the electoral college on account of the existence in that State of a class which is denied political rights, we have a right to inquire into that fact. Whether we can inquire into it so as to affect the pending election, or one two years, four years, or eight years hence, is another question. We have an unquestionable right to inquire into it. We have a right to make any inquiry.

I suppose, Mr. President, that precedent has weight with this body. What has been done in other times and in other deliberative bodies might be received, perhaps, as giving a construction to the Constitution, and as forming a precedent upon which we may act. I turn to the CONGRESSIONAL RECORD and I find that yesterday the House of Representatives, a co-ordinate body of this Congress, passed the following resolution——

Mr. THURMAN. Do you propose to read it?

Mr. MORTON. I propose to read the resolution, with which we have nothing to do here now or hereafter, and can have nothing to do. It is as much a matter of history as it will be twenty years hence, and I propose to read it.

Resolved, That three special committees, one of fifteen members to proceed to Louisiana, one of six members to proceed to Florida, and one of nine members to proceed to South Carolina, shall be appointed by the Speaker of the House to investigate recent elections therein and the action of the returning or canvassing boards in the said States in reference thereto, and to report all the facts essential to an honest return of the votes received by the electors of the said States for President and Vice-President of the United States, and to a fair understanding thereof by the people, and whether the electoral votes of the said States should be counted, &c.

If it is legitimate for a democratic House to inquire into these things, it ought to be for a republican Senate to do so. That resolution was carried in the House by a two-thirds vote and, I have heard it stated by better parliamentarians than I am, by trampling on the rules of that body; but with that we have nothing to do. I am simply showing the understanding of two-thirds of that body of what its powers are in reference to an inquiry. As I said before, precedent carries with it some authority; and I merely refer to them as showing that what has been done in the other body, and so recently that the ink is hardly dry from recording it, might be done here without that gross violation of the Constitution of which we have heard so much this morning.

Mr. THURMAN. Mr. President, I do not rise to further discuss the subject just now, if, indeed, I had anything to say in addition to what I have already said; but I wish at once to say, and I attempted to get the floor as soon as the Senator from Vermont concluded, to say, that there was not one word uttered by me which justified the inference he seemed to draw from my remarks, that I was disposed to shut out the light, or that I had any fear that an investigation would disclose any serious intimidation or kukluxing. There was nothing in my remarks that, properly construed, would bear any such interpretation.

Mr. BAYARD. Mr. President, for many years I have believed that the peace of the country, the permanence of our institutions, and the "domestic tranquillity" which the Constitution of the United States was intended to create and protect, have all been placed in great

jeopardy by laws passed by the Congress of the United States; and since I have been a member of the Senate, I have felt it was my duty, however unavailingly, to oppose all that class of measures which assumed the authority in Congress to surpass what I believed to be the limits of their just powers and undertake the control of those questions which, under our federal form of government never were relinquished, and of necessity belonged to the several States, and to them alone. I believe to-day that efforts to restrain congressional power and to recognize and uphold in the several States their powers and just responsibilities are needed as much as ever, and indeed more than ever. I say to you, most frankly, sir, that I have entered upon this session of Congress more seriously impressed with the overhanging presence of dangers to our form of government than I have ever experienced before; and I have come here convinced more than ever that it is my duty, successfully or not, to oppose at every stage, at every step of its progress, this march toward consolidated power which the party to which you belong have entered upon in this country. There is this constant and persistent effort to invade and overthrow those necessary State powers without which our Government cannot exist, nor can free republican institutions be preserved.

It is not with me a question of party advantage or party power. So thoroughly am I convinced of the necessity of adhering to a strict construction of the Federal Constitution, that I should oppose the party with which I act just as readily as I should another where I thought it transgressed that theory of government which I believe to be essential to the safety and permanence of this Union and of the republican institutions existing under it. I have nothing now to say to the honorable Senator from Indiana [Mr. MORTON] when he quotes, as I think against both the letter and spirit of the rules of this body the proceedings in the House of Representatives. If it were in order for me to discuss the resolution and proceedings of that House, which in disregard of parliamentary rule have been read and referred to by the Senator, I would not ask whether the hand that drew the resolution was that of a republican or of a democrat; I would put each to the same test and mete to both the same measure of constitutional criticism.

Mr. President, I did desire more time for deliberation on this important subject, but it has been denied, and it seems to be the will of those who control the action of the Senate that these resolutions shall be hastily pressed to a sudden vote. Here is my objection to them, that they assert a power in the Senate of the United States and the Congress to interfere in matters not confided to them, but the control of which is essential to the existence and the self-government of the States.

The honorable Senator from Vermont, who has these resolutions in charge, [Mr. EDMUNDS,] and from whose hand they come, tells us that because he recites the language of the fourteenth amendment of the Constitution, therefore the objects of his resolution must be in accordance with it. Why, sir, truly he has used the language, but he has used that language to pervert the meaning, he has used the language constructively in such manner as to destroy the object and intent for which the amendment was adopted. The very inquiries, six in number, which the resolutions contain, and the quarters to which they are directed, all show that he proposes to inquire into the infractions of the fourteenth amendment in quarters and of parties never contemplated by the amendment. Look, sir, for one moment at the language of the fourteenth article of amendment, which declares that:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

A simple declaration. Then follows:

> *No State* shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall *any State* deprive any person of life, liberty, or property, without due process of law, nor deny to any person *within its jurisdiction* the equal protection of the laws.

Then comes the second section:

> Representatives shall be apportioned among the *several States* according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.

Then pass to the clause limiting the representation of the States in the House of Representatives of the United States in case there is denied *by the State* to any of the male inhabitants, being twenty-one years of age and citizens of the United States, the right to vote at any election for electors of President and Vice-President or Representatives in Congress or the executive and judicial officers of the State.

Mr. President, in 1875 at the October term the Supreme Court of the United States considered this very amendment in its general scope as well as in its application to the case then before the court. I read from page 554 of the second volume of Otto's Supreme Court Reports, the case of The United States *vs.* Cruikshank *et al.*, this declaration:

> The fourteenth amendment prohibits *a State* from depriving any person of life, liberty, or property, without due process of law; but this adds nothing to the rights of one citizen as against another. It simply furnishes an additional guarantee against any *encroachment by the States* upon the fundamental rights which belong to every citizen as a member of society.
>
> The fourteenth amendment—

Say they again—

> prohibits *a State* from denying to any person within its jurisdiction the equal protection of the laws; but this provision does not, any more than the one which precedes it and which we have just considered, add anything to the rights which one citizen has under the Constitution against another. The equality of the rights of citizens is a principle of republicanism. Every republican government is in duty bound to protect all its citizens in the enjoyment of this principle if within its power. That duty was originally assumed by the States; and it still remains there. The only obligation resting upon the United States is to see that the States do not deny the right. *This the amendment guarantees, but no more.* The power of the National Government is limited to the enforcement of *this* guarantee.

Passing on further, they declare:

> In Minor *vs.* Happersett, (21 Wallace, 178,) we decided that the Constitution of the United States has not conferred the right of suffrage upon any one, and that the United States *have no voters of their own creation in the States.* In United States *vs.* Reese *et al.*, *supra*, page 214, we held that the fifteenth amendment has invested the citizens of the United States with a new constitutional right; which is, exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude.

Mr. President, I have merely fortified myself by this declaration of the intent, the purview, and the scope of this article of the Constitution which has been referred to, and is supposed to justify the present resolution. The basis of authority is to be found in the preamble. The Senator from Indiana says you may strike out the preamble and the power will still exist. There is no doubt that the preamble does not give the power, but in this case it affects to recite it: it is paraded as the authority, and the sole authority for this exercise of power.

Now, sir, construing the fourteenth amendment as this tribunal of last resort in this country, this voice of authority declares to us that it should be construed, what is it? It is intended to prevent encroachments by the States upon members of their society, and the only obligation that rests upon us is to see that *the States* do not deny the right in question. How can a State act? By what voice can a State speak? Only by its authorized agents, only by the voice of its legislature, expressed by the acts of its executive officers in carrying out the legislative will. That written charter of government of every State which our form of government prescribes, and those laws passed in pursuance of it, and of the Constitution of the United States all written and in plain English. Therefore it is to the legislative acts of the State, as a political community, that you must look; and the alleged fact of denial or abridgment is to be tested by inspection of the statute books of the States and not by the acts of individual citizens or classes of men. And yet what does this resolution inquire of? Tested by the authority I have cited, assuming that the sole object of the amendment is to check the States and not the unauthorized action of individual citizens of the States, to prevent the encroachment of State authority upon citizens within their limits.

But examine the inquiries proposed and see how absurd and impossible it will be to apply them to the action of States.

> 1. Whether in any of the elections named in said amendment in said States in the years 1875 or 1876, the right of any portion of such inhabitants and citizens to vote as aforesaid has been in any wise denied or abridged; and that said committee be authorized to extend this inquiry to the elections of 1874.
> 2. To what extent such denial or abridgment has been carried.
> 3. By what means such denial or abridgment has been accomplished.
> 4. By whom has such denial or abridgment been effected.
> 5. With what motives and for what purposes has such denial or abridgment been carried on.
> 6. By what authority or pretended authority has such denial or abridgment been exercised.

Does not every man see that these are inquiries as to the acts of individuals, the motives of men, not the action of a State? It is not proposed that the action of a State shall be brought under criticism by the resolution. It is intended to bring the individual or bodies of men, the human motive, into review; you shall ask with what motive he did an act. You cannot question as to the motive of an amendment to a State constitution or a statute of a State. That is presumed to mean that which it expresses, and there is no latent ambiguity to be hunted out as to what was the intent and meaning of the Legislature in passing the law. The act speaks for itself.

And let me here ask, is the rectification of irregular or unwarranted State action to be redressed by the legislative power of Congress, or will it not properly fall under the corrective power of the judicial branch in their power and duty to annul all such action by their judgments?

It is plain that this resolution, upon its face, means not that the question shall be raised and decided as to the action of the State, but shall inquire of the individual and unauthorized action of citizens. The honorable Senator from Vermont, whose brain has conceived, whose hand has written, and whose will here forces upon the Senate this present resolution, intelligent, able, and pains-taking as we know him to be, has been unable to answer the simple question put by my friend from Ohio, whether he knew of any law or constitution, or part of a law or constitution of any of these six named States, which did abridge or deny the free right to vote of any man of any race or class in any of these named States, and he sheltered himself behind some humorous response to the Senator from Ohio, saying that he would not answer him or give him the information. Well, sir, the matter is rather grave for jocularity. The question was respectful and pertinent, and I regret exceedingly that the honorable Senator did not answer it in that straightforwardness and good faith in which it was asked. Yet, Mr. President, I cannot forbear here to state that I can scarcely think that honorable Senator believes, or that any man in this country believes, that there has been in any of these named States a discrimination against voters by reason of race or color, or that any statute or constitutional provision of any one of these six States gives a shadow of right to believe that such a thing has been attempted. Therefore, believing that this amendment to

the Constitution of the United States has been falsely quoted—I mean by "falsely quoted," quoted for a purpose totally different from its first object and intent. I do not propose by my vote to aid it; but on the contrary, to oppose it, because I think it is a clear misuse and misappropriation of power to direct against the public power of a State and the acts of citizens or classes of citizens of a State, those powers which were intended only to be prohibitory of State action in the line which is alleged and complained of.

Mr. President, I have no profession here to make of my love of equity or of my revolting sense against injustice, my desire for peace and right to the uttermost in this land; but I do know that these blessings only can be secured by standing by the Constitution as it is written, and by the law as it truly is. Claims of irregular power will find no champion or advocate in me, but ever and always a constant, even though unsuccessful, opponent.

Mr. President, I stated before how perfectly endless is the task upon which the Senate by this resolution proposes to enter. If every allegation of abridgment or denial of the right of suffrage in a State, by individuals singly or in combination, is to be followed by congressional inquisition, the task of labor will never end, nor will the expense ever cease. One of these very States here named—Mississippi—was the subject last summer of a most searching and vigorous inquisition. There stands upon the files of the Senate, published at great cost, a document of twenty-two hundred printed pages of testimony and reports relating to Mississippi alone, which I am sure no Senator could yet have read, unless it be one or two of those who shared in the great labors of that committee and may have some knowledge of the contents. It was not printed until long after the adjournment of Congress; and yet it is proposed now to duplicate that labor. Sir, the pecuniary expense of this proceeding is its most trivial feature. That is a matter perhaps not worthy of so much consideration, although there is a duty in economy. It is not that, Mr. President. It is the assumption of powers that do not belong to this body; it is the perpetuation of a system of inquisition and interference that has never produced other fruits than those of discord and unhappiness; it is the deliberate continuance of a system that has plainly met with the reprobation of the people of the United States, without respect to political party, and I can see that the substance of this inquiry is nothing less than the grasp at a jurisdiction over the domestic and internal affairs of the States boundless in its extent and unending in its application. We are, according to the meaning of these resolutions, to sit upon contested elections in all the States wherever an allegation shall be made that by classes or by individuals the right to vote has been abridged or denied. Look upon it and see how perfectly impracticable it is. See how perfectly without warrant is the attempted exercise of jurisdiction. I say nothing of motive; I cannot know men's motives and am not given to impugning them. I only feel that there is coming close upon this Senate and upon the people of the United States a time when law and their love of law is to be severely tested; and I propose to stand upon the law and let the consequences take care of themselves. Therefore it is now that I resist this attempt to open up again and continue a system called "reconstruction of States" that has been found worse than worthless, whose fruits have been nothing but anarchy, disgrace, and loss; a system which begins by disregarding the limits within which a just exercise of power under the Constitution would confine us, and branches off into a jurisdiction which, as I said before, will be boundless in its extent, interminable as to its time of execution, and fatal in its consequences.

As to the last resolution providing for an inquiry touching the question of the eligibility of electors of President and Vice-President and the power to judge of the regularity of their appointment and the power of Congress over counting the electoral vote, I can only say that perhaps the memory of Senators, but certainly the records of the Senate, will bear me witness how earnestly and indefatigably I strove to have that question considered at the last session of Congress. The honorable Senator who now occupies the chair [Mr. ANTHONY] remembers the debates, for I recall his taking part in them and the interest he exhibited in them. I felt then and feel now that those were the hours and those were the days in which these questions should have been considered and settled before the result upon party welfare could be predicted from the action of the law. Then was the time I did seek to withdraw the question from the heat of partisan discussion, to protect it from the feelings that are engendered even by debate alone, and to consign the question to a carefully chosen committee of able and intelligent and patriotic men of the two Houses, differing in their party politics, that they might possibly, with care, with thought, prepare some method which, not being touched by the fires of opposition or discussion on either side, could be returned to us as something upon which they quietly and in seclusion had agreed. I believed then that this question should have no taint of party. I believed then that calmness, sedateness, and serenity of mind were essential to a settlement of the question that should remain as law and be obeyed as law. Unfortunately my wishes did not prevail. Unfortunately those who controlled the action of this body did not see the matter as I saw it then or feel toward it as I did. We are here now at the end of an exciting canvass to pass a law the effect of which necessarily will betray in advance that as we vote upon the law so may we in effect decide the result of the election.

Mr. President, I regard that as unfortunate, and yet our duty remains to do the best that we can under the circumstances; and, not as party men, but as Americans, not as republicans or democrats, but as men loving their whole country, that we should dismiss from our minds the question of party advantage and believe that we can have no road so firm to walk upon as in our written Constitution with its limitations upon our power, not undertaking irregular power for the purpose of any imagined party advantage. Sir, it is in that spirit that I trust this Congress will be guided; it is with that spirit I know I speak to-day, and hope to be actuated throughout, and therefore it is that I have uttered these words of caution and, as I believe, of warning, and somewhat of protest, against the assumption of power to undertake the examination of questions not confided to us by the charter of our Government.

As to the last resolution, I am disposed to vote for it if it can be severed so that a separate vote can be taken; but even as to that I should desire time for examination. It has been materially changed since it was brought before the Senate this morning; so much so as to raise exceedingly interesting and important questions not touched by it before; for instance, this most important question of inquiry "whether Congress has any constitutional power, and, if so, what, and the extent thereof, in respect of the appointment of or action of electors of President and Vice-President of the United States." That has been amended by the interpolation of the words "or either House of Congress," raising a question which, of course, we see is fraught with the very deepest importance and is of the greatest gravity at this present time. That is the question of all questions that the American people to-day are asking; it is not simply the co-ordinate power of Congress, it is the separate power and responsibility of one House of Congress to control the count of the electoral votes that to-day is the mighty question before which the American people are standing, and which must be answered at the present session of Congress. Yet that has been put into this resolution only to-day. All this opens up new fields of inquiry. I do not mean to say the mere inquiry would bind any one, I do not mean to say that it ought not to be made; but I do say that questions of this kind should be passed upon most deliberately, and not pressed through, as is now sought to be done, in what may be called the very first working day of the meeting of the Senate; scarcely that, because the custom of the Senate has been heretofore that when the message of the President of the United States has been received, and it has been read, the Senate adjourns for the purpose of considering this new and weighty communication. That has not been done in the present case. The message and its consideration have been laid aside informally, as some casual and ordinary message during the session. That is not usual, Mr. President. In matters of this kind it behooves us all to act with great deliberation; and there is no disposition for delay. If it shall be the will of the Senate to come at once to a vote upon this question, I shall not stand longer in the way.

Mr. WHYTE. Mr. President, I rise for the purpose of merely asking that these resolutions, comprising as they do so many subjects, may be voted upon separately. The first three resolutions I shall vote against, because I accept the decision of the Supreme Court of the United States in construing the fourteenth amendment, and I believe that that amendment refers solely to a denial or abridgment of the right of a citizen of the United States to vote by a State, and not by any turbulent faction in a State or parties for whom the State government is not responsible. I shall certainly, therefore, vote against the first branch of this proposition. In regard to the investigation of the recent elections in some of the States, I am for immediate and prompt action, and as soon as the vote is taken on the first three resolutions I propose to offer a substitute for the last resolution inviting thorough scrutiny and investigation into certain transactions in those States.

Mr. MERRIMON. Without detaining the Senate in debating it, I move to add the following:

Provided, nevertheless, That such examination shall be confined to the inquiry whether the right of any such persons as are described in said section of said article has been in any manner or measure denied or abridged by the constitution and laws, or any of them, of said States.

Mr. EDMUNDS. I ask for the yeas and nays on that amendment.

The yeas and nays were ordered, and taken.

Mr. MERRIMON. Before the vote is announced I desire to state that my intention is that the amendment should come in at the end of the first resolution.

Mr. KERNAN, (who had not voted on the call of the roll.) With that explanation I desire to vote. I vote "yea."

Mr. COCKRELL, (who had not voted during the call of the roll.) With that explanation I vote "yea."

The result was announced—yeas 24, nays 39; as follows:

YEAS—Messrs. Bayard, Bogy, Cockrell, Cooper, Davis, Dennis, Eaton, Goldthwaite, Johnston, Jones of Florida, Kernan, McCreery, McDonald, Maxey, Merrimon, Norwood, Price, Randolph, Ransom, Stevenson, Thurman, Wallace, Whyte, and Withers—24.

NAYS—Messrs. Alcorn, Allison, Anthony, Blaine, Bontwell, Bruce, Burnside, Cameron of Wisconsin, Chaffee, Christiancy, Clayton, Conkling, Conover, Cragin, Dawes, Dorsey, Edmunds, Frelinghuysen, Hamilton, Hamlin, Harvey, Hitchcock, Howe, Ingalls, Logan, McMillan, Mitchell, Morrill, Morton, Oglesby, Paddock, Patterson, Sargent, Spencer, Teller, Wadleigh, West, Windom, and Wright—39.

ABSENT—Messrs. Barnum, Booth, Cameron of Pennsylvania, Ferry, Gordon, Jones of Nevada, Kelly, Key, Robertson, Saulsbury, Sharon, and Sherman—12.

So the amendment was rejected.

Mr. BOGY. I move to amend the resolution by striking out the preamble, all down to the word "resolved."

Mr. McDONALD. Would it be in order for me to move to strike out the first clause of the preamble?

The PRESIDING OFFICER, (Mr. ANTHONY in the chair.) Such a motion would be in order.

Mr. McDONALD. I desire, then, to offer that amendment.

The PRESIDING OFFICER. The Senator from Indiana moves to strike out the first clause of the preamble. It will be reported.

The Chief Clerk read the words proposed to be stricken out, as follows:

Whereas it is provided by the second section of the fourteenth article of the amendments to the Constitution of the United States that "Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens over twenty-one years of age in such State;"

And,"

Mr. McDONALD. I desire to make one remark. I have listened to the mover of these resolutions, and he said that it was not the intention of the resolutions to express any opinion as to the force and effect of the fourteenth amendment as to what class of cases the denial of the right to vote shall apply to. If the purpose of these resolutions is simply to ascertain what facts have transpired in the States named in the resolutions with reference to the election, outside of any legal status or question, I would be very willing to vote for them. If this portion of the preamble is stricken out, it seems to me that then the implication which has been claimed, and which it seems to me is very clear upon it, would not appear. I desire the yeas and nays upon my amendment.

The yeas and nays were ordered.

Mr. EDMUNDS. How much of the preamble does the Senator move to strike out?

Mr. McDONALD. All that which refers to the fourteenth amendment, the first clause.

Mr. EDMUNDS. I have seen a good deal in this body, but I did suppose our friends on the other side would be willing to let the Constitution stay in the preamble. I hope we shall stick to it.

The question being taken by yeas and nays, resulted—yeas 21, nays 40; as follows:

YEAS—Messrs. Bayard, Bogy, Cooper, Davis, Dennis, Goldthwaite, Johnston, Jones of Florida, Key, McCreery, McDonald, Maxey, Merrimon, Norwood, Price, Randolph, Ransom, Stevenson, Thurman, Wallace, and Withers—21.

NAYS—Messrs. Alcorn, Allison, Anthony, Blaine, Boutwell, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Chaffee, Christiancy, Clayton, Conkling, Cragin, Dawes, Dorsey, Edmunds, Ferry, Frelinghuysen, Hamilton, Hamlin, Harvey, Hitchcock, Howe, Ingalls, Jones of Nevada, Logan, McMillan, Mitchell, Morrill, Morton, Oglesby, Paddock, Patterson, Spencer, Teller, Wadleigh, West, Windom, and Wright—40.

ABSENT—Messrs. Barnum, Booth, Cockrell, Conover, Eaton, Gordon, Kelly, Kernan, Robertson, Sargent, Saulsbury, Sharon, Sherman, and Whyte—14.

So the amendment was rejected.

The PRESIDING OFFICER. A division having been ordered the question recurs upon the first resolution, upon which the yeas and nays have been ordered. The preamble will be reserved till after the resolutions have been voted on.

The question was taken by yeas and nays on the first resolution in the following words:

Resolved, That the Committee on Privileges and Elections, when appointed, be, and it hereby is, instructed to inquire and report as soon as may be—

1. Whether, in any of the elections named in said amendment in said States in the years 1875 or 1876, the right of any portion of such inhabitants and citizens to vote as aforesaid has been in any wise denied or abridged; and that said committee be authorized to extend this inquiry to the elections of 1874.
2. To what extent such denial or abridgment has been carried.
3. By what means such denial or abridgment has been accomplished.
4. By whom has such denial or abridgment been effected.
5. With what motives and for what purposes has such denial or abridgment been carried on.
6. By what authority or pretended authority has such denial or abridgment been exercised.

The result was announced—yeas 41, nays 25; as follows:

YEAS—Messrs. Allison, Anthony, Blaine, Boutwell, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Chaffee, Christiancy, Clayton, Conkling, Conover, Cragin, Dawes, Dorsey, Edmunds, Ferry, Frelinghuysen, Hamilton, Hamlin, Harvey, Hitchcock, Howe, Ingalls, Jones of Nevada, Logan, McMillan, Mitchell, Morrill, Morton, Oglesby, Paddock, Patterson, Sargent, Spencer, Teller, Wadleigh, West, Windom, and Wright—41.

NAYS—Messrs. Bayard, Bogy, Cockrell, Cooper, Davis, Dennis, Eaton, Goldthwaite, Johnston, Jones of Florida, Kernan, Key, McCreery, McDonald, Maxey, Merrimon, Norwood, Price, Randolph, Ransom, Stevenson, Thurman, Wallace, Whyte, and Withers—25.

ABSENT—Messrs. Alcorn, Barnum, Booth, Gordon, Kelly, Robertson, Saulsbury, Sharon, and Sherman—9.

So the first resolution was agreed to.

The PRESIDING OFFICER. The question recurs on the second resolution, on which the yeas and nays have been ordered.

Mr. WHYTE. The second resolution I presume is the one at the bottom of the first page:

Resolved further, That the said committee have power to employ such number of stenographers as shall be needful, and to send for persons and papers, and have leave to sit during the sessions of the Senate, and to appoint subcommittees with full power to make the inquiries aforesaid and report the same to the committee.

The PRESIDING OFFICER. The Senator is right.

Mr. EDMUNDS. Have these resolutions been separated, each one?

The PRESIDING OFFICER. Yes, sir.

Mr. EDMUNDS. I presume the Senators do not wish the yeas and nays on that resolution.

Mr. WHYTE. No; but to the next one I want to ask the attention of the Senate.

The PRESIDING OFFICER. If there be no objection the Chair will put the question on the second resolution without having the yeas and nays taken.

The second resolution was agreed to.

The question recurred upon the third resolution, as follows:

Resolved further, That said committee, in order to the more speedy performance of its duties, have power to provide for the taking of depositions, on the subjects aforesaid, before any officer authorized by the laws of the United States to take depositions, and to receive and consider the same.

Mr. WHYTE. This third resolution I do think opens the door to a great deal of misconduct on the part of bad people in the South, in any of these States where the committee is directed to make inquiry. We all recollect the testimony of Theodore Jacques, in the Louisiana case a few years ago, who openly avowed that he had manufactured, I think thirteen hundred and odd affidavits to order. The resolution which has just been adopted gives ample power to the Committee on Privileges and Elections, by itself or by its sub-committee, to take full testimony and to cross-examine witnesses who may be testifying on these subjects; but to open the door to depositions taken without notice, without cross-examination, before a United States commissioner, and sent here, will really not inform the Senate as to the actual truth of the transactions to which the deponents testify. Investigation into Louisiana affairs, as reported to the Senate, established the fact that too many affidavits were made, the affiants really not knowing what they swore to. I hope, therefore, that this resolution will not pass.

Mr. EDMUNDS. I am sorry the Senator objects to this resolution. I think myself that the committee will have power to receive depositions without it, but it does not require them to receive depositions. It says they shall have the power to provide for the taking of depositions. I think this authority may be safely left to the committee to get evidence in such manner as courts of justice receive it, at any rate.

Mr. THURMAN. Heretofore where the amount of duty devolved upon a committee has been such as to make it impossible for the whole committee to act together in the discharge of that duty, it has been customary to have subcommittees especially for the purpose of taking testimony; but if I understand the scope of this resolution it is to authorize this committee to say that A B or C D or E F may proceed to take depositions. There is no provision that anybody shall be notified. The whole proceeding will be essentially *ex parte;* and the matter is not helped one particle by calling them depositions instead of affidavits. What then will be the result? We are told that in Louisiana the mills for the manufacture of depositions on both sides have been running with great industry now for more than a month, and I see it stated that gentlemen are coming on here to Washington on one side and the other, to use the language I saw in a newspaper, each of them with two bushels of affidavits to be laid before Congress, *ex parte* of course. Here is a proposition, as I understand it, to clothe the committee with power to name some person to take depositions. How can that person take depositions, for instance, under the sanctions necessary to the ascertainment of the truth? Suppose, for instance, that a witness shall refuse to answer, how is he to be punished for contempt: how is he to be compelled to answer? Besides, what is more than that, does not every one see that these will all be *ex parte* depositions, or affidavits rather, got up, so to speak, in the dark, upon which no court in the world would determine a case of five shillings? That will certainly be the result of this thing, and nothing else. Your Committee on Privileges and Elections, containing some of the leading members of the Senate, whose duties require them to be here, will stay here, while a set of affidavit-takers, and I fear affidavit-makers, will perambulate these States to accumulate this kind of stuff which will be called testimony. My own impression about it is that, instead of throwing light upon the subject, it will only darken instead of enlightening; that they will only get up a mass of stuff that will be called testimony, but that would not be received in the lowest court in the United States, or in any civilized country. If you had the presence of one of the members of the committee, then his high character would be some security that the investigation would be honest, that the words of the witness would be taken down correctly; that the truth would be got out of him so far as it was possible for examination to get it; that if he was swearing falsely his falsehood would be exposed as far as cross-examination would expose it. You would have some security for that in the character of the member of your committee, a Senator of the United States; but to say that Tom, Dick, and Harry may go about on a mission to hunt up sensational stories and reduce them into the form of depositions or affidavits and pile them in here as a basis for congressional action, seems to me to be one of the most unwise things that could possibly be conceived.

Mr. EDMUNDS. Do Senators wish the yeas and nays on this little matter of taking testimony?

Mr. THURMAN. I did not demand the yeas and nays. I do not know who did.

Mr. EDMUNDS. The yeas and nays were demanded on the whole

proposition; but the resolutions were divided. That is how it happens.

Mr. THURMAN. It is wholly indifferent to me whether the yeas and nays are taken or not. I know very well if they are taken the resolution will be adopted. I see that the whole thing was foreordained, perhaps from the foundation of the world.

Mr. EDMUNDS. Yes, Mr. President, the Senator is right; it was foreordained before the foundation of the world, as truth, and justice, and the means of getting at it, in spite of all opposition, factions or otherwise, will always live.

Mr. THURMAN. Yes, because the Senator from Vermont has a firm conviction that orthodoxy is his doxy and heterodoxy is everybody else's doxy.

Mr. EDMUNDS. It is. I am right about that.

The PRESIDING OFFICER. The call for the yeas and nays will be regarded as withdrawn by general consent.

The third resolution was agreed to.

The question recurred on the fourth and last resolution, as follows:

Resolved further, That the said committee be, and is hereby, instructed to inquire into the eligibility to office under the Constitution of the United States of any persons alleged to have been ineligible on the 7th day of November last, or to be ineligible as electors of President and Vice-President of the United States, to whom certificates of election have been or shall be issued by the executive authority of any State as such electors; and whether the appointment of electors or those claiming to be such in any of the States has been made, declared, or returned, either by force, fraud, or other means, otherwise than in conformity with the Constitution and laws of the United States and the laws of the respective States; and whether any appointment or action of any such elector has been in any wise unconstitutionally or unlawfully interfered with; and to inquire and report whether Congress, or either House thereof, has any constitutional power, and, if so, what, and the extent thereof, in respect of the appointment of or action of electors of President and Vice-President of the United States, or over returns, or certificates of votes of such electors; and that said committee have power to send for persons and papers, and to employ a stenographer, and have leave to sit during the session of the Senate.

Mr. WHYTE. The first resolution and its tender, the two other resolutions, having been adopted, relating to the enforcement of the fourteenth amendment, and this last resolution having reference to the presidential election, I offer this as a substitute for the last resolution:

Resolved, That a select committee of nine members of the Senate be appointed to investigate the recent elections in the States of South Carolina, Florida, and Louisiana, and the action of the returning boards in the said States in reference thereto, and to report all the facts essential to an honest return of the votes received by the electors for the said States for President and Vice-President of the United States; and whether the said States are entitled to be considered in the count of the electoral votes of the States; and, for the speedy execution of this purpose, the said committee shall have power to send for persons and papers, to administer oaths, to take testimony, and at their discretion to detail subcommittees with like authority to send for persons and papers, to administer oaths and take testimony; and said committee and subcommittees are empowered to employ stenographers, clerks, and messengers, and shall be attended by a deputy sergeant-at-arms. That the said committee be, and hereby is, instructed to inquire into the eligibility to office under the Constitution of the United States of any persons alleged to have been ineligible on the 7th day of November last, or to be ineligible as electors of President and Vice President of the United States, to whom certificates of election have been or shall be issued by the executive authority of any State as such electors; and whether the appointment of electors, or those claiming to be such in any of the States, has been made either by force, fraud, or other means other than in conformity to the Constitution and laws of the United States and the laws of the respective States; and whether any such appointment or action of any such elector has been in any wise unconstitutionally or unlawfully interfered with; and that said committee shall have leave to report by bill or otherwise at any time.

Mr. EDMUNDS. Mr. President, the substance of what the honorable Senator from Maryland has proposed, although apparently not in accordance with the views he expressed last year, is the substance of the last resolution which I have had the honor to offer. The only difference in substance, as my resolution covers all three of these States in every possible aspect of the case—fraud, force, violence, or any other means in respect of the appointment of electors or their behavior—is that if the amendment be adopted it constitutes a special committee, of which, by the usage of the Senate, my honorable friend would be the proper chairman, (and we certainly could not confide the duty to any more valuable member,) instead of confiding it to the Committee on Privileges and Elections. I should hope, therefore, that my resolution would not be interfered with, as it covers the whole subject, and we should leave the proper committee, instead of this special committee, to perform the duty.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Maryland as a substitute for the last resolution.

Mr. CONKLING. I should like to understand this before I vote. Does the Senator from Maryland move to strike out any part of the resolution?

The PRESIDING OFFICER. He moves this amendment as a substitute for the last resolution.

Mr. CONKLING. So I heard; but as the Secretary read, I thought that succeeding the new matter introduced by the amendment there followed what seemed to be literally the present resolution. I should like to know how that is? The Senator from Maryland can inform me no doubt. Does he strike out any portion of the last resolution, or does he merely in offering his substitute introduce certain matter of his own and also include the whole of the present resolution?

Mr. WHYTE. I amend a part of the present resolution and add to it also.

Mr. CONKLING. So that the motion is both to strike out and to add, and it proposes a separate committee?

Mr. WHYTE. Yes, sir; for the reason, the Senator from New York will allow me to say, that the duties imposed upon the Committee on Privileges and Elections by the first resolution will certainly occupy all their time for the next two months.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Maryland.

The amendment was rejected.

The PRESIDING OFFICER. The question recurs on the last resolution. Is the call for the yeas and nays insisted upon on the last resolution?

Mr. EDMUNDS. Yes, sir.

The PRESIDING OFFICER. The yeas and nays are ordered, and the Secretary will call the roll.

The yeas and nays were taken, and resulted—yeas 49, nays 11; as follows:

YEAS—Messrs. Alcorn, Allison, Anthony, Blaine, Booth, Boutwell, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Chaffee, Christiancy, Clayton, Cockrell, Conkling, Conover, Cragin, Dawes, Dorsey, Edmunds, Ferry, Frelinghuysen, Hamilton, Hamlin, Harvey, Hitchcock, Howe, Ingalls, Jones of Nevada, Kernan, Logan, McDonald, McMillan, Mitchell, Morrill, Morton, Oglesby, Paddock, Patterson, Randolph, Ransom, Sargent, Spencer, Teller, Wadleigh, Wallace, West, Windom, and Wright—49.

NAYS—Messrs. Eaton, Goldthwaite, Johnston, Key, McCreery, Maxey, Merrimon, Norwood, Stevenson, Whyte, and Withers—11.

ABSENT—Messrs. Barnum, Bayard, Bogy, Cooper, Davis, Dennis, Gordon, Jones of Florida, Kelly, Price, Robertson, Saulsbury, Sharon, Sherman, and Thurman—15.

So the resolution was agreed to.

The PRESIDING OFFICER. The question recurs on the preamble.

Mr. EDMUNDS. I presume we do not need the yeas and nays on that.

The PRESIDING OFFICER. Is the call for the yeas and nays insisted upon on the preamble? The Chair hears no objection to the call being withdrawn. The question is on the preamble.

The preamble was agreed to.

COUNTING OF ELECTORAL VOTES.

Mr. EDMUNDS. I wish to give notice that to-morrow, if I can get the floor, I shall move to take up Senate resolution No. 10, being a joint resolution proposing an amendment to the Constitution of the United States respecting the method of counting and ascertaining the result and deciding upon the electoral votes of the States for President and Vice-President of the United States, that was reported from the Committee on the Judiciary on the 12th of May last, and I give notice of an amendment which I shall propose to offer, which I ask may be printed, which makes it, if adopted in season, applicable to the present election.

The PRESIDING OFFICER. The order to print will be made, if there be no objection.

PRESIDENTIAL ELECTORS.

Mr. MERRIMON. I ask unanimous consent, without previous notice, to introduce a bill and to accompany its introduction with a word of explanation. I believe that the election of electors of President and Vice-President is a State election, and experience has proven that the several States ought to provide some means for contesting such elections. The time which intervenes between the election of electors and the day when the electoral colleges meet is so short that no regular contest can be made. The purpose of my bill is to so alter the law that the election shall take place on the first Tuesday of October and the electoral college meet on the first Wednesday in January, so as to give reasonable time to make contest if one shall be deemed proper in any State.

I move that the bill be printed and laid on the table for the present.

By unanimous consent, leave was granted to introduce a bill (S. No. 1049) to alter the time prescribed for holding the elections for electors for President and Vice-President and casting the vote in the electoral college for President and Vice-President; which was read twice by its title and ordered to lie on the table and be printed.

Mr. WRIGHT. I move that the Senate adjourn.

The motion was agreed to; and (at four o'clock and twenty-two minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

TUESDAY, *December* 5, 1876.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of yesterday was read.

The SPEAKER. If there be no objection, the Journal as read will be regarded as approved by the House.

ORDER OF BUSINESS.

The SPEAKER. The morning hour will now begin at half past twelve o'clock.

Mr. HAMILTON, of Indiana. I ask unanimous consent to submit a resolution to which I am sure there will be no objection.

The SPEAKER. The Chair will recognize gentlemen to offer resolutions which are not objected to.

CORRECTION OF THE JOURNAL.

Mr. PLAISTED. I rise to a question of privilege.

The SPEAKER. The gentleman will state his question of privilege.

Mr. PLAISTED. On the passage of the resolution introduced by the gentleman from New York [Mr. HEWITT] yesterday, I am reported in the RECORD as not voting. I voted in the negative, and my recollection of the matter is very distinct. The Journal may be, and I presume is, correct, as I heard my name read among those voting in the negative. I desire that the error be corrected.

Mr. KASSON. I desire to call attention to an error in the Journal as read touching the matter of an appeal from the decision of the Chair yesterday.

The SPEAKER. The gentleman from Maine [Mr. PLAISTED] is not recorded as voting. The roll was carefully called and carefully read over, and the clerks inform the Chair that the Journal is correct in that respect.

Mr. BANKS. I move that the Journal be corrected so that the vote of the gentleman from Maine may be recorded.

Mr. HOLMAN. There can be no correction of the Journal at this period which will change the result of the vote as announced, except by unanimous consent.

Mr. BANKS. Certainly there can be. The Journal cannot be recognized by the House without a vote of approval, if there is an error in it; I do not say there is; but, if that be conceded, then we have the right to correct the Journal in that regard; there can be no doubt about that.

Mr. HOLMAN. As to yea and nay votes the Journal is made up at the time, and is read in presence of the House for the purpose of correcting errors. For that reason, if the change of a vote changes the result I think that over an objection a change in the Journal has never been allowed in the House.

Mr. BANKS. It makes no difference whether the result is changed or not, if a member voted upon that question. The only authority for raising the question is the Journal as it is read this day; and if there be an error in it, it is the right of the House to correct it; and if the correction changes the result, then the question will again be submitted to the House; the Speaker can give his vote and decide it. I shall move to amend the Journal, if the fact be as stated by the honorable gentleman from Maine.

Mr SPRINGER. I rise to a question of order: that a motion to amend the record is not now in order, the Journal having been approved.

Mr. BANKS. The Journal has not been approved.

Mr. SPRINGER. I beg the gentleman's pardon; the Journal was approved, and the Speaker announced the commencement of the morning hour. Thereupon the gentleman from Indiana [Mr. HAMILTON] rose to introduce a resolution and the gentleman from Maine rose to a question of privilege. He stated that question, but he did not make a motion to amend the Journal. I further desire to state that a motion to amend the record——

Mr. PLAISTED. I rose to my feet the moment the journal clerk got through reading.

The SPEAKER. The Chair would take no advantage of the gentleman from Maine in that regard, even if he had not risen at that moment.

Mr. PLAISTED. I wish to state that my recollection in this matter is very distinct, on account of a remark made to me by one of the members on the outer row of seats when I voted. He said to me that perhaps the clerks did not get the vote or did not hear me. In consequence of that remark, I listened very attentively, and my name was read among those who voted in the negative.

Mr. HOLMAN. Mr. Speaker, it is very clear that if the record presents the course of procedure in the House on yesterday, no motion to correct it, no motion to amend the record can be entertained. The motion is in effect a motion to amend the record. I ask to have read in connection with what I wish to say a single passage——

Mr. PLAISTED. I do not intend to yield the floor. I claim my right to have the motion passed upon. I ask that the record contained in the Journal of the House be corrected.

The SPEAKER. The gentleman will recognize that this is a question of fact, the clerks asserting that he did not vote; and, the usual forms having been proceeded with and the record showing that he did not vote, the gentleman of course is not in a position to press and insist upon a motion.

Mr. PLAISTED. I will state, Mr. Speaker, that I was standing in the outer row, near the gentleman from New Hampshire [Mr. BLAIR] or the gentleman from Wisconsin, [Mr. LYNDE;] and one of those gentlemen, when I voted, made the remark to me that perhaps the clerks did not hear me, although I spoke very loudly. I will ask those gentlemen to state their recollection on this point.

Mr. BLAIR. I heard the gentleman from Maine [Mr. PLAISTED] distinctly vote in the negative upon this question. He stood in the rear of the gentleman from Wisconsin, [Mr. LYNDE.] I was in my seat. When the Clerk called the name of the gentleman from Maine he did not respond promptly; just as the Clerk called the name of the next gentleman on the roll, the gentleman from Maine made his response. He made it very loudly and distinctly; but, thinking that the attention of the clerks might have been called to the next name, I said to him. "Perhaps, Mr. Plaisted, you were not heard." I remember very distinctly that he voted; and he voted in a loud and clear voice. Moreover, let me say that the gentleman did vote before the next response was given.

The SPEAKER. There is an admission on all sides that there is no mistake in the record. The gentleman from Maine himself intimates that he may not have been heard; and now the gentleman from Massachusetts [Mr. BANKS] makes a motion which he will be kind enough to indicate.

Mr. PLAISTED. I wish to state, and have it understood distinctly, that in consequence of the remark made to me by the gentleman from New Hampshire [Mr. BLAIR] I came down here to my seat and listened with close attention to the reading of the names; and my name was read among those voting in the negative.

Mr. BANKS. I move that the Journal be corrected by the addition of the name of the honorable gentleman from Maine who voted upon the question as he has stated. Mr. Speaker, I desire to speak of one fact which I think is of importance to the Chair in deciding this question. I do not think that there is a precedent in the practice of this House (there may have been one but I do not think there is) in which when a member of the House has risen in his place and stated that he did an act in the presence of the House which has been overlooked by the Speaker or neglected by the Clerk from not hearing it, the member's word has not been taken as sufficient verification of the fact. I doubt whether in the history of this House there is any instance where in a case of this kind the fact stated by the member has been disputed by the Chair or by the House.

Mr. KASSON. The gentleman from Massachusetts will allow me in a single word to refer the Speaker to page 126 of Barclay's Digest, which reads as follows:

When a member's vote is *incorrectly* recorded, it is his right, on the next day, while the Journal is before the House for its approval, to have the Journal corrected accordingly.—*Journal*, 2, 30, page 211. But it is not in order to change a *correct record* of a vote given under a *misapprehension*.—*Journal*, 1, 31, page 42-6.

It will be observed by the Speaker, therefore, that this is not a claim to correct a vote given under misapprehension, but a claim to correct a record that the truth may appear. Therefore, under what I have read, and the rule as laid down in Barclay's Digest, each member has the absolute right to have the record show verity—that the vote as cast shall be shown in the Journal.

Mr. HOLMAN. It is manifest that according to the uniform practice of the House a motion cannot be favorably entertained changing the record of a vote when it would change the result; for the reason that it is within the power of each individual member to ascertain whether his vote is properly recorded or not. There is no power connected with this House so absolute as that which each individual member possesses to see that his own individual vote is properly recorded. If he fails to resort to these safeguards, to see that his vote is properly recorded, he cannot afterward come in and ask the record be changed, when that change of record will change the result of the action of the House except by unanimous consent.

Mr. KASSON. Allow me to say——

Mr. HOLMAN. The gentleman will excuse me until I have stated my point. This change in the Journal cannot now be made, over an objection, at this time, because the gentleman from Maine proposes to correct a record over which he had absolute control at the time.

Mr. FOSTER. How?

Mr. HOLMAN. He had absolute control at the time to see that his vote was correctly recorded. It is a power with which he was invested for two purposes: first, for his own protection; and secondly, for the public interest, that the action on a measure which transpired yesterday, and which went partially into effect, shall not be changed on a subsequent day in the correction of the Journal. I not only assume that ground, but say further that under the rules of the House any gentleman desiring to correct the record should do so instantly upon the record itself being read.

Mr. PLAISTED. I did so.

Mr. HOLMAN. The gentleman did not do so immediately. The roll-call was read over, and the vote announced, and the name not being recorded it was within his power to have the matter settled at once. There has been intervening business since the announcement of the vote. And, sir, the gentleman from Massachusetts will not say that the gentleman from Maine resorted to every proper means within his power to see that his name was properly recorded yesterday.

Mr. FOSTER. What more could he have done?

Mr. HOLMAN. He could have ascertained, if he had doubts about the fact of his vote being heard or recorded, and it seems the gentleman from Maine did have some doubts whether his name was heard, whether it was in fact recorded. He had the right to rise in his seat, as a question of the highest privilege, to ascertain whether his name was recorded. But the gentleman did not do so yesterday when this vote was taken.

There is no matter so completely, as I must repeat again, within the control of the House, and of each individual member of the House, as the making up properly of the record of the votes. For that reason it has been uniformly held that the result of a vote must be taken as final when the subject comes up for consideration on a subsequent day and the error in the Journal is not admitted.

Mr. KASSON. Let me ask the gentleman from Indiana a question.

Mr. HOLMAN. It must be taken as final when the question is raised on a subsequent day, long after the vote has been announced,

on motion to correct the roll-call unless the fact of the error is admitted. Here the clerks insist that the Journal is correct.

Mr. KASSON. I think the gentleman forgets that the rule he speaks of has been applied in cases where the member asks the privilege of recording a vote which he did not cast, or of correcting his own vote given under misapprehension. The rule he refers to has been applied in those cases, but it has never within my knowledge been applied where it concerns a change of the Journal. Where, as I have read from Barclay's Digest, it is the member's absolute right——

Mr. HOLMAN. The reason is the same in both instances. First, to secure the individual right of members; and secondly, to prevent public injury by a change of the record in the Journal, after the vote had been announced, and the order of the House has been partially executed. Absolute power is placed in the hands of each member at the time, to see that his vote is properly recorded.

I wish to ask the gentleman from Iowa, whether, in his experience in this House, I am not correct in saying the House has never allowed a change to be made in the record of its votes on a subsequent day, when the result of a vote would be affected by that change.

Mr. KASSON. I can only say I have never known it extend much beyond the two instances I have named, where permission was asked to record a vote which was not given; and, secondly, where the member asked to correct his own vote given under misapprehension. It is the distinct case of a correction of the record to make the record tell the truth, and in that respect the gentleman should see that it puts us all at the mercy of an inaccurate clerk, unless we have that right. Even a law may be adopted without power to correct it if the clerk shall wish so to record votes as to pass the law. There cannot be safety unless the record is made to show the verity.

Mr. HOLMAN. I have never known such an instance myself of the Journal being changed unless the error was admitted. If the fact of the error is admitted by the clerks and the members of the House of course the correction can be made, and it is often done. On the contrary, in my experience there have been instances, and I think the gentleman from Massachusetts [Mr. BANKS] can call to mind instances of the same kind, where such motions have not been entertained on the ground I have mentioned, that the record being completely under the control of each member it must be conclusive and final.

Mr. BANKS. I ask a moment to respond to the gentleman from Indiana.

The SPEAKER. Does the gentleman from Indiana yield to the gentleman from Massachusetts?

Mr. BANKS. The gentleman has made an appeal to me, and I want to respond.

Mr. HOLMAN. I will take it back.

Mr. BANKS. It cannot be taken back. I will say, in answer to the gentleman's suggestion, that I have never known a proposition to amend the Journal in a material point of fact where it has been refused; but I have known repeatedly that where members of the House have risen to make a statement on their word of honor as members of the House that there was a mistake in the Journal, it has been corrected.

Mr. HOLMAN. When it changed the result?

Mr. BANKS. Yes; when it changed the result.

Mr. HOLMAN. I will be glad if the gentleman will point to a precedent.

Mr. BANKS. I will point to a principle which is better than an instance. I beg the attention of the gentleman from Indiana. What is the advantage of the right to correct the Journal if the correction does not change any result? What is the advantage of a right of the House to correct the Journal where it produces no material change in point of fact? How does the gentleman from Indiana say I can move to correct the Journal where it is immaterial and no change is made, but where it changes the result I have not the right? I am sure the House will not support that position.

Let me say another thing. This does not change any result. No, sir; no result is changed by this motion which I submit. The result of the vote was that there was one more in the negative than the record exhibits. Therefore, there was a mistake in the record. There is no mistake in the result unless the Chair or the House shall say that the gentleman from Maine, a member of the House, has stated what is false with regard to his vote.

Mr. HOLMAN. Mr. Speaker——

Mr. BANKS. I beg the gentleman's pardon for one moment longer. He has said a member is bound to watch and take all the precautions, and avail himself of all the safe-guards in regard to securing the accuracy of the record. That is not correct. That is not a correct statement of the right or duty of a member of the House. The clerks of the House, the sworn officers of the House, are required to keep a correct record of the proceedings; and if every member of the House is obliged to give his time to the performance of their duty and to see they do perform it, he cannot attend to the business of the House. You know, Mr. Speaker, that no member has the right to go to the Clerk's desk to ascertain if his vote is correctly recorded or not. The gentleman from Maine has done all a member can do in regard to that matter. The gentleman from Maine stands up here and says to the House that his attention was called to the record of his vote. He watched the reading of the record. He heard his name read in the negative. Yes, sir, he watched the reading of the record and heard his name in the negative. What more can you ask? When the Journal is read next day his name does not appear on the record in the negative. What more can you want to justify the proposition to amend the Journal?

Now let me say one other thing, and I will leave this question. I ask pardon of the House for troubling it so long, and I will say but one word more, and will then leave the question. Sir, the proposition to which this vote refers is one of a solemn character. It is to send a commission from the House to investigate proceedings in a southern State with regard to the election of officers of the United States. It calls for the appointment of officers, deputy sergeants-at-arms, stenographers, clerks, messengers. It calls for the organization of an almost completely independent commission. It requires money to be paid from the Treasury of the United States. There is no authority for that act, except what is placed upon the Journal. At this hour there is no other authority for it.

Nobody can go back to the vote of yesterday; no man can recall the events of yesterday, because of those events there is no record except that which lies upon your desk. Upon that record there is a mistake; of that there can be no doubt. I do not censure the clerks of the House at all; I am willing to concede that it has been a matter of inadvertence. Possibly in the confusion of the House, or perhaps, because of the withdrawing the attention of the clerks by some member for a moment, the mistake may have been made.

Mr. CONGER. I asked that the vote might be read again.

Mr. BANKS. Certainly. Half a dozen gentlemen, one after another, rose at the close and declared that their votes had been recorded, and their names read, on both sides of the question. My friend from Michigan [Mr. CONGER] asked that the list might be read again, and as the record shows, the majority of the House refused to have it read again.

Mr. HOLMAN. I trust that the gentleman from Massachusetts [Mr. BANKS] will excuse me.

Mr. BANKS. I will. I thank the gentleman for the opportunity of saying so much; the privilege of speaking is a privilege which I appreciate very highly indeed.

Mr. HOLMAN. I was in hopes that the gentleman from Massachusetts [Mr. BANKS] would answer the question which I propounded to him. It was a direct inquiry whether, in his experience as a member of the House, he had ever known a motion like this to be entertained favorably, where it would change the result of a given vote, and the fact of the error was not admitted by the clerks and the House. And the gentleman avails himself, as he always does, of his admirable eloquence to obscure the fact. The gentleman does not point to an instance where, after the usual safeguards have been resorted to which every member has under his control, and a mistake has been made in the record—the gentleman cannot point to an instance where a member was permitted to correct that record and change the result unless the fact was conceded by those having charge of the Journal. I think I am entirely safe in saying that no such precedent can be found. The safeguards are innumerable; they were mostly resorted to on yesterday by gentlemen anxious to avoid a mistake.

Mr. CONGER. Allow me a question.

Mr. HOLMAN. In a moment. The roll was called very carefully. The record of the vote is required to be read and is to be approved at the moment, *eo instanti*. There is to be no delay about it; we do not wait until the next day, because the result of that vote may be carried into effect before the next day shall come. That part of the record must be made up at the time.

If any gentleman entertains some apprehension, as the gentleman from Maine [Mr. PLAISTED] seems to have done, and as some other gentleman did, it is his right against every other member and all other members of the House to rise in his seat and have the fact ascertained for himself individually, in the presence of the whole House, whether his name was properly recorded or not. What is that for? It is because the record of that vote must be made out at the moment. It is upon this solid foundation that the rule rests, that there shall be no change the succeeding day in the vote unless by unanimous consent, if it shall affect the record and if it shall change the result. And that is for a manifest public reason, for a reason higher than the interest of any individual member; it is because the vote may have been partly executed, and grave evil might result from a change in the vote the next day.

Mr. SEELYE. Will the gentleman from Indiana [Mr. HOLMAN] yield to me for a moment?

Mr. HOLMAN. For a question.

Mr. COX. I rise to a point of order.

Mr. SEELYE. I am surprised at this discussion.

Mr. COX. I rise to a point of order.

The SPEAKER. The gentleman will state it.

Mr. COX. If the Speaker desires to hear the gentleman from Massachusetts [Mr. SEELYE] I will defer my point of order.

Mr. SEELYE. I have but a word to say, if the gentleman will allow me. I am surprised at this discussion. As the Journal of yesterday is read this morning, a member of this House rises immediately upon its conclusion, as I can testify, and demands the attention of the Speaker, but fails to secure it, and asks for a correction of his record. I have never known such a request fail of being granted for a moment. There is a rule of the House requiring that it should be done. If there were no rule of the House applicable to the question, there is a common sentiment of honor and justice requiring it to be done.

Now, I confess to a kind of indignation that anything further than the simple word of the gentleman from Maine [Mr. PLAISTED] is required as evidence of the fact—evidence of the fact that he voted, and evidence of the fact that he distinctly heard his name read in the negative. I voted in the affirmative on this question. I desired that this committee should be appointed. But I will not, by any action of mine, allow that even righteous ends shall be gained by unrighteous means. It is the clear right of a member of this House to have the Journal corrected as he claims that it should be. And I am surprised that any member of this House should rise in his seat and object to it.

The SPEAKER. The Chair will now hear the point of order of the gentleman from New York, [Mr. COX.]

Mr. HOLMAN. I hope the gentleman will allow me just one word and then I shall conclude.

The gentleman from Massachusetts [Mr. SEELYE] argues this as if it were an original question which had never been before this House heretofore. I am arguing it from the stand-point of public law—for no one questions the perfect integrity of the gentleman from Maine—the law of this House founded on public reasons. If the gentleman had cited a precedent——

Mr. SEELYE. As the gentleman refers to "public law," I hope he will allow me to call his attention to page 1002 of Cushing's Law and Practice of Legislative Assemblies, in which it is said—

It is quite common to correct mistakes in a count, and, if made necessary by such correction, to alter the determination of the House.

Mr. KASSON. And I beg to offer the gentleman the precedent which he has desired. It is a precedent in this House, and, if he wishes, it can be read.

Mr. HOLMAN. The proposition read by the gentleman from Massachusetts is not necessarily applicable to the question now before the House, but if the gentleman from Iowa [Mr. KASSON] has a precedent of actual adjudication in this House, of course I should be glad to hear it.

Mr. HOSKINS. I have a precedent on this very question. It is contained in the record of this House, which I hold in my hand.

Mr. KASSON. I have such a precedent in the House Journal of the second session of the Thirtieth Congress, page 211, proceedings of Monday, January 8, 1849, where a bill was announced on Saturday by the Speaker to have been passed. On Monday corrections were made which changed the result and defeated the bill. In connection with this case——

Mr. HOLMAN. Will the gentleman read the record?

Mr. KASSON. I will send it to the Clerk, only desiring first to call the attention of the House to the points involved, that members may see the pertinency of the precedent. Here was the precise point raised by the gentleman from Maine, in addition to other points:

Mr. Farrelly rose and called for a further correction of the Journal, stating that he voted in the negative on Saturday last, and his vote appeared not to have been recorded. The Speaker decided that it was the right of the gentleman from Pennsylvania to have his vote recorded, if he voted on Saturday last; and the correction was accordingly made.

The vote was then finally announced—yeas 98, nays 90—

Thus defeating a bill which on the previous Saturday was declared to have been passed by a vote of 91 yeas to 89 nays. In order that all gentlemen may understand the points of this case, I ask the Clerk to read the whole record.

Mr. HOLMAN. I am still upon perfectly safe grounnd in my position. I said that there was no precedent of public law in this House for the case now before us where there was a controversy as to the fact.

Mr. KASSON. Will the gentleman allow this record to be read?

Mr. HOLMAN. By unanimous consent that might be done. I understand that the record is plain enough.

Mr. KASSON. Will the gentleman allow the whole record to be read? I think the Speaker would desire it himself.

Mr. HOLMAN. Almost anything may be done in this House by unanimous consent, if not in conflict with the Constitution of the United States.

Mr. KASSON. That was not a case of unanimous consent.

Mr. HOLMAN. If there is any fact showing that the motion was objected to, I should like to hear that read.

Mr. KASSON. I ask the Clerk to read the record as I have marked it in the Journal. I think the Speaker himself will be glad to hear it read, because the point is very fully and distinctly made.

The Clerk read as follows:

MONDAY, *January* 8, 1849.

As soon as the Journal of Saturday had been read,

The Speaker said: The House will remember that the vote on the passage of the bill for the relief of the representatives of Antonio Pacheco was originally made up by the Clerk—ayes 90, noes 89; and this record having been handed to the Speaker and by him announced to the House, the Speaker proceeded to make some remarks upon the bill preparatory to giving the vote contemplated in such cases by the rules of the House. While in the act of explanation the Speaker was interrupted by the Clerk, who stated that on a more careful count the vote was found to be—ayes 91, noes 89. The intervention of the Speaker was therefore no longer allowable; and the bill was declared to have passed the House.

The Chair takes the earliest opportunity to state to the House this morning that, upon a re-examination of the yeas and nays, the Clerk has ascertained that an error existed in the announcement of the vote on Saturday. The vote actually stood—ayes 89, noes 89. The correction will now accordingly be made on the Journal; and a case is immediately presented, agreeably to the twelfth rule of the House, for the interposition of the Speaker's vote.

At this stage of the proceedings the Speaker was interrupted by Mr. Farrelly, who rose and called for a further correction of the Journal, stating that he voted in the negative on Saturday last, and his vote appeared not to have been recorded.

The Speaker decided that it was the right of the gentleman from Pennsylvania to have his vote recorded if he voted on Saturday last; and the correction was accordingly made.

The vote was then finally announced—yeas 89, nays 90.

Mr. HOLMAN. Mr. Speaker, this case has no possible parallel to the one pending before the House, and no fair gentleman will say so. There the Speaker called attention himself to a mistake in the record. The Clerk also called attention to the mistake. It was a conceded mistake, conceded by all the members of the House, and by unanimous consent the correction was made.

Mr. HOSKINS. Will the gentleman allow me to call his attention to the fact that that is precisely this case?

Mr. HOLMAN. When the gentleman says that this is parallel to that case——

Mr. HOSKINS. Precisely.

Mr. HOLMAN. Any one saying that that is a parallel case does injustice to language.

Mr. KASSON. The gentleman does not desire to have the House misunderstand the fact. Independent of the proceeding of the Speaker, independent of the declarations of the Clerk, there was a second change in the result, all the efforts being to the verity of the Journal. Mr. Farrelly, like the gentleman from Maine, got up on Monday following the Saturday and said he was incorrectly recorded. The Speaker decided as the personal right of the member that his vote should be recorded, and no member more than the gentleman from Indiana, who, if he had been misrepresented on the record, I apprehend, would see the propriety and importance of verity being shown by the Journal. Whatever consequences follow, the Journal should show verity. Every member has the right to verity; no more the Speaker than the member, and that is the whole question.

In this case shall the Journal show verity? Has any individual member the right to make the Journal show verity?

Mr. HOLMAN. Mr. Speaker, the case is different in every respect, and in nothing more than this: There the Speaker, who had the control of the record of the House himself, corrected the record and the Clerk gave the necessary information upon which that correction was made. Here the Speaker is told by the clerks keeping this public record, sworn officers of the House, that the record is correct. There is the difference. I am not questioning or doubting the absolute truthfulness of the gentleman from Maine, but the question of fact has been raised by the record.

Mr. HOSKINS. Mr. Speaker, I am surprised that gentlemen on the other side of the House should stand up in this branch of the American Congress and deny to any citizen who will assert in his place as a Representative that he voted upon this resolution, and his vote is not recorded, the right to be properly recorded in the Journal. In a legislative experience of some length I have never yet seen an exhibition of this character. It is not only a violation of the individual right as a Representative, but a violation of all the rules of parliamentary practice that can be found recorded within the lids of any book.

Now, the gentleman from Indiana says the case just stated is not a parallel one. It is precisely the same case. Here is a gentleman declaring, when the Journal is read the next morning after the transaction, that he voted in the negative, and that his vote is not recorded. Speaker Winthrop, in the Thirtieth Congress, directed without debate, as he was perfectly correct and right in doing, that the member had the right to have his vote recorded.

Let me refer to that case in the second session of the Thirtieth Congress, Speaker Winthrop being in the chair: "At this stage of the proceedings," which was the succeeding morning, "the Speaker of the House was interrupted by Mr. Farrelly, who rose to call attention to a further correction of the Journal." A correction of the Journal had already been made on that very morning. "He said that he had voted in the negative on Saturday last, and his vote appeared not to have been recorded." It is precisely this case. Here is a gentleman claiming that the first discovery he made of the omission to record his vote given yesterday was on the reading of the Journal to-day, that while he had voted he had not been recorded in the Journal, and asking the correction to be made. It is precisely the case of Mr. Farrelly in the Thirtieth Congress.

In that case of Mr. Farrelly it is stated, "his vote appeared not to have been recorded." The Speaker decided "that it was the right of the gentleman from Pennsylvania to have his vote recorded after the vote of Saturday last, and the correction was accordingly made." And I venture to say again, you cannot find anywhere a precedent where a man rose in his place and said he had voted, the right was denied to him to have the correction made.

The SPEAKER. The Chair desires to say to the House that his judgment is very clear on this point.

Mr. BANKS. I desire to have a paragraph read.

The SPEAKER. Perhaps after you hear what the Chair has to say you will find it unnecessary.

The Chair desires to say, that his judgment is very clear on this point. The object of a journal is to have a correct record of the proceedings of the House. In cases of disputed fact it is not within his power or province to decide, and therefore he holds the motion of the gentleman from Massachusetts, to correct the Journal, is in order, and so rules.

In this connection, the Chair will have read the report of the proceedings of this morning, which will show that the gentleman from Maine [Mr. PLAISTED] was late in rising to correct the Journal, as it had been already approved and the House had passed to other matters. Retracing the steps already taken, the Chair will allow the gentleman from Maine to make the correction of his vote in the Journal.

The Clerk read as follows:

HOUSE OF REPRESENTATIVES.

TUESDAY, *December* 5, 1876.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. Townsend.

The Journal of yesterday was read.

The SPEAKER. If there be no objection, the Journal as read will be regarded as approved by the House.

ORDER OF BUSINESS.

The SPEAKER. The morning hour will now begin at half past twelve o'clock.

Mr. HAMILTON, of Indiana. I ask unanimous consent to submit a resolution to which I am sure there will be no objection.

The SPEAKER. The Chair will recognize gentlemen to offer resolutions which are not objected to.

CORRECTION OF THE JOURNAL.

Mr. PLAISTED. I rise to a question of privilege.

The SPEAKER. The gentleman will state his question of privilege.

Mr. PLAISTED. On the passage of the resolution introduced by the gentleman from New York [Mr. HEWITT] yesterday, I am reported in the RECORD as not voting. I voted in the negative, and my recollection of the matter is very distinct.

The SPEAKER. The House will remember that the Chair then immediately stated that he would take no advantage of the delay in the recognition of the gentleman from Maine. The Chair therefore rules that the gentleman's vote must be recorded.

Mr. BANKS. I desire to read a passage in support of the decision of the Chair which will satisfy every member of the House of its correctness.

Mr. BUCKNER. I demand the regular order. We have had enough of this.

The SPEAKER. It is not usual to hear anything further as to a point which has been disposed of.

Mr. BANKS. I only desire to read a sentence or two.

The SPEAKER. The Chair will hear it.

Mr. BANKS. On page 124 of the Manual this will be found:

All proceedings of the House subsequent to the erroneous announcement of a vote, which would have been irregular if such vote had been correctly announced, are to be treated as a nullity, and are not to be entered on the Journal.

Mr. FULLER. I rise to a question of privilege. I desire to correct the Journal. In the vote on the resolution introduced by the gentleman from New York [Mr. HEWITT] I am recorded as being absent. I voted in the affirmative.

The SPEAKER. The Chair has recognized the gentleman from New York, [Mr. WOOD.]

MESSAGE FROM THE PRESIDENT.

Mr. WOOD, of New York. The committee appointed to wait upon the President and inform him that the House is organized and is ready to receive any communication he may desire to make have discharged that duty and report that the President states that he will send a message in writing forthwith to the House.

The annual message of the President of the United States, with accompanying documents, was then delivered to the House by C. C. SMITH, his Private Secretary.

CORRECTION OF THE JOURNAL.

Mr. KASSON. I have been endeavoring to get the attention of the Chair to a question of privilege connected with the correction of the Journal.

Mr. HOLMAN. My colleague, Mr. FULLER, had risen to make a correction of the Journal and I insist that he shall not be interrupted.

The SPEAKER. The Chair will hear the gentleman from Indiana.

Mr. FULLER. I desire to state that when the roll was called I was in my seat and voted ay. The gentleman from Georgia and the gentleman from Texas, who were near me, said to me that perhaps the clerks had not heard my response. I came to the Clerk's desk and asked if my name was recorded in the affirmative, as I had voted. I was told that it was, and I went back satisfied.

The SPEAKER. The same ruling will apply to the record of the vote of the gentleman from Indiana as the Chair has decided applies to the vote of the gentleman from Maine.

Mr. HOLMAN. Will my colleague mention the names of the gentlemen from Georgia and Texas to whom he refers?

Mr. FULLER. I had reference to Mr. THROCKMORTON, of Texas, and Mr. HILL, of Georgia.

Mr. HILL. I desire to say that the statement of the gentleman from Indiana is exactly correct. I was standing near the Clerk's desk. The gentleman came up and said, "Is my vote recorded?" He asked the clerk, and I heard the clerk tell him it was recorded in the affirmative.

The SPEAKER. The Chair desires to make a statement to the House. The vote on the resolution offered by the gentleman from New York [Mr. HEWITT] as announced was—ayes 156, noes 78. There seems to have been one omission on each side. The votes omitted, if correctly recorded, would have made the vote 157 to 79. The Speaker was ready on yesterday to have voted as was his constitutional right if his vote would have produced a result either way. And if the Journal had shown the vote to be 157 to 79, he would have voted in the affirmative; still making the two-thirds. The Chair now asks that by unanimous consent, as a solution of the difficulty, the vote may be again taken upon the proposition of the gentleman from New York to suspend the rules and pass the resolution.

Several MEMBERS. No objection.

Mr. HOAR. The entire vote to be taken again?

The SPEAKER. Yes, sir.

Mr. CONGER rose.

Mr. BANKS. I must object.

The SPEAKER. Then the Chair asks of the House the privilege of recording his vote.

Mr. BANKS. I withdraw my objection.

Mr. CONGER. I was about to say that the proposition seems to me a fair one that we may arrive at the views of the House. Only I would suggest that the gentleman from New York should move to reconsider the vote taken yesterday.

The SPEAKER. The vote to suspend the rules is not susceptible of a motion to reconsider.

Mr. CONGER. Then I understand the proposition of the Chair is that we take a new vote. I have no objection to that.

Mr. BANKS. I wish to say that I made the objection under a misapprehension. I recognize the right of the Chair to vote.

The SPEAKER. Is there objection to the Chair casting his vote?

Mr. BURCHARD, of Illinois. There is no objection to another roll-call.

Mr. SPRINGER. I object to that.

The SPEAKER. The Chair must insist upon his right to vote in the case that his vote would produce a result. He thinks the gentleman from Massachusetts will admit that the Chair has that right.

Mr. BANKS. I do. I desire to say a word upon that point; and as I brought this question to the attention of the House I claim the right to be heard for a moment.

The SPEAKER. The Chair is willing to hear the gentleman at length.

Mr. BANKS. The correction of the Journal having been made, the Chair has the same right to vote at this moment as he had if the actual vote had been correctly stated in the session of yesterday. His right is resumed upon the correction of the Journal.

The SPEAKER. The Chair then exercises that right, and asks that his vote may be recorded in the affirmative.

Mr. CONGER. Will the Speaker allow me to be heard first? The Chair had made a proposition to have a new vote, to which we upon this side, through my voice, acceded.

Several MEMBERS. Regular order.

The SPEAKER. The Chair will state that nothing the Chair could suggest would take away from him his constitutional right to vote. That is a privilege which the people have the right to require him to exercise for them.

Mr. CONGER. Then I desire to say that there is not another republican on this side of the House who agrees with the gentleman from Massachusetts [Mr. BANKS] and with the Chair; not one.

The SPEAKER. The Chair is very sorry to disagree with the gentleman from Michigan.

Mr. CONGER. I think the Chair is not sorry to disagree in this case.

Mr. SPRINGER. I call for the regular order.

Mr. KASSON. I now rise to a privileged question.

The SPEAKER. The Chair recognizes the gentleman from Indiana [Mr. HAMILTON] to offer a resolution. The Chair desires to say to the gentleman from Michigan [Mr. CONGER] that he does not think that anything that has occurred here to-day on the part of the Speaker warrants the reflection that gentleman has just made upon either the decision or the motives of the Chair.

Mr. CONGER. The Speaker will allow me to reply to that.

The SPEAKER. The Chair has recognized the gentleman from Indiana [Mr. HAMILTON] to offer a resolution.

Mr. HAMILTON, of Indiana. I ask unanimous consent for the adoption of the resolution which I have sent to the Clerk's desk.

Mr. CONGER. I rise to a question of privilege, if it be one.

The SPEAKER. The gentleman is not now in order; the gentleman from Indiana [Mr. HAMILTON] has been recognized.

Mr. CONGER. Then the Chair will have the last word.

The SPEAKER. The Chair will recognize the gentleman immediately after the resolution of the gentleman from Indiana has been disposed of.

THE LATE HON. M. C. KERR.

The Clerk read as follows:

Resolved, That the special order for Saturday, December 16, at one o'clock, shall be the presentation of suitable resolutions on the death of Hon. M. C. KERR, Speaker of this House during its last session, and the expression by the members of the esteem in which he was held for his unblemished character, for his eminent services as a Representative, and for his ability and impartiality as a presiding officer.

The resolution was unanimously adopted.

PERSONAL EXPLANATION.

The SPEAKER. The Chair will now recognize the gentleman from Michigan [Mr. CONGER] upon his question of privilege.

Mr. CONGER. The remarks made by the Chair just now in refer

ence to what I had said, I think must have arisen from a misunderstanding or from a motive upon which I may properly comment. The Chair proposed publicly as a solution of the difficulty that a new vote be taken. I arose in my place, after consultation with those immediately around me, and on behalf of this side of the House expressed in words our assent to that proposition.

Immediately upon that assent being given to the Chair's own proposition, the Chair took another course, declined to entertain the proposition which he had himself made and to which we had assented, and carried the resolution in favor of his partisan side by a new ruling. Therefore I made the remark I did, and I think I was justified in it.

The SPEAKER. The Chair desires to state that, as a matter of fact, all his decisions to-day have been upon the side of the minority. Therefore he was a little surprised when he found a gentleman of that minority reflecting upon his course, and he considered it very unjust. The Chair knows that he did make the proposition to which the gentleman from Michigan [Mr. CONGER] refers, and he states in all frankness that subsequently to making that proposition he was reminded that he had the constitutional right to vote, which he might exercise. And having that right he subsequently did exercise it.

Mr. CONGER. That is the very thing of which I complain.

Mr. CAULFIELD. No doubt of it.

CORRECTION OF THE JOURNAL.

Mr. KASSON. I rise to a correction of the Journal in another particular, touching a motion that I made, on yesterday.

The SPEAKER. The Chair thinks it is now too late to correct the Journal.

Mr. KASSON. I assure the Chair that I have been endeavoring to obtain the floor for this purpose ever since the gentleman from Maine [Mr. PLAISTED] brought forward his correction of the Journal. At the time his correction was before the House I was examining the Journal, thinking it might be wrong in another respect. I found that it was wrong in this particular, that it represented my appeal to have been taken from the decision of the Chair that we had not the right to have the Journal read; whereas the appeal was taken from the decision of the Chair that there was no morning hour on yesterday in which to call the States and Territories for bills and joint resolutions, and that therefore a motion to suspend the rules was in order. It is that correction of the Journal that I desire to have made.

The SPEAKER. The gentleman will remember that he appealed from the decision of the Chair, but did not state what that decision was, and the Chair requested him to reduce his appeal to writing.

Mr. KASSON. And I reduced my appeal to writing, and stated that it was "an appeal from the decision just rendered," as is correctly reported in the RECORD. The Journal has put in the other point of order before recording my appeal.

Mr. LUTTRELL. If I remember correctly, the Chair waited some time for the gentleman from Iowa [Mr. KASSON] to write out his appeal.

Mr. KASSON. It was after the decision of the appeal that I raised the other point.

The SPEAKER. The Journal will be corrected. The Chair means to give the utmost latitude in that particular.

MESSAGE FROM THE PRESIDENT.

The SPEAKER laid before the House the annual message of the President of the United States; which was read.

[The message will be found in the proceedings of the Senate.]

Mr. WOOD, of New York, submitted the following resolution; which was read, considered, and agreed to:

Resolved, That the annual message of the President and accompanying documents be referred to the Committee of the Whole House on the state of the Union and printed.

Mr. WOOD, of New York. I desire also to offer a resolution with reference to the printing of pamphlet copies of the message and accompanying documents for the use of members. I presume that this resolution will not require to go to the Committee on Printing under the rules, as it does not provide for any extra copies.

The resolution was read, as follows:

Resolved, That the usual number of the message of the President and the reports of the several Secretaries of the Executive Departments of the Government be printed forthwith in pamphlet form for the use of the House.

The SPEAKER. The Chair will entertain the resolution.

The resolution was adopted.

ELECTIONS IN SOUTHERN STATES.

The SPEAKER announced the appointment of the following committee to investigate the recent election in the State of Louisiana: Mr. WILLIAM R. MORRISON of Illinois, Mr. GEORGE A. JENKS of Pennsylvania, Mr. JOHN A. MCMAHON of Ohio, Mr. WILLIAM P. LYNDE of Wisconsin, Mr. J. C. S. BLACKBURN of Kentucky, Mr. E. R. MEADE of New York, Mr. JOHN F. HOUSE of Tennessee, Mr. JAMES PHELPS of Connecticut, Mr. J. D. NEW of Indiana, Mr. MILES ROSS of New Jersey, Mr. GEORGE W. MCCRARY of Iowa, Mr. LORENZO DANFORD of Ohio, Mr. STEPHEN A. HURLBUT of Illinois, Mr. WILLIAM W. CRAPO of Massachusetts, and Mr. C. H. JOYCE of Vermont.

The SPEAKER also announced the appointment of the following committee to investigate the recent election in the State of Florida: Mr. CHARLES P. THOMPSON of Massachusetts, Mr. REZIN A. DE BOLT of Missouri, Mr. ANSEL T. WALLING of Ohio, Mr. JAMES H. HOPKINS of Pennsylvania, Mr. JAMES A. GARFIELD of Ohio, and Mr. MARK H. DUNNELL of Minnesota.

The SPEAKER. The Chair re-appoints the committee on the election in South Carolina as indicated yesterday.

PROPERTY IN CHARGE OF INTERIOR DEPARTMENT.

The SPEAKER, by unanimous consent, laid before the House a communication from the Secretary of the Interior, transmitting, in compliance with the provisions of the act of July 15, 1870, a full and complete inventory of all the property belonging to the United States under the charge of that Department; which was referred to the Committee of Accounts, and ordered to be printed.

COURT OF CLAIMS.

The SPEAKER also laid before the House a communication from the clerk of the Court of Claims, transmitted in compliance with section 9 of the act of June 25, 1868, to provide for appeals from the Court of Claims and other purposes; which was referred to the Committee on Appropriations, and ordered to be printed.

PROPERTY IN CHARGE OF HOUSE DOORKEEPER.

The SPEAKER also laid before the House a statement from the Doorkeeper of the House of Representatives of property in his charge on the 4th of December, 1876; which was referred to the Committee of Accounts, and ordered to be printed.

COMMISSIONERS OF SOUTHERN CLAIMS.

The SPEAKER also laid before the House a letter from the commissioners of claims appointed under the act of March 3, 1871, transmitting their sixth annual report; which was referred to the Committee on War Claims, and ordered to be printed.

LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted as follows:

To Mr. SMITH, of Georgia, for fifteen days, on account of important business;

To Mr. HENDEE, for two weeks, on account of sickness in his family; and

To Mr. WIGGINTON indefinitely, on account of sickness in his family.

WITHDRAWAL OF PAPERS.

Mr. HANCOCK, by unanimous consent, obtained leave for the withdrawal from the files of the House of papers in relation to the claim of Mrs. Florence Selley.

Mr. CONGER. In regard to the withdrawal of papers relating to a claim, it should only be allowed when no adverse report has been made.

The SPEAKER. That will be understood.

Mr. CONGER. It should be the rule in all cases.

The SPEAKER. Papers of this kind are never given up, if there has been an adverse report.

Mr. HOLMAN. That is the permanent rule of the House.

HOUR OF DAILY MEETING.

Mr. HOLMAN, by unanimous consent, submitted the following resolution; which was read, considered, and agreed to:

Resolved, That until otherwise ordered, the hour of daily meeting of the House be twelve o'clock m.

Mr. HOLMAN. I move that the House adjourn; but pending that motion I will yield to the gentleman from Missouri, [Mr. WELLS,] who desires unanimous consent for the adoption of a resolution.

COMMITTEE CLERKS.

Mr. WELLS, of Missouri, by unanimous consent, submitted the following resolution; which was read, considered, and agreed to:

Resolved, That the Committee of Accounts be, and they are hereby, instructed to designate the committees of this House which are entitled to clerks under the act of August 15, 1876, and report to this House.

COMMON-SCHOOL EDUCATION.

Mr. LAWRENCE. I ask unanimous consent to offer a resolution; and as I have to go to South Carolina upon committee duty, I hope the resolution will be acted on now without objection.

The resolution was read, as follows:

Whereas the fourteenth article of amendments to the Constitution declares that no State shall deny to any person within its jurisdiction the equal protection of the law;

And whereas this provision was designed to secure to all persons the equal benefit of all laws: Therefore,

Resolved, That the Committee on Education and Labor be, and are, instructed to ascertain whether in any one or more States an equal opportunity for common school education, including school privileges for equal time, is secured to colored and white children; and if not, that said committee report such bill as may be proper to enforce the Constitution in this respect.

Mr. HOLMAN. This is but an inquiry, I believe?

Mr. LAWRENCE. That is all.

Objection was made.

The SPEAKER. Objection being made, the resolution is not before the House.

DODD, BROWN & CO.

Mr. STONE, by unanimous consent, introduced a bill (H. R. No. 4113) for the relief of Dodd, Brown & Co., of Saint Louis, Missouri, assignees of E. H. Durfee & Co., Durfee & Peck, John Shirley, and William Shirley; which was read a first and second time, referred to the Committee on Indian Affairs, and ordered to be printed.

ELECTIONS IN SOUTHERN STATES.

The SPEAKER. The Chair appoints on the Louisiana committee instead of Mr. MCCRARY, of Iowa, who declines to serve, Mr. WASHINGTON TOWNSEND, of Pennsylvania. He also appoints on the South Carolina committee Mr. ALEXANDER G. COCHRANE, of Pennsylvania, in place of Mr. W. S. STENGER, of Pennsylvania, who declines to serve on account of illness in his family.

A. F. ROCKWELL.

Mr. BANNING, by unanimous consent, introduced a bill (H. R. No. 4114) for the relief of A. F. Rockwell, late aid-de-camp to General Buell; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

ORDER OF BUSINESS.

Mr. HOLMAN. I insist on my motion.

Mr. MACDOUGALL. I ask the gentleman to yield to me that I may offer a resolution.

Mr. HOLMAN. I decline to yield.

The question being taken on Mr. HOLMAN'S motion, it was agreed to; and accordingly (at two o'clock and forty minutes p. m.) the House adjourned.

PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. BUCKNER: The petition of Margaret E. Johnson, of Washington City, District of Columbia, for the incorporation of and an appropriation for the Women's National College and Business Institute in the city of Washington, District of Columbia, to the Committee for the District of Columbia.

By Mr. HUNTON: The petition of George Foster, late a private in Company C, Tenth Regiment of Cavalry, United States Army, for a pension, to the Committee on Revolutionary Pensions.

By Mr. JENKS: The petition of T. H. Carpenter, late captain in the Seventeenth United States Infantry, for restoration to the regular Army, to the Committee on Military Affairs.

By Mr. MORRISON: Protest of citizens of the second congressional district of the State of South Carolina, against C.W. Buttz being seated as a member of the House from said district, together with certified copies of the action of the supreme court of said State in the matter of The State *ex rel.* R. M. Sims *et al. vs.* H. E. Hayne *et al.*, board of State canvassers, to the Committee of Elections.

By Mr. PIERCE: The petition of pilots at Boston, Massachusetts, for the repeal of the law requiring pilot-boats to wear mast-head lights, to the Committee on Commerce.

By Mr. WARREN: The petition of Mrs. Marsilvia F. Woodard, of Cambridgeport, Massachusetts, mother of George R. Woodard, deceased, late of Company B, Eighth United States Infantry, to the Committee on Invalid Pensions.

IN SENATE.

WEDNESDAY, *December* 6, 1876.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

The Journal of yesterday's proceedings was read and approved.

ELI SAULSBURY, from the State of Delaware, and JOHN SHERMAN, from the State of Ohio, appeared in their seats to day.

EXECUTIVE COMMUNICATION.

The PRESIDENT *pro tempore* laid before the Senate a letter from the Treasurer of the United States, transmitting, in compliance with the requirements of section 311 of the Revised Statutes of the United States, "fair and accurate copies" of the accounts rendered to and settled with the First Comptroller for the fiscal year ending June 30, 1876, and also a copy of his annual report to the Secretary of the Treasury; which were ordered to lie on the table and be printed.

PETITIONS AND MEMORIALS.

Mr. DAWES. I present the petition of Seth Driggs, who has a claim upon the Venezuelan government, in which he complains of some action of the House of Representatives. I do not know what the merits of his complaint are, but his petition is a proper one in form. It is accompanied by a bundle of original documents. I have not been able to examine them to know whether they are relative to the matter or not. I ask that the petition be referred to the Committee on Foreign Relations when appointed, and that the papers lie on the table also until the committees are appointed.

The PRESIDENT *pro tempore*. That course will be pursued, if there be no objection; and the Chair hears none.

Mr. PRICE presented the petition of H. H. Lemon, of Harper's Ferry, West Virginia, late a member of the Capitol police, praying compensation for damages sustained by falling through a trap-door at the Capitol while in the discharge of his duties; which was ordered to lie on the table, to be referred to the Committee on Claims when appointed.

Mr. BOUTWELL presented the petition of Mrs. Marsilvia F. Woodard, of Cambridgeport, Massachusetts, praying to be allowed a pension; which was ordered to lie on the table, to be referred to the Committee on Pensions when appointed.

Mr. THURMAN presented the petition of E. W. Metcalf, agent for the owners of the ship Delphine, destroyed by the confederate ship Shenandoah December 29, 1864, praying for the passage of the bill (H. R. No. 2685) for the distribution of the unappropriated moneys of the Geneva award; which was ordered to lie on the table, to be referred to the Committee on the Judiciary when appointed.

BILLS INTRODUCED.

Mr. WINDOM asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1050) to extend the provisions of an act entitled "An act making an additional grant of lands to the State of Minnesota, in alternate sections, to aid in the construction of railroads in said State," approved July 4, 1876; which was read twice by its title, and ordered to lie on the table and be printed, to be referred to the Committee on Public Lands when appointed.

Mr. HITCHCOCK asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1051) for the relief of Henson Wiseman; which was read twice by its title, and ordered to lie on the table and be printed, to be referred to the Committee on Claims when appointed.

He also asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1052) for the relief of A. W. Greely; which was read twice by its title, and ordered to lie on the table and be printed, to be referred to the Committee on Military Affairs when appointed.

WITHDRAWAL OF PAPERS.

Mr. FRELINGHUYSEN. I ask an order to take from the files the papers in reference to the claim of William H. Stephens. There has been an adverse report. A copy can be made.

The PRESIDENT *pro tempore*. If there be no objection that order will be made.

COMMITTEES OF THE SENATE.

Mr. WRIGHT. I move that the Senate now proceed to the selection of the standing and other committees for the present session of Congress.

The motion was agreed to.

Mr. WRIGHT. By a rule of the Senate, the thirty-fifth rule, I believe, it is required that the committees shall be selected by ballot. I move that that rule be suspended.

The PRESIDENT *pro tempore*. Is there objection to the suspension of the rule which requires the choice to be made by ballot?

The Chair hears no objection and the rule will be suspended.

Mr. WRIGHT. I send to the Clerk's desk lists of the committees in the form of resolutions, and I ask their adoption.

The PRESIDENT *pro tempore*. The resolutions will be reported.

The Chief Clerk read as follows:

Resolved, That the following be the standing committees of the Senate during the present session:

On Privileges and Elections—Messrs. Morton, (chairman,) Logan, Mitchell, Wadleigh, Cameron of Wisconsin, McMillan, Saulsbury, Merrimon, and Cooper.

On Foreign Relations—Messrs. Cameron of Pennsylvania, (chairman,) Morton, Hamlin, Howe, Frelinghuysen, Conkling, McCreery, Bogy, and Eaton.

On Finance—Messrs. Sherman, (chairman,) Morrill, Frelinghuysen, Logan, Boutwell, Jones of Nevada, Bayard, Kernan, and Cooper.

On Appropriations—Messrs. Windom, (chairman,) West, Sargent, Allison, Dorsey, Blaine, Davis, Withers, and Wallace.

On Commerce—Messrs. Conkling, (chairman,) Spencer, Cameron of Wisconsin, Burnside, McMillan, Dawes, Ransom, Dennis, and McDonald.

On Manufactures—Messrs. Robertson, (chairman,) Booth, Bruce, Wallace, and Barnum.

On Agriculture—Messrs. Frelinghuysen, (chairman,) Robertson, Harvey, Davis, and Gordon.

On Military Affairs—Messrs. Logan, (chairman,) Cameron of Pennsylvania, Spencer, Clayton, Wadleigh, Burnside, Gordon, Randolph, and Cockrell.

On Naval Affairs—Messrs. Cragin, (chairman,) Anthony, Sargent, Conover, Blaine, Norwood, and Whyte.

On the Judiciary—Messrs. Edmunds, (chairman,) Conkling, Frelinghuysen, Wright, Howe, Thurman, and Stevenson.

On Post-Offices and Post-Roads—Messrs. Hamlin, (chairman,) Ferry, Dorsey, Jones of Nevada, Dawes, Paddock, Saulsbury, Maxey, and Key.

On Public Lands—Messrs. Oglesby, (chairman,) Windom, Harvey, Hamilton, Paddock, Booth, Kelly, McDonald, and Jones of Florida.

On Private Land-Claims—Messrs. Thurman, (chairman,) Bayard, Bogy, Edmunds, and Christiancy.

On Indian Affairs—Messrs. Allison, (chairman,) Oglesby, Ingalls, Clayton, Dawes, Bogy, and McCreery.

On Pensions—Messrs. Ingalls, (chairman,) Allison, Hamilton, Bruce, Teller, McDonald, and Withers.

On Revolutionary Claims—Messrs. Stevenson, (chairman,) Johnson, Goldthwaite, Wright, and Patterson.

On Claims—Messrs. Wright, (chairman,) Mitchell, Wadleigh, McMillan, Cameron of Wisconsin, Teller, Cockrell, Jones of Florida, and Price.

On the District of Columbia—Messrs. Spencer, (chairman,) Hitchcock, Dorsey, Ingalls, Robertson, Merrimon, and Barnum.

On Patents—Messrs. Wadleigh, (chairman,) Booth, Johnston, Chaffee, and Kernan.

On Territories—Messrs. Hitchcock, (chairman,) Patterson, Christiancy, Sharon, Chaffee, Cooper, and Maxey.

On Railroads—Messrs. West, (chairman,) Hitchcock, Cragin, Howe, Hamilton, Mitchell, Dawes, Ransom, Kelly, Eaton, and Price.

On Mines and Mining—Messrs. Sargent, (chairman,) Alcorn, Harvey, Sharon, Chaffee, Goldthwaite, and Randolph.
On the Revision of the Laws of the United States—Messrs. Boutwell, (chairman,) Alcorn, Christiancy, Wallace, and Price.
On Education and Labor—Messrs. Patterson, (chairman,) Morton, Morrill, Burnside, Bruce, Sharon, Gordon, Maxey, and Key.
On Civil Service and Retrenchment—Messrs. Clayton, (chairman,) Wright, Oglesby, Alcorn, Patterson, McCreery, and Randolph.
To Audit and Control the Contingent Expenses of the Senate—Messrs. Jones of Nevada, (chairman,) Dawes, and Dennis.
On Rules—Messrs. Ferry, (chairman,) Hamlin, and Merrimon.
On Engrossed Bills—Messrs. Bayard, (chairman,) Withers, and Anthony.

Resolved, That the following select committees be appointed for the present session of the Senate:

On the Levees of the Mississippi River—Messrs. Alcorn, (chairman,) Clayton, Harvey, Cooper, and Cockrell.
To Examine the Several Branches of the Civil Service—Messrs. Harvey, (chairman,) Conkling, Allison, Merrimon, and Eaton.
On Transportation-Routes to the Seaboard—Messrs. Mitchell, (chairman,) Sherman, Windom, Conover, Burnside, Norwood, Davis, and Johnston.

Resolved, That the Committee on Public Buildings and Grounds shall have power to act concurrently with the same committee of the House of Representatives, and shall be as follows: Messrs. Morrill, (chairman,) Cameron of Pennsylvania, Paddock, Cooper, and Whyte.

Resolved, That the Committee on the Library shall have power, in conjunction with three members appointed by the House of Representatives, to superintend and direct the expenditure of all moneys appropriated for the Library, and to perform such other duties as are or may be directed by law, and shall be as follows: Messrs. Howe, (chairman,) Edmunds, and Ransom.

Resolved, That the Committee on Printing shall have power, in conjunction with the committee on the part of the House of Representatives, to discharge all the duties now or hereafter devolved upon them by law, and shall be as follows: Messrs. Anthony, (chairman,) Sherman, and Saulsbury.

Resolved, That the Committee on Enrolled Bills shall have power to act concurrently with a similar committee of the House of Representatives in the examination of enrolled bills, and shall carefully compare the enrollment with the engrossed bills as passed in the two Houses, and correcting any errors that may be discovered in the enrolled bills, make their report to the respective Houses, and shall be as follows: Messrs. Conover, (chairman,) Robertson, and Kelly.

Mr. DAVIS. I should like to ask whether the latter resolutions in regard to the Committee on Printing, &c., are in the usual form, or are they changed?

Mr. WRIGHT. They are in the usual form.

The resolutions were agreed to.

Mr. WRIGHT. Before this matter passes, I believe that the order has been thus far that all business presented shall be referred to the committees when appointed. If there has been any omission, it may be well to include that in a motion.

The PRESIDENT *pro tempore*. All bills and memorials heretofore presented will be referred to the appropriate committees.

Mr. MORTON. Resolutions passed the Senate yesterday imposing upon the Committee on Privileges and Elections very important and arduous duties, requiring a great deal of labor. I move that three additional members be appointed upon that committee to serve in the discharge of the duties imposed by the resolutions adopted yesterday.

The motion was agreed to.

By unanimous consent, the President *pro tempore* was authorized to appoint the additional members of the committee; and Messrs. HOWE, BOUTWELL, and KERNAN were appointed.

CHINESE IMMIGRATION TESTIMONY.

On motion of Mr. MORTON, it was

Ordered, That the testimony taken by the special committee appointed to examine into the question of Chinese immigration be printed with the usual number of copies.

FEDERAL TROOPS IN VIRGINIA.

Mr. WITHERS. I move that the resolution offered by me yesterday, in relation to the occupation of Petersburgh by troops of the United States, be taken up for action.

The motion was agreed to; and the Senate proceeded to consider the following resolution:

Resolved, That the President be, and he is hereby, requested to inform the Senate, if not incompatible with public interest, under what authority and for what purpose troops of the United States occupied the city of Petersburgh, in the State of Virginia, on the 7th of November, 1876, the day of the general election.

Mr. LOGAN. I move that the resolution be referred to the Committee on Military Affairs.

Mr. WITHERS. I hope the Senator from Illinois will withdraw the motion for reference. This is a resolution of inquiry, which it seems to be fashionable now to prosecute, and this is a very important inquiry to us. It is simply asking for information upon a subject which is of special interest, not only to our own people, but to all the people of this nation, it seems to me. If any possible good were to result or any possible agency were to be exercised by the committee in shaping the resolution differently, I should have no objection to a reference, but this is a simple resolution of inquiry to which the President alone can respond.

Mr. LOGAN. I presume the committee could get the information, however, and report it to the Senate as readily as it could be obtained in any other way.

Mr. WITHERS. If it were customary to refer all such resolutions, or if the rule were observed to refer resolutions of similar purport, I should have no objection to this resolution taking the same course.

Mr. LOGAN. At the last session a resolution was referred to the Committee on Military Affairs, calling on the Secretary of War for information of a similar character. It was referred to the committee and the report was made.

Mr. WITHERS. Of course I am aware that I am at the mercy of the majority in the matter, but I should like to press the inquiry.

Mr. LOGAN. There is no disposition to delay it at all, but I think it proper for the resolution to go to a committee.

Mr. WITHERS. It is not usual for such resolutions to be referred to a committee.

Mr. THURMAN. I should like the chairman of the Committee on Military Affairs to state some reason for asking the reference of this resolution to his committee.

Mr. LOGAN. I will state the reason if the Senator desires. A resolution calling for information, in my judgment, should have a reason to be based on. I have not heard any reason for this inquiry.

Mr. WITHERS. The reason is stated in the resolution.

Mr LOGAN. The reason is, then, that troops were stationed in a certain place.

Mr. INGALLS. There is no evidence of it.

Mr. LOGAN. There is no evidence that they were there. There is no evidence that they were there for any improper purpose. There is no evidence that they did anything. I will ask the Senator if the theory is now to be established that troops of the United States are to have nowhere in this Government where they are to rest or encamp or to be stationed? Are they to be sent across the seas to be kept out of States, or are they to be kept in the Territories? Unless the troops were there for an improper purpose, there is no reason whatever for the inquiry, because the President of the United States as Commander-in-Chief of the Army and Navy has a right to send troops for a lawful purpose anywhere in the United States; and certainly where they are not doing an unlawful act they have a right to encamp. They may have been in motion; they may have been moving to some place and merely encamped there. I do not know. Hence, unless there is some charge against the President or somebody for improperly putting troops there, I think it is proper the resolution should go to a committee.

Mr. WITHERS. Mr. President, if the troops were merely *in transitu*, it would be a very simple matter for the President of the United States so to state. It will be for the Senate, on the response to the interrogatory, to say whether any criticism can be based upon the action. It is to secure that information that the resolution is offered. When it is responded to by the President, it will be then time for the Senate to decide whether the purposes were lawful or unlawful. In the absence of such information we cannot decide; and it is for the purpose of eliciting just that information that the resolution was submitted; and with all due deference I cannot see any possible objection to the President being permitted under this resolution to state the reasons which prompted him in sending troops to Petersburgh.

Mr. THURMAN. Mr. President, I dissent from the judgment of the chairman of the Committee on Military Affairs that the President has a right to send troops anywhere that he sees proper in his discretion in the United States.

Mr. LOGAN. For a lawful purpose?

Mr. THURMAN. Yes, for a lawful purpose.

Mr. LOGAN. That is what I said.

Mr. THURMAN. And the very object of this resolution is to inquire whether these troops were sent to Petersburgh for a lawful purpose, as I understand.

Mr. WITHERS. Yes, sir; that is the purpose.

Mr. THURMAN. That is the very object of the resolution, and respect to the President requires that he should be inquired of why they were sent there. The two thousand and second section of the Revised Statutes reads as follows:

> No military or naval officer, or other person engaged in the civil, military, or naval service of the United States, shall order, bring, keep, or have under his authority or control, any troops or armed men at the place where any general or special election is held in any State, unless it be necessary to repel the armed enemies of the United States, or to keep the peace at the polls.

Now, when troops have been stationed at a place of election, the burden rests on those who stationed them there to show that there was a case provided for in this section that authorized their being stationed there, to wit, that their presence there was necessary either to repel the armed enemies of the United States or to keep the peace at the polls. These are the only two exceptions to the general prohibition contained in this section. Whether or not this provision as to keeping the peace at the polls is not subordinate to the provision in the Constitution that prohibits the use of the Army in a State unless the Executive is called upon to furnish military aid to suppress domestic violence or insurrection or to repel an invasion, is a question that I do not propose to say anything about now. It will be time enough to consider that hereafter. I will let the statute stand as it is and let it be considered as constitutional as it is. Certainly it is right to inquire, that we may know whether there was danger or a necessity to repel the armed enemies of the United States at Petersburgh last month; whether there was a necessity for Federal troops there to keep the peace. Certainly we have a right to know that, and it is not in the slightest degree disrespectful to the President of the United States to ask him his reasons for ordering those troops there. I admit that *prima facie* it is to be presumed that he had reason for what he did. The respect due to his office requires us to presume that; but that does not stop our mouths. It is perfectly proper for us to ask him what were those reasons which we may presume that he had, but which we do not know.

Mr. LOGAN. Mr. President, I am very much surprised at the position of the Senator from Ohio on reading this statute and the resolution. The resolution inquires of the President why troops were at Petersburgh, in Virginia——

Mr. THURMAN. On the day of the general election.

Mr. LOGAN. Yes, sir; on the day of the general election, perhaps there the day before, or a week before, and perhaps afterward. I know nothing about that.

Mr. MORTON. Does it say they were at the polls?

Mr. LOGAN. No, sir. That is the point I was coming to. This statute is in reference to troops being stationed at the voting-place, where the votes were being cast; and there is nothing in this resolution which charges that. By reading the statute any one will see in a moment that it has no reference to troops being stationed at a town, or a city, or any place, except the voting-place.

> No military or naval officer, or other person engaged in the civil, military, or naval service of the United States shall order, bring, keep, or have under his authority or control any troops or armed men at the place where any general or special election is held in any State, unless it be necessary to repel the armed enemies of the United States or keep the peace at the polls.

They are not to be stationed at the voting-place, that is, the polls, except to keep the peace. The resolution makes no such allegation. Now, sir, I would ask if the troops of the United States cannot be stationed anywhere in this country? There is hardly a city in the United States but what it is competent to station troops at, to encamp them at, to build barracks to keep them at. The fact that they were at a city or some spot in the United States, without alleging that they were at the polls to interfere in elections, is no violation of this statute whatever; it does not come within the purview and meaning of it in any sense; and therefore the resolution, as it seems to me, ought to go to a committee, that they may examine and see, if the gentleman bases it upon this provision of the statute, whether or not the law was violated.

I should like to have the Senator from Virginia at least state to the Senate whether these troops interfered with the voters, whether they molested any one in any way whatever at the polls, or were at the polls on the day of the election. I should like him to at least state some fact that would bring it within the meaning of this statute, if he desires this inquiry. If what was done was not violative of this statute, then I do say the President has the lawful right and authority to send troops anywhere in the United States, where he does it for a lawful purpose. That is what I said before, and I say so now. To assert that troops may not be placed anywhere in this country, is to deny the right of bivouac or encampment to the troops of the United States on American soil. Hence I say when a resolution of inquiry of this kind is offered, addressed to the President, or any other official of the Government, it should on its face state a case that would show at least an infringement of some law. If the act alleged is not an infringement of a law, then the officer had a right to do it, and we have no right to inquire the reason why.

I will put a case to the Senator. Suppose we were engaged to-day—I hope such a thing will never occur—in trouble, in war, would the Senate of the United States have a right to inquire of the President every day why he made a certain movement of the Army, would the Senate of the United States disclose every day the secrets of the movements of the Army and the secrets of the camp to an enemy? They would have the very same right to do it as they have to inquire why troops are encamped at any place in the United States. This is a right belonging to the commander-in-chief of an army and navy, where the law of the country is not violated, to encamp the troops anywhere, to move them anywhere on the soil of their country for a lawful purpose. This being the case, I ask that the resolution be referred to the Committee on Military Affairs.

Mr. WITHERS. Mr. President, in submitting the resolution, I was exceedingly careful to draw it up in terms most respectful to the President of the United States. I did not intimate or charge in the resolution that the troops were there for an unlawful purpose, and I further guarded it with the usual provision, "if not incompatible with public interest." Now, it seems to me that, thus carefully worded and carefully guarded, no detriment to the public interests could possibly arise from having a response to the interrogatory. If the purposes were so clearly and unmistakably within the province of the law and within the legitimate and constitutional authority of the President, there surely could be no difficulty in his responding to the resolution, stating these facts. In the absence of such response, I prefer not arguing upon a hypothetical and suppositious case which subsequent developments might prove to be untrue. All I want is the information upon the subject on which we can predicate future action, if in our opinion such future action be desirable.

Mr. LOGAN. Will the Senator allow me to ask him a question before he takes his seat?

Mr. WITHERS. Yes, sir.

Mr. LOGAN. Petersburgh being in his own State perhaps he has as definite a knowledge of this transaction as anybody. Will he state to the Senate any act committed by those troops of an unlawful character?

Mr. WITHERS. I have not charged in the resolution that the troops were guilty of any act of an unlawful character, nor am I cognizant of any act committed by any of the troops that was of an unlawful character.

Mr. LOGAN. Does the Senator know whether these troops were troops in motion, stopping there for an encampment, or whether they remained there for some length of time?

Mr. WITHERS. My information is to the effect that they were ordered there upon the application of the United States marshal for the eastern district of Virginia, to be and remain there during the election, that they were sent there before the election, and that they remained there during the election. I do not know whether they are there now or not, but I presume that they are not. It is for the purpose of obtaining information as to the causes which prompted and the reasons which influenced the President to order troops to Virginia that I have offered this resolution. It seems to me that it is a perfectly legitimate and proper inquiry, and I see no reason for taking a course with this resolution differing from what is usual with similar resolutions of inquiry. Yesterday, we had a resolution much more wide-spread in its operation, much broader in its scope, affecting much more vital interests if possible than this does, which was not referred, but which was pushed through this House under the operation of a declaration that they would sit it out and not adjourn until a vote was taken upon it; and why, to-day, should we subject this resolution, one of simple inquiry, to the tender mercies of a committee, where it may remain, where it may be reported upon? but the Senator will pardon me for stating that I have heard of such things as committees receiving resolutions and quietly shelving them for the rest of the session. I want this information. I think this is the surest and shortest means of reaching it. Of course I know it is within the power of the majority to withhold this information or prevent the President from giving it if they think proper to do so, but I wish to discharge my representative duty in a matter in which my people and I myself feel a very deep and vital interest.

Mr. LOGAN. I would say to the Senator and the Senate that the motion I made was not with a view of preventing any information coming out or being disclosed to the Senate. I had no such idea, but acted on the ground that unless the resolution itself presupposed an unlawful act, the inquiry would not be made. Wherever an executive officer is performing his duty strictly, there is no necessity for an inquiry. When you inquire why a transaction took place, it necessarily carries upon its face the imputation that a wrong was perpetrated or enacted. Therefore I asked that this resolution should be referred to the Committee on Military Affairs so that it should be sent to the President with a request that he send through the committee to the Senate full information, and then the committee examining the law would make a report to the Senate. That was the only object I had, and it is the only object I have now. Where partisan feeling sometimes runs very high, I think this is a very proper mode of doing business in the Senate.

The resolution the Senator referred to which was before the Senate yesterday was entirely of a different character. That was a resolution authorizing the Committee on Privileges and Elections to make an investigation into and ascertain certain facts. It took the regular course, the course that all resolutions of that character take in the Senate. This is only following precedents we have had before in the reference of resolutions of this kind. Therefore I made the motion, and I ask that the resolution be committed.

Mr. THURMAN. Mr. President, it seems to me that the Senator from Illinois suggests a very novel mode of proceeding. He proposes that instead of the Senate requesting the President of the United States to furnish information, the Committee on Military Affairs shall request the President to furnish it. I think it much more respectful to the President and much more worthy of the occasion that the Senate itself should ask for this information instead of its being a mere request of a committee which the President may comply with or may not.

Mr. LOGAN. The Senator misunderstood me. I spoke of a request of the Senate of the United States through the committee.

Mr. THURMAN. It is not, I beg the Senator's pardon, a request from the Senate at all. If the resolution is referred to the committee and the committee request the information of the President, that is the request of the committee alone, and the President may or may not reply to that as he shall see fit. If he do reply to it, it is simply an act of courtesy on his part; he is under no obligation to reply to it. There is no statute or provision of the Constitution that subjects the President to the interrogatories of a committee of either branch of Congress, unless it might be a committee of investigation; and therefore the President, if he should reply to the request of the committee, would only do so out of courtesy and not because he is under any obligation to do so. So much for that.

Now, Mr. President, I dissent from the interpretation of this statute given to it by the chairman of the Committee on Military Affairs. He limits the meaning of the word "place" in this statute to the actual polling-booth where the votes are being deposited, and supposes it to be perfectly lawful to have troops at the town or village or hamlet where the votes are cast provided they are not immediately and directly at the polling-booth. I dissent entirely from that interpretation of this act. It is a familiar principle of criminal law that a man, if he is within striking distance, may be found guilty of being accessary to the violence that is committed; and so, if troops are within striking distance of the polling-booth or if they are at that distance where their presence may influence the election either by the intimidation of voters or otherwise, they are within the meaning of this

statute. We can have some light upon this subject from the legislation of the mother-country, England. The Senator will not deny that the Queen of England has as ample power to station troops wherever she pleases in England as the President of the United States has to station troops in the United States. No one can deny that. Yet, sir, there is an act of Parliament which says that at every general election for members of Parliament no troops shall be within one mile of a polling-place. What then is the universal practice there? There are plenty of troops that are stationed from time to time within less than a mile of the polling-places; but the universal practice there is, and a practice which if violated would stir the British heart from one end of that realm to the other, to remove those troops the day before the election and not send them back until two days after. My learned friend from Connecticut [Mr. EATON] suggests to me that the statute is a very old statute, passed in the eighth year of the reign of George II. They are somewhat careful in that old country, monarchy as it is, that military force shall not interfere with the free elections of the people. But now the Senator from Illinois, the chairman of the Military Committee, seems to think that the President of the United States can fill a town full of the Army of the United States, and not violate either the letter or the spirit of this statute if their bayonets are not under the noses of the people when they are voting. That is not the true interpretation of this statute at all. I grant that it is not as explicit as it ought to be by far, it is not as explicit as the British act of Parliament; but still in its letter as well as in its spirit it is not the statute which the Senator from Illinois supposes it to be.

Now, sir, I say once more that this resolution is a respectful resolution to the President. The Senator from Illinois seems to suppose that it assumes that there has been a violation of the law. It assumes no such thing. On the contrary, it asks simply for the circumstances of the case. Have we not a right to them? Have we not a right to them, if for no other reason than for the purpose of knowing whether or not this statute ought not to be amended and ought not to be made more specific? Have we not a right to them for the purpose of knowing upon what information it is that the President sent those troops there? Have we not a right to know whether the President has not been imposed upon; and if he has been imposed upon by any officer of the United States, have we not a right to provide a remedy to prevent such imposition in the future, if we cannot punish the officer for the imposition already practiced upon the President? Why, sir, in no sense is this resolution disrespectful to the Executive. On the contrary, it is in the highest degree respectful to him; and it seems to me that it is simply for the Senate to abnegate its power of judging of the propriety of an inquiry to send this resolution to a committee.

Mr. LOGAN. Just one word, Mr. President, in reply to the Senator from Ohio in reference to what he has said about the construction of the statute, I should like to make an inquiry of him. If his construction is correct that troops cannot be stationed at a town or city on the day of an election, as he seems to think is the correct construction of the law, where would the troops be stationed on the day of a general election, as on the 7th of last November? There would be no town in the United States of America where troops could be permitted to encamp. I suppose that we should have to arrange to send them up in a balloon, and hold them there for a week perhaps, until after the election was over and then let them down again. [Laughter.] That is the only way I can conceive in which we could encamp our troops at all. There is hardly a community anywhere in the United States in which an election was not held on the 7th of November. According to the interpretation of the Senator from Ohio we could not encamp troops anywhere in a town or city where an election was being held. In the city where I live there are I do not know how many, but a great number of polling-places, and troops could not be stationed there at all on the day of election if that is the interpretation of the statute. No, sir, the meaning of the statute is that troops shall not be held at the voting-place; that is to say, at the polls, so that men shall be intimidated by them. That is the meaning of the statute; it can have no other meaning; and to construe it that they could not be stationed at a town where an election was being held, seems to me to be entirely contrary to good and common sense.

Now I will say to the Senator from Virginia, as he seems to think that the object was to get this resolution before the committee that it might be delayed, that I certainly have no such object. But the resolution itself does exactly what I stated to the Senate that it did; that is to say, it presupposes on its face an unlawful act on the part of the President. It is:

> That the President be, and he is hereby, requested to inform the Senate, if not incompatible with public interest, under what authority and for what purpose troops of the United States occupied the city of Petersburgh.

What is the meaning of the word "occupied" when applied to troops? It certainly is very different from the idea that they were stationed there, that they were encamped there. It means that they took possession and held the city and controlled it. That is the meaning of the language. I said the resolution did bear on its face an accusation of the President of an unlawful act, and for that reason I asked its reference to a committee. The Senator well knows and understands the English language, and he certainly knows that that is the meaning of the resolution.

Now, sir, in order to satisfy the Senator and others who are desirous of having this information, I will say that I certainly have no objection to acquiring the information. My suggestion is only as to the manner of getting at it and the character of the resolution. If the Senator will change the resolution by striking out that part of it that speaks about the occupation of Petersburgh, and inquiring why and under what authority the troops were stationed there at that time, I shall have no objection to it.

Mr. WITHERS. Let us hear what the Senator proposes.

Mr. LOGAN. To assume that they occupied the city on election day is assuming that the President took possession by his troops of that city for an unlawful purpose. I would amend the resolution so as to read in this way:

> That the President be, and he is hereby, requested to inform the Senate, if not incompatible with public interest, whether troops of the United States were stationed in the city of Petersburgh, in the State of Virginia, on the 7th of November, 1876, the day of the general election.

Mr. WITHERS. If the construction of the Senator of the phraseology be correct we should simply get a return from the President to the resolution as offered by me, that no troops had occupied it. That would be all.

Mr. LOGAN. Very well.

Mr. WITHERS. Now there is no doubt of the fact that United States troops were in the city of Petersburgh on the day of election, and that they were not merely *in transitu*.

Mr. LOGAN. That is not the question at all. I say that you ask the President why they occupied it. You assume that they did occupy the city. That is the fact which you assume.

Mr. WITHERS. If the Senator's construction was correct the President would simply say that no troops occupied it.

Mr. LOGAN. Very well; that would be a response to your resolution. I would say to the Senator, then, strike out the word "occupied" and ask the President this:

> Whether troops of the United States were stationed in the city of Petersburgh, in the State of Virginia, on the 7th of November, 1876, and, if so, under what authority and for what purpose.

I am willing to agree to the resolution in that form.

Mr. WITHERS. I am willing to accept that modification.

Mr. LOGAN. Very well.

Mr. WITHERS. Mr. President, I am perfectly willing to accept the amendment suggested by the chairman of the Military Committee, and substitute the word "stationed" for "occupied" in the resolution.

Mr. SARGENT. I thing that is not all the modification.

Mr. WITHERS. I think it is the only one suggested. Let the Secretary report the resolution as amended.

The PRESIDENT *pro tempore*. The resolution will be read as modified.

Mr. LOGAN. It will read in this form, if the Senator accepts the modification:

> That the President be, and is hereby, requested to inform the Senate, if not incompatible with public interest, whether troops of the United States were stationed at the city of Petersburgh, in the State of Virginia, on the 7th of November, 1876, the day of the general election; and, if so, under what authority, and for what purpose.

Mr. WITHERS. Very good.

Mr. LOGAN. I have no objection to the resolution in that form.

The PRESIDENT *pro tempore*. The resolution will be so modified.

Mr. MORTON. There is no allegation that these troops were at the polls or that they were there to over awe or influence anybody. There is no pretense of any improper interference with the election or with the affairs of Virginia in any respect. They were simply there, perhaps a small number, one, or two, or three companies, I do not know how many, but a mere handful of troops. They had a right to be somewhere. The Army is a lawful organization, and the troops are not bound to be confined to the District of Columbia or to a Territory. They have a right to be in the States if the President so orders; and unless there is some interference, unless they were at the polls or did some act of a doubtful character, why make the inquiry? The very fact of the inquiry is an imputation that there was something singular about it, that there was something suspicious about it, that requires to be inquired into. Did they do anything wrong? Is there anything singular about it? That troops should be scattered, a few in one State, and a few in another, is not at all remarkable and not at all improper, and the general condition of the South for some years past and its present condition might afford a reasonable explanation for putting two or three companies of troops in one State and two or three in another without having the President catechised to know what he meant by it.

Mr. WITHERS. He can give his reasons.

Mr. MORTON. He could give the reasons; but the very inquiry is an imputation that there is something wrong that requires to be explained. Now, as these troops were not at the polls, as there is no such pretense, but perhaps were entirely outside of the city though in the neighborhood of it, and as they have done nothing wrong and nothing improper is imputed to them, why make this inquiry? If our friends from Virginia will say that they did something wrong, that they exercised an improper influence, or took a position that was calculated to overawe, or to intimidate—to use a word that some people do not like, but which is very common—if there was any intimidation practiced, let it be stated; but if they were simply there to

stay a week, or a month, or three months, it is no subject of inquiry by us. I am willing to inquire if there is any possible circumstance of suspicion about it; but I say if we want a reason for it, the general disturbed condition of the Southern States for some years past is a sufficient reason for putting troops at places where they would be on hand if they should be required. They had to be in some particular part of a State.

Mr. WITHERS. The Senator from Indiana has given a reason, but I wish the President's reasons.

Mr. THURMAN. I do not want to prolong this debate, but I cannot let the remarks which have just been made by the Senator from Indiana and those which were made by the Senator from Illinois pass without my protest at least. They seem to think that the question turns on whether the troops did something that was wrong when they were there. I say that is not the question at all. That is not the meaning of this statute. This statute does not say that they shall not be there and do something wrong, but they shall not be there at all.

Mr. LOGAN. Where?

Mr. THURMAN. You say at the polls; I say within striking distance of the polls. That, I say, is the fair meaning of the statute. You say at the polls. Take your own interpretation of the act. Suppose these troops were at the polls and did nothing wrong, would it not have been a violation of the statute, unless their presence there was necessary to repel the armed enemies of the United States or to preserve the peace? No man can deny that; and yet they might have been at the very polls themselves and been the most civil, well-behaved, and well-mannered men in the world, and done nothing whatsoever that was wrong, and still, plainly, it would have been a violation of the statute. It is not a question at all about what they did; whether they did what was right or whether they did what was wrong. The question is, were they at a place where they ought not to have been at that time? In England I said that troops were prohibited from being brought within one mile of a place of election. I do not know but that it is two miles. I said one mile, and that is my recollection; but some of my brother Senators say they are required to be removed two miles from the voting-places. What would be said there if troops were kept within the prohibited distance? Would it be any answer to say that they did no harm, that they kept in their barracks and took their rations and were very civil and well behaved and interfered with nobody? Would that be any answer at all to the provision contained in the statute that they shall not be there at all, whether they are well behaved or whether they are not? I wish, therefore, to say that I dissent wholly from the idea that this question is to be determined by the conduct of the troops on that occasion.

Mr. SARGENT. Mr. President, when the statutes of the United States shall prescribe that troops shall not be stationed within one mile or two miles of the polls, and the Executive, in violation of that law, shall send them within a nearer distance without sufficient cause, under the Constitution, then the example of England might be quoted in this Chamber, and would be more potent also. If it could be shown that England, notwithstanding men are killed there in lawlessness for endeavors to exercise their right of suffrage under English laws, looks coldly upon its subjects driven from the polls and deprived of their rights as Englishmen, then that example might be pleaded in favor of such a policy on the part of the Executive of the United States. There is no parallel whatever between the case of English society and that which has existed during this last election throughout many States of this Union.

Mr. JOHNSTON and Mr. WITHERS rose.

Mr. SARGENT. I decline to yield.

Mr. WITHERS. Then I repel the imputation contained in your language.

The PRESIDENT *pro tempore*. Senators will observe the rules.

Mr. SARGENT. You will have an opportunity to reply to me. If I say anything that is improper, it will be time then for you to reply, and in order. I say there is no parallel whatever between peaceful elections in England, where the rights of both sides are respected and the law proceeds on that hypothesis, and the events which have happened in the Southern States of this Union during this presidential election. Why, sir, the air is full of testimony of gross and flagrant crimes committed against life and liberty with the purpose of preventing American citizens from exercising the highest right which belongs to them under the law. It is not well to have this extreme sensitiveness over the use of the Army of the United States, when it is a fact well known to every Senator within the sound of my voice that there are illegal organized combinations of men, calling themselves sometimes rifle clubs, calling themselves by other names, that took possession of the polls and of the registry places, who first, by fraud defiled the registration, and then by violence prevented a fair election even for those registered. To object that the Executive of the United States upon the suggestion of things like these, which come up to us on every avenue of information, which crowd themselves upon his attention, given to him by executives of States, given to him by respectable, honorable men of the localities where these things are occurring—to say that he should turn coldly away from this; that he should keep his troops at Fort Leavenworth, out upon your borders, keep them away from the towns and the States where these things are happening which disgrace the American name, is to deny that he should properly discharge his functions under the Constitution; and I do not propose for one by my vote in the Senate to call in question the act of the President in so grave a matter, and where he is acting under the executive oath.

I regret that there was not the strong arm of the United States by means of its army at Hamburgh, last spring. I regret that subsequently, when the grand jury that met in that place were dispersed by the rifle clubs assembled there under pretense of a democratic meeting, so that they could not summon witnesses, and the judge from the bench advised that the case be laid over, that there be no action upon it then, I regret that there was not an army strong enough to enact justice upon the assassins in that case, to at any rate see that they were indicted, and that they were tried before a tribunal having jurisdiction of their offenses, and if they were found guilty upon proper evidence to see that sentence was duly executed upon them. I regret that there was not some power within striking distance, to use the language of my friend from Ohio, when Eliza Pinkston's husband was killed and her babe's throat was cut in her arms and she herself was first violated by man after man or brute after brute, and then stabbed and defaced so that she scarcely resembled any more God's image. I regret that when these things are happening in the various States of the Union, Senators think it is necessary to imply that the President of the United States has been too ready in affording protection in these directions.

I believe that the President of the United States has certain duties to perform under the Constitution of the United States. He is commander-in-chief of the Army of the United States, and the statute which has been read does not provide that he shall not station troops in any State of the Union where he sees fit, or in any community or in any place, but that he shall not interfere at the polls except under certain circumstances. That there was a necessity for interference at the polls in many cases, is shown by the circumstance that there were large communities of republicans, known to be such, who were prevented from voting the republican ticket by a terrorism worse than any which has ever been exercised on the face of the earth before this time, unless within a few years past. I commend the President of the United States for the action he has taken in this matter, and I do not believe that this Senate ought, by an inquiry of him, to carry the imputation that the use of the Army was improper in stationing it where it might be within reach, in order to prevent outrages of this character.

I shall vote against the resolution.

Mr. JOHNSTON. Mr. President, the resolution relates to matters in the State of Virginia, not to matters in the State of South Carolina or Louisiana. If the Senator from California or any other Senator says or insinuates that there has been in the State of Virginia any misconduct, any violation of the law, any man intimidated, any fraud committed at elections, or anything done which justifies the interference of the United States, he is laboring under a very great mistake. I say that the State of Virginia, from the termination of the war to the present time, has been peaceful and quiet, and the elections have been fair; there has been no Ku-Klux organization in the State of Virginia; there have been no such organizations as these the Senator describes as rifle clubs; the only intimidation that has been practiced has been that practiced by colored people against democratic colored people; and no republican has been intimidated or kept from voting in the whole State of Virginia.

I agree very well that the United States troops have to be stationed somewhere; that the President is Commander-in-Chief of the United States troops; and that he has a right to station them somewhere. They ought regularly to be stationed at the arsenals, at the barracks, or at some point over which the United States have jurisdiction, which has been specially set aside by law for themselves. At Petersburgh there is none of these things. There are no barracks there. There is no fort there. There is no point there of which the United States have acquired jurisdiction for the purpose of stationing troops and keeping their Army. But a few days before the election troops came to the city of Petersburgh, marched to the custom-house, which is in the center of the city, and there remained until after the election. There was no foreign foe there. There was no report even of apprehended violence, no reason to believe that there was going to be any breach of the peace or violence of any sort, as there never had been any at that city. And yet the unusual thing was done of taking troops from the place at which they had regularly been stationed and bringing them to Petersburgh just before the election, and keeping them there until after the election, and when the election was over sending them away. I do not mean to say and do not say that they did anything wrong while there; on the contrary, I believe they behaved with great propriety while they were there. That is the testimony of the citizens of Petersburgh; but, as the Senator from Ohio has said, that is not the question. The question is, for what purpose were they sent there? Why were they sent there? They could have staid just as well at Old Point Comfort, where there is a United States fort. They could have just as well staid at the navy-yard at Portsmouth, where there is United States property. When you couple the coincidence that they went to Petersburgh just before the election, remained there during the election, and left when the election was over, it seems to me it was an unusual movement, that requires some investigation.

Mr. MORTON. Will my friend allow me to ask a question?

Mr. JOHNSTON. Certainly.

Mr. MORTON. I understood the Senator from Ohio to say that

respect for the high office of President required us to presume that the troops were sent there from some good motive or for some proper purpose. I think that remark on the part of the Senator from Ohio was right. Now, unless somebody will take the responsibility of alleging some improper purpose, I think that presumption ought to prevail and this inquiry ought to be dropped. As the Senator from Virginia himself says, they behaved with propriety while they were there, did nothing wrong; and there is no question of the power to send them there. It seems to me that the Senate of the United States ought not to make such an inquiry, and thereby cast an imputation, unless somebody will take the responsibility of saying that they were sent there for an improper purpose. Until somebody takes that responsibility, the other presumption stated by the Senator from Ohio ought to prevail, that they were sent there for a proper purpose.

Mr. JOHNSTON. The question under this resolution is not what the troops did when they were there. The charge is not that the troops behaved improperly. They did not, as far as I know or have had any information. The information I have, and I presume it is true, is that they behaved properly. It is their presence there, the fact that they were sent there at all, that we desire to inquire into. It was an unusual place to send them. Nothing that the public could see justified it. There was no reason that any citizen could see why it was done. The movement was an unusual one. The fact that it occurred just at the time it did, we think affords a reason for asking the President why it was done. We looked upon it as a threat, as a menace. Although we had done nothing wrong, although we are as law-abiding as any people in the world, yet we were subjected to this menace. The election in that district passed off perfectly quietly, and the returning board of the State has given the return to Jorgensen, the republican candidate for Congress. No intimation is made that there was any attempt to defraud Jorgensen out of the return. The returning board, consisting of the governor and other public officials of the State, have certified to Jorgensen's election and given him the return fully, freely, and fairly.

For these reasons it seems to me this resolution ought to pass and the President ought to be asked to give the information called for.

Mr. LOGAN. Although I have already troubled the Senate several times on this question, I desire now to call the attention of the Senate to this statute especially and to reply to one or two remarks made in this debate by the Senators from Virginia.

It seems that there is getting to be a great dread of troops in this country for some reason or other. It does seem to me very strange that the troops of the United States, the defenders of the nation, are to have no resting or abiding place anywhere on Southern or Northern soil. We are to maintain an Army, and that Army is to be a vagabond Army, and it is to hunt and seek a place of resting far out on the confines of our own country.

The Senator from Virginia [Mr. JOHNSTON] says that these troops did no harm that he knows of. If they did no harm, in God's name are the people of Virginia so hostile to the defenders of their country that they cannot allow them to have a resting spot for a few days within their borders without finding objection to it?

Mr. JOHNSTON. I did not say so. They are welcome to any part of the State of Virginia——

Mr. LOGAN. If they are, then why inquire why they are there?

Mr. JOHNSTON. If they come there for a lawful purpose.

Mr. LOGAN. Does the Senator say they came for an unlawful purpose?

Mr. JOHNSTON. I do not know. That is what I want to find out.

Mr. LOGAN. If you do not know, you ought not to insinuate it. Now, sir, I understand—I do not know how true it is—that there was a sergeant with ten men sent to the place named. Is that so?

Mr. JOHNSTON. No, sir; there was a major, with a company perhaps, but I do not know certainly.

Mr. LOGAN. How many in the company?

Mr. JOHNSTON. I do not know that. It does not make any difference how many there were; one was the same as a thousand, so far as the principle is concerned.

Mr. LOGAN. I have heard of whole States being almost scared into a fit by the rustling of a cow's head at night, and it seems that great terror has stricken the people of Virginia, especially the two Senators, on account of the appearance of a major in that State; I do not know whether he was a Georgia major or what kind of a major; whether he wore a high shirt-collar or a low shirt-collar. I cannot tell how that was.

Now, I desire to call the Senator's attention to this statute. The Senator from Ohio spoke of the laws of England not allowing or permitting troops to be within two miles of a voting place; that is, of a poll. He told us that it was an old statute. I believe there are about three places in England where soldiers are permitted to be nearer than a certain distance of the polls on the day of election. Now, I ask the Senator from Ohio whether, at the time our statute was passed, the English statute being much older, the members of Congress who enacted it were enacting it with reference to troops not being stationed close to polling places? Why did they not say, as is said in the statute of England, that they should not be within a certain distance of the polling place? But that is not our law. The law of this country is that—

No military or naval officer, or other person engaged in the civil, military, or naval service of the United States, shall order, bring, keep, or have under his authority or control, any troops or armed men.

Where?

At the place where any general or special election is held in any State, unless it be necessary to repel the armed enemies of the United States, or to keep the peace—

Where?

or to keep the peace at the polls.

Mr. JOHNSTON. Suppose the laws of Virginia say that an election shall be held at Petersburgh, and troops are sent to Petersburgh, is not that sending them to the place where the election is to be held?

Mr. LOGAN. Not the whole of Petersburgh; it applies to the voting-place. Suppose an election law says New York is the place of holding an election, does the Senator say that troops stationed in New York City would have to be removed from the city on the day of election because a voting-place was close to the place where they were stationed? Will he pretend that that is the law? Will he pretend that because troops are in a city they must be removed on account of an election there? Why, sir, the statute means no such thing. It means that troops shall not go to the polling-place unless their presence is demanded in order to preserve the peace. That is the meaning of the statute, and no other construction can be given to it.

But our friends are becoming so sensitive in reference to the Army and Navy of this country that I believe they will drive them into the sea if they are let alone, or abolish them.

Mr. JOHNSTON. The Navy ought to be in the sea. [Laughter.]

Mr. LOGAN. You think they ought to be there?

Mr. JOHNSTON. The Navy.

Mr. LOGAN. O, the Navy. [Laughter.] Some of it is there, and the rest of it perhaps will be; we cannot always tell, but we certainly do not want to send the Army there. My friend would send the Army out to live among the Indians and let them have no other habitation.

Now, Mr. President, although I do not care anything about this resolution as it is amended, I think it ought to be referred to a committee or it ought not to be passed at all. I do not presume the President of the United States cares anything about it. But I wish while I am up to say that in my judgment the President of the United States has a right to move troops anywhere in the United States for a lawful purpose, and we have no right to deny that authority; and he is the judge as to where troops shall be moved so that they are not moved in violation of law. Troops are moved to my city, frequently pass through it or are stationed at Chicago, and come and go, and our people are not alarmed by the presence of troops whether on election or any other day. We are not frightened; we do not rush to the Senate to inquire why troops have passed through Chicago, or why they have stopped at Springfield. If a major should make his appearance in Chicago to-morrow with perhaps half a company of infantry, I do not think anybody would be alarmed, I do not think anybody would be scared. I think every citizen would say that the President had a right to send them there or elsewhere if he desired so that it was for a lawful purpose. And inasmuch as the Senators fail to say that these troops were sent to Petersburgh for an unlawful purpose, in my judgment this looks at least as though it was an attempt to insinuate some wrongful act on the part of the President without—I will not say manliness, I will not use any such term, but at least without a basis for making the accusation. If I wanted to charge the President with doing an unlawful act I would say so. I would say it was unlawful, I would say it was wrong, and I would ask why he violated the law. I would not say troops appeared there and behaved themselves in a respectful manner, did no wrong, violated no law; just merely appeared there, ate their rations in camp, as they had a right to do; nobody was molested, nobody interfered with; but why did the President allow them to do it? Why did he allow them to eat rations on "the sacred soil" of Virginia? Why did he allow a major and ten or fifteen men to trample upon that sacred soil? Why did he permit a blue coat to appear in Petersburgh, not in violation of law, not in violation of any statute of the United States, not in violation of any of the rights of the people of Virginia? As they did no wrong whatever, it looks to me as though the people of Petersburgh had objection to troops coming close there at all. They were there once and the people objected to it; they still object; and that is about all there is in this objection to what the President has done.

Then, sir, I think this resolution is only the beginning or the entering-wedge to a kind of general assault on the administration of this country, on the President of the United States, a man to whom the people of this country are indebted more than to any other man for the rights that the people have under the Constitution and the laws of this Government to-day. [Manifestations of applause in the galleries.]

The PRESIDENT *pro tempore* rapped with his gavel.

Mr. MORTON. Since this debate began, Mr. President, I have been informed by a gentleman from Virginia of some facts at Petersburgh that may furnish the reason why troops were ordered there. As there has been no imputation that they were sent there for an unlawful purpose or did anything wrong, I see no reason for the inquiry; but I am informed that about a year ago at a municipal election in that city there was a bloody riot, in which three republicans were shot, one of whom has since died from his wounds, and four or five others were severely whipped and injured. I do not know whether the statement is true or not, but this is the statement made to me. Further, some two or

three years ago the Legislature of Virginia passed a bill to extend the terms of the town officers of that city beyond the period for which they were elected; the governor of Virginia vetoed that bill very properly, for which he was burned in effigy in the city of Petersburgh. I do not know whether that story is true or not, but I am so informed; and if these things be true, they may possibly furnish some reason why this handful of men were sent there.

Mr. WITHERS. If that be the reason why these troops were sent to the city of Petersburgh, because three or four years ago a modification of the charter of the city was passed by the Legislature, which was vetoed by the governor, then let the President say so.

But, Mr. President, I must confess to a little surprise that, after having agreed to such modification of the resolution as met the approval of the chairman of the Committee on Military Affairs, who intimated that, if thus amended, he was willing to give it his support——

Mr. LOGAN. No; I said I had no objection to it. I did not say I would support it. I say now I have no objection to it as modified.

Mr. WITHERS. I accept the qualification. His statement was that if the resolution were so modified he would have no further objection to it. I supposed then that the vote would be taken upon it and that the resolution would pass *nem. con.* But when the distinguished Senator from California [Mr. SARGENT] with his usual fiery and impassioned zeal attempted to draw a parallel between the scenes which have been enacted or are alleged to have been enacted in South Carolina and Louisiana with the condition of things which existed in Virginia, refusing to submit to any interruption whereby the apparent intimation was fixed on Virginia and Virginians of having thus acted, I must confess and apologize for having been guilty of a violation of parliamentary law in injecting into his speech my disclaimer and repulsion of the intimation.

Sir, I did not desire, as I have previously stated, to go into any discussion upon the actual facts in this case until they should have been ascertained by a response to this interrogatory. Other gentlemen seem to act upon a different hypothesis, going upon the assumptions which they proceed to combat. I refrain from it in order that we may arrive at a conclusion. If it be the sentiment of the Senate that all inquiries as to the acts of the President are improper; if it be the sentiment of the Senate that the disposition of the Army in the States of this Union is not a proper subject of inquiry by the representatives of those States; if it be true, as the distinguished chairman of the Military Committee alleges, that the people of Virginia are peculiarly sensitive and nervous and timid, so as to be easily frightened at the standing collar of a major, Georgia or otherwise, and when, in the plenitude of his bravery, he proceeds to contrast the conduct and feelings of his own people with those of Virginia, I have nothing to say in the matter. I have no doubt that "brave men lived before Agamemnon." But if we are thus timid, if we are thus sensitive, it seems to me we have a constitutional right to make inquiry of the President of this nation, when he quarters troops in a State where not an armed hand of violence was raised, or is alleged to have been raised, to interfere with the vested rights of any person. When the *prima facie* construction of the Constitution forbids the occupancy of any portion of a State by United States troops, except on certain given conditions which are not alleged to exist, in the present temper of the public mind, and in view of the present encroachments of power, when we have an army standing ready and a Senate ready apparently to back up and sustain the action of the Executive, whatever that action may be, and when we are criticised severely and harshly for presuming to question it, I think then, sir, another long step is taken toward the deprivation of the liberties of the people and a new era is marked in American history, certainly in the history of this portion of America.

Now, sir, the fact of the presence of this armed force in the city of Petersburgh is one which is admitted upon all hands. Whether they were there for a lawful or an unlawful purpose is the subject of the inquiry predicated in the resolution which I have submitted, and I prefer, as I say, to wait for a response to that resolution before going further into the discussion of the merits of the question. Let us have a response to the interrogatory and then we shall be prepared to judge of the legality or illegality of the act and of the mode and measure of redress which is proper to be taken in the circumstances, assuming that the purpose was illegal. If legal, of course every one will acquiesce in it, no difficulty will be made, no criticism made upon the action of the President, but we shall all admit that it was right and eminently proper. That, sir, is the whole scope and object of the inquiry, and I prefer not going into a discussion of the general principles involved in the matter until we shall receive a response to the interrogation.

Mr. MORTON. Mr. President, I made objection to this resolution because I thought it cast an imputation on the Executive which was not deserved, and because no possible reason has been given why the inquiry should be made. But, sir, I am induced to withdraw my objection and let this resolution go to the President with a view of getting at the facts in regard to Petersburgh.

The Senator from Virginia on my left [Mr. JOHNSTON] said that there had been no violence in Virginia, and if anybody supposed that there had been he was laboring under a great mistake. I am advised that at the municipal election at Petersburgh in May, 1876, three republicans were shot, others beaten, the room from which the republican tickets were distributed was broken into and tickets stolen therefrom, and general fear prevailed of other outrages; that these outrages were committed by regularly drilled companies of desperadoes who were armed and drilled and acted in a military form; and no one was punished for these outrages thus committed.

Now as our friends are in quest of information, I hope they will get it. I for one shall vote for the resolution.

Mr. WITHERS. I am very glad to hear that, because I am satisfied that when the information is elicited on these points the Senator will find cause to rather blush for his party.

Mr. MORTON. We will try it.

Mr. HOWE. Mr. President, I should like to hear the resolution read as modified.

The PRESIDENT *pro tempore*. The resolution will be again read as it now stands.

The Chief Clerk read as follows:

Resolved, That the President be, and he is hereby, requested to inform the Senate, if not incompatible with public interest, whether troops of the United States were stationed at the city of Petersburgh, in the State of Virginia, on the 7th of November, 1876, and, if so, under what authority and for what purpose.

Mr. HOWE. Mr. President, I have not the slightest objection myself to such an inquiry as that being addressed to the President of the United States. I did not know before that troops were stationed at Petersburgh, in the State of Virginia, on the day named. I do not now know why they were stationed there. But if the Senators from that State are curious to know what the reasons were for having troops at that particular locality, I certainly think it is a curiosity which ought to be gratified. The President of the United States used to have a somewhat happy knack for posting troops in the proper places. If he directed any troops to Petersburgh, unless he has lost that knack I am inclined to think he had some good reason for doing it, and I have not the slightest objection to his having an opportunity to state what that reason was. So that I shall vote for the resolution as it stands before the Senate.

If any Senator assumes that there is a statute of the United States which commanded the President not to have troops at Petersburgh on the 7th of November last, I can only say that I have seen no such statute yet. I do not expect to find it. The statute read by the Senator from Illinois just now does not command any such thing; and it seems to me very manifest that if troops could not be in Petersburgh lawfully on the 7th of November because there was an election in Petersburgh on that day, neither could troops be in any other town in the United States, because in every other town there was an election on the same day. They would therefore be illegally anywhere within any town in the United States. I do not think that is the fair interpretation of that statute. The statute evidently does undertake to put some restrictions upon the placing of troops on election day. I want to say of the statute itself that it is in my judgment an affront to the Army of the United States. I do not belong to the Army; I never did; I doubt if I shall ever enlist in it now; but according to my understanding it is an affront to the Army of the United States. I do not know of any place so sacred in this country as that our Army may not be intrusted in it, whether that be the place where votes are cast or the place where God is worshiped. I believe the Army is as safe in either place; the citizens of the United States wearing the uniform of the United States are as safe as citizens who do not wear that uniform in one of those places or the other.

I know this statute seems to be of republican origin. I have great confidence in whatever republicans have done, and that confidence is not abated at all, but I nevertheless think that this statute is not politic; it ought never to have been put on the book, but being there while it is there it should be obeyed. There is no reason in this country such as might be urged in Great Britain for keeping the Army at a distance from the polls where an election is held. The Army is commanded by the servants of the people in this country. The army of Great Britain is not commanded by those servants. He who moves your troops is as responsible in this country to popular rebuke as any other servants engaged in any branch of the public service. I do not know of any reason why we should be jealous of the exact locality which may be occupied by any portion of our troops on any day of the year.

But, sir, as I have the utmost confidence that there was some good reason or supposed to be some good reason why troops were sent to Petersburgh on the 7th of November last if they were sent there, and as I can find no law which prohibits the sending them there, I shall be very glad to have a respectful inquiry addressed to the President that he may state for the satisfaction of our friends, the Senators from Virginia, just why it was done. I have the most abiding confidence that when they hear the President's reasons they will be satisfied with those reasons, and no doubt I shall be satisfied with them myself.

Mr. THURMAN. Mr. President, I did not intend to trouble the Senate with another remark on this resolution; but some things have been said which induce me to trespass for a few minutes on the further attention of the Senate.

I said when I first addressed the Senate that, in the absence of anything to the contrary, the presumption was that the President in ordering troops to Petersburgh, if he did order them there, acted in conformity with the statute. That is a presumption which is due to all official acts of the lowest officer, and certainly to the official acts

of the highest executive officer of the nation. But at the same time I said, and that I repeat, that notwithstanding that presumption we have a right to inquire into the facts, and that in doing so we do not cast any imputation upon the President, and certainly are guilty of no disrespect toward him. The Senator from Indiana [Mr. MORTON] quoted that observation of mine that the presumption was that the President had acted in conformity with the statute, and said that that was conclusive reason why this resolution ought not to pass until somebody took the responsibility of alleging that the order of the President, if made, was in violation of the law. That was the position which the Senator from Indiana took. But soon after that the Senator re-appears in his seat with a paper in his hand and reads from it what he informs us is a statement that has been furnished to him that certain violent acts did take place at Petersburgh in some time past; and all at once changing his idea about the respect that is due to the President, changing his idea that the presumption that the President has acted in accordance with law ought to control until somebody shall allege the contrary, giving up that position entirely, and seeing that an answer to this might redound to the benefit of his party, he all at once, after having opposed the resolution, now says that he will vote for it! Ah, Mr. President, how has that scrap of paper which he read here upon the information of somebody of whom we know nothing, changed the position of this question from what it was when the Senator said that the presumption in favor of the President ought to be conclusive until somebody would take the responsibility of charging him with dereliction of duty or a violation of law? But enough for that.

Now, I will make a remark to which I beg the attention of the chairman of the Committee on Military Affairs, [Mr. LOGAN,] and that I think with submission is worthy of his attention. The chairman of that committee has insinuated that those who favor this resolution are enemies of the Army. Let me say to that Senator that the very worst enemy the Army of the United States has is the man who wishes to see it employed in interfering with the elections in this country. [Applause in the galleries.] He is its worst enemy.

The PRESIDENT *pro tempore*. The Senator will pause a moment. The Chair will remind those occupying the galleries that it is against the rules to applaud either one side or the other. He now instructs the officers to remove any man occupying the gallery who makes such applause.

Mr. EDMUNDS. Mr. President, on that very point I wish to suggest that yesterday there was applause and again to-day, and that it turns the thing into a very disreputable performance. I hope the Chair will enforce the power that he has to have every person arrested who, under any circumstances, violates the order of the Senate in that respect.

Mr. THURMAN. I hope so too; that is to say, I hope the rules of the Senate will be enforced. This is a deliberative body, and not a popular assemblage. Whatever may be the motives of men, those who are here as spectators of our proceedings have no right whatever to interfere by applause or dissent. I heard nothing of any applause yesterday. My poor remarks got no applause from the galleries. Perhaps those of the Senator's did.

Mr. EDMUNDS. O, yes; yours did.

Mr. THURMAN. Then I was unfortunately so deaf that I did not hear it. I was listening to the applause of my friend from Vermont; I did not hear the applause of the galleries at all.

Mr. EDMUNDS. My friend yesterday was so happy and so correct in the remarks which elicited the applause that I did not feel myself at liberty to raise any point then. But now I do think that the Chair ought rigorously to enforce the rules in that respect; and if this be repeated again under any circumstances, I hope the persons will be arrested and brought to the bar of the Senate and imprisoned for contempt. We cannot go on in this way.

Mr. THURMAN. I hope so too; for if ever there was a time in the history of this country when careful deliberation, when sound sense, when freedom from passion, as far as it is possible to free the human heart from it, ought to prevail, that time is now; and I for one shall not do anything whatsoever that shall tend to inflame the passions of men, but shall appeal in all I have to say to their reason.

Sir, I had said to the Senate, and especially to the Senator from Illinois, the chairman of the Military Committee, that the very worst enemy the Army has is he who would use it in interfering in the elections of this country. It is a fundamental principle, not only of American liberty, but of English liberty too, that the military shall be subordinate to the civil power. That principle is embodied in almost every constitution that ever was adopted in the United States. The people of the country from which the most of us are derived have an innate jealousy of the use of the military. Why, look at England. Her appropriations for the army are only from year to year, so jealous is she of a standing army. Look at our own Constitution which prohibits appropriations for any object for more than two years. See how jealous our forefathers, both in the old country and in this, have been of the interference of the military in the elections of the country. And let me tell you that, notwithstanding the events of the last fifteen years, that spirit of liberty has not died out in the American heart. If, therefore, I were an enemy of the Army of the United States and wished to see it abolished, I could contrive no better plan than its use in interfering in the elections of the country. The inevitable result would be the election by the people of a House of Representatives whose power over the purse would soon dwindle the Army into a mere shadow. It is not true, sir, that those who protest against military and armed interference in the elections are the enemies of the Army. It is my solemn belief that there is no duty ever performed by a soldier so onerous to him, so distasteful to him, as this employment that has been made of the soldiers in the elections of the country. I believe I do not know a man who wears the uniform of the United States Army, be he officer or be he private, who would not at this very moment be rather engaged in a winter campaign against the savages on the frontier than to be engaged in these squabbles about the elections in the States of the Union. It is no hostility then to the Army that prompts us to inquire why it is that troops are stationed at the place where a general election is held; but it is because "the price of liberty is eternal vigilance," and, if you cease to cherish those great principles which lie at the foundation of liberty and of free government; if you let them cease to be dear to the hearts of the people, then, sir, liberty and free government will cease.

The Senator from Wisconsin [Mr. HOWE] was pleased to express the hope that there is no danger from the Army of the United States, and to say that the officers of the Army are the servants of the people; that our case is a little different from that of England. Well, Mr. President, I am not going to run the parallel between English freedom and American freedom. I certainly do not want to run any parallel that might not be advantageous to my own country, but let me tell the Senator that there was a government once whose renown will never die out as long as history is read or memory lasts, whose officers were also officers of the people, and whose conquests covered almost the whole known globe. That was Rome. Her officers were officers of the Roman people, officers for only twelve months at a time, her military councils holding power for but twelve months at a time; and yet a military chieftain overthrew the liberties of Rome, and from the time that he passed the Rubicon she was a republic only in name and a despotism in fact.

Mr. EDMUNDS. Mr. President, the Senator from Ohio has fallen inadvertently into a slight error in stating what the Constitution is about appropriations. If I correctly understood him, he said that our Constitution limited all appropriations to two years. Among the powers of Congress is this:

> To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years.

The limitation on appropriations is to two years for the Army, but not for other objects.

Mr. THURMAN. I am very thankful to the Senator for correcting me with his usual accuracy. The very fact that that is singled out, and that an appropriation for the Army is limited to two years while other appropriations may be for a longer period, only makes more emphatic the position I took.

Mr. EDMUNDS. So it does, but I like to have my friend, as he almost always is, perfectly accurate. I entirely agree with the Senator from Ohio that the price of vigilance is eternal liberty, and that the price of liberty, as he stated it, is eternal vigilance. One species of that vigilance is the exercise by every department of the Government of its constitutional functions, and that it shall not fail to exercise those functions at any time or at any moment of the existence of the Republic; and in one department of the Government, in the exercise of its duty, in order to see that the laws of the United States are faithfully executed, in order to support the process of the courts, as the Army is bound to do when properly called upon, it is one of the high duties of the President of the United States to so distribute the force that the Constitution and Congress have placed at his command that he may be always and in all places enabled to execute the oath he has taken to support, protect, and defend the Constitution of the United States, and to see to the faithful execution of the laws, and to aid in the enforcement of judicial process by the only force known to the laws of the United States when there is resistance to judicial process, the Army.

Therefore it may happen, as it did at Boston, in the Commonwealth of Massachusetts, when a so-called fugitive from labor was to be returned to his slavery, that it was supposed to be the duty of the President of the United States to draw into the city of Boston from forts and places the armies of the United States to execute the process of a commissioner of the circuit court of the United States, and to remand to Virginia or to some other State a so-called fugitive from labor. That was done not a great many years ago. It was a good deal criticised in the interest of humanity, and liberty, and justice, but it was not criticised I think by right-thinking men in respect of the constitutional duty of the President, however unpleasant it might be, to see to it that that arm of the Government, its force, its power residing in the Army, was applied to constitutional uses. So it may happen on this occasion that that great portion of the Army, or small portion, whatever it may have been, that is said to have been taken to Petersburgh or stationed there, was taken or stationed there for just constitutional purposes, for the protection of liberty in the upholding of constitutional law.

In such a state of case, if any Senator seems to suppose, as the Senator from Virginia does, that there was something improper or irregular either in fact or motive about this event that he assumes took place—I know nothing about it—I am disposed for one to gratify his feeling, his wish for information; because, if the President of the

United States has, as I believe he has, had good reason for whatever he has done, I shall be glad to have the people of the United States, as well as the Senator from Virginia, know it.

There is this singularity, so far as I have heard the debate, in what has been stated by the Senator from Virginia, and by other Senators. I have failed to hear any suggestion even of a suspicion that the supposed presence of troops in Petersburgh on the occasion referred to was in any respect unlawful in fact, or accompanied by any improper motive. If I am right in that, there would be good reason for hesitation, I think, on the part of the Senate in adopting the resolution, because it would imply that on the suggestion of any Senator and at all times we would saddle the Executive with the onerous and annoying duty of reporting daily to Congress whenever in the United States there was any change in the disposition of troops or their location; that we might ask him to-day, on the curiosity that I certainly feel, as some of my friends are there, as to where certain regiments of infantry are in the Black Hills and on the Yellowstone, and how they are getting on, and why they have been sent to a cold and wintry place, instead of being in a better one, and all that. And yet every Senator would say that an inquiry of that kind ought not to be forced on the President of the United States; not that he has any objection to answering it, but it is asking useless questions that the public interest does not require to be answered, and that we ought not to impose upon a co-ordinate branch of the Government the necessity of making daily reports of the roster and the disposition of all the troops of the United States. Nobody would contend for that.

The only fault that I see in this proposition, if there be any, is the failure of my honorable friend from Virginia to state that he himself has been informed or believes that this supposed presence or movement of troops was in any respect in violation either of the Constitution or of the laws, or of that just and proper disposition of the force of the United States that the President is always bound to make. If he had stated that either upon his own responsibility or upon information that he was willing to be responsible for as believing to come from respectable sources, then in my opinion he would have made a clear case for an inquiry. As it is, on this naked question I doubt exceedingly whether it falls within correct principles of mere practical administration of affairs; I do not mean constitutional principles; of course it is perfectly out of constitutional principles; but this is a subject that appears to excite the feelings of some Senators and gentlemen, one that I am sure I am not desirous should be blinked or disguised at all, for I should be glad to have the President of the United States report why it is and how it is that the force of the United States has been distributed in respect of turbulences and resistances to law growing out of election and franchise questions for the last four years. If it stood upon that ground there would be great reason for such an inquiry; and in this particular instance, without committing myself to all sorts of inquiries in the future which are merely burdensome and not improper in themselves, I shall vote for the passage of this resolution.

I should be glad to have the President of the United States report to us the occasion of every movement of troops that has taken place in connection with elections or disturbances growing out of political ideas of whatever character, if his movements, as I believe, have always been right, growing out of his fidelity to his duty under the Constitution, carefully keeping himself within the limits of the law and the Constitution, and doing whatever he has done only with the motive that he is bound to possess, and does, I believe, of preserving the peace under the laws of the United States, and within the limits of his constitutional power. I should be glad to know that, and if, as seems to be implied, although not stated, there is some ground as somebody supposes to suspect that this handful of men who are said to have been in Petersburgh on this occasion were there for some purpose not affecting the preservation of the peace under the laws, not affecting the enforcement of judicial process, but for some other purpose, then certainly I agree with what Senators have said that it is high time the Senate of the United States should know it, so that in this particular instance although on the face of the resolution, it does not point that I can see any reflection in it, I shall vote in favor of its passage.

The PRESIDENT *pro tempore*. The question is on agreeing to the resolution as modified.

The resolution was agreed to.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. GEORGE M. ADAMS, its Clerk, announced that the House had passed the joint resolution (S. R. No. 26) authorizing an allowance to certain clerks of committees.

The message also announced that the House had passed the following bills; in which it requested the concurrence of the Senate:

A bill (H. R. No. 1611) authorizing the changing of the name of the sloop Addie Parker, of New Bedford, Massachusetts;

A bill (H. R. No. 1824) to change the name of the pleasure-yacht Hiram B. to Iola;

A bill (H. R. No. 3687) to amend section 3117 of the Revised Statutes of the United States, relative to entry of goods taken or delivered at intermediate ports;

A bill (H. R. No. 4112) directing the Secretary of the Treasury to report upon the necessity of a public building at Rochester, New York; and

A bill (H. R. No. 4116) to change the name of the steamship Whirlwind to that of Arcadia.

ENROLLED BILLS SIGNED.

The message also announced that the Speaker of the House had signed the following enrolled bills:

A bill (S. No. 620) to remove the political disabilities of James Argyle Smith, of Mississippi;

A bill (H. R. No. 648) for the relief of Andrew J. Barrett;

A bill (H. R. No. 1075) directing the Second Auditor to settle the pay and bounty account of John Ammahaie, or Ammahe;

A bill (H. R. No. 1503) for the relief of Sarah F. Albertson, of Boonville, Missouri; and

A bill (H. R. No. 1581) for the relief of John Gowers, late of Company C One hundred and eleventh regiment New York Volunteers.

ELECTORAL VOTE OF LOUISIANA.

The PRESIDENT *pro tempore* laid before the Senate a message from the President of the United States which was read, as follows:

To the Senate and House of Representatives:

I have the honor to transmit herewith a letter (accompanied by testimony) addressed to me by Hon. JOHN SHERMAN and other distinguished citizens, in regard to the canvass of the vote for electors in the State of Louisiana.

U. S. GRANT

EXECUTIVE MANSION, *December 6*, 1876.

Mr. MORTON. I should like to hear that document read.

Mr. SHERMAN. As it is lengthy, I move that it lie on the table and be printed.

Mr. THURMAN. I wish to inquire how far the order to print would go, whether it would include all these matters that accompany the letter.

Mr. EDMUNDS. We ought to print everything the President sends, as a matter of course.

Mr. THURMAN. Or is it simply the message that is to be printed?

Mr. SHERMAN. The document itself is accompanied by papers; that it is necessary, as a matter of course, to have in order to understand the document. The paper refers to the documents upon the table of the President of the Senate, and my motion is to print it in the ordinary way of printing any communication from the President of the United States.

Mr. THURMAN. With all the documents—everything?

Mr. SHERMAN. Yes.

Mr. THURMAN. I do not know that. I am not prepared to say that all that matter ought to be printed until I understand what it is. I am perfectly willing that the message itself shall be printed, and that the letter addressed by my colleague and others to the President shall be printed, but that all the matter which accompanies those papers shall be printed, for the present, without knowing to the contrary, I am not exactly prepared to say ought to be done.

The PRESIDENT *pro tempore*. Does the Senator from Ohio object to the printing?

Mr. THURMAN. I do.

Mr. SHERMAN. If my colleague objects I will make a statement to him and to the Senate. As my name is attached, with the names of other gentlemen, to the letter, I desire to state that the letter was the result of a request on the part of the President of the United States that we should proceed to Louisiana to witness the counting of the vote of that State for presidential electors. When we severally arrived in New Orleans we found there gentlemen selected by the national democratic committee of the United States, appointed for the same purpose. These two committees so selected met there and they performed as they thought important public duties. Those selected by the President, aided greatly by gentlemen sent there by republican state organizations, have communicated the result of their visit to the President of the United States in the form of a letter, which is also accompanied by a full report of the proceedings and the testimony taken before the board of returning officers of that State.

Mr. EATON. May I ask the Senator from Ohio a question?

Mr. SHERMAN. I should like to finish my statement first.

Mr. EATON. I wish to ask whether this report to the President is from both sets of gentlemen, whether it includes both sides?

Mr. SHERMAN. I will answer the question if I am allowed to proceed in my way. I will state that when we met there the common desire of both committees was to secure an open and fair canvass, so that every citizen of the United States might look in upon the action of the returning board and see what was done. Therefore, by the concurrence of both committees, anticipated by the invitation of the board of returning officers itself, we were present at all the sittings of the board, although we had no more legal claim to be present than other citizens of the United States. Yet, to prevent the inconvenience of a great crowd, five gentlemen appointed by either committee were present and heard every word that was said and saw every act that was done by this board of returning officers. Whenever a paper was opened about which there was any contest or controversy the candidates on both sides were called upon with their attorneys to be present. Further, to secure a publicity that would be general throughout the United States, each committee employed a stenographic reporter at its own expense, and by this means full reports of the proceedings of this board were published every morning in the respective papers of the republican and democratic parties. Thus every word that was said before this board and every act done was reported in the morn-

ing papers of New Orleans, and the whole report is communicated in this mass of documents now awaiting your order for publication.

After having seen the canvass completed in this open and fair manner, so that everybody could see that it was done publicly and fairly, we have brought the whole report, together with copies of the testimony taken by commissioners appointed by the board, so far as we could get it on either side; but as I shall mention after a while a portion of the testimony is not here. We have submitted all to the President of the United States, with our general statement as to the character and nature of the canvass.

Now I will answer the question submitted to me by the Senator from Connecticut. It is a very pertinent one. He asks me whether this document contains all the testimony taken. I say it does not, but I say for myself and the other gentlemen who signed the paper that we did everything that could possibly be done to secure every scrap of testimony taken on either side. But under the law of Louisiana it seems that they examine witnesses by interrogatories and cross-interrogatories which are served upon the opposite party and are answered by the witness. When the depositions were taken for the democratic electors it was not possible for us to procure copies of that testimony until the papers were filed formally as depositions before the board of returning officers, and even then we could not copy them until the board acted upon them. We tried to but could not, because, from the nature of the examinations, the depositions were under the control of these electors until presented to the board of returning officers, and much of this matter was not presented until the last day when their public sessions were finally closed. Anticipating the trouble that would arise out of this failure on our part to give all this testimony I applied—as will appear from a published communication which I have seen in the papers since I came home—to the democratic committee there to furnish copies of depositions taken by them or to enable us to secure copies of them. For the reasons which they gave in their published letter they declined, thinking they would seek some other mode of communicating the testimony on their part. That was the general substance of it, but I will state that the papers now presented contain every particle of evidence submitted to the board that was accessible to us, and an accurate account of every act done and every word said by every member of the board. The testimony consists mainly of depositions taken by commissioners upon interrogatories furnished by each side—many of Army officers and supervisors of election, and affidavits attached to and made part of the returns of election officers.

Mr. McDONALD. I should like to ask the Senator from Ohio if the committee attending there at the request of the chairman of the democratic executive national committee did not first propose that there should be a joint action between the two representative parties in regard to securing a fair count and if that was not declined by the gentlemen representing the other side.

Mr. SHERMAN. The democratic committee did on their part before we arrived there publish to the world a letter in which they proposed to us to join with them to influence the action of the board of returning officers.

Mr. McDONALD. I will ask the Senator from Ohio if it appeared——

The PRESIDENT *pro tempore*. Does the Senator from Ohio yield?

Mr. SHERMAN. I will hear a question, and then I hope the Senator will not interrupt me further.

Mr. McDONALD. I understood the Senator to say that this proposition was published before the arrival of the gentlemen who had gone there at the request of the President.

Mr. SHERMAN. There was one there, I think, at the time. Is that the question? Is the Senator through?

Mr. McDONALD. Yes, sir.

Mr. SHERMAN. I will answer that that letter was published to the world when only one of the gentlemen named by the President had arrived there, but two other gentlemen representing political organizations, republican organizations in the Northern States, were also present. But we made no point upon that except that they published this document to the world when but one of those named by the President had arrived. When we arrived we declined their proposition very promptly.

Mr. McDONALD. Will the Senator allow me to ask him one other question?

Mr. SHERMAN. One other, yes.

Mr. McDONALD. Was it proposed to the committee representing the democratic party there by your committee that there should be a joint report, or did you propose anything to them except that they should furnish to you what testimony they might have that you might incorporate it in your report?

Mr. SHERMAN. All the questions put to me by the Senator from Indiana are answered in this document. The document shows the letter to us, our reply, and the correspondence that occurred. The document also shows the letter on our part asking them for copies of their depositions, stating that the request was made with a view to communicate them to the public at large, and it gives their reply. My friend asks me questions which are answered by the papers themselves.

I am told that this document has gone to the other House as well as to this. It is made the express duty of the President of the United States to submit to either House of Congress matters proper for public information. It is clear that no matter has occurred in the history of the United States more important for public information than the transactions connected with these canvassing boards, and also connected with the whole proceeding in the making of a President of the United States. In the strict performance of that duty, he has sent you a communication signed by several private citizens, and it is accompanied by information which bears upon a public act. Therefore, the publication of this document, it seems to me, is not only proper, but it is indispensable. The people of the United States have a right to know all that has been said, all that has been done, and all that has been proved before that returning board of officers. I, for one, say (and I have no doubt the same thing will be assented to by those who agree with me in political opinions) that if at any time, in any form, the testimony submitted to that board, taken on behalf of the democratic electors, is presented here the Senate will vote for its publication. Indeed, as the correspondence shows, my effort was to secure this testimony, so that I might say to the Senate, if called upon, that every scrap, every word, every deed done by this board of officers is open and public; and I say now, before the vote is taken, that there probably never has been a more public act done in the United States of America than was done before this board of returning officers. It is true that, by their rule, they excluded all the people except a limited number, because, from the very nature of their duty, partly ministerial and partly judicial, those returns had to be opened in the presence of a few persons. They were so opened; but, whenever a contest arose, appearing either upon the face of the papers themselves or appearing from public information known at large, the very moment that contest appeared, the attorneys on both sides, who were very troublesome and, it seems to me, very annoying sometimes, (I speak of them as a general rule.) and the candidates on both sides were admitted there and made their contest. We witnessed the whole of that; and our record, not differing in any essential respect from the democratic record, will show the way that was done. All that was done there is contained in these papers.

Mr. McDONALD. I should like to ask the Senator from Ohio one other question.

Mr. SHERMAN. Certainly.

Mr. McDONALD. I ask the Senator if this board did not frequently go into what they termed executive sessions, from which all parties were excluded.

Mr. SHERMAN. I am very glad my friend has asked me the question, because we have executive sessions here in which all persons are excluded. The executive sessions of this board were the very public sessions which I have described. This board, with a strange misuse of language, called their sessions open when they received motions and made orders, public orders, as to announce the rules and the like, or to receive protests. Then some member of the board would move to go into executive session. When they went into executiye session, all the republican committee and all the democratic committee were present. The reporters on both sides were there; and everything that was done by them in executive session was printed the next morning in the public papers by men of both political parties; and there was no disagreement in their report.

Mr. McDONALD. Down to what time of their investigation did that take place?

Mr. SHERMAN. Down to Saturday last at two or three o'clock. I was present; and when all the whole mass of testimony on both sides, including everything contained in these papers, was presented in evidence, then we, the signers of this paper, conceiving that our business was done, left for our respective homes.

Mr. McDONALD. Then I understand the Senator knows nothing of the action of the board from Saturday night on.

Mr. SHERMAN. I know before we left the board adjourned *sine die* to make their final decision, just as the Supreme Court adjourns to go into its consultation-room to make up its decision.

Mr. McDONALD. Did the board adjourn *sine die* on Saturday evening?

Mr. SHERMAN. Yes, sir. They declared the case closed and went into private consultation on this mass of testimony to examine it, and to take up the case of each election poll, and to decide the questions before them.

Mr. McDONALD. Then I understand from the Senator that he knows nothing about what transpired before the board, what evidence they received, if any, after Saturday at three o'clock?

Mr. SHERMAN. I know from the public prints that they received no evidence after that time. I know that this mass of testimony contains not one single thing that was not submitted to the board in open day, and copied for us. Nothing else was submitted. I know that this board of returning officers did precisely what any court in this broad land of ours would do under like circumstances. They heard the case to the fullest extent; during two weeks of laborious labor they opened the returns, analyzed them, heard contests and protests, examined witnesses orally, received depositions taken before commissioners under the law of Louisiana. They worked as the rest of us had to work until the case was exhausted and both sides had submitted all the testimony they desired to submit. Then they said, "the case is closed; we will take it up and decide this matter as soon as we can. Certainly we must decide it before the day fixed by the Constitution of the United States for the declaration of the vote.

I make this statement now, because I have seen in the public prints since I came North the whole of the proceedings of that board, and the conduct of the gentlemen before the board, entirely misrepresented. I will now only say in the presence of my friend from Indiana [Mr. MCDONALD] and my friend from Kentucky [Mr. STEVENSON] who saw some of these things.

Mr. MCDONALD. No, sir, I was not present at any board-meeting.

Mr. SHERMAN. I thought these gentlemen were present. At any rate all that was said and all that was done was as public as the proceedings of the Senate of the United States in open session, and what they called an executive session was a simple misnomer of a proceeding that was as public as the day.

Perhaps I have said enough, because I do not wish to add to any excitement. I do not wish to prejudge this matter. I do not wish to engage in a debate upon the matter until these documents are printed. The action of this board has now been made public. I know nothing of it except what I see in the public prints. But, from my knowledge of the testimony, I feel bound to say that when printed it will disclose to the people of the United States an organized effort on the part of the democratic State committee of Louisiana to conduct the election in the State of Louisiana so as to defeat by intimidation and violence, if need be, the election of the electors on the Hayes ticket and to carry the election of the electors on the Tilden ticket. I believe the facts presented by this testimony clearly and conclusively show that there was such an attempt, and that it was carried into execution in several parishes or counties of the State of Louisiana. In forty or forty-two of these parishes there seemed to have been a fair election and no obstruction to the freedom of voting, but in others there was organized violence accompanied with whipping, terror, intimidation, murder, and wrong so painful in its character that I could not listen to it or read it with patience or toleration. The depositions that are contained in this document and the cross-examinations furnished present scenes that I am sure the people of the United States will look upon with horror and humiliation. I do believe the success of such a plan accomplished with means so terrible to human nature would have been a disgrace to civilization and a reproach to our republican institutions.

I have said this much without going into detail—without saying anything about particular polls, parishes, or places, but merely to give you the general effect of this testimony upon my mind. I am sure I went there with no purpose but to witness a fair count, with no desire to imagine or propagate scenes of horror. I took no part in the proceedings except as a witness. I listened to the testimony such as was oral, I read such as I had access to, and I have read more of it since I left there, having copies of it. Unless the case as made on these papers is changed materially by the testimony and depositions produced on the other side, it does prove the broad, grave charge I have made, that an organized conspiracy of intimidation to defeat the will of the majority of the legal voters of Louisiana has been legally and properly defeated by this returning board in the exercise of powers plainly conferred by law, and openly and boldly performed in the light of day. When the papers are printed and laid on our table I may desire, if the subject should come up, to make good the statements of this letter, but until then I do not care to pursue the matter further.

Mr. BOGY. Mr. President, I was one of the persons selected by the national democratic committee to visit New Orleans to obtain if possible a fair count of the vote given at the late election. As I was there and took some part in trying to obtain that result, I am not willing that the statement made by the gentleman from Ohio should go to the country without some explanation. My impression was when I was in New Orleans that the election throughout that State had been fair and orderly, without any intimidation, and without any force used at the polls more than may happen and has always happened in almost all the States. The first attempt that was made after reaching New Orleans, was to get the co-operation of the gentlemen who were sent there by the request of the President, to get them to co-operate with us to obtain a fair count of the vote. The gentleman from Ohio says that the effort was made to influence that vote. That remark I think is not correct. I had some connection with others in preparing the letter, although I did not write it. It was written by a man who writes much better than I can; but the object was to obtain a fair count, and not to bring about any extraneous or any improper influence. That object was proper in itself, as it was for this that both parties visited New Orleans; but this request was by the opposite side denied. We then again addressed them, and a second denial was the result of our second application. After a great deal of see-sawing and trouble, which you would not infer from the speech made by the gentleman from Ohio, it was finally conceded that five gentlemen from our side and five gentlemen from the other side should be present, and this under the most difficult circumstances, before that board. Rules were prescribed that made it utterly impossible to obtain anything like a fair investigation unless it was by that side that had the sympathy of the board. For instance, you could ask no question of the opposite witness unless the interrogatory was filed in writing twenty-four hours beforehand and handed to what was called the opposite party. The Senator says the seals of the returns were opened before these gentlemen. The returns were opened as he says, but they were not and could not be examined by them, at least not by our side. Such was the rule. The gentleman from Ohio states that a fair examination took place. The rule was that the seals of the returns were to be opened before the committee, but the examination was to be made by the canvassers themselves, in what they call executive session.

Mr. SHERMAN. Will the Senator allow me a word on that point?

Mr. BOGY. Let me finish my sentence. I was not a member of the committee of five; therefore I do not know exactly what an executive session means, but I understood it to be very different from what he says. Now I will hear the Senator from Ohio.

Mr. SHERMAN. My friend says he was not there, but I think everybody who was there will bear me out in what I stated. I said that not only were those seals broken, but the papers were passed around and all had a chance to inspect them. There were only fifteen parishes in the State that were contested, but whether contested or not we had an opportunity of inspection. The returns were passed around. Indeed, I saw them in the hands of the democratic committee. They felt it to be their duty to inspect every return, and I think every one was inspected. Then, whenever there was a conflict in the nature of a protest, they called in the attorneys and candidates on both sides to examine the papers.

Mr. BOGY. Of course, as I was not there I cannot speak of what took place in practice. The rules printed and handed to the committee were entirely different. The seals were to be broken in presence of the committee but the examination of the contents of the envelopes was to be private, and I do know from what I was told there—I only state what was told to me by gentlemen of very high standing—that the first examinations were made in the way that I have mentioned; that while the seals were broken before the committee, the after examination took place privately. Of course I do not wish to be understood as denying a matter of fact that the gentleman from Ohio states. I was not there as long as he was; I was there but a short time, but that such was the fact when I was there, I have no doubt.

The law of Louisiana requires that a statement of all acts of intimidation, all unlawful acts, all improper conduct which took place at the time of the election, or immediately preceding the election, should be made a part of the return of the commissioner of each parish at the same time that he makes a return of the votes, and the law is to that extent very particular that the fact of intimidation and of unlawful conduct shall be made with the return of the votes. We were informed at that time that the returns made contained no returns of bad conduct or intimidation at the polls, and that the information now spoken of and which is returned here to-day to be printed and go to the country consists of statements and affidavits obtained in violation of law, and after the returns required by law had been made. I presume the gentleman from Ohio will not deny that.

Mr. SHERMAN. Please repeat that.

Mr. BOGY. The law of Louisiana requires that the fact of any unlawful conduct, any intimidation, or any other improper conduct which may have taken place on the day of election, or immediately preceding the election, or even when the voters were being registered, that statement of fact—it is called a statement in that law—should be made a part of the return of the county officer when he returns the vote. That was not the case, as I was informed when in New Orleans.

Mr. SHERMAN. According to my recollection of the law of Louisiana, my friend does not exactly state it. The supervisor of election, as he is called, is bound to attach his statement to one of two duplicate returns, not to both, supported by the affidavits of three citizens. In one case which excited a good deal of comment and was the subject of telegraphic communication to the North, in the parish of De Soto, the paper came and was opened. It appeared to have been sealed up on the 16th, but it came to us and was opened on the 25th. When opened, there were found inside the envelope certain certificates, including the certificate of the supervisors of election and the affidavits of three disinterested persons under the law. It was not claimed, I believe, that it was necessary to attach this statement at the time the return was made; but it must be attached before it was returned to the board. In that case, the case of De Soto, when the papers were opened, at once it was seen that there must have been an opening of that envelope; but upon looking at the papers themselves, the affidavit of the supervisor of election set out the fact that he brought the returns to New Orleans himself, that he was afraid, for fear of his life on account of threats, to attach the affidavit to the legal return in De Soto Parish; the name of the town I have forgotten. This was supported by the affidavits of three witnesses taken in New Orleans and who came down with him. They certified that they were afraid to make the affidavit in the place where the poll was held. Instead of attaching this paper to the envelope and the returns themselves he opened the papers, and then, after inserting these affidavits, he sealed them again. In that I think he was wrong, although there probably was no fraudulent intent. The affidavits themselves, showing that they were sworn to in New Orleans the day before, were actually opened by the board. On this subject there was a great deal of comment. The error of the supervisor was in not first wrapping these affidavits on the outside of the package and then sending them before the returning officers, when there could have been no objection to their legality. The point was not made that he had not the right to make these returns.

Mr. BOGY. This is what a friend of yours and an acquaintance of mine in the city of New York calls "a mere clerical error," the open-

ing of the seal and injecting into that paper another paper, and then sealing it. This is called a "clerical error."

Mr. SHERMAN. That was a telegraphic falsehood. My friend is justified in repeating it because he saw it in the newspapers, but I saw what occurred and heard what occurred, and I say here that Mr. Stoughton and I exactly agreed on that point, and although they gave me credit for justice and fairness and tried to throw discredit on Mr. Stoughton he did not say that it was a clerical error. The telegram colored the whole transaction.

Mr. BOGY. I have the floor, I believe.

The PRESIDENT *pro tempore*. The Senator from Missouri is entitled to the floor.

Mr. BOGY. The Senator's statement bears out my statement, and I am astonished that the Senator should understand the law regulating the election in Louisiana so imperfectly, when he was there for three or four weeks making that a special study. Now I do say, as a fact, and I shall bring the law which I have at my room, whenever necessary, that the law of Louisiana requires that the fact of any intimidation, or of any unlawful conduct, or any improper behavior which prevented a free election, must be returned by the county officer with the return of the votes to the officer in the city of New Orleans authorized to receive the returns. The law goes further; it tells how that return shall be made.

Now, the statements proposed to be printed here to-day, if not all fully nineteen parts out of twenty, were made outside of that law and were gotten up in the city of New Orleans independent of the returns and in violation of the law. They are affidavits taken in the city of New Orleans, or depositions, as they are called. They have a peculiar way of taking depositions in that country. I repeat, all this information was obtained in violation of the law, and after the parties got to the city of New Orleans, and in almost every instance they were kept by the parties who brought them to the city of New Orleans for days before they were handed to the proper officer. The fact was notorious and cannot successfully be denied. My assertion can be proved, that they were held back by the parties for days.

While it is true that on the face it appeared to be all right, and the examination all fair, because the two parties were represented by a committee of five gentlemen each, and distinguished gentlemen they were, too, yet one had all the facilities imaginable, and had the ear and regard of the canvassers, while the other had no means to get at the truth except under the most difficult circumstances. These affidavits were gotten up in violation of law, as I have already said. If you apply as a test the case mentioned by the Senator from California this morning of Eliza Pinkston, which was depicted here in such glowing language, you will judge of the correctness of all this testimony. A grosser and more infamous imposition from one end to the other was never attempted in a civilized country than this case of Eliza Pinkston, which had nothing to do with politics; the whole statement is founded in falsehood.

The people of New Orleans, democrats and republicans, know the statement I make here to be true and the story of this case as it is made to appear as infamous and disgraceful. I do not think that the Senator from California knew these things or he would not have alluded to the case of Eliza Pinkston.

Mr. President, I would say, in behalf of the gentlemen who were there with me, that when we first got to the city of New Orleans, after organizing ourselves as a committee, a resolution was passed that the first thing to be ascertained was how had the State of Louisiana voted, and if it had voted for Hayes we resolved that the fact should be stated to the people of the United States over our names; and on the other hand if it had voted for Tilden we were to invite the co-operation of the gentlemen on the other side to assist us in getting a fair count. We accordingly for some time attempted to get the correct information from all the different parishes of Louisiana. There are fifty-seven parishes in that State, and although the information obtained was not of an official character, it was of the very highest credibility. In many cases, perhaps in twenty-odd, the committee had what were called duplicate returns; meaning thereby a return of the votes of the parish signed in most cases by the United States supervisor. We then sent messengers and telegrams and went to work in every way possible to obtain information from the other parishes, and in that way we obtained information from all, I think, but two parishes, and they lie away off on the Sabine, where the population is very sparse. After that information was obtained a letter was addressed to the republican committee asking them to co-operate with us. The committee declined. We were informed by gentlemen of New Orleans that the returns made from all but two or three parishes contained no information whatever of any intimidation or bad conduct on the day of election. Of course this information is not and was not official; but was of very high character and such as carried conviction with me of its truth. I believe it now.

Mr. President, the Senator speaks of a letter which he and his associates addressed to the committee on the other side, to obtain from them the testimony which had been given, and he says that was declined. The testimony which had been taken by both sides was in possession of the board of canvassers, was notorious, and the committee of the other side did not wish to place this testimony in a position to be disposed of by these persons, and for which they were to be held responsible. The request was altogether out of the way and was made as one of those political smart things that our friends supposed would be an advantage.

Now, sir, if the Senator from Louisiana will give me possession of that book which he has in his hand for a moment, and which contains the law of elections of Louisiana, I will show him that the statement I made that any and all evidence of outrages must be returned with the votes, I think, within twenty-four or forty-eight hours, is correct.

Mr. WEST. I do not think the Senator can show that. I will give him the book.

Mr. BOGY. If it is not in that book, you have not got the right law, because I know it is the law of Louisiana.

Mr. WEST. I will not take the law of Louisiana from that. We will show you, however, the interpretation of the law in a few minutes.

Mr. BOGY. I will look at it, and I assert that the statement I make is correct. Any act of misconduct at the polls has to be returned with the list of voters. I state that as a fact.

Mr. SHERMAN. Can it not be written in New Orleans as well?

Mr. BOGY. No, it cannot be written in New Orleans. It has to be written from the seat of justice of the county or parish and as a report. That is the law in so many words.

Mr. WEST. Here is the law; I hand it to the Senator and ask him to please find the statement in this law that requires the officers of election to mail or date their returns from the county seat. It may be here, but I think not.

Mr. BOGY. All this statement that I make will be seen to be true if the law is in this book. If it is not, I have got it at my room.

Mr. SHERMAN. You ought to have it here.

Mr. BOGY. I should have had it, but that I did not expect you would take a snap-judgment on us this morning. I will look into this book, and I am sure if it is the correct law it will fortify my statement. [Examining the book.] Mr. President, this being a very important point; as I wish my statement to be sustained, I will look into it, and if not sustained I will take it back forthwith.

Mr. President, I will state this fact upon my responsibility as a citizen and a Senator, that I and those gentlemen who went with me to New Orleans made an effort to ascertain in good faith the fact whether the election in Louisiana had been fairly conducted or not. I felt then as I feel now, that this subject is above party. The peace of the country may depend upon this thing; and my mind was made up then, and I firmly believe the minds of my colleagues were made up equally as firmly as mine, that if the State of Louisiana had fairly and squarely voted for Hayes, to state it over our names. But we were satisfied beyond the possibility of any reasonable doubt that the election had been fair and that the democrats had carried the State by between seven and eight thousand majority, and had carried a majority of the Legislature, and also carried the member of Congress, notwithstanding the fact that upward of three thousand persons were disfranchised in the city of New Orleans and could not vote. It is the easiest thing in the world in that country to disfranchise a man. A few days before the election some six or seven thousand notices were sent to A B and C D, charging them with having used improper means to intimidate some colored individual, no matter when or where; and while a man is under these charges his name is erased from the list of voters, and of course cannot vote.

Mr. CONKLING. What charges?

Mr. BOGY. Anybody can make a charge. That is, I go before the United States commissioner as a citizen and I charge that Mr. ROSCOE CONKLING a year ago was guilty of intimidation in doing this or that, any specification I please to make, you are thereupon notified. Some seven or eight thousand were so notified that they had been charged with this offense and would remain under that charge until the question was investigated by the United States commissioner, and while under that charge their names are erased from the list of registered voters and they cannot vote. There being but one United States commissioner and he having six or seven thousand cases to examine, or more, perhaps eight or nine thousand cases—I will not be precise but the number was large—he could not possibly discharge them all. So there remained under these charges some three thousand persons in the city of New Orleans who did not and could not vote because their names were taken off the list of registered voters. Yet the democratic member of Congress from that district was elected, and also in the adjoining district. So while it was apparent that the democrats had carried the State fairly and squarely, carried the Legislature and I think every member of Congress, this returning board, composed of these four men whose names are known to the country, two of them being white men and two of them colored men, have changed that majority into a minority and have returned four republican members of Congress, a republican Legislature, and have given the State to Hayes.

If the investigation had been carried on in the way the Senator from Ohio would impress upon the country it would be proof positive that the election had not been fair, and therefore it would not be right to give the election to Mr. Tilden; but I do say that from all the information I could get when in New Orleans the election was fair throughout the State, as fair as in the State of New York or in the State of Illinois. There might have been some disturbance at the polls here and there; such things happen all over the country; but there was nothing unusual.

The Senator from Louisiana, who ought to know and does know the law, said that I did not state that law correctly. I will read it:

That immediately upon the close of the polls on the day of election the commissioners of the election at each poll or voting place shall proceed to count the votes as provided in section 13 of this act, and after they shall have so counted the votes and made a list of the names of all the persons voted for, and the offices for which they were voted for, and the number of votes received by each, the number of ballots contained in the box, and the number rejected, and the reasons therefor, duplicates of such lists shall be made out, signed, and sworn to by the commissioners of election of each poll, and such duplicate lists shall be delivered, one to the supervisor of registration of the parish and one to the clerk of the district court of the parish, and in the parish of Orleans to the secretary of state, by one of all such commissioners in person, within twenty-four hours after the closing of the polls. It shall be the duty of the supervisors of registration, within twenty-four hours after the receipt of all the returns for the different polling-places to consolidate such returns, to be certified as correct by the clerk of the district court, and forward the consolidated returns, with the originals received by him, to the returning officers provided for in section 2 of this act, the said report and returns to be inclosed in an envelope of strong paper or cloth, securely sealed and forwarded by mail. He shall forward a copy of any statement as to violence or disturbance, bribery or corruption, or other offenses specified in section 26 of this act, if any there be, together with all memoranda and tally-lists used in making the count, and statement of the votes.

That must be done within twenty-four hours.

Mr. WEST. After he receives it.

Mr. BOGY. Another place in this law says that it must be returned to this canvasser within twenty-four hours, and he within twenty-four hours must make this return. I stated that to be the law of Louisiana. It is very difficult when everything is denied to be able to put your hand on it. I am not a New Orleans lawyer, but I state that to be the law, that the return has to be made to this county officer within twenty-four hours, and he within twenty-four hours from that time has to make that return to the officer in New Orleans.

He shall forward a copy of any statement as to violence or disturbance, bribery or corruption, or other offenses specified in section 26 of this act, if any there be, together with all memoranda and tally lists used in making the count and statement of the votes.

That law has not been complied with. In nineteen cases out of twenty the testimony reported by the Senator from Ohio was taken outside of this law, and perhaps in every case. What is the twenty-sixth section? The twenty-sixth section says:

That in any parish, precinct, ward, city, or town in which during the time of registration, or revision of registration, or on any day of election, there shall be any riot, tumult, acts of violence, intimidation, and disturbance, bribery, or corrupt influences at any place within said parish, or at or near any poll or voting-place, or place of registration or revision of registration, which riot, tumult, acts of violence, intimidation, and disturbance, bribery, or corrupt influences shall prevent, or tend to prevent, a fair, free, peaceable, and full vote of all the qualified electors of said parish, precinct, ward, city, or town, it shall be the duty of the commissioners of election, if such riot, tumult, acts of violence, intimidation, and disturbance, bribery, or corrupt influences occur on the day of election, or of the supervision of registration of the parish, if they occur during the time of registration, or revision of registration, to make in duplicate and under oath a clear and full statement of all the facts relating thereto and of the effect produced by such riot, tumult, acts of violence, intimidation, and disturbances, bribery, or corrupt influences in preventing a fair, free, peaceable, and full registration or election, and of the number of qualified voters deterred by such riots, tumult, acts of violence, intimidation and disturbance, bribery—

I am not responsible for all these crimes in that country. They are very numerous—

or corrupt influences from registering or voting, which statement shall also be corroborated under oath by three respectable citizens, qualified electors of the parish.

That contemplates when that is to be made, and it is not to be made *ad libitum* whenever it may suit the purpose a month or six weeks afterward, as in this case. That law, infamous as it is in some respects, yet if carefully carried out would not have allowed this vast amount of testimony to be presented of an *ex parte* character before the returning board. It will again appear and be made plain, I think at the proper time, that this returning board had no right whatever to investigate anything in relation to the election of presidential electors. The whole force, intent, and purport of that law is that it shall apply to local state officers and members of Congress. I will not detain the Senate by explaining my views upon that subject, but at a proper time it can be made plain beyond a doubt that it never was intended to embrace the question of the election of electors for President and Vice-President of the United States.

I think I have made good the statement I advanced awhile ago that according to the laws of Louisiana all the facts in relation to any of the numerous offenses described in that law must be returned with the list of voters within twenty-four hours from the time they were received by the canvassers at the county seat. The commissioners of the election which we call judges of election in the other States, must make return to the county seat twenty-four hours after election, making at the most forty-eight hours. That law, I say again, has not been complied with. The twenty-sixth section goes on to enumerate the character of the offenses. And that has not been complied with neither. Hence, I do not think it would be doing right to the people of the United States to place before them a mass of stuff of this kind and call it testimony, and thereby induce the people of the United States to believe that this examination by the returning board was fair and impartial, to use the language of the gentleman from Ohio, who compared it to the investigation by a court of the highest character and standing. Sir, in that he and I disagree. It was *ex parte*; all the facilities were given to one side, none given to the other, and it was in violation of law from the beginning to the end.

Mr. STEVENSON and Mr. SHERMAN rose.

The PRESIDENT *pro tempore*. The Senator from Kentucky.

Mr. CONKLING. I ask the Senators to yield to me for one moment that I may allude to a jocose reference made by the Senator from Missouri to a citizen of the State of New York. He alluded to a telegraphic allegation that Mr. Stoughton, a man of high respectability and a lawyer eminent in his profession, witnessing a disclosure of irregularities in the case of De Soto Parish I think, upon opening the envelope from which it turned out that an affidavit the jurat of which showed plainly that it was made several days subsequent to the date of the return and to the date of the entry made by the clerk on receiving the return, and on its coming to his notice that such an irregularity occurred, passed it by saying that it was a clerical error. Many persons have been amused and not altogether good-naturedly amused at the expense of Mr. Stoughton in this regard. I wish to state, and I feel warranted in doing it emphatically because I speak upon such information as I regard of the very best authority, that Mr. Stoughton never made any remark of the sort. On the contrary, he said to one of the gentlemen attending on behalf of the party to which the Senator belongs that, obviously, undeniably, that envelope had been opened and there had been inserted in it afterward this affidavit, that there could be no question of it; but he never did say that it was a clerical error or make any remark or allusion to it for which he should have been subjected to the ridicule and the censure which somebody saw fit to cast upon him.

As Mr. Stoughton is a constituent of mine and a friend of mine and a highly respectable gentleman, I have thought it fit to enter here this specific denial which I venture to do in his behalf.

Mr. BOGY. Mr. President——

The PRESIDENT *pro tempore*. The Senator from Kentucky has the floor, but yielded to the Senator from New York.

Mr. BOGY. I did not make the statement of my own authority. I read it in the papers that Mr. Stoughton had characterized this thing as a clerical error. Perhaps my friend from New York may have read the same thing.

Mr. CONKLING. Repeatedly.

Mr. BOGY. I not knowing differently made that statement, and I think I would leave to my friend from New York to decide if I was not justified in making the statement as a fact. I am glad to hear it is not true.

I would state, furthermore, that I myself know Mr. Stoughton personally, and my relations with him are of a very pleasant character. Indeed, I am indebted to him for very kind treatment the last time I was in New York. Therefore I had no disposition to make an unkind statement in regard to Mr. Stoughton. But having read the remark I honestly believed that he had made it. When it was denied by my friend from Ohio [Mr. SHERMAN] I accepted the denial at once, and when it is again denied by my friend from New York, I accept it again. If I have done him an injustice, it was not intentional.

Mr. CONKLING. I have only to say that I did not understand the Senator from Missouri to intend any injustice to Mr. Stoughton and the only difference between the Senator from Missouri and myself as he now states himself is this: When that remark was read to me from a telegraphic dispatch, in place of believing it as the Senator did, knowing Mr. Stoughton, I ventured to say at once that I did not believe it, and I never believed it down to the time when Mr. Stoughton assured me himself that he never heard of it until it was reported to him as having appeared in some northern journals.

Mr. BOGY. You have the advantage of knowing him better than I do, and therefore I was justified in repeating what I read. But the papers are so very often untrue, as you know to be the case, that perhaps we cannot believe anything stated by them.

[Mr. STEVENSON addressed the Senate. His remarks will appear in the Appendix.]

The PRESIDENT *pro tempore*. The Senator from Kentucky objects to the present consideration of the motion to print. It will go to the Committee on Printing.

Mr. SHERMAN. I desire to make some reply to the observations of the Senator from Missouri and the Senator from Kentucky. It will be observed that I studiously avoided discussing the papers contained in that document, but only gave my general impressions of the result and stated what occurred at the time the testimony was taken. Now we are met by various questions of law and fact which can only be debated after we have had a chance to examine the very papers contained in that document.

The last point made by my friend from Kentucky is that the returning board had no power to pass upon the election of presidential electors, and he says on this subject he can convince republican lawyers as well as democratic lawyers that the returning board had no right to pass on the election of electors. Now I venture to say that there is not a democrat within the sound of my voice who reads this language of the last election law of Louisiana but will say that the returning board has as clear a right to pass on the election of electors as upon that of any constable or governor in Louisiana. I will read it. This is the last law:

That five persons, to be elected by the senate from all political parties, shall be the returning officers *for all elections in the State*, a majority of whom shall constitute a quorum, and have power *to make the returns of all elections*.

And yet, although that is the last law, and a clear law, giving to this returning board the power to pass upon all elections held in the

State of Louisiana, my friend from Kentucky says they had no power to pass upon the election of electors.

Mr. BOGY. That law makes no provision for the election of electors at all. If that is the last and only law, there is no law for the election of electors.

Mr. SHERMAN. Then you shift your ground. The Senator from Missouri says there is no law providing for the election of electors. Neither party discovered this. Those elections are held under the provisions of the Constitution of the United States, and necessarily are provided for in the laws of every State. You should not construe a law of the State on the supposition that it is violative of the provisions of the Constitution of the United States or that the State has neglected its plain duty.

My friend from Missouri talks about *ex parte* affidavits. I tell him that there was not a single *ex parte* affidavit admitted by that board of returning officers except those that were expressly provided for by law, and if he had been present he would have known that. How can my friend get up and say, "Here is a great mass of *ex parte* affidavits?"

Mr. BOGY. Is there any law besides the law you hold in your hand, and does not that law require that these affidavits must be made within twenty-four hours of the time the returns are made? I have read you the law.

Mr. SHERMAN. I hope my friend will keep cool and sit still. He said that here was a mass of *ex parte* affidavits, and that he did not want them spread before the people of the United States, for fear the people could not tell the difference between true and false testimony. I tell him that there is not a paper on these files in the nature of an *ex parte* affidavit except the *ex parte* affidavits attached to the certificates of the commissioners of registration, and they by the law, by the election law which he read himself, are made *prima facie* evidence, to give the board jurisdiction, and then there must be further testimony, in the language of the law, taken according to the laws of Louisiana, and the great body of that testimony is depositions taken with as much form and ceremony as if upon them depended the largest sugar plantation in Louisiana.

Now he says there is no law for the election of electors and then talks about these affidavits being made in violation of law, and then he says that the commissioner ought to have attached his objections to this election, his allegation that there was intimidation, violence, and fraud, to the identical paper within twenty-four hours after the returns are received. Mr. President, the language of the law does not bear that construction. He read it himself. If he will analyze it he will find that that provision about the twenty-four hours applies only to the making up of the consolidated returns, and that the clause providing for sending forward the affidavits and certificates is not limited by twenty-four hours, and as I was told there, and as was conceded to be the fact, it was the practice there of the supervisors of registration to go to New Orleans with the returns and file them with the returning board. That seemed to be the admitted practice.

My friend argued this great case involving the freedom of election in the United States on the question of a twenty-four hour rule when the very officer who is required to make this return swears that he could not make the return at that time and place without danger of his life, and he and other witnesses from the neighborhood went to New Orleans in order that they might make their affidavit without fear of their lives. If there was a law in Louisiana requiring the twenty-four hour rule to apply, the people of the United States would disregard such a rule, when the reasons for deviating from it are given. Here are the affidavits of the supervisor himself and other sworn witnesses, that he could not then and there have made that affidavit without endangering his life. Sir, the idea of trying this case like a quarter-sessions or justice's of the peace court is absurd. The fact is if you believe these affidavits, if you believe the certificates of the supervisors of registration and these citizens, you have all that is needed to give the returning officers jurisdiction of the case, and having jurisdiction of the case they then must try it upon the sworn testimony of witnesses examined and cross-examined.

That is enough for these minor objections. My friend from New York has done justice to an eminent citizen of the State of New York, who, at great inconvenience to himself, at a personal loss to himself, paying his own expenses, and performing a laborious and unpleasant duty, went there and discharged that duty honestly and faithfully. There seems to have been a desire in some way or other to place Mr. Stoughton in a wrong position. I do not know why, but they did it. I know personally myself that Mr. Stoughton never made such a remark as that which was attributed to him. He sat by my side when the De Soto papers were canvassed and he and I agreed throughout in that whole examination that there had been an act at least of impropriety in one supervisor opening his returns and putting in these affidavits and then sealing them again. If he had just taken these affidavits and with red tape attached them around the outside of the papers, they would have been in strict conformity to the law of Louisiana; but he did not do it.

Now, Mr. President, let us go a little further. My friend from Kentucky says I precipitated the debate. In opening it I did not say anything except of what occurred there in open session to show that this testimony was taken openly before the board. I did state the general result of it; but he himself has stated twice as much as I did; and not only that, the democratic committee, before the board had acted on these returns, while they still had the case before them, issued a *pronunciamiento* to the people of the United States, giving their version imperfect as it was. Sir, I would not have done it. I did not do it. I said nothing about this matter in a public way until I came here and I was called upon to vote in the Senate of the United States. So I have not precipitated this debate. It has commenced, and it will go on when this testimony is printed and can be analyzed.

But my friend from Missouri took an unfortunate step in this debate that justifies me in going a little into the examination of the testimony of a single witness. He referred to the case of Eliza Pinkston, whose deposition was published all over the United States. He said that the murder of Pinkston was not on account of political trouble. He says that it was done for other than political purposes. Sir, on the short and brief facts of that case I would leave the whole matter to the people of the United States. We have the sworn testimony of two witnesses, both of whom received the severest injury that could be inflicted on man or upon woman, one of whom was unimpeached, Cora Williams. Not one word was said against her in any respect whatever. She suffered the same wrong and indignity that was inflicted on Eliza Pinkston, except that her throat was not cut and she was not hamstrung and wounded all over. Eliza Pinkston's husband was killed in the dead hour of night by a democratic band of marauders and her child was taken from her arms and butchered. There were the dead bodies. There was no controversy about that. When that woman, herself having been wounded in several places, fled after these demons had left her in her humble home to a white man's house for protection, she fled to the home of the father of one of the men who was a member of the very band of regulators who did this act, and there she was told that if she involved white men in the case they would finish her, and then she talked about "niggers" being there, and thus they seek to impeach her testimony given with her wounds yet bleeding and her dead husband and child buried like dogs without inquest or examination.

At that very same time, within hearing of the shot that killed Pinkston, another woman was injured in the same way as Mrs. Pinkston and she knew the men who did it. She told their names and her testimony is uncontradicted by a single witness or a single circumstance. She heard the shot that killed Pinkston; she saw Mrs. Pinkston within a few hours when they came together. Her husband had fled to the swamps. Ah! my friend, the scenes that occurred in those parishes that are called "bull-dozed," where thousands of negroes fled from their cabins, slept at nights in the swamps, and worked at picking cotton in the day-time, were disclosed by that testimony. But, says my friend from Kentucky, whose heart I know beats with the same feeling as mine does in regard to such atrocities, he saw negroes who were presidents of democratic clubs, he saw negroes who voted for Tilden and voted willingly. How comes it, then, my friend from Kentucky, that in forty-two parishes where it was conceded that there was a fair election, where there was no pretense of intimidation, or wrong, or fraud on either side, there was a certain and general republican gain, and there, where the negro had the right to vote, he voted for the party that gave him liberty, that secured him civil and political rights, as by the instincts of humanity he would be guided to do? Why was it that there, where there was a free election, there was an increased republican vote, while in the very parishes that were bull-dozed, where there was a majority of registered colored votes in one parish, not a single republican vote cast? And the evidence shows you that one large town of three thousand inhabitants, near which was a company of United States soldiers, for three days before the election was picketed by these armed marauders, these organized democratic rifle clubs three miles outside, and negroes were driven away who came to vote at that place. When twenty-six negroes came in the Sunday before the election, so that they might be there in time to vote, they were shot upon and three of them were killed or fled to parts unknown. And this is proven by testimony that is not gainsaid.

How comes it that one negro man, respected by all the neighborhood, spoken of kindly by the white people, seeming to be an honest, plain, simple man, who told his story well, when he started at two o'clock in the morning as an officer of the election to go to hold an election in one of these bull-dozing parishes, had gone but a little ways when a company of men, whom he knew by name, whom he named to the board, living in the neighborhood, seized him, held him, took away his ballot-box, destroyed it, and then deliberately shot him? He came before us with the wounds upon his person; and no election was held in that precinct that day. Do you think a President of the United States ought to be elected in this way? No, no. Mr. President, these scenes of violence and tumult and turmoil are proven by testimony which cannot be gainsaid. You cannot turn it aside. Not only that, the law of Louisiana, with a charity and wisdom that might be fairly followed by other States, provides for the very situation and circumstances that they found there.

In 1870, I think it was, after the murders that occurred in 1868, men of both parties joined in providing an election law that would prevent these atrocities, and Judge Campbell, now, I think, one of the judges of the supreme court of that State, at all events one of the judges of that State, drew the law under which this returning board acted, and he gave to this board of returning officers these ex-

traordinary powers for the very purpose of protecting the negroes from this maltreatment by organized bands of marauders, from the terror, tumult, intimidation, riot, and violence that had occurred in the election of 1868. That law is spoken of as a horrid law. I must confess when I went to Louisiana I had such a distaste of the turbulence and disturbance we had heard of about them that I hardly knew what to believe; but when I examined that law and the reasons for passing that law, given in one of the papers on your files, I could not help seeing that the occasion had arisen for the passage of such a law, that such laws were necessary to protect those people in the enjoyment of their rights, if they were allowed to be protected. There was the law; it gave to the board of returning officers full power, in case of riot, tumult, intimidation, murder, violence so extensive as to change the results of election, to throw out the vote of the parish or polling place or district where the violence might have occurred. The reason of the law then became obvious. It was a great power to intrust to a returning board. It was a power only to be exercised under such care and caution that it could not lead to any great danger, and it was only intended to protect the purity of election.

Well, sir, in 1872 the democrats were glad to avail themselves of this very law and did do so. They got control of the law and claimed to use the powers of the law. Two years ago, when its powers were used against them, their complaint was acted upon by a committee of Congress. It turns out now that in the parishes which were bulldozed two years ago there was a quiet and peaceable election this year. The people of all those parishes this year voted precisely according to what the returning board two years ago showed would have been their vote if there had been an honest election then. So the very decision of this returning board two years ago, and which was set aside by a republican committee because the board had exceeded its powers, turns out to have been correct, for in these very parishes the republican members are elected this year, showing you that this returning board did do what they thought was right then and did do actually right. The result of the election this year shows that they exercised a wise judgment and did what was right. They knew more about the process and effect of intimidation than even our own republican committee of congressmen.

Now, sir, I did not want to go into this debate. God knows I would rather get rid of it entirely and let the testimony be printed. If there is anything on the other side, any explanation, let it be given.

Mr. STEVENSON. Please let me have that law which the Senator has read.

Mr. SHERMAN. I am not quite through, but I will give the Senator the law.

Mr. President, there was one remark made about the affidavits of people who came to New Orleans. That is sufficiently answered already by the testimony. It is true, I have no doubt, that some colored men did vote in Louisiana for the democratic ticket without intimidation, but they were "few and far between." As near as I can gather, the people of Louisiana are divided largely by the color line. Perhaps it is natural that it should be so. The great body of the white people of Louisiana participated in the rebellion. Perhaps it is natural that they should vote the democratic ticket and join the democratic party; while, on the other hand, the blacks were emancipated by our policy; they were clothed with the right of citizenship and they were given the ballot, and they would naturally belong to the republican party. These general reasons, which gave color to political parties, no doubt have divided the whites and blacks in Louisiana by the color line. It is unfortunately so. A policy ought to be adopted that would break down this distinction. These people have got to live together and I would be very glad indeed to see any policy adopted which, while securing the blacks peace, safety, quiet, the free right of the elective franchise, would see them divided and mixed and mingled with their white friends in party ties and party divisions on some other than a color line. But there it stands. There are, according to the best statements made to us by men of both political parties, about seven thousand white republicans in the State of Louisiana. There is an excess of at least twelve or fifteen or seventeen thousand—I do not know which—but probably about twelve or fifteen thousand as stated by most of them, of black voters over white voters.

Mr. BOGY. The white population exceeds the black population of Louisiana, according to the census of the United States.

Mr. SHERMAN. No, sir.

Mr. BOGY. Yes, sir; according to the census of the United States the white population exceeds the black population of Louisiana.

Mr. SHERMAN. The census shows just about an equipoise of whites and blacks in 1870, but the census of 1875, taken under State authority, shows a large majority of colored people, how many I cannot tell; but the census itself and the returns of the registration are given in these papers. But that is not all. My friend may probably know that in Louisiana, which is composed largely of varied elements coming from all parts of the world, there are about eleven thousand white men who, if naturalized, could vote, but who have never been naturalized. They still adhere to the land of their nativity. Whether that is more or less, it is manifest that the republican registered vote in Louisiana, taken by any mode you choose, gives a republican majority of 12,000 or 15,000; and when the question comes up how was this majority overcome, you are met by the fact that in forty-two of the parishes where there was a fair election, the republicans gained on the vote of two years and four years ago, and in the fifteen parishes where there was this intimidation to a greater or less degree, the republican majorities were overturned and democratic majorities given. When you inquire into the cause of this extraordinary fact you find it disclosed in this testimony. Intimidation, violence, tumult, riot, murder, burning, all these crimes have intimidated and overawed the republican vote. In some places where the negro vote is two to one white vote, not a single republican vote has been cast. There are many election precincts where there are more than two blacks to one white, where no republican vote was cast. This is shown by the testimony.

Now, Mr. President, in the face of these facts, any impartial man who will study the history of Louisiana and read the testimony in this case on both sides, must come to the conclusion that the very case provided for by the election law of Louisiana has come; that riot, murder, intimidation, and violence did so prevent a free election there as to change the result, so that it became the absolute duty of the returning board, by their oaths, to make a return according to the language of the law, by rejecting the votes at those election polls where this violence and intimidation had occurred. That they have done. The members of the returning board are just as much officers in the performance of a limited judicial duty as your Supreme Court is in a broader one, just as much as a justice of the peace is. The judicial powers and duties of that tribunal must be respected by the tribunals of the United States. The Constitution of the United States declares that the electors shall be elected according to the laws of the States. It is Louisiana that says how her electors shall be elected; it is Texas that says how her's shall be elected; it is Ohio that says how her's shall be elected. The United States have no power to interfere with their laws. Their laws and their tribunals, their mode of returning and contesting have to be regarded. It is by their laws that this case must be decided, and by the laws of Louisiana this returning board is required to pass upon these returns. It has done so, and I feel bound as a man who saw them do it, who witnessed their proceedings, to say that they did it in a manner to demand and require of you the same respect for their decision as would be given to the decisions of the Supreme Court of the United States. Their decision is final, made so by the law of Louisiana and by the supreme law of the land; and, in making that decision, they conducted themselves with manly courage, I feel bound to say, in the midst of great excitement. They are men "to the manner born;" every man in that board is a native of the State, except Anderson, who was born in Virginia; but they are all southern men. Anderson and Wells are men as highly to be respected as any member on this floor. You may laugh as much as you please—as highly as you, sir, [turning to Mr. BOGY.] Mr. Wells has been governor of that State. He is the son of a distinguished man who lived many years in that State before Governor Wells was born. He is a property-holder and planter. Anderson was a member of the Legislature there for twenty years, elected by the people of his parish, of which nearly all are planters and colored people, before and during the war and since the war. I could not help feel a little indignation when I saw the taunts about these men in the Northern States while they were performing a bold, and manly, and disagreeable duty to them.

It will not do to ridicule these men. From the best information I can get, their opinion is worth as much, and their vote is as pure in this matter as the vote of a Senator of the United States, and it will not do for us to laugh them to scorn. They are men who have exhibited in this whole matter courage—the very quality which we admire in men. Why, sir, if they wanted to yield a moment to temptation, to popular feeling, to social desire, how easily they could have done it. But they have done their duty. I did not know, and when I left Louisiana I left in doubt how they would perform it, and what would be their decision. I now see, from the mass of testimony, that the evidence of intimidation extended not merely to the five bulldozed parishes, as they are called, where the intimidation was the worst, but it extended to fifteen parishes to a greater or less degree.

My friend from Kentucky has referred to Major Bascom, a respectable Army officer. I would leave this case upon the testimony as to East Feliciana, where this gentleman was stationed as an officer. I did not see Major Bascom to know whether he had sworn to any statement, but I believe his deposition was taken, though I have not yet seen it. I would be willing to let this case rest upon the very parish in which Major Bascom was said to have lived and performed his duty as a United States officer. A very distinguished gentleman has examined and criticised every particle of the testimony in regard to that parish, and according to his statement it presents one of the most glaring cases in the whole State. Take the case of the East and West Feleciana, two of the parishes where there was most complaint of violence and murder and intimidation. They were examined with the utmost care by lawyers, either of whom would be entitled to the respect of the Senate of the United States, one an eminent private citizen, and another a member of the House of Representatives. They have examined that testimony, and upon that testimony alone, in spite of the statement of Major Bascom, I am willing to rest this case.

But, sir, that is not all. We are not only to be governed by law but we are to be governed by the forms of law, and the forms of law in Louisiana have been fully observed and the spirit of the law has been observed.

Mr. McDONALD rose.

The PRESIDENT *pro tempore*. Does the Senator from Ohio yield to the Senator from Indiana?

Mr. McDONALD. I should like to ask just one question. Was the form of law observed in filling the vacancy that existed in the board?

Mr. WEST. Yes.

Mr. SHERMAN. I think it was.

Mr. WEST. It can be demonstrated here to the Senate.

Mr. SHERMAN. A great many of these ideas will be dissipated when you come to examine the matter.

Mr. McDONALD. I will ask another question.

Mr. SHERMAN. Let me answer one.

Mr. McDONALD. Does not that law require a representation of all parties on the board? I ask whether they had that representation?

Mr. SHERMAN. Mr. President, they had that representation. A democrat was appointed on that board; he chose after remaining a while to resign, and the other members of that board have tried and appealed to several democrats in the State of Louisiana to take that vacant place without success. But when the democratic committee recently proposed to them the name of a certain gentleman and dictated to them a particular appointment they disagreed about it and did not do it. That is all there is of that. They could not agree as to filling that vacancy.

Mr. President, I have already gone far beyond what I intended and I will stop here, hoping that Senators will allow this testimony to be printed. As a matter of course, if a single objection is made it will go over until to-morrow, but that will only delay the matter for the moment, for while the vote of Louisiana has this day been legally and irrevocably cast for the republican candidates, yet I want this testimony printed and all the light of investigation thrown on the election in Louisiana to show how narrowly the people of the United States have escaped the danger of having a President elected by violence and murder.

Mr. WEST. Mr. President, considering the great length of time that this subject has occupied in the Senate to-day, and, also, that perhaps during the remainder of this session we shall get quite a surfeit of the subject, I should have preferred not to have risen in my place; but there are some few things that have fallen from the lips of Senators to-day which require at my hands such statements as I shall now make.

Whenever the democratic party of this country, and particularly whenever the democratic party of the State of Louisiana, fail either to convince the country or themselves that a black man can be converted into a democrat—and my experience is that they might as well expect to see the grand old Mississippi run up stream as to expect to see a colored man vote the democratic ticket when his neighbors are being murdered by his side for their political faith—but whenever they fail to convince themselves that such can be done, they resort to this old exploded fallacy that the races in Louisiana, white and black, are nearly equally divided, and that the whites are in slight preponderance, and therefore that the State is democratic. Trying their own "color line" and assuming that we have not a white man in our ranks, let me tell Senators to-day that nine-tenths of the men who have been elected in Louisiana at the last election came from the old confederate stock who have seen the error of their ways and are joining the republican ranks. Whenever they fail to convince themselves of that they come back to that old exploded fallacy, and what is it? Let the Senators turn to the census of 1870. I will be particular because the facts are impressed upon my memory by repeated assertion. Let them take pages 619 and 629 of the second volume of the census, on the statistics of population, and they will find but a very meager difference between the number of the white male adults and the number of the black male adults. They will find absolutely the fact that the white male adults preponderate to the extent of one hundred and fifty over the blacks. But it is very convenient for them to stop there in their researches. Let them go to the column of citizenship and they will find in that column that they have 15,000 unnaturalized foreigners in the State of Louisiana, and God knows how many of them they vote. There are nine thousand in the parish of Orleans alone, men that have been there thirty years under the protection of the British flag and using it when they are called upon to do jury duty. Such is the fact. Absolutely under the census of 1870 there is a preponderance of 15,000 black voters over the whites in Louisiana, and the gentlemen are not even willing to accord us that majority, accumulated as it might be by the men of my political faith and color there. I hope we have heard the last of that fallacy. It has been exploded over and over again.

Mr. President, something has been said about this returning board, and its action in 1874 and 1876. It will be shown by the testimony here—I have not seen any of it, but I am part of it, because I went through the canvass in all parts of that State—that parishes which by violence and outrage and murder in 1874 cast a democratic vote, this year, with peace and with quiet are restored to their normal condition, have rolled up a republican majority. They will find that parishes which in 1874 cast a republican vote to the extent of 5,000 majority, this year by violence and murder and outrage have been distorted to a representation of 3,500 democratic majority. These are the facts that they will find; we shall have enough of this, and it will go to the country. All that I can rejoice in is that my voice, which has been raised over and over again on this floor in regard to outrage and violence in Louisiana, is now to be echoed by Senators from every section of the Union who have witnessed what I have often borne testimony to here.

Mr. President, the Senator from Kentucky almost overwhelmed me with his high legal authorities. First, I had to contend with the honorable Senator himself. Then he quoted one of our old associates here, a man pre-eminent for his judicial opinions in this country, the Ex-Senator from Illinois. Then he quoted an eminent gentleman from Ohio. I will admit all that, and I bow in humility to their superior wisdom and knowledge of law. I have stated no opinion here; I have stated the law and let anybody put his own construction on it that pleases. But, Mr. President, why have I not stated an opinion? Because neither I nor any Senator here has any right to interfere with the machinery provided by a State under the Constitution of the United States for its appointment of electors. Suppose the Senator does differ from me? Suppose the honorable Ex Senator differs? Suppose the highest authorities in the land may choose to differ, will you go back of the machinery provided under your Constitution and you organize yourselves into a grand returning board, grander and with greater powers than Louisiana has ever had, and presume to say that that State shall not cast her electoral vote? Is not that proposition foreshadowed here by the Senator from Kentucky, that the Congress of the United States on the second Wednesday of February is to outreturn Louisiana, is to assume a jurisdiction that Louisiana never dreamt of, and perhaps cast out votes from other sovereign States?

Sir, that is the tribunal provided by law, and I have just as much right to touch the returns of the State of the Senator from Kentucky or the State of the Senator from Missouri as they have to touch those of Louisiana. Ah, Mr. President, how often we hear this reference to the tranquillity, the peace, and the good order that prevailed on election day in Louisiana. It is the peace of death, purchased by the death of thousands of republicans. How was it in 1868 when the news came here that an election unparalleled in tranquillity and peace had been held in this State? Why, sir, where a republican vote of 45,000 had been cast only five months before, we could with all our efforts and with the bravery that some white men manifested get only 1,500 votes. That is the kind of peace and good order we have in that State. You will see evidences of it here. But Senators are scarcely right in calling for a judgment before we hear the testimony. They are scarcely right in making their assertions before we get the opportunity to see how far they are substantiated. I am glad for one that at last Louisiana's voice is to be heard; that at last it is coming to the country to know how men suffer, how men are murdered and butchered in the wilderness in the South, and I am glad that it is to be known to the country what measures we had to take to protect men there for opinion's sake. It will come in due time. It is here, and we shall all listen to it, and I am satisfied that when the verdict of this American people shall come they themselves, when they render it will be astonished that they have left us in our days of trial to suffer as we have done throughout the South.

Mr. STEVENSON. Mr. President, I wish to add a word or two in reply to both the Senator from Louisiana and the Senator from Ohio. If I understand the Senator from Ohio, he claims the jurisdiction of this board under the second section of the act admitted to be the only one regulating elections in Louisiana. That section declares:

> That five persons, to be elected by the senate from all political parties, shall be the returning officers for all elections in the State, a majority of whom shall constitute a quorum, and have power to make the returns of all elections. In the case of any vacancy by death, resignation, or otherwise, by either of the board, then the vacancy shall be filled by the residue of the board of returning officers. The returning officers shall, after each election, before entering on their duties, take and subscribe to the following oath before a judge of the supreme or any district court.

Now I insist that the words "all elections" in that section is limited and controlled by the first section of that act, which the Senator did not read, but which I will now do: "That all elections for State, parish, and judicial officers, for members of the General Assembly, and for members of Congress, shall be held on the first Tuesday after the first Monday of November." I insist that the words "all elections" in the second section cited by the Senator is limited to the State officers enumerated in the first section. There is no reference in the act admitted by the Senator from Ohio to be the only act on the subject of elections in Louisiana to the election of President and Vice-President. That act does not refer to presidential electors. But the Senator from Ohio attempts to escape the difficulty by announcing that the election of electors in the States is regulated by Federal enactment, and therefore it was not necessary to refer to the election of electors in the State. This is a novel doctrine, that the Federal Government can regulate the election of electors for President in a State. If such a dogma as that has ever been uttered before, I am not aware of it.

Mr. SHERMAN. Did I say that?

Mr. STEVENSON. Yes, sir, unquestionably. You stated that while the same law cited by you did not mention presidential electors that the omission was provided for by some act of Congress.

Mr. SHERMAN. My friend must certainly have misunderstood me. I said that the law applied to all elections in Louisiana, the election for electors as well as others.

Mr. STEVENSON. You clearly misunderstood yourself, and I am not surprised at it. I am, however, perfectly willing the Senator shall take back what he said; but then the difficulty presents itself

where is the law of Louisiana providing for the appointment of presidential electors. The Senator has failed to show it.

From time immemorial electors have been regarded as State officers, elected under State authority, paid out of the treasury of the State. The Federal Government does, I believe, pay the messenger who bears the electoral vote of the States on the certificate of the Vice-President, and that is the only Federal regulation with the vote of the electoral college. An elector of President is a State office; the election is regulated solely by State law; electors are paid out of the State treasury, and therefore I insist the Senator from Ohio must exhibit to the Senate the act of Louisiana under which the appointment of electors in Louisiana was held; the jurisdiction of the returning board to canvass the votes for presidential electors. If no such act is in force then there was no authority to hold it. Now, I insist the act cited by the Senator from Ohio as the only election law in force in Louisiana makes no reference to the appointment of electors or to the filling of vacancies. I have read this act fifty times, and if there is a word in it in regard to the electors or the electoral college except that a provision on the day of the election for President the election for State officers shall be held, I am mistaken.

Mr. SHERMAN. Let me read it:

That five persons to be elected by the Senate from all political parties shall be the returning officers for all elections.

Mr. STEVENSON. Yes, sir; but now read the first section, which confines all elections to such officers, and not to presidential electors.

Mr. SHERMAN. "The returning board for all elections."

Mr. STEVENSON. That is for all elections specified and included in that act; but show me the power in that act to appoint an elector for President or to fill a vacancy in the electoral college when one shall occur.

Mr. SHERMAN. I do not think there will be any vacancy in the electoral college of Louisiana.

Mr. STEVENSON. My position is that the State law cited by the Senator from Ohio contains no authority on the subject of the election of President and Vice-President and the appointment of electors. If that statute repealed all other laws there was no authority to hold an election for President. If the act cited by the Senator from Ohio did not repeal the act of 1868, which is the only act in Louisiana providing for the appointment of electors for President and Vice-President, then the act of 1868 is still in force. That act provides that the governor of Louisiana, on the fourth Monday in November, shall examine and certify the returns in the appointment of electors. I give no opinion whether the act is repealed or not. If it is repealed no authority to appoint electors in Louisiana existed. If it is not repealed the governor of Louisiana, and not the returning board, is the only authority to count and return the votes. Either horn is fatal to the claim of the returning board.

The Senator from Louisiana was pleased to say that I was seeking some legal authority in Congress to exclude the vote of Louisiana. I desire to say that there was nothing which I said which authorized the Senator to attribute to me any such sentiment. It was unjust and gratuitous. Nor could any such inference be deduced from my argument touching the law of Louisiana. I have said nothing about the power of Congress to canvass and exclude the vote of Louisiana or any other State for President. I cited the law to prove the want of jurisdiction of the returning board. But I said nothing as to the candidates for whom Louisiana had voted. On the contrary, I said that I had not made my opinion up as to the charges of intimidation, because I had not seen and read the evidence. I had a distinct impression that Louisiana had voted for Tilden, but it was not so strong that it could not be removed. I did not argue the question of fact, but rather of law, and I did not intimate what authority could pass upon the question of the validity or invalidity of the vote of Louisiana. That will come up hereafter. "Sufficient unto the day is the evil thereof."

Mr. President, I have not a word to say as to the eloquent and extraordinary eulogy that the Senator from Ohio [Mr. SHERMAN] has passed on the *personnel* of the Louisiana returning board. He says they are equal in respectability and character to any Senator in this Chamber.

Mr. SHERMAN. I did not say that.

Mr. STEVENSON. I should be glad if the Senator would tell us what he did say? I do not certainly want to misquote or misrepresent him.

Mr. SHERMAN. I said their action as returning officers is entitled to as much respect as that of any one of us here.

Mr. STEVENSON. The Senator, I must insist, went a little further. He was eloquent as to their worth and respectability. I wish to make no issue now as to the character of the Louisiana returning board. I have only to say that the Senator from Ohio and his party candidate for Vice-President [Mr. WHEELER] would seem to differ widely in their opinion as to the character of the returning board. Mr. WHEELER has put on record his opinion of the capacity of this board to make a fair count on election returns. The Senator's candidate for Vice-President set aside the action of the returning board as unjust and illegal. The Senate of the United States has also set aside the findings of this returning board as being illegal; and I deny——

Mr. SHERMAN. Will my friend allow me to correct him in one particular; he would not do injustice to any one?

Mr. STEVENSON. No, I would not.

Mr. SHERMAN. I have recently read, as I never did before, the Wheeler report, and in that very report signed by Judge HOAR and Mr. WHEELER they passed a very high eulogium upon the returning board. It is true they differed with the board as to the construction of a single clause of a single law, and how often do we differ here among ourselves about the law? I will not interrupt my friend long, but there is here a very strong eulogium on the returning board in this very report which I have before me.

Mr. STEVENSON. Please let me have that. Does that paragraph contain all that they said about Mr. Wells? [Laughter.]

Mr. WEST. They had a very high respect for him.

Mr. STEVENSON. I have said nothing personally to-day of Mr. Wells or Mr. Anderson. I may have occasion to look to that hereafter. I was speaking of what Mr. WHEELER did. He certainly put out a great many members of the Louisiana Legislature that the returning board had put in. They must have been put in illegally and wrongfully, therefore. Besides, the records of the Senate show that the history of elections in Louisiana has been a sad history of wrong and oppression. For many successive years that gallant and down-trodden Commonwealth has been oppressed, and the recorded suffrages of her people, legally cast and properly authenticated, have been derided and set at naught. Her chosen officers have been denied the offices to which they were elected. The Senate of the United States has declared that there was no legal government in Louisiana when the returning board of that State would have installed usurpers. If half of what the Senator from Ohio says about the returning board be true, if they are the upright, law-abiding, honest officials which he to-day asserts them to be, the Senate has sadly erred, I fear, in many of its rulings. Pinchback should have been admitted; but this was done by republican and democratic votes alike in this Chamber. Eminent republicans and democrats alike in the past have united in condemning the wrongs and crimes of Louisiana returning boards.

Mr. SHERMAN. Will my friend show me the report which shows that these men have been guilty of wrongs and outrages? If he can do it, I will give up.

Mr. STEVENSON. I have shown you what Mr. WHEELER did to reprobate the action of the returning board by vacating its returns; need I refer the Senator to the report of the Senator from Wisconsin [Mr. Carpenter] in which he said that the whole history of the returning board of Louisiana was a fraud from beginning to end so far as the election of republican candidates——

Mr. SHERMAN. My friend has changed the issue. He said a distinguished committee of this body had said so and so of the *personnel* of this board; that they had been guilty of wrong and outrage. If he will show me that passage or anything that will bear that construction, or anything in that report except a difference of opinion on a legal point and a eulogy of their personal character, I will yield.

Mr. STEVENSON. I have already shown the wrongs of the returning board in having the returns of members of the Legislature set aside by the republican candidate for Vice-President. I now refer to Mr. Carpenter's report, then Senator from Wisconsin, a known republican and a man of the highest ability, as to the thousands of fraudulent ballots put into the boxes at the election in Louisiana, and his startling exposure of the system of fraud practiced in Louisiana elections. This returning board undertook to return republican candidates upon evidence that shocked men of all parties.

Mr. EDMUNDS. May I ask the Senator a question?

Mr. STEVENSON. Certainly.

Mr. EDMUNDS. I wish to ask the Senator, with great respect, when it was that this report of Mr. Carpenter, of Wisconsin, to which he refers, was made?

Mr. STEVENSON. I do not recall the year. The Senator perhaps remembers better than I do, and as his memory is always better than mine he can state it if he deems it important.

Mr. EDMUNDS. In 1873. Then I wish to ask the Senator whether a single member of the present returning board of Louisiana was a member of the board of which Mr. Carpenter spoke?

Mr. STEVENSON. I really do not know. I am very glad the Senator from Vermont has called my attention to it. I had supposed that some of the present returning board were on that.

Mr. EDMUNDS. Not a single member.

Mr. STEVENSON. Then I take all back I have said touching the iniquities of the returning board in 1872. I wish to do injustice to nobody.

Mr. EDMUNDS. I know it. That is why I ask the question.

Mr. STEVENSON. I repeat that I am gratified that the Senator from Vermont has corrected me, for I desire no statement to go out in matters like these that is not exactly true; and if I have done injustice to this returning board, I shall always rejoice to correct it. I take back all reference to the returning board of 1872. I desire always to be right and to have the truth on my side. The present board was not the returning board then in 1872?

Mr. WEST. If the Senator will pardon me, both the law and the board are dead.

Mr. STEVENSON. The Senator from Ohio [Mr. SHERMAN] thinks there is one on the board now acting who was acting then.

Mr. WEST. I state what I know.

Mr. STEVENSON. Very well. This returning board have sins enough to answer for without going back to 1872. I charge that this

returning board failed to discharge their duty or to obey the law in failing to fill the vacancy on the board. They were sworn to do their duty. The law of Louisiana creating this returning board requires that both parties shall be represented. Why did not Wells and Anderson fill the vacancy caused by the resignation of the democrat? What motive prompted this board, so highly eulogized by the Senator from Ohio, from performing what the law demanded and required of them? Men who thus flagrantly violate law should not justly stand on the same footing with Senators of the United States or with judges of the Supreme Court.

The Senator from Ohio puts a question to me, Why have there not been frauds and intimidation in other districts where the republicans have increased their vote? I believe it was Archimedes who said, "If you give me a fulcrum for my lever I will move the world." So, too, if the Senator from Ohio be allowed his premises he doubtless could make everything logical. But his assumption is all wrong that there were no frauds and intimidation in that portion of Louisiana where the republicans gained. I am credibly informed that there was more intimidation by white republicans over colored voters in the Red River country of Louisiana than in any portion of the State. I can give high authority for this statement. I am informed that the colored voters were marched up in pairs with their registration papers in one hand, and as they approached the polls folded republican ballots were handed to them, and if any refused or showed any reluctance he was instantly taken possession of and summarily and cruelly dealt with by republican intimidators. The attorney-general-elect of Louisiana will, I am sure, bring proof of the truth of this species of republican intimidation.

Mr. SHERMAN. Where do you get that?

Mr. STEVENSON. My authority is not based upon such testimony as that offered by you in the person, Mrs. Pinkston. Her statement, as you know, was contradicted. My authority, as already stated, rests on the statement of the governor-elect of Louisiana and the attorney-general. I was grieved at the eloquent manner in which the Senator from Ohio attempts to revive all the animosities and prejudices of the North and the South by his recital of Mrs. Pinkston's injuries. I am informed that these assaults and killings recited by Mrs. Pinkston had no political bearing, and that her testimony was impeached and overthrown by some reputable witness.

Mr. President, can it be possible that the legality of the Louisiana returning board has to be sustained by such *ex parte* recitals as the Senator from Ohio has exhibited to-day in the Senate as to Mrs. Pinkston's injuries? My observation during a visit to a large sugar plantation while in New Orleans exhibited the kindest relations between the whites and the blacks; and could every Senator in this Chamber have witnessed, as I did, the happy condition of the colored people, with their wives and children of all ages, and their friendly relations toward the proprietors of that plantation, it would dissipate these stories of cruelty and wrong between whites and blacks. That outrages have been committed I do not doubt. God forbid that any of them should ever find an apologist in me. But that these outrages are often political I do not believe. The solution of the changed vote of the colored people in the old slave States is that the negroes are sick of the wrongs, injuries, and extortions under carpet-bag rule and they desire a change.

Mr. HOWE. Will the Senator allow me to ask him a question?

Mr. STEVENSON. With great pleasure.

Mr. HOWE. I should like to ask him whether the planter to whom he referred is a gentleman by the name of Lawrence?

Mr. STEVENSON. He is not. The plantation to which I went was that of a widow lady who was at the time I was there in New York, but whose plantation was managed by her brother, a worthy gentleman of high character, and his son who is a talented member of the present Legislature of Louisiana at this time. It was the Poydras plantation.

Mr. HOWE. The representation answers the description very well of a gentleman I know, and hence my inquiry.

Mr. BOGY. Mr. President, it is very late and I shall detain the Senate but a moment. I am not willing that the speech of the Senator from Ohio should go to the country without some word of explanation from me. I was also in New Orleans, and speak from some knowledge obtained while I was there, of what occurred under my own observation. The gentleman makes a speech in advance to sustain the doings of the returning board, as well as its character, and to make it appear that it was not only composed of men of ability and of capacity, but that their action was altogether just and impartial. I will not detain the Senate by going into a lengthy statement of the character of that board. Certainly if there be any truth to be attached to the report of General Sheridan, Mr. Wells cannot be a man of much character, for in a report made a few years ago to the President of the United States he said that he was a man not worthy of belief. This returning board is not composed of men who are esteemed as good and honest men in that State. Mr. Anderson, who is now a member of the board, went on it pretending to be a democrat, and he has been since that time considered a radical of the most decided character. Another member of this board, named Kenner, is a colored man, who is known to be infamous, and who was indicted for robbing a gambling-house a few years ago, and now keeps in New Orleans a saloon of the very lowest character. This is Mr. Kenner. The other man, Mr. Casanave, is also colored, but appears to be an innocent man without any mental capacity.

Mr. SHERMAN. I hope my friend will not attack the character of these men. He says Mr. Kenner was the keeper of a low gambling-house.

Mr. BOGY. No, a saloon; and I saw the indictment myself.

Mr. SHERMAN. An indictment can be easily procured.

Mr. BOGY. I saw the indictment which some years ago was found by the grand jury against this Mr. Kenner. I said that he keeps in the city of New Orleans now a low saloon. A clever man may keep a saloon, but I mention it as evidence that he is not a man of high position. The gentleman said that that board was composed of men as respectable in their personal character as Senators on this floor.

Mr. SHERMAN. I said the two persons that I named; but I never saw Mr. Kenner unless in the board. I never heard that he had kept a gambling-house.

Mr. BOGY. I did not say he keeps a gambling-house; but he keeps a saloon where he sells liquors every day. I passed in front of his saloon myself.

Now, sir, a word with regard to all the testimony alluded to by the Senator from Ohio. He has made a speech which will go to the country showing these alleged outrages. I do not deny that such testimony was taken and presented to the returning board; I do not deny the fact that that testimony had influence on that returning board; yet I do deny the fact that that testimony is true; and when the time comes the respectable men of Louisiana will disprove all these things. These terrific outrages that have been reported and related by the gentleman from Ohio are not true, although they are stated to be true.

Mr. SHERMAN. I did not relate a single instance of outrage except the one the Senator referred to. I can tell him stories in that testimony about which there is no contradiction.

Mr. BOGY. The gentleman contradicts himself again. I do think he is laboring under a peculiar hallucination of mind to-day. He did relate more than one case, several cases where great outrages were reported. His speech in the RECORD will show it. He related not only the Pinkston case but other cases in which these men had been badly treated, taken out in the night and murdered. These statements were made for that returning board. In New Orleans they are known not to be true by the respectable men of both parties, democrats and republicans. They were manufactured and made there and sworn to by colored men who cannot sign their names, and who make their marks not knowing what is written. You cannot tell if the affidavits returned have been taken or not. It is all a vast system of imposition gotten up by bad men to make an impression upon the mind of the people of the United States that the citizens of Louisiana have been guilty of these horrid frauds.

I speak from my observation in the city of New Orleans. I took great pains to inquire. The State of Louisiana is as peaceful, as quiet, as law-abiding as the State of Ohio, and there has been no intimidation, no outrages committed at this election more than was committed in the gentleman's own State, or the State of Pennsylvania, or in any other State. It was the policy of the democratic party not to commit wrong of any kind. They were satisfied that they had a majority in the State. Gentlemen are much mistaken when they believe that a colored man must from necessity be a republican. The colored men know well now that the republican party did not give them freedom because they believed they were entitled to freedom. They know well now that freedom was conferred upon them from policy so that they might be used as instruments in elections. They have found that thing out. In addition to this, the administration in Louisiana by the republican party has been so infamous, so corrupt, that even the colored men have been disgusted, and they are no longer willing to support that party. I saw many colored men myself while I was in New Orleans. I made it my business. I went there for the purpose of investigating the question of the recent election. I saw men from different parishes in that State, French and English, negroes, and they all told me that they had heretofore been republicans, but were no longer willing to be so; that they had been robbed in everything; that they were promised education and have not received any; that the school funds have been robbed in all the parishes; that bad officers have been sent to them, and that a system of infamous corruption has pervaded that State from one end to the other, until it had become revolting to them, and for that reason they had become democrats.

It is said that the color line is drawn in Louisiana. So it is. It is from necessity. It may be a misfortune, and much to be regretted; but that being so, it shows that the State is democratic. For according to the census of 1870, the white population exceeded the black population. The Senator from Louisiana says, however, that the black voting population exceeds the white voting population.

Mr. WEST. By 15,000.

Mr. BOGY. I only know that the white population exceeds the black population, and that most of the white men are democrats, and that there are from five, to ten and fifteen thousand negroes who are democrats, to say the least, is certainly not stretching it very far; and that makes the State democratic. If it be true that they have destroyed so many of the colored men, to carry out the idea of my friend from Ohio, that they have slain them in every direction, how can it be that since 1870 they have increased so as to have the

preponderance? If in 1870 we had the majority, according to the census, and if the whites have killed thousands since that time, how can it be that the negroes have become so numerous?

Mr. ALLISON. They have gone there from other States.

Mr. BOGY. I cannot tell. It seems they have increased in all the Southern States. My friend from Iowa says they have gone from other States. If they are likely to be killed with that rapidity which it is said they are, I do not think they would be encouraged to go there from the other States.

Mr. CRAGIN. I presume the Senator wishes to be correct. I have before me the census of 1870, and it shows that the colored population in 1870 was a little over two thousand more than the white. If the gentleman would like to look at it, I will send it to his desk.

Mr. MORTON. Including all the white aliens?

Mr. CRAGIN. Including all the white aliens.

Mr. BOGY. It requires some examination. We had that book before us in Louisiana, not the compendium but the large edition of the census, and it was an acknowledged fact, not denied by the republicans there, that in 1870 the white population exceeded the negro population. I understood the Senator from Louisiana to say the same thing.

Mr. WEST. I will admit it.

Mr. BOGY. Therefore it will require some little time to explain that. I do not deny the correctness of the reading of the Senator from New Hampshire; but there must be some explanation of it. The fact was not denied in New Orleans that the white population exceeded by some sixteen hundred the colored population.

I will not detain the Senate, Mr. President, at this time. My object is only to correct the impression which will be made upon the country by the speech of the Senator from Ohio. I understand his object perfectly well. It is to sustain the action of the returning board. It is to make the impression that the people of Louisiana have been guilty of fraud and violence at the recent election, and to sustain the character of the testimony taken by himself and others in violation of law. He admits himself that the testimony was taken in violation of law.

Mr. SHERMAN. I did not.

Mr. BOGY. He admits himself that it was taken in violation of law, but justifies it on the ground that these men could not comply with the law and make the returns for fear that they might be assassinated.

Mr. SHERMAN. That would not be in violation of law. I certainly did not admit that we had taken any testimony. I never took a scrap of testimony.

Mr. BOGY. I did not say that you had. The gentleman was there, one of a committee of five, while the testimony was taken and he was there when it was read. The testimony was taken in violation of law and so admitted by him, but justified upon the ground that the persons were afraid to comply with the law, fearing they might be assassinated. That excuse is given. The law nevertheless is positive, it is imperative, and you have no right to disregard it. This board is composed of four members and ought to be composed of five members. Why was not the fifth member elected, and he a democrat? The gentleman says it was offered to parties in Louisiana. I heard that thing talked of in Louisiana and the democratic committee designated half a dozen different gentlemen of high standing to be members of that board, and they were all refused. I never heard that the appointment was tendered in an official way by that board to any other man in Louisiana. It might have been talked of, but so it is that that vacancy never was filled to this day. It was their duty according to law to have a democrat on that board, and there is none now. They could not afford to have a democrat there who would be a witness to what transpired in the so-called executive sessions. These sessions were held after both committees had left, and they wanted no eye not friendly to witness their infamous doings. When the sealed packages were opened and documents introduced, as the proof is was done from the parish of De Soto, and through a clerical error, it would not have done for a democrat to be present. The fact is it is admitted to have been done in this case, and that it was done in many other cases there can be no doubt. For this reason it was wise to confine the board to four republicans.

At the proper time I presume this subject will come up again. The history of Louisiana is a painful history. It is a history of blood, of murder, and of violation of law, painful indeed. Nevertheless, I think, painful as it is reported to be, it is very much exaggerated, and I believe that the white people there are as anxious for good and quiet government as the white people of any other State of this Union, and are as little guilty of fraud and violence as any other people of the United States.

Mr. EDMUNDS. What is the question before the Senate, Mr. President?

The PRESIDENT *pro tempore*. Objection was raised to printing, and under the rule the motion to print the message and documents will now go to the Committee on Printing.

Mr. EDMUNDS. Why should it go to the Committee on Printing?

The PRESIDENT *pro tempore*. The rule requires it.

Mr. EDMUNDS. There is no motion to print extra copies.

The PRESIDENT *pro tempore*. The rule requires that motions to print all such documents shall go to the Committee on Printing.

Mr. EDMUNDS. Then I move to take up Senate resolution——

Mr. SHERMAN. Let the rule be read.

Mr. EDMUNDS. Yes, I should like to hear it read.

The PRESIDENT *pro tempore*. The Secretary will read the rule.

The Chief Clerk read as follows:

A Committee on Printing, to consist of three Senators, to whom shall be referred every question on the printing of documents, reports, or other matter transmitted by either of the Executive Departments, and all memorials, petitions, accompanying documents, together with all other matter, the printing of which shall be moved, excepting bills originating in Congress, resolutions offered by any Senator, communications from the Legislatures, or conventions lawfully called by the respective States, &c.

Mr. EDMUNDS. I should like to have the exceptions read through. I am surprised if a motion to print a message from the President of the United States must be referred to the Committee on Printing.

The Chief Clerk resumed the reading, as follows:

Excepting bills originating in Congress, resolutions offered by any Senator, communications from the Legislatures, or conventions lawfully called by the respective States, and motions to print by order of the standing committees of the Senate.—*Senate Manual*, page 142.

Mr. SHERMAN. Then the Committee on Printing can report back, and that report will not be subject to objection.

The PRESIDENT *pro tempore*. The rule requires that the motion shall be referred to the committee if there be objection. By unanimous consent printing has been directed heretofore without a reference, but objection being made the motion goes to the Committee on Printing under the rule.

COUNTING OF ELECTORAL VOTES—JOINT RULES.

Mr. EDMUNDS. I move that the Senate proceed to the consideration of Senate resolution No. 10, proposing an amendment to the Constitution of the United States, of which I gave notice yesterday. I will say that I do not intend to press it to-night but wish to leave it as the unfinished business for to-morrow.

Mr. MERRIMON. With a view to have a definite understanding as to the rules we are proceeding under, I object, and cite in support of my objection the twenty-first joint rule:

After six days from the commencement of a second or subsequent session of Congress, all bills, resolutions, or reports which originated in either House, and at the close of the next preceding session remained undetermined in either House, shall be resumed and acted on in the same manner as if an adjournment had not taken place.

The six days have not elapsed. It is true there is a rule of the Senate which conflicts with that, but I take it that this rule supersedes that rule of the Senate, and that according to the terms of the rule, its spirit, and the practice under it, no unfinished business can be proceeded with until the time prescribed shall have elapsed. I know that at the last session the Senate undertook to re-adopt the joint rules which had prevailed in the Forty-third Congress and anterior to that time from almost the beginning of the Government.

The PRESIDENT *pro tempore*. The Chair will remind the Senator that if he states his point of order the Chair will rule upon it, and then the Senator can proceed upon the ruling of the Chair.

Mr. MERRIMON. I want to state the facts in order that my point of order may be seen. I submit that the joint rules are in force, and that under the joint rules this unfinished business cannot now be proceeded with. Therefore, the Senator from Vermont in making his motion is not in order.

The PRESIDENT *pro tempore*. The Chair overrules the point of order. The joint rules are not in force, and the fifty-second rule of the Senate governs the case. Does the Senator appeal from the decision of the Chair?

Mr. MERRIMON. The Chair knows that I have very great respect for his rulings, but with a view of having this matter looked into I beg to appeal from the ruling of the Chair.

The PRESIDENT *pro tempore*. The Senator from North Carolina appeals from the decision of the Chair. Shall the decision of the Chair stand as the judgment of the Senate?

Mr. MERRIMON. I wish to be heard upon the question. The greater number of the joint rules of the two Houses have existed since 1790. They have been continually used and both branches of Congress have practiced under them from that day until this. I do not know of any proceeding of the Senate by which these rules were repealed, and if there is such I shall thank any one to cite it. I know that at the last session the Senate re-affirmed these joint rules——

Mr. WEST. With the consent of the Senator from North Carolina, I move that the Senate adjourn.

Mr. EDMUNDS. I hope not. Let us finish this matter.

The PRESIDENT *pro tempore*. Does the Senator from Louisiana insist on the motion?

Mr. WEST. There is nobody more interested in this matter than the Senator from Vermont. I withdraw the motion, but I do not believe this question can be pressed to a decision to-night.

Mr. MERRIMON. I repeat what I said a moment ago.

Mr. MORTON. I ask my friend to give way for a motion to adjourn.

Mr. MERRIMON. I will.

Mr. MORTON. I move that the Senate adjourn.

The motion was agreed to; and (at four o'clock and forty-five minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

WEDNESDAY, *December* 6, 1876.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of yesterday was read and approved.

ORDER OF BUSINESS.

The SPEAKER. The morning hour begins at twelve minutes after twelve o'clock; and the business of the morning hour is the calling of the committees for reports, beginning with the Committee on Elections.

There were no reports from the Committee on Elections.

WILLIAM S. MORRIS, ET AL.

Mr. TARBOX, from the Committee on Claims, reported back with a favorable recommendation the bill (H. R. No. 1857) for the relief of William S. Morris, William Mann, Charles A. Oakman, George W. Hillman, the Union Transfer Company of Philadelphia, Pennsylvania, the Union Transfer Company of Baltimore, Maryland, and John R. Graham, late of Philadelphia, now of Washington, District of Columbia; which was referred to the Committee of the Whole on the Private Calendar, and the accompanying report ordered to be printed.

DE FOREST W. CARPENTER.

Mr. TARBOX also, from the same committee, reported back with a favorable recommendation the bill (H. R. No. 677) for the relief of De Forest W. Carpenter, postmaster at Richford, Vermont; which was referred to the Committee of the Whole on the Private Calendar, and the accompanying report ordered to be printed.

EDGAR A. BEACH.

Mr. TARBOX also, from the same committee, reported back with a favorable recommendation the bill (H. R. No. 385) to pay Edgar A. Beach, of Essex, Vermont, the sum therein named; which was referred to the Committee of the Whole on the Private Calendar, and the accompanying report ordered to be printed.

H. H. ALEXANDER.

Mr. TARBOX also, from the same committee, reported back with a favorable recommendation the bill (H. R. No. 3447) for the relief of H. H. Alexander; which was referred to the Committee of the Whole on the Private Calendar, and the accompanying report ordered to be printed.

HENRY B. BROWN.

Mr. TARBOX also, from the same committee, reported back with a favorable recommendation the bill (H. R. No. 1058) for the relief of Henry B. Brown; which was referred to the Committe of the Whole on the Private Calendar, and the accompanying report ordered to be printed.

D. D. WEAD.

Mr. TARBOX also, from the same committee, reported back with a favorable recommendation the bill (H. R. No. 672) to re-imburse D. D. Wead, postmaster at Sheldon, Vermont, for stamps and moneys stolen from him December 31, 1873; which was referred to the Committee of the Whole on the Private Calendar, and the accompanying report ordered to be printed.

WIDOW OF P. M. ARMSTRONG.

Mr. TARBOX also, from the same committee, reported back with an adverse recommendation the bill (H. R. No. 1903) for the relief of the widow of P. M. Armstrong, of Overton County, Tennessee, under the act of March 3, 1873, and the same was laid on the table, and the accompanying report ordered to be printed.

CHANGE OF NAME OF YACHT.

Mr. PIERCE, from the Committee on Commerce, reported back with an amendment the bill (H. R. No. 1824) to change the name of the pleasure yacht Hiram B. to Iola.

The bill was read. It grants authority to the owner of the yacht Hiram B. of the port of Edgartown, Massachusetts, to change its name to Iola, by which name said vessel shall be known and registered.

The amendment of the committee was as follows:

Add these words:

And the Secretary of the Treasury is hereby authorized and directed to allow said change of name.

The amendment was agreed to.

The bill as amended was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. PIERCE moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

JAMES CALER.

Mr. PIERCE. I am instructed by the Committee on Commerce, to which was referred the memorial of James Caler, to report it back with a bill.

The bill (H. R. No. 4115) for the relief of James Caler, of Stamford, Connecticut, was received and read a first and second time.

The bill authorizes the Secretary of the Treasury to pay, out of any money in the Treasury not otherwise appropriated, to James Caler, of Stamford, Connecticut, the sum of $2,900, said sum to be in full compensation for damages incurred and for extra labor performed by said Caler in the execution of his contract with the United States for dredging the bar at Rutherford Park, on the Passaic River, New Jersey, dated the 28th day of June, 1873.

Mr. HOLMAN. That bill of course goes to the Committee of the Whole.

Mr. PIERCE. I was about to move that the bill be referred to the Committee of the Whole on the Private Calendar, and with the accompanying report ordered to be printed.

The motion was agreed to.

CHANGE OF THE NAME OF A VESSEL.

Mr. PIERCE, from the Committee on Commerce, reported back the bill (H. R. No. 1611) authorizing the changing of the name of the sloop Addie Parker, with a recommendation that it do pass.

The bill was read, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to allow the owner of the sloop Addie Parker, a vessel of American ownership and license, to change her name, and be hereafter known as the Addie.

The committee reported an amendment to add to the title the words, "of New Bedford."

The amendment to the title was agreed to.

The bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. PIERCE moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

BRIDGE ACROSS THE SYNEPUXENT BAY.

Mr. KEHR, from the same committee, reported back with a favorable recommendation the bill (H. R. No. 3163) to authorize the Ocean City Bridge Company to maintain and operate a bridge heretofore erected over and across Synepuxent Bay in Worcester County, Maryland, with an amendment.

The bill was read, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Ocean City Bridge Company, a corporation created by an act of the General Assembly of the State of Maryland, passed at the January session thereof, in the year 1876, be, and it is hereby, authorized to maintain and operate a bridge heretofore built across Synepuxent Bay, from Hommock Point to Ocean City in Worcester County in said State, with all the powers, rights, and franchises, and subject to all the conditions, duties, and obligations which are conferred and imposed upon said corporation in and by the several provisions of the said act of incorporation.

SEC. 2. That the right to alter or amend this act so as to prevent or remove all material obstructions to the navigation of said bay by the construction of said bridge is hereby expressly reserved, and any change needful to that end shall be made at the expense of the said corporation.

The amendment reported by the committee was to strike out the second section and substitute in lieu thereof the following:

SEC. 2. If the bridge authorized by the preceding section shall at any time, in the opinion of the Secretary of War, substantially or materially obstruct the free navigation of the Synepuxent Bay, the same shall, by the direction of the Secretary and at the expense of the owner or owners, be so altered or changed as to obviate the obstruction. And if, in the opinion of the Secretary, the removal of the bridge shall be necessary to secure the navigation of said bay, such bridge shall, within sixty days after notice to that effect, be removed by the owner or owners at his or their expense.

The amendment was agreed to.

The bill, as amended, was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. KEHR moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

BRIDGES ACROSS THE OHIO RIVER.

Mr. REAGAN, from the same committee, reported back the bill (H. R. No. 2263) for the repeal of so much of the act of December 17, 1872, as provides for a pivot-draw in any bridge to be erected across the Ohio River between the cities of Covington, Kentucky, and Cincinnati, Ohio.

Mr. REAGAN. The committee recommend the passage of this bill, but I do not ask action upon it now. I ask the consent of the House that it be made the special order for Thursday, the 14th of this month.

Mr. HOLMAN. I hope the gentleman from Texas will allow this measure to come up at a later day than that named.

Mr. REAGAN. The measure is one involving great interests, and it is important that it should be acted upon speedily.

Mr. HOLMAN. Certainly it is a measure of very great moment.

The SPEAKER. The bill cannot be made a special order except under a suspension of the rules, and it is not within the power of the House to suspend the rules to-day.

Mr. REAGAN. I am aware of that, but I ask unanimous consent that the bill be postponed and made a special order for that day.

Mr. BANNING. I trust the gentleman from Texas will make it a special order at a late day, because my colleague, Mr. SAYLER, whose

constituents are very much interested in the bill, and who will unavoidably be absent, would like to have an opportunity to be heard upon it.

Mr. REAGAN. Will it answer the purpose of the gentleman from Ohio if I ask that it shall be made the special order for Tuesday the 19th instant?

Mr. BANNING. I wish the gentleman would fix upon a day after the holidays.

Mr. REAGAN. I wish, on account of the important interests involved, to have as early a day as possible fixed for the consideration of the bill.

Mr. BANNING. Then make it immediately after the holidays?

Mr. HOLMAN. I hope the gentleman from Texas will consent to that.

Mr. BANNING. I know that Mr. SAYLER cannot be here before the holidays.

The SPEAKER. The gentleman from Ohio cannot make a qualified objection. Will the gentleman from Texas indicate the day on which he asks that this bill be made a special order?

Mr. REAGAN. I will ask that it be made the special order for the first Tuesday after the holiday recess.

Mr. HOLMAN. Subject to the consideration of the appropriation bills?

Mr. REAGAN. O, certainly.

There was no objection, and the bill was made the special order for the first Tuesday after the recess.

Mr. WILSON, of Iowa. Is it understood that this bill is made the special order for one day only?

The SPEAKER. That is the understanding of the Chair.

ENTRY OF GOODS.

Mr. REAGAN. I am instructed by the Committee on Commerce to report back, with a favorable recommendation, the bill (H. R. No. 3687) to amend section 3117 of the Revised Statutes of the United States, relative to entry of goods taken or delivered at intermediate ports.

The bill was read, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3117 of the Revised Statutes of the United States be, and the same is hereby, amended so as to read as follows:

"SEC. 3117. If any vessel so enrolled or licensed shall touch or enter at any intermediate port in the United States, and there discharge cargo taken on board at an American port, or at such intermediate ports shall take on board cargo destined for an American port, the master of such vessel shall, before leaving, report to the collector such arrival, and produce his manifest; and it shall be the duty of the collector to indorse thereon, certified by himself, a description of the cargo so taken on board or unladen, and return the same to the master, which he shall deliver to the collector of the port at which the unlading of the cargo is completed, within twenty-four hours after arrival, which manifest shall be placed on file in the office of the collector."

Mr. REAGAN. I ask that that bill be put upon its passage now.

Mr. HOLMAN. I trust the gentleman from Texas will explain the effect of this bill upon the present law?

Mr. REAGAN. I yield for that purpose to the gentleman from Michigan, [Mr. BRADLEY,] who originally introduced the bill.

Mr. BRADLEY. This bill seeks to amend the section of the Revised Statutes designated, and the object to be accomplished is this: Under the present law a vessel clearing from a port in any district within the United States for a port in another district, is permitted to stop at intermediate ports and discharge or take in cargo. When arriving at the other destination the cargo there discharged is reported as having been received at the port of clearance, and the injustice wrought by this plan, gentlemen will notice, is this: The vessel receiving the cargo at intermediate ports having cleared from the original port of clearance on its arrival is credited to the port from which it clears, and no report being required at intermediate ports.

To illustrate, I will take my own district and my own town to explain the difficulty. Bay City is an intermediate port on the northwestern lakes between Buffalo and Chicago. It is common for vessels to clear from Buffalo for Chicago. They run into Bay City, take on cargo, proceed to Chicago and report. The report is entered setting forth that the vessels received the cargo at Buffalo.

Now, when we go to the reports at the custom-house for the purpose of ascertaining the business of a port, we find that Buffalo is credited with two-thirds of the business of Bay City, and hence an injustice is done. When the merits of a town or a port are considered in matters of legislation as well as other matters important in regard to its business, it does not receive the credit to which it is entitled. This bill seeks simply to provide that whenever a vessel enters an intermediate port and receives cargo it shall so report, and the records of the custom-house shall show when and where any portion of the cargo is received or discharged. That is all the change proposed by this bill.

Mr. REAGAN. The section of the Revised Statutes intended to be amended now reads as follows:

If any vessel so enrolled or licensed shall touch at any intermediate port in the United States, and there discharge cargo taken on board at an American port, or at such intermediate ports shall take on board cargo destined for an American port, the master of such vessel shall not be required to report such lading or unlading at such intermediate ports, but shall enter the same on his manifest obtained at the original port of departure, which he shall deliver to the collector of the port at which the unlading of the cargo is completed, within twenty-four hours after arrival, and shall subscribe and make oath as to the truth and correctness of the same.

It will be observed that the section as it now stands provides that the port from which a vessel clears shall be credited with whatever of commerce is carried from one of the intermediate ports to some other port to which the vessel may be destined. The object of the amendment is to so change the section as that each port from which articles are exported to another port may be credited with those exports. It seems that there is so manifest justice in the request for the change of this section that it is hardly necessary for me to make any further explanation. I will therefore call the previous question.

The previous question was seconded and the main question ordered; and under the operation thereof the bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. REAGAN moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

STEAMSHIP WHIRLWIND.

Mr. PIERCE, from the Committee on Commerce, reported a bill (H. R. No. 4116) to change the name of the steamship Whirlwind to that of Arcadia; which was read a first and second time.

The question was upon ordering the bill to be engrossed and read a third time.

Mr. CONGER. I would like to have some gentleman of the Committee on Commerce state what this ship is, in what district it is owned, and what occasion there is for changing the name.

Mr. PIERCE. I will say to the gentleman from Michigan [Mr. CONGER] that this is a first-class vessel. The name of Whirlwind is objectionable; people do not like to go to sea in a whirlwind, [laughter,] and the owners desire to change the name. The inspectors of the board of underwriters of Boston are most reliable and careful men, and they certify fully as to the seaworthiness of this vessel in every respect.

Mr. CONGER. Is it a passenger boat?

Mr. PIERCE. It is.

Mr. CONGER. A steamboat?

Mr. PIERCE. It is. If the gentleman will examine the papers he will find that it is a vessel of the first class.

Mr. CONGER. Where does she run?

Mr. PIERCE. Between Boston and the British provinces.

Mr. CONGER. The old custom of allowing the Secretary of the Treasury to change the names of vessels led to some of the most serious disasters that have ever been known upon our waters. The name of an old vessel would be changed and a new name given to it, a new coat of paint and putty put upon it, and the public would think it was a new vessel and a safe vessel. Gentlemen will recollect that in one year there were hundreds of lives lost in old vessels because the public were deceived by the new names given to those vessels.

In view of that, Congress took away the power of the Government or of any of its Departments to change the names of passenger-carrying vessels, or, as a friend near me suggests, putting new wine into old bottles. The evils of changing the names of old vessels were very great and serious. From that time to this even Congress has refused to change the names of more than four or five passenger-vessels, so far as I recollect. It is bad as a precedent; and, in my judgment, there should be some strong reason why Congress even should exercise a power which has been so disastrous in its results when exercised by the Secretary of the Treasury.

Mr. PIERCE. I ask for the reading of the certificate of the inspectors of the board of underwriters, so that the gentleman may see that this is a sound and first-class vessel.

The Clerk read as follows:

MARINE INSPECTION OFFICE,
Boston, Massachusetts, May 20, 1876.

We, the undersigned, having examined the steamship Whirlwind for the purpose of rating and placing her upon the books in this office as a record of her condition and seaworthiness, and in our opinion she is now in a good seaworthy condition for carrying both cargo and passengers.

EBR. DAVIS,
[SEAL.] R. G. F. CANDAGE.
Marine Inspectors for the Boston Board of Underwriters and Record of American Shipping and Foreign Shipping.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

BOSTON, *May 22, 1876.*

Then personally appeared the above-named Ebr. Davis and R. G. F. Candage and made oath that the foregoing certificate by them subscribed is true.

Before me.
[SEAL.] GEO. M. AMERIGE,
Notary Public.

Mr. CONGER. Will the gentleman inform the House what is the age of this vessel?

Mr. PIERCE. I ask that the memorial of Mr. Loring be read.

The Clerk read as follows:

To the Senate and Representatives in Congress of the United States:

The undersigned, a citizen of Boston, Massachusetts, respectfully petitions that the name of the steamship Whirlwind be changed to Arcadia.

Your petitioner, having recently bought the steamship, has rebuilt her, renewing the planking from the water line, masts, boilers, &c., and has thoroughly refitted her. The ship is built of the best material, of large size, and great strength for a vessel of her dimensions. She is sound and thoroughly fastened. The annexed

certificates of the master carpenter and the marine inspectors of this city will be a sufficient guarantee of her strength and seaworthy condition. I ask for a change of name for the reason that the present name is prejudicial to the ship. The name Whirlwind carries with it in the imagination of almost everybody much that is dangerous and treacherous; it is neither euphonious nor agreeable, and is altogether too suggestive for a passenger-ship.

And your petitioner will ever pray, &c.

HARRISON LORING.

The bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. PIERCE moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

ERRONEOUS CREDITS IN POST-OFFICE ACCOUNTS.

Mr. WADDELL. The Committee on the Post-Office and Post-Roads have directed me to report back the bill (H. R. No. 3713) to enable the Postmaster-General to place to the credit of the proper account any moneys erroneously deposited to the credit of the Post-Office Department. I move that this committee be discharged from the further consideration of the bill, and that it be referred to the Committee on Appropriations.

Mr. CONGER. I ask that the bill be read.

Mr. WADDELL. It is an erroneous reference. We ask that the bill be referred to another committee.

Mr. CONGER. I am aware of that; but I want to see what it is proposed to refer to another committee.

The bill was read, as follows:

Be it enacted, &c., That, to enable the Postmaster-General to place to the credit of the proper account any moneys erroneously deposited to the credit of the Post-Office Department and covered into the Treasury, such a sum as may be necessary be, and the same is hereby, appropriated, out of the revenues of the Post-Office Department; and, for the purpose herein expressed, this appropriation shall be deemed and held to be a permanent annual appropriation.

Mr. CONGER. I ask the gentleman whether this bill refers to moneys paid in by postmasters in the Southern States prior to and during the rebellion.

Mr. WADDELL. I do not remember the points involved in the bill. I was instructed by the committee, toward the close of last session, to ask the reference of the bill to another committee; and I am now simply discharging that duty.

I am at this moment informed by the chairman of the committee [Mr. CLARK, of Missouri] that the bill does not relate to the matter which the gentleman mentions. At any rate, it makes no difference about the contents of the bill; it was referred to us by mistake.

The motion of Mr. WADDELL was then agreed to; and the bill was referred to the Committee on Appropriations.

JOHN WIGHTMAN.

Mr. WADDELL, from the Committee on the Post-Office and Post-Roads, reported back the bill (H. R. No. 3259) for the relief of John Wightman, a contractor for carrying the mail in Pennsylvania, and moved that the committee be discharged from the further consideration of the same, and that it be referred to the Committee of Claims.

The motion was agreed to.

ADVERSE REPORTS ON DEPREDATION CLAIMS.

Mr. MORGAN, from the Committee on Indian Affairs, reported adversely upon the following claims; which were laid on the table, and the accompanying reports ordered to be printed:

Claim of Anastacio Cordoba for $375 on account of depredations by Cheyenne Indians;

Claim of Hall Brothers for $995 on account of depredations by the Arapahoe Indians;

Claim of Thomas Gurule for $507.50 on account of depredations by Navajo Indians;

Claim of Miguel Gonzales for $80 on account of depredations by Navajoe Indians;

Claim of José Telles for $55 on account of depredations by Gila-Apache Indians; and

Claim of José Y. Garcia for $70 on account of depredations by Gila-Apache Indians.

COLONEL FRANK L. WOOLFORD.

Mr. MACDOUGALL, from the Committee on Military Affairs, reported a bill (H. R. No. 4117) for the relief of Colonel Frank L. Woolford, late of the First Kentucky Cavalry Volunteers, of certain disabilities; which was read a first and second time.

The bill provides that Colonel Woolford be relieved from all penalties and effects of General Order No. 117, dated Washington, March 24, 1864, and signed "E. D. Townsend, Assistant Adjutant-General," dishonorably dismissing Woolford from the service of the United States; that he be restored to all the rights and privileges to which he would have been entitled had said order not been issued and enforced. But nothing in the bill is to entitle him to any additional pay or allowances.

Mr. HOLMAN. I trust the gentleman from New York [Mr. MACDOUGALL] will make a brief statement of the facts upon which this bill is based.

Mr. MACDOUGALL. I yield to the gentleman from Kentucky [Mr. DURHAM] to make a statement, as this is a matter coming from his State.

Mr. DURHAM. Mr. Speaker, this bill is for the relief of Colonel Frank L. Woolford, late of the First Kentucky Cavalry. He enlisted in the Union Army early; raised a regiment; and I think I can truthfully say that he did more fighting than almost any other colonel or general in the Federal Army. About the year 1864 it seems he displeased the President of the United States by some speech he had made at Lexington, Kentucky. After that speech he was dismissed the service. Colonel Woolford was badly wounded while in the Union service and is now gradually dying of his wounds. I have talked to the Adjutant-General of the United States, and he has consented to the removal of these disabilities if it is the pleasure of Congress to do so. My object in introducing the bill on the petition of a large number of citizens in Colonel Woolford's own county, irrespective of party, asking these disabilities be removed, is that he may be able to apply for the pension to which he is justly entitled. That is the whole case.

The bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. MACDOUGALL moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

Mr. FAULKNER. I am instructed by the Committee on Foreign Affairs to move that House bill 2245, to carry into execution the provisions of the fourteenth amendment of the Constitution concerning citizenship, and to define the rights of citizens of the United States in foreign countries and certain duties in diplomatic and consular offices, be recommitted to the Committee on Foreign Affairs.

The SPEAKER. The Chair rules this cannot be received, as not being in order.

Mr. FAULKNER. It is a report from a committee.

The SPEAKER. The Chair rules that it is not in order during the morning hour, and there are other reasons why it is not in order at any other time during the day. The report cannot be received at this time.

MESSAGE FROM THE PRESIDENT.

A message in writing from the President of the United States was received by his Private Secretary, Mr. U. S. GRANT, jr.

CHANGE OF REFERENCE.

Mr. DURHAM, from the Committee on the Revision of the Laws, reported back a bill (H. R. No. 2991) to repeal section 4716 of the Revised Statutes of the United States, and moved its reference to the Committee on Invalid Pensions; which motion was agreed to.

OMISSIONS IN REVISED STATUTES.

Mr. ROBINSON, from the same committee, reported back a bill (H. R. No. 2825) to correct errors and supply omissions in the Revised Statutes of the United States, with the recommendation that it do pass.

The bill was read, as follows:

That for the purpose of correcting errors and supplying omissions in the act entitled "An act to revise and consolidate the statutes of the United States, general and permanent in their nature, relating to the District of Columbia, in force on the 1st day of December, in the year of our Lord 1873," so as to make the same truly express such laws, the following amendments are made therein:

Section 192 is amended by inserting after the word "the," in the second line, the word "Union."

Section 195 is amended by inserting after the word "ten," in the second line from the last, "Revised Statutes of the United States."

Section 309 is amended by striking out the words "three hundred and three," and inserting "three hundred and six."

Section 312 is amended by striking out the words "three hundred and three," and inserting "three hundred and six."

Section 322 is amended by inserting after the words "United States," in the second line, the words "by and with the advice and consent of the Senate."

Section 445 is amended by striking out the word "two" at the end of the section, and inserting "three."

Section 467 is amended by inserting after the word "President" the words "by and with the advice and consent of the Senate."

Section 476 is amended by inserting after the word "section," at the end of the first line, the words "four hundred and thirty-nine."

Section 618 is amended by striking out the word "clerks," in the first line of the third paragraph.

Section 717 is amended by inserting after the words "Revised Statutes" the words "of the United States."

Section 764 is amended by inserting after the words "Revised Statutes," in the last line, the words "of the United States."

Section 765 is amended by inserting after the words "Revised Statutes," in the third line, the words "of the United States."

Section 780 is amended by inserting after the words "Revised Statutes," in the line next to the last, the words "of the United States."

Section 811 is amended by inserting after the words "indebted to," in the second line, the words "the defendant in."

Section 841 is amended by adding after the word "section," in the third line, the letter "s," so as to read "sections;" and after the words "one hundred and four," in the same line, add the words "one hundred and seven and one hundred and eight," and at the end of the section add the words "and bribery at elections."

Section 843 is amended by inserting after the words "Revised Statutes," in the eighth line, the words "of the United States."

Section 847 is amended by striking out in the last line the words "in the following section," and inserting the words "otherwise by law."

Section 873 is amended by inserting after the words "the circuit," in the second line, the words "and district;" in the same line by striking out the word "District" and all the remainder of the section, and inserting the words "of the United States by the act of February 26, 1853."

Section 897 is amended by inserting after the words "Revised Statutes," in the last line, the words "of the United States."

Section 1193 is amended by inserting after the words "Revised Statutes," in the fourth line, the words "of the United States."

Section 1283 is amended by striking out the word "eight," in the fourth line, and inserting the word "nine."

Section 1288 is amended by inserting after the words "Revised Statutes," in the second line, the words "of the United States."

Mr. HOLMAN. I hope the gentleman reporting the bill will explain its effect.

Mr. ROBINSON. The bill does not supply any substantial omissions in the statutes, but merely corrects clerical errors in the revision of the laws in 1873. There is no new legislation in the bill, no alteration of any former statutes. It is reported from the Committee on the Revision of the Laws with the unanimous sanction of that committee.

Mr. CONGER. As this relates to a bill of the District of Columbia, and not to our general laws, I perhaps ought not to make the objection to it which I should in the other case. I think the amendment of any general law without reciting the law as amended is very dangerous. It is within my recollection that the change of a numeral in a section effected a very great and very disastrous change in our customs laws. I do not now oppose the passage of this bill on that ground because it is an amendment of a local bill, but I do call the attention of the committee in any revision of the laws to the propriety of reciting the amended section entire in the bill, for the use of the public and for the use of members of the House.

Mr. HOLMAN. The objection mentioned by the gentleman from Michigan, and which my colleague will undoubtedly fully appreciate, is so grave a one that, unless there is some pressing public necessity, I hope my colleague will consent to the recommittal of the bill to the Committee on the Revision of the Laws. Except in rare instances, this legislation has never been allowed in the course of late years. In the State of Indiana, and in almost all the States of the West, a constitutional provision has been adopted against this form of legislation, as my colleague is aware. Therefore I ask him to allow the bill to be recommitted, with the view of making the sections full and complete, instead of merely referring to the errors of the sections in the statute which it is proposed to correct by their number.

Mr. ROBINSON. This whole question was considered by the Committee on the Revision of the Laws.

Mr. HOLMAN. The morning hour has expired, and I demand the regular order of business.

The SPEAKER. The morning hour having expired, the bill goes over to the morning hour to-morrow.

MESSENGER.

Mr. KNOTT, by unanimous consent, introduced the following resolution; which was referred to the Committee of Accounts:

Resolved, That one messenger be added to the list of messengers under the Doorkeeper of the House, to be assigned to duty to the room of the official reporters of debates, which is now unattended to.

PRINTING OF THE PRESIDENT'S MESSAGE.

Mr. CONGER, by unanimous consent, introduced the following resolution; which was referred to the Committee on Printing:

Resolved, That 20,000 copies of the President's message, with the accompanying documents, be printed.

REMOVAL OF SIOUX INDIANS.

Mr. FRANKLIN, by unanimous consent, submitted the following resolution; which was read, considered, and referred to the Committee on Indian Affairs:

Resolved, That the Committee on Indian Affairs be instructed to inquire if any Department of the Government of the United States is attempting to procure the removal of the Sioux Indians from their reservation, as granted to them by treaty stipulations, to the Indian Territory; and, if so, by what authority of law such removal is contemplated, and the probable cost thereof, and whether said removal can be made without violating solemn treaty stipulations heretofore made with the civilized tribes inhabiting the Indian Territory, unless the said civilized tribes consent and agree to said removal.

SURETIES OF JESSE J. SIMPKINS.

Mr. GOODE, by unanimous consent, introduced a bill (H. R. No. 4118) for the relief of the sureties of the late Jesse J. Simpkins, collector of the port of Norfolk, Virginia; which was read a first and second time, referred to the Committee on the Judiciary, and ordered to be printed.

BARBARA MILLER ET AL.

Mr. BURCHARD, of Illinois, by unanimous consent, introduced a bill (H. R. No. 4119) for the relief of Barbara Miller, John S. Miller, and William H. Miller; which was read a first and second time, referred to the Committee of Ways and Means, and ordered to be printed.

ARTIFICIAL LIMBS FOR SOLDIERS.

Mr. SAMPSON, by unanimous consent, submitted the following resolution; which was read and referred to the Committee on Appropriations:

Whereas complaints have been made by disabled soldiers entitled to commutation for artificial limbs that the appropriation therefor was exhausted shortly after the adjournment of the last session of Congress, and they are therefore unable to obtain the allowances to which they are justly entitled under the law: Therefore,

Resolved, That the Committee on Appropriations be instructed to inquire into the fact whether such appropriation has been exhausted, and, if so, to report at once the necessary bill to supply said deficiency.

FLORIDA COMMITTEE.

Mr. GARFIELD. I ask to be excused from service on the committee appointed to investigate the recent election in the State of Florida.

The SPEAKER. If there be no objection the gentleman from Ohio is excused, and the Chair appoints in his place Mr. WILLIAM WOODBURN, of Nevada.

VOTE FOR ELECTORS IN LOUISIANA.

The SPEAKER laid before the House the following message from the President of the United States:

To the Senate and House of Representatives:

I have the honor to transmit herewith a letter (accompanied by testimony) addressed to me by Hon JOHN SHERMAN and other distinguished citizens in regard to the canvass of the vote for electors in the State of Louisiana.

U. S. GRANT.

EXECUTIVE MANSION,
Washington, D. C., December 6, 1876.

Mr. SPRINGER. I move that the message of the President be referred to the special committee on Louisiana affairs.

Mr. HURLBET. There is no such committee.

Mr. SPRINGER. I mean the committee to investigate the recent election in the State of Louisiana.

Mr. CONGER. I ask that the document accompanying the message be read.

The SPEAKER. That is the gentleman's right.

Mr. SPRINGER. The message of the President has been read; and I submit that the gentleman from Michigan has no right to call for the reading of the accompanying documents.

The SPEAKER. The Chair thinks that the gentleman from Michigan is entitled to have the accompanying documents read.

Mr. HOLMAN. I move that the House do now adjourn.

The SPEAKER. Before entertaining the motion to adjourn, the Chair will lay before the House certain communications.

REPORT OF THE DISTRICT ENGINEER.

The SPEAKER, by unanimous consent, laid before the House a letter from the engineer of the District of Columbia, transmitting, in compliance with a recommendation from the commissioners, a report of the operations of his office for the year ending November 30, 1876; which was referred to the Committee for the District of Columbia.

REPORT OF THE TREASURER OF THE UNITED STATES.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Treasurer of the United States, transmitting, in compliance with section 3111 of the Revised Statutes, his quarterly accounts for the fiscal year ended June 30, 1876, and also his annual report to the Secretary of the Treasury; which was referred to the Committee on Appropriations, and ordered to be printed.

ENROLLED BILLS SIGNED.

Mr. BAKER, of Indiana, from the Committee on Enrolled Bills, reported that the committee had examined and found duly enrolled bills of the following titles; when the Speaker signed the same:

An act (H. R. No. 648) for the relief of Andrew J. Barrett;

An act (H. R. No. 1075) directing the Second Auditor to settle the pay and bounty account of John Annahaie or Annahe;

An act (H. R. No. 1503) for the relief of Sarah F. Albertson, of Booneville, Missouri; and

An act (H. R. No. 1581) for the relief of John Gowers, late of Company C, One hundred and eleventh Regiment New York Volunteers.

VOTE FOR ELECTORS IN LOUISIANA.

Mr. CONGER. Instead of insisting that the document accompanying the President's message be read, I shall be satisfied if authority be given to print it.

Mr. SPRINGER. I object to its being printed.

Mr. HOAR. Does the gentleman want to suppress the information communicated in the President's message and to prevent it from going to the country?

Mr. WILSON, of Iowa. Gentlemen must see——

Several MEMBERS. Regular order.

Mr. WILSON, of Iowa. Let me say just one word. Gentlemen must see that this will come up in the morning as unfinished business——

Mr. SPRINGER. That is what we want.

Mr. WILSON, of Iowa. And must be read or ordered to be printed before it is disposed of. It may as well be disposed of now.

Mr. HOLMAN. I insist on my motion that the House do now adjourn.

Mr. HOAR. I call for the yeas and nays on that motion.

The yeas and nays were ordered.

The question was taken; and there were—yeas 109, nays 132, not voting 49; as follows:

YEAS—Messrs. Abbott, Atkins, John H. Bagley, jr., Beebe, Bell, Blackburn, Bland, Bliss, Boone, Bradford, John Young Brown, Buckner, Samuel D. Burchard, Cabell, John H. Caldwell, William P. Caldwell, Candler, Carr, Cate, Chapin, John B. Clark, jr., of Missouri, Clymer, Cochrane, Collins, Cook, Cowan, Culberson, Davis, Dibrell, Durand, Durham, Eden, Egbert, Ellis, Felton, Finley, Forney, Franklin, Fuller, Gause, Gibson, Glover, Goode, Goodin, Gunter, Robert Hamilton, Hardenbergh, Henry R. Harris, John T. Harris, Hartridge, Hatcher, Goldsmith W. Hewitt, Hooker, Hopkins, Humphreys, Hunton, Hurd, Frank Jones, Thomas L. Jones, Kehr, Knott, Lamar, Franklin Landers, George M. Landers, Levy, Lynde, Maish, McFarland, Metcalfe, Milliken, Mills, Money, Morgan, Mutchler, Neal, Odell, Payne, Piper, Poppleton, Powell, Reagan, Rice, Riddle, John Robbins, Roberts, Scales, Schleicher, Sheakley, Slemons, Southard, Sparks, Spencer, Stanton, Swann, Tarbox, Teese, Terry, Thompson, Tucker, Turney, John L. Vance, Robert B. Vance, Charles C. B. Walker, Alpheus S. Williams, Jeremiah N. Williams, Wilbs, Wilshire, Yeates, and Young—109.

NAYS—Messrs. Adams, Anderson, Ashe, Bagby, George A. Bagley, John H. Baker, William H. Baker, Ballou, Banks, Banning Blair, Blount, Bradley, William R. Brown, Horatio C. Burchard, Burleigh, Campbell, Cannon, Cason, Caswell, Caulfield, Chittenden, Conger, Crapo, Crounse, Cutler, Danford, Darrall, Davy, De Bolt, Denison, Dobbins, Donnell, Eames, Ely, Evans, Faulkner, Flye, Fort, Foster, Free-

man, Frye, Garfield, Hale, Andrew H. Hamilton, Hancock, Haralson, Benjamin W. Harris, Harrison, Hartzell, Hathorn, Haymond, Henderson, Hereford, Abram S. Hewitt, Hoar, Hoskins, House, Hunter, Hurlbut, Hyman, Jenks, Joyce, Kasson, Kimball, King, Lawrence, Leavenworth, Le Moyne, Luttrell, Mackey, Magoon, MacDougall, Miller, Monroe, Morrison, Nash, Norton, O'Brien, Oliver, O'Neill, Packer, Page, Phelps, John F. Philips, William A. Phillips, Pierce, Plaisted, Platt, Potter, Pratt, Rea, John Reilly, James B. Reilly, William M. Robbins, Robinson, Rusk, Sampson, Savage, Scelye, A. Herr Smith, Springer, Strait, Stenger, Stevenson, Stone, Martin I. Townsend, Washington Townsend, Tufts, Van Vorhes, Waddell, Wait, Walden, Alexander S. Wallace, John W. Wallace, Walling, Warner, Warren, Watterson, Erastus Wells, White, Willard, Andrew Williams, Charles G. Williams, James Williams, William B. Williams, Benjamin Wilson, James Wilson, Alan Wood, jr., Fernando Wood, Woodburn, and Woodworth—132.

NOT VOTING—Messrs. Ainsworth, Bass, Bright, John B. Clarke of Kentucky, Coy, Douglas, Hays, Hendee, Henkle, Hill, Hoge, Holman, Hubbell, Kelley, Lane, Lapham, Lewis, Lord, Lynch, McCrary, McDill, McMahon, Meade, New, Purman, Rainey, Miles Ross, Sobieski Ross, Sayler, Schumaker, Singleton, Sinnickson, Smalls, William E. Smith, Stephens, Stowell, Thomas, Thornburgh, Throckmorton, Tilbert C. Walker, Walsh, Ward, G. Wiley Wells, Wheeler, Whitehouse, Whiting, Whittborne, Wigginton, and Wike—49.

So the House refused to adjourn.

Mr. CONGER. I now renew my call for the reading of the documents accompanying the President's message.

The SPEAKER. The Chair would like to make a statement to the House.

Mr. WOOD, of New York. There was so much confusion while the message from the President was being read that I would like the Chair to state distinctly how the proposition stands before the House at this moment.

The SPEAKER. The Chair will do so when the House comes to order. The Chair desires to state that the message proper was read, and a motion was made by the gentleman from Illinois [Mr. SPRINGER] to refer it to a select committee; whereupon the gentleman from Michigan [Mr. CONGER] demanded the reading of the accompanying papers. The attention of the Chair has been directed to Rule 141, which is as follows:

141. When the reading of a paper is called for and the same is objected to by any member, it shall be determined by a vote of the House.

That rule was adopted on the 13th of November, 1794, and the note to it states that—

As originally adopted, this rule contained, after the word "for," the words "which had before been read to the House." They were stricken out on the 14th December, 1795.

The Chair desires to read further on page 193 of the Manual:

"Where papers are laid before the House or referred to a committee, every member has a right to have them once read at the table before he can be compelled to vote on them"—*Manual*, page 97—and this applies to the reading of papers on a motion to refer them.—*Journal*, I, 34, page 1146. And so in regard to any proposition submitted for a vote of the House; but it being a right derived from the rules, he may at any time (when a motion to suspend the rules is in order) be deprived of it by a suspension of the rules.

A motion to suspend the rules is not now in order

The Chair will read further:

The rule above recited is not construed to apply to the single reading of a paper or proposition upon which the House may be called upon to give a vote, or to the several regular readings of a bill, but to cases where a paper has been once read or a bill has received its regular reading and another is called for, and also where a member desires the reading of a paper having relation to the subject before the House.

Mr. HURLBUT. The Chair omitted one paragraph.

The SPEAKER. The Chair had previously read that rule. The Chair decides that this case comes within the latitude of that rule. And it is a necessary step toward correct legislation that all such papers shall be read; and so deciding, the paper will now be read.

The Clerk read as follows:

To the President of the United States:

In pursuance of your request that several of the undersigned should proceed to New Orleans, and there witness the canvass by the returning board of the State of Louisiana of the votes cast in that State for electors for President and Vice-President of the United States, we have performed that duty and now most respectfully report:

That on our arrival in that city we found several gentlemen from other States who had proceeded there at the request of the chairman of the national democratic committee, and we also found there several gentlemen who came representing republican State organizations, who have throughout co-operated with those who went at your request, and whose names are also appended to this communication.

Between the gentlemen representing the democratic party and ourselves a correspondence in writing ensued, a copy of which is appended hereto. Reference to it will disclose that a conference with us for the purpose of exercising an influence upon the returning board was declined upon the ground that the only duty devolved upon us was to attend before the board, carefully note its proceedings, and finally to report a faithful history thereof, with such opinions concerning the same as truth and justice should demand. Such report we are now able to present, and we take pleasure in stating that our ability so to do is due to the exercise of a courtesy and kindness by the returning board which entitle its members not only to our thanks, but to that confidence which a just public extends toward every tribunal which desires that all its proceedings should be daily presented to public scrutiny.

It was our earnest wish that this publicity should be attained, but we should have felt a delicacy in requesting any privilege not in harmony with the usage of the board. We were, however, relieved from all embarrassment by the receipt of its formal invitation hereto annexed, delivered to us and to the gentlemen who attended at the request of the chairman of the democratic committees, inviting the attendance of five gentlemen from each delegation as spectators and witnesses of the proceedings of the board; and this invitation was accompanied with an offer to permit stenographic reporters, selected by each committee, to be present and make a full report of all proceedings and testimony; and to secure daily publication thereof by the press, the undersigned made arrangements for that purpose with the proprietors of one of the daily newspapers printed in New Orleans, and thus the papers there and elsewhere have been enabled to give such proceedings and testimony the widest circulation. In justice to the board, it should be stated that this privilege was freely accorded by its members without solicitation, and that they cordially united with us in the desire to have all their proceedings published throughout the country.

The scrutiny invited by the board has been constantly exercised. Day by day both committees have been in attendance before the board with their stenographic reporters; and, in addition, a privilege tendered to both the committees of inviting gentlemen from States other than Louisiana has been several times availed of. As returns were opened, whether contested or not, the papers inclosed have been freely tendered to the committees for examination, and have usually been carefully inspected; and, as a means of detecting any possible changes in the returns after leaving their respective parishes, both committees were furnished by the respective parties with statements of the vote as claimed by them respectively, that by comparison it might be known if any alteration had been made in returns to be passed upon by the board, with which statement the returns usually agreed. Whenever it was known to the board that a return was to be contested, the attorneys for the candidates interested were sent for, to be present at the ceremony of opening, and, when such knowledge was attainable only by inspection of the inside of the package containing such return, these attorneys were invited to be present before any action was taken upon it.

There were thus secured in the manner mentioned publicity of all the proceedings of the board, the most careful scrutiny of every package of returns by it opened, and an opportunity for candidates insisting upon the validity of returns to appear personally and by counsel before the board, in many instances before returns were opened and in every instance before action was taken upon them.

It has been we believe quite unusual to give such full and wide-spread publicity to the proceedings of a returning board, nor do we think that better means for permanently recording every word and act of its members, while engaged in the discharge of their duties, could have been afforded, than we enjoyed.

Having thus presented a statement of the means accorded of witnessing the canvass, it may be well to state briefly the causes which led to the creation of such a board in Louisiana and to call attention to the statute which devolves upon it powers and duties of great public importance.

The white people of that and other southern States had, by their rebellion, forfeited all right to representation in Congress or to any participation in the government of the Union, and had been compelled, as a condition of resuming their former political rights, to assent to the constitutional amendments by which, in hostility to their will, those who had been but lately their slaves were made citizens; and although it was their duty to submit to this political re-organization the annals of the South, and especially of Louisiana, disclose a wide-spread and persistent determination of its ruling white people to prevent the exercise of the elective franchise by the colored race except subject to their will. This was manifested by the violence, outrages, and murders perpetrated in that State just preceding the presidential election of 1868. They will be found stated in various congressional reports. From these it appears that over two thousand persons were killed, wounded, and otherwise injured in that State within a few weeks of the presidential election of that year; that half the State was overrun by violence, midnight raids, secret murders, and open riots, which kept the people in constant terror, until the republicans surrendered all claims, and then the election was carried by the democracy.

The parish of Orleans, which contained 29,910 voters—15,020 of which were colored, and which in the spring had given 13,973 republican votes, in the fall cast for General Grant but 1,178, a falling off of 12,795 votes. Riots prevailed for weeks, filling New Orleans with scenes of blood, and Ku Klux notices were scattered throughout the city warning the colored men not to vote. In the parish of Caddo there were 2,907 republicans who in the spring of 1868 carried the parish, which in the fall gave to General Grant but one vote, and there also bloody riots occurred.

In the parish of Saint Landry the republicans had a registered majority of 1,071 votes, and in the spring of that year carried it by 678 votes, while in the fall not a vote was cast for General Grant, while for Seymour and Blair the democrats cast the full vote of the parish, 4,787 votes; and there occurred one of the bloodiest riots on record, in which the Ku Klux killed and wounded over two hundred republicans, hunting and chasing them for two days and nights, through fields and swamps. Thirteen captives were taken from the jail and shot, and a pile of twenty-five dead bodies was found buried in the woods. Having thus conquered the republicans, and killed and driven off their white leaders, the masses were captured by the Ku Klux, marked with badges of red flannel, enrolled in clubs, led to the polls, and compelled to vote the democratic ticket, after which they were given certificates of that fact.

These are some of the outrages which marked the pathway to political supremacy of those who but a few years before had obtained the mercy of a Government under whose laws the black republican and the white democrat were entitled to equal protection. It was but natural and just that the colored race should unite with and cling to the party to whose principles they owed freedom and protection; and this seems to have marked their political course from the time they were given the elective franchise, and their history in Louisiana has but illustrated this whenever they have been left free to vote as they pleased. Until a radical change could be effected in the nature and purposes of those who had been their owners, and who repudiated the idea of being placed upon terms of civil equality with them, it was evident that a fair election could not be held in parishes containing any considerable majority of colored voters, and hence the act of 1870, acquiesced in by both political parties and amended in 1872, was passed, creating a returning board, authorized to sit in New Orleans, having supreme authority to canvass the votes cast throughout the entire State, and authorized, if convinced that riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences had prevented voters from registering, or had materially interfered with the purity or freedom of election at any poll or voting place, or had materially changed the result of the election, to exclude votes cast at such polls or voting places from the final count.

This law with some amendments, not materially changing its nature, is that under which the present returning board of Louisiana is now organized and sits. That some such independent tribunal was necessary for the protection of the legal voter, and as a check upon the violence and intimidation which had before prevailed throughout the State, no one can deny. It will be seen, when the statute organizing this board and defining its duties is examined, how inadequate are its provisions to afford full relief against the wrongs it was designed to prevent. Thus the powers of the board are limited to the rejection of votes polled for the causes stated, while it cannot, in any case, add to returns votes which would have been polled but for the intimidation, violence, &c., mentioned. To illustrate, the undersigned will refer to the five parishes of East and West Feliciana, East Baton Rouge, Morehouse, and Ouachita, which appear, as the evidence discloses, to have been especially selected for the perpetuation of such violence and intimidation as should be necessary to prevent the republicans from casting any considerable vote in either. In each and all of these there is a large republican majority. In all of them the white voters registered for this year numbered 5,134; the colored, 13,244; a majority of 8,110. If by intimidation and violence the democrats could secure in each of these parishes a majority, an immense gain would be thus achieved; for if the board should upon the canvass reject the vote of all, it would be powerless to administer that complete justice which would consist only in declaring for the republicans such a majority in each parish as but for the intimidation and violence would have been cast for their candidates. The law, therefore, in this provides but a partial and inadequate remedy for the grave wrongs from which the colored people and white republicans of Louisiana have long suffered; and when the proof taken by the board is examined and weighed it will be found, we believe, that the returns by it excluded for the causes mentioned are generally from poll-

ing places which, but for intimidation, violence, outrage, and murder would have given republican majorities, thereby greatly increasing that declared by the board. In considering its powers and duties this important feature of the law should be borne constantly in mind, for while that tribunal may upon proof and in the exercise of judicial discretion reject votes for the causes mentioned, it cannot upon so doing return any not actually cast.

It will therefore readily occur to any one that a careful selection by political managers of certain parishes known to have large republican majorities for scenes of intimidation and violence in the belief that other parishes within the State would enable them to carry it for their party, even should their majorities in parishes thus selected be rejected, might well be a favorite method for achieving success; and as we proceed it will be apparent that such was the mode adopted to carry Louisiana for the democratic party.

While from the very nature of the mischief to be remedied the law could but partially repair it, the statute under which the board acts is so framed as to prohibit the rejection of votes cast at any poll or voting-place unless certain solemn formalities are first complied with, which must be supplemented by the testimony of witnesses.

The statute organizing the board declares in substance that whenever from any poll or voting-place there shall be received by the board the statement of any supervisor of registration or commissioner of election, confirmed by the affidavits of three or more citizens, of any riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences, which prevent, or tend to prevent, a fair, free, and peaceable vote of all qualified electors entitled to vote at such polls, the board shall proceed to investigate the facts, and if, from such statement and affidavits, they shall be convinced that such causes did not materially interfere with the purity and freedom of such election or prevent a sufficient number of qualified voters from voting to materially change the result of the election, then such vote shall be canvassed and compiled; but if they are not thus fully convinced, it shall be their duty to examine further testimony in regard thereto, and to that end shall have power to send for persons and papers. And if, after examination, the board shall be convinced that such acts of violence, intimidation, &c., did materially interfere with the purity and freedom of the election at such poll or did prevent a sufficient number of qualified electors from registering or voting to materially change the result of the election, then the board shall not canvass or compile the vote of such poll, but shall exclude it from their returns.

Nothing can be more simple, nothing more just than these provisions. They are, for the reason before stated, inadequate to secure the administration of a complete remedy, for it may be fairly said that, if by reason of violence and intimidation committed in the interest of one political party the adherents of another are restrained from voting through fear, an equitable remedy, if practicable, for the outrage would be to count in favor of the injured every vote thus lost. The ascertainment of this being however different, the statute of Louisiana has provided only for the rejection of votes; and it is worthy of remark that the most flagrant cases submitted to the board have, as proven, occurred in parishes where the republican registered vote, which would undoubtedly have been cast but for the intimidation and violence, largely exceeded the registered vote of the democratic party.

We have thus alluded to some of the causes which led to the creation of this board, and have also called attention to its duties, and to the proof upon which it is authorized to act. It is a tribunal established by the laws of Louisiana, entirely independent of the laws of any other State, or of the United States. It is empowered, among other things, to canvass and finally determine the number of votes legally cast for electors of President and Vice-President of the United States, but in the discharge of that duty it acts exclusively under authority of the laws of that State—the Constitution of the United States having declared that "each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress."

Not only is the action of this board independent of State or national laws, other than those of Louisiana, but its determination as to the votes cast and candidates elected is final and substantially conclusive, as appears from a decision of the supreme court of that State, reported in the twenty-fifth volume of the Louisiana Annual Reports, where the court, at page 268, say:

"No statute conferring upon the courts the power to try cases of contested elections or title to office authorizes them to revise the action of the returning board. If we were to assume that prerogative we should have to go still further and revise the returns of supervisors of elections, examine the right of voters to vote, and in short the courts would become in regard to such cases mere officers for counting, compiling, and reporting election returns. The Legislature has seen proper to lodge the power to decide who has or has not been elected in the returning board.

"It might have conferred that power on the courts, but it did not. Whether the law be good or bad it is our duty to obey its provisions, and not to legislate."

It became our duty immediately on arriving in New Orleans to thoroughly understand the constitution, powers, and duties of this board and to examine with care the statutes under which it was bound to act; and enough has been written to show that a tribunal charged with such duties and invested with such powers, the members of which were originally appointed by the senate, is entitled to the respect of all citizens until it shall be forfeited by a violation of its judicial or ministerial obligations. The great national importance of the duties to be performed by the board invested each member with much interest, and as many reports had been circulated concerning them, we were led to make some inquiry as to their individual history. Two of them, Hon. James Madison Wells, president of the board and General Thomas C. Anderson, next senior member, are southern-born, and of old and highly respectable families. The father of the former was Hon. Levi Wells, of the parish of Rapides, who in 1812 represented it in the convention called to frame the constitution of the State of Louisiana. The son received a liberal education and was early engaged in the care of the planting and other interests of his father. He was a Union man from the time the war broke out, and although he suffered greatly by it in the loss of property, he never faltered in his devotion to the Union cause. Under the Banks reconstruction scheme he was chosen lieutenant-governor on the ticket with Hon. Michael Hahn, who was elected governor, and upon the election of the latter to the Senate, a year after, Mr. Wells became governor of the State, to which office he was almost unanimously re-elected under the reconstruction plan of President Johnson. His experience in public life has been great and varied, and his capacity to discharge the duties assumed cannot be questioned. General Anderson was born in Virginia; has resided in the parish of Saint Landry for the period of some forty years; is a cousin of the General Anderson who commanded Fort Sumter at the outbreak of the war; was educated a lawyer; is the owner of and carries on several plantations; is widely known and highly respected throughout the State; has been intimately associated in the promotion of the social and industrial interests of his parish, and has represented it in both branches of the Legislature more than twenty years.

Mr. Casnave, the third member of the board, is a man of intelligence, of excellent character and business habits, not dependent on office for a livelihood, not seeking it, but a well-educated citizen who has long conducted a prosperous and respectable business in the city of New Orleans.

Mr. Kenner, the junior member of the board, is a young man born and reared in the city of New Orleans, intelligent and active, who was for some time in charge of the street commissioner's bureau in the department of improvements.

We will now present such an outline of the proofs as disclose not only such violence and intimidation as prevented a fair election in several parishes and at many polls, but disclose also that these grave offenses were committed in pursuance of a preconcerted and settled plan, formed by democratic leaders to prevent republican voters from attending the polls; and that such unlawful purpose was so effectually accomplished as not only to interfere with the purity and freedom of the election, but materially to change its result.

To illustrate how carefully the political campaign was considered, and the plan mentioned, contrived by the leaders of the democratic party, it is instructive to refer to a circular issued from the rooms of the democratic conservative State central committee at New Orleans, marked "confidential," and signed by I. W. Patton, president, and P. J. Sullivan, secretary, intended for circulation in each parish, and recommending the formation of ward clubs therein. These circulars urged that "in conversation no gloomy forebodings should be indulged in, and that the result of the election should be spoken of as a foregone conclusion, as we have the means of carrying the election and intend to do so. But be careful to say and do nothing that can be construed into a threat or intimidation of any character."

The circular also recommended that there should be frequent meetings of all the clubs to be formed, and that occasionally they form at their several places of meeting and proceed thence on horseback to the central rendezvous, stating that "proceedings of this character would impress the negroes with a sense of your united strength." And it further recommended that on the day of election at each polling place there should "be affidavits prepared to the effect that 'there has been no intimidation and no disturbance on account of any efforts by the democratic-conservative party to prevent any one from voting on account of race, color, or previous condition of servitude.'"

Thus carefully guided from the central democratic authority, by this secret and confidential circular, urged to impress upon the timid blacks by horseback processions a sense of the united strength of their former masters, and warned to prepare blank affidavits, in advance, that no terrorism had been exercised, the next and not the least important part of the scheme of these leaders was, to select the parishes, where, having "the means to carry the election and intending to use them as stated in the circular, they could do so with most effect.

There were in the State of Louisiana on the day of election 92,996 white registered voters, and 115,310 colored—a majority of the latter of 22,314. It was well known that if left free to vote, uninfluenced by violence or intimidation, the blacks would be almost unanimously republican, and that with the white republican vote its majority would be about equal to that above indicated. The plan appears to have been to select for purposes of intimidation and violence as few parishes as possible (for in forty of fifty-seven parishes where these were not employed, the republican majority was 6,000,) but to select those in which the colored vote, as compared with the white, would be large unless unlawfully prevented, for in so doing it might be expected that should any majority they could thus obtain in such parishes be rejected, they would nevertheless attain their purpose by the suppression of a large republican vote.

In pursuance of this plan, five of the parishes selected, in which the greatest violence and intimidation were practiced, were East and West Feliciana, which border upon that portion of Mississippi in which murder and outrage so prevailed during and preceding the election as substantially to prevent any republican votes; East Baton Rouge, which borders upon the southern portion of East Feliciana; Morehouse, which adjoins the State of Arkansas, and Ouachita, which adjoins and lies directly south of Morehouse. The geographical position of these five parishes was well suited to the purposes to be attained; for it was easy for members of the clubs to be formed therein, and who usually perpetrated their outrages with masked faces, to pretend that they were committed by border ruffians from Mississippi and Arkansas, where like outrages had been perpetrated. The location of these five parishes was not, however, better suited to the plan to be accomplished than was the great disproportion existing therein between the number of white and colored voters. The former numbered but 5,134; the latter 13,244; a majority of the latter equal to more than one-third of the entire majority of colored voters in the fifty-seven parishes of the State.

The returns of the votes actually cast in these five parishes suggest that the clubs, to whom was assigned the task of securing democratic majorities therein, had performed their work of violence and intimidation effectually, while the proof discloses—brief summaries of portions of which are hereto annexed—that where violence and intimidation were inefficient, murder, maiming, mutilation, and whipping, were resorted to. Instead of a majority of six or seven thousand, which the republicans should have had in these parishes upon a fair election, there was actually returned to the returning board a democratic majority for the parishes of East and West Feliciana, Morehouse, and Ouachita of 3,878, and in East Feliciana, where the registered colored voters number 2,127, not a republican vote for electors was cast. In East Baton Rouge, containing 3,552 colored registered voters, and but 1,801 whites, the democrats claim a majority of 617, which, but for the rejection of several polls by the commissioners and supervisors of election, would have been returned to the returning board as votes actually cast.

If, to the democratic majority from the four parishes as above stated, we add the 617 thus claimed and insisted upon before the returning board, a democratic majority of 4,495 is the result of an election in five parishes containing 13,244 colored republican and but 5,134 white democratic voters.

The conclusion that intimidation and violence alone could have produced this is almost irresistible, and that such influences were employed, and were supplemented by murder, when that was thought necessary, is established by the proofs already referred to.

It but confirms this conclusion, to refer to the vote cast in these five parishes in 1874, when no special motives existed for the use of cruel means to influence the election. The republican majority therein was then 3,979.

A result so suggestive of violence and intimidation was obtained by means the most terrible and revolting. Organized clubs of masked, armed men, formed as recommended by the central democratic committee, rode through the country at night, marking their course by the whipping, shooting, wounding, maiming, mutilation, and murder of women, children, and defenseless men, whose houses were forcibly entered while they slept, and as their inmates fled through fear the pistol, the rifle, the knife, and the rope were employed to do their horrid work. Crimes like these, testified to by scores of witnesses, were the means employed in Louisiana to elect a President of the United States; and when they shall succeed, the glories of the Republic will have departed and shame and horror will supplant in the hearts of our people that love and veneration with which they have hitherto regarded the institutions of their country.

The proof of violence and intimidation and armed disturbance in many other parishes is of the same general character, although more general and decisive as to the five parishes particularly referred to. In others these causes prevailed at particular polling-places, at many of which a republican vote was to a considerable extent prevented.

We hope to be able to furnish full copies of all testimony taken by the board, that the justice of its conclusions may be appreciated. It is a tribunal from which there can be no appeal, and, in view of the possible consequences of its adjudication, we have closely observed its proceedings and have carefully weighed the force of a large mass of the testimony upon which that adjudication has been reached.

The members of the board, acting under oath, were bound by law, if convinced by the testimony that riot, tumult, acts of violence, or armed disturbance did materially interfere with the purity and freedom of the election at any pole or voting-place, or did materially change the result of the election thereat, to reject the votes thus cast and exclude them from their final return. Of the effect of such testimony the board was sole and final judge; and, if in reaching a conclusion it exercised good faith and was guided by an honest desire to do justice, its determination should be respected, even if upon like proof a different conclusion might have been reached by other tribunals or persons.

To guard the purity of the ballot, to protect the citizen in the free and peaceful exercise of his right to vote, to secure him against violence, intimidation, outrage, and especially murder when he attempts to perform this duty, should be the desire of all men and the aim of every representative government. If political success shall be attained by such violent and terrible means as were resorted to in many parishes of Louisiana, complaint should not be made if the votes thus obtained are denounced by judicial tribunals and all honest men as illegal and void.

JOHN SHERMAN, Ohio.
E. W. STOUGHTON, New York.
I. H. VAN ALEN, New York.
EUGENE HALE, Maine.
J. A. GARFIELD, Ohio.
CORTLANDT PARKER, New Jersey.
W. D. KELLEY, Pennsylvania.
SIDNEY CLARK, Kansas.
J. C. WILSON Kansas.

Mr. SPRINGER obtained the floor and said: I yield to the gentleman from New York, [Mr. WOOD.]

Mr. WOOD, of New York. Mr. Speaker, if I could be surprised at anything occurring in this remarkable epoch in the history of our country, I would be surprised at this communication of the Executive. Conversant as I am from personal participation in the national legislation for a third of a century, this is to me a most extraordinary and unprecedented occurrence. The Constitution of the United States divides the powers and duties of our Government into three departments: the legislative, to make the laws; the judiciary, to construe the laws; and the executive simply to execute the laws. These divisions are well defined, positively expressed, and have never been questioned or doubted until now. But, sir, we live in a marvelous and most extraordinary time. The President of the United States, after nearly eight years of service, in which it is to be presumed he must have necessarily obtained a knowledge not only of the theory but of the practice of the Government and of his office, sees proper to send us a communication unauthorized in its nature, from persons clothed with no official authority, created by his own will, outside of any official duty or power, and not in pursuance of any act of Congress, and thus giving this unauthorized communication from unofficial and unauthorized persons his official sanction, and striving to make this House do likewise, by placing it on our records and sending it forth to the people of the country with congressional sanction. I hesitate to use the language which the gravity of such an attempt manifestly deserves. For the high office which the present Executive represents I have the most exalted opinion, but when from any cause or from any motive the incumbent of it fails to sustain in all respects its dignity and nature, I cannot withhold my condemnation.

It may be that the President finds a justification from a belief that Congress should be informed on all of the antecedent events attending the counting and declaring the election returns in the States of the Union for presidential electors. This is certainly implied from the character of the paper now sent to us. This is an admission on his part that this House is clothed with authority to institute a careful inquiry into the late election for President of the United States. In advance of the presentation of the certificates, in advance of the agitation of that grave question in Congress, in advance of any official action by the House of Representatives and the Senate as to the count of the votes of the electoral colleges, he tells us by this procedure that we are authorized to institute an inquiry as to the correctness and integrity of the certificates of election as they may be presented. Without offering an opinion as to our authority to do this, I am sure that those who believe that one or both Houses of Congress can do so will be glad to find that the President thus places himself so squarely on their side.

But, sir, the exception that I take is to the fact that he transmits here in this unauthorized way an unauthorized document of a merely partisan and *ex parte* character. My first impulse was to move that the House return this communication to the President. If I had followed the prompting of my heart when this document was presented to us, I should have made such a proposition. But, sir, I shall not do so. As the mildest rebuke I can give to this most atrocious attempt to mislead public opinion, I move that the communication and accompanying paper be laid on the table, and on that motion I call for the previous question. [Applause in the galleries.]

The SPEAKER. The gentleman from New York moves that this communication be laid on the table, and on that motion he demands the previous question. Is there a second?

Mr. PAGE, Mr. HOAR, and others, rose. [Cries of "Regular order!"]

Mr. HOAR. I rise to a question of order.

The SPEAKER. The gentleman from Massachusetts [Mr. HOAR] will state his question of order.

Mr. HOAR. I make the point that the gentleman from New York had not the floor for the purpose of making the motion stated.

The SPEAKER. The gentleman from Illinois [Mr. SPRINGER] had the floor and yielded it to the gentleman from New York, [Mr. WOOD,] whom the Chair recognized in his own right.

Mr. HOAR. Mr. Speaker, this side of the House desires a little time for debate in reply to the gentleman from New York. [Cries of "Regular order!"]

Mr. BUCKNER. We will give you plenty of time for debate hereafter.

Mr. BLACKBURN. Is not the motion to lay on the table undebatable, and does it not preclude the necessity for the previous question?

The SPEAKER. The calling of the previous question is not necessary; but the Chair understood the gentleman from New York to demand it.

Mr. WOOD, of New York. The demand of the previous question is not necessary, as the motion to lay on the table is not debatable.

The SPEAKER. The Chair so rules. The rule is clear on that point.

Mr. CONGER. I demand the yeas and nays upon laying on the table.

Mr. BLACKBURN. And I second that demand.

The yeas and nays were ordered.

The question was taken; and there were—yeas 153, nays 90, not voting 47; as follows:

YEAS—Messrs. Ainsworth, Ashe, Atkins, Bagby, John H. Bagley, jr., Banning, Beebe, Blackburn, Bland, Bliss, Blount, Boone, Bradford, John Young Brown, Buckner, Samuel D. Burchard, Cabell, John H. Caldwell, William P. Caldwell, Candler, Carr, Cate, Caulfield, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Cochrane, Collins, Cook, Cowan, Culberson, Cutler, Davis, De Bolt, Dibrell, Durand, Durham, Egbert, Ellis, Ely, Faulkner, Felton, Finley, Forney, Franklin, Fuller, Gause, Gibson, Glover, Goode, Goodin, Gunter, Andrew H. Hamilton, Robert Hamilton, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Haymond, Henkle, Hereford, Abram S. Hewitt, Goldsmith W. Hewitt, Holman, Hooker, Hopkins, House, Humphreys, Hunton, Hurd, Jenks, Frank Jones, Thomas L. Jones, Kehr, Knott, Lamar, Franklin Landers, George M. Landers, Le Moyne, Levy, Lewis, Lord, Luttrell, Lynde, Mackey, Maish, McFarland, Metcalfe, Milliken, Mills, Money, Morrison, Mutchler, Neal, New, O'Brien, Odell, Payne, Phelps, Piper, Poppleton, Powell, Rea, Reagan, John Reilly, James B. Reilly, Rice, Riddle, John Robbins, William M. Robbins, Roberts, Savage, Scales, Schleicher, Sheakley, Singleton, Siemons, Southard, Sparks, Spencer, Springer, Stanton, Stenger, Stevenson, Stone, Swann, Teese, Terry, Thompson, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Waddell, Charles C. B. Walker, Walling, Walsh, Warner, Warren, Watterson, Erastus Wells, Alpheus S. Williams, James Williams, Jeremiah N. Williams, Willis, Benjamin Wilson, Fernando Wood, Yeates, and Young—153.

NAYS—Messrs. Adams, Anderson, George A. Bagley, John H. Baker, William H. Baker, Ballou, Blair, Bradley, William R. Brown, Horatio C. Burchard, Burleigh, Campbell, Cannon, Cason, Caswell, Chittenden, Conger, Crapo, Crounse, Danford, Darrall, Davy, Denison, Dobbins, Dunnell, Eames, Evans, Flye, Fort, Foster, Freeman, Frye, Garfield, Hale, Haralson, Benjamin W. Harris, Hathorn, Henderson, Hoar, Hoskins, Hunter, Hurlbut, Hyman, Joyce, Kasson, Kimball, King, Lapham, Leavenworth, Magoon, MacDougall, McCrary, Miller, Monroe, Nash, Norton, Oliver, O'Neil[1], Packer, Page, William A. Phillips, Pierce, Plaisted, Platt, Potter, Pratt, Robinson, Rusk, Sampson, Seelye, Simmickson, A. Herr Smith, Strait, Martin I. Townsend, Washington Townsend, Tufts, Van Vorhes, Wait, Alexander S. Wallace, John W. Wallace, G. Wiley Wells, White, Willard, Andrew Williams, Charles G. Williams, William B. Williams, James Wilson, Alan Wood, jr., Woodburn, and Woodworth—90.

NOT VOTING—Messrs. Abbott, Banks, Bass, Bell, Bright, Chapin, Cox, Douglas, Eden, Hancock, Hays, Hendee, Hill, Hoge, Hubbell, Kelley, Lane, Lawrence, Lynch, McDill, McMahon, Meade, Morgan, John F. Philips, Purman, Rainey, Miles Ross, Sobieski Ross, Sayler, Schumaker, Smalls, William E. Smith, Stephens, Stowell, Tarbox, Thomas, Thornburgh, Waldron, Gilbert C. Walker, Ward, Wheeler, Whitehouse, Whiting, Whitthorne, Wigginton, Wike, and Wilshire—47.

So the motion to lay on the table was agreed to.

During the call of the roll,

Mr. LUTTRELL said: I desire to state that my colleague, Mr. WIGGINTON, is detained at home on account of sickness in his family; if here he would vote "ay."

Mr. WOOD, of New York, moved to reconsider the vote just taken; and also moved that the motion to reconsider be laid on the table.

Mr. HOLMAN. That is unnecessary.

Mr. SPRINGER. We had better do it.

The motion to reconsider was laid on the table.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of its clerks, announced that the Senate had adopted the following resolutions:

Resolved, That the Committee on Enrolled Bills shall have power to act concurrently with a similar committee of the House of Representatives in the examination of enrolled bills, and shall carefully compare the enrollment with the engrossed bills as passed in the two Houses and correct any errors that may be discovered in the enrolled bills, make their report to the respective Houses, and shall be as follows: Mr. CONOVER, (chairman,) Mr. ROBERTSON, and Mr. KELLY.

Resolved, That the Committee on the Library shall have power, in conjunction with three members appointed by the House of Representatives, to superintend and direct the expenditure of all the moneys appropriated for the Library, and to perform such other duties as are or may be directed by law, and shall be as follows: Mr. HOWE, (chairman,) Mr. EDMUNDS, and Mr. RANSOM.

Resolved, That the Committee on Printing shall have power, in conjunction with the committee on the part of the House of Representatives, to discharge all the duties now or hereafter devolved upon them by law, and shall be as follows: Mr. ANTHONY, (chairman,) Mr. SHERMAN, and Mr. SAULSBURY.

Resolved, That the Committee on Public Buildings and Grounds shall have power to act concurrently with the same committee of the House of Representatives, and shall be as follows: Mr. MORRILL, (chairman,) Mr. CAMERON of Pennsylvania, Mr. PADDOCK, Mr. COOPER, and Mr. WHYTE.

Mr. MORRISON. I move that the House now adjourn.

ENROLLED JOINT RESOLUTION SIGNED.

Mr. BAKER, of Indiana, from the Committee on Enrolled Bills, reported that they had examined and found truly enrolled a joint resolution of the following title; when the Speaker signed the same:

A joint resolution (S. R. No. 26) authorizing an allowance to certain clerks of committees.

LEAVE OF ABSENCE.

Mr. WELLS, of Missouri, was granted leave of absence for three days.

Mr. SMALLS and Mr. RAINEY were granted leave of absence for eight days, on account of important business.

The motion of Mr. MORRISON was then agreed to; and accordingly (at three o'clock and twenty-five minutes p. m.) the House adjourned.

PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. DOBBINS: A paper containing a statement of the service of John De Camp, deceased, late rear-admiral United States Navy, to the Committee on Invalid Pensions.

By Mr. HOOKER: The petition of Dr. Robert J. Turnbull, late of Mississippi, for compensation for property taken by United States troops during the late war, to the Committee on War Claims.

By Mr. SAMPSON: The petition of Henry Newman, Goddard & Brother, and Meyer & Schwab, of New York City, against the extension of letters-patent to the heirs of Sheldon S. Hartshorn for an improvement in buckles, to the Committee on Patents.

By Mr. SCALES: The petition of David T. Garrett, late a private in Company A, Second Infantry, for a pension, to the Committee on Invalid Pensions.

IN SENATE.

THURSDAY, *December 7*, 1876.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

The Journal of yesterday's proceedings was read and approved.

HOUSE BILLS REFERRED.

The following bills from the House of Representatives were severally read twice by their titles, and referred to the Committee on Commerce:

A bill (H. R. No. 1611) authorizing the changing of the name of the sloop Addie Parker, of New Bedford, Massachusetts;

A bill (H. R. No. 1824) to change the name of the pleasure-yacht Hiram B. to Iola;

A bill (H. R. No. 3687) to amend section 3117 of the Revised Statutes of the United States, relative to entry of goods taken or delivered at intermediate ports; and

A bill (H. R. No. 4116) to change the name of the steamship Whirlwind to that of Arcadia.

The bill (H. R. No. 4112) directing the Secretary of the Treasury to report upon the necessity of a public building at Rochester, New York, was read twice by its title, and referred to the Committee on Public Buildings and Grounds.

ENROLLED BILLS SIGNED.

The PRESIDENT *pro tempore* signed the following enrolled bills, heretofore signed by the Speaker of the House of Representatives:

A bill (S. No. 620) to remove the political disabilities of James Argyle Smith, of Mississippi;

A bill (H. R. No. 648) for the relief of Andrew J. Barrett;

A bill (H. R. No. 1075) directing the Second Auditor to settle the pay and bounty account of John Ammahaie, or Ammahe;

A bill (H. R. No. 1503) for the relief of Sarah F. Albertson, of Boonville, Missouri; and

A bill (H. R. No. 1581) for the relief of John Gowers, late of Company C, One hundred and eleventh Regiment New York Volunteers.

REPORT OF THE SECRETARY OF THE SENATE.

The PRESIDENT *pro tempore* laid before the Senate the annual report of the Secretary of the Senate, communicating a statement of property belonging to the United States in his possession December 4, 1876; which was ordered to lie on the table and be printed.

MANNER OF COUNTING THE ELECTORAL VOTE.

The PRESIDENT *pro tempore*. The Chair lays before the Senate a communication in the form of a petition, which will be read, if there be no objection.

The Chief Clerk read as follows:

SAINT LOUIS, MISSOURI, *4th December*, 1876.

To the honorable the Senate and House of Representatives in Congress assembled:

The undersigned, citizens of the United States, respectfully represent that it is highly important that the electoral votes be counted and the result of presidential elections be declared by a tribunal which according to the principles of our Government is to stand aloof from the ambitions and conflicts of political parties.

That the meaning of the constitutional provision touching this matter being the subject of different constructions as to the power conferred by the fundamental law upon the President of the Senate and the two Houses of Congress, it is especially desirable in the present excited state of the popular mind to remove the counting of the electoral vote from the very theater of those contentions; and

That the counting of the electoral votes and the declaration of the result by the Supreme Court of the United States would, in our opinion, inspire universal confidence as to its justice and impartiality, and insure ready acquiescence on the part of all citizens without distinction of party.

The undersigned, therefore, respectfully pray that the two Houses of Congress at the earliest possible period propose to the Legislatures of the several States an amendment to the Constitution whereby the duty of counting the electoral votes and declaring the result thereof may be conferred upon the Supreme Court of the United States with such powers and subject to such restrictions and limitations as may in the wisdom of Congress be deemed necessary to secure the object desired. In view of the fact that a large majority of the State Legislatures will be in session during the month of January, and those that are not may be convened for the purpose, a proposition promptly submitted by Congress may be considered and ratified by the requisite number of State Legislatures in time to secure its benefits in the settlement of the pending presidential contest.

C. SCHURZ.
J. B. HENDERSON.

Mr. EDMUNDS. As this very subject has already been reported upon, I move that the communication lie upon the table.

The motion was agreed to.

ELECTORAL VOTE OF LOUISIANA.

Mr. ANTHONY. The Committee on Printing, to whom was referred a motion to print the message of the President of the United States, transmitting a letter, accompanied by testimony, addressed to him by Hon. JOHN SHERMAN and others, in relation to the canvass of the vote for electors in the State of Louisiana, have instructed me to report favorably to the printing of the testimony submitted with the report. The report has already been ordered to be printed.

Mr. SAULSBURY. I desire to make a statement as a member of the Committee on Printing. The chairman of the committee said that he was instructed by the committee to make the report, without stating that there was dissent. I desire to say that I do not assent to the printing of that testimony. I have no objection to the publication of the message of the President. It seems to me, however, that it is extraordinary, when we receive a message from the President, contained in simply a line or two, transmitting a letter from certain private gentlemen, having no official connection with the affairs to which they refer, together with such proof as they have seen proper to collect, that the whole thing should be printed. It is entirely a one-sided, *ex parte* statement of what occurred. It seems to me, therefore, to be improper that it should be printed by order of the Senate, and for that reason I withheld my assent to the publication.

I think the question presented to this country is a very grave question, and that nothing ought to go out from the Senate bearing the impress of authority from the Senate, which is calculated to mislead, calculated to excite the public mind, and calculated in any respect to prejudice the honest judgment which the people of this country may form upon the grave subjects now agitating the public mind. Therefore I honestly believe that all these *ex parte* statements ought not to go out from the Senate.

Mr. ANTHONY. My colleague on the committee says that I omitted to state that he dissented from the report of the committee. I certainly did nothing unusual in that. It is not customary when committees report by the vote of the majority to state what took place in the committee-room. I certainly would not have made this report in the absence of my dissenting colleague, but noticing him in his seat I presumed that he was able to speak for himself, as he generally is, and I did nothing that was unusual when, in making the report of the committee, I did not state that it was not unanimous.

Mr. McDONALD. I understood, yesterday, that under objection the motion to print went over until to-day.

The PRESIDENT *pro tempore*. The Chair will correct the Senator. The motion went to the committee and it has been reported upon this morning.

Mr. McDONALD. I do not rise for the purpose of opposing the report of the committee. I shall vote to print all testimony that may be taken or anything that bears the semblance of testimony relating to the late election in the States of Louisiana, Florida, and Mississippi. If the distinguished Senator from Ohio [Mr. SHERMAN] yesterday had simply presented his application for the printing of the President's message and the documents which he and his associates had furnished to the President, without any remarks of his own, I should perhaps have said nothing; but in the course of those remarks the distinguished Senator referred to certain other parties who had acted as a committee also and who were present at the count of this vote in Louisiana, and to the fact that that other party or committee had been applied to to furnish such testimony as they had received, that it might go with this also. This statement was supplemented by the opinion of the distinguished Senator as to what this testimony now offered would establish. In view of this I have thought it best to ask that the statement of these other gentlemen, as published in the public prints, be read by the Secretary, so that the Senate may have before it also their views in reference to this transaction and the manner in which this examination has been conducted.

Mr. ANTHONY. If we are going to read from the newspapers, I think I shall call for the reading of the testimony. I am willing that it shall be printed but not that it shall be read.

Mr. McDONALD. This is not testimony. It is simply the statement of these gentlemen.

Mr. EDMUNDS. Is not that testimony, or does it lack the quality of testimony altogether?

Mr. McDONALD. If the reading is objected to and if it is in order to do so, I will read it as part of my remarks.

The PRESIDENT *pro tempore*. The question is on concurring in the report of the committee. The Senator from Indiana has the floor and can read what he deems proper as part of his remarks.

Mr. ANTHONY. I shall not object to the reading if it is insisted on, but it is not fair. We did not have read even the report made by the Senator from Ohio and his associates, and we did not have the testimony read; but now some testimony on the other side is offered which is to be read. I think the whole should be offered if any, but the Senator has a perfect right to read what he deems proper.

Mr. EATON. We heard the statement of the honorable Senator from Ohio in regard to this very transaction. Therefore it is proper that what these other gentlemen say should be read.

The PRESIDENT *pro tempore*. The Chair understands that there is no objection to considering the report of the committee at this time. There is no objection, and the question is on concurring in the report.

Mr. McDONALD. I ask the Secretary to read the paper which I send to the desk.

The Chief Clerk read as follows:

NEW ORLEANS, *December* 1, 1876.

To the people of the United States:

On our arrival here, in casting about for approaches to the officials who control the elections in this State, we discovered that they were all of one political party; that the governor had appointed none but republican supervisors of elections, and that the returning officers constituting the State board were of the same political school. Influenced by these inauspicious surroundings, our thoughts and hopes were turned toward the eminent gentlemen who have been selected by the President to be present and see that the board of canvassers made a fair count of the votes actually cast, and on the 14th of November we invited these gentlemen to meet and confer with us.

This co-operation was declined, but we nevertheless have reason to believe that to this correspondence may be attributed the invitation to us on the 18th ultimo by the returning board to attend and be present at its meetings as spectators and witnesses of its proceedings. Through this courtesy and the services of a competent stenographer, we became possessed of all the essential facts developed on the face of the official papers. We have been furnished with a certified copy of the duplicate statements of votes made by the commissioners of election at each place of voting in the State. From these statements, it appears that the Tilden electors received the following votes, to wit: McEnery, 83,712; Wickliffe, 83,880; St. Martin, 83,676; Poche, 83,529; De Blanc, 83,667; Seay, 83,842; Cobb, 83,579; Cross, 83,652; and the Hayes electors received the following votes, to wit: Kellogg, 77,132; Burch, 77,144; Joseph, 74,889; Sheldon, 74,844; Marks, 75,227; Levisse, 75,350; Brewster, 75,457; Jeffrion, 75,597. The result of the vote for presidential electors, as disclosed on the face of the returns opened by the returning board in our presence: For the Tilden electors—McEnery, 82,223; Wickliffe, 82,326; St. Martin, 82,129; Poche, 82,036; De Blanc, 82,065; Seay, 82,242; Cobb, 81,959; Cross, 82,109. For Hayes electors—Kellogg, 77,023; Burch, 76,983; Joseph, 74,642; Sheldon, 74,678; Marks, 75,087; Levisse, 75,157; Brewster, 75,270; Jeffrion, 75,390.

In most cases the returns opened by the returning board corresponded precisely with the certified copies of statements of commissioners of election furnished us. The most material difference arose from failure of the supervisors of East Baton Rouge, Tangipahoa, and of Orleans to forward statements of votes from all voting-places in their respective parishes. In thirty-five out of the thirty-eight States in the Union these figures would be conclusive; no one would claim that Tilden and Hendricks were not entitled to the electoral vote of the State; but in Louisiana a tribunal has been set up which on former occasions had overthrown the will of the people as expressed at the polls, and for which the power is now claimed in its discretion to change the result of the popular vote at the recent election.

In view, however, of the returns and the law and facts which should control the returning board, with which we have made ourselves familiar, we have no hesitation in saying that the result shown by votes actually cast cannot be changed without a palpable abuse of the letter and spirit of the law governing the returning board and a manifest perversion of the facts before it. Irregularities have been committed in some instances by officers conducting elections and making returns, but they are about as much on one side as the other; and as to intimidation and violence or other illegal acts preventing a free and fair election, there is evidence on both sides, but not of such a character as to affect the general result.

In most instances acts of violence proceeded from mere lawlessness, as in the case of Henry and Eliza Pinkston, and had no connection with politics. It is a significant fact that in parishes where it is alleged that voters were kept from the polls by intimidation the total vote of such parishes was as large as at any time heretofore, and in the whole State is 1,500 above any vote heretofore cast. An honest and fair canvass of returns, even under the Louisiana law, cannot materially reduce Tilden's majority as shown on the face of the returns.

JOHN M. PALMER.
LYMAN TRUMBULL.
WILLIAM BIGLER.
GEORGE B. SMITH.
GEORGE W. JULIAN.
P. H. WATSON.

Mr. McDONALD. Mr. President, I do not desire to enter on any discussion of what these papers contain or what the testimony taken establishes. I fully concur in what has been said by the distinguished Senator from Ohio, that it will be time enough to discuss those questions when we have the facts before us. But as something has been said with respect to the high character of this returning board, to whose *fiat* we are called upon to submit, I desire that the Secretary shall read the preamble to the resolution reported by the majority of the committee of the House of Representatives, February 23, 1875, which I send to the desk.

The Chief Clerk read as follows:

Whereas both branches of the Legislature of Louisiana have requested the special committee of this House to investigate the circumstances attending the election and returns thereof in that State for the year 1874; and whereas said committee have unanimously reported that the returning board of that State, in canvassing and compiling said returns and promulgating the result, wrongfully applied an erroneous rule of law, by reason whereof persons were awarded seats in the house of representatives of Louisiana to which they were not entitled and persons entitled to seats were deprived of them.

Mr. SHERMAN. I should like to have what is said about the *personnel* of this board in that paper read.

Mr. McDONALD. It is the same now as it was then.

Mr. SHERMAN. I know; but I ask to have read from that document what these gentlemen said as to the *personnel* of the board and as to the reasons which led them to think their action was erroneous. If the Senator will hand me the document, I will ask that that be read.

Mr. McDONALD. With pleasure; but I should like to ask the Senator from Ohio to explain to me, if he can, what a wrongful application of an erroneous rule of law may be.

Mr. SHERMAN. I have seen that done so often in the Senate that I might be personal if I were to enter into it. I simply desire to have an extract read from the same document.

Mr. McDONALD. I send the document to the desk.

Mr. WEST. It is on page 19 of the report and on page 21.

Mr. SHERMAN. Let it be read from the same paper as that used by the Senator from Indiana.

The CHIEF CLERK. On page 19 of this report appears the following:

It was to declare the result of such an election that the returning board met at New Orleans in 1874. In expressing our dissent from the view they took of their own powers and duties, and our emphatic disapprobation of their proceedings, we desire to state as emphatically our unwillingness to do them any injustice, and our full appreciation of all the considerations which may tend to palliate their conduct. Several of them have held high positions. Governor Wells, the president, had been a large and wealthy planter before the war, had remained loyal through the rebellion, had been true to the flag of his country when driven to the swamps and hunted with dogs. Such a record entitles him to our warmest sympathy and respect.

On page 21 appears the following:

The returning board claims that in this proceeding they acted under an honest belief that they were right in their construction of the law, and that they were giving effect to the true will of a majority of the people of Louisiana, and that in their construction they followed the precedent set by the democratic or fusion returning board of 1872. We believe they did follow such a precedent. We have no doubt that they believed they were defending the people of Louisiana against a fraud on their constitutional rights. But there is no more dangerous form of self-delusion than that which induces men in high places of public trust to violate law to redress or prevent what they deem public wrongs.

Mr. MERRIMON. Mr. President, I should like to hear the Chair state the question.

The PRESIDENT *pro tempore*. The question is on concurring in the report of the Committee on Printing.

Mr. MERRIMON. I wish to ask of the Senator from Ohio or the Senator from Indiana, as one or the other may be able to give me the information, what judicial or official sanction has this testimony. Was it taken by any competent authority in a matter that was properly before any tribunal, or was it taken extra-judicially or extra-officially by anybody who would go out and find somebody who would take an affidavit?

Mr. SHERMAN. There are three classes of testimony in that lot of papers: First, the oral testimony taken before the board and the proceedings of the board, testimony taken in strict conformity to law where there was cross-examination of the witnesses; second, statements of the supervisors of election sworn to by them, and affidavits attached to them, in pursuance of the election law of Louisiana which gave this board jurisdiction for further examination. That was clearly legal; but it was only legal to the extent of giving them jurisdiction. Then there is testimony taken according to the laws of Louisiana, a novel proceeding to me, under interrogatories and cross-interrogatories submitted to the witnesses.

Mr. MERRIMON. Do you understand that the law of Louisiana would allow such testimony to be taken in any other than some competent proceeding instituted in a competent court?

Mr. SHERMAN. The law under which these men acted expressly provided that testimony should be taken according to the law of Louisiana, and this testimony was taken in strict accordance with the law of Louisiana by commissioners appointed under the law of that State.

Mr. MERRIMON. So that the affiant, if he swore falsely, would be guilty of perjury?

Mr. SHERMAN. Clearly so. I suppose there is no question about that. This testimony was taken by men learned in the law, one of them a counselor who had been a judge of the supreme court of that State. It was taken before commissioners appointed by the courts under the law.

Mr. BOGY. I would inquire of the Senator from Ohio if this is not the fact also, that the evidence of outrages in different parishes is sustained by affidavits, and affidavits only, and not by depositions.

Mr. SHERMAN. No; my friend is entirely mistaken. The great mass of it was taken by depositions, taken in due form according to law by these commissioners. The order was made by the consent and at the request of both parties, to expedite the matter and to avoid the taking of oral testimony which would have unduly prolonged the examination, that the modes allowed by law should be followed and these depositions, as I understand, were taken in strict conformity to the law of Louisiana, and indeed the commissioners that took them were selected at the request of the democratic electors. I think they furnished the names, as is shown by the official proceedings of the board. This was the only testimony taken except that which I explained yesterday.

Mr. EATON. Mr. President, I do not propose to discuss this question at this time, or any of the various questions that may arise on testimony of this character; but as I shall not vote to print the mass of stuff which is lying on the Senate's table, I ought to say in one word why.

In the first place, it does not come here by the action of this body at all. As I understand, there will be proper testimony taken either by this body or by the House of Representatives, and perhaps by both, upon all these questions which arise in Louisiana. I am opposed to the printing of partisan matter, to the printing of matter which is brought here, not by the order of the Senate of the United States, but by private citizens. I am aware that the honorable Senator from Ohio was in Louisiana at this time, but he was not there as a Senator of the United States, but as JOHN SHERMAN, of Ohio. As a Senator of the United States, in my judgment, he ought not to have been there. He was there as a private citizen belonging to one party, and for one

I am utterly opposed to the printing of testimony that has been taken in the manner and under the circumstances that this was. I hope that the yeas and nays will be called and that the motion will be rejected.

Mr. SHERMAN. I wish to make a remark which perhaps I ought not to make. As a matter of course I am not accountable to my friend from Connecticut for what I do as plain JOHN SHERMAN. What I did in Louisiana, I did from a sense of duty, and it was not a pleasant duty. I am happy to say that in performing that duty I had the cooperation of gentlemen on the democratic side as well, among whom were some of my former associates in this body. We went there to perform a very disagreeable duty; and Senators, instead of blaming us for performing that duty, ought really to commend us, because it was an unpleasant and disagreeable task, and two of the members of this body were there for the same purpose on the democratic side, and among the names read to you this morning as signing a paper on the part of a democratic political organization were names of very eminent gentlemen, who did the best they could under the circumstances. We went at the request of the President, and they under no less authority than that of the president of the democratic national committee.

Mr. EATON. Mr. President, only a word. I find no fault that the honorable Senator from Ohio chose to go there at his own expense. He said yesterday, I think, that a gentleman from New York, a very respectable lawyer, Mr. Stoughton, went there at his own expense and was to be credited for that. Very well, let him print this at his own expense if he pleases. It is the act of parties. I will not call the President of the United States a partisan; I do not care to do that; but the President of the United States appointed only republicans to go there for a certain purpose, if I recollect aright. If am wrong I may be corrected. It was that a fair count might be made of the votes cast in Louisiana; but nobody was invited by the Chief Executive of the United States to see that fair thing done except members of one political organization; and hereafter it will be determined whether those gentlemen had a fair count of the votes cast, or whether they disfranchised or saw a portion of the people of Louisiana disfranchised.

Mr. DAWES. Will the Senator from Connecticut be kind enough to answer me a question?

Mr. EATON. I will if I can.

Mr. DAWES. I should like to inquire of him what he understands to be the meaning of the words "votes cast." Do they mean simply pieces of paper found in the ballot-boxes?

Mr. EATON. Well, Mr. President, I do not know how it is up in Massachusetts exactly, but when we poll 10,000 votes in the city of Hartford, where I live, in the State of Connecticut, they are ballots, pieces of paper upon which are written or printed certain names, and when we have a fair count of those ballots we count them all. What way they have of manipulating matters in Massachusetts, I am not able to say; but that is what I understand to be a fair count of ballots that have been cast.

Mr. DAWES. Mr. President, the Senator does not seem to understand my interrogatory. I asked him what he understands by the term "votes cast;" whether he thinks that a vote cast is simply a piece of paper found in a ballot-box, or whether it is the free, untrammeled expression of the will of a voter as evidenced by a piece of paper put in the ballot-box by authority and according to law.

Mr. EATON. Mr. President, I understand this, that the entire machinery of the election was in the hands of the republicans in the State of Louisiana. I understand that the supervisors of election were republicans. I understand that the votes cast there were cast by men who had a right to vote. Such is my understanding with regard to Louisiana. All have to be registered as is suggested as they are in my State, and as I suppose they are in Massachusetts—registered under republican officers in the State of Louisiana. What I mean by a fair count is this: that when there are 5,000 ballots or 1,000 ballots put in by registered voters those ballots are to be counted, not to be destroyed, not to be counted out, but to be counted as ballots cast properly for officers. That is what I understand by it.

Mr. BOGY. Mr. President, I desire to explain how I acted when I was in New Orleans. The Senator from Ohio has alluded to Senators besides himself who were sent to that city for the purpose of obtaining a fair count of the vote given at the late election in the State of Louisiana. As I stated yesterday, I was one of the persons designated to go to New Orleans, and I promptly did go; but when the position was assigned to the members of the committee of five to remain in New Orleans and conduct the investigation we thought it unbecoming to remain because it had passed the point of obtaining a fair count. We left them to represent the counting on the side which was favorable to us. I do not say it to place my friend from Ohio in an awkward position, because he has a right to judge of that himself, but only to explain our position. The two Senators and myself from our side who went there felt it to be wrong to engage in anything beyond going to the city of New Orleans for the purpose of conferring and obtaining a fair count. Beyond that we felt that it would be wrong and improper for us to act. Of course, I have no right to judge of my friend's action; but that was what we felt to be our duty.

Mr. THURMAN. Mr. President, I was not in when the report was made by the Committee on Printing with such commendable diligence, and I will ask if it is not very long that it be read, or at least that the resolution be read.

The PRESIDENT *pro tempore*. The motion is that the usual number of copies be printed.

Mr. THURMAN. Mr. President, there is no one more desirous of knowing the facts and all the facts connected with the late election in Louisiana than I am, and I hope that in due time all the facts will be laid before the Congress of the United States and the American people. If, therefore, I have objected to the printing of these papers at this time it is not from any desire to suppress the publication of the facts; but it is because I do not want public opinion or the opinion of members of Congress to be forestalled by the premature printing of only a part of the facts. I understood from an answer made by my colleague to a question I put to him yesterday that there is not in that bundle of papers on the desk all the testimony that was before the returning board of Louisiana. There is all that was offered on the republican side; but there is not, if I apprehend his answer correctly, all that was offered by way of rebuttal to that testimony, or to sustain the allegations made by those who represented the democratic candidates on that occasion. This, then, is only a partial statement of the case, and it is proposed to scatter broadcast over the land and to form conclusions upon this partial and one-sided statement of the case. To that I object. If this matter shall be delayed until the testimony shall be fully produced, as I venture to say it will and that shortly, then I shall have no objection, for, as I said before, I want myself to see and I am sure every Senator and every member of the other House and almost every man in the United States must want to see the testimony upon which, for the third time in that State, the remarkable result has been reached that an apparent majority, heretofore as high as 15,000, this year as high as 7,000, goes for nothing, and that those candidates who upon the return were 7,000 in the minority are returned by the board to be 3,000 in the majority. That is a thing that would startle a man if he heard it for the first time; but it does not startle anybody who hears it in respect to the State of Louisiana, for it is only the third act in the same comedy. But now, when this concerns not alone the State of Louisiana, but when it concerns the whole Republic, when it affects the choice or the declaration of the choice of the Chief Magistrate of the nation, I want myself to see and to scrutinize and to investigate, as well as time and ability will permit me, the testimony upon which this extraordinary result has been effected.

My colleague has stated to us with something of detail the public character of the proceedings of that board. He has stated its open sessions and what were called its executive sessions; but there is one thing he has not stated; there is one thing that he cannot state; there is one thing he does not know to this day, I presume, and that is what were called the secret resolutions after that board had ceased to hold either public or executive sessions. What were the returns that were thrown out; what were the precincts that were thrown out; what was the count by which an apparent majority of over 7,000 for Tilden and Hendricks is thrown into a majority of 3,000 for Hayes and Wheeler,—those were matters done in secret and done in the worst kind of secrecy; for, sir, it cannot be denied that it was the duty of that board to fill the vacancy in the board. There were four republicans on the board already. The law contemplated and in fact required that the board should be constituted of members of different political organizations. Had the vacancy been filled that law would have required a choice of a democrat as the fifth member of that board. And yet that vacancy never was filled; not because it was not the duty of the four members there to fill it, for it was confessedly their duty, but under the miserable pretext that they could not agree upon the man. In all Louisiana they could not find one single democrat or conservative upon whom they could agree! Name whom you please among the 83,000 men who voted for Tilden in that State, name any one of the 83,000, and that board of four was immediately divided, two for and two against the man who was named. Why, Mr. President, on the very face of the thing it shows a predetermined purpose to do wrong. Had there been a democratic member on that board he would have been present at the secret as well as the public and executive sessions of the board; he would have known how it was that whole parishes were thrown out, that precincts were thrown out, that republican majorities were raised or democratic majorities reduced; he would have known all that and he would have been a witness to the actual count which was made, not in the public or in the executive sessions of the returning board, but in its secret sessions, when no eye of a democrat was allowed to see one thing that was done, no ear of a democrat allowed to hear one word that was said.

All the whitewashing in the world cannot wipe out or hide this guilt, for guilt I call it. You may attempt to forestall public opinion by presenting one portion of the testimony without the rest. You may make hot haste to do it; you may print it; you may send it abroad to the people; it will go forth stamped with the stigma that it is only a one-sided statement of the case. It cannot be avoided if this thing is to be done. There is no necessity either for doing it now. There is ample time to wait until the whole matter can be heard. We know very well that it is to be investigated. We know very well that all the testimony on both sides will be laid before the

Congress. We know very well that then there will be no *ex parte* or one-sided statement of the case. All that we know. But now, sir, in advance of legitimate investigation, in advance of an investigation that will present the whole case and the whole testimony before Congress and the American people, we are pressed to publish a defective and one-sided statement of the testimony and the report of one set of political gentlemen, without the report of the others who witnessed those proceedings as well as these gentlemen who now have sent this matter to the President.

I protest against this. I protest against it in the name of fair play. I think I understand it well enough. I impute no motives; it is not becoming or consistent with the rules of the Senate to impute motives to gentlemen; but if a man were disposed to forestall public opinion and to pave the way for sustaining what may be or may not be one of the most flagrant wrongs that were ever committed in this country; wrongs that if tolerated put an end to everything like honest republican government—if that were the object of the man, he could not take a better course than this to attempt to forestall this case by presenting one side of it.

Mr. President, I do not want to speak of this matter in any way that would indicate that I prejudge it. I want to see all the testimony. I want, onerous as the duty may be, to see what is the testimony in each particular case upon which that board rejected this parish or that parish, this precinct or that precinct, and I say to Senators now that mere general declamation about intimidation will not do. I say to them that this is a matter which must be investigated judicially with a judicial mind and with judicial fairness. Mere declamation will not do; mere vague general charges will not do; mere pictures of horror, even where there is a foundation for them in some particular and isolated case, will not do. The action of this board must be investigated and scrutinized as a chancellor would investigate and scrutinize a case before him to see if each point is supported by the law and supported by the testimony. I shall not commit myself to any judgment upon it until I have all the facts before me, and then if I can have the time to do it, then if I can take the time to do it, even to the neglect of other duties, I propose to see for myself, in order that I may vote according to my best judgment, whether or not the testimony supports the various rulings of the board by which an apparent majority upon the returns of 7,000 is turned into a minority of 3,000.

Now, sir, what I desire is that these papers shall lie on the table until the other side is heard and then have all printed. I do not desire that we shall have a mere one-sided statement of this case. I desire further, sir, that we shall know before we proceed what were the particular rulings and judgments of that board in its secret sessions, what parishes it threw out, what precincts it threw out, what majorities were increased, what majorities were reduced, so that we may be able to make a table for ourselves and to apply the testimony to each of the cases decided by the board. That is what I want to see. But you begin in hot haste—I must be permitted to say without disrespect—to present but one side of this case and then ask the American people to take that as the whole.

Mr. MORTON. Mr. President, we have the singular spectacle here of denunciation of the returning board of Louisiana, denunciation of it for committing fraud, for improperly changing the result of the election in that State, while at the very same time resistance is made to laying before the country the evidence upon which that action was taken. Here is the evidence placed before the board upon the republican side. I understand from the Senator from Ohio that the democrats were invited to present their testimony, to bring it here and have it printed and let it go to the country together. They can do it now; they can do it to-morrow; but they are not willing to do that; they are not willing to have the case go to the country as it was before the board; but they want to wait until they take more testimony, so that they can get a case which was not before the board. When it is charged that that board acted fraudulently, we are willing to have all the evidence upon both sides upon which they acted published. Let it all go to the country together. Our democratic friends declined the invitation; but they want to wait until they get new evidence which was not before the board. They thus confess that they are not satisfied with their case as it was before the board, but must wait till they make a new case by sending a committee down there.

Mr. President, this gratuitous denunciation of that board in advance I think is wholly without authority. If they acted improperly, let those who make that charge bring forward their evidence that was before the board; let it all go to the country together, and the people can judge of it. But they are not willing for that. They must wait until they make a new case, get more evidence, that that board never saw; and then, on the new testimony, that the board never saw, we are to judge whether the board acted correctly or not. From what I have heard, we are not afraid of the new testimony. The more testimony the better. The half has not been told. But when it comes to finding fault with that board and condemning it, we are willing to have all the testimony go together. I understood the Senator from Ohio [Mr. SHERMAN] to have urged them to send in or to give copies of their testimony.

Mr. SHERMAN. Here is the letter.

Mr. MORTON. I will send it to the desk and have it read.

The Chief Clerk read as follows:

NEW ORLEANS, *November* 30, 1876.

DEAR SIR: It is our purpose to communicate to the President copies of the testimony of witnesses taken under the order of the board of returning officers before the commissioners, but we have no means of getting copies of such of the depositions as are taken in behalf of the democratic candidates for electors. If you will secure us copies of such depositions we will, with pleasure, transmit them, with the copies of the depositions taken by the republican candidates, so that if printed hereafter the whole body of the testimony may be read and considered together. No doubt a request by you of the gentlemen taking the depositions will enable you to comply with our wish for a copy of them.

Very respectfully, yours,

JOHN SHERMAN, *Chairman.*

To Hon. JOHN M. PALMER, *Chairman.*

Mr. McDONALD rose.

Mr. MORTON. Read the answer.

Mr. McDONALD. That is what I want.

The PRESIDENT *pro tempore.* The morning hour has expired.

Mr. MORTON. Read the answer.

The PRESIDENT *pro tempore.* Is there objection to the further reading?

Mr. EDMUNDS. I submit that there is no unfinished business. I submit that the motion I made to take up a certain resolution being a motion that falls if not disposed of at the adjournment, the appeal which is incidental to it falls with it, and so we have nothing before us as unfinished business. I am going to move to take it up again the first chance I get.

Mr. MORTON. I want that read as part of my remarks.

The PRESIDENT *pro tempore.* Is there objection? The Chair hears none.

The Chief Clerk read as follows:

NEW ORLEANS, *December* 1, 1876.

To Hon. JOHN SHERMAN:

DEAR SIR—Your note of yesterday's date was received this morning, and at once laid before the gentlemen with whom I am associated, and they instruct me to answer that they are extremely anxious that all the facts relating to the election of presidential electors in Louisiana shall be known to the people of the United States, but that your note contains no assurance that the evidence collected here will be laid before the country.

They further instruct me to say that though upon that and other grounds they decline to be the medium of communication between the representatives of the President and the citizens who claim to have been chosen by the people of Louisiana at the late election as presidential electors, they would gladly unite and cooperate with you and your associates in collecting and collating for publication such returns, protests, petitions, exceptions, and the evidence taken by all parties, with any other papers which may be necessary to a full understanding of all the questions that relate to the election for presidential electors in this State.

In view of your proposition, and the importance of a proper understanding of all the facts by the country, we must express our regret that you declined the cooperative action proposed by us in the beginning.

Very respectfully, &c.,

JOHN M. PALMER.

Mr. MORTON. There is the invitation and there is the polite declination. They were invited to send their testimony in and let it all go out together, but they declined for certain reasons, and when it is proposed on our side to make the publication they say, "hold on, wait until it all comes in." That means "until we make a new case." That is the whole of it. They will not trust the case they have made, they confess that, but "wait until we get a new committee and we rake these States over and make a new case and then let it all be published." That is the whole of it.

Mr. THURMAN. Mr. President I cannot help feeling some surprise really, if a man should be surprised at anything in this day, at the bold position the Senator from Indiana takes when he charges that here is an attempt to make a new case which was not before the returning board. Where he gets any authority for saying that, I do not know. He certainly has stated none that will bear him out in any such inference.

But now there is one thing to which I wish to call the attention of the Senate. The Senator's remarks indicate, and very truly so far as the action of the returning board is concerned, that the question is to be determined by the testimony which was before that board, with one qualification, however, which he has not made, but which I make, that the fairness of that board is to be judged of, not simply by its determination upon the testimony which it received, but by its rulings in regard to the reception of testimony as well. If that board, in violation of right and justice, rejected testimony that ought to have been received, or made rules that excluded testimony where testimony was of the greatest importance, then it cannot stand the scrutiny of justice or of the American people; and therefore I do hope that any committee that investigates this matter will see whether the rules established by that board for the reception or the exclusion of testimony were such as were warranted by law and justice, or whether, on the contrary, they were partial in character and calculated to do wrong. Let me mention a single instance.

The case of Eliza Pinkston has become notorious in this country by the statements which have been made of it, often most inaccurate, and by the declamation that has followed about these statements. If the newspapers which I saw were right, that board, after receiving Eliza Pinkston's testimony, made a rule that but two witnesses should be examined to contradict her.

Mr. SHERMAN. I know my colleague does not want to misunderstand this matter. The board, after having allowed two witnesses to be examined in regard to the Eliza Pinkston case, orally, ruled that only two witnesses should be examined orally in reply. I will state

to him that any number of witnesses were allowed to be examined by interrogatories on either side, as he will find on the files, but the board were compelled by the apparent necessity of the case, in order to perform their constitutional duty, to exclude further oral testimony, and I can say to my colleague that it is shown by the record that this was done by general consent. The attempt to take oral testimony would have exhausted the whole time to examine into a single parish, and they therefore adopted—and, I think, at the suggestion of gentlemen on that side—the rule of taking testimony by depositions instead of orally.

Mr. THURMAN. I am not here to decide upon a matter in regard to which I have not the facts before me. If they acted fairly and received all the testimony, then they are not to be condemned in respect to the reception of testimony. If they acted unfairly, then they are to be condemned.

But now with respect to this correspondence between my colleague and his associates and Judge Trumbull and his associates, in respect to the latter furnishing the testimony taken on the democratic side, if I understand the Senator from Indiana, [Mr. MORTON,] he says that we are to consider no testimony except that which was before the board, and therefore I presume that my colleague here has produced no testimony but that which was before the board.

Mr. MORTON. I did not say that. I merely said that the proposition was made on the part of the republicans to publish all the testimony that was before the board on both sides and upon which the board acted, but that the democrats declined to do that and were determined to wait until they could make a new case. They were not satisfied with the case as it appeared before the board. That is the point.

Mr. THURMAN. I say there is nothing in the world to warrant that statement; but, Mr. President, I hold the Senator to it. He says the proposition was to furnish copies of that evidence which was before the board. Then it was evidence filed before the board. Now I want to know where was the necessity of my colleague and his associates calling on the democrats to furnish the evidence when there was the evidence before the board and they could get copies of it themselves? Where did they get the copies which they produce here?

Mr. SHERMAN. I hope my colleague will not try to place me in a wrong position. The letter itself shows that the depositions referred to were in the possession of the democratic committee. They were filed on Saturday. They were under their control. We got copies of the depositions taken on the part of the republican electors by having them copied; we could not do that with the depositions taken on the other side; but on the other hand we had assurances that they were copied for them, and their answer practically admits that they had copies of those depositions. They do not take depositions there as is our practice in Ohio, by a series of interrogatories which are filed at once with the answers to them; but the depositions are practically under the control of the party taking them until they are presented as evidence. I would have been glad, and indeed attempted as far as possible, to get copies of those depositions, but I could not do it, and therefore I failed. The answer admits that, while they were not available to us, they were available to them, and they proposed to us at some future time to select out from the mass of testimony those that were proper for publication—a thing that was perfectly impracticable. We regarded their letter simply as a denial of our request and as showing a desire on their part to present their testimony in a different way, and I have no doubt in some form it will come to one or the other House of Congress, and when it comes it ought to be printed and considered with this mass of testimony.

Mr. THURMAN. I ask what is the date of that letter making that request?

Mr. SHERMAN. I think it was last Thursday.

The PRESIDENT *pro tempore*. November 30, the Chair understands, is the date of the first letter read at the desk.

Mr. THURMAN. That was Thursday. Do I understand my colleague to have left New Orleans on Saturday?

Mr. SHERMAN. When the case was concluded, I think about 2 o'clock on Saturday.

Mr. THURMAN. Now, Mr. President, I have this to say in respect to the reason of those gentlemen for declining. I do not know exactly, further than they have stated, what may have influenced them, but I know what I would have done if I had been one of them, and that is I would have refused the request of my colleague and his associates.

Mr. McDONALD. Allow me to say to the Senator from Ohio that the committee of which his colleague was a member had already refused to co-operate with them in any way.

Mr. THURMAN. I am coming to that matter. I say, sir, I would have refused. What is this? Here are five gentlemen of the republican party who went down there at the request of the President of the United States. Did that constitute them officers of the United States? Did that give them any official function? Did that give them any superiority of position or entitle their judgment to any more weight than that of any other five respectable citizens of the United States? They went down there at the request of the President. They asked these other five gentlemen to furnish the testimony taken on the democratic side. For what reason? That these gentlemen might make up their report and send it to the President, having all the testimony before them, in order that it might be laid before Congress. They do not ask the five independent gentlemen down there who acted for the democratic or conservative party to join with them in making a report to the President. They ask nothing of that kind. They do not ask for a consultation upon the testimony to arrive at conclusions and lay them before the President, but they ask that all the testimony may be put into their hands, that they may send their judgment, the judgment of five republicans, to the President, to be by him communicated to Congress. Sir, a more one-sided thing I never heard of in my life, and I cannot help feeling some surprise that a gentleman whose sense of propriety is so keen as that of my colleague and those who were associated with him should have ever ventured to make such a proposition. If they had said to these five gentlemen—men certainly of as high character as any in this country—"Let us get together; let us take this testimony; let us make a report either to the President or to the people or to Congress; let us see whether we cannot arrive at conclusions that will meet the assent of us all, that will command the approbation of the American people and of the American Government"—if they had proposed that to them, it would have been a fair proposition; but to say "You shall furnish us your proofs, and we, a one-sided party, we, half the jury, will then make up our verdict; we of the one political party will make up that verdict and give it a sort of official sanction, an odor, a flavor by sending it to the President of the United States, to be communicated to Congress," is a little the most modest proposition that ever I heard in all my life!

I say that those gentlemen were perfectly right in refusing such a proposition as that. My colleague and his four associates were not constituted by law or courtesy or fairness the sole judges of this business, to take all the testimony and make a report to the Chief Magistrate of the nation, to be laid before the Congress of the United States. They had no such official functions. They had no such rights as American citizens. It will not do for the Senator from Indiana to talk about confessing that the case was against the democratic party because such a proposition as that was rejected, and properly rejected.

One word more. I say it will be a matter of investigation, not simply what was the testimony before that board, but what was the testimony that was offered and rejected, which ought to have been received and, therefore, was wrongly rejected. It will be an inquiry which fairness, justice, and the common sense and the sense of right of the American people will demand to know, why it was that the vacancy in that board was not filled, why it was that no democratic eye was allowed to see, that no democratic ear was allowed to hear, the secret and final proceedings of that board.

I think it very probable that anything I can say will have no effect upon this pending question. I see a spirit of haste in all this business which augurs to my mind anything but good. I said yesterday, I believe, or if I did not I say it to-day, that there never was a time in the history of this country when republican institutions and our form and structure of government and our Constitution were put to a severer trial than they are at this moment. Under these circumstances everything that is done by Congress should set an example to the people everywhere to act with deliberation, with coolness, and above all with a supreme sense of justice and right. Therefore I do say again that no *ex parte* presentations, no one side of the case, will satisfy either the conscience of the American people or the demands of justice.

Mr. MORTON. Mr. President, the Senator from Ohio [Mr. THURMAN] has discussed the situation down there more or less in his several speeches, has denounced the action that has been taken there, and now talks about an *ex parte* presentation of the question. All the ingenuity that can be brought to bear upon the other side cannot extricate them from the dilemma into which they are placed. It cannot change the point. The point is this: So far as the republicans are concerned who were there, it was voluntary on their part; they were not officers. So far as the democrats were concerned it was voluntary on their part, they were not officers. They stood upon the same footing upon both sides, so far as that is concerned; but when the republicans offered to lay the whole testimony before the country, that was before the board, and publish what the democrats offered as well as what the republicans offered, the offer was declined; and now when the republicans come forward and give what they have, offer to publish to the world what they have under their control, they are asked not to do it, because the democratic side is not presented. They were invited to let it all go to the country together. They declined that. They wanted to wait until they could get more testimony; and, to come right back to the point, they want to wait until they can make a new case. That is the whole of it.

Mr. McDONALD. I should like to ask my colleague if the democratic committee had made the same request of the republican committee whether he would have advised their consenting to it?

Mr. MORTON. I certainly should. If the democratic party proposed to publish the evidence before that board in their possession, all that they offered, and if they had called upon the republicans to give what they had and let it all go together, I should have said it was the fair thing; and, if the republicans had declined to accept that proposition, it would have been because they had no confidence in their case, did not dare trust it, and wanted to wait until they made a new case.

Mr. McDONALD. That is not an answer to my question. My question is whether my colleague would have regarded it as proper for the

democratic committee to have asked the republican committee to give over into their charge the entire testimony they had taken upon their side, and have no part whatever in its presentation?

Mr. MORTON. To have asked the democratic committee to surrender the originals into the hands of the republicans and thus place the entire control of the testimony into the hands of the republicans, might not have been proper; but if the democrats had asked them for copies as the republicans asked the democrats for copies, and the republicans had refused the request, I should say, as I say on the other side, it was because they had no case, and were afraid to trust it, and wanted to wait until they got a new case.

Mr. McDONALD. I will say that it would be the first time in the history of the gentleman that he ever condemned his own party.

Mr. SHERMAN. I will say but a word in reply to my colleague on one point he made in regard to presenting this testimony. There was no question made by anybody in New Orleans as to the course of those sent by the President, and who witnessed the count. Our course as a body and as a committee was fair and proper. We sat there and listened; we heard the testimony, such as was given orally; we read such as was furnished to us from time to time that was written. No one called in question the fairness and propriety of our conduct, however different a conclusion he may draw from that testimony.

In regard to carrying the testimony here, I will not go out of the record to repeat the conversations that occurred between us, because I know that is not fair. The other gentlemen are not present, and therefore, I will not repeat a single statement of a verbal character made by them to us; but the correspondence on its face shows this matter. It may be seen from the nature and manner of taking the testimony. Here were two large volumes of testimony. Copies were in the hands of the democratic committee and copies were in our hands. There was no disposition, I think, on either side to withhold from the other an examination of these copies or papers. I have no doubt that at any moment I might have gone to Governor Palmer and received from him a copy of any paper he had in his possession, and I am quite sure, I know very well, that he could have come to us for any paper. I will not go into what was done, but he would come to us for any paper whatever, a copy of a deposition, and it would be freely, frankly, and cordially given. Gentlemen would conduct that kind of intercourse, as a matter of course, between each other. We did decline their proposition as committees to confer with each other to influence the count by the board. We had no such power. The power was in the returning board; and our course in that matter, I think, was justified by the common sense of mankind. We had no business to act there in a joint capacity to influence the conduct of the board. As individuals, as gentlemen, as private citizens, we did confer; we had agreeable intercourse, so that if any testimony was in our possession that was not in theirs it could be freely had at any moment, and that was known by both.

The question of communicating this mass of testimony to Congress did necessarily come up days before the testimony was closed, and that letter of mine, which was only in pursuance of verbal interviews before, was simply to put in a formal way the request that we might know some way to get together these two bodies of testimony and present them here. I do not suppose that Governor Palmer or any of those gentlemen feared to trust the testimony with me in a sealed package or in any form in which it could be put to present it here. I do not believe they thought it would not be presented. And if the democrats had asked me for the mass of these copies and said to me that they would deliver them in Washington at a certain time, as soon as I could get them I would have given them freely, without question or doubt. I have no doubt if Governor Palmer had come this way he would have been glad to do it; but we knew very well that not one of the committee who were there on the part of the democrats was coming to Washington. They were not residents here; they were not members of Congress. Therefore it was that I made the offer to transmit and be a common carrier, if you please to call it so, of the common testimony either in a sealed package or any form so as to get it before the people. Anybody can see that on the face of the papers. They declined because, as they said, they preferred to adopt some other mode of communicating this information to the people of the United States than the mode we proposed, through the President of the United States. There was the difference. We could only communicate this information to the Senate through the President. They preferred to communicate it in some other way. I have no doubt whatever that in a very short time such testimony as they desire to present will be presented to either one of the two Houses, and when presented it ought to be printed without all this complaint, without all this, it seems to me, captious objection. That testimony is the testimony upon which this case is to be decided. It is taken according to law for the use of officers who had judicial as well as ministerial functions to perform. That was the testimony that gave force and power and authority to their decisions. All we can do is, not to reverse their decision, for we have not the power to do that, but to say to the people of the United States whether the proceeding was fairly conducted, whether it was honestly conducted, whether upon the face of the testimony before them they could form and honestly come to the conclusions to which they came. It is rather a question of public opinion and investigation upon which they are on trial. Their judgment is final, and made so by the laws of Louisiana and by the Constitution of the United States. All we desired was to present the whole of the testimony so that every man in the United States may see whether or not these men in the performance of that high, important ministerial and judicial duty acted honestly, like honest men, or whether as rogues they sought to deprive the people of Louisiana of their vote in the election for presidential electors. That is all there is of it.

My colleague talks about having no feeling. He has shown more feeling in this matter than he would consider consistent with the just judicial mind in the examination of a case before him as a judge. I am quite sure that when I expressed in a single sentence my general opinion of the character of this testimony, without saying whether it justified all the acts of this returning board, because I do not know them yet, I did not show as much feeling as, or certainly not any more than, he has now exhibited when he is praying for a judicial, a disinterested, and a dispassionate examination of this testimony. He promises us, if he has the time consistent with his other duties, to read these depositions. I do not believe my colleague will have the time. We had barely the time. It was made our duty, not as officers, not as Senators, but as citizens requested by the President of the United States to look into and investigate and witness this count. It was made our duty to examine this testimony. I know more about it than he does. We may come to a different conclusion on this matter from him even if he would examine it fully; but he has not made that examination. If he had the time and attempted to make that examination he would find things that were startling, things that I think he could not exactly reconcile to his sense of justice and honesty, things that he would not defend before our common constituents.

What I desire to say is that we present you every particle of testimony that we could get; that we tried to get it all, but that a portion of it was not within our power; that it was under the control of another committee who no doubt in due time will present it to one or the other of the two Houses, if they think it will be worth while to do so. If they think it will carry out and sustain their views they will present it. If not, they will not present it. All I can say is that we tried to get all this testimony so that the whole might be printed, and that every man might judge for himself whether or not the judgment of this returning board was sustained by honest testimony, honestly given, and by a weight of testimony sufficient to warrant their finding.

Mr. THURMAN. My colleague has, as I am inclined to think he will on calm consideration agree, made unaware several very important admissions. In the first place, it is apparent from his statement that these papers are laid before us, not for the purpose of any congressional action at all, because he tells us in so many words that whether that testimony supports the rulings of that board or not, whether its rulings were right or whether they were wrong, we have no right to criticise them; that we are conclusively bound by them. If that is the case, then that testimony and this report to the President are not laid before Congress for any practical purpose whatsoever, so far as our action is concerned. But again, for another reason, it appears from the Senator's admission that it is not for the purpose of congressional action at all that these papers are laid before us, for he says to me that he does not believe that I shall have the time to read this testimony. If I do not have it, who will? My colleague has known me a long time; and whatever reputation I may have, I certainly have the reputation of being an industrious, hard-working man; and if I cannot read this testimony, I should like to know what member of the Senate can or will. Then it is not laid before the Senate, to be read by the Senate, for the Senate has not the time to read it. Why then is it laid before the Senate? Not to found any action upon it, for my colleague says we are concluded by the judgment of the returning board. It is not for us to read it during this session, for he says we have no time to read it. Why then lay it before us here to be printed at the public expense, but for the purpose of having it go before the people and creating public opinion? If that is the reason, as it is the only reason that inexorable logic will leave to my colleague, then I ask why is it brought here? Can he not wait a little while until the testimony on the other side comes in, so that it may go to the people who will have time to read, who will have years to read it, if you please; so that it may all go together to the people in order that they may form a correct public opinion on the subject? What is the necessity on this fourth day of the session for putting this evidence in press when in a few days we can have the whole of it, and let it all go together? I cannot, for the life of me, see any logic in this business.

But there was another admission of much more importance, and I wish the attention of my colleague to it. Pointing to that pile of papers, which is called testimony forsooth, he says it was upon that testimony that the decision of the returning board was made.

Mr. SHERMAN. That and the other testimony.

Mr. THURMAN. Ah! But the Senator did not say so. He pointed to that pile of papers and distinctly said that it was upon that testimony that the decisions of the returning board were made.

Mr. SHERMAN. Did my colleague suppose that I said it was upon that testimony alone? He is fishing with a pin-hook.

Mr. THURMAN. I do not want any pin-hook. I never fished with a pin-hook in my life; I always had a good hook. If my colleague says he did not mean that, I refrain from all criticism upon it; but when he was urging that it should be laid before the American people now, without waiting for the other testimony, he said upon that

testimony the board decided, I want him to tell me how I can understand him otherwise than that it was upon that testimony, one side of the case, that that board has rendered its decision, and claims to have converted 7,000 majority in the State of Louisiana into a minority of 3,000. I am inclined to think that my colleague has inadvertently told the truth. I am inclined to believe that it was upon that testimony, and not upon the testimony which rebutted that proof; nay more, that it was upon that which was not even fair supposition, that those gentlemen rendered their decision. But I withhold my decision upon that until I can see the case and try to find time to read it and to read it fairly. It may not be necessary to read it all. I shall want to take up a particular parish and see what the testimony is in relation to it, and then another and another; and perhaps before I have gone through with a half dozen of them I may be able to form, with a judicial mind, a judgment whether that was an honest count or not. I propose to do it.

One word about the refusal of Governor Palmer and his associates to furnish their testimony to my colleague and his associates. My colleague has said that we cannot have time to read the testimony; that is, we cannot at this time, or before the count of the presidential votes on the second Wednesday of February. That is what he must have meant. Did not Governor Palmer and his associates know that? Did they not know that if you put in the rest of that testimony it would only accumulate it, and make it so much the more impossible to read it? Did they not know then that it is upon the report which shall be made upon the testimony that public opinion is most likely to be formed? It is the report—that is all—that the great mass of the people can read or ever can see. It is the report which will be in every newspaper of one party in the United States. Did they not know that? It was not right and fair to ask them to submit all this testimony to these five republican gentlemen, and allow them to make their report without one single word of a democratic report to the contrary. Is that fairness? Is that fair play? Is that the way to proceed? No, sir. I repeat it, they did perfectly right in refusing.

But my colleague says, "All we could do was to report to the President." Report to the President! Where is the statute that authorizes you to make any report to the President, I should like to know. You were no more than five other citizens of the United States. Any five citizens of the United States had just as much right as you had to make a report to the President; any one of them has just as much right to ask the President to give a sort of official sanctity to the document by sending it to Congress. Palmer and his associates had just as much right to do it as you had. You occupied no superior position in this case, none whatever. If you were official men, if you were sent down there as official men by the President to see that there was a fair count, then I must say that the President took a very strange way of constituting his commission to constitute them all of one political party. If the President acted *ex virtute officii*, if he acted as President, if he acted in the execution of any duty devolved on him by the Constitution or law, and undertook to send a commission to see that there was a fair count, with what kind of face did he ask nobody to serve on that commission but members of his own political party? No, Mr. President, that will not do. It will not do for my colleague, and I do not suppose that he claims it at all, to assert that he and his associates had any more authority there, any precedence there over Palmer and his associates, than anybody else would have, whether called by the President or not.

I have not yet criticised the action of the President in requesting my colleague and others to go down there. I make no criticism whatsoever upon it. I have not a word of censure to say in respect to any such thing as that. But the attempt to clothe this with an odor of officiality, to put the garments of office upon it, is the thing that I protest against. I say my colleague, highly honorable and respectable and influential as he is, and his honorable colleagues on that committee, highly respectable as they were, were nothing but five private citizens of the United States having no more rights than any other private citizens, and in no way clothed with power to speak by authority.

Now, Mr. President, having it here entirely, clearly, and frankly admitted by my colleague that we can do nothing with these papers as a Senate, that nothing we can do with them, as he says, can influence the declaration of the election to the Presidency, that they can have no possible bearing upon the question who shall be counted in as President on the second Wednesday of next February, and, further, having the admission that there is no time for any Senator to read them at this session, and thus being driven to admit that the whole object of the publication is for effect on the public mind, I once more appeal to the fairness of the Senate to wait until the whole case can be laid before the American people.

I shall vote against the resolution to print not at all because I am opposed to the printing, for when the other testimony shall come in I shall cheerfully vote to print it all. I only vote against printing it now. The moment the whole testimony is in I will vote to print it all readily and freely.

Mr. EDMUNDS. Mr. President, I wish to attain that pitch of virtue that is possessed by my honorable friend from Ohio, [Mr. THURMAN,] and the other opponents of this motion; and to do so, I wish to declare with all the heat of which I am capable that I am perfectly cool, and with all the passion I can possibly feel that I am absolutely dispassionate, and with all the bias that I can fret myself into that I am absolutely impartial and unbiased. And if, by following that method, in humble imitation of my friends on the other side, I can get up to a sufficient pitch of virtue to look at this most momentous question, then I shall discuss it.

I wish to call the attention of my friend from Ohio, in the first place, to the third section of the second article of the Constitution of the United States as it was, none of these spurious thirteenth, fourteenth, and fifteenth amendments, but the real old thing. Speaking of the Executive, it says:

> He shall from time to time give to the Congress information of the state of the Union.

That is one of the duties that the President of the United States is commanded to perform, and he has bound himself by all the obligations that constitutions and laws and conscience can impose upon a man who accepts an office voluntarily to obey that command, as all his predecessors before him have done. And you will find, Mr. President—I do not know that my friend from Ohio will find it—but you will find, sir, from the administration of George Washington to the administration of President Grant, in the Journals of both Houses of Congress, documents printed with presidential messages containing from first to last every species of information, official and unofficial, letters from private persons to private persons, sometimes confidential and sometimes not, everything that comes to the possession of the President of the United States as "information," in the language of the Constitution, that he believes the public interest requires him, touching the state of the Union, to lay before the two Houses of Congress.

Mr. THURMAN. May I interrupt the Senator for a moment? Have I said one word criticising the conduct of the President in sending this message.

Mr. EDMUNDS. I have not said that the Senator has.

Mr. THURMAN. I certainly have not.

Mr. EDMUNDS. It will be time enough for the Senator to plead not guilty when he is accused. I am only trying to convey to my honorable friend from Ohio a little "information of the state of the Union."

That being the state of the Constitution, and the universal practice under it from first to last, there having occurred on the 7th of November an election for electors of President and Vice-President in the several States, and in some of them there being great disputes and public excitement and charges and counter-charges, that seemed to threaten the peace and good order and constitutional law of those respective States, and possibly of the whole Union, the President, in order to obtain information that he has a right to obtain by any lawful means, invites certain respectable citizens of the United States to endeavor to obtain it and communicate it to him. Nobody has criticised that; nobody will criticise it until he attains a pitch of virtue that is higher even than that assumed by my friends on the other side so far.

Having obtained that information, no matter whether it is information that is trustworthy or untrustworthy, it is of a character that he feels it to be his duty, under the Constitution, to communicate to the two Houses of Congress as affecting the state of the Union, for what it is worth; not proof, not law, but simply, in the language of the Constitution, "information," that may turn out to be entirely a dream, that may turn out to be entirely a fact. And when it is proposed that this communication of the President, with the information that he lays before us, shall be printed for our use, it is gravely objected by Senators that we ought to refuse to print the information; in other words, we ought to refuse to receive the information in the sense of being able to have it communicated to us, as we have not yet, because, forsooth, there lies in the imagination of somebody somewhere a belief that at some time, convenient to some political party, some further and additional and assumably counteracting information may be obtained that the people of the United States and the Congress of the United States ought to know also. Let us suppress, therefore, whatever information we do have until we can hunt around and see if we cannot find some other that will be different information from what we assume this information is! That is the proposition.

Mr. President, I venture to say that in the whole history of the Government, in the hottest times of Adams and Jefferson and Aaron Burr, of John Quincy Adams and Jackson, of Van Buren and Harrison, of Buchanan and Lincoln, there never was yet refused a motion to print papers accompanying a message of the President of the United States, unless it was upon the ground—and I know of no such instance as that even—that the information had been already obtained and that it was of no possible consequence to go to the expense of the ink and paper necessary to print it. And yet here virtue and impartiality and the want of passion and that judicial mind which some people claim that they possess lead us to refuse to avail ourselves of the information that the President under the circumstances has felt it to be his duty to send to us, because we have a suspicion, owing to this entirely unprejudiced state of our minds, that something may be trumped up hereafter in some way or found somewhere that will show another side and a different kind of information from what has been sent us. That is the proposition. If any Senator wants to stand in that attitude and refuse to vote to print this, very well. All I have to say in addition is, that I ask for the yeas and nays on the adoption of the motion to print.

Mr. WHYTE. Mr. President, if it were possible that this testimony could be winnowed by some impartial hands and the chaff taken from the real grain, I should have no objection whatever to the printing of that which was true and proper for consideration. The Senator from Ohio who was in Louisiana during the examination before the returning board [Mr. SHERMAN] has already told us that there were three classes of testimony in this vast batch upon the Secretary's table. He has told us that there was the stenographic report of the proceedings which took place before the board in the presence of the gentlemen who were visiting as spectators, that there was another class of testimony which came with the statements and returns of the supervisors of election in the various parishes, and then there was a third and last class made up of affidavits taken by parties themselves before United States commissioners.

Now for my part I would have no objection to printing the proceedings which took place before the returning board, the oral testimony taken under examination and cross-examination and in the presence of the responsible gentlemen who sat in that room and heard this testimony orally delivered. I would go a step further and consent to the publication of the statements made by the supervisors of election under the law of Louisiana. But, Mr. President, there I would stop. And why? Because we have before us the testimony of respectable witnesses in Louisiana and also of witnesses who have been guilty of acts heretofore which ought to have consigned them to the penitentiary in manufacturing this third class of testimony that we now propose to spread before the country. In this very building, under the examination of the Committee on Privileges and Elections and under the conduct of the former Senator from Wisconsin, we have had the revelation disclosed to the country that an affidavit-mill existed in Louisiana where they ground out affidavits by the bushel, and if they are to go before the country let the country know and understand what kind of affidavits are made in Louisiana, before you undertake to print this third class of the testimony upon which this returning board acted. Now, I propose, for human memory is frail and we often forget the character of testimony laid before the Senate in the various reports that are made from year to year, to read a part of the testimony taken before the committee and returned and reported by Mr. Carpenter at the time he made his report, he having conducted a part of the examination. The testimony is on page 520 of the report and testimony reported to the Senate on the 20th of February, 1873. It is the testimony of Theodore Jaques. On the inquiry as to how many votes he had manufactured this was his reply, and I will read all relating to that branch of the case:

Question. After the election was over you returned to New Orleans?
Answer. Yes, sir.
Q. Then did you return to Plaquemines?
A. Yes, sir.
Q. What for?
A. To take affidavits.
Q. How many did you take?
Mr. RAY. If these inquiries are gone into we must go into every parish in the State and inquire in regard to every affidavit taken.
The CHAIRMAN. I understand that this proof is to show how these affidavits, which were before the Lynch board, were gotten up.
Mr. WARMOTH. We can show the same thing existing in every parish.
The CHAIRMAN. The examination may proceed.

By Mr. WARMOTH:

Q. Did you see many of these people yourself?
A. Yes, sir; three hundred and one.
Q. How many affidavits did you take on the spot?
A. To many parties I just read it to them in blank, and told them they were cheated out of the vote. That made them angry. They said they did not vote.
Q. What reasons did they give?
A. Many said they didn't care and many said it was too far to the polls.
Q. You say you read the affidavit to them?
A. Yes, sir.
Q. Did any of them sign it?
A. No, sir; only one.
Q. Did any of them authorize you to sign it?
A. No, sir, they only said they wanted to vote, and considered that voting—taking their names.
Q. Who was with you?
A. Judge Prescott.
Q. The United States commissioner?
A. Yes, sir; and three others.
Q. You say three hundred and one persons who said they did not vote?
A. Yes, sir.
Q. How many signed the affidavit?

There were thirteen hundred affidavits!

Q. How many signed the paper?
A. One.
Q. Only one?
A. Only one.
Q. How many did Judge Prescott swear?
A. I suppose not over twenty. He merely said, "You swear;" that is all that was about it; I read the affidavit.
Q. After you saw these people where did you go?
A. To New Orleans.
Q. You live there?
A. Yes, sir.
Q. How many votes did you prepare?
A. Thirteen hundred and fourteen.
Q. Did you sign the names of those people to them?
A. Yes, sir.
Q. The three hundred and one?
A. No, sir; three hundred; there was one signed himself.
Q. You signed the other three hundred?
A. Yes, sir.
Q. And then you signed a thousand more?
A. Yes, sir; ten hundred and thirteen.

Then on the next page, 522:

Q. Where did you get the names?
A. From the poll-books of 1870.
Q. How many of these people voted?
A. A great many voted; I cannot answer how many.

Again:

Q. But you signed their names to an affidavit?
A. I was instructed to make them out so.
Q. I did not ask that. Do you swear that you signed the names of a thousand men to a thousand affidavits?
A. Yes, sir; I put a thousand names to a thousand affidavits.
Q. Without any authority from these men?
A. Yes, sir; for many of the men were men of straw.

Now, Mr. President, I find marks all through these papers; not signatures, but marks all through the papers on the table; and if this class of affidavits, made out in the country with no party to cross-examine the witness when being interrogated upon one side, have been imposed upon Congress in the past, they may be imposed upon Congress to-day. Segregate those affidavits and leave the stenographic report of the testimony taken before the board and the returns of the supervisors of elections, and I will vote now to print that and let it go to the country for what it is worth; but as to the rest of it, I will not lend my sanction without knowing whether they are true or false, to circulate such documents throughout this land to produce an improper impression upon honest men who want to do right and who in order to do right must know the actual truth.

Mr. President, the distinguished Senator from Vermont justifies the sending of these papers by the President of the United States to the Senate upon the ground that he is bound under the Constitution to give information of the state of the Union to Congress, that it may take action in regard to questions pending before it. I agree with him that the President has a perfect right to send messages based upon actual information to Congress, but it is his duty in advance to ascertain that the information is true, that it comes to him guaranteed by some respectable indorsement before it is sent to Congress, and my learned friend from Vermont ought not to liken the case of President Grant to-day to that of Washington or Jefferson in the past, because Washington and Jefferson never had a returning board to deal with. It is a creation of the latter-day saints. Therefore, sir, while it was proper in the President to send any information to Congress, and I do not complain of his sending this information, though I think he ought to have withdrawn that part of it which is based upon bare affidavits unsupported by the testimony of the Senator from Ohio, but as regards the other part which was not delivered in his presence he ought to have segregated it from that testimony which was taken under the sanction of examination and cross-examination before the returning board. But I do not wish to commit myself to any action of this returning board right or wrong. It is an unlawful institution in Louisiana to-day. It is the creature of the same senate that sent Mr. Pinchback here with his credentials to take a seat in this body. We repudiated him because the Legislature that sent him was an unlawful body, and this returning board is the creation of the same body that sent him here.

I say then, Mr. President, that while I am willing to vote for the printing of that part of this communication which comes as the testimony before the returning board, which comes as the returns of the supervisors of election, I protest, in the name of fair dealing, in the name of justice, against sending out affidavits when we have before our eyes the experience of what was done four years ago in the State of Louisiana and sent to the Congress of the United States.

Mr. WEST. I do not know, Mr. President, that the Senator from Maryland can be induced to leave the somewhat stale subject of the election of 1872, to consider the election that is now under discussion in this body; but I think he is somewhat at fault in stating that there is any analogy between the testimony that is now submitted here and the character of testimony that was submitted in 1872. His reasoning leads to the conclusion that if there be one perjurer in the State of Louisiana its entire population are not entitled to belief. Let him apply that rule and that proposition to his own State, and he has only to acknowledge in his experience of the criminal law there that there have been instances without number which did not affect the general reputation of the State.

But, Mr. President, it is very convenient to bring up that old case; it is very convenient to recur to the iniquities that were presented at that time in connection with it; but the Senator fails to see what was the fact, that the Senate repudiated it at that time, and that testimony did not weigh, and yet he leaves the intimation that there is similar testimony here. Ah, Mr. President, wait until the affidavit-mill of the democratic party down in Louisiana works that we are asked to withhold our hand from at the present time; wait until we see those machine affidavits, printed in form, as I am told, already, sent broadcast throughout that State to be testified to by anybody that they can get, and you will see machine affidavits in connection with this testimony before we get through. I venture to say there is nothing of that kind in the papers now on the table.

Then, again, without waiting to hear the propositions of the returning board, without waiting for their grounds of justification for their action, they are condemned here in advance upon their construction of the law. The republicans of Louisiana are arraigned because in their representation on that board they did not fill a vacancy. Has anything been heard from them in regard to what dic-

tated that conduct? No; but it is taken for granted that they did not desire and would not permit a democrat to see into the proceedings of that board. How was it when the democrats held the power in that State, when they had control of this election machinery in the State? I do not say that two wrongs make a right, but I say there are charges made here which have never been justified. We are waiting for the justification of our men, and I think we shall have it.

How was it in the election of 1872? Not only was no republican to be permitted on any board, but no republican eye was to be permitted behind the ballot-box or to witness the counting of the votes at any insignificant poll throughout the State. It was conducted by the democratic party and the record of it is here in our testimony. Let me refresh the recollection of the Senate and the country in that regard. The instructions to the democratic officers of election in 1872 were as follows:

First. In counting the ballots after election, count first the votes cast for presidential electors and members of Congress, keeping separate tally-lists on the Form No. 1, provided for that purpose, and making up and completing the statement of votes for each poll, upon Form No. 1. Then close the box, reseal it, and proceed in a similar manner, until all the national votes have been counted.

Then proceed with the counting of the State and parish votes, bearing in mind the fact that the United States supervisors of election and deputy marshals have no right whatever to scrutinize, inspect, or be present at the counting of the State and parish votes.

That construction may be strictly legal, but by that proceeding they shut out every republican United States supervisor, and there was no republican witness behind the ballot-boxes throughout the State in 1872.

Furthermore, an additional circular under date of November 2, 1872, addressed to the president of the State republican committee, said:

In reply to your communication of date, I must respectfully decline compliance with your request to appoint one commissioner of election at each polling place from the republican party.

Not only on the returning board, but all through the State and at every precinct and every poll where the election was held, the republicans were shut out as participants in that election as officers, and after the count not a republican eye should rest on the proceedings of these officers. Now, can any party that has practiced that so generally and so universally arraign us here for what we have done in the present case until they wait for our answer and our justification?

Furthermore, Mr. President, the testimony and the manner of its submission to this returning board has been commented upon at large. It has been argued that the returning board exceeded its authority and transgressed the law in admitting this testimony at certain stages. How was it in 1872? Take the proceedings of the democratic board, and the testimony shows that weeks and even a month after the ballot-boxes were closed in the most remote sections of the State they took testimony in the city of New Orleans that fraud and violence were perpetrated there and they threw out *en masse* whole republican parishes. If the republican returning board wanted precedent for their conduct they had it in the course established by the democratic board. It can be shown by numerous witnesses over and over again in the Carpenter report that from three weeks to a month after the cessation of the election it was vitiated and rendered void upon the *ex parte* testimony of men that were not even in the parishes and saw what was going on.

Another proposition, sir. There is testimony in the Carpenter report also that democratic supervisors of election came to the city of New Orleans and framed affidavits to their returns; they came there without even a poll-list, and they sat down taking the republican tickets and the democratic tickets and tallied off enough to give a democratic majority and never saw a ballot!

But, Mr. President, what was the action of members of the Senate in regard to those returns? The election of 1872 has never been claimed by the republicans in this Chamber upon the returns, whether rendered by one board or the other, and yet we are treated to the testimony of one or two perjurers, and perhaps more, and upon that assertion we are to be led to believe that this testimony just taken is an equivalent falsification and no man in the State is to be believed. I think it is a pretty bad case of the pot calling the kettle black so far as the election of 1872 is concerned, but we have never claimed anything from the hue of our kettle.

The PRESIDING OFFICER, (Mr. MITCHELL in the chair.) The question is on the motion to print, on which the yeas and nays have been called for.

The yeas and nays were ordered.

Mr. BAYARD. Mr. President, this is not the time, in my judgment, to pass upon the action of the Louisiana returning board. That time will come. Every man in this Chamber and every intelligent man in this country knows that around and centered upon this election in the State of Louisiana hang consequences as grave as any ever presented to the American people. When the time comes I trust we shall discuss such questions in a spirit worthy of the results which lie within their decision. I will not, however, touch upon the merits of these questions of fact or law, and can only express regret that they have in the discussion of my associates in this Chamber been at all touched upon, although it seems to me the discussion was in some respect made necessary by the action of the honorable Senator from Ohio, the envoy of the President at New Orleans, under whose auspices this paper has been prepared and laid before the Senate. But, sir, I feel that now of all times it is especially proper and essential that the prerogatives of the several branches of this Government should be carefully considered and respected. The measure that I give is the measure that I will demand. Therefore it is, that when the President of the United States, an independent branch of this Government, shall in his discretion, in the exercise of his official duty, perform any act, I propose to treat his action with the respect that is due to his office and to accompany it with that obedience which his legal action demands from me as one of his co-ordinates in the Government of this country.

The Constitution of the United States does in plain terms authorize and require the President of the United States "from time to time to give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient." Therefore, it will be observed that the only communications from the President to either House of Congress, or to both Houses of Congress, are *official* communications; he can have none other; and it is by virtue and by power of his office that he makes his communications to us, and we receive them as he gives them, assuming, of course, that they are orderly and regular and marked with that respect due from one branch of the Government in the comity of civilization to the other. I know of nothing in the present case of that kind to except to in the present communication. Therefore it is, if this communication comes connected with papers which he considers proper to elucidate the subject-matter, ordinarily my disposition would be to let it be printed for the information of the Senate; and the present motion is, as I understand, that there shall be the usual number for the use of the Senate of these voluminous papers printed.

I have nothing to say in regard to the fact of the great haste with which this has been done, and the apparent unwillingness to yield to a reasonable delay in order that the whole case may appear. The message coming yesterday, being only sent to the committee at the very close of the session last night, and reported back the first thing in the morning, there has been no time lost at least. But although the communications of the President of the United States to either House of Congress must in their nature be official, yet we cannot but observe in the present case—and I consider it proper and just that I should comment upon the fact—that the matters referred to in this communication are not official, do not pretend to be official, are without the sanction of law, and are not connected with the presentation of any recommendation or measure for the action of Congress.

In the first place, let it be noted that the letter now submitted to Congress by the President, and the voluminous documents which accompany it are necessarily intended to be of a one-sided and partisan nature. The President of the United States has authority under no law, there is no color of law whatever, for the appointment of any committee for any such object as he has suggested in reference to an election held in one of the States. It is a voluntary action upon his part, and those who acted under his suggestion are necessarily volunteers. I have nothing to say of the impropriety of the motive either of him in appointing or of these gentlemen in accepting his personal and unauthorized appointment. I mean by "unauthorized," unauthorized by any color of office or of law. The office of the President of the United States no more connects him with the election in a State than does the office of a Senator connect that Senator with an election in a State not his residence. The whole action therefore is without warrant of law, and however laudable may have been his private motive or however conducive it may turn out to be to public justice, the action is without warrant of law either on the part of the appointing power or on the part of these gentlemen who accepted his appointment.

If there should be any doubt about that letter, this report to the President by his appointees and of the testimony which they return and which is admitted to be testimony only and solely of one side of this contested transaction, that doubt would be removed by a scrutiny of the composition of that committee of five gentlemen, well-known, ardent champions of the party of which the President of the United States is the chief agent. Therefore, having deliberately excluded those who may be called independent or disinterested men and having selected gentlemen well known for their ardent championship of the party to which he and they belong, necessarily he did not intend to act through official channels and to obtain that species of independent action which is supposed to be inherent in official action, for officials are bound by oath and officials are bound by a sense of duty, if they regard it, to their country, and not to their party. Therefore it is that everywhere official information is held to have more weight and official certification to be more binding than that of mere partisans, however worthy may be the private character of those partisans.

But, Mr. President, this other fact appears on this transaction, that the gentlemen so selected by the President of the United States to form his committee went to the city of New Orleans at his request, at his suggestion, to inspect and scrutinize the action of a certain board of officials in the State of Louisiana, and to return to him as their party chieftain, not as the President of the United States, their information, their results of fact and law as they should ascertain them by personal inspection. When this committee reached that city they found there another body of volunteers, gentlemen of high intelligence and character, well known to them personally and possessing their personal confidence and respect, who, immediately

political on the part of the opposite political party of this country, democratic, proposed to co-operate with the President's committee in order that there should be the additional force given arising from a mixed commission of differing views, who should if possible come to a common opinion in regard to the facts. But this proposition of the committee on behalf of the democrats was rejected by the President's committee, and not only rejected for reasons which they gave, but it was an absolute rejection, because, had they, to use the common parliamentary phrase, concurred in the proposition with amendments or with qualifications, it may well be that they would have found ready co-operation on the part of the democrats to act with them on their own terms and take from these committees that one-sided and partisan color which necessarily otherwise would be inherent in each.

The proposition of the democratic committee or of the committee on behalf of the democrats, for I do not know that the gentlemen who form that committee would be willing to bear that party name, was not accepted. They were acting with the democratic party. If their proposition had contained anything exceptionable and the substance of it, however, which was co-operation for the purpose of denying the partisan features of this examination had been accepted, the President's committee could have suggested "leave out certain features of the propositions you have made and we will accept the substantial proposition, which is, that we shall act together," there would then have been no doubt but that we should have had a combined scrutiny by these two committees and we should have had at least an attempt to agree upon a common conclusion of law and of fact. But that was made impossible by the action of the President's committee who not only rejected the proposition made to them to meet and act in co-operation with the other side, but they never even suggested any terms upon which they would be willing under any circumstances so to meet and act, and so the fact seems to be admitted on both sides that this investigation was made by each separately, one on one side, one on the other side, confessedly. The testimony prepared by the President's committee has been brought carefully into the Senate; the testimony prepared by the committee on the other side is not yet here.

Now the proposition of the President's committee that the other side should subject to them their testimony and leaving them to draw and state only their own conclusions and report upon it, was certainly inequitable, and with all due respect to them, unreasonable and never could have been expected to be acceded to, and the common sense of justice would revolt at it.

Mr. SHERMAN. Will my friend allow me?

Mr. BAYARD. Certainly.

Mr. SHERMAN. I do not want to interrupt the Senator from Delaware; but if he will allow me, I desire to state, not only on behalf of the republican committee, but on behalf of the democratic committee, that I do not think either committee took depositions. Certainly the gentlemen who went by the President's request took no depositions whatever. To my knowledge there was no affidavits taken by them or suggested by them; and I think that is true of the democratic committee also. They were there rather in the light of spectators, and certainly we took no part in the examination of witnesses in any respect.

Mr. BAYARD. It is a matter for the present quite unimportant in the aspect in which I was discussing this case whether this testimony, so called, was taken by the President's committee or by the opposition committee. The question is whether this testimony was one-sided, and therefore incomplete; and what I mean to say is that, be the testimony have been taken by whom it may, it is here a one-sided presentation of the case, and that I say is what the honorable Senator from Ohio says as a member of the President's committee he sought in some degree to rectify, and how? Not by asking the opposition committee to go with him and sit upon the case and join him and his party friends in the conclusions to which they came, but to give them their facts and let them, the President's appointees, draw their own and the only conclusions! I have been, as you, sir, have been, concerned heretofore in representing parties in litigation, and I never heard that a counsel representing one side of a case would hand over his brief and proofs and be bound by the arguments and conclusions to be drawn by his opponent; and yet that was the refreshingly cool proposition of the President's committee in New Orleans. Therefore it is that I say that as a matter of simple justice in my mind, that will appeal to that sense of fair play which I trust and believe does distinguish the American people, when a case is to be heard both sides shall be heard. That is all that is asked or suggested, as I understand, by the honorable Senator from Ohio who sits nearest to me, [Mr. THURMAN.] He simply asks that there may be a moderate delay in order to permit the facts on both sides to appear, and to appear through the same channel.

As I said before, this report to the President is wholly unofficial. The gentlemen making it have no color of authority or office; they make it under the sanction of no law; they make it under the color of no legality. It is a purely party report of his committee selected by him from his party associates and friends. Its conclusions of law and its conclusions of fact are simply those of five citizens of the country who, at the close of a heated political canvass, in which they have been all actively engaged, are acting under no law, but solely as members of one political party at the call of their political chieftain. The affidavits and the testimony, as I say, are but on one side, and they form at best that most dangerous and delusive of things, a half truth, which proverbially is more delusive than a whole falsehood.

But, Mr. President, there is this official color given to these communications: although the information is not drawn from an official source, nevertheless they are transmitted by an officer of the Government and he the highest and an independent branch of the Government, to the legislative branch. He does take cognizance of the facts attending this election and of the influence of those facts not to that State alone but to the entire Union, and he commits them to both Houses of Congress, not for mere advertisement, not to form (if such a thing is to be imagined) a mere party placard, but he commits them for consideration and invokes to that subject and to those facts the attention of Congress, evidently to submit to their jurisdiction the subject-matter to which this communication relates.

Mr. President, there can be no graver question to fill the hearts and the minds of the American people and of their representatives in these two Houses of Congress than the subjects which are touched upon and the decisions and principles which are involved in the consideration of the transactions referred to in this message. Therefore it is that I shall by my vote exclude no light, exclude no fact that will tend to better inform me of the truth and right of this transaction. At the same time I believe that we should approach its consideration with due regard to all those rules of justice and of law that govern men in their transactions of much less importance. To know the truth of a case you must have before you both sides of the case, both sides must be presented. No matter what the case may be, there never was a case yet that had but one side; and therefore it is that while my vote shall not oppose the printing of these documents, at the same time my vote shall be given, if the measure can be carried, of reasonable delay for the purpose of enabling both sides to come together and through the same channel, touched by the same degree of official recommendation and authority, so that the facts shall not only come to us, to be tried by us as I hope judicially, but shall go before that other and grander court to which all our actions and every vote must finally be submitted; I mean the bar of an upright, honest popular opinion. It is by that, in the end, that the institutions of this country are to stand, or it is for the want of that they are to fall. Therefore it is that I desire upon this subject, with all its gravity, with all its far-reaching importance, to construe fairly and apply strictly every rule of evidence that conduces to the elucidation and establishment of truth.

I hope that the opportunity will be given, especially after the statement of a gentleman so well known and respected as my honorable friend from Ohio [Mr. THURMAN] that the papers showing the other side of this story may be speedily presented, that there may be a short delay for the purpose of having that accomplished.

Mr. President, in the face of the events in which we stand, none of us can maintain our positions unless we rest upon our consciences and upon the truth of the law. A man's foot must be planted upon the rock of law and truth. Partisan trick or shuffling or evasion or anything which is unworthy of consideration in the face of such high duty as we have now brought before us will be found sand and not rock. Neither the party nor the man can stand upon the shams of constitutional government from which have been subtracted that common honesty, that honor, that truth, which are the essential elements of American government.

Mr. SARGENT. Mr. President, we have been instructed that no partisan trick, no shuffling, no evasion will be tolerated in this matter by the great jury of the American people. I trust, sir, that this is true and that the public condemnation will light with scathing force upon any party which endeavors to rob government of its honor or discharges the functions submitted to the rulers of States in such manner as to defeat the honest judgment of the American people. I will not refer in this connection to matters to which I alluded briefly yesterday, the crimes of violence committed in the South. Senators have loudly declaimed of their own conscientiousness, and I believe sincerely. They think they accurately describe themselves. I wish to call their attention, and that of the American people, to the gross inconsistencies in democratic treatment in different States of the grave matter of what constitutes a valid elector in the college. Gross inconsistencies are committed in the various States by democratic governors and other officers, the apparent end in each case being to secure votes for Tilden at any sacrifice of justice and consistency. Why talk so loudly of fairness, of impartiality, of respect for the honest judgment of the people, and have no words of condemnation for such things as these, while denouncing with bitter vituperation the efforts of republicans to have an honest count of honest votes?

I wish to call attention to some divergent cases. A case arose in New Jersey where two men were disqualified under the Constitution of the United States to act as electors or to be elected as such. A protest against certificates in favor of these electors was filed before the board of canvassers, considered, and rejected or neglected. A protest was then filed showing these facts before the governor of the State, a democratic governor, (and the majority of the board were democrats,) and he refused to pay any attention to it, to act upon it, to question the right of these persons to receive the certificates, and they constituted a portion of the electoral college to which they were apparently elected, and cast their votes for Tilden.

Mr. RANDOLPH. Mr. President——

Mr. SARGENT. I am told——

The PRESIDENT *pro tempore*. Does the Senator from California yield to the Senator from New Jersey?

Mr. RANDOLPH. I should like the Senator from California to tell me precisely where he gets that information.

Mr. SARGENT. I got that information from the same sources that the Senators get it who speak so fluently of the affairs of Louisiana. I got it by the avenues of public information. I have stated my information as I received it through the newspapers and also from intelligent citizens of New Jersey. If I am in error in either of the statements I have made, I shall be very happy to have the Senator correct me.

Mr. RANDOLPH. Mr. President, I can say that the State board of canvassers of New Jersey appointed by the governor of the State is made up of three republicans and three democrats selected from the State senate; that the governor is the presiding officer of that board; that the protest to which the Senator from California alluded was received, was duly acted upon, and by a majority vote laid aside. That is all there is about it.

Mr. SARGENT. What action did the governor take?

Mr. RANDOLPH. The governor acted simply as presiding officer of that board. He voted.

Mr. SARGENT. That made the democratic majority to which I have alluded. Furthermore, the protest was handed to the governor bringing this disqualification to his attention as the executive of that State, the officer who was to sign the certificates of the electors. Has the Senator any knowledge of what action the governor took when the protest was thus transferred to him?

Mr. RANDOLPH. I have no official information on the subject, but I can say that the protest was entered as to a single individual, Ex-Chancellor Williamson of that State; that when the board convened yesterday so informed, the Ex-Chancellor omitted to act as an elector; that a gentleman was placed in his stead, and that that gentleman who was not disqualified, or against whom no protest had been entered, did qualify and did act.

Mr. SARGENT. Will the Senator answer me the question whether the governor of New Jersey held that the republican candidate for elector receiving the highest vote was elected on account of the disqualification of that person, and issued to him a certificate and authorized him to act? I mean the republican elector, the person receiving the highest vote as elector on the republican ticket. Did the governor or this democratic board grant to him a certificate showing his qualification to act in New Jersey?

Mr. RANDOLPH. The Senator has the same means of information that I have. Neither of us has very much just now, as the action of the board took place only twelve or twenty-four hours ago.

Mr. SARGENT. The Senator evidently can give me no further information, and he will please excuse me. This is the way in which this matter was treated in democratic New Jersey, treated by a democratic governor and by a democratic board of canvassers. The governor disregarded the protest. He did not recognize any republican as elected. I do not say that the course which he and the board pursued was not exactly right. I am not questioning that for the purpose of this argument. I intend to show that the opposite thing was done in a republican State where a democrat was governor by accident. I intend to show that the people of the State of Oregon have been directly defrauded of their intelligent judgment in the election; that the whole electoral college has been stripped, and that not a republican, though two were elected beyond all question without disqualification of any kind whatever, has been allowed to sit in that college. That governor has been elected as a member of this body. I call the attention of Senators to the fact that a man who has been elected to this body would do that which I propose to state; that is to say, it being alleged that Dr. Watts, one of the three republican electors and elected by eleven hundred majority, on the day of election was a postmaster, which office he resigned the day thereafter, the governor gave to a man by the name of Cronin, who had the highest vote on the democratic ticket and who was defeated by about eleven hundred majority, the certificate of election, and not merely the certificate of election, rejecting Watts, but put into his hands, in violation of the direct statute of Oregon, the certificates of the other two republicans who were elected; and that this man Cronin organized himself into an electoral college of that State, and, excluding the other republican electors duly elected, that he named two democrats to sit with him who cast two votes for Hayes and he himself voted for Tilden, and the governor certifies this nugatory act here to Congress.

I say that here is a "partisan trick," "shuffling," "evasion," in the language of the Senator who preceded me. Is it not? If the governor of New Jersey did right in giving the certificate in that State to the disqualified person and then this person qualified himself by resigning, and being re-elected by the body of electors, or some one else was elected, what shall we say with reference to this action of the governor of Oregon? If the governor of New Jersey did right the governor of Oregon was grossly wrong. We are told that returning boards commit enormities; that two or three years ago one did, which was by inference condemned by a committee of the Senate; and that republicans hesitated to sanction that which they did; therefore the returning board is a bad system and this returning board, which contains not a member of a former one, did something wrong, because returning boards do necessarily wrong. The statutes of Oregon make the secretary of state and the governor of that State the returning board of the State to perform the functions of such a board by determining through the canvass of votes who are the electors, and prescribes that they shall give the electors certificates after so doing. It also carefully provides what shall be done with the certificates. I read from page 578 of the Laws of Oregon, title 9:

The votes for the electors shall be given, received, returned, and canvassed as the same are given, returned, and canvassed for members of Congress.

I will show how that is:

The secretary of state shall prepare two lists of the names of the electors elected and affix the seal of the State to the same. Such lists shall be signed by the governor and secretary, and by the latter delivered to the college of electors—

Not to one of these electors—

at the hour of their meeting on such first Wednesday of December.

On the contrary, the governor gave these certificates and duplicates to this man whom he himself had elected. The people of Oregon had rejected Cronin. The governor gave them to him, and he refused to give the certificates to those whom he claimed to be his colleagues; to other members of the board in which he was intruded by the governor. He kept them in his own possession for fear they would meet as an electoral college, as they had a right to do, and fill any vacancy which might occur therein, and as they were authorized to do under the laws of Oregon.

Mr. MITCHELL. He refused to exhibit them.

Mr. SARGENT. He refused even to exhibit them. The law further provides:

The county clerk, immediately after making the abstract of the votes given in his county, shall make a copy of each of said abstracts, and transmit it by mail to the secretary of state, at the seat of government, and it shall be the duty of the secretary of state, in the presence of the governor, to proceed within thirty days after the election, and sooner if the returns be all received, to canvass the votes given for secretary and treasurer of state, State printer, justices of the supreme court, members of Congress and district attorneys.

The clause which I have just read provides that the canvass of the electoral vote shall be made in the same manner in order to determine who are electors. This "returning board," viz, the democratic governor and the democratic secretary of state, have disfranchised, so far as in them lay, the people of Oregon. They have robbed a State of its suffrages. They have defied both State law and the Constitution of the United States. They have committed an offense against public order and decency.

I do not know whether it is worth while to discuss, in making the point I do, the question whether the governor had any right to grant a certificate to the person claiming the highest number of votes upon the defeated ticket. The mere fact that he gave to this person, Cronin, the certificates of his alleged colleagues, with the use that person made of them, depriving the legal electors thereof, preventing them from having any evidence whatever to transmit to the officer of the Senate that they were electors and that they had received any vote whatever for that office from the people of Oregon, and especially that they had received a majority, is in itself the highest evidence of what the Senator from Ohio [Mr. THURMAN] calls a "predetermined purpose to do wrong." The case might be allowed to rest there. Talk about your returning board of Louisiana not having filled a vacancy on the board! What do you say of a democratic governor creating a whole electoral college? That is what he has done, selecting all the members in effect, and then certifying to their acts; first taking a man who was defeated by hundreds of majority by a vote of the people of the State, and giving him the power of selecting his associates from a party defeated before the people of that State; giving to one man the power, and that power exercised by him to select two others of his own, the defeated party, who go through the farce, the shameful wrong, the crime, of casting two votes for Hayes, for that is what it amounted to, they doing that act of hypocrisy to the exclusion of the men who were properly, legally, overwhelmingly elected to that position! There is the great wrong that was done, and it is not qualified by any assumption that he did not know the law as did the governor of New Jersey. He put the whole power to act nefariously in Cronin's hands, and then consummated the conspiracy by certifying the wrong to this body, while refusing to recognize in any way the acts of the legal electors.

But I think it is worth while to show that it was not only done with all the badges of fraud, but also done in violation of every principle of law, every principle of common sense ever applied by judges upon the bench. The court of appeals of New York, and I read from volume 50 of their reports, a court which, as I understand, was then composed of a majority of democrats, passed upon this very question; and there is scarcely an authority in the United States or elsewhere that is not to the same point as that made by the court in this case.

Mr. WALLACE. Will the Senator from California allow me to ask him whether the supreme court of California has not ruled directly the reverse on one occasion?

Mr. SARGENT. I think not.

Mr. WALLACE. Was it not ruled so in 15 California Reports?

Mr. SARGENT. I think not. If the supreme court of California has so decided I am not aware of the fact, and if so it is contrary to the current of decisions.

Mr. MITCHELL. I understand that there has been a very recent decision of the supreme court of California to the contrary.

Mr. SARGENT. That is my impression.

Mr. MORTON. It is the most recent decision that has been made.

Mr. SARGENT. I know of cases that never reached the supreme court where it was decided without objection being made, without an appeal being taken. I know of a number of cases in California which came under my own observation, where a contrary rule was held; where it was held that the ineligibility of a candidate of the prevailing party disqualified him, but his opponent was not elected on account of his disability. The New York case to which I refer is The People *ex rel.* Furman and others *vs.* Clute, found on page 452 of the fiftieth volume of the New York court of appeals reports. The court state the facts quite succinctly and briefly, and I will read from their statement:

The first question to be considered on this appeal is whether Clute was eligible to the office of superintendent of the poor.

It was enacted by chapter 354 of the laws of 1829 (laws of 1828 and 1829, page 538) that no supervisor of any town should be appointed to hold the office of superintendent of the poor in any county.

In the compilation statutes, commonly known as the Revised Statutes, fourth edition, the text of this act of 1829 is incorporated as "* * section 22, chapter 20, part I, of the Revised Statutes."

In 1853 it was enacted (laws of 1853, chapter 80, page 115) as follows:

"SECTION 1. Section 22 of chapter 20 of title 1 of the first part of the Revised Statutes, fourth edition, is hereby amended so as to read as follows: Section 22. No supervisor of any town * * * shall be elected or appointed to hold the office of superintendent of the poor * * * in any county."

In 1862 the Legislature amended the charter of the city of Schenectady (Laws of 1862, chapter 385, pages 644-661, section 8) and enacted that the supervisors of wards to be elected thereunder should be subject to all the provisions of law then applicable to those officers in the towns of the State.

Clute, being in April, 1871, was elected a supervisor of the Fifth ward in the city of Schenectady, and held the office at the general election in that year, he is affected by these several statutes, unless for the reasons urged in his behalf they do not apply to him.

The point was whether he, being a supervisor of the town of Schenectady, could be elected to the office of superintendent of the poor of the county. It was conceded that he was such supervisor and at that election ran and received a majority of the votes cast. The point of ineligibility was raised against him, and that point and another went to the court of appeals, whether this ineligibility would apply to the circumstances of that case, and, if it did, whether the person who ran against him for office and receiving a less number of votes was elected. The court of appeals reviewed at very considerable length the authorities on the matter, and say, as I have said, that the current of decision is nearly all one way. One or two unimportant cases were cited and reasoned against them, but they say that they either had no bearing upon the principle or else were not valuable as authority; and they cite the English decisions which are in strict conformity with the rules which they lay down. They hold in the syllabus here, which fairly represents the text:

Where a majority of the electors, through ignorance of the law or the fact, vote for one ineligible to the office, the votes are not nullities; but while they fail to elect the office cannot be given to the qualified person having the next highest number of votes. The election is a failure, and a new election must be had.

In the case in Oregon by this decision and all the authority to which they refer herein, and which was consistent with the whole body of American and English law, in case the ineligibility of Watts was ascertained, the duty then devolved upon the power which had the filling of the vacancy to cause that vacancy to be filled, and by the law of Oregon it is plainly provided that the electors elected shall fill a vacancy occurring from any cause whatever. By both common sense and principle no defeated person at that election had any right whatever to intrude himself or be intruded into the electoral college, and certainly had no right to construct that electoral college, beginning with himself as the foundation and putting stone upon stone until every part of it was his handiwork and none of it that of the people or the legitimate appointing power. Talk about partisan tricks! What more stupendous trick than this was ever played in the face of the American people for partisan ends? It is a well-known fact that Oregon was flooded, as was California while there was any hope of it, with telegrams emanating from New York stating that "we must have that State at all hazards." I saw some of those telegrams myself. They said "a single vote must be had, and it must be had from Oregon."

Mr. CLAYTON. That was after the election?

Mr. SARGENT. Yes, sir; after the election. They said it must be had from Oregon or it must be had from California, and so they got up this partisan trick. Talk about shuffling! Here is a whole electoral college shuffled out of sight. Evasion! It is well to use phrases like these in the presence of facts like these. These facts cast a flood of light upon the acts and intents of the democratic party. The people of the country can understand just what was done in Louisiana, just what was done in South Carolina, what in Florida, ay, what in Mississippi; what in any of those States which were bull-dozed, by what was done here in the light of day before a community like that of Oregon, where the parties met peaceably, assembled and cast their votes. It was yielded up that the republicans had honestly and fairly carried the State, and then they came in with desperate tricks, shuffling and evasion, in order to cheat them out of their rights, put a false voice in their mouths, to shuffle in by their apparent vote a President whom they repudiated by their vote. Shuffling! Evasion! I thank God that one whole centennial passed, one hundred years in the history of the American people, before its history recorded an incident like this.

The court of appeals of New York say with reference to this case which I cited:

To give the office to the relator—

That is, to the person who claims it, he having a minority of the votes cast—

it is first to be presumed, as a matter of law, that near three hundred of those who voted for Clute—

That is, the ineligible person who received a majority—

had knowledge of the fact that he was supervisor; had knowledge of the existence of the act of 1853; and knew that the fact and the law, concurring thus, he was ineligible to receive and avail himself of their votes in his favor, and knew that their votes given to him were wasted, without effect upon the count.

It is to be presumed further, that knowing this, they all, though seemingly desirous of taking an effectual participation in the choice of a person to the office of superintendent, deliberately so acted as that they are assumed to have persisted against knowledge; determined to "do nothing but tender their vote for him."

It is not in accordance with common sense, and we find no rule or authority so stringent as to compel us to that result.

Yet this is just the result that was reached in Oregon; and the highest court in New York, controlled by democratic influences at the time, declares there is no rule of common sense that justifies it. But the case is more extreme in Oregon. The court say that three hundred persons, in order to seat the relator in the case they were discussing, were to be presumed to have done an absurd thing, that is, to have cast their votes intending that they should be blank; but in Oregon it is necessary to presume that 16,000 of them did that very absurd thing, more than one-half of the voting population of the State, eleven hundred more than one-half.

I might refer to the Vance and Abbott case, decided in the Senate, where it was held and so voted, I believe, unanimously by democratic Senators, that the disabilities of Vance did not cause the election of Abbott; that Abbott had no claim because the man who had received a higher vote than he had was ineligible under the Constitution of the United States. The decision of the Senate stands parallel with this case in New York. Senators will find it useful to read this New York decision at length and trace out the authorities therein referred to, both in English and American courts, all going to establish the point that a person defeated at an election cannot on account of the ineligibility of his opponent be elected by any canvassing board, court, or any other declaring power on earth. That is the way the matter stood in Oregon on the day that, acting as a returning board under the laws of that State, these democratic officials smothered the voice of the State, kept away the certificates from those who were elected beyond any question whatever, and gave them to a person no more entitled to cast the vote or vote in that body than one of the pages in this Chamber. That person proceeded then to reconstruct wholly the electoral college. If a President could be made by means like these, then the spirit of our institutions is gone; ay, the very forms of American liberty are lost; we are in chaos and anarchy; and I want now to hear democratic Senators rise in their places, as they are accustomed to do when there is any act of democratic officials in question, and defend it, and give us the grounds on which Governor Grover's action can be defended.

Mr. MERRIMON. I wish to ask the Senator whether as a lawyer he is not familiar with the fact that there are respectable decisions both ways upon this question that he is making before the Senate?

Mr. SARGENT. I was careful to state that I did not base my judgment in this matter simply upon what the law was, whether the governor had a right to give a certificate to Cronin or not, although I believe, as was declared by this democratic court of appeals in New York, that the great current of authorities, both English and American, is in favor of that view of the matter, and as the court of appeals say, common sense compels to that conclusion. But I asked what right had he, even if he recognized Cronin, to give him not only the evidences of his right to sit there but those of his colleagues, and for this man Cronin then to go and make a college and refuse to recognize those unquestionably elected to sit with him, to fill up the places which they should hold, push them from their stools and put dummies there to cast votes, men not known to the people, men not nominated, not elected, men put there simply to carry out "a predetermined wrong" which was designed at the time that this shuffling, this trick, was gone into.

Mr. MERRIMON. If the appointment of Cronin was lawful, and he was a lawful elector, the governor had as much right to deliver this return to him as to the others.

Mr. SARGENT. No, sir.

Mr. MERRIMON. Surely in the one case or the other it does not present a case for charging the governor with corruption, the governor of New Jersey or the governor of Oregon.

Mr. SARGENT. The Senator is wrong, in that he misunderstands the law of Oregon, and I read it clearly, which states that it is the duty of the governor "to present to the college at their hour of meeting" the certificates of their election. He did nothing of the kind. He gave them to this man Cronin. This man Cronin kept them in his own pocket, in his own possession, refused even to exhibit them, and carried out this obvious predetermined purpose for wrong. I know of no language that better expresses the conspiracy against the American people which was there hatched by that democratic governor and that democratic secretary of state and those supposititious electors in Oregon.

Mr. MERRIMON. Will my friend allow me to read two sections from the Law and Practice of Legislative Assemblies, by Cushing, in order to show the state of the law in this country and in England also?

The PRESIDING OFFICER, (Mr. HITCHCOCK in the chair.) Does the Senator from California yield to the Senator from North Carolina?

Mr. SARGENT. The Senator will have an opportunity to make his speech after I get through, and I decline to yield. I have asked Senators if they defend the action of the governor of Oregon in this matter.

Mr. MERRIMON. I shall neither do one thing nor the other. What I want to show is that these officers in one State or the other may have been very honest in the course they pursued, and that there are respectable decisions in England and in this country both ways. Here I understand is a case in California, placed in my hands now, sustaining the course of the governor of Oregon.

Mr. MITCHELL. The Senator from California yields to me a moment. I desire the attention of the Senator from North Carolina in answer to the question as to whether there were not certain decisions by certain courts to the effect that the minority man was elected in a case of that sort. There may be a sporadic case of that kind, but I say to the Senator that there is no decision in any court in America or any place else to the effect that in a case of that kind a mere ministerial officer, whose plain duty under the law was simply to give the certificate to the person having the highest vote, had a right to go behind that and adjudicate upon the question as to whether the person was eligible or not; and that is just precisely what Governor Grover of Oregon has done in undertaking to set aside the will of the people of that State.

Mr. MERRIMON. The point I want to make is not controverted, that there are decisions both ways; and therefore there is no ground for making a charge of corruption against these officers.

Mr. MORTON. I do not believe one decision can be found to the effect stated.

Mr. LOGAN. I will call the attention of the Senator from North Carolina to a case from his State in the Senate, the case of Vance and Abbott.

Mr. MERRIMON. I am willing to say to my friend from Illinois that so far as my opinion goes I think the case of Vance and Abbott was properly decided. That is my view of the law, but others quite as respectable as myself think otherwise. One of the ablest lawyers of the country who occupied a seat on this floor at that time thought otherwise, and he made a long and labored argument to show that his position was the true one.

Mr. LOGAN. What I wished to call attention to was that this precise point was decided in the case between his colleague and Abbott in the Senate of the United States, not by a partisan vote but by a large majority vote of the Senate. I made the report myself from the Committee on Privileges and Elections, and it was discussed for days and decided on this very point.

Mr. MERRIMON. I think you decided right, but other lawyers thought otherwise.

Mr. SARGENT. I have not had time to examine the authority which the Senator referred me to, the old authority of fifteenth California. The Senator can examine it, but I can inform him that a recent unreported decision of the supreme court of California decided exactly in accordance with this decision of the court of appeals of New York. That is the law in the opinion of the supreme court of California. I insist that that is the law; that it is so held by the highest and gravest courts in this country, and that there is not a decision worthy of consideration that goes to the contrary, either in this country or in England. But that is not the point I was making. I am willing to leave that part of the discussion to some other occasion. While I hold that the governor had no warrant of law for his action in declaring Cronin an elector, yet if he had, he proceeded in such a manner in doing it as apparently to show a predetermined purpose to exclude the other republican electors from their rights in the electoral college. I want to call attention again to the Oregon statute in that matter and ask what defense there is for this governor, having made this his creature, and putting all the certificates in his hands to enable him to enact a fraud which he proceeded at once to carry out of excluding the duly elected electors of the State from discharging their functions and then putting his official seal to his acts? The statute provides:

> The secretary of state shall prepare two lists of names of the electors elected and affix the seal of the State to the same. Such lists shall be signed by the governor and secretary, and by the latter delivered to the college of electors.

To the college of electors, not to one of the electors. When? On the street or in his own office? Not at all. The statute is ample and explicit:

> At the hour of their meeting on such first Wednesday of December.

If the governor did otherwise he violated the law. A violation of the law carries with it a presumption of fraud. Certainly for an intelligent man as he should be, to be governor of a State and to be a member-elect of this body, he knew this law. It was not left for him to discover it himself. His attention was called to it right then and there by those most interested, by the electors elected, against whom no disqualification was alleged. They claimed their certificates, and the governor would not give them, but he gave them to this man Cronin, whom he elected, as I said before, as a member of the college.

When we hear so much of the attention of the American people, that their eyes are fixed upon Washington, that they are watching our proceedings, that they are jealous lest something shall be done which savors of fraud, and democrats make long exhortations and fill republican ears with assertions of this kind and reflections of this kind, I say to them let them examine the nefarious proceedings of their governor and secretary of state and their assumed electoral college in the State of Oregon. Let them defend that if they can; and when they can clear their skirts of that, then let them, if there is reason for it, denounce returning boards in Louisiana. Here is their returning board, and with a statute guiding its acts, and it so proceeds that, although it is admitted by the very parties acting that men were elected as presidential electors, those men are shuffled out of the electoral college, and it is filled up with dummies in their place who go through the form of an election in order that one vote may be stolen and consummate the election of Samuel J. Tilden.

When I see things like this transpiring in this country under the patronage of such a party and by its eminent men elected to office, men who hereafter we presume will come forward and take the oath in this body, I am prepared to believe those things which I heard in the distant Pacific when I was busy there with my own people, exercising my rights there as a citizen, that New York City and Brooklyn and Jersey City would be overwhelmed by stupendous democratic frauds. I am prepared to believe those things that were alleged to have taken place under democratic auspices in 1868 in New York City, where in some wards the democratic vote was greater than the whole population of the ward. I am prepared to believe that there was some purpose in the effort made at the last session of this Congress to repeal all laws upon the United States statute-books which prohibited fraud at elections and pointed out the methods of detection and punishment. I am prepared to believe that it was an intelligent design which would sweep from the statute-books laws of that character. I am prepared to believe almost any of the allegations made against the democratic party, that it resorts to fraud in order to get control of this Government, when I see a whole electoral college destroyed in what they are so fond of calling a sovereign State, and every member of it cast out in defiance of the will of the people clearly ascertained, the admitted will of the people, ascertained by an election not disputed in its results, and men that the people never heard of in that connection put therein to cast the vote of the State for the highest office of the nation.

No, sir, it does not do to talk about republican frauds. It does not do, when such things as this transpire, to say that we republicans are seeking to control this election by fraudulent votes, by substituting electors by partisan trick, by shuffling, or evasion. We are resisting those things. We have been resisting them for years past, both in the North and in the South. We have been endeavoring to prevent these frauds which defile registrations and corrupt elections. We have been endeavoring to protect every man in the United States who has a right to vote in the right to cast that vote once, and but once. That has been the tendency of republican legislation, that has been the desire of the republican party.

I believe from my own consciousness that the republican party would not secure the control of this country unless they could do it by fair and honorable means; that they would not accept the Government of this country provided they had to wade through such frauds as those to which I have referred in order to do it. I believe the republican party think that there may be even a worse thing than a democratic administration of this Government, and that is that such democratic policy should prevail, and our elections should be poisoned by fraud. The republican party desires and has desired during these past years when we have been engaged in this struggle not only the unity of this country, but purity in elections, the fair, unbiased, unintimidated voice of the people. If I did not believe it I would not associate my life with it; I would not give it my allegiance. I would not adhere to a party that I thought would build itself up by fraud or which would wrongfully seize upon the Government.

[Mr. MITCHELL at this point offered a resolution in regard to the occurrence in Oregon alluded to in the debate, which will be found n a subsequent part of the proceedings.]

Mr. MORTON. Mr. President, the Senator from California has broached the discussion of a question this afternoon on which I desire to say a word. I had intended to speak to it upon another occasion with more ample preparation than I can have this afternoon, but I desire to say a word now before an adjournment takes place. The question is whether where votes are cast for a person who is ineligible the effect is to elect the minority candidate. I do not think there can be such a case found anywhere. We have settled the question just the other way in this body on three several occasions. It has recently been settled in the House of Representatives in a very conspicuous case well known to all, the case, I believe, of JOHN YOUNG BROWN. The present Senator from Massachusetts farthest from me [Mr. DAWES] was the chairman of the committee of the House, and he made the report to the House upon that occasion, and I believe the report was sustained in the House by a large majority.

Mr. DAWES. I think the record shows that the report was sustained by a vote of 102 to 30.

Mr. MORTON. The furthest any of the authorities have gone is

where there was direct notice of the ineligibility of the person to the voters. Where the voter had knowledge at the time he cast his vote that the person voted for was ineligible, it has been held in certain cases in England that the votes were lost and should not be counted; but that is not the American doctrine. The American doctrine is just the reverse; but the English doctrine is not broad enough to cover the case. English authorities have gone to this point:

If, before the election comes on, or a majority has polled, *sufficient notice has been publicly given of his ineligibility*, the unsuccessful candidate next to him on the poll must ultimately be the sitting member.—*Haywood on County Elections*, page 535.

Again:

If an election is made of a person or persons ineligible, such election is void, where the ineligibility is clear *and pointed out to the electors at the poll*.—*Male on Elections*, page 336.

Again. Clerke on Election Committees, page 156, said:

Whenever a candidate is disqualified from sitting in Parliament, *and notice thereof is publicly given to the electors*, all votes given to such disqualified candidate will be considered as thrown away.

Roe on Elections, page 256, said:

It will be seen that the latter proposition is that which constitutes the law in cases where misapplication of the franchise by the electors was *wilful*, and, therefore, *made in their own wrong*.

In the case of Abbott and Vance, Vance was disqualified under the fourteenth amendment from being elected to a seat in this body. Abbott claimed that he was elected upon the ground of Vance's ineligibility and that the votes thrown for Vance were not to be counted. That was the direct question. The report was signed in the Vance case by Senator THURMAN of Ohio, Senator Hill of Georgia, Senator LOGAN, and one other Senator. It was argued precisely upon the ground that owing to the ineligibility of Vance the votes thrown for him were to be regarded as nullities, and that Abbott was necessarily elected. It was held by the Senate that the votes thrown for Vance were not nullities, that the votes must be counted, that the election was not void so far as he was concerned, but only voidable, and that Abbott was not elected. The same principle was held in the case of Yulee from Florida many years ago.

Mr. LOGAN. And in the case of Shields, of Illinois.

Mr. MORTON. And in the case, as I am informed, of Shields, of Illinois. I am in fact informed that there are a number of cases in both Houses in which this doctrine has been held; that there is no doctrine better settled in the United States upon any question than upon this subject.

Mr. BAYARD. As the honorable Senator is commenting on the case of Abbott and Vance, as I happen to have the report before me, may I draw his attention to the principle stated there, he being the chairman of that committee? The report states:

The number of persons entitled to vote at a popular election is not fixed and definite, and hence it is impossible to have a quorum or anything answering thereto. There is no power to compel attendance. This is and necessarily must be wholly voluntary; therefore it is necessary that those attending should have the right to elect, where the election is free, and are prevented from attending by force, intimidation, or fraud. If a candidate receiving the majority is disqualified, and the votes cast for him are declared nullities, (as claimed by the memorialist,) the remaining votes are as effectual to elect as if every voter of the district had been present; and if those who voted for the candidate receiving the majority had not been present at all, the election nevertheless would have been valid. But the rule is wholly different in legislative bodies.

I do not speak now upon another principle which strikes me as still more robust and important which underlies that question; but so far as the report of that committee was concerned they placed the case of a person voted for in a legislative body with an ascertained quorum or an ascertainable quorum upon wholly different grounds than where a person was voted for at large by the people *en masse*, because in one case it is ascertainable and in the other case it is not. That was the reason, I think, why the honorable Senator and his colleagues on that committee stated that the rule was wholly different in legislative bodies from what it was in cases before the people.

Mr. THURMAN. Will the Senator from Indiana allow me to say a word?

Mr. MORTON. After Senators all get through I will resume my speech.

Mr. THURMAN. While we are on this question I desire to say a word.

Mr. MORTON. I yield to the Senator.

Mr. THURMAN. I shall certainly never forget the case of Abbott in the Senate, for circumstances compelled me to take a more conspicuous part in that case than I ever took in any other. It will be seen by the argument in that case, which was mainly conducted by the Senator from Illinois [Mr. LOGAN] and myself on one side and by the late Senator from Wisconsin [Mr. Carpenter] on the other, that the case turned on this question more than on any other, whether Vance was eligible to election. It was maintained on our side that there was a distinction between eligibility to election and eligibility to hold the office; that where the disability was only to hold the office a person ineligible to hold the office at the time of his election might become eligible after election, and could take his seat if he became eligible to hold the office at the time when his term of office should commence; but a person ineligible to election could never be elected at all. That was our position, and we illustrated it in various ways. For instance, the Constitution provides that a man shall not be a Senator unless he shall have attained the age of thirty years. A man may be elected Senator in Congress before he is thirty years of age, but he cannot hold the office unless he becomes thirty years of age before the term of office commences.

Mr. EDMUNDS. That is not what the Constitution says.

Mr. MORTON. I did not give way for the Senator to make an argument.

Mr. THURMAN. I will wait until the Senator gets through.

Mr. MORTON. The Senator from Delaware did not read quite all the extract to show what we meant. In answer to the English authorities that were urged upon the committee at that time, the committee stated that an election by legislative officers differed from an ordinary election; but the question was discussed by the committee upon principles analogous to an ordinary election, as I shall show.

Here is what the committee said:

If a candidate receiving the majority is disqualified and the votes cast for him are declared nullities (as claimed by the memorialist)—

That was Abbott—

the remaining votes are as effectual to elect as if every voter of the district had been present—

That is, if they are to be as dead—

and if those who voted for the candidate receiving the majority had not been present at all, the election nevertheless would have been valid. But the rule is wholly different in legislative bodies. The number is fixed and definite, a quorum can be and is required to act, and the presence of a less number is not effectual. Had but the thirty-two who voted for Abbott been present in the House at the time the vote was cast, we do not suppose any one would contend that he had even a shadow to base his claim upon; yet this number would be sufficient to elect in a district of a thousand voters if no other voted. We therefore coincide in the view that there is a difference, and that, even if the English rule was applicable in the case of an election of a member to the House of Representatives, it would by no means follow that it was applicable to the election of a Senator where the number voting, of the votes counted, is less than a quorum.

I suppose nobody will dispute that. Now I come to the general question upon which the committee discussed it; and it is not to be distinguished away. It was discussed on broad principles. The committee say this:

It appears, therefore, that Abbott rests his claim to the seat solely upon what he assumes to be the legal result of the conceded ineligibility of Vance, who, although receiving a majority of votes, is not entitled to take the oath of office or hold the seat. He assumes that it is a conclusion of law that, if the candidate who has received the highest number of votes is ineligible, and ineligibility was known to those who voted for him before casting their votes, the votes so cast for him are void, and should be considered as nullities and as though they never had been cast; and, consequently, the candidate receiving the next highest number of votes is elected.

The case could not be stated any more strongly than that:

In support of this view of the case the memorialist has called the attention of the committee to a large number of English authorities bearing on this question. While the committee make no question as to the general tenor of the decisions to which attention has been called, yet it is evident that these are based upon a very different rule from that adopted in our country. To show that this rule is different, the committee would refer to the following authorities, which are cited in the very able report of Mr. DAWES from the Committee on Elections, in the case of Smith *vs.* J. Y. Brown, (Report of Committees, No. 11, second session, Fortieth Congress.)

They then refer to the English authorities, and the general purport is that the votes are to be counted as nullities where they are cast for an ineligible person when they knew of the ineligibility. That is the English rule, but it is not the American rule I have just read from different authorities. They then refer to the English law:

The English law in question does not obtain in the United States, as is clearly shown from the following considerations:

First. The judicial decisions are against it, there being but one decision which sustains it, namely, the Indiana case of 14 Indiana, page 927—

Which I shall refer to by and by—

while on the other hand are the decisions in Maine, New Jersey, Pennsylvania, Wisconsin, and California, to which your committee would refer, and from which the following quotations are made:

Here comes the case from the New Jersey reports:

Anderson was elected sheriff of Hunterdon. He had not been three years a freeholder, and was therefore absolutely disqualified, the statute of 1788 having declared that no person shall hereafter be eligible to the office of sheriff in any county in this State, unless he shall be and hath been an inhabitant thereof and possessing a freehold estate in his own right in fee simple, in the same county, *for three years previous to his election*.—324.

Held by the court:

That Anderson was disqualified, but that his election was not void. The election of an unqualified person as sheriff is not *ipso facto* void; it is only voidable. (Syllabus, 318.) Still, however, we think the election not *ipso facto* void.—*Opinion*, 327.

In first Chandler's Wisconsin Reports, page 112, in the case of State *vs.* Giles *ex rel.* Dunning, &c., the court say:

Two questions arose in this case:

1st. Whether the person holding the office of sheriff at the time of the adoption of the constitution was eligible to that office at the next ensuing election.

2d. If the then sheriff was ineligible, whether the person who, at that election, received the next highest number of votes could be considered as entitled to the office.—13

The mere ineligibility of a person to hold a particular office, and who receives the greatest number of votes, such votes are not a mere nullity, but should be counted by the canvassers. A contestant for the same office, and receiving a lesser number of votes, though eligible, cannot be regarded as elected, and does not thereby become invested with the right to the office.—*Syllabus*, 112.

It is proper to say that *we are all of the opinion* that the mere ineligibility of a candidate does not, as the law now is, render void the votes cast for him; that such votes should not be rejected, but should be counted by the canvassers, and that in the event of such ineligible person having the highest number of votes, the person having the next highest number is not thereby elected. If any public embarrassment is apprehended from this, such as that an office may remain indefinitely va-

cant by reason of a majority of the electors obstinately persisting in voting for an ineligible person, it is within the undoubted power of the Legislature to prevent it by enacting that all such votes shall be deemed void and not be counted.—*Opinion*, 117.

Again, in fourteenth Wisconsin Reports it was said:

The remaining questions are: 1. Whether the defendant, being an alien, and not a qualified elector at the time of his election, was eligible to the office. 2. If he was ineligible, whether the relator, who received the next highest number of votes cast, is entitled to the office.

The last question has been already settled in this State by the case of the State *vs.* Giles, (1 Chand., 112.) It was there held by the unanimous judgment of the court that in the absence of a statute declaring it so, the mere ineligibility of a candidate does not render void the votes cast for him; that such votes should not be rejected, but should be counted by the canvassers; and that in the event of such ineligible person having the highest number of votes, the person having the next highest number would not be thereby elected.—*Opinion*, 498.

The committee then cite fifty-sixth Pennsylvania Reports, where the decision was delivered by Judge Strong, now of the Supreme Court of the United States, as follows:

The votes cast at an election for a person who is disqualified from holding an office are not nullities. They cannot be rejected by the inspectors, or thrown out of the count by the return judges. The disqualified person is a person still, and every vote thrown for him is formal. Even in England it has been held that votes for a disqualified person are not lost or thrown away so as to justify the presiding officers in returning as elected another candidate having a less number of votes, and if they do so a *quo warranto* information will be granted against the person so declared to be elected, on his accepting the office. (See Cole on Quo Warranto, 141-2; Regina *vs.* Hiorns, 7 Ad. & E., 960; 3 Nev. & Perry, 184; Rex *vs.* Bridge, 1 M. & S., 76.)

Here, according to the decision of Judge Strong, the English authorities do not go to that point, and the strongest English authority goes to the point simply that where the elector when he puts in his vote knows that the person voted for is incligible his vote is a nullity, but it goes only to those who have actual knowledge of the ineligibility. But that is not the doctrine now.

Under institutions such as ours are there is even greater reason for holding that a minority candidate is not entitled to the office if he who received the largest number is disqualified. We are not informed that there has been any decision strictly judicial upon the subject, but in our legislative bodies the question has been determined. It was determined against a minority candidate in the Legislature of Kentucky, in a case in which Mr. Clay made an elaborate report and was sustained. In 1793 Albert Gallatin, elected a Senator from this State, was declared by the Senate of the United States disqualified, because he had not been a citizen of the United States nine years, and his election was declared void for that reason, but the seat was not given to his competitor. Nobody supposed the minority candidate was elected. There have been several other cases of contested elections in which the successful candidates were decided to have been disqualified, and denied their offices. John Bailey's case is one of them. He was elected to Congress from Massachusetts, and refused his seat in 1824. But neither in his case, nor in any other with which we are acquainted, were the votes given to the successful candidate treated as nullities, so as to entitle one who had received a less number of votes to the office. There is a class of cases in England apparently, but not really, asserting otherwise.—*Opinion of the court by Strong, J.*

As stated here, there has been no case where when a man elected to Congress or to any legislative body or to any office has been held disqualified the minority candidate has been seated or has received the office because the majority candidate was ineligible. In such a case there is simply no election. This is the universal rule in Congress. The committee go on to say:

This able opinion of Judge Strong, now on the supreme bench of the United States, is well worth careful consideration. Your committee would call special attention to that sentence where it is stated that "the disqualified person is a person still, and every vote thrown for him is formal."

I might take up your time longer, Mr. President, but, not being very well, I will refer to but one other authority and pass it by for to-night. There are many other authorities that can be referred to. In the case of JOHN YOUNG BROWN, in the last Congress, which has been referred to, at the time of his election he was disqualified under the fourteenth amendment, and a man by the name of Smith was the minority candidate; and he contested the election upon the ground that the votes cast for BROWN were nullities, and hence that he was elected, the precise point we have here. After discussing the question at great length, going fully into it, and showing that the universal practice in this country has been the other way, the committee of the House reported the two following resolutions:

Resolved, That JOHN YOUNG BROWN, having voluntarily given aid, countenance, counsel, and encouragement to persons engaged in armed hostility to the United States, is not entitled to take the oath of office as a Representative in this House from the second congressional district of Kentucky, or to hold a seat therein as such Representative.

Resolved, That Samuel E. Smith, not having received a majority of the votes cast for Representative in this House from the second congressional district of Kentucky, is not entitled to a seat therein as such Representative.

The resolutions were concurred in by a vote of 130 to 30; and I am informed by the distinguished Senator from Massachusetts [Mr. DAWES] that there is no exception to the rule as is shown by his report that he submitted to the House. I am further informed that every democrat in the House voted for the resolutions.

Now I come to the Indiana decision, the only one that I know of. It is said there is a California decision to the same effect, but I have been informed by Mr. PAGE, a Representative from California, that within two weeks this very question has been decided by the supreme court of California and it has been held that the minority candidate was not elected.

Mr. SARGENT. And the majority of that court are democrats.

Mr. MORTON. The majority of the court, I am informed, are democrats.

Mr. President, I did not design talking so much on this subject because I was not prepared. I am informed that there are very many authorities going to sustain the doctrine as emphatically the American doctrine, and it may be said to be the English doctrine, except in case of direct notice, that where the ineligible man receives the majority the votes are not nullities, they must be counted: the election is not void but voidable, and the minority man is not elected. That is the ascertained rule of this House and of the other House, and it is stated as the general American doctrine.

Mr. DAWES. I would suggest to the Senator from Indiana that so far as there is any English decision to the contrary it should be construed as a decision under an act of the British Parliament. The British Parliament before that act recorded itself against the doctrine. At first, in the case of John Wilkes, in high party times, the British Parliament adopted the doctrine of the governor of Oregon, but very soon after that the British Parliament reversed their own decision and exscinded from their record their action in reference to John Wilkes. Subsequently to that the British Parliament regulated the whole matter by an act of Parliament prescribing just what should be the form of the ballot, so that when a voter put his vote into the box he knew by an act of Parliament what should be the force of it. Under that act of Parliament all the English decisions that have been cited have grown up.

Mr. MORTON. I thank the Senator for his statement. He has examined this question and I have not. But I want to make one further remark.

Mr. DAWES. But the chief element of it all is that it must be shown that the voter when he put his vote in the ballot box knew that the person for whom he was casting it was ineligible, and the statute enacted that a vote thus put in should be counted as nothing so that the voter who put it in knew when he put it in that the statute required that it should have no force whatever, and he was held by the courts to have intended thereby that effect of his vote.

Mr. MORTON. I was simply going to remark that I will not allow myself at this time to characterize this transaction in Oregon. I think that all the parties engaged in it will have to live to the age of Methuselah if they ever get clear of it. But I may venture to refer to an illustration in the conduct of the governor of New Jersey, where a democratic elector was disqualified to vote, and under this rule a republican elector should have been certified, but was not, and I am advised, and I believe the information to be true, that there are at least four and perhaps five instances where democratic electors were disqualified at least to the extent of the man in Oregon; but republican electors were not certified in their places as they should have been according to the rule that was adopted in Oregon. I have simply to say that the conduct of the governor of Oregon, in my opinion, can find no justification in law or morals, or in the tolerance of the people of the United States of all parties.

Mr. THURMAN. Mr. President, when I came into the Senate a few minutes ago, after having been out of it for nearly an hour, I found the Senator from Indiana [Mr. MORTON] discussing the question upon which he has expressed his views to the Senate. How the question arose on this motion to print the documents, if they can be called documents, the papers accompanying the President's message, I do not know. But as the question has been brought up, I desire to say a very few words upon it. I shall not enter into a discussion of whether the English rule prevails in this country; but I will say to the Senator from Massachusetts that that rule is older than the act of Parliament to which he referred.

Mr. EDMUNDS. May I ask the Senator what that rule is exactly?

Mr. THURMAN. I will state it. That rule is this, that if an elector votes for a disqualified person, knowing him to be disqualified, he is held to have renounced his right of suffrage for that election and his vote is not to be counted for any person.

Mr. EDMUNDS. On that question what is the rule of evidence? Is it to be presumed that he did know or that he did not?

Mr. THURMAN. That is another question.

Mr. EDMUNDS. Yes, and that is the question I put.

Mr. THURMAN. Yes, and upon that I will give the Senator the light of what little information I have. If the disqualification of a person is a public fact of which everybody is bound to take notice or ought to take notice, or where the presumption is that he had notice, then he is held to have had notice although he had no actual notice; but if it is not of that public character, then the notice must be brought home to the voter.

Mr. EDMUNDS. I wish the Senator would produce a little English authority to support that thesis.

Mr. THURMAN. I will at the proper time produce authority that will satisfy my friend that that is the English law.

Mr. EDMUNDS. The Senator cannot produce it now, for that is not the English law.

Mr. THURMAN. I did not expect this thing to come up to-day, but my friend from North Carolina [Mr. MERRIMON] puts into my hand Cushing's Law and Practice of Legislative Assemblies, which says:

175. If an election is made of a person who is incligible, that is, incapable of being elected, the election of such person is absolutely void, even though he is voted for at the same time with others who are eligible and who are accordingly elected; (see Male on Elections, 336;) and this is equally true whether the disability is known to the electors or not; whether a majority of all the votes or a plurality only is necessary to the election; and whether the votes are given orally or by ballot.

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158. In this country it is equally true that the election of a disqualified person is absolutely void; and in those States where a plurality elects, and where the votes are given orally, as in England, votes given for a candidate after notice of his disqualification are thrown away, and the candidate having the next highest number of votes is elected.

159. In reference to elections by ballot, in which secrecy is the distinguishing feature, and in which, consequently, neither the returning officers nor the electors themselves are supposed to know for whom the votes are given until the result is declared, it seems not unreasonable to consider the votes for ineligible candidates to be thrown away in all cases, and the opposing candidate elected, where the electors know, or must be presumed to know, the disability; and in all cases where there is no such actual or presumed knowledge, to hold the whole proceeding merely void.

Mr. EDMUNDS. Does the Senator think that supports his proposition of what the English law is?

Mr. THURMAN. I want to make very briefly some remarks.

Mr. EDMUNDS. Yes; but I wish to ask the Senator a question if he will allow me.

Mr. DAWES. Will the Senator read the authority from Cushing?

Mr. THURMAN. I would very much prefer to state just what I have to say, because I did not propose to go into a discussion.

Mr. EDMUNDS. Then I understand the Senator declines to allow me to ask him a question.

Mr. THURMAN. No, sir; I do not.

Mr. EDMUNDS. Then I will ask it. I ask the Senator whether he thinks the book he has just read supports his proposition as to what the state of the English law is?

Mr. THURMAN. I do, and I will produce further authority if the Senator does not ask me to produce it on the spot, for I came into the Senate without any expectation of this question being sprung upon us, and show the Senate that according to the English law there are cases, as stated by Cushing in his Practice of Parliament, where the voters are presumed to know the disqualification although they had not the actual knowledge of the fact. I will satisfy the Senator on that question at the proper time.

Mr. EDMUNDS. Can the Senator tell me what those cases are? Can the Senator give an illustration or example of one of those cases where the presumptive knowledge is supposed to exist?

Mr. THURMAN. The Senator from Indiana asks me to give way to him.

Mr. MORTON. I was just going to call the attention of the Senator to the view which he took of the English law in the Vance case.

Mr. EDMUNDS. That was last year. [Laughter.]

Mr. MORTON. It was longer ago than that. It was three or four years ago.

Mr. EDMUNDS. O, then it is no authority now.

Mr. MORTON. This is the English doctrine as there stated, from which the committee dissented:

Under the English rule, it is the fact that the voters *knowingly and purposely* throw away their votes that lays the foundation for saying they assent to the election of the minority man.

Where the circumstances show that they knowingly and willfully throw away their votes.

But no such purpose can be predicated of the Legislature of North Carolina. They *did not know* that their votes for Vance would be thrown away. They did not *purposely* throw them away, because Congress had, in numerous cases, previously removed disabilities of a similar character from those elected, and allowed them to hold their offices.

Mr. THURMAN. What the Senator from Indiana has read met my approbation then, it meets my approbation now, and I stand by it, by every word and every letter of what he has read.

Mr. President, I shall not argue the question now. The time will come for it to be argued how far the English rule applies in this country. What that English rule is, I said to the Senator from Massachusetts, was established before the act of Parliament to which he referred. It was established by cases as long ago as the case of the King *vs.* Monday, Cowper's Reports, page 538, which was long before the statute to which the Senator has referred, if I am not mistaken. The same thing was also affirmed in the case of the King *vs.* Hawkins, 10 East., 217, and the King *vs.* Parry, 14 East., 560. Later than that, and after the passage of the act to which the Senator has referred, the English rule was laid down by Lord Denman, chief justice, with great clearness in the case of Gosling *vs.* Veley, 7 Adolphus and Ellis, in these words——

Mr. EDMUNDS. May I ask the Senator what authority he is reading?

Mr. THURMAN. I am reading from Adolphus and Ellis's Reports, new series, volume 7, page 438.

Mr. EDMUNDS. Is that the book the Senator has in his hand?

Mr. THURMAN. No, sir.

Mr. EDMUNDS. I am asking the Senator what the document he is reading from is? I wish to send to the library to get it.

Mr. THURMAN. I have given the Senator the reference, and he can send for the book.

Mr. EDMUNDS. Well, let us get the book. What volume of Adolphus and Ellis is it?

Mr. THURMAN. Seven Adolphus and Ellis, new series, page 438, and to give the Senator another opportunity to get it, it is in the fifty-third volume of English Common Law Reports. He will find it in that compilation. In that case Lord Denman said:

Where an elector, before voting, receives due notice that a particular candidate is disqualified, and yet will do nothing but tender his vote for him, he must be taken voluntarily to abstain from exercising his franchise; and, therefore, however strongly he may in fact dissent, and in however strong terms he may disclose his dissent, he must be taken in law to assent to the election of the opposing and qualified candidate, for he will not take the only course by which it can be resisted; that is, the helping to the election of some other person. He is present as an elector; his presence counting as such to make up the requisite number of electors, where a certain number is necessary; but he attends only as an elector, to perform the duty which is cast on him by the franchise he enjoys as elector; he can speak only in a particular language; he can do only certain acts; any other language means nothing; any other act is null; his duty is to assist in making an election. If he dissents from the choice of A, who is qualified, he must say so by voting for some other also qualified; he has no right to employ his franchise merely in preventing an election, and so defeating the object for which he is empowered and bound to attend. And this is a wise and just rule in the law. It is necessary that an election should be duly made, and at the lawful time; the electoral meeting is held for that purpose only; and but for this rule the interest of the public and the purpose of the meeting might both be defeated by the perverseness or corruption of electors, who may seek some unfair advantage by postponement. If, then, the elector will not oppose the election of A in the only legal way, he throws away his vote, by directing it where it has no legal force; and in so doing he voluntarily leaves unopposed, *i. e.*, assents to, the voices of the other electors.

That is the language of Lord Denman in that case. Again, in 1854, in the Queen's Bench, Lord Campbell, chief-justice, said:

C clearly was elected counsellor in November, 1851, just as much as if B had not then stood at all. B was, in fact, a candidate, but he was an alderman and therefore ineligible, and that fact was known to the electors. Now, it is the law, both the common law and parliamentary law, and it seems also common sense, that if an elector will vote for a man who he knows is ineligible, it is as if he did not vote at all or voted for a non-existent person, as it has been said, as if he gave his vote to the man in the moon. C was duly elected.—(Regina *vs.* Coaks, 3 *Ellis and Blackburn; 77 English Common Law*, 253.)

Mr. EDMUNDS. Will the Senator kindly give me the page in Adolphus and Ellis from that newspaper he is reading from?

Mr. THURMAN. Page 438, 7th Adolphus and Ellis, new series.

Mr. EDMUNDS. What is that newspaper the Senator is reading from?

Mr. THURMAN. I do not know and I do not care. [Laughter.] The Senator might as well ask me if I had made a brief in my own handwriting as whether or not that was the original book of reports.

Mr. EDMUNDS. Is it the case of Gosling *vs.* Veley?

Mr. THURMAN. Precisely that case.

Mr. EDMUNDS. Well, I thought so.

Mr. THURMAN. I am not going to argue the question whether that English law prevails in the United States. That question it will be time enough to argue when it shall come before us in a proper way. What I rose to do was to call the attention of the Senate to it, and especially to it in connection with the case of Abbott, which was before the Senate. There are two kinds of ineligibility. One is ineligibility to hold the office, the other is ineligibility to be elected or appointed to office; and they are very different in their consequences. A man who is simply ineligible to hold the office may be elected to that office, and if he become eligible to hold the office before the term of office commences he may take his seat. A familiar illustration of that is in the case of Senators and Representatives. No man can hold the office of Senator until he is thirty years of age, but he may be elected or appointed before he is thirty years of age, as Mr. Clay was, and if he becomes thirty years of age before his term of office commences he has a right to be sworn in and to take his seat. No man can be a Representative in Congress until he is twenty-five years of age, but he may be elected before he is twenty-five years of age, as John Randolph was, as JOHN YOUNG BROWN, of Kentucky was, and if he become of the requisite age before his term of office commences he may take his seat. Indeed, in the case of BROWN the House of Representatives went further, and I am not certain that they decided right for they allowed him to take his seat, although a large period of the time of the Congress to which he was elected had expired before he became twenty-five years of age. But there can be no question that if a man be elected a Senator before he is thirty years of age and becomes thirty years of age before his term of office commences, he has a right to his seat. If he is elected a Representative before he is twenty-five years of age and becomes twenty-five years of age before his term of office commences he may be sworn in; he has a right to his seat. It was precisely upon that principle that Abbott was held not to be entitled to the seat he claims. Vance received the majority of the votes of the Legislature of North Carolina for Senator. He was then under disability, but the Constitution did not declare him to be ineligible to election; it only declared him ineligible to be Senator, and therefore if his disabilities were removed before his term of office commenced he would be entitled to take his seat, and that had been the universal interpretation of the Constitution both in the House of Representatives and in the Senate. Those who opposed the admission of Abbott put it upon that ground, that Vance was not ineligible to election but only ineligible to be Senator; that he might lawfully be elected, and if his disabilities were removed before the senatorial term commenced he would be entitled to take his seat, and we said in the extract read by the Senator from Indiana, that the Legislature of North Carolina could not have intended to have thrown away their votes, because they knew that again and again men had been appointed to office by the President, men had been elected to office by the people, men had been elected to office by Legislatures who were under disabilities, but their disabilities being removed before their terms of office commenced they were entitled to hold the offices, and were allowed to hold them.

Mr. EDMUNDS. May I ask the Senator a question?

Mr. THURMAN. I hope the Senator will not interrupt me. I do not want to make a long speech here.

Mr. EDMUNDS. No; but I am sure the Senator could answer my question easily enough.

Mr. THURMAN. I hope the Senator will not break the thread of my argument by an interruption.

That was the ground. Now, sir, that there is this distinction is perfectly apparent upon the Constitution itself. Let us see. First, take the case of a Representative:

No person shall be a Representative who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States.

A man may be elected a Representative who has not attained the age of twenty-five years and who has not been seven years a citizen of the United States; but if by the time his term commences he is twenty-five years of age and has been for seven years a citizen of the United States, he is entitled to his seat. There the disability is to hold the office; it is not ineligibility to election, but ineligibility to hold the office.

Mr. EDMUNDS. Will the Senator read the clause of the Constitution?

Mr. THURMAN. I am going to read the next clause if the Senator will not interrupt me. Under the very next clause in the same paragraph the ineligibility is to election:

And who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

There is ineligibility to election. If he is not an inhabitant of the State in which he is chosen, he is ineligible to election, and that is an ineligibility that cannot be cured, though he should the next day move into the State and become an inhabitant thereof. There the ineligibility is to election; in the other case it is only ineligibility to hold the office and not ineligibility to election. Now take the case of Senators:

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States.

A man may be elected Senator before he is thirty years of age, he may be elected before he has been nine years a citizen of the United States, but if when his term of office commences he has attained the age of thirty years and has been nine years a citizen of the United States, he has a right to take his seat, because there the ineligibility is not to election, but it is to hold the office. But hear the next clause, which is ineligibility to election:

Mr. EDMUNDS. Mr. President——

Mr. THURMAN. I decline to be interrupted.

Mr. EDMUNDS. Will not the Senator allow me to ask him about the case of Shields, a democratic authority?

Mr. THURMAN. I will notice it, sir.

Mr. EDMUNDS. That is right; do.

Mr. THURMAN. "And who shall not, when elected, be an inhabitant of that State for which he shall be chosen." There the ineligibility is to election. If he is not an inhabitant of the State at the time when elected he is ineligible to election and the defect in his title cannot be cured at all. It was upon precisely that ground that, if I am not mistaken, the Senator from Vermont agreed with me and voted with me and I think the whole Judiciary Committee voted with me—I beg pardon for the presumption of saying they voted with me; I voted with them—that General Ames was not entitled to be Senator from Mississippi because he had not been an inhabitant of that State at the time he was elected. It is very true the Senate overruled us. The Senate was in the habit of overruling at that session everything that the Judiciary Committee recommended; so much so that I believe that I facetiously once asked them to abolish the committee, for whatever we recommended was sure to be defeated and whatever we opposed was sure to be adopted. I think my friend from Vermont agreed with me, and he made a very excellent argument, if I am not mistaken, against General Ames taking his seat. Why? Because General Ames was not an inhabitant of Mississippi at the time he came here and claimed his seat? At the time his term of office commenced? Not at all, for he was, but because at the time of his election he was not an inhabitant of that State, and therefore was ineligible to election.

Now, sir, what was the Shields case? Shields was elected a Senator from Illinois, but he had not been nine years a citizen of the United States at the time he was elected and he had not been nine years a citizen when his term of office commenced, and it was upon that ground distinctly that he was rejected.

Mr. EDMUNDS. How was it in the case of Albert Gallatin, let me ask my honorable friend, who was naturalized in 1785 and the question arose in 1794? He had been nine years a citizen of the United States.

Mr. THURMAN. Ah! but the Senate decided that he had not been. The Senator is mistaken in his history. It was decided that Gallatin had not been a citizen for nine years. He thought he had been. He relied upon certain acts which he referred to and which he claimed made him a citizen of the United States. The decision was against him.

Mr. EDMUNDS. The decision was against him; but the Senator is mistaken, I think, in his recollection. I say it with great deference, as he is so much wiser than I am. I think he will find if he will look at the history—he can take time to do that—that while Mr. Gallatin had not been nine years a citizen of the United States when the Legislature appointed him in Pennsylvania, yet, when his credentials were presented in 1794, and the question was decided, he had been nine years a citizen, and yet the Senate declined to receive him.

Mr. THURMAN. I beg pardon of the Senator. My recollection is precisely the contrary. But if that had been the decision, (and if so it has been overruled again and again since,) it would only go to show that a man could not be a Senator unless he had been nine years a citizen of the United States at the time of his election and thirty years of age at the time of his election; but we know the decisions are contrary to that. We know that Mr. Clay was appointed Senator before he was thirty years of age. We know that Mr. Randolph and JOHN YOUNG BROWN were both elected to the House of Representatives before they were twenty-five.

But, sir, let us proceed further in this matter. I have shown by these two cases of Senator and Representative the difference between ineligibility to election and ineligibility to hold office. Where the ineligibility to election exists, then that man is not chosen, whether the electors knew of his disqualification or not.

If an election is made of a person who is ineligible, that is, incapable of being elected, the election of such person is absolutely void, even though he is voted for at the same time with others who are eligible and who are accordingly elected. (see Male on Elections, 336;) and this is equally true, whether the ineligibility is known to the electors or not.

That is the doctrine laid down by Cushing, and there cannot be any doubt about it. Let me illustrate by the constitution of my own State. It provides that no person holding a judicial office shall be eligible to election to any other office but a judicial one. Now suppose that the people of Ohio should elect the chief justice of the supreme court governor of the State. The vote is absolutely void, although not ten men in the State should know he was chief justice, because the constitution makes him ineligible to election for governor.

Mr. EDMUNDS. Would that elect the man running against him, who had only one vote?

Mr. THURMAN. That is another question. I am not going to discuss that. If the Senator from Vermont will only possess his soul in peace for a little while and allow me to proceed, I will give him the whole of the rest of this session to answer.

Mr. EDMUNDS. Mr. President, my friend from Ohio is so good that I will take him at his word.

Mr. THURMAN. Well, I am delighted to know that the Senator will, because I do not want to be a burden on the Senate by much talking. Let me read the provisions of the Constitution that applied to Vance's or Abbott's case:

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

There plainly the disqualification is to hold the office; plainly it is not a disqualification to be elected or appointed to the office, but simply a disqualification to hold the office; and therefore it was properly decided in Abbott's case that Vance was not disqualified to be appointed or elected a Senator of the United States, and that if his disabilities had been removed before his term of office commenced he would have been entitled to his seat. But now let us take the case of electors of President and Vice-President of the United States and see how that stands:

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

It does not say that no such person shall hold the office of elector, but no such person shall be appointed an elector, thus, by the clearest langnage, disqualifying him from appointment. I need not say to the Senate that, under the language of the Constitution, an election by the people of an elector of President and Vice-President is an appointment. Here the disqualification is plain that he shall not be appointed, and therefore what I have read from Cushing is true that, whether the voters knew of his disqualification or not, such a man is not appointed. Whether that creates a vacancy, or whether the man who was qualified and who received the next highest number of votes is elected, is another question which I shall not go into now; but, so far as the disqualified person is concerned, there is nothing clearer than that that man is not appointed at all, for he is ineligible to appointment.

Mr. MITCHELL. May I ask the Senator from Ohio a question?

Mr. THURMAN. Yes, sir.

Mr. MITCHELL. I would inquire of the Senator from Ohio whether, in his judgment, the disability imposed by section 3 of the fourteenth article of amendment to the Constitution applies to the appointment to or the holding of the office; in other words, whether there is any distinction between the two disabilities?

Mr. THURMAN. Certainly there is. Section 3 of article 14 is that upon which Abbott's case was decided, and it only goes to holding the office.

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, &c.

It does not say "shall not be appointed," but he shall not be an elector. Hence if a man were elected an elector of President and

Vice-President who was under the disability of the fourteenth amendment and his disabilities were removed before he was called upon to act as an elector, he would have a perfect right to act as an elector.

Now, sir, I have said all that I desired to say. All that I wished to do was to call the attention of the Senate to the broad distinction between ineligibility to hold the office and ineligibility to be elected or appointed to the office. In the case of ineligibility to be elected or appointed, it matters not at all whether the elective or appointing power knew of the disqualification or not, because the Constitution has distinctly declared that that person shall not be appointed. No matter what are the circumstances he shall not be appointed. Under no circumstances of knowledge or of ignorance shall he be appointed. That is clear enough. But in the case of ineligibility to hold the office, a person may be appointed who at the time of his appointment or election cannot hold the office, but who, if qualified before his term of office commences to hold the office, is rightfully entitled to possess it. This other question of whether or not in the particular case which has elicited these remarks the person who was qualified and who received the next highest number of votes is elected or not, I shall not now consider. It will be time enough to consider it when that question arises.

Mr. EDMUNDS. Mr. President, the Senator from Ohio has a peculiarly happy way, in the interest of that judicial impartiality which belongs to him, of taking pains to discuss and dispose of all questions that he thinks are in his favor and to be very careful to omit any reference to or disposition of those that are a little troublesome. He has spent half an hour here in endeavoring to demonstrate that when the Constitution says a particular class of persons shall not be appointed to an office they cannot be appointed to it; but when it comes to the next question, which is the only question that interests anybody, whether somebody else, whom the electors did not intend to appoint to an office and in respect to whom there is not a particle of pretense to-day—but there may be to-morrow—that anybody knew that the party elected was disqualified, can pick up the commission through a governor, he says he wishes to hold himself up for that, because if he were to speak to-day, as I suppose he would say, he would be rather against the baseness of a performance of that character.

Now, the Senator is a little out in his reading of the Constitution. He interpolates certain words. The Constitution says that no person shall be a Senator who shall not have attained the age of thirty years, but it does not read as he stated it; it does not say that no person shall hold or exercise the office of Senator who shall not have attained the age of thirty years; the Constitution says that "no person shall be a Senator," &c. Yet, I take it, it would trouble the Senator from Ohio a little—although he is not to speak again this session, according to his promise—it would trouble him a little at the next session of Congress to show how a man can be appointed a Senator and not be one when he is appointed. The other clause of the Constitution says no person shall be appointed an elector under certain circumstances. If a person is appointed an elector I take it it would rather follow that being appointed an elector he is an elector.

Mr. THURMAN. If my friend——

Mr. EDMUNDS. O, no! O, no, Mr. President, I really cannot. My friend must not forget his promise so soon. [Laughter.] Now, Mr. President, I will hear my friend with great pleasure. He may interrupt me as often as he likes, although he will not give me that privilege when he himself is on the floor.

Mr. THURMAN. The remark of the Senator imports that a man is a Senator as soon as he is appointed. I say he is not. I was appointed nearly two years before I was entitled to take my seat. My colleague was appointed nearly two years before he was entitled to take his. If we were Senators from the time we were appointed then Ohio had three Senators, and not two.

Mr. EDMUNDS. The Senator is entirely mistaken about that, he will allow me to suggest. It is totally impossible for anybody who understands human language to say that a being is created and not created at the same time. The sophism of my honorable friend is that, although a man may be appointed or elected a Senator, there may yet be the necessity for something to occur before he shall exercise the function of the office to which he is appointed. The Constitution says in explicit terms, that are as plain as language can make them, that on the day fixed by law for the counting of the votes, which is the second Wednesday in February, the person elected President shall be declared so and so. Very well. Then are there two Presidents between the second Wednesday in February, which happens to be the day fixed, and the 4th of March who are exercising functions? Not at all. There is one President who holds his office for the constitutional term and exercises its functions. There is the other President, who has become to all intents and purposes a President of the United States, waiting the time when he, being President, shall begin to perform the functions that the Constitution imposes upon him. The Senator therefore cannot escape in that way. When anybody is appointed to an office he then is the officer. Whether the scheme of law allows him to exercise the duties of office that day before he is sworn, although his term may have begun, six months may have gone by, (although he cannot do a thing yet he is the officer,) or whether some other person must finish his term before he begins, makes no difference. No man can exercise the office of President of the United States constitutionally until he takes the oath to protect and defend the Constitution of the United States; and yet I take it, if it should happen at any time that a President, elected by the unanimous voice of the people and the electors and the two Houses of Congress and the President of the Senate and everybody else that can be conceived as having anything to do with it, should, through sickness or neglect or any other cause for six months after the 4th of March following the election, not take the oath that the Constitution provides, he would be President of the United States though he could not exercise a single power that belonged to that office. We all know that. The Senator from Ohio, I take it, would agree to that. Therefore I submit to my honorable friend, whose mind is very acute indeed in seeing difficulties in other people's transactions, whatever may be said of his own or those of his friends, it does not follow that, when the Constitution says no man shall be a Senator until he is thirty years of age, a man may be appointed by the Legislature of his State and wait for one year or two or three or five years until he gets to be thirty years of age. There is no logic in that; so that does not help my friend out at all. It comes right back to the point whether when a person is entitled to an office he is or is not appointed to the office. If he is appointed to the office he is the officer. Whether he can do any of the duties depends upon other provisions. My friend's notion is to interpolate the word "hold;" he bases his argument upon the idea that as to electors the Constitution says "appointed" and as to Senators it says "shall be" without saying "appointed." If he will turn right over on the same subject to the next page of the book that we usually refer to, he will see an argument which will entirely overthrow that notion of his:

> No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either House during his continuance in office.

There the constitution makers intended to say, as they did clearly, that in respect of these affairs the test should be that he should not exercise the two functions at the same time; and yet to turn back one page it says he shall not be it at all, and then when you turn over to the other phraseology it says he shall not be appointed, which is exactly the same thing. In the case of Mr. Vance, therefore, in my opinion, and I had it then, acting not as the Senator says on his view of it, but on my own, and I do not think it was his view then—he is a little mistaken about his own notions; the point was that Mr. Vance was incapable of being elected to the place at all, and it did not depend on the contingency, elected or not elected, as to the will of an independent body whether his disqualifications could be removed or not.

But as I have said, Mr. President, this is entirely apart from anything that is before the Senate, or that was legitimately introduced into the discussion. The question is, as was stated by the Senator from Ohio himself when he began, whether a person who is not elected by a majority of voices, or by a plurality of voices, is to take up the office because the other party who had the most votes was incapable of being elected or having the office in any form at all. That is the question. The governor of Oregon has taken certain action, it is said in the newspapers—I do not believe it yet, it cannot be so. That State is composed of ninety-five thousand square miles of territory. The citizens of that State scattered all over it having by a majority that everybody concedes to be a fair and straight one, voted for a postmaster for one of their electors of President; he it is said resigned the next day, but of course I know nothing about that. Now the governor of the State of Oregon, as it is said—I do not say that he has done it, and I do not believe it is possible that he could have done it, without any proof of notice to the citizens of that State scattered over ninety-five thousand square miles of territory that this man held the office of deputy postmaster in some hamlet in the woods, has undertaken to say that the man whom the people said should not be an elector is one; and the Senator from Ohio in order to hint that way, although he says he reserves his opinion upon it, and to make as much of a case as he can for that side without putting his own foot in it, says that the English rule is that in some cases, which he declines to enumerate, there is a presumption that the electors knew of the disqualification. He refers to 7th Adolphus and Ellis, the case of Gosling *vs.* Veley. Now without taking up your time, sir, because this is all entirely extrinsic to what we have in hand, just let me read you—my honorable friend read from a newspaper; I read from the book itself what the case was.

Certain church wardens, a corporation of a definite number of persons, assembled together to impose a church rate upon the inhabitants of the parish. When they had met they proceeded to enforce or to endeavor to enforce against a certain party that had not paid his rates the next step that the English law requires, which I will not take up or waste your time by stating. Thereupon some of the wardens moved an amendment to the proposition for imposing this rate upon this man, which was entirely foreign to the subject for which they had met, and then having failed in that, being present, they declined to take any further step in the performance. Now, what does the court say?

> *Held*, that the persons voting for the amendment must be considered as having declined to join in the proceedings of the meeting—

It was not called for any such purpose—

> the amendment having no reference to the object for which the vestry was summoned under monition, that the persons so voting therefore left the question in the hands of the remainder; and that the rate was legally made.

That was the decision. The simple case was, therefore, not that some person having a minority of votes either with notice or without it had been elected to some office or to the exercise of some duty, but that certain members of a corporation being present and having undertaken to divert the meeting, against the law, to another purpose than that for which it was called, the other members present had the right to go on, whether the rest participated or not, and do the duties which the meeting was called to perform. In the course of that discussion the judge who delivers the opinion says this, upon which I suppose my honorable friend relied in his newspaper, which did not state it at all as it is stated by the judge himself:

Where the majority of electors vote for a disqualified person in ignorance of the fact of disqualification, the election may be void or voidable, or, in the latter case, may be capable of being made good, according to the nature of the disqualification; the objection may require ulterior proceedings to be taken before some competent tribunal, in order to be made available; or it may be such as to place the elected candidate on the same footing as if he never had existed and the votes for him were a nullity. But in no such case are the electors who vote for him deprived of their votes if the fact becomes known and is declared while the election is still incomplete. They may instantly proceed to another nomination and vote for another candidate. If it be disclosed afterward, the party elected may be unseated and the election declared void; but the candidate in the minority will not be deemed *ipso facto* elected.

According to the statement from Oregon, which, as I say, I cannot believe; but where an elector before voting receives due notice that a particular candidate is disqualified, "and yet will do nothing but tender his vote for him, he must be taken voluntarily to abstain from exercising his franchise." That I agree to; it is perfectly sound law; it is a rule of common sense and justice; and yet the point here that has been foisted into this debate is that the governor of Oregon, as it is said, has undertaken without any proof to declare, against everybody's common sense of the truth, that over these 95,000 square miles of the territory of that State every one of its electors is taken in his judgment to have had due notice and therefore intended to throw away his vote; and that is democratic virtue in Oregon, it is said!

Mr. ANTHONY. And "reform!"

Mr. EDMUNDS. Yes, reform and judicial fairness: something that can be carried to the intelligent conscience of the American people as the action of "the just made perfect" to elect a President of the United States. I do not wonder that the honorable Senator from Ohio says that he will hold up a little, or that after having furnished all the ammunition he can to gloss it over he will hold up before he goes in for the full figure himself. He has got to be stimulated two or three days more, he will come to it, you may be sure, Mr. President.

Sir, we ought to have the question. All this is outside of what we have before us. I should not have said a word upon the subject except for the fact that the observations of my honorable friend are calculated, of course not designed, to manufacture public opinion to that infinite baseness that is imputed, as I hope wrongfully, to the governor of Oregon.

The PRESIDENT *pro tempore*. The question is on the motion to print.

Mr. LOGAN. I do not desire to debate this question at present——

Mr. THURMAN. Will the Senator from Illinois give way for a motion to adjourn?

Mr. LOGAN. Not just now. I will in a moment. I will not occupy the time of the Senate long.

Mr. EDMUNDS. Do not give way for a motion to adjourn. I hope we are going to finish something to-day.

Mr. LOGAN. I desire to call the attention of the Senate, in view of the remarks that have been made in reference to the authority for the election of the minority candidate in the case stated, to the opinion of the Senator from Ohio some three years ago on that very point. In commenting on the English decisions in similar cases to the one read by the Senator from Vermont, the document in my hand quotes from a case decided by Chief-Justice Abbott, as follows:

I am of opinion, therefore, that he (the infant) was ineligible, and due notice of his incapacity having been given to the electors at the time of his election, their votes were thrown away, and consequently there must be judgment for the plaintiff.

Then again Clarke on Elections, page 156, is quoted as saying:

Whenever a candidate is disqualified from sitting in Parliament, and notice thereof is publicly given to the electors, all the votes given for such disqualified candidate will be considered as thrown away.

In answer to that theory of the English decisions, the following remarks are made and agreed to by the Senator from Ohio himself:

This notice, in order to bring the case within the rule, was required to be strictly formal, and was generally given at the polls. And the reason for this is apparent, as by their theory a voter who, after due notice of the ineligibility of a candidate, persisted in voting for him, was deemed guilty of a crime. Therefore, as all crimes are committed with an intention to commit the offense, it was necessary that the knowledge of the fact by the voter should be clear.

Roe on Elections, 236:

"It will be seen that the latter proposition is that which constitutes the law in cases where misapplication of the franchise by the electors was willful, and therefore made in their own wrong."

In answering that further, the Senator said:

But is such a principle applicable in a government based upon the theory that the power emanates from the people? In the British government the case is exactly the reverse, as there the theory is that the power originates with the monarch, and the privileges allowed the people to select representatives are, under that theory, considered as conceded and not as inherent rights. But this Government rests upon an entirely different basis. Here the power originates with the people, and that which the Government is authorized to exercise is conceded by the people. The right to designate who shall exercise this power has never been delegated. The method by which this choice shall be made known consistent with this theory can never be otherwise than by giving the majority or plurality the right to decide. Any attempt to restrict the right of the voter is an attempt to invade that right; therefore the theory that casting a vote knowingly for an ineligible candidate is in the nature of a crime which may be punished by ignoring the act of the minority and recognizing the act of the minority is in direct conflict with that most sacred right which the people of this Government have always guarded with jealous care. Such a rule is consistent with the theory of the British government, as it affords one means of preventing the power from passing into the hands of the people, but it is directly at variance with the theory of our Government, as it affords one means by which that right which the people have of selecting their representatives may be abridged.

That was the language of the Senator from Ohio three years ago and of the majority of the committee.

Mr. THURMAN. I beg the Senator's pardon. I do not say whether that is good law or not good law; but when he says that is my language he does great injustice to himself. That report, which I admit is an extremely able one, was drawn by the Senator from Illinois himself and the language was his.

Mr. LOGAN. When I referred to this language I said it was that of the committee. I did not say who drew the report, but this was the language of the committee, and therefore the language of the Senator because his name is signed to it. The names of Messrs. MORTON, LOGAN, THURMAN, and Joshua Hill are signed to it. The report was read and agreed to by all.

Mr. EDMUNDS. Do I understand the Senator from Illinois to say that the Senator from Ohio signed a paper containing that statement?

Mr. LOGAN. I say he did sign that report. His name is to it. He read it carefully, examined it, and agreed to it. I wrote the report, it is true.

Mr. EDMUNDS. Is that the same Senator from Ohio. [Laughter.]

Mr. LOGAN. The same Senator; yes, sir. [Laughter.]

The PRESIDENT *pro tempore*. The question is on agreeing to the report of the Committee on Printing in favor of the motion to print, on which the yeas and nays have been ordered.

The Secretary proceeded to call the roll.

Mr. SHERMAN, (when Mr. CONKLING'S name was called.) I am requested to announce that the Senator from New York [Mr. CONKLING] is paired with the Senator from Connecticut, [Mr. EATON.] Mr. CONKLING, if present, would vote "yea," and Mr. EATON "nay."

Mr. DAVIS, (when his name was called.) I am paired with the Senator from California, [Mr. SARGENT.] If he were present he would vote "yea," and I should vote "nay."

Mr. RANSOM, (when his name was called.) On this question I am paired with the Senator from Wisconsin, [Mr. HOWE.] If present he would vote "yea," and I should vote "nay."

The roll-call having been concluded, the result was announced—yeas 40, nays 13; as follows:

YEAS—Messrs. Alcorn, Allison, Anthony, Blaine, Booth, Bontwell, Brownlow, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Chaffee, Christiancy, Clayton, Cockrell, Cragin, Dawes, Edmunds, Ferry, Frelinghuysen, Hamlin, Hitchcock, Ingalls, Jones of Nevada, Kernan, Key, Logan, McDonald, McMillan, Mitchell, Morrill, Oglesby, Paddock, Patterson, Randolph, Sherman, Teller, Wadleigh, Wallace, West, and Wright—40.

NAYS—Messrs. Bogy, Cooper, Dennis, Johnston, Jones of Florida, McCreery, Maxey, Morrimon, Norwood, Saulsbury, Thurman, Whyte, and Withers—13.

ABSENT—Messrs. Barnum, Bayard, Conkling, Conover, Davis, Dorsey, Eaton, Goldthwaite, Gordon, Hamlin, Harvey, Howe, Kelly, Morton, Price, Ransom, Robertson, Sargent, Sharon, Spencer, Stevenson, and Windom—22.

So the report was concurred in.

ELECTORAL VOTE OF OREGON.

Mr. MITCHELL submitted the following resolution; which was ordered to lie on the table and be printed:

Whereas, at the late presidential election in the State of Oregon, the people by a majority of over eleven hundred, chose electors who were pledged to vote for Rutherford B. Hayes for President and William A. Wheeler for Vice President; and

And whereas the governor of that State, upon the pretext that J. W. Watts, an elector thus chosen, was at the time of his election a deputy postmaster, certified to one E. A. Cronin, who had been a candidate upon the democratic electoral ticket, that he, Cronin, was chosen an elector, in the face of the notorious and undisputed fact that he had been defeated by the majority before stated; and

And whereas the governor placed in the hands of the said E. A. Cronin the certificates of the other two electors chosen to vote for Hayes and Wheeler, instead of putting them into their own hands, as the law required, who retained them in his possession, and refused to exhibit them; and

And whereas this E. A. Cronin assumed to appoint two electors and with them pretended to cast the electoral vote of the State and certified it up to the President of the Senate; and

And whereas the action of the said governor in issuing a certificate of election to said Cronin was wholly unauthorized, illegal, and fraudulent, and a gross violation of the rights of the people of Oregon; and the action of said Cronin in assuming to act as an elector and to appoint two others was wholly fraudulent and wicked: Therefore,

Resolved, That the Committee on Privileges and Elections is hereby instructed to investigate the facts attending the appointment of said electors and pretended electors, their action as electors and pretended electors, and the action of the governor and secretary of state in respect to them, and report the same to the Senate; and for this purpose may employ a stenographer, send for persons and papers, administer oaths, and examine witnesses.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. GEORGE M. ADAMS, its Clerk, announced that the House had passed the following bills; in which it requested the concurrence of the Senate:

A bill (H. R. No. 3163) to authorize the Ocean City Bridge Com-

pany to maintain and operate a bridge heretofore erected over and across Sycamoxent Bay in Worcester County, Maryland;

A bill (H. R. No. 3693) changing the name of the First National Bank of Amesbury to the First National Bank of Merrimac;

A bill (H. R. No. 4117) for the relief of Colonel Frank L. Woolford, late of the First Kentucky Cavalry Volunteers, of certain disabilities; and

A bill (H. R. No. 4121) to provide for the expenses of certain special committees.

ENROLLED BILL SIGNED.

The message also announced that the Speaker of the House had signed the enrolled joint resolution (S. R. No. 26) authorizing an allowance to certain clerks of committees.

REPORTS OF COMMITTEES.

Mr. WRIGHT, from the Committee on Claims, to whom was referred a petition of 55 citizens of Texas, praying to have refunded to them out of the Treasury the proceeds of the sales of certain cotton alleged to have been illegally seized and taken possession of by United States officials in that State, asked to be discharged from its further consideration and moved that the petitioners have leave to withdraw their petition; which was agreed to.

He also, from the same committee to whom was referred the bill (H. R. No. 3373) for the relief of Susan E. Willard, widow of Sylvester D. Willard, of New York, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

BILLS INTRODUCED.

Mr. HOWE asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1053) to restrain unauthorized persons from assuming to act as electors of President and Vice-President; which was read twice by its title, referred to the Committee on the Judiciary, and ordered to be printed.

Mr. McMILLAN asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1054) to establish a mail route between Deadwood City, in the Black Hills and Bismark, both in Dakota Territory; which was read twice by its title, referred to the Committee on Post-Offices and Post-Roads, and ordered to be printed.

Mr. PADDOCK asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1055) to provide for the free distribution of public documents already printed or ordered to be printed; which was read twice by its title, referred to the Committee on Post-Offices and Post-Roads, and ordered to be printed.

Mr. CAMERON, of Wisconsin, (by request,) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1056) concerning commerce and navigation and the regulation of steam-vessels and sailing-vessels; which was read twice by its title, referred to the Committee on Commerce, and ordered to be printed.

BILL RECOMMITTED.

Mr. WRIGHT. In regard to the bill (S. No. 723) for the relief of Nannie Hall, reported adversely by the Committee on Claims at the last session, a motion has been entered for the reconsideration of the vote indefinitely postponing the bill. That is now pending. I ask that the order postponing the bill indefinitely may be reconsidered by common consent, and the papers recommitted to the Committee on Claims, with some additional testimony that I present.

The PRESIDENT *pro tempore*. If there be no objection, that order will be made.

COUNTING OF ELECTORAL VOTES.

Mr. EDMUNDS. It is so late now that I hardly expect the Senate would be willing to stay to take up the constitutional amendment which was reported by the Committee on the Judiciary, and as a point of order is to be raised upon it, of course an adjournment before it was disposed of would make it all fall again. I shall hope to-morrow, as soon as I can get the floor, to have that matter taken up and disposed of. I now move that the Senate adjourn.

The motion was agreed to; and (at five o'clock and five minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

THURSDAY, *December* 7, 1876.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. J. L. TOWNSEND.

The Journal of Wednesday was read.

CORRECTION OF THE JOURNAL.

Mr. REAGAN. I rise to a correction of the Journal. On yesterday I asked that the bill in relation to the bridges on the Ohio River (I do not now recollect the number) be considered on the first Tuesday after the recess.

The SPEAKER. That is the understanding of the Chair.

Mr. REAGAN. The Journal reads that it is to be considered in Committee of the Whole. I did not so ask and the House did not so order. It is a bill that contains no appropriation of money, and I wish it to be considered in the House.

The SPEAKER. The Clerk informs the Chair that the Journal correctly records the statement made and that the CONGRESSIONAL RECORD corresponds with the Journal in that respect.

Mr. REAGAN. It was a statement that was never made by me.

The SPEAKER. The correction will be made.

PENSION APPROPRIATION BILL.

Mr. ATKINS, from the Committee on Appropriations, reported a bill (H. R. No. 4120) making appropriations for the payment of invalid and other pensions of the United States for the year ending June 30, 1878; which was read a first and second time, and ordered to be printed.

Mr. ATKINS. I ask that the bill be made the special order for to-morrow, immediately after the reading of the Journal, and from day to day until disposed of.

The SPEAKER. The Chair would suggest that it ought to be made a special order after the morning hour.

Mr. CONGER. Will it be printed so that we can have it to-morrow?

The SPEAKER. It will be printed.

Mr. ATKINS. I have no objection to the suggestion of the Chair.

Mr. WILSON, of Iowa. Is it to be considered in the House or in Committee of the Whole?

The SPEAKER. In Committee of the Whole.

Mr. ATKINS. In the Committee of the Whole, of course. And I give notice that I will call it up immediately after the morning hour to-morrow.

Mr. WILSON, of Iowa. I desire to reserve all points of order on the bill.

The bill was accordingly referred to the Committee of the Whole, and made the special order for to-morrow after the morning hour, and from day to day until disposed of.

MINNESOTA RAILROAD LAND GRANT.

Mr. DUNNELL, by unanimous consent, introduced a bill (H. R. No. 4121) to amend an act entitled "An act making an additional grant of lands to the State of Minnesota, in alternate sections, to aid in the construction of railroads in said State, approved July 4, 1866;" which was read a first and second time, referred to the Committee on Public Lands, and ordered to be printed.

UNANIMOUS CONSENT.

The SPEAKER. The Chair desires to state to the House that a number of gentlemen who are about to leave the city in the discharge of a public duty ask unanimous consent to refer certain bills and to transact other business, and with the permission of the House the Chair will hear them in the first instance. The Chair hears no objection.

QUIETING LAND TITLES, CALIFORNIA.

Mr. LUTTRELL (by request) introduced, by unanimous consent, a bill (H. R. No. 4122) to quiet land titles in the State of California; which was read a first and second time, referred to the Committee on Public Lands, and ordered to be printed.

RIGHT OF PRE-EMPTION IN CALIFORNIA.

Mr. LUTTRELL also (by request) introduced a bill (H. R. No. 4123) to confer the right of pre-emption to lands in California in certain cases; which was read a first and second time, referred to the Committee on Public Lands, and ordered to be printed.

JOINT RULES.

Mr. MONROE. I ask unanimous consent to take from the Speaker's table Senate bill No. 980, which is a pension bill, in order to move its reference to the Committee on Invalid Pensions.

The SPEAKER. The Chair cannot entertain that motion, even by unanimous consent, as it is in conflict with the joint rule.

Mr. MONROE. I should like to have a talk with the Chair on the subject of that joint rule.

The SPEAKER. The gentleman can talk with the Chair on the subject at any time.

COUNTING THE ELECTORAL VOTES.

Mr. McCRARY. I ask unanimous consent to offer the following resolution for consideration at this time.

Mr. WOOD, of New York. Let us first hear what it is.

The SPEAKER. The Chair will have the resolution read, then ask for any objection if there be any.

The Clerk read as follows:

Whereas there are differences of opinion as to the proper mode of counting the electoral votes for President and Vice President and as to the manner of determining questions that may arise as to the legality and validity of returns made of such votes by the several States;

And whereas it is of the utmost importance that all differences of opinion and all doubt and uncertainty upon these questions should be removed, to the end that the votes may be counted and the result declared by a tribunal whose authority none can question and whose decision all will accept as final: Therefore,

Resolved, That a committee of five members of this House be appointed by the Speaker, to act in conjunction with any similar committee that may be appointed by the Senate, to prepare and report without delay such a measure, either legislative or constitutional, as may in their judgment be best calculated to accomplish the desired end, and that said committee have leave to report at any time.

Mr. WOOD, of New York. It appears to me, Mr. Speaker, that a subject of so much importance should be first considered by one of the standing committees of this House, and I therefore hope my

friend from Iowa will consent to its reference to the Committee on the Judiciary, of which he himself is a member.

The SPEAKER. The Chair will further suggest that the resolution be printed.

Mr. HALE. Let me make the suggestion that, in case of the reference of this resolution to the Committee on the Judiciary, that committee shall have leave to report at any time.

Mr. WOOD, of New York. Yes; there will be no objection to granting the committee leave to report at any time.

Mr. McCRARY. As gentlemen desire that course to be taken, of course I shall acquiesce in it, although we all understand how important prompt action is.

Mr. WOOD, of New York. Certainly; we appreciate that.

The SPEAKER. There being no objection, the resolution will be referred to the Committee on the Judiciary, with leave to report at any time, and ordered to be printed.

There was no objection, and it was ordered accordingly.

Mr. McCRARY moved to reconsider the vote just taken; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

COLORADO.

Mr. FRYE. I rise to a question of privilege. I have here a resolution of the State of Colorado in relation to the contested seat of their Representative in the Congress of the United States, which I ask may be read and referred to the Committee on the Judiciary.

The Clerk read as follows:

DENVER, COLORADO, *December* 6, 1876.

To the Congress of the United States:

Whereas, by act of Congress approved March 3, 1875, it was provided that the people of Colorado should be permitted to form and organize a State government, under which act a constitution duly framed and presented was on the 1st day of July, 1876, ratified and adopted by the legal voters of Colorado by an almost unanimous vote, said constitution being conformable to the Constitution and laws of the United States;

And whereas, on the 1st day of August, 1876, under and by virtue of the provision of said act of Congress, the President of the United States did issue his proclamation admitting the State of Colorado into the Union on an equal footing with the original States;

And whereas we have learned with profound surprise that the House of Representatives in Congress has refused, and still does refuse, our duly elected member, Hon. James B. Belford, a seat and vote in said House, and believing as we do that he was legally elected, and that our State is justly entitled to full representation in Congress: Therefore

Be it resolved by the House of Representatives of the State of Colorado, (the Senate concurring herein,) That we, as the representatives of the people of this State, do hereby most earnestly protest against this injustice and wrong in depriving our people of a voice in the Congress of the nation and do request that our said representative be received and recognized as a member of Congress from the State of Colorado.

Resolved, That a copy of this resolution be forwarded at once by telegraph to our Senators in Congress and that an enrolled copy be also sent by mail with a request that the same be presented to the House.

Adopted at Denver, December 6, 1876.

WEBSTER D. ANTHONY,
Speaker of the House.

WM. W. WEBSTER,
President pro tempore of Senate.

Attest:

WM. B. PELTON,
Clerk of the House.

GEO. T. CLARK,
Secretary of the Senate.

The resolution was referred to the Committee on the Judiciary, and ordered to be printed.

PATIENTS IN PROVIDENCE HOSPITAL.

The SPEAKER, by unanimous consent, laid before the House a letter from the Secretary of War, transmitting a communication from the Surgeon-General, recommending an appropriation for the support of certain paupers and surgical patients in Providence Hospital, Washington, District of Columbia; which was referred to the Committee on Military Affairs.

SUSPENDED ENTRIES OF PUBLIC LANDS.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of the Interior, transmitting, in pursuance of law, a list of suspended entries of public lands for the year ending June 30, 1876; which was referred to the Committee on Public Lands.

LOUISIANA COMMITTEE.

The SPEAKER. The gentleman from Wisconsin, Mr. LYNDE, asks to be excused from service on the committee to go to the State of Louisiana. Is there objection to the gentleman being excused? The Chair hears none; and the Chair appoints Mr. GEORGE M. BEEBE, of New York, in his place.

OMISSIONS IN REVISED STATUTES.

The SPEAKER. The morning hour begins at thirty-five minutes past twelve o'clock and the House resumes consideration of the unfinished business of yesterday's morning hour, being the bill (H. R. No. 2825) to correct errors and supply omissions in the Revised Statutes of the United States, reported by the Committee on the Revision of the Laws. The gentleman from Indiana [Mr. ROBINSON] has the floor.

Mr. ROBINSON. I yield to the chairman of the committee, the gentleman from Kentucky, [Mr. DURHAM.]

Mr. DURHAM. I do not know that it is necessary to say anything further except this: that the Committee on the Revision of the Laws have taken a great deal of pains with the bill now under consideration, in order to correct these errors and omissions as far as the District of Columbia is concerned, and believe the bill is correct; and I see no necessity of referring the bill back with the view of incorporating the whole of the sections, the amendments being very few. I believe my friend from Indiana, [Mr. HOLMAN,] and also my distinguished friend from Michigan, [Mr. CONGER,] when they come to look into the matter, will concur with the committee that the amendments proposed for the correction of errors and the supplying of omissions are strictly correct.

Mr. CONGER. I will ask the gentleman so to amend the title as to show that these amendments apply only to the District of Columbia, and not to the Revised Statutes at large.

Mr. DURHAM. That is unquestionably the fact; and certainly there can be no objection to amending the title of the bill, for that is all that it does. It shows that on its face.

Mr. CONGER. I certainly feel that this is a very wrong precedent. It would be very inconvenient for the legal profession, and for all the persons interested in these laws, to be compelled to hunt through a bill for amending words, which would be the case when there is not printed a recital of the section as amended. By passing the bill in this way, when these laws are printed, the amendments cannot be incorporated in them. The original Revised Statutes would be printed and the amendments would have to be looked for in another bill printed separately from the statutes themselves. This is an evil which has been remedied in many of the States by constitutional provisions requiring that the amendment of any section shall be accompanied by a reprint of the section as amended. I still think that the committee had better take the time to revise their work and report the sections as they will be when amended. It is desirable that they should do so, even as a matter of precedent.

Mr. DURHAM. I will state to the gentleman from Michigan that in preparing the bill to correct errors and supply omissions in the general Revised Statutes we adopted the method he has suggested. But this is a very short bill, and my colleague on the committee supposed this was all that was necessary, as it is simply a local bill. I admit the general proposition laid down by my friend from Michigan, and, as I have said, we acted in accordance with it in the general bill adopted by the last House. But I hope the gentleman will not insist on the point with reference to this local bill. I am sure no practical difficulty can arise under it.

Mr. CONGER. It will remove part of my objection if the gentleman consents that the title shall be so changed as to show that it is merely a local bill.

Mr. DURHAM. My colleague on the committee, the gentleman from Indiana, [Mr. ROBINSON,] will make that motion at the proper stage.

The bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. ROBINSON moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

The SPEAKER. The gentleman from Michigan [Mr. CONGER] will indicate the amendment he desires to have made in the title of the bill.

Mr. CONGER. Let the title be amended by adding the words "relating to the District of Columbia."

There was no objection, and the title was amended accordingly.

NORTHERN PACIFIC RAILROAD.

The SPEAKER. The Chair will recognize the gentleman from Mississippi, [Mr. LAMAR,] who was absent when the Committee on the Pacific Railroad was called, and who now asks unanimous consent to be allowed to make a report from that committee. Is there objection?

There was no objection.

Mr. LAMAR. The Committee on the Pacific Railroad have instructed me to report back with a favorable recommendation the bill (S. No. 14) to extend the time for the construction and completion of the Northern Pacific Railroad, and to ask that it be made the special order for Wednesday, December 20, after the reading of the Journal, to be considered in the House as in Committee of the Whole from day to day until disposed of; not to interfere with the consideration of appropriation bills.

Mr. HOLMAN. I did not hear the request made by the gentleman from Mississippi in regard to the bill. I reserve the point of order.

The SPEAKER. The point of order will be reserved. The request of the gentleman from Mississippi [Mr. LAMAR] is in writing, and will be read by the Clerk.

The request was again read.

Mr. HOLMAN. I make the point of order that this is a bill appropriating public property to a private use and should be considered in Committee of the Whole. I have no objection to its being made an order subject to the consideration of other bills in Committee of the Whole; but I make the point of order for the present that the bill must go to the Committee of the Whole.

Mr. LAMAR. That is the language of the request.

Mr. HOLMAN. It is that the bill be considered in the House as in Committee of the Whole.

Mr. LAMAR. I will strike out the words "in the House as," so that the bill may be considered in Committee of the Whole.

Mr. HURLBUT. Will the Chair state what is the present condition of this bill; whether it is upon the Speaker's table or not?

Mr. LAMAR. It is, sir.

Mr. HURLBUT. Then I object to taking it up.

The SPEAKER. The Chair did not understand that the bill was on the Speaker's table. The Chair understood the gentleman from Mississippi made it as a report from the Committee on the Pacific Railroad.

Mr. LAMAR. I recollect that I attempted to make the report from the committee, and that it was objected to.

The SPEAKER. The Chair would have ruled it out of order if he had known it was a bill upon the Speaker's table.

Mr. LAMAR. I attempted to make the report, but failed to get it before the House.

Mr. LANE. I recollect very distinctly that the bill was in the hands of the Committee on the Pacific Railroad, and that the gentleman from Mississippi [Mr. LAMAR] had sought to suspend the rules; but the House refused to agree to his motion, and therefore the bill is now in his hands.

Mr. WILSON, of Iowa. The bill is then on the Speaker's table.

The SPEAKER. The Chair does not controvert that position. The Chair states, however, that it is an important fact to know whether the bill is on the Speaker's table or in committee. The Clerk will read the record in regard to it.

The Clerk read as follows:

Mr. LAMAR moved that the rules be suspended so as to enable him to report from the Committee on the Pacific Railroad and the House to consider the bill of the Senate (S. No. 14) "An act to extend the time for the construction and completion of the Northern Pacific Railroad."

And the question being put, "Shall the rules be suspended?" it was decided in the negative—yeas 42, nays 149, not voting 93.

The SPEAKER. The Chair therefore rules that the gentleman from Mississippi has the right to make the report as a bill from the committee, but the gentleman from Indiana [Mr. HOLMAN] makes the point of order that the bill must have its first consideration in Committee of the Whole.

Mr. HOLMAN. Was this bill ever referred to the Committee on the Pacific Railroad?

Mr. LAMAR. It was; but in view of the circumstances I withdraw the report.

CHANGE OF THE NAME OF A NATIONAL BANK.

Mr. HAYMOND, from the Committee on Banking and Currency, reported, with a recommendation that it do pass, the bill (H. R. No. 3693) changing the name of the First National Bank of Amesbury to the First National Bank of Merrimac.

The bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. HAYMOND moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

HORACE GLOVER.

Mr. TARBOX, from the same committee, reported back the bill (H. R. No. 1592) to re-imburse Horace Glover for property unlawfully seized and sold by the United States Government, with the amendments of the Senate thereto.

Mr. TARBOX. I ask unanimous consent for the present consideration of the bill. The amendments of the Senate are merely verbal and formal. I ask that they be concurred in.

The amendments of the Senate were concurred in.

The bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. TARBOX moved to reconsider the vote by which the Senate amendments were agreed to; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

AMENDMENT OF THE REVISED STATUTES.

Mr. HURD, from the Committee on the Judiciary, reported back with amendments the bill (S. No. 155) to amend sections 533, 556, and 572 of the Revised Statutes of the United States.

The bill was read, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 533 of the Revised Statutes be amended so as to read as follows:

"SEC. 533. The State of Arkansas is divided into two districts, which shall be called the eastern and western districts of Arkansas. The western district includes the counties of Benton, Washington, Crawford, Sebastian, Scott, Polk, Sevier, Little River, Howard, Montgomery, Yell, Logan, Franklin, Johnson, Madison, Newton, Carroll, Boone, and Marion, and the country lying west of Missouri and Arkansas known as the Indian Territory. The eastern district includes the residue of said State."

That section 556 be amended so as to read as follows:

"SEC. 556. In the eastern district of Arkansas there shall be appointed two clerks of the district court thereof, one of whom shall reside and keep his office at Little Rock, and the other shall reside and keep his office at Helena."

That section 572 be amended so as to read as follows:

"SEC. 572. In the eastern district of Arkansas, at Little Rock, on the second Monday in April and October, and at Helena on the second Monday in March and September.

"In the western district of Arkansas, at Fort Smith the first Monday in February, May, August, and November."

The amendments proposed by the committee were read, as follows:

The Committee on the Judiciary, to whom was referred Senate bill No. 155, recommends the adoption of the following amendments to the bill: In section 571 strike out the words "the eastern district of Arkansas, at Helena," and add to the section the following words: "and the eastern district of Arkansas, the terms of the circuit court shall be held at Helena at the same time as the terms of the district court."

Mr. FORT. I desire to inquire whether the bill involves an additional outlay of public money. It seems to me that it necessarily would, as it provides for the holding of courts in new places. It must necessarily, therefore, cause some increase of expenditure; and, if so, I wish to make a point of order upon the bill.

Mr. WILSHIRE. I desire to state for the information of the gentleman from Illinois that this bill does not involve any additional outlay at all. The districts as they now exist require the courts to be held at Helena just as this bill does. It only changes the territorial districts and causes the court to be held at Helena.

The SPEAKER. The Chair will hold that this bill involves no additional expenditure, involves no expenditure except what is already authorized by existing law, and therefore a point of order would not stand against the bill.

The amendments reported from the committee were agreed to; and the bill, as amended, was read the third time, and passed.

Mr. HURD moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

BURLINGTON AND MISSOURI RIVER RAILROAD.

Mr. McCRARY, from the Committee on the Judiciary, reported back with a favorable recommendation House bill No. 4075, to amend an act entitled "An act to amend an act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes,' approved July 1, 1862," approved July 2, 1864.

The bill was read, as follows:

Be it enacted, &c., That an act entitled "An act to amend an act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes,' approved July 1, 1862," approved July 2, 1864, be, and the same is hereby, amended so as to make and constitute the railroad in Nebraska authorized to be constructed by the Burlington and Missouri River Railroad Company, and which is now completed and known as the Burlington and Missouri River Railroad in Nebraska, a branch of the Union Pacific Railroad, and entitled to all the rights and privileges, and subject to all the duties and requirements, provided by sections 9 and 15 of said last-mentioned act: *Provided*, That no Government bonds shall ever be issued to said Burlington and Missouri River Railroad Company in Nebraska to aid in its construction: *And provided further*, That this act shall in no wise affect the extent or conditions of the land grant made to said company by the act of July 2, 1864.

SEC. 2. That in order to secure to the Government and the public equal advantages and facilities as to rates, and to prevent discrimination, it is hereby provided that the said Union Pacific Railroad Company shall operate its line in connection with the said Burlington and Missouri River Railroad in Nebraska; and for carrying freight and passengers received from or to be delivered to said Burlington and Missouri River Railroad, the said Union Pacific Railroad Company shall charge at the same rate per mile for the distance between Kearney Junction and Cheyenne that is charged by it for like services in carrying freight and passengers over its own line for the distance between Omaha and Cheyenne; and for carrying all such passengers and freight from Cheyenne to points west of that place on the Union or Central Pacific Railroad, the charges shall be at such fair and reasonable rates, to be based upon a fair proportion of its charges upon its own line, as may be fixed by the Secretary of the Interior, who shall, after due inquiry and investigation, fix and establish such proportion, and notify all the companies interested; and he may, for the purpose of fixing such proportion, employ not more than three competent experts to ascertain and report to him such facts as may be necessary to enable him to discharge his duty under this act, together with such opinions and recommendations thereon as they may deem proper. And the reasonable compensation of such experts, to be fixed by the Secretary of the Interior, shall be paid by such railroad company or companies interested as he may designate and in the proportion fixed by him. The proper circuit court of the United States shall have power to compel the observance of the provisions of this act, for which purpose said court shall have jurisdiction to hear, try, and determine any suit in equity or action of *mandamus* instituted for that purpose.

Mr. FRYE. I make the point of order against this bill that it involves legislation affecting one of the land-grant roads.

The SPEAKER. The Chair understands the gentleman from Maine [Mr. FRYE] to make the point of order that this bill involves a grant of public lands to a private corporation.

Mr. McCRARY. That, I think, is not the fact.

The SPEAKER. As this bill refers to acts which the Speaker has not at hand, will the gentleman from Maine [Mr. FRYE] please indicate wherein the fact is set forth in this bill by which land is given not already appropriated by law?

Mr. FRYE. I do not understand that there is anything in the bill which gives lands not hitherto given; but there is legislation in the bill affecting a land-grant road. I understand the rule to be this: Suppose, for instance, that the time in which a road was to be built is about expiring, but has not expired, by six months. The ruling of the Chair has been that a bill to extend that time must be first considered in Committee of the Whole, because it is a land-grant road, and the bill would affect the interest of the United States or of the land-grant. The land-grant has not expired and it would not be a new gift of land. I make the point of order that this bill affects a land-grant road in which the United States has an interest; it does not extend any land-grant or give any land.

The SPEAKER. Does it extend the time?

Mr. FRYE. It does not.

The SPEAKER. The Chair would be glad to hear from the gentleman from Iowa [Mr. MCCRARY] who reported the bill. The Chair understood the gentleman from Iowa to state that the point of order was made upon a certain condition of facts that did not exist.

Mr. MCCRARY. There is no appropriation of any public land, nor any appropriation of bonds or other property of the United States, as the Chair will see by reference to the two provisions at the end of the first section.

The SPEAKER. The Chair will read Rule 112.

All proceedings touching appropriations of money and all bills making appropriations of money or property, or requiring such appropriations to be made, or authorizing payments out of appropriations already made, shall be first discussed in a Committee of the Whole House.

If the gentleman from Maine [Mr. FRYE] will indicate to the Chair any provision in this bill touching appropriations of money, or making appropriations of money or property, then the Chair will be better informed as to how he should render his decision upon the point of order.

Mr. FRYE. Remotely, if the Chair pleases, in this way; this bill has reference to two acts creating or incorporating the Union Pacific Railroad Company. It requires that company with all its branches to make this Burlington and Missouri River Railroad in Nebraska one of its branches, and to prorate its charges for freight and passengers. Thus, it affects appropriations hitherto made by the United States to the Union Pacific Railroad Company, and affects to a certain extent, remotely, I admit, but to a certain extent, the bonds now held by the United States of the Union Pacific Railroad Company. I admit that it is remote.

The SPEAKER. Allow the Chair to ask the gentleman from Maine to explain whether this bill does not in fact give additional protection to the Government—and additional advantages to the Government—of the United States?

Mr. FRYE. It does not. It gives additional advantages to this Burlington and Missouri River Railroad Company, but it gives no additional advantages to the United States. On the contrary, in my opinion, it detracts from the securities held by the United States of the Union Pacific Railroad.

Mr. CROUNSE. That is an assumption which may or may not be warranted by the facts. The fact may be that prorating and running in connection with the other branches may inure to the benefit of the Union Pacific Railroad. At all events it is quite clear that there is nothing on the face of the bill from which the Speaker can conclude that it falls under the rule, or that could justify him in sending it to the Committee of the Whole.

Mr. FRYE. I have but one desire in this matter, and it is that time shall be given for the discussion of the bill, which is very important in its principles, and for the offering of certain amendments. If the gentleman from Iowa will have some future day assigned for its consideration and leave it open to certain amendments which are desirable, I have no wish to insist on the point of order.

Mr. CROUNSE. I would like to say by permission of the gentleman from Iowa that I most earnestly object to any postponement. This matter was brought to the attention of the House early last session. It went to the committee and by their indulgence arguments upon it were postponed from time to time to await the pleasure of those opposed to the bill, so that it was not until the closing days of the session that it was reported back to the House. If action on it is now further delayed, it is not unlikely that it may not be reached again this Congress.

Postponing consideration of bills is one of the ways of defeating them. I trust it will not be tolerated in this instance.

Mr. W. B. WILLIAMS. It occurs to me that a point of order is directly presented by this bill; in other words, it directly affects the revenues of the Government from the Union Pacific Railroad. While I approve of the principles of this bill in reference to prorating, it must at once occur to the Chair that when a system of prorating is adopted it will affect the net earnings of the Union Pacific Railroad Company, and in doing this will directly affect the percentage to be yearly paid to the Government upon the sinking fund under the law as it now exists. The bill directly affects that question; and I fully agree with the gentleman from Maine that we should have an opportunity to discuss the measure fully upon its merits. It strikes me that, while in some points of view it may have merit, in others it may have demerit. Hence we cannot pass upon the bill properly in this method of discussion, and I hope it will go to the Committee of the Whole.

Mr. WILSON, of Iowa. The Chair has read the rule under which a point of order may be raised against bills appropriating lands, money, property, or anything else belonging to the United States. Now, while it may be a question whether it suits the convenience of members to consider this bill at the present time, the Chair, I think, can have no difficulty in ruling that the point of order founded upon Rule 112 has no application to this bill. It does not propose to give away anything belonging to the Government. The question involved in this bill is whether the United States will exercise a certain authority over that railroad or not. That is all I see in the point. I think the Chair will have no difficulty in deciding that the bill proposes to give away nothing belonging to the United States. Whether it may impair the revenues of that railroad or not is a disputed question. A great many of us think that it would have a salutary effect to require that company to do what is reasonable. That, as I understand, is what this bill proposes.

The SPEAKER. The Chair coincides with the gentleman from Maine [Mr. FRYE] that the application of the point of order is very remote. The Chair does not see upon the face of the bill that the Government of the United States is affected by this legislation. He does see, however, that there may be a controversy between two corporations as to the effect of the bill. In the opinion of the Chair Rule 112 does not operate against this bill. The point of order is therefore overruled.

Mr. FRYE. I will ask the Chair whether the morning hour has not expired.

The SPEAKER. There are fifteen minutes of the morning hour remaining.

Mr. MCCRARY. Before I proceed to discuss the bill the gentleman from Michigan [Mr. W. B. WILLIAMS] desires, I understand, that the bill be again reported. I have no objection to that.

The bill was again read.

Mr. MCCRARY. Mr. Speaker, I will make a brief explanation of the provisions of this bill. The original Union Pacific Railroad act provided for the main line and for a number of branches. The amendatory act of 1864, which largely increased the subsidy, among other things, provided that the main road and branches are not only required to be operated as a connected continuous line, as demanded by section 12 of the original act, but "in such operation to afford and secure to each equal advantages and facilities, as to rates, time, and transportation, without discrimination," &c. (Section 15.) As to the branches provided for in the first part of the original act, there is no question that the law as it now stands requires the main line to prorate with them. But in the fifteenth section of the act, perhaps by a clerical error, the words "the aforesaid roads," were inserted, which would literally refer only to such branches as were provided for in the previous sections of the act. The branch that is now asking to be allowed to prorate with the Union Pacific Railroad Company is provided for by a subsequent section; and hence the company refuses to recognize this branch as one of the branches contemplated by the act, and declines to make terms with it for prorating.

The purpose and object of the bill is to make this Burlington branch a branch of the Union Pacific Railroad to all intents and purposes, and to give it the same rights that other branches have, and to give to those persons who are compelled to use it as a means of transportation and travel the same rights that persons using the main line or other branches have under the law.

There can be no question as to the justice and the reasonableness of the provisions of this bill. The only point which any gentleman can make is that Congress has no authority to require the Union Pacific Railroad Company to prorate with this particular branch, and that was the question considered by the Committee on the Judiciary of this House at great length at the last session, and which was discussed by several gentlemen before the committee.

On two grounds, Mr. Speaker, I claim Congress has the clear right to pass this bill. The first is under the general power to alter or amend the charter of the Union Pacific Railroad Company. The language of that provision is as follows:

And the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line * * * Congress may at any time—having due regard for the rights of said companies named herein—add to, alter, amend, or repeal this act.

The power conferred upon Congress under that provision is certainly broad enough to authorize an amendment which shall require that company to prorate with this branch. It is clearly such an amendment as Congress may make even upon the theory that we cannot affect any vested rights conferred by the original act.

But, sir, there is another ground upon which I claim we have a clear right to pass the bill. Section 15 of the original Pacific Railroad act provides as follows: "That any other railroad company now incorporated, or hereafter to be incorporated, shall have the right to connect their road with the road and branches provided for by this act, at such places, and upon such just and equitable terms, as the President of the United States may prescribe." It follows that under the law, then, as it now stands, the President of the United States might exercise the prerogative of fixing the terms and conditions upon which the Burlington branch shall connect with the Union Pacific Railroad Company at Kearney.

Now, it is entirely clear that Congress may, under the general power to alter and amend this charter, so far alter and amend it as to provide another mode of exercising this power and this discretion which by the original act is placed in the hands of the President of the United States. That is all that this bill does.

As the matter now stands, I understand the people who live along the line of this branch are completely at the mercy of the Union Pacific Railroad Company. They are compelled to pay the same price for traveling and transportation from Kearney Junction westward that they have to pay from Omaha. No reduction of rates whatever, as I understand, is made for the whole distance from Plattsmouth to Kearney, which is about two hundred miles. There is a large population, and a constantly increasing population, in the State of Nebraska living along this line of railroad which is compelled to travel on this branch to Kearney Junction, and there to take the Union Pacific Railroad for travel or transportation westward. And they are compelled

after they reach Kearney Junction to pay the same price from there west that persons who come over the main line pay from Omaha to the same point. If you use the Burlington branch, you must now pay for two hundred miles of the main line which you do not use; that is, you pay double rates for the first two hundred miles. Of course every gentleman will see this is a great wrong upon these people, and if it is within the power of Congress to remedy it, we ought not to hesitate to do it. Being entirely clear myself as to our right to pass the bill, I hope the House will pass it without delay.

I do not know whether any gentleman desires to discuss this bill further. If no gentleman desires to be heard, I shall feel it to be my duty to demand the previous question.

Mr. HURD. Has not the morning hour expired?

The SPEAKER. It has.

Mr. HURD. Then I demand the regular order of business.

The SPEAKER. The regular order of business being demanded, the bill goes over until the morning hour to-morrow.

Mr. CROUNSE. Does the morning hour expire by its own limitation?

The SPEAKER. By unanimous consent the morning hour is sometimes allowed to continue beyond the hour, but the gentleman from Ohio has now called the attention of the Chair to the fact that the morning hour has expired, and has further demanded the regular order of business.

EXPENSES OF INVESTIGATING COMMITTEES.

Mr. HOLMAN, from the Committee on Appropriations, reported a bill (H. R. No. 4124) to provide for the expenses of certain special committees; which was read a first and second time.

The bill, which was read, provides that the sum of $21,000, or so much thereof as may be necessary, be, and the same is thereby, appropriated from any moneys in the Treasury not otherwise appropriated, to defray the expenses of the three special committees charged, respectively, with the investigation of the recent elections in the States of Louisiana, South Carolina, and Florida; said appropriation to be added to the contingent fund of the House, and to be disbursed upon vouchers approved by the chairmen of the respective committees.

The bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. HOLMAN moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

SERVICE OF THE ARMY IN SOUTHERN STATES.

Mr. WOOD, of New York. I ask unanimous consent to offer the following resolution, calling on the Executive for information:

Resolved, That the President be requested to transmit to this House copies of any and all orders or directions emanating from him or from either of the Executive Departments of the Government to any military commander or civil officer, with reference to the service of the Army, or any portion thereof, in the States of Virginia, South Carolina, Louisiana, and Florida, since the 1st of August last, together with reports by telegraph or otherwise, from either or any of said military commanders or civil officers.

Mr. KASSON. Let that lie over a day, that we may have an opportunity to examine it.

Mr. WOOD, of New York. The Senate has unanimously passed a similar resolution.

The SPEAKER. The resolution will be again read.

The resolution was again read.

Mr. WOOD, of New York. I ask unanimous consent that the resolution be considered at this time.

Mr. KASSON. I object to its being considered now.

Mr. WOOD, of New York. Will the gentleman object to its being referred to the Committee on Military Affairs?

Mr. KASSON. Let it lie over for a day. There may be no objection to its passing when it is again considered.

The resolution was accordingly laid over under the rule.

REMOVAL OF SIOUX INDIANS.

Mr. MILLS. I ask unanimous consent to offer the following resolution, calling on the Secretary of the Interior for information:

Resolved, That the Secretary of the Interior be directed to inform this House whether any, and what, negotiations have been or are being made with the Sioux Indians for their removal to the Indian Territory, and under what authority the same has been or is being done.

Mr. CONGER. I think that inquiry should be addressed to the President.

Mr. MILLS. The Secretary of the Interior has the negotiations conducted in his Department. I think it is not necessary to call on the President for the information; but it does not make any difference whether the inquiry be addressed to the President or the Secretary of the Interior.

The SPEAKER. Does the gentleman from Michigan [Mr. CONGER] desire that the change he has indicated be made?

Mr. CONGER. I object to the consideration of the resolution to-day unless the change be made.

Mr. MILLS. I accept the gentleman's suggestion, and will add the words "if not incompatible with the public service."

Mr. CONGER. Then the word "directed" should be changed to "requested."

The resolution, as modified, was agreed to.

Mr. MILLS moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

And then, on motion of Mr. HOLMAN, (at one o'clock and forty-five minutes p. m.,) the House adjourned.

PETITIONS.

The following petitions were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. SEELYE: The petition of Thomas P. Madden, assignee of R. K. Dodge, for compensation for supplies furnished the Menomonee Indians in 1859 and 1860, to the Committee on Indian Affairs.

By Mr. TUCKER: The petition of A. C. Myers, of Baltimore, Maryland, for the removal of his political disabilities, to the Committee on the Judiciary.

By Mr. WAIT: The petition of Henry E. Rhodes, for a correction in the Navy Register of the date of his original entry into the naval service, to the Committee on Naval Affairs.

IN SENATE.

FRIDAY, *December* 8, 1876.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

The Journal of yesterday's proceedings was read and approved.

HOUSE BILLS REFERRED.

The following bills, yesterday received from the House of Representatives, were severally read twice by their titles and referred as indicated below:

The bill (H. R. No. 3163) to authorize the Ocean City Bridge Company to maintain and operate a bridge heretofore erected over and across Synepuxent Bay, in Worcester County, Maryland—to the Committee on Commerce.

The bill (H. R. No. 3693) changing the name of the First National Bank of Amesbury to the First National Bank of Merrimac—to the Committee on Finance.

The bill (H. R. No. 4117) for the relief of Colonel Frank L. Woolford, late of the First Kentucky Cavalry Volunteers, of certain disabilities—to the Committee on Military Affairs.

The bill (H. R. No. 4121) to provide for the expenses of certain special committees—to the Committee on Appropriations.

ENROLLED JOINT RESOLUTION SIGNED.

The PRESIDENT *pro tempore* signed the enrolled joint resolution (S. R. No. 26) authorizing an allowance to certain clerks of committees, heretofore signed by the Speaker of the House of Representatives.

PETITIONS AND MEMORIALS.

Mr. CAMERON, of Wisconsin, presented the petition of John J. Orton, of Milwaukee, Wisconsin, praying for the passage of an act providing for the redemption of the greenback currency; which was referred to the Committee on Finance.

PORTRAIT OF HON. HENRY H. STARKWEATHER.

Mr. ANTHONY. I ask leave to introduce a bill, and I think if it is read there will be no necessity for a reference. Let it be read and I will explain it; and if there be any objection of course it will take the usual course.

Leave was granted, by unanimous consent, to introduce a bill (S. No. 1057) to provide for engraving and printing the portrait of the late Hon. Henry H. Starkweather, of Connecticut; and it was read twice and considered as in Committee of the Whole. It appropriates such sum as may be necessary to enable the Secretary of the Treasury to have engraved and printed a portrait of Hon. Henry H. Starkweather, of Connecticut, deceased, late a member of the House of Representatives, as authorized by the resolution of the House of Representatives of May 5, 1876, and concurred in by the Senate May 20, 1876, the portrait to accompany the eulogies ordered to be printed by the same resolution.

Mr. ANTHONY. It has been customary latterly to print a portrait with the eulogies of deceased members of the Senate and House of Representatives, and the order was made in this case. I think the order was made positively, but the Bureau of Engraving and Printing say that they have no money appropriated for that purpose and the Congressional Printer has no money appropriated for that purpose. Therefore, it is necessary, in order to carry out the order of Congress, that there should be an appropriation made. The practice of engraving portraits and of publishing additional numbers of eulogies delivered is, in the opinion of the committee, an injudicious one, and the committee have intended to introduce a resolution to discontinue it in the future; but the propriety of passing such a resolution at a time when there is no pending case will be apparent to any one. We should not introduce a resolution to that effect now, because in the course of the next week we have notice that eulogies will be delivered upon a very distinguished member of the House of Represent-

atives, who has been its presiding officer, and neither the Senate nor the House would like to make that the occasion of discontinuing any honor that it has been the custom to pay to our departed associates. After that, and when there is no case pending, it will be proper to pass a law or to express an opinion which will enable us to discontinue this practice without any invidiousness. I hope, therefore, that what has been done in other cases will be done in this, and that this bill, which merely provides for carrying out what I think was the order of Congress, (it certainly was the intention,) will be agreed to.

Mr. DAVIS. By way of information I should like to hear from the Senator from Rhode Island something as to the cost. I want to know the general cost. I have no doubt he has the information.

Mr. ANTHONY. I will first verify what I supposed was the case. The resolution of the House of Representatives, the Senate concurring, was—

That the Secretary of the Treasury have printed the portrait of Mr. Starkweather to accompany the same.

It is therefore an order of Congress. The cost in this case will be about $680. There have been cases where a portrait is already in existence in the Bureau of Engraving and Printing, and then the cost is very small. It costs $16 a thousand to print them; the great cost is in the engraving, which of course is done in high style, in a manner creditable to the Government. The cost will be about $650.

Mr. DAVIS. And that is about the usual cost, I understand. There is nothing unusual provided for in this case?

Mr. ANTHONY. That is the usual cost except in certain cases, as I think in the case of Mr. Douglas, where there was a portrait at hand; and of course then the cost of engraving, which is the great cost, is saved and there is only the cost of printing. No; there is nothing intended in the bill except to make this portrait precisely like the others. I am under the impression, although I am not quite sure, that some of the portraits have been engraved at less cost. This estimate, I believe, is the estimate of the style in which they would like to do it, and like all the engraving in that bureau, being intended originally for currency and for protection against counterfeiting, it would be done in the very highest style of art. There is nothing better that I know of than the engraving done there.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

BILLS INTRODUCED.

Mr. WEST asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1058) for the relief of W. W. Handlin, former judge of the third district court of New Orleans; which was read twice by its title, referred to the Committee on the Judiciary, and ordered to be printed.

Mr. COOPER asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1059) for the relief of R. G. P. White, Peter Hanger, and L. T. Green; which was read twice by its title, referred to the Committee on Claims, and ordered to be printed.

Mr. WITHERS asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1060) for the relief of owners and purchasers of land sold for direct taxes in insurrectionary States; which was read twice by its title, referred to the Committee on the Judiciary, and ordered to be printed.

PAPERS WITHDRAWN AND REFERRED.

On motion of Mr. COCKRELL, it was

Ordered, That Frank A. Page have leave to withdraw his petition and accompanying papers from the files of the Senate.

On motion of Mr. MITCHELL, it was

Ordered, That the memorial and papers of Ben Holladay be taken from the files of the Senate and referred to the Committee on Claims.

Mr. PATTERSON. I ask for an order to withdraw the petition and papers of Miss R. L. Wright from the files of the Senate. There has been no adverse report. It is an old case.

Mr. WRIGHT. I wish to say one thing in connection with this order. Very frequently applications are made for orders to withdraw papers where there has been an adverse report. I understand the rule, without anything being said about it, to be that in every case where an adverse report has been made copies have to be left, and it is not necessary to mention it in each particular case.

The PRESIDENT *pro tempore*. That is the rule and it is observed in every case. The order asked by the Senator from South Carolina will be made, if there be no objection.

SIOUX INDIANS.

Mr. INGALLS submitted the following resolution; which was considered by unanimous consent, and agreed to:

Resolved, That the Secretary of the Interior be requested to report immediately to the Senate what efforts have been made to remove the Sioux Indians from their treaty reservation to the Indian Territory, and what negotiations are now pending between the Government and said Indians, together with the object and purpose thereof.

CIVIL-SERVICE COMMITTEE.

Mr. HARVEY. I offer the following resolution and ask for its present consideration:

Resolved, That the select committee appointed to examine the several branches of the civil service be authorized to employ a stenographer, to administer oaths, and to send for persons and papers.

The Senate proceeded to consider the resolution.

Mr. EDMUNDS. There is no need to have in the resolution the power to administer oaths. That is conferred by statute, and cannot be conferred properly by a Senate resolution. Of course it does not do any harm; but it would seem to look as if the law did not already provide for it.

Mr. HARVEY. If the Senator will permit me, I will state that this is an exact copy of the original resolution offered by the committee at the session before the last. Such a resolution was passed then. It is the usual resolution.

Mr. EDMUNDS. I do not object to the proposition, except that part of it which authorizes the committee to administer oaths. My objection is not to their having the power; but the statutes declare in explicit terms that any special committee as well as a standing one may administer oaths.

Mr. HARVEY. Then the resolution may be modified in that particular.

Mr. SARGENT. I should like some information from the chairman of the committee as to the purpose of the resolution. I should like to know what is to be investigated. A stenographer, which is rather an expensive luxury, is to be employed, which implies that testimony will be taken. I have no objection, of course, to any proper examination, or to the examination of any subject, whatever, under legislative cognizance; but I should like to know what is proposed to be done, and what expenses are to be incurreed.

Mr. HARVEY. I will state in answer to the Senator from California that this resolution is exactly a copy of the resolution passed at the session before the last, with the exception that it does not provide that the committee shall sit during the recess of the Senate. So far as I am concerned I am willing that the resolution shall be modified so as to provide for the employment of a clerk instead of a stenographer.

Mr. SHERMAN. That is all right—a clerk during the session.

Mr. SARGENT. I have no objection to that.

The PRESIDENT *pro tempore*. The Senator from Kansas modifies the resolution so as to read "clerk" instead of "stenographer."

Mr. EDMUNDS. I want to strike out the clause relating to oaths as being entirely unnecessary, in order to keep within the statutes.

The PRESIDENT *pro tempore*. Does the Senator from Kansas accept that modification?

Mr. HARVEY. I do.

The PRESIDENT *pro tempore*. The resolution will be so modified.

Mr. DAVIS. I should like to ask whether this is an addition to the usual clerk, or is it intended to give a clerk to this committee as is ordinarily done?

Mr. HARVEY. It is intended to allow a clerk. There has been no provision made for a clerk to this committee at the present session.

Mr. DAVIS. Then of course it ought to read "a clerk" instead of "a stenographer."

The PRESIDENT *pro tempore*. The resolution is so modified. The question is on agreeing to the resolution as modified.

The resolution, as modified, was agreed to.

COMMITTEE ON PRIVILEGES AND ELECTIONS.

Mr. MORTON. I move that there be three more members added to the Committee on Privileges and Elections. The duties imposed upon that committee are so arduous and extended that the present number is hardly equal to the task. I move, therefore, that there be three members added to the Committee on Privileges and Elections temporarily, for the purpose of discharging the duties imposed by the resolutions adopted the day before yesterday.

The PRESIDENT *pro tempore*. The question is on the motion of the Senator from Indiana, that three members be added to the Committee on Privileges and Elections charged with a special inquiry under the resolutions introduced by the Senator from Vermont, [Mr. EDMUNDS.]

The motion was agreed to.

By unanimous consent, the President *pro tempore* was authorized to appoint the additional members of the committee; and Messrs. CHRISTIANCY, TELLER, and MCDONALD were appointed.

ELECTORAL VOTE OF OREGON.

Mr. MITCHELL. Yesterday I introduced a resolution in reference to the electoral vote of Oregon. I now move to take it up simply for the purpose of reference. I do not desire to have it considered by the Senate.

The PRESIDENT *pro tempore*. Is there objection to taking up the resolution for reference?

Mr. DAVIS. For reference only?

The PRESIDENT *pro tempore*. It is so stated—for reference only. The Chair hears no objection, and the resolution is before the Senate.

Mr. MITCHELL. I move the reference of the resolution to the Committee on Privileges and Elections.

The motion was agreed to.

SILVER COIN.

Mr. LOGAN. There is on the Calendar the bill (S. No. 1026) for the issue of silver coin and to make the silver dollar a legal tender, which was introduced by me at the last session and ordered to lie on the table without a reference. I desire now that it shall be referred to the Committee on Finance, and I make that motion.

The motion was agreed to.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. GEORGE M. ADAMS, its Clerk, announced that the House had passed the bill (S. No. 155) to amend sections 533, 556, 571, and 572 of the Revised Statutes of the United States relating to courts in Arkansas and other States, with an amendment in which it requested the concurrence of the Senate.

The message also announced that the House had concurred in the amendment of the Senate to the bill (H. R. No. 1592) to re-imburse Horace Glover for property unlawfully seized and sold by the United States Government.

The message further announced that the House had passed a bill (H. R. No. 2825) to correct errors and supply omissions in the Revised Statutes of the United States relating to the District of Columbia.

COUNTING OF ELECTORAL VOTES—JOINT RULES.

Mr. EDMUNDS. I move that the Senate proceed to the consideration of Senate joint resolution No. 10, proposing an amendment to the Constitution of the United States; the one to which the Senator from North Carolina made objection the other day. I wish to call the attention of the Senator from North Carolina to the motion I have just made.

Mr. MERRIMON. I object to taking it up because of the twenty-first joint rule. I raise the point of order that under the twenty-first joint rule it is not competent to take up any unfinished business of the last session until after the lapse of six days from the opening of this session.

The PRESIDENT *pro tempore*. The Senator from North Carolina makes the point of order that the motion is not in order under what he denominates the twenty-first joint rule. The Chair overrules the point of order. The joint rules are not in force. The question is controlled by Senate Rule No. 52.

Mr. MERRIMON. With all due respect to the Chair, I pray an appeal to the Senate, and on sustaining the ruling of the Chair I ask for the yeas and nays.

The PRESIDENT *pro tempore*. The Senator from North Carolina appeals from the ruling of the Chair. The question is, Shall the decision of the Chair stand as the judgment of the Senate? on which the yeas and nays are demanded.

The yeas and nays were ordered.

Mr. COOPER. Will the Chair have Rule 52 read? I understood the Chair to refer to that rule.

The PRESIDENT *pro tempore*. The Chair holds that Senate Rule No. 52 controls this question. The rule will be read.

The Chief Clerk read as follows:

52. At the second, or any subsequent, session of a Congress, the legislative business of the Senate which remains undetermined at the close of the next preceding session of that Congress shall be resumed and proceeded with in the same manner as if no adjournment of the Senate had taken place; and all subjects referred to committees, and not reported upon at the close of a session of Congress, shall be returned to the office of the Secretary of the Senate, and be by him retained until the next succeeding session of that Congress, when they shall be returned to the several committees to which they had been previously referred.—*Senate Manual*, page 149.

Mr. MERRIMON. I now ask the twenty-first joint rule may be read.

Mr. EDMUNDS. There is no such rule, Mr. President.

The PRESIDENT, *pro tempore*. There is no such rule in force; there is what has been denominated the twenty-first joint rule.

Mr. MERRIMON. I ask that what I call the twenty-first joint rule may be read.

The PRESIDENT, *pro tempore*. What the Senator from North Carolina denominates as the twenty-first joint rule will now be read.

The Chief Clerk read as follows:

21. After six days from the commencement of a second or subsequent session of Congress, all bills, resolutions, or reports which originated in either House, and at the close of the next preceding session remained undetermined in either House, shall be resumed and acted on in the same manner as if an adjournment had not taken place.

Mr. MERRIMON. Mr. President, I have no objection to the immediate consideration of the joint resolution which it is proposed to take up, if it can be done properly; but the twenty-first joint rule contains a wholesome provision, and if it is in force it ought to be observed. Indeed, I may say that the Senate is bound to observe it, because even unanimous consent is not sufficient to suspend it without the concurrence of the House of Representatives. I know that it has been contended in the past that this rule is subject to the fifty-second rule of the Senate, which was read by the Clerk a minute ago. It seems to me plain upon the face of the rule that I am commenting upon, that its purpose was to prevent the consideration of any unfinished business at the beginning of a session of Congress until after the lapse of six days. Manifestly that was the spirit of the resolution, and if that were not so, it has been again and again determined by the rulings of the presiding officer of this body, and I believe such rulings have once or twice had the express sanction of the Senate, that such is the proper construction to give it. As the matter is one of some importance it may not be out of place to cite one or two rulings on that subject, and I beg leave to do so.

On the 5th of December, 1870—I read from page 3, part I, Congressional Globe, third session, forty-first Congress—this occurred:

Mr. SHERMAN. I move to take up House bill No. 2414, ceding jurisdiction to the State of Ohio.

The VICE-PRESIDENT. Before putting the question on the motion of the Senator from Ohio, the Chair will call the attention of the Senate to the twenty-first joint rule. That rule, which the Chair understands has been construed twice by the Senate, reads as follows:

I omit the reading of the rule.

The Chair understands that upon two occasions the Senate of the United States decided, and on one of them, at least, on appeal, that this rule barred action by the Senate, during the first six days of the session of a Congress after the first, upon any House business. The Chair will state that in the House of Representatives the effect of this joint rule has been decided to be precisely the reverse—that it does not bar that action; but the Senate have heretofore decided upon appeal, in the case of a Pacific railroad bill sought to be taken up on motion of a then Senator from California, Mr. Gwin, which was objected to by Senator Pearce, of Maryland, that this joint rule, adopted by both Houses, prohibited action within the first six days of a second or subsequent session of a Congress upon business pending at the close of the preceding session.

I read that to show that the ruling on the part of the Senate has been uniform and that the effect of this joint rule when it is operative is to postpone the consideration of all business until after the lapse of six days.

Mr. EDMUNDS. The Senator will allow me to suggest that I am quite willing to admit for the purposes of this case that the Senator is perfectly correct, and I hope the Senate will pass upon the question as the Chair stated it the other day and this morning as a question whether the twenty-first joint rule or any other of the joint rules, as they are called, is in force; in other words, whether the rule upon which the Senator claims to rely is one of the present laws of this body. That presents the very question. I think the Senator need not take any time upon the first point, that the twenty-first joint rule bars my motion, if there is now such a rule.

Mr. MERRIMON. As that point is conceded I will not detain the Senate further upon it, taking it for granted.

There are what have been termed joint rules of the Senate and House of Representatives. The most of them are coeval with the existence of the Government, and have always been in force and practiced under. They never were questioned nor were they ever abolished as a whole, nor was it ever suggested before the last session of Congress that there was any period of time when they were not in force and binding upon both Houses of Congress. At the late session the Senator from Vermont introduced a resolution which I will now read to the Senate. I read from the Journal of the last session, at page 56:

Mr. EDMUNDS submitted the following resolution; which was referred to the Committee on Rules:

Resolved, That the joint rules of the Senate and House of Representatives in force at the close of the last session of Congress be, and the same are hereby, adopted as the joint rules of the two Houses for the present session.

The Senate will observe this fact and a material one in the course of my argument, that this resolutiond oes not purport to *abolish* the joint rules. Its simple province and effect is to re-adopt them, and that seemed to be the purpose of the mover. That resolution was referred to the Committee on Rules and there considered. That committee, on January 10, 1876, reported the same back as follows. I read from the Journal, page 87:

Mr. HAMLIN, from the Committee on Rules, to whom was referred the resolution submitted by Mr. EDMUNDS on the 15th of December last, adopting as the joint rules of the present session the joint rules of the Senate and House of Representatives in force at the close of the last session of Congress, reported it with an amendment.

The Senate proceeded, by unanimous consent, to consider the said resolution; and the amendment reported by the Committee on Rules, viz.: after the word "Resolved," insert "By the Senate, the House of Representatives concurring," having been agreed to, and

A further amendment having been proposed by Mr. MORTON,

Pending debate,

Ordered, That the further consideration of the said resolution be postponed to to-morrow.

On the 18th of January, the resolution was further considered; the proceedings will be found on page 112 of the Journal of last session, as follows:

The Senate resumed the consideration of the resolution submitted by Mr. EDMUNDS, adopting the joint rules of the two Houses in force at the close of the last session of Congress; and

The question being on the amendment proposed by Mr. MORTON, to except the twenty-second rule,

On motion by Mr. BAYARD to postpone the further consideration of the resolution to Monday next,

Pending debate,

On motion by Mr. HAMLIN,

The Senate proceeded to the consideration of executive business.

I read now from the Journal of January 20 last, when the resolution was further considered, at page 125:

On motion by Mr. EDMUNDS,

The Senate resumed the consideration of the resolution submitted by him, adopting the joint rules of the two Houses in force at the close of the last session of Congress; and

The question being on the amendment proposed by Mr. MORTON, to except the twenty-second rule,

After debate,

It was determined in the affirmative.

On motion by Mr. BAYARD to amend the resolution by striking out all after the word "that," and inserting "the Committee on Rules of the Senate and House of Representatives be, and they are hereby, instructed to examine, and after conference to report what amendments, if any, should be made in the present joint rules of the two Houses; and also whether any, and what, legislation is expedient in regard to the matters considered in the present twenty-second joint rule,"

After debate,

It was determined in the negative.

No further amendment being made to the resolution,

The resolution as amended was then agreed to, as follows:

I read now the resolution as it passed:

Resolved by the Senate, (the House of Representatives concurring,) That the joint rules of the Senate and House of Representatives in force at the close of the last session of Congress, excepting the twenty-second joint rule, be, and the same are hereby, adopted as the joint rules of the two Houses for the present session.

That resolution as it passed the Senate was sent to the House of Representatives. If the House ever took any action upon it the Senate has not been notified of it. So that the question is, whether or not the joint rules of the two Houses, which have prevailed from the beginning of the Government down to that time, at all events, are in force to-day; and also the other question is presented, Is it competent for the Senate to abolish the joint rules without the concurrence of the House of Representatives?

I beg to say before I proceed further in what I am about to submit, that I was on the Committee on Rules to which the resolution I have read was referred, and I concurred in the report the committee made recommending its passage with the amendment reported. I did so without a very great deal of consideration, deferring greatly to the large experience of the other members of the committee; and I did not trouble myself to go into an examination of the subject at all, for I could not see at the time that it was very material one way or another, as it was proposed simply to re-adopt the joint rules. The debate, however, on the occasion of the adoption of the resolution as it finally passed the Senate was a very interesting one and impressed me very much. I was particularly impressed by the arguments delivered by the Senator from Ohio who sat nearest me, [Mr. THURMAN,] and the Senator from New York who sits before me, [Mr. CONKLING,] which went largely to show that the House is a continuous and perpetual body. Their arguments induced me to modify my opinions very much at the time.

Mr. MORTON. What resolution is the Senator referring to?

Mr. MERRIMON. The resolution re-adopting the joint rules, passed at the late session. Since that debate I have given the subject very considerable reflection, and I am satisfied, with all due submission, that the committee were in error in reporting, and the Senate were in error in adopting, this resolution; or rather, I am satisfied that there was no necessity for adopting it, because the joint rules were in force and had been from the beginning almost of the Government down to that time and are in force to-day. And I wish now, as briefly as I can, to submit some considerations upon which I base this judgment; I believe they are correct and will stand the test of legal criticism.

Now, Mr. President, what are the joint rules? They are no more nor less than the embodiment of certain provisions adopted by the Senate and House of Representatives for the purpose of regulating the intercourse and intercommunication between these two bodies. Without them, we should be in utter confusion; it would be impossible to proceed easily and conveniently with business. They are as essential as the existence of each branch of Congress, for unless there is some means by which they can intercommunicate they had as well not exist, for the Senate cannot pass a law by itself nor can the House pass a law by itself. There must be some means of communication between the two Houses, and unless this is regulated by some rule there will be dissention, uncertainty, and utter confusion. All legislative bodies have such joint rules. They are absolutely essential.

It is said that there is no provision in the Constitution which authorizes these joint rules and which, when they are provided, sanctions their existence in such way as to give them such force as that they must be observed. With all respect, I deny that suggestion. It is provided in the Constitution that each House may determine its own rules. I read from section 5, of article 1, which is in these words:

> Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

The word "determine" there implies more than to put an end to the rules. It means to devise them, to adopt them, to change them, to modify them, to abolish them, to put an end to them in the discretion of either branch of Congress, as they may be the rules of the one or the other. But it will be noted—and this is material—that this provision refers to the two Houses in their separate capacity. It refers to those matters in which each House is absolutely independent of the other, which concern them severally, and has no bearing whatever upon the intercommunication which is as essential as that each House should be governed by rules. There is no express provision in the Constitution, I concede, conferring upon Congress power to pass joint rules; but when we come to consider the nature of Congress we shall see that by necessary—essential—implication, the power does exist.

What is Congress? It is provided by the Constitution as one of the three co-ordinate Departments of the Government. In one sense it is a whole. It forms the Legislative Department of the Government. It is a whole existing without intermission, perpetual in its nature. The Congress is forever in existence in contemplation of the Constitution and laws. In this general sense it is one, an artificial being of oneness. When you come to consider it, however, in its details, it has a dual nature. It consists of two parts, separate, and independent, in many respects; but co-ordinate parts, one called the Senate and the other called the House of Representatives. But from its very nature, from its purposes as defined in the Constitution, and as we understand them to exist in the nature of government and under all parliamentary law, these two Houses are not in all respects independent of each other. In certain respects they are independent of each other, and in those respects they have rules for their separate government, and those are the rules which are allowed and provided for in the section of the Constitution I have just read. But they are dependent upon each other in many respects; they are affected by each other in many respects; and neither can proceed far, as I said a while ago, in the discharge of duty, neither can pass any law, and neither can take any action other than such as affects each House separately, without the concurrence and co-operation of the other House. And because they must concur, because they have these relations to each other, they must have some means to intercommunicate, and that intercommunication must be regulated by some rule; there must be some method about it; and that regulation is not inaptly styled joint rules. I cannot conceive how the two Houses would proceed successfully, regularly, efficiently, without some regulation of their intercourse with each other.

But how is such regulation, which is so essential and because of its essentiality the power must be implied by the Constitution—how is it to be made? Is it done by the independent action of either body? Can the Senate pass a class of joint rules and say that they shall have effect and that the House shall be governed by them? Can the House devise and adopt in that branch of Congress a class of joint rules and insist that the Senate shall observe them? Neither one House can do it any more than the other. Joint rules are proposed on the part of one House and are accepted upon the part of the other House. Each House must concur in adopting them. There is concurrence in the adoption of these rules for the purpose of regulating the intercommunication between the two Houses. I put it to anybody, if each House must concur in the adoption of these rules, if in the nature of Congress and the relation between these two Houses these rules are essential, and if they must be concurred in on the part of both Houses, can it be pretended for one moment that either House can withdraw its assent at pleasure or without the concurrence of the other House? It seems to me that such a proposition is absurd. It involves a destruction of the honor, the faith, and the virtue of each House, it seems to me. These rules stand upon a very different ground from the rules of each House taken separately. Those latter rules are framed under the express provision of the Constitution. The power to frame the joint rules exists in the Constitution by necessary implication; and when that power is exercised they have the same force and effect and are binding to the same extent upon each House as the rules of the two Houses respectively are binding upon each of them separately. If it were otherwise all confidence, all courtesy between the two Houses would be abrogated, destroyed, and we should be in a state of conflict and utter confusion. It would destroy the purpose for which the Congress was created, and nothing could be done except at the whim and caprice of one body or the other. There would be no permanent order or regularity. What would be the effect? Suppose to-day when the Clerk of the House shall come to the bar of the Senate with a message some Senator shall object, the message cannot be received unless a special resolution or order shall be passed for that purpose; and when the messenger from the Senate shall go down to the House with a message, there the messenger cannot be received unless there is a special order or resolution to that effect or some action of that sort shall be taken. Such a course as that in my judgment would involve a failure to exercise a plain implied power in the Constitution and would contravene all the laws of parliamentary bodies in all civilized countries.

I say, then, that this power exists by necessary implication, that it appears from the nature of our Congress and of the two Houses composing it, and because of the necessity for intercommunication between them, and that each branch of Congress, without any express provision, has the constitutional power and the right to adopt joint rules, and because they are adopted by the concurrence of both Houses, neither House can withdraw its assent to them without the concurrence of the other. The faith, the honor, the interest of each are pledged to the other for the observance of them, until by their concurrent action they shall be abolished.

But, sir, I know that it is said further that, if this be conceded, if all that I have contended for be admitted and these rules have existed as I have stated, yet they are not binding upon the various Congresses that assemble from time to time, until they shall be adopted by each succeeding Congress; and that is said because in the other branch of Congress its organization is divided into what are for convenience called Congresses. It is said that the House is not a perpetual body like the Senate, that it exists for two years, and then another House comes in, a different body entirely, and the Congresses are numbered consecutively beginning at number one and going on until now we are in the Forty-fourth Congress, and it is insisted further that an engagement of the kind I have described, denominated joint rules, with the Forty-third Congress is not an engagement with the Forty-fourth Congress, that these joint rules when adopted by one Congress are only binding while that Congress lasts, and that before they can have any binding effect on a subsequent Congress they must have the sanction of that subsequent Congress, must, in other words, be re-adopted. It is insisted that at the beginning of the late session of the Forty-fourth Congress there were no joint rules, that there could not be any, that there are none to-day, because since the beginning of the present Congress the House did not propose on its part to the Senate the adoption of the joint rules that have governed the Congresses in the past and the Senate have not adopted any that have been con-

curred in by the House, and therefore we are without them. I think this is a false view; it might indeed in some contingency be a fatal view of this subject. The Senate is a perpetual body. It exists without intermission of time, and it exists perpetually in contemplation of law. The House exists, in my judgment, in the same way. Can anybody doubt that the Congress, itself a co-ordinate branch of the Government, is a perpetual artificial body, that the Congress of the United States to-day is the same in the contemplation of law as it was the first day that the Constitution went into operation, that it always exists in contemplation of law, and that it may always be assembled under the Constitution for proper purposes? I take it not. In the very nature of things it is so. It is an artificial being intended to have this perpetual nature and this continuous existence without intermission. It is so with the House of Representatives, and it is more plainly so with the Senate because the Senate is never without an organization, while the House is at some times without an organization. Every two years it is without an organization for some months. But because it is without an organization it does not follow that the House of Representatives is not in existence. There is never a moment when it is not in existence; there is never a moment when it does not continue to exist; there is never a moment when it may not be assembled. That is not only so with our system of government but it is so with every other system of government, and this is one of the natural elements of government; every legislative body has a similar existence in this respect.

But it is said in reply to that that the practice has been to recognize the House of Representatives otherwise, and that practice has a great deal to do with this question of parliamentary rule. I concede the last fact and I insist upon it and shall bring it more in point after a while. The practice of the House has been at the beginning of each succeeding Congress to adopt new rules, or rather to adopt the rules of the preceding Congress. Although that is the practice it does not follow that it was necessary to do so. It seems to me—I can see no reason to the contrary, and I should be glad to be informed if there were or can be any reason to the contrary—that the rules adopted by the First Congress might well have been binding on the Second Congress and the Third Congress, and so on all the way down to the Forty-fourth Congress. That is the ordinary parliamentary rule; the parliamentary rule in England is that the rules of a preceding house bind a subsequent house. The rule—the practice—with us as to the House of Representatives is different. It seems to me that it would have been well if the rule that prevails in Parliament of England had prevailed in our House of Representatives. I see no reason why it might not have been done so; but still the practice was as I have stated until in 1868, I believe it was, when a rule was adopted providing in terms that the rules then existing should be binding upon all subsequent Houses until the rules should be modified or changed or abolished by the House of Representatives. That rule received the solemn sanction of the House, thereby indicating the opinion of the House of Representatives at that time that it was competent to make a rule of the House, adopted for its separate government, binding upon subsequent Congresses. I do not doubt that such power exists; there is nothing in the Constitution that forbids it, and general parliamentary usage sanctions such practice.

But, Mr. President, the joint rules stand upon entirely different ground. These joint rules have the sanction of the implied power in the Constitution which I have adverted to. They have not only that, but, inasmuch as it is an implied power, not limited by express terms, the exercise of it is governed in great measure by the ordinary parliamentary law affecting joint rules governing legislative bodies. The ordinary parliamentary law applies to and limits the exercise of this implied power to the making of all needful rules and regulations touching intercommunication between the two Houses of Congress. Now, what is the ordinary parliamentary law on this subject? The ordinary parliamentary law, unrestrained by any provision in our Constitution, is that the standing orders and rules of a preceding Parliament or a preceding session of Parliament bind the subsequent Parliament or session; and I beg to cite one or two authorities on this subject.

In the British Parliament—

I read now from Cushing on the Law and Practice of Legislative Assemblies, section 248—

> In the British Parliament, according to the ancient and invariable usage of the two houses, as evidenced by their rules, three is the number necessary to constitute a quorum of the Lords and forty a quorum of the Commons. These numbers, respectively, although established by and dependent upon usage merely, and within the power of each house to abrogate or change at any time, have nevertheless the force of standing orders, that is, they are equally binding upon every succeeding Parliament until abrogated, and do not require to be specially adopted in order to be in force.

Mr. EDMUNDS. Now will the Senator read note 4 to the same paragraph?

Mr. MERRIMON. I will read another section, and then I will pay attention to my friend. I now read section 497 of the same work:

> In Parliament it is customary for both branches, at the commencement of each session, to agree to or adopt certain orders, which have been found necessary in the transaction of business, and which last during the session only. These orders are very nearly or quite the same from one session to another. The sessional orders, which are some of them merely in affirmance of the common parliamentary law, have but very little to do with the ordinary proceedings of the house; which are governed and regulated, for the most part—

Now I read the material part of this section to the purpose I have in view—

> by a system of procedure which constitutes the law of the house, without any previous adoption or sanction by the house itself. This system consists, in part, of customs and usages, which have been handed down in the practice of both houses, from time to immemorial, and, in part, of positive regulations, which have been made, from time to time, by the two houses, respectively, and declared to be standing orders, and which consequently are binding upon every succeeding house, by the law and custom of Parliament, until they are vacated or rescinded. The consequence is, that each house of Parliament, as soon as it assembles, is provided with a code of rules for the government and regulation of its proceedings.

Mr. EDMUNDS. Now will the Senator read section 498 bearing on the one he has just read?

Mr. MERRIMON. It is not material to my argument and will come more properly from my friend on the other side, but to gratify him I will read it and then comment upon it as I might have to do after he should have read it.

Mr. EDMUNDS. I wish the Senator, however, would read note 4 to the first section he read.

Mr. MERRIMON. I know the point at which the Senator is aiming, and I intend to comment upon it. I shall evade nothing. I want to get at the truth.

Mr. EDMUNDS. But I submit to my honorable friend that if he is reading an authority he should not read half the lines and then stop.

Mr. MERRIMON. No, sir; I have read the whole section.

Mr. EDMUNDS. The Senator has read section 497. Section 498 is really a part of it.

Mr. MERRIMON. I am going for your gratification, now, to read section 498, and going to comment on it.

Mr. EDMUNDS. But I ask the Senator to read note 4 to the first section which he read, which is referred to as the author's part of the section, and then I ask him to read section 498 so that Senators can see the whole of what the author says upon the subject and not half of it.

Mr. MERRIMON. I will read for the Senator's gratification what he says and then make my comments upon it. I do not think he will be able to throw me off my line of argument.

Mr. EDMUNDS. Certainly I do not wish to do that. I hope the Senator does not think I wish to disturb him.

Mr. MERRIMON. It will suit me to make comments on it now, as I might have to do it at another time. I read now the note to which the Senator refers:

> By the system of standing orders, which is in use in England, it is in the power of the House of Commons, at any time, by simply declaring one of its orders a standing order, to make it binding on or in force in a succeeding House of Commons, as much as if it was an order of that house itself. This system does not prevail in this country. It is not in the power of a legislative assembly here to make any rules to bind its successors. That can only be done by constitutional provision or by law. Each assembly indeed usually adopts the rules and orders of its predecessors, in express terms, and until this is done they are not in force at all. There is an interval, therefore, of more or less duration, at the commencement of each assembly in this country, when the only rules in force in it are those of the common parliamentary law.

That is the note. Now I will read the other section the Senator desired me to read.

> But in this country every one of the constitutions—

That is material now to my purpose, and I beg every one to remember it—

> But in this country every one of the constitutions contains a provision that each legislative assembly thereby established may determine the rules of its proceeding. Hence, probably, in consequence of this constitutional provision, the system of standing orders has never been established in this country; and no legislative assembly is here governed or its proceedings regulated by any other rules and orders than those to which it gives its own consent. One of the proceedings, therefore, which take place at the commencement of the first session of legislative bodies in this country is the adoption of rules and orders for the regulation of its proceedings; and as this adoption of rules would expire with the session, unless otherwise specified, it would require to be renewed at the commencement of each succeeding session.

Now is there any other section that the honorable Senator wishes me to read?

Mr. EDMUNDS. Certainly not. I only asked my friend to read those remarks that were in connection with those that he was reading and as a part of what the author was treating on that particular point. There are other sections to which I may call attention by and by.

Mr. MERRIMON. I believe it is usual to allow each Senator to conduct his own argument according to his own notions of propriety.

Mr. EDMUNDS. Certainly, and I hope the Senator did not suppose that I did not intend to let him do what he pleased. I only asked him, according to the custom of the Senate, to do a particular thing. He was not bound to do it, I admit.

Mr. MERRIMON. It does not put me out of the way; it gives me an opportunity to comment on these clauses which, I take it, the Senator himself would have read by and by. It is material to consider that the note and the last section I read are founded entirely on constitutional provisions in this country. The power that I contend for is a constitutional provision existing by implication, necessary implication, and unlimited, and it is a power that is governed by the ordinary parliamentary law, and therefore these two sections do not apply.

I have shown, and I think it must be admitted by every reason-

able man, that some means of intercommunication between the two branches of Congress is absolutely essential. We should have anarchy in Congress without it. Further, the power to make these rules exists by implication, and that power, as there is no express provision of the Constitution, is not governed like the powers exercised by the two Houses here separately and by the respective houses in the Legislatures of the several States under constitutional limitation. It is an implied power that is limited and governed by the general parliamentary law and governed by that only. Then what is the ordinary parliamentary law? It is that which I have called attention to. It is that the standing orders or rules of a parliamentary body are binding upon subsequent sessions, binding upon subsequent parliaments, binding upon Congress—all succeeding Congresses—from the beginning of the Government down to this day, without re-adoption at any time. The constitutional barrier is not interposed here as to joint rules and it cannot be, because there is no express provision in the Constitution defining it and limiting it. The power is an implied power and it is limited only by the general parliamentary law, as I have said, and that general parliamentary law is this: that wherever there are rules, whether for the government of one branch of a legislative body or another or whether they be joint rules for the government of both bodies, these rules are as binding upon subsequent sessions and upon subsequent Congresses and subsequent Parliaments as they were upon the Parliament or the Congress that adopted them until they shall be modified or abolished. That is the ground I occupy, and it seems to me that it is entirely consistent with reason.

I said a moment ago that practice had a great deal to do with this subject, and I invoke practice in support of the view that I have been submitting. What has been the practice in Congress on this subject? Let us see. Most of these joint rules came into existence shortly after the Constitution and the Government went into operation, three-fourths of them at least, and they have been acted upon by Congress from that day to this without intermission or question that they were binding on all subsequent Congresses. There never has been a time since the beginning of the Government when they did not exist and were not in force and acted under, and there was never a time until the late session of Congress when either branch of Congress deemed it necessary at all to re-adopt them or supposed they were not in existence and binding. That is the fact; that is the history of this matter; and if anybody can show to the contrary I will thank him to do so. This practice, ancient in its character in this country, must have great force in determining the question under discussion, and I take it that this practice, which has been tolerated, shows that, whether the view that I have submitted here of the power that authorized it was directly in the eye of Congress or not, it rests upon that power. It rests upon the grounds of this implied power, and this continuous practice has been governed by the ordinary parliamentary law which makes these rules as binding upon the present Congress as they were upon the first Congress that adopted them; and there is no escape, it seems to me, from that conclusion.

Not only have these joint rules existed and been binding on subsequent Congresses without re-adoption or re-affirmation in any way, but whenever questions have been raised involving their validity, sometimes under circumstances of great excitement, both branches of Congress have held that they were binding on both Houses, without any re-affirmation; and now I want to call attention to the rulings on that subject. There have been various rulings on this question which it is interesting to refer to at this moment. I refer now to the proceeding that was had in Congress in the Senate on December 8, 1870, which will be found in the Congressional Globe, part 1, third session, Forty-first Congress. A question on the order of business was before the Senate, and these among other proceedings were had; I read from the Globe:

Mr. ABBOTT. Is it proper to make a report from a committee?

The VICE-PRESIDENT. The Chair does not call for reports of committees yet; but if there is a committee in existence, of course it can make a report.

Mr. ABBOTT. I desire to make a report to accompany Senate bill No. 717.

The VICE-PRESIDENT. From what committee?

Mr. ABBOTT. The Committee on Military Affairs.

The VICE-PRESIDENT. That cannot be done. There is no Committee on Military Affairs now in existence. There is one committee in existence, the Committee to Audit and Control the Contingent Expenses of the Senate, and the Chair does not remember any other.

Mr. DRAKE. Mr. President, am I correct in understanding the ruling of the Chair the other day to be that it is not competent, even by unanimous consent, to take up a bill pending before the Senate during the first six days of the session?

Mr. POMEROY. We can do anything by unanimous consent.

Mr. DRAKE. We cannot violate a joint rule by unanimous consent.

The VICE-PRESIDENT. The Chair thinks a joint rule cannot be violated by unanimous consent.

Mr. DRAKE. The question I ask, sir, is whether it is now in order, by unanimous consent, to take up a bill?

The VICE-PRESIDENT. By the ruling of the predecessors of the present occupant of the chair it would not be in order. They have ruled that by the joint rule adopted by the two Houses this cannot be done during the first six days of any session of a Congress subsequent to the first; and being a joint rule, it can only be dispensed with as the sixteenth and seventeenth joint rules are at the close of the session, by the consent of both Houses. But the Chair stated before that he had examined the record for some years back and found that at almost every session this rule had been waived, apparently by unanimous consent; motions made to take up bills, no dissent made, no ruling required, and they have been entertained.

Mr. DRAKE. I would inquire, then, sir, of the Chair how it was that a bill was passed just now from the Committee on Contingent Expenses?

The VICE-PRESIDENT. That does not come within the rule. The rule applies to business from a preceding session, not to original bills introduced at this session. It therefore gives original bills a priority over bills of a previous session during these six days. They can be introduced and acted on.

Mr. DRAKE. I would inquire of the Chair further, whether the rule found by the Chair applies to Senate bills pending here from the last session as well as to bills from the House of Representatives?

The VICE-PRESIDENT. It applies to bills of each House; and the ruling made on the two occasions to which the Chair has already referred was in regard to Senate bills, prohibiting action on Senate bills that remained over.

That is the first ruling on the subject to which I direct attention. I wish now to refer to a ruling on the same subject on another very interesting occasion. It was February 12, 1873, on the occasion of the counting of the electoral votes for President and Vice-President. The proceedings I refer to were as follows:

Mr. TRUMBULL. I object to this debate—

Some one had offered a statute which he wanted read on the occasion of counting the electoral votes:

Mr. TRUMBULL. I object to this debate. If the statute cannot be read, certainly Senators should not be allowed to indulge in debate.

The VICE-PRESIDENT. The Senator from Illinois insists on the enforcement of the rule. The Chair has ruled that this is in the nature of debate. The Secretary has read the official paper from Arkansas, and attempted to describe the seal—

Mr. CONKLING. I beg pardon of the Chair if I interrupt him.

The VICE-PRESIDENT. Not at all.

Mr. CONKLING. My purpose is to ask unanimous consent that we may hear the statute read, if there be a statute bearing on the subject.

The VICE-PRESIDENT. The Senator from Rhode Island objected.

Mr. ANTHONY. I withdraw the objection; but I ask the Chair if the Senate, by unanimous consent, can dispense with a joint rule of the two Houses of Congress? I make no objection, however.

The VICE-PRESIDENT. The Senate, by unanimous consent, cannot dispense with a joint rule; and if there is no protest against a statute being read, that not being language spoken by any Senator, the Chair himself would not check the reading of that statute; but he would if any Senator commented on it, which would be in the nature of debate. The Chair does not know where the statute is; but if no Senator objects, the statute will be reported. [A pause.] It does not appear to be in the Chamber.

Now I want to cite the opinion of the Senator from Vermont himself on this very subject. [Examining a Globe.] I had it marked here if I have not lost it.

Mr. EDMUNDS. I can give it to the Senator again if he would like to have it. [Laughter.]

Mr. MERRIMON. I may have to avail myself of your courtesy, sir. [Laughter.] I will thank the Senator to look at the page.

Mr. EDMUNDS. I do not think I can refer to it in a moment, because I am not in the habit of reading my own speeches very often.

Mr. MERRIMON. It would be better if the Senator would read them more often.

Mr. EDMUNDS. I dare say. I should learn more than I should by reading others, I admit.

Mr. MERRIMON. I think I can turn to it now without difficulty.

Mr. EDMUNDS. I do not happen to have the index of the volume before me.

Mr. MERRIMON. I have it now, and will read what the Senator said:

Mr. EDMUNDS. I was about to say that the rule of the Senate last read, which speaks generally of taking up business at subsequent sessions, was understood by the Committee on Rules, as I think it must be by the Senate, to be in perfect harmony with the *joint rule, over which, of course, we have no control.* One provides generally for what shall be done at a session; the other provides at what particular period in the session, when it arrives, a particular class of business shall be acted upon; so that both rules stand in harmony.

I have cited these proceedings, important as they are, for the purpose of showing, in the first place, that each House has not control over the joint rules at its will and pleasure as was contended here during the last session. A joint rule cannot be determined by one branch of Congress without the consent of the other branch for reasons that I have already submitted. And then I insist that these joint rules are in force to-day as much as they were at the first Congress when they were adopted; that by the general parliamentary law, there being no constitutional provision except the implied power I have contended for, existing rules that governed preceding Congresses are binding on subsequent Congresses. I have supported that position further by calling the attention of the Senate to the fact that these joint rules, or most of them, are almost coeval with the Government; that they existed from the beginning of the Government down to this time and have been practiced under by every subsequent Congress. They never were questioned, they never were re-adopted, and never was it suggested that it was necessary to re-adopt them until the last session.

Mr. MORTON. I desire to ask the Senator, with his permission, if all he has read does not go simply to this point, that while a joint rule is accepted as being the rule and in force the Senate cannot by unanimous consent dispense with it in a particular case? That is a very different thing from abrogating a rule. While it is acknowledged to be a rule it must be applied to all cases, and we cannot by general consent dispense with it in a particular case. But that does not at all go to the point that the rule may be abrogated or declared not to exist. While we accept the rule as being in existence we cannot dispense with it in a particular case, because that makes it no rule at all. To abrogate a rule or to say it is not a rule at all is one thing; but to admit it to be a rule and to propose to dispense with it in a particular case is a very different thing. That is all it goes to.

Mr. MERRIMON. I am glad that the Senator has interrupted me. Let us see now what that proposition leads to. What is a joint rule? It is a rule proposed by one House to the other and concurred in by

both. It is a solemn and essential engagement, which has the sanction of the Constitution in the way I have described and it is done by an implied power, one that is essential to the free and convenient operation of Congress in the exercise of all its powers. The Senate proposes to the House a joint rule; the House agrees to it. Then I say by no rule of reason, no rule of honor, no rule of virtue, no rule of sound policy, can either party be relieved from that contract without the consent of the other. It seems to me that it would be the basest dishonor to insist upon such a view as that. Sir, these joint rules are no more nor less than a solemn engagement by both Houses to do certain things, and binding upon the consciences and honor of both. If anybody can show the contrary I should be glad to have him do it. These joint rules are no more nor less than a contract, an engagement between the two Houses that has the sanction of the Constitution in the way I have undertaken to describe.

Mr. EDMUNDS. How can the Senator prove that? He says he should like somebody to prove the contrary. That may be a good way to establish an affirmative proposition by saying "I say a thing is not so; and now if anybody can prove that it is so, I should like to have him do it."

Mr. MERRIMON. A proposition agreed to by A and B, made on the part of A and accepted by B, is binding; it requires the concurrence of both parties; but the Senator seems to contend for the doctrine that A can recede from it at will without the concurrence of B. I have not heard of such justice in this world before.

Mr. EDMUNDS. I have not contended for anything of the kind. What I ask the Senator to prove is not his logic, but his premises. He says a joint rule is a contract. I should like to have him show that.

Mr. MERRIMON. It is not a contract in the technical sense, but an engagement between the two branches of Congress.

Mr. EDMUNDS. I should like to see my friend prove that, if he can.

Mr. MERRIMON. It is a proposition by the one accepted by the other; and each spreads it upon its book of rules, and here all the joint rules are spread out upon our book of rules the same as upon the book of rules of the House. There is not only this solemn engagement, as the record of the journals and debates here show, but here in the proper, legal, logical form is the immemorial evidence of this engagement; it exists and has existed from the foundation of the Government until now, and yet it is contended that one House can recede from this engagement, honorably, virtuously, and honestly; that one party can recede from it without the consent of the other. I do not believe in any such doctrine. It certainly cannot receive the sanction of justice; it is rank injustice; and it seems to me it would be rank dishonor for either branch of Congress to exercise such a power. It has the physical power to do it. Either branch has the physical power to do it, but it has no right to do it. That is the view I take of the whole matter.

Mr. President, if I have made myself understood, the case I have made is this: By the practice of each House of Congress with the sanction of the Constitution, each House makes its own rules determinable at the will of each. By the practice of the House of Representatives its rules last only from Congress to Congress, and in each subsequent Congress the practice has been to re-adopt the rules of the House; but I apprehend I think I have shown that it was competent for the lower branch of Congress to adopt another practice, which probably would have been sounder, and I have called attention to the fact that the House of Representatives passed an order at one time that the rules should be binding on subsequent Congresses. I have endeavored to show further that the joint rules stand on entirely different ground and that they are not governed by this provision of the Constitution upon which I have commented, to-wit, that "each House may determine the rules of its proceedings," but that they are authorized by an implied power which is limited by the general parliamentary law.

I have shown that the very nature of Congress requires that there shall be intercommunication between the two branches; that business between the two branches cannot be conducted unless there is some regulated mode of doing it; that the power is therefore necessarily implied to make joint rules or joint orders for such regulation, the conduct of business, between the two Houses; that joint rules were adopted at the beginning of the Government; that they have existed from that day to this, and Congress has used them, every Congress until the present Congress recognizing them all the time as binding and having every binding provision that was necessary to facilitate the purpose of intercommunication between the two Houses. They have existed without intermission, and they have always been recognized as binding, and they vest upon the implied power in the Constitution, governed only by the general parliamentary law which is in effect that the general standing rules and orders bind not only the Parliament which adopts them, but bind all subsequent Parliaments and Congresses until they shall be abolished, not by one branch, but by the concurrence of both branches. These rules have never been abolished by the concurrence of both branches. The Senate did not purport to abolish them at all at the last session; it simply proposed, with the concurrence of the House, to re-adopt them—a superfluous work. It was not necessary that it should be done. And therefore I insist that the joint rules are in full force today, and that we are as much bound by them as the Congress has ever been at any past period of the Government.

I want to repeat a word as to myself before I take my seat. I did concur in the report from the Committee on Rules at the last session. I did not give the matter serious consideration in committee, deferring greatly to the large experience of the other members. When the discussion took place it was a very interesting one. I was very much impressed with the able arguments delivered by the Senator from New York and the Senator from Ohio, and since that time I have given the subject serious reflection and I do not now entertain the slightest doubt that the position I occupy is the true and lawful one.

Mr. JOHNSTON. Mr. President, at the last session the twenty-second joint rule, the one under which the votes for President and Vice-President of the United States have been counted by Congress, was under consideration, and this House took action in regard to it. This House decided that it, so far as it could do so, would rescind that joint rule. At the same time that they took this action this House proceeded to re-enact or to re-affirm the other joint rules of the two bodies, and notified the House of Representatives of that fact. The other House referred the action of the Senate to a committee, but no report was made upon it and no action taken by the House. At the close of the session in the House the usual action was taken, suspending for the time being the sixteenth and seventeenth joint rules. A message was sent to the Senate by the House notifying the Senate that the sixteenth and seventeenth joint rules had been suspended for the remainder of the session; and to that message from the House the Senate, on motion of the Senator from Vermont, replied that there were no joint rules in force. That is the attitude of the case.

Now, Mr. President, the question arises whether there are any joint rules in force. Without undertaking to go into the legal or constitutional merits of this question, I desire to say only a few words in regard to the practical operation of the matter. I insist that, although at the beginning of the last session of the Senate it was claimed that the joint rules were not in force, yet the Senate and House both acted every day of the session, and many times every day of the session, under the joint rules, and that the business of Congress could not be carried on for one day without the joint rules. Let me illustrate that now, sir, by reference to the joint rules, and to what was done during the whole of the last session and what has been done during this session up to this time, and what was just a few moments ago done in receiving a message from the other House. The first joint rule is in regard to conferences; it provides:

> In every case of an amendment of a bill agreed to in one House and dissented to in the other, if either House shall request a conference, and appoint a committee for that purpose, and the other House shall also appoint a committee to confer, such committee shall, at a convenient hour, to be agreed on by their chairmen, meet in the conference chamber, and state to each other, verbally or in writing, as either shall choose, the reasons of their respective Houses for and against the amendment, and confer freely thereon.

During the last session of this Congress there were more committees of conference appointed, I suppose, than there ever had been in the whole history of the Government. There was no authority to appoint any committee of conference except that joint rule.

Mr. EDMUNDS. Is there not a general parliamentary law that provides for committees of conference?

Mr. JOHNSTON. I do not know if there is any such.

Mr. EDMUNDS. The Senator ought to know that there is.

Mr. JOHNSTON. Perhaps that may be so, but I took it for granted that we were acting under this joint rule. We could not appoint a committee of conference except under it or the general parliamentary law.

The second joint rule provides for the sending of messages, for communicating from one House to the other. Without this joint rule, by what authority would you have a right to receive a message from the other House? You do it simply because you have a joint rule providing for transmitting messages from House to House.

Mr. EDMUNDS. May I ask the Senator a question?

Mr. JOHNSTON. Yes, sir.

Mr. EDMUNDS. I suppose when the Constitution of 1787 was adopted and we had the first Senate, the Senators must have been sworn in and taken their seats before they made any joint rules. I should like to ask the Senator how he supposes the two Houses communicated on the first day of their meeting?

Mr. JOHNSTON. That was the organization of the Government, and I suppose some means were taken for organization.

Mr. EDMUNDS. Does the Senator think it was unconstitutional?

Mr. JOHNSTON. Every government has to be started by some means or other, by some special order.

Mr. EDMUNDS. Cannot the government that starts keep going by the same means?

Mr. JOHNSTON. I think not. I think, after the government is regularly organized and put into operation by legitimate means, then its branches proceed to adopt rules for their future government, guidance, and direction. The means adopted after the Government was started and went into operation was the establishment of joint rules. The bulk of the joint rules were adopted in the year 1789. The first joint rule, in regard to committees of conference, was adopted on the 15th of April, 1789, and has been practiced under from that day to this. When the government is originated and organized of course there must be some power to put it into operation, but once organized then it provides the means for carrying itself on, and the means provided in the beginning for the mere starting of the machinery of the government are discharged when the government gets fairly

under way and then new means are adopted, other means; and whatever might have been the original way in which the two Houses of Congress when they first assembled under the Constitution proceeded, it was not intended to regulate the subsequent action of the bodies, but was only intended to put the Government into operation. They then proceeded to provide for the carrying on of the Government and for intercourse between the two bodies. Here is this first joint rule, in regard to committees of conference, adopted on the 15th of April, 1789, which has been in force ever since and acted upon at every session of Congress from that day to the present time and acted upon to the very last hour of the last session of Congress. The same is the case in regard to the transmitting of messages. We transmit messages from House to House and do it under the joint rules. Why, only a few moments ago this very day a message was received from the House. By what authority was that received unless it was under authority of the joint rules? We could not carry on business for one day without these joint rules, we could not transmit a message to the House, we could not receive a message from the House, we could not have a conference committee without them.

Mr. MORTON. I ask the Senator if a conference committee requires a joint rule to authorize it? The Senate appoints a committee to confer with a like committee on the part of the House. That requires no joint rule if the House responds to it. Suppose the Senate appoints a committee to confer with the merchants of New York in regard to a particular matter in which that city is interested, does that require a joint rule? The sending of messages from one House to the other requires no joint rule.

Mr. JOHNSTON. These two Houses are regulated either by their respective rules or by the joint rules of the two bodies. They have no other guide of action except their separate, distinct rules and the joint rules. The Senate has rules which regulate its action; the House of Representatives has rules which regulate its action; and the joint rules regulate the joint action of the two Houses and the joint intercourse of the two bodies. Neither House can do anything except under its own rules or the joint rules. They were passed for the purpose of regulating and controlling the action of each body and the action of the two bodies. That has been the course practiced from the beginning of the Government to the present time, and there has been no other practice. It has not been under parliamentary law. We have not appointed conference committees under the parliamentary law; we have appointed them under the joint rule adopted in 1789 and in force to this day, and upon no other rule. I do not believe that without the adoption of some rule the House could habitually receive messages from the Senate and the Senate messages from the House, as we do every day of the session.

We have a standing rule of the Senate providing for the appointment of certain standing committees. The joint rule provides for the appointment of certain other committees. One of the committees provided for by the joint rules is a Committee of Engrossed Bills and another is a Committee on Enrolled Bills, and a joint rule provides for the examination of enrolled bills and another for signing enrolled bills by the presiding officer. Another joint rule is for the presentation of enrolled bills to the President. Each and every one of these things is done by virtue of a joint rule, and not of a standing rule of the Senate. Here we have committees appointed: we have a certain number of committees which are provided for by the rules of the Senate. The Senate, of course, have the right to appoint them and have appointed them; but at this very session we have appointed committees that have no existence under the rules of the Senate, and only under the joint rules. We have appointed a Committee on Engrossed Bills.

Mr. EDMUNDS. May I ask the Senator if we did not, and with his concurrence, appoint all those committees by unanimous resolution adopted by the Senate, defining their powers and providing that they should be created?

Mr. JOHNSTON. Just as you always have done.

Mr. EDMUNDS. I beg the Senator's pardon, just as we never have done while acting under what you call joint rules.

Mr. JOHNSTON. I ask the Senator by what right we appointed a joint committee by the unanimous consent of this body.

Mr. EDMUNDS. We do not appoint a joint committee by unanimous consent of this body; and we never have appointed a joint committee and probably never shall.

Mr. JOHNSTON. Where do you find authority for appointing a Committee on the Library except under one of the joint rules?

Mr. EDMUNDS. We have a right to appoit a Committee on the Library and have a right to appoint a committee on the moon, if we like.

Mr. JOHNSTON. There has been from time immemorial a Joint Committee on the Library, existing by the joint rules of the two Houses, and we have appointed that same committee at this very session, exactly as we had done on previous occasions.

Mr. SARGENT. If the Senator will look at the order made he will find that it was not the same as that made on previous occasions. He will find that, recognizing the fact that there was no joint rule, the Senate by its resolution provided for a Committee on the Library, which when appointed should have the power to act concurrently with the committee of the House in certain matters which, before that time, came within the province of the joint committee.

Mr. SAULSBURY. I ask the Senator from California whether the Committee on the Library was not appointed at the last session in a different mode and whether it did not continue in existence until the present session of Congress, expending the money appropriated by Congress; and, if the joint rules were not in existence at that time, whether there was any authority in the Committee on the Library to have expended one dollar whatever?

Mr. SARGENT. There may have been no authority or they may have exceeded any authority which they did have. That question I am not to decide upon. I simply say that the Senate without dissent at this session has recognized the non-existence of the joint rule in reference to the Committee on the Library, and has passed a resolution of the Senate to cover that point.

Mr. MERRIMON. I beg to make this remark: The very provision incorporated into the order adopting the report of the committee on committees shows the importance of joint rules, indeed the absolute necessity of them; for if there are no joint rules there can be no communication between the two Houses except by a special order in every case, and then it depends on the whim of either branch of Congress whether that special order will be recognized. The House is not bound by any obligation to recognize the appointment of the Senate branch of that joint committee if we have no joint rules.

Mr. SARGENT. Mr. President——

Mr. JOHNSTON. I believe I have the floor.

The PRESIDENT *pro tempore*. Does the Senator from Virginia yield to the Senator from California?

Mr. JOHNSTON. Yes, sir.

Mr. SARGENT. Unquestionably it is an inconvenience to have no joint rules between the two Houses. I suppose no one will doubt that. The fact that it is inconvenient to have no joint rules does not of itself create joint rules. I should like to ask the Senator who speaks of an analogy between a contract made between private parties and joint rules, what party there is in existence to be bound by joint rules after Congress adjourns. Even if it were conceded that joint rules adopted at the commencement of a Congress would bind both sessions or any sessions of that Congress until its expiration unless both Houses assented to their being rescinded, I ask how, after that Congress has finally adjourned and there is no House of Representatives in existence and none meeting for months, any action of the previous House can bind the subsequent House, or how the Senate in spite of itself can be bound in favor of a House which has not yet assembled?

Mr. MERRIMON. I will answer the Senator with pleasure. Congress itself is an artificial body; each branch of Congress is an artificial body. The engagement embodied in the joint rules between the two Houses of Congress is not between A B and C D of the Senate, and E F and G H of the House. It is an engagement between the Senate on the one part in its corporate or artificial capacity, and the House of Representatives in its corporate or artificial capacity. These joint rules are binding upon each subsequent Congress, just as the by-laws of a corporation that are adopted by one board are binding upon another board which comes in after it. They are binding upon that creation that exists by virtue of the Constitution and in contemplation of the Constitution and laws.

Mr. SARGENT. Will the Senator then inform me what becomes of the qualification he makes that Congress shall have power to make joint rules, if the first Congress that assembled had power to make joint rules, and did make them, to bind every subsequent Congress, and neither House of any subsequent Congress has power to divest itself of them? What becomes of the continuing implication, which he says exists, that there is power to make joint rules?

Mr. MERRIMON. My friend inadvertently assigns me a position that I do not occupy. I said these joint rules, adopted at the first session of Congress, are binding upon every subsequent session of Congress and every subsequent Congress, until some Congress shall modify them, alter them, or abolish them; and I say that one branch of Congress cannot abolish or modify any of them without the concurrence of the other.

Mr. SARGENT. My friend, I think, still does not appreciate my point. The Constitution, from which this implication arises, provides that each House shall have the power to make rules for its own government, independent of the other House. That is the constitutional provision, and from that he implies the power to make joint rules. It is only by implication that the power can exist, as confessed by the Senator. Now, if each Congress has the power by the Constitution to make joint rules, then the Senate has the right at the commencement of Congress to decide that the rules which the previous Senate had it will not be bound by, and more especially it must be the case where there is no necessary connection between the members of the former House and those that are assembled, as is the case in the other branch at the opening of every Congress.

Mr. MERRIMON. If my friend had done me the honor to listen to my argument awhile ago he would not have made this point. The provision of the Constitution that each House may determine its own rules applies to the two Houses as separate bodies, and it applies only to those matters in which each House is absolutely independent of the other. That is the way that that provision of the Constitution applies, and it does not apply to the two Houses in their joint capacity and in the capacity in which they are interested in each other and in intercommunication. The implied power that I contend for, and that must exist of necessity, bears upon both of them;

it exists in the House and it exists in the Senate; and it is a power, regulated and limited only by the general parliamentary law, on the part of each House to contract or to engage with the other in the matter of regulation of their intercommunication. That is the way it acts.

Mr. DAVIS. I ask the Senator from Virginia to yield to me for a moment to make an inquiry.

Mr. JOHNSTON. I will.

Mr. DAVIS. I should be glad to have the attention of the Senator from Iowa, who reported the list of committees a day or two ago. I understand from the Senator from California that there was something unusual, something different from what had occurred heretofore, in the adoption of the resolutions in regard to the committees a day or two ago at this session. The Senator from Iowa and the Senate, I think, will recollect that I made the inquiry at the time of the adoption by unanimous consent of the report of the Senator from Iowa in regard to the committees, whether there was anything unusual or whether all was as usual in the appointment of the committees, and the answer was that there was nothing unusual. I understood from the Senator from Iowa that there was no unusual resolution accompanying the list of committees, but that they were appointed in the usual way.

Mr. WRIGHT. When I presented the resolution under which the committees were appointed for the present session of Congress, I remember the Senator from West Virginia asking me a question about it. I see that from what he says now I did not understand his inquiry. My understanding was that he asked whether there was any change or anything unusual in the mode of the appointment of committees. My answer was on that supposition; but when I made answer I did not understand the question as he puts it now. At the time the inquiry was made of me I was engaged in conversation with some person and my understanding of the inquiry was whether there was any change made, any departure from the ordinary manner of appointing committees, and my reply was in answer to that inquiry.

Mr. DAVIS. Then, Mr. President, there was a misunderstanding at the time of the question propounded by myself to my friend from Iowa. The question was intended to cover the ground whether or not there were unusual resolutions of any kind accompanying the appointment of the committee. The answer was, as has been indicated by the Senator himself, no, he having misunderstood my question. Now we find that there was a change from the usual way of appointing the committees, and it was done, of course, by the Senate under a misapprehension, and was not known at the time. I make this statement so that it may hereafter be referred to again by some Senators.

Mr. JOHNSTON. Mr. President, if it be true that there are no joint rules operative in Congress to regulate intercourse between the two Houses, this practical result would follow: If this body should desire to send a message to the other House it cannot be done under the rules as it has been previously done, but the matter would have specially to be brought to the attention of the body and action taken upon each separate message. If we want to communicate the fact that we have passed a bill, passed a resolution, or anything of that sort, then some Senator would have to rise in his place and make the motion that a committee be appointed or that a messenger be sent for that purpose in each and every special case.

Mr. EDMUNDS. If the Senator will look at the Journals of the Senate from the beginning of the Government he will see that, except stating that a member made the motion, the Senate in each case makes an order as to what person shall carry the message to the House.

Mr. JOHNSTON. It is done under a joint rule.

Mr. EDMUNDS. I beg the Senator's pardon, because the joint rules do not provide who shall carry a message.

Mr. JOHNSTON. But practice does.

Mr. EDMUNDS. The Senate orders in every case that the Secretary, or anybody else it chooses, shall take the message, and that order is entered every time as a matter of course.

Mr. JOHNSTON. One joint rule provides that—

Messages shall be sent by such persons as a sense of propriety in each House may determine to be proper.

Mr. EDMUNDS. Cannot that be done without a joint rule?

Mr. JOHNSTON. It has not been done without a joint rule. Congress has not thought so heretofore.

Mr. SARGENT. On page 553 of the Senate Journal of the last session I find the following:

Ordered, That the Secretary notify the House of Representatives thereof.

That is, notify the House of a resolution we had passed. In every case it seems that the Secretary or some other person is authorized to enter such an order.

Mr. JOHNSTON. That is done according to the practice existing under the joint rule as a matter of course. There has been no special order. Look at that Journal and you will find that no special motion was made to that effect, no special order submitted, but it was done under the general order of the two Houses according to the joint rules.

Mr. SARGENT. I will give the Senator a parallel case. Here is a large number of petitions found on page 332 of the same Journal followed by the words:

Ordered, That they be referred to the Committee on the District of Columbia.

No Senator moved that those petitions be so referred. In nine cases out of ten where a petition is referred the presiding officer says, it will be referred so and so. This order is then entered in the Journal as if ordered by a vote of the Senate. That is not done under a joint rule.

Mr. JOHNSTON. No, it is done under a standing rule.

Mr. SARGENT. It is exactly a parallel case.

Mr. JOHNSTON. It is done under a Senate rule, not under a joint rule; but I insist that it is impossible for Congress to go on one day in the absence of the joint rules; that we acted under them at the last session up to the last hour; that we have been acting under them at this session; and that we could not carry on the business of the Government without the joint rules. We have done things which we could only do by virtue of the joint rules, and having acted under them, having been guided by them, having regulated the Government by them, they cannot be disregarded.

Mr. EDMUNDS. Will the Senator be kind enough to state, if I do not too much interrupt him, what are the things which he thinks we have done that could not have been done without the joint rules?

Mr. JOHNSTON. I will state what we have done under those rules. We have appointed committees of conference and those committees of conference have made reports to the House and to the Senate, their reports have been adopted by the two Houses, and received the signature of the President, and become laws. That has been done under the joint rules of the two Houses.

Mr. EDMUNDS. But the statement of the Senator was that we had done things that could not have been done without the joint rules. What I ask him to do is for information to tell us specifically what those things are.

Mr. JOHNSTON. I mentioned one.

Mr. EDMUNDS. Very good; that is the kind.

Mr. JOHNSTON. I mentioned one thing that was done under the joint rules, and I venture to say that when the Senator agreed to appointing a committee of conference or acted on a conference he did not consider that it was done under general parliamentary law, but under the joint rules; and the bills on which conferences were thus had have passed and have become laws of the land. Practically, I insist that we could not get along without these joint rules.

Mr. MORTON. Mr. President, perhaps there is no legal proposition that can be started in favor of which an argument cannot be made. If there is a plain proposition to my mind, one perhaps plainer than another, it is that the twenty-second joint rule was nullified; that we have no joint rules of any kind except by the consent of each body; and that if that consent has been once given it may be withdrawn at any time. While a joint rule exists it is not competent, as shown probably by the Senator from North Carolina, to suspend it in a particular case that might suit the convenience of one House and continue it as to all other cases; but when a joint rule has been abrogated, then of course it is no longer to be regarded. Until formally abrogated, when it has once been made, both Houses are bound in good faith to observe it, not bound in law but simply bound in good faith. Joint rules are not laws. They are not submitted to the President; they are not enacted. They are in no sense laws, but they are mere methods of doing business between the two Houses, which are agreed upon for mutual convenience. That is all there is about them. Everything the Senator from Virginia mentioned we can do without joint rules. We can send and receive messages from one House to the other without a joint rule. We can appoint committees of conference to confer with the House, or with a committee on the part of the House, or with the merchants of New York, or with anybody, without a joint rule.

Mr. SAULSBURY. Will the Senator allow me to ask him a question?

Mr. MORTON. Yes, sir.

Mr. SAULSBURY. I agree to what the Senator has said, that we can do these things without any joint rule; but I wish to know whether any communication from this House to the other can be made except by a special order unless it is made under a joint rule of the two bodies?

Mr. EDMUNDS. But there is a special order in every case.

Mr. SAULSBURY. Could our Secretary be sent to the House of Representatives without being specially ordered to do so under any other rule than the joint rule on that subject?

Mr. MORTON. As the Senator from Vermont suggests, there is a special order in every case, and it need not be repeated every time. But aside from that, if that is the habit of the Clerk, and he does it by the consent of the Senate, it is the same thing precisely as if he was specially instructed in every case. It requires no concurrence upon the part of the other House for him to do that thing; and whether the Clerk does it by the consent of the Senate or whether he does it in pursuance of any specific rule makes no sort of difference. It does not require the concurrence of the other House or require a joint rule to enable him to do these things.

Mr. MERRIMON. But the Clerk cannot do it without a special order. Congress seeing the importance of it, one of the first things the first Congress did was to raise a Committee on Rules and a committee also on joint rules. The Congress met in March and on the 25th of April the joint rules were in operation.

Mr. MORTON. So far as joint rules are concerned, they are unknown to the Constitution. There is no provision for them. They are not laws, and they are not provided for by any provision of the Constitution. They simply spring up out of the condition of things

between the two Houses, and they are under the control of each House; that is to say, each House can withdraw from them at pleasure.

Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

At the end of every two years a Congress dies. The new House is as essentially new as if it had been the first House. It makes its own rules of proceeding. It is not bound by anything a former House has done. This has been the received construction ever since the foundation of the Government. When a new House is organized it adopts its rules of proceeding. It is not bound by any previous action of a former House. It begins *de novo*. The present House has done it, and every other House has exerted its power in that particular. Will it be pretended that the present House of Representatives is bound by joint rules made by a former House, and that it cannot get clear of them except by the consent of the Senate? No Senator has said that; and I make this direct proposition: is the present House of Representatives bound by a joint rule made by a former House unless the Senate consents to its repeal?

Mr. MERRIMON. I say yes.

Mr. MORTON. I submit to my friend that it is an after-thought.

Mr. MERRIMON. No, sir.

Mr. MORTON. It is an after-thought of my friend himself, as he admitted this morning. This whole pretext that the twenty-second joint rule and that the other joint rules are in operation is an after-thought. When the question was up here less than a year ago there was not a Senator who entertained any other opinion, and the roll was not even called when the resolution was adopted. I will read the resolution adopted by the Senate on the occasion to which I allude:

Resolved, That the joint rules of the Senate and House of Representatives in force at the close of the last session of Congress, excepting the twenty-second joint rule, be, and the same are hereby, adopted as the joint rules of the two Houses for the present session.

That resolution passed this body unanimously. There was no one to call for the yeas and nays. My friend from North Carolina voted for it, and he voted for it, as I understand him now, understandingly.

Mr. MERRIMON. No, sir; the Senator does me injustice and resorts to the lamest way to argue a question, an *ad hominem* argument. I, at the time, as I have explained twice this morning, concurred in the report of the committee with very little reflection and without examination, deferring to the larger experience of the other members of the committee. I have said before, this morning, that after the able arguments of the Senator from Ohio who sits on my right nearest me and of the Senator from New York my opinions at that time were very much changed, and I mentioned it to a member of the committee at that very moment and told him that my opinion had been shaken very much. Since that time I have given the subject more reflection.

Mr. MORTON. I think my friend does injustice to his reflection.

Mr. MERRIMON. I claim to have the manhood, when I change my opinion under such circumstances as these, to express it and to admit it.

Mr. MORTON. I do not do my friend such injustice. I said it was an after-thought, and my friend says that he changed his mind upon reflection.

Mr. MERRIMON. My friend talks about the twenty-second joint rule as though that were the only rule. I do not know that the twenty-second joint rule has more to do with this debate than any other joint rule. I entertain opinions about the twenty-second joint rule not material to be expressed now at all.

Mr. MORTON. My friend says the twenty-second joint rule has no more to do with this question than any other joint rule. I am inclined to think, or at least I had thought up to that moment, that it had all to do with it.

Mr. MERRIMON. The Senator is very much mistaken, as far as I am concerned.

Mr. MORTON. I thought that it was to preserve that rule in force that this argument was now made. My friend is earnest and sincere about it and I do not doubt for a moment that he entertained a different opinion last session when the vote was taken; and he himself will not deny it.

Mr. MERRIMON. Yes, I do deny it.

Mr. MORTON. But my friend voted for this resolution; there was no opposition to it.

Mr. MERRIMON. I did not vote for the resolution. I did not vote at all; and I went, as I repeat to you now, to a member of the committee and told him that my opinion had been very much changed upon the subject and that I was thinking seriously after the debate had progressed some time, and it was a very interesting one, whether I should not get up then and declare my dissent; but I did not feel any great interest in the matter, because I supposed the House would promptly concur and there would be no difficulty about it.

Mr. MORTON. According to my friend's present statement he was on the fence when the vote was taken; he was not on either side.

Mr. SAULSBURY. Will the Senator from Indiana allow me to correct an error into which he has perhaps inadvertently fallen? He says that in the discussion there was no expression of dissent from that view. I desire to call his attention to some remarks which I made on that occasion myself, found in the CONGRESSIONAL RECORD, page 435 of volume 4, part 1. I then used this language:

But I do not concur in the views expressed by the other Senator from Ohio [Mr. SHERMAN] that it is competent for this body to annul, at pleasure, any joint rule between the two Houses. The view which I take of these joint rules is that as they require the concurrent action of both Houses they partake of the nature of a statute, and that neither House may annul a joint rule without the concurrence of the body that helped enact it. I therefore do not believe that it is competent for the Senate of the United States to annul the twenty-second joint rule, nor do I believe that it is competent for the House, after its having been enacted or ordered by the concurrent action of both Houses, without the concurrent action of both Houses to render it null and void. This is the view I take of the joint rules.

So that the Senator from Indiana is mistaken when he says that no dissent whatever was made at that time.

Mr. MORTON. I did not recollect what my friend from Delaware said; but I will ask him if he voted against the resolution.

Mr. SAULSBURY. My vote is a matter of memory, and it may be supposed from my speech that I voted against it.

Mr. MORTON. The yeas and nays were not taken, and my recollection is that there was no one voting in the negative. The resolution was adopted by common consent. I know that my friend from North Carolina is so vigilant and that my friend from Delaware is so vigilant in regard to the performance of their duty that if they had thought we were taking an unconstitutional step, they would have called a halt.

Mr. SAULSBURY. I do not see how I could express myself more plainly than I did in the few sentences I uttered.

Mr. MORTON. My friend could have expressed himself more plainly by voting against the resolution if he thought it unauthorized. The resolution assumes precisely that we had the power and that we did thereby withhold our assent from the adoption of the twenty-second joint rule. I will read it again:

That the joint rules of the Senate and House of Representatives in force at the close of the last session of Congress, excepting the twenty-second joint rule, be, and the same are hereby, adopted as the joint rules of the two Houses at the present session.

Now I want to call attention to the remarks made by the colleague of the Senator from Delaware who has just taken his seat.

Mr. BAYARD. If my friend will allow me, he will find that my views do not change, and I will state, if he will permit me, my views now.

Mr. MORTON. I hope the Senator will wait until I get through. I shall finish in a few minutes, and he can have the floor.

Mr. BAYARD. I will say to the Senator that I have been waiting for an opportunity to state my views upon this subject.

Mr. MORTON. I will give the Senator the opportunity in a very few minutes. But the Senator from Delaware who has just taken his seat, expressed the law so very clearly at the last session in regard to this whole thing that I want to read what he said.

Mr. BAYARD. From what page?

Mr. MORTON. I read from page 517 of the RECORD of last session:

MR. BAYARD. As I stated in reply to the Senator from New York, I had nothing in contemplation in the way of interference or amendment with any of the existing joint rules of the two Houses except the twenty-second joint rule. As the question has been raised, it is of great importance that it should be properly settled. Gentlemen have differed on this floor in regard to the power of each House over the joint rules. A very ingenious and able presentation of the subject was made by the Senator from Ohio who sits near me, [Mr. THURMAN,] claiming that the House of Representatives was a continuing body, and that there was needed no adoption at the incoming of each new Congress of either the separate or the joint rules governing the preceding House. Having heard him and considered his point, I entirely dissent from his view. I believe that the House of Representatives is not a continuing body, and that, indeed, it is not only separate but that each House has its operative legal existence and would be without any rules until it has adopted the parliamentary rules of the preceding House, as is usually done. The proposition has been made here that, this being a joint rule, made by two contracting parties, neither can at will retire from the rule. That is a very grave subject. Gentlemen on this floor have admitted such a view, and declared that it required a joint consent to the rescission of a rule as much as to its formation; but from that proposition I entirely dissent. I cannot believe that, either under the language of the Constitution or the very theory of checks and balances which the two Houses were designed to enforce one upon the other, the independence of either House can be taken from it, either by its own act or an act of the other House. Therefore I hold, as these rules are made, they are made during the good pleasure of each House, and that it is in the power of either the Senate or House of Representatives to retire from a joint rule at any time, and simply give notice of that fact to the other branch of Congress.

But still the question has been made, and I think it would be advisable to have it settled by conference of the two Houses through their respective Committees on Rules. I cannot doubt that on examination they will come to the conclusion to adopt the whole code, if I may so call it, except this twenty-second joint rule, which is highly exceptionable. Therefore I do not think there is any necessity to apprehend embarrassment in treating this subject, because I have referred the matter to the two Houses. These points having been raised, I think they should be disposed of gravely and properly. I know no reason why there should not be an entire assent betwe n the two branches on the subject; but the questions having been raised, I think it is a good opportunity to have the subject considered.

I should vote now for the adoption of the joint rules of the two Houses, excepting the twenty-second joint rule, and I prefer to have the proposition made and considered in this formal and deliberate manner for the purpose of having the matter reviewed. It is a very grave subject. It has not been, so far as my researches enable me to discover, heretofore brought before the Senate in a manner that would admit of a clear decision, as it has been at the present time. There is no act of Congress on the subject. There is really nothing in the practice of the two Houses on the subject. I am not aware that any joint rule of the two Houses has ever been repealed. Such rules have been amended by the joint action of the two Houses but I submit that as yet I know of no case where either House has elected to retire from a joint rule; and yet I cannot doubt the power of either House to do so. Still I think it would be well, as we are treating of these joint rules, if we should invite the co-operation of the other House. If I am right in that, there will be no embarrassment, because the whole subject of the rules will be referred to the committee.

There can be no pretense that these joint rules continue from one Congress to another, except upon the theory that the House is a continuing body.

Mr. MERRIMON. Which it is.

Mr. MORTON. The Senator from Delaware who interrupted me a moment ago [Mr. SAULSBURY] in his speech to which he referred denied that the House was a continuing body.

Mr. SAULSBURY. No, sir; I beg the Senator's pardon; I said it had not a continuing organization; not that it was not a continuing body. It is a co-ordinate branch of this Government, which is in existence and has been in existence from the foundation of the Government.

Mr. MORTON. I will read the Senator's words:

Mr. SAULSBURY. Mr. President. I do not concur in all that I have heard on this question. I differ from the views expressed by the Senator from Ohio, [Mr. THURMAN.] I do not regard the House of Representatives as being at all times an organized body. While it is true that the House of Representatives is one of the departments of this Government, yet there are periods when there is no organization of the body, according to the view which I take, and the members of the House of Representatives in each Congress have the right to adopt their own rules, and the rules provided by the previous Congress are not obligatory upon them.

Mr. SAULSBURY. That is in reference to the House itself. The rules of the House of one Congress do not bind the House of another Congress; it has not a continuing organization; but the House itself as a House always exists.

Mr. MORTON. My friend, then, involves himself in this logical absurdity, if he will excuse the use of the word—I use it respectfully—that one House of Representatives cannot make rules which will bind the next House, but that it can unite with the Senate in making rules which will bind the next Congress.

Mr. SAULSBURY. Yes, sir; I say as a co-ordinate branch of this Congress we can enter into stipulations with another co-ordinate branch of this Government which are binding, being regarded as the concurrent action of both, until by the joint action of both they are repealed.

Mr. MORTON. My friend's assumption is that one House of Representatives can enter into a contract with the Senate and make a rule which will be binding on all the Houses that come thereafter, unless the Senate concludes to release the House from its obligation. I think I need only state that proposition, without arguing it one moment. My friend says that the House is not a continuously organized body. He concedes the whole case by that admission, for if it is not organized it is no House at all. He says it is not a continuously organized body, but nevertheless it is a continuous body; a body that is not organized; I do not understand; that will not do. The only proposition upon which this doctrine can be sustained—and it cannot be sustained logically upon that—would be that the House of Representatives is a continuous body, like the Senate; but even if it was a continuous body a joint rule is not a law; it has no resemblance to a statute; it is a mere method of joint proceeding which either House can retire from at pleasure. As stated by the Senator from Delaware [Mr. BAYARD] either House can withdraw from it at pleasure.

Mr. MERRIMON. No, sir, a solemn engagement between the two branches of a deliberative assembly as to those two bodies is just as binding as a statute.

Mr. MORTON. These two Houses have no right to make a bargain except in the form prescribed by the Constitution. They have no right to make a contract except in the form prescribed by the Constitution; and that is in the form of a statute. If they agree upon joint rules, at the pleasure of each they may withdraw from them at pleasure; but they can make nothing in the form of a law which is not sent to the President of the United States for his approval.

Mr. MERRIMON. But there is an implied power in the Constitution that sanctions these joint rules.

Mr. MORTON. I know of no such implied power, and I deny it utterly. I must say that I look upon this whole doctrine as dangerous. Until my friend from North Carolina made the remark that he did, I supposed that the entire purpose of now assuming that the joint rules are binding upon us is to maintain the twenty-second joint rule, a rule that has been condemned as being wicked or improper by every member of this body.

Mr. MERRIMON. I shall not be so uncharitable as to suspect that the wish on the other side is to get rid of it for a purpose.

Mr. MORTON. I have been always anxious to get rid of it. My friend knows that I have been fighting that joint rule since 1871. I have called the attention of the Senate to it "in season and out of season." I have always denounced it as being wicked, and I have denounced it as being unconstitutional.

Mr. MERRIMON. My friend will remember that I joined with him.

Mr. MORTON. I believe my friend did; but my friend has given the subject more attention since the last session of Congress than before, and I fear he has changed his mind.

Mr. BAYARD. Mr. President, the Senator from Indiana has saved me, in a great measure, the trouble of restating my views at this time upon this very important question by reading long passages from a debate which took place in January of the present year. While I trust my mind will always be open to the reception of new light and that I shall always be strong enough and candid enough to change my views when convinced of error, I can only say now that on this subject my views have undergone no change.

At the risk of a repetition of much that the Senator has read from the debate of 1876, I desire shortly to say this much: The very theory of our Government is founded on the necessity of the independence of the several powers of its co-ordinate branches. From the country from which our institutions are in the main drawn we have the theory that checks and balances of power are essential to liberty; not only that they tend to secure independence, but because they secure that deliberation and those pauses in action which are frequently essential for the purposes of justice; and all throughout the Constitution of the United States are to be found marks of the designation of separate powers in the different branches of the Government. In no case are these features more strongly apparent than in the distribution of powers between the two Houses of Congress, to whom, together with the President, is committed the entire legislative power of the Government.

I need not repeat to the Senate the frequent illustration of this truth which appears everywhere and all over the face of this written charter. Throughout the first article, in the definition and enumeration of powers, we find the phrase:

Each House shall be the judge of the elections, returns, and qualifications of its own members.

Again:

Each House shall keep a journal of its proceedings. * * *

Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

In this careful discrimination and delegation of power to each we find the sole exception in which the control of one House over the other is stated to be the want of power in either to adjourn for more than three days without the consent of the other. There you have the solitary and exceptional grant of power of one House over the other in its proceedings anywhere given by the Constitution. But there is other language than that directly applicable to the subject under discussion, and I know not how to find words of more apposite meaning to convey the idea intended:

Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

First, there is given to each House the sole judgment upon the composition of its body by controlling the question of the qualification, election, and returns of its own members. Sole and exclusive was the power given there. Then comes the power of each House to expel its own members, and to punish them for disorderly behavior, and coupled with that is the new power that they shall, not in common phrase, "make and alter," but shall determine the rules of its procedure. What is determine? What is terminus but the end, and what to determine a fact but to put an end to it? What is it that each House may determine? The rules of its own proceedings. Are not the rules in which we join with another as much rules as those which are rules for our sole guidance? Can it be that I, in partnership, am not responsible as I acting alone, and must it not be that my power and duty and responsibility for my acts shall continue and extend to those which I perform jointly with others, and to which I give my consent as to those over which I have my own sole consent to be obtained?

Really, Mr. President, it seems to me, with all due respect to the reasoning of others, that it would be the relinquishment of that which we have no power to relinquish. This Senate cannot put on and off its powers at will. Power means the duty to execute power. Responsibility runs ever with power, and this body may not divest itself and transfer to another a discretion and a power such as this. It is a common principle of law that a delegated discretionary power cannot be delegated. This is the exception of a high discretion, and how can we part with that and give it to another body, of all bodies on earth that over whom we were designed to act as a check. Parliamentary law and our rules prohibit even reference to the proceedings of one House in the other. This is my view. This was my view and I have been unable to find light or authority to change it. It was considered by us in connection with another subject. I would prefer where I pass upon a subject to settle the principle and stand by it and not have my judgment perturbed or darkened by my sense of interest in the result. It is my object to settle the principle upon which I stand, and I would rather not know the precise and immediate consequence or results to my individual interest when I have to pass upon a case any more than as a judge I would ask to know what was the personal result to me of a decision which I should give under my oath. Therefore it is that I think this grave question is one to be decided upon principle and upon reason. I tried so to decide before. I have seen nothing to change my view since. I may be permitted further to read from the following page of the RECORD a statement which I made about one year ago on this very subject. The honorable Senator from Vermont [Mr. EDMUNDS] had stated that he did not believe that it was in the power of the Senate to retire during a session from a rule which it had adopted at that session, but seemed to consider that there was something running with the session that compelled him to observe a joint rule during that session's continuance.

Mr. EDMUNDS. If the Senator will yield to me, I do not think he puts a correct construction on my remark. The idea that I had in my mind and I think—although I have not looked it up—he will see that somewhere I said so, was that retiring, or whatever the phrase was, was one thing and changing the rule and admitting it to exist was

another, but as long as it existed of course we must stand by it. That was the idea I had in my mind. I do not know whether I was happy in expressing it or not.

Mr. BAYARD. I referred to the Senator from Vermont in order to explain the language I was about to read, that I made use of in reply to him last January.

My present disposition is, with deference of course to the Senator from Vermont, to differ from him in regard to the power of the House at any time to retire from a joint rule on giving notice.

As I understood, he implied that they could not retire at any time on giving notice after that rule had been adopted for the session.

Mr. EDMUNDS. Will the Senator kindly tell me the page of the RECORD he is reading from?

Mr. BAYARD. Page 549, the debate of January 20, 1876:

Otherwise they would be tied up for the session irrevocably to a joint rule which because it was a joint rule, had a binding effect which other rules could not have. The Senate cannot deprive itself of its power over its own rules; it cannot delegate any portion of this power to another branch of Congress; and it has no right to deprive itself of its power given to it for its own exercise in its sound discretion.

Therefore it is that I believe it is within the power of the Senate—I mean within the constitutional power of the Senate—to retire from any joint rule at will, under the forms prescribed by themselves for amendment and alteration of the law. I believe this idea is in furtherance of the necessary independence of each House of Congress from the other, in order to form a check on the action of the other, for this was designed to be a Government in which various checks should constantly interpose upon the power of each House. Each House was created with particular powers for the purpose of preserving those checks and balances in the Government. But I am anxious that the question shall be considered, and considered now by the respective Committees on Rules of the two Houses. I have no idea that there will be found any necessity for amending any of the rules but the twenty-second joint rule, and that, I believe, had better be tried, because it is leaving that subject under the machinery of a rule which ought to be dealt with only under the machinery of a law regularly enacted.

If it be the object of the Senate to repeal the twenty-second joint rule and to leave the naked language of the Constitution, insufficient and meager as it has been found to be, to stand in doubt and obscurity until the next count of the presidential votes, then I shall say they will fall very far short of their duty in my opinion.

What I say now, Mr. President, is only meant to bear upon the question and upon the true principle which underlies the adoption and abrogation of joint rules. I do not speak upon the present condition of the joint rules, for, after all, the convenience and orderly progress of the business of these two great bodies would show by the light of experience that we should conduct them under rules, under regulations such as these, and most of which have existed from the very earliest history of our Government. The usage of the Senate on this subject is full of instruction. Many of the joint rules have remained untouched by amendments, have been admitted and in force in practice since 1794, when, I believe, most of them were adopted, and some from the very first year, 1789, and so they stand. A reference to the manual prepared by our Chief Clerk will disclose the fact, for the date of the adoption of these rules will be found at the foot of each, so that they are rules of great antiquity in our system.

But, Mr. President, it seems to me and I may submit here, what are rules, what are laws worth unless the spirit of the rules and of the laws shall lie back of them? Take, for instance, this question of joint rules. Grant, if you please, some obligation in the shape of constitutional law that makes it under the idea of the honorable Senator from North Carolina, impossible for either House to retire from a joint rule, and that it stands there never to be changed except by joint consent, binding them and their successors forever unless there shall be an agreement arrived at between the two Houses to change it; suppose there is a refusal by one House or the other to abide by it, what is your remedy of enforcement? This is a law-making body, not a law-executing body. And the joint rules never had the forms of law, nor received the sanction of the Executive. As mere rules they did not need it—and the independence of the two Houses would have made executive assent unnecessary and improper. When we make laws other departments of the Government execute them. If this be a law, where is the power to execute it? If it is to have the irrevocability and the permanence of law, where is the power to execute it? I think it would puzzle any honorable Senator to apply to the judicial branch for a remedy for a refusal of either House to concur with the other, either upon the question of obedience to a rule or upon differences as to its construction. The result would be that the comity of business between the two Houses would be interrupted, and nothing but the will of either and the will of both could restore it. Such is the practical effect.

It seems, therefore, that living under a government of laws, as I sincerely hope, and as is so necessary for us to exist, the test is a just one in regard to any exercise of power and the shape that that exercise takes, whether it be a law and binds us, to ask, can it be executed; and under what authority? It seems to me that there is none here, that necessarily there should be none, because not only there is no form of law, it is the expression of a mere will. Like any contract between individuals that has no term agreed upon for its execution, it may be retired from at the will of either party. A contract with no term for its continuance or its performance is a contract severable or rescissible at will. Even putting it in that shape, I cannot agree with the Senator from North Carolina as to the action of these two bodies over a subject which rests only in their several discretion and which, at their will, they may, in the language of the Constitution, "determine," and I cannot suppose that we are to apply even a principle of this kind, but we must look to the grant of power, to the nature of the power, and the necessary application of our principles to it. Therefore it is that I am, for one, compelled to stand by the conclusion that I reached before, that the joint rules of the House and the Senate are as much within their separate control as any other rules of the House or the Senate, and that they may be determined and must be determined by each in the exercise of their just discretion. I cannot see otherwise how that independence, which is essential to the preservation of the powers delegated to each House under our written Constitution of government, can possibly be maintained. If the matter were within law and had taken the form of law, we then should be transferred to an entirely different domain; a different jurisdiction would take cognizance of the question. But no one professes as yet, that I have heard, that the rules of the Senate are laws of the land, whether joint or separate; and for this reason, and without referring to the condition of the other joint rules—I am not precisely aware what was the action of the Senate on that subject—I do not hold the twenty-second joint rule to be in force. On the question of power over the subject, I am unable to reach any other conclusion than I have stated.

Mr. MORTON. Does the Senator know the action of the House on that question?

Mr. BAYARD. I did not read it.

Mr. MORTON. I have the House Journal here, and on the page where the joint rules appear I find the following entry:

The following resolutions will explain the omission herein of the joint rules of the two Houses, as heretofore.

Then follows the resolution of the 22d of January, 1876, which has just been read, and then follows the resolution of the 16th of August, which has also been read. It seems that in view of the action of the Senate the House has treated the joint rules as all dead, and has not published them in the Journal of last session.

Mr. EDMUNDS. Mr. President, I wish, in the first place, to defend myself from the implication suggested by the Senator from North Carolina, and possibly by the Senator from Delaware, that I have at any time either admitted or maintained that what are called the joint rules of the two Houses are not at all times, like their separate rules, within the control of each House as far as its own action is concerned. The Senator from North Carolina read from something that I said, I do not know when, but two or three or more years ago, when a question under the twenty-first joint rule was up. But that was so perfectly answered by the suggestion of the Senator from Indiana, that I need not take any time about it at all. The simple point of what I said, whether I was happy in the language, as my friend from North Carolina would have been in expressing it, was that as long as the rule was in force, of course we were bound to obey it, as we are our own rules. Every time that we dispense with our own rules by unanimous consent, we violate the provision of those rules which declares that no rule shall be suspended without a day's notice, and so on, unless there be a qualification, which is conventional if it be one, that by unanimous consent they can be suspended at any time. If so, that makes the law for the time being; but we can change the law if we like. So much for that.

Now I come to the debate of the last session, to which my friend from Delaware has referred. What I said, and to which he replied, upon that subject, was this:

That being the state of the case—

After stating how the question stood, I said:

That being the state of the case, we have not, as my friend and I both agree, any joint rules. We all agree, as the practice has been, that joint rules may be adopted by acquiescence, by acting under them without objection. Some of them provide for intercourse between the two Houses, and it may be that acting under one would not imply an adoption of another. I do not really think it would; but in drifting along in this way we are liable to be met by and by in one House or the other with the suggestion, "You have already got your joint rules for this session, however clear the law may have been that you had not any when you began your session, and it is now too late to make objection; and therefore you cannot change the twenty-second joint rule without the consent of both parties." I do not agree with my friend from Delaware that in a particular session, when the joint rules have been adopted by the concurrence of the two Houses, either may retire at its own will by simply giving notice to the other party. I do not think that is the law. I cannot see any foundation for such a proposition as that. We might as well say that any member of this body can retire from the observance of rules as soon as it displeases him.

And yet everybody can see that neither I nor anyone else would have contended that it was not the right of any member of this body, if the law made him a quorum, or with others who thought as he did, to make a change of the rule that he could not retire from or disobey, and make an entirely different one, or abolish it altogether.

Of course two governments treating with each other may retire from a treaty; but, unless the treaty provides for retiring from it, they retire from it by breaking it. Of course if either House, as a mere matter of power—

Here I speak of constitutional power—

without regard to right—

And there I speak of moral right—

(which must be supposed to govern both Houses,) should say "We will disobey a joint rule which declares that messages from the House of Representatives shall be received through their Clerk, and that messages for the Senate shall be received there by our Secretary," the remedy might be difficult to find.

Just as the Senator from Delaware has now said that, if you had a contract or compact between two equals that had no definite limitation of time during which it was to run, either might retire from it, to use his expression, but I should say terminate it instead of retire from it, and that was what led me to make these remarks last year.

It was rather upon the true use of a particular word which implied to the Senator's mind one thing and to mine another. If the Senator had said that it was competent for either House to terminate any joint rules, as they are called, between the two bodies, I should certainly have agreed.

Mr. BAYARD. There the Senator would use the word "determine" as a synonym for "terminate."

Mr. EDMUNDS. I did not say "determine," but "terminate."

Mr. BAYARD. The Constitution says "determine," and I apprehend they are synonyms.

Mr. EDMUNDS. So it may be, but I do not wish to waste the time of the Senate in discussing my own individual views hitherto, although, if I correctly understood them at that time and correctly understand them now and correctly understand the exact force of the language I used, I do not occupy any attitude in the slightest degree inconsistent with that which I have occupied before.

The Senator from North Carolina says that he, as another eminent person did on a former occasion, has seen a great light, and as he was coming to Washington, instead of going to Damascus, he suddenly has changed his views. Well, in the first case there was certainly very good reason for it, and to the Senator I have no doubt there is very good reason for this, although he has not referred to any particular authority or to any fresh research that he had not examined before, when, as a responsible member of a responsible committee of this body, there was committed to him the trust of making a careful examination of this question, which he told us, on the occasion when he with the other members of the committee made their report, he had made, and in which he said this as a member of the committee, and upon which I placed great reliance:

Mr. MERRIMON. * * * When the matter was brought to the attention of the Committee on Rules we could not see how any rule, whether joint or otherwise, of one Congress could be binding on a subsequent Congress, for the Congress as a Congress lasts but two years. As a legal proposition, if a joint rule is not binding upon the House, how could it be binding upon the Senate?

Mr. MORTON. From whom is the Senator reading?

Mr. EDMUNDS. I am reading from the remarks of Senator MERRIMON, of North Carolina, a member of the Committee on Rules of this body, who reported upon this question of the joint rules, whether in force or not, and who as a member of that committee had made, as it appears from his reference to precedents and the want of precedents and the principles of constitutional and parliamentary law, a most exhaustive and candid examination, such as he always does when he brings a fresh mind to the consideration of a fresh subject. What intellectual pressure has reversed the Senator's opinion I am unable to perceive, because he has not produced the evidence of the source of this great light that has shone upon him from somewhere in this respect. Then he goes on to say:

We thought one House of Representatives could not by its own mere construction imply an engagement on the part of a subsequent Congress. The committee went on the ground that if a joint rule was not binding on a subsequent House it could not be binding upon the Senate in connection with a subsequent House, for an engagement with one Congress is no engagement with another Congress. It seems, as the venerable Senator from Maine [Mr. HAMLIN] stated on a former occasion, that this matter has passed uniformly from the beginning of the Government down to this time without question. The question is now raised, and if to-day some action of Congress should be required under the joint rules, and a Senator should rise and say "I object,"—

I am sure he could not have referred to me, because I rarely do a thing of that kind, [laughter,]—

there would be the end of it. It is only by common consent that the practice to which I have referred has prevailed.

Mr. INGALLS. What is the date of those observations?

Mr. EDMUNDS. The date of those observations is the 17th of January, in the year of our Lord 1876, the centennial year of the Republic, as this present moment is also.

Mr. MERRIMON. Now I trust the Senator will allow me to make a statement here. I know that he will be courteous enough to let me state the ground I occupied. Those remarks went upon the ground that each succeeding Congress, so called, was different from that which preceded it. I have said here to-day that after the arguments made by the Senator from Ohio and the Senator from New York pending that debate I modified my opinion. Since that time I have reflected much on the subject, and now I am as sure as I ever was about any conclusion in the world that the House is as much a perpetual body as the Senate and that it lives without intermission; and if that proposition is true, then the theory upon which those remarks went, and upon which the committee went, falls to the ground.

Mr. EDMUNDS. It is very extraordinary, Mr. President, that if after as a member of a responsible committee of this body the honorable Senator from North Carolina had stated *ex cathedra* those opinions and following that and in the same debate those opinions had changed from observations of other Senators he should have omitted to state the fact, because he could not have failed to know that others of us, less familiar with the principles of parliamentary and constitutional law than he is, would have relied entirely upon his first observations and so should have been entrapped into a false position. I can scarcely impute to the Senator such an idea as that.

Mr. MORTON. Will the Senator at this point yield to me to read a short extract from the proceedings of the House?

Mr. EDMUNDS. With pleasure.

Mr. MORTON. I read from the CONGRESSIONAL RECORD of December 6, 1875, page 174 of the bound volume:

Mr. RANDALL. I submit the following resolutions:

"*Resolved*, That the rules of the House of Representatives of the Forty-third Congress shall be the rules of the House of Representatives until otherwise ordered, except Rule 166 and Rule 167.

"*Resolved further*, That a committee of five, to consist of the Speaker and four members, to be named by him, be appointed, to whom shall be referred the rules of the House, who shall report all such amendments or revisions of the same as they shall think proper, and such reports shall always be in order to be made."

Mr. GARFIELD. I rise to a point of order.

Mr. RANDALL. I demand the previous question.

Mr. GARFIELD. I rise to a point of order. I object to the resolution under the existing rules, which are our rules without a declaration of this sort.

Mr. RANDALL. I submit that both these resolutions are strictly in order. I propose that we adopt the rules of the last House, with the exceptions stated. As to the second resolution, I will say there is no rule providing for the appointment of a Committee on Rules. The gentleman from Ohio [Mr. GARFIELD] is therefore mistaken on this point.

Mr. GARFIELD. That particular point is not what I object to. I object to the first branch of the gentleman's resolutions, on the ground of immemorial usage.

Mr. RANDALL. The gentleman has a perfect right to object by voting against the resolutions, but in no other manner.

Mr. GARFIELD. I submit that this is not a privileged question.

The SPEAKER. Does the gentleman make that point of order?

Mr. GARFIELD. I do.

The SPEAKER. The Chair overrules it, on the ground that the Constitution clearly gives to each House the right to adopt its own rules. Whatever may have been the rules of orders of a preceding House in reference to this matter, they cannot supersede the constitutional right of this House to adopt its own rules.

Mr. RANDALL. The Speaker is clearly right.

Mr. GARFIELD. I submit that these resolutions should be referred to the Committee on Rules when appointed.

Mr. RANDALL. There is no rule of this House, and there was no rule of the last House, by which a Committee on Rules can be appointed. It is only by a resolution of this character that the Speaker can be authorized to appoint a Committee on Rules.

Mr. GARFIELD. The gentleman will find that immemorial usage is in itself a rule.

Mr. RANDALL. Immemorial usage will do for that side of the House, but we mean to have strict construction of the rules. [Laughter.] For the information of the House, let the rules excepted be read.

Mr. EDMUNDS. I was intending to have referred to that in a little different connection.

Mr. MORTON. I did not know the Senator had it there.

Mr. EDMUNDS. But I am very glad the Senator has read it, because it is very high authority, from a very eminent man, with whom, although I disagreed with him upon subjects of general politics, I long had a most pleasant personal intimacy, acquaintance, and friendship, and who has departed from his career of honor and usefulness with the sorrow and regret of his family and friends and the sympathy of all who knew him, pre-eminent in that great party of which he was a leading character, not only for the zeal of a politician but for the high honor of a patriotic citizen and the large views of a statesman; and when he, speaking to one of his own *confrères*, now, if I do not violate the rules in saying it, the presiding officer of the other House, reminds him and reminds the objector that, under the Constitution and the essential principles of the absolute independence of each House within its constitutional sphere, nothing that a preceding body of men, although constituting in the constitutional sense a continuous government, can do shall bind their successors, I commend to my friend from North Carolina a fresh reconsideration of this subject, and it is just possible that after the present emergency—if I may follow a newspaper phrase—has, like all preceding emergencies, calmly passed away under the law, he may again come to his first love and believe that each House is at all times absolutely independent of the other, and that neither can by the Constitution or would knowingly undertake to make an engagement, if you call it that, with the other that it could not at all times rightfully in the constitutional sense and in the legal sense recede from.

Mr. President, I do not wish to delay the Senate about this thing, as it has been discussed over and over again and the Senate has twice, and with apparent unanimity, and on the last time as I happen to remember personally with an absolute unanimity, not upon the yeas and nays, determined that these joint rules, as they are called, are not in force; but still I wish under the special circumstances of this case to state in a very brief way how it appears to me this question stands.

In the first place, as high an authority as Mr. Jefferson, in the preface of his Manual, which has stood with the rules of the Senate of the United States almost from the foundation of the Government, says that independent of conventional arrangements there exists, drawn from the country from which we take the larger share of our methods and institutions, a system of parliamentary law; and he says—I have it before me; it will be found on pages 207 and 208 of the Senate Manual—that there is a means, notwithstanding what the Senator from Virginia who has so ably succeeded to the place of Mr. Jefferson—I do not mean as a Senator, but as the pre-eminent representative of that great State—whereby Senates and Houses of Representatives may get on together in peace and amity and good order without the necessity of violating or even enacting anything for their own government, and that this common law of Parliament, as it is called, where the specific ordinances of each House do not apply, is the rule which governs the two bodies. I take it I need not go into an argument to show (because it has been the daily practice of both bodies of Congress for nearly a hundred years) that the parliamentary law is binding.

Now, then, when these first joint rules, as they are called, were

adopted, let us see what the state of the law was. If my honorable friend from North Carolina will turn to the work of Mr. May, an Englishman, on the laws of Parliament, he will find that the standing orders of the Lords and of the Commons existed, as he has read out of Cushing, from session to session.

The PRESIDENT *pro tempore*. The Senator from Vermont will pause a moment to enable the Chair to receive a message from the House of Representatives.

A message from the House of Representatives, by Mr. GEORGE M. ADAMS, its Clerk, announced that the House has passed a bill (H. R. No. 4120) making appropriations for the payment of invalid and other pensions for the year ending June 30, 1878; in which it requested the concurrence of the Senate.

The message also announced that the House had passed the bill (S. No. 1057) to provide for engraving and printing the portrait of the late Hon. Henry H. Starkweather, of Connecticut.

The message further announced that the Speaker of the House had signed the enrolled bill (H. R. No. 1592) to re-imburse Horace Glover for property unlawfully seized and sold by the United States Government; and it was thereupon signed by the President *pro tempore*.

Mr. EDMUNDS. Mr. President, I am almost surprised that the honorable Senator from Virginia and the honorable Senator from North Carolina should not at this moment, when I was interrupted by a message from the House of Representatives, have arisen in their places and protested against this violation of the joint rules of the two bodies.

Mr. MERRIMON. Either of us might have done it very pertinently.

Mr. EDMUNDS. Certainly, and if the Senator is sworn to the constitutional performance of his duty and sees the other House here day by day this session violating the joint rule which says they shall do nothing of the kind that they are daily doing and sending to us, certainly it is his duty to see to it that the implied constitutional privilege, as he expresses it, of the Senate—because he gets this power for joint rules out of an implication, which like a water-color painting is swashed all over the Constitution, and cannot be found in any particular place—is not so violated. The House of Representatives itself—and I violate no rule in saying that, because I refer to its action that it communicates to us, not to the motives that lead to it nor the debate that leads to it; but the action that is communicated to us is our property for discussion—day by day since this session began, the House of Representatives, restrained by this twenty-first joint rule as I call it, without stopping to say "so called," has, in the teeth of it, acted upon bills just like that to which the honorable Senator now objects and makes a point of order upon. Why? Not by a proposed suspension of it sent to us for our concurrence, but because, having received from us on the 14th of August the solemn and unanimous resolution of this body that we declined to entertain the proposition that the sixteenth and seventeenth joint rules be suspended, because there were no joint rules in force, it proceeds to do what otherwise upon the theory of the honorable Senator it would have no right to do; and it proceeded after that resolution was sent back by us in August last to send bills to this body and to send them to the President of the United States; because, according to the authoritative and unanimously-acquiesced-in statement of Mr. Speaker Kerr, it was impossible that any preceding House of Representatives could make a law of any character which should bind the fresh men, coming fresh from the people, under the Constitution to do one thing or another in respect to their constitutional right to regulate their own proceedings. We have therefore what comes broadly toward a great farce of this Senate spending this day in debating whether these joint rules, as they are called, exist or can be changed, or retired from as the Senator from Delaware calls it, terminated as I express it, without the consent of both Houses, when day by day ever since the question was raised both Houses have continued to do the very things that these joint rules say shall not be done. I do not know—for the future is always uncertain—but that some motive or some inducement, patriotic of course, may lead that great body to stultify itself, as we are endeavoring apparently to stultify ourselves and to say "Good Lord and good devil; for all the purposes of legislation the joint rules are not in force; they are gone, buried in the catacombs of yore; but for all purposes of political advantage, when it is convenient, we will say they are in force." But I venture to believe that that great constitutional body will respect itself as it expects right-minded people in this country to respect it.

Now then I will come back to what I was speaking of when I was interrupted by this supposed unconstitutional message from the House of Representatives. If the Senator from North Carolina will take the trouble to look into the history of English parliamentary law, he will see this thing set down in the plainest possible phrase, that the standing orders of the Lords and the Commons, from the beginning of Parliament down to this day, although they do bind both bodies as long as they are in force, bind each one of them separately just as their separate orders and rules do, and in no otherwise, and that not a single standing order of either House was ever put into the form of a compact, or agreement, or partnership, or anything of the kind, although they did regulate from day to day the intercourse and procedure that the operations of the two Houses required should be done in some way by concurrent action. Then, if the distinguished Senator from North Carolina will only look into the Journals of the Senate and House of Representatives when these joint rules from time to time were adopted, he will see that, following the settled and well-known practice of the Lords and Commons, these joint rules themselves, as we call them, are, every one of them, simply standing orders that each House has agreed upon in the same language; and when he looks at the Journal he will see that the resolutions adopting them, certainly the earlier ones—I have not looked them all through, but I have examined two or three—in 1789 and 1790 are the simple separate resolutions of each body agreeing to the same thing. That may make some difference with the Senator's further reflections if he will look it up, for we are convinced by what the Senator has said that he is always ready to correct himself if he finds on reflection that he is wrong. But when you look at these as they are printed Mr. President, you will find that "joint rules," as they are called, is merely the heading at the top by the man who compiled the book, and when you take up the first one and examine into it you will find that it was adopted by itself on the 6th of April, 1789, as will be seen by referring to the Journal of that day of the Senate of the United States, but I cannot find in a hasty examination that the House ever adopted it at all, except by prescription or usage. It was adopted as a Senate resolution. As to a reasonably long string of those adopted afterward, a dozen or more altogether, you will find that although they were called in the resolution joint rules they were not adopted by a concurrent resolution that was sent from one House to the other for assent, but each House adopted it on its own hook and informed the other that it had adopted such and such a thing. What is the consequence? The consequence is just as it is with the standing orders of the two Houses of Parliament where they have identical laws, which govern themselves separately and independently upon subjects of common and concurrent concern. If that be so, as it certainly is by the record, as it plainly ought to be upon constitutional principles either under the British or the American Constitution, then it necessarily follows, I submit to my honorable friend from North Carolina, that each House may change its own order of procedure, whether it affects its method of communicating with the other House or doing anything else with the other House, at its own will and pleasure. And so the makers of the Constitution, familiar as they were with this notion of the standing orders of parliamentary procedure in the two houses of the British Parliament, said all that was necessary to be said when they stated in the Constitution that each House—not both Houses—should determine the rules of its procedure, not a part of the rules of its procedure, not upon one subject, but upon every subject that it had any constitutional power to deal with, and so having said it had given authority enough, preserving what the Constitution necessarily intended to preserve, the absolute independence of each House, that being so independent it should determine every method of its procedure for itself, whether that procedure embraced one topic or another topic, whether something that required the action of the two Houses as every law does and as every bill does or whether something that concerned the mere expulsion or discipline of a member of either body that affected only itself.

Mr. President, this is so clear, I submit to my honorable friend from North Carolina, if he will only read the history of it and consider the principle, that I should hope, as I indeed expect when we come to take the yeas and nays upon this question, that we shall find for once that this body is, as it has been on two previous occasions on the same topic, almost unanimous.

There is nothing in any one of these so-called rules but the simple independent action of each House in respect of guiding its own conduct. The Constitution of the United States, as well as the British constitution, does not give and did not intend to give—for otherwise it would overthrow every principle upon which liberty and security in legislative action is concerned—any power to either House to coerce or control the other in any particular whatever. There must be absolute independence, and so being independent the things that they are required to do in concurrence, as everything that makes law is in their mutual relations, are still done with the absolute independence that is reposed in each, and they go by one method or another method that they may agree upon just as long as it is agreeable to each to do it and no longer.

But, Mr. President, I do not wish to waste the time of the Senate about this question. If my honorable friend will only reconsider once more, I feel, knowing him so well as I do, that the candor of his mind and the clearness of his intellect will lead him, when he makes further research, to these conclusions. But as this Senate has settled it twice upon the clearest grounds, and as the House of Representatives has, ever since the Senate has informed it that it had so settled it, disregarded every one of these rules that bore upon action it has taken, such as the sixteenth and the seventeenth and the twenty-first, I do not see, as I have said, what it is that we are discussing except a mere abstract proposition that not only this body but the other body has long put at rest. I believe the yeas and nays have been asked for.

The PRESIDENT *pro tempore*. The yeas and nays have been ordered.

Mr. MERRIMON. I shall detain the Senate but a minute in vindication of the argument I submitted a short time ago and in answer to the Senator from Vermont, [Mr. EDMUNDS.]

It is ordinarily understood to argue weakness to resort to things that do not bear directly on the merits of any issue in order to con-

trol it. The opinion that I expressed before has very little to do with the argument to-day. I based my opinion then upon a particular ground that was stated. I adverted to the fact that I had done so, in the opening of my remarks to-day. I stated as expressly and as clearly as I could the ground upon which that opinion was changed. What, therefore, has the fact that I expressed a certain opinion on that day to do with the argument to-day? What am I in the argument or what is the Senator from Vermont? It is a question of truth; it is a question of principle; it is a question of argument; and men are out of the case entirely.

Now, sir, I wish the Senator had had the candor to state with more distinctness and care the position I did really occupy. I did not deny the provision of the Constitution that each House may determine the rules of its proceedings. On the contrary, I admitted it. I said that the Senate, touching all matters wherein it was independent of the House, had the power under this provision of the Constitution to make its own rules. I said that the House, touching matters that pertained to it exclusively, had the power to make its own rules. But I said that neither the Senate nor the House was absolutely independent of the other. By the very terms, as well as by the very force and spirit of the Constitution, in one respect these two bodies are one, and there are certain relations which exist between them that neither can put off. Among other things, there is constant intercommunication that must be regulated by some order, and, because the Constitution has not expressed in terms the power conferred to so regulate it, I said that necessarily the power was implied in the Constitution to do it, just like any other power that existed by necessary implication in the Constitution; that in the exercise of this implied power, which is only limited by the general parliamentary law, the Senate and the House of Representatives had entered into an engagement and contract by which their intercourse was to be governed. It was done in the beginning of the Government and it has been kept up from that day to this. We are told now for the first time in the history of the Government that either branch of Congress can at will abandon these joint rules, this solemn engagement to which the faith and honor of each House are pledged. That is the whole of it.

If the doctrines contended for on the other side are true, it does seem to me that the joint rules are mockeries; they are absolutely nothing; the Senate can recede from them at will on any occasion. So the argument the Senator from Vermont has made, the argument the Senator from Delaware has made, does not affect, in the slightest degree, the ground that I occupy, to wit: that there was an implied power because of the necessity of regulating the manner of intercommunication between the two Houses; and as there was no limitation by the Constitution on the exercise of that power, it was governed by general parliamentary law; and according to the general parliamentary law these joint rules bind not only the Congress which adopts them but every subsequent Congress until they shall be modified or abolished. That is the argument I made. I do not deny that each House has absolute control of all matters that pertain to it exclusively and wherein it is independent of the other House. But each House is not absolutely independent of the other House. There are certain respects in which each is affected by the other, and each sustains relations to the other, and these relations and this matter of intercommunication must be regulated by some order, some order agreed upon between the two Houses, or else we have confusion and anarchy, as it would seem we should have if we did not act even under these joint rules, though it is said we have no joint rules. It is said we have no joint rules, and yet every day during the session we have been acting practically under the joint rules, as has also the House of Representatives The Senator says that the joint rules are not observed. I might say that the rules of the Senate are not observed; the rules of the House are not observed. That goes unnoticed. Nobody notices it. But, if the point were raised, the presiding officer of either House would be bound to decide that the point of order should be sustained, if the rules are regarded as in force at all. That argues nothing. It argues no more than the suggestion that this point of order is made and this effort is made to see whether we have any joint rules, for political purposes. I have no political purpose. It argues weakness, it argues nothing to make such imputations. I might do it with as much force and propriety on my side as it is done on the other side, but I will not do it, because it has no fair, just bearing upon the issue between us.

The PRESIDENT *pro tempore*. The Chair will restate the question. The Senator from Vermont [Mr. EDMUNDS] moved the present consideration of Senate joint resolution No. 10, submitted by him during the last session. The Senator from North Carolina [Mr. MERRIMON] raised the point of order that under joint rule No. 21, as denominated by him, no bill or resolution of the last session can be taken up within six days from the commencement of this session. The Chair overruled the point of order, stating that the joint rules are not in force, and that Senate rule No. 52 governs the question. From this ruling the Senator from North Carolina has taken an appeal to the Senate. The question now is, Shall the decision of the Chair stand as the judgment of the Senate? on which the yeas and nays have been ordered.

Mr. CAMERON, of Pennsylvania. On this question I am paired with the Senator from Delaware, [Mr. SAULSBURY;] who I believe would vote "nay" if present. I should vote "yea."

The question being taken by yeas and nays, resulted—yeas 50, nays 4; as follows:

YEAS—Messrs. Alcorn, Allison, Anthony, Bayard, Blaine, Booth, Boutwell, Bruce, Burnside, Cameron of Wisconsin, Chaffee, Christiancy, Clayton, Cockrell, Conkling, Conover, Cooper, Cragin, Dawes, Dennis, Dorsey, Eaton, Edmunds, Frelinghuysen, Hamilton, Harvey, Hitchcock, Howe, Ingalls, Kernan, Logan, McCreery, McDonald, McMillan, Mitchell, Morrill, Morton, Paddock, Patterson, Price, Randolph, Sargent, Sherman, Spencer, Teller, Wadleigh, Wallace, West, Windom, and Wright—50.

NAYS—Messrs. Maxey, Merrimon, Whyte, and Withers—4.

ABSENT—Messrs. Barnum, Begy, Cameron of Pennsylvania, Davis, Ferry, Goldthwaite, Gordon, Hamlin, Johnston, Jones of Florida, Jones of Nevada, Kelly, Key, Norwood, Oglesby, Ransom, Robertson, Saulsbury, Sharon, Stevenson, and Thurman—21.

So the decision of the Chair was sustained.

The PRESIDENT *pro tempore*. The question now is on the motion of the Senator from Vermont to take up the joint resolution for consideration.

The motion was agreed to.

Mr. EDMUNDS. I submitted the other day, and which is printed, an amendment that I gave notice I would offer, to make this provision, if it shall be adopted by the 1st of February, applicable to the last election. I perceive that in printing one or two of the words that I think were in my original draught have been omitted. I wish for the information of the Senate to supply those now, so that Senators in looking at this amendment may read it as it was really intended to be. In the fifth line of the printed amendment, at the end of the resolution, after the word "the," where it first occurs, there should be the word "ascertaining."

Mr. SARGENT. I should like to inquire of the Senator if he desires to go on with the debate on this to-night.

Mr. EDMUNDS. No, sir, I do not; but I wish, in order that Senators may know exactly what I propose, to have the amendment that I offer made according to the way I submitted it.

Mr. SARGENT. I should like to move that when we adjourn to-night it be to meet on Monday next.

Mr. EDMUNDS. I intended to move an executive session, and then we can consider what we shall do.

Mr. SARGENT. The motion I have indicated might be submitted now.

Mr. EDMUNDS. The Senator will pardon me a single moment; there is another word I wish to add. After the word "result," in the fifth line of the amendment I proposed to the joint resolution, there should be inserted the words "of the last election;" so that the proposed amendment will read:

This article shall, if it be ratified by the legislatures of three fourths of the States on or before the 1st day of February, A. D. 1877, operate upon the opening and counting of the votes and the ascertaining and declaring the result of the last election by the Supreme Court.

Mr. ANTHONY. I suggest to the Senator from Vermont, as this is a very important resolution, that it had better be printed as amended.

Mr. EDMUNDS. I ask that it be reprinted as corrected.

The PRESIDENT *pro tempore*. The Chairs hears no objection to that suggestion. It will be printed as amended.

ADJOURNMENT TO MONDAY.

Mr. SARGENT. With the consent of the Senator from Vermont, I move that when the Senate adjourn to-day it be to meet on Monday next.

The motion was agreed to.

EXECUTIVE COMMUNICATION.

Mr. EDMUNDS. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to.

The PRESIDENT *pro tempore*. Before the doors are actually closed, if there be no objection, the Chair will dispose of some business on his table.

Several SENATORS. No objection.

The PRESIDENT *pro tempore* laid before the Senate a report of the Secretary of State, transmitting, in obedience to law, a statement of fees collected, accounted for, and reported by the diplomatic officers of the United States for the year 1875; which was ordered to lie on the table and be printed.

HOUSE BILLS REFERRED.

The bill (H. R. No. 2825) to correct errors and supply omissions in the Revised Statutes relating to the District of Columbia was read twice by its title and referred to the Committee on the Revision of the Laws.

The bill (H. R. No. 4120) making appropriations for the payment of invalid and other pensions for the year ending June 30, 1878, was read twice by its title and referred to the Committee on Appropriations.

COURTS IN ARKANSAS.

The PRESIDENT *pro tempore* laid before the Senate the amendments of the House of Representatives to the bill (S. No. 155) to amend sections 533, 556, 571, and 572 of the Revised Statutes relating to courts in Arkansas and other States.

The amendments were on page 2, line 6, to strike out the words "the eastern district of Arkansas, at Helena," and to add to the

section, "and in the eastern district of Arkansas, the terms of the circuit court shall be held at Helena at the same time as the terms of the district court."

Mr. EDMUNDS. I move that the amendments be referred to the Committee on the Judiciary.

Mr. CLAYTON. I ask the Senate to concur in the amendments. The Senate bill provides that the district court held at Helena shall have circuit-court powers. This amendment requires the circuit court to be held there. That is all the difference.

Mr. EDMUNDS. I do not doubt it, but at the same time in respect to these judicial matters I do think it is better that the committee should look at them exactly, for we have sometimes discovered that we were all mistaken.

Mr. CLAYTON. I have no objection.

Mr. EDMUNDS. I can tell the Senator that we shall report it promptly.

The motion to refer was agreed to.

EXECUTIVE SESSION.

The Senate proceeded to the consideration of executive business. After ten minutes spent in executive session the doors were re-opened, and (at three o'clock and fifty-two minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

FRIDAY, *December* 8, 1876.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of yesterday was read and approved.

NAVY WAITING-ORDERS PAY.

Mr. WHITTHORNE, by unanimous consent, introduced a bill (H. R. No. 4125) to appropriate "waiting-orders pay" to those officers of the United States Navy whose pay was affected by the general order of the Secretary of the Navy No. 216, and to repeal section 1442 of the Revised Statutes; which was read a first and second time, referred to the Committee on Naval Affairs, and ordered to be printed.

S. D. PLEMMONS.

Mr. VANCE, of North Carolina, by unanimous consent, introduced a bill (H. R. No. 4126) for the relief of S. D. Plemmons, of North Carolina; which was read a first and second time, referred to the Committee of Ways and Means, and ordered to be printed.

CHARLES S. KELLER.

Mr. STEVENSON, by unanimous consent, introduced a bill (H. R. No. 4127) for the relief of Charles S. Keller; which was read a first and second time, referred to the Committee of Claims, and ordered to be printed.

BLACK HILLS TERRITORY.

Mr. PIPER, by unanimous consent, introduced a bill (H. R. No. 4128) to establish the Territory of the Black Hills and to provide a temporary government therefor; which was read a first and second time, referred to the Committee on the Territories, and ordered to be printed.

DESERT WEST OF FORT YUMA.

Mr. PIPER also, by unanimous consent, introduced a bill (H. R. No. 4129) to encourage the introduction of a supply of fresh water on the desert west of Fort Yuma; which was read a first and second time, referred to the Committee on Public Lands, and ordered to be printed.

MONTHLY AGRICULTURAL REPORT.

Mr. CUTLER, by unanimous consent, introduced a joint resolution (H. R. No. 167) for continuing the publication of the monthly reports of the Commissioner of Agriculture, and making an appropriation for the publication of the same; which was read a first and second time, referred to the Committee on Appropriations, and ordered to be printed.

SURETIES OF B. B. EMERY.

Mr. HOOKER, by unanimous consent, introduced a bill (H. R. No. 4130) for the relief of J. M. Stone, William M. Compton, and W. C. McAlexander, sureties on the bond of B. B. Emery, deceased, late collector of internal revenue, third district of Mississippi; which was read a first and second time, referred to the Committee on the Judiciary, and ordered to be printed.

TERRENCE J. KENNEDY.

Mr. MACDOUGALL, by unanimous consent, introduced a bill (H. R. No. 4131) for the relief of Terrence J. Kennedy, late lieutenant-colonel Third New York Volunteer Artillery; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

J. N. RIGGS.

Mr. MACDOUGALL also, by unanimous consent, introduced a bill (H. R. No. 4132) for the relief of J. N. Riggs, late major Third New York Volunteer Artillery; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

JAMES P. CARROLL.

Mr. DURHAM, by unanimous consent, introduced a bill (H. R. No. 4133) for the relief of James P. Carroll; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

CONSTITUTIONAL AMENDMENT.

Mr. BAKER, of Indiana, by unanimous consent, introduced a joint resolution (H. R. No. 168) proposing an amendment to the Constitution, forbidding the assumption or payment of any claim for loss or damage growing out of the taking, use, or destruction of property during the late war of the rebellion; which was read a first and second time, referred to the Committee on the Judiciary, and ordered to be printed.

ORDER OF BUSINESS.

The SPEAKER. The morning hour will now begin at fifteen minutes past twelve o'clock. This being Friday, the first business during the morning hour is the call of committees for reports of a private nature.

CHARLES HOWE.

Mr. GUNTER, from the Committee on Private Land Claims, reported a bill (H. R. No. 4134) to confirm the title of the legal representatives of Charles Howe to certain lands in Florida; which was read a first and second time, referred to the Committee of the Whole on the Private Calendar, and, with the accompanying report, ordered to be printed.

JEAN FRANCOIS PERRY.

Mr. GUNTER also, from the same committee, reported as a substitute for House bill No. 2518, a bill (H. R. No. 4135) for the relief of the heirs of Jean Francois Perry; which was read a first and second time, referred to the Committee of the Whole on the Private Calendar, and, with the accompanying report, ordered to be printed.

ORDER OF BUSINESS.

The SPEAKER. The call of committees for reports of a private character having been concluded, the Chair will now call the States and Territories for resolutions, commencing with the State of Maine.

Mr. GARFIELD. Is not this private bill day?

The SPEAKER. It is private bill day, and the call of committees for the presentation and disposition of private bills has been concluded. Under Rule 52, which the Clerk will read, the Chair holds that the next business in order is the call of States for resolutions.

Mr. GARFIELD. Private or public resolutions?

The SPEAKER. The rule does not define.

The Clerk read as follows:

Reports from committees having been presented and disposed of, the Speaker shall call for resolutions from the members of each State and Delegate from each Territory, beginning with Maine and the Territory last organized, alternately; and they shall not be debated on the very day of their being presented, nor on any day assigned by the House for the receipt of resolutions, unless where the House shall direct otherwise, but shall lie on the table, to be taken up in the order in which they were presented; and if on any day the whole of the States and Territories shall not be called, the Speaker shall begin on the next day where he left off the previous day: *Provided*, That no member shall offer more than one resolution, or one series of resolutions, all relating to the same subject, until all the States and Territories shall have been called.

Mr. GARFIELD. I simply asked for information. My understanding was that this day being set apart for private bills, the whole of the day must be given to the consideration of private bills, if that was demanded by any member.

The SPEAKER. All the rules relating to the consideration of private bills have been complied with.

Mr. GARFIELD. The Chair may be right.

Mr. HOSKINS. I desire to call the attention of the Speaker to Rule 128 in connection with this matter.

The SPEAKER. That rule does not conflict with the ruling of the Chair. It is as follows:

Friday in every week shall be set apart for the consideration of private bills and private business in preference to any other.

The SPEAKER then proceeded to call the roll of States and Territories for resolutions; and having reached the State of Louisiana without any response being made,

Mr. WOOD, of New York. Has the State of New York been called?

The SPEAKER. It has.

Mr. WOOD, of New York. Do I understand that under this call simple House resolutions can be introduced and put upon their passage?

The SPEAKER. They can.

Mr. WOOD, of New York. I did not hear when the State of New York was called. I desire to offer a resolution.

Mr. HOAR. I desire to call the attention of the Chair, in connection with the answer he has just made to the gentleman from New York, [Mr. WOOD,] to the fact that the rule requires that the resolutions submitted under this call shall lie upon the table for one day.

The SPEAKER. The rule requires that all resolutions offered under this call shall not be debated upon the very day of their being presented, which would seem to imply——

Mr. HOAR. The Chair does not read quite far enough. I understand that under this rule all resolutions offered lie upon the table without debate until the entire call has been gone through with, and then they may be taken up for debate in the order in which

they have been presented, but they cannot be debated on the day on which they were presented.

The SPEAKER. The Chair would rule that all resolutions introduced under this call, except by unanimous consent, must lie over one day for both debate and action.

Mr. HOLMAN. Is it not the correct interpretation of that rule that if the previous question is not seconded, thereby leaving the resolution open to debate, it must lie over one day? If the previous question is seconded, then the resolution is before the House for immediate action.

The SPEAKER. As to the question of consideration, that is for the House to determine.

Mr. HOLMAN. If a resolution is offered and the previous question called upon it and not sustained, then it is open to debate; and, inasmuch as it is not debatable on the day it is offered, then it must go over one day on the objection of a single member rising and proposing to debate it.

Mr. HOAR. The gentleman from Indiana will pardon me for calling his attention to this point: he is now speaking of resolutions which come in during the morning hour of Monday on the second call of States, and which are governed by their own rule. This is a rule which applies to every day of the week, and it is now being applied to Friday. It is a rule applying to the order of business after all the reports of a private nature from committees have been presented and disposed of.

Mr. HOLMAN. To what rule does the gentleman refer?

Mr. HOAR. To Rule 52; that is the one the Speaker is now applying. Allow me to say that if the gentleman from New York [Mr. WOOD] desires to introduce any business now, I for one would probably have no objection.

The SPEAKER. The Chair is of opinion that the portion of the rule which says that under this call resolutions may be introduced, but "shall not be debated on the very day of their being presented," looks to the debate of resolutions presented under the call provided for by this rule. Therefore the Chair under this call would not entertain a motion for the previous question.

Mr. GARFIELD. That would necessarily cut off debate and therefore defeat the intention of the rule.

Mr. HOAR. This is probably the first time within the parliamentary recollection of the Speaker that the House has been so far without business that this rule has been applied.

The SPEAKER. The Chair does not recollect any occasion during his term of service when this rule has before been called into operation.

Mr. WILSON, of Iowa. This rule presents an opportunity that hundreds of members have looked for and never found. Since I have been a member of this House, this call has never been made; it has generally been skipped over. But it is clearly provided for in Rule 52. The States are now called for resolutions in just the same way as committees are called during the morning hour. But in order that members may not be taken by surprise, all propositions introduced under this call are required to lay over for one day; and then the series of resolutions introduced from different States under Rule 52 would come up for consideration in the order in which they were offered. I do not think that the previous question is in order at all under this call.

The SPEAKER. With all respect for the gentleman, the Chair would say that he has already decided this question.

Mr. WILSON, of Iowa. The call referred to by the gentleman from Indiana [Mr. HOLMAN] to which the previous question is applicable is the second call in the morning hour of Monday.

Mr. HALE. As the basis of this action is admittedly that the condition of the House is such that no business is ready, would it not be in order at the present time to make a motion which would involve actual business, and would not such a motion remove the condition under which this call comes up? For instance, this is private-bill day; the committees have all been called and they have no measures ready; is not a motion now in order to proceed to the consideration of business on the Private Calendar, that being business of the House?

The SPEAKER. The Chair, in anticipation of the exact condition of things that has occurred, made examination of the rules and found that when the call of committees for reports is exhausted before the morning hour is actually out, this fifty-second rule comes into operation. Therefore, until the procedure provided for in this rule is exhausted, the Chair would not entertain any motion which would interrupt it.

Mr. HALE. Not until the expiration of the morning hour?

The SPEAKER. Then of course this business could be superseded.

COUNTING ELECTORAL VOTES.

Mr. LE MOYNE submitted the following resolution:

Whereas serious differences of opinion may arise between members of the two Houses of Congress as to their jurisdiction and powers in joint session in counting the electoral vote, and the questions involved being questions of law:

Resolved, That the Senate be requested to appoint a committee to act with a committee of five to be appointed by the Speaker of this House, in presenting to the Supreme Court such questions as either of said committee may deem important in the premises and in asking the members of the Supreme Court to give to Congress an opinion thereon.

Mr. HOSKINS. I rise to debate this resolution.

The SPEAKER. Debate arising, the resolution lies over.

AGRICULTURAL REPORT FOR 1876.

Mr. WILSON, of Iowa. I offer the following resolution:

Resolved, That the Committee on Printing be instructed to report a joint resolution providing for the printing of the Report of the Commissioner of Agriculture for the year 1876.

The SPEAKER. By unanimous consent the resolution can be adopted at this time.

Mr. WILSON, of Iowa. I presume there will be no objection to it.

Mr. GARFIELD. Does this resolution come from the Committee on Agriculture? If not, I suggest that it be referred to the Committee on Printing for consideration, instead of being adopted.

Mr. WILSON, of Iowa. I do not accept the gentleman's suggestion. If he will not allow the resolution to pass now, let it lie on the table. I will find a way to reach it hereafter.

The resolution was laid over under the rule.

NATIONAL ARMORY AT HARPER'S FERRY.

Mr. FAULKNER submitted the following resolution; which, by unanimous consent, was considered and adopted:

Resolved, That the Committee on Military Affairs be instructed to inquire into the objects and purposes of the Government in recently becoming the purchaser of the water-power and land formerly occupied and used for a national armory at Harper's Ferry, and to inquire, since the Government has now again become the owner of that property, whether it would not be expedient to re-establish the national armory at that point, or employ its valuable water-power for some other governmental purpose.

PENSION APPROPRIATION BILL.

The call of States and Territories for the introduction of resolutions having been concluded,

Mr. ATKINS moved that the House resolve itself into Committee of the Whole for the consideration of the pension appropriation bill.

The motion was agreed to.

The House accordingly resolved itself into Committee of the Whole, (Mr. CLYMER in the chair,) and proceeded to the consideration of the bill (H. R. No. 4120) making appropriations for the payment of invalid and other pensions of the United States for the year ending June 30, 1878.

The bill was read, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and the same are hereby, appropriated out of any money in the Treasury not otherwise appropriated for the payment of pensions for the fiscal year ending June 30, 1878:

For pensions for Army invalids, for widows, minors, and dependent relatives, and for survivors and widows of the war of 1812, $27,525,000, including such contingent expenses as may be recommended by the Commissioner of Pensions, and approved by the Secretary of the Interior; fees for preparing vouchers and administering oaths, in accordance with the act of June 20, 1874, $225,000; fees of examining surgeons, $245,000; compensation to pension agents and the expenses of the several pension agencies, $285,000, as provided under the act of June 9, 1874, and of section 4781 of the Revised Statutes.

For Navy pensions to invalids and for widows and dependent relatives, $525,000; for fees of examining surgeons, $2,600; for fees for preparing vouchers and administering oaths, as provided by the several acts of Congress, $3,400; compensation to pension agents, $2,000, including such contingent expenses as may be recommended by the Commissioner of Pensions, and approved by the Secretary of the Interior: *Provided*, That the appropriation aforesaid for Navy pensions and other expenditures under that head shall be paid from the income of the Navy pension fund, so far as the same may be sufficient for that purpose, as provided by the act of July 11, 1870.

The total sum recommended by this bill is $28,533,000.

Mr. ATKINS. Mr. Chairman, I will simply state that the Committee on Appropriations have this year followed, as they did last year, the estimates of the Commissioner of Pensions. The appropriation this year is $999,500 less than the appropriation last year. The whole amount of appropriations contained in the bill is $28,533,000 for both Army and Navy pensions. About $3,000,000 of this sum it is deemed important by the Department to set aside for the purpose of meeting the arrears of pensions. A little over $25,000,000 will be sufficient to pay the pensioners upon the Army roll, and between $400,000 and $500,000 will pay the pensioners on the Navy roll. But it is necessary to have about $3,000,000 to meet arrears upon the Army roll, and from $25,000 to $50,000 to meet arrears upon the Navy roll. The rate this year per month shows a slight decrease upon the rate last year. Last year it was $8.65; this year it is $8.60.

I do not think it is necessary to say anything further on this bill. I suppose no gentleman in the House will raise any objection to its passage.

Mr. GARFIELD. It may be well for the country to know, as a matter of information, whether the number of pensioners on the roll is now less than it has been.

Mr. ATKINS. The number of invalid pensioners has increased; but the ratio of decrease of widows and dependents is greater than the ratio of increase of invalid pensioners. Hence the reduction.

Mr. GARFIELD. As a matter of information, as to the new elements of increase and decrease, I should like to know how much the appropriation has been reduced by change of law and how much by change of mortality rates.

Mr. ATKINS. The gentleman will find the facts embraced in the report of the Commissioner of Pensions, which has just been laid upon the table of every member. I have the report here and can read the figures, but every gentleman can read them for himself. But there is no change growing out of the law.

Mr. HOLMAN. Let me say to the gentleman from Ohio that no increase or decrease of the appropriation results from recent changes of

the law, but altogether from the decrease on the one hand and the increase on the other hand of the number of pensions.

Mr. GARFIELD. The gentleman is of course aware that besides occasional changes in the general law of pensions the number of persons put upon the rolls by private bills year by year is one element in making up the pension bill. I have tried, so far as I could, to analyze the forces which play upon this bill, to see what keeps it up and what puts it down.

Mr. HOLMAN. There has been for the last eight years the same number of private bills passed both Houses.

Mr. GARFIELD. My idea is, if the gentleman will allow me, that we have reached and perhaps passed the summit of appropriations for this object; that it took a number of years to develop, to get through with the regular form of laws to admit to the rolls the persons entitled to pensions, and that the time must necessarily come when we shall pass the climax and begin to go downward. I suppose we have already passed the maximum.

Mr. ATKINS. We reached the maximum two years ago. We appropriated last year $500,000 less than the year previous and we appropriate this year a million less than the appropriation in the previous pension bill.

If any gentleman desires further to discuss the bill I will yield the floor for that purpose, but no further discussion being desired I will move that the committee rise and report the bill to the House with the recommendation that it do pass.

The motion was agreed to.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. CLYMER reported that the Committee of the Whole on the state of the Union had, according to order, had under consideration the bill (H. R. No. 4120) making appropriations for the payment of invalid and other pensions of the United States for the year ending June 30, 1878, and had directed him to report the same back to the House with the recommendation that it do pass.

The bill was ordered to be engrossed for a third reading; and being engrossed, it was accordingly read the third time, and passed.

Mr. ATKINS moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

SERVICE OF THE ARMY IN THE SOUTHERN STATES.

Mr. WOOD, of New York. I desire to call up for action at this time the resolution I presented yesterday, which under the rule was laid over until this morning.

The Clerk read as follows:

Resolved, That the President be requested to transmit to this House copies of any and all orders or directions emanating from him or from either of the Executive Departments of the Government to any military commander or civil officer, with reference to the service of the Army, or any portion thereof, in the States of Virginia, South Carolina, Louisiana, and Florida, since the 1st of August last, together with reports, by telegraph or otherwise, from either or any of said military commanders or civil officers.

Mr. KASSON. Is it in order to-day, on Friday, to consider that resolution?

The SPEAKER. Why not?

Mr. KASSON. It was entered on a day of public busines, and the general rule is when it stands over, it stands over to another public-business day.

The SPEAKER. The Chair will state that the private business, as far as the rules provide for private business coming before the House, has been gone through with, and, if the suggestion of the gentleman from Iowa be correct, then the House would have nothing to do but to adjourn. The Chair would rule that the motion would not be in order to-day.

Mr. KASSON. Not to go into Committee of the Whole on the Private Calendar?

The SPEAKER. Not to-day.

Mr. KASSON. There is new business as well as old business on the Private Calendar, and it seems to be in order to consider the new business.

The SPEAKER. The Chair would modify his statement in that regard, that the new business would be open to consideration.

Mr. KASSON. With the permission of the Chair, I will say that I understand the construction of Joint Rule 21 to be simply imperative when business lying over shall be in order, but it does not exclude as being in order at the will of the House at an earlier moment——

The SPEAKER. The Chair has already ruled upon that point.

Mr. WOOD, of New York. I demand the previous question on the passage of the resolution.

Mr. HALE. I rise to a point of order.

The SPEAKER. The gentleman will state it.

Mr. HALE. And that is to object to the reception of the resolution.

Mr. WOOD, of New York. Does the gentleman from Maine raise the question of consideration?

Mr. HALE. No; I make objection as a member of the House upon this ground: that this report, or resolution, comes here from no committee, by no authority, and that it can only be received by unanimous consent. There has been no action taken upon it. It was first submitted on yesterday. Now, in certain cases where committees report on certain matters on the call of committees an objection may send the report over for a day, and then it may be taken up. But this resolution, as I understand, was presented on yesterday; objection was made and it was said, let it lie over for a day and perhaps no objection will be made to its consideration. Now, that was simply an expression of what any member might or might not do. I raise the point of order on this ground, that I have the same right to object to-day that I had yesterday; that the resolution is in no better condition to-day; that it requires unanimous consent to be now considered. I do this because, while I have no objection to such a resolution as the Senate passed in proper terms, calling for full information, not limiting it, and also having the clause which is always attached to requests made to the Executive for information, "if not incompatible with the public service"—while to such a resolution I would have no objection, the objection to this is fundamental, that it is not in the proper form; and so I avail myself of the privilege of a member to object.

Mr. WOOD, of New York. The gentleman from Maine [Mr. HALE] is wrong in his premises on which he has erected his argument which, in my judgment, is entirely out of place in reference to the question before the House. The resolution of yesterday was objected to simply in regard to its consideration at that time. It was laid over and now is called up to be considered. If the gentleman from Maine is right in his position and may object to the resolution to-day, another member may object to it to-morrow, and so it may go through the whole session, some one gentleman objecting every time that the resolution comes up, so that the House would never have an opportunity of acting upon the resolution at all.

Mr. HALE. If the gentleman will excuse me I will say that I think every gentleman has a right to object in the way he suggests.

Mr. WOOD, of New York. The gentleman from Maine is wrong for the reason that the resolution was laid over under the rule one day before being considered.

The SPEAKER. The Chair would correct the gentleman from New York. The resolution was not laid over one day under any rule. The Chair will also correct the gentleman from Maine, [Mr. HALE.] The resolution was before the House by unanimous consent. The Chair will state his exact understanding with reference to this matter. This resolution, in the first place, was presented for unanimous consent. It was not in the power of any member of the House to make a conditional objection. But the gentleman from Iowa [Mr. KASSON] stated in debate or conversation with the gentleman from New York, that if he would agree that it should come up again to-day he would not interpose an objection, therefore the Chair thinks that this resolution on yesterday, with the conditions attached for its consideration to-day, was brought then before the House by unanimous consent.

Mr. KASSON. The Chair will allow me to state that when I made the objection my object was to prevent the consideration of the resolution, or its reception, until there was time to examine it. I thought it differed in form essentially from the resolution, adopted in the Senate, to which the gentleman from New York has referred. It was read a second time, and what took place appears thus in the CONGRESSIONAL RECORD:

Mr. WOOD, of New York. The Senate has unanimously passed a similar resolution.

The SPEAKER. The resolution will be again read.

The resolution was again read.

Mr. WOOD, of New York. I ask unanimous consent that the resolution be considered at this time.

Mr. KASSON. I object to its being considered now.

Then the gentleman from New York asked that the resolution might be referred to the Committee on Military Affairs. I made objection to that, still insisting that it should lie over. The object clearly was to prevent its being taken up, its being even considered by the House until I could see what it was; because, on the first reading, I thought its terms were different from the ordinary terms in which we address the President of the United States for information.

The SPEAKER. The Chair would suggest to the gentleman from Iowa that he did not quite read all that appears in the RECORD.

Mr. KASSON. I referred to the last portion and will now read it:

Mr. WOOD, of New York. Will the gentleman object to its being referred to the Committee on Military Affairs?

Mr. KASSON. Let it lie over for a day. There may be no objection to its passing when it is again considered.

The resolution was accordingly laid over under the rule.

The SPEAKER. The Chair decides that the objection must be absolute; that it could not be conditional; and that this arrangement which was being made was for the consideration of the resolution.

Mr. HOAR. I request that the Journal may be read.

Mr. WOOD, of New York. The gentleman from Iowa did not object to the reception of the resolution but to its consideration at that time. That is the distinction.

The SPEAKER. The Journal will be read.

The Clerk read as follows:

Mr. FERNANDO WOOD, by unanimous consent, submitted the following resolution, to-wit:

Mr. KASSON objected to the present consideration of said resolution, and by unanimous consent the same was laid over for one day.

The SPEAKER. The Chair had not seen the Journal before, and the House will observe how accurately the Journal confirms the position of the Chair.

Mr. KASSON. But when the Journal recites that it was by unani-

mous consent the resolution was laid over, it is clearly an error; because the rule requires that when a resolution calls for information it shall lie over for a day.

The SPEAKER. The Chair will say that the resolution had to come in by unanimous consent. It could not come in under any rule.

Mr. KASSON. Unquestionably it had to be by unanimous consent that it got in, if at all; but it was the rule, on my objection, and not unanimous consent which took it over.

Mr. HOAR. Permit me to call attention——

The SPEAKER. The Chair desires to state right at this point that the rule which provides that resolutions shall lie over one day does not apply to this resolution, but to resolutions introduced on Monday.

Mr. HOAR. In regard to a statement which the Chair has just made to the House about not having seen the Journal, the Chair will pardon me for calling his attention to Rule 5.

The SPEAKER. The Chair understands that that rule has been and is practically a dead letter; that seldom does the Speaker examine and correct the Journal before it is read. The House has that power, and the Journal of yesterday's proceedings was read to the House to-day and no correction was made.

Mr. HOAR. Permit me to say in the friendliest and most respectful way——

The SPEAKER. The Chair understands that.

Mr. HOAR. I understand that one very great security which the House has always had in regard to the correctness of the Journal is in this very Rule 5, which gives the House the assurance, depending upon the personal character of the Speaker as well as the Clerk, that the Journal has been examined by the Speaker before it is read to the House. I know that in the case of some of the predecessors of the present Speaker that rule has not been carried out.

The SPEAKER. Does the gentleman recollect an instance, within his own knowledge, when it was the practice of a Speaker on his own motion to correct the Journal?

Mr. HOAR. I have no doubt it has been done.

The SPEAKER. The gentleman has more knowledge on that point, then, than has the Chair.

Mr. HOAR. It do not state it of my own knowledge. That rule should not be a dead letter; it is a very important rule.

Mr. KASSON. I referred to Rule 53, which is as follows:

A proposition requesting information from the President of the United States, or directing it to be furnished by the head of either of the Executive Departments, or by the Postmaster General, shall lie on the table one day for consideration, unless otherwise ordered by the unanimous consent of the House.

That unanimous consent was not given yesterday. The rule does not refer to resolutions offered on Monday, but to any such resolutions whenever offered.

The SPEAKER. The Chair holds that unanimous consent was given yesterday for the introduction of this resolution, and that an arrangement was made, not under any rule, but by unanimous consent, that the resolution should be considered to-day, for the reason that a qualified objection could not be made.

Mr. KASSON. I take no exception to the ruling of the Chair, because the record as it is made looks as if it were intended by the House to make this order.

The SPEAKER. The Chair will submit the question of consideration to the House if that question is raised.

Mr. KASSON. I will only say to the gentleman from New York [Mr. WOOD] that my only object was to have an opportunity to get the resolution worded in the usual manner of all addresses to the President calling for information; that is, "if not incompatible with the public interest."

Mr. WOOD, of New York. While I do not object especially to the suggestion of the gentleman from Iowa [Mr. KASSON] I want to correct a statement of fact about which he is evidently mistaken. It is usual when calling upon the President for executive information in reference to foreign affairs to put in the phrase "if not incompatible with the public interest;" for in those cases, involving our relations with foreign governments, there may be reasons of public interest rendering it inadvisable to make known certain diplomatic correspondence, &c. But in cases like this, where we call for information touching certain orders the President may have issued and which are matters of record in the Departments, which we have a right to legislate upon and which we desire for purposes of legislation, it does seem to me that no public interest can require any secrecy in regard to them, unless——

Mr. KASSON. Permit me to say that I think the gentleman——

Mr. WOOD, of New York. I have said that I will not object to the modification of the resolution if the gentleman insists upon it.

Mr. CLYMER. I trust the gentleman from New York [Mr. WOOD] will not modify his resolution.

Mr. KASSON. I will only say to the gentleman from New York [Mr. WOOD] that he will be unable to find any exception such as he refers to. The necessity for the use of the phrase to which I have referred arises from the fact that the executive is one of the co-ordinate branches of the Government, and its judgment is also free upon such points. But the gentleman accepts my suggestion, and that is all I want.

Mr. CLYMER. I trust the gentleman will not accept the suggestion.

Mr. WOOD, of New York. I cannot conceive that in answering this resolution it is possible for the President of the United States to make any exception on any ground or pretext that the public interest requires that he shall not submit to Congress the information called for. If he shall so far transgress his clear and palpable duty under the resolution as not to send us everything we ask for, I can only say that that would be an additional offense which the Congress of the United States will not permit to be overlooked. As I said before, I will accept the modification suggested by the gentleman, believing that it does not substantially affect any public interest. I now call the previous question on the resolution as modified.

Mr. HALE. Let the resolution, as modified, be read.

The Clerk read as follows:

Resolved, That the President be requested, if not incompatible with the public interest, to transmit to this House copies of any and all orders or directions emanating from him or from either of the Executive Departments of the Government to any military commander or civil officer, with reference to the service of the Army, or any portion thereof, in the States of Virginia, South Carolina, Louisiana, and Florida, since the 1st of August last, together with reports by telegraph or otherwise from either or any of said military commanders or civil officers.

The previous question was seconded and the main question ordered; and under the operation thereof the resolution was adopted.

Mr. WOOD, of New York, moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

ELECTIONS IN SOUTHERN STATES.

Mr. HEWITT, of New York. I ask unanimous consent to have the RECORD corrected in reference to the resolution which I offered on Monday for the appointment of special committees to investigate the recent elections in Louisiana, South Carolina, and Florida. The resolution is printed in the RECORD as originally offered, and contains a clause which was stricken out in the resolution as afterward adopted.

The SPEAKER. The Chair understands that the Journal is correct.

Mr. HEWITT, of New York. The Journal is correct; but the RECORD does not give the resolution as finally passed. I ask that the resolution be reprinted as actually adopted.

Several MEMBERS. Let the resolution be read.

The SPEAKER. The Clerk will read the resolution as it appears in the CONGRESSIONAL RECORD; and then the gentleman from New York will indicate the correction.

The Clerk read as follows:

Resolved, That three special committees, one of fifteen members to proceed to Louisiana, one of six members to proceed to Florida, and one of nine members to proceed to South Carolina, shall be appointed by the Speaker of the House to investigate recent elections therein, and the action of the returning or canvassing boards in the said States in reference thereto, and to report all the facts essential to an honest return of the votes received by the electors of the said States for President and Vice President of the United States, and to a fair understanding thereof by the people, and whether the electoral votes of the said States should be counted; and that for the purpose of speedily executing this resolution the said committee shall have power to send for persons and papers, to administer oaths, to take testimony, and, at their discretion, to detail subcommittees, with like authority to send for persons and papers, to administer oaths, and to take testimony, and that the said committees and their subcommittees may employ stenographers, clerks, and messengers, and be attended each by a deputy sergeant-at-arms; and said committees shall have leave to report at any time by bill or otherwise.

Mr. HEWITT, of New York. The clause which was stricken out in the resolution as adopted is in these words:

And whether the electoral votes of the said States should be counted.

The SPEAKER. If there be no objection, the CONGRESSIONAL RECORD will be corrected in accordance with the suggestion of the gentleman from New York and the resolution in its corrected form reprinted.

There was no objection.

Mr. GARFIELD. I understand that it is the right of a member to make a correction in the RECORD without calling the attention of the House to it.

The SPEAKER. The gentleman will observe that this is a correction of a resolution, not of a gentleman's remarks.

Mr. GARFIELD. Still, I think that if a resolution has been misprinted it is the right of a member to have it corrected in accordance with the Journal.

The SPEAKER. The Chair will not rule on that point till the occasion requires.

The resolution as corrected is as follows:

Resolved, That three special committees, one of fifteen members to proceed to Louisiana, one of six members to proceed to Florida, and one of nine members to proceed to South Carolina, shall be appointed by the Speaker of the House to investigate recent elections therein, and the action of the returning or canvassing boards in the said States in reference thereto, and to report all the facts essential to an honest return of the votes received by the electors of the said States for President and Vice-President of the United States, and to a fair understanding thereof by the people; and that for the purpose of speedily executing this resolution the said committee shall have power to send for persons and papers, to administer oaths, to take testimony, and, at their discretion, to detail subcommittees, with like authority to send for persons and papers, to administer oaths, and to take testimony, and that the said committees and their subcommittees may employ stenographers, clerks, and messengers, and be attended each by a deputy sergeant-at-arms; and said committees shall have leave to report at any time by bill or otherwise.

WAR DEPARTMENT EXPENDITURES.

The SPEAKER, by unanimous consent, laid before the House a communication from the Secretary of War, transmitting a report of expenditures in the War Department and its bureaus for the fiscal

year ending June 30, 1876; which was laid on the table, and ordered to be printed.

ENROLLED BILL SIGNED.

Mr. HARRIS, of Georgia, from the Committee on Enrolled Bills, reported that the committee had examined and found truly enrolled a bill of the following title; when the Speaker signed the same:

An act (H. R. No. 1592) to re-imburse Horace Glover for property unlawfully seized and sold by the United States Government.

ADJOURNMENT TILL MONDAY.

Mr. HOLMAN. I move that when the House adjourns to-day it adjourn to meet on Monday next.

The motion was agreed to.

Mr. HOLMAN. I move that the House now adjourn; but before the question is put I will yield to allow my colleague [Mr. CASON] to make some reports from a committee.

REPORTS ON PRIVATE CLAIMS.

Mr. CASON, by unanimous consent, from the Committee of Claims, reported back, with a recommendation that they pass, bills of the following titles; which were severally referred to the Committee of the Whole on the Private Calendar, and the accompanying reports ordered to be printed:

A bill (H. R. No. 1906) for the relief of John Fletcher;

A bill (H. R. No. 510) for the relief of W. C. Snyder, of Illinois;

A bill (H. R. No. 1005) to amend the act entitled "An act making appropriations for the service of the Government for the fiscal year ending June 30, 1872, and for former years, and for other purposes," approved May 18, 1872;

A bill (H. R. No. 902) for the relief of Abel M. Lewis; and

A bill (H. R. No. 1157) for the relief of Joel A. Billups.

Mr. CASON also, from the same committee, reported back with amendments a joint resolution (H. R. No. 74) relating to the claim of Forman Matthews and David S. Parker, in the Court of Claims; which was referred to the Committee of the Whole on the Private Calendar, and the accompanying report ordered to be printed.

Mr. CASON also, from the same committee, reported back adversely the petition of Captain A. W. Bolenius and other officers of the Fiftieth Regiment of Pennsylvania Volunteers, claiming remuneration for clothing and other property lost in the service of the United States; which was laid on the table, and the accompanying report ordered to be printed.

Mr. BRADLEY, from the same committee, reported back, with a recommendation that they pass, bills of the following titles; which were severally referred to the Committee of the Whole on the Private Calendar, and the accompanying reports ordered to be printed:

A bill (H. R. No. 1433) for the relief of A. B. Woodruff, late postmaster at Woodruff, South Carolina; and

A bill (S. No. 715) for the relief of Samuel H. Canfield, postmaster at Seymour, Connecticut.

Mr. BRADLEY. The last bill reported is designed as a substitute for House bill No. 242 of similar title.

Mr. BRADLEY also, from the same committee, reported bills of the following titles; which were severally read a first and second time, referred to the Committee of the Whole on the Private Calendar, and, with the accompanying reports, ordered to be printed:

A bill (H. R. No. 4136) for the relief of Charles E. Fahnestock, of Glasford, Illinois. (substitute for House bill No. 919;)

A bill (H. R. No. 4137) for the relief of Sidney F. Oviatt, postmaster at Orange, Connecticut, (substitute for House bill No. 688;) and

A bill (H. R. No. 4138) for the relief of Edwin A. Clifford, of Evanston, Illinois.

Mr. BRADLEY also, from the same committee, reported back adversely the bill (H. R. No. 2471) for the relief of J. A. Murray; which was laid on the table, and the accompanying report ordered to be printed.

Mr. BRADLEY moved to reconsider the various votes by which bills reported by him were respectively referred to the Committee of the Whole on the Private Calender or laid on the table; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

DEFENSE OF FRONTIER OF TEXAS.

Mr. MILLS, by unanimous consent, submitted the following resolution; which was read, considered, and agreed to:

Resolved, That the President of the United States be requested to inform this House, if not incompatible with the public interests, whether any increase in the cavalry force of the Army on the Mexican and Indian frontier of Texas has been made as authorized by act of July 24, 1876, and whether any troops have been removed from the frontier of Texas and from the post of Fort Sill on the Kiowa and Comanche reservations; and whether, if so, their places have been supplied by other forces.

Mr. MILLS moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

IMPROVEMENT OF THE MONONGAHELA RIVER.

Mr. FAULKNER, by unanimous consent, introduced a bill (H. R. No. 4139) to authorize a further appropriation to continue the public works now in the course of construction upon the Monongahela River, in the State of West Virginia; which which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

GOVERNMENT WORKS, MONONGAHELA RIVER.

Mr. FAULKNER. I ask unanimous consent to submit the following resolution for consideration at this time.

The Clerk read as follows:

Resolved, That the Committee on Commerce be instructed to inquire into the loss and injury which have resulted to the Government works upon the Monongahela River from failure at the last session of Congress to make the appropriation recommended by the Secretary of War, and also into the causes and reason of the failure to make said appropriation; and further, to inquire into the expediency of repairing the injury, if any, resulting from the discontinuance of said works by an immediate appropriation for that purpose.

Mr. HOLMAN. This a matter of inquiry, to be sure, but still I do not think that my friend from West Virginia should insist upon it.

The SPEAKER. Does the gentleman from Indiana object?

Mr. HOLMAN. I do not.

Mr. FAULKNER. It is a simple resolution of inquiry.

There being no objection, the resolution was adopted.

VETO MESSAGE.

Mr. BANNING. I desire to report back from the Committee on Military Affairs a veto message of the President of the United States, and to move that it be laid upon the table.

The SPEAKER. The Chair would suggest to the gentleman that the manner of treating a veto message is provided for in the Constitution.

Mr. HALE. I suggest to the gentleman from Ohio that he had better withdraw his report and submit it in another form.

Mr. BANNING. I will then withdraw it for the present.

PORTRAIT OF HON. H. H. STARKWEATHER.

A message from the Senate, by Mr. SYMPSON, one of its clerks notified the House that that body had passed a bill (S. No. 1057) to provide for the engraving and printing of the portrait of the late Hon. Henry H. Starkweather, of Connecticut, in which the concurrence of the House was requested.

Mr. GARFIELD. I hope, by unanimous consent, that bill will be taken from the Speaker's table and acted on at once.

The SPEAKER. Does the gentleman from Indiana [Mr. HOLMAN] yield for that purpose?

Mr. HOLMAN. Certainly.

The SPEAKER. The Chair hears no objection; and the bill is taken up for action at this time.

The bill, which was read a first and second time, provides that such sum as may be necessary is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to enable the Secretary of the Treasury to have engraved and printed a portrait of Hon. Henry H. Starkweather, of Connecticut, deceased, late a member of the House of Representatives, as authorized by the resolution of the House of May 5, 1876, and concurred in by the Senate May 20, 1876; such portrait to accompany the eulogies ordered to be printed by the same resolution.

The bill was ordered to a third reading; and it was accordingly read the third time, and passed.

Mr. GARFIELD moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

And then (at one o'clock and thirty minutes p. m.) the House adjourned until Monday next at twelve o'clock m.

PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. J. H. BAGLEY: The petition of Henry S. Van de Carr and Elsie M. Reynolds, administrator and administratrix of the estate of Rensselaer Reynolds, deceased, and Gordon B. Reynolds, of Stockport, New York, for an extension of letters-patent for brakes for power-looms, to the Committee on Patents.

By Mr. BANNING: A letter from J. S. Keefe, first lieutenant Nineteenth United States Infantry, Fort Dodge, Kansas, complaining of the violation of section 1204 of the Revised Statutes, relating to the promotion of Army officers, to the Committee on Military Affairs.

Also, the petition of hospital stewards of the United States Army, for increased compensation, to the same committee.

By Mr. DENISON: The petition of C. D. Penniman, and 15 others, for the repeal of the check-stamp tax, to the Committee on Banking and Currency.

By Mr. EAMES. The petition of the officers of Redwood Library of Newport, Rhode Island; of the officers of the Historical Society of Pennsylvania, and of officers of the following-named libraries: Boston Public; Amherst College; Chicago Public; Literary Company of Philadelphia; Fletcher, Burlington, Ohio; Public, Leeds, England; Public, Indianapolis, Indiana; Academy of Natural Sciences, Philadelphia; Free, Germantown; Cooper Union, New York; Mercantile, Philadelphia; Apprentices', New York; Public, Haverhill, Massachusetts; State Law, Rhode Island; Grosvenor, Rhode Island; Sawyer Free, Gloucester, Massachusetts; Public, Cincinnati; American Catalogue, New York; Grand Lodge of Pennsylvania F. A. M.; Pennsylvania

Hospital Medical, Philadelphia; Public, Worcester, Massachusetts; American Antiquarian Society of Massachusetts; Rockford Public; Mercantile, of New York and of Baltimore; Young Men's Christian Association, New York; Young Men's Association, Buffalo; Free, Newton, Massachusetts; Yale College; Friends' Historical Association, Philadelphia, for the purchase by the United States of the papers of General Count de Rochambeau, to the Joint Committee on the Library.

By Mr. HOLMAN: The petition of Charles W. Garrett, of Wayne County, Indiana, late a cadet at the United States Naval Academy, and who was dismissed therefrom on the charge of "hazing," for an inquiry into the facts upon which the court-martial acted that found him guilty, and that he may be re-instated in said Naval Academy, to the Committee on Naval Affairs.

By Mr. HUNTON: The petition of F. E. Shepperd, of Casanova, Virginia, for the removal of his political disabilities, to the Committee on the Judiciary.

By Mr. PIERCE: The petition of the officers of the Boston Free Trade Club, that the merchant shipping of the country be relieved from the onerous restrictions now resting upon it by the preventing of citizens of the United States buying ships built out of the United States and sailing them under the nation's flag, and for changes in the tariff laws, to the Committee on Commerce.

By Mr. SCALES: A paper relating to the establishment of a post-route from Buchanan, Granville County, North Carolina, to Roxborough, Person County in the same State, to the Committee on the Post Office and Post-Roads.

By Mr. STEVENSON: The petition of Charles S. Keller, of Washington, District of Columbia, for compensation for services rendered the United States at the United States arsenal at Charleston, South Carolina, to the Committee of Claims.

By Mr. WOOD, of New York: The petition of Tassel Conklin, late corporal Company K, One hundred and seventy-third New York Volunteers, for a pension, to the Committee on Invalid Pensions.

IN SENATE.

MONDAY, *December* 11, 1876.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

The Journal of the proceedings of Friday last was read and approved.

JOHN B. GORDON, from the State of Georgia, appeared in his seat to-day.

PERSONAL EXPLANATION.

Mr. HAMLIN. I wish to say that I was absent on Friday from the Senate on account of severe indisposition. If I had been present I should have voted to sustain the ruling of the Chair on what is called the twenty-second joint rule.

PETITIONS AND MEMORIALS.

Mr. DAWES. I present the petition of Mrs. Sarah J. Spencer, president of the board of trustees of the Girls' Reform School of the District of Columbia, on behalf of the board and other citizens of the District, praying for aid in providing for the immediate necessities of the unfortunate females for whom that institution has been established. I desire, at the request of these petitioners, to have their petition referred to the Committee on Appropriations. As the chairman of that committee [Mr. WINDOM] is now in the Senate he will permit me to invoke the early and earnest consideration of the committee to the prayer of this petition.

The PRESIDENT *pro tempore*. The petition will be referred to the Committee on Appropriations.

Mr. WEST presented the petition of Samuel Jamison, of New Orleans, Louisiana, praying compensation for property used by the United States in New Orleans from July, 1862, to October, 1865; which, together with the papers on the files of the Senate relating to this case, was referred to the Committee on Claims.

Mr CHAFFEE presented eight petitions of citizens of Colorado, praying for the creation of an additional land district in that State, to be located at Lake City, Hinsdale County, and named and known as the San Juan land district; which were referred to the Committee on Public Lands.

He also presented resolutions of the Board of Trade of Denver, Colorado, asking that Denver be made a port of entry; which were referred to the Committee on Commerce.

Mr. ALCORN presented the petition of Dr. Robert J. Turnbull, late of Mississippi, praying compensation for property taken by United States troops during the late war; which was referred to the Committee on Claims.

Mr. SHERMAN presented the petition of J. E. Johnston, praying the removal of his political disabilities; which was referred to the Committee on the Judiciary.

Mr. PATTERSON presented the petition of M. L. Bonham, of South Carolina, praying the removal of his political disabilities; which was referred to the Committee on the Judiciary.

ELECTORAL VOTE OF LOUISIANA.

Mr. BOGY. I wish to present to the Senate, so that it may be printed, the report of the five democrats who were invited by the returning board of Louisiana to be present at the counting and canvassing of the votes given at the late election in that State. It is a very able document, very dignified, and contains a great deal of information. As the report from the other side was printed the other day, I hope there will be no objection to having this report also printed.

Mr. EDMUNDS. What is the paper?

Mr. INGALLS. I suggest the reference of the motion to print to the Committee on Printing.

Mr. EDMUNDS. I should like to know what it is before it is received. I do not know whether it is a petition or what it is.

Mr. BOGY. I will state again that it is the report of the five democrats who were invited to be present by the returning board at the counting of the votes given in Louisiana at the late election. We have received and printed the report of five gentlemen on the other side which was sent to this body by the President; and now I desire and they desire that this report be printed, so that the facts may go before the country.

Mr. HAMLIN. Will the Senator allow me to ask if it is addressed to the Senate?

Mr. BOGY. No, sir, it is not.

Mr. HAMLIN. Then it should not be here.

Mr. BOGY. It is a report not addressed to the Senate. The report of the other men was not addressed to the Senate.

Mr. EDMUNDS. The other was a message of the President of the United States.

Mr. BOGY. The other was addressed to the President, and transmitted to the Senate, and in that way it was printed. At the time the printing of that document was obtained by a vote of the Senate it was stated by more than one Senator that the opposite statement would also be printed when received. It was understood that there would be no objection made to printing it. I will say of this document that it is respectful, perfectly so. If it were not so, I would not offer it to the Senate. It is a dignified and an able document, and contains not one word offensive to the Senate or to anybody. I repeat that it was understood, as far as an agreement of that kind can be called an understanding, that this document should also receive publication. I would not like to detain the Senate by reading it as part of my speech, which if I claimed the right I could do; but I think the Senate will with great propriety, as the other statement was published, order that this be printed also.

Mr. EDMUNDS. To whom is the paper addressed?

Mr. BOGY. It is a report made to Mr. HEWITT, chairman of the democratic national committee, because those gentlemen, like myself, went to New Orleans at the request of Mr. HEWITT. Of course he had no right to send us there, no official authority, but I think, as far as that is concerned, he had as much authority as the President, although not holding a position equal to the Presidency. Both were unofficial and outside of official duty.

Mr. EDMUNDS. Of course the Senator must be aware, and undoubtedly is, that it is the settled rule of the Senate not to receive papers which do not accompany something that is before the body or which are not addressed to the Senate. The objection to the paper is that it violates all the rules we have hitherto observed in respect to receiving and acting upon documents that are not addressed to us. I certainly have not the least objection, for one, to the thing being printed at the expense of the Senate, or at the expense of anybody else, provided it reaches us in a way that is in accordance with the ordinary method of legislative proceeding. If the Senator will turn the report into the form of a petition to the Senate, asking us to make an inquiry or to set forth any facts, and it is signed by these gentlemen, of course he has a right to present it, and I should be very glad to see it printed.

Mr. BOGY. I presume I have no right to make such a change myself.

Mr. EDMUNDS. The Senator can get the authority in a few hours undoubtedly.

Mr. SHERMAN. I should like the Senator from Missouri to state again the nature of the paper he presents.

Mr. BOGY. It is a report made by the five democratic gentlemen who were invited to be present by the returning board in New Orleans at the counting of the votes. It is of the same character as the report made by yourself and others on the other side. I will state now for the benefit of the Senator who was not in his seat a while ago what I stated before, that when the other paper was printed it was understood that any report from this side would, when received, also be printed without objection. If it is improper to print it I will read it as part of my speech, for it sustains in the same manner in which my speech did all the positions which are advanced in answer to the gentleman from Ohio. This paper does beyond a doubt, I think, establish the fact that the returning board of Louisiana had no control legally over the question of the election of presidential electors. The point is argued with ability and with dignity; and I advanced the same position the other day in answer to my friend from Ohio. He contended that they had control; I contended that they had not. This point is very clearly made in this very able paper; and if it be proper I will read it as part of my remarks, and in that way get it before the country.

Mr. HAMLIN. I think the Senator from Missouri should adopt the suggestion made by the Senator from Vermont. I should vote for the printing of that paper now and at all times when it shall come properly before the body; but the Senator from Missouri will see while he may read it as a part of his speech and incorporate it in the RECORD the Senate cannot well order it to be printed. It is in violation of its rules. If any old almanac of the last century should be offered here and the Senate be asked to reprint it, it would conform just as much to the rule as a motion to print this statement. If the gentlemen who signed the paper should address their statement to the Senate it would come in the nature of a memorial or remonstrance or whatever you choose to call it. It would then be properly before us and I certainly would vote to print it; but I cannot vote to print it in its present condition, because it would be in violation of all rule and would open the door so that anything in the world might be offered to print, while our rules prescribe precisely what shall be printed. To come within the rule and meet the unanimous consent of the Senate, I take it, one day is not a consideration, and I presume the gentlemen will so shape their paper as to bring it properly before us.

Mr. SHERMAN. I not only desire to vote for the printing of this paper, but I desire to see it, and we cannot have an opportunity of seeing it properly unless it be put in the form of print. The suggestion made is perfectly fair, that it ought to be put in a form so that, according to the rules of the Senate, it may be printed; for instance, the form of a memorial. These gentlemen may address their memorial to the Senate, and that authority no doubt can be got by telegraph in two hours, and then I think it ought to be printed. Besides that, I think these gentleman ought to furnish us copies of testimony that they have in their possession, taken before the returning board, especially the cross-examination of some of their witnesses, which throws great light on this whole matter. I think they ought in justice to themselves, because they have ours, to furnish that testimony. They have in their possession copies of depositions of witnesses selected by the democratic electors and cross-examined by the republican electors, and that testimony I am as anxious to see as is the Senator from Missouri to see the paper in print that he presents this morning. I will vote for printing this report in any form in which it is presented, according to the rules of the Senate, and also for printing the testimony taken by the democratic electors. I think it important, because we have before us the consideration of that matter.

Mr. MORTON. The Senator refers to testimony taken before the board?

Mr. SHERMAN. I mean all the testimony before the board.

Mr. BOGY. I do not know that I would be justified in making the alteration. A letter accompanied this report signed by all these gentlemen, telling me that it is sent to me to be presented to the Senate, sent for that purpose, and as the other document had been printed they also want this document printed. I have that letter.

Mr. CONKLING. Will the Senator allow me to make a suggestion to him?

Mr. BOGY. Certainly.

Mr. CONKLING. We shall all agree that this paper as presented is not within the rules of the Senate. The Senator from Missouri at this moment is seeking a mode of making it conform to the rules of the Senate. If the signers of the paper are not accessible and he has no authority competent in his own estimation to change this paper, any single citizen I think may address to the Senate a memorial of his own in which memorial he may incorporate the paper as a part of it. Thus it would be within the rules and within the suggestion made by the three Senators who have called attention to the fact that it is not now in such conformity. Any single citizen I take it has a right to address to one or both Houses of Congress a petition or memorial, and he has a right to make this paper if it be, as I have no doubt it is, as described by the Senator, respectful and proper in its terms, a part of the memorial he presents; he refers to it; he adopts it. That brings it I think within the rules of the Senate and that will save the Senator all trouble of telegraphing and also all delay in assuring himself of his authority.

Mr. BOGY. I should like to ask my friend a question.

Mr. STEVENSON. If my friend from Missouri will accept a suggestion from me, I will join him in a memorial to the Senate, as we were both on that committee, asking that the accompanying document, which we will make a part of our memorial, shall be printed, setting forth in the memorial what the document which we ask to be printed is. I have no doubt that that will reach the suggestion. I will join with the Senator myself. This is a matter of too much importance to stand on a mere technicality, and I have no doubt every Senator desires to see it printed.

Mr. McDONALD. I will unite with the Senator from Kentucky in subscribing a memorial embracing the paper. As to the suggestion of the Senator from Ohio in reference to the testimony taken, I will say that I have no doubt before the close of this week it will be properly brought forward and be printed for the consideration of the Senate.

Mr. SHERMAN. I am glad to hear it, because I assure the Senators that I think it is just to the Senate and to the people of the United States that the testimony in the hands of these gentlemen, or at least in the hands of the democratic candidates claiming to be electors of Louisiana, shall be published. I think, under our laws in Ohio, we should be entitled to have copies of it, because the republican electors through their counsel did cross-examine witnesses introduced by the democratic electors, and they would have a right to copies of those depositions to be made a part of the case.

Mr. McDONALD. There will be no difficulty about that.

Mr. EDMUNDS. It will be certainly within the power of the Senate Committee on Privileges and Elections, now acting under a resolution of the Senate, to invite these gentlemen who send this left-handed memorial to come with their papers before the committee and exhibit them, and I hope it will be done if there is any reluctance on the part of anybody to print it.

Mr. BOGY. My intention, when I rose a moment ago, was to ask the Senator from New York a simple question, which may not be necessary now: whether it would be proper for me to present a memorial and make this document a part of my memorial.

Mr. CONKLING. I have no doubt about it, Mr. President. The Constitution guarantees to every citizen, as I understand, the right of petition. The Senator, although Senator, is a citizen. I take it if he or Mr. HEWITT, who is a member of the House, or any other person in whose custody this paper is, present in form addressed to the Senate a memorial of which the paper constitutes a part, either by being incorporated in it or referred to as part of it, that is an appropriate paper, the right to present which nobody will, nobody can, deny; and if the Senators from Kentucky and Indiana who seem to be so engaged just now, should make that their memorial, or any single citizen should make it his, I cannot see what doubt there would be as to the right of the Senator to present it to the Senate.

Mr. BOGY. So as to conform to the rules of the Senate, which I presume are altogether proper, I will adopt the suggestion of the Senator from New York, and will prepare, with my friend from Kentucky [Mr. STEVENSON] and my friend from Indiana, [Mr. McDONALD,] who were also there, a memorial, and make this document a part of the memorial. I will accept that suggestion.

The PRESIDENT *pro tempore*. The paper is withdrawn by the Senator from Missouri.

ELECTION INVESTIGATION IN SOUTHERN STATES.

Mr. WINDOM. I am instructed by the Committee on Appropriations, to whom was referred the bill (H. R. No. 4121) to provide for the expenses of certain special committees, to report it back with amendments, and ask for its present consideration. I suppose there will be no objection to it.

By unanimous consent the Senate, as in Committee of the Whole, proceeded to consider the bill. It appropriates the sum of $21,000, or so much thereof as may be necessary, to defray the expenses of the three special committees charged, respectively, with the investigation of the recent elections in the States of Louisiana, of South Carolina, and of Florida, the appropriation to be added to the contingent fund of the House of Representatives, and to be disbursed upon vouchers approved by the chairmen of the respective committees.

The bill was reported from the Committee on Appropriations with amendments.

The first amendment was to insert after the word "committees," in line 7, the words "from the House of Representatives;" so as to read:

To defray the expenses of the three special committees from the House of Representatives, &c.

The amendment was agreed to.

The next amendment was to insert the following as an additional section:

SEC. 2. That the sum of $50,000, or so much thereof as may be necessary, be, and the same is hereby, appropriated, out of any moneys in the Treasury not otherwise appropriated, to defray the expenses of the Committee on Privileges and Elections in making the investigations directed by Senate resolution of December 5, 1876, in the several States named therein, said appropriation to be paid into the contingent fund of the Senate. And the disbursing officer of the Senate shall advance such parts of the sum above appropriated to the Sergeant-at-Arms of the Senate as the chairman of said committee shall, in writing, direct, for the purpose aforesaid; and the Sergeant-at-Arms shall, as soon as practicable, make a detailed report of the expenditure thereof, with proper vouchers, which, when so made, shall be received by said disbursing officer and returned with his accounts to the proper officer of the Treasury Department.

Mr. DAVIS. I should like the amendment relating to the House committees reported again. I know it has been acted upon, but I should like to hear it.

The CHIEF CLERK. After the word "committees," in line 7, insert "from the House of Representatives."

Mr. COCKRELL. How much is the amount appropriated in the House bill?

The PRESIDENT *pro tempore*. Twenty-one thousand dollars.

Mr. COCKRELL. Twenty-one thousand dollars to three committees of the House and $50,000 to one committee of the Senate!

Mr. WINDOM. The Committee on Appropriations were guided in their judgment as to the amount necessary by the unanimous action, as they are informed, of the Committee on Privileges and Elections. Upon a consultation among themselves it was agreed that this was the smallest sum that would be sufficient, and upon their judgment, they having canvassed it carefully, the Committee on Appropriations reported the amount asked for.

Mr. MORTON. I will state that the Committee on Privileges and Elections canvassed this question of expense in view of the duties imposed upon them and the extent of the investigations which they are required to make. They came to the conclusion that it would

require in the neighborhood of $50,000 to do the work; but if it does not require so much the money will not be used. There will be no more money used, I presume, than is necessary. I think the committee will be conducted as economically as it can be, but we came to the conclusion that it would cost in the neighborhood of $40,000 to conduct this investigation.

The PRESIDENT *pro tempore*. The question is on the amendment of the Committee on Appropriations.

The amendment was agreed to.

The bill was reported to the Senate as amended.

Mr. DAVIS. When this matter was discussed in the Committee on Appropriations, it was believed that $21,000 was too small a sum for the House committees, and that the House would probably amend the bill so as to provide for an increase. I name it now, so that when the amendment comes here the Senate may not be taken by surprise at the fact that there is an additional sum required on the House side.

The amendments were concurred in.

The amendments were ordered to be engrossed, and the bill to be read a third time. The bill was read the third time, and passed.

The title was amended so as to read: "An act to provide for the expenses of certain special committees of the House of Representatives, and of the Committee on Privileges and Elections of the Senate."

BILLS INTRODUCED.

Mr. MITCHELL asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1061) making a further appropriation toward construction of canal and locks at Cascades of Columbia River; which was read twice by its title, referred to the Select Committee on Transportation Routes to the Seaboard, and ordered to be printed.

Mr. CAMERON, of Wisconsin, (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1062) to provide for the redemption of the greenback currency; which was read twice by its title, referred to the Committee on Finance, and ordered to be printed.

Mr. WINDOM asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1063) for the relief of certain settlers on the public lands; which was read twice by its title, referred to the Committee on Public Lands, and ordered to be printed.

Mr. HOWE asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1064) for the relief of L. H. & G. C. Schneider; which was read twice by its title, referred to the Committee on Claims, and ordered to be printed.

He also asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1065) for the relief of William T. Duvall; which was read twice by its title, referred to the Committee on Claims, and ordered to be printed.

Mr. LOGAN asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1055) to increase the pension of Amasa J. Finch and First Lieutenant George W. Fitch; which was read twice by its title, referred to the Committee on Pensions, and ordered to be printed.

ELECTORAL VOTE OF OREGON.

Mr. MITCHELL. The Committee on Privileges and Elections, to whom was referred the resolution relating to the electoral vote of Oregon, have considered the same and instructed me to report it with amendments, and ask its adoption. I ask for the present consideration of the resolution.

The PRESIDENT *pro tempore*. The report will be read, and the Chair will put the question.

The Chief Clerk read as follows:

The Committee on Privileges and Elections, to which was referred the resolution relating to the electoral vote in Oregon, having considered the same, have instructed me to report that the said resolution be amended to read as follows, and they recommend its adoption: Strike out all after the word "whereas" in first line and insert the following in lieu thereof: "It is alleged that at the late election for electors of President and Vice-President for the State of Oregon the people of said State by a majority of over one thousand votes elected W. H. Odell, John C. Cartwright, and J. W. Watts.

"And whereas it is also alleged that the governor of said State did subsequently, in violation of law and in defiance of the expressed will of the people, issue a certificate of election to one E. A. Cronin instead of to said J. W. Watts;

"And whereas it is also alleged that said E. A. Cronin did, in violation of law, upon some pretext, assume to select for his colleagues one J. N. T. Miller and —— Parker in lieu of said W. H. Odell and J. C. Cartwright;

"And whereas it is further alleged that said Cronin, Miller, and Parker have assumed to cast the vote of Oregon for President and Vice-President and to certify the same to the President of the Senate: Therefore,

"*Be it resolved*, That the Committee on Privileges and Elections is hereby instructed to inquire into the eligibility of said J. W. Watts, and investigate the facts attending the appointment of said electors and pretended electors and report the same to the Senate, and for this purpose may employ a stenographer, send for persons and papers, administer oaths, and examine witnesses."

Mr. COOPER. Is that up for consideration?

The PRESIDENT *pro tempore*. The Chair is about to put the question whether the Senate will proceed to its present consideration.

Mr. COOPER. Will one objection carry it over?

The PRESIDENT *pro tempore*. One objection will carry it over under the rules.

Mr. COOPER. I object.

The PRESIDENT *pro tempore*. The resolution goes over until to-morrow.

Mr. MITCHELL. I move that the resolution, as amended, be printed.

The motion was agreed to.

ELECTORAL VOTE OF LOUISIANA.

Mr. SHERMAN submitted the following resolution; which was referred to the Committee on Printing:

Resolved, That —— extra copies of the letter of the President, with the accompanying documents, on the election of Louisiana, be printed for the use of the Senate.

EMPLOYMENT OF DEPUTY MARSHALS.

Mr. BAYARD. I offer the following resolution, and ask for its present consideration:

Resolved, That the Attorney-General be, and he is hereby, directed to communicate to the Senate the total number of deputy marshals employed throughout the United States in connection with the election held on November 7 last, stating the number so employed in each State and at each voting precinct respectively, and the length of time they were so employed.

Mr. EDMUNDS. Mr. President, I want to offer an amendment to that resolution to-morrow, and I should like it to go over till then. I wish to get a little more information than the resolution seems to contemplate.

The PRESIDENT *pro tempore*. The resolution will lie over.

Mr. BAYARD. Does the Senator object to its being printed?

Mr. EDMUNDS. To its being printed, I have no objection of course.

The PRESIDENT *pro tempore*. If there be no objection the printing will be ordered.

JAMES L. HIGH.

Mr. LOGAN. I ask that the bill (S. No. 604) for the relief of James L. High, reported at the last session by the Senator from Iowa [Mr. WRIGHT] adversely from the Committee on the Judiciary, be restored to the Calendar.

The PRESIDENT *pro tempore*. If there be no objection, the bill will be restored to the Calendar with the adverse report. The Chair hears no objection.

COMMITTEE ON PRIVILEGES AND ELECTIONS.

Mr. MORTON. I offer the following resolution:

Resolved, That the several subcommittees of the Committee on Privileges and Elections authorized and instructed by the resolution offered by Mr. EDMUNDS (being Senate Miscellaneous Document No. 1 of this session) to inquire and report concerning certain matters relating to elections, and any other subcommittees into which said first-named subcommittees may be subdivided, shall be committees of the Senate, so that the chairmen thereof shall be authorized to administer oaths under the provisions of section 101 of the Revised Statutes.

The purpose simply is to authorize the chairmen of subcommittees to administer oaths as the chairmen of committees under the general law; and, for that purpose, to treat them as committees of the Senate.

Mr. EDMUNDS. I think that is the law now, although the statute says "committees." The original resolution provided for the appointment of subcommittees so as to give them this power; but there is not the slightest objection to removing all possible doubt, as this resolution does.

Mr. MORTON. The Senator from Michigan [Mr. CHRISTIANCY] I believe examined the law, and also the Senator from New Hampshire, [Mr. WADLEIGH,] and they thought it might not be broad enough, that there might be a doubt of it. Hence we deemed it proper to have this resolution adopted.

Mr. WADLEIGH. It is proposed that the subcommittees be divided into other subcommittees. That is the difficulty.

Mr. EDMUNDS. I see.

The PRESIDENT *pro tempore*. The question is on the resolution.

The resolution was agreed to.

COMMITTEE SERVICE.

Mr. BOUTWELL. Mr. President, when additions were made to the Committee on Privileges and Elections for the special purpose of acting under the resolution introduced by the Senator from Vermont, it was understood by me, and I think by the chairman of the committee, that the work to be done under that resolution would be done in the city of Washington. The committee are of the opinion that it is necessary to visit the several States. I ask the Senate to excuse me from service on that committee on that ground. I have already spent some time in the same business, but should not urge that as a reason for asking to be relieved now; but I am a member of what is called the silver commission. The subject referred to that commission is important; we are considering it; and the material work of the committee is to be done in the next twenty or thirty days. I ask the Senate to excuse me from service upon the Committee on Privileges and Elections. I submit that motion.

The motion was agreed to, and the President *pro tempore* being by unanimous consent authorized to fill the vacancy, Mr. OGLESBY was appointed.

COUNTING OF ELECTORAL VOTES.

The PRESIDENT *pro tempore*. If there be no further morning business the Chair will call up the unfinished business of Friday's session, which is the joint resolution (S. R. No. 10) proposing an amendment to the Constitution of the United States. The joint resolution is before the Senate as in Committee of the Whole.

The joint resolution, as introduced by Mr. EDMUNDS on the 22d of March last, is as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of each House concurring therein,) That the following article be proposed to the Legislatures of the several States as an amend-

ment to the Constitution of the United States, which when ratified by three-fourths of said Legislatures, shall be valid as a part of the Constitution, namely:

ARTICLE XII.

That the twelfth article of the amendments of the Constitution be, and the same is hereby, abrogated, and in the place thereof the following be, and the same is hereby, ordained and established, namely:

The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom at least shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and for all persons voted for as Vice-President, and of the number of votes for each; which lists they shall sign and certify, and transmit sealed to the seat of Government of the United States, directed to the presiding justice of the Supreme Court of the United States. And the Supreme Court, at a time and place to be fixed by law, shall publicly open all the certificates and count the votes, and the person having the greatest number of votes for President, considered by the court to have been lawfully given and certified, shall be President, if such number be a majority of the whole number of electors lawfully appointed; and if no person have such majority, the state of the votes shall be immediately certified to the House of Representatives, and then, from the persons having the highest number not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by a *viva voce* vote, the President; but the vote shall be taken by States, the representation from each State having one vote; and if the votes of any State shall not show a majority for any one candidate, the vote of such State shall not be reckoned. A quorum of the House of Representatives for the purpose of such election shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice; and if, on the first vote, there shall be a failure to elect, further votes shall immediately continue to be taken until a President shall be elected.

And if the House of Representatives shall not choose a President, when the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of death or other constitutional disability of the President. The person having the greatest number of votes for Vice-President, to be counted and determined as in case of President as before provided, shall be Vice-President, if such number be a majority of the whole number of electors appointed. And if no person have a majority, then from the two highest numbers on the list, the Senate shall choose a Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

SEC. 2. No person holding the office of a justice of the Supreme Court of the United States shall be eligible to be elected as President or Vice-President until the expiration of two years next after he shall have ceased to be such justice.

The joint resolution was reported by the Committee on the Judiciary on the 12th of May with amendments.

The first amendment was in line 14 of section 1, before the word "vote" to insert "each elector shall;" in the same line, after the word "vote" to strike out the words "by ballot" and insert "*viva voce*;" and in line 16 after the word "with" to strike out "themselves" and insert "himself;" so as to read:

The electors shall meet in their respective States, and each elector shall vote *viva voce* for President and Vice-President, one of whom at least shall not be an inhabitant of the same State with himself.

The amendment was agreed to.

The next amendment was in the same section, line 17, after the word "name" to strike out "in their ballots;" after the word "and" at the end of line 17, to strike out "in distinct ballots" and insert "separately;" in line 20, after the word "and" to strike out "for" and insert "all;" and in line 21, after the word "each" insert "and of the electors voting for the same;" so as to read:

They shall name the person voted for as President, and separately the person voted for as Vice-President; and they shall make distinct lists of all persons voted for as President, and all persons voted for as Vice-President, and of the number of votes for each, and of the electors voting for the same.

The amendment was agreed to.

The next amendment was in line 29, after the word "be" to insert "the;" so as to read:

And the person having the greatest number of votes for President, considered by the court to have been lawfully given and certified, shall be the President, &c.

The amendment was agreed to.

The next amendment was after the word "appointed" in line 31, to insert the following words:

But the court shall, in the discharge of the duties herein provided, disregard errors of form, and be governed by the substantial right of the matter.

Mr. MORTON. Mr. President, I think such an amendment as that ought not to be adopted without some consideration. This amendment will give to the Supreme Court a boundless jurisdiction. There is no limit to it.

But the court shall, in the discharge of the duties herein provided, disregard errors of form, and be governed by the substantial right of the matter.

I think that would authorize the court to do almost anything, perhaps to go and count the votes in the State of Vermont. It is such a jurisdiction as ought not to be conferred upon any tribunal without very grave consideration. This makes the Supreme Court a returning-board authorized to do the very right in the matter, to disregard all matters of form, to go behind every kind of document and do what they think is right. I certainly think that is a very dangerous power to confer on any tribunal.

Mr. EDMUNDS. Mr. President, if the Senator from Indiana is right in his suggestion as to the scope of this amendment, I should agree with him entirely; but the object of the committee was—and if we have not attained that we certainly desire to attain it—to authorize the court not to exercise a boundless discretion, or to go forward to count the votes of citizens, or to retry any question that the State authorities had, according to their laws under the Constitution, tried and determined, but to do exactly what the Supreme Court of the United States and the circuit courts and the district courts of the United States and the courts of all the several States are authorized by the laws of the United States and the several States to do in the matters which the courts are called upon to try, and that is to disregard defects of form and decide according to the matter of right in the cause as it shall appear. The language is almost literally that in the act of Congress of the 24th of September, 1789, establishing the judicial courts of the United States, which says that in all matters coming before them—

The said courts respectively shall proceed and give judgment according as the right of the cause and matter in law shall appear unto them, without regarding any imperfections, defects, or want of form, &c.

And they may amend all such defects. The language that we used we supposed imported simply the authority in the Supreme Court in performing this duty, to disregard such a technical effect, for instance, as that which on an occasion only a few years since occurred, I believe, in reference to the State of Arkansas, whose vote was not counted, or at least was objected to—I do not remember what became of it—on account of some difficulty in the seal of the State attached to the certificate of the governor showing who were the electors; the difficulty being, if I rightly remember the circumstance, that the seal of the secretary of state was used as distinguished from the great seal of the State—of course a matter of no practical consequence whatever, and one that would give everybody who was obliged to decide upon such a question, and bound to follow the exact letter of the law in that mere matter of form, great regret to be obliged, if we had the authority, to reject the vote of a State on such a ground. The object of this amendment, the only object, and the only construction that I can see which can be given to it, is to enable the Supreme Court, guided by what is said before as to what their duty is, that is, to ascertain what electoral votes have been lawfully given and certified, taking up the elector from the time of his creation, to perform that duty without being bound to follow mere matters of form, but being bound only by matters of substance. Of course that increases the power of the tribunal as the power of all the courts of the United States and now of all civilized countries is greatly increased. Although the laws of all such countries regulate the forms and methods of procedure, yet they nevertheless all of them, in the interest of justice and civilization, give the court a power and impose upon it the duty, when a matter is before it, to follow the substance and not to allow the letter to defeat the spirit of the law it is called upon to administer. If there is any other phrase which my friend can suggest, either now or by and by, as we are now in committee, this can be postponed.

Mr. MORTON. I will say to the Senator that, before the Senate is called upon to vote on this important amendment, I think we ought to hear the Senator on the general merits of the proposition. I have no doubt he is prepared to speak, and I should like to hear him on the general proposition before we are called upon to pass on this particular amendment.

Mr. EDMUNDS. Well, sir, I am perfectly willing to state now the little I have to say. I am, of course, prepared to speak in the same sense that I and all the other members of every committee of the Senate are prepared when they report a matter, to explain briefly the grounds and principles upon which it rests. I shall be very happy to do it at this time rather than after the amendment is adopted, if that course is agreeable to Senators.

The substantial point, Mr. President, in this proposed amendment to the Constitution is to change what is said, and what has been said for many years on all sides of political opinion, to be an uncertainty in respect of the present state of the Constitution of the United States on this most interesting topic into a certainty as far as constitutional provision can produce certainty about anything. I wish to say, also, that this is not a device, as some of the newspapers have intimated, and as has been suggested in some letters that I myself have received, to use the vernacular, "to swap horses in crossing a stream," but it is an amendment to the Constitution of the United States that was introduced into the Senate on the 22d of March, almost a year ago, and was reported favorably by the then Committee on the Judiciary on the 12th of May, with the changes of phraseology that will be found in the print.

Now, of course, the first ground on which we should enter in considering this question is, what is the present state of the constitutional law upon this subject? And, having ascertained that, if we can, or having ascertained that there is no unanimity of opinion as to what the present state of the constitutional law is, is it desirable to reach a state of constitutional law in the interpretation of which all statesmen and legislators and judges can agree, as far as such a thing is ever possible? Secondly, whether the particular method of certainty that the committee propose is the best one attainable under the present condition and probable future condition of the Republic.

It is a singular circumstance, Mr. President, that the language of the existing Constitution should have paused exactly where it did. The Constitution of 1789, article 2, taking up this question just where this proposed amendment does, after the State has appointed its electors, just as now, "in such manner as the Legislature shall direct," proceeds to say that the electors—

Shall make a list of all the persons voted for and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate. The

President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President," &c.

That, the Senate will observe, is the provision of the Constitution of 1787, of the government which went into force on the 4th of March, 1789, and not the provision now in force, which I shall come to presently.

The first thing that took place, of course, in respect of this provision was its being proposed and considered in the Federal convention. I have searched through the debates and the journal of that convention to find some light, however faint, that would enable me to perceive precisely what the makers of the Constitution intended in respect of the powers of any body when these certificates should have been opened; and I am unable for one, to find in the proceedings of the Federal convention anything that throws light upon it. That language, so far as I have been able to discover, was not made the subject of criticism or comment or debate. It may be that it was; but I have not been able to find it.

Immediately after this, and during the first term of President Washington, Congress was called upon to pass a law to put this provision of the Constitution into more perfect effect in respect of the time when the electors should be voted for and the time when the electors should give their votes, and so on. So the act of 1792 was passed to carry out these provisions of the Constitution relating to the election of President and Vice-President of the United States. And again it is a singular circumstance, although there is a considerable body of debate upon the passage of that law, that this particular point of where the power resided, if there was any power at all, to count these votes, the extent of that power, by whom to be exercised, under what methods, was left entirely without a single word of comment or criticism or debate. There was no allusion to it that I can find. The debate ran chiefly as to the proper time to fix of distance between the votes of the people and the votes of the electors, some thinking the electors ought to vote the next day almost, if it were possible to guard against their being influenced by machinations and cabals and all that sort of thing. But when you come to the passage of this first law, which was to put these provisions of the Constitution about the election of President and Vice-President into effect and provide for future elections, the first one being provided for by an ordinance of the convention that has been already referred to and which contains a very strong implication apparently in the direction of the power, whatever it may be, residing in neither House of Congress, but residing in the President of the Senate, this question was untouched. I do not mean to say that this ordinance of the convention defined the extent or the limit of the power of the presiding officer of the Senate, but it seems to imply that the thing to be done, the whole thing to be done in the presence of the two Houses, was to be done by the presiding officer of the Senate; and on that occasion, on that first election, the resolution of the Senate and the attendance of the House of Representatives in this Chamber proceeded apparently evidently upon that theory. The presiding officer of the Senate did everything. Since that time, as we know, that method has not always, perhaps not generally, been pursued; and in what I say now I do not intend to express any opinion as to the true construction of the Constitution. If we are forced to define what is the true construction of the Constitution, I wish to do it for myself after further reflection and deliberation, and after I shall have heard the subject more fully discussed. The principle upon which the committee proceeded in respect to this proposed amendment to the Constitution is not based, if I correctly understand the views of the committee, upon any determination that we have made as to precisely what is the true construction of the present Constitution, but rather upon the well known fact that, for many years at least, there has been, among gentlemen of all parties, a considerable difference of opinion as to the true interpretation of the Constitution; and, in order to escape from that difficulty and to solve that doubt, not by interpretation, but by a fresh act of three-fourths of the States of the American people, we thought it was desirable to do it in this way, and for other reasons that I shall come to by and by.

Mr. President, under this provision of the Constitution of 1787 the act of 1792, as I have said, was passed which throws no light at all upon the construction that Congress in the passage of that act gave to it. It simply provides that the two Houses shall be in session on the second Wednesday in February, and that the certificates shall be opened and the result ascertained in the manner provided by the Constitution. It goes directly back to that; and as I say it went back without any comment at all that I can find upon what sort of power resided anywhere on such an occasion.

The next time and place that one might fairly look for light upon the subject was in the year 1800, and in Congress when there was introduced into the Senate, and passed, a bill providing for disputed presidential elections. You will observe that that was under the first provision of the Constitution. That bill provided, in substance, as it left the Senate—I have the original files down-stairs and will send for them, but I think I can state the substance with accuracy without referring to them—that there should be a joint committee of the two Houses of Congress, selected in a particular way which I need not now go into for that was a matter of detail, which committee when appointed should be actually a single committee, not like many of what are called joint committees—an equal number of gentlemen of the two Houses meeting together for convenience and if they all agreed very well, and if they did not each committee stood on its own feet—but a tribunal composed of equal numbers from each House of Congress to whom, when the certificates were opened, as provided by the Constitution by the presiding officer of the Senate, all the certificates and all petitions, memorials, depositions, papers, complaints to be made with a certain formality that the bill provided for otherwise, upon the subject of that election, should be committed; and that that committee should consider, substantially under such limitations as we have provided for the Supreme Court in this joint resolution, not how many votes were given in a particular State, not hunt all over all the States to count up and see how many had voted honestly and how many dishonestly and how many had been rejected and so on, but looking to those electors and ascertaining first whether they were the persons they purported to be, whether they were the individuals whom the States had as provided by their Legislatures appointed, that is looking into the regularity and legality of their commissions and not into the measurement of the number of votes that each had got going behind the State machinery, but looking to see that that had been complied with. Then that committee thus having examined any disputed case was to report its opinion and that opinion was made the law for that occasion. I believe they were to be sworn; I am quite sure they were. They embraced in fact all the characteristics that the Senate at that time could impute to a selected body of judges to pass upon a specific question of the application of the Constitution to the state of facts that the papers and other evidence laid before them raised. It went over to the House of Representatives. The House of Representatives entirely reversed the method and at first proposed not to the Senate—I am now giving a general sketch of the proceedings—but it was first proposed in the House that this joint committee, instead of having a power to decide, should only have the power to inquire and report to the two Houses; and that their functions should end by furnishing to the two Houses, just as any other committee's functions end by furnishing the two Houses the facts that they had ascertained, the testimony upon which they had ascertained them, and their opinion, leaving the two Houses perfectly free either to follow that opinion, or to reverse it or to do something else. But finally the House of Representatives agreed upon an amendment which was in substance a substitute for the whole bill, providing simply and finally for leaving the matter to the decision of the Senate and the House of Representatives acting separately just like two judges on the bench having equal powers, and provided that the vote of a State shall be counted unless the two Houses concurred for the reasons appearing on the depositions or on the face of the papers in rejecting the certificates of that State; and with that condition in substance, with all the necessary machinery which I will not take up your time to go through, they sent the bill back to the Senate of the United States. The Senate, after consideration, amended the amendment of the House by striking out the form of rejection and inserting the form of admission so as to make the law, if the Senate amendment to the House amendment were agreed to, a law substantially like the twenty-second joint rule that once existed in this body, if it ever had a constitutional existence anywhere upon which I express no opinion, because as I say, I am not pressing this amendment upon the Senate upon any theory that I may be supposed to have as to what the present Constitution is, but upon a different one. The Senate and the House then met finally in this attitude upon those two amendments, the Senate insisting upon what was the substance of the twenty-second joint rule that nothing should be received that the two Houses did not agree to receive, the House insisting upon what was the substance of the bill of my honorable friend from Indiana that nothing should be rejected that the two Houses did not agree to reject, and finally each House adhered to its respective opinions and the bill fell as a matter of course.

That ended the attempt of 1800, which the Chair will see was first on the part of the Senate, an effort very largely concurred in by the votes that passed the bill, to provide for a joint committee, who, being sworn as judges, should pass upon all disputed questions finally, and the two Houses agreeing to stand by that opinion upon the theory, as it was stated somewhat in the debates, that there would be less danger from the bias of party, the heat of passion, excitement, and so on, to have any disputes settled by a limited body of selected persons from the two Houses, specially sworn to perform that duty, than to open the question at large to all the combinations of politics and the heat of party and so on and so on. But the House having changed that entirely, the Senate apparently receded from that attitude without any serious resistance and finally agreed that the two Houses at large should determine any disputed question, but insisting that nothing should be received, as I have said, that the two did not agree to, while the House insisted that everything should be received that the two did not agree to reject.

Mr. BAYARD. Will the Senator be kind enough to indicate the volume in which the record of those proceedings, to which he has referred, exists and the pages at which they will be found?

Mr. EDMUNDS. All this will be found about this bill that I am now speaking of, the bill of 1800, in the proceedings of the Sixth Congress, Annals of Congress, 1799 to 1801. It runs through a large number of pages.

Mr. BAYARD. Which volume of the Annals?

Mr. EDMUNDS. They are not numbered by volumes, but by Congresses, the Sixth Congress, 1799 to 1801. After that came the elec-

tion of Mr. Jefferson as President of the United States, and that celebrated tie of the vote between himself and Mr. Burr, which was made manifest on the second Wednesday of February, 1801; and with that, of course, everybody is familiar. The Constitution as it then stood, as the Chair and Senators are perfectly well aware, provided for a particular method, where there were votes for several persons, of picking out the particular person who was to be President, inasmuch as the electors were not authorized to distinguish who they were for as to President and Vice-President, but were to vote for two persons. Then it was proposed to change the Constitution. I ought to have said before coming to that, that in the debates about this bill of 1800, providing a mode of settling disputes about President, there is reference to the true construction of the Constitution in the course of the debate, and one of the chief and leading debaters, Mr. Charles Pinckney, of South Carolina, insisted with great vigor, and certainly with great ingenuity, if not with soundness—on which as I say I do not intend to express any opinion at all—that not only this bill of 1800, but even the act of 1792, was unconstitutional; that the act of 1792 went clear to, if not beyond the verge of congressional power, and that this act, which actually undertook in terms to provide for a disputed case to be acted upon either by law or by either House under the law, was wholly outside of constitutional power, and that the people of the United States in agreeing to the Constitution never intended, could not be supposed to have intended, to repose, particularly in a legislative body that in a particular contingency, dependent upon its own action, was to have the right to choose a President, any power at all over the subject. He said in substance that it would be monstrous to suppose that the States in adopting this Constitution had intended first to leave it to the House of Representatives under any circumstances to determine whether a President had been elected, and then, if in a particular state of parties with heat and excitement they should choose to determine that a particular President had not been elected, take the thing into their own hands, and elect one themselves. Whether that was sound or not, as I say, I express no opinion; I am only endeavoring to point out to the Senate as briefly as I may the course of legislation and of discussion on the subject that has already occurred in the earlier times of the Government.

That bill, as I have said, failed for the reason I have stated. Then it was proposed to amend the Constitution, and in 1803 the two Houses agreed on an amendment to be submitted to the people, which is now article 12 of the amendments, which, so far as this present question is concerned, although it requires the electors to vote distinctly for some person for President and some person for Vice-President, as the first provision did not, when you come to the respect about which this proposition of the Committee on the Judiciary acts and speaks, adopts literally the language of the old article. Although there had been fourteen years, nearly fifteen years, since the Government went into operation four elections of President of the United States under the old article, although there had been in the debate three years before in the preceding Congress a great difference of opinion as to what the language meant, where was the limit of constitutional power in Congress if any existed at all, and what was its nature, yet, when the two Houses of Congress proposed to the States this fresh amendment to cure the difficulties that had arisen in 1800, they took exactly the same language that the convention had taken before in respect of the disposition of the votes after the electors had given them and provided that the lists should be signed and certified and transmitted, sealed, "to the seat of the Government of the United States, directed to the President of the Senate," and—

> The President of the Senate shall, in presence of Senate and House of Representatives, open all the certificates, and the votes shall then be counted.

Making no provision for what had already been drawn into dispute and discussion as to the exercise of that power, and no specific direction as to the person or authority by whom it was to be exercised, or the limit of the jurisdiction of that person or power. There was a very extended debate on the subject of that amendment to the Constitution, which went through and was adopted, as I have said; and although I have not yet been able to read it all, I think I have read it so far that I feel safe in saying that that debate on this change in the Constitution makes no reference to the force of the words declaring that the certificates shall be opened "and the votes shall then be counted." It is entirely dark, so far as I can discover, though it is possible something may yet be found. We can draw no light from the discussion on this new amendment in respect of the true import of those words.

From that time to this, as everybody knows, exactly what has been done has been somewhat various. For a period of sixty-one years, from 1803 to 1864, there was no provision of law except the act of 1792, which does not touch at all the subject that we are now speaking of, because it merely says the thing shall be done according to the Constitution, whatever that means; there was no provision of law at all, and there was no provision in any joint rule or other proceeding of the two Houses, that I know of, which undertook, either expressly or by implication, to carry out that provision of the Constitution except by the mere mechanical presence of the two bodies, with tellers to sit at the tables to do the clerical work. The first instance that I know of when any question was made was in 1857, when the electors of Wisconsin failed to meet on the day that the act of 1792 required they should; so that, if the act of 1792 were constitutional in that respect, and that requirement was a requirement of substance, a mandate instead of a direction, the vote of the State of Wisconsin had not been given in accordance with the Constitution. But the certificate was received by the then President of the Senate, Mr. Mason, of Virginia, and was opened and was reported by the tellers in the regular way with all the others. On the President announcing that vote, some body rose and questioned the right of the presiding officer to determine whether that was the constitutional vote of the State of Wisconsin or not, and the presiding officer, it is stated, declined to entertain the question of order or to submit it to the bodies or people, whatever they might be called, who were before him, and retired from the Chair and with the Senate came back to the Senate Chamber.

Mr. MORTON. And said the only thing in order was to count the votes.

Mr. EDMUNDS. And he said the only thing in order was to count the vote. Then in each House a resolution on the subject was immediately proposed; and, after some discussion in each House, the whole thing was dropped without throwing any light on the matter further than the event itself shows. That was under the law, and upon a point that the law explicitly provided for. In other cases, those of Indiana and Missouri and Michigan, connected with their condition as States in the Union or out of it, whether they were entitled as States, in each instance I believe, to cast the vote, questions were made, and certain forms of resolutions of the two Houses were in all or the most of them adopted. That in respect of Missouri was simply providing that the result should be stated contingently. Inasmuch as it was understood before hand that it did not make any difference whether the State of Missouri had so far become a sovereign State on the day of the election as to be entitled to vote for President and Vice-President or not, it was simply provided that the thing should be read contingently: "If Missouri be counted, the vote will stand so and so; if Missouri be not counted, the vote will stand so and so." In the case of Indiana, I believe the vote was actually counted; nobody finally made any objection.

Mr. STEVENSON. There was an objection to the Indiana vote, and the Houses separated.

Mr. EDMUNDS. Yes, there was an objection to Indiana, and the Houses separated; and apparently without any decision by the two Houses, so far as I now remember, the count went on. My friend from New York [Mr. CONKLING] says the House of Representatives voted to count Indiana, and sent a message to the Senate; the Senate returned and it was counted. I remember that it was counted, but I had forgotten how the thing was reached. Then in the case of Michigan there was the same difficulty, and the same sort of steps were taken.

Then when we come down to 1864, the particular condition of the country at that time seemed to require that some measure should be resorted to, if already under the Constitution the law was not complete, to provide for the contingency of our southern brethren in the confederacy sending votes to the President of the Senate that should be entirely adequate to reject Mr. Lincoln and put in General McClellan, who was supposed to be more favorable to their views than Mr. Lincoln was, to secure what little there was left of the Union at that time to the peaceable and quiet enjoyment of its own rights, in its own way; and so, in that abnormal condition of things, the two Houses passed a joint resolution declaring in substance, as I remember it, that these States having gone into the rebellion, and put themselves outside of all healthy organizations, as the saying is, or used to be, in the democratic party—I never knew exactly what it meant—but being entirely out of the range of being able to perform any constitutional function in the way of controlling the destinies of this Republic, that they should not be treated as entitled to cast any vote at all. Mr. Lincoln signed that joint resolution and returned it to Congress with a message in which he stated, if I correctly remember it, that he signed it out of deference to the opinions and wishes of Congress; but he wished to put on record his statement that he did not consider that the President of the United States had anything to do with the subject at all, either under the form of a law or otherwise; and that the Constitution had not made it the subject of the exercise of the law-making power; and that the two Houses or somebody, certainly not he, and not the law, must take whatever fate the Constitution gave them, without any interference on the fact of the President.

Mr. COCKRELL. What was the date of that joint resolution?

Mr. EDMUNDS. February, 1865. I do not remember the exact date.

Mr. CONKLING. February 8.

Mr. EDMUNDS. February 8, I think. Just as the joint resolution was thus on the verge, when it was not known whether Mr. Lincoln would finally veto it or sign it, this twenty-second joint rule, now happily, as everybody has said before this session of Congress, among the things of the past, sprang into existence one morning in the Senate here. Nobody knew exactly who the father of it was. I think I have seen it stated that the Senator who contrived it, a few years afterward, expressed his great astonishment that any such thing should ever have been presented and adopted. A very distinguished Senator, once the chairman of the Committee on the Judiciary of this body, indeed for a very long time, and still a prominent statesman in the central part of the continent, expressed his infinite surprise that such a thing as that should be in existence; and yet, on looking it up, it turned out that he was the identical person who wrote it and put it

through. But on looking at the record there does not seem to have been any debate on the subject of the power of Congress to pass it, or the wisdom of making that particular sort of provision, or any reference to the fact that it settled one way what had been that bone of contention in 1800 when Congress had tried to pass a law on the subject under the Constitution, which required the President as well as the two Houses to assent, and decided it in favor of the then view of the Senate, and against what was almost the unanimous view of the House of Representatives; for, although those were high party times in 1800, when it came to this question as to whether everything should come in that both Houses did not agree to reject or whether everything should stay out that both did not vote to receive, on the vote, after debate, in the House of Representatives, the state of parties appeared to have been broken up altogether, and the vote was very heavy, embracing gentlemen of all sides, in favor of standing by the House notion, that nothing should be rejected that both Houses did not agree to reject. Under the twenty-second joint rule, everybody knows what we have done.

Mr. BOGY. I would inquire of the Senator if the twenty-second joint rule was not reported from a joint committee raised by both Houses, to provide a mode of counting the votes? Was not the joint rule the report of that committee?

Mr. EDMUNDS. Yes, I think that is so. It was reported by Judge Trumbull, if I recollect rightly, then chairman of the Committee on the Judiciary, and one of the members of the joint committee which, according to the usual course of like ceremonious occasions, had been from time to time appointed on every occasion when the count was to be had and a President to be declared to arrange the ceremonies. No, I should not say "on every occasion," because in 1801, when that usual committee of the two Houses appointed in the same way that it always had been and ever has been since, came to consider how the thing should be done, on that occasion, when Mr. Jefferson and Mr. Burr, the two chief candidates, were on the poise, they were unable to agree, and the committee reported to each House the fact that they were unable to agree, and thereupon the Senate passed a resolution to inform the House of Representatives that on the second Wednesday in February, being two or three days subsequent to the time of the passage of the resolution, the Senate would be ready in its Chamber to receive the House of Representatives in accordance with the Constitution that both might be present at the opening and counting of the votes, which, of course, was obviously the only possible thing that could be done, unless the two Houses could agree. Inasmuch as the Constitution imposed upon the President of the Senate, officially, who has only one place and that is the chair he occupies in presiding over the Senate, to have the custody of those certificates and to open them, if the Constitution were to be observed at all, unless it could be arranged that the Senate as a body, with its presiding officer, should meet in some other place than its own Chamber, it was indispensable, of course, that if the two Houses could not agree, the House of Representatives should attend here. They could not find the President of the Senate anywhere else. As everybody now knows after this great lapse of time, there was then intense excitement, the same sort of prophecies that we see now in many newspapers and in the letters of some men were uttered, that the country was on the verge of destruction and that civil war would imbrue our hands everywhere in a very short period of time; human language was exhausted, as it has been on more recent occasions and is being now, on the subject of the danger of the Republic, and the House of Representatives was one way politically and the Senate was the other; and yet when that resolution of the Senate went over to the House, the patriotic good sense that, after all settles down upon us at last, led the House of Representatives by a unanimous vote, without debate, or disagreement, or a word of objection, to send a message to the Senate that they would attend in the Senate Chamber on the day fixed by law, being the second Wednesday in February, to be present, and that they had appointed A B and C D the two tellers, according to the usual custom, to sit at the Clerk's desk, just as the Senate had informed them that it had appointed a teller to sit at the Clerk's desk to keep the minutes of what was going on; and so the country came out clear and safe, as I hope it will and believe it will on this occasion.

That, Mr. President, briefly and in quite an imperfect way of stating it, because it takes too much time to state with detailed precision all these things, is the history of what we have done; and it left the Committee on the Judiciary, to whom this subject was referred, in the attitude, looking it all over, of seeing that there was a difference of opinion as to the true import of the Constitution in respect of where this power is lodged, and what sort of a power it is, and what are its boundaries if it be a power at all except a ministerial one. Then it left us also to face another question. Granted that the power named in the Constitution is purely ministerial and that the Constitution really reads that the President of the Senate, in the presence of the two Houses, shall open and count the votes whatever they may be, and that he, and nobody else, has the power to do anything but the simplest ministerial duty of spreading out to the public gaze everything that he has got, then we ask ourselves where does that leave us? Suppose he has three sets from a State, all signed by the same governor, and under the same seal, if you please, signed by the same electors voting different ways, does his ministerial power include the right to take out number one rather than number three? We did not know whether it did or not. Then, we being satisfied that that would not be an agreeable way to leave it in respect of the orderly administration of this Government, because on that theory neither he nor anybody else had any power to do anything except to empty the basket in the presence of the representatives of the American people, and leave it to luck, or to revolution, or to the law in the contest for title to the office, or, to use one sweeping phrase, to the future, to find out who was elected President, the next alternative was to assume that the President of the Senate has more than ministerial power and that the Constitution has vested the power in him to hear, try, and determine the question upon the face of the papers—I do not now mean "determine" in the sense of a final judicial decision, but determine just as a canvassing officer having full powers under a State to determine who had been elected a judge of the county court or a governor in the State, still subject under the constitution and laws of that State to a dispute between two individuals as to the title to the office in the proper way. Assuming that the presiding officer of the Senate had power, more than ministerial, but quasi judicial, giving certainly a *prima facie* title to the person in whose favor he should decide, then we said, is it wise for the security of this country in the long run, when some distant day comes when Presidents of the Senate are not as good as they are now, but when in the normal condition of things the President of the Senate is always the Vice-President of the United States, who, like Mr. Jefferson, might be a candidate himself, and frequently would be, and always wanted to be, I believe; is he to be left with quasi judicial power to determine whether he is elected himself to an office? It appeared to us that that would be an alternative that we ought to take refuge from in some better plan, if we could find it, as soon as possible.

Then we were faced in the third place by a third phase that might be put on the Constitution; that the Constitution had intended, although it did not say so, that the two Houses of Congress might by law regulate the matter, and provide some species of tribunal to act, after the certificates should be opened, and between the time of their opening and the time when, in a certain contingency, the House of Representatives might be entitled to elect a President. It is true that the Constitution says nothing of that sort in that place, but still in another place it gives general powers of legislation to carry all the provisions of the Constitution and all the powers under the Constitution into effect and to regulate their exercise; and, therefore, granting for the sake of the argument, as was early denied by Mr. Pinckney and others, that there was the constitutional power to legislate and form a tribunal for the occasion, what sort of tribunal can you form by law? We had tried the experiment only a few years ago of having introduced and sent to the Law Committee of this body, and I believe afterward, on another occasion, the Committee on Privileges and Elections, a proposition to establish a particular judicial or quasi-judicial tribunal which was to decide disputes arising afterward between individuals; but a majority of the committee were of opinion that we had no constitutional power to impose that duty on the judges of the Supreme Court of the United States at any rate, and doubted greatly whether we had the constitutional power to establish such a tribunal at all; at least many did. That did not come to anything.

Then, to recur again to this immediate subject, what were we to do in the way of a law? We had found that seventy years ago Congress had endeavored to pass a law and that after great deliberation the two Houses had separated upon a radical difference, the most radical of any that could possibly be stated probably, as to the treatment that a disputed certificate was to receive, one side by a great strength of votes and with a great show of reason contending that nothing ought to be admitted into this most vital function of the Republic except what the two great powers of the Republic, the House of Representatives and the Senate, should agree to admit. The other said at the other end of the Capitol, by a still greater number of votes and with an equal show of reason, that exactly the reverse ought to be the case; stating it in their way, that no sister in this Republic of States should have her voice excluded from the performance of this most interesting and important function unless the two great powers of the States and of the people should agree that she ought to be rejected. Of course, anybody who philosophizes can see that there is a fallacy in the statement of both propositions, one that is most ineradicable, for the reason that both of them rest on the foundation that here are two independent judges who are to have an independent voice upon the question, and hence it requires a unanimity one way or the other in order to agree upon anything. That was not an agreeable condition to leave it in.

And so it appeared to us, Mr. President, that in a matter of such grave consequence, and not for this present election that is now just past—for it was long anterior even to the nominations of the candidates or to the formation of the particular issues on which it was expected that parties might divide—but for all the centennial future of the Republic, until some better means could be adopted, that the safest repository of this power must be, first, for legal reasons, in order to get at a decision, a tribunal that had a single, solid, united existence, not a duality, half with independent power and the other half with independent power, but one tribunal, so that that tribunal in almost every practically conceivable case, being usually of an unequal number of persons, must be able to come to some solution of the problem, to say yes or no to any question arising about a certificate.

Then the question was, what tribunal is the best? We had flattered ourselves, I think all of us, that philosophically considered such a tribunal, however extensive or however limited its powers might be, must for the time being be the best, just as single tribunals, when anything is to be done or decided, as distinct from making laws, where checks and balances are required for the preservation of liberty and so on, would as a matter of necessity, we supposed, be conceded by everybody to be the best. What one then? If you were to form the two Houses of Congress into one grand committee to meet in the Hall of the House of Representatives or here, under a particular presiding officer, no matter who, and were to have questions of this character respecting whether a particular State had in the constitutional way expressed her voice on the election of President, then in times of high party excitement we had every reason to expect, as all human experience has proved, that just in proportion as you increase the number of men who compose such a single tribunal, some of them elected for short periods, some for long ones, and having such diverse kinds of constituencies, just in proportion as you increase the number of such judges, just in that proportion you increase the danger of a decision being reached, based not upon the case, but upon the wish of each individual member of that body. We all know, and the world knows, and I need not take your time, Mr. President, to state it, that if you take a thousand citizens of a city and take twenty of them at a time separately, and ask them to decide a question of public moment, there is that lack of magnetic heat which is pretty apt to lead them to preserve order, decency, deliberation, and as far human nature is capable of it under the best conditions of coming to a result that they intellectually believe in, although that result might be colored by their prejudices, or changed possibly; but in respect of fidelity to themselves, we could say that the mass of them everytime would decide according to conscience, and upon the case, and not upon wish. If you multiply that twenty men in the city by five hundred and make it a thousand, even if they are clergymen, and bring them together to decide identically the same question, all human experience goes to prove that you have got what is substantially a mob; you have not a deliberative body; prejudice, passion, anger, everything that ought not to enter into the consideration of such a subject, as excluded from the minds of those same men, individually virtuous and honest, would intrude themselves; everything by which they ought to be enabled to measure and dispose of the subject that is before them would be lost sight of. You would have such a result as that.

It seemed to us, therefore, that a power of this character ought not to be reposed, if we could avoid it, in a single political body composed, as if you make a political body of the great mass of the Senators and Representatives in Congress, and especially so as in the event of an inability to find that any one person has a majority of all the votes, one of those political bodies immediately comes into the exercise of a very important, and under certain circumstances a very pleasant, jurisdiction. Where were we to look then? We found that under the Constitution of the United States there exists at the seat of Government a tribunal that is single, is perpetual, whose existence and term of service do not depend upon changes in Presidents or in politics or changes of the law—a tribunal sufficiently numerous not to be under the control of any one or two men, and sufficiently limited in numbers not to be the subject of that excitement which a great mass of men always feel; a tribunal whose members are continually changing by the course of nature and by the course in respect of their politics of those gradual changes that arise from changes of administration when one party or another is in power when a vacancy occurs; so that it was almost certain, we thought, that there would be in all the future in that tribunal a representation of the general shades at least, if not of the smaller colorings, of the various political parties of the country, so that whatever of bias and prejudice should grow out of political opinion, although the man himself could have no interest in it, would be a large degree offset one against another in the various judges.

In the next place, of course these gentlemen are always trained presumably, and taking the history of the Republic I think we may say as a fact, that this great tribunal has always been composed of men trained to a careful, systematic knowledge of constitutional law, and of the laws of the various States where they hold their courts; and therefore they would bring to the consideration of whatever question should be left to them minds as well-fitted to the performance of that duty as those of any that could be selected, if we were to do it, by some grand committee or otherwise on each particular occasion; but that method, of course, has its objections and great ones, for the reason that if you selected a grand committee, even of a few persons for a particular occasion to compose it, as you must, of gentlemen of different political opinions, they are charged more or less with the excitement and the wishes of the hour, and are, therefore, presumably very largely affected in their judgments by the state of public feeling and their own wishes more than these gentlemen who are not selected for that particular object, but who, coming in from administration to administration, one at a time, now of this party now of that, make a permanent mass of citizens, small in number, trained to the law, always here, and who, therefore, presumably would bring to the discharge of whatever duty you impose upon them the greatest amount of impartiality and respect for orderly government that could be found in any tribunal that might be selected.

That led us to think that whatever power it was necessary to repose anywhere in such a case had better be reposed in the Supreme Court of the United States. We were not blind to the fact that many objections can be stated to this. The most common one that I have heard is, "You are committing the liberties of the people to the decision of nine men," which is the number that now compose the court. Well, sir, if the liberties of the people must be committed in a government of law to the decision of somebody, is it not safer to commit them to the decision of nine men thus selected than it is to the decision of three hundred and seventy men, who are, from the very nature of their positions, Senators and Representatives, more or less partisans, and whose judgments, therefore, must be, be they as pure as human nature ever is or can be, affected by the views and wishes they entertain of what they would like to have done. It seemed to us, therefore, that this very argument as to danger to liberty and to the peace and security of the Government, the avoidance of despotism or aristocracy, or by whatever you may call those forms of government that steal the power of the people away from them, was much more strong for the security of liberty in having a question that must be decided by somebody decided by such a body, rather than by such another body as I have described.

There are various other objections, Mr. President, that can be urged which are entitled to more or less weight; but it appeared to the committee on the whole that the great mass of reasons in favor of this selection would countervail those that seemed to tend against it; and, as in all human affairs, we of course were entirely sensible that no scheme of government and no step in a scheme of government can be suggested to which there cannot be rightfully made some ground of philosophic or practical objection, and we are obliged in this imperfect world to put the objections and the reasons in favor of a thing fairly together, and give to that course the preponderance to which the general weight of reason seems to entitle it.

Then the question was, what sort of power should be confided to the Supreme Court, and that brings me somewhat nearly to the amendment to which my friend from Indiana objected. It appeared to us all, I think, that it was not desirable to give to the Supreme Court, or to any other tribunal that was to act upon this subject, the power of going into the several States and counting up the numbers of citizens who voted one way or another; it would be totally impracticable as a fact, and in my opinion totally wrong in principle upon any well-considered scheme of government; but to give them the power to take these certificates, or papers claiming to be certificates, as they should come from the authority of the several States, as they are now to be sent under the Constitution, and determine, having these papers before them, openly and publicly, as they hear and determine causes, that person President who has the greatest number of votes considered by the court to have been lawfully given and certified—electoral votes that are sent from the States. Now connect that with the present Constitution. The present Constitution says that there shall be a number of electors, appointed in such manner as the Legislatures of the several States shall direct, equal to the whole number of Senators and Representatives in Congress, and that those electors, so having been appointed, shall proceed to vote in a particular way and send forward their certificates. What, then, is committed to the Supreme Court to decide? Not whether one elector got more votes than another; but they are to find out, looking at the title which that elector claims to his office, whether, under the law of the State, he has been appointed an elector, leaving it to the State, just as now, to make the appointment and provide for it in its own manner and in its own way, and determine in its own manner and its own way whether the appointment had been made. Then it comes to the Supreme Court of the United States; and if a question arises as to whether the appointment of that elector is in accordance with law, whether he is the person whom the Constitution says the State shall appoint, and appoint in its own way, the Supreme Court ascertains it. They ascertain whether he is the person whom the Constitution of the United States says may hold such an office at all. If he be a Senator they find that he has not been appointed in accordance with the laws of the State and the Constitution of the United States. If they find that he has given a double vote, of course one of those votes at least cannot have been lawfully given.

Then we go on to say (which brings me to the amendment that my friend from Indiana questions the correctness of) that in doing this duty of canvassing these electoral votes—not the votes of citizens—the Supreme Court should disregard mere errors of form, and being guided by the preceding lines as to what their powers would be, in exercising those powers they should follow the right, adopting the substance or the language of the act of 1789 in respect to courts of law and of equity, disregarding matters of form where the substance of the law and justice require them to so disregard them. We did not think in proposing that, that we were giving an unlimited discretion to the Supreme Court of the United States, at all. We thought that we were only reposing in them that duty which, in every system of civilized jurisprudence that I know of, is imposed upon every court of judicature guided by the law as to the rights of parties, not to allow the form of procedure, or a defect in the form of procedure, to overthrow the very substance of the thing they are called upon to do. We thought that discretion might be safely, ought indeed to be, reposed in that body or any other that you are to select to do such a duty; for how painful would it be, Mr President, in a matter of this moment, a thousand times more than in the private

cause of a private citizen, for this is the cause of all the citizens—how painful it would be for any tribunal, be it yourself, or this body, or the other House, or all three of them, to be obliged to reject the vote of a State known to have been fairly given, by an unquestioned and undisputed majority of free citizens, voting according to their own free will, and all of them voting, and whose votes have been counted out advisedly, fairly, and truly, and whose electors have attempted to perform, and have in substance performed, the duty that the Constitution has imposed upon them, but it happens when the paper gets here that it lacks a seal, or, as in the case of Arkansas, has the wrong seal, or something of that kind! I think that even if we had the power we should be inclined to stretch the point a good deal before we should lead ourselves to deny to a State this great right that it has, upon any such technicality as that. Perhaps we should be obliged to do it. I am not discussing that question. I am only saying that now making a scheme we thought it was desirable, and even essential to justice, and good order, and to peace, that this tribunal should be authorized, in the narrow and limited duty that is given to it, to stick to the substance rather than to the shadow; and so we have proposed this amendment.

Mr. MAXEY. Will the Senator from Vermont permit me to ask him a question?

Mr. EDMUNDS. Yes, sir.

Mr. MAXEY. In 1837, if I remember correctly, a committee was appointed by the Senate, consisting of Mr. Grundy, Mr. Clay, and the third member I do not remember, on the very question——

Mr. BOGY. Mr. Wright.

Mr. MAXEY. On the very question of counting the vote of a disputed elector. At the conclusion of that report, with which the Senator is doubtless familiar, they recommend that permanent provision be made to meet a question of that kind. Now, while the Senator is on this subject, I should be very glad indeed to have his views on the question, whether or not permanent provision can be made to meet the question by an act of Congress.

Mr. EDMUNDS. Mr. President, I am entirely familiar with the joint committee of which Mr. Grundy in the Senate and I believe Mr. Cambreleng in the House were the chairmen in 1837. That committee was appointed by a double resolution adopted at the same time, but a resolution of two parts. The first was the mere ceremonious appointment that had always taken place to arrange for the getting together of the two Houses. Then on motion of Mr. Clay there was added a resolution that that committee inquire into the expediency of ascertaining whether any of the persons that had acted as electors were in anywise constitutionally ineligible, and, if they were, what ought to be done about it, and so on, there being on that occasion, as it turned out by their report, some six or seven postmasters, pension agents, &c., who had voted for Mr. Van Buren. They made a report stating that that was the fact in substance. They said they had not taken proof of the identity of the individuals, but they had not any doubt about it; but they did not consider that it was material to the result of that election, as it was not, to determine what ought to be done about it. They said that of course it was a thing the Constitution did not tolerate and that something ought to be done about it; but, as it would not make any difference at that particular time, they proposed to do something about it at some other time when the people should have performed, as they already had indeed, what they were told not to perform, and the votes were here to be counted, and they were counted without any apparent objection on the part of anybody, and they did recommend, in the very language almost of the Senator, a permanent provision; but they did not say in their report, and appeared to be careful not to say, what they thought the form of that permanent provision ought to be nor where the power resided to make it.

Mr. MAXEY. That was precisely the point. They simply recommended that permanent provision should be made, but made no suggestion. Now I should like to have the benefit of the Senator's judgment whether or not it can be done.

Mr. EDMUNDS. They did not suggest the power that was capable of making that permanent provision. They were entirely shy upon the subject whether Mr. Pinckney in 1800 was right or whether the opposition to his views were right in reference to the power of Congress over the matter at all. They said it was evident that a permanent provision ought to be made; but just at that time, when the very event had occurred, as they found, which required a permanent provision and which showed how difficult, not to say dangerous, such a question might become, they passed it silently by, merely saying that there ought to be a permanent provision made sometime by somebody. Now the Senator wishes my opinion, Mr. President. I stated when I began this statement of mine, which has been longer than I intended it to be, that I had wished and I thought the committee when we reported this resolution had wished, that the merits of this constitutional amendment might be considered independently of any individual views that any Senators might have in respect of where the power at present resides, or whether there is a complete legislative remedy for it or not, for the reason that in all those respects, first as to where the power resides, if there be one, and second whether a legislative provision can be made in respect to regulating its exercise even, there always has been and there undoubtedly is now a difference of opinion. We could not find out, in the sense of a general concurrence of gentlemen of all parties, what the Constitution does mean; and it appeared to us that it would not help the consideration of this subject to go into a discussion, either by a written report or otherwise, of what probably on the whole might appear to a majority of the committee the true view of the present Constitution to be. It appeared to us that there was enough, more than enough, to move this body to deliberate diligence in acting upon this one way or the other, in the circumstance that in the minds of many men having equal means of information there is a wide difference of opinion, and of course I think we should all agree that a question of this importance ought not to be left to changing interpretations, as they would be if you fix it by legislation, as parties and sentiments change from time to time, and still more to changing interpretations without a law, which might be largely affected by the particular emergency when it was to be decided.

So it appeared to us, to sum it all up, that it was desirable that the Constitution itself should speak, independent of all parties and seasons of heat, above legislation, and speak to a tribunal that existed permanently under the Constitution itself, its powers measured and defined, and rendered itself absolutely impartial in respect of interest in the matter by the additional section (to which I now have only to refer upon the substance of it) which provides that:

> No person holding the office of a justice of the Supreme Court of the United States shall be eligible to be elected as President or Vice President until the expiration of two years next after he shall have ceased to be such justice.

That removes from that august tribunal any such ambition as it is said has sometimes led some of its members, without their consciousness of course, to decisions upon topics verging into political considerations differing from that which they otherwise might have held and which has led, in public estimation sometimes, that court or some members of it not to have that high respect and confidence that their merits as citizens and their learning as lawyers and judges would otherwise have entitled them to.

There only follows, Mr. President, before I sit down, so far as I have anything to say, the amendment which I proposed to offer on my own responsibility, and not that of the committee, which simply provides that:

> This article—
>
> That is all that precedes—
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> shall, if it be ratified by the Legislatures of three-fourths of the States on or before the 1st day of February, A. D. 1877, operate upon the opening and counting of the votes and the ascertaining and declaring the result of the last election by the Supreme Court; and in case of such ratification the President of the Senate shall deliver all the lists of votes, certificates, packages, and papers in his possession relating to the election of President and Vice President for the term beginning on the 4th day of March, A. D. 1877, to the Presiding Justice of the Supreme Court, to be proceeded with as in this article provided.

As I have said, this proposition is not formed for this occasion, but for all the future until some better means can be found; for, even if the proposition of my friend from Indiana, to change the method of election, were to be adopted, and the people were to vote directly, there must still be somewhere a method of consolidating all those votes and getting them together, and determining such disputes as may lawfully arise, and which must be lawfully determined. I do not say that in such an event as the adoption of his proposition the exact language of this amendment, as it now stands, would cover it, because this speaks of electoral votes; but I do say that if such a proposition as his were to be adopted there must be, at last, some power to have the votes and returns all brought together, and the result ascertained, in some way. As I have said, Mr. President, this last amendment offered by me is designed to apply this constitutional amendment, if adopted in season, to the existing state of affairs, which I am sure gentlemen of all parties will say is not a pleasent state of affairs. I do not share in what is so often said and reported to be said by people who ought not to say it, that there is any serious danger of a civil convulsion of force in this Republic. There ought not to be any such danger. There will not be any such result unless it be driven by the excitements produced by men who care more for what they can make out of the fortunes or misfortunes of their country than they do for its peace and good order, followed under the methods of the law; for if it were possible to imagine that the two Houses of Congress cannot agree, if they have any power to agree, upon what shall be the result of this last election, it does not follow that wise men and patriotic men will feel called upon immediately to resort to their muskets. There will be some peaceable and just way out of such a difficulty, as there ought to be, and in society well regulated there always is out of what are apparently irreconcilable difficulties between private citizens. I do not think, therefore, that the good sense of this nation and its love of law will allow its peace to be imperiled out of any dispute that can arise between two men and their friends as to which of them is for four years to appoint the postmasters and sign the appropriation bills. Somewhere under the Constitution there will be found a power broad enough, serene enough, and majestic enough to settle by peaceable and lawful methods any such contingency; but, nevertheless, that circumstance is not an argument against our going on, if this proposition be right, without it. It is extremely desirable to avoid entering upon an unknown and untried path, although our faith in the Constitution and in Providence may not lead us to believe, as it does me, that it will finally be a way of pleasantness, and a path of peace.

Mr. MORTON. Mr. President, I am sorry for one that this debate

is precipitated upon the Senate at this time. I have not carefully considered this particular proposition until this morning; but I have been studying this subject more or less for five or six years, and I have very decided opinions in regard to it.

The Senator from Vermont [Mr. EDMUNDS] says we are not now to adopt a proposition for a particular occasion, but one for all time. In that point of view we ought to be very sure that this proposition is the true one, and one under which we can afford to live for all time; and we may rest assured that if we adopt this constitutional amendment no other one will be adopted for many years to come, until some sad accident or disaster to the country shall have forced a new one upon us.

Mr. President, there are in my mind a number of fatal objections to this amendment. In the first place, it is proposed to transfer the counting of the vote to the Supreme Court, giving to that court very plenary power. That makes it a political body; it makes it the great returning board of the Government; and, though its decision may be conducted with entire purity and integrity, it will be placed in a position where its motives will always be impugned. I insist that no returning board in any State that has ample powers given to it can so discharge its duties as not to be subjected to the severest abuse and condemnation; and when you vest the Supreme Court of the United States with this great power of determining who shall be the President of the United States and what party shall have the administration of this Government for four years, and perhaps for many years, you make it subject to political influences, and you give its members political powers which must excite their ambition and hopes.

It is true one clause of this amendment provides that supreme judges shall be ineligible to be elected President or Vice-President until two years after they have resigned. A supreme judge who may have had the casting vote in the court in determining who shall be President could lay the foundation for future candidacy by resigning at the end of two years after that time. We may say that is not very probable, but it is made possible under this proposition.

I call the attention of the members of the Senate to this proposition. It is a re-enactment of the twelfth article of the amendments with just three changes. First, it requires that the electors shall vote *viva voce* and not by ballot. In the next place, it transfers the count of the votes to the Supreme Court. In the third place, it provides that the supreme judges shall be ineligible to be President or Vice-President within two years after their resignation. It is the re-enactment of the twelfth article of the amendments with these changes. It leaves the electoral college with all its abuses. Now, I do not believe that though we propose it ever so much the people of these United States will ever re-enact the electoral college. It has wholly failed to answer the purpose for which it was created. Its office has been exactly the reverse of what it was intended to be by the framers of the Constitution. It is full of dangers and troubles, some of which are now at our very door, and which are not removed at all by this proposed amendment. I say it leaves this rubbish of the electoral college, this rock in the channel upon which we are more likely to split than any other. This joint resolution does not take away the dangers; it does not take away the difficulties. It simply transfers the count to the Supreme Court, but it leaves this electoral difficulty, obstacle, and danger, with all its terrors, just as we have it now.

Mr. President, two years ago I had the honor to report to this body from a committee upon this very subject, and I want to read to you an extract from my report which expresses my views better than I can do it to-day:

> There is imminent danger of revolution to the nation whenever the result of a presidential election is to be determined by the vote of a State in which the choice of electors has been irregular or is alleged to have been carried by fraud or violence, and where there is no method of having these questions examined and settled in advance—where the choice of President depends upon the election in a State which has been publicly characterized by fraud or violence, and in which one party is alleged to have triumphed and secured the certificates of election by chicanery or the fraudulent interposition of courts.

It seems to me this fits what has happened within the last six weeks very well.

> Such a President would in advance be shorn of his moral power and authority in his office, would be looked upon as a usurper, and the consequences that would result from such a state of things no man can predict. But it may be compared to what has so often occurred in history, where the successor to the crown in a monarchy was believed by a large part of the nation to be illegitimate, or not to be rightfully entitled thereto under the laws or usages of the nation.

Again in speaking on this subject I said:

> The more complicated the machinery is, whether in politics or in the arts, the more liable it is to get out of order. In the complex system of electing a President which we now have, contingencies may arise which cannot be foreseen, which may lead to civil war and disaster. The simpler the machinery of government, the more easily it is understood and the less liable to accident.
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> Not only has the result been that the electors are not left free to select a President and Vice President, they being in all instances pledged in advance, but it has unquestionably been a blessing that this has been so, for experience has demonstrated that small bodies of men intrusted with such vast powers as the choice of the Chief Magistrate of the Republic are liable to the arts of corruption, cabal, and intrigue, while the great body of the people cannot be reached in that way.
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> Mr. Benton once declared that "the only effectual mode of preserving our Government from the corruptions which have undermined the liberty of so many nations is to confide the election of our Chief Magistrate to those who are furthest removed from the influence of his patronage; that is, to the whole body of American citizens." His patronage would be ample to reach every elector in every State, but it cannot reach the whole body of the people. This danger has in effect been avoided by pledging the electors in advance to vote for particular persons. But this pledge in advance defeats the very purpose for which the electoral college was created, and converts it into a body of agents, who are to execute their powers according to strict instructions given before their appointment.
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> The electoral colleges have turned out to be wholly useless. Every reason given for their original establishment has absolutely failed in practice. But while they are powerless for good, they may be potent for evil. In their election errors may easily be committed, and in very many instances have been. While nobody would mistake the name of Grant or Greeley, changes in the names on the long list of electors may occur from errors in printing or fraud sufficient to reverse the vote of a State.

We have recently had cases where through errors the names of some of the electors were left off, and others where they were ineligible. People never know the electors, they care nothing about them. They are perfectly indifferent as to who they are; they are persons pledged in advance to execute a certain trust and hence their names are sometimes left off; they are often misprinted, and persons are put on who are ineligible because nobody attaches any importance to it, and their ineligible condition is not known perhaps until after the election takes place.

Mr. SHERMAN. Their names are usually not printed until the tickets are printed?

Mr. MORTON. No, sir, the names of the electors are not usually printed until the tickets are printed. Now, to show the absurdity of the whole electoral business, I may refer to the vote of Kentucky. I do not see the Kentucky Senators here. I believe in Kentucky they vote *viva voce*. The practice has been, I believe, when a voter comes to vote, to say, "I vote for Tilden and Hendricks," or "I vote for Hayes and Wheeler." He never mentions the names of the electors; they are not known; probably he never heard of them; and then the clerk of the election puts down one for each one of these electors. That is the way, as I am advised, the election was conducted in Kentucky the other day; and it shows the absurdity of the whole business.

If you submit to the people of this country at this time the question of re-enacting, for that is what this proposed amendment does, the electoral college without a single improvement except to require them to vote *viva voce* instead of by ballot, I do not believe they will ever ratify that amendment. I doubt whether you can find five States that will agree to it. I think the current of public opinion is now that this electoral college is a total failure, that it is dangerous, and that it ought to be abolished. It is not a party question. It is above all party questions. It is a system full of danger to this country. It is antirepublican, antidemocratic in the true sense of the word.

As the law now stands I cannot vote for a man for President that I want. I can only vote for some men as electors and if there are not enough men of my way of thinking to have a convention and nominate electors and put them into the field, I cannot vote at all. In other words it makes the caucus indispensable; it makes the convention necessary to enable me to vote. If I want to vote for my friend from Illinois, [Mr. OGLESBY,] I cannot do it unless there are enough men in my State to come together in a convention and nominate fifteen electors who are pledged to vote for him. We saw the way that operated in 1860. While there were men scattered all through the South who wanted to vote for Mr. Lincoln they could not do it; there were no electoral tickets formed. Men did not dare to come together in conventions to form electoral tickets, and the men who wanted to vote for Mr. Lincoln in the South could not do it because there were no electors put in nomination for them to vote for. It might be that a man would get a strong vote in some sections of the country or in a particular State, and perhaps none in another. He might not have friends enough in that State to come together and form an electoral ticket, and yet he might have many friends who wanted to vote for him, while perhaps he was strong in other States; and thus he is deprived of that vote and they are deprived of the right to vote. In other words, no man can vote for President until first there has been a convention or a caucus of some kind that has put an electoral ticket in nomination.

The original purpose of the electoral college was to form a body of independent, intelligent men, who should come together and deliberate and elect a President. The theory of the electoral college was that they were to be wholly uncommitted, left perfectly free, and to enable them to be independent the Constitution provided that they were to vote by ballot, so that one elector should not let another one know how he voted, that he might give a vote in strict secrecy even so far as his colleagues were concerned. That was the theory of it and the purpose of it, but that purpose is entirely destroyed by this amendment, which requires that they shall vote *viva voce*, so that it may be known how they vote. I confess if you have it at all you might as well have it that way, because the original purpose has failed, for in every instance these men are committed in advance. It would be infamy to a man to violate his pledge and vote for a different candidate.

I will not take the time this morning to go over all the dangers and all the evils of this system. I may perhaps before this discussion is over take another opportunity. But now I want to call the attention of my friend from Vermont to another part of his joint resolution, and that is that it re-enacts the election of a President by the House. If no one gets a majority of all the electors appointed, then the election goes to the House and the House votes by States. It is a re-enactment of the old system, and I say now that in my opinion the election of a President by the House of Representatives is the most dangerous provision in the Constitution of the United States. It is not republican in any sense. It gives the State of Nevada, with 42,000

people, the same voice in electing a President that New York with one hundred and fourteen times the amount has got. It does not express the sentiments of the people.

Suppose now that we fail to elect the next President by the people, if you please; that the election goes to the House and they will elect the President. That body is composed of members elected two years ago who do not represent the sentiment of the country to-day at all, members who would not be returned and many of whom were not returned at the last election. The election would devolve upon members of Congress two years old who do not represent, perhaps, the sentiment of the country at all; and who would elect a President directly opposed to the sentiment of the great body of the people. It is a burlesque to talk about that being an election by the people. I would like to call the attention of the Senate to some of the dangers attending an election by the House of Representatives, for now, mark you, we are called upon to re-enact and again declare in favor of the monstrosity of electing a President by the House of Representatives. If we come to look at the history of that clause in the Constitution we will find that it was the last one put there, and that it was put there, as it turned out, without deliberation and without debate, after they had puzzled themselves, I believe for weeks, in order to contrive some method of electing a President.

In the first place we came near making shipwreck, at least once by this method of electing a President, in 1801, when they balloted, I think up to the thirty-seventh ballot, some eleven or twelve days, and there was danger of an interregnum; they were approaching the 4th of March. We know the influences resorted to finally to bring about the result that was obtained. We know that practices were resorted to, and that pledges and promises were given which finally brought about that result, which would utterly damn any political man, any statesman, at the present day. We have heard much said about the American people having become corrupt and about the degeneracy of public morals, but I say to you that the arts which were resorted to in order to bring about the election of Mr. Jefferson in 1801 would utterly damn any public man of this day.

The plan of electing a President by electors or by the House of Representatives presents the strongest inducements for corruption where you bring it down to the election by a few men who are entirely within the power of the patronage of the candidate, a number so small that all can get offices, and big offices, and where one man, or half a dozen men, have the balance of the power in their hands, and can change the vote of a great State or of a small State. Consider what temptations they are under; what temptations there are to buy them; what temptations they have to sell. We expose our public men to corruption and to temptation by presenting to them this opportunity. It was so in 1801, when a President was elected upon a pledge made by him that three men should be continued in their offices, and that certain other measures should be adopted that the parties prescribed in advance.

How about the electors? The election of the President is referred to a few men. It may turn out that one man has the result in his hands. That has happened very lately. What enormous temptations to buy! Nothing but the infamy of a man betraying the party that elected him will secure us from that kind of danger; and yet that very pledge in advance is in direct violation of the theory of the electoral college, because the theory was that they were to be independent and uncommitted: an independent body of men who should meet together without pledges and there elect the best man to be President. That is the theory upon which that college was created, but it has turned out that they were all pledged in advance, and that pledge in advance is all the security this Government has against the purchase or the sale of electors. Whether it will always be sufficient, I do not know.

Mr. President, I want to show to you very briefly some of the dangers and the inequalities and something of the injustice of electing a President by the House of Representatives, each State to have one vote. We are now called upon to pass upon this proposition again. We are, at the end of a hundred years, required now to indorse this most unequal, iniquitous, and dangerous system of electing a President of the United States. I have entertained these sentiments for years and I will read what I said upon a former occasion, for I cannot put it in better language to-day:

In the election of a President in the House of Representatives under the present apportionment, each State having one vote, forty-five members out of the two hundred and ninety-two may make the election, as follows:

Forty-five members—

Delaware, Nebraska, Nevada, and Oregon have each one member, and four members would cast the votes of those four States; Rhode Island and Florida have each two, and four members would cast the votes of those States; Minnesota, New Hampshire, West Virginia, Vermont, and Kansas have each three members, and two votes in each, or ten members; in all five, would cast the votes of those five States; Arkansas, California, and Connecticut have four members each, and three in each, or nine in all, may cast their votes; Maine and South Carolina have each five members, three of whom in each, or six in both, may cast their two votes; Maryland, Mississippi, and Texas have each six members, and four in each, or twelve in all, may cast the votes of those three States. This makes nineteen States, or a majority of the States in the Union, and forty-five members may cast their votes and elect a President of the United States against the wishes of the other two hundred and forty-seven members of the House of Representatives. Again, these nineteen States have an aggregate population by the census of 1870 of a fraction over eight millions of people, while the remaining eighteen States have an aggregate population of about thirty millions. So that nineteen States, having scarce more than one-fifth of the entire population of the United States, may elect a President in the House of Representatives against the wishes of the other four-fifths; and this, by courtesy, has been called republican government!

Such a combination and result as above exhibited may not be likely to occur; but they are possible under the present system of electing a President in the House of Representatives by a majority of States; and no system admitting such possibilities should be tolerated. In 1825 it did happen that Mr. Adams was elected in the House over General Jackson, who had received a larger proportional majority of the popular vote than has any President elected since that time; and who had also a large plurality of the electoral votes.

There is always danger to a country in an injustice in its institutions, and the danger increases as the injustice is aggravated.

When the smallest State is made equal to the largest in the choice of the President of the United States, the gross inequality becomes offensive, and must become dangerous to the country whenever the power is exercised. Surely every patriot who looks forward with anxiety to the future peace and perpetuity of the Republic must earnestly pray that it may never again be exposed to the trial of electing a President by the House of Representatives under the present provision of the Constitution; and, most of all, should the small States ask to be delivered from the exercise of a power so grossly unequal and offensive.

Another absurdity in the election of a President by States in the House of Representatives is found in the fact that the election is to be had by members elected two years before, without reference to the election of President.

Members not elected for that purpose, not chosen by the people with a view to the election of the President, members chosen perhaps upon some local and temporary issue which has passed away, members chosen two years ago, who would not, as we now know, a large portion of them, be returned to the next Congress.

If there is any use in having a President elected every four years, it is that the public sentiment of the country may find expression; that a man may be chosen to represent that sentiment; but when the election is committed to the members of the House, who were elected two years before, and whose political sentiments may have been expressly repudiated at the last election, we can understand how completely this system is calculated to baffle and defeat the popular will.

Two years ago I had the honor to report from a committee the following proposition to amend the Constitution of the United States which I will ask the Clerk to read.

The Secretary read as follows:

As a substitute for the foregoing provisions, the committee propose the following joint resolution:

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of each House concurring therein,)* That the following article is hereby proposed as an amendment to the Constitution of the United States, and, when ratified by the Legislatures of three-fourths of the several States, shall be valid, to all intents and purposes, as a part of the Constitution, to wit:

"ARTICLE —.

"I. The President and Vice-President shall be elected by the direct vote of the people in the manner following: Each State shall be divided into districts, equal in number to the number of Representatives to which the State may be entitled in the Congress, to be composed of contiguous territory, and to be as nearly equal in population as may be; and the person having the highest number of votes in each district for President shall receive the vote of that district, which shall count one presidential vote.

"II. The person having the highest number of votes for President in a State shall receive two presidential votes from the State at large.

"III. The person having the highest number of presidential votes in the United States shall be President.

"IV. If two persons have the same number of votes in any State, it being the highest number, they shall receive each one presidential vote from the State at large; and if more than two persons shall have each the same number of votes in any State, it being the highest number, no presidential vote shall be counted from the State at large. If more persons than one shall have the same number of votes, it being the highest number in any district, no presidential vote shall be counted from that district.

"V. The foregoing provisions shall apply to the election of Vice-President.

"VI. The Congress shall have power to provide for holding and conducting the elections of President and Vice-President, and to establish tribunals for the decision of such elections as may be contested.

"VII. The States shall be divided into districts by the Legislatures thereof, but the Congress may at any time by law make or alter the same."

Mr. MORTON. In my opinion any amendment that is made upon this subject ought to refer the election of a President directly to the people, and provide that any man can vote for any man as his candidate without being under the necessity of first having a convention and putting electors in the field, who may cheat him, or in regard to whom errors or mistakes may be made. All that machinery has been shown to be utterly worthless and entirely dangerous; but now, at the end of a hundred years, we are called upon to re-enact it, and what is worse to re-enact this terrible mockery of an election by the House of Representatives.

I have a calculation here in regard to the electoral college by which I showed upon a former occasion that the electoral college had never come within 16 per cent. of representing the popular vote, and had differed from it more than 37 per cent. It does not represent the popular vote. Under the present system of general tickets in the States a majority of one may carry the vote of the State of New York and throw it all in one direction to the entire subversion of any representation on the part of the minority. Then the minority is not represented. A great fraud in one place will carry the vote of the State and control the whole State, as in 1868 a great fraud in the city of New York carried the vote of that State for Seymour, when it is well known, as has been demonstrated since that time, that but for that fraud the vote of the State would have been given for Grant. That fraud all occurred in the space of two miles square. Outside of the city the republicans elected nineteen members of Congress, but the votes were overcome by a single fraud committed in the city of New York.

I should much prefer, so far as I am concerned, to elect the President by a direct vote of the people, without regard to State lines, but I am satisfied the smaller States would never agree to that proposi-

tion. Therefore, I proposed this amendment which was reported by the committee. I have proposed that the States should be laid off into districts, equal in number to the congressional districts, and to be of contiguous territory, as nearly as possible of the same population; that the man who gets the highest vote of a particular district for President shall have one vote; that the people shall vote for him directly, and the man who gets the most votes in that district gets the vote of the district, and that counts one. Then to preserve the autonomy of the States, so that the smaller States should not lose the power they now have, it was proposed that the man who got the largest number of votes in the State at large should have two votes from the State at large, representing the senatorial electors now; but they shall be given to the man who has got the most votes in the State at large. This is the nearest that we can come to a direct election by the whole mass of the people.

Mr. OGLESBY. May I ask the Senator from Indiana a question on that point?

Mr. MORTON. Yes, sir.

Mr. OGLESBY. Has the honorable Senator made any provision either in his proposed amendment to the Constitution or by a mental reservation for settling contests between electors in the States under the plan which he now suggests?

Mr. MORTON. I will state to my friend from Illinois that in this proposed amendment the sixth section reads as follows:

> The Congress shall have power to provide for holding and conducting the elections of President and Vice President, and to establish tribunals for the decision of such elections as may be contested.

You could not put the particular method into the Constitution; it would be too tedious; but we give to Congress here the power to pass a general law applicable to all the States providing for holding the election; that they shall be under the control of the national Government, that is, under the protection and direction of it, and that they shall provide a tribunal to decide all contests that may arise in a particular State or district as to the question of who is elected. It would thus enable Congress to provide a carefully considered law regulating the whole matter, just as the States now regulate the contests of elections for governors and other subordinate officers. We could not put the specific provision into the amendment because it was too tedious and involved too many details; but we authorize Congress to provide for it by law. As the matter now stands there is no law in any State for contesting the election of electors. The election may have been obtained by fraud or by violence; but there is no law except in those States where they have returning boards that can canvass and pass upon elections which are alleged to have been brought about by fraud or violence.

Mr. FRELINGHUYSEN. Mr. President, I assume that it is not proposed to come to a vote upon this amendment to-day; and if I shall vote in favor of it, of which I have some doubts, I wish here to say that I do not intend by such vote to indicate that in my opinion Congress has not now, without any amendment, full power to legislate on this subject.

I suppose that we will all agree to this one proposition, namely, that the Constitution confers upon the General Government the power to count the vote. To that proposition there should be no dissent.

If the Constitution directs how and by whom that vote shall be counted and we wish to change the Constitution in that regard, an amendment is of course necessary.

If the Constitution does not say how or by whom that power, which is clearly conferred on the General Government, shall be executed, we do not need a constitutional amendment to enable us to determine how the vote is to be counted; that we can effect by legislation. Therefore, at the very threshold of the inquiry whether this amendment is necessary, we meet the question whether the Constitution has specified how and by whom the vote should be counted.

What the Constitution says on the subject is that "the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted."

It seems to me that a convention of men who knew how to use the English language, and who wanted to employ such an expression as would merely confer a power upon the General Government without designating by whom or how the power was to be executed, leaving that to legislation, could hardly have employed more appropriate words than these, "and the vote shall then be counted." The power of counting the vote as conferred by the Constitution upon Congress is simply a power to legislate on that subject.

There was no necessity whatever that the Constitution should have provided as it does, that—

> The Congress shall have power * * * to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any Department or officer thereof.

There was no necessity in having that provision in the Constitution. It is merely declaratory of powers which would have existed without the provision by simply conferring a power upon Congress. There was no necessity in making the amendments to the Constitution that we should have provided that Congress should have power by appropriate legislation to enforce the foregoing amendment. On that point let me read from Story on the Constitution. In speaking of the clause which I have read, to wit, the provision that Congress may pass all necessary and proper laws for carrying into effect the powers granted by the Constitution, Story says:

> This clause is merely declaratory of a truth which would have resulted by necessary implication from the act of establishing a National Government and investing it with certain powers. If a power to do a thing is given, it includes the use of the means necessary and proper to execute it. If it includes any such means, it includes all such means; for none can, more correctly than others, be said exclusively to appertain to the power, and the choice must depend upon circumstances, to be judged of by Congress.

And further on he says:

> If it should be asked why, then, was the clause inserted in the Constitution, the answer is, that it is peculiarly useful, in order to avoid any doubt, which in jealousy or jealousy might raise upon the subject. There was also a clause in the Articles of Confederation, which restrained the authority of Congress to powers expressly granted, and, therefore, it was highly expedient to make an explicit declaration that that rule of interpretation, which had been the source of endless embarrassments under the confederation, should no longer prevail.

So that the mere granting to Congress a power carries with it the right fully to legislate in reference to that power. And if this Congress is invested simply with the power to count the vote and is not restricted as how the count shall be made, it is invested with the power to adopt all necessary and proper legislation to effectuate that end. If, however, the power to count the vote is conferred upon the two Houses, or if it is conferred upon the President of the Senate, and we wish to change that procedure, then I admit that an amendment to the Constitution is necessary so as to vary the existing fundamental law. Therefore, to my mind, the very first question to be settled is that which I think was avoided in the otherwise very clear and able statement of the question made by the Senator from Vermont.

Mr. MORTON. Mr. President, I want to read an extract from my report which I omitted, and I should be glad to have the attention of Senators to what it contains:

> The following statement of the result in the different presidential elections from 1872 back to 1844 will establish the truth of what we have said:
>
> In 1872 General Grant received 55 per cent. of the votes of the people; in the electoral college he received 84 per cent.
>
> In 1868 General Grant received 52 per cent. of the popular vote, and 73 per cent. of the electoral vote.
>
> In 1864 Mr. Lincoln received 55 per cent. of the popular vote, and 91 per cent. of the electoral vote.
>
> In 1860 Mr. Lincoln received only 40 per cent. of the popular vote; he received 59 per cent. of the electoral vote.
>
> In 1856 Mr. Buchanan received only 45 per cent. of the popular vote; he received 59 per cent. of the electoral vote.
>
> In this election Fillmore received 25 per cent. of the popular vote, and only 2 per cent. of the electoral vote; but fourteen of his friends were elected to Congress.
>
> In 1852 Pierce received 51 per cent. of the popular vote, and 85 per cent. of the electoral vote.
>
> In 1848 General Taylor received 47 per cent. of the popular vote, and 56 per cent. of the electoral vote. At this election Mr. Van Buren received about 10 per cent. of the popular vote, and received no electoral vote; but three of his friends were elected to the House of Representatives.
>
> In 1844 Mr. Polk received not quite 50 per cent. of the popular vote. He received 62 per cent. of the electoral vote.
>
> To illustrate the operation of the district system, we will consider the comparative results of the elections for President and for members of Congress, in the four States of Pennsylvania, Ohio, Indiana, and Illinois, from 1860 to 1872.
>
> These States voted solidly for Mr. Lincoln in 1860, casting 74 electoral votes. At the same election they returned 66 members of Congress, of whom 24 were democrats.
>
> In 1864 the same States cast 76 electoral votes for Mr. Lincoln again, and elected the same year 68 members of Congress, of whom 16 were democrats.
>
> In 1868 the same States threw 76 electoral votes solidly for General Grant, and elected 68 members of Congress, of whom 22 were democrats.
>
> In 1872 the same States again voted solidly, giving 85 electoral votes to General Grant, and elected 77 members of Congress, of whom 25 were democrats.
>
> In these four States the democratic strength, as compared with the republican, has been about as 9 to 10, but under the operation of the general-ticket system they had been wholly unrepresented in the electoral college; but in the House of Representatives, under the district system, they have had an average of nearly one-third of the members.
>
> Take the State of New York alone for the same period. In 1860 New York cast her 35 electoral votes solidly for Mr. Lincoln. At the same time she elected 31 members of Congress, of whom 9 were democrats.

I simply read this to show how utterly the electoral college comes short of representing the body of the people or the public sentiment of the whole nation.

Mr. MERRIMON. I should like to ask the Senator from Indiana how the plan reported by him, the substitute which he offers, obviates the difficulty of giving the small States too large a power in the election of President. Take for example the case of Colorado. Suppose the people vote directly for President under the plan proposed by the Senator, Colorado would have the same power and weight in the election of President as now. The only difference would be that each congressional district under the Senator's plan would elect an elector to suit its wishes.

Mr. MORTON. Not an elector.

Mr. MERRIMON. Not an elector, but each district would count one vote

Mr. MORTON. Colorado would have three votes. She would have two votes for the State at large, now represented by the senatorial electors, and she would have one vote representing her Representative; but the votes would be cast directly by the people. The people would vote for the candidate directly.

Mr. MERRIMON. Still the State would have the same weight in the election that it has now?

Mr. MORTON. That is what I say, the State would have the same relative weight, according to her population.

Mr. MERRIMON. Then I put it to the Senator whether it is not true that the State may provide that the electors for President shall be elected just as he provides that the people shall give three votes in Colorado?

Mr. MORTON. No, sir. The State may provide how the electors shall be chosen. The Constitution provides that they shall be chosen as the Legislature directs, and the Legislature may refer the matter to the people or they may choose these electors themselves, as was done by South Carolina up to the time of the war.

Mr. MERRIMON. The point I make is that it is perfectly competent now for the Legislature to provide that each congressional district in the State shall elect its own elector. Then I want to ask the Senator another question. Suppose under the plan that he proposes no candidate shall receive a majority of all the votes of the several States, how does he propose to solve that difficulty?

Mr. MORTON. It is proposed in that case to let the man who has the plurality of votes be elected. We propose to adopt that rule in regard to the President of the United States that is now adopted in every State of the Union but one or two, perhaps. I think there are one or two States where the governor is required to receive a majority of the votes cast; but in all the other States a plurality elects. In those few New England States, I think New Hampshire is one, where the governor is required to receive a majority of all the votes, if he fails to do that, it is then referred to the Legislature; but in Indiana, in North Carolina I believe, and in every other State the candidate for governor who has a plurality is elected; so is the candidate for Congress; so is the candidate for supreme judge. No trouble has ever come out of it. But this proposition is, because a candidate fails to get a majority of all the electors appointed, or of all the presidential votes, then he is not elected and it must go to some tribunal that does not represent the people at all. Take for example the case of the election of John Quincy Adams by the House of Representatives. General Jackson got the largest proportion of the popular vote ever given to any President before or since that time except in the first election of General Washington. He not only had the largest popular majority as compared with Mr. Adams, but he had a large plurality of the electoral college; yet the election was thrown into the House of Representatives. It was alleged that a bargain was made; I presume that is not so; but the popular belief was that a bargain was made; and the men who were inculpated in that bargain never recovered from that belief. It is said that the result of that bargain decided the result of the presidential election in the House in 1825. It is known that a bargain decided the result of the election in 1801.

Mr. MERRIMON. Then under your plan a candidate receiving, it might be, a considerable minority, could be elected?

Mr. MORTON. It would be a plurality.

Mr. MERRIMON. That might be a large minority.

Mr. EDMUNDS. May I ask the Senator from Indiana what his plan would be in the case, acting upon the plurality system, where two candidates had an equal and still the highest number of votes, but neither a majority?

Mr. MORTON. I am glad my friend has called my attention to that point, because we provided for it as near as we could. In the consideration of that question, which was, perhaps, one of the chief difficulties of the committee, we provided:

IV. If two persons have the same number of votes in any State—

That is, two presidential votes for the State at large—

If two persons have the same number of votes in any State, it being the highest number, they shall receive each one presidential vote from the State at large.

Suppose there are two candidates for President and there is a tie in the State, then each one has a presidential vote for the State at large:

And if more than two persons shall have each the same number of votes in any State, it being the highest number, no presidential vote shall be counted from the State at large.

Suppose there are three candidates and each receives the same number of votes in the State of Indiana, then neither of them gets any benefit from the vote of the State at large:

If more persons than one shall have the same number of votes, it being the highest number in any district, no presidential vote shall be counted from that district.

In other words, if the vote for two or three candidates is a tie in a district, then the vote is not given to anybody because you cannot divide up the vote. The district has but one vote, and therefore if two or three persons have a tie vote in that district no vote is counted from that district; but if two persons have a tie vote in the State at large, inasmuch as the State at large has two votes, then each one can get a vote.

Mr. EDMUNDS. That I can understand, but that does not reach the point I was asking about. Suppose when you have got the votes of all the districts and the States together in districts and States where there was no tie, on the plurality system, and when you foot them all up by somebody somewhere, there is a tie between two candidates for President on all the votes, what are you going to do then?

Mr. MORTON. I do not know whether this amendment provides for that contingency or not.

Mr. EDMUNDS. That is the contingency that caused the disturbance in 1801.

Mr. MERRIMON. If the Senator from Vermont will allow me——

Mr. EDMUNDS. If the Senator from North Carolina will be kind enough to wait a moment until I hear the answer from my friend from Indiana: I do not ask this question for the purpose of controversy or debate, but to get at the idea that my friend's report is supposed to contain.

Mr. MORTON. Since my friend speaks of it and I come to think about it, the reason of the committee was that that difficulty can always be avoided by taking an unequal number of districts, that is to say that there shall not be three hundred, but three hundred and one or two hundred and ninety-nine.

Mr. EDMUNDS. I respectfully submit that would not solve the difficulty because in the scheme that has been already stated about ties in districts it would happen in the course of chances, it might happen every time, that the number of votes actually got, the number of districts actually having a voice, taking out those where there is a tie between the highest, and where there would be no vote at all, would be perfectly even. Then you run right into the difficulty that exists under the present system, if you call it a difficulty; but there the Constitution does provide for a mode of solving it, and that is by the representatives of the people in the House of Representatives acting as the representatives of States in that respect, which was an idea that entered into the very groundwork of this Government—the rights of States, political communities, and not the old Athenian democracy that vibrated from the wildest excess of democracy to the severest tyranny of kings or tyrants, but a Government of co-ordinating and co-checking powers. That body of men are selected in that emergency to make the selection. It may be in a given case that they do not represent what is called the popular majority at that particular moment. They may represent what was the popular majority two years before and what turns out to be the popular majority two years afterward. You cannot tell, because you do not know, in a free and democratic country and in an intelligent country, as light increases and wisdom is gained by experience, how often people will change their opinions. Therefore I submit to my friend, without going into an argument about it now, the objection that he makes that it is monstrous that the House of Representatives should be authorized to fill the office of President for four years, voting by States, because the persons voting on the particular February may not be the sort of people whom a majority of the people at the last election have elected members of the next Congress, does not prove anything; because the very fact implied in his observation that the will of the people has changed also implies (if you are not to have a pure democracy where every day the change of the will of the people is a change of the Government) that in another year or two the judgment of the people as to the selection of their public servants will again change, so that on the whole, in the average of twenty years, you have got the average of the public sentiment of all the people.

Mr. MERRIMON. I regret that about a matter of so much moment the Judiciary Committee did not deem it necessary to make a written report upon this proposed amendment to the Constitution. I hope therefore that the chairman of the committee will allow me to trouble him with one or two questions explanatory of it. I beg to ask him whether or not it is understood by this provision touching the Supreme Court that any other than ministerial powers are conferred upon the court, or whether they are to exercise judicial powers. In order to make the point of my question more plain, I will suppose that the electors in the electoral college or any of them should be bribed to vote for one person or another, or suppose they or any of them should be intimidated. In that case am I to understand that the Supreme Court is charged with power to inquire into that question and determine as the right may be, or must they simply count the vote and certify it?

Mr. EDMUNDS. I cannot speak for the committee, because this matter was reported so long ago that I do not remember the particular views of the committee upon exactly such a case as my friend has stated. I will answer that I believed myself, and I think the committee believed, that we did give to the Supreme Court more than ministerial powers in the strict sense of that term. We used the language:

And the person having the greatest number of votes for President, considered by the court to have been lawfully given and certified, shall be the President.

Consideration implies judgment, deliberation. Therefore I should say that the court have a ministerial duty. It is claimed that in this body or in its Presiding Officer, or somewhere under the present Constitution, there is only the duty to count everything that comes. There must be the duty of identification which in a certain sense is ministerial and in a certain other sense is judicial. Therefore I do not think I can lay down for the committee any precise definition or rather description of where ministerial power ends and where judicial power begins; but the committee did design by this language, as carefully selected as we were capable of selecting it, to give this tribunal the power to know and to determine for the time being whether a particular paper presented was the paper authorized by the laws of States and according to the forms that the States prescribed, instead of going into an inquiry as to whether the people who performed those duties were performing them from good motives or from bad ones. That power we did intend to give. When it comes to the illustration that my friend names, of in the one case bribery and in the other intimidation, I should say, speaking for my-

self alone, that it would not be within the competence of the Supreme Court to refuse to count a vote that the elector had been bribed to give, because there it is his vote, given freely, from a corrupt motive, and it would be just like the vote of any other elector given from some other corrupt motive, as a selfish and wicked belief that if he voted for A B for President of the United States he would presently have a fat office that he very much coveted. That goes into the region of the motives which influence the electors who are casting their votes (as motives always influence men, good or bad) to give their votes, but the vote of each is the free act of his will. If, on the other hand, an elector, to use the other illustration of my friend, votes under what he calls intimidation, by which I suppose he means to use a term that all we lawyers can readily understand the meaning of, duress——

Mr. MERRIMON. Yes, sir.

Mr. EDMUNDS. Then I should say, speaking for mysef and nobody else, that the Supreme Court would reject a vote that was given by duress, because it was not the vote of that elector, it was the vote of the superior coercion that through his fingers, if you please, put it into the box without his voice.

Mr. MERRIMON. How would they get at the facts?

Mr. EDMUNDS. I do not know. You might as well ask me how a circuit court of the United States would get at the fact in a patent cause. How will they get at the fact that a particular elector ineligible by the Constitution of the United States, being a Senator, is a Senator? You may say in that particular case that the Supreme Court are bound to take notice judicially of who is a Senator. Then they have got to identify the man as a question of fact. They know that my friend, admit that they do—I doubt whether judicial knowledge will go quite as far as that, but take it for granted—is one of the Senators from the sovereign State of North Carolina; but when it comes to be ascertained as a fact, if a gentleman named Merrimon appears as voting there, whether that is the MERRIMON who is a Senator of the United States, there is a question that must be ascertained upon proof, and that proof implies consideration *pro* and *con*, the weighing of evidence, and the determination of it. So in respect of the question my friend has put. If he asks me how a tribunal is going to get at the fact, I can only say if they are authorized to get at the fact at all they must get at it by those simple and general means that are known in civilized countries in the course of jurisprudence.

Mr. MERRIMON. If it is uncertain it ought to be made certain. Upon reading the proposition, my mind was impressed with the notion that this simply conferred ministerial power, and I was more impressed with that notion because in line 28 I notice that the word "considered" is used instead of the more definite and technical term "determined:"

> And the person having the greatest number of votes for President, considered by the Court to have been lawfully given and certified.

"Considered" is something that precedes judgment; "determined" is to put an end to a question, to come to a conclusion about it.

Then I beg to ask the honorable Senator another question. I notice that this amendment, wherever it can be made to do so, runs upon the language of the Constitution as it now stands; that very much the same language is adopted, but in this phraseology one word is interpolated. I read from line 29 down to the word "appoint" in line 31:

> Shall be President if such number be a majority of the whole number of electors lawfully appointed.

The word "lawfully" is added here. I beg to ask the Senator why the word "lawfully" is inserted. Furthermore, I would ask this other question which is more important—it may be a practical question as things now stand before the Congress of the country—whether what is meant there by the majority of the whole number of electors lawfully appointed, embraces all the electors that are allowed by law, whether they were appointed or not. For example, suppose in the present contest the vote of one of the States should be cast out, if it were a fraud. In that case is the majority counted against that State as it might have had electors, or if a candidate gets a majority of the votes counted is he elected?

Mr. EDMUNDS. I can only say that, in the particular to which the Senator from North Carolina now refers, the committee supposed, whether rightfully or wrongfully, that they had taken the clearest language of which the subject was susceptible in order to show that the whole number necessary to a choice was not the whole number equal to the number of Senators and Representatives to which all the States should be entitled in Congress at that time, but was the whole number of those persons whom the people of the States, in the manner provided by their Legislatures, had chosen to appoint and if a particular State did not choose to make any selection at all it should not be counted, as in the case during the rebellion when eleven States did not undertake to participate in the election for the head of what they then regarded as a foreign government, and yet the other States that still kept up the Government here maintained that the Government was not dissolved, that there were just as many States as there were before, that the fact that there were a great number of States that did not appoint electors at all should not throw the election into the House of Representatives. But in the event of a failure to get a majority of the whole number lawfully appointed, that is, in the manner provided by the Constitution of the United States, which is, as the Senator and everybody else well knows, that the Legislatures, in a manner selected by themselves, shall make the appointments or provide for their being made, the court would have the power, in my judgment and in that of the committee, as I understand, to ascertain in making up the aggregate the whole number of votes given, just as canvassers would on an election in my friend's town or my own. The whole number of votes necessary to a choice is so many; that is, the whole number of lawful votes represented in the ballot-box. If a person has a majority of those he has got the election. If he has not, then the contingent provision applies.

Mr. MERRIMON. My question, though, goes further than that, but on the same line, however. Suppose, in the count which is to take place in February next, for some reason, some consideration, the vote of a State that is entitled to vote shall be cast out. I take it that case would be the same as if the State had not voted at all. It is an adjudication of the fact by Congress. Congress is to count the vote.

Mr. EDMUNDS. I do not say anything upon that subject. If this present proposition were the supreme law of the land, then I should say that this language, as it now stands here, would be exactly what the Senator says he takes it the Constitution is now; but I do not say that I take it so or do not take it so.

Mr. MERRIMON. Then I beg to ask the Senator one other question, why the manner of casting the vote in the electoral college was changed from the method by ballot to that of *viva voce*.

Mr. EDMUNDS. I think that all of the committee were of the opinion that upon the true principles of republican government, wherever a duty is devolved upon an agent of the people, that agent should publicly perform that duty. I do not speak of reflection and of reading a book as a judge does when he is trying to determine what sort of an opinion he shall render; but when the public servant renders the act which is intrusted to him it ought to be an act which he is to perform in the eyes of all his principals who have intrusted him with that duty. Therefore I think we all concurred in the idea that this action of the chosen agents of the people should be public, upon the individual responsibility of each agent, so that there would be no dispute or concealment in respect of the question whether he had fulfilled the trust which had been committed to him or whether he had betrayed it, and in a manner in which he could not be found out.

Mr. CONKLING. Will the Senator from Vermont yield to me a moment that I may make a suggestion?

Mr. EDMUNDS. Certainly.

Mr. CONKLING. There was another reason which I think has escaped his recollection. The Constitution as it stands now provides that the electors shall vote separately for President and Vice-President, one of whom shall not be a resident of the same State with themselves. This provision, effectuating, as the committee thought, the design of the old provision, ordains that each elector shall vote for a candidate for President, not resident in the same State with the candidate for Vice-President. Now, if ballots were to be cast and no declaration *viva voce*, it might be difficult, indeed impossible, to ascertain whether the Constitution in that regard had been observed or not. Therefore I think a sufficient reason was found in requiring each elector to denote openly for whom he voted.

Mr. EDMUNDS. The Senator from New York is entirely correct. His statement brings the matter clearly to my recollection, and he has stated it with the precision with which he states all questions, so that I need not comment upon it at all, except to add what has occurred in respect of debates hitherto upon these questions as to whether the whole vote of a State, as in 1837, should be thrown out, it being by ballot, because one single one of the electors happened to be ineligible, and you could not tell whether he had voted for one candidate or the other, unless it happened that all the electors voted for one candidate; and so it was a serious question in the report of Mr. Grundy about the ineligible democratic postmasters and pension agents, &c., in 1837, how hard it would be to throw out the vote of a whole State, given beyond dispute by a clear majority for a particular candidate, because some one of those persons casting it, without anybody knowing it, happened to be a person who was not entitled to act at all; and that is an illustration entirely of what the Senator from New York says.

But, Mr. President, I had not designed, of course, to press this important subject to a decision to-day, because I should hope that Senators would carefully reflect upon it in the light of the whole history of the Government, which I have so briefly and imperfectly stated, about the doubt that now exists and the attitude that the two Houses have hitherto occupied upon the subject, and be prepared, within the course of a day or two, or as soon as we can with propriety, after careful consideration, to vote. Certainly there is great occasion, if this is a just thing, for acting upon it now. If it be not, of course the sooner it is put out of the way in order to let us resort to some means of knowing where we stand, the better.

Mr. MERRIMON. I have to suggest to the Senate that after to-morrow the Senate will lack twelve or fifteen or twenty of its members who are going off on committee duty; and for one I should be glad to vote on this question.

Mr. EDMUNDS. Perhaps we can get to a vote to-morrow. I shall certainly be ready myself to vote to-morrow, if gentlemen all around are reasonably ready.

Mr. MERRIMON. I beg to give notice of an amendment that I shall offer at the proper time. I shall offer at the proper time an amendment to section 2, by adding after the word "Vice-President," in line 69, these words:

Or appointed to any office under the United States until the expiration of four years next after he shall have ceased to be such justice.

So that the section shall read:

SEC. 2. No person holding the office of a justice of the Supreme Court of the United States shall be eligible to be elected as President or Vice-President, or appointed to any office under the United States until the expiration of four years next after he shall have ceased to be such justice.

Mr. EDMUNDS. I hope that amendment may be printed. It may be a proper one. I now move, if no other gentleman wishes to speak, that the Senate proceed to the consideration of executive business.

The motion was agreed to.

FEES OF WITNESSES.

Mr. MORTON submitted the following resolution, which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

Resolved, That the rule for paying witnesses summoned to appear before the Senate, or either of its committees, shall be as follows: For each day a witness shall attend, the sum of four dollars; for each mile he shall travel in coming to or going from the place of examination, the sum of five cents each way; but nothing shall be paid for traveling when the witness has been summoned at the place of trial.

Mr. SHERMAN and Mr. COCKRELL submitted amendments intended to be proposed by them to the above resolution; which were referred to the Committee to Audit and Control the Contingent Expenses of the Senate.

COMMITTEE ON PRIVILEGES AND ELECTIONS.

Mr. MORTON submitted the following resolution; which was considered by unanimous consent, and agreed to:

Resolved, That the sum of $5,000 from the contingent fund of the Senate be transferred to the use of the Committee on Privileges and Elections; the same to be reimbursed to such fund out of any appropriation to be made for defraying the expenses of said committee in inquiring into the alleged abridgment of the elective franchise in certain States of the Union as provided by the resolution of December 5, 1876.

THE CURRENCY REPORT.

The PRESIDENT *pro tempore* laid before the Senate the annual report of the Comptroller of the Currency; which was ordered to lie on the table and be printed.

The Senate proceeded to the consideration of executive business. After twelve minutes spent in executive session the doors were reopened, and (at four o'clock and four minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

MONDAY, *December* 11, 1876.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

UNANIMOUS CONSENT.

The SPEAKER. The Chair asks, as this is the first day for the call of States and Territories for the introduction of bills and joint resolutions on leave, that unanimous consent be allowed to have the call gone through with, although it may take more than one hour.

Mr. HOAR. Does the Chair mean the first call?

The SPEAKER. The first call of States and Territories to-day.

There was no objection, and it was ordered accordingly.

The Journal of Friday last was then read and approved.

WITHDRAWAL OF PAPERS.

On motion of Mr. O'BRIEN, by unanimous consent, leave was granted for the withdrawal from the files of the House of the papers in the case of J. & R. K. Porter.

CLAIMS FOR INDIAN DEPREDATIONS.

The SPEAKER, by unanimous consent, laid before the House a letter from the Secretary of the Interior, transmitting, in compliance with the seventh section of the act of May 29, 1872, statement of the claims for property destroyed, by Indian depredations, of Decatur Barton, D. B. Warren, John B. Collomb, &c.; which was referred to the Committee of Claims.

VACANCY IN COMMITTEE ON APPROPRIATIONS.

The SPEAKER announced the appointment of Mr. CLYMER to fill the vacancy in the Committee on Appropriations occasioned by his own retirement therefrom.

LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted to Mr. ROBINSON for fifteen days on account of sickness in his family.

ORDER OF BUSINESS.

The SPEAKER. The morning hour commences at twenty minutes past twelve o'clock, and this being Monday, the first business in order is the call of States and Territories, beginning with the State of Maine, for the introduction of bills and joint resolutions for reference to their appropriate committees, not to be brought back on motions to reconsider. Under this call memorials and resolutions of State and territorial Legislatures may be presented for reference and printing. By unanimous consent the House has ordered the call shall proceed although it may consume more than an hour.

OVERCHARGE OF DUTIES.

Mr. FRYE introduced a bill (H. R. No. 4140) to provide judicial remedies for overcharge of duties on tonnage and imports; which was read a first and second time.

Mr. FRYE. I ask that the bill may be read.

The bill was read at length, and was referred to the Committee on the Judiciary, and ordered to be printed.

CHARLES J. LEAHY.

Mr. SEELYE introduced a bill (H. R. No. 4141) for the relief of Charles J. Leahy; which was read a first and second time, referred to the Committee of Claims, and ordered to be printed.

POSTAGE ON LETTERS.

Mr. EAMES introduced a bill (H. R. No. 4142) to reduce postage on letters; which was read a first and second time.

Mr. BURCHARD, of Illinois. I call for the reading of the bill.

The bill was read at length, and was referred to the Committe on the Post-Office and Post Roads, and ordered to be printed.

RICHARD H. BIRMINGHAM.

Mr. WILLIS introduced a bill (H. R. No. 4143) for the relief of Richard H. Birmingham, late sergeant of Company A, Sixty-ninth Regiment, New York State Volunteers; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

HENRY S. VAN DE CARR ET AL.

Mr. J. H. BAGLEY introduced a bill (H. R. No. 4144) for the relief of Henry S. Van de Carr and Elsie M. Reynolds, administrators, &c.; which was read a first and second time, referred to the Committe on Patents, and ordered to be printed.

COMPENSATION OF LETTER-CARRIERS.

Mr. COX introduced a bill (H. R. No. 4145) to regulate the compensation of letter-carriers; which was read a first and second time.

Mr. BURCHARD, of Illinois. I ask that the bill may be read.

The bill was read at length, and was referred to the Committee on the Post-Office and Post-Roads, and ordered to be printed.

SECTION 1015 OF THE REVISED STATUTES.

Mr. DAVY introduced a bill (H. R. No. 4146) to amend section 1015 of the Revised Statutes so as to permit the commissioners of the circuit court of the United States to take bail for the appearance of the accused before them from time to time till the final disposition thereof; which was read a first and second time.

Mr. HALE. Let that bill be read.

The bill was read at length, and was referred to the Committee on the Judiciary, and ordered to be printed.

ELIZA H. POWERS.

Mr. CUTLER introduced a bill (H. R. No. 4147) for the relief of Eliza H. Powers; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

GEORGE HOBBS.

Mr. WALSH introduced a bill (H. R No. 4148) to authorize a change of record to be made in the case of George Hobbs, late private Company L, First Maryland Cavalry Volunteers; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

LLOYD J. BEALL.

Mr. WALKER, of Virginia, introduced a bill (H. R. No. 4149) to remove the legal and political disabilities of Lloyd J. Beall, of Virginia; which was read a first and second time, referred to the Committee on the Judiciary, and ordered to be printed.

ESTATE OF WILLIAM L. SHARKEY.

Mr. SINGLETON introduced a bill (H. R. No. 4150) for the relief of the estate of the late William L. Sharkey, late of Hinds County, Mississippi; which was read a first and second time, referred to the Committee on War Claims, and ordered to be printed.

BAYOU LA FOURCHE.

Mr. DARRALL introduced a bill (H. R. No. 4151) to authorize the State of Louisiana to close the month of the Bayou La Fourche, in said State; which was read a first and second time.

Mr. HALE. I call for the reading of the bill.

The bill was read at length, and was referred to the Committee on Commerce, and ordered to be printed.

EDUCATION.

Mr. DARRALL also introduced a bill (H. R. No. 4152) to apply the proceeds of the sales of public lands to the education of the people; which was read a first and second time.

Mr. BURCHARD, of Illinois. I ask that the bill may be read.

The bill was read at length, and was referred to the Committee on Education and Labor, and ordered to be printed.

HEIRS OF JOSEPH PARROTT.

Mr. SAVAGE introduced a bill (H. R. No. 4153) to authorize the payment of the claim of the heirs of Joseph Parrott; which was read a first and second time.

Mr. CONGER. Let the bill be read.

The bill was read at length, and was referred to the Committee on Revolutionary Pensions, and ordered to be printed.

SECTIONS 733 AND 2737 OF REVISED STATUTES.

Mr. FOSTER introduced a bill (H. R. No. 4154) to amend sections 733 and 2737 of the Revised Statutes; which was read a first and second time, referred to the Committee of Ways and Means, and ordered to be printed.

KENDRICK & AVIS ET AL.

Mr. FOSTER also introduced a bill (H. R. No. 4155) amending the act of July 28, 1876, entitled "An act for the relief of Kendrick & Avis and others;" which was read a first and second time, referred to the Committee of Ways and Means, and ordered to be printed.

MARY K. PATTON.

Mr. NEAL introduced a bill (H. R. No. 4156) granting a pension to Mary K. Patton, widow of John Van O. Patton, deceased; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

COINAGE OF SILVER DOLLARS.

Mr. HUNTER introduced a bill (H. R. No. 4157) to authorize the Secretary of the Treasury to purchase silver bullion and cause the same to be coined into silver dollars, each dollar to be of the same value and fineness of the silver dollar as required by the laws of the United States on the 18th day of March, 1869, and making said silver dollar when coined a full legal tender for all debts public and private within the United States, including duties on imports and interest on the public debt, excepting obligations heretofore entered into and made payable in gold, such obligations last named to be paid in gold, and repealing all acts inconsistent therewith; which was read a first and second time.

Mr. CONGER. Let the bill be reported.

The bill was read at length, and then referred to the Committee on Banking and Currency, and ordered to be printed.

CHEAP TRANSPORTATION.

Mr. CANNON, of Illinois, introduced a bill (H. R. No. 4158) to promote commerce among the States and to cheapen transportation of persons and property between the Atlantic seaboard and the Western States and Territories; which was read a first and second time.

Mr. CANNON, of Illinois. I ask that the bill be reported.

The bill was read at length, and then referred to the Committee on Railways and Canals, and ordered to be printed.

PROTECTION AGAINST DOMESTIC VIOLENCE.

Mr. GLOVER introduced a bill (H. R. 4159) for the protection of States against domestic violence; which was read a first and second time.

Mr. GLOVER. I ask that the bill be reported and referred to the Committee on Military Affairs.

The bill was read at length, and then referred to the Committee on Military Affairs, and ordered to be printed.

ELIZABETH MEMEMEYER.

Mr. STONE introduced a bill (H. R. No. 4160) for the relief of Elizabeth Mememeyer, of Saint Louis, Missouri, administratrix of Anton Mememeyer, deceased; which was read a first and second time, referred to the Committee on War Claims, and ordered to be printed.

ROBERT L. HOTTEL.

Mr. MORGAN introduced a bill (H. R. No. 4161) for the relief of Robert L. Hottel, late sergeant Company C, Fifteenth Missouri Cavalry; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

BLASIUS REIDINGER.

Mr. HATCHER introduced a bill (H. R. No. 4162) granting a pension to Blasius Reidinger, of Madison County, Missouri; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

G. W. JOBE.

Mr. GUNTER introduced a bill (H. R. No. 4163) for the relief of G. W. Jobe, late second lieutenant Company F, Forty-sixth Missouri Infantry Volunteers; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

PHILLIP R. JONES.

Mr. GAUSE introduced a bill (H. R. No. 4164) for the relief of Phillip R. Jones, of Lee County, Arkansas; which was read a first and second time, referred to the Committee on War Claims, and ordered to be printed.

EXPIRATION OF MORNING HOUR.

Mr. HUNTER. Has not the morning hour expired?

The SPEAKER. It has, but unanimous consent was given that the first call of States and Territories for bills and joint resolutions for reference should be completed, notwithstanding it might take more than one hour, and the list of States has not yet been called through.

W. E. WOODHOUSE & CO.

Mr. SCHLEICHER introduced a bill (H. R. No. 4165) for the relief of W. E. Woodhouse & Co.; which was read a first and second time, referred to the Committee of Claims, and ordered to be printed.

WILLIAM REDUS.

Mr. HANCOCK introduced a bill (H. R. No. 4166) for the relief of William Redus; which was read a first and second time, referred to the Committee on Indian Affairs, and ordered to be printed.

DUTY UPON SUGAR.

Mr. KASSON introduced a bill (H. R. No. 4167) to establish a discriminating duty upon all products of the sugar-cane imported into the United States and being the growth or product of slave labor; which was read a first and second time, referred to the Committee on Ways and Means, and ordered to be printed.

LAND-GRANT RAILROAD IN IOWA.

Mr. OLIVER introduced a bill (H. R. No. 4168) to amend section 1 of the act of May 12, 1864, for a grant of land to the State of Iowa to aid in the construction of a railroad in said State; which was read a first and second time, referred to the Committee on Public Lands, and ordered to be printed.

IMPROVEMENT OF THE DES MOINES RAPIDS, MISSISSIPPI RIVER.

Mr. McCRARY introduced a bill (H. R. No. 4169) for the relief of certain employés in the work for the improvement of the Des Moines rapids of the Mississippi River; which was read a first and second time, referred, with accompanying papers, to the Committee on Commerce, and ordered to be printed.

MATTHEW HULZER.

Mr. WILLIAMS, of Wisconsin, introduced a bill (H. R. No. 4170) for the relief of Matthew Hulzer, late a private of Company H, Twenty-eighth Regiment of Wisconsin Volunteers; which was read a first and second time, referred to the Committee on Military Affairs, ordered to be printed.

ALONZO W. BAKER.

Mr. WILLIAMS, of Wisconsin, also introduced a bill (H. R. No. 4171) for the relief of Alonzo W. Baker, late a private of Company A, Twenty-fourth Regiment of Wisconsin Volunteers; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

CATHARINE BRENNAN.

Mr. KIMBALL introduced a bill (H. R. No. 4172) granting a pension to Catharine Brennan, widow of John Brennan, private of Company B, Fifty-eighth Illinois Volunteers; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

NAVIGATION OF FEATHER RIVER, CALIFORNIA.

Mr. LUTTRELL introduced a bill (H. R. No. 4173) to appropriate money for the improvement of the navigation of Feather River, California; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

NAVIGATION OF SACRAMENTO RIVER.

Mr. LUTTRELL also introduced a bill (H. R. No. 4174) to appropriate money to improve the navigation of the Sacramento River, California; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

WIDOW OF CAPTAIN C. M. HAILE.

Mr. LUTTRELL (by request) also introduced a bill (H. R. No. 4175) for the relief of the widow of Captain Christopher M. Haile, United States Army; which was read a first and second time, referred to the Committee of Claims, and ordered to be printed.

WAGON-ROAD ACROSS SIERRA NEVADA MOUNTAINS.

Mr. LUTTRELL (by request) also introduced a bill (H. R. No. 4176) granting the right of way for a wagon-road across the Sierra Nevada Mountains below the snow line, and for other purposes; which was read a first and second time, referred to the Committee on Public Lands, and ordered to be printed.

SETTLERS ON THE PUBLIC LANDS.

Mr. STRAIT introduced a bill (H. R. No. 4177) for the relief of certain settlers on the public lands; which was read a first and second time, referred to the Committee on Public Lands, and ordered to be printed.

OSAGE CEDED LANDS IN KANSAS.

Mr. GOODIN introduced a bill (H. R. No. 4178) to appropriate out of the Indian civilization fund the expenses incurred in conducting the recent suit against certain railway companies to contest the validity of title to the Osage ceded lands in Kansas; which was read a first and second time, referred to the Committee on Indian Affairs, and ordered to be printed.

QUARRY RESERVE, ARIZONA TERRITORY.

Mr. STEVENS, of Arizona, introduced a bill (H. R. No. 4179) authorizing the Secretary of War to sell to the village of Yuma, Arizona Territory, certain land known as the Quarry reserve; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

The SPEAKER. All the States and Territories having now been called, the Chair will recognize for the introduction of bills members who were not in their seats during the regular call.

LANDS IN SAN FRANCISCO.

Mr. HARDENBERGH introduced a bill (H. R. No. 4180) to declare the true intent and meaning of an act entitled "An act to relinquish the interest of the United States in certain lands to the city and county of San Francisco, California;" which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

MARY BRADLY CROSS.

Mr. CANNON, of Utah, introduced a bill (H. R. No. 4181) allowing a pension to Mary Bradly Cross; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

PUBLIC WORKS ON MISSISSIPPI RIVER.

Mr. HARTZELL introduced a bill (H. R. No. 4182) to authorize a further appropriation to continue the public works now in the course of construction upon the Mississippi River between the foot of Dickey Island and the mouth of the Ohio River, in the State of Illinois; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

CORNELIUS S. UNDERWOOD.

Mr. MACDOUGALL introduced a bill (H. R. No. 4183) for the relief of the estate of Cornelius S. Underwood, deceased, late major and additional paymaster United States Army; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

MRS. ADOLPHUS BASSETT, OF AUBURN, NEW YORK.

Mr. MACDOUGALL also introduced a bill (H. R. No. 4184) granting a pension to Mrs. Adolphus Bassett, of Auburn, New York; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

JOHN S. LUFF.

Mr. LUTTRELL (in the absence of Mr. WOODBURN and by request of one of his constituents) introduced a bill (H. R. No. 4185) for the relief of John S. Luff; which was read a first and second time, referred to the Committee of Claims, and ordered to be printed.

NATHANIEL M'KAY.

Mr. WELLS, of Missouri, introduced a bill (H. R. No. 4186) for the relief of Nathaniel McKay; which was read a first and second time, referred to the Committee on Naval Affairs, and ordered to be printed.

The call of States and Territories was then completed.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of its clerks, announced the passage of a bill (H. R. No. 4121) to provide for the expenses of certain special committees, with amendments; in which the concurrence of the House was requested.

JAMES MADISON WELLS.

Mr. BANNING. I ask unanimous consent to introduce the following resolution for adoption at this time:

Whereas the President having sent to this House what purports to be a report of certain gentlemen sent to Louisiana to be present at the canvass of the electoral vote of that State in which the returning board is indorsed and sustained as a board made up of gentlemen of patriotism and integrity, and referring to James Madison Wells, president of the board, as follows: "Two of them, Hon. James Madison Wells, president of the board, and General Thomas C. Anderson, next senior member, are southern-born, and of old and highly respectable families. The father of the former was Hon. Levi Wells, of the parish of Rapides, who in 1812 represented it in the convention called to frame the constitution of the State of Louisiana. The son received a liberal education and was early engaged in the care of the planting and other interests of his father. He was a Union man from the time the war broke out, and although he suffered greatly by it in the loss of property, he never faltered in his devotion to the Union cause. Under the Banks reconstruction scheme he was chosen lieutenant-governor on the ticket with Hon. Michael Hahn, who was elected governor, and upon the election of the latter to the Senate, a year after, Mr. Wells became governor of the State, to which office he was almost unanimously re-elected under the reconstruction plan of President Johnson. His experience in public life has been great and varied, and his capacity to discharge the duties assumed cannot be questioned:" Therefore,

Be it resolved, That the President be, and he is hereby, requested to forward to this House copies from the War Department of all reports, orders, correspondence, telegrams, indorsements, and memoranda connected with the removal of James Madison Wells from the governorship of Louisiana by General Sheridan in the year 1867.

Mr. KASSON. I object to the resolution.

Mr. BANNING. Then I move to suspend the rules and pass the resolution.

Mr. HALE. And on that motion I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and it was decided in the negative—yeas 141, nays 81, not voting 68; as follows:

YEAS—Messrs. Ainsworth, Ashe, Atkins, Bagby, John H. Bagley, jr., Banning, Bell, Bland, Blount, Boone, Bradford, John Young Brown, Samuel D. Burchard, Cabell, John H. Caldwell, William P. Caldwell, Campbell, Candler, Carr, Cate, Caulfield, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Collins, Cook, Cowan, Cox, Culberson, Cutler, Davis, Dibrell, Douglas, Durand, Durham, Ellis, Faulkner, Felton, Finley, Forney, Franklin, Fuller, Gause, Glover, Goode, Goodin, Gunter, Andrew H. Hamilton, Robert Hamilton, Bancock, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Henkle, Hereford, Goldsmith W. Hewitt, Holman, Hooker, Humphreys, Hunton, Hurd, Frank Jones, Kehr, Knott, Lamar, George M. Landers, Lane, Le Moyne, Levy, Lewis, Lord, Luttrell, Lynde, Mackey, Maish, Metcalfe, Milliken, Mills, Money, Morgan, Mutchler, Neal, O'Brien, Odell, Payne, Piper, Poppleton, Powell, Rea, Reagan, John Reilly, James B. Reilly, Rice, Riddle, John Robbins, William M. Robbins, Roberts, Savage, Scales, Schleicher, Schumaker, Sheakley, Singleton, Slemons, Southard, Sparks, Spencer, Springer, Stanton, Stenger, Stevenson, Stone, Tarbox, Terry, Thomas, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Waddell, Gilbert C. Walker, Walsh, Warner, Warren, Watterson, Erastus Wells, Whitthorne, Alpheus S. Williams, James Williams, Jeremiah N. Williams, Willis, Wilshire, Benjamin Wilson, Fernando Wood, Yeates, and Young—141.

NAYS—Messrs. Adams, George A. Bagley, John H. Baker, William H. Baker, Ballou, Blair, Bradley, William R. Brown, Buckner, Horatio C. Burchard, Burleigh, Cannon, Cason, Conger, Crounse, Darrall, Davy, Denison, Eames, Evans, Flye, Fort, Foster, Freeman, Frye, Garfield, Hale, Benjamin W. Harris, Hathorn, Henderson, Hoar, Hoskins, Hunter, Hyman, Kasson, Kelley, Kimball, Leavenworth, Lynch, Magoon, MacDougall, McCrary, McDill, Miller, Monroe, Nash, Norton, Oliver, O'Neill, Packer, Page, William A. Phillips, Pierce, Plaisted, Platt, Porter, Sobieski Ross, Rusk, Sampson, Seelye, Sinnickson, A. Herr Smith, Strait, Stowell, Thornburgh, Martin I. Townsend, Tufts, Van Vorhes, Wait, Alexander S. Wallace, John W. Wallace, G. Wiley Wells, White, Whiting, Willard, Andrew Williams, Charles G. Williams, William B. Williams, James Wilson, Alan Wood, jr., and Woodworth—81.

NOT VOTING—Messrs. Abbott, Anderson, Banks, Bass, Beebe, Blackburn, Bliss, Bright, Caswell, Chapin, Chittenden, Cochrane, Crapo, Danford, De Bolt, Dobbins, Dunnell, Eden, Egbert, Ely, Gibson, Haralson, Haymond, Hays, Hendee, Abram S. Hewitt, Hill, Hoge, Hopkins, House, Hubbell, Hurlbut, Jenks, Thomas L. Jones, Joyce, King, Franklin Landers, Lapham, Lawrence, McFarland, McMahon, Meade, Morrison, New, Phelps, John F. Philips, Pratt, Purman, Rainey, Robinson, Miles Ross, Sayler, Smalls, William E. Smith, Stephens, Swann, Teese, Thompson, Washington Townsend, Waldron, Charles C. B. Walker, Walling, Ward, Wheeler, Whitehouse, Wigginton, Wike, and Woodburn—68.

So (two-thirds not having voted in the affirmative) the rules were not suspended and the resolution was not passed.

ELECTION INVESTIGATIONS.

Mr. MACDOUGALL moved to suspend the rules and pass the following resolution:

Resolved, That a committee of nine be appointed to proceed to the cities of New York, Brooklyn, and Jersey City, to examine into the alleged fraudulent registration and fraudulent voting for presidential electors and Representatives in Congress at the late election in each of said cities; also, a committee of five to proceed to the State of Virginia, to examine and report whether election frauds have been committed, or intimidation of voters used in the second and fourth congressional districts of said State at the recent election for presidential electors and Representative in Congress; also, a committee of nine to proceed to the State of Mississippi, to examine and report whether any frauds have been committed, or intimidation of voters used, in the recent election for presidential electors and Representatives in Congress; also, that a committee of five be appointed to proceed to the city of Philadelphia, to examine into and report whether there was fraudulent registration and voting in said city previous to and at the recent election for presidential electors and Representatives in Congress; also, a committee of three to proceed to the State of Alabama, to examine into and report whether any intimidation was used, or illegal votes cast, at the recent election for presidential electors and Representative in Congress in the fourth congressional district of said State; and that each of said committees have power to send for persons and papers, to employ a stenographer, and be attended by a deputy sergeant-at-arms, and that they have the privilege to report at any time.

Mr. SOUTHARD. I ask, by unanimous consent, that the gentleman from New York shall also include San Francisco and Oregon.

Mr. COX. Is the resolution divisible?

Mr. SOUTHARD. I hope the gentleman from New York will not object to include at least an investigation into the alleged frauds in the election at San Francisco.

The SPEAKER. The Chair decides that the resolution, under the motion to suspend the rules, cannot be divided.

Mr. COX. I have never heard there was any allegation about New York in this connection.

Mr. WILLIS. We want an examination into New York.

Mr. COX. Certainly there is no objection to that.

Mr. WOOD, of New York. I rise for the purpose of asking a question of the Chair.

The SPEAKER. Only a parliamentary question is in order.

Mr. WOOD, of New York. It is a parliamentary question strictly. My question is whether any gentleman can offer in this House a resolution which in its effect will leave the House without a quorum?

The SPEAKER. That is for the House to judge.

Mr. WOOD, of New York. The resolution proposes to send away forty or fifty members.

Mr. MACDOUGALL. Only thirty-one.

The question being taken on suspending the rules and adopting the resolution, the Speaker declared that, in the judgment of the Chair, two-thirds had not voted in the affirmative.

Mr. MACDOUGALL. I call for the yeas and nays.

The yeas and nays were ordered.

Mr. ATKINS. I ask that the resolution may be again read.

The resolution was again read.

The question was taken; and there were—yeas 123, nays 89, not voting 78; as follows:

YEAS—Messrs. Adams, Ainsworth, Anderson, Bagby, George A. Bagley, John H. Bagley, jr., John H. Baker, William H. Baker, Ballou, Blair, Bradley, Buckner, Horatio C. Burchard, Burleigh, William P. Caldwell, Campbell, Cason, Chittenden, Clymer, Conger, Cook, Cox, Crounse, Cutler, Darrall, Davy, Denison, Douglas, Durand, Eames, Evans, Felton, Finley, Fort, Foster, Freeman, Frye, Garfield, Goode, Goodin, Benjamin W. Harris, John T. Harris, Hartridge, Hartzell, Hathorn, Hoar, Holman, Hooker, Hoskins, Humphreys, Hunter, Hyman, Kelley, Kimball, Franklin Landers, Leavenworth, Lord, Luttrell, Lynch, Magoon, MacDougall, McCrary, Metcalfe, Miller, Monroe, Morgan, Mutchler, Nash, Neal, Norton, O'Neill, Packer, Page, William A. Phillips, Pierce, Platt, Poppleton, Potter, Rea, John Reilly, James B. Reilly, Roberts, Sobieski Ross, Rusk, Savage, Seelye, Sinnickson, Slemons, A. Herr Smith, Stanton, Strait, Stenger, Stevenson, Stone, Stowell, Thornburgh, Martin I. Townsend, Tucker, Tufts, Turney, Van Vorhes, Robert B. Vance, Waddell, Wait, Waldron, Alexander S. Wallace, John W. Wallace,

Warner, Warren, Watterson, G. Wiley Wells, White, Whiting, Willard, Andrew Williams, Alpheus S. Williams, Charles G. Williams, William B. Williams, Willis, Benjamin Wilson, James Wilson, Alan Wood, jr., and Woodworth—123.

NAYS—Messrs. Ashe, Atkins, Banning, Bland, Blount, Boone, Bradford, John Young Brown, Samuel D. Burchard, Cabell, John H. Caldwell, Candler, Cate, Caulfield, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Cowan, Culberson, Davis, Dibrell, Durham, Faulkner, Forney, Franklin, Fuller, Gause, Gibson, Glover, Gunter, Andrew H. Hamilton, Hancock, Hardenbergh, Henry R. Harris, Harrison, Hatcher, Henkle, Hereford, Goldsmith W. Hewitt, Hill, Hunton, Hurd, Kehr, Knott, Lamar, George M. Landers, Lane, Le Moyne, Levy, Lewis, Lynde, Mackey, Maish, McFarland, Milliken, Mills, Money, O'Brien, Odell, Payne, Piper, Powell, Reagan, Rice, Riddle, John Robbins, William M. Robbins, Scales, Schleicher, Schumaker, Sheakley, Singleton, Southard, Sparks, Spencer, Springer, Tarbox, Terry, Throckmorton, John L. Vance, Gilbert C. Walker, Walsh, Erastus Wells, Whitthorne, James Williams, Jeremiah N. Williams, Wilshire, Fernando Wood, Yeates, and Young—89.

NOT VOTING—Messrs. Abbott, Banks, Bass, Beebe, Bell, Blackburn, Bliss, Bright, William R. Brown, Cannon, Carr, Caswell, Chapin, Cochrane, Collins, Crapo, Danford, De Bolt, Dobbins, Dunnell, Eden, Egbert, Ellis, Ely, Five, Hale, Robert Hamilton, Haralson, Haymond, Hays, Hendee, Henderson, Abram S. Hewitt, Hoge, Hopkins, House, Hubbell, Hurlbut, Jenks, Frank Jones, Thomas L. Jones, Joyce, Kasson, King, Lapham, Lawrence, McDill, McMahon, Meade, Morrison, New, Oliver, Phelps, John F. Philips, Plaisted, Pratt, Purman, Rainey, Robinson, Miles Ross, Sampson, Sayler, Smalls, William E. Smith, Stephens, Swann, Teese, Thomas, Thompson, Washington Townsend, Charles C. B. Walker, Walling, Ward, Wheeler, Whitehouse, Wigginton, Wike, and Woodburn—78.

So (two-thirds not having voted in the affirmative) the rules were not suspended.

During the roll-call the following announcements were made:

Mr. DURHAM. My colleague from Kentucky, Mr. BLACKBURN, has paired with Mr. ROBINSON, of Indiana, on all political questions.

Mr. WILLIS. My colleague from New York, Mr. BLISS, is detained unavoidably from the House. If present, he would vote "ay."

The result of the vote was then announced as above recorded.

NARROW-GAUGE RAILWAY TO SAINT LOUIS AND CHICAGO.

Mr. STONE. I move to suspend the rules and take from the Committee of the Whole House on the state of the Union House bill No. 2798, entitled "A bill to authorize the Washington, Cincinnati and Saint Louis Railway Company to construct a narrow-gauge railway from tide water to the cities of Saint Louis and Chicago," and make it the special order for consideration in the House, as in Committee of the Whole, on Wednesday next, immediately after the morning hour, and from day to day until disposed of.

The question being taken, there were ayes 21, noes not counted.

So (two-thirds not having voted in the affirmative) the rules were not suspended.

ELECTION INVESTIGATIONS.

Mr. COX. I move that the rules be suspended and that the following resolution be adopted:

Resolved, That a committee of five be appointed to proceed to the cities of New York, Philadelphia, Brooklyn, and Jersey City, to examine into any alleged fraudulent registration and fraudulent voting for presidential electors and Representatives in Congress at the late election in each of said cities.

Mr. LYNCH rose.

Mr. COX. I object to debate.

Mr. LYNCH. I ask the gentleman if he will not include Mississippi in the resolution?

Mr. COX. I object to debate.

The SPEAKER. Debate is not in order.

The question being taken, the rules were suspended (two-thirds having voted in favor thereof) and the resolution was adopted.

CIRCULAR LETTER TO UNITED STATES MARSHALS.

Mr. GOODE. I move that the rules be suspended and that the following resolution be adopted:

Resolved, That the Committee on the Judiciary be, and are hereby, instructed to inquire and report upon the legality of the circular letter issued by the Attorney-General during the late presidential campaign to the marshals of the United States in relation to their powers and duties in the election then pending; and that said committee also report what legislation, if any, is necessary upon the subject-matter of said circular letter.

Mr. KASSON. I ask that the first four lines of the resolution be again read.

The SPEAKER. The resolution will be again reported.

The resolution was again read.

Mr. GARFIELD. I do not think there is any objection to that. I do not see any.

The question being taken, the rules were suspended (two-thirds having voted in favor thereof) and the resolution was adopted.

CONTRIBUTIONS OF FEDERAL EMPLOYÉS TO ELECTION FUND.

Mr. SPENCER. I move that the rules be suspended and that the following resolution be adopted:

Resolved, That the Judiciary Committee be instructed to investigate and report what, if any, intimidation or coercion has been practiced upon employés of the Federal Government during the late presidential campaign to compel said employés to contribute to the election fund of any political party, and to report to this House what action or legislation may be necessary to protect said employés from such exactions for political purposes; that said committee have power to send for persons and papers and to administer oaths.

Mr. GARFIELD. I ask the gentleman if he will not include in his resolution the voters of the State of Mississippi?

Mr. COX. That is not germane.

Mr. SPENCER. I do not admit any amendment.

Mr. GARFIELD. If the gentleman will admit that amendment I think there will be no objection to the resolution.

The question being taken, there were—ayes 128, noes 62.

Mr. GARFIELD and Mr. CONGER called for the yeas and nays.

Mr. GARFIELD. Let me say again to the gentleman from Louisiana that if he will include Mississippi we will have no objection to the resolution. Committees have been appointed to go all round; put in Mississippi and there will be no objection to the resolution.

[Cries of "Regular order!"]

The yeas and nays were ordered.

The question was taken; and there were—yeas 135, nays 74, not voting 81; as follows:

YEAS—Messrs. Ainsworth, Ashe, Atkins, Bagby, John H. Bagley, jr., Banning, Bland, Blount, Boone, Bradford, John Young Brown, Buckner, Samuel D. Burchard, Cabell, John H. Caldwell, William P. Caldwell, Campbell, Candler, Carr, Cate, Caulfield, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Collins, Cook, Cowan, Cox, Culberson, Cutler, Davis, Dibrell, Douglas, Durham, Ellis, Faulkner, Felton, Finley, Forney, Fort, Franklin, Fuller, Gibson, Glover, Goode, Goodin, Gunter, Andrew H. Hamilton, Hancock, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Haymond, Henkle, Hereford, Goldsmith W. Hewitt, Hill, Holman, Hooker, Humphreys, Hunton, Frank Jones, Kehr, Knott, Lamar, George M. Landers, Le Moyne, Levy, Lewis, Lord, Luttrell, Maish, McFarland, Metcalfe, Milliken, Mills, Money, Morgan, Mutchler, Neal, O'Brien, Odell, Payne, Piper, Popp'eton, Powell, Rea, Reagan, John Reilly, James B. Reilly, Rice, Riddle, John Robbins, William M. Robbins, Roberts, Savage, Scales, Schleicher, Sheakley, Singleton, Slemons, Southard, Sparks, Spencer, Springer, Stanton, Stenger, Stevenson, Terry, Thomas, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Waddell, Gilbert C. Walker, Walsh, Warner, Watterson, Erastus Wells, Whitthorne, Alpheus S. Williams, James Williams, Jeremiah N. Williams, Willis, Wilshire, Benjamin Wilson, Fernando Wood, Yeates, and Young—135.

NAYS—Messrs. Adams, George A. Bagley, John H. Baker, William H. Baker, Ballou, Blair, Bradley, William R. Brown, Horatio C. Burchard, Burleigh, Cannon, Cason, Chittenden, Conger, Cromne, Darrall, Davy, Denison, Eames, Five, Freeman, Frye, Garfield, Haralson, Benjamin W. Harris, Hathorn, Henderson, Hoskins, Hunter, Hyman, Kasson, Kelley, Kimball, Leavenworth, Lynch, Mackey, Magoon, MacDougall, McCrary, McDill, Monroe, Nash, Norton, Oliver, O'Neill, Packer, Page, Plaisted, Platt, Potter, Sobieski Ross, Rusk, Sampson, Sinnickson, A. Herr Smith, Strait, Stone, Stowell, Thornburgh, Martin I. Townsend, Tufts, Van Vorhes, Wait, Alexander S. Wallace, John W. Wallace, G. Wiley Wells, White, Whiting, Andrew Williams, Charles G. Williams, William B. Williams, James Wilson, Alan Wood, jr., and Woodworth—74.

NOT VOTING—Messrs. Abbott, Anderson, Banks, Bass, Beebe, Bell, Blackburn, Bliss, Bright, Caswell, Chapin, Cochrane, Crapo, Danford, De Bolt, Dobbins, Dunnell, Durand, Eden, Egbert, Ely, Evans, Foster, Gause, Hale, Robert Hamilton, Hays, Hendee, Abram S. Hewitt, Hoar, Hoge, Hopkins, House, Hubbell, Hurd, Hurlbut, Jenks, Thomas L. Jones, Joyce, King, Franklin Landers, Lane, Lapham, Lawrence, Lynde, McMahon, Meade, Miller, Morrison, New, Phelps, John F. Philips, William A. Phillips, Pierce, Pratt, Purman, Rainey, Robinson, Miles Ross, Sayler, Schumaker, Seelye, Smalls, William E. Smith, Stephens, Swann, Tarbox, Teese, Thompson, Washington Townsend, Waldron, Charles C. B. Walker, Walling, Ward, Warren, Wheeler, Whitehouse, Wigginton, Wike, Willard, and Woodburn—81.

So (two-thirds not voting in favor thereof) the rules were not suspended and the resolution was not adopted.

MANNER OF CALLING THE ROLL.

Mr. WILLIAMS, of Wisconsin. I move that the rules be so suspended as to adopt the resolution which I send to the Clerk's desk.

The Clerk read as follows:

Resolved, That the Speaker be, and he hereby is, respectfully requested to direct the Clerk in calling the roll of the House to call out the surnames of members with the prefix of "Mister," except where there are two or more of the same name, in which case he will call the name of the State, and that he will only call the Christian names of members where there are two or more of the same name from the same State.

Mr. KASSON. I think that had better go to the Committee on Rules.

Mr. GARFIELD. There is an important principle involved in that resolution——

Mr. WILLIAMS, of Wisconsin. If there is any general opposition to adopting this resolution at this time, I will consent that it be referred to the Committee on Rules.

The resolution was accordingly received, by unanimous consent, and referred to the Committee on Rules.

ORDER OF BUSINESS.

Mr. WOOD, of New York. I move that the House now adjourn.

Mr. SPRINGER. I ask the gentleman to yield to me that I may introduce a resolution.

Many MEMBERS. Regular order! Regular order!

Mr. WOOD, of New York. I have no objection to yielding to the gentleman.

The SPEAKER. There is objection, and the question is upon the motion to adjourn.

The motion was agreed to; and accordingly (at three o'clock and fifteen minutes p. m.) the House adjourned.

PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. COX: The petition of the letter-carriers of New York that their salaries be raised to the amount they received previous to their reduction in 1874, to the Committee on the Post-Office and Post-Roads.

By Mr. FRYE: The petition of Emery Pollard, of West Poland, Androscoggin County, Maine, for a pension, to the Committee on Invalid Pensions.

By Mr. HARTRIDGE: A paper relating to the establishment of post-routes from station No. 2 on the Central Railroad, Georgia, to the house of Samuel E. Groover, Bullock County; and from Way Cross,

Ware County, to Traders' Hill and Centre Village, Charlton County, Georgia, to the Committee on the Post-Office and Post-Roads.

By Mr. HOUSE: The petition of the Southern Methodist publishing-house, that it be paid for the use of its property by the United States Army in the years 1864 and 1865; together with the following petitions heretofore presented to Congress asking that said house be paid the amount justly due it: By Mr. ASHE, the petition of Munroe Station (North Carolina) Sunday-school; by Mr. ATKINS, the petition of President J. M. Wright and 108 other citizens of Montgomery County, Tennessee; also, two petitions of citizens of Tennessee; by Mr. BLAND, the petition of B. E. Lemon, mayor of Warrensburgh, Missouri; by Mr. BLOUNT, the petition of citizens of the South Georgia conference of the Methodist Episcopal Church South; also, the petition of Hon. W. P. Price, of Georgia, and other citizens of said State; by Mr. BRIGHT, the petition of W. B. Black and other citizens of Tennessee; by Mr. BUCKNER, the petition of the Missouri conference of the Methodist Episcopal Church South; by Mr. CALDWELL, of Alabama, the petition of citizens of Marshall County, Alabama; By Mr. DARRALL, two petitions of citizens of Louisiana; also, the petition of the Methodist Episcopal Sunday-school at Jackson, Louisiana, and of the president and faculty of Centenary College, and of other citizens of Jackson, Louisiana; by Mr. HANCOCK, the petition of the Texas conference of the Methodist Episcopal Church South; by Mr. HARRIS, of Georgia, the petition of citizens of Georgia; by Mr. HAYS, the petition of citizens of Green County, Alabama; also, the petition of Judge Goldson and 41 other citizens of Prattville, Alabama; by Mr. HARRIS, of Virginia, the petition of John Wilson and 50 other citizens of Greenville, Virginia; by Mr. HEREFORD, two petitions of citizens of West Virginia; also, the petition of the West Virginia conference of the Methodist Episcopal Church South; by Mr. HUNTON, the petition of Holston conference of the Methodist Episcopal Church South; by Mr. LAMAR, the petition of Chancellor Simmons and 16 other citizens of Sardis, Mississippi, of 19 citizens of Marshall County, Mississippi, of John F. Williams and 23 citizens of Iuka, Mississippi, of J. J. Alexander and other citizens of Mississippi, and of the bishop, ministers, and lay representatives of the North Mississippi conference of the Methodist Episcopal Church South; by Mr. LAWRENCE, the petition of Bishop Morris, of Ohio, and five other bishops of the Methodist Episcopal Church, General Fisk, the book-agents of the Methodist Book Concern, of New York, and Drs. Whedon, Dashiell, Eddy, Reid, and Durbin, of New York; also, the petition of 18 senators and 9 officers of the senate of Ohio; by Mr. LUTTRELL, the petition of Hon. C. P. Berry and others of California; by Mr. LYNCH, the petition of the Sabbath-school of Brookhaven, Mississippi, of Professor Hunnicutt and 66 officers, teachers, and pupils of the Methodist Sunday-school at Natchez, Mississippi, of Chancellor Ellis and 21 other officers and citizens of Jefferson County, Mississippi, of the sheriff and 33 other officers and citizens of Port Gibson, Mississippi, of the mayor of Enterprise and 49 other citizens of Clarke County, Mississippi, and of the president and faculty of Whitworth Female College of Mississippi; by Mr. MAGINNIS, the petition of citizens of Montana; by Mr. MILLS, the petition of the East Texas conference of the Methodist Episcopal Church South; also, the petition of Hon. F. Rainey and other citizens of Texas; also, the petition of the Northwestern Texas conference Methodist Episcopal Church South; also, the petition of the West Texas conference Methodist Episcopal Church South; by Mr. O'BRIEN, the petition of Rev. Samuel Rogers and 20 other clergymen, of Baltimore; by Mr. PURMAN, the petition of citizens of Florida; by Mr. RAINEY, the petition of the South Carolina conference of the Methodist Episcopal Church South; by Mr. ROBBINS, of North Carolina, two petitions of citizens of North Carolina; by Mr. STOWELL, three petitions of citizens of Virginia; by Mr. SWANN, the petition of Bishop Ames and 34 other ministers of the Methodist Episcopal Church of Baltimore, and of the Baltimore conference of the Methodist Episcopal Church South; by Mr. VANCE, of North Carolina, the petition of B. F. Logan and 15 other citizens of Shelby, North Carolina, and of J. S. Kennedy, Thomas B. Long, and other citizens of North Carolina; by Mr. WADDELL, the petition of R. Bryan and 17 other citizens of North Carolina, and of Senator Troy and 75 other members of the Legislature, and other officials and citizens of Cumberland County, North Carolina; by Mr. WALLACE, of South Carolina, the petition of the president and faculty of Wofford College, South Carolina; by Mr. WELLS, of Missouri, the petition of the Saint Louis Methodist conference and of the quarterly conference of the Methodist Episcopal Church South, at Canterbury, Missouri; by Mr. WHITTHORNE, the petition of L. D. Myers, W. P. Ingraham, and others of Columbia, Tennessee, and of Hon. Ed. Cooper and others of Shelbyville, Tennessee, to the Committee on War Claims.

Also (by Mr. HOUSE) the following petitions filed by members of the Forty-third and previous Congresses, asking that the Southern Methodist publishing-house be paid for the use of its property by the United States in the years 1864 and 1865: The petition of citizens of Wilcox County, Alabama; of citizens of Mobile, Alabama; of W. W. Wood and others, of South Carolina; of Rev. John Lanahan and 8 other ministers of the Methodist Episcopal Church, of Washington, District of Columbia; of citizens of California and of the Pacific conference of the Methodist Episcopal Church South, of California; of the general conference of the Colored Methodist Episcopal Church and Hon. D. C. Smythe and others, of North Carolina; of citizens of Missouri; of the mayor of Columbus, Kentucky, and 30 other citizens of Hickman County, Kentucky; of John P. Hall and 7 other United States officers, and of Rev. R. H. Mahan and other citizens of Paducah, Kentucky; of citizens of Chattanooga, Tennessee; of T. M. Bowyer and others, of Virginia; of the governor, secretary of state, treasurer, attorney-general, superintendent of education, and adjutant and inspector generals, of South Carolina; of S. R. Morratt, G. M. Mattison, and other citizens of South Carolina; of A. T. MacIntyre and other citizens of Georgia; of Robert Hester and other citizens of Georgia; of Rev. J. B. Walker and 13 other citizens of Galveston, Texas; of the mayor and board of aldermen of the city of Edgefield, Tennessee; of citizens of Nashville, Tennessee; of the mayor and city council of Nashville, Tennessee; of citizens of Williamson County, Tennessee; of the ministers and lay representatives of the West Saint Louis conference of the Methodist Episcopal Church South; of the Trinity Texas annual conference of the Methodist Episcopal Church South; of the mayor of Aberdeen, Mississippi, and 80 other citizens of Munroe County, Mississippi; of the United States district attorney and 29 other citizens of Holly Springs, Mississippi; of W. H. Perry and 15 other citizens of Yellville, Arkansas; of the judges and 28 attorneys of the supreme court of Tennessee; of Rev. David Bush and 23 other citizens of Frederick County, Maryland; of the Tennessee conference of the Methodist Episcopal Church South; of R. W. Downey and others, citizens of Pennsylvania; of the Mississippi conference of the Methodist Episcopal Church South; of B. A. Clark, Hor. Christian, Thomas Green, Rev. H. H. Montgomery, and other citizens of Mississippi; of P. B. Cook and 30 other citizens of Mississippi; of the Virginia conference of the Methodist Episcopal Church South; of the governor and other citizens of Alabama; of citizens of Shelby and Marion Counties, Kentucky; of the Centenary Methodist church, Richmond, Virginia; of the ministers and lay members of the North Alabama conference of the Methodist Episcopal Church South; of Fred. Sloss, Hon. George S. Houston, and other citizens of Athens, Alabama; of C. C. Ellis, J. R. Powell, and other citizens of Birmingham, Alabama; of the president of the North Carolina University and others of Chapel Hill, North Carolina; of citizens of Arkansas; of R. S. Ellis and 18 other citizens of Louisa County, Virginia; of Rev. A. C. Bledsoe and 12 other citizens of Richmond, Virginia; of the chiefs of the Indian nation west of Arkansas, and of citizens of Arkansas; of Bishop Miles and 29 other colored citizens of Louisville, Kentucky; of W. A. Allen, F. D. Koonce, and other citizens of North Carolina; of citizens of Tuscaloosa, Alabama; of the Alabama conference of the Methodist Episcopal Church South; of citizens of Craig County, Virginia; of the Methodist conference of Illinois; of 32 citizens of Maryland; of citizens of Lawrence and Johnson Counties, Kentucky; of citizens of Christian County, Illinois; of the governor of Oregon, Hon. J. W. Nesmith, Hon. W. C. Baird, and other citizens of Oregon; of Rev. T. L. Boswell and 23 other citizens of Fayette County, Tennessee; of 31 officials and citizens of Mississippi; of citizens of Hickman, Tennessee; of citizens of Somerville, Tennessee; and of Governor Young, John E. Ryland, and other citizens of Missouri, to the same committee.

Also, (by Mr. HOUSE:) Resolutions of the States of Tennessee, Mississippi, and Arkansas, heretofore presented, favoring the paying of the Southern Methodist publishing-house for the use of its property by the United States, to the same committee.

By Mr. MACDOUGALL: Memorial of the Sinclair Rectifying Machine Company of New York, remonstrating against granting the petition of Joseph W. Reford, praying that his letters-patent for improvement in rectifying and oxygenating apparatus may be antedated, to the Committee on Patents.

By Mr. MCDILL: The petition of D. W. Moffat, auditor of Woodbury County, Iowa, for the division of the State of Iowa into northern and southern districts and the holding of Federal courts at Sioux City, Iowa, to the Committee on the Judiciary.

By Mr. MCFARLAND: The petition of Thomas Dalton, father of Henry Dalton, deceased, late a private in Company E, Ninth Tennessee Cavalry, for a correction of his war record, to the Committee on Military Affairs.

Also, the petition of Daniel K. Justice, late a private in Company D, Eighth Regiment Tennessee Volunteer Infantry, for a pension, to the Committee on Invalid Pensions.

By Mr. MONROE: The petition of Charlotte Buck, mother of James Buck, deceased, late a private in Company A, Sixteenth Regiment United States Infantry, for a pension, to the same committee.

By Mr. PLAISTED: The petition of Henry H. Haskell, late of the Second Regiment Maine Volunteers, for a pension, to the same committee.

By Mr. PHILLIPS, of Kansas: The petition of W. A. Tannahill, late a private in Company D, Sixty-fourth Regiment Ohio Infantry, for a pension, to the same committee.

By Mr. VANCE, of North Carolina: A paper relating to the establishment of a post-route from Hayesville, North Carolina, to Edey's Store, Georgia, to the Committee on the Post-Office and Post-Roads.

By Mr. WALKER, of Virginia: The petition of Lloyd J. Beall, for the removal of his political disabilities, to the Committee on the Judiciary.

By Mr. WILLIS: The petition of Richard H. Birmingham, for additional bounty, to the Committee on Military Affairs.

IN SENATE.

TUESDAY, *December* 12, 1876.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

The Journal of yesterday's proceedings was read and approved.

REFERENCE OF ANNUAL REPORTS.

Mr. HAMLIN. I submit a motion in the nature of an order that the annual report of the Postmaster-General be referred to the Committee on Post-Offices and Post-Roads.

The motion was agreed to.

Mr. SHERMAN. I make a similar motion in regard to the report of the Secretary of the Treasury on the state of the finances, that it be referred to the Committee on Finance.

The motion was agreed to.

PETITIONS AND MEMORIALS.

Mr. BOGY. I present to the Senate a memorial prepared by myself and Senators MCDONALD and STEVENSON, which was referred to yesterday, in relation to the counting by the returning-board, of the votes of the people of Louisiana for the appointment of presidential electors on the 7th of November, 1876. I ask that the same be received and that it be printed.

The PRESIDENT *pro tempore*. Is there objection to printing this memorial? The Chair hears none and it is so ordered.

Mr. HITCHCOCK presented the petition of Henson Wiseman, praying compensation for losses and damages to his property and family sustained by Indian depredations; which was referred to the Committee on Claims.

CHANGE OF NAME OF A BANK.

Mr. BOUTWELL. I am instructed by the Committee on Finance, to whom was referred the bill (H. R. No. 3693) changing the name of the First National Bank of Amesbury to the First National Bank of Merrimac, to report it favorably, and I ask for its present consideration. There can be no objection to it.

By unanimous consent the Senate, as in Committee of the Whole, proceeded to consider the bill.

Mr. SHERMAN. I should like the Senator from Massachusetts to state the local reasons why this change should be granted. They are known to me, but I should like to have them on the record, so that the case may be understood.

Mr. BOUTWELL. The sole reason for the passage of the bill is that the town of Amesbury has been divided and a new town made by the name of Merrimac out of a part of the old town. The place of business of this bank is in that portion of the town which is now the town of Merrimac.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

BILLS INTRODUCED.

Mr. CAMERON, of Wisconsin, asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1067) to establish a post-route from Barron to Clayton, in Wisconsin; which was read twice by its title, referred to the Committee on Post-Offices and Post-Roads, and ordered to be printed.

Mr. ANTHONY asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1068) to repeal certain provisions of the Revised Statutes of the United States relative to advancement in the Navy; which was read twice by its title, referred to the Committee on Naval Affairs, and ordered to be printed.

Mr. MERRIMON asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1069) to amend section 146 of the Revised Statutes of the United States, relating to vacancies in the offices of President and Vice-President; which was read twice by its title, referred to the Committee on Privileges and Elections, and ordered to be printed.

Mr. DORSEY asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1070) for the relief of Andrew J. Jones; which was read twice by its title, referred to the Committee on Post-Offices and Post-Roads, and ordered to be printed.

Mr. HITCHCOCK asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1071) for the relief of H. E. Woodhouse & Co., of Brownsville, Texas; which was read twice by its title, referred to the Committee on Claims, and ordered to be printed.

Mr. DAVIS asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1072) making an appropriation for continuing the improvement of the Monongahela River, in the States of West Virginia and Pennsylvania; which was read twice by its title, referred to the Committee on Commerce, and ordered to be printed.

He also asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1073) making an appropriation for continuing the improvement of the Great Kanawha River, in the State of West Virginia; which was read twice by its title, referred to the Committee on Commerce, and ordered to be printed.

Mr. OGLESBY asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1074) to amend the act entitled "An act providing for the sale of the Osage ceded lands in Kansas to actual settlers;" which was read twice by its title, referred to the Committee on Public Lands, and ordered to be printed.

RIVER AND HARBOR BILLS.

Mr. MERRIMON submitted the following resolution; which was referred to the Committee on Rules:

Resolved, That the following be added to the rules of the Senate:

"All bills providing appropriations for the improvement of rivers and harbors, and all amendments thereto, shall be referred to the Committee on Commerce, and before reporting the same back to the Senate, the committee shall send the same to the Secretary of War and the Chief of Engineers, who shall make inquiry and report upon the extent, expediency, and necessity for the proposed improvements; and such report shall be made a part of the report of the committee to the Senate."

REPAVEMENT OF STREETS IN WASHINGTON.

Mr. DORSEY. I offer the following resolution, and ask for its present consideration:

Resolved, That the Committee on the District of Columbia be, and hereby is, directed to inquire into the necessity and expediency of repaving or otherwise improving all or any portion of the streets and avenues named in the schedule hereto annexed, and to ascertain as near as may be the cost of such work and the proportions to be borne respectively by the United States, the District of Columbia out of its general revenues, and the property-owners along said streets and avenues, and to report by bill or otherwise.

Worn-out wood pavements.	Between what limits.	Approximate estimated number of square yards.
E street, N. W	New Jersey avenue and Fourth street N. W.; Fifth and Seventh streets, N. W.; Eighth and Ninth streets, N. W.; Ninth and Tenth streets, (half square.)	611,433
F street, N. W	Ninth and Thirteenth streets; Seventh and Fifth streets; Fourth street and New Jersey avenue.	15,867
I street, N. W	Fifth and Tenth streets	12,320
L street N. W	New Jersey and Pennsylvania avenues	22,535
M street, N. W	Third and Fourteenth streets; M-street bridge and Montgomery street.	30,667
Bridge street, Georgetown	Intersection of Potomac street	1,330
Potomac street, Georgetown	Second block north of Bridge street	1,283
High street, Georgetown	Bridge and Second street	5,400
East Capitol street	First and Sixth streets, E	3,212
Pennsylvania avenue, S. E	First and Eighth streets	14,172
Pennsylvania avenue, N. W	Circle and Rock Creek	14,370
A street, S. E	First and Second streets	583
C street, N. E	First street, W. and Third street, E	12,570
First street, E	B and C streets, S.; B and C streets, N.	3,770
Delaware avenue, N. E	B and C streets	3,667
New Jersey avenue, S. E	B and E streets	9,509
New Jersey avenue, N. W	B and H streets; K and N streets	26,611
Massachusetts avenue, N. W	New Jersey avenue and Seventh street; Ninth and Fourteenth streets.	29,947
First street, N. W	Pennsylvania avenue and E street	7,467
Second street, N. W	B and H streets	10,525
Sixth street, N. W	E street and Louisiana avenue	4,300
Seventh street, N. W	I and N streets	10,683
Seventh street, S. W	C and L streets	18,530
Eighth street, N. W	E and F streets	1,400
Tenth street, N. W	K and M streets	3,804
Fourteenth street, N. W	N and Rhode Island avenue	4,200
Fifteenth street, N. W	Pennsylvan aavenue and B street; Rhode Island avenue and K street.	11,667
Eighteenth street, N. W	K and L streets	1,555
B street, S. W	Fourteenth and Twelfth streets; Ninth and Sixth streets.	9,528
Total		303,015

I certify that the above is correct:

J. W. PHILLIPS,
Overseer.

Mr. COOPER. Let that go over.

The PRESIDENT *pro tempore*. Objection being made, the resolution will lie over.

Mr. DORSEY. I ask that it be printed.

The PRESIDENT *pro tempore*. Does the Senator desire the schedule printed also?

Mr. DORSEY. Yes, sir.

The PRESIDENT *pro tempore*. The resolution and the schedule will be printed, if there be no objection.

EMPLOYMENT OF DEPUTY MARSHALS.

The PRESIDENT *pro tempore*. If there be no further resolutions, shall the morning hour be declared concluded?

Mr. EDMUNDS. I wanted during the morning hour to ask to have the resolution of the Senator from Delaware, [Mr. BAYARD,] which was laid over at my request yesterday, taken up. I dare say he would like to have it disposed of, and, if it is agreeable to the Senator from Delaware, I will ask that it be taken up.

Mr. BAYARD. Yes, sir; I desire that it be taken up.

Mr. EDMUNDS. I move to take it up.

The motion was agreed to; and the Senate proceeded to consider the following resolution, submitted by Mr. BAYARD yesterday:

Resolved, That the Attorney-General be, and he is hereby, directed to communicate to the Senate the total number of deputy marshals employed throughout the United States in connection with the election held on November 7 last—stating the number so employed in each State and at each voting-precinct, respectively—and the length of time they were so employed.

Mr. EDMUNDS. I move to amend the resolution by adding after the word "employed," at the close, the following words:

With a full statement of the causes and necessity of such employment, the object thereof, what duties they were to perform, how far they performed duties, and the nature thereof.

The object of the amendment is to get complete, full information of all the transaction of the employment of such deputies, if any were employed, so as to have the full picture, so far as the Attorney-General can give it to us, of the state of the situation.

Mr. BAYARD. I do not know that I object to the amendment. It of course increases the labor and will delay the return of this information for a while, but I shall not object to it.

The amendment was agreed to.

The resolution, as amended, was agreed to.

HOT SPRINGS RESERVATION.

Mr. OGLESBY. There is pending before the Committee on Public Lands a bill (S. No. 821) authorizing the sale and disposition of the Hot Springs reservation, in the State of Arkansas, and for other purposes. It is a matter of some considerable importance, as the title to the lands where the springs are has been held by the Court of Claims to be in the United States. I have a communication addressed to the Committee on Public Lands, from the judges of the court, upon that subject, which I am directed by the Committee on Public Lands to ask to have printed. I move, therefore, that the communication be printed for the benefit of the Committee on Public Lands.

The PRESIDENT *pro tempore*. It will be printed under the rule.

Mr. OGLESBY. I move that the paper be recommitted to the Committee on Public Lands.

The motion was agreed to.

CAPTAIN JOHN T. M'GINNISS.

Mr. SHERMAN. I ask the favor of the Senate to take up House bill No. 2257, which has been reported from the Committee on Military Affairs. It is very brief and will take but a moment, I think.

By unanimous consent, the Senate, as in Committee of the Whole, proceeded to consider the bill (H. R. No. 2257) for the relief of John T. McGinniss, captain of Thirteenth Infantry, United States Army. It relieves J. T. McGinniss, captain of the Thirteenth Infantry, United States Army, from the responsibility of commissary funds, amounting to $380.79, the property of the United States, which were stolen from an office safe in a tent at Fort Shaw, Montana Territory, October, 1867.

Mr. EDMUNDS. Is there a report?

Mr. SHERMAN. There is a report, I think a House report.

Mr. EDMUNDS. I will not ask for the delay that will be caused by sending for the report. I see it is a very small sum, and I dare say the chairman of the committee has looked into it.

The bill was reported to the Senate without amendment, and ordered to a third reading.

Mr. WITHERS. Let us hear the report read.

Mr. SHERMAN. The Clerk has the report now.

The PRESIDENT *pro tempore*. The report will be read.

The Chief Clerk read the following report, submitted by Mr. BANNING, from the Committee on Military Affairs of the House of Representatives, May 13, 1876:

The Committee on Military Affairs, to whom was referred the bill H. R. No. 2257 and accompanying documents, make the following report:

On or about the 29th of September, 1867, a small iron office-safe, belonging to the Government, for which Captain N. S. Constable, acting quartermaster, United States Army, was responsible, was stolen from the headquarters at Fort Shaw, Montana Territory.

A board of examiners, consisting of three Army officers, was convened by Special Orders No. 93, at Fort Shaw, October 9, 1867, to inquire into and report upon the loss of said safe and its contents.

The board found that the safe had been taken by a person or persons unknown to the responsible parties or to the board.

The examiners also found as follows:

"In said safe were $380.79, subsistence-funds, for which First Lieutenant J. T. McGinniss, assistant quartermaster Thirteenth Infantry, acting commissary of subsistence at Fort Shaw, Montana, is responsible.

"In said safe were $798.51, regimental funds of the Thirteenth Infantry, and $294.93 post funds; also, $27.14 regimental band Thirteenth Infantry, and $300 private money, for which First Lieutenant Thomas J. Lloyd, adjutant Thirteenth Infantry and post, is responsible."

The board of examiners further found that the safe had been turned over to Lieutenant McGinniss a few days previous to the theft; that a clerk slept in the office; that the safe was kept by McGinniss in the same manner it had been kept by his predecessor, and that it had probably been stolen by deserters from the Army.

The following certificate of Lieutenant J. B. Guthrie, of the Thirteenth Infantry, fully presents the case, and shows that the loss was not the result of any negligence of McGinniss.

Lieutenant Guthrie's statement.

"I hereby certify that, on or about the 20th day of September, 1867, I transferred, to date August 31, 1867, to Captain N. S. Constable, assistant quartermaster United States Army, a small office safe, (iron.) I retained the keys of the safe for the time being, and on the 27th of September I transferred them, (the keys,) together with what subsistence funds I was responsible for, $380.97, to First Lieutenant J. T. McGinniss, regimental quartermaster Thirteenth Infantry, who was ordered to relieve of duties in the subdepartment at this place. On the 30th of September I received from Brevet Major General John W. Turner, commissary of subsistence at Saint Louis, Missouri, the sum of $10,000, which I transferred to Lieutenant J. T. McGinniss on the 1st day of October. On receiving this money Lieutenant McGinniss first discovered the safe had been stolen from the office. Search was immediately instituted, but without success. I know this safe contained a large amount of money, part of which was the amount I transferred to Lieutenant McGinniss a few days previous, and part of which money in the safe was deposited by Lieutenant Lloyd, regimental adjutant. Lieutenant McGinniss was not responsible either for the safe or its loss and contents. The safe had always remained in the office and no danger was apprehended of its being stolen. The exact amount of subsistence funds lost I cannot state.

"J. B. GUTHRIE,
"*Second Lieutenant Thirteenth Infantry, United States Army.*"

The committee therefore recommend that H. R. No. 2257 be amended as follows: Strike out the words "fifty-six dollars," in the sixth line, and insert the words "eighty dollars and seventy-nine cents;" and that the bill, thus amended, be passed.

Mr. WITHERS. Has our Military Committee reported on the bill favorably?

The PRESIDENT *pro tempore*. There is a favorable report from the Military Committee of the Senate.

The bill was read the third time, and passed.

JOHN S. LOGAN AND W. L. SHADWICK.

Mr. WRIGHT. I reported from the Committee on Claims on the 2d of June last Senate bill No. 890, for the relief of John S. Logan and W. L. Shadwick. It is for the payment of but a thousand dollars and I think there will be no trouble about it. There is a report that I send to the Clerk, to be read if necessary. I move that the Senate proceed to the consideration of the bill.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill (S. No. 890) for the relief of John S. Logan and W. L. Shadwick. It authorizes the Secretary of the Treasury to pay to John S. Logan and W. L. Shadwick, of Missouri, the sum of $1,000, in full for so much money advanced by the Western Bank of Missouri for the use and benefit of United States troops, under the command of Colonel John Edwards, in 1861, of which claim Logan and Shadwick are now the owners.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

ELECTORAL VOTE OF OREGON.

Mr. MITCHELL. I ask the Senate to proceed to the consideration of the resolution reported from the Committee on Privileges and Elections with reference to the electoral vote of Oregon.

Several SENATORS. Let it be read.

The CHIEF CLERK. The resolution was reported from the Committee on Privileges and Elections, with an amendment to strike out all after the word "whereas" in the first line and insert in lieu thereof the following:

It is alleged that at the late election for electors of President and Vice-President for the State of Oregon the people of said State by a majority of over one thousand votes elected W. H. Odell, John C. Cartwright, and J. W. Watts;

And whereas it is also alleged that the governor of said State did subsequently, in violation of law and in defiance of the expressed will of the people, issue a certificate of election to one E. A. Cronin instead of to said J. W. Watts;

And whereas it is also alleged that said E. A. Cronin did, in violation of law, upon some pretext, assume to select for his colleagues one J. N. T. Miller and John Parker in lieu of said W. H. Odell and John C. Cartwright;

And whereas it is further alleged that said Cronin, Miller, and Parker have assumed to cast the vote of Oregon for President and Vice-President, and to certify the same to the President of the Senate: Therefore,

Be it resolved, That the Committee on Privileges and Elections is hereby instructed to inquire into the eligibility of said J. W. Watts, and investigate the facts attending the appointment of said electors and pretended electors, and report the same to the Senate, and for this purpose may employ a stenographer, send for persons and papers, administer oaths, and examine witnesses.

Mr. WHYTE. I have no objection to voting for the resolution; but, really, I think that the preamble ought not to pass in its present shape; and if it remains in its present shape I cannot vote for the resolution, because the very first proposition is that these three men were elected. I have no objection to saying that a majority of a thousand votes was cast for these three persons, but one of them being ineligible I can hardly agree to say that he was elected. If that amendment were made to the resolution I should have no hesitancy in voting for it. As it now stands I shall vote against it.

The PRESIDENT *pro tempore*. The question is on taking up the resolution for consideration. Is there objection to taking it up? The Chair hears none, and it is before the Senate.

Mr. MITCHELL. Mr. President, I do not think there can be any serious objection to this preamble so far as that is concerned. I do not desire at this time, or intend, to go into any discussion, so far as I am concerned, of the questions involved in the case of the Oregon electoral vote. These questions will be discussed at length by abler men before the close of this session.

It is not often that the country is startled as it has been startled by so plain a violation of law by the chief executive officer of a State as seems to be clearly presented in the case of Oregon. The constitution of the State of Oregon, in section 10 of article 5, in specifying and defining the duties of the governor, reads as follows:

He shall take care that the laws be faithfully executed.

The constitution of the State of Oregon also provides, in section 16 of article 2, under the head of "Suffrage and Election," as follows:

In all elections held by the people under this constitution, the person or persons who shall receive the highest number of votes shall be declared duly elected.

Section 2 of the act of October 24, 1864, of the State of Oregon, provides as follows:

The electors of President and Vice-President shall convene at the seat of government on the first Wednesday of December next after their election, at the hour of twelve of the clock at noon of that day, and if there shall be any vacancy in the office of an elector, occasioned by death, refusal to act, neglect to attend, or otherwise, the electors present shall immediately proceed to fill, by *viva voce* and plurality of votes, such vacancy in the electoral college, and when all the electors appear, or the vacancies, if any, shall have been filled as above provided

ors shall proceed to perform the duties required of them by the Constitution and laws of the United States.

It is the next section, however, that I desire more particularly to read at this point, section 3 of the same act, which provides as follows:

The votes for the electors shall be given, received, returned, and canvassed as the same are given, returned, and canvassed for members of Congress. The secretary of state shall prepare two lists of the names of the electors elected, and affix the seal of the state to the same. Such lists shall be signed by the governor and secretary, and by the latter delivered to the college of electors at the hour of their meeting on such first Wednesday of December.

This, Mr. President, it will be perceived, provides that the votes for the electors shall be received, returned, and canvassed as the same are given, returned, and canvassed for members of Congress. Now what is the provision on that point? It is to be found in section 33 of the act of January 11, 1854, and reads as follows:

The county clerk, immediately after making the abstract of the votes given in his county, shall make a copy of each of said abstracts, and transmit it by mail to the secretary of state, at the seat of government, and it shall be the duty of the secretary of state, in presence of the governor, to proceed, within thirty days after the election, and sooner, if the returns be all received, to canvass the votes given for secretary and treasurer of state, justices of the supreme court, member of Congress, and district attorneys; and the governor shall grant a certificate of election to the person having the highest number of votes for either of such offices, and shall also issue a proclamation declaring the election of such person.

So that the "laws" referred to, or at least a part of the "laws" referred to in that section of the constitution of the State of Oregon, which declares that it shall be the duty of the governor to "take care that the laws be faithfully executed," provide in plain, unambiguous, emphatic terms that it shall be the duty of the governor of the State of Oregon to issue his certificate to the person having the highest number of votes.

The constitution of the State provides, as I have already shown, the same thing. The statute provides in terms, that that shall be his duty. Nowhere does the law provide that the governor of the State shall exercise judicial functions, that he shall have jurisdiction to enter into the question as to the eligibility of this man or that man that a majority of the people of the State may have selected for this office or that office in any election by the people. He therefore has no jurisdiction whatever to enter upon that subject at all, to entertain it, to adjudicate upon it. It is not the case, therefore, which sometimes is presented, which very frequently is presented, where an officer having jurisdiction commits an error in judgment; it is a case where the chief executive officer of the State has taken jurisdiction not only in absence of law giving jurisdiction, but in the face of the law which says that he has not jurisdiction, because the law declares positively that it shall be his duty to issue a certificate to the person receiving the highest number of votes; and in this connection I call special attention to the clause of the constitution of the State to which I referred a moment ago. I allude to section 16 of article 2:

In all elections held by the people under this constitution the person or persons who shall receive the highest number of votes shall be declared duly elected.

By whom? By the governor, by the secretary of state, by the canvassing board; the ministerial officers provided by law for the performance of that duty. Then, when that is done, if any question arises as to the eligibility of the person so declared to have been elected, that is for another tribunal.

As I said, I do not intend to argue the questions involved. I simply wish to call the attention of the Senate to these provisions of the constitution of the State of Oregon, and to these provisions of the law of the State of Oregon under which this action has been had, for the purpose of showing in a few words to the Senate and to the country how plain a violation of law the chief executive officer of the State of Oregon has been guilty of, because that requires no investigation so far as his action is concerned, there is no mistake—it is conceded by all. That seems to me requires no investigation. There are circumstances connected with the whole matter that require investigation; but it seems to me, with the law before us of which we all take notice, with the conceded facts before us in reference to the action of Governor Grover, that there will be none here or elsewhere, now or at any other time, at the present or in the future, statesmen or mere politicians, who will have the hardihood to defend the action of Governor Grover in issuing his certificate to Mr. Cronin, or in refusing to issue it to Mr. Watts. That is all I desire to say. I do not want to argue the question. That I will leave to other Senators.

Mr. MORTON. Mr. President, the other day when what may be called the Oregon question was before the Senate I produced some authorities, but others that I had collected were not here, and there was no time to send for them. I desire this morning very briefly to present these authorities.

Allusion was made in that discussion to a decision in California; and I understood the Senator from North Carolina to say that the supreme court of California had decided that where the majority candidate was ineligible the minority candidate would be elected.

Mr. MERRIMON. I did not state exactly that. It will be remembered that it was a running debate and I said, in the hurry of the debate at the moment, that a volume of reports of that State had been placed in my hands in which I understood the gentleman who handed it to say there was a decision directly in point. I looked at the case afterward and found it did not go as far as I supposed it did from what he said on the subject.

Mr. SARGENT. If the Senator from Indiana will allow me, I hold in my hand and will place at his disposal a decision made upon the 13th of November of this year, since the election, by Wallace, chief-justice of our State, who is a life-long democrat, in the case of Crawford *vs.* Dunbar. Delivering the opinion of the court, in it he refers to the case in 13 California which has been already cited. This affirms distinctly the case in 13 California, and cites from it quite largely, and this clearly states that the ineligibility of a person receiving the highest number of votes in no way promotes the election of a person receiving a less number; that the person receiving the less number could not take the place notwithstanding the other was ineligible.

Mr. MERRIMON. It is due to myself also to say here that I did not on that occasion take either side. I simply said there were respectable decisions both ways, and that there was no ground for imputing corruption either to the governor of New Jersey and the electoral college there or to the governor of Oregon. I simply meant to say that there were decisions both ways, and that so far as the mere decision went there was no ground for imputing corruption.

Mr. MITCHELL. The Senator all the while, however, should take into consideration the powers of the board and the powers of the governor under the laws of Oregon in considering that question.

Mr. MERRIMON. I said nothing about that at all. I simply repelled an imputation that I thought the Senator from California was making.

Mr. MORTON. The Senator from North Carolina was simply mistaken about it. I did not suppose for a moment that he took the ground that the minority candidate was elected, and I took occasion to hunt the authority up. I want to read the authorities.

Mr. MERRIMON. I tried to hand the book to you at the moment you were speaking.

Mr. MORTON. This is 13 California Reports, the case of Saunders *vs.* Hayne, and I shall read from page 153. The court say:

It will be observed that the point of this defense is, that the votes cast for Turner, supposing he received the highest number, were nullities, because of his assumed ineligibility. But we do not so consider. Although some old cases may be found affirming this doctrine, we think that the better opinion at this day is, that it is not correct.

The celebrated controversy in the British Parliament between Wilkes and Luttrel has given rise to much discussion; and the opinions of jurists and statesmen have been somewhat divided. But the prevailing opinion, English and American, of modern times, seems to be against the precedent established in that case. In the case of Whitman and Melony, (10 Cal.,) Mr. Justice Field clearly intimates his opinion in favor of the principle that the votes given for an ineligible candidate are not to be counted for the next highest candidate on the poll. In the State of Wisconsin *vs.* Giles (1 Chandler, 117) the same doctrine is held; and it is enforced by the judges of the supreme court of Maine, in their opinion, to be found in 38 Maine Reports, 597.

Our legislative precedents seem to be the same way. Upon principle we think the law should so be ruled. An election is the deliberate choice of a majority or plurality of the electoral body. This is evidenced by the votes of the electors. But if a majority of those voting, by mistake of law or fact, happen to cast their votes upon an ineligible candidate, it by no means follows that the next to him on the poll should receive the office. If this be so, a candidate might be elected who received only a small portion of the votes, and who never could have been elected at all but for this mistake. The votes are not less legal votes because given to a person in whose behalf they cannot be counted; and the person who is the next to him on the list of candidates does not receive a plurality of votes because his competitor was ineligible. The votes cast for the latter, it is true, cannot be counted for him; but that is no reason why they should, in effect, be counted for the former, who, possibly, could never have received them. It is fairer, more just, and more consistent with the theory of our institutions to hold the votes so cast as merely ineffectual for the purpose of an election than to give them the effect of disappointing the popular will, and electing to office a man whose pretensions the people had designed to reject.—13 *California Reports*, Saunders *vs.* Haynes, 153, 154.

Now, I will in connection with that ask the Senator from California to read a very recent decision of the supreme court of the State of California, as he is familiar with it.

Mr. SARGENT. The facts are stated as follows:

1. The office of inspector of customs at Stockton, in the San Francisco collection district, to which there is annexed a salary of $1,000 per annum, is a lucrative office within the meaning of section 21, article 4 of the constitution of the State, and if the defendant, Dunbar, held that office in September, 1875, then he was indigible to the office of school superintendent in the county of San Joaquin, which is a "civil office of profit under the State," the salary thereof being $1,500 per annum.

2. It is settled here that a mere *de facto* incumbency of the inspectorship of customs would not render Dunbar ineligible to the office of school superintendent under the disqualifying clause of the constitution referred to. He must have been inspector *de jure* in order to work that result. (People, *ex rel.* Attorney-General, *vs.* Turner, 20 Cal., 142.)

3. The case made upon the part of the contestant established that Dunbar, on the first Wednesday of September, 1875, was *de jure* as well as *de facto* inspector of customs at Stockton. It appeared from the evidence adduced by the contestants that upon the nomination of the collector of customs, and with the approval of the Secretary of the Treasury, Dunbar had been appointed such inspector of customs and had taken the oaths, two in number, prescribed by law, and had entered upon the discharge of his official duties, pursuant to his appointment. His appointment and the taking by him of the prescribed oaths of office, the last of them on the 6th day of April, 1875, was established by the records thereof in due form, which, or copies of which, duly certified, were produced from their proper custodian, and it was proven and found by the court below to be the fact, that, pursuant to his appointment, Dunbar, thereafter and on or about the 10th day of April, 1875, took possession of all the public property belonging to the office of inspector of customs of Stockton theretofore under the control of his predecessor, and then and there entered upon the discharge of the duties pertaining to said office, and that he had not resigned nor been removed therefrom.

The court then discuss a question of evidence, which is not material to this point, and proceed:

5. It further appears by the findings that at the regular election in question, the respondent, Dunbar, received 1,702 votes, the contestant Crawford (the next highest vote) 1,182 votes, and Jenny Phelps 840 votes.

Upon these facts the contestant claims that he is entitled to the office and should

have judgment here to that effect. This claim is in argument put upon the ground that Dunbar, being ineligible, the votes cast for him, though amounting in number to a plurality, were mere nullities, and that the respondent received a majority of the votes over Jenny Phelps, the only other eligible candidate for the office. But this position cannot be maintained. This was directly ruled here, and adhered to upon a petition for a rehearing, in Saunders *vs.* Haynes, (13 California Reports, 145.) In that case the court said—

And then they go on and quote the portion which the Senator from Indiana has read from their opinion, and they conclude by saying:

It results from this view that the judgment of the court below must be reversed, and the cause remanded with directions to render judgment vacating the office.

Mr. MORTON. Mr. President, allusion has been made in the report that I read to the case of Wilkes, and that has been referred to by others. I desire to read a mere statement of the Wilkes case in connection with the English authorities, to which I will now refer:

Wilkes had been expelled from the House, January 19, 1764, had fled to France, and upon his return was elected four several times. *Each time he was rejected and a new election ordered*, because the Commons considered him personally disqualified. At last their patience was exhausted. Wilkes had become a popular idol, and the excitement was so great as almost to endanger the safety of the kingdom. The attorney-general justified the action taken by the House in giving the seat to Luttrell, upon the ground that each time a writ of election was issued to the sheriff of Middlesex Wilkes's disqualification was *expressly stated*, so that the people *knew* they voted for a man who would not be permitted to take his seat when elected. Lord North justified the act rather upon the *ground of public expediency than upon its legality*.

And now, Mr. President, it has been said that under the English doctrine the minority candidate would be elected if the majority candidate was ineligible at the time of the election. In every instance under the English doctrine which I have been able to find, the minority candidate has not been held to be elected except where the electors before the election had positive affirmative notice of the ineligibility of the other man—notice both as to the fact and as to the law. In no instance, as far as I can find, has the English doctrine gone beyond the case where positive affirmative notice was given, before the election, of the fact and of the law, which made the majority candidate ineligible. In the case of Wilkes, he had been elected three times in defiance of the decision of Parliament, which made him ineligible to re-election, and the writ under which the second, third, and fourth elections were held each contained a statement of his disability to be re-elected, so that in that case the voters had positive affirmative direct information in regard to the fact and in regard to the law.

Mr. DAWES. Will the Senator allow me to interrupt him for a moment?

Mr. MORTON. Certainly.

Mr. DAWES. I think, Mr. President, that the case of Wilkes is altogether too much brought into this consideration, if the Senator will pardon me for saying so. Wilkes was declared ineligible by the House of Commons alone, and not by any act of Parliament at all, and largely upon that ground was it that thirteen years afterward the Commons not only reversed their decision in reference to Wilkes but also expunged from their records the proceedings which declared him ineligible. He was declared ineligible simply by the House of Commons, and it was, if I recollect aright, the general judgment of all the courts and of all the lawyers of England that, however an act of Parliament might make a man ineligible to sit in the House of Commons, no resolution of the Commons was competent to do that.

If the Senator will allow me a moment more: after the action of the House of Commons upon the case of Wilkes, a man who was ineligible by act of Parliament to a seat in the House from a university offered himself as a candidate, and the opposing candidate stood at the polls and as every voter cast his vote informed him personally of the ineligibility of the other candidate. The man so stated to be ineligible, however, received a majority of the votes. The man receiving the minority, accompanied with personal knowledge to every voter as he cast his vote, applied for the seat in Parliament upon the principle that the honorable Senator is now discussing, and Parliament, although they unseated the man who had a majority, specifically declared the place vacant and the man having the minority not entitled to the seat. This was after the case of Wilkes.

Subsequently to that, a man who was holding the office of sheriff of a county, which by an act of Parliament makes him ineligible to a seat in Parliament, offered himself as a candidate. On that occasion the opposing candidate standing at the polls gave personal notice to every voter; and although the man holding the office of sheriff received the majority of the votes and took the seat, yet upon a contest made by the man receiving the minority of the votes, the House of Commons declared not only the man receiving the majority not entitled to the seat but that the man having the minority was not entitled to the seat and declared the seat vacant.

The Senator from Ohio [Mr. THURMAN] a few days ago called attention to a case in Cowper's Reports before the act of Parliament of which I then spoke. It is true that there was a case in Cowper's Reports long before that act of Parliament. There were cases, however, in direct conflict with that, and the common law of England was unsettled altogether until the case of Wilkes came up, which excited so much attention in England as to produce the result which I stated a day or two ago.

I am very much obliged to the Senator from Indiana for permitting me to make this statement at this time.

The PRESIDENT *pro tempore*. The morning hour has expired.

Mr. DAWES. I ask pardon of the Senator.

Mr. SARGENT. I trust the pending business will be temporarily laid aside in order that the Senator from Indiana may conclude his remarks.

Mr. EDMUNDS. If it only takes a little time I do not wish to interfere with it, but I do not desire to have the unfinished business postponed too long.

Mr. SARGENT. Let this go on subject to a call for the regular order.

Mr. EDMUNDS. Not to displace the regular order.

The PRESIDENT *pro tempore*. Is there objection to continuing the consideration of this resolution, not to displace the unfinished business? The Chair hears none.

Mr. MORTON. Mr. President, I have referred, I believe, to all the English cases which have been quoted, to show that where the majority condidate is ineligible the minority candidate is elected, and in every one of them I find that there was positive, affirmative notice given to the electors before the election took place, and that the courts in every instance placed it upon that ground. In every case, I believe, except perhaps three, it was an election in a corporation where the number of electors was very small, in some cases twenty, in some cases fifty, and perhaps in others one hundred and fifty, so that all could be and were personally informed before the election took place that the candidate was ineligible under the law, and they were informed as well as to the law as to the fact.

Now I make this further statement that, under the law in England, the presumption that every man is presumed to know the law, does not apply to a case of this kind. Ignorance of the law will not excuse a man in the commission of crime or an assault, nor will it release him from the binding obligation of his contract; but in regard to a matter of this kind, he is not presumed to know the law, he is not bound to know the law, but he must be informed personally and affirmatively as to what the law is as well as to the fact. I will refer to the fiftieth volume of New York Reports, where a decision was made in which the English doctrine was summed up and stated very fully. It is the case of the People *ex rel.* Furman *et al. vs.* Clute:

In the multitude of cases in which the question has arisen, we think that up to this point there is no essential difference of result. All agree that there must be prior notice to, or knowledge in the elector of fact and law, to make his vote so ineffectual as that it is thrown away. But some say that if there be a public law declaratory that the existence of a certain fact creates ineligibility in the candidate, the elector having notice of the fact is conclusively presumed in law to have knowledge of the legal rule and to be deemed to have voted in persistent disregard of it. Others deny that the maxim "*Ignorantia juris excusat neminem*," (even with the clause of it, "*quod quisque scire tenetur*," not often quoted and of which we are reminded by the very thorough brief of the learned counsel for the relator,) can be carried to that length and insist that there does not apply to this question the rule that all citizens must be held to know the general laws of the land and the special law affecting their own locality.

That maxim, in its proper application, goes to the length of denying to the offender against the criminal law a justification in his ignorance thereof; or to one liable for a breach of contract, or for civil tort, the excuse that he did not know of the rule which fixes his liability. It finds its proper application when it says to the elector, who ignorant of the law which disqualifies, has voted for a candidate ineligible, "Your ignorance will not excuse you and save your vote; the law must stand, and your vote in conflict with it must be lost to you." But it does not have a proper application when it is carried further, and charges upon the elector such a presumption of knowledge of fact and of law as finds him full of the intent to vote in the face of knowledge, and to so persist, in casting his vote for one for whom he knows that it cannot be counted, as to manifest a purpose to waste it. The maxim itself concedes that there may be a lack of actual knowledge of the law. For it is ignorance of it which shall not excuse. Then the knowledge of the law to which each one is held is a theoretical knowledge; and the doctrine urged upon us would carry a theoretical knowledge of the statute further than goes the statute itself. The statute but makes ineffectual to elect the votes given for one disqualified. The doctrine would make knowledge not actual, of that statute thus limited, waste the votes of the majority and bring about the choice to office by the votes of a minority. We are not cited to nor do we find any decision to that extent of any court in this State. The industrious research of the learned counsel for the relator has found some from courts in sister States. Gulich *vs.* New (14 Indiana, 97) is to that effect. Carson *vs.* McPhetridge (15 id., 331) follows the last-cited case. Hatcheson *vs.* Tilden (4 Har. and McH., 279) was a case at nisi prius, and is to that effect. With respect for these authorities, we are obliged to say that they are not sustained by reasoning which draws with it our judgment. Commonwealth *vs.* Read (2 Ashmead, 261) is also cited. But that was a case of a board of twenty, assembling in a room to elect a county treasurer. On motion being made to elect *viva voce*, a protest was made that the law under which they were acting prescribed a vote by ballot. Thus, *actual notice* of law and fact was brought directly to each elector before voting. Nineteen persisted in voting *viva voce*. These were held to be wasted votes. One voted by ballot; and his vote was held to prevail, and the person he voted for to be elected. Commonwealth *vs.* Cluley (56 Pennsylvania State Reports, 270) is also cited. But the language of the court there is: "The votes cast at an election for a person who is disqualified from holding an office are not nullities. They cannot be rejected by the inspectors or thrown out of the count by the return judges. The disqualified person is a person still, and every vote thrown for him is formal." And that was the case of one who was ineligible by reason of having held the office of sheriff of a county, and became a candidate in the same county for the same office before the lapse of time prescribed by the constitution; a case in its facts quite like this in hand.

The relator also cites many instances of the action of legislative bodies and their committees. As to these, a respectable authority on these questions has remarked "that they cannot be said to afford any precise or useful principle." (1 Peckwell, 500;) and learned counsel, arguing in support of the principle now claimed by the relator, has conceded that "no fixed principle is established by the decision of committees." (Galway Election Cases, 2 Moak English Cases, 714.) and it may safely be said that they are not so conclusive and satisfactory as judicial determinations, as it is difficult to arrive at the exact principle upon which the votes of so many as constitute a legislative body are put. Besides that, they are not uniform, but quite diverse in their results, as appears from the citations of the counsel of the relator, and the instances noted in 56 Pennsylvania State Reports. (*supra.*)

We have consulted many of the authorities cited to us from the English books, and in them it will be found, we think, that where it was held that votes for an ineligible person would be treated as thrown away, it was not extended beyond cases

in which there was actual notice of fact and of law to the voters before their votes were cast.

The voter was not presumed to know the law, not bound to know it; but in every case there must be actual notice given before the election of the law and of the fact. The court says:

And there are American authorities which hold that if a majority of those voting, by mistake of law or fact, happen to cast their votes upon an ineligible candidate, it by no means follows that the next to him in poll shall receive the office. (Saunders *vs.* Haynes, 13 California, 145; State *vs.* Giles, 1 Chandler, [Wisconsin,] 142; State *vs.* Smith, 14 Wisconsin, 497.) And in Dillon on Municipal Corporations, (page 176, section 135,) it is stated that unless the votes for an ineligible person are expressly declared to be void, the effect of such person receiving a majority of the votes cast is, according to the weight of American authority and the reason of the matter, (in view of our mode of election, without previous binding nominations, by secret ballot, leaving each elector to vote for whomsoever he pleases,) that a new election must be had, and not to give the office to the qualified person having the next highest number of votes. And this view is sustained by a preponderance of the authorities cited by the author in the foot-note, some of which are cited above.

Now I come to a late English case, which is here referred to thus:

And in the Queen *vs.* Mayor, &c., (3 Law Reports, [Queen's Bench,] 629,) after holding that though the electors had actual notice of the fact which had been adjudged by the courts to disqualify, yet knowledge or notice in the elector of the adjudication could not be presumed. It is further said: it is not enough to show that the voter knew the fact only; but it is necessary to show sufficient to raise a reasonable inference that he knew that the fact amounted to a disqualification.

That he knew the law which made the fact a disqualification.

Mr. SAULSBURY. Will the Senator allow me to call his attention to one fact? I presume he has seen the letter of Governor Grover, in which he states that a greater number of persons voted for Mr. Watts than his actual majority of votes who had had business relations with his office and knew the fact that he was postmaster.

Mr. MORTON. I did see that letter and I was astonished at it in more ways than one. In the first place we all know that no attention is paid to the fact who are electors on the ticket by either party. It is a matter of form. Perhaps there was not one person in ten thousand who knew or who remembered that it disqualified a man to hold a Federal office; he may have read that some time, but it was not present in his mind. Perhaps there was not one man in the convention that placed that electoral ticket in nomination who knew that Watts was a postmaster, or if he did, who knew the law that that disqualified him to be an elector. That is what these authorities go to—they go to the point that the voters knew the fact, that is to say, that he was a postmaster, and they must have known affirmatively that that made him ineligible; in other words, their attention must have been called to the law or to the Constitution that made him ineligible.

My friend spoke of the letter of Governor Grover. Governor Grover claimed in that letter that his conduct was sustained by the New York authorities and by the English authorities. It is enough to say that he was absolutely wrong in regard to both assertions. His conduct was not sustained by either, for I am on that very point. The English authorities do not go any further than where actual notice was given of law and of fact to the elector before he cast his ballot or gave his vote, and I am just reading on that very point. I am now reading from an English decision:

"It is not enough to show that the voter knew the fact only; but it is necessary to show sufficient to raise a reasonable inference that he knew that the fact amounted to a disqualification. It cannot be said in all cases that the mere knowledge of a fact, which in law disqualifies a candidate, must be taken to be knowledge of all the accompanying circumstances."

The New York court of appeals, after this citation, go on to say:

We think that the rule is this: The existence of the fact which disqualifies and of the law which makes that fact operate to disqualify must be brought home so closely and so clearly to the knowledge or notice of the elector as that to give his vote therewith indicates an intent to waste it.

All the English authorities on this subject put it upon this ground: that the electors, having absolute notice of the law and the fact, thereafter voted for an ineligible candidate and thereby showed that they intended to waste their votes. In other words, they voted wantonly for a man whom they had been informed was ineligible. Every one of the English authorities speaks of it as showing the intention to waste the vote. It would have to be presumed, then, that the whole republican party in Oregon intended to waste their votes.

Mr. MAXEY. Will the Senator allow me to call his attention to the fact that the attention of the voters of Oregon was called by the democrats to the ineligibility of Mr. Watts as an elector?

Mr. LOGAN. Will the Senator from Indiana allow me right here to ask this question? and I should like him to consider it: Suppose it to be the case that all the voters in Oregon were notified of his disability and of the law and of everything connected with it, does that elect the other man under any authority in the United States?

Mr. MORTON. That is just where the difference between the English and the American authorities comes in. It has been held in England that where the voter has been informed affirmatively and directly of the fact and of the law which makes the candidate ineligible, there he is to be regarded as throwing away his vote and the minority candidate is elected; but in America it is held that even such direct and affirmative information in regard to the law and the fact does not have that effect, but that there is no election. That is the difference precisely, and neither doctrine will cover the nakedness of Governor Grover. He is just as clearly unprotected and indefensible under the English doctrine as he is under the American doctrine.

Mr. MAXEY. I will ask the Senator from Indiana, if his position be correct that the American doctrine is that, in the event that ineligibility is brought home actually to the notice of the voter and he casts his vote for the ineligible person after that notice, the party having the minority is not elected, would not the result of that be that Mr. Watts would not be elected? Although Mr. Cronin may not have been elected, was Mr. Watts?

Mr. MORTON. In that case, it would be impossible to show the fact. They vote by ballot in Oregon. Who it was that voted for Watts, the ineligible candidate, nobody can tell. You cannot know that the men who were informed and knew that he was postmaster voted for him. The English doctrine prevails only in cases where there is a small constituency, and generally in cases of corporations, where they have direct notice and they vote *viva voce*, so that you may know who voted for whom.

Mr. MERRIMON. How are the decisions in your State on that subject?

Mr. MORTON. If my friends will allow me to get along, I will answer any question. So far as the supreme court of Indiana is concerned, I read that decision myself, and I say that did not cover the ground, and it is the only case that can be referred to as giving it any ground to stand on. Even that utterly fails to cover this case, but it is the only case where constructive notice to any extent of the character of the law is maintained.

Mr. SARGENT. I should like to say in reply to the Senator from Texas that I think he is in error in his recollection of Governor Grover's card. He does not assert that it was proclaimed on the stump that Watts was a postmaster and ineligible to the office of elector. As I remember, he goes on to recite that in the town where he exercised this office of postmaster it was generally known, and he infers that as many as eleven or twelve or thirteen hundred, the majority which Watts got, must have known the circumstance, and therefore were presumed to know that he was ineligible. I was pretty near that State myself on the Pacific and know pretty well all that transpired there politically during the last election, and I know it was a surprise to the people of Oregon and to the people of California when the statement was made that there was any ineligible elector. The Senator from Oregon was taking part in that contest actively in all parts of the State, and I should like to understand from him whether it was stated on the stump generally or anywhere that Mr. Watts was ineligible, and could not serve if he was elected.

Mr. MITCHELL. I will state that I spoke twenty-five times during the last campaign in Oregon. I spoke in nearly every county in the State, and I made twenty-five speeches in all; I was all over the State, and I never heard the question broached or suggested either by republican or democrat, or by any newspaper in the State. I remained in Oregon until the morning of the 11th of November, when I took the steamer for San Francisco, and I never heard the matter broached until I arrived in San Francisco. Then for the first time I saw by telegraph that the question had been raised in Oregon.

Mr. MORTON. I may make this remark in regard to that pretended notice: we know the earnestness of both parties, the desire for success; and we know that if either the democratic party or the republican party of Oregon had had their attention called to the ineligible character of a candidate for elector, they would have made a change at once, a thing easy to do. We are to presume that they have common sense out there as well as everywhere else.

Now, Mr. President, I want to begin to read again where I left off, and I trust my friends will allow me to proceed.

The knowledge must be such, or the notice brought so home, as to imply a willingness in acting, when action is in opposition to the natural impulse to save the vote and make it effectual. He must act so in defiance of both the law and the fact, and so in opposition to his own better knowledge, that he has no right to complain of the loss of his franchise, the exercise of which he has wantonly misapplied.

To state a truism, our theory of government by the people is upon the assumption that the people, as a whole, are intelligent of their rights and interests, and are honestly and earnestly concerned in the due and wise administration of affairs and zealously alive to the need of good and fitting men in the various places of public trust, and hold in high esteem the privilege of suffrage, and are unready to pretermit its exercise or to exercise it meaninglessly. It is much to presume, with this as our starting point, that any considerable body of electors——

And I call the attention of my friends to this:

It is much to presume, with this as our starting point, that any considerable body of electors will purposely so exercise their right of electing to office as that it shall be but an empty form; and that going through with outward signs of an election they will of intent so cast their ballots as that they will be votes wasted.

Now the finding in this case is that there was no proof of actual notice of Clute's ineligibility, nor of any facts from which notice could be implied, save that he was a supervisor.

There was but this fact, and the law upon the statute-book; sufficient in themselves, as we hold, to render him ineligible.

That is just the case in Oregon. In the case I have just read from, there was but the fact that the man was supervisor and the public law made him ineligible for the office for which he was running, and in this case there was but the fact that the man was postmaster and the Constitution of the United States contained a provision making him ineligible.

But therefrom to give the office to the relator, it is first to be presumed, as a matter of law, that near three hundred of those who voted for Clute had knowledge of the fact that he was supervisor; had knowledge of the existence of the act of 1853; and knew that the fact and the law, concurring thus, he was ineligible to receive and avail himself of their votes in his favor, and knew that their votes given to him were wasted, without effect upon the count.

It is to be presumed further that knowing this they all, though seemingly desirous of taking an effectual participation in the choice of a person to the office of superintendent, deliberately so acted as that they are assumed to have persisted against knowledge; determined to "do nothing but tender their vote for him."

That is the New York doctrine which Governor Grover has referred to as sustaining his action. If he is no nearer right in regard to his other statement than he is in regard to the law of England and the law of New York, there is no reliance to be placed upon anything that he says.

Now, Mr. President, I wish to refer to an extract from the minority report of Senator Carpenter in the Vance and Abbott case in this body. It will be remembered that Senator Carpenter vindicated the right of Abbott to the seat, on the ground that Vance was ineligible and that Abbott, having the next highest number of votes and being qualified, was elected; but in the course of his argument he expressly excepted from the operation of the rule elections by the people and said he confined simply to elections by a legislature or by a corporation board where there was a small constituency. I will now ask the Secretary to read the extract I have marked from Mr. Carpenter's report.

The Chief Clerk read as follows:

In a popular election, by ballot, for a member of the House of Representatives, where the voters are numerous and scattered over a considerable territory, it would be impossible to ascertain whether or not the electors, or enough of them to change the result, had knowledge of the disqualification of the candidate. Besides, voting by ballot includes the right of the elector to conceal the fact for which candidate he voted. This is his secret, which cannot be wrested from him even in a court of justice. And they who voted against the successful candidate, yet failed to defeat him at the polls, might attempt to accomplish the same end by pretending to have voted for him with knowledge of his incapacity. Even perjury in such case, should a voter voluntarily swear falsely in regard to it, could never be detected and punished. Such a principle applied to such elections would be unsatisfactory, often incapable of application, and always a temptation to frauds and perjuries, which might be committed with impunity. And it may be conceded that, in determining who has been elected at such popular election by ballot, *no candidate not receiving a majority of all votes cast*, counting blanks and ballots for disqualified candidates, ought to be declared elected; and that the decisions of the House of Representatives, as applied to the election of its own members, ought to proceed upon a different principle than the one here contended for.

Mr. MORTON. Mr. President, that extract sets forth clearly the reason why that doctrine cannot be applied to an election by the people by ballot. Whatever might be the rule so far as a Legislature was concerned, or a small corporation where the constituency was small, when you come to a popular election where those voting vote by ballot and you can never tell who voted for the ineligible candidate and the constituency are scattered over a large territory, it would be impossible to ascertain whether there were enough having knowledge of the fact to overcome the majority that the candidate received. I want now to refer to the English authorities that have been cited on the other side to confirm the statement that I make, that they do not go beyond cases where the ineligibility of the candidate as to law and fact was made known to the electors before the election took place. I will refer first to the strongest case on the other side in the English authorities on that subject, the case most quoted, of Gosling *vs.* Veley, decided in 1848. The chief-justice delivering the opinion of the court said:

Where an elector, before voting, receives due notice that a particular candidate is disqualified, and yet will do nothing but tender his vote for him, he must be taken voluntarily to abstain from exercising his franchise; and, therefore, however strongly he may in fact dissent, and in however strong terms he may disclose his dissent, he must be taken in law to assent to the election of the opposing and qualified candidate, for he will not take the only course by which it can be resisted.

Putting it on the ground of actual information as to law and fact. Again, I read from Rogers on Elections:

In England, where a plurality only is necessary to an election, and where the votes are given orally—

Mark you, "given orally"—

it is also held that if electors have notice of the disqualification of a candidate, every vote given for him afterward will be thrown away and considered as not having been given at all.

Where they vote orally and where they had positive information before as to the fact and the law. Now I want to read from another case which is quoted. I read now from a case in 1 Maule and Selwyn, 76:

Upon the nomination of two aldermen of a borough in order that one of them might be afterward elected mayor pursuant to charter: *Held*, that votes which were given before notice of the ineligibility of one of the candidates, on account of his not having received the sacrament within one year, were not thrown away so as to authorize the returning officer to return another candidate who was in a minority.

Again:

On the 31st of August, 1812, (the day appointed by the charter,) a meeting of the free burgesses was held, at which two persons of the names of Smith and Sparling, together with the defendant, being all three aldermen of the borough, were put in nomination by the free burgesses. The mayor, having called for a show of hands, declared the majority to be in favor of Smith and Sparling, whereupon a poll was demanded on the behalf of the defendant, and proceeded in. During the progress of the poll, and when the total number of free burgesses who had voted were as follows, namely, for Smith 99, for Sparling 91, and for the defendant 11, the defendant inquired of Sparling if he had taken the sacrament within a year; to which Sparling answered that he had not; whereupon the defendant gave notice to the free burgesses that Sparling was ineligible. A fresh nomination did not take place, but the remainder of the free burgesses were allowed to poll at the close of which the total numbers were for Smith 133, for Sparling 123, and for the defendant 22; but the mayor, considering Sparling as ineligible on the ground above stated, returned Smith and the defendant to the residue of the aldermen, who afterward elected the defendant to the office of mayor.

That was in 1812. There the court held that the votes which were cast before actual notice was given were to be counted. I take now the case of Rex *vs.* Hawkins in 10 East's Reports:

If the law be that at the election of corporate officers the votes given for an incapable candidate after notice of such incapacity are to be considered as thrown away, that is, as if the voters had not given any vote at all, then it shall be no election unless the time when notice of his incapacity was given, namely, after two persons had given their votes for each of the persons, can be considered as making any difference.

The general proposition that votes give them a candidate—

I call attention now to the condition—

The general proposition that votes given for a candidate after notice of his being ineligible are to be considered the same as if the persons had not voted at all is supported by—

Various cases which are cited. The whole discussion passes upon the point of notice having been given. The doctrine is predicated on that point. In the case of Key *vs.* Godwin there was notice given of the ineligibility of the candidate; so in the case also in 14 East that I want to refer to, but I believe the paper is misplaced, the case of The King *vs.* Parry and Phillips.

Therefore, Mr. President, I may say in general terms that the English doctrine goes no further in any case than to give the minority candidate the election where they vote *viva voce* and where they have had positive information both as to law and fact of the ineligibility of the candidate.

I now read from Dillon on Municipal Corporations, a very high authority in this country:

Thus, if the law requires freeholders to be chosen for certain officers, the election of a person not a freeholder is void. But unless the votes for an ineligible person are expressly declared to be void, the effect of such a person receiving a majority of the votes cast is, according to the weight of American authority, and the reason of the matter (in view of our mode of election, without previous binding nominations, by secret ballot, leaving each elector to vote for whomsoever he pleases,) that a new election must be held, and not to give the office to the qualified person having the next highest number of votes.—*Dillon on Mun. cipal Corporations*, 258, 259.

I presume there is no better authority than that of Dillon. I have a case here from the Georgia Reports. I read from 12 Georgia Reports:

A person receiving a minority only of the legal votes polled is not entitled to be installed into an office, notwithstanding the incumbent be removed, on account of some personal disqualifications. Under such circumstances a new election will be ordered.—12 *Georgia Reports*, 23.

I read from the Kentucky Reports, 16 Ben. Munroe, 547, 548:

As the facts respecting Garrett's ineligibility were agreed, no doubt is entertained of the propriety of the action of the board in refusing him a certificate of election. Nor have we any that Stevens was not entitled, in virtue of the election in 1854, to hold the office.

Stevens was the minority candidate in that case and claimed to be elected because Garrett, the majority candidate, was ineligible. The court held that Stevens was not elected.

In 14 Wisconsin Reports, the case of the State *ex relatione* Off Smith, the court say:

The last question has been already settled in this State by the case of The State *vs.* Giles, 1 Chandler, 112. It was there held by the unanimous judgment of the court, that, in the absence of a statute declaring it so, the mere ineligibility of a candidate does not render void the votes cast for him; that such votes should not be rejected, but should be counted by the canvassers and that in the event of such ineligible person having the highest number of votes, the person having the next highest number would not be thereby elected.—14 *Wisconsin Reports*, 498, 499.

I will now read from the American Law of Elections. I will ask the Secretary to read for me, beginning on page 167 and reading over to page 170.

The Chief Clerk read as follows:

SEC. 231. We come now to a question which has been much discussed, and upon which the authorities are somewhat conflicting; it is this: Suppose the candidate who has received the highest number of votes for an office is ineligible, and that his ineligibility was known to those who voted for him before they cast their votes, are the votes thus cast for him to be thrown out of the count, and treated as never cast, and should the minority candidate, if eligible, be declared elected in such a case? No doubt the English rule is, that where the majority candidate is ineligible, and sufficient notice of his ineligibility has been given, the person receiving the next highest number of votes being eligible must be declared elected. Great stress is laid upon the fact of notice having been given, and the reason of the English rule is said to be "that it is willful obstinacy and misconduct in a voter to give his vote for a person laboring under a *known incompetency*." (Southwark on Elections, page 259.) An examination of the English cases will show that in some of them the election was declared void, and sent back to the people, on the ground that there was not sufficient notice of the incapacity of the successful candidate, while in others the minority candidate was declared elected, on the ground that due notice of the ineligibility of the person receiving the majority was given. The following are some of the principal English authorities upon the subject: Rex *vs.* Monday, Cowp., page 537; Rex *vs.* Coe, Heywood, page 361; Rex *vs.* Bissell, *ibid.*, page 360; Rex *vs.* Parry, 14 East, 549; Regina *vs.* Coal's, 28 Eg. L. and Eq., 304, 7 Q. B., 406. Heywood on County Elections, page 535; Male on Elections, page 336; King *vs.* Hawkins, 10 East, 210; Claridge *vs.* Evelyn, 5 B. and A., 8; Clarke on Election Committees, page 156; Southwark on Elections, page 259.

SEC. 232. Although the law of the British Parliament, as well as that administered in the courts of that country, recognizes the rule as laid down in the cases just cited, the House of Representatives of the United States has refused to adopt it. See the case of Smith *vs.* Brown, (2 Bartlett, 395,) in which, in an able report, submitted by Mr. DAWES, chairman of the Committee of Elections, the authorities are reviewed, and the conclusion is reached, "that the law of the British Parliament, in this particular, has never been adopted in this country, and is wholly inapplicable to the system of government under which we live." And the courts of this country generally take the same view.

SEC. 233. Thus, in Commonwealth *vs.* Cluley, 56 Pennsylvania State Reports, 270, the supreme court of Pennsylvania held that, where at an election for sheriff a majority of the votes are cast for a disqualified person, the next in vote is not to be returned as elected; and the supreme court of California, in Saunders *vs.* Haynes, (13 California, 145,) holds the same doctrine and enforces it by cogent reasoning;

and in Wisconsin we have the same ruling in State *vs.* Giles, (1 Chandler, 112,) and in State *vs.* Smith, (14 Wisconsin, 497;) and see opinion of judges, (32 Maine, 597;) State *vs.* Boal, (46 Missouri, 528.) Cushing Election Cases, 496, 576. And see State *vs.* Anderson, (1 Cox, New Jersey, 318;) People *vs.* Clute, (50 New York.) But in Indiana the doctrine of the English authorities has been followed. (Gulich *vs.* New, 14 Indiana, 93; Carson *vs.* Phetridge, 15 Indiana, 327.) And see Stewart *vs.* Hoges, in circuit court of Stephenson County, Illinois, (3 Chicago Legal News, 117.)

SEC. 234. Thus it will be seen that the weight of authority in this country is decidedly against the adoption here of the English doctrine. And we think that sound policy, as well as reason and authority, forbids the adoption of that doctrine in this country. It is a fundamental idea with us that the majority shall rule, and that a majority or at least a plurality shall be required to elect a person to office by popular vote. An election with us is the deliberate choice of a majority or plurality of the electors. Any doctrine which opens the way for minority rule in any case is anti-republican and anti-American. The English rule, if adhered to, would in many cases result in compelling very large majorities to submit to very small minorities, as an ineligible person may receive, and in many cases has received, a great majority of the votes. It is enough in such a case to hold the election void.

SEC. 235. This question was elaborately discussed and settled, so far as the Senate of the United States is concerned, in the case of Joseph C. Abbott, of North Carolina. The decision in that case was against the adoption of the English rule in this country, and Abbott, who, notwithstanding he received only a minority of the votes cast, claimed a seat upon the ground that he was the only eligible person voted for, was declared not elected. And it was distinctly asserted, in the report of the committee, that the fact that the voters have notice of the ineligibility of the candidate at the time they cast their votes for him makes no difference. The remark of Judge Story, in Commonwealth *vs.* Cluley, [*supra,*] that "the disqualified person *is a person still,* and every vote thrown for him is formal," is quoted with approbation. The broad doctrine was asserted that in this country an election by a minority of the persons voting is not to be tolerated under any circumstances. Mr. Carpenter, from the minority of the committee, submitted an elaborate report maintaining the right of Mr. Abbott to the seat, and the debate was exhaustive, but the Senate sustained the majority of the committee.—(*Senate Report, No. 58,* Forty-second Congress, second session; *McCrary's American Law of Elections,* pages 167-170.)

Mr. MORTON. I call attention to the decision in the case of The Commonwealth, *ex relatione* McLaughlin, *vs.* Cluley, reported in 56 Pennsylvania Reports, where after an elaborate decision Judge Strong, now of the Supreme Court of the United States, held, in delivering the opinion of the supreme court of Pennsylvania:

Where at an election for sheriff a majority of the votes are cast for a disqualified person, the next in vote is not to be returned as elected.—56 *Pennsylvania Reports,* 270.

Judge Strong, as I said the other day, goes over the whole ground in a very able and learned opinion upon that subject.

I have also here an opinion of the court of Pennsylvania, in the case of The Commonwealth *vs.* Read, as reported in the Leading Cases on Elections, by Brightly, in which the court say:

It has been held that if the corporate assembly be duly convened and the majority vote for an unqualified person, after notice that he is not qualified, their votes are thrown away, and the person having the next majority, and not disqualified, is duly elected.—*Brightly's Leading Cases on Elections,* page 129.

That again is another definition of the English rule, that is, it is confined to corporations where they vote *viva voce* and after positive and affirmative information has been given that the candidate is ineligible.

I have just had a letter put into my hands, which I will ask to be read by the Clerk.

The Chief Clerk read as follows:

HOLLIDAYSBURGH, PENNSYLVANIA, *December* 9, 1876.

DEAR SIR: At the October election of 1846, Ephraim Galbreath was the whig candidate for the office of recorder of Blair County, and died on the morning of the election before the opening of the polls. It was found by the return judges that a majority of the votes for recorder were cast for Galbreath, and at the October term of the court of common pleas, held by Hon. Jeremiah S. Black, then president judge, the democratic candidate, Samuel Smith, appeared and asked to be qualified as recorder, on the ground that the votes cast for Galbreath, having been given for a dead man, should be disregarded, and the votes given for the claimant only should be counted.

Judge Black referred to the case of Mr. Wilkes, in the British Parliament, and denounced the seating of Luttrell as a high-handed outrage. He followed the line of argument of those who opposed the seating of Luttrell and declared emphatically that two things were settled by the election in question: first, that the *people did want Galbreath;* secondly, that they *did not want Smith.*

The result was that the democratic governor, Shunk, I think, filled the vacancy by the appointment of John M. Gibbony.

Truly yours,

SAM'L S. BLAIR.

Hon. SIMON CAMERON.

Mr. MORTON. The other day the case decided in the House between JOHN YOUNG BROWN and Smith was referred to, where the House held, after a very full and able report from the Committee of Elections, of which the Senator from Massachusetts [Mr. DAWES] was the chairman at that time, that the minority candidate was not elected, and that even the English doctrine of positive notice would not elect the minority candidate in this country. I want to show by one or two references that that doctrine has been followed by the House in other cases. I refer to the case of the contest of McKee, from Kentucky:

The first point relied upon by the contestant (Mr. McKee) in his notice is that Mr. Young was disqualified and ineligible to the position of Representative in Congress by reason of disloyalty, and that as such disqualification existed at the time Young was voted for, all votes cast for him were illegal and void and not to be counted, and, as a necessary consequence, that the contestant having received the highest number of legal votes, is duly elected and entitled to the seat. This point has been ably and elaborately argued and decided by this committee and by the House, in the late case of Smith *vs.* Brown, of Kentucky, and the committee deem it necessary to say no more than that they decline to favor giving the seat to contestants on this ground.—(*Contested Election Cases,* 1865-1871, pages 427, 428.)

That report was concurred in by the House. Again, in a more recent case, that of Jones *vs.* Mann, the committee say:

The committee does not consider the evidence adduced by the contestant in regard to Mr. Mann's residence or domicile (Miscellaneous Document No. 13, pages 20, 29 and 30) sufficiently clear and conclusive to justify it in declaring Mr. Mann constitutionally ineligible at the time of his election even if the evidence on the part of Mr. Mann were rejected; but it is not necessary to decide upon this question of ineligibility, since, if Mr. Mann were admitted to have been ineligible at the time of holding the election, and the evidence of this held to be satisfactory and conclusive, it would not aid the contestant nor entitle him to the seat, but would only show that there was a vacancy.—*Ibid,* 475.

And this report was concurred in by the House.

I have a report here of a recent English case. I find it in a newspaper, but I presume the report is given correctly. It shows that even now in England the American doctrine prevails in regard to the election of a member of Parliament, and that even where positive, affirmative notice is given of the ineligibility of the majority candidate, that will not elect the minority candidate. I ask the Clerk to read what I send to the Chair.

The Chief Clerk read as follows:

AN ENGLISH PRECEDENT APPLICABLE TO THE OREGON CASE.

At the general election held in England in 1865 Mr. Forsyth, the present member for Marylebone, was elected member for Cambridge. His election was petitioned against on the ground that he was ineligible in consequence of holding an office of trust and profit under the Crown, he being at the time of his election counsel to the India board. His seat was also claimed by the candidate receiving the next largest number of votes. A committee of the House of Commons, of which Mr. Lowe was chairman, held that the election was void, and declined to seat the other candidate, notwithstanding the fact that personal notice of Mr. Forsyth's ineligibility had been served on a large number of electors. The house unanimously adopted the report of the committee, and ordered the speaker to issue his writ for the election of a member of Parliament in place of Mr. Forsyth, whose seat was declared vacant.

Mr. MORTON. That is a case where recently the American doctrine has been fully recognized by the English Parliament, that even if personal notice were given to the electors it would not elect the minority candidate.

In reference to the action of the governor of Oregon it may be said, in the first place, that the determination upon his part that the postmaster, Watts, was ineligible was a judicial question, one that he had no right to decide. I have examined the constitution of Oregon, and it places in the courts the judicial authority. That was a question he had no right to decide. The governor of Oregon had a simple ministerial duty to perform, and that was to certify who had the highest number of votes. Whether the person having the highest number was ineligible was a judicial question that he had no more power to decide than I have, not living in Oregon at all. The question as to whether the minority candidate was elected was a judicial question of a high character. He had no power to decide it. It was a clear usurpation upon his part. Neither the constitution of Oregon nor of any other State that I know of has conferred judicial powers upon the governor. So far as he is concerned with the electors his duty is simply ministerial, that is, to certify who got the highest number of votes. Whenever he goes beyond that he transcends his duty. For him to undertake to say that Watts was ineligible was to exercise judicial power with which he was never invested, and for him to go beyond that and decide that the minority candidate was elected was the exercise of a judicial power which he did not possess, and it was a decision right in the face of the law, a palpable wrong, for which there is no excuse. None can be offered. In one of the southern states of Europe there used to be a custom that when a man was hanged or executed for a crime, or when he was killed in the commission of a felony, he was to be buried by the roadside, and it was the duty of every traveler who went along to throw a stone upon his grave, so that the monument of his crime might be increased from year to year and from generation to generation; and so in regard to this Oregon transaction, every future historian, from generation to generation, will add comment and condemnation upon that act which will increase its magnitude and its infamy to the latest hour.

REFORM AND RE-ORGANIZATIGN OF THE ARMY.

Mr. EDMUNDS. I call for the regular order.

Mr. BAYARD. Mr. President——

The PRESIDING OFFICER, (Mr. WRIGHT in the chair.) The Chair understands that the regular order was laid aside temporarily. The Senator from Vermont calls for the regular order, which is Senate joint resolution No. 10.

Mr. WEST. With the consent of the Senator from Vermont, I ask leave to introduce a joint resolution and ask for its consideration.

Mr. EDMUNDS. If it leads to no debate I shall not object.

Mr. WEST. It will lead to no debate.

Leave was granted, by unanimous consent, to introduce a joint resolution (S. R. No. 29) extending the time for the making of a report by the Army commission created by the act of July 24, 1876; and it was read twice and considered as in Committee of the Whole. It extends the period fixed by the fourth section of the act of July 24, 1876, making appropriations for the support of the Army for the fiscal year ending June 30, 1877, for the submission of the report of the commission named in the section, to the 29th of June, 1877.

The joint resolution was reported to the Senate, without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

COUNTING OF ELECTORAL VOTES.

The Senate, as in Committee of the Whole, resumed the consideration of the joint resolution (S. R. No. 10) proposing an amendment to the Constitution of the United States, the pending question being on the amendment reported by the Committee on the Judiciary, to insert

after the word "appointed," in line 31 of section 1, the following words:

But the court shall, in the discharge of the duties herein provided, disregard errors of form and be governed by the substantial right of the matter.

The amendment was agreed to.

The next amendment was in line 55, to insert the word "the" before "case;" so as to read:

The person having the greatest number of votes for Vice-President, to be counted and determined as in the case of President as before provided, &c.

The amendment was agreed to.

The next amendment was in line 58, after the word "majority," to insert "the state of the vote shall be immediately certified to the Senate, and;" so as to read:

And if no person have a majority, the state of the votes shall be immediately certified to the Senate, and then, from the two highest numbers on the list, the Senate shall choose a Vice-President.

The amendment was agreed to.

The next amendment was in line 62, after the word "Senators," to insert "elected and qualified," and in line 63, after the word "number," to insert "elected and qualified;" so as to read:

A quorum for the purpose shall consist of two-thirds of the whole number of Senators elected and qualified, and a majority of the whole number elected and qualified shall be necessary to a choice.

The amendment was agreed to.

The PRESIDING OFFICER. This concludes the amendments proposed by the Committee on the Judiciary.

Mr. EDMUNDS. I now offer my amendment to come in as an additional section. It has been printed.

The PRESIDING OFFICER. The amendment will be reported.

The CHIEF CLERK. It is proposed to insert as an additional section the following:

SEC. 3. This article shall, if it be ratified by the Legislatures of three-fourths of the States on or before the 1st day of February, A. D. 1877, operate upon the opening and counting of the votes, and the ascertaining and declaring the result of the last election, by the Supreme Court; and in case of such ratification, the President of the Senate shall deliver all the lists of votes, certificates, packages and papers in his possession relating to the election of President and Vice-President for the term beginning on the 4th day of March, A. D. 1877, to the presiding justice of the Supreme Court, to be proceeded with as in this article provided.

Mr. EDMUNDS. The honorable Senator from Iowa [Mr. WRIGHT] now occupying the Chair, has made the very correct suggestion that as in one of the articles themselves the time is a time to be fixed by law, this amendment that I have proposed is defective in not providing a day, inasmuch as the law may not be able to fix a day for this count. I therefore wish to modify the amendment by adding at the end these words:

On a day to be fixed by said court, not later than the 10th day of February, A. D. 1877, and so from day to day until the matter be disposed of.

The PRESIDING OFFICER. The Senator from Vermont modifies his amendment in the particular suggested. The question is on the amendment as thus modified.

The amendment as modified was agreed to.

The PRESIDING OFFICER. If there be no further amendment the resolution will be reported to the Senate and the question will be on concurring in the amendments made as in Committee of the Whole.

The joint resolution was reported to the Senate as amended.

Mr. MERRIMON. I will now offer the amendment that I gave notice of yesterday.

Mr. EDMUNDS. As the resolution has been reported to the Senate, if the Senator would kindly allow us to dispose of the amendments made in committee, I would be obliged to him.

Mr. MERRIMON. Very well.

The amendments were concurred in.

The PRESIDING OFFICER. The joint resolution is in the Senate and still open to amendment.

Mr. MERRIMON. I will now offer the amendment of which I gave notice yesterday.

The PRESIDING OFFICER. The amendment will be reported.

The CHIEF CLERK. It is proposed to insert after the word "Vice-President," in line 69, the words "or appointed to any office under the United States;" and, in line 70, strike out the word "two" and insert the word "four;" so that the section will read:

SEC. 2. No person holding the office of a justice of the Supreme Court of the United States shall be eligible to be elected as President or Vice-President, or appointed to any office under the United States, until the expiration of four years next after he shall have ceased to be such justice.

Mr. MERRIMON. The object of the amendment is to cut off any possibility that any judge of the Supreme Court would have any hope of benefit at the hands of the President who might be inaugurated in pursuance of the action of his court, to cut off every political consideration or hope of office at the hands of the President. It is due to candor to say that I upon consideration cannot support this joint resolution; but still, if it is to pass, I should like to see it pass in such shape as will be most agreeable to me, and so as to be more effectual to cut off as much as possible what I regard as probably the most serious objection to it, to wit, that of assigning to the Supreme Court a political duty. It is an extraordinary duty, one rather ministerial in its character, and yet it involves political considerations that agitate the whole country, and it would involve the Supreme Court more or less in politics and political considerations. I think the influence and the great power of the Supreme Court consists in its moral weight. Its judgments have a moral force and power that are tremendous. If it shall engage, or if there shall be such provisions in the Constitution and laws as require it to engage, in political controversy, the end of it will be that the court will be brought into contempt, and soon lose much of the moral weight and power that it has on the American mind at this time. The object of my amendment is such as I have indicated.

Mr. EDMUNDS. Mr. President, the committee were inclined to the opinion that two years were long enough to make the court absolutely safe from any personal ambitions that might possibly influence their judgment; but so far as I am individually concerned, (of course I have no right to speak for the committee,) four years would be just as agreeable to me, perhaps more so. The other part of the Senator's amendment as to appointment to any office under the United States for the same length of time, strikes me favorably. I shall not, therefore, so far as my present personal views are concerned, make any opposition to the amendment of the Senator, but I incline to think I should vote for it and with pleasure, because the object that he has stated is of course precisely the one that the committee had in view. He only makes it stronger by giving a greater length of time to this exclusion from an office that a President might give to one of the judges, which I think is a very good idea indeed.

But I wish to say just one word in reply to what the Senator has said about the duty of the court being a political duty. Of course, definitions of terms are always extremely difficult to pronounce with exactness, owing to imperfections of language and the capability of words having various senses; but in the sense in which I understand this general proposition, the duty of the Supreme Court is not a political duty any more than its present duty under the Constitution is political duty when it is called upon to pronounce on the constitutionality of any law passed by Congress. Its duty is to apply to certain facts that are laid before it in the way that the Constitution prescribes, the Constitution of the United States, that is, the supreme law of the land. To state it with absolute brevity and conciseness, it is to apply the supreme law of the land to a state of facts that is furnished to it, and pronounce upon it.

I know, of course, as I stated yesterday, that it can be said, and with a certain degree of reason and truth, that the judges of the Supreme Court, like everybody else, citizens of a republic, will have political opinions, and that those political opinions will in a less or greater degree influence, consciously or unconsciously, their action. The good time that we are taught to believe in, when nobody will have a personal interest or political interest in anything, and be absolutely free from bias, has not come. So long as we have human institutions of government there must be committed to somebody, selected in some way, duties the performance of which may be either misdirected or biased by the particular views that the selected agents of the people have upon the general results of such topics. That is perfectly true; but how is it possible in this Republic to remove further from political bias, further from excitement, passion, interest, a matter of this kind than to take that body whose existence is the existence created by the Constitution itself and is not subject to the changes of law and the duration of office, in which each person is always beyond the reach of the law, and the change of the *personnel* of which from the very nature of the case is always gradual from administration to administration and from year to year or ten years to ten years.

While I see the force, therefore, of what my honorable friend says, I do submit it to the consideration of Senators that this is the nearest possible attainment to founding a tribunal to settle such an important question which has the least objection to it, on the whole.

Mr. MERRIMON. My object, Mr. President, is to protect and shield the Supreme Court from the calumnies and assaults that would be heaped upon it by politicians of all parties if it should discharge such a duty as it is proposed to charge that court with by this proposed amendment to the Constitution. The Supreme Court is virtually constituted a national returning board for the election of President, that election which probably excites the passions of the people more than any other in this country. If we take the present instance to illustrate what we may expect if the law were to-day as it is proposed to make it here, can anybody doubt that if the Supreme Court in the present contingency were to decide one way or the other it would be assailed most violently, its integrity would be questioned, and all sorts of assaults made upon it and it would be brought into contempt on the part of one party or the other? I do not doubt it. If the proposition were to allow Congress or some other power to determine the result of the presidential election in a more satisfactory way than is now provided by the Constitution or the laws and then in case of any legal question arising to allow the Supreme Court to decide that through some means of transferring it to that court for deciding a question of law that should arise, it would meet the sanction of my judgment more readily than it does as it is. This proposition, it seems to me, is to charge the court with a duty that is purely ministerial in its nature and that savors very largely of political considerations, and considerations that affect the people in their organizations as political parties. They are charged with the decision of a matter that will forever excite the passions and the prejudices and the predilections of the people in such a way as that, decide as they will, as honestly as they may, in closely contested elections like the present, for example, the court will be assailed and denounced and brought into contempt, and there-

by the moral weight, which is the great power and strength of the court in its hold upon the popular mind of the nation, will be in a great measure impaired. It may be that the dignity, the integrity, and I had almost said the sacredness of that court ought to be protected and shielded not only by the legal profession of the country but by the whole American people from the ordinary calumnies and slanders that are tolerated and encouraged too much by all political parties.

This is the consideration that moves me to oppose this resolution with my vote, and, with a view to remove as far as possible any consideration that might be held out to a judge that could influence by possibility his judgment, I have submitted the amendment I have offered. It seems to me it is in the proper line, and if the joint resolution shall pass I hope the amendment will go in and become a part of it.

The PRESIDING OFFICER, (Mr. WRIGHT in the chair.) The question is on the amendment of the Senator from North Carolina.

The amendment was agreed to.

Mr. KEY. Mr. President, I propose to call one matter to the attention of the Senator from Vermont who has this joint resolution in charge. If I understood him yesterday, as well as the Senator from New York, they seemed to think that the provisions of this proposed amendment would prevent the President and Vice-President from being citizens of the same State. It does say that the electors shall vote for President and Vice-President, one of whom shall not be an inhabitant of the State in which they reside. But suppose that at the last election the electors of the State of New York had voted for Tilden and Hendricks and the electors of every other State had voted for Tilden and Wheeler, would not Tilden and Wheeler, both residents of the same State, have been elected, and yet the electors have complied with this provision of the amendment as well as of the Constitution of the United States as it now stands? If the object is to prevent them being residents of the same State, does this do it?

Mr. EDMUNDS. I do not think it does, and the present Constitution does not do it, for this is the present Constitution word for word in that respect.

Mr. KEY. Yes, sir; but I understood the remarks of the Senator from New York (and the Senator from Vermont seemed to concur with him) to go on the other hypothesis.

Mr. EDMUNDS. The other hypothesis undoubtedly is the hypothesis on which the makers of the Constitution proceeded and upon which the committee proceeded; and we puzzled our heads for two or three evenings, I remember, over that conundrum and we could not see any way to settle it, for if you say (which is a change that we did not propose to make in the Constitution, because we only wished to direct this resolution to one single point) that the President and Vice-President shall not come from the same State, and have the election by separate States as the Constitution now is, there is no way of the electors in each State knowing who the other electors are going to vote for, and you might produce a failure to elect every time. It was thought as a practical thing, this being the spirit and the idea that are held out and carried by prohibition as far as they can be practically, that it would result as a matter of fact, although theoretically it might result otherwise, in having the President from one State and the Vice-President from another State, as it always has. But the criticism of my honorable friend from Tennessee upon the present Constitution and upon this re-enactment of that part of it is, I think, substantially correct.

Mr. CONKLING. Mr. President, I wish to say a word in reply to the suggestion made by my friend from Tennessee, whose mind I did not succeed in bringing clearly yesterday to the point of the observation I intended to make. Article 12 of the amendments to the Constitution as it now stands reads thus:

The electors—

In the plural, the Senator will observe:

The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves.

I need not suggest to the Senator that that language is open to these two constructions; first, the construction that it is a prohibition imposed upon each elector severally that he shall not vote for two persons each of whom resides in the State of which he is an elector; and second that it means that the electors, speaking of them in general, shall not do this thing. To make more clear what I mean, here comes a certificate from the State of Tennessee; on being opened it turns out that two persons both resident in Tennessee have five votes each, one for President and one for Vice-President, and the votes under this present Constitution have been cast by the electors by ballot. In the first place it would not be easy to ascertain whether the same five persons, if there were five, who voted for one of these candidates resident in, Tennessee, also voted for the other. But again, if you had ascertained how the fact was, it would not be perfectly transparent under this provision of the Constitution whether it had been violated at all, provided, that the five persons who voted for a President from Tennessee were not the same five electors who voted for another resident of Tennessee for Vice-President. This very case has occurred. I remember on the count of the votes, I think the very last time, in 1873, the attention of the two Houses sitting in conference was called by the tellers to the fact that in one instance—I will not stop to remember the State—votes had been given for a person for President and a person for Vice-President each of them resident in that State. The Houses were about to separate. The fact appeared on this certificate, and I remember myself asking the tellers to state whether it could be gleaned from the certificate that the same electors who voted for one of those persons also voted for the other. On reading the conclusion of the certificate in that case the electors, it turned out, had added that although these two persons both resident in the same State appeared by that certificate to have received a certain number of votes each, the truth was that the presidential electors who voted for the one for President were not the same presidential electors who voted for the other for Vice-President, but other and different. It was a mere coincidence that the number of votes cast for each was precisely the same, it being untrue that in either instance the same elector had voted for both.

Not having the pending amendment before me, I speak of it from recollection, but I well remember that it was the purpose of the committee to ascertain and settle that doubt. Therefore, in language aimed at each elector, and visiting each one separately, the committee proposed to ordain that no single elector should vote for candidates from the same State for the two offices and that voting *viva voce* each should manifest and record the fact that he did not so vote, to the end that it would become matter of record, be patent and permanent. That was the suggestion which I intended to make yesterday in reply to an inquiry why it was that the Constitution as it now stands had been changed by providing in the pending amendment that the votes of electors should be given *viva voce* and not given by ballot, as is now provided. I think the Senator from Tennessee must see the purpose very clearly, and that this answers that purpose if it be desirable to answer it.

Referring for one moment to the case the Senator put of electors, under the present Constitution or under the Constitution as it shall turn out to be, prohibited from voting for candidates both resident in their own State, but nevertheless leaving all the other States through their electors privileged to elect both the candidates in another State, I inquire of the Senator what is the objection to it? What is the practical objection to it? What objection to it does he find written on the face of the present Constitution? If my friend will pardon me a moment before he answers, I need not ask him—I might ask a less intelligent Senator and be sure that he could tell me—why it was that the framers of the Constitution discouraged the idea of the electors of a State seeking to locate in that State both the candidates. The preponderance of the large States, the opportunities certain to occur and the still greater opportunities not unlikely to occur of particular States asserting separately or by combination undue influence on this subject, are quite enough to teach us why it was that the framers of the Constitution forbade the electors of each State from attempting to put within the limits of that State both the chief executive officers of the Republic. But that reason, the honorable Senator will see, is not at all applicable to a case in which other States, distant States looking over the country, or the electoral colleges upon the old theory exercising discretion looking over the whole country find the two foremost or fittest men in their estimation happening to reside in a single State. The people and the electors of that State being checked and restrained from making such a selection, the framers of the Constitution stopped, and they said it is wise enough to leave distant, external communities, thus uninfluenced by the local considerations free to locate where they please these officers in a State not their own. Therefore the committee, as I believe the Senator from Vermont indicated so clearly that I need not repeat it, did not feel bound to aim at a change of the Constitution in that regard, but only to make such change as should render certain what might otherwise be regarded as an ambiguity and furnish the evidence which would always make manifest to the two Houses meeting in joint conference on an occasion of counting the votes whether the Constitution had been observed or disregarded.

Mr. BOGY. Mr. President, I desire to make an inquiry of the Senator from Vermont, and I do not know but I may require information as to one point. The same language which is in the twelfth amendment is retained in this proposed amendment, which provides that the electors shall not vote for two persons who are inhabitants of the same State with themselves. That language in the same words will be found in the original Constitution retained in the twelfth amendment and also retained in this. I presume the object of this language was to prevent these two high positions being filled from the same State. Am I right in that view, I would ask the Senator?

Mr. EDMUNDS. Partly, and partly not. As has already been stated by myself and by my honorable friend from New York in reply to the Senator from Tennessee, the committee saw plainly enough, under the present Constitution and under this amendment which follows it except as to voting *viva voce*, and making each one vote for some one not an inhabitant of his State, that while the spirit and object of the Constitution was undoubtedly to separate these two great offices into different States, yet it was substantially impracticable to do so other and further than by providing that the electors of one State should themselves not vote for two inhabitants of their own State. The change in the phraseolology we have made, as the Senator from New York has perfectly explained, is to put it upon each elector instead of as in the old language, upon the body voting *viva voce*, that no one of them separately shall vote for President and Vice-President being in-

habitants of the same State with himself; and we propose that change in order to make it clear on the record as a duty on each one and showing which one, if any, did it. The italics indicate the change, because the original text is word for word the old Constitution. At the top of page 2 of the print the italics show what the change is, and the object has been stated.

Mr. BOGY. Even with that explanation it might be that this should no longer be retained in any amendment, because, if the object was originally to prevent the election of these two high officials from the same State, it is not at all accomplished by this language. Why then retain it? Why not simplify it? It is meaningless. It is really, with all respect to the committee who reported this resolution and to the framers of the Constitution, also nonsensical. For instance, while it is true that the electors in the State of New York could not have voted for Tilden and Wheeler, as they are prohibited by the Constitution from voting for two persons being inhabitants of the same State with themselves, yet, supposing the electors from every other State in the Union had voted for Tilden and Wheeler, they certainly would be elected President and Vice-President of the United States. Would not that be so? That being so why retain this language?

Mr. CONKLING. What is the objection to that, may I ask?

Mr. BOGY. The objection is this: why put anything in the Constitution which has no meaning? because the text of it accomplishes nothing. "The electors shall meet in their respective States and vote by ballot for President and Vice-President, one of whom at least shall not be an inhabitant of the same State as themselves." That is the twelfth amendment, which is substantially retained in the proposed amendment. The proposed amendment is this:

> The electors shall meet in their respective States, and each elector shall vote *viva voce* for President and Vice-President, one of whom at least shall not be an inhabitant of the same State with himself.

Substantially, as far as the point I desire to make is concerned, the language is the same. The object was to prevent the selection of these two persons from the same State. That object is not accomplished at all.

Mr. CONKLING. Will the honorable Senator let me interrupt him a moment?

Mr. BOGY. With pleasure.

Mr. CONKLING. Suppose in the State of New York the 1,000,018 voters who deposited their ballots had been so equally divided that certain of the democratic electors had been chosen and certain of the republican electors, and they had met in the electoral college twenty-five on the one side and ten on the other, making the thirty-five electors. The candidate for Vice-President on one side having been designated in New York and the candidate for President having been designated from the same State on the other side, the Senator will see that these electors, in order to preserve their faith and observe their obligations, would vote ten, if the democratic electors were ten, for Mr. Tilden for President and ten for Mr. Hendricks for Vice-President; the republican electors, preserving their faith, would vote, twenty-five for Governor Hayes, of Ohio, for President and Mr. Wheeler, of New York, for Vice-President. There the Senator has the case for which this expressly provides, because it ordains or means to ordain if it shall become a part of the Constitution that each elector for himself shall in no case vote for two persons both of whom reside in the State whereof he is an elector, but each elector shall vote for persons one of whom is a resident elsewhere.

If I am not right in this, or if the Senator's suggestion is correct that such a result would be objectionable, that we ought to provide against it, will the honorable Senator tell me what would be the issue or result of such a case as I have stated of electors some on the one side and some on the other being chosen in a particular State where one candidate of one party for one office happened to be a resident of that State and another candidate on the other side happened to be resident of that State if he had a provision under which no elector or all of them together could so vote as that votes should be cast for two persons resident in that State? He does not confine it to separating that privilege from each elector; and how could he fail to overthrow and vitiate the result and intention of the popular election? And my honorable friend from Maine [Mr. HAMLIN] reminds me that only as recently as 1860, in one of the States, I think New Jersey, the electoral vote was divided, some of the electors being on one side and some being on the other. Now the Senator will see that but for this, under such a construction as would prevent any elector from so voting, votes would come out of the electoral college for two persons from the same State, and the result of the election would be defeated.

Mr. BOGY. I fully understand the explanation made by the Senator from New York and I coincide with him; and yet it does not meet the objection which I raised, but I presume I have not been happy in making myself plain. As I understand the object of this provision, both in the original Constitution and in the twelfth amendment, and it is retained in this proposed amendment, it is to prevent the selection of two persons by the people of the United States as President and Vice-President who are inhabitants of the same State. That is the great object; but as the inhibition is only confined to the electors of each State, that is the electors of each State shall not vote for two persons being inhabitants of the same State with themselves, the great object which was to prevent the selection of these two men from inhabitants of the same State is not at all accomplished, is not at all effected. It amounts to nothing at all because they can be selected by the electors of different States. The point that I am trying to make and the point made by the Senator from New York are entirely different; but if I am correct in this, it seems to me this language should disappear from the Constitution, for it does not accomplish the object.

It will be observed in the old Constitution, and also in the twelfth amendment, that this inhibition was not carried to the selection of Vice-President by the Senate because there the Senators are confined to the two persons having received the highest number of votes. There is no inhibition on the Senate that they shall not vote for a person who is also a citizen of the same State as the person who may have been elected, for instance, President by the lower House, or may have been elected by the people. In that way, even under the old Constitution, the President and Vice-President might be inhabitants of the same State, and they can be now under this proposed amendment. If, therefore, the object were as I suppose it is conceded was the object, to provide a mode which should prevent that from being ever accomplished, that these two persons should be inhabitants of the same State, that object is not at all accomplished by the words used in this amendment, in the preceding amendment of 1801, or in the original Constitution. I may be entirely at fault about this matter; and if I am I should like to be set right.

The joint resolution was ordered to be engrossed for a third reading; and was read the third time, as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of each House concurring therein,) That the following article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three-fourths of said Legislatures, shall be valid as a part of the Constitution, namely:

ARTICLE XII.

That the twelfth article of the amendments of the Constitution be, and the same is hereby, abrogated, and in the place thereof the following be, and the same is hereby, ordained and established, namely:

The electors shall meet in their respective States, and each elector shall vote *viva voce* for President and Vice-President, one of whom at least shall not be an inhabitant of the same State with himself; they shall name the person voted for as President, and separately the person voted for as Vice-President; and they shall make distinct lists of all persons voted for as President and all persons voted for as Vice-President, and of the number of votes for each, and of the electors voting for the same; which lists they shall sign and certify, and transmit sealed to the seat of Government of the United States, directed to the presiding justice of the Supreme Court of the United States. And the Supreme Court, at a time and place to be fixed by law, shall publicly open all the certificates and count the votes, and the person having the greatest number of votes for President, considered by the court to have been lawfully given and certified, shall be the President, if such number be a majority of the whole number of electors lawfully appointed; but the court shall, in the discharge of the duties herein provided, disregard errors of form, and be governed by the substantial right of the matter; and if no person have such majority, the state of the votes shall be immediately certified to the House of Representatives, and then, from the persons having the highest number not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by a *viva voce* vote, the President; but the vote shall be taken by States, the representation from each State having one vote; and if the votes of any State shall not show a majority for any one candidate, the vote of such State shall not be reckoned. A quorum of the House of Representatives for the purpose of such election shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice; and if, on the first vote, there shall be a failure to elect, further votes shall immediately continue to be taken until a President shall be elected.

And if the House of Representatives shall not choose a President, when the right of choice shall devolve upon them, before the 4th day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes for Vice-President, to be counted and determined as in the case of President as before provided, shall be Vice-President, if such number be a majority of the whole number of electors appointed. And if no person have a majority, the state of the votes shall be immediately certified to the Senate, and then, from the two highest numbers on the list, the Senate shall choose a Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators elected and qualified, and a majority of the whole number elected and qualified shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

SEC. 2. No person holding the office of a justice of the Supreme Court of the United States shall be eligible to be elected as President or Vice-President, or appointed to any office under the United States, until the expiration of four years next after he shall have ceased to be such justice.

SEC. 3. This article shall, if it be ratified by the Legislatures of three fourths of the States on or before the 1st day of February, A. D. 1877, operate upon the opening and counting of the votes and the declaring the result by the Supreme Court; and in case of such ratification, the President of the Senate shall deliver all the lists of votes, certificates, packages, and papers in his possession relating to the election of President and Vice-President for the term beginning on the 4th day of March, A. D. 1877, to the presiding justice of the Supreme Court, to be proceeded with as in this article provided, on a day to be fixed by said court, not later than the 10th day of February, A. D. 1877, and so from day to day until the matter be disposed of.

The PRESIDING OFFICER. The question is on the passage of the joint resolution.

Mr. BOGY. I ask that this question be laid over. It has been my intention for some days to say something on this important subject, and I would request as a matter of personal favor that it be postponed until to-morrow. I know and fully appreciate the importance of time in regard to this question; I commend the motives of the Senator from Vermont both in pressing this question before the Senate and also in his anxiety to have it disposed of as soon as possible; but I am not prepared to speak now. I desire to say something; I have some views on this question which I feel it to be my duty to explain, at least for the information of the citizens of my own State. I hope therefore that the subject will be laid over and to-morrow, when, if I

am able, I shall ask the courtesy of the Senate to allow me to express my views. I regret the necessity, but it has been utterly out of my power to prepare myself at all. I intended to have done so last evening, but I was engaged on a committee which occupied my time.

Mr. MORTON. I unite with the Senator from Missouri in the hope that this joint resolution will be laid over for the present. I should prefer that it go over until next week. Here we are about to vote on a most important constitutional amendment with scarce any consideration. The consideration it has received up to this time really amounts to nothing, and the more I look at this resolution the more I am satisfied that it ought to be carefully considered. I trust that in view of its great importance, to give Senators time to examine it, it will go over until next week.

The PRESIDING OFFICER. The question is on the passage of the resolution.

Mr. EDMUNDS. It is the furthest possible from my desire, as it is from that of the committee, I have no doubt, to unduly press this proposition upon the attention of the Senate; but we cannot shut our eyes to the fact that the present condition of affairs is far from being satisfactory in a legal point of view, and that if there is any measure that shall meet the approval, expressed in a constitutional way, of the people of the United States to settle what is confessedly a serious difficulty, one that alarms a great many people, and one out of which it is not easy to see a clear road now, that way ought to be as speedily taken as due consideration will allow. I think everybody will agree to that.

This amendment is not a new thing. It has been on the tables of Senators for more than six months; it was reported on the 12th of May; and yet at the same time listening to what the Senator from Missouri has said and the Senator from Indiana, I certainly do not feel at liberty really to insist upon coming to a vote upon it to-day, although it is extremely inconvenient to some gentlemen who are obliged by their duties to depart out of the city; but of course it is a matter of great importance and one that ought not to be passed hastily, neither ought it to be overdelayed so that if it is passed there may be some chance that the other House may have an opportunity to act upon it deliberately and diligently, and some chance that the Legislatures of three-fourths of the States may have a reasonable time to act upon it, in order that in the present momentous state of affairs which certainly exists, of anxiety if not of alarm, on the part of a large portion of the people of the United States, there should be some means found of getting on, and if on the other hand it should fail, then we ought not to be slow, but ought to be diligently deliberate in trying to find some other means of reaching a concurrent judgment in respect of the method and the scope of ascertaining the result of the last presidential election. So then, whether this is to fail or to succeed, it appears to me that we ought to dispose of it at the earliest moment consistent with what I conceive to be proper and due deliberation. I shall therefore consent to allow this resolution to go over until to-morrow, when I should hope that it would be disposed of. I will move, if necessary, to postpone it until to-morrow with the understanding that it shall be the unfinished business.

Mr. MORTON. I suggest to the Senator to let it go over until Monday. I think that is little time enough for a proposition of this very important character. I venture to say that there are scarcely two lawyers in the Senate who would agree about the extent of the jurisdiction to be conferred on the Supreme Court by this amendment. It calls upon us, for the sake of an emergency, to re-enact two of the most dangerous and I think two of the most objectionable provisions in the Constitution of the United States; to re-affirm, to establish anew the electoral college with all its dangers and all its faults, and to re-affirm and enact anew that the House of Representatives, each State having one vote, may elect the President of the United States. Before we commit ourselves to a further declaration in favor of these things at the end of one hundred years, when I believe that the thinking men of this country are satisfied both ought to be wiped out, we ought to have some time to consider. I hope my friend will let the resolution go over until next week.

Mr. EDMUNDS. Mr. President, I cannot consent to do that. That part of the Constitution and of this proposition which the Senator wishes to deliberate upon has been under the eye of the American people for nearly a century and nobody has succeeded in getting a vote in either House to change it in this whole century, and therefore it is not a novel proposition, and this proposition of the committee merely leaves that as it is. It does not undertake in trying to effect one object to reach half a dozen at the same time. Assuming that my honorable friend is perfectly correct, as I certainly should not agree in the fact, that the present Constitution is not right in the respect he mentions, it is the present Constitution and we all know what it means; but when you come to the point that this amendment does speak to, and that is not changing the character of the Government but providing a means of ascertaining what the will of the States is under the Constitution in the selection of President, and nothing else, then you have a question that is very simple and that is wholly disconnected from the question of whether the present institution of our system is the wisest possible or not or whether you can ever overturn it. My honorable friend may overturn it to-morrow if he can; and yet that does not affect the rightness or the wrongness of what we are endeavoring to do; and that is, taking our institutions as they are, to endeavor to provide a clear and definite remedy for what the Constitution does not seem to speak clearly and definitely upon, as to where the power lies to regulate and provide for ascertaining the will of the people under the Constitution as it is. So then, Mr. President, inasmuch as we have only two months before this present question must be determined in some way, it appears to me that we ought to be sufficiently in earnest one way or the other to dispose of this measure as soon as reasonable debate will allow.

Mr. FRELINGHUYSEN. Mr. President, I would suggest as the Senator from Missouri [Mr. BOGY] has indicated his readiness to discuss this subject to-morrow, that it is enough for us to decide at present to let it go over until to-morrow, and when to-morrow comes we can consider it further.

Mr. MORTON. There is a bill on our table which has twice passed the Senate, at the last session and the session before, to provide a method for counting electoral votes. After having passed at the last session, a motion was made to reconsider; which was adopted. The third reading was then reconsidered, and the bill is now before the Senate. If the emergency is simply the counting of the votes for President and Vice-President in February next, I suggest to my honorable friend from Vermont that he turn his attention to passing a bill providing for that and providing for that emergency only; but do not let us under the pressure of that emergency on a single case be driven into a constitutional amendment to last for all time, and driven into the re-enactment of the two most antirepublican and antidemocratic and the two most dangerous provisions of that instrument. Neither of them is republican; neither of them is democratic.

Mr. FRELINGHUYSEN. I should like to have an executive session.

Mr. WRIGHT. Before that is done, I ask unanimous consent at this time to make a report on a little bill from the House.

The PRESIDING OFFICER, (Mr. ANTHONY in the chair.) The Chair will receive it.

COURTS IN ARKANSAS.

Mr. WRIGHT. The Committee on the Judiciary, to whom was referred the amendment of the House of Representatives to the bill (S. No. 155) to amend sections 533, 556, 571, and 572 of the Revised Statutes of the United States, relating to courts in Arkansas and other States, which passed the Senate at the last session and went to the House and was sent back with an amendment, have instructed me to report it back and recommend that the Senate do not concur in the amendment of the House. I ask for its present consideration.

There being no objection, the Senate proceeded to consider the amendment of the House of Representatives, which was on page 2, line 6, to strike out the words, "the eastern district of Arkansas at Helena," and add to the section, "and in the eastern district of Arkansas the terms of the circuit court shall be held at Helena at the same time as the terms of the district court."

Mr. WRIGHT. I only desire to say that the original bill provided that the district court should have circuit court jurisdiction. This amendment proposes that the term to be held at Helena shall be held as a circuit court. We do not propose to concur in that amendment.

The amendment was non-concurred in.

EXECUTIVE SESSION.

Mr. FRELINGHUYSEN. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After fifteen minutes spent in executive session the doors were re-opened, and (at three o'clock and ten minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

TUESDAY, *December* 12, 1876.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of yesterday was read and approved.

REFORM SCHOOL FOR GIRLS, ETC.

Mr. WILLARD. I ask unanimous consent to have read and referred to the Committee on Appropriations the memorial which I send to the Clerk's desk.

There being no objection, the memorial was read as follows, and referred to the Committee on Appropriations:

To the Senate and House of Representatives of the United States in Congress assembled:

Whereas it is well known to your honorable body that, except the work-house and the common jail, there is no provision in the capital of the United States for the shelter of young ruined, deserted girls, who are driven by desperation to the fearful crimes of abortion and child-murder, nor for helpless infants, who are therefore subjected to violent death or to death by exposure on our streets, nor for the training and reformation of girls who have become vicious and abandoned, and are peopling the country with criminals;

And whereas existing laws in this District are so framed and executed as to protect men in the highest crimes against the souls and bodies of women and of poor, ignorant, and misguided girls, men of all ages and stations being permitted to seduce, or liberally reward procuresses for securing for them, new victims at every convenient opportunity, and being allowed to abandon the mothers and disown the children born out of wedlock, while all the legal penalties fall only upon the wretched mother;

And whereas all criminal legislation, to be permanently effective should tend

toward reform and remedy, toward the abolition of arbitrary, cruel, and barbarous distinctions against the weak and in favor of the strong, toward justice to women and kindness to children, toward securing to the State a multitude of trained, intelligent, and useful citizens, instead of an ignorant and vicious generation of outcasts and criminals, and should provide as liberally for the direct and immediate consequences of vice as it provides ways and means to fall into temptation and sin;

And whereas the District Legislature in 1873, in response to a petition from our best citizens, granted a charter for the establishment of a Girls' Reform School, and made an appropriation for the purchase of land, provided Congress would order the construction of buildings, which appropriation for land was lost through the failure of the Forty-third Congress to pass the bill for the construction of buildings, reported favorably by the Committee on Public Buildings and Grounds;

And whereas the long delay in making provision for these classes of persons has led to terrible suffering among young women and to fearful slaughter of infant life;

And whereas it has appeared in debate that there is a general kindly feeling in the House of Representatives toward the establishment of a suitable institution for these classes, and that negligence in passing the bill has not arisen from ignorance of the need, nor from indifference, but from the fact that the persons to be provided for are women, and not your constituents, while you believe it to be your first and constant duty to pass such measures as your constituents imperatively demand;

And whereas, although we cannot declare that your constituents imperatively demand this measure, we do declare that your constituents, the men of the United States, are largely responsible for the moral and social atmosphere and condition of the capital of the nation, and may more appropriately be taxed for the protection and care of these wretched women and for the education and training of their unfortunate children than for their arrest and punishment as criminals;

And whereas the citizens of this District support fifteen benevolent institutions which do not depend upon Congress for aid, although receiving inmates from every part of the United States and from every quarter of the globe, while Congress entirely supports but three and partially supports but four benevolent institutions, all of which are national in their character;

And whereas the care of the persons described in this memorial has fallen for years mainly on a few women, who are wholly unable to bear the expense or to save the sufferers from exposure and subsequent degradation: Therefore,

We pray your honorable body to immediately take from the Calendar H. R. bill No. 3763, add thereto the appropriations named therein as limits to the cost for land and for buildings for a Shelter for the Sick, an Infants' Home and a Reform School for Girls, and enact the same in such manner that it may be speedily effective.

And we further pray that you will appropriate a sum to be immediately available for the shelter and care of urgent cases of young women about to become mothers, in temporary quarters, until suitable buildings shall be constructed.

Board of trustees.—Sara J. Spencer, president; E. D. E. N. Southworth, vice-president; Ellen H. Sheldon, corresponding secretary; Susan A. Edson, M. D., recording secretary; Mrs. Le Droict Langdon, treasurer; A. G. Riddle, solicitor; John F. Cook, auditor.

Citizens.—R. J. Meigs, clerk supreme court District of Columbia; G. W. Phillips, District marshal; A. S. Solomons; Simon Wolf, recorder of deeds; Arthur McArthur, associate judge supreme court; Francis Miller; William Tindall; George F. Schayer; John Hitz; C. E. Prentiss; Charles H. Nichols, superintendent Hospital for Insane; A. C. Richards, superintendent of police; William B. Snell, judge of police court; D. K. Cartter, chief justice District court; J. O. Wilson, superintendent public schools; Ellen C. Sargent; Lucretia R. Garfield; Helen L. Sumner; Nellie B. Thompson; Rosina M. Parnell; Martha A. Snell; Frederick Douglass; C. Kennedy; A. S. Pratt; O. C. Wight; Mrs. A. G. Riddle; J. E. Rankin; Alex. T. Stuart, general secretary Young Men's Christian Association; M. A. S. Cary, and others.

I wish that this bill might be passed, and the sooner the better.

HENRY H. WELLS, *District Attorney.*

There is most pressing necessity for this institution. Common humanity demands it.

J. H. THOMPSON,
Surgeon-in-Chief Columbia Lying-in Hospital.

JOHN W. JENNINGS.

Mr. THROCKMORTON, by unanimous consent, submitted the following resolution; which was read and referred to the Committee of Accounts:

Resolved, That the Clerk of the House be authorized and required to pay John W. Jennings, late assistant doorkeeper, the salary of such officer from the date of his discharge, September 15, 1876, up to the day of the meeting of the second session of the Forty-fourth Congress, the 4th of December, 1876.

BLANKETS FOR REFORM SCHOOL.

Mr. BUCKNER, by unanimous consent, introduced a joint resolution (H. R. No. 169) authorizing the Secretary of War to supply blankets to the Reform School in the District of Columbia; which was read a first and second time, referred to the Committee for the District of Columbia, and ordered to be printed.

IRENA GARRETT.

Mr. MONROE. I ask unanimous consent to take from the Speaker's table and have referred to the Committee on Invalid Pensions Senate bill No. 980, granting a pension to Irena Garrett. I make this request on account of information received of suffering in a family which is entitled to the pension.

There being no objection, the bill was taken from the Speaker's table, read a first and second time, and referred to the Committee on Invalid Pensions.

MANUFACTURE AND SALE OF INTOXICATING LIQUORS.

Mr. BLAIR, by unanimous consent, introduced a joint resolution (H. R. No. 170) to amend the Constitution of the United States; which was read a first and second time, referred to the Committee on the Judiciary, and ordered to be printed.

Mr. BLAIR. I ask unanimous consent that this joint resolution be read at length and also published in the RECORD.

There was no objection.

The joint resolution reads as follows:

Joint resolution to amend the Constitution of the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of each House concurring therein,) That the following amendment to the Constitution be, and hereby is, proposed to the States, to become valid when ratified by the Legislatures of three-fourths of the several States, as provided in the Constitution:

ARTICLE —.

SECTION 1. From and after the year of our Lord 1900 the manufacture and sale of distilled alcoholic intoxicating liquors or alcoholic liquors any part of which is obtained by distillation or process equivalent thereto, or any intoxicating liquors mixed or adulterated with ardent spirits or with any poison whatever, except for medicinal, mechanical, chemical, and scientific purposes, and for use in the arts anywhere within the United States and the Territories thereof, shall cease; and the importation of such liquors from foreign states and countries to the United States and Territories and the exportation of such liquors from and the transportation thereof within and through any part of this country except for the use and purposes aforesaid shall be, and hereby is, forever thereafter prohibited.

SEC. 2. Nothing in this article shall be construed to waive or abridge any existing power of Congress, nor the right which is hereby recognized of the people of any State or Territory to enact laws to prevent the increase and for the suppression or regulation of the manufacture, sale, and use of liquors and the ingredients thereof, any part of which is alcoholic, intoxicating, or poisonous, within its own limits, and for the exclusion of such liquors and ingredients therefrom at any time as well before as after the close of the year of our Lord 1900; but until then and until ten years after the ratification hereof as provided in the next section, no State or Territory shall interfere with the transportation of said liquors or ingredients in packages safely secured over the usual lines of traffic to other States and Territories wherein the manufacture, sale, and use thereof for other purposes and use than those excepted in the first section shall be lawful: *Provided*, That the true destination of such packages be plainly marked thereon.

SEC. 3. Should this article not be ratified by three-fourths of the States on or before the last day of December, 1890, then the first section hereof shall take effect and be in force at the expiration of ten years from such ratification; and the assent of any State to this article shall not be rescinded nor reversed.

SEC. 4. Congress shall enforce this article by appropriate legislation.

JEFFERSON BOWERS.

Mr. STEVENSON. I ask unanimous consent to take from the Speaker's table a bill (H. R. No. 1588) for the purpose of concurring in the Senate amendments.

Mr. BLAND. I do not object to any mere reference; but I do object to bringing up any measure for action, and desire to call attention to the twenty-first joint rule.

Mr. STEVENSON. This is a bill granting a pension. The Senate has reduced the amount fixed in the House bill; and I ask that the House may concur in that amendment.

Mr. BLAND. I demand the regular order—the business of the morning hour.

Mr. STEVENSON. I ask the gentleman to withdraw his objection and let these amendments of the Senate be concurred in.

Mr. BLAND. I have no objection to the request of the gentleman, if it creates no debate.

There being no objection, Senate amendments to the bill (H. R. No. 1588) granting an additional pension to Jefferson Bowers, of Mason County, Illinois, were taken from the Speaker's table and read as follows:

In lines two and three of the bill strike out "at an increased rate of pension" and insert "at the rate of $8 per month."

In line 5 strike out "according to his present disabilities" and insert "which shall be in lieu of the pension now received by him."

The amendments were concurred in.

Mr. STEVENSON moved to reconsider the vote by which the amendments were concurred in; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

PAUPERS IN PROVIDENCE HOSPITAL, DISTRICT OF COLUMBIA.

Mr. HARDENBERGH, by unanimous consent, reported back from the Committee on Military Affairs a letter from the Secretary of War, transmitting a communication from the Surgeon-General concerning the support of certain paupers in the Providence Hospital, Washington, District of Columbia, and moved that the same be referred to the Committee on Appropriations.

The motion was agreed to.

Mr. HARDENBERGH moved to reconsider the vote just taken; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

JOINT RULES.

Mr. BLAND. I desire to call the attention of the Speaker to the twenty-first joint rule, and to demand the announcement of the morning hour so that the House may resume business where we left off last session.

The SPEAKER. The gentleman from Missouri [Mr. BLAND] demands the business of the morning hour; and the morning hour now commences at twelve o'clock and thirty minutes p. m. The gentleman from Missouri directs the attention of the Chair to the twenty-first joint rule, which the Clerk will read.

The Clerk read as follows:

After six days from the commencement of a second or subsequent session of Congress, all bills, resolutions, or reports which originated in either House, and at the close of the next preceding session remained undetermined in either House, shall be resumed and acted on in the same manner as if an adjournment had not taken place.

Mr. BLAND. Mr. Speaker, this is not only a joint rule, but——

The SPEAKER. The Chair would suggest that no debate is in order. If the recollection of the Chair is correct, the Committee on Mines and Mining at the last session exhausted their two hours and the question was on seconding the demand for the previous question upon the bill reported by them.

Mr. BLAND. The committee exhausted their time for reports and only called for action on the bill.

Mr. BURCHARD, of Illinois. The attention of the Chair has been called by the gentleman from Missouri to what is denominated the twenty-first joint rule. While I have no disposition to object to the resumption of the order of business to which the gentleman calls attention, I ask that Rule 136 of the House be read.

The SPEAKER. The rule will be read:

The Clerk read as follows:

136. After six days from the commencement of a second or subsequent session of any Congress, all bills, resolutions, and reports which originated in the House, and at the close of the next preceding session remained undetermined, shall be resumed and acted on in the same manner as if an adjournment had not taken place. And all business before committees of the House at the end of one session shall be resumed at the commencement of the next session of the same Congress, as if no adjournment had taken place.

The SPEAKER. The Chair will state that the one hundred and thirty-sixth rule of the House corresponds exactly with the requirements of the twenty-first joint rule. As the joint rule is arbitrary, using the word "shall," the Chair decides that the unfinished business in the morning hour at the last session has under that rule preference this morning and its consideration will be resumed accordingly.

Mr. GARFIELD. Under which rule?

The SPEAKER. Under both rules, the twenty-first joint rule as well as under the one hundred and thirty-sixth House rule.

Mr. GARFIELD. I rise to a question of order.

The SPEAKER. The Chair will hear the gentleman from Ohio on the point of order.

Mr. GARFIELD. I make no objection to the ruling of the Chair as to the resumption of the unfinished business of last session, because the one hundred and thirty-sixth rule of the House is conclusive on that point, and the gentleman from Missouri [Mr. BLAND] has the right to call up his bill; but if the ruling of the Chair implies that the twenty-first joint rule is in existence and binding upon this House, I most respectfully appeal from that decision.

Mr. BURCHARD, of Illinois. I did not believe it was necessary to appeal from the decision of the Chair, believing that the point made by the gentleman from Missouri under the one hundred and thirty-sixth rule of the House is correct, and that the unfinished business under the rule of the House should be resumed.

Mr. GARFIELD. I do not take the appeal from the decision of the Chair so far as it relates to the one hundred and thirty-sixth rule of the House.

Mr. BURCHARD, of Illinois. But the one hundred and thirty-sixth rule covers that point, and the question therefore does not arise whether the twenty-first joint rule is in force or not. Before the Chair decides the question whether the joint rules are in force, I wish to say there are some gentlemen on this side of the House who desire to be heard.

Mr. GARFIELD. I do not wish at all to delay the business of the House. I agree perfectly in the ruling of the Chair so far as it relates to the one hundred and thirty-sixth rule, and that is all that directly concerns us in this case. But the Chair has based his ruling in part upon the supposed authority of the joint rules. I wish to call the attention of the Chair to the fact that the very joint rules which have been referred to are not printed as the joint rules of this Congress, even in our own Digest. The heading in the edition of Barclay's Digest just published is as follows: "Joint rules and orders of the two Houses as they existed at the close of the Forty-third Congress."

The SPEAKER. The Chair will state that that was put in without the authority of anybody who had the right to do it.

Mr. GARFIELD. Besides the authority of the Digest, I refer the Chair to the Journal of this House—the official record whose authority will not be questioned. It has been the uniform practice of all who have kept the Journal of the House hitherto to insert the rules of the House and the joint rules of the House and Senate for the Congress to which the Journal relates. Here is the Journal of the House for the last session. The rules of the House for this Forty-fourth Congress are printed; and at the end of them, on page 1542, is this record:

The following resolutions will explain the omission herein of the joint rules of the two Houses, as heretofore.

And then follows the recitation of the resolution of the Senate of the 22d of January, 1876, adopting the joint rules as they then existed, with the exception of the twenty-second joint rule, and asking the concurrence of the House in their adoption. That resolution was received by this House, and was referred to the Committee on Rules, but never acted on. The House having thus failed to concur in the resolution of the Senate adopting joint rules for this Congress—the twenty-first joint rule among them—it follows that the Forty-fourth Congress has no joint rules.

Mr. SPRINGER. Let me ask the gentleman a question.

Mr. GARFIELD. Not until I have finished my statement, and then I will.

On the 14th of August last, a few days before our adjournment, the House passed a concurrent resolution "to suspend the sixteenth and seventeenth joint rules for the remainder of the session," and sent it to the Senate. The Senate in considering that resolution, the same day, replied to the House in these words:

Resolved, That the resolution of the House of Representatives presented this day in the following words:

"*Resolved by the House of Representatives, (the Senate concurring,)* That the sixteenth and seventeenth joint rules be suspended for the remainder of the session"—

be respectfully returned to the House of Representatives with the statement that as the House of Representatives has not notified the Senate of the adoption of joint rules for this present session, as proposed by the resolution of the Senate of the 20th day of January last and transmitted to the House of Representatives on the 22d day of the same month, there are no joint rules in force.

This resolution the Senate adopted without a dissenting vote, and of course without distinction of party. Thus in the most formal way the Senate declared to the House that the joint rules theretofore in force by the consent of both Houses were not the rules of this Congress. This is the authoritative testimony of our own Journal.

The same question arose in the Senate last week, on a point of order, as appears in the CONGRESSIONAL RECORD, on Saturday last, and by a vote of 50 to 4, the Senate again re-affirmed its former decision that there are no joint rules of the two Houses now in force; and in this a large majority of both political parties in that body concurred.

Thus our own records and the records of the Senate disclose the fact that there are now no joint rules other than this, that the House for example, appoints a Committee on Printing, empowered to act with a similar committee which the Senate may appoint, and thus we have a joint committee by special order of the two Houses acting separately, but not concurrently. The same may be said of the Committees on the Library, and perhaps of one or two other committees. But so far as joint rules are concerned, manifestly there are none for this Congress.

But I wish to state the case on another ground, entirely independent of this. The Constitution empowers each House to determine its own rules——

Mr. McCRARY. On that point, if the gentleman will allow me to interrupt him, let me say that the Speaker of the House made a decision in this Congress. I have before me that decision.

Mr. GARFIELD. I will yield to have it read.

Mr. McCRARY. I send to the desk to be read the passage which I have marked from the CONGRESSIONAL RECORD of December 6, 1875, page 174.

The Clerk read as follows:

Mr. RANDALL. I submit the following resolutions

"*Resolved*, That the rules of the House of Representatives of the Forty-third Congress shall be the rules of the House of Representatives until otherwise ordered, except Rule 166 and Rule 167.

"*Resolved further*, That a committee of five, to consist of the Speaker and four members, to be named by him, be appointed, to whom shall be referred the rules of the House, who shall report all such amendments or revisions of the same as they shall think proper, and such reports shall always be in order to be made."

Mr. GARFIELD. I rise to a point of order.

Mr. RANDALL. I demand the previous question.

Mr. GARFIELD. I rise to a point of order. I object to the resolution under the existing rules, which are our rules without a declaration of this sort.

Mr. RANDALL. I submit that both these resolutions are strictly in order. I propose that we adopt the rules of the last House, with the exceptions stated. As to the second resolution, I will say there is no rule providing for the appointment of a Committee on Rules. The gentleman from Ohio [Mr. GARFIELD] is therefore mistaken on this point.

Mr. GARFIELD. That particular point is not what I object to. I object to the first branch of the gentleman's resolutions, on the ground of immemorial usage.

Mr. RANDALL. The gentleman has a perfect right to object by voting against the resolutions, but in no other manner.

Mr. GARFIELD. I submit that this is not a privileged question.

The SPEAKER. Does the gentleman make that point of order?

Mr. GARFIELD. I do.

The SPEAKER. The Chair overrules it, on the ground that the Constitution clearly gives to each House the right to adopt its own rules. Whatever may have been the rules or orders of a preceding House in reference to this matter, they cannot supersede the constitutional right of this House to adopt its own rules.

Mr. RANDALL. The Speaker is clearly right.

Mr. GARFIELD. I submit that these resolutions should be referred to the Committee on Rules when appointed.

Mr. RANDALL. There is no rule of this House, and there was no rule of the last House, by which a Committee on Rules can be appointed. It is only by a resolution of this character that the Speaker can be authorized to appoint a Committee on Rules.

Mr. GARFIELD. The gentleman will find that immemorial usage is in itself a rule.

Mr. RANDALL. Immemorial usage will do for that side of the House, but we mean to have strict construction of the rules. [Laughter.] For the information of the House, let the rules excepted be read.

The SPEAKER. The Chair desires to state just at this point that the reading of the RECORD in a most remarkable manner confirms the present judgment of the Chair in the position he takes. It will be observed that neither in the resolution nor in the subsequent debate is the word "joint" ever used, and no reference was made in the proceedings just read to joint rules; implying, therefore, that the joint rules were to be reached in some other way than by the action of the House.

Mr. SPRINGER rose.

Mr. GARFIELD. I have but a few words more to complete what I was about to say. At the time when the point was made last session we had been proceeding one day in legislation, and there had been no dissent from the proposition that the rules were in existence. I made the point of order that the motion to amend the rules should lie over one day.

But the Speaker—our late Speaker, Mr. Kerr—ruled that, in view of the constitutional power of each House to make its own rules, even the notice of a day was not necessary in the beginning of its existence to adopt any rules it chose; and I bowed respectfully to the decision of the chair much gratified to know that the gentleman who now worthily fills the Chair, entirely concurred in the ruling of the Speaker.

To the point just now made by the Chair, that the debate on that occasion related solely to the rules of the House and that no word was said about the joint rules, I respectfully respond that there are no rules, whether joint or several, that bind this House except by its own consent. The proposition that a joint rule enacted by a former Senate and House has any more authority over this House than a House rule adopted by a former House, I may be permitted to say, if not wholly absurd, is certainly indefensible in logic and law.

The SPEAKER. Will the gentleman allow the Chair to ask him a question just there?

Mr. GARFIELD. With pleasure.

The SPEAKER. The Chair would ask the gentleman from Ohio whether he has not himself frequently in former Congresses submitted a motion to suspend the sixteenth and seventeenth joint rules without those rules having previously been adopted by those Congresses.

Mr. GARFIELD. I admit that freely; and for the reason that whenever either House proceed without protest under the rules, when no question is raised by either House, there is an implied assent by the new Congress to adopt the rules of the former Congress. There have doubtless been cases in which no resolution has been passed by a new Congress adopting the rules of the former Congress; but in such cases, by the tacit consent of both Houses, the old rules have been continued. Now I have no doubt that the Speaker himself, when he was a member on the floor, has frequently moved to suspend the rules of the House on the first Monday of the first session of a Congress before any action had been taken on the rules, thereby assuming that the rules were in force. But I press this point upon the Chair, that, call it by what name we may, call it joint rule or House rule, any rule that binds us is a rule of the House; and the Constitution empowers each House to determine its own rules, by whatever name they may be known. Every rule that governs the proceedings of the Senate; every rule that governs the proceedings of the House, known by what name soever, joint or several, must be under the control of each of the two bodies separately in accordance with the Constitution; and when the Senate at last session re-adopted by a concurrent resolution all the joint rules except one, they thereby disclaimed the old rules until the House should concur in their action. That the House has not done. And the assumption of the ruling of the Chair to-day is that this House can bind the Senate to be governed by some rules that it does not consent to; and of course, on the same principle, this House can never be released from the rule made by a former Congress in the form of a joint rule, unless the Senate consents to such release. And in that way a Congress that existed eighty years ago can bind all later Congresses forever if either House chooses to adhere to a rule against the consent of the other. Such a construction absolutely destroys the constitutional prerogative and privilege of the House, and also of the Senate.

Now, the fact is, that we have never adopted joint rules for the Forty-fourth Congress; that we have never concurred with the Senate in the rules they proposed to adopt; that the two presiding officers of this House, the presiding officer of the Senate, and the Senate itself, and our own Journal, and our body of rules as stated in the Digest, all concur in the view that there are no joint rules of the Forty-fourth Congress. There is no body of rules printed in any book that purports to be the joint rules of the Forty-fourth Congress.

Mr. REAGAN. Will the gentleman allow me to ask him a question?

Mr. GARFIELD. I will yield for a question.

Mr. REAGAN. I desire to ask for information whether the Forty-third Congress or any preceding Congress ever adopted the body of joint rules, as such, which had been in force in a previous Congress?

Mr. GARFIELD. I will say to the gentleman that in the early history of Congress there were no concurrent joint rules passed in the form in which we have of late years passed them. This was the method: The Senate, for example, made an order in regard to the intercourse of the Senate with the House, such as the delivery of bills or the proceedings of a conference committee, and informed the House that they had adopted such an order. The House then adopted an order of its own *in totidem verbis*, so that, each House making the same order, it served the purposes of a joint rule, but was absolutely under the separate control of each House.

Mr. REAGAN. What I desire to have the gentleman answer in a word is this: did the House ever adopt the joint rules as the gentleman from Ohio [Mr. GARFIELD] now insists this House ought to have done?

Mr. GARFIELD. I do not know that they ever did. These rules have frequently been adopted by tacit consent, without formal action. In conclusion I wish to say that I cannot make an appeal from the ruling of the Chair in the pending case without appealing from one portion of his ruling which is perfectly correct. His ruling as to this bill is perfectly correct under Rule 136 of this House. I cannot take exception to his ruling and appeal from it without appearing to involve myself in the contradictory position of appealing from a just ruling under our own rule. I do not wish in an incidental and collateral way to bring the House to a vote upon this question without time for deliberation. It is manifest that a very grave public question may turn upon the existence or non-existence of the twenty-second joint rule. I prefer that the discussion of that question shall come upon a direct issue, with opportunities for full debate and when the ruling is upon that point alone. I have accomplished my object by stating the grounds of my objection to the incidental ruling of the Chair, and I therefore withdraw my appeal from his decision.

The SPEAKER. The Chair desires to state——

Mr. SPRINGER. I understood the gentleman from Ohio [Mr. GARFIELD] to agree to allow me ask him a question.

Mr. GARFIELD. If the Speaker will allow me, I will be glad to hear the question of the gentleman from Illinois [Mr. SPRINGER] and to answer it if I can.

Mr. SPRINGER. I understood the gentleman from Ohio to state that these joint rules were the joint rules as they existed at the close of the Forty-third Congress. Did I understand him correctly?

Mr. GARFIELD. Will the gentlemen state his question again?

Mr. SPRINGER. I understood the gentleman to state that these joint rules were the joint rules as they existed at the close of the Forty-third Congress.

Mr. GARFIELD. I read that statement from the heading of page 207 of the Digest, and said that that was the only entry here in relation to the joint rules.

Mr. SPRINGER. Do I understand that these are the joint rules as they existed at the close of the Forty-third Congress?

Mr. GARFIELD. So this statement would seem to indicate.

Mr SPRINGER. Is that the statement of the gentleman from Ohio?

Mr. GARFIELD. I said nothing about that; I only said that that was the only record here. How long the joint rules have existed, when they began to exist, or when they ceased to exist, I have not discussed.

Mr. SPRINGER. Will the gentleman give an opinion as to whether these joint rules were in existence at the close of the Forty-third Congress?

Mr. GARFIELD. When I have examined the question I will be glad to give the gentleman the result of my examination.

The SPEAKER. The Chair desires to say that he does not wish by any statement or ruling of his to anticipate this question. The Chair, however, wishes to mention as a matter of fact that this House, composed of the same gentlemen who now sit here, did at the end of the last session of this Congress, recognize the fact that the joint rules were in existence, by unanimously adopting a resolution to suspend the sixteenth and seventeenth joint rules.

Mr. SPRINGER Allow me to say further, in explanation of the question I put to the gentleman from Ohio, [Mr. GARFIELD,] that these joint rules have never been re-enacted or re-adopted by any subsequent Congress from the foundation of the Government to the present time. The twenty-second joint rule was universally conceded to be in force and was acted upon in 1869 and in 1873, in counting the presidential vote, and was never adopted but once, and that in 1865. The very language of the twenty-second joint rule implies that it was to be a continuous rule for all future elections of President and Vice-President. The rule provides that—

> The two Houses shall assemble in the Hall of the House of Representatives at the hour of one o'clock p. m. on the second Wednesday in February next succeeding the meeting of the electors of President and Vice-President of the United States, &c.

This language applies to all cases. The rules for governing the joint sessions before 1865 were only applicable to the particular election then pending.

Mr. HOAR. Will the gentleman allow me to ask him a question?

Mr. SPRINGER. I will.

Mr. BLAND. I call for the regular order and ask that the pending bill be read.

The SPEAKER. The gentleman from Missouri [Mr. BLAND] will be kind enough to withdraw his call for a moment. The Chair desires to hear everything upon this point. Debate has been allowed to proceed at some length by unanimous consent, and perhaps it would be a saving of time in the future if gentlemen be allowed now to understand each other.

Mr. HOAR. The question I desired to put to the gentleman from Illinois [Mr. SPRINGER] was this: Whether, in his judgment, a rule of action which has been handed down by tacit consent from Congress to Congress, as to the mode of proceeding of the two Houses, is not necessarily abrogated by a message from one of them to the other that it considers such joint rule no longer in force. Otherwise, is it not true that this House is bound, not merely by the act of a previous House, as in the case of its own rules, but by the act of a previous Senate in which the present Senate does not concur?

Mr. SPRINGER. I will answer the gentleman's question. If the doctrine is maintained that when a joint rule has been established between the two Houses one of those Houses may abrogate that rule at its will, then I see no necessity whatever for adopting a joint rule, because after the rule has been made it does not bind either of the parties to the agreement.

Mr. HOAR. A joint rule of two parliamentary bodies, each of which is entitled by the Constitution to determine its own method of proceeding, (that is what the Constitution means,) is necessarily an agreement to proceed in a certain way so long as both concur.

The SPEAKER. The Chair will state, in reply to the gentleman from Massachusetts, that the history of legislation between the two Houses as to these joint rules since their original adoption shows that action upon the subject has always been in the form of additions or amendments to those joint rules, which, without re-adoption, have continued to be recognized, accepted, and acted on; and, as continu-

ously operative, have been printed in the successive editions of the Digest.

Mr. KASSON. That only shows that the two Houses, by that mode of expression, consented to the continuance of the joint rules.

The SPEAKER. The Chair thinks that any action which requires the concurrence of two bodies to enact or make it binding requires the concurrence of those two bodies for its abrogation.

Mr. SPRINGER. I did not finish my answer to the question of the gentleman from Massachusetts. He will observe that a joint rule is adopted by a concurrent resolution, which declares:

Resolved by the Senate, (the House of Representatives concurring therein), That the following be added to the joint rules of the two Houses of Congress.

Now as a concurrent resolution can not be repealed by one body without the consent of the other——

Mr. HOAR. Does the gentleman say that a rule adopted by a concurrent resolution of the two branches of Congress at the beginning of the Government binds successive Houses of Representatives forever until the Senate abandon it?

Mr. SPRINGER. Until both Houses abandon it. That is my position, and the gentleman from Massachusetts, in 1873, on the occasion of counting the electoral votes for President, objected to the counting of three votes from the State of Georgia which had been cast for Horace Greeley. The gentleman objected on the ground that Mr. Greeley was dead at the time those votes were cast; and the objection was based upon the existence of the twenty-second joint rule, which had never been re-enacted since its original adoption in 1865.

Mr. HOAR. Both Houses were then acting under that rule by consent.

Mr. SPRINGER. It had never been re-adopted, and it had no validity except by virtue of its original adoption in 1865. Yet it was recognized as continuously operative by the unanimous verdict of both branches of Congress at two successive counts of presidential votes. That recognition had the concurrence of the gentleman from Massachusetts as well as other members upon that side of the House.

Mr. HOSKINS. I would like to put one question to the gentleman from Illinois before he takes his seat. If he holds that these joint rules can never be abrogated except by the consent of the two Houses, I would like to put this inquiry: When the Senate has abrogated or refused to recognize these rules, by what power or authority can the House or any other body enforce the observance of them by the Senate?

Mr. SPRINGER. We cannot compel the Senate to abide by its own rules. That body may, if it chooses, act as if it were a law unto itself; but we can on our part abide by those joint rules; and we propose to do it. [Applause in the galleries.]

Mr. BURCHARD, of Illinois. I would like to call the attention of my colleague to the third paragraph of article I, section 7, of the Constitution:

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him.

If the rule now under discussion has the force of law to bind the two Houses, I ask the gentleman to show that it has ever been presented to the President of the United States.

Mr. SPRINGER. I will answer my colleague. Under the Constitution, amendments to that instrument before being submitted for ratification must receive the concurrence of two-thirds of both Houses of Congress; yet they have not, in all cases, been presented to the President of the United States for his signature, because the Constitution requires only that they be submitted for ratification by a two-thirds vote of each House.

Mr. BURCHARD, of Illinois. But the method of proposing a constitutional amendment is expressly provided for by the Constitution itself and is not in the same category as a law or "order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary."

Mr. SPRINGER. This joint rule is the law of the land to-day by virtue of its original adoption, although the President never signed it.

Mr. BURCHARD, of Illinois. The gentleman does not answer my question.

Mr. SPRINGER. I thought I did.

Mr. BURCHARD, of Illinois. The gentleman merely refers to a case which he says bears upon this question, but which was the method of procedure in case of amendments, provided for by the Constitution itself.

Mr. SPRINGER. I say it is a very good precedent in this case.

Mr. BURCHARD, of Illinois. I ask the gentleman how he reconciles his view in regard to the validity of the joint rules with the provision of the Constitution I have quoted.

Mr. SPRINGER. I refer to a precedent in the adoption of an amendment to the Constitution of the United States, which amendment is binding now upon the whole country. In 1865 the two Houses of Congress adopted this twenty-second joint rule. Congress was then republican in both branches, and the President was also a republican. But it did not occur to any of the gentleman's party then that the signature of the President was necessary to give the joint rule validity. Nor did it ever occur to anybody that that rule was not in force until those who made it discovered that it did not meet the particular case which must now be settled under it.

Mr. McCRARY. Before asking to have read the decision of the Speaker of this House given at the opening of this Congress, I beg to say one word upon that point, reserving to myself of course the privilege of discussing the subject at length when it shall come up again in a more formal manner.

The SPEAKER. The Chair recognizes the gentleman from Iowa, [Mr. McCRARY,] but he will remember that this debate is proceeding by unanimous consent, and therefore he will be limited as to time.

Mr. McCRARY. I shall occupy but a moment.

The SPEAKER. The Chair cannot recognize the gentleman as holding the floor for one hour, and thus cut off other gentlemen who may wish to speak briefly upon the point of order.

Mr. McCRARY. I do not expect that at all. I merely say that I reserve to myself the privilege of discussing this subject at length hereafter. I desire now simply to state that at the beginning of this Congress the Speaker of this House decided that each House had, under the Constitution, the absolute right to make its own rules, the rules which should govern its proceedings; and for that reason and upon that ground he held that the rules which had prevailed and been adopted in the Forty-third Congress were not in force at the beginning of the Forty-fourth.

That decision, Mr. Speaker, covers the whole ground of this controversy beyond all question. It does unless gentlemen will say that a joint rule adopted for the government of the two Houses is not a rule for the government of the House of Representatives; and a position like that cannot for one moment be maintained. Whether it be a rule of this body alone or a rule which this House of Representatives has adopted to govern its intercourse with the other body, it is a rule, and each House has the absolute right, under the Constitution, to make its own rules, not only to govern itself, but to govern its intercourse with any other body or any other authority under this Government. The contrary doctrine simply implies that the Senate of the United States, if by any means this House shall inadvertently agree to a bad or injurious rule, can hold us to it, if it be a joint rule, for one hundred years.

The joint rules relate to the proceedings of the House. They are rules to all intents and purposes for the government of the House in its proceedings, and if we give up the right of each House to make its joint rules or to consent to joint rules, we concede the whole question. I say, therefore, that the decision of the Speaker that each House shall make for itself all its rules, and that no other House can be bound by the action of any preceding House in the matter of its rules, covers the whole ground.

The SPEAKER. The Chair will say in reply to the gentleman from Iowa that he knows of no means of coercing the Senate if they choose to nullify a joint rule. The Senate may so proceed, but it does not follow therefore that the House should not be guided by the joint rules, and especially when the House is reminded of the fact that the two Houses, the Senate and the House of Representatives, so far as the action directed by the twenty-second joint rule is concerned, have three several times operated under that very twenty-second joint rule in counting the electoral votes for President and Vice-President, and so far as the Chair is concerned he is unaware of any good reason why it should not in that regard be followed once more.

Mr. HOAR. I desire to make one point——

Mr. KASSON. I wish to ask the Chair simply a parliamentary question.

The SPEAKER. The Chair will be glad to hear the gentleman.

Mr. KASSON. Can there be a joint rule to which both Houses are not at the time agreed? Does it not cease to be a joint rule the moment either House dissents?

The SPEAKER. The very fact of their title, showing that they are joint rules, operates in the judgment of the Chair to make them binding on both bodies until they are vacated.

Mr. KASSON. By one House?

The SPEAKER. The Chair did not say so.

Mr. HOAR. I believe I have the floor.

The SPEAKER. The gentleman from Massachusetts is entitled to the floor.

Mr. HOAR. I wish to call the attention of the Chair, and of the House, and of the country to the *reductio ad absurdum* of the proposition which is now advanced, and which is created by the very case to which it is proposed to apply it. A question has arisen in the House of Representatives, not of the mode of communicating with the Senate, not of the mode of meeting the Senate in joint convention, but in what order in its morning hour it shall take up its own business, and shall proceed with matters which are absolutely within its own jurisdiction, to wit, considering, amending, and disposing of a House bill. That is the proposition before us.

Mr. BLAND. I should like to ask the gentleman from Massachusetts if this side of the House can do that if they raise this question?

Mr. HOAR. The gentleman from Missouri must excuse me for a moment until I get through with my statement—that, being a matter of proceeding of the House with which no other person, authority, or power in this Government has any concern, the Constitution of the United States saying that each House shall adopt the rules of its own proceedings, and the present occupant of the chair having insisted and the House having ruled that means each new House as it assembles every two years, it is said we are bound to deal with House bills in a particular order because our ancestors in 1789 promised the

Senate they would; and although the Senate has long since absolved us from that, declaring the joint rules are not in force, still we have to proceed under their operation until time shall be no more.

The SPEAKER. The Chair desires to state to the gentleman from Massachusetts——

Mr. HOAR. I have not yet concluded.

Now, Mr. Speaker, I am willing to have any collection of school-boys, or any collection of statesmen, in this country able to understand those principles of parliamentary law which, somebody has said, every American citizen knows by instinct in his cradle, consider such a proposition as that.

The SPEAKER. The Chair desires to state very respectfully to the gentleman from Massachusetts, that his own record, and his own conduct, and his own sayings on this floor heretofore, are part of the information which he relies upon, in a measure, for the decision he has just made, that the joint rules of the two Houses are still in force.

Mr. SPRINGER. The gentleman from Massachusetts [Mr. HOAR] has stated that it would be worthy only of a lot of school-boys to entertain this view; and as we desire to be instructed——

Mr. HOAR. I hope the gentleman will not misunderstand me. I said nothing of the kind.

Mr. SPRINGER. The gentleman said something about a collection of school-boys. What he said was at least an appeal to the school-boy for information. Now, I have some information here on this subject; not from a school-boy, but from a distinguished gentleman, a friend and late colleague of the gentleman from Massachusetts and also a member of the Forty-fifth Congress, who has given his opinion upon this subject. I send to the desk, and ask to have read, the opinion of General Butler [laughter] on this question. It will be seen that at least one distinguished lawyer in this country differs from the distinguished gentleman from Massachusetts.

The Clerk read as follows:

[From an interview in the Herald.]

REPORTER. Do you think, then, that the two Houses must agree on the votes before they can be counted?

General BUTLER. If any instrument says that A and B are to do a thing—for example, to make an award or enter a judgment—can A do it without B or B do it without A? If both Houses are to count by the Constitution, can one count without the other? If so, which? If our republican friends in Louisiana, in their letter, had claimed the right in the President of the Senate to adjudicate as to the propriety or rightfulness of the electoral vote when they made the claim that he was to count them, I should have thought it very significant; but as they have insisted that he is merely a machine or clerk to register what may be sent him, I do not think the democratic party will be likely to be much moved by their manifesto, which certainly leaves the President of the Senate about as harmless a piece of clock-work as could well be imagined, it being his only duty to tick out what is placed in the wheels. I believe that whoever has the counting of the vote in the last resort to determine an election has a right to scrutinize that vote, ascertain its legality, its fairness, and truthfulness, and whether it represents in the case of a vote by proxy, as the electors are, the will of the people who are their constituents. All that, of course, cannot be done by the President of the Senate, and therefore must be done by the two Houses. If it can be done by the President of the Senate, then the most alarming stride against the rights of the people has been taken when the claim is made that the President of the Senate is to count the votes.

Mr. SPRINGER. The point in this to which I desire to direct the attention of the gentleman from Massachusetts [Mr. HOAR] is that the two bodies, the Senate and the House, are required to concur in passing a joint rule; and if it requires the two bodies to concur in the establishment of a joint rule, I think it is an extreme *reductio ad absurdum* for the gentleman to assert that one body may abrogate that rule without the assent of the other.

GOLD AND SILVER COINAGE.

The SPEAKER. The gentleman from Missouri [Mr. BLAND] is entitled to the floor on the bill (H. R. No. 3635) to utilize the product of gold and silver mines and for other purposes, reported back from the Committee on Mines and Mining with amendments; and the Chair will state that unless objection be made he will not take the time, which has been consumed in the discussion this morning, from the morning hour. He does not think it should be fairly counted against the morning hour, and, therefore, alters the time of the beginning of the morning hour from half-past twelve o'clock to fifteen minutes past one o'clock.

Mr. BLAND. I ask for the reading of the bill.

The bill was read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That coin-notes of the denomination of $50, and multiples thereof up to $10,000, may, in the mode hereinafter provided, be paid by the several mints and assay offices at San Francisco, Carson City, Philadelphia, and New York, for the net value of gold and silver bullion deposited thereat; and of the bullion thus received not less than 75 per cent. in coin or fine bars shall at all times be kept on hand for redemption of the coin-notes, gold for gold, and silver for silver. The gold deposited shall be computed at its coining value, and silver at the rate of 412.8 grains standard silver to the dollar, less the lawful mint charges, and such charge for transportation from the several assay offices to the mints for coinage, and from the latter to the assistant treasuries respectively at which the coin-notes shall be payable.

SEC. 2. That for bullion deposited at the mints of San Francisco and Carson the coin-notes issued shall be redeemable on demand at the assistant treasury at San Francisco; and for bullion deposited at the Philadelphia Mint and assay office at New York the notes shall be redeemed at the assistant treasury at New York.

SEC. 3. That the Secretary of the Treasury shall from time to time cause coin and fine mint-bars (stamped) to be transferred from the mint to the assistant treasuries at San Francisco and New York in such amounts as may be necessary for the redemption of the coin notes.

SEC. 4. That the coin-notes issued under the provisions of this act shall be receivable without limit for all dues to the United States; and the coin mentioned in this act shall be a legal tender for all debts of the United States, public and private, not specified to be paid in gold coin.

SEC. 5. That the gold-coin notes issued under this act shall be redeemed on presentation in gold coin or fine bars, and silver in silver dollars or fine bars.

SEC. 6. That the coin notes authorized by this act to be issued shall be prepared under the direction of the Secretary of the Treasury, and shall be transferred to the mints and assay offices named in this act as a part of the bullion fund, and from which fund deposits shall be paid for in coin or coin notes at the option of the depositor.

SEC. 7. That the fine gold and silver bars by this act authorized to be issued shall bear the mint stamp of fineness, weight, and value, and the value of the gold bars shall be computed according to their coining rate and the silver bars at their coining value in dollars.

SEC. 8. That the Secretary of the Treasury shall prescribe the necessary regulations for carrying into effect the provisions of this act.

Mr. KASSON. Are there not some amendments pending?

The SPEAKER. Yes, sir; the amendments will be read.

The amendments were read.

The amendments reported by the Committee on Mines and Mining were as follows:

At the end of line 17, section 1, add the following:

And there shall be coined at the mints of the United States the silver dollar hereinbefore mentioned.

In line 4, section 4, strike out the words "of the United States."

The amendment proposed by Mr. LYNCH was as follows:

Strike out section 4 of the bill.

The amendment proposed by Mr. CASWELL was as follows:

Insert after the words "United States," in line 3, section 4, the words "except duties on imports and the interest on the public debt not required to be paid in gold coin;" and add to the section the words "except duties and interest as aforesaid."

The SPEAKER. The question before the House is upon seconding the demand for the previous question on the bill and amendments.

Mr. BLAND. For the purpose of making a few remarks, I will withdraw for a moment the call for the previous question. I desire to state that among those who favor the remonetizing of silver there is quite a divergence of opinion. I find that many are in favor of restoring the silver dollar of 1837, which consists of 412.5 grains of standard silver to the dollar, restoring its legal-tender character as existing at that time, and until 1873. This divests the proposition of the sections relating to the depositing of bullion and other matters connected with the bill as it has now been read at the Clerk's desk; and for the purpose of meeting these views and to get the question before the House that a choice may be made between the two propositions, I will submit as a substitute what I now send to the desk, and which may be voted upon after the previous question shall have been seconded.

The Clerk read the proposed substitute, as follows:

A bill authorizing the coinage of the standard silver dollar, and restoring its legal-tender character.

Be it enacted, &c., That there shall be from time to time coined at the mints of the United States silver dollars of the weight of 412½ grains standard silver to the dollar as provided for in the act of January 18, 1837, and that said dollar shall be a legal tender for all debts public and private, except where payment of gold coin is required by law.

Mr. BLAND. That bill is substantially the bill that was introduced and voted upon twice at the last session of Congress; which was introduced by the gentleman from Pennsylvania [Mr. KELLEY] and received an almost two-thirds vote of this House. I am reminded by gentleman that there has been a commission appointed to investigate this subject, and that it may be proper to postpone its consideration until the report of that commission shall have been made. But, Mr. Speaker, this session is a short one. The political condition of the country is now agitating the public mind and occupying the attention of members of this House, and of gentlemen at the other end of the Capitol, and I am not sufficiently advised to say at what time this commission may be able to make a report. Indeed, I think I would be warranted in saying that under present circumstances no report can be made in time for action in this House and in the Senate. Besides, Mr. Speaker, I think if the friends of this measure desire to do anything at this session of Congress, it is well that they shall pass some bill here and send it to the Senate for action there. And if this commission appointed for the purpose of investigating this subject desires to amend any proposition that we send to the Senate they will have ample opportunity to do it there, and this House can then agree to such amendment or not, as it thinks proper.

But I say that if we intend to act upon this subject at this session of Congress, the sooner we get this bill to the Senate the better, the sooner we get it out of this House and before the Senate the better, I think, for the success of this bill even in this House. This is evidently not a session for business, and the nearer we draw to the time of counting the presidential votes, the more excitement we find in this House and the less opportunity there is for the consideration of the business that comes over from the last session. For that reason I insist upon action now, so that whatever action this House may take may go to the Senate. If the commission which was appointed for the purpose of reporting upon this subject desire to amend our proposition or to substitute something else for it, there will be ample opportunity to do so in the Senate, and the House will then have an opportunity to pass upon it.

Mr. COX. Will the gentleman allow me one moment?

Mr. BLAND. Certainly.

Mr. LYNCH. I desire to raise a point of order on the proposed substitute?

The SPEAKER. The gentleman will state his point of order.

Mr. LYNCH. My point of order is this: the gentleman from Missouri, [Mr. BLAND,] as chairman of the committee reporting this bill, was directed by the committee to permit only two amendments to be offered to it and then to demand the previous question upon the bill and amendments for the purpose of testing the sense of the House upon them and them alone, I submit that it is not in order for the gentleman now to offer an entirely new propositon, one that has not been considered by the committee, one that he was not authorized by the committee to submit, and which is in direct violation of the instructions of the committee.

Mr. BLAND. In answer to that I will state——

The SPEAKER. The Chair desires to state that that is not a point of order. It is a question between the gentleman from Missouri [Mr. BLAND] and the committee that he represents in this matter.

Mr. BLAND. I desire to state that the gentleman is altogether mistaken. The committee, at a regular meeting for the purpose, agreed that this substitute might be offered and voted upon, and I was authorized to offer it for that purpose.

Mr. LYNCH. As a member of the committee, I was not aware that the committee had a meeting for this purpose, and never was informed that there was to be such meeting. I was, therefore, not informed of the action that was taken. With that explanation I withdraw the point of order.

Mr. BLAND. A meeting of the committee was called, and the clerk of the committee was directed to notify each member of the committee of the time of meeting.

Mr. COX. I wish we could defer action on this measure. This House is not in a condition——

Mr. BLAND. I did not yield for a speech; I supposed the gentleman desired to ask me a question.

Mr. COX. I will ask this question: whether the gentleman does not think it eminently prudent and wise, considering the present condition of this House and of the country, and the fact that a commission has been raised to examine and report upon this question, of which commission the gentleman himself is a member, to postpone action upon this subject for the present, when we know that no immediate action will be taken upon it by the Senate?

Mr. KELLEY. How do you know?

Mr. COX. No law upon the subject will be passed at once. Although I concur with my friend in many of his views, I do not desire to vote upon a measure of this transcendent importance, without having the benefit of some careful report from the commission which we raised at the last session of Congress.

Mr. BLAND. In answer to the gentleman I will say that I am aware that there were some here during the last session, who for a month, by filibustering motions and other methods sought to obtain a continuance of this subject until this session of Congress.

Mr. COX. I was not among them.

Mr. BLAND. And I suppose that the gentlemen who were opposed to it then are still opposed to it, and propose to defeat this bill if possible. I say now that if we intend to act upon it at all, if we intend that this or some similar bill shall become a law, we will act upon it now. In my opinion there was scarcely a congressional district in the last election where each candidate did not discuss this question before the people. And now to talk of a necessity for further discussion of a measure that has been discussed for nearly a year in the public press, and upon the hustings and everywhere else, is simply a subterfuge and can be intended only to defeat this bill. It is true that a commission was raised by Congress at its last session to investigate and report upon this subject, but I believe the only design of raising that commission was to defeat the passage of this bill. In my opinion that fact should not govern our action here. This bill is legally and properly before this House and we should not shirk the responsibility of voting upon it now.

Mr. COX. Allow me to correct the gentleman.

The SPEAKER. Does the gentleman yield?

Mr. BLAND. For a question.

Mr. COX. For a correction. The proposition for a commission was not reported to this House for the purpose the gentleman states. To my certain knowledge it was first introduced into this House by my colleague from New York, [Mr. HEWITT,] and was considered with reference to other matters connected with our currency. It was never intended to embarrass the bill of the gentleman from Missouri, [Mr. BLAND.] His present embarrassment does not come from this side of the House or from any member on this side.

Mr. FORT. Will the gentleman allow me to correct——

Mr. BLAND. I yielded for a question only.

Mr. FORT. I wish to ask whether the chairman of the democratic national committee [Mr. HEWITT, of New York] did not lead the filibusters in opposition to this bill at the last session.

Mr. BLAND. I do not yield further.

Mr. COX. I know there was a good deal of filibustering; I did not take part in it.

Mr. KELLEY. I wish to ask whether the bill now offered as a substitute, and which was to be considered on a certain Monday of last session, was not filibustered against in order to allow the gentleman's colleague, the chairman of the democratic national committee, to introduce his resolution for a commission on the silver question and to prevent action on this bill?

Mr. COX. I do not know that to be the fact.

Mr. KELLEY. I do.

Mr. COX. The gentleman generally knows more than most people.

Mr. KELLEY. I know this.

Mr. BLAND. Mr. Speaker, I regret that this question has already occupied so much time. I think the sooner we dispose of it in this House the better. I therefore demand the previous question.

Mr. KASSON. I beg to ask the chairman of the committee a single question.

Mr. BLAND. I demand the previous question.

Mr. KASSON. I wish to ask the gentleman whether he will not allow one hour's debate, and so end this question? Will he not allow this side to be heard for thirty minutes?

Mr. BLAND. Mr. Speaker, if this bill is not to lose its place in the morning hour, and if we are not to be deprived of an opportunity for a vote upon the demand for the previous question, I have no objection to the gentleman's proposition. If the House will allow one or two hours for debate, and give me the right to demand the previous question and have a vote upon it, I have no objection.

Mr. KASSON. I really hope that will be done.

The SPEAKER. The Chair desires to state that forty minutes of the morning hour still remain.

Mr. KASSON. I will ask the Chair whether this bill, if not disposed of during this morning hour, will not stand over till to-morrow morning?

The SPEAKER. The Chair will recognize the gentleman from Missouri at every point where a motion is to be made involving the control of the bill.

Mr. KASSON. Then with the understanding that the gentleman will have that right to-morrow morning——

Mr. BLAND. No, Mr. Speaker, there is no such understanding. I simply stated that if the House wanted debate upon the bill for one or two hours, and would agree to consider the previous question as operating, I would consent to such arrangement. Otherwise I now demand the previous question.

Mr. HOLMAN. I trust that by unanimous consent, in order to give time for debate on this bill, it will be agreed that the previous question be now sustained and that two hours shall be allowed for debate.

Mr. KASSON. The Chair has already stated that he will recognize the gentleman from Missouri at his own request at every stage of the bill.

Mr. BLAND. I desire to have the previous question operate now.

The SPEAKER. What is the proposition of the gentleman from Iowa?

Mr. KASSON. It is that the gentleman from Missouri allow this bill to run on during this morning hour and in the morning hour to-morrow for debate, the Chair recognizing him at his will to-morrow to move the previous question.

Mr. BLAND. I make this proposition: That the previous question be now considered as operating and then debate go on for one or two hours.

The SPEAKER. The Chair would state that pending the operation of the previous question debate cannot extend over one hour except by unanimous consent.

Mr. HOLMAN. I ask that unanimous consent be granted.

Mr. KASSON. I hope the gentleman from Missouri will allow the House the opportunity to debate the bill, especially as a new substitute is pending. It really seems to me best that the bill should be left at the disposition of the House to-morrow morning.

Mr. BLAND. I demand the previous question.

Mr. KASSON. Then I hope the previous question will not be sustained. This is too important a bill to be considered without debate.

Mr. KELLEY. I hope the previous question will be sustained.

The question being taken on seconding the demand for the previous question, there were—ayes 108, noes 35.

Mr. KASSON. I make the point that no quorum has voted.

The SPEAKER. The Chair sustains the point.

Mr. KASSON. I now move that the House adjourn. I do this for the express purpose of securing time for debate.

The SPEAKER. The motion to adjourn is in order.

Mr. KASSON. If the gentleman will allow debate, I will withdraw the motion. Otherwise I demand the yeas and nays on the motion.

The yeas and nays were ordered; there being—ayes 30, noes 114.

The question was taken; and it was decided in the negative—yeas 5, nays 200, not voting 85; as follows:

YEAS—Messrs. Chittenden, Gibson, Hathorn, O'Neill, and Piper—5.

NAYS—Messrs. Ainsworth, Anderson, Ashe, Atkins, Bagby, George A. Bagley, John H. Bagley, jr., John H. Baker, William H. Baker, Ballou, Banning, Bell, Blair, Bland, Blount, Boone, Bradford, Bradley, Bright, John Young Brown, William R. Brown, Buckner, Horatio C. Burchard, Samuel D. Burchard, Burleigh, Cabell, John H. Caldwell, William P. Caldwell, Campbell, Candler, Cannon, Carr, Cason, Cate, Caulfield, Chapin, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Collins, Conger, Cook, Cowan, Cox, Crounse, Culberson, Cutler, Davis, Davy, Denison, Dibrell, Douglas, Durand, Durham, Eames, Ellis, Evans, Faulkner, Felton, Finley, Forney, Fort, Foster, Franklin, Freeman, Frye, Fuller, Garfield, Gause, Glover, Goode, Goodin, Gunter, Hale, Andrew H. Hamilton, Robert Hamilton, Haralson, Hardenbergh, Benjamin W. Harris, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Haymond, Henderson, Henkle, Hereford, Abram S. Hewitt, Goldsmith W. Hewitt, Hoar, Holman, Hooker, Haskins, Humphreys, Hunter, Hunton, Frank Jones, Kasson, Kehr, Kelley, Kimball,

Knott, Lamar, George M. Landers, Le Moyne, Levy, Lewis, Lynch, Mackey, Magoon, Malsh, MacDougall, McDill, McFarland, Metcalfe, Miller, Milliken, Mills, Money, Monroe, Morgan, Mutchler, Nash, Neal, Norton, Odell, Oliver, Packer, Page, Payne, Pierce, Platt, Poppleton, Potter, Rea, Reagan, John Reilly, James B. Reilly, Rice, Riddle, John Robbins, William M. Robbins, Rusk, Sampson, Savage, Scales, Schleicher, Seelye, Sheakley, Singleton, Sinnickson, A. Herr Smith, Southard, Sparks, Spencer, Springer, Stanton, Strait, Stenger, Stevenson, Stone, Stowell, Tarbox, Terry, Thornburgh, Tufts, Turney, Van Vorhes, John L. Vance, Robert B. Vance, Waddell, Wait, Waldron, Gilbert C. Walker, Alexander S. Wallace, John W. Wallace, Walsh, Warren, Watterson, Erastus Wells, Whiting, Whitthorne, Willard, Andrew Williams, Alpheus S. Williams, Charles G. Williams, James Williams, Jeremiah N. Williams, William B. Williams, Willis, Wilshire, Benjamin Wilson, James Wilson, Alan Wood, jr., Fernando Wood, Woodworth, Yeates, and Young—209.

NOT VOTING—Messrs. Abbott, Adams, Banks, Bass, Beebe, Blackburn, Bliss, Caswell, Cochrane, Crapo, Danford, Darrall, De Bolt, Dobbins, Dunnell, Eden, Egbert, Ely, Five, Hancock, Hays, Hendee, Hill, Hoge, Hopkins, House, Hubbell, Hurd, Hurlbut, Hyman, Jenks, Thomas L. Jones, Joyce, King, Franklin Landers, Lane, Lapham, Lawrence, Leavenworth, Lord, Luttrell, Lynde, McCrary, McMahon, Meade, Morrison, New, O'Brien, Phelps, John F. Philips, William A. Phillips, Plaisted, Powell, Pratt, Purman, Rainey, Roberts, Robinson, Miles Ross, Sobieski Ross, Sayler, Schumaker, Siemons, Smalls, William E. Smith, Stephens, Swann, Teese, Thomas, Thompson, Throckmorton, Martin I. Townsend, Washington Townsend, Tucker, Charles C. B. Walker, Walling, Ward, Warner, G. Wiley Wells, Wheeler, White, Whitehouse, Wigginton, Wike, and Woodburn—85.

So the House refused to adjourn.

MESSAGE FROM THE SENATE.

During the vote,

A message was received from the Senate, by Mr. SYMPSON, one of its clerks, announcing the passage, without amendment, of the following House bill:

A bill (H. R. No. 2257) for the relief of J. T. McGinniss, captain of the Thirteenth Infantry, United States Army; and

A bill (H. R. No. 3633) changing the name of the First National Bank of Amesbury to the First National Bank of Merrimac.

It further announced the passage of a bill (S. No. 830) for the relief of J. S. Logan and W. L. Shadwick; in which the concurrence of the House was requested.

GOLD AND SILVER COINAGE.

Mr. BLAND. I move that the reading of the names be dispensed with.

The SPEAKER. If there be no objection, that will be done.

There was no objection, and it was ordered accordingly.

The vote was then announced as above recorded.

The SPEAKER. The question now recurs on seconding the demand for the previous question.

Mr. MONROE. I ask the gentleman from Missouri to yield to me for a word of explanation.

Mr. BLAND. I will yield, but for that purpose only.

Mr. MONROE. There is a desire on the part of several members on this side of the House, as I have no doubt there is on the other, to say a word of explanation at some time to-day or to-morrow of their position in regard to this bill, and it seems to me as very desirable for a good understanding generally that such opportunity should be afforded. I understand gentlemen on this side of the House to say they have no objection whatever to the arrangement which the gentleman from Missouri proposed some time since in his place upon the floor. We are willing to regard the previous question as ordered by unanimous consent, and to let the debate go on for the rest of the hour to-day, and through the hour to-morrow, or perhaps two hours in all, if it shall be found convenient.

Mr. BLAND. I certainly have no objection to that.

The SPEAKER. If any understanding is arrived at by unanimous consent, the proposition should be distinct as to the time the debate should be allowed to run.

Mr. KASSON. Will the gentleman from Missouri suggest what time he proposes to allow for this debate?

Mr. BLAND. I understand it is proposed by unanimous consent that the previous question shall be considered as now ordered and operating.

Mr. MONROE. Certainly.

Mr. BLAND. That then two hours shall be given for debate.

Mr. KASSON. We agree to that.

The SPEAKER. That will have to be by unanimous consent, for only one hour of debate can be allowed after the main question has been ordered to be put.

Mr. MONROE. There is no objection to that proposition.

The SPEAKER. If there be no objection, the previous question will be considered as seconded, and the main question ordered to be now put.

Mr. BLAND. There is no objection to that, but I still hold the floor.

The SPEAKER. The gentleman from Missouri is entitled to the floor.

Mr. KASSON. Will the gentleman from Missouri allow an order to be entered for the printing of the bill, as amended, with the substitute offered to-day, so that we may have the entire proposition on our desks to-morrow?

The SPEAKER. The Chair understands now that by unanimous consent two hours are allowed for debate—that is to say, two morning hours; one hour to-morrow, and one the day following.

Mr. KASSON. With the understanding also that the morning hour has now terminated, and that the bill and amendments be printed and laid upon our desks to-morrow.

Mr. HOAR. I desire to inquire whether the ordering the main question does not necessarily take this bill out of the morning hour?

The SPEAKER. The proposition of the gentleman from Missouri has been agreed to by unanimous consent; the main question having been ordered the debate can now proceed, if that be the desire of the House. The Chair desires the understanding shall be distinct so there may be no conflict hereafter.

Mr. KELLEY. Why may not the debate go on immediately for one hour, and then for another hour to-morrow?

Mr. BLAND. That is my desire.

Mr. KELLEY. Why not go on and debate the bill now, and take a vote upon it?

Mr. KASSON. I cannot find the bill, as amended, among my papers, and it will be of great convenience if the debate shall go over until to-morrow, and an order shall be entered for the printing of the bill and amendment as well as the substitute, so they may be laid upon our desks to-morrow.

Mr. KELLEY. The substitute will be found by gentlemen on their files, printer's number 4298, number of bill 3923, except that the substitute provides for protecting any contracts made payable in gold.

Mr. KASSON. That simply makes it another bill. I submit the whole House will be gratified to see it all in print.

Mr. BLAND. I desire to ask if the time allowed for debate is now being consumed in this discussion.

Mr. HOAR. Certainly not. As I understand under the order of the House, unless some other order is made, this will come up in the morning after the reading of the journal, as unfinished business, and the two hours' debate will go on and the vote be taken before the morning hour begins.

The SPEAKER. That would be the ruling of the Chair under the rule, unless by unanimous consent some other arrangement is agreed to.

Mr. KASSON. That is right. I am quite satisfied with that. I presume there is no objection to the order to print.

The SPEAKER. The Chair hears no objection. The Chair understands that the original print of the bill has been exhausted, and he would therefore suggest that the printing embrace the original bill, the amendments, and the substitute offered to-day.

There was no objection, and it was so ordered.

Mr. BLAND. Will not the bill and amendments and substitute be also in the CONGRESSIONAL RECORD, having been read at the Clerk's desk?

The SPEAKER. Certainly; they will be printed in the RECORD.

Mr. DURHAM. I think that should be sufficient.

The SPEAKER. Does the gentleman from Kentucky object?

Mr. DURHAM. I do not object. I think, however, that it would be sufficient to have them printed in the RECORD.

POST-OFFICE APPROPRIATION BILL.

Mr. HOLMAN. I rise to report a bill from the Committee on Appropriations.

The SPEAKER. The morning hour has not quite expired.

Mr. HOLMAN. Then I ask unanimous consent to make a report from the Committee on Appropriations.

There was no objection.

Mr. HOLMAN, by unanimous consent, from the Committee on Appropriations, reported a bill (H. R. No. 4187) making appropriations for the service of the Post-Office Department for the fiscal year ending June 30, 1878, and for other purposes; which was read a first and second time.

Mr. HOLMAN. I ask unanimous consent that the bill be printed and made the special order in the House for to-morrow after the morning hour, and that it be considered in the House under the five-minute rule.

Mr. KASSON. I reserve all points of order on the bill.

The SPEAKER. The points of order will be reserved. The gentleman from Indiana moves that the bill be printed, and that it be made the special order for consideration in the House as in Committee of the Whole to-morrow after the morning hour.

Mr. HOAR. I object.

Mr. HOLMAN. Then I move that the bill be printed, and that it be referred to the Committee of the Whole House on the state of the Union, and made a special order after the morning hour to-morrow.

Mr. REAGAN. The bill will not be printed and on our tables in the morning, and there will not be sufficient time to examine it if this order be made. Will the gentleman from Indiana not agree to allow the bill to go over until the following day?

Mr. HOLMAN. If the bill be not printed when the House meets to-morrow I will not press it; but I ask now that it be made a special order for to-morrow after the morning hour in Committee of the Whole.

The question being taken, the motion was agreed to—ayes 80, noes not counted.

EXPENSES OF INVESTIGATING COMMITTEES.

On motion of Mr. HOLMAN, by unanimous consent, the bill (H. R. No. 4121) to provide for the expenses of certain special committees with amendments by the Senate, was taken from the Speaker's table and referred to the Committee on Appropriations.

ORDER OF BUSINESS.

The SPEAKER. The gentleman from Iowa [Mr. McCRARY] is entitled to the floor. There are still three minutes remaining of the morning hour.

Mr. CROUNSE. The gentleman from Iowa [Mr. McCRARY] is not here, and I ask that by unanimous consent the morning hour be considered as having expired.

There was no objection, and it was so ordered.

ENROLLED BILL SIGNED.

Mr. HARRIS, of Georgia, from the Committee on Enrolled Bills, reported that the committee had examined and found truly enrolled a bill of the following title; when the Speaker signed the same:

An act (H. R. No. 1588) granting an additional pension to Jefferson Bowers, of Mason County, Illinois.

APPROPRIATION FOR QUARTERMASTER'S DEPARTMENT.

The SPEAKER, by unanimous consent, laid before the House a letter from the Secretary of War, transmitting a report of the Quartermaster-General in relation to the annual diversion of large sums of money from the appropriations for that Department; which was referred to the Committee on Appropriations.

ATTORNEYS' FEES IN PENSION CLAIMS.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of the Interior, transmitting a communication from the Commissioner of Pensions, together with a draught of a bill to regulate attorneys' fees in pension claims; which was referred to Committee on Invalid Pensions.

RESIGNATION OF A MEMBER.

The SPEAKER. The Chair also lays before the House the following communication:

The Clerk read as follows:

WASHINGTON, D. C., *December* 11, 1876.

SIR: I hereby tender my resignation as a Representative in Congress for the seventh congressional district of the State of New York.

Very respectfully yours,

SMITH ELY, JR.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

NAVY-YARDS.

The SPEAKER also laid before the House a letter from the Secretary of the Navy, transmitting a copy of the report of the board of officers organized under the provisions of the act of Congress approved June 30, 1876, to examine and determine whether in their opinion any of the navy-yards can be dispensed with and abandoned; which was referred to the Committee on Naval Affairs and ordered to be printed.

ELECTIONS IN NEW YORK, PHILADELPHIA, ETC.

The SPEAKER announced the following as the members of the select committee authorized by a resolution of the House, adopted on yesterday, to investigate the late elections in New York, Philadelphia, Brooklyn, and Jersey City:

Mr. COX, of New York; Mr. RICE, of Ohio; Mr. WADDELL, of North Carolina; Mr. MACDOUGALL, of New York, and Mr. WELLS, of Mississippi.

PRESIDENT'S ANNUAL MESSAGE.

Mr. WOOD of New York. I move that the House now resolve itself into Committee of the Whole on the state of the Union, for the purpose of adopting resolutions concerning the distribution of the last annual message of the President, with the accompanying documents, to appropriate committees.

The motion was agreed to.

The House accordingly resolved itself into Committee of the Whole, Mr. COX in the chair.

The CHAIRMAN. The House is now in Committee of the Whole for the consideration of the President's annual message.

Mr. WOOD, of New York. I have been directed by the Committee of Ways and Means to submit the resolutions which I send to the Clerk's desk.

The Clerk read the resolutions, as follows:

Resolved, That so much of the annual message of the President of the United States to the two Houses of Congress at the present session, together with the accompanying documents, as relates to finances and taxation, to the public debt, and public credit, be referred to the Committee of Ways and Means.

Resolved, That so much of said message and documents as relates to the necessary appropriations for carrying on the Government in its several departments, and to deficiencies in appropriations, and to deficiencies in the revenue for the maintenance and support of the Post-Office Department, and to special appropriations for the Army and Navy of the United States, to the payment of the joint commission for the adjustment of claims between the United States and Mexico, under the convention of 1868, be referred to the Committee on Appropriations.

Resolved, That so much of said message and documents as relates to the expenditures in the improvements of rivers and harbors and to commerce be referred to the Committee on Commerce.

Resolved, That so much of said message and documents as relates to the Post-Office Department, post-office, and postal service, be referred to the Committee on the Post-Office and Post-Roads.

Resolved, That so much of said message and documents as relates to agriculture and the Department of Agriculture be referred to the Committee on Agriculture.

Resolved, That so much of said message and documents as relates to the territory of the District of Columbia be referred to the Committee on the District of Columbia.

Resolved, That so much of said message and documents as relates to the court of commissioners of Alabama claims, to the necessity of throwing a greater safeguard over the method of choosing and declaring the election of President, be referred to the Committee on the Judiciary.

Resolved, That so much of said message and documents as relates to foreign affairs, to fixing the boundary upon the Pacific coast by the protocol of March 10, 1873, pursuant to the award of the Emperor of Germany, by article 34 of the treaty of Washington, to the commerce and navigation with the Ottoman government, to the awards paid to the claimants in the seizure of the steamer Montijo, to the question which lately arose with Great Britain respecting the surrender of fugitive criminals under the treaty of 1842, to the termination of the treaty of 1862 with the Ottoman government, to the joint commission for adjustment of claims between the United States and Mexico under the convention of 1868, to the payment of claims by the government of Venezuela to the citizens of the United States, to provide for the hearing and determination of the just and subsisting claims of aliens upon the Government of the United States within a reasonable limitation, and of such as may hereafter arise, to the island of Santo Domingo, to expatriation and the election of nationality, and to the necessity of legislation concerning the marriages of American citizens contracted abroad, and concerning the status of American women who may marry foreigners and of children born of American parents in a foreign country, be referred to the Committee on Foreign Affairs.

Resolved, That so much of said message and documents as relates to the employment of the Army against eight certain wild bands of the Sioux Indian Nation, to the extension of time to the commission constituted under the act of July 24, 1876, to complete their report on the re-organization and reform of the Army, to the employment of the increase of the cavalry force of the Army by the act of August 15, 1876, to the transfer of claims under the act of July 4, 1864, for supplies taken by the Army during the war, be removed from the offices of the Quartermaster and Commissary-Generals, and transferred to the southern claims commission, to the sanction of Congress of an annuity fund for the benefit of the families of deceased officers, and for the permanent organization of the Signal Service, to the concentration of the manufacturing operations of the Ordnance Department to three arsenals and an armory, and that the remaining arsenals be sold, and the proceeds applied to this object by the Ordnance Department, be referred to the Committee on Military Affairs.

Resolved, That so much of said message and documents as relates to the Navy of the United States be referred to the Committee on Naval Affairs.

Resolved, That so much of said message and documents as relates to the management of Indian affairs be referred to the Committee on Indian Affairs.

Resolved, That so much of said message and documents as relates to the troubles on the Texas frontier be referred to the Select Committee on the Texas Frontier Troubles.

Resolved, That so much of said message and documents as relates to the international exhibition held in Philadelphia be referred to the Select Committee on the Centennial Celebration.

The resolutions were adopted.

Mr. WOOD, of New York. I move that the committee now rise, and report to the House the resolutions just adopted.

The motion was agreed to.

So the committee rose; and the Speaker having resumed the chair, Mr. COX reported that the Committee of the Whole on the state of the Union had had under consideration the Union generally, and particularly the annual message of the President of the United States, and had directed him to report sundry resolutions.

The resolutions were adopted.

Mr. WOOD, of New York, moved to reconsider the vote by which the resolutions were adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

FORTIFICATION APPROPRIATION BILL.

Mr. HALE, from the Committee on Appropriations, reported a bill (H. R. No. 4188) making appropriations for fortifications and for other works of defense, and for the armament thereof, for the fiscal year ending June 30, 1878, and for other purposes; which was read a first and second time, and ordered to be printed.

Mr. CONGER. I desire to reserve all points of order on this bill.

Mr. HALE. I move that this bill be referred to the Committee of the Whole on the state of the Union, and made a special order for Thursday next, after the morning hour, and from day to day until disposed of.

The motion was agreed to.

Mr. HOLMAN. I believe there is no pressing business before us, and I therefore move that the House now adjourn.

The moton was agreed to; and accordingly (at two o'clock and twenty-five minutes p. m.) the House adjourned.

PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. KIDDER: A paper relating to the establishment of a post-route between Deadwood City, via Crook City, in the Black Hills, and Bismarck, both in Dakota Territory, to the Committee on the Post-Office and Post-Roads.

By Mr. WELLS, of Mississippi: The petition of John Carruth and 41 others, residents of Mississippi, who remained loyal to the United States Government during the late war, and who lost heavily on account of its results, to have the time extended so that they can have their claims for quartermaster and commissary stores furnished to and taken and used by the United States Army, adjudicated by the Court of Claims or some other tribunal that will give them relief, to the Committee on War Claims.

Also, the petition of sail-makers of the United States Navy, to be restored again to their former positions in charge of sail-lofts, from which they were displaced by the appointment of civilians thereto, to the Committee on Naval Affairs.

IN SENATE.

WEDNESDAY, *December* 13, 1876.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

The Journal of yesterday's proceedings was read and approved.

PETITIONS AND MEMORIALS.

Mr. SARGENT. I present the petition of the Methodist Episcopal church, of Highlandville, Massachusetts, signed by the pastor and officers, praying the Government by appropriate legislation to prohibit the manufacture and sale of alcoholic beverages in the District of Columbia and the Territories of the United States, and for the prohibition of the foreign importation of alcoholic liquors. I move its reference to the Committee on Finance.

The motion was agreed to.

Mr. THURMAN. I present a similar petition, signed by E. P. Bishop, grand worthy patriarch, of Ohio, and E. J. Morris, grand scribe, representing 8,000 members of the Sons of Temperance of Ohio, which I move be referred to the Committee on Finance.

The motion was agreed to.

Mr. KERNAN. I present a petition of the same character from the New York State Temperance Society, making the same prayer; and also a petition of a like character of the Friends' Temperance Union, of Ghent, New York. I move their reference to the Committee on Finance.

The motion was agreed to.

Mr. CHRISTIANCY. I present a like petition in behalf of the Methodist Episcopal church, of Newton, Massachusetts, which I move be referred to the Committee on Finance.

The motion was agreed to.

Mr. BOGY. I present a like petition of Denton S. Thomas, grand scribe of the grand Division of Sons of Temperance of the State of Missouri. I move its reference to the Committee on Finance.

The motion was agreed to.

Mr. MORRILL. I present a petition of the Good Templars of the District of Columbia, a petition of the Methodist Episcopal church, of Riverdale, Gloucester, Massachusetts, signed by the pastor and officers, and a petition of the Grand Lodge of Good Templars of Vermont, signed by John B. Mead and Frank Plumlie, representing 5,400 members, asking for prohibitory legislation for the District of Columbia and the Territories, and for the prohibition of the foreign importation of alcoholic liquors. I move their reference to the Committee on Finance.

The motion was agreed to.

Mr. ANTHONY. I present a precisely similar petition from the First Methodist church, of Chelsea, Massachusetts, signed by the pastor and officers, and one from the Good Templars of Montana. I move their reference to the Committee on Finance.

The motion was agreed to.

Mr. COOPER. I present a similar petition from the Grand Division of the Sons of Temperance of East Tennessee. I move that it be referred to the Committee on Finance.

The motion was agreed to.

Mr. WALLACE. I present a petition of like import from the Pennsylvania Temperance Union. I move its reference to the Committee on Finance.

The motion was agreed to.

Mr. HITCHCOCK. I present a similar petition of the Sons of Temperance of Nebraska officially signed. I move that it take the usual reference.

The motion was agreed to.

Mr. BURNSIDE. I present the petition of Abram Boynton and others of the Methodist Episcopal church of Gloucester, Massachusetts, praying for prohibitory legislation for the District of Columbia and the Territories, and the prohibition of the foreign importation of alcoholic liquors, &c. I move its reference to the Committee on Finance.

The motion was agreed to.

Mr. HAMLIN. I present the memorial of H. A. Shore, grand worthy chief templar, and George E. Brackett, grand worthy secretary, of the Good Templars of the State of Maine, representing 14,000 members, remonstrating against the manufacture of spirituous liquors in the District of Columbia and the Territories. I move its reference to the Committee on Finance.

The motion was agreed to.

Mr. DAWES. I present two petitions of the Methodist Episcopal church, of Holliston, Massachusetts, and of the Wesley Chapel church, of Salem, Massachusetts, similar to those just presented. I move their reference to the Committee on Finance.

The motion was agreed to.

Mr. CONKLING. I have three petitions, similar I presume to those just presented by other Senators, excepting that these I observe pray, among other things, for a constitutional amendment prohibiting the use of alcoholic drinks, these petitions coming from temperance societies and also from churches, representing a large number of citizens. I move their reference to the Committee on Finance.

The motion was agreed to.

REPORTS OF COMMITTEES.

Mr. SARGENT. I am instructed by the Committee on Naval Affairs, to whom was referred the bill (S. No. 549) to relinquish the title of the United States to certain property in the city and county of San Francisco, California, to ask that the committee be discharged from its further consideration. A bill of the same import, a House bill, has passed the Senate, and is now a law.

The report was agreed to.

Mr. CAMERON, of Wisconsin, from the Committee on Claims, to whom was referred the bill (S. No. 203) for the relief of John L. Buck, of Pine Bluff, Arkansas, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

Mr. WRIGHT, from the Committee on Claims, to whom was referred the bill (S. No. 257) for the relief of James R. Porter, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (S. No. 657) for the relief of Thomas F. Ryan and Charles J. Ryan, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the petition of Jackson Tibbetts and others, contractors on the improvement of the Fox River, Wisconsin, praying that the amount forfeited to the United States by the contractors, by the annulment of their contract be applied to the payment of wages due to their employés, reported adversely thereon, and moved that the claim be rejected; which was agreed to.

Mr. INGALLS. The Sac and Fox tribe of Indians occupying a reservation partly in Kansas and partly in Nebraska sent a petition here at the last session praying for the passage of an act authorizing the sale of a certain portion of their reservation. The Committee on Indian Affairs have had the subject under consideration, and have directed me to report back the petition, and recommend that they be discharged from its further consideration.

The PRESIDENT *pro tempore*. The committee will be discharged from the further consideration of the petition, if there be no objection.

Mr. INGALLS. I am also directed by the same committee, to whom was referred the bill (S. No. 388) to provide for the sale of a portion of the reservation of the Sac and Fox Indians in the States of Kansas and Nebraska, to report it without amendment and to recommend its passage. If there is nothing of an urgent character before the Senate at the present time, I ask for the consideration of the bill now.

The PRESIDENT *pro tempore*. The bill will be read for information.

The Chief Clerk read the bill.

The PRESIDENT *pro tempore*. Is there objection to the present consideration of the bill?

Mr. HITCHCOCK. I think the Senator from Kansas will discover on page 208 of the laws of last session that the provisions of this bill are already substantially in the law.

Mr. PADDOCK. I think that the bill had better lie over until to-morrow.

Mr. INGALLS. Let the matter lie over until the subject can be examined.

Mr. PADDOCK. The same provisions are embraced in the law of last year providing for the sale of the Otoe reservation.

The PRESIDENT *pro tempore*. The bill will be placed upon the Calendar.

MANNER OF COUNTING ELECTORAL VOTES.

Mr. ANTHONY. The Committee on Printing, to whom was referred a resolution to print additional copies of the statement prepared by the Chief Clerk of the Senate in regard to the manner of counting the electoral votes for President and Vice-President, have instructed me to report it back with an amendment in the nature of a substitute and to ask for its present consideration. The amendment provides for 5,000 copies and the original resolution gave 8,500.

The PRESIDENT *pro tempore*. The resolution, as amended by the committee, will be reported.

The Chief Clerk read as follows:

Resolved, That 5,000 copies of the statement prepared by the Chief Clerk of the Senate in regard to the manner of counting the electoral votes for President and Vice-President from 1789 to 1873 be printed for the use of the Senate.

Mr. THURMAN. I would rather that that should lie over. I think I shall have an amendment to offer to the resolution.

The PRESIDENT *pro tempore*. Does the Senator from Ohio object to its present consideration?

Mr. THURMAN. Yes, sir.

The PRESIDENT *pro tempore*. Objection being made, the resolution goes over.

ELECTORAL VOTE OF LOUISIANA.

Mr. ANTHONY. The same committee, to whom was referred a motion to print additional copies of the letter of the President with the accompanying documents on the election in Louisiana, have instructed me to report the following resolution and ask for its present consideration:

Resolved, That 1,850 extra copies of the letter of the President with the accompanying documents on the election in Louisiana be printed for the use of the Senate.

Mr. THURMAN. I ask that that resolution may lie over.

The PRESIDENT *pro tempore*. The resolution will go over under objection.

Mr. SHERMAN. I think under the rules a report from the Committee on Printing may be considered without lying over. It is done as a matter of usage, at least.

The PRESIDENT *pro tempore*. All reports must go over upon objection.

Mr. SHERMAN. I thought an exception was made in favor of the Committee on Printing.

Mr. EDMUNDS. The exception of unanimous consent, usually.

The PRESIDENT *pro tempore*. All reports may be considered when made, by unanimous consent. The colleague of the Senator from Ohio has objected.

Mr. SHERMAN. All right. I got the impression from the usage of the House.

Mr. ANTHONY. It is very seldom that Senators object to reports from the Committee on Printing, they are always so judicious; but when a Senator does object I suppose we must act under the ordinary rule.

The PRESIDENT *pro tempore*. The resolution will lie over.

Mr. ANTHONY. I am also instructed by the Committee on Printing to report the following resolution, and I ask for its present consideration:

Resolved by the Senate, (the House of Representatives concurring.) That 10,000 additional copies of the letter of the President with the accompanying documents on the election in Louisiana be printed; of which 2,500 shall be for the use of the Senate and 7,500 shall be for the use of the House of Representatives.

Mr. THURMAN. What is that? I thought that was the matter just reported upon.

Mr. ANTHONY. It relates to the same document, but the previous resolution is a Senate resolution. The first resolution included the number that the Senate may print under the law without the assent of the House of Representatives. The second resolution is for an additional number, which requires the concurrence of the House.

Mr. THURMAN. Then let me understand. I thought that the rule provided that we may print for the Senate 1,500 copies.

Mr. ANTHONY. That has already been ordered to be done. These are additional copies.

Mr. THURMAN. The rule provides for 1,500 copies as the usual number, I am told.

Mr. ANTHONY. The usual number has been ordered, and that gives one to each Senator and Representative and other copies that go according to a specified order of distribution.

Mr. THURMAN. And now there is a resolution to print 1,850 more?

Mr. ANTHONY. Yes; of the same document.

Mr. THURMAN. And then 10,000 additional on that?

Mr. ANTHONY. And 10,000 on that number.

Mr. THURMAN. Making 11,850. Let the resolution go over.

Mr. ANTHONY. I should like to have the resolution considered promptly. I wish the Senator from Ohio would allow it to be considered now, for the reason that, if it is to be printed at all in extra numbers, the document can be printed a great deal cheaper now than a week or ten days hence. It is a great inconvenience to keep the type standing; probably it cannot be kept standing. I am willing of course to hear everything the Senator has to say against the printing, but I hope the resolution will be allowed to come up to-morrow for the sake of public economy.

Mr. THURMAN. I shall not delay the matter at all, but I want to move an amendment to the resolution when it comes up.

Mr. ANTHONY. Can the Senator not move his amendment now?

Mr. THURMAN. No; I am not prepared to do it now.

The PRESIDENT *pro tempore*. The resolution will go over, objection being made to its present consideration.

BILLS INTRODUCED.

Mr. WHYTE asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1075) for the relief of Brantz Mayer, of Baltimore, and James W. McCulloh, of New York; which was read twice by its title, and, with the accompanying petition, referred to the Committee on Private Land Claims.

Mr. MITCHELL asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1076) for the protection and preservation of the salmon fisheries of the Columbia River; which was read twice by its title, referred to the Committee on Commerce, and ordered to be printed.

PROPOSED TERRITORY OF PEMBINA.

Mr. HITCHCOCK. I desire to call up the motion of the Senator from Missouri [Mr. BOGY] to reconsider the vote by which the bill (S. No. 606) to establish the Territory of Pembina, and to provide a temporary government therefor, was passed. Toward the close of the last session the Senator from Missouri moved to reconsider the action of the Senate in passing the bill, for the purpose of changing the name of the Territory. I desire that action may be had upon that motion, so that if the bill is to be reconsidered it shall be done now.

Mr. BOGY. I favor the provisions of the bill generally. I am in favor of the organization of a Territory in that portion of the country. I do not now remember whether the boundaries of the proposed Territory were entirely satisfactory to me. I think they were not exactly so, although I do not raise any objection of that kind. The objection which I had was to the name, and that objection appears to be considered so unimportant that it is very hard to get the attention of the Senate to a matter of that character. I think we ought to pay some attention to the giving of proper names, historic names, and handsome names to our new Territories which are in time to become States of the Union. I explained at that time that the word "Pembina" is insignificant, not historic, and really not an Indian name but a corruption of two French words; and I selected another name, a very handsome name, sounding well, and also historic—the name of Algonquin. I repeat, it is very hard to get the attention of the Senate to a subject so apparently unimportant, but I do feel some little anxiety that proper names, handsome names, and historic names shall be given to new Territories.

I know that my friend from Nebraska will insist upon this name of Pembina, because he says he has been informed himself that it is the desire of the people of that country; but, even if it were so, that would not be an argument, because the number of persons now in that Territory is small. But even that is not exactly true, admitting at the same time that my friend has that information. Two years ago, or perhaps three years ago, I was in that portion of the country, and the name of Pembina was acceptable to but few persons, and, I may say, not to a single person when it was explained. Pembina is a common name in that country. There is a large tree growing in the region toward Hudson's Bay called pembina; the region of country is called the pembina region. Nevertheless, I repeat that the name of Pembina is not handsome, is not historic, and that it is not Indian. The name of Algonquin was the cognomen of a tribe large in number, extending from the shores of the Chesapeake Bay away up into Maine. It was a generic tribe, if I may use that term, embracing within its nationality many subordinate tribes.

I therefore propose, if the bill be taken up, that that change be made.

Mr. CLAYTON. As I understand, this new Territory of Pembina, the whole of it, is to be carved out of the original Territory of Dakota, is it not?

Mr. HITCHCOCK. Yes, sir.

Mr. CLAYTON. In view of the fact that there is a probability of the Black Hills country being ceded by the Indians to the United States, a large portion of which also lies in Dakota Territory, and of the likelihood that the cession of that territory may make it necessary to create a new territory covering that Black Hills country, and as these facts did not exist at the time this bill was acted upon by the committee and reported to the Senate, it seems to me this matter had better be held in abeyance until the Committee on Territories can examine further into the propriety of changing the boundaries of this new proposed Territory. I make the suggestion in view, as I said before, of the additional large territory which is likely to be ceded to the Government now held by the Sioux Indians. If there be any necessity at all for creating a new Territory, it seems to me it would be in that direction more than in the direction where this Territory is proposed to be organized under the present bill.

Mr. HITCHCOCK. The territory which is covered by the boundaries named in the bill does not comprise the Black Hills country, and the organization of the Territory of Pembina has no effect, directly or indirectly, upon any future organization of the territory which covers and comprises the mineral region known as the Black Hills. The merits and demerits of the bill were discussed at some length at the last session, and the necessity and economy of the passage of the bill were pretty generally understood then and admitted. Whatever it may be necessary to do hereafter in regard to the organization of a Territory in the Black Hills region can be done when that necessity arises; but there is a necessity that this question of name should be settled, and settled now, if this bill is to become a law at the present session. As was pretty generally admitted at the last session, the necessity for the organization of this Territory arises from the fact that the northern portion of Dakota is entirely separated in its political and geographical interests from the southern portion.

Mr. SARGENT. I should like to ask the Senator if he desires to take up the bill now?

Mr. HITCHCOCK. The bill has already passed the Senate. The Senator from Missouri moved its reconsideration for the purpose of changing the name of the Territory.

Mr. SARGENT. Will not the Senator wait until we get through with the ordinary morning business? Then I will not antagonize it. Otherwise I shall object.

Mr. CLAYTON. Let it go over at least for to-day.

Mr. HITCHCOCK. If any one objects, I shall not press the bill now.

Mr. SARGENT. Let us get through with the ordinary morning business.

Mr. HITCHCOCK. I thought we were through.

Mr. SARGENT. Are resolutions in order?

The PRESIDENT *pro tempore*. Resolutions are in order.

TESTIMONY AS TO CHINESE IMMIGRATION.

Mr. SARGENT. I offer the following resolution, which I ask may be referred to the Committee on Printing:

Resolved, That 10,000 extra copies of the evidence taken by the Joint Special Committee on Chinese Immigration be printed for the use of the Senate.

I should like to say to the chairman of the Committee on Printing and to the Senate that this document is very remarkable among public documents. The evidence taken was from very intelligent sources. It embraces reliable evidence, I think, upon religion, superstitions, habits, ethnology, on industrial questions, on questions of trade and commerce, and it will be a book that will be very much sought after. I am informed at the Printing Office that a large amount of it is now

in type and that it is necessary for them to know as soon as possible whether extra copies are to be printed, and of course it can be done cheaper now than at any other time. I trust the Committee on Printing will report back the resolution in good time and that the Senate will adopt it.

The resolution was referred to the Committee on Printing.

ELECTORAL VOTE OF OREGON.

Mr. MITCHELL. I move that the Senate proceed to the consideration of the Oregon resolution which was up yesterday.

The motion was agreed to.

Mr. MITCHELL. I hope we may have a vote now on the resolution. It is very important that there should be early action upon it.

The PRESIDENT *pro tempore*. The resolution will be read.

The Chief Clerk read the amendment reported by the Committee on Privileges and Elections, which was to strike out all after the word "whereas," in the first line, and insert the following in lieu thereof:

It is alleged that at the late election for electors of President and Vice-President for the State of Oregon the people of said State, by a majority of over 1,000 votes, elected W. H. Odell, John C. Cartwright, and J. W. Watts;

And whereas it is also alleged that the governor of said State did subsequently, in violation of law and in defiance of the expressed will of the people, issue a certificate of election to one E. A. Cronin instead of to said J. W. Watts;

And whereas it is also alleged that said E. A. Cronin did, in violation of law, upon some pretext, assume to select for his colleagues one J. N. T. Miller and John Parker in lieu of said W. H. Odell and John C. Cartwright;

And whereas it is further alleged that said Cronin, Miller, and Parker have assumed to cast the vote of Oregon for President and Vice-President, and to certify the same to the President of the Senate: Therefore,

Be it resolved, That the Committee on Privileges and Elections is hereby instructed to inquire into the eligibility of said J. W. Watts, and investigate the facts attending the appointment of said electors and pretended electors, and report the same to the Senate, and for this purpose may employ a stenographer, send for persons and papers, administer oaths, and examine witnesses.

Mr. MITCHELL. I ask for the yeas and nays on the adoption of the resolution.

The yeas and nays were ordered.

Mr. BAYARD. Mr. President, I trust after what was suggested by the Senator from Oregon yesterday, that he will not object to permitting such an amendment to the preamble of this resolution as will enable those of us who favor the general object to vote for its adoption. For one I am entirely disposed, indeed I may say that I am very desirous, to have all the instruction that can be given to me by the action of the Committee on Privileges and Elections in regard to this important class of subjects touching governmental powers now coming into such prominence before the minds of the people of this country. But I do not see why for the purpose of procuring the information there should not be just sufficient recital in the preamble of the condition of affairs which justifies the inquiry, without making it so full of reflections in advance upon a governor of one of the States of this Union. Perhaps it may be superfluous for me to say, and yet it is rather an indulgence of my feeling to say, that everything and anything which tends to defeat the great majority principle of republican government I look upon with regret and disfavor. Wisely or not wisely, that is the basis of the conduct of affairs in this country, that the will of the people expressed according to law shall be held the controlling power and the controlling principle. Therefore it is that I exceedingly regret that there should have been any question arising out of the vote of the people of this Union in any State thereof, and that anything should be permitted or should be compelled under arrangement of law to defeat the will of the majority substantially and honestly expressed. I am frank to say that in any capacity where I stood armed with official power and responsibility my leanings would be altogether in favor of a recognition of the honest, actual popular will expressed according to the forms of law. But, sir, in this case I am not prepared to denounce in advance, by any reflection or by any indirection, the action of an officer clothed with the duties of official power. I am not prepared to say of the action of a man who has heretofore stood high in the community where he has lived, who has been elevated by the votes of his people to their chief magistracy and who is to-day a member-elect of this Senate, that he has not carried out the laws of his State and the laws of the United States, duly and properly, conscientiously and honorably. It is perfectly plain that the duties which he has exercised have been those of the very highest importance and to be tempered and controlled by a high sense of conscientious discretion. Far be it from me to say of political friend or foe, in advance and without trial, that he is to be condemned for a willful maladministration of his great trusts. Every presumption is against this. Legal presumptions are all against this. Moral presumptions are all against this. We have no right therefore by a mere preamble to suggest moral delinquency and official delinquency in any one, much more to place that upon the forehead of a mere resolution of inquiry. The inquiry is proper; it is important; it needs care and thought; and those who shall report upon it I doubt not will be influenced by proper motives in giving their opinion to the Senate. But, Mr. President, it will not do in the present state of affairs, and even for those who may be disposed to hold opinions expressed here in great haste, and I think with great injustice in advance of examination, of condemnation against this official—it will not do for them to so weaken their case by prejudging it and announcing in advance by the tone of their preamble what will be the result of their report. That will not do, sir. It is not conducive to justice; and in a time like this nothing less than justice, untouched and untainted by party heats, will satisfy the minds of the American people, and, as I trust, of those who represent them in the two Houses of Congress.

Now, Mr. President, this question of law has been discussed in advance, I do not wish to say in any disrespect, prematurely; I do not mean to say that the arguments were improper; but it does seem to me it would have been better to follow as a commentary on the examination of this committee than as an argument in advance. The law of this case by authority that is entitled to respect and weight is entirely, and has been by courts of high character and final jurisdiction in States of this Union, declared in complete and exact justification of the act of Governor Grover. Therefore it will not do to denounce and condemn him in advance, when he is backed by such an authority as I hold in my hand, the re-affirmed judgments of the supreme court of the State of Indiana. I do not know but that this authority should have more weight with the honorable Senator from Indiana than with the Senator from any other State; but in 1860 the court of appeals in Indiana, in the well-known case of Gulick *vs.* New, made a decision, to the syllabus of which I will refer, a decision that the governor of that State could determine even against the decision of a board of canvassers, "whether an applicant is entitled to receive a commission or not, where the objection to his right to receive it rests upon the ground that a constitutional prohibition is interposed." Such was the law under the decisions in Indiana, and it stands unquestioned until this day; nay, it stands re-affirmed since that day; and in looking at the composition of the court of Indiana I find that but one judge in 1872 who sat in the case of Price *vs.* Baker, the governor, sat in the case of Gulick *vs.* New in 1860. It was a court composed of members of both political parties, to which circumstance I make a very hesitating reference and perhaps should apologize for it. In 1860 the supreme court, composed of four members, decided the law to be upon this question of gubernatorial power of correcting the report of the canvass of a board of canvass, of withholding a certificate upon the direct and very ground which Governor Grover has undertaken to assume as correct in this case, to wit, that there was a constitutional ineligibility which the board of canvass had not chosen to recognize, but which he was bound to recognize and in recognizing to exclude the party ineligible and to certify the fact. Such was the opinion of the supreme court of the State of Indiana in 1860. Not only was that fact decided and never from that day to this questioned in any court of that State, but the further doctrine was announced that "where a majority of the ballots at an election were for a person not eligible to the office under the constitution" then "the ballots cast for such ineligible person were ineffectual, and that the person receiving the greatest number of legal votes, though not a majority of the ballots, was duly elected and entitled to the office." Such was the doctrine in 1860 of the supreme court of Indiana; and when the composition of that court had entirely changed in 1872, so that but one member who sat in 1860 occupied the bench in 1872, in the case of Price *vs.* Baker the doctrine was re-affirmed and the case of Gulick *vs.* New cited without qualification as authority. Said the court in 1872, following their decision of 1860:

It is a principle of law well settled in this State, that where a majority of the ballots at an election are given to a candidate who is not eligible to the office, the ballots so cast are not to be counted for any purpose. They cannot be counted to elect the ineligible candidate or to defeat the election of an opposing candidate by showing that he did not receive a majority of the votes cast at such election. They are regarded as illegal and as having no effect upon the election for any purpose. As a consequence, it follows that the candidate who is eligible, having the highest number of legal votes, though that number may be less than the number of votes cast for the ineligible candidate and less than a majority of all the votes cast at such election, is entitled to the office.

Now, Mr. President, I do not propose in advance to present here a brief of argument and authorities to control the action of the Senate, or to control my own action or vote in this case; but I merely read these authorities to show how perfectly unjust it is to declare in the words of this preamble "the governor of said State did subsequently, in violation of law and in defiance of the expressed will of the people," do a certain act.

Sir, whether the action of the governor of Oregon has been according to law or not is a most important question upon which I conceive it will be the duty of every member of this Senate hereafter to decide judicially. Upon the law of Oregon and the principles which must govern it, I do not mean at this time to express an opinion; but I shall obediently wait and then respectfully consider the information that shall be conveyed to us by the committee to whom this subject is to be referred, and not consent in advance to stigmatize the action of an officer, when in condemning him I should also be compelled to condemn a respectable, honorable, and upright tribunal of last resort in a sister State.

Why, Mr. President, it will not do in this way to hurl anathemas and denunciations at the head of a man in a high position who palpably with legal authority at his back, acting if you please to believe it erroneously, but acting under the very highest sense of responsibility, has chosen to construe his duty in a certain way. I cannot doubt that his motive has been pure, honorable, and upright, because that would simply be in consonance with all I have ever heard of his previous life, and never with my consent, and I trust not with the consent of a majority of this body, shall we strike until we have heard. The honorable Senator from Indiana, [Mr. MORTON,] with much elaboration stated what was the English law on this subject and cited sundry cases. There are, and I hold in my hand authorities later in

date embracing all those to which he referred yesterday, and giving the decision made in the case of the parliamentary election in the county of Galway between W. Le Poeur French, the petitioner, and Nolan, the respondent, which was decided in the court of common pleas in Ireland before a full court in 1872. I take leave to say that this is the latest expression of English law upon this subject known to me. It will be found in the second volume of English Reports, Moak's Notes, and there may be something very instructive in considering the reasoning of the court in delivering their opinion.

Into that case there entered not only a great deal of party prejudice but even of a more dangerous and tempting prejudice, that of religious animosity and prejudice, or rather sectarian. One judge held that in that case the electors were not fixed with knowledge of the disqualification of one of the candidates, and therefore that his minority opponent was not entitled to the seat; but three judges who concurred, and whose judgment controlled the case, found that the electors had knowledge of this disqualification, and their votes for one party were thrown away, and the other, the minority man, being the only candidate for whom votes were legally given, was entitled to the seat. There the position was taken that the only thing that could prevent the party receiving the minority of the legal votes cast from taking his seat, provided the majority candidate was ineligible, was the fact that notice of the ineligibility should not be brought home to those who so cast their votes. The facts of the case were simply these: Captain Nolan, for whom a majority of the votes were cast had been disqualified because he had been guilty of the violation of a statute prohibiting intimidation at the polls. There had been no adjudication and no sentence of disqualification passed upon him; but the fact that he had disqualified himself by being guilty his opponent alleged; and then, to bring notice of that home to the voters, he caused affidavits and statements alleging the commission of the disqualifying acts by Captain Nolan to be distributed throughout the booths and other places of voting, so that, he said that he had brought home, with all the certainty the case admitted, knowledge of the disqualification to the voters, who, having such knowledge, yet deliberately voted for an ineligible man. The question between the different members of the court was not as to the principle, but it was as to the application of the principle to the case before them. Three of the judges held that there had been sufficient notice given arising out of the state of facts; when one held that there had not been; three held that the seat passed to the man who had received the minority of the votes; one held it had not; and the difference of reasoning between them was the extent to which notice had been brought home to the minds of the persons who cast those votes for an ineligible man.

Mr. MORTON. Will the Senator allow me to ask him a question? Was it not claimed there that notice had been given, so that all the voters knew the fact, by posting up and by giving personal notice to the voters?

The PRESIDENT *pro tempore*. The morning hour has expired.

Mr. MITCHELL. I hope this matter will be allowed to go on to a conclusion.

Mr. EDMUNDS. I cannot consent that it shall go on and be finished now; but according to the usual courtesy, I cannot take the Senator from Delaware off his feet. The matter is not so pressing. Therefore, I have no objection to the special order being passed over informally until the Senator from Delaware concludes.

Mr. MITCHELL. I simply desire to state in this connection that the witnesses are here; and it is very important there should be early action.

The PRESIDENT *pro tempore*. By general consent, the unfinished business will be passed over until the Senator from Delaware is through, and the resolution will remain before the Senate.

Mr. BAYARD. The case had better stand on its own definition; and I will read to the Senate the words used, because words are very important in considering such subjects:

First, then, it is necessary to see whether there are any principles to be deduced from the decisions of the House of Commons upon the question whether a duly qualified candidate is entitled, though in a minority, to be seated in case the other candidate is proved to have been disqualified at the time of the election, and the electors were duly apprised of such disqualification. The research and industry of counsel have referred to all the cases from the earliest times before committees upon the point; I need not travel through them.

I may say this decision was made in 1872.

The result of them is that, in very many cases, the candidate in the minority has been seated upon proof of the knowledge of the disqualification of his opponent being brought home to the electors; and in other cases, upon apparently a similar state of facts, the committees have simply unseated the disqualified candidate, and declared the election void.

Then they refer to two apparently contradictory cases in which there was a divided opinion among the committees, showing us that which we have seen in our own land, that where the question of admission to Parliament or to either House of Congress is to be decided, very often principles are overruled and conclusions made which are irreconcilable upon principle.

Failing then—

As the court states—

to discover in the chaos of decisions any settled principles which should absolutely govern us, we must have recourse to our common law for rules and analogies to guide our judgment; a course to which, for myself, I must say I turn with pleasure, because we find in it, though often mixed up with, and obscured by, what may be deemed technical or narrow principles of the soundest sense and the truest wisdom, and, above all, a power of expansiveness and adaptation which, when properly applied, is adequate to the solution of the novel questions, which, in the complex relations grown out of an advanced civilization, are continually coming to the surface. This exhaustive power is well stated in the passage of Mr. Justice Coleridge's judgment in Gosling *vs.* Veley, 4 H. L., 768, to which Mr. Murphy referred, and, in the language of Lord Chief-Justice Eyre in Ilderton *vs.* Ilderton, 2 H. Bl., 145, where he says that when one mode of trial is obsolete or inapplicable, the common law, out of its own inexhaustible fountain of justice, will devise another.

The court then proceeds to cite a list of authorities which I will not detain the Senate by reading; but Lord Ellenborough is cited as saying:

The general proposition, that votes given for a candidate after notice of his being ineligible are to be considered the same as if the persons had not voted at all, is supported by the cases of The Queen *vs.* Boscawen, Easter, 13 Anne; The King *vs.* Withers, Easter, 8 Geo. 2; Taylor *vs.* Mayor of Bath, M., 15 Geo. 2, all which are cited in Cowper, 537, The King *vs.* Monday.

Then in the case of Taylor, Bigg, and Kingston:

The Lord Chief-Justice Lee at nisi prius directed the jury that if they were satisfied that the electors had notice of Bigg's want of qualification, they should find for the plaintiff; that was Taylor, who had only 13 votes, because Bigg not being qualified was to be considered as a person not *in esse*, and the voting for him a mere nullity. The jury found for the plaintiff; and the court, on motion for a new trial, agreed with the law as laid down by Lord Chief-Justice Lee, and refused a new trial.

Then came a decision by Lord Eldon in the House of Lords; in Hawkins *vs.* Rex, 2 Dow's Parl. Cases at page 148, and he puts it upon the ground that "the majority knowingly voted for this dead man."

It is quite true that the candidate in that case admitted his own incapacity; but it will be found in late cases that that is not material, and if the elector votes after he knows of the disqualification he does so at the peril of losing his vote.

Lord Denman, a great constitutional lawyer, lays down the rule as expressly applicable to elections for the House of Commons. At page 436 he says: Upon the argument of this case, the counsel for the defendants did not shrink from meeting his opponent on the principle; majority he truly asserted to mean legal majority, and he contended that, although there might be numerically more vestrymen present, who were in intention adverse to the rate, than those who voted for it, yet the majority of votes legally expressed was in its favor.

Then the opinion proceeds to recite another list of cases, some of which have been referred to in this debate, the case of King *vs.* Hawkins in 10 East and King *vs.* Parry in 14 East:

The result of the decisions appears to be this: Where an elector, before voting, receives due notice that a particular candidate is disqualified, and yet will do nothing but tender his vote for him, he must be taken voluntarily to abstain from exercising his franchise; and, therefore, however strongly he may in fact dissent, and in however strong terms he may disclose his dissent, he must be taken in law to assent to the election of the opposing and qualified candidate, for he will not take the only course by which it can be resisted; that is, the helping to the election of some other person. He is present as an elector; his presence counting as such to make up the requisite number of electors, where a certain number is necessary; but he attends only as an elector, to perform the duty which is cast on him by the franchise he enjoys as elector; he can speak only in a particular language; he can do only certain acts; any other language means nothing; any other act is null; his duty is to assist in making an election. If he dissents from the choice of A, who is qualified, he must say so by voting for some other also qualified; he has no right to employ his franchise merely in preventing an election, and so defeating the object for which he is empowered and bound to attend. And this is a wise and just rule in the law. It is necessary that an election should be duly made, and at the lawful time; the electoral meeting is held for that purpose only, and but for this rule the interest of the public and the purpose of the meeting might both be defeated by the perverseness or corruption of electors, who may seek some unfair advantage by postponement. If, then, the elector will not oppose the election of A in the only legal way, he throws away his vote, by directing it where it has no legal force; and in so doing he voluntarily leaves unopposed, i. e., assents to, the voices of the other electors.

Where the disqualification depends upon a fact which may be unknown to the elector, he is entitled to notice, for without, the inference of assent could not be fairly drawn, nor could the consequence as to the vote be just. But if the disqualification be of a sort whereof notice is to be presumed, none need expressly be given. No one can doubt that, if an elector would nominate and vote only for a woman to fill the office of mayor, or burgess in Parliament, his vote would be thrown away; there the fact would be notorious and every man would be presumed to know the law upon the fact. This decision was reversed in the House of Lords on a collateral point, (see 4 House of Lords, 679,) but the principles laid down by Lord Denman have never been questioned.

One of the illustrations is that it is claimed "that, if an elector knows as a fact that the candidate for whom he is about to vote is disqualified and yet persists in voting for him, the elector's vote is as utterly thrown away as if he voted for a dead person or for the man in the moon." That statement is repeated again in the course of the decision.

Mr. MORTON. May I ask what illustration is given of presumptive knowledge. Will the Senator refer back to what he has just read? It was the case of voting for a woman, was it not?

Mr. BAYARD. I will give the case.

Can any elector be assumed to be ignorant that a candidate openly practicing intimidation and undue influence was not by law disqualified to be elected? I think not. It is quite true that a man cannot be assumed to know legal technicalities, or, as Mr. Justice Manle says, in a case cited by Judge Blackburn there, (see Martindale *vs.* Falkner, 2 C. B. at page 720, 15 L. J. C. P., at page 94:) "It would be too much to hold that ordinary people are bound to know in what particular court such and such a practice does or does not prevail." Lord Westbury, in the case of Cooper *vs.* Phibbs, L. R. 2 H. L. Cas., 149, thus explains the maxim at page 170: It is said, "*Ignorantia juris haud excusat*," but in that maxim the word "*jus*" is used in the sense of general law.

"The general law," the ordinary law of the country. Now, what, pray, is the Constitution of the United States? Is that a special law? Does that depend upon technicalities, or is it not, with a force not known in England, the general law of the United States? As my friend from Ohio citing the language suggests, it is "the supreme law of the land."

Mr. Justice Lush, in his judgment in the Mayor of Tewkesbury's case (see 16 W. R., 1200, L. R. 3 Q. B., page 638) says: "For the reasons given by my brother Black-

born. I am of opinion that it is not enough to show that the voter knew the fact only, but that it is necessary to show sufficient to raise a reasonable inference that he knew the fact amounted to a disqualification. It cannot be said in all cases that the mere knowledge of a fact which in law disqualified a candidate must be taken to be knowledge of all the accompanying circumstances." Taking the rule thus to be laid down, I am clearly of opinion that it is not only a reasonable inference, but a *legal* inference from the facts stated, which I am bound to draw, that the electors who knew of the exercise of these acts of undue influence, spiritual intimidation, knew that they disqualified the candidate.

And then they proceed to state what was the testimony under which they found that the acts had been committed in the community where the vote was cast, affidavits alleging these acts were scattered broadcast on the day of election around the polls, and for these reasons they gave their decision. This is followed in a note by the recital of a case in New York, which was an appeal to the supreme court of that State, the case of Furman *vs.* Clute, which was subsequently, however, overruled in the New York court of appeals, in the fiftieth volume of New York Reports. But in this case of Furman *vs.* Clute, the supreme court of the State of New York decided that, where there was an ineligibility for the election for superintendent of the poor in the city of Schenectady and "the ground of the decision that Clute was not eligible to the office, is that being supervisor of the Fifth ward of the city of Schenectady he was debarred from holding that of superintendent of the poor, the statute providing that 'no supervisor of any town, or county treasurer, shall be appointed to hold the office of superintendent of the poor of any county in this State,'"

The question came up whether when the people throughout that county voted for a man who was ineligible they knew it. The court required that knowledge of that fact should be brought home to them, but not in the ward in which the supervisor lived and exercised his duties, and therefore they permitted the 295 votes cast in that ward of the city of Schenectady in which this gentleman exercised the powers of supervisor to be separated from the rest and declared that in the ward where he sat and exercised his powers, in that local division of power in which these 295 voters resided, those voters should have been held to have full notice, and knowing that they were voting for a disqualified man, were held to have thrown their votes away and did not intend to defeat the opposing candidate because they had neglected the only means whereby they could defeat him, which was to vote against him and vote for a qualified person against him. That decision, however, was overruled by the court of appeals of New York.

I have only cited this, as I have cited this other authority, not for the purpose of concluding my judgment on the subject, not for the purpose of making an attempt at concluding the judgment of anybody upon this Oregon case, but merely to show you how much law, how much reasoning, how many respectable decisions can be produced to sustain diverse opinions in regard to this exceedingly important subject. Perhaps I may say what my present impression is generally of the law, that we should lean as much as we can against the doctrine of the English cases. That is my personal belief. The great foundations, the great underlying principle of a republican government is the residence of power in the majority. It is the majority principle that we should strive to sustain, and I would never defeat that willingly by a technicality, and it would require the law to hold me to it, but yet law can hold me to it. A majority means a *legal* majority, and therefore we must ascertain in the present case what was the law and what justification there has been for the party whose duty it was to execute it and who has done so according to his conscience.

Now, Mr. President, I propose to the Senator from Oregon to strike out his preamble and insert this:

Whereas it is alleged that the governor of the State of Oregon has issued a certificate of election to one E. A. Cronin as one of the electors of said State instead of issuing such certificate to one J. W. Watts, alleging that the said Watts was ineligible to the said office of elector on November 7, 1876, the time of said election: Therefore,

Be it resolved—

That brings up sufficient justification for the resolution, and it subtracts from the preamble recitals which I think are unjust and also incorrect. I believe that the great matter for us is, and I have endeavored to exhibit that in the manner in which I have discussed the resolution, to decide these questions with the most scrupulous regard for law. Laws have their periods of test, and if ever the laws of the United States and the spirit of subordination of the people to the laws, the duty of holding all citizens whether in or out of office to obedience to law, was never, never more forcibly brought home to us than it is now. And, therefore, while I trust this examination will be made, prior to the grave, deliberate utterance of opinion by the appropriate committee of the Senate, at the same time I hope the report of the committee will not be weakened or prejudiced by anticipating the character of their decision in the unnecessary charges, innuendoes, and implications, to say the least, which the present preamble contains.

I therefore trust that the honorable Senator from Oregon, as he desires to reach the substantial fact of inquiry, and I desire to aid him in it, will not bind us to a recital of facts in the preamble that are entirely useless for the purposes of decision, but which I submit to him are rather destined to anticipate the judgment to be given, because they do anticipate it or may be held to anticipate it. I know the preamble has already been amended by the action of the honorable Senator himself, and therefore I trust that this reasonable and, as I think, this entirely just proposition of mine in regard to the preamble may be adopted without objection.

Mr. EDMUNDS. I call for the regular order.

Mr. MITCHELL. I wish to be allowed one moment.

The PRESIDING OFFICER, (Mr. BURNSIDE in the chair.) The Senator from Vermont calls for the regular order, which is the joint resolution (S. R. No. 10) proposing an amendment to the Constitution of the United States, the pending question being on the passage of the joint resolution, upon which question the Constitution requires the yeas and nays to be taken.

Mr. BOGY. Mr. President——

COMMITTEE SERVICE.

Mr. MITCHELL. With the consent of the Senator from Missouri, who kindly gives way to me for a moment, I desire to state that I am a member of the Committee on Privileges and Elections and have been assigned as one of the members of a subcommittee to proceed to Florida to investigate the election in that State. While I do not desire to shirk any duty to which I may be assigned by the Senate or by any committee to which I belong, I find that it is absolutely impossible for me, in justice to my constituents, to leave here at this time. I therefore desire to tender my resignation as a member of the Committee on Privileges and Elections and hope it may be accepted.

The PRESIDENT *pro tempore*. Will the Senate excuse the Senator from Oregon from further service upon the Committee on Privileges and Elections? The question is on that motion.

The motion was agreed to.

Mr. MORTON. I simply desire to remark that there is an investigation on hand in which the State of Oregon is interested, which renders it perfectly proper that the Senator from that State should be here. He is interested in the present discussion that is going on. We think it important that the Senator from Oregon shall remain. I move, therefore, that the Chair fill the vacancy.

The motion was agreed to by unanimous consent; and

The PRESIDENT *pro tempore* appointed Mr. SARGENT to fill the vacancy.

WITHDRAWAL OF PAPERS.

On motion of Mr. CLAYTON, it was

Ordered, That Isaac A. Morris have leave to withdraw his petition and papers from the files of the Senate, leaving copies of the same.

COUNTING OF ELECTORAL VOTES.

The Senate resumed the consideration of the joint resolution (S. R. No. 10) proposing an amendment to the Constitution of the United States, the question being on its passage.

Mr. BOGY. Mr. President, it is my purpose to address some observations to the Senate, but I regret I have not had the time to make the preparation which the subject really demands. I fully appreciate its importance, and particularly at this time and under the singular circumstances now existing.

A proposition to amend the Constitution is, under all circumstances and all times, one of very great interest. It is the fundamental law, and the foundation on which rests all the vast superstructure of material, social, political, and, I may say, religious interests. This written Constitution should be amended but seldom, and, when a proposition is presented to amend and to change it, it should be examined with great care and deliberation, after long study, and with an honest purpose to decide the subject as its importance really demands.

I believe that the section of the Constitution which it is proposed to amend ought not to be amended; that it is fully capable of carrying out the object intended to be accomplished by the proposed amendment, and I will attempt to show that the action and the practice of the Government from the beginning, in 1789, to the present day, has in the main been uniform on this subject, and that this gives to this section a construction rendering it now very plain. When I say this I do not wish to be understood as stating that this has been perfectly regular, but that this uniformity has been of a general character. I can compare it to nothing better than to the geological formation of our earth, where the different strata, although in the main regular, are now and then broken by great dikes of rock belonging to a different period; nevertheless to the eye of the scientific geologist the formation of the earth from its primitive condition to what it is to-day has been uniform, and to his eye is as plain as if written in letters of gold.

My object will be to establish this point, that the Constitution as it now stands has been interpreted by the action of the Government from a very early period to the present day in a way so as to make that which originally was somewhat obscure now very plain.

If this be so then I believe the Constitution is ample if it be faithfully carried out by the persons who are called upon to do so. I am aware that at the first election, that of Washington, it is different from what it is afterward. There are several explanations why this should be so; but even this difference is more apparent than real. It will be remembered that the Government was not yet organized. A President had been elected, but his election had not yet been made known officially by any count. The Senate was not organized because the Vice-President designated at the election had not yet been decided by any count to have been elected. So that a count could be effected and the Government organized, on the 6th April, 1789, this resolution was introduced:

The Senate proceeded by ballot to the choice of a President for the *sole* purpose of *opening and counting* the votes for President of the United States.

It has been said that this recognizes the power to count the votes by the President of the Senate, who was Mr. John Langdon. Yet a critical analysis of this order, as it was called, will not sustain this opinion. It was simply for the purpose of opening and counting the votes, and for that purpose only. The object was to put the Government into operation. The opening and the counting of the votes was the first thing necessary to be done. Therefore this order was made for that purpose, and for nothing else.

Ordered, That Mr. Ellsworth inform the House of Representatives that a quorum of the Senate is formed; that a president is elected for the sole purpose of opening the certificates and counting the votes of the electors of the several States in the choice of a President and Vice-President of the United States; and that the Senate is now ready, in the Senate Chamber, to proceed in the presence of the House to discharge that duty; and that the Senate have appointed one of their members to sit at the clerk's table to make a list of the votes as they shall be declared; submitting it to the wisdom of the House to appoint one or more of their members for the like purpose—who reported that he had delivered the message.

I will call the attention of the Senate to this fact, that from the very beginning to the present day tellers were always appointed. It may appear from the wording of some of these orders (or joint resolutions) that these tellers were appointed merely to keep a tally of the votes as announced by the President of the Senate. I will try to show that these tellers were called upon to perform and did perform the same duty that tellers in modern times have performed, and that they were the agents of the two Houses by whom the votes of the electors were counted. They represented the two Houses. Therefore at the very first election and the first counting of the votes tellers were appointed. The counting having taken place, Mr. Langdon thereupon made this report:

The president elected for the purpose of counting the votes declared to the Senate that the Senate and House of Representatives had met, and that he, in their presence, had opened and counted the votes of the electors for President and Vice-President of the United States of America.

Taking this announcement as correct history, as no doubt it is, Mr. Langdon opened the votes, and also counted them. Under the circumstances it was not very astonishing that but little attention was paid to the subject. Washington was the choice of the entire people. The counting of the votes for him was a matter of naked form, as it was well known that every elector had voted for him. Notwithstanding this it ought not to be overlooked that tellers were appointed, thus recognizing that the two Houses had some duty to perform that necessitated the appointment of them. But since that time—as far as I have been able to ascertain—the votes have been counted by tellers appointed by the two Houses, and there is not one single instance in the long line of our history, (excepting the first time, under the presidency *pro tempore* of Mr. Langdon,) when the votes for President and Vice-President were not counted by tellers appointed by the two Houses.

The second election resulting as the first, in the election of Washington and Adams, the following took place:

Mr. King, from the joint committee, reported—

That the two Houses shall assemble in the Senate Chamber on Wednesday next, at twelve o'clock; that one person shall be appointed a teller, on the part of the Senate, to make a list of the votes as they shall be declared; that the result shall be delivered to the President of the Senate, who shall announce the state of the vote, and the persons elected, to the two Houses assembled as aforesaid; which shall be deemed a declaration of the persons elected President and Vice-President, and, together with a list of the votes, be entered on the Journals of the two Houses.

It is manifest from the report of Mr. King that the counting was done by tellers representing the two Houses, not appointed to make a list of the votes only, but to deliver the results of the count to the President of the Senate, and which, when made, to be announced by him. It will thus be seen that so early as the second election the two Houses, through their tellers, counted the votes, while the first time it appears this was done by the President of the Senate, appointed for this purpose and for this alone.

It appears that the place of the meeting of the two Houses was not regular—at first in the Senate Chamber and afterward in the Chamber of the House. Mr. King, who had great ideas of senatorial dignity, insisted always that this joint meeting should be in the Senate Chamber. He thought it below the dignity of the Senate that it should go to the House of Representatives, but that it was the duty of the House to come to the Senate. It is a pleasure for me to say at this distant day that Mr. King was for many years one of the brightest ornaments of this body—a man of great ability and of great purity of character.

Thus at the second election it appears beyond I think reasonable grounds for controversy that the count of the votes was made by the two Houses, and not by the President of the Senate. We then come to the third election, that of John Adams and Thomas Jefferson. On the 2d of February, 1797, it is reported—

That the two Houses shall assemble in the Chamber of the House of Representatives on Wednesday next, at twelve o'clock; that one person be appointed a teller on the part of the Senate to make a list of the votes as they shall be declared; that the result shall be delivered to the President of the Senate, who shall announce the state of the vote and the persons elected to the two Houses assembled as aforesaid, which shall be deemed a declaration of the persons elected President and Vice-President and, together with a list of votes, be entered on the Journals of the two Houses.

Tellers were appointed again to make a list, the result to be delivered to the President of the Senate, and by him to be announced.

This form for the appointment of tellers appears to have been retained from that day, and indeed before to a very recent period. I may say that this form has continued until the adoption of what is known as the twenty-second joint rule. The vote always was returned to the President of the Senate by the tellers, and by him announced, showing that they had necessarily ascertained by a count what the vote was. I now come to the fourth election, that of Thomas Jefferson and Aaron Burr, in 1801; and here again the same form of order is retained.

Four years before the meeting had taken place in the Chamber of the House. This time it is in the Senate Chamber, showing that the practice upon the subject has not been uniform, and I think it is of no consequence whatsoever.

Resolved, That the Senate will be ready to receive the House of Representatives in the Senate Chamber on Wednesday next, at twelve o'clock, for the purpose of being present at the opening and counting the votes for President of the United States; that one person be appointed a teller on the part of the Senate to make a list of the votes for President of the United States as they shall be declared, and that the result shall be delivered to the President of the Senate, who shall announce the state of the vote, which shall be entered on the Journals; and if it shall appear that a choice hath been made agreeably to the Constitution, such entry on the Journal shall be deemed a sufficient declaration thereof.

Ordered, That the Secretary notify the House of Representatives of this resolution.

Tellers as before are to be appointed to make a list of the votes—the result to be delivered to the President of the Senate.

Mr. Burr, then Vice-President and consequently President of the Senate, at the opening of the joint session made a short speech in which he showed what was meant by this duty devolved on the tellers. This speech is important, and I will read it verbatim:

The President (Mr. Burr) stated that, pursuant to law, there had been transmitted to him several packets, which, from the indorsements upon them, appeared to be the votes of the electors of a President and Vice-President; that the returns forwarded by the mail, as well as the duplicates sent by special messengers, had been received by him in due time. You will now proceed, gentlemen, said he, to count the votes as the *Constitution and laws direct*; adding that, perceiving no cause for preference in the order of opening the returns, he would pursue a geographical arrangement, beginning with the Northern States.—*Annals of Congress*, Eighth Congress, second session, 1804-1805, page 56.

I call the attention of the Senate to this most significant speech made by this, I may say, remarkable man. For whatever may be said of Mr. Burr he certainly was a man of very great ability, and his construction of the Constitution at that early day is entitled to great respect. He says:

You will now proceed, gentlemen, to count the votes as the *Constitution and laws direct*.

The two Houses were assembled for that purpose; tellers had been appointed under orders of a similar character as the orders made at the beginning of the Government; that is, to make a list of the votes and return the result to the President of the Senate; he construes this order to mean that the counting of the votes shall be done by the two Houses through their tellers, for he says:

You will now proceed, gentlemen, to count the votes as the *Constitution and laws direct*.

"As the Constitution and laws direct." There was no law at that time but the law of 1792, directing how the vote should be counted, and this law said this should be done in accordance with the requirements of the Constitution. In this speech Mr. Burr gave a construction to the form of the order appointing tellers—that is, they were to count the votes—as the instruments of the two Houses.

From that day to the time of the adoption of the twenty-second joint rule, tellers have been appointed very much in the same language. In 1800, or perhaps in the latter part of 1799, a bill was proposed to create a tribunal to be authorized to pass upon the returns of the votes for President and Vice-President. From the debate on this bill it appears that many distinguished men at that day denied the power of Congress over the votes of the States beyond the duty to count such votes as had been sent to the President of the Senate and by him opened before the two Houses; yet while this appears to have been the opinion of Charles Pinckney and others, leading democrats of that period, no one claimed this power for the President of the Senate.

This bill of 1800, which was opposed by Charles Pinckney and the democrats of that day, was objected to upon the ground that this power belonged to the States. Their objection was founded on the theory that the college of electors was an independent body created by the States, as authorized by the Constitution of the United States, and that this independent body had within itself acting under State laws the power of purging itself of any illegal or improper votes; that when the votes had thus passed through the ordeal of the electoral college none would or could get to Congress but the true and honest votes of the different States.

The Federal party, at whose head stood John Marshall, then a member of the lower House, believed that the power was in Congress to receive or reject the vote of any State which was improperly cast; that Congress had the power also to create a board to be composed of members of the two Houses, authorized to pass upon the votes of the States. However this may be, no one believed that the power to count was in the President of the Senate—no such idea was advanced by any one of any party. This doctrine, if entertained by anybody, is of modern growth and entirely new. The bill failed because of disagreement between the two Houses.

This bill was sent by Mr. Jefferson to Mr. Madison, then at his seat at Montpelier, in Virginia, and we have his letter to Mr. Jefferson on the subject, in which he denies the power of Congress over the sub-

ject. His letter is, however, based upon the idea that the electoral college is an independent body, the creature of the States, and having within itself the power to eliminate the votes of any State improperly given.

It is plain that while the power of Congress was opposed by one party and claimed by the other, no one ever said that the power to count the votes, or to reject, or anything else, excepting to open the same was in the President of the Senate.

In 1817 the power of Congress over the vote of a State was asserted in a manner which cannot be misunderstood. This was on the occasion of the counting of the votes at the election of James Monroe and Daniel P. Tompkins.

During the opening of the certificates and counting the electoral votes upon this occasion, the following proceedings in reference to the vote of the State of Indiana took place in the House of Representatives:

February 12, 1817.

The President of the Senate, in the presence of both Houses, proceeded to open the certificates of the electors of the several States, beginning with New Hampshire, which were delivered to the tellers, by whom they were read, and who took lists of the same as far as Indiana. When the President of the Senate was about to open the vote of that State for the purpose of having the same counted,

Mr. Taylor, one of the Representatives from the State of New York, rose and objected to the same; and stated that, in his opinion, the votes of the electors for the said State of Indiana, for President and Vice-President of the United States, ought not to be counted.

Upon which, objection being made, the Senate, on motion of one of its members, withdrew; and being absent,

A resolution was submitted by Mr. Sharp, a member of the House, in the words following:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the votes of the electors for the State of Indiana for a President and Vice-President of the United States, were properly and legally given and ought to be counted.

A motion was made by Mr. Taylor, of New York, to amend the said resolution by striking out all thereof after the enacting clause, and inserting the following: That the votes of the electors of the State of Indiana having been given previous to the admission of the State into that Union, *ought not to be received and counted.*

And debate arising thereon,

On motion by Mr. Ingham, that the resolution be postponed indefinitely,

It passed in the affirmative; and

On motion by Mr. Pitkin,

Ordered, That a message be sent to the Senate to inform them that this House is again ready to receive them and continue the opening of the certificates and counting the votes of the electors of the several States for a President and Vice-President of the United States, in pursuance of the resolution of the two Houses of the 11th instant, and that the Clerk go with the said message.

Upon this objection being made, the two Houses separated. After consultation the vote was admitted; but it might have been rejected, and the power to admit is no greater or different than the power to reject. In short, the power to pass on the question was claimed and exercised.

The next case which transpired was that of my own State, and was the second election of Monroe and Tompkins:

The two Houses, agreeably to the joint resolution, assembled in the Representatives' Chamber, and the certificates of the electors of the several States, beginning with the State of New Hampshire, were, by the President of the Senate, opened and delivered to the tellers appointed for the purpose, by whom they were read, except the State of Missouri; and when the certificate of the electors of that State was opened, and objection was made by Mr. Livermore, a member of the House of Representatives from the State of New Hampshire, to counting said votes; whereupon,

On motion by Mr. Williams, of Tennessee, the Senate returned to their own Chamber.

[The following proceedings took place in the House of Representatives in reference to the vote of the State of Missouri:

The President of the Senate opened a packet, which he presented to the tellers as containing the votes of the electors of President and Vice-President of the United States, of the State of Missouri; when,

Mr. Livermore, one of the Representatives of the State of New Hampshire, rose, and objected to the counting of any votes given by Missouri for President and Vice-President of the United States of America, *because Missouri is not a State in this Union.*

Whereupon,

On motion by a Senator,

The Senate withdrew to their Chamber.

Mr. Floyd submitted the following resolution:

Resolved, That Missouri is one of the States of this Union, and her votes for President and Vice-President of these United States ought to be received and counted.

Mr. Archer, of Maryland, moved that the resolution be postponed indefinitely.

Mr. Clay moved that it lie on the table.

And the question being taken thereon,

It passed in the affirmative.

Ordered, That a message be sent to the Senate, to inform that body that the House is now ready to receive the Senate in the Chamber of the House of Representatives, for the purpose of continuing the enumeration of the votes of the electors for President and Vice-President, according to the joint resolutions agreed upon between the two Houses, and that the Clerk go with the said message.]

Thus, Mr. President, from a very early period down to 1821 and for years afterward the action and the practice of the Government has been in the main uniform. This went on in the same way until 1865, when the twenty-second joint rule was adopted. Much has been said as to whether this rule be now in force or not, the Senate saying it is not and the House that it is. In my opinion it is not of any consequence whether it is or not. It stands as a construction and exposition of the twelfth amendment to the Constitution made by the men who were then in Congress, some of whom are here to-day; and this construction is in my opinion in strict conformity with the practice of the Government from an early period. I believe now, as I did at the last session when this subject was before the Senate, that this rule is a correct exposition and interpretation of the Constitution.

The bill offered at the last session by the Senator from Indiana was in every respect but one similar to this rule, and this difference is in this, that as the rule required the sanction of both Houses to receive, the bill requires the sanction of the two to reject. The difference, apparently very slight, is nevertheless very great, and while I believe the rule conforms to the Constitution, the bill may not. My understanding of the Constitution is that it requires the sanction of both Houses to receive, as either House by itself has no power to do anything; that is, it must be the action of Congress, composed as it is of two Houses, and if either declines to receive, the vote stands not received. I consequently voted against this bill, with, however, considerable hesitation, as I was anxious then, as I am now, to adopt a mode which will in conformity to the Constitution be a guide for the action of Congress.

The twelfth amendment to the Constitution—which in this particular is the same as the old Constitution—is in my opinion similar to the twenty-second joint rule, the latter giving in detail what of course is not in the Constitution. No rule could be made which could take away or add to the Constitution. The only object of a rule is to create the machinery to carry out granted powers. This twelfth amendment provides that the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted. The twenty-second joint rule provides the details necessary to carry this out, and provides for the appointment of tellers—two by the House and one by the Senate—to whom shall be handed, as they are opened by the President of the Senate, the certificates of the electoral votes, and no vote shall be counted except by the concurrent vote of the two Houses. This rule I believe to be the meaning of the Constitution; that is, as the power was in Congress, it requires the concurrence of the two Houses constituting the Congress to receive. And the first question which can be presented is to receive, and not to reject, and when once received the question to reject can never be presented.

It is not provided in the Constitution who shall preside over the joint meeting. This, being only a question of form, was very properly put in the rule, and without a rule on this subject the joint session would be without a presiding officer. The President of the Senate would in the joint session be the presiding officer of the Senate, and the Speaker of the House would be of the House. A joint rule is therefore a necessity or a law; without a rule or a law no one is authorized to announce the result of the vote.

I think the Senator from Vermont [Mr. EDMUNDS] stated, a day or two ago, that this rule had been adopted by the Senate without consideration or deliberation, and as if of no importance. The truth is, it was reported by Judge Trumbull—as the chairman of a joint committee raised for this purpose—and passed unanimously in both Houses.

Mr. EDMUNDS. Was it not, may I ask my friend, passed on the morning it was reported, without any debate of the important questions that he and I both agree lie in it?

Mr. BOGY. I have no doubt the statement of the Senator is entirely correct, but it does not conflict with what I have said. My statement is this: That although reported on the morning of the meeting of the two Houses, it was the report of a joint committee who had been selected for the purpose of providing a way and a mode of getting at this count, as had been done every four years in all the period of time antecedent to this.

Mr. MORTON. Let me call the attention of my friend. Does my friend mean to say that the twelfth article of the amendments would empower one House to reject the vote of the State of Missouri without the concurrence of the other House? The twenty-second joint rule authorizes that to be done. Does my friend mean to say that the twelfth article of the amendment authorizes that?

Mr. BOGY. I say that according to my understanding this is the meaning of the twelfth amendment of the Constitution, and that the twenty-second joint rule carried out this meaning. If the power to count the vote be in Congress it requires the assent or concurrence of both to agree to receive, and if one does not concur there is no action of Congress, it being composed of two Houses, and the vote necessarily is not received. This I believe to be the Constitution and also the twenty-second rule.

Mr. EDMUNDS. Then may I ask my friend a question?

Mr. BOGY. Of course.

Mr. EDMUNDS. I do it in the sincere desire to get information, because I do not propose to have a contest with anybody just now on this subject; but I wish to ask my friend this upon his theory: Suppose that at the last election of the present President, (I do not mean the one that may now be drawn into question, because I wish now to say nothing about that at all,) in February, 1873, the Senate of the United States on my friend's theory say: "We reject the vote of the State of New York;" the House say: "We reject the vote of the State of Missouri," for reasons respectively that are satisfactory to the consciences of men I will suppose; I will not speak of a mere wild anarchy that makes objections at large, but suppose both Houses to be acting conscientiously, and so for reasons which each House believes to be valid for itself. You have run the vote down until the only State unobjected to by one House or the other is the State of Delaware. I might take any other State, but I want to take one of the smaller States. Delaware has a little smaller representation than the State of Vermont or I would take that. Delaware has three votes, I believe. Now then, does the Senator mean to say that the single vote of the State of Delaware is to elect a President? If he says no, that in that case the Constitution throws it upon the House of Representatives, then does he say that because through

some informality or the non-voting of the electors on the day prescribed by law, the Constitution requiring that they shall all vote on the same day, although the whole number of electors of all the States has been appointed as the Constitution prescribes, yet they have not voted, then the House of Representatives have the power to elect. I say they would have no power to act, because they can only act when somebody fails to receive a choice of the whole number of electors appointed. What are you going to do then? It seems to me the argument of my friend, and I suggest it to him merely to get his views upon it, would lead in certain contingencies to an absolute breaking up of the Government by the exercise of its own constitutional power. Each House by the Constitution is to do a particular thing and doing that particular thing you are to produce a state of anarchy. I do not mean an anarchy of civil commotion and strife, but a legal anarchy, because probably the good sense of most people in the United States would say "If we have not got any Government we will not fight about it; we will try some peaceable means of getting it." I should like my friend's views upon that question.

Mr. BOGY. I will with pleasure reply to my friend, but I will first terminate the argument which I was presenting to the Senate and then will answer him. I was stating that Congress being composed of two separate bodies, independent of each other, working under and according to their own separate rules, their concurrence is required to do anything, no matter what that may be. No act can be performed by one House, but it requires the concurrent action of both.

The first question which necessarily presents itself in a case of this kind is not one of rejection but one of reception. You cannot kick a thief out of your house unless he has previously entered it. You cannot reject anything unless you have previously received it. The common import of language shows this. Therefore the first question which necessarily presents itself to the two Houses is not one of rejection but one of reception. The twenty-second joint rule provided that if the vote of any one State was objected to by either House and the two Houses could not concur on its reception, it being objected to by one House, it was of necessity not received. I said that that was in my opinion the meaning of the Constitution.

Mr. MORTON. Will my friend allow me a moment? He makes the presumption of law against the return from a State. Instead of giving to the return from a State the benefit of the presumption of law in its favor, he makes the presumption of law against it, so that when an objection is made, however trivial or unimportant in itself, both Houses must concur in overruling the objection or this vote of the State goes out. Now, I take it the other way, that the presumption of law is in favor of the return from a State, and unless both Houses concur in rejecting the vote, it ought to be counted. The iniquity of the twenty-second joint rule was that it enabled one House to disfranchise one or all of the States of the Union, an absurdity, I think, upon its face. As to the power of the President of the Senate, I do not choose now to enter into the discussion of that subject.

Mr. BOGY. The Senator from Indiana says it is absurd——

Mr. MORTON. I say that according to my opinion it is absurd.

Mr. BOGY. Yes, absurd that the vote of a State should be rejected by either House.

Mr. MORTON. By the vote of one House.

Mr. BOGY. Of course that would be the vote of either House, and the Senator says it is absurd because the presumption ought to be in favor of the vote of the State. Surely it ought to be in favor of the vote of the State, but I am trying to show that, as it requires the action of Congress to do anything, unless the two Houses concur, nothing can be done, and that this was the twenty-second joint rule. The Senator admits it and calls it iniquitous. I think it is correct and that the mode pointed out in his bill is not correct, I will not say iniquitous. I voted against it after considerable hesitation at the last session. The first duty, as well as the first question, is one of reception and not one of rejection, and although it is a plausible argument to say that the presumption is in favor of the correctness of the vote of a State, yet it is only plausible. There is this one answer to all such questions, and this will reply both to the Senator from Indiana as well as the Senator from Vermont.

The representatives of the people and of the States we must believe will do their duty and nothing less, and no one has the right to presume that the members of either Houses would object to the vote of a State from caprice, and which would justify the other House to object to another from the same motive. Carry out the suggestion a little further and say that both Houses of Congress, when they belong to the same party as they have in this country not very long ago, would reject the vote of every State but one and receive the vote of that State which had voted in accordance with their political views. Suppose that every State in this Union was democratic but one and that Congress was republican, as was the fact a few years ago, on the supposition of my friends that men act dishonestly, which I deny, the vote of every State could be rejected by the concurrent vote of both Houses excepting that one State which is republican. Carry out these suppositions founded on the dishonesty of the representatives of the people and the Government is gone. This you have no right to presume. The presumption of the Constitution, the principles underlying all representative governments, is that public men will discharge their duty with fidelity, with honesty, and when the occasion requires it, regardless of party; and to assume any other theory makes this and all free governments a farce, and it would be wiser to scatter our Constitution and laws to the winds and submissively range ourselves under the protection of the sword. It is true this power may be abused if it is confined to one House with more ease than if it is confided to two Houses, but it is only making the case easier; it is not changing the logic of the argument. If one House can do wrong so can two, and this is the only difference. The difference between the twenty-second joint rule and the bill of the Senator from Indiana is simply in this, as already stated, one requires two to receive, the other two to reject. The first, in my opinion, is more in conformity to the Constitution; the latter perhaps more conservative, for the reason, as already said, that it is more difficult for two to do wrong than it is for one.

If the day ever comes when Congress can be influenced by any other than high, patriotic, and honest influences, the day will have come when no joint rule, or law, or constitution will be respected. The bad men, rognes and thieves and assassins, will be in power, and a bloody revolution will be necessary to wrest the Government from their vile hands, or we will be driven as other nations before us to seek protection in a stronger government. This I will not permit myself to think of.

Mr. MORTON. Will my friend allow me to ask him a question?

Mr. BOGY. Certainly.

Mr. MORTON. I desire to ask the Senator this question: whether his proposition that one House may reject the vote of a State, virtually disfranchising it, is not at variance with our whole theory of government? I take it that the rejection of the vote of a State is one of the most delicate of all the powers that Congress can exercise, if Congress acting as a Congress can do it. We cannot pass the smallest bill, we cannot make an appropriation of $10, we cannot do the smallest act, without the concurrence of both Houses, except those things which each House may do in carrying on its own business, as to questions of order, investigation, and so on. So far as any act is concerned that may affect the country, we cannot do it to the smallest extent, the smallest character, without the vote of both Houses. That is the theory of our Government. My friend proposes that one House, without the concurrence of the other, may disfranchise the State of New York, cast out her vote, and in fact cast out the vote of every State in this Union.

Mr. BOGY. I have admitted that it was easier for one House to do an injustice to a State than for the two Houses, but that is the extent of the argument. You have to suppose that that one House is acting from improper and dishonest motives; that it is led by a spirit of party, or corruption has taken possession of the hearts and the minds of a majority of its members. If that be true as to one House, may it not be true as to the two Houses? It only makes it more difficult.

If the day ever comes when a majority of either House of Congress will so far forget themselves as to reject the vote of a sovereign State which has been cast in accordance with the law and the Constitution, the day will have come when our experiment will be a failure. Power may be abused, and to some extent you cannot keep out of Congress the spirit of party. The best men, the most enlightened and virtuous, are to some extent influenced by it. We cannot help this. It is our frail nature; but frail as we are, unless we are bad and corrupt, there is a point where party stops and country present itself, where party sinks and your country stands before you in all its majestic proportions, and from the frail, weak partisan the patriot arises if he be an honest man. Power is the ability to do, to perform, and to accomplish; and if he who has the power chooses to abuse it, it becomes dangerous. Yet power has from necessity to be placed somewhere; and the great question is, the safest place to put it.

Mr. BURNSIDE. Will the Senator from Missouri allow me to ask him one or two questions upon the topic he is speaking of just at this moment?

Mr. BOGY. Certainly, and with pleasure.

Mr. BURNSIDE. Does the Senator hold the members of the two Houses, occupying their position as members, would be actuated by any higher motive than the members of the two committees who were sent to New Orleans to look into the troubles in that State and of one of which he was a member? Would they owe a higher duty to the people of the United States than those eminent citizens, a great many of them members of the two Houses, owed to the people of the United States? Would he as a legislator, in other words, owe any higher duty to the people of the United States than he owed to them as a member of that committee?

Mr. BOGY. I will answer the Senator; and I think the question is one of the best arguments on my side. All the committees heretofore sent to Louisiana by Congress, composed of men of both parties, united in reporting that the government in that State and its returning board were a fraud. I speak of congressional committees, and not of the citizens who went there lately as private individuals. One of them, I am afraid, has failed in its duty. I believe the democratic citizens acted above the spirit of party, and in good faith and with all honesty tried to find out who had received the vote of that State, being determined if, after fair investigation, they had satisfied themselves that the vote was for Hayes, to say so. Candor compels me to say that I do not believe the republican citizens were actuated by the same spirit. Yet I am in hopes that such of them as are members of either House of Congress will yet do right, and sink the partisan into the patriot. All I can say is, we shall see.

Mr. BURNSIDE. How does it happen then that these two committees come to such entirely different conclusions in reference to the condition of affairs there?

Mr. BOGY. My friend will observe that these men went there as private individuals and partisans, and not in any official character. That man will on all occasions rise above party, I am sorry to say I am not prepared to advance.

Mr. BURNSIDE. I will ask the Senator one more question. I ask if the Supreme Court of the United States has not in a very marked instance within the last year made a decision which was adverse to what were considered the views and principles of the party which the democratic party claim now had the organization of the Supreme Court?

Mr. BOGY. Mr. President, I do not exactly fancy that mode of argument, because——

Mr. BURNSIDE. I beg the Senator's pardon.

Mr. BOGY. Because I am not disposed to criticise the action of the Supreme Court. I would say, however, with great respect to that court, as one of the co-ordinate branches of this Government and also for the individual members of it, that I think at one time they gave way to the fell spirit of party, I will not say corruptly, nor do I mean to be understood as intimating in the slightest degree the slightest corruption. Far from it, but I think they gave way to the spirit of party under peculiar circumstances, such circumstances as would perhaps have swayed any other body in the world. In saying this I hope not to be misunderstood.

Mr. BURNSIDE. I will ask the Senator one more question, with his permission. Is he not satisfied that the main body of the people of the United States—I do not mean now the active politicians; yes, I will include even them—that the main body of the people of the United States would sit down by any decision made by the Supreme Court of the United States on this subject, no matter which party the decision favored; and is there any other tribunal in the United States to which the matter could be referred whose decision would give that satisfaction?

Mr. BOGY. Mr. President, it is taking me a long way out of the line of my argument, but I will answer.

Mr. BURNSIDE. I only refer to this subject because the gentleman, while discussing other subjects, the mode of counting the votes, &c., alluded to the amendment offered by the Senator from Vermont. He referred to the Supreme Court, or otherwise I should not have asked the question which I did.

Mr. BOGY. I will answer my friend.

A comparison of moral characteristics, if I may use that expression, between the Supreme Court and Congress is by no means a pleasant one. But I will say this, that aside from the fact that you would be destroying the Supreme Court by bringing it into the arena of politics, while now it is beyond and above it, a decision made by that court would give less satisfaction, in my opinion, than a decision made by Congress. Take the case pending to-day between the two parties. If the decision should be in favor of Mr. Tilden, improper motives would be ascribed; if in favor of Mr. Hayes, the same would be said. Under these conflicting opinions the court would be essentially destroyed, its moral power taken away. I would say also that no decision of Congress can ever be entirely satisfactory. It has not been so heretofore.

When Mr. John Quincy Adams was elected, having received the vote of thirteen States out of the twenty-five, the defeat of Jackson by the House was made the great battle-cry before the people, that the minority candidate had been elected and not the majority; that Jackson had received ninety-nine electoral votes while Adams had but eighty-four. It was said that the one who had the majority should have been elected by the House. Yet this argument, as every one must see, was not founded on constitutional grounds. Nevertheless it became the battle-cry of the next canvass. The result was at the next election the Adams party was signally defeated.

We are no doubt often carried away by a fell spirit of party. To this we are all to a certain extent subject; but this has its limits. We all feel and we all know that the times are threatening, and that there is danger overhanging the future. We will soon be called to discharge a most serious duty. I have faith that all will yet be well, and that the dangers which appear to be threatening us will all quietly pass away. Yet much will depend on the action of Congress, and it is to the two Houses of Congress that the country looks for relief. I am ready to co-operate with any one to devise the measures which will enable us to meet the crisis. That other members entertain the same sentiments I have no doubt.

Mr. President, the old Greeks invested their *Deus optimus maximus*, the great Olympian Jove, with all power over the gods and godesses and divinities of heaven as well as over the actions of men and of nations. Yet to this power there was a limit. Jupiter could not control the Fates, and these had power over the life of man and the concatenation of events constituting the life of nations. This was the old Pagan mythology. I hope that under our new dispensation we shall at least be able to control, not the fate of all the ages to come, but the fate of some more years for our country, and that we will have the power and the will so to discharge our duty and perform the work assigned to us as to bridge over the awful abyss now yawning at our feet—an abyss so deep that no human eye can see the bottom, and whose opposite shore is so distant that no mind can conceive it. This passed, we will again enter into a course of prosperity—the enjoyment of free institutions and of national renown—for one hundred years more, equal to the one hundred years past.

Mr. RANDOLPH. Mr. President, it is my misfortune to have to follow the eloquent Senator from Missouri [Mr. BOGY] with a dry statement of some historical facts which I think it necessary to present at this time in order to "vindicate the truth of history."

The Senator from Vermont, [Mr. EDMUNDS,] usually very accurate as we all know, in a speech upon the pending question, said on Monday last:

> The first instance that I know of when any question was made was in 1857, when the electors of Wisconsin failed to meet on the day that the act of 1792 required they should; so that, if the act of 1792 were constitutional in that respect, and that requirement was a requirement of substance, a mandate instead of a direction, the vote of the State of Wisconsin had not been given in accordance with the Constitution. But the certificate was received by the then President of the Senate, Mr. Mason, of Virginia, and was opened and was reported by the tellers in the regular way with all the others. On the President announcing that vote, somebody rose and questioned the right of the presiding officer to determine whether that was the constitutional vote of the State of Wisconsin or not, and the presiding officer, it is stated, declined to entertain the question of order or to submit it to the bodies or people, whatever they might be called, who were before him, and retired from the Chair and with the Senate came back to the Senate Chamber.
>
> Mr. MORTON. And said the only thing in order was to count the votes.
>
> Mr. EDMUNDS. And he said the only thing in order was to count the vote.

Now, Mr. President, a brief reference to the Congressional Globe of February 11, 1857, discloses these facts:

> The Senate entered the Hall, preceded by its Sergeant-at-Arms, &c.

Mr. Mason, President of the Senate, presiding over the joint convention, said, (I use the term "joint convention" because it seems to be a term that was used during the debates on that occasion, and I use it for convenience:)

> Pursuant to law and in obedience to the concurrent order of the two Houses, the President of the Senate will now proceed to open and count the votes which have been given for a President and Vice-President of the United States, for the term prescribed by the Constitution, to commence on the 4th day of March, 1857. The teller appointed on the part of the Senate and the two tellers appointed on the part of the House will please take the seats assigned them in discharge of their duties.

Whereupon the tellers took their seats.

> The Presiding Officer thereupon proceeded to open and hand to the tellers the votes of the several States for President and Vice President of the United States, commencing with the State of Maine.
>
> Pending the count,
>
> Senator CASS said: I suggest that it is better to read the results of the vote, and not the certificates in full, unless the reading of the certificates be called for.
>
> The PRESIDING OFFICER. The presiding officer considers *that the duty of counting the vote has devolved on the tellers under the concurrent order of the two Houses*; and he considers further that the tellers should determine for themselves in what way the votes are verified to them, and read as much as they may think proper to the two Houses assembled.

It will be observed, Mr. President, that the presiding officer, Mr. Mason, on this occasion thought that the tellers had something else than mere clerical duty to perform.

> The tellers discontinued the reading of the certificates in full, and merely announced the votes of each State. It appeared from the certificate of the electors of the State of Wisconsin that the electoral vote of that State had not been cast on the day prescribed by law.
>
> Mr. LETCHER, of the House of Representatives, (addressing the President of the Senate.) If I understood the vote which has just been read, it has not been cast on the day prescribed by law for voting for President and Vice-President of the United States. I do not know what would be proper in a case of this sort; but I desire now to call attention to it in order that the point may be brought to the attention of the country. The time may come when it would be a matter of importance to have these votes in regular shape. I desire, so far as I am concerned now, as a Representative of the people, to present my objection to the reception of this vote.
>
> Mr. JONES, of Tennessee—

And just here, Mr. President, I call special attention of Senators to the few lines that now follow—

> Mr. JONES, of Tennessee. I suppose, Mr. President, the proper way would be for the tellers to report the facts to *the convention of the two Houses*, and let *them* decide.
>
> The PRESIDING OFFICER. *The presiding officer so considers.*

Mark this reply again:

> The presiding officer so considers.

Considers what? That all the facts are to be reported to the convention of the two Houses and have *them* decide.

It was stated, as I remarked in the beginning, by the Senator from Vermont and by the Senator from Indiana that the presiding officer had said that the only business was to count. On the same page of the Congressional Globe from which I have just read it will be seen that Senator Crittenden, of Kentucky, in the joint convention inquired:

> Do I understand the Chair to decide that Congress in no form has power to decide upon the validity or invalidity of a vote?
>
> The PRESIDING OFFICER. The presiding officer has made no such decision, he will inform the Senator from Kentucky.

Mr. H. Marshall, of Kentucky, in the course of remarks following Senator Crittenden, said:

> The language of the Constitution is that "the President of the Senate, in the presence of the House of Representatives, shall open *all* the certificates," and then the phraseology changes, and proceeds: "and the votes shall be counted," not by *you*, but by *us*.

Thus, Mr. President, at the very outset of the proceedings in joint convention, the intimation that the President of the Senate might assume any power in deciding what were the votes of States, was promptly assailed, and by leading Senators and Representatives of both political parties, as will be seen as I proceed.

A little later in the debate, Senator Crittenden said:

I shall not presume before Congress to occupy a moment's time with argument. I wish merely to say that the sense of duty, an honorable sense of duty I have no doubt, upon which the presiding officer has acted in assuming to declare the number of votes, involves the privilege of determining a presidential election, and saying who shall be President. I protest against any such power.

The PRESIDING OFFICER. The presiding officer is utterly unaware that he has assumed the exercise of any such power.

Certainly, Mr. President, no reasonable man can complain of lack of distinctness in the utterances of the Vice-President up to this period in the proceedings of the convention. I will leave you, sir, and the Senate to determine how far these expressions of the President of the Senate agree with the assertions of the Senator from Vermont [Mr. EDMUNDS] and the Senator from Indiana, that "he said the only thing in order was to count the vote."

You will bear in mind, also, Mr. President, that, according to the statement of the Senator from Vermont, [Mr. EDMUNDS,] this is "the first instance when any question was made."

Immediately following the emphatic disclaimer of the presiding officer just quoted, Senator Cass, of Michigan, whose long public service and experience in public affairs are familiar to us all, said:

The only thing which remains for us to do, if there are insuperable difficulties in the way, is to adjourn immediately to our respective halls. Then let the Senate or the House of Representatives bring up the matter for action.

The presiding officer having informed the House that the tellers had not yet completed their certificates, Senator Douglas, of Illinois, whose ability and experience were scarcely second to those of any public man in the country, said:

I rise to state that, in my opinion, the tellers have no right to authenticate that certificate until the two Houses have passed upon it as to its being a true count. I rise to protest against this joint convention being dissolved until the question which has been raised shall have been decided.

I am passing on as rapidly as I may with a partial history of the eventful proceedings of the convention and of the Houses of Congress, for I do not desire to detain the Senate at this late hour.

Some question had arisen as to the presentation of the certificate of the tellers, and Mr. Mason, the presiding officer, said:

The presiding officer would again state that the duty of the tellers has not yet been discharged. The tellers, it would appear, made their report before they had signed the certificate. The vote will be again read to the two Houses, and *they can determine what shall be done.*

I now quote Mr. Washburne, of Illinois, speaking a little later in the debate:

I demand the reading of all the official papers connected with the Wisconsin case. I think the convention have the right to know what those papers are.

The PRESIDING OFFICER. The Chair will direct them to be read.

Now, Mr. President, if you will refer to the proceedings in the Senate, which took place immediately after the Senators had returned to the Senate Chamber, you will find the presiding officer, Mr. Mason, recorded as follows:

The Chair will state to the Senate, as the result of the action in the Hall of the House of Representatives in counting the votes, that the duty was devolved upon the presiding officer, there, by the concurrent order of the two Houses.

On page 645, the President of the Senate again stated:

The presiding officer desires to say, as he thought he had distinctly stated while presiding over the two Houses in the Chamber of the House of Representatives, that the conception of the Senator from Georgia is entirely erroneous, in the judgment of the presiding officer. *The presiding officer did not undertake to decide whether the vote of the State of Wisconsin was a good vote or a bad vote.* The presiding officer upon that matter did no more than recite the fact which was reported to him by the tellers, pursuant to the order concurrent of the two Houses.

The presiding officer did no more than announce that the vote of Wisconsin had been given to John C. Fremont. *Whether it was a good vote or a bad vote, he did not undertake to decide.* The presiding officer announced further, that James Buchanan had a majority of all the votes given, and that such majority was a majority of the whole electoral vote; and he declared, as his duty required him to do, that James Buchanan was thereby elected President of the United States.

If the result could have been affected by the collateral fact reported by the tellers, that the vote of the State of Wisconsin had been given on a day different from that prescribed by law, the presiding officer would have considered it his duty to have reported, as the state of the vote, that whether a majority of the whole electoral votes had been given to James Buchanan would depend on canvassing the votes, *a duty that he did not assume.* But inasmuch as it appeared clearly from the state of the vote that whether the vote of the State of Wisconsin was counted or not the result of the election remained unaffected, he announced, as he considered his duty required him to announce, that James Buchanan had a majority of all the votes cast, and that such majority was a majority of the whole number of electoral votes.

Now, sir, mark the presiding officer's concluding sentence:

He disclaims having assumed on himself any authority to determine whether that vote *or any other vote* was a good or a bad vote.

And finally, as to the action of the then President of the Senate, I read from page 649 of the Congressional Globe, now before me, in these words:

The presiding officer did no more than give the result as stated by the tellers, and then, in the further discharge of the duty devolved upon the presiding officer by the concurrent resolution, he announced the person who was elected, the Constitution providing that "the person having the greatest number of votes for President shall be the President if such number be a majority of the whole number of electors appointed." The presiding officer in his own judgment believed then, as he believes now, that he declared correctly, as the state of the vote, that James Buchanan had received the greatest number, and that that number was a majority of the whole number of electors, not undertaking to decide and not having decided.

I call the attention of the Senators from Vermont and Indiana to these final, conclusive, and clinching words:

Not undertaking to decide, and not having decided whether the vote of the State of Wisconsin had been given to John C. Fremont or not—*a power that the Chair utterly disclaims and never asserted.*

Mr. President, I will not impair the force of these unequivocal words by any comment of my own.

Mr. MORTON. Will my friend allow me right there? The Chair did not undertake to decide whether the vote of Wisconsin was a good vote or a bad vote, as he said, but when a motion was made that it should not be counted he overruled that motion. As I remember—I have not read the record for four or five years—he decided that the only thing in order was to count the vote, and the vote was counted.

Mr. RANDOLPH. If the Senator from Indiana will read the record, he will find that he is somewhat in error. The vote was counted, and for the reasons assigned in the remarks made by the President of the Senate on that occasion. The tellers had called it, stating, however, when announcing the Fremont vote to be 114, "including the five votes of Wisconsin." All that the President of the Senate declared was that Mr. Buchanan, having received a majority of all the votes cast, irrespective of Wisconsin, and of all the votes, including Wisconsin, if you please, was elected President of the United States.

Mr. President, this is in substance all that there is on record as to the action of the then President of the Senate touching the Wisconsin case. I have gone over it with some care because I felt that it was important at this juncture of affairs that we should know the facts as we proceed. I simply desired, as I stated at the outset, to "vindicate the truth of history." If the Senator from Vermont and the Senator from Indiana will take the pains to investigate the record as contained in the Congressional Globe of February, 1857, they will find not only all that I have read, but they will also find that Senators of both political parties and from a large number of the States, declared themselves with great emphasis against the power of the President of the Senate to do aught else than obey the orders of the convention and of the Senate.

Mr. Seward will be found to have said in the course of debate in the Senate immediately after the members of that body had withdrawn from the convention, "a misunderstanding exists in both Houses of Congress, whether the President of the Senate, acting as I hold, as the organ of the Senate, has not passed upon the question, and counted the votes from the State of Wisconsin, and whether that may not be drawn into a precedent hereafter. I am one of that number who think that the President has not counted them."

Mr. Collamer, of Vermont, whose views will be found on page 647, said:

In my estimation, the moment the tellers came to a certificate irregular on its face, stating that the votes were cast on a day different from that prescribed by law, they should have stopped there and announced the fact to the Chair, and the Chair should immediately have stated that condition of things, and the two Houses should have separated to make provision in relation to the manner of settling it. In my opinion, further, the Chair, immediately on being informed of that fact at any stage of the proceedings, should have stated it to the body—

Not decided it himself, sir, but should have stated it to the body—and then the two Houses should have separated and taken proceedings in relation to the matter.

On page 648 of the same volume Mr. Collamer again remarks:

Now I say if the Chair in terms decided the question in relation to Wisconsin, the Chair perhaps did that at least which ought to be inquired into by a committee; but I say the Chair decided nothing as to the Wisconsin vote being lawful or unlawful.

I have deemed it well, Mr. President, to quote the views of one of the ablest of all the predecessors of the Senator from Vermont.

It will be found that Senators Hunter, Butler, Nourse, Toombs, Adams, Reid, Seward, Toucey, Houston, Bell, Crittenden, Weller, Cass, and Douglas, at more or less length and with greater or less emphasis, indorsed the views taken by the presiding officer of the Senate at that time as to his functions. I had purposed, had I obtained the floor at an earlier hour of the day, to have given quotations from the speeches of Senators on that occasion, as well as to have called the attention of the Senate to some notable speeches made by eminent authority in the House of Representatives.

I know I shall have the good will of the Senate better at this late hour if I desist. It is enough that I have called the attention of the Senate to these notable and conclusive proceedings in the Senate in joint convention and in the House pending the discussion on the Wisconsin case. I have accomplished my purpose. I believe that a careful consideration of the whole subject will show to the Senate and the people of the country that the recent assumption of some Senators as to the power of the Vice-President is not founded in law or logic. Out of this and kindred debates I have no doubt we shall find a mode of counting the votes just and lawful, acceptable to all honest men, ending in peace and prosperity to our country. To this great consummation all patriotic men labor.

The PRESIDING OFFICER, (Mr. BURNSIDE in the chair.) The question is on the passage of the joint resolution, which requires a two-thirds vote, and the yeas and nays will be taken. The Secretary will call the roll.

The Secretary proceeded to call the roll.

Mr. DAVIS, (when his name was called.) On this question I am paired with the Senator from Minnesota, [Mr. WINDOM.] If present he would vote "yea," and I should vote "nay."

Mr. RANSOM, (when his name was called.) I am paired generally with the Senator from Michigan, [Mr. CHRISTIANCY,] who has been assigned to visit South Carolina as a member of the Committee on Privileges and Elections, and therefore is absent. I have an impression that he and I would vote differently, and therefore I refrain from voting.

The roll-call having been concluded, the result was announced, as follows:

YEAS—Messrs. Allison, Anthony, Blaine, Burnside, Conkling, Edmunds, Ferry, Frelinghuysen, Hamlin, Hitchcock, Key, Morrill, West, and Wright—14.

NAYS—Messrs. Alcorn, Bayard, Bogy, Booth, Bruce, Cameron of Pennsylvania, Chaffee, Clayton, Conover, Dawes, Dennis, Eaton, Goldthwaite, Hamilton, Harvey, Ingalls, Jones of Florida, Kernan, Logan, McCreery, Maxey, Morton, Norwood, Patterson, Price, Randolph, Sargent, Thurman, Wallace, Whyte, and Withers—31.

ABSENT—Messrs. Barnum, Boutwell, Cameron of Wisconsin, Christiancy, Cockrill, Cooper, Cragin, Davis, Dorsey, Gordon, Howe, Johnston, Jones of Nevada, Kelly, McDonald, McMillan, Merrimon, Mitchell, Oglesby, Paddock, Ransom, Robertson, Saulsbury, Sharon, Sherman, Spencer, Stevenson, Teller, Wadleigh, and Windom—30.

The PRESIDENT *pro tempore*. On this question the yeas are 14 and the nays are 31. Two-thirds of the Senators present not having voted in the affirmative, the resolution is not passed.

Mr. EDMUNDS. I give notice that to-morrow, if I can get the floor, I shall move to take up the bill now on the table on a motion to reconsider or in some other form, providing for a means of counting and determining the electoral vote for President and Vice-President.

Mr. MORTON. I inquire of the Senator what bill he refers to.

Mr. EDMUNDS. I refer to the bill reported from the Committee on Privileges and Elections and that once passed this body and was reconsidered on the motion of the Senator from Ohio, [Mr. THURMAN,] or he had a motion to reconsider entered; I have forgotten which.

Mr. HAMLIN. Is there any question now pending?

The PRESIDENT *pro tempore*. None.

Mr. HAMLIN. I move that the Senate proceed to the consideration of executive business.

Mr. SHERMAN. I should like to inquire if the Oregon resolution has been disposed of?

The PRESIDENT *pro tempore*. It went over on objection. The unfinished business took precedence of it at the close of the morning hour.

Mr. EDMUNDS. The Oregon resolution, I will suggest to the Senator from Ohio, so far as the practical power of the Senate is concerned, is already covered by a resolution adopted by the Senate, commanding the Committee on Privileges and Elections to inquire into all cases of alleged ineligibility, &c.

Mr. HAMLIN. I renew my motion for an executive session.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After four minutes spent in executive business the doors were re-opened, and (at four o'clock and five minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

WEDNESDAY, *December* 13, 1876.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of yesterday was read and approved.

COMMITTEE CLERK.

Mr. FORT. I ask unanimous consent to submit for immediate adoption the following resolution:

Resolved, That the Committee on Coinage, Weights and Measures be allowed a clerk, to be appointed by Hon. ALEXANDER H. STEPHENS, chairman of said committee, and paid out of the contingent fund of the House, and that said clerk shall not be counted as one of the number to which the House has been limited.

Mr. GARFIELD. I only want to make an inquiry. If any gentlemen of the Committee on Appropriations are here, I wish to inquire whether it is not against the law to make an appropriation out of the contingent fund of the House for any salary. The law may have been changed since it was my business to be familiar with such questions. I do not wish, however, to make any objection to this resolution.

Mr. FORT. At any rate this matter can be arranged by the committee. I trust the resolution will be adopted now.

There being no objection, the resolution was considered and adopted.

Mr. FORT moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

JOHN T. CHAUNCEY.

Mr. STEPHENS, of Georgia, by unanimous consent, submitted the following resolution; which was read, considered, and agreed to:

Resolved, That the Clerk of the House be, and he is hereby, authorized and directed to pay out of the contingent fund to John T. Chauncey, for his services for the time employed, at the rate of $3.60 per day.

Mr. STEPHENS, of Georgia, moved to reconsider the vote by which the resolution was adopted, and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

TERRITORY OF OKLAHOMA.

Mr. SOUTHARD. The bill (H. R. No. 3922) to provide for the organization of the Territory of Oklahoma and for the better protection of Indian tribes therein was set as a special order for to-day at two o'clock. In consequence of the absence of some members of the Committee on the Territories, who are interested in this question, I ask that the bill be made a special order for the third Wednesday in January, after the morning hour, and from day to day until disposed of. I hope there will be no objection to this proposition.

Mr. FORT. I have no objection to the order suggested, but I desire to submit an amendment by way of substitute, and to have it pending for consideration when the bill comes up.

Mr. SOUTHARD. There is no objection to that.

The SPEAKER. The Chair hears no objection, and the special order proposed by the gentleman from Ohio will be made.

Mr. HALE. Let that be in subordination to any business of the Committee on Appropriations.

The SPEAKER. It will be so understood.

TIMBER IN COLORADO.

Mr. HALE. I ask unanimous consent to introduce, for reference and printing, a bill to authorize citizens of the State of Colorado to fell and remove timber on the public domain for building, agricultural, mining, and domestic purposes. In offering this bill for reference I wish to say that it illustrates the grievance under which the inhabitants of this State rest——

The SPEAKER. Debate is not in order.

Mr. HALE. I wish simply to say as a matter of privilege involving a membership in this House, for this State has no member at present on this floor, being held out by the action of the House——

The SPEAKER. The gentleman is not in order.

Mr. HALE. Colorado is at present not called on Monday morning, either as a State or as a Territory, and can only get in its business through other members.

Mr. LUTTRELL. I call the gentleman to order.

The SPEAKER. The gentleman from Maine [Mr. HALE] asks unanimous consent to introduce and have referred a bill, the title of which has been stated.

Mr. SPRINGER. I object.

Mr. HALE. Is there objection?

Mr. SPRINGER. I object.

Mr. HALE. The gentleman from Illinois objects?

Mr. SPRINGER. He does, and takes the responsibility.

Mr. HALE. That only further illustrates the hardship under which this State rests.

Mr. SPRINGER. It only illustrates the presumption of the gentleman in his course.

The SPEAKER. Gentlemen will suspend their remarks; they are out of order.

GOLD AND SILVER COINAGE.

Mr. BLAND. I demand the regular order.

The SPEAKER. The regular order is the consideration of the bill (H. R. No. 3635) to utilize the product of gold and silver mines and for other purposes. The gentleman from Missouri [Mr. BLAND] is entitled to the floor.

Mr. BLAND. Under the arrangement which has been made, the friends of this bill will occupy the first half hour and the last half hour of the time allowed for discussion, leaving the intermediate hour to gentlemen on the opposite side.

The SPEAKER. The Chair understands the gentleman from Missouri to state the arrangement to be that the friends of the bill shall occupy the first and the last half hour of the two hours allowed for debate, and that the intervening hour shall be under the control of the opponents of the bill. The Chair will recognize gentlemen in pursuance of that understanding.

Mr. BLAND. I yield to the gentleman from Kentucky [Mr. DURHAM] for ten minutes.

Mr. CAMPBELL. I ask unanimous consent to offer an amendment.

The SPEAKER. No amendment is in order, either to the original bill or to the substitute. An amendment can only be offered now by unanimous consent. The gentleman's proposition, however, may be read for information.

Mr. CAMPBELL. I ask that it be read.

The Clerk read as follows:

Amend the proposed substitute by inserting after the word "be," in line 7, the words "the unit of value and;" so as to read: "And that said dollar shall be the unit of value and a legal tender for all debts, public and private, except where payment of gold coin is required by law."

The SPEAKER. The amendment is not pending.

Mr. BLAND. I now yield to the gentleman from Kentucky [Mr. DURHAM] for ten minutes.

Mr. DURHAM. Mr. Speaker, having been a member of the Committee on Mines and Mining, and the original bill under consideration having been before that committee for some time, I have given it all the attention and study which it was in my power to do. Not only that, but the question as to how far the provisions of the act of 1873 operated upon the legal-tender qualities of silver has also been under consideration in another committee of which I am a member and chairman, to wit, the Committee on the Revision of the Laws. And it is upon the latter proposition I desire to say a few things on the present occasion. There are a great many branches to this subject, and as a matter of course in the short time allotted to me I cannot be expected to discuss them all.

The question whether or not we should have one quality of legal

tender, or in other words, whether or not there should be two legal tenders, one of silver or one of gold, or whether or not the present bill interferes with the rights of contracts, are questions which I shall not consider on the present occasion to any very great extent. I am, however, very well satisfied in my own mind that where you have two kinds which are legal tenders they do not operate to the prejudice of any commercial community. I have but to look to the past, Mr. Speaker, to bear me out in what I say.

I have read with a great deal of interest the argument made by Dr. Linderman, who has charge of this subject in the United States mints, upon the idea that gold alone should be the legal tender or standard of value, because the large transactions which are carried on in this country, as argued by him, must necessarily be done in gold. I admit that proposition to be true; yet at the same time there certainly have been as large transactions carried on prior to the year 1873 as there have been since that time and there was no difficulty on the part of the commercial community, so far as I am apprised, that the legal tender might have been made during that time in the silver coin of the country.

I admit, sir, so far as these large transactions are concerned, they may still be in gold, and yet I would have that old law, which has been upon our statute-books as far back as the year 1792, restored. I would have the legal-tender quality of silver restored to the utmost limit, except as provided for in the act of 1853, to wit, that where the smaller coin, to wit, half dollars, quarter dollars, &c., were deteriorated in value, I would not have them legal tender to any extent beyond five dollars. But so far as the silver dollar is concerned, I would have it restored to its original value as established by the act of 1837, and make it legal tender for all debts, dues, and demands of every kind and description, except where the contract provides otherwise. But I would not have, as in the State of California, (and I see one of the Representatives from that State paying strict attention to what I am saying in regard to this matter,) any contract violated; but wherever a contract has been made payable in gold, it should be discharged in gold. I would not have that disturbed, and hence the proposition as made by the distinguished Representative from Pennsylvania [Mr. KELLEY] has been amended to that extent, so that wherever there is a contract in the State of California or Oregon, where gold is the whole and sole circulating medium, or where it may have been so made under the acts of other States, I would not have that contract interfered with.

I may then be asked by gentlemen who are opposed to this, Why will you interfere with other contracts that may have been made, so far as they have been made since the coinage act of 1873, where the trade-dollar is of a larger and greater value than the dollar of 1837? I would not even have that done; but I would undertake to say, and I give it to the House as my opinion as a lawyer, after having investigated this matter fully, that every single contract which had been made prior to the year 1873, I do not care whether it was large or small, could have been discharged, and can now be discharged, in the old silver dollar which was authorized by the coinage act of 1837. I believe the act of 1873 expressly reserves this legal-tender quality to the dollar of 1837. If I am correct in the position I take, and it is simply the legal proposition which I propose to discuss in the short time I am entitled to the floor, then what injury can it do? How can it affect the public credit? I know it would be argued on the other side, as I have heard it argued elsewhere, and as I have heard it partially argued here, that we have no right to interfere with existing contracts. While I would not interfere to the extent of the one hundredth part of a cent with contracts, yet I wish to say that all the national debt ever created was so done when this dollar was a legal tender. I say that to-day, if the old silver dollar can be found, it does come in the discharge of every public debt or private contract made prior to the 12th day of February, 1873.

Then, sir, what contracts, so far as the Government is concerned, have been made since that time? There may have been a few, and I admit that if since that time debts have been contracted, you could only pay in your dollar to the extent of five dollars, or they must be paid in gold. I would say in good faith, in good conscience, those obligations ought to be discharged according to the act of 1873.

But what I desire to say is this, in regard to the contracts that existed on the 12th day of February, 1873, when the last coinage act was passed and when the value of the dollar was increased from 412½ grains to 420, that it is right in morals, that it is right in law, that it is right in principle, too, that every single one of those contracts shall be discharged at the option of the debtor in the old silver dollar that may have existed at that time. And the substitute now as proposed by this committee (and I am in favor of the substitute and the substitute alone) proposes to restore the legal qualities of the old silver dollar so that all these obligations and all other obligations and contracts that existed at that time can be discharged precisely in the same dollar or in a dollar of equal or equivalent value existing at that time.

Now, how can any person that holds these obligations complain? Why, if my honorable friend from the State of Michigan sitting beside me [Mr. BRADLEY] and I had made a contract prior to that time, I had the right to pay him in the silver dollar which was then of the value of 412½ grains. Suppose he held my obligation for a thousand dollars that I could have discharged in silver, provided I had had it in hand at that time, in preference to handing it over to him in gold, it must be a contract that must be complied with in either one of these coins. What injury does it do him if he has stood on his rights from 1873 to the present time; what injury does it do him even if the debt was not dischargeable in the coin existing at that time, if the Congress of the United States now should adopt this bill and make the silver dollar of the same value as that which was in existence at the time I made the contract?

There is no violation of any contract by the passage of this substitute, but it will place creditors and debtors where they were before the passage of the act of 1873. I believe the passage of that act demonetizing silver was not demanded by the people at the time and is now almost universally condemned by them. It was an act in the interest of the bondholders and gold speculators and against the laboring classes. It has built up capital and crushed out labor. Mr. Speaker, as far as I have investigated the question of a single and double currency and the effect upon the stability of the currency, I am led to the opinion that the double is far preferable; the one seems to be a check on the other. The larger transactions will be in the more precious metal, and yet, if it appreciates more rapidly in value than the surrounding circumstances would justify, then the other presents a wholesome check. Our western States and Territories are rich in silver ore. Let us remonetize silver and thereby increase the production of this metal which is required as money in nearly all the civilized nations of the earth. Let us stand by contracts when all our national debt was made, that is, that the same should be paid in coin, in the legal tenders then in existence, viz, gold or silver.

Pass this bill and I believe that the fluctuation which has existed in the great money centers for some time will measurably cease. The passage of this bill is but an act of simple justice to creditor and debtor and to all classes of society.

[Here the hammer fell.]

Mr. BLAND. I now yield ten minutes to the gentleman from Michigan, [Mr. WILLARD.]

Mr. WILLARD. I could have desired more time than ten minutes to say what I should like to say on this subject. While I shall endeavor to express in the brief time allotted to me the reasons of my support of the substitute which is offered for the bill now before the House, I still could have wished that action upon this question might have been deferred until the report of the commission appointed by the last Congress, because it seems to me that there are questions connected with this whole monetary question, and especially with that of the standard, which are not fully embraced in either of the bills now before us.

As preliminary to the few remarks I may make, allow me to say, Mr. Speaker, that the commission of which I am a member has, I think, made some progress in the investigation of these questions, and will be enabled to lay before the House some time next month a report which will throw some light upon this subject. The members of the commission appointed by Congress met last September in the city of New York, and selected as additional members Hon. Mr. Groesbeck, of Ohio, and Professor Bowen, of Harvard College. After thus completing the organization, the commission proceeded to take testimony from a large number of prominent business men and students of finance in New York and in New England, and also from certain gentlemen in the Western States. It is the intention of the commission to proceed with the work here in this city, and I have no doubt that we shall be able to lay before this House an abundant weight of testimony which, in my opinion, speaking as one member of the commission, will fully warrant the restoration of the old standard of this country, the American silver dollar as it was established in accordance with the report of Alexander Hamilton in 1792 and continued without variation until 1873.

All the investigations which have been made upon this question go to prove at least one fact, that the silver dollar, substantially the same as that which is received by the American people, has a greater supremacy among the varied populations of this globe than any other coin or any other unit by which values are measured. The gold sovereign of Great Britain dominates only among 35,000,000 of people; the gold dollar, or its equivalent, is received by but 80,000,000; while the French franc, which corresponds nearly to the silver dollar, is in use and is the unit of value with 77,000,000 of people; and the silver dollar, in its various equivalents, ma ybe said to be used by more than 550,000,000 of the people of this globe. And as we look further at the facts which have been developed the last year, we find that, notwithstanding the value of silver at one time reached in the market only 47¾ pence per ounce, at no time has the silver dollar or silver coin of any kind lost its purchasing power. The rupee of Bengal during all this time has purchased of the comforts and luxuries of life the same amount that it did before the depression of silver, and, as far as I have been able to make inquiry, wherever the franc predominates the franc still retains the full equivalent of its power to purchase all commodities which are necessary for the supply of human wants. And who can doubt that in our own country during all this time the silver dollar has had actually as much purchasing power over the necessaries and luxuries of life as it had in former times? You can buy with it as much wheat, as much flour, as much of anything which people need either to eat or wear. It will go as far in purchasing nearly all the requirements of man as it would twenty years ago.

Well, now, Mr. Speaker, under this state of things, while the purchasing power of this coin has remained, to what other conclusion can

we come than that, whatever divergence there may be between the price of gold and that of silver, it is to be largely attributed to the rise in gold?

Most of the prominent political economists of this country—I will say nearly all political economists of this country who have been heard before the commission, have been united in the testimony that if silver is thrown out of coinage the tendency must be to appreciate the value of gold. Well, now, if gold be thus appreciated it ends in the appreciation of all indebtedness, both public and private. It means the fall of commodities; it means that the farmer must raise more bushels of wheat to pay the debts which he now owes; it means that the manufacturer is to produce more of the various articles and commodities which he manufactures in order to settle his indebtedness than was required before; it means that the laborer, if he be at all in debt, must give more hours of his toil in order to pay that debt. We have to face this fact. If the nations of the world shall unite in throwing silver out of coinage, there must be an appreciation of the entire bonded indebtedness which now rests upon the world. We are now in debt; the world is in debt. This toiling Caucasian race of ours owes nearly all the vast volume of debt which has been piled up, until the entire sum of national and railroad indebtedness now amounts to $35,000,000,000, and if we add 10 per cent. to that debt, if gold appreciates in value to the extent of 10 per cent., it means an increase of the burden now resting upon this industrious, enterprising Caucasian race, by an amount considerably more than the entire national debt of the United States. I will add, Mr. Speaker, that it will be found that almost every political economist throughout the world must stand appalled before results which cannot fail to fill every thoughtful mind with the most serious apprehension.

[Here the hammer fell.]

Mr. BLAND. I now yield to the gentleman from Indiana [Mr. LANDERS] five minutes.

Mr. LANDERS of Indiana. Mr. Speaker, I regret very much, sir, that the debate on this very important question is so limited. There are gentlemen here who are opposed to the standard silver dollar. I will be much pleased to hear some of these gentlemen, because I always like to hear those who are opposed to me on any question. I can often learn more from them than I can from gentlemen who agree with me. While I am in favor of remonetizing silver, yet at the same time if I were convinced that the interests of the country would be promoted by keeping it demonetized I would vote against this bill or any other to remonetize it.

As the original bill stands I am not in favor of it. My main objection to it is this: that it provides for the depositing of gold and silver bullion and the issuing of certificates at their coinage value. Taking the certificates at their coin value, redeemable by the Government, either in coin or bullion at the option of the holders, the holders can take the gold or silver bullion at their coin value. According to this bill the holders of certificates can at any time demand coin or bullion. In all business circles option does not belong to one party alone. In this case it belongs to the holders of the certificates, and if the bullion advances they will demand it, and if the bullion declines they will demand coin, and the Government is obliged to give it.

The Government cannot know until the certificate is presented what will be demanded. Therefore it cannot coin the bullion, not knowing but what it will be called upon for bullion. Therefore the business community is not to have the benefit of the coinage of this bullion under this bill.

I am in favor of the substitute. It proposes to repeal the law of 1873 and to restore the double standard as it was from 1792 up to that time. The double standard is designed to regulate the relative values of the two coins. It is said that we practically have but one standard. That is true to some extent, since the ingenuity of man has never been able to adjust the value of the two coins in such a way that they would long remain of the same relative value. The reason of this failure is that they are commodities. The value of any commodity is regulated by the uncontrollable laws of supply and demand. The right of the debtor to pay in the cheapest money is a right that has been conceded to him ever since the formation of the Government and long before. That always brings into use the cheapest money and checks the demand for the dearer. This has been the practical working of a double standard, and the effect has been such that there has never been such change in the coinage value of those metals to make them correspond with their market value. The only change that there has been was to make gold correspond with the market value of silver.

In 1834 the market value of gold and silver varied about 6 per cent., the silver being the lowest. The right of the debtor in those days was recognized. Albert Gallatin, and other distinguished statesmen contended that it would be a great act of injustice to the debtor class to increase the value of silver, since the debt of the country was based upon that (it being the cheaper) to make it correspond with the market value of gold. Their views were acknowledged to be correct, and Congress changed the gold eagle from 270 grains to 258, a reduction of 12 grains. This is the only change that has ever been made between the gold eagle and the standard silver dollar from 1792 until 1873, when this vicious legislation was enacted against the silver dollar. Had it not been for the use of both metals as equal legal tenders, I have no doubt their fluctuation in value would have been much greater. With a single standard nothing can be substituted for the metal used as such standard when a demand is made upon us for that metal. There is nothing to check the advance.

The standard silver dollar was not made by accident. It was made by Mr. Hamilton, after having ascertained the value of the Spanish milled dollar, which was in use in the Colonies prior to the formation of the Government. All debts were based upon that dollar. It was found to contain 371¼ grains of pure silver. On the recommendation of Mr. Hamilton, Congress declared that that should be the standard silver dollar of the United States, as in no other way could justice be done alike to both creditor and debtor.

I want the gentlemen on this floor who advocate the single standard to tell the House what they propose to do. I want them to point out to this House in what way this advance in gold is to be checked. Our policy provides for checking it. I have shown how the double standard will check it. I am also in favor of restoring silver because silver is a product of this country and it would give it increased value to make it a legal tender. Our mines constitute a portion of our national wealth. We have but few industries that produce fifty or sixty millions a year. The silver mines of this country produce wealth to that amount and furnish employment to thousands of our laboring population. Are we to allow this designing legislation of 1873 to further depreciate the value of one of our most valuable products? I would do nothing to depreciate the value of gold. It is also a product of this country, but is not produced to more than one-half the extent that silver is.

I believe in protecting the industries of our own country and maintaining the value of the product of such industries. The same gentlemen on this floor who favor the demonetization of silver, that tends so much to depreciate the value thereof, have been the most clamorous for protection to their own industries. Our mining interests have been very much embarrassed for the last few years because of this legislation. The decline in their bullion falls directly upon the laboring man who digs it out of the ground. I have a further reason for favoring the remonetization of silver. As was said by the gentleman from Kentucky, [Mr. DURHAM,] we have a right to pay all our bonded indebtedness in silver as well as in gold, and I have never been able to understand why it was that a Congress professing to represent the interests of the people should destroy the value of more than one-half of that which they have to pay with. I want gentlemen who favor this policy to explain why they do so.

The only reason that can be assigned for the legislation of 1873, as it is plainly seen, is that an abundance of silver would tend to cheapen it. This is a risk that all men take who agree to receive payment in a commodity likely to change its value like gold or silver. The only way that the bondholder could evade receiving it in payment was to have it demonetized, so that there would be only a gold coin in existence, since their debt was payable in coin and silver was as much coin as gold. Is it not strange that a Congress of the United States could be induced to destroy the value of this great mining interest, furnishing labor to so many thousands of men and producing wealth to the amount of fifty or sixty millions of dollars; that the country could be induced to adopt legislation that benefits a single class alone, small in number, and a non-producing class at that?

It is said by gentlemen on this floor that are in favor of contraction of either hard or soft money that our productive industries cannot prosper unless the cost of producing commodities for exportation corresponds with the cost of like articles produced in other countries, and which are likely to come in competition. In order to reduce their cost they propose to reduce the quantity of money in the country, because the quantity of money in any country or its representatives, used in performing exchanges of commodities, regulates the value of all commodities. As the quantity of money is reduced the value of commodities is reduced, and consequently the price of labor. If the quantity of money is reduced here to correspond with the quantity of money in monarchical countries, the price of commodities here would be the same as there, and the price of labor that produces them must also be the same.

You gentlemen have now pursued this policy until you have reduced many of our laboring-men to beggary and want. More than two thousand families in the city where I live, it is said, are depending upon the charities of the city for sustenance. The New York Herald, a few days ago, informed us that nearly fifty thousand mechanics and laborers are out of employment in that city, and a large portion of that number bordering on starvation. You pursue this policy of contraction as you have done and propose to continue to do, to reduce the cost of commodities in order to compete with foreign nations, and you will bring our laboring-men down to the condition of the laboring-men of Great Britain and other countries. It is this that I have been fighting ever since I have been upon this floor. It is that we may have more money and cheaper money that I am now contending for the remonetization of silver. I prefer cheap money and well-paid labor to dear money and poorly paid labor.

No government coin is countenanced by any other nation. Our coin is a commodity whenever it leaves our shores. The coins of other nations are commodities when they come here, and there is nothing in the argument so often adduced to which I have referred. Whenever a commodity of this country passes to another it is subject to the laws of trade there. When their commodities come here they are subject to the laws which govern trade here. Our coin or currency have

nothing whatever to do with their value in foreign countries. Their value is regulated by the supply and demand in their own country, and the amount of money in circulation to perform the exchanges of the nation.

A favorite remark of contractionists and demonetizers of silver is "let us have honest money." I have come here to make honest money. The Constitution of the United States has conferred power upon Congress to coin money and to regulate its value as well as the value of foreign coins. How do we regulate the value of money? That is just what we are now trying to do—regulate the value of silver money. We are trying to make it a legal tender for all debts, public and private; that is just the way that Congress regulates the value of money. Whenever they make money, whether coin or paper, only a partial legal tender it is dishonest legislation and dishonest money is the result. We have depreciated money. I have never cast a vote here and never expect to cast one to make anything money for one purpose that is not money for all. If that policy prevails we will never have money that can be called dishonest, because it will always be at par.

Money is valuable just as it is useful, and whenever a man gets into a field with his money, whether metallic or paper, that he cannot use, he must submit to a shave to get something that he can use. If gold had been legislated against as silver has been, and silver been favored with legislation as gold has been, gold would be dishonest money because it would be depreciated, as Treasury notes and silver now are. No man cares what his money is made of. The question is what can he do with it.

I hope, Mr. Speaker, to see the day, and that very soon, when there will be no depreciated money; if this Congress will exercise its power under the Constitution to make money and shall make all money a full legal tender. Let this bill pass, the gold-broker will be panic-stricken, as silver will perform the same exchanges that gold does. Let this Government honor its own paper and receive its own notes in payment of debts due to it, the gold-brokers will leave their gold board like rats deserting a sinking ship. That is just what I want to see. I want to see legislation in favor of the people and not in favor of gold-gamblers and bondholders, and no speculation in money except for legitimate business purposes. Money is not something to invest in, but is a tool of exchanges, and its offices are to perform exchanges.

[Here the hammer fell.]

Mr. BLAND. I now yield for ten minutes to the gentleman from Kansas, [Mr. PHILLIPS.]

Mr. PHILLIPS, of Kansas. Mr. Speaker, I regret very profoundly that the time should be so limited within which to discuss a measure of so much moment as the one before the House, one requiring facts and information on which the safe and judicious action of this House so much depends. The experience of the civilized world teaches us that we should approach this question with great caution and diffidence. Germany tried to demonetize its silver coin and brought herself to the verge of ruin, and has now been compelled to suspend her action. When we, a nation producing from $75,000,000 to $90,000,000 in silver each year, as ours has been estimated to do, estimating amounts that cannot be officially computed, proposes to strip itself of this peculiar means of paying its debts which we naturally possess, when the balance of other trade is against us, and to reduce the value of one of our products, we naturally ask why? As the gentleman just said, if you go to the gold standard you will raise the standard of values higher than it ever reached before, and you will increase your debt from 30 to 40 per cent. and diminish the power of this country to pay its debts; and I give the estimate not as to the relation of values of gold to silver, but as to the effect of reducing to a single or gold standard, which would still further enhance the standard. I say in all candor, and I say in no agrarian spirit, that the debt which the people owe was contracted when the silver dollar was one of the coin standards. Indeed, the silver dollar is peculiarly the American standard. It has been the true unit of the American standards of value and has been so since 1792, when the plan for its issue came from one of our most illustrious statesmen, General Hamilton.

Why should it now be disturbed? Because gold is at present more valuable. The creditors of the Government "want some more."

I warn them that while every patriotic American will adhere to the strict terms of the contract, it is not for them to step forward and violate that contract. I say to pay in coin is in strict fulfillment of the contract, save when it is expressly stipulated that it shall be paid in gold. When they demand a higher standard, which will impose a heavier burden upon labor and the producing industry of the country, they come before the country with an unjust demand, as violators of the contract.

I think it is high time that we took the proper steps to secure the coinage of the old American silver dollar, the constitutional coin of the country. I will say, as I have before said, that we have the means of producing the material in our country, $75,000,000 a year in silver coin. Already, with the issue of fractional coins, we have raised the price of silver nearly to the value of greenbacks; it was 7½ per cent. below when the steps to issue the subsidiary coin were taken. Coin the American silver dollar and make it receivable for all contracts, and you will force Germany, the leading nation of Europe in that respect, to remonetize silver, and it will place silver along-side of gold in value as it was before. We have this silver, and as American statesmen it is our duty to adopt this measure. We cannot afford to stand here as the representatives of any one interest, or if there be but one interest let it be the interest of the many rather than the few. Gold and silver both constantly fluctuate in value. Following the discovery of America, gold fell in relation to silver 50 per cent. in twenty-five years. Then, when the great silver mines of Potosi were discovered, the value was again disturbed. Gold rose and silver fell. At that time, too, some nations tried to demonetize silver. Again, on the discovery of gold in California, at Australia gold went down in relation to silver. You will observe that we have always measured one of these by the other. Both might have increased in amount so as to have fallen in value so far as the value of the other products of the earth were concerned. Both of the products, gold and silver, intrinsically rise and fall. They may be said to regulate, or indicate, the standard of increased or diminished production in either. The stamp and the credit and authority of the United States give them their fixed value, make them a standard for debts and other things. It does much more. The demand for them as money is nearly all the demand there is for either, since demand for plate and jewelry is very small.

By coining the American silver dollar we put our credit on a sounder basis. By coining the American silver dollar and giving its old powers, all the paper we issue, interest-bearing and non-interest-bearing, has a better coin basis. By coining our old dollar we make ourselves a power still greater in the money world, and we are enabled to pay our debts without burdening the people more severely. Surely no other course can commend itself to the American statesmen.

The SPEAKER. The time of the gentleman has expired.

Mr. BLAND. I believe that now the gentleman from Iowa [Mr. KASSON] is entitled to control the discussion for one hour.

The SPEAKER. The Chair recognizes the gentleman from Iowa [Mr. KASSON] as entitled to the floor for one hour.

Mr. KASSON. I yield to the gentleman from New York [Mr. CHITTENDEN] for five minutes.

Mr. CHITTENDEN. I have not time to make any elaborate argument nor shall I attempt it. I propose, in the few minutes allowed me, to appeal to the common sense and the conscience of this House to reject a bill of such injurious and monstrous propositions.

At the close of the last session of Congress this question was fairly and deliberately referred to a joint committee of the two Houses, which committee has been in session most of the time since. For us now to take this business out of their hands and to pass this bill seems to me, to say the least of it, to be indecent. Is it not enough for this House to know that this bill is of vital and vast importance in its relation to the commerce and credit of the country, the credit of the nation as well as of individuals? Is it not enough for us to know that the great body of men connected with our financial interests, especially the custodians of the savings of the people, those who represent the savings-banks in which are deposited hundreds of millions of the savings of the people—is it not enough to lead us to hesitate, when we know that these men regard this bill with alarm, as a sweeping menace of confusion and disaster?

Why in the name of reason should we shut our eyes to the fact that the value of silver in the commerce of the world changes from day to day, as does the value of wheat and cotton and wool? When this bill or the substance of it was first brought forward here some four or five months ago, the price of silver in London was 47*d.* sterling per ounce. A month or two ago it was 52 or 53*d.* sterling per ounce, and day before yesterday it was quoted at 55*d.* per ounce.

Why should we shut our eyes to the fact that this proposition, which is brought forward here and pressed with so much persistency, is a proposition to make a fourth standard of currency? We have now a gold standard, a greenback standard, and a subsidiary-coin standard. Now it is proposed, that instead of delaying this question until the committee has reported, to make a fourth standard, that of the silver dollar, that shall cover all the rest, that so far as possible shall be a universal legal standard, receivable for customs in all our custom-houses, receivable in payment of the interest upon most of our national debt, which would be practicably bad faith and a step in the direction of repudiation. Moreover, the commerce and credit of the country have been in fierce combat with a vicious and depreciated currency for more than a dozen years.

[Here the hammer fell.]

Mr. KASSON. I now yield to the gentleman from Illinois [Mr. CANNON] for five minutes.

Mr. CANNON, of Illinois. Mr. Speaker, I am in favor of the remonetization of silver. I advocated such measure during the last session of Congress, and fully discussed the proposition in the late canvass, and am satisfied that nine-tenths of the people indorse it. I cannot, however, in the five minutes allotted me discuss the bill and proposed substitute. I suppose the committee which reported the bill is in favor of the substitute offered by the gentleman from Missouri, [Mr. BLAND,] commonly known as the Kelley bill. I am sorry that the previous question is operating so as to cut off amendments, for I fear the substitute as well as the original bill is not perfect. I call the attention of the gentleman from Missouri [Mr. BLAND] to lines 7, 8, and 9 of the substitute, as follows: "And that said dollar shall be a legal tender for all debts public and private, except where payment of gold coin is required by law," and ask him as well as other gentlemen of the committee the meaning of the language.

Mr. BLAND. I will tell the gentleman there is a great deal of our railroad debt which is payable in gold coin. There are many contracts and debts which the law specifically requires to be paid in gold coin. We do not want to interfere with them.

Mr. CANNON, of Illinois. Nor would I interfere with contracts in any manner, but I do not understand that the law makes any debt specifically payable in gold coin. It is true that until we remonetize silver I suppose all obligations of the Government are payable in gold coin eventually, but the very object of the bill is to utilize the silver dollar by making it a legal tender for all these debts, as we have the right to do under the original contract. If that is the effect of the substitute, all right; but I think it would be better if the same was more explicit.

Now, Mr. Speaker, one word as to the policy of the legislation. There is a large amount of public indebtedness, as well as private, when made we agreed to discharge by the payment of dollars, and the law said those dollars were either gold or silver of a certain weight and fineness, and we have the right to discharge the same according to the terms of the contract in whichever dollar is of the least value. In the exercise of that right we paid gold dollars up to 1873, for the reason that gold dollars were less valuable than silver dollars, and for no other reason, and now we should have the power to use the silver dollar because it is the least valuable, and would certainly use the gold dollar hereafter in the event it should become less valuable than silver, and all this because our contract gives us the option. The gentleman from New York [Mr. CHITTENDEN] who opposes this bill so strenuously is one of the merchant princes of New York. I have no doubt he has always kept his contracts; at the same time I have no doubt he has always paid in the cheapest material he could under his contract, otherwise he would not be a merchant prince. Correct financial principles for one man are correct financial principles for forty millions of people; the only difference is in the magnitude of the transaction.

Mr. KASSON. I now yield ten minutes to the gentleman from Ohio, [Mr. GARFIELD.]

Mr. GARFIELD. Mr. Speaker, I do not think I shall use the whole of the ten minutes granted me, but only enough to state the reasons which will guide my vote on this bill.

I suppose that the officer of the United States Army who had charge of the excavations at Hell Gate, an hour before the explosion, could have given you the lay of the ground on every square foot of Hell Gate ledge and the depth of the water at all stages of the tide, because, by years of patient study, he had learned all about it; but if he had pretended to tell any one, just after the explosion occurred, how the ledge lay, how deep the water was, and what the situation of the channel was in regard to navigation, he would have proved himself a charlatan and a cheat. After those tons of dynamite had exploded under the ledge, there was a new set of conditions; and like a sensible officer he would have said to all comers, "I must put down my sounding apparatus; I must make a careful exploration of this ledge before I can tell you anything accurately or definitely of the situation." In the course of a few weeks he was able to do that, and do it intelligently and thoroughly.

I have stated this as an illustration of my view of the present state of the silver question. For several centuries the relation between silver and gold has been very accurately understood, and has continued without great and violent fluctuations. These two metals have been used by the governments of the world, in some definitely ascertained proportions, as the basis for standard coin; and men have known with tolerable accuracy something about their then relative value. But within the last few years, and notably within the last few months, there has been an explosion under the silver question as it stands related to gold—an explosion as much greater than the explosion under Hell Gate ledge as the continents of Europe, Asia and America are greater than Hell Gate itself. Now, while the fragments of this mighty explosion are falling in confusion all over the world, while the upheaval is still going on, and while we are still involved in the uncertainty which it has caused everywhere; when we have sent out our explorers by the wise order of both Houses of Congress to make soundings and report what they find; even while we are waiting for their coming, (and they tell us we may expect them soon,) it is proposed, in the hot haste of a two hours' debate, under the tyranny of the previous question—the two hours being parceled out into fragments of five or ten minutes apiece—it is proposed in this Chamber that we settle this world-wide question and determine it to-day.

If I had no other reason to urge against this bill, this to my mind would be overwhelming and unanswerable. Who in this brief space of two hours can go into the philosophy of the great revolution that has occurred? Who can state its causes calmly and dispassionately? Who can point out the probable future course of silver in the markets of the world? We know that a year or two ago it was bought and sold at 60¼ pence per ounce; that on the 13th of July last it had by extraordinary fluctuations tumbled down almost to 46 pence per ounce; and that now again, faster than the thermometer indicates the changes of temperature, it is up again we are told to 57. Yet on this rising and falling tide, in the midst of fluctuations almost equal to the political passions of a presidential campaign, we are asked to settle for ages this question, when the intelligence that we require is near at hand, but not yet received; we must settle it before we hear. It is said that Rhadamanthus and his brother-judges in the lower world, when the accused was brought before them, first castigated him, then made him confess that he was properly punished, and then heard his case.

Now, perhaps that is a mode of procedure fit for the court below, but it is not a method altogether fit for the House of Representatives.

What I ask for, Mr. Speaker, is information and time for deliberation before we proceed to settle this great question. There is no emergency pressing us to a decision to-day.

I am free to say, if I am forced to choice of evils, that I like the substitute better than the original bill. I have no objection to voting for the substitute, but I shall vote against the bill, whether the substitute be adopted or not, as the case now stands.

Let me call the attention of gentlemen to another fact: Can they say this country is going to get any good out of this bill? Pass it and what can be done? Every man who owns silver bullion in America or who can buy it from abroad can take it by the car-load to the mint of the United States and have it coined under our laws as they stand to-day without cost to himself, and can take away in silver coin all the difference between the value of his bullion and the nominal value of his coin. The owner of the bullion will make the difference and the Government makes nothing. Why should we give away all the possibly great difference which in July last would have been 30 per cent. to the accidental owner of bullion or the one who chooses to speculate in it? Why should we offer so great a premium to domestic and foreign speculators in metals, and forbid our national Treasury to have any share in it? And where will gentlemen find any good to the people by this policy?

There is no time in this brief debate to discuss the philosophy of a single or double standard. I am willing that in some way, properly restricted, we shall enlarge the scope of our silver coinage. I hope the commission may show us how this can safely be done. But I am unwilling to undertake so grave a work without full information and deliberation.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of its clerks, announced the passage of joint resolution (S. R. No. 29) to extend the time for the making of a report by the Army commission created by the act of July 24, 1876; in which concurrence was requested.

It further announced disagreement to amendments of the House to the bill (S. No. 155) to amend sections 533, 556, 571, and 572 of the Revised Statutes of the United States relating to courts in Arkansas and other States.

GOLD AND SILVER COINAGE.

Mr. GARFIELD. Has my time expired?

The SPEAKER. The gentleman has two minutes remaining.

Mr. GARFIELD. I wish to say in the remaining moments left to me that it is impossible within the brief space we have, even to go carefully through the history of the legislation which has brought us where we are. That legislation has been denounced as a "legislative trick," as a delusion, as something intended to cheat the American people. I will not even on this occasion go so far as the gentleman who advocated the bill, but let me read from the Congressional Globe of January 9, 1872, the reason given by the distinguished gentleman who introduced, or at least had much to do with the original bill. I read from the language of my friend from Pennsylvania [Mr. KELLEY] who now sits near me.

> I wish to ask the gentleman who has just spoken [Mr. Potter] if he knows of any government in the world which makes its subsidiary coinage of full value? The silver coin of England is 10 per cent. below the value of gold coin. And acting under the advice of the experts of this country, and of England and France, Japan has made her silver coinage within the last year 12 per cent. below the value of gold coin, and for this reason: *it is impossible to retain the double standard. The values of gold and silver continually fluctuate.* You cannot determine this year what will be the relative values of gold and silver next year. They were 15 to 1 a short time ago; they are 16 to 1 now.
>
> Hence, all experience has shown that you must have *one standard coin* which shall be a legal tender for all others, and then you may promote your domestic convenience by having a subsidiary coinage of silver which shall circulate in all parts of your country as legal tender for a limited amount, and be redeemable at its face value by the government.

The SPEAKER. The gentleman's time has expired.

Mr. KASSON. I will yield now fifteen minutes of my time to the gentleman from New York, [Mr. HEWITT.]

Mr. HEWITT, of New York. I will yield a portion of my time to the gentleman from Ohio, [Mr. GARFIELD.]

Mr. GARFIELD. Thanking the gentleman from New York for his courtesy, I will conclude the reading of the extract which I have already begun:

> But, sir, I again call the attention of the House to the fact that the gentlemen who oppose this bill insist upon maintaining a silver dollar worth three and a half cents more than the gold dollar, and worth seven and a half cents more than two half dollars, and that so long as those proportions remain you cannot keep silver coin in the country.

I have read the whole of that extract, Mr. Speaker, in order to do full justice to the gentleman from Pennsylvania, [Mr. KELLEY,] who reported the bill. Now, I am sure he was not guilty of a legislative trick. I am sure he gave the House full notice of what they were doing and the reason why he asked them to do it. And he gave as a reason that at that moment silver was worth more than gold and you could not keep two standards from fluctuation in reference to each other. Just now it happens that silver is a little below the value of gold, and the gentleman will see and the House will see we must have a basis for our judgment broader than the uncertain chances of an

uncertain market. I have not quoted the passage to affirm that I wholly disbelieve in the double standard, but to show the great difficulty of realizing it.

I wish to make another remark. When the report of that commission is made I hope it will instruct us as to the international relations of this question. One nation alone cannot put silver up or put it down and control all the markets of the world. If seven or eight of the leading nations of the world should form a monetary treaty on the subject, and should agree that silver be adopted, to be issued within certain limits in each, I have no doubt the silver coin could be kept in equipoise with gold. But let one-half of the leading nations of the globe drop the silver coinage and let only one like our own insist upon it, and then we will see a flood of silver coin pouring ntot the hands of our brokers, who would bring it to the Treasury, and fill their own pockets with the difference between silver bullion and silver coin.

The SPEAKER. The gentleman from New York [Mr. HEWITT] has twelve minutes of his time remaining.

Mr. HEWITT, of New York. Subscribing to all the gentleman from Ohio [Mr. GARFIELD] has said, and said so much better than I could possibly hope to do it, I was very glad to yield a portion of my time to him, and I will supplement what he said in regard to the position of the gentleman from Pennsylvania, [Mr. KELLEY,] whose remarks I myself was about to quote when I took the floor, by saying that in the same speech, in regard to the care with which the bill demonetizing the silver dollar was considered and passed, the gentleman from Pennsylvania used the following language:

> We proceeded with great deliberation to go over the bill, not only section by section, but line by line, and word by word. The bill has not received the same elaborate consideration from the Committee on Coinage in this House, but the attention of each member was brought to it at an early day of the session. Each member procured a copy of the bill and there has been a thorough examination of the bill again.

And I venture to refer those members of the House who wish to follow up the history of this legislation to the remarks which I caused to be printed in, I think, the last number of the RECORD of the last session, in which I carefully considered the whole question of the bill submitted by the gentleman from Missouri, [Mr. BLAND.] I do not propose now to go over that ground. There is no time for it. But I do propose to say to this House that there are no questions which ever come before deliberative bodies of more consequence and of more delicacy and difficulty than those that relate to finances and the monetary concerns of the country. If we are sick and wise we send for a doctor; if we are in trouble and have litigation we consult a good lawyer; and if we fail to send for the doctor or if we fail to send for the lawyer the suffering falls only upon the individual who is so negligent of his own welfare. But when there is a great question of finance, affecting every operation of trade, every man in the community, from the highest in the country to the lowest in the land, unsettling values, making a new standard of values, increasing the pressure of debt or diminishing the obligation to pay, then in haste, before a body who will not themselves pretend that they understand these financial questions, we are asked here to pass judgment upon a proposition which goes to the foundations of society and affects every transaction and every man, not only here but throughout the civilized globe. I plead for time, I plead for knowledge, I plead for information; and I ask this House, the Representatives of the American people, to listen to the voice which, we are told, is to come to us from the commission which we appointed at the close of the last session. We are told to-day by a member of that commission that by the middle of next month they will be able to throw a flood of light upon this question, upon which a commission has been sitting in England; a question which has given rise to a conference among the nations comprised in the Latin Union, causing them to suspend their coinage until the future of silver is more fully developed; a question which has disturbed to the very foundations the trade of China and of India and called forth minutes in council and elaborate papers from all quarters. We are told that all this is to be brought before this House from a competent commission, assisted, I am glad to say, by experts of the highest character. And yet this bill is pressed upon us at this moment as if some great interest were suffering that requires action on this day. I know of no interest that is suffering unless it be that silver stocks are not selling at as high a price now as they did some six months ago. I know of no interest in this country that cannot wait long enough to get the facts and get the truth. But I do know if we make any mistake upon a question of this gravity and moment that then every interest in this country will suffer; that the rich man will find his property confiscated, and that the poor man will be no better off for that confiscation, but will suffer in the general confusion resulting from the unsettling of values, for the simple reason that when you undertake to violate or vitiate or interfere in anywise with the sanctity of contracts capital leaves the country, values fall, and the debtors who might have paid their debts with a margin between the debt and the value of the property find that that value disappears and that there is no margin with which they can meet their obligations, and the property is transferred from the debtor to the creditor. While the debtor is ruined the creditor is no better off, because the property which he has been compelled to take in payment of his debt will no longer bring the amount for which it was pledged.

This, Mr. Speaker, is the position of things to-day in the city of New York and, I have no doubt, throughout the country; mortgages are being foreclosed and property transferred in vast amounts from the poor debtor to the rich creditor, and yet the rich creditor knows not where to raise the money to pay the taxes which he is thus called upon unexpectedly to pay. But, sir, in dealing with this question, which emphatically involves the question of a double standard, what is needed to bring us to a proper solution of it? I do not say that silver may not be remonetized with advantage, but I say that if it be remonetized it must be at its true value. What is its true value? It has ranged for the last six months between 46¾ and 60½ pence per ounce, and at this instant a telegram has been received saying that it has gone up to 58½ in London. And yet in face of these violent fluctuations we are going to legislate a value into the silver coin which it does not derive from the law of supply and demand. You may by adding to the demand or by reducing the supply increase the price, but the matter must finally be decided by a law higher than the action of legislators, the eternal laws of truth, which have determined that values must be the result of demand and supply. Now, on the question of demand, how much additional demand do these gentlemen suppose they can put into silver by making it a legal tender for the payment of debts? If you make it a legal tender there will not be any diminution in the supply of silver; it will merely be a transfer of silver from those countries where it is not now wanted to where a factitious demand has been created for it; it will merely be a transfer from one place to another. That is all that the action of the House can accomplish. This country will thus become the market for the silver which all the rest of the world desires to get rid of, and the loss which belongs to all will be inflicted upon this country alone. By adopting the suggestion of the gentleman from Ohio, [Mr. GARFIELD,] that is, for an international conference, taking the whole subject into consideration, it will be possible to give to silver general stability of value and restore it to its true place in the commerce of the world without inflicting an unnecessary and a grievous loss upon the people of the United States, whose interests and welfare we are bound to protect and preserve against the natural desire of other commercial nations to saddle upon us the loss arising from the general depreciation in the value of silver.

Mr. KASSON. Mr. Speaker, my respect for the judgment of the members of the House, as well as the necessities of the time for debate, require me to confine my remarks chiefly to a statement of facts, both of legislation and of statistics, bearing upon this question. Upon those facts, and my propositions briefly stated, I am compelled to leave the question to the judgment of a majority of the House.

I am glad, however, of an opportunity to state reasons for the persistent opposition made to the original bill, as presented to the House at its last session. Now we have the opportunity to choose between that bill and a substitute, which was only offered yesterday and is far less objectionable. It was then a proposition to create a new paper money, called coin-notes, which were to be issued alike for gold and silver, and were a new legal-tender paper. The depositor of bullion was to have the right to receive the coin-note, and then, in exchange for that, to receive the stamped bullion or the coin; and in case of his receiving the coin, it was then to go into the circulation of the country by his disbursement, he gaining all the profit, which now by existing law goes into the Treasury for the public benefit. This involved so serious a change in the laws regulating the mintage of this country that I did not believe it possible that the House would, upon consideration, sustain the bill. The present law directs the Government to buy the silver at market rates, and the artificial value given to the coin accrues to the Treasury, not to the bullionist. The people are thus saved from an equal amount of taxation to supply the Treasury; and it has resulted that during the last fiscal year there has been paid into the Treasury of the United States a profit on the minor silver coinage alone of about $2,000,000 which came from that provision of law through the depreciation of silver, and which the proposed law would have nullified. The proposition is in the interest of the bullionists themselves, is against the public interest, and the House could not be willing to pass the bill in the form in which it was then presented and as it is still pending.

Now another point. We have now two legal tenders: gold and paper. The bill originally proposed to make three additional legal tenders: the gold and silver coin notes representing the bullion deposited for coinage, and then the silver coinage from the bars or bullion so deposited, and in which the silver coin notes were to be redeemed. This would have furnished to the people five different legal tenders, making inextricable confusion in all the business of the country.

It will thus be seen that the proposition submitted by this committee to the House is one which proposes to make a new legal standard of the most fluctuating, and at that time the most depreciated, of all the several legal standards submitted to the country. Beginning in January, 1876, silver represented, in the standard value of gold, a trifle over ninety-five cents upon the dollar. During the first seven months of this year, with various intermediate fluctuations that are shown to the eye of any gentleman looking at this chart, the value of silver descended from ninety-five cents to a fraction over seventy-nine cents on the dollar on the 13th of July.

It was therefore proposed at the end of the last session to introduce a new legal standard which had fluctuated sixteen cents on the dollar during the first seven months of the present year; and it was pro-

posed to put that entire profit upon the legal-tender value of the silver coin, above the actual value of the bullion, into the pocket of the producer of the bullion, instead of permitting it to go into the Treasury of the United States, where it then went by existing legislation.

Mr. BUCKNER. Does not the gentleman assume in his argument that gold is an unvarying standard of value?

Mr. KASSON. I submit that there are some points that ought to be considered as beyond dispute. Among those points is the statement made by all responsible publicists of the world, that gold has fluctuated less than any other standard of value among the nations of the earth. If gentlemen will consult the work of Professor Jevons, covering a period of nearly one hundred years, and giving the prices during that time of thirty or forty of the most essential raw commodities, they will get information on that point that I cannot now give them. I refer also to Horace White's brief essay on the silver question. (1876.)

Now, under these circumstances, it would have deranged the business interests of the community inextricably if that proposition had become a law of Congress. For example, there are about $1,500,000,000 of deposits in the savings-banks and the other monetary institutions of the country, belonging to individuals. Those individuals have the right to call for those deposits according to the terms of the contract. Those deposits were made mainly in paper. During the time I have mentioned that value of our paper money fluctuated only between 87½ and 89¾ cents on the dollar in gold, or 2½ per cent. That has been the amount of fluctuation of our paper legal tender, against 16 cents on the dollar of fluctuation of silver during the same period.

Had this proposition become a law, then all the moneyed corporations of the country, representing $1,500,000,000 of deposits by merchants, traders, laborers, widows, and orphans, would have had the right to have repaid all those deposits in silver worth 13½ cents on the dollar less than the paper money which was deposited, if they could have procured the silver.

Let me call attention to another fact, to the claim that this will give us the privilege of paying our debts in silver instead of gold or paper, as the case may be, for that is the great argument in favor of this bill. Have gentlemen considered where the blow would fall? Every possible injury to the permanence of the money standard falls not upon the wealthy man, who can guard himself against loss, or upon the speculator, who keeps himself in accord with every change, but it falls upon the laborer and upon the producer of the country. Take the laboring man who is paid his wages at the end of the day, the week, or the month; he accumulates no surplus; your capitalist will pay him in the poorest money and not in the best that you give to the country. And when the laborer comes to pay that poor money for the supplies the laborer must purchase, he will find that he is charged for those supplies just in proportion to the poverty of the money he presents. If, as in the case of our paper money at one time, it is worth only forty cents on the dollar, then the laborer will be required to pay two and one-half times as much in the poor money for the articles he purchases as he would be required to pay in good money.

On every occasion when this question has come up, I have urged gentlemen to remember that it does not concern the capitalists of the country half as much as it does the laborer and producer of the country. The best money the country can furnish should be given to that class, because every shave of every dollar falls upon the man who has no accumulation, upon the man who does not speculate, and who has no ability to protect himself.

Take the payment of our debts held abroad, and consider that subject for a few moments. According to my estimate we have paid not less than $600,000,000 in a way that I am sorry to say we have been obliged to pay it; that is, by the processes of the bankruptcy courts of the country. During the last five years our railroad corporations have gone into insolvency thick and fast. Their bonds held abroad have realized but a small percentage, and then the debts have been canceled. The result is, that in addition to the bonds taken up in this country, our debts owned abroad are less to-day by hundreds of millions of dollars than they were five years ago.

Then, again, look at the balance of trade. Gentlemen say that if we could pay our debts abroad with cheap money we would be doing a great thing for this country. But as a nation we are not paying debts abroad this year. During the last year we have had, irrespective of bullion and money exchanged, a favorable balance of trade of $79,000,000, which foreign countries are paying to the United States in gold or its equivalent.

And now what do you propose to do? When we have become a creditor nation—when exchange is 2½ cents below par to-day in favor of the United States—par being about $4.86½ and the price being $4.84—when we are receiving from abroad every quarter millions on millions in discharge of debts owing to us, gentlemen propose to create a new and cheaper money in which Europe can pay her debts to the United States whenever the balance of trade is in our favor, and the payments may be made in the United States.

Are our foreign creditors going to send us gold unless they are obliged to do so in payment of this balance of trade? Are you by your legislation going to permit them to pay that balance in silver which yesterday represented on the dollar of 1837 97.40 cents, or will you get one hundred cents for every dollar that Europe owes to the United States?

Why, sir, the proposition is in the interest of foreign debtors, and strikes me as a direct injury to the merchants and producers of America, to be avoided only by express contracts. Our European debtors now remit gold for the wheat and the corn of my section of the country. By this bill you propose at this time and in the present condition of trade, with silver at its present value, to enable them to make their remittances in money worth two and six-tenths cents on every dollar less than the gold which they are paying to-day, no stipulation being made to the contrary, and when foreign silver shall be unloaded upon us the depreciation will be greater.

I commend these facts to the most serious consideration of my colleagues on this floor. I am glad that is a business proposition to which attention is called, that it concerns the material interests of the country, and that men are bound in conscience to vote for the best interests of their country. Do gentlemen say, as I believe my friend from Kansas [Mr. PHILLIPS] did, that we are producing $77,000,000 of silver annually? It is an entire mistake resulting from a careless examination of the tables. The amount stated is the combined product of gold and silver. Over $20,000,000 of it is in gold. You cannot attack the gold standard in favor of silver or the silver standard in favor of gold without striking at one or another of the great producing interests of this country.

Again, Mr. Speaker, at the rate at which the work is now going on in the mints, they will turn out this year $54,000,000 in gold coin. And need I say also—certainly not to you, Mr. Speaker, who originated the bill—that they are already at work night and day in supplying the country with silver coin? Since the passage of the resumption act of 1875 we have issued over $25,000,000 of silver money for the uses of the people. That is to go on under existing laws until it amounts to $50,000,000 of silver. I thought at the last session, and am still of the opinion, that we can go on and furnish $25,000,000 more of the present silver coinage before the time will arrive at which we shall have supplied the wants of our people for minor coinage.

The situation then is this. Our mints are fully occupied with the production of gold and silver coin. They are taxed to their utmost capacity. The San Francisco mint is now $800,000 behind the demand of the people for the trade-dollar for foreign export, being unable to make the supply equal to the demand. Now under these circumstances, it is proposed to make a new coin the value of which, according to the original bill, shall be 412.8 grains (a value which the silver dollar has never had in the history of this country) or according to the substitute 412½ grains, the value under the act of 1837. Under your new legislation you propose to put this coin into the circulation of the country and make it a legal tender for all amounts.

Let me say to the House (for I desire as far as possible to give facts rather than arguments) that yesterday the legal-tender paper dollar was worth 93.35 cents. Two half dollars of the United States, as now coined, were worth 91.1 cents; your silver dollar of 1837 (412½ grains) was worth 97.4 cents. It is now proposed to make this additional legal tender, which yesterday was worth 97.4 cents and to-day is between 98 and 99 cents. The fluctuations for the future no man can determine, any more than he could have foreseen the fluctuations in the past. Silver has been as low as 46¾ pence per ounce, while in 1859 it was up to 62.16 pence. It may reach that point again or it may go down again. It now rises in value by reason, in part, of the order of the German government suspending the demonetization of silver for the present; and I beg to state a fact, which I have on the highest authority, that France has already accumulated about $100,000,000 of silver, a large part of which, when the proper point is reached, will be thrown upon the markets; and when that time comes, your silver goes down. Thus you have a standard varying from week to week and from day to day. Can you, gentlemen, put this burden upon the country? Or, if you do it, is it possible that you will not at the same time so derange business that the returning prosperity of the country and the revival of business enterprise already begun will not be seriously checked?

Mr. PHILLIPS, of Kansas. Has not silver been down so low as 46¾*d.*, and is it not now 57*d.*?

Mr. KASSON. I do not know what the gentleman refers to except it be what I have already stated.

Mr. PHILLIPS, of Kansas. The question is simply this: Have we increased its value by using it as subsidiary coin?

Mr. KASSON. We have used it as subsidiary coin with a different ratio of value from the silver dollar.

Mr. PHILLIPS, of Kansas. And what has been the effect?

Mr. KASSON. It has been thus affected probably to some extent, but I do not know how much, as we have only coined $25,000,000 of it.

Mr. PHILLIPS, of Kansas. I ask the gentleman to yield to me.

Mr. KASSON. My time is nearly up, and I must be excused.

Mr. PHILLIPS, of Kansas. Is not the value of silver given to it because it is used as coin?

Mr. KASSON. No; it is an article in the market but has an artificial vale as coin. But the gentleman must excuse me, as my time is nearly out.

The whole question, then, I apprehend, cannot be in the judgment of this House whether the original bill shall be adopted. It embraces so many contingencies shown by observation and examination to be outside of the ordinary judgment of legislative bodies that I apprehend that is out of the question. What I have said, therefore, I desire to apply largely to the substitute for the bill. It con-

cerns the propriety, at this time, before the fluctuations of silver are so determined that you can possibly establish its ratio of value to the gold dollar, the propriety of taking any action in the present condition of affairs and of our knowledge. From fifteen to one it has fallen; that is, the value as to gold has fallen; at one time to over twenty to one; that is to say, over twenty pounds of silver required to be equivalent to one pound of gold.

I submit, in view of the action of this commission of ours, which is charged especially to find if there be not a safe ratio we can adopt as to relative values of silver and gold, that we should await their report and find if it be possible to adjust a relative value between the two metals. If it be, I am for adopting it; but if it be not, then let us stand by the least fluctuating standard as the most beneficial to the people of our country in respect to their own debts and in respect to the payment of the obligations that Europe seems now likely to owe annually to the amount of nearly $100,000,000 to the people of the United States.

Mr. BLAND. I will yield now for ten minutes to the gentleman from Pennsylvania, [Mr. KELLEY.]

Mr. KELLEY. Mr. Speaker, I have none of the remarks quoted from me to withdraw. They were not made on the bill demonetizing the standard silver dollar which was passed, which was a substitute, never read in this House, and being a substitute was not the bill to which I had spoken.

In answer to the learned gentleman from Ohio, [Mr. GARFIELD,] and the equally learned gentleman from New York, [Mr. HEWITT,] I have only in humility to confess that, unlike them, I was not at my birth inspired with all wisdom, all knowledge, and all coming experience, and that I have therefore, unlike them, frequently had to sit humbly at the feet of teachers, and especially in the presence of that master teacher, the Disposer of Events, whose logic is the volume I have studied most assiduously and devoutly, though it has often compelled me to abandon cherished conclusions which, in the absence of their gifts, had been deduced from imperfect knowledge.

I did believe when I made those remarks that we must have a single standard because gold and silver fluctuated; gold more, as is shown by the history of commerce, than any other commodity produced by man. But I have learned, sir, through the sad experiences of the past three years; from the parliamentary commission appointed to inquire into the depreciation of silver referred to by the gentlemen; from the minutes of the Indian board on the same subject; from the writings of Wollowski, Cernuschi, De Lavaleye, and other philosophers of Europe, that the double standard alone can give stability to the currency of a country; that when gold depreciates silver appreciates; that when silver depreciates gold appreciates; that the nation that maintains a double standard has an unvarying currency, while that which relies upon either gold or silver suffers from depreciation or appreciation—depreciation affecting one class, appreciation the other, as between creditor and debtor.

The minute of the Indian board has this paragraph on the recent fluctuations in the value of these metals:

> The divergence now noticeable in the values of gold and silver does not necessarily prove a diminution in the value of silver. It may be equally well accounted for by a rise in the value of gold; and, in fact, it is probable that since the commencement of this divergence in November, 1872, there has been an increase in the value of gold as well as a decrease in the value of silver. The actual values, measured in silver, of general commodities, whether in India or in England, afford, as yet, no evidence of any recent sudden or violent fall in the value of silver; and if *a priori* considerations strongly indicate that silver must have fallen, such considerations also make it probable that gold must have risen in value. Appended to this resolution is a series of tables of prices in London and in India, the information contained in which points to two conclusions: First, that gold has risen in value since March, 1873, and especially since last December; secondly, that it is not shown that silver has fallen in value, *i. e.*, as compared with commodities in general, either in London or in India, during the same period. These conclusions are open to correction on a wider review of the economical causes which have been at work during the period; but they appear to indicate a rise in the value of gold as at least one of the causes which have disturbed the equilibrium of the two metals. The bearing of both conclusions upon the questions now before the government of India is important.

In supporting the substitute, which is my bill of last session, I plead in the name of justice and of honesty for the maintenance and enforcement of the wise provisions of the laws under which we have issued two thousand millions of bonds. No exigency, said the gentleman from Ohio, [Mr. GARFIELD,] demands immediate action! Why, sir, the highest of exigencies, justice to the wronged and oppressed American people, demands it. They are in idleness and in want by our legislation shrinking the value of their labor and accumulated property. It is we who are dooming men of skill and industry to idleness and vagrancy. I ask that gentlemen to-day shall restore and enforce the law of March, 1869, which, being an act to maintain the public credit, declared that all our obligations should be paid in coin of gold or silver. I ask you in the name of honor, of honesty, and justice to your constituents, outraged and oppressed, to stand by the letter and spirit of the funding act of 1870, which in providing for the issue of 4, 4½, and 5 per cent. bonds provided that they should be paid in the then standard coin of the country.

What was that standard coin? It was a gold dollar which was not the unit of value, and a silver dollar such as the substitute proposes, which was then, and had been from 1792, the unit of the monetary system of the United States. This substitute proposes to vindicate and execute both of those acts. In doing this it proposes to relieve the labor of the country from the grasping dishonesty which, by appreciating one metal, requires two days' labor, two barrels of flour, two bales of cotton, two hogsheads of tobacco, two tons of iron, to pay the amount of interest that one did when silver was demonetized. That is the whole question, whether labor and enterprise shall by an ingenious contrivance have their products so reduced in value by the appreciation of a metal and the making of that metal the sole money of the country, that poverty and despair shall everywhere prevail? In the name of outraged justice, in the name of humanity, here and abroad, I plead with you, gentlemen of the House, to stand by the coins of gold or silver pledged by the acts of 1869 and 1870. Stand by your contract and thus vindicate the honor of your country and the rights of the poorer classes of your countrymen.

Ten minutes will not suffice to read the passages I have marked in these papers, but I will invite your attention to some facts illustrative of the Indian money problem, and to a brief extract or two from the report of the British parliamentary commission to show that what I am contending for is deemed reasonable by authorities who, though not inspired like the gentleman from New York, [Mr. HEWITT,] and the gentleman from Ohio, [Mr. GARFIELD,] have studied the question of currency in the light not only of all recent experience, but in the light of the history of the world, under the discipline and restraints of the scientific institutions of England and the states of the continent.

The report of the parliamentary commission informs us that India absorbed during the forty years between 1835-'36 and 1874-'75, £200,000,000 or a thousand million of dollars of silver, and that she has need of much more as I shall show hereafter. It also tells us that, misled by the example of nations that claim to be more enlightened, she began a system of public works, the capital for which she borrowed from England on coin-bearing bonds; that these works are unproductive, and that English capitalists no longer send her silver in settlement of the balance of trade, but bills of exchange drawn against her bonds held by them; so that, while India suffers from the lack of silver, the market of England was suddenly overstocked with that metal.

Here is a table showing the net imports of silver into India from 1867 to 1875–'76, which with a statement of the amount of bills annually drawn will illustrate the net imports of silver after deducting exports:

1866–'67	£6,960,000
1867–'68	5,500,000
1868–'69	8,000,000
1869–'70	7,329,000
1870–'71	943,000
1871–'72	6,565,000
1872–'73	705,000
1873–'74	2,430,000
1874–'75	4,040,000
And in the year just concluded, that is, 1875–'76	1,555,000

Statement showing the permanent effect of an increase of "council bills" on the flow of silver to India and upon the Indian exchanges.

1865–'66	£6,998,800
1866–'67	5,613,740
1867–'68	4,137,275
1868–'69	3,705,741
1869–'70	6,980,122
1870–'71	8,433,500
1871–'72	10,310,379
1872–'73	13,999,695
1873–'74	13,295,578
1874–'75	10,840,675
1875–'76	12,389,673

These tables are taken from the London Economist, because they give the facts more in detail than does the report, but they are sustained by its assertions.

The commission regard the conditions illustrated by these tables as but temporary, and show how large a market India still offers for silver. On this point let me cite the language of the report:

> Colonel Hyde, for fourteen years director of the mint in Calcutta, was examined by the commission, and in the course of his testimony he was asked whether he believed that India had already been supplied with adequate silver currency. He stated in reply his belief that the capacity of India for absorbing silver currency remained great. He gave as the grounds of his belief that in many parts of India, especially in the distant and more isolated parts, transactions were not carried on by currency but by barter. He explained that "wherever large public works have been in progress, such as railways, roads, and irrigation schemes, silver had been generally distributed in such districts," and that where this had taken place the use of silver currency had superseded barter arrangements to a great extent. Where the natives have once been taught the convenience of silver currency, there the currency remains. Another witness, Mr. Mackenzie, also spoke strongly on the absorption of silver by India. He said: "It appears from historical periods she has always gone on absorbing silver, and there seems at present no cessation to this absorption." He also spoke of the circulation in many districts being "totally inadequate," a large amount appears either to be hoarded or converted into ornaments, and remains in the district."
>
> A practical distinction should, in the opinion of your committee, be drawn between the addition made to a currency in countries where all transactions have been previously carried on in the same form of currency; and where accordingly an increased supply would simply have for its effect a rise in prices, and, on the other hand, an addition made to the currency by the extension of that currency over fields where transactions were previously carried on in a totally different form.
>
> If, at a former period, only a portion of India used silver to any extent in the ordinary transactions of life, and if now the extent of territory using it has been doubled, it is clear that India requires more silver than formerly; and the facts of the case seem to warrant the conclusion that the use of silver coin has greatly extended in India, and will continue to extend, not so much by the use of more silver in the territories already occupied by the existing currency, as by the gradual increase of its use in the remoter parts of India.

These facts seem to me to be sufficient in themselves to dispose of the terrible suggestion that the restoration of the standard dollar to our coinage will overwhelm us by a ceaseless tide of worthless silver flowing from all lands. What it will do will be to restore the old relation of 15½ to 1 between silver and gold.

The gentleman from New York said that the report of the commission had compelled the Latin Union to suspend their coinage. How then does it elaborately discuss the effects of that suspension?

Mr. HEWITT, of New York. I desire to correct the gentleman. He misunderstood me; I made no such statement.

Mr. KELLEY. Then my ears deceived me and the ears of gentlemen around me were deceived.

Mr. HEWITT, of New York. I merely stated the fact that the Latin Union had suspended coinage, but not as a consequence of the report of the silver commission.

Mr. KELLEY. I am glad to have the explanation made and hope the correction will be made in the RECORD. The commission discussed elaborately the effect of the action of the Latin Union. Their report also tells me that in four years France—a nation that has not one legal tender, nor two legal tenders, but three legal tenders; in which gold, silver, and the irredeemable notes of the Bank of France are all legal tender and are each at par with the others because the government receives and pays whatever it makes legal tender—France absorbed in four years preceding the making of this report not $100,000,000, as stated by the gentleman from Iowa, [Mr. KASSON,] but $107,500,000 of silver, and goes on absorbing it and her industries are undisturbed, while those of Germany and the United States that are pursuing the *ignis fatuus* of a single standard, the metal for which they cannot obtain, are paralyzed unto death. Sir, France has the equilibrium and suffers no crisis. She has gold and silver, and they regulate her currency by each compensating for the fluctuations that may occur in the other.

[Here the hammer fell.]

Mr. HOLMAN. Since the country became fully informed of the effect of the coinage act of February 12, 1873, omitting the silver dollar as a legal tender from the coinage of the United States, there has been an unmistakable determination among the people that it should be restored. The passage of this act at a time when specie payments were not arresting the attention of the country and the absence of any general and definite information as to the effect of that law, either in Congress or out of Congress, had created a wide-spread belief that the measure was designed to promote special interests, and not the general good. A people greatly in debt and feeling seriously the weight of taxation cannot be unmindful of the medium through which payment shall be made. The act of 1869, declaring that the entire public debt, a large portion of which had been contracted on the basis of a paper money greatly under the value of coin, should be paid in coin, has been condemned by a large portion of our people as an unjust discrimination in favor of capital, and this act of February 12, 1873, which in effect declares that this great public debt and all other debts, public and private, should not only be paid in coin but in gold coin, this measure, with the succeeding measures proposing to retire and cancel the greenback money, leaving gold only as a medium of payment, was well calculated to excite serious alarm. The least-informed citizen could perceive that the debt he might have contracted would be greatly enlarged by the shrinking in value of the property on which he might rely for payment. Is it remarkable, then, that a vigorous public opinion should at least demand the restoration of the silver dollar as a full legal tender to our coinage?

This act of February 12, 1873, in a most striking manner illustrates the contest between labor and capital, and the ingenious and far-reaching methods by which capital constantly obtains the advantage. On the 1st day of January, 1873, it may be safely assumed that the debt of the United States, the debts of States and municipal governments, of corporations and citizens, taken in the aggregate, greatly exceeded the indebtedness of this country at any other period. Subsequent events fully demonstrate that it was the intention of the men who for years have controlled our legislation and financial policy to retire at an early moment the legal-tender greenback money. At this period, without a note of warning, not by a direct provision but by a *mere omission* in the enactment of a voluminous statute, one of the precious metals, used for the coinage of money in all the ages and fully recognized by the Constitution and entering into every contract, public and private, in this country up to that hour, is ignored and set aside and the most precious and valuable of all the means of payment known to the world, gold coin, must be sought for by the debtor to meet the demands that press upon him. This, with the resumption act, will be found to be one of the most extraordinary instances of bad faith ever charged upon a government. It entails and will entail, if it shall be consummated, on a great multitude of people destitution and ruin, while a comparative few—capitalists of Europe and America—will by this disingenuous and fraudulent legislation add hundreds of millions to their wealth.

The vast body of debts, public and private, made on the basis of a greatly inflated volume of paper money, and which by the act of 1869 "to strengthen the public credit," so called, this coin act of 1873 and the resumption act of 1875, are to be made payable in gold coin, present as a united series of measures a most revolting instance of public injustice. Capital here achieves a heartless victory over the debtor and the laborer, and the suffering which this victory may bring to countless firesides may sooner or later provoke retaliation. The memory of a great act of injustice is not a pleasant feature in the history of even a monarchy, and much less so in that of a republic where justice and good faith are the foundations of government.

This bill, or rather this substitute for the original bill, simply re-enacts the silver-dollar law of 1837, which is substantially the same as the law of 1792, and directs the Secretary of the Treasury to restore the coinage of the silver dollar of 412½ grains of silver, with unrestricted coinage and unlimited legal tender, except where the contract is expressly payable in gold. It is simply the restoration of the law in regard to the silver dollar as it stood when repealed by the act of February 12, 1873. The absolute justice of this measure is too manifest for dispute. It can only be opposed on the theory that legislation in the interest of capital, however unjust and oppressive, can never be recalled. That theory is not yet fully crystallized in our Government and a vigilant people will see that it shall not be.

It yet, sir, is remarkable that the entire weight of gentlemen who administer the financial affairs of this Government is against the restoration of the silver dollar. Unhappily the small body of people to whose benefit this order of legislation inures, greatly enlarging their already ample estates, are infinitely more vigilant and possessed of infinitely more leisure than the people whom it will oppress. They are always at the seats of power, and their arguments, and theirs only, reach the ear of those who administer the affairs of Government. The people are never represented by the lobby, either in the halls of this Capitol or in your departments of Government.

Even as to the resumption act, it has been asserted, since the last adjournment of Congress, that the legal-tender notes, when redeemed in coin, would be re-issued; that it was not the purpose of the Treasury Department to finally cancel the money of the people; but the Secretary of the Treasury tells us, in his last report to Congress, "that the policy which tolerated the continuance of these notes as money after the close of the war must be regarded as a public misfortune." And again: "They have served their end, they existed only as evidence of Government indebtedness, to be provided for as *other debt obligations*." It is therefore apparent that influences, strong and potential, are at work to reduce, in a very short period, the currency and money, and all values in this country, to the single standard of gold coin, no matter how oppressive and no matter how wide-spread the disaster and ruin it may bring.

Specie payments—no, gold payments—are to be forced upon the country, the greenbacks funded in gold-interest-bearing bonds, and the issues of the national banks brought down to the gold standard, and yet the most rose-colored estimate only claims $181,678,000 in silver and gold coin and bullion in the United States, with at least $700,000,000 of Federal, State, and local taxation upon our people.

The Director of the Mint informs us that the gold and silver coinage of the last year was as follows:

Coinage.	Pieces.	Value.
Gold	1,949,468	$38,178,962 50
Silver, (trade dollars)	6,132,050	6,132,050 00
Silver, (subsidiary coin)	64,104,950	12,994,452 50
Minor	14,915,000	260,350 00
Total	87,101,468	57,565,815 00

The export of gold vastly exceeds the import. Only $38,178,962.50 coined in the past year, yet, at the bidding of the great capitalists at home and abroad, we must repudiate the greenback and fund it in gold-interest-bearing bonds, and ignore silver coin as no longer consistent with the views and interests of the gentlemen of princely estates who control our financial affairs.

If labor and the great interests that are immediately identified with our productive industries do not intend to be crushed out, they must insist, as freemen only can insist, and by a force of public opinion that cannot be resisted, that this reign of injustice and oppression shall cease.

Mr. BLAND. Mr. Speaker, it has been urged by the opponents of this bill that this measure has been foisted upon the House and the country without due consideration. Sir, this bill was pending at the last session of this Congress six weeks; it has been discussed throughout the country in the public press and in nearly every congressional district in the country, and when the gentleman from Ohio claims that here, without consideration, we are endeavoring to pass a measure of this importance, and compares it to the explosion of Hell Gate, I apprehend that he had probably forgotten that when silver was demonetized in this country it was a Hell Gate explosion, and that he helped to apply the torch. The country was not informed of the fact that such a measure was pending in the House at that time.

Mr. Speaker, the gentleman from Iowa [Mr. KASSON] and the gentleman from New York [Mr. HEWITT] pleaded for time, for consideration, but I apprehend the fact that the pleading is for an extension of time wherein to oppress the debtor class of this country. It is simply a question, as was remarked by the gentleman from Pennsylvania, [Mr. KELLEY,] that instead of one day's work paying a certain amount of debt we shall require two days' work; that is the effect of establishing a single standard of values. Is it not a matter of history that a famine occurred in Ireland which nearly swept the

people of that green isle from the face of the earth because its people depended upon one standard of food?

If it were possible by legislation to decree that nothing but wheat should be used for bread, would it not be a consequence that the price of wheat would be double? But when there are two or three articles that may be used, the actual effect is that the price of the one governs the other and there is a medium standard established between the two.

There has been a reference again to this commission who have been authorized to inquire into this matter, and it is urged that we should postpone action until we receive the report which that commission will lay before the House.

Mr. Speaker, I am apprehensive that the gentlemen who raised this objection, at least I fear they would, if this commission reported favorably upon the subject, resort to some other means to defeat this measure as heretofore. Pleading for time is pleading for the creditor class against the debtor. Some suggestions have been made in regard to the substitute for the bill. That is a provision that the silver dollar shall be a legal tender for all debts except where the contract requires the payment of gold coin. The sole object of that amendment is to protect the kind of contracts known to exist in this country calling specifically for payment in gold coin as the payment mentioned in contracts. We know that on the Pacific coast in many cases contracts have been made requiring payments in gold coin. It was not the object of the committee, and it should not be the object of this House, to interfere with any debt required to be paid in gold coin. So far as public debts are concerned I know of no such contracts, and the law is now, except by the law of 1873, that all public and private debts must be paid in gold and silver. The gentlemen who oppose this bill pretend to be especial advocates on this floor—and especially the gentleman from Iowa [Mr. KASSON]—of the workingmen, the widows, and orphans. He is not representing that class upon this floor, and I venture to assert that if you ask the workingmen, the widows, and orphans what they demand in this country there would be a unanimous voice in favor of this bill. But if he asks the creditor class, the men who hold the obligations of the country in behalf of public and private debts, they would demand payment in gold coin. He refers to the report of the Director of the Mint on this question of the variation of the prices of gold and silver, and the whole argument is an assumption when they undertake to say that gold is the only standard. It is merely an assumption, because gold has appreciated and was occasioned by the demonetizing of silver in Germany and the United States. Mr. Groschen, on behalf of the British Parliament, expressed himself with reference to these commodities having appreciated. I hope that this Government will in restoring to us a double standard compel Germany to retrace her steps in that regard.

I confess that I am in favor of the bill as originally introduced. I agree that the certificates authorized to be issued for bullion deposited in the Treasury would take the place of your national-bank notes and furnish a secure paper currency for this country, and that the coin mentioned there would be a legal tender for all debts as is provided in the substitute. But I am not particular upon this point. For that reason the committee has permitted the substitute to be voted upon by the House in order that the House may take their choice between the two bills. I now call for a vote.

The SPEAKER. The time allowed for debate has expired.

Mr. DURHAM. I ask unanimous consent to offer an amendment to the substitute. I do not desire to argue it, but there is some doubt whether or not it is provided for in the act of 1873.

Mr. FORT. Will it be in order to ask that the time for debate upon this bill be extended?

The SPEAKER. It can be extended by unanimous consent.

Mr. FORT. There are a great many of the humbler members of this House who would like to say something upon this important measure.

The SPEAKER. How long a time does the gentleman suggest?

Mr. FORT. One hour.

Mr. BUCKNER. I object.

The SPEAKER. The amendment of the gentleman from Kentucky [Mr. DURHAM] will be read.

Mr. FORT. I would like to have the privilege of having printed in the RECORD some remarks upon this subject.

The SPEAKER. That permission can be given, if there is no objection.

There was no objection.

Mr. LANDERS, of Indiana. I ask unanimous consent to have printed in the RECORD some remarks upon this subject, in addition to those which I made to-day.

There was no objection.

The amendment of Mr. DURHAM was read as follows:

Provided, That a seignorage of 1½ per cent. shall be charged upon the dollars coined under this act.

Mr. KELLEY. I object to that amendment.

Mr. PAGE. I ask unanimous consent to have considered as pending an amendment to line 9 of the proposed substitute, to insert after the word "law" in that line the words "or express contract."

Mr. KEHR. I object to that amendment.

The SPEAKER. The time for debate having expired, and the main question having been ordered upon the bill, amendments, and substitute, the first question will be taken upon the substitute offered by the gentleman from Missouri.

The substitute (H. R. No. 4189) was as follows:

Strike out all after the enacting clause, and insert the following:

That there shall be, from time to time, coined at the mints of the United States silver dollars of the weight of 412½ grains standard silver to the dollar, as provided for in the act of January 18, 1837; and that said dollar shall be a legal tender for all debts, public and private, except where payment of gold coin is required by law.

The question was taken, and the substitute was adopted.

The bill, as amended by the adoption of the substitute, was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time.

The question was upon the passage of the bill.

Mr. HOLMAN. Upon that question I call for the yeas and nays.

The yeas and nays were ordered.

The question was taken, and there were—yeas 167, nays 53, not voting 69; as follows:

YEAS—Messrs. Ainsworth, Anderson, Ashe, Atkins, Bagby, John H. Bagley, jr., John H. Baker, Banning, Bland, Blount, Boone, Bradford, Bradley, Bright, John Young Brown, William R. Brown, Buckner, Horatio C. Burchard, Samuel D. Burchard, Cabell, John H. Caldwell, William P. Caldwell, Campbell, Cannon, Carr, Cason, Caswell, Cate, Caulfield, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Collins, Conger, Cook, Cowgill, Cox, Crounse, Culberson, Cutler, Davis, Dibrell, Durham, Ellis, Evans, Faulkner, Felton, Finley, Forney, Fort, Foster, Franklin, Fuller, Glover, Goode, Gunter, Andrew H. Hamilton, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Hathorn, Haymond, Henderson, Henkle, Hereford, Goldsmith W. Hewitt, Holman, Hooker, Humphreys, Hunter, Hunton, Kelley, Kimball, Knott, Lamar, Franklin Landers, George M. Landers, Lane, Leavenworth, Lewis, Luttrell, Lynde, Mackey, Magoon, McCrary, McDill, McFarland, Milliken, Mills, Money, Monroe, Morgan, Mutchler, Neal, Odell, Oliver, Page, Payne, William A. Phillips, Piper, Poppleton, Powell, Rea, Reagan, John Reilly, Rice, Riddle, John Robbins, William M. Robbins, Roberts, Rusk, Sampson, Savage, Scales, Shackley, Singleton, Slemons, William E. Smith, Southard, Sparks, Spencer, Springer, Stanton, Strait, Stenger, Stevenson, Stone, Stowell, Swann, Teese, Terry, Thorneburgh, Throckmorton, Martin I. Townsend, Tufts, Turney, Van Vorhes, John L. Vance, Robert B. Vance, Waddell, Waldron, Gilbert C. Walker, Alexander S. Wallace, John W. Wallace, Walsh, Watterson, Erastus Wells, G. Wiley Wells, White, Whiting, Whitthorne, Willard, Andrew Williams, Charles G. Williams, Jeremiah N. Williams, William B. Williams, Benjamin Wilson, James Wilson, Woodworth, Yeates, and Young—167.

NAYS—Messrs. Adams, George A. Bagley, William H. Baker, Ballou, Bell, Blair, Burleigh, Candler, Chittenden, Davy, Denison, Eames, Flye, Freeman, Frye, Garfield, Gibson, Hale, Haralson, Benjamin W. Harris, Abram S. Hewitt, Hoar, Hoskins, Hurd, Frank Jones, Kasson, Kehr, Levy, Lynch, Maish, MacDougall, Metcalfe, Miller, Nash, Norton, O'Brien, O'Neill, Packer, Pierce, Plaisted, Platt, Potter, Schumaker, Seelye, Sinnickson, A. Herr Smith, Tarbox, Wait, Warren, Algernon S. Williams, Willis, Alan Wood, jr., and Fernando Wood—53.

NOT VOTING—Messrs. Abbott, Banks, Bass, Beebe, Blackburn, Bliss, Chapin, Cochrane, Crapo, Danford, Darrall, De Bolt, Dobbins, Douglas, Dunnell, Durand, Eden, Egbert, Gause, Goodin, Hays, Hendee, Hill, Hoge, Hopkins, House, Hubbell, Hurlbut, Hyman, Jenks, Thomas L. Jones, Joyce, King, Lapham, Lawrence, Le Moyne, Lord, McMahon, Meade, Morrison, New, Phelps, John F. Phillips, Pratt, Purman, Rainey, James B. Reilly, Robinson, Miles Ross, Sobieski Ross, Sayler, Schleicher, Smalls, Stephens, Thomas, Thompson, Washington Townsend, Tucker, Charles C. B. Walker, Walling, Ward, Warner, Wheeler, Whitehouse, Wigginton, Wike, James Williams, Wilshire, and Woodburn—69.

So the bill (H. R. No. 4189) was passed.

During the call of the roll,

Mr. ATKINS said: My colleague, Mr. HOUSE, is absent upon an investigating committee; if present he would vote "ay."

Mr. GUNTER. My colleague, Mr. GAUSE, is absent on account of sickness.

Mr. BLAND moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

The SPEAKER. Does the gentleman from Missouri desire to have the title of the bill amended so as to correspond with the title of the substitute? The title to the substitute will be read.

The Clerk read as follows:

A bill authorizing the coinage of the standard silver dollar and restoring its legal tender character.

Mr. BLAND. That is the title which I desire to have adopted.

The SPEAKER. If there be no objection, the title as just read will be regarded as the title of the bill.

There was no objection.

ORDER OF BUSINESS.

Mr. HOLMAN. I move that the rules be suspended and that the House resolve itself into the Committee of the Whole for the consideration of the post-office appropriation bill.

Mr. CROUNSE. What is the regular order?

The SPEAKER. The business of the morning hour.

Mr. CROUNSE. I call, then, for the regular order.

Mr. HOLMAN. I believe that this motion is in order, even before the business of the morning hour.

The SPEAKER. The House yesterday made an order that the post-office appropriation bill should be in order after the morning hour.

Mr. HOLMAN. Although I presume that my motion is in order I withdraw it for the present.

BURLINGTON AND MISSOURI RIVER RAILROAD.

The SPEAKER. The motion being withdrawn, the Chair will not decide until the occasion requires whether it is in order or not. The regular order being demanded, the morning hour begins at five minutes before three o'clock; and the pending business is the bill (H. R. No. 4075) to amend an act entitled "An act to amend an act entitled

"An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes,' approved July 1, 1862," approved July 2, 1864. The gentleman from Iowa, [Mr. McCRARY,] who reported the bill from the Committee on the Judiciary, is entitled to the floor.

Mr. McCRARY. I have no desire to discuss the bill further myself. I will yield the floor to the gentleman from Nebraska, [Mr. CROUNSE,] whose constituents are especially interested in the measure.

Mr. FRYE. Before the gentleman from Iowa [Mr. McCRARY] yields the floor, I wish to ask him a question. When the bill was last under consideration, I understood him to close his speech by saying that if no gentleman desired to discuss the bill he would move the previous question. I say to him now that there are members of the Judiciary Committee who desire to discuss the bill, and I ask him whether he yields the floor to the gentleman from Nebraska with the understanding that that gentleman is to move the previous question.

Mr. McCRARY. I do not wish of course to cut off any member, and particularly members of the Judiciary Committee, who may wish to debate the bill. I expect that the gentleman from Nebraska will yield to them if they desire to be heard.

Mr. CROUNSE. How much time will those gentlemen desire?

Mr. FRYE. I do not know. I understand several gentlemen desire to discuss the bill.

The SPEAKER. The Chair will state to the gentleman from Maine that the bill will hold its place in the morning hour from day to day until the previous question shall be called and sustained. The Chair will recognize hereafter the gentleman from Iowa [Mr. McCRARY] who reported the bill to call the previous question.

Mr. McCRARY. I yield the balance of my time to the gentleman from Nebraska, [Mr. CROUNSE.]

Mr. GLOVER. With the permission of the gentleman from Iowa [Mr. McCRARY] I desire to offer an amendment to the bill.

Mr. LUTTRELL. I would like to put one question to the gentleman from Iowa.

The SPEAKER. The Chair is of opinion that the bill is open to amendment whenever the gentleman from Missouri [Mr. GLOVER] shall be recognized.

Mr. CROUNSE. Have I the floor?

The SPEAKER. The gentleman has the floor.

Mr. LUTTRELL. I desire to ask the gentleman before he goes any further, to let us have an understanding as to the time when the previous question will be called. I understand that several gentlemen desire to speak on the bill, and others who are called out of the House for the time being wish to be here and vote. Let us have some understanding as to the time when the gentleman from Iowa will call the previous question.

The SPEAKER. The Chair can only say that the debate on this bill will continue during the morning hour from day to day until the House shall determine to second the demand for the previous question.

Mr. LUTTRELL. Will not the gentleman from Iowa designate some hour or some day when he will call the previous question?

Mr. CROUNSE. As to when the previous question shall be demanded, that question can be better settled after I understand who wants to speak upon the bill and for what purpose. I am advised that since this bill was brought before the House nearly a week ago a pressure has been brought against it which I fear almost to confront. I understand that every effort will be made to defeat the bill by amending it to death, by referring it back to the committee, and by all other means known to parliamentary law. I wish to proclaim here in advance that if there is any honest intention, any intention in good faith on the part of any member to amend the bill so as better to carry out the purposes for which it was introduced, I shall give the broadest latitude for such amendments and also for discussion. The purpose of the bill is such that it will bear the fullest examination and discussion; but I would not like by any indulgence of mine, or by the abandonment of any advantage which I may now possess, to allow the bill to be defeated by any of those resorts. I will listen to any amendment which may be suggested; amendments which any gentleman desire to offer may be read for information.

Mr. FRYE. I desire to correct one statement of the gentleman from Nebraska if he will allow me. He stated, I believe, that there is no honest purpose, as he understands, to perfect this bill.

I simply desire to say that I shall offer three amendments for the purpose of perfecting the bill and doing justice to the people who are the constituents of the gentleman from Nebraska.

Mr. CROUNSE. Is the gentleman from Maine in favor of the purpose of the bill? Did he not tell me it was his object to defeat the bill? That is a plain question; answer it.

Mr. FRYE. My purpose is, if the bill is to pass, that it shall pass in a perfect form, so the rights of the people of Nebraska shall be protected.

Mr. CROUNSE. That is an evasive answer. I will take care of the interests of the people of Nebraska. I do not ask the gentleman to volunteer to defend them.

Mr. FRYE. But I desire to do so.

Mr. CROUNSE. I ask the gentleman from Maine whether he is in favor of the purpose of the bill and whether he did not declare to me that it was his purpose to defeat it?

Mr. FRYE. I believe that the bill is an outrage in itself.

Mr. CROUNSE. That is enough.

Mr. FRYE. I believe I can make it a great deal better than it is now by putting on some amendments.

The SPEAKER. Does the gentleman from Nebraska yield the floor?

Mr. CROUNSE. Not to the gentleman from Maine to offer his amendments.

Mr. GLOVER. I ask the gentleman from Nebraska to allow me to offer an amendment.

Mr. CROUNSE. I am willing to yield so the amendment may be read for information.

Mr. GLOVER. I desire to offer this amendment to protect the interests of the people, not of Nebraska alone but of all the people of the United States, and I hope the House will give attention to the reading of the amendments.

The Clerk read as follows:

Strike out of section 1 lines 20, 21, and 22 and insert the following words:

That the lands granted to the Burlington and Missouri River Railroad by section 19 of the act above mentioned shall not be located beyond or outside of a line of ten miles on each side of said road and that the lands outside of said ten miles on each side of said road which may have been conveyed by the United States to said railroad company shall be reconveyed by said railroad company to the United States, except such lands as may have been sold and conveyed prior to the passage of this act; and that for such lands the sum of $1 25 per acre shall be paid into the United States Treasury. And this provision shall be complied with by said railroad company before any of the other provisions of this act shall take effect or be in force: *And provided further*, That the lands granted to the said Burlington and Missouri River Railroad Company by the United States shall be subject to the same conditions in regard to the sale of such lands as are imposed upon the Union Pacific Railroad Company and branches.

Mr. GLOVER. I desire to have it understood that this amendment is pending.

The SPEAKER. The gentleman from Nebraska is entitled to the floor.

Mr. CROUNSE. I simply allowed the amendment to be read for information, and do not yield the floor to have it come in as a pending amendment.

The SPEAKER. If the demand for the previous question is not seconded, then the gentleman from Missouri can offer his amendment.

Mr. FRYE. I do not understand that the previous question has been demanded.

The SPEAKER. It has not, but the gentleman from Nebraska is entitled to the floor.

Mr. CROUNSE. I desire to say, Mr. Speaker, that the purpose of this bill was set forth fully by the gentleman from Iowa [Mr. McCRARY] when he reported it. The bill has been considered in the Committee on the Judiciary, and was reported after full argument for and against it, and after due consideration, and therefore I now demand the previous question, which will give us an hour for debate after it has been seconded and the main question ordered.

Mr. GLOVER. I hope that the previous question will be voted down.

Mr. CROUNSE. I hope not. I hope the question will be decided here, so it may be determined whether these corporations shall run from Congress to Congress.

Mr. KASSON. Is the gentleman from Nebraska willing to allow me a few moments to call attention to a communication received from some people in Iowa on this subject? I understood there would be an opportunity for debate.

Mr. CROUNSE. After the previous question is seconded, I will yield to the gentleman from Iowa for the purpose of calling attention to that communication.

Mr. KASSON. But there will be no opportunity for amendment, and I desire to protect certain interests in my State adversely affected by this bill.

Mr. CROUNSE. I demand the previous question.

The House divided; and there were—ayes 42, noes 82.

So the previous question was not seconded.

Mr. GLOVER. I desire now to move to the bill the amendment which has just been read, and if the House desires, I will then move to recommit it.

Mr. HOLMAN. O, no!

Mr. CROUNSE. Very well; I will now merely move my amendment.

Mr. KASSON. I ask the gentleman from Missouri to give me the opportunity to offer another amendment and an opportunity to explain it before he calls for the previous question.

Mr. GLOVER. I have no objection to yielding to the gentleman from Iowa to offer his amendment.

Mr. FRYE. I have three amendments to offer to the bill.

Mr. KASSON. I move to strike out all after the word "requirements," in line 15, page 2, to and including the word "act," in line 16, and to insert in lieu thereof the following words: "all the other branches of the Union Pacific Railroad."

Mr. FRYE. I have another amendment which I desire to offer.

The SPEAKER. That can only be admitted by unanimous consent.

Mr. HOLMAN. I ask that the portion proposed to be stricken out be now read.

The Clerk read as follows:

Strike out all after the word "requirements," in the fifteenth line of section 1, down to and including the word "act," in the sixteenth line, to wit: these words: "provided by sections 9 and 15 of said last-mentioned act;" and insert in lieu thereof the following words: "of the other branches of the Union Pacific Railroad."

The SPEAKER. The Chair would like to understand whether the amendment which the gentleman from Maine [Mr. FRYE] proposes to offer is an amendment to that of the gentleman from Missouri [Mr. GLOVER] or an amendment to the original text.

Mr. FRYE. It is an amendment to the original text, as are the other two which I hold in my hand.

The SPEAKER. Then the Chair will entertain them.

Mr. FRYE. I offer the amendment which I send to the desk.

The Clerk read as follows:

Insert after "1-64," in line 22, section 1, the following:

"Except that the lands received by the said grant to the said Burlington and Missouri River Railroad Company in Nebraska shall be subject to the operation of section 3 of said act of July 1, 1862, in like manner as the land granted by Congress to the Union Pacific Railroad Company and branches.

Mr. FRYE. I have another amendment which I desire to offer.

The SPEAKER. To the original text?

Mr. FRYE. Yes, sir.

The Clerk read as follows:

Strike out all after the word "said," in line 3, section 2, to and including the word "Nebraska," in line 6, and insert "Burlington and Missouri River Railroad Company in Nebraska may operate its line in connection with the said Union Pacific Railroad; and all railroad companies whose roads now connect with or may hereafter connect with the said Burlington and Missouri River Railroad in Nebraska shall have and enjoy all the rights, privileges, and immunities in respect to rates, time, and transportation over the said Burlington and Missouri River Railroad in Nebraska that are conferred upon the said Burlington and Missouri River Railroad in Nebraska in respect to the Union Pacific Railroad, by this act."

Mr. FRYE rose.

The SPEAKER. The gentleman from Missouri has the floor for debate.

Mr. GLOVER. How much time does the gentleman from Maine desire?

Mr. FRYE. About twenty minutes.

Mr. GLOVER. I give fifteen minutes to the gentleman from Maine.

Mr. FRYE. Will the gentleman from Missouri [Mr. GLOVER] yield to me to make a motion to recommit?

Mr. HOLMAN. O, no; we want to pass the bill with these amendments.

Mr. FRYE. If the gentleman from Missouri will yield to me for that purpose, I will move to recommit the bill with the amendments.

Mr. HOLMAN. The amendment offered by the gentleman from Missouri is a very important one, and an attempt has been made for years to get this important measure of policy in regard to this land grant before the House in a tangible form. It is now before the House in a very satisfactory form, it appears to me; and I trust that the bill will pass at this time as proposed to be amended.

Mr. FRYE. Then I desire to discuss the bill.

The SPEAKER. The Chair understands that the gentleman from Missouri does not yield to allow the gentleman from Maine to make a motion to recommit the bill.

Mr. GLOVER. I do not yield for that purpose. I yield the gentleman from Maine fifteen minutes for discussion.

Mr. FRYE. This bill is one of great importance, and I trust that I may have the attention of the House while I explain certain objections which lie in my mind to it. At the last session of Congress we passed a bill relating to the Union Pacific Railroad Company in my opinion at that time, unconstitutional and unjust. But it had this excuse, that the Government of the United States was a creditor to that road in $35,000,000, and that the legislation was for the purpose of protecting that creditor. In this bill there is no such excuse found. It simply in its operation allows the Chicago, Burlington and Quincy Railroad Company, a corporation of great wealth and power, running to-day the Burlington and Missouri, to take from the Union Pacific Railroad Company—running parallel to it for hundreds of miles and within twenty miles of it—freight and passengers, and thus reduce the earnings of the Union Pacific Railroad Company and cripple its power to meet the requirements of the law which this House passed at its last session.

Now, sir, this is not a conflict between the people and a railroad company. It is a conflict between two great railroad corporations, and the interests of the people only come in incidentally. Let us take the history of the Burlington and Missouri road. It was chartered by the State of Iowa, and in the Pacific acts of 1862 not one word will be found relating to it. When the grants of land were made in 1862 to the Union Pacific, no grants of land were made to the Burlington and Missouri; but in 1864, in the act increasing the grant to the Union Pacific Railroad Company, in sections 18, 19, and 20, the Burlington and Missouri Railroad Company of Iowa is given a land grant and is allowed certain privileges, certain immunities, and a right of way through the State of Nebraska, to connect with the Union Pacific Railroad at the one-hundredth meridian.

Now, sir, this Burlington and Missouri Railroad Company when it came before this House, came with a bill, which I have in my hand, simply declaring that it was a branch of the Union Pacific Railroad Company, like the other three branches chartered and to which land grants were given, and as such entitled to all the rights and privileges they or either of them enjoyed.

This bill which I hold in my hand, and which the gentleman from Nebraska [Mr. CROUNSE] sent to our committee, declares in terms that the Burlington and Missouri River Railroad is a branch of the Union Pacific Railroad Company. Go back five or six years and you find that in receiving this charter the same Burlington and Missouri River Railroad Company came before the Secretary of the Interior, Mr. Harlan, and claimed that it had never been a branch of the Union Pacific Railroad Company, and had never been subject to the limitations to which that company was. It claimed to be exempt from the ten-mile limitation imposed upon that road and all its branches. The Secretary decided in favor of its claim; found that it was not a branch and was entitled to go outside of the ten-mile limit and select an equal number of acres with those hitherto pre-empted within the ten-mile limit. The same question was again argued and insisted upon before Secretary Browning, who decided adversely to the company. Again it was argued before Secretary Delano, who gave a favorable opinion, on the ground that in no sense was it a branch of the Union Pacific Railroad Company. Twelve hundred thousand acres had been pre-empted within the ten-mile limit. Under this decision, this road selected that number of acres of the cream of the lands of Nebraska—outside of that limit—exercising such a care to obtain the very best that in some instances it selected land lying one hundred miles away from its tract. It received patents for the 1,200,000 acres, and then, to make itself absolutely certain, obtained the Attorney-General to test the validity of its patents in the courts, and Mr. Justice Miller affirmed the opinion of Secretaries Harlan and Delano.

Mr. HOLMAN. Secretary Browning?

Mr. FRYE. No; Secretaries Harlan and Delano.

To-day that company, having 1,200,000 acres of land obtained solely on the plea that it never was a branch of the Union Pacific Railroad Company, asks to make them a branch. Having gained all it wished by not being a branch, it says now let us have all the rights, munitments, and advantages of being a branch of the Union Pacific Railroad Company.

Now I do not know, Mr. Speaker, if there is any way in which to reach them and recover these lands, but I do want to call attention to an amendment which I think can reach them in another particular. The Union Pacific Railroad act provides that after the lapse of three years after the time the road is completed all the lands granted to the road shall be subject to pre-emption at $1.25 an acre. This road has obtained these lands; they are worth to-day from $2.50 to $20 an acre; let the company be compelled to hold them subject as the other branches of the road are to pre-emption at $1.25 an acre. If this road is really a branch of the Union Pacific Railroad Company, with all the rights and immunities of that road, I wish to put in this provision in the interest of the people of Nebraska and in the interest of immigration.

Again it will be noticed that this bill provides that the Burlington and Missouri River Railroad Company shall prorate over the Union Pacific Railroad Company from Fort Kearney to Cheyenne. Now the original proposition was to give the prorate to the eastern line of the State of California. Only look at this monstrous proposition! West of Cheyenne the actual cost of building the Pacific road was four, and may be six times greater than east of that point. The cost of transportation over the mountains west of Cheyenne is probably twice that over the plains east. And yet this road, diverting freight from the Union Pacific road, asked us to compel that road to carry this freight over the mountains at the lowest rate per mile it carries it over the plains.

Why, sir, let this road do that, let a half dozen other roads do it, and you will wipe the Union Pacific Railroad out of existence, and you would never get one single dollar of the thirty-five millions you have advanced to that road.

They saw that, and backed down from that proposition; and they now ask to be allowed to prorate to Cheyenne. Then where are they? The Union Pacific Railroad Company has charged an average. It has increased the charges for freight over the plains east, and decreased the charge of freight over the mountains, and thus made its average. This prorate as far as Cheyenne would actually cost them more than it would if they had their own road and it stopped east of the mountains, because the increased cost of the carriage over the mountains has been added in part to the decreased cost over the plains.

Now, is that what they want? O, no. They propose to land their freight at Cheyenne. Where is it going from Cheyenne? It is going west. How? By the Union Pacific Railroad Company.

This bill provides for experts. Now, those experts will take into consideration the fact that the Union Pacific Railroad has had no haul of this freight except from Kearney Junction: they will take into consideration the increased cost of transportation over the mountains, and then they will increase the charge on the freight landed at Cheyenne one-third or one-half, and these gentlemen know it. Then there will be an outery all over the western country that there is discriminations against this road and those roads landing freight at Cheyenne. They will then come to Congress with that outery—you have seen the effect of it in the West—and they will drive through Congress, if they can, their original prorate bill. This bill provides that the Burlington and Missouri River Railroad Company shall have the right to prorate——

[Here the hammer fell.]

The SPEAKER *pro tempore*. The time of the gentleman has expired.

Mr. FRYE. I think the gentleman will yield to me a few minutes more.

Mr. GLOVER. How much more time does the gentleman desire?

Mr. FRYE. Perhaps ten minutes.

Mr. GLOVER. I will yield to the gentleman for ten minutes longer.

Mr. FRYE. This Burlington and Missouri River Railroad alone asks for the right to prorate with the Union Pacific Railroad Company. I suppose the gentleman from Nebraska [Mr. CROUNSE] was instructed by the resolution of the republican convention which met in his State and a copy of which I hold in my hand. That resolution itself declared that the Burlington and Missouri River Railroad Company ought to prorate over the Union Pacific Railroad. But it also declared, and instructed its members of Congress to see to it that it was done, that the Atchison and Nebraska, the St. Joseph and Denver, the Midland Pacific, and the Omaha and Northwestern Railroads shall also be allowed to prorate over the Burlington and Missouri River Railroad.

Now that is a question of the utmost importance to those roads and to the people of Iowa and Nebraska. If the Burlington and Missouri River Railroad alone, a road but a few hundred miles long, is permitted to prorate over the Union Pacific Railroad, what shall be done with all those great roads emptying freight into the Burlington and Missouri River Railroad? Shall she stand there and close the door to the other roads and say, We will fix the rates of freight that you shall pay for going over our road? You will only be putting them into a worse position than the Burlington and Missouri River Railroad can possibly be in to-day. If you enact this bill into law, then propriety and justice demand at your hands that you shall do what the republican convention of Nebraska demanded should be done, compel the Burlington and Missouri River Railroad Company to allow these other roads, emptying their freight into it, to prorate over it, and thus the people of those States and these roads will obtain a benefit. One of the amendments which I have offered provides for that.

Again, if you look at this bill you will find that it provides that the Burlington and Missouri River Railroad Company shall prorate over the Union Pacific Railroad. Where is the provision in the bill that the Union Pacific Railroad Company shall prorate over the Burlington and Missouri River Railroad? And if you amend the bill so that the Burlington and Missouri River Railroad Company shall permit these other railroads to prorate over that, where is your provision in this bill which permits the Union Pacific Railroad to prorate back again over those roads?

Will you give this privilege all to one road? The Burlington and Missouri River Railroad has now opened its broad mouth and swallowed up 1,200,000 acres of the best land in Nebraska; will you allow it to open its mouth again and swallow this privilege and this discrimination and this right, and compel all these other roads to stand one side, to go to that road as a beggar in order that their freights may go over it; or compel the Union Pacific Railroad to stand one side and have no power to take its freight over the Burlington and Missouri River Railroad and the other roads running into that?

The Union Pacific Railroad Company brings coal from Wyoming. When that coal gets down to Fort Kearney, where this Burlington and Missouri River Railroad connects with it, they cannot send a single ton over the Burlington and Missouri River Railroad. Why? Because the Burlington and Missouri River Railroad Company has put up its rate of freight so high that the Union Pacific Railroad cannot afford to send it into Nebraska or Iowa. Why do they do that? They do it because there are coal mines in Iowa, because starting from those coal mines this Burlington and Missouri River Railroad Company gets four times the haul that it would get if the freight of coal were given to it at Fort Kearney junction and then carried eastward. Now, who suffers? The people of Nebraska, the people of Iowa are the sufferers by an increased price of coal. Who are the gainers? The capitalists owning the mines in Iowa are the gainers and the holders of the Burlington and Missouri River Railroad stock.

Sir, this bill is one of the utmost importance. In the brief time given to me I have only had an opportunity to call attention to a few amendments which seem to me in the interest of justice and of fair, decent legislation. I believe that the bill ought to be recommitted to the Judiciary Committee, there to be considered again with care, and, if reported back, reported in such a shape as to deal justly with this company, justly with the other railroad corporations, and justly with the people of Iowa and Nebraska.

Mr. CROUNSE rose.

Mr. GLOVER. How much time does the gentleman from Nebraska [Mr. CROUNSE] desire?

Mr. CROUNSE. Fifteen or twenty minutes, to meet the several objections which have been urged against the bill.

Mr. GLOVER. I cannot yield to the gentleman more than fifteen minutes.

The SPEAKER. The gentleman from Missouri has forty minutes remaining.

Mr. HOLMAN. Will the gentleman from Nebraska, before he proceeds, allow me to submit an amendment to the amendment of the gentleman from Missouri?

Mr. CROUNSE. Yes, sir.

Mr. HOLMAN. I offer the following as an additional proviso:

But if the said company shall decline to accept the other provisions of this act, the provisions aforesaid shall still be in full force; and the issue of patents to said company for lands outside of the said ten-mile limit is hereby declared to be illegal and void; but the patents for lands heretofore sold by said company situate outside of said limits shall be legalized by the payment aforesaid.

The SPEAKER. The Chair understands that the gentleman from Nebraska [Mr. CROUNSE] is now entitled to the floor for fifteen minutes.

Mr. CROUNSE. Mr. Speaker, I wish to repel at the outset the imputation which perhaps the remarks of the gentleman last on the floor sought to put upon me, that this bill was brought forward by me in the interest of any railroad. I wish to say that I scarcely know by name the officers of the Chicago, Burlington and Quincy Railroad Company, or those of the Burlington and Missouri River Railroad Company. This bill is in the interest of the people of Nebraska, and in the interest of the commerce of the nation; and any attempt to bring in prominently here the Chicago, Burlington and Quincy Railroad, or the Burlington and Missouri River Railroad, to arraign them upon charges which I never before heard and cannot discuss, and so divert the attention of the House, is calculated to raise a false issue and turn attention in the wrong direction. I stand here demanding relief for the people of my State, and in that interest I will contend, whether it is against the Burlington and Missouri River Railroad Company, or whether it is against the Union Pacific Railroad Company.

My course here in that direction has been too emphatic and too distinct to need any explanation or apology at my hands. I have brought in bills here for the taxation of the lands of both these companies, and I am prepared to join hands with the gentlemen when he, in good faith, brings forward any bill to recover lands that either of these companies may have wrongfully obtained. But what I wish here is that no dust may be thrown, that no false issues may be raised, that this question may be fairly and squarely met whether the Union Pacific Railroad Company runs this Congress or whether Congress has and will exercise the reserved power to alter and amend, or even repeal its charter, if we see fit.

I regret that the time allotted to me is not sufficient to enable me to review this matter fully; but in the few minutes accorded me let me say that in 1862 the first charter of the Pacific Railroad Company was granted. That road was to start in the interior of Nebraska, at the one hundredth meridian of longitude. From that meridian three or four different branches were projected and chartered by the same bill, pointing eastward, one running immediately east to Omaha, at the Missouri River, known as the Iowa branch; another diverging to the northeast, called the Sioux City branch; another extending down to Kansas; the grand purpose and object of the bill being to subsidize one grand-trunk road and different branches to the river, to subserve the public interest. By some manipulation in Congress the Sioux City branch was allowed to go down the river and connect almost in sight of the eastern terminus of the Iowa branch, but a short distance from the city of Omaha, thus making it of but little service to the people of Nebraska or of use to the public.

The Kansas branch was allowed to run direct to Denver. From Denver to Cheyenne, on the Union Pacific Railroad, an independent road was built, and by a bill introduced by the gentleman from Missouri representing the Saint Louis district, and passed in the last Congress, the Kansas Pacific and this road to Cheyenne, as a whole, were put on a prorating basis with Union Pacific road, so that we are bereft of any branches in Nebraska of any account except this one which it is sought by this bill to make a branch of service to the people of Nebraska and to the commerce of the country.

The gentleman who inveighs so loudly against the Burlington and Missouri River Railroad has no word to say against any legislation which has been made for the benefit of the Union Pacific Railroad, but he is particularly solicitous that no amendment should be made which shall be in the least prejudicial to that company. That company came forward in 1864 and had its charter amended to the extent of doubling its land grant. It had the first-mortgage bonds of the Government made second-mortgage bonds, the preference being given those which might be issued to private individuals. As respects all these he has no word of fault to find. However, in this same amendatory act the people demanded something. The fifteenth section says that the road and its several branches shall be operated as one continuous line, without discrimination as respects rates and times of transportation of freight and passengers. The object is patent, and was specially emphasized, that these roads were built by Government aid and for the benefit of the people.

Now, sir, in that same amendatory act this Burlington and Missouri River Railroad Company, then crossing the State of Iowa, was allowed to extend its road across the Missouri River into Nebraska and also compelled to connect with the Union Pacific Railroad in order to get its subsidy. It was made by the language of the act a branch of the Union Pacific Railroad, being compelled to connect with it at the one-hundredth meridian of longitude or some point east of it. In consideration of that it was given a land grant, but no money or bonds were issued to it as had been issued to the Union Pacific Railroad. Running parallel to and at points at no great distance from the Union Pacific Railroad, the limit of land grant of the latter extended or lapped over that of the former. For this reason the Burlington and Missouri River Railroad Company could receive but a very limited amount of lands along the line of its extension in Nebraska, and therefore it is I suppose that whatever lands it got had to be got somewhere else. As I understand it, the Secretary of the Interior held that in view of it getting no lands along its road in places, while the other roads got lands and bonds, and because the lands which it was to have had been already taken up, it was entitled to land in other places.

And these are the lands about which such clamor is made. If they have been unlawfully taken, I will be glad to help the gentleman to recover them. I am not here to aid that road in any illegal act, but I do ask that that question shall be brought up in its proper time and place and not thrust in at this time for the purpose of embarrassing action on this bill. The question presented in the bill is a simple one and I do not want it loaded with amendments which may endanger its passage or render it nugatory or of little value if passed.

This road, Mr. Speaker, runs almost parallel with the Union Pacific for nearly two hundred miles, as has been already said. It is a road built by grant of Government lands, the same as the Union Pacific Railroad, and in its operation should be a benefit rather than a subject of oppression to the people, and would be, if the spirit which prompted the construction of these great highways were carried out. Our commerce is largely West. In that direction and north of Cheyenne lie the new mining fields, the Spotted Tail, Red Cloud, and other Indian reservations, military forts and garrisons, and Nebraska is the nearest State where supplies are produced.

Now, how does the matter stand? How has this Union Pacific Railroad been operated? The Burlington and Missouri River Railroad strikes it at Kearney, some two hundred miles west of Omaha, in Nebraska. When you reach the point of junction with the Union Pacific Railroad you have to pay for fare and freight to Cheyenne, and west of there, as I am assured, precisely the same price that is paid from Omaha. No allowance is made in fare or freight for the two hundred miles run on the Burlington and Missouri River Railroad before the point of junction is reached. The more populous portion of Nebraska is the southern part. This road runs through its capital. Yet, upon the commerce of that section of the State embargo is laid because it cannot move westward without being discriminated against by having these undue charges imposed upon it. That road virtually says, "If you want to have any commerce with the West, it must go around by way of Omaha. You must bring it over our road. And if any one wishes to go to the Pacific coast, he must travel by our road or we will make no allowance for the distance he has traveled over the Burlington and Missouri River Railroad to the point of junction, but we will charge the same from the point of junction as from Omaha, without making any allowance for the travel over the Burlington and Missouri River road." It is against that "discrimination" it is proposed to make provision. I am aware of the magnitude of the undertaking in which I am engaged. The Union Pacific Railroad, with all its forces, is quite enough against which to contend, but there are other connections and considerations opposed to this legislation.

At Omaha, or at Council Bluffs, opposite it, center three other great railroads, running from there into Chicago. These also have formed a combination as against the public and for their own profit, which they do not wish disturbed, as this bill in effect proposes by the operation of a rival line south of them and the Union Pacific. The Union Pacific charges its own terms for freight and passengers. There is no way to avoid it. West of Omaha the Union Pacific fixes such rates as it pleases, and it fixes them, too, at such figures as have no parallel scarcely in the Union.

When you come to the Missouri River you find a bridge built across it by this same Union Pacific Railroad Company where you are compelled to pay the enormous rate of $10 for every car passing over it. Whether it be of coal for the poor people on the treeless prairies or of lumber to shelter them, you have to pay $10 a car to get it over, while fifty cents for each passenger is charged. Then you may take your choice of roads from there to Chicago. Over each it is the same. Their earnings are "pooled" and no competition allowed. They hold the commerce of that country in their deadly grasp, and no wonder the effort is made here—I am not surprised at it at all—to prevent the passage of the bill which I have introduced. I am not at all surprised at the display of energy which has been shown for several days past. The lobby has swarmed and the telegraph has been used in a way I have never seen before. The people whom I represent, and in whose interest more particularly I have pressed this bill, have no agents here. I have stood almost alone against all the pressure which by person, letter, or telegraph this combination could bring. Again the company is fortunate in having so able an advocate upon this floor as the gentleman from Maine, [Mr. FRYE,] who has from the very inception of this question, from the time I introduced the bill, through the committee and down to this hour, opposed it, and who now seeks to drive it back into the Committee on the Judiciary, from which it was reported. He starts questions and raises objections never suggested even by the company in its arguments.

The Union Pacific Railroad, beyond the question of power, offered but one objection to it. They said "If you want to make this road a branch road, let it be made upon such terms as are just; not compel us to prorate over the mountainous district of our road upon the same terms as upon the valley district." The bill was amended in committee to reach that objection, and that is what the gentleman calls "backing down."

The committee met the company upon their own terms in this particular, and say that prorate shall be upon equal terms as far as Cheyenne, at the foot of the mountains, the grade to that point being but about ten feet to the mile over either road. The proposition is a simple one. Here are two roads built by the munificence of the Government. We ask that they may be made to subserve a public purpose. To-day one practices a monopoly of the grossest kind and one that can only be reached here in the halls of Congress. I had occasion to say in the last Congress, when they were attempting to advance another bill for a national railway, that I feared the introduction of that class of bills.

The experience of the people of Nebraska is not an encouraging one. The Union Pacific Company has even undertaken to run the politics of the State. At our last convention, when the interests of the road were thought to be interested, the unseemly spectacle was presented of Jay Gould and Sydney Dillon being at Omaha in communication with the superintendent of the road, Mr. Clark, at the convention, the wires communicating between them. I repeat, I am not in the interest of or specially hostile to any of these roads, and the attempt of the gentleman to put me in that attitude is a good deal in keeping with the rest of his efforts on behalf of the company he is defending. All I ask is what is right and what is due to the people, no matter which read it benefits or prejudices. The gentleman says the Burlington and Missouri road is not required to prorate the Union Pacific. The very terms of sections 9 and 15 cover that distinctly. But if it is contended that they do not, I have prepared an amendment myself to make that entirely clear, which I shall be only too glad to have incorporated in the bill. It is as follows:

Provided, however, That the Burlington and Missouri Railroad Company in Nebraska shall not charge for the transportation of freight and passengers delivered to it at Kearney Junction by the Union Pacific Railroad Company any greater rate than is charged by it for the transportation of other freight and passengers over its own line.

I am entirely willing, and would be glad to have an amendment of that kind adopted in order to cover this point if it is not already covered.

Now, the gentleman proposes another amendment to bring in several other roads. I would be glad to have this done if Congress can do it, but he knows that the right of Congress to interfere with corporations created by the States would be denied by the majority here, and such amendments can only complicate the question before us. The ground upon which this bill is based is that both the Union Pacific and the Burlington and Missouri roads are subsidized by the same act, and in which the power to alter, amend, and repeal is expressly given.

But I regret that my time is exhausted, as I would like to notice more of the gentleman's objections.

[Here the hammer fell.]

Mr. GLOVER. I yield five minutes to the gentleman from Iowa, [Mr. KASSON.]

Mr. KASSON. I am obliged to the gentleman for his courtesy and ask to have read a telegram received from respectable citizens of Iowa.

The Clerk read as follows:

COUNCIL BLUFFS, IOWA, *December* 11, 1876.

To Hons. JOHN A. KASSON, ADDISON OLIVER, JAMES WILSON, JOHN Q. TUFTS, GEORGE W. MCCRARY, JAMES W. MCDILL, H. O. PRATT, J. D. AINSWORTH, and Judge SAMPSON:

We believe Burlington and Missouri prorate bill detrimental to interests of Iowa, absolutely suicidal to Northern Central and Western Iowa, and desire a hearing before bill is disposed of.

J. W. CHAPMAN.
J. T. BALDWIN.
W. C. JAMES.
W. H. M. PUSEY.
SPENCER SMITH.
CHAS. E. DIX.
H. L. HENRY.
W. H. ROBINSON.
H. EVERETT.
W. T. SAPP.
MARSHALL KEY.

Mr. KASSON. Mr. Speaker, these gentlemen are known to me to be among the most prominent and respectable business men resident at Council Bluffs, in Western Iowa. In endeavoring to inquire what they most feared in the bill, I was led to an examination of its provisions such as I had not given before; and it is but due to their character, and also to certain interests in Iowa, that in a moment I state the objections to which, I apprehend, they desire to call my attention.

As the roads now stand—the branches of the Union Pacific—there are four roads crossing Iowa, and meeting at Council Bluffs as the common point at which to deliver to and receive from the Union Pacific Railroad its business. They therefore stand there on equal terms. The southernmost of these roads, known as the Burlington and Missouri road, at whose instance, I suppose, this bill is before this House, constructed by the aid of a special land grant through Nebraska, south of the Union Pacific road, a branch nearly two hundred miles long, tapping far west of all the other roads the main line of the Union Pacific. The object, or rather the result of this bill, for I do not know its object specially, is to give them by its provisions the benefit of the longest haul; first, sacrificing the interests of the Union Pacific for about two hundred miles, which would naturally have the haul to the point of common connection of all the roads; and, secondly, giving them that much advantage in a long haul over the other roads that have met the Union Pacific at the common point of Council Bluffs.

The Burlington and Missouri Railroad and the Rock Island road both run through my district. The Chicago and Northwestern road runs near the north line of my district, in the central portion of the State. The fourth is hardly in a position to compete successfully for the busi-

ness. I apprehend, therefore, these gentlemen who sent me the dispatch find that this bill tends to establish, and is likely to result in establishing, a monopoly of through business under the name of accommodating the local business of the people of Nebraska.

With a view, therefore, to promote the interests of the people of Nebraska and to see that while justice is done to their rights touching the local traffic other interests shall not be invaded, I desire to offer the following amendment, to be acted upon in its order, and to be considered if the bill is recommitted:

Strike out after the word "discrimination," in line 3, section 2, to the word "for," in line 6, and insert the word "that;" and insert in line 8, after the word "railroad," the words "at or for points on their said line in Nebraska."

Mr. GLOVER. I have no objection to that amendment being considered as pending. But now, in compliance with the generally expressed wish that this bill should be recommitted without further discussion, I move that it be recommitted, with all the pending amendments, to the Committee on the Judiciary; and upon that motion I move the previous question.

Mr. CROUNSE. I ask that that committee have leave to report it back at any time.

The SPEAKER. That would require unanimous consent.

Mr. WILSHIRE. I object.

Mr. McCRARY. I hope the motion to recommit will not prevail. Its adoption will be equivalent to the defeat of the bill, and I am sure the gentleman from Missouri does not desire that.

The SPEAKER. Pending the motion for the previous question the motion to recommit is not debatable.

The previous question was seconded and the main question ordered.

The question was taken on Mr. GLOVER's motion; and on a division there were—ayes 122, noes 32.

So the motion to recommit was agreed to.

Mr. GLOVER moved to reconsider the vote by which the bill was recommitted to the committee; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

ENROLLED BILLS SIGNED.

Mr. HAMILTON, of Indiana, from the Committee on Enrolled Bills, reported that the committee had examined and found truly enrolled bills of the following titles:

The bill (H. R. No. 2257) for the relief of J. T. McGinniss, captain of Thirteenth Infantry United States Army;

The bill (H. R. No. 3693) changing the name of the First National Bank of Amesbury to the First National Bank of Merrimac; and

The bill (S. No. 1057) to provide for engraving and printing the portrait of the late Hon. Henry H. Starkweather of Connecticut.

APPOINTMENT ON COMMITTEES.

The SPEAKER appointed the following members to fill vacancies on committees:

Mr. ABBOTT, of Massachusetts, on Public Buildings and Grounds, *vice* Mr. Ely.

Mr. CARR, of Indiana, on Private Land Claims, *vice* Mr. Parsons.

Mr. WILSON, of West Virginia, of Elections, *vice* Mr. BEEBE.

Mr. RIDDLE, of Tennessee, on Invalid Pensions, *vice* Mr. WILSON.

Mr. CULBERSON, of Texas, on Mileage, *vice* Mr. Walls.

Mr. HUMPHREYS, of Indiana, of Accounts, *vice* Mr. Williams.

Mr. FINLEY, of Florida, on Railways and Canals, *vice* Mr. MEADE.

Mr. FLYE, of Maine, on Railways and Canals, *vice* Mr. Frost.

Mr. WARNER, of Connecticut, on Coinage, Weights, and Measures, *vice* Mr. Parsons.

Mr. FRANKLIN, of Missouri, on Expenditures in the Treasury Department, *vice* Mr. Ely.

Mr. LE MOYNE, of Illinois, on Expenditures in the Department of Justice, *vice* Mr. MEADE.

Mr. STANTON, of Pennsylvania, on Expenditures in the War Department, *vice* Mr. CLYMER.

Mr. WILSON, of Iowa, on Rules, *vice* Mr. BLAINE.

Mr. SAYLER, of Ohio, on Rules, *vice* Mr. RANDALL.

Mr. WATTERSON, of Kentucky, of Ways and Means, *vice* Mr. BLAINE.

CONTINGENT EXPENSES OF THE STATE DEPARTMENT.

The SPEAKER, by unanimous consent, laid before the House a letter from the Secretary of State, communicating, in pursuance of law, a statement relative to the disbursements of the contingent fund of that Department for the year ending June 30, 1876; which was referred to the Committee on the Expenditures in the State Department.

LEAVE OF ABSENCE.

Mr. DARRALL, by unanimous consent, was granted leave of absence for twenty days from the 15th instant.

Mr. SMALLS, by unanimous consent, was granted leave of absence for ten days on important business.

TEXAS PACIFIC RAILROAD.

Mr. LAMAR. I ask unanimous consent to have printed for the use of the House the bill (H. R. No. 472) amendatory of and supplementary to the act entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," approved March 3, 1871, and the act supplementary thereto, approved May 2, 1872, and the act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Ocean," approved July 27, 1866, with sundry proposed amendments.

No objection was made, and it was so ordered.

Mr. COX. I move that the House now adjourn.

COINAGE OF THE SILVER DOLLAR.

Mr. JAMES B. REILLY. At the time the vote was taken to-day on the passage of the bill for the coinage of the silver dollar, I was absent from the Hall of the House; but not from the Capitol. I ask unanimous consent to be allowed to record my vote in the affirmative.

There was no objection.

POST-OFFICE APPROPRIATION BILL.

Mr. HOLMAN. Before the question is put on the motion to adjourn, I desire to call attention to the fact that on yesterday the House ordered that the post-office appropriation bill be referred to the Committee of the Whole and made the special order for to-day after the morning hour. It is manifestly too late in the day now to proceed to the consideration of that bill.

The SPEAKER. It will go over to to-morrow, holding the same position it does now.

VIRGINIA E. WHITE.

Mr. WILSON, of West Virginia. I ask unanimous consent that the Committee of the Whole on the Private Calendar be discharged from the further consideration of House bill No. 1016, for the relief of Virginia E. White, of Ohio County, West Virginia, and that it now be considered in the House.

Mr. CARR. I object, and call for the regular order.

The SPEAKER. The regular order is the motion to adjourn.

The motion was agreed to; and accordingly (at four o'clock and ten minutes p. m.) the House adjourned.

PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. CUTLER: The petition of the Good Templars of Burlington County, New Jersey, for the appointment of a commission of inquiry concerning the alcoholic liquor traffic, to the Committee on the Judiciary.

By Mr. FAULKNER: The petition of Allen C. Hammond for compensation for property taken for public uses, to the Committee on War Claims.

By Mr. GARFIELD: The petition of G. Chandler, Thomas E. King, and other citizens of Wilmington, Delaware, for the appointment of a commission of inquiry concerning the alcoholic liquor traffic, to the Committee on the Judiciary.

Also, the petition of Rear-Admiral R. N. Stembel, United States Navy, to be allowed the pay of a rear-admiral in the United States Navy from the date of his promotion from the rank of commander to that of rear-admiral, to the Committee on Naval Affairs.

By Mr. HAMILTON, of New Jersey: A paper relating to the establishment of a post-route from Pattenburgh in the county of Hunterdon to Norton, New Jersey, to the Committee on the Post-Office and Post-Roads.

By Mr. HEWITT, of Alabama: A paper relating to the establishment of a post-route from Detroit, Sanford County, to Allen's Factory, Marion County, Alabama, to the same committee.

By Mr. HUNTON: The petition of Lewis Shumate for a rehearing of his claims disallowed by the southern claims commission, to the Committee on War Claims.

By Mr. MACKEY, of Pennsylvania: The petition of David Allen, of Company C, Second United States Artillery, for an appropriation to pay him for services rendered in the office of the Adjutant-General in the year 1873, to the Committee on Appropriations.

By Mr. THORNBURGH: The petition of William Darnel, late second lieutenant, Company G, Fourth Tennessee Cavalry, for pay for services from February 1 to August 8, 1863, to the Committee on Military Affairs.

Also, the petition of James W. Anderson, executor of the estate of John W. Anderson, of Montgomery County, Maryland, for compensation for timber taken from his lands near Great Falls, on the Potomac River, by United States troops, to the Committee on War Claims.

IN SENATE.

THURSDAY, *December* 14, 1876.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

The Journal of yesterday's proceedings was read and approved.

EULOGIES ON THE LATE SENATOR CAPERTON.

Mr. DAVIS. I rise to give notice that on this day a week, next Thursday, the 21st, as soon after the morning hour as will suit the convenience of the Senate, I shall ask that the ordinary business be suspended in order that we may pay the respect due my late colleague, Mr. Caperton.

EXECUTIVE COMMUNICATION.

The PRESIDENT *pro tempore* laid before the Senate a report of the Secretary of the Interior, transmitting, in answer to a Senate resolution of the 8th instant, information in relation to the removal of the Sioux Indians from their treaty reservation to the Indian Territory; which was ordered to lie on the table and be printed.

PETITIONS AND MEMORIALS.

Mr. JOHNSTON presented a petition of the Sons of Temperance of Virginia, officially signed, asking for prohibitory legislation for the District of Columbia and the Territories, and the prohibition of the foreign importation of alcoholic liquors; which was referred to the Committee on Finance.

Mr. MORRILL presented the memorial of the board of trustees of the Girls' Reformed School of the District of Columbia, and other citizens of the District, praying an appropriation for the use of said institution; which was referred to the Committee on the District of Columbia.

Mr. EATON presented the petition of the Methodist Episcopal church, of Newton, Massachusetts, signed by the pastor and officers, asking for prohibitory legislation for the District of Columbia and the Territories, and the prohibition of the foreign importation of alcoholic liquors; which was referred to the Committee on Finance.

Mr. DORSEY. I present the petition of the Grand Lodge of Good Templars of Arkansas, officially signed, representing 1,000 members, asking for the same legislation. I move its reference to the Committee on Finance.

The motion was agreed to.

Mr. BOUTWELL presented the petition of the Methodist church of Allston, Massachusetts, and the petition of the Methodist church of Saxonville, Massachusetts, asking for prohibitory legislation for the District of Columbia and the Territories; the prohibition of the foreign importation of alcoholic liquors; that total abstinence be made a condition of admission to the civil, military, and naval service, and that a constitutional amendment be proposed to prohibit the traffic in alcoholic beverages throughout the national domain; which were referred to the Committee on Finance.

Mr. WITHERS presented the petition of Elizabeth Lucas, praying compensation for property taken and appropriated by United States troops during the late war; which was referred to the Committee on Claims.

He also presented the petition of Mary Lucas, praying compensation for property alleged to have been taken and appropriated by United States troops during the late war; which was referred to the Committee on Claims.

Mr. LOGAN presented the petition of Benjamin F. Brackett, late of Company I, Eighty-seventh Illinois Volunteers, praying to be allowed the difference in the pay between that of a first sergeant and that of a second lieutenant from the 30th day of April, 1863, to the 27th day of July, 1863; which was referred to the Committee on Military Affairs.

FEES OF WITNESSES.

Mr. DAWES. I am instructed by the Committee to Audit and Control the Contingent Expenses of the Senate to report the resolution which was referred to that committee in reference to the compensation of witnesses summoned before committees, in a new draught.

The PRESIDENT *pro tempore*. The resolution as amended by the committee will be reported.

The Chief Clerk read as follows:

Resolved, That the rule for paying witnesses summoned to appear before the Senate, or any of its committees, shall be as follows: For each day a witness shall attend, the sum of $3; for each mile he shall travel in coming to or going from the place of examination, the sum of five cents each way; but nothing shall be paid for traveling when the witness has been summoned at the place of examination.

The PRESIDENT *pro tempore*. The question is on agreeing to the report of the committee.

Mr. MITCHELL. I desire to suggest to the chairman of the committee, as I suggested the other day, that five cents a mile will not pay the actual necessary traveling expenses of witnesses from the State of Oregon here, and I suggest whether some exception should not be made so as to cover at least the actual expenses.

Mr. DAWES. The committee conferred with the officials in the other branch, and we thought it very desirable to have a uniform rate. It seemed very embarrassing that there should be different rates in the same locality, allowed by different bodies examining witnesses. This is the rate which is established elsewhere, and on consultation with the other members of the committee we all thought it was better to have the same rates. As a general thing I think it would be best that the Government should pay a uniform rate. Perhaps in the case suggested by the Senator from Oregon, it might work a hardship; but it is true in reference to all witnesses summoned before courts, that it is not possible to make it a money-making service on their part, or even to pay their full expenses in all cases. It is generally the case that it is a great hardship to be summoned as a witness before any court, and we should not attempt to establish fees that would in all cases remunerate a man for the loss of his time, or even his expenses. Where the rule would work a very great hardship, we may be compelled to make exceptions. I do not desire to oppose any proper provision as to Oregon.

Mr. MITCHELL. I do not suppose any Senator would desire to establish a rule that would amount to a money-making business to any witness. I certainly should be very loath to make any suggestion of that kind; but I apprehend at the same time that no Senator would wish and that the Senate as a whole would not wish to establish a rule in reference to the payment of witnesses who are dragged here by subpœnas that would not pay their actual traveling expenses.

Mr. EDMUNDS. What is the distance from here to Portland, Oregon?

Mr. MITCHELL. About four thousand miles.

Mr. EDMUNDS. That would make the travel fees two hundred dollars at five cents a mile!

Mr. MITCHELL. Yes, sir.

Mr. EDMUNDS. What is the price of a ticket?

Mr. MITCHELL. The price of a ticket to San Francisco is about $127 or $130. It is about $45 from there to Portland, and then a man has to pay for sleeping-coaches all the way through and the meals. It averages $3 a day from here to Oregon for meals. I have crossed some seventeen times and I have never been able to get across under $200, and I travel as economically I think as most persons.

Mr. DAWES. I inquire of the Senator what would be the fees of a witness from Oregon under the rule which the committee propose?

Mr. MITCHELL. About $200.

Mr. DAWES. If the Senate should deem it wise to make a different rule or even to make an exception in the case of Oregon witnesses, the committee would not object. The desire of the committee was to put it at as low a figure as would be possible in order to be right and just, and to have a uniformity between the two Houses.

Mr. MITCHELL. I agree, certainly, with the chairman of the committee that the rule should be uniform, provided it be a just rule at the same time. I feel, however, that an exception should be made in reference to the whole Pacific coast; it does not apply merely to Oregon. As stated by the honorable Senator from California [Mr. SARGENT] the other day, who is not now in his seat, there should be an exception made in favor of all those States.

Mr. DAWES. I suggest to the Senator that perhaps a different rule may be prescribed where a witness is compelled to travel a certain number of miles and there a larger rate of compensation be given. If the Senator can suggest anything of that kind, it would perhaps be acceptable to the Senate.

Mr. MITCHELL. I would move——

Mr. DAWES. If the Senator will allow the resolution to go over we shall perhaps be able to amend it so that it will be satisfactory to him.

Mr. MITCHELL. Very well.

Mr. DAVIS. And let it be printed, so that we may understand what it is.

The PRESIDENT *pro tempore*. The resolution will lie over and be printed.

BILL INTRODUCED.

Mr. WHYTE asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1077) for the relief of William Bowen, of the District of Columbia; which was read twice by its title, and, together with the accompanying petition, referred to the Committee on the District of Columbia.

WITHDRAWAL OF PAPERS.

On motion of Mr. WRIGHT, it was

Ordered, That James A. Harrold have leave to withdraw his petition and papers from the files of the Senate upon leaving copies as required by the rules of the Senate.

PHILIP ROHR.

Mr. JOHNSTON. At the last session the bill (H. R. No. 3503) for the relief of Philip Rohr, of Virginia, for tobacco seized for the use of the Army was referred to the Committee on Claims, and that committee reported adversely on the bill, on the ground of defective evidence. Mr. Rohr has forwarded to me some evidence which supplies the want, as shown by the report of the Committee on Claims. I ask that the case be recommitted to the Committee on Claims with the additional evidence which I now submit.

Mr. WRIGHT. I understand the Senator from Virginia presents additional evidence, and asks that this additional evidence with the original papers may go to the Committee on Claims. He does not ask a reconsideration of the order of the Senate, but that the papers be recommitted, I understand.

The PRESIDENT *pro tempore*. The Senator from Virginia moves that the papers be recommitted to the Committee on Claims, together with the paper which he now presents. That order will be made, if there be no objection.

ELECTORAL VOTE OF LOUISIANA.

Mr. SHERMAN. I move to take up the resolution of the Committee on Printing in regard to the printing of extra copies of the Louisiana report. I see the Senator from Rhode Island [Mr. ANTHONY] is now in his seat.

The PRESIDENT *pro tempore*. Which of the two resolutions does the Senator move to take up, the one providing for 1,850 copies or the one providing for 10,000 extra copies?

Mr. SHERMAN. I wish to call up both; but first I move to proceed to the consideration of the Senate resolution providing for the smaller number.

The motion was agreed to; and the Senate proceeded to consider the following resolution, reported from the Committee on Printing yesterday:

Resolved, That 1,850 extra copies of the letter of the President, with the accompanying documents, on the election in Louisiana be printed for the use of the Senate.

Mr. THURMAN. I move to amend the resolution by adding:

And that there be printed and stitched or bound with said message the memorial of Messrs. STEVENSON, BOGY, and MCDONALD, and the papers accompanying the same.

Mr. ALLISON. And the testimony?

Mr. THURMAN. If the testimony were here I should certainly expect to put it in. I see by the RECORD that the Senator from Indiana [Mr. MCDONALD] said that he expected it would be here by the end of this week. That may be; but it is intimated to me that it is not here because it is needed before some of the investigating committees now in session in New Orleans, and that they requiring its production it cannot be brought here. That has been suggested to me as the reason why it is not here. I would greatly prefer that the printing of these papers should go over until that testimony is here, and that would be doing what is perfectly fair. I cannot understand very well why the printing should be hurried without waiting for that testimony, unless indeed Senators think it will never be produced; but after the statement made the other day by the Senator from Indiana that it would be produced, I do not think it can be assumed that it will not be here and that therefore we are to hurry on with a one-sided and *ex parte* view of this case. But if the Senate will not wait for that testimony to come in, at least I want the conclusion of the other five gentlemen who were down there to go with the conclusion of my colleague and the four gentlemen who were associated with him. If we cannot have the full measure of justice, the full presentation of the case, as we should have if we had the testimony here, at least we are entitled to have the judgment of these men to be compared with the judgment of my colleague and the four gentlemen who were associated with him.

Mr. SHERMAN. Mr. President, I cannot allow the statement made by the gentlemen who represented the democratic party in Louisiana to be published among the official documents of the Senate without making a brief reply, and after I shall have done that I shall have no objection to printing that paper with the documents. But I wish to call attention very briefly, for I will not detain the Senate long in the morning hour, to some points made by these gentlemen in the paper which is now proposed to be incorporated in our public records.

I was very sorry indeed that the signers of this paper did not place the controversy in regard to Louisiana upon the broad grounds of the question of intimidation in the State of Louisiana and the extent to which that intimidation went; but it will be observed by those who have read this paper that they evade that question entirely. They do not take issue at all or to any considerable extent with the report that has already been published, signed by the gentlemen who represented the President of the United States before that board. Their whole paper consists in an array of technicalities to defeat the plain meaning of the law of Louisiana defining the powers of the returning board.

The first point made by them (and I will take care to quote them exactly) is that—

No law exists in Louisiana for the election of electors for President.

If that be true, it is a very remarkable discovery of these gentlemen, for nobody in Louisiana ever found it out. Neither judge, nor lawyer, nor citizen, nor priest, nor layman ever had any doubt about the power or the right of the people of Louisiana to elect electors at the recent election; but these gentlemen have found out that there is no law in Louisiana for that purpose; and that they make the main point of their case. They state that under the law of Louisiana there was no provision made for the election of presidential electors. They ran democratic candidates for electors, and everybody supposed they were in the pursuit of a legal duty. However, this is their principal point. In the very paper itself—and I believe they correctly quote the law—there is this provision of the general law of Louisiana:

SEC. 2824. Every qualified voter in the State shall vote for electors as follows: Two persons shall be selected from the State at large and one person shall be chosen from each congressional district in this State; and in case any ticket shall contain two or more names of persons residing in the same district, (except the two chosen from the State at large,) the first of such names only shall be considered as duly voted for.

This is in the act of 1870. Another section in this code, for it seems to be a code or general law, provides:

SEC. 2830. If any one or more of the electors chosen by the people shall fail, from any cause whatever, to attend at the appointed place at the hour of four p. m. of the day prescribed for their meeting, it shall be the duty of the electors immediately to proceed by ballot to fill such vacancy or vacancies.

Here is a law passed in 1870 that contains the usual provisions contained in the laws of nearly all the States for the election of presidential electors; but they say this law has been repealed, and they find that, by a certain provision attached to a law of 1872 which they quote, the only law providing for the election of electors in Louisiana has been repealed, a discovery made by this committee of democrats. I have here the election law referred to, being an act approved November 20, 1872, which contains this repealing clause, the last section of it:

That this act shall take effect from and after its passage, and that all others on the subject of election laws be, and the same are hereby, repealed.

This clause is quoted as a repeal of the provisions made for the election of electors. Mr. President, how these gentlemen could have fallen into that misapprehension I cannot imagine. The law of 1872 contains nothing in it about who shall be elected, whether sheriffs, or coroners, or electors, or representatives, or anything else. It contains a simple provision of the mode and manner of electing all officers in Louisiana, with guards over the purity of the elective franchise, &c.

The title of the bill indicates the object and purpose of the act of 1872: "An act to regulate the conduct and to maintain the freedom and purity of elections, to prescribe the mode of making returns thereof, to provide for the election of returning officers and defining their powers and duties, to prescribe the mode of entering on the rolls of the senate and house of representatives, and to enforce article 103 of the constitution."

That article provides for the purity of elections. It is manifest, therefore, that these gentlemen have taken a very narrow view of this law by their construction when they say that this last clause repeals the whole election laws of Louisiana. If their construction is correct, there is no provision now in Louisiana for the election of any officer of the government of that State. The laws of Louisiana provided, like the laws of other States, for the election of sheriffs, coroners, and a great variety of officers. This law provides the mode and manner in which it shall be done, how the returns shall be made out; and if the argument is good that the law of 1872 repeals the law of 1870, providing for the election of electors, it also repeals all the laws that provide for the election of any officers in the State of Louisiana. So absurd a conclusion as that is not drawn from the law of 1872 except by these gentlemen, so far as I can hear, because all the people in Louisiana were in earnest in supposing that they had the right to elect a whole series of officers, including electors of President of the United States. Upon this point they waste, it seems to me, about a column of their report.

The next point they make is that the returning board could not pass on the election of electors, but it must be done by the governor and others. It seems that by the act of 1870 a returning board of a different character is provided from what is provided by the act of 1872. That provides that—

Immediately after the receipt of a return from each parish, or on the fourth Monday of November, if the returns should not sooner arrive, the governor, in presence of the secretary of state, the attorney-general, a district judge of the district in which the seat of government may be established, or any two of them, shall examine the returns and ascertain therefrom the persons who have been duly elected electors.

That is, the law of 1870 provides one mode of ascertaining who are elected electors, and the act of 1872 provides an entirely different mode; but they say that if the law of 1870 is not repealed, then this provision about the election board is still in force, and therefore this returning board composed of five men is not the legal election board, but the legal election board consists of the governor and certain other officers. The absurdity of that is very plainly seen when you read the plain language of the act of 1872, which expressly repeals the old returning board and provides a new returning board for all elections in the State of Louisiana. And here is the section that makes that provision, and it is so plain that it seems to me it does not require a very learned lawyer to see the perfect fallacy of the technicality, the narrow basis upon which this part at least of the argument of these gentlemen is based. Here is the law of 1872:

That five persons, to be elected by the senate from all political parties, shall be the returning officers for all elections in the State, a majority of whom shall constitute a quorum, and have power to make the returns of all elections. In case of any vacancy by death, resignation, or otherwise, &c.

There is a mode pointed out by which it shall be filled. So taking these two acts together, the act of 1870 and the act of 1872, they show clearly that the act of 1872 was intended solely to provide for a new mode of conducting all elections in Louisiana, a new returning board to be organized in a different way, and the machinery of the election is somewhat varied from that provided by the law of 1870. The act of 1872, by any fair construction of it, neither repeals any previous law providing for the number of officers to be elected, their character, their salary, their duties, the nature of their employment—all that mass of laws in Louisiana remains unrepealed; but the act of 1872 substitutes for previous acts regulating the manner of elections a different machinery, so that the act of 1872 does not modify in any particular any law of Louisiana except so far as relates to the manner of conducting the election and the returning board. And yet, sir, strange as it may seem, upon these two points the great body of the labor of these gentlemen has been wasted. They need not have gone to Louisiana to have discovered these provisions of the law. They might have done it in their homes at Chicago. The same points have been raised in the Senate of the United States and have been acted upon and decided against them by committees of this body.

I might say further that the supreme court of the State of Louisiana expressly have decided, in a case which I have in my room, this point, by holding that this returning board, organized under the law of 1872, is the only returning board of the State of Louisiana to pass upon all elections in that State.

Mr. THURMAN. May I interrupt my colleague to ask him what decision he refers to? The only report of a committee on the returning board of Louisiana that I have ever seen yet was Carpenter's report, that the law establishing the returning board of 1872 was a violation of the constitution of that State.

Mr. SHERMAN. That is not the report I refer to. I refer to the often-quoted report of Messrs. WHEELER, HOAR, and others, who expressly recognize the legality and powers of this returning board; and I also quoted with approbation, as settling the question of the powers and duties of this board, the decision of the supreme court of Louisiana.

Mr. THURMAN. You spoke of Senate reports.

Mr. SHERMAN. Then I was wrong. I think our Senate Committee did not pass upon it; but I am not sure. I referred particularly, however, to the House committees.

The next point that these gentlemen waste nearly a column upon is that the board did not fill the vacancy; and, therefore, was not legally constituted. There may be some question as to whether the board ought not to have filled the vacancy; but as to the legal effect of their failure to fill it, I think there ought not to be any question among lawyers. The powers of this board, the quorum of the board, remained precisely the same whether the vacancy was filled or not; and the question of filling the vacancy was a question rather of propriety than a question of legal constitution. That board was legally constituted by the laws of the State of Louisiana, and whether it was composed of four or five men, it had the same legal powers. When a vacancy occurred, it seems to me that vacancy ought to have been filled in the way pointed out by law; but the reason it was not done was given by these returning officers before these gentlemen; and I will do justice to President Wells by giving you in his own language his reasons why this vacancy was not filled. On the sixth day of the session, Colonel Zacharie, who was counsel for the democratic electors, put a question, and this is what occurred:

Colonel ZACHARIE. I would ask if the board will take into consideration the filling of that vacancy, or if they have come to the final consideration of the application?

President WELLS. I have just said that it has not, because it has never had under deliberation the idea that the position would have to be filled. But the board differs in regard to the gentleman you have proposed. I will go further, and state that you gentlemen of the opposite side brought upon us this difficulty. We had a republican on the board and he resigned, and then a democratic legislature filled the vacancy with a democrat, and that democrat resigned. Speaking individually, I don't think you have any claim, therefore, to representation: that you have forfeited it by resignation.

Here was the position. It seems from the statement of one of this returning board that they had offered this position to several democrats, six I believe were named, and that they would not serve, declined to serve. Mr. Arroyo, a democrat, appointed on that board by the democratic legislature, while the board was in process of its business, resigned and declined to serve further.

Mr. WEST. The Senator will pardon me. Mr. Arroyo was put on the board by the remaining members.

Mr. SHERMAN. Mr. Wells says here that he was appointed by a democratic legislature. I think that Mr. Wells was probably more familiar with the facts, and he states here expressly:

We had a republican on the board and he resigned, and then the democratic legislature filled the vacancy with a democrat and that democrat resigned.

It is probable that Mr. Wells, who was on the board, is more likely to be correct; but it makes no difference to my argument.

Mr. THURMAN. Arroyo's resignation was a year ago.

Mr. SHERMAN. More than a year ago; but there has been no election, I believe, since that time and no action by the board until the present occasion. They did make an effort to fill the vacancy, but the same motive that induced Arroyo to resign prevented democrats selected by this board from serving. It was owing to the state of public feeling, and that was the ground on which it was put. At the beginning of this controversy a democratic committee did ask that a certain man, naming him, should be put upon the board, and upon that, according to the statement of Mr. President Wells, they disagreed and the vacancy was not filled.

Now, sir, whether or not it ought not to have been filled, I will not engage in discussing, because if I had been a member of that body I should certainly have been in favor of filling that vacancy by any man who would serve of the democratic party. That a democrat was put upon the board and that he would not serve—whether appointed by the board itself or by the democratic legislature, I do not know—is certain. He may have been appointed by the board and designated by the democratic legislature, but he did not serve, and a kind of public opinion prevented men from serving there who were selected by this board. Finally when they were called upon to name, on the first day of their session, a particular man, they divided and disagreed and did not fill the vacancy. That that goes to the constitution of the board is simply absurd. Sometimes the Supreme Court has been held with less than its usual number by the failure of the President and Senate to perform their constitutional duty. Such a case as that is very common indeed; but it does not affect the jurisdiction of the board or its composition, but is simply a question as to their conduct.

But, sir, another thing is made a good deal of in this report, that the entire clerical force of this board was republican. I do not know any law that required them to employ democratic clerks or, as they call them down there, democratic-conservative clerks, men who perhaps belong to some of these companies that ride around the country. There is no law on the subject. It might have been better there, and it might be better in this country all over, if party spirit was not so high as to require the men holding office generally to surround themselves with men of their own political faith. But it seems to me that this could hardly be made an objection to the constitution of the board, especially when the House of Representatives, the only branch of this Government now in the hands of the democratic party, have been turning out everybody of my faith in politics and putting in democrats, and we do not complain of them for it; they have the right to do it; but I do not suppose any one would say that it is not yet the House of Representatives, that that impairs their power. And it is a little strange that this criticism comes from these gentlemen, all of whom are partisans and two or three of whom are offensively partisan in this particular controversy. They went there as partisans, all partisans, selected by a partisan committee, and they criticise the fact that this returning board did not name a lot of democrats as their assistant clerks. It is a very small hole to creep through in attacking the powers of this board.

Now it is due to Mr. Wells to state that these very questions were presented to the board; and I will read you his answer to them. It was not necessary to send a democratic committee down there to have these questions presented, because they were presented to the board; and here is Governor Wells's answer; I will read the whole of it; and you will see that it covers his view of all these technical points:

The board has considered the protest or objections filed by counsel and has arrived at the following conclusions:

To the first objection, that the act creating the board has the effect of "creating a government not republican in form or character," seems to us to be a political question, that can only be decided by the Congress of the United States.

To the second objection, that this board is vested with judicial power, which is in violation of the constitution: This board is not a court—

And as Wells said afterward there were no lawyers upon it—

this board is not a court, but a commission appointed by the Legislature, with special and limited powers; it has no jurisdiction to decide constitutional questions, such as are presented in this protest. If this board be an unconstitutional body, the courts having jurisdiction to pass on this question are open to any person having the right to contest it.

To the third objection, that this board is not legally constituted: The act creating this board provides for the original organization, and it was originally organized as the law directed; all political parties at that time organized or recognized were represented on the board; at that time there was no party known as the democratic-conservative party; there was no provision in the law for a re-organization of the board, so it could not have been contemplated that the board should be changed to suit shifting political organizations that might subsequently be made.

To the fourth objection, that this board should not canvass or count the votes for presidential electors, as there is no law giving this board jurisdiction: The law creating this board says:

"SEC. 2. That this board shall be the returning officers for all elections held in the State."

This seems to us to cover that for the presidential electors so clearly that there is no room for doubt; the objection as to whether the "electors" are State or Federal officers is not material.

I think that is as good an answer as could be made.

To the fifth objection, that this board cannot canvass or count the votes cast for Brewster or Levisee as candidates for presidential electors, for the reason that on the day of the election they were holders of offices of trust or profit of the United States, and were consequently ineligible to the position of electors: This point will be reserved until the evidence shall be produced, merely suggesting that we have doubts as to whether this board can question the eligibility of candidates, our powers being confined to the canvass or compilation of the votes.

I think that this plain man, who boasts that he is not a lawyer, has answered all the points made by this protest; and this document, which is laid on your table and which is now to be printed, is but an amplification of the protest made by the counsel on the part of the democratic electors.

There is one other point made by these gentlemen, that the returning board could not take jurisdiction of a complaint of intimidation unless made by the returning officers within twenty-four hours after the closing of the polls or the making and receiving the returns. I have the law here; and this is the same point that was mentioned by the Senator from Missouri, [Mr. BOGY,] and in my judgment there is no foundation for it. I will now read the law. It all turns upon the construction of two sections of the act, the twenty-sixth and forty-third sections; and if Senators will mark the connection of these paragraphs they will see that the rule of twenty-four hours applies only to the making up of the consolidated return, and does not apply at all to the forwarding of the accompanying papers, protests, &c. The twenty-sixth section of this act provides for the mode and manner of making out protests and returns by the commissioners of election in each polling place, provides the mode and manner in which it shall be done, and then the forty-third section of the act provides as follows:

It shall be the duty of the supervisors of registration, within twenty-four hours after the receipt of all the returns for the different polling-places, to consolidate such returns to be certified as correct by the clerk of the district court and forward the consolidated returns with the originals received by him to the returning officers provided for in section 2 of this act, the said report and returns to be inclosed in an envelope of strong paper or cloth, securely sealed, and forwarded by mail.

This clause applies solely to what are called the consolidated returns. The commissioners of elections at the polls send their returns to the supervisor of the parish, and he is bound within twenty-four hours to make a consolidated return of the actual results of these papers from the polls, and he is bound within twenty-four hours to send that consolidated return to the returning board. But the protest and the accompanying affidavits need not then be sent. There is no provision at all that requires it to be done, and I am told that the

practice of both parties is that it has not been done. The clause I will now read is another distinct and separate clause of the law, not governed by that clause requiring certain acts to be done within twenty-four hours, but it is as follows, speaking of the duties of the commissioner of registration:

He shall forward a copy of any statement as to violence or disturbance, bribery or corruption, or other offenses specified in section 26 of this act, if any there be, together with all memoranda and tally-lists used in making the count and statement of the votes.

There is no time fixed for that, and the only time that is fixed by a fair construction of the act is that they must be there within ten days so as to be there in time for the action of the returning board; and, as I am told—I know nothing except what is generally admitted there—all parties have acted upon that construction of the law, and both parties at different times have sent in these allegations of intimidation, violence, &c., without respect to the twenty-four hour rule. But even if that rule were to be applied to the papers in this case there is an ample answer to it, because the supervisors of registration when they sent in their reports in most instances attached to them an affidavit that they dared not by reason of danger of their lives attach the formal protest and affidavit to their consolidated return.

Mr. THURMAN. Will my colleague allow me to ask him a question there? He made that statement the other day, and it struck me with so much surprise that I wanted to ask him about it and I will ask him now. If they could not have made the affidavit before they left the parishes, although they could do it and nobody in the world know they had made it except themselves and the officer who administered the oath, how could they make it in New Orleans and go back to their parishes?

Mr. SHERMAN. I will show you the actual fact that they did make them. I do not know why. If my colleague was down there a republican instead of a democrat, in one of these parishes, he would find out what could be done and what could not be done. I do not want to go into all the facts to-day because I propose to do that at some other time. They simply swore that they could not do it, and I believe those statements, and I will read you in a moment the affidavit of one of them to show you the character and condition of the circumstances by which they were surrounded.

The very intimidation which prevented whole masses of people from voting would very easily prevent one man from making an affidavit, especially when he did not feel that he was bound to make his affidavit with his consolidated return. These men did, in some few cases, make the formal protest, but in most cases they personally took their consolidated returns, went to New Orleans, and then attached this formal protest, together with the affidavits of the citizens, to the formal paper, and they were filed before the meeting of the returning board in most cases. That was held to be a compliance with the law.

So far as I know, the attorneys there did not seem to take objection to this construction of the law, but now this committee take objection to it and hold these people to the twenty-four-hour rule, and would deprive whole parishes and large communities of their right to participate in a presidential and State election by an arbitrary twenty-four-hour rule. It seems to me that, in any aspect, whether the rule is a mere directory rule, to be complied with as a general rule, is not material. It is very certain that the mere failure of one of these officers to comply with his duty in sending in that return could not defeat or deprive the people of that parish of their right to vote. I do not believe by any fair construction of the law it was necessary for them to attach their protests to these consolidated returns.

The only other allegation of a matter of fact that these gentlemen assert here struck me as strange; that was:

When the returns were opened by the returning board such returns were found among the papers in a few instances, but not in relation to the parishes of either Ouachita, Morehouse, East Baton Rouge, East or West Feliciana.

And as these are what are called the five bull-dozed parishes, I wish to examine whether or not these gentlemen are correct. I find that in every case of the parishes where they say there were no protests with the returns there are protests and some of them as formal as the keenest Philadelphia lawyer could possibly frame.

Mr. THURMAN. Before the board met?

Mr. SHERMAN. They were there, some of them, before the board met. Now I will refer my colleague to where he will find the proof, and I will take the parishes in their order. As to West Feliciana, he will find on page 186 the formal protest of D. A. Weber, supervisor of registration, and there follow several affidavits, and some of the persons who made these affidavits were afterward examined and cross-examined by both parties; I cannot say that all were. On page 222 my colleague will find the formal affidavit of D. A. Weber, who deposed that he was United States supervisor of election for the parish of West Feliciana. It seems there is a supervisor of election and also supervisor of registration, and both these officers make the formal protest on oath. So much for West Feliciana. Now I will refer to East Feliciana. I find on page 223 of this document a formal protest sworn to on the 10th day of November, 1876, which, if I remember aright, was before the board met at all, and this protest covers over a page of printed matter, of James E. Anderson, setting out in full the details of the intimidation, the nature of it, and the extent of it, sworn to before a judge of the fourth district court of the parish of Orleans. Attached to that is the affidavit of the three witnesses so as to comply literally with the terms of the law; and my colleague will see that these witnesses, whose depositions were attached formally merely to give this board jurisdiction, were afterward examined and cross-examined by both parties; and the testimony of Thomas H. Jenks, which follows on the next page, giving answers to interrogatories on both sides, is here fully set out.

Take the next case, because wherever these gentlemen come down to a matter of fact we can deal with the fact; but where they depend upon questions of law raised before the board and already settled, it is a matter for everybody to determine for himself.

Mr. THURMAN. Will my colleague allow me to interrupt him one moment? I have have not read this report on which he is commenting; but, if I understood from his reading, what they state as matter of fact is that in these five parishes no protest was made within the twenty-four hours. That was their statement. They do not pretend to say that the protests were not coined afterward in the city of New Orleans. That is one of the things they complain of, as I understand. I understand them to say that no protests were made within the twenty-four hours, which, as they construe the law—whether they are right or not I do not know—ought to have been done. Now, my colleague so far has not read one single protest made within the twenty-four hours.

Mr. SHERMAN. Mr. President, I do not so understand the clause that I read a moment ago, that these gentlemen confined themselves solely to the twenty-four-hour rule. If they did, then their case is weaker than ever. If there was a law in the State of Louisiana directing the election officer to make a certain return within twenty-four hours, and if he made it within sixty hours, if he failed to make it within the twenty-four hours, that would not defeat the plain right of the people or of the officers elected at that election. It is a directory law. He might be punished, he might be held to account; but it could not defeat the people. I say that by a fair construction of the law there is no such provision requiring this to be done within twenty-four hours; and if there was it would be immaterial. This very affidavit shows you why they did not do it at the time. Mr. Anderson was on all hands held to be a very good man in every respect, a worthy man; no imputation was cast on him. James E. Anderson, supervisor of registration for the parish of East Feliciana, says at the close of his affidavit:

And affiant further states that he did not affix the foregoing statement of riot, intimidation, &c., to his returns of the election at the time of mailing them, because he would have been in danger of his life to have done so at that time.

Here is the affidavit of the officer of this election who makes this return, brings the papers down with him, delivers them on the 10th day of November, and the election was on the 7th, just as rapidly as a man could act. He takes the returns down, makes this affidavit, swears to it, and makes the formal protest, and gives the reason why he did not do it two days before in East Feliciania, that he did not dare to do it there for fear of his life at that time. Here was no delay, no manufactured case. All this occurred before the returns were opened, because this committee did not arrive there until long after the 10th of November.

Now let us go a little further. As to East Baton Rouge, on page 258, there is another formal protest. This is one of the parishes named by these gentlemen as there having been no protest from. There is the protest of the supervisor of election:

F. A. Clover, being duly sworn, &c.

Here is a long deposition connected with other affidavits under the laws, and this witness was afterward examined at length by both parties, and his examination will be found on page 281. It should have been printed directly in connection with his deposition.

The PRESIDENT *pro tempore*. The morning hour has expired.

Mr. SHERMAN. I should like to conclude the remarks I am making.

The PRESIDENT *pro tempore*. Is there objection to the Senator proceeding? The Chair hears none.

Mr. SHERMAN. I find on page 281 that Francis A. Clover was examined and cross-examined at considerable length, and his deposition is fully set forth. This protest is here in full form. I might go on and show that in Ouachita the protest of M. J. Grady, who was the supervisor of registration or of election, is given in full, printed on page 364; and in Morehouse Parish that of F. M. Grant is printed on page 441. So that in five parishes where these gentlemen say there were no protests there were full protests and formal protests according to the law of Louisiana.

Mr. President, it seems to me that when such is the state of facts disclosed by these gentlemen, the case upon which they rest their report, the whole of it, is upon technicalities. What they say on the main issue of the matter I will read, all the single paragraph they give us in regard to the main facts. What was the question we were sent there to see to? First, whether these men conducted themselves fairly. They do not deny that. The only complaint they make in that particular is one that "the attorneys were not allowed to be present in all cases upon the opening of the returns."

That has been sufficiently explained by showing that the attorneys were allowed to be present in all cases where there was any contest whatever. When there was no contest, no protest, and the returns were agreed upon on all hands, they excluded everybody except about twelve or fifteen persons, the reporters, the two committees, &c., which would make of itself quite a crowd; but whenever there was a contest over a parish all were admitted, the attorneys on both

sides, and they came in and examined the papers to their hearts' content. So these gentlemen do not impeach the fairness of the mode of conducting this count.

When you come to the great question, as to the nature of the intimidation that, in the opinion of this board, was sufficient to control and change the result, this is what they say, and I will ask the Clerk to read it:

The Chief Clerk read as follows:

The evidence taken on both sides, so far as it has been accessible to us, discloses a state of lawlessness in certain parishes, not in the State generally, about the cause of which parties are not agreed. The democrats attribute it to the inefficiency and imbecility of the State government, which they allege to be a usurpation, resting wholly for support on the Federal Army, without the confidence or respect of the people, and without the disposition to prevent or punish crime which they can pervert to political uses. Such a state of things, as might be expected, has led to disorder and, in some instances, to the most shocking barbarities.

The republicans, on the other hand, attribute the lawlessness to the hostility of the white against the colored race and as largely due to politics.

The murders and outrages which have been brought to our notice are frequently committed by persons of the same race upon each other, and in a large majority of cases have no political significance.

Mr. SHERMAN. What these gentlemen do say is true that this intimidation was confined to comparatively few parishes. It was admitted that out of the fifty-seven parishes, in forty there was a free and fair election; but in seventeen parishes there was to a greater or less degree intimidation. As to the character of that intimidation, as to the extent of it, these gentlemen dare not commit themselves, and I say now that when the time shall arrive for the examination of the character of this testimony, I am perfectly willing to stand not only before the Senate of the United States but before any class or part of the people of the United States, upon the broad assertion that in these parishes there was intimidation to a degree and to an extent that actually changed the result of the election—that whole parishes were overawed, the voting population driven into the swamps at night, and murder, riot, tumult, whippings, all sorts of crimes were committed by organized rifle clubs of the democratic party in pursuance of a plan to carry the election, and upon that testimony I would be willing to let this question rest.

Mr. President, in view of the impending importance of this presidential canvass I do not wish to do anything prematurely; I do not wish to debate these facts prematurely. I have made these remarks simply to show the observations of these gentlemen who went there on behalf of the democratic committee contain a bundle of technicalities which have no foundation in the law of Louisiana. I think as Senators and as men we ought to keep our minds self-poised, cool, deliberate, and examine these questions as well as we can. There are three or four States about which there is some controversy. As to the State of South Carolina I understand there is none, because the returns on all hands, it is conceded, show that the Hayes electors were elected, although there is controversy about the State government.

Mr. RANDOLPH. I beg to correct the Senator. I think there is a dispute as to the electoral return of South Carolina and what the votes would declare if properly returned.

Mr. SHERMAN. There is a dispute then; but I did not suppose there was any, because the returns made by the very board and by the very court that are now, as I understand, using their process in South Carolina concede the election of the Hayes electors.

Mr. RANDOLPH. That is not my understanding.

Mr. SHERMAN. Very well. In Florida there is a controversy; in Louisiana there is a controversy. As to that controversy in Oregon I can scarcely dignify it by the name of a controversy, because I do not believe any portion of the people of the United States would like to see a President elected by a bold and palpable fraud, by which a man not elected, confessedly not elected, the minority——

Mr. COCKRELL. Will the Senator permit me to ask him one question?

Mr. SHERMAN. Not at present; I am about through. I do not say and I do not think that that will rise to the dignity of a dispute. Indeed, I saw a remark attributed to the democratic candidate for the Presidency in some of the papers that he himself would scorn to hold his election by virtue of a fraud of that kind. I believe it. I would not believe otherwise. There is some controversy and a real controversy as to Florida and Louisiana; and those cases I am perfectly willing to examine as dispassionately as any man can; but I say to Senators that if they will follow the nature and character of the intimidation and violence that was committed upon poor people, unoffending people in Lousiana, if we can believe the testimony of living witnesses, not negroes alone but officers of the Army, officers of the law, officers of registration, men of the highest character, both white and black, there was a condition of affairs in Louisiana that did change the result in that State. The evidence is overwhelming that but for this intimidation the vote of that State would have been cast for Governor Hayes. I should dislike above all things to see such scenes of intimidation prevail in the election of a President of the United States, or to see any man, however able or eminent he may be, hold the high office of Chief Magistrate of 40,000,000 of people by means such as are depicted in this book.

Mr. THURMAN. Mr. President, one word. "Such as are depicted in this book," which is but one side of the case. When we get the whole case, then we shall see what kind of pictures are presented. But I do not propose now to trench on the matter which is properly before the Senate by replying at all to some of the remarks made by my colleague, although I must confess that I am a little surprised at them and disposed to answer some of them right on the spot; but I do not wish to do that just now; but this matter will be up again and there will be opportunity afforded to see whether there is not another word ending in i-o-n besides the word intimidation, whether there is not a word called exaggeration, and a word too that characterizes, perhaps, the matter in regard to this election as much as it ever was applicable to anything in this world. If positiveness of assertion, boldness of assertion, positive declarations, could settle this matter, I suppose we should have to regard it as settled right here and now at once; but that cannot be. There must be time to examine even this one side of the case before any one is authorized to stand up here and pronounce *ex cathedra* that the case is thus or the case is so.

This is all I wish to say now, sir. When this matter comes up again I may ask the Senate to hear me further.

Mr. WEST. Cannot we get a vote?

Mr. THURMAN. Not now. I have not yielded the floor. The resolution goes over of course.

Mr. WEST. I do not understand why it goes over. I should like the ruling of the Chair.

Mr. THURMAN. Because the morning hour is out.

Mr. WEST. There is no unfinished business, and this business is just as pertinent as any other.

Mr. THURMAN. If it is before the Senate I shall have something to say now, although I do not wish to speak to-day because the matter requires some little looking into to be able to speak on this subject; and besides the very matter the printing of which I moved is not yet on our tables. Why it is not I do not know. I want the resolution to go over until to-morrow.

The PRESIDING OFFICER. (Mr. INGALLS in the chair.) The Chair will state that there was no unfinished business before the Senate. This resolution was taken up on the request of the Senator from Ohio [Mr. SHERMAN] at the expiration of the morning business, and is now under consideration by the Senate for its action.

Mr. THURMAN. Then I move its postponement until to-morrow.

Mr. ANTHONY. This is a mere question of printing. I suppose nobody has any objection to printing the small number of copies that the committee have reported, leaving to after-consideration the resolution for printing the larger number. Really, I wish it could be disposed of. The speeches can just as well be made on a dozen occasions that will arise. The subject is before the Senate already in half a dozen forms. It will be a convenience to the Printing Office and an economy to the public service if the extra copies can be ordered now. Congress orders printing by driblets in this way, having the type set up three or four times, and then the Senators who require this delay and additional expense complain of the extravagance of the Printing Office. I wish this resolution could be disposed of now.

Mr. THURMAN. I hope that it will not. The cost of this printing is a small matter compared with having a proper case before the American people. The little cost of printing is too insignificant to be considered upon a subject like this. Here, sir, at the very early part of this session my colleague comes in, or the President sends in, a report made by five gentlemen to him, and immediately it is asked that extra numbers of that President's message and the accompanying report shall be printed with the testimony; that 10,000, and now 11,800 and odd extra copies shall be published, without waiting for the whole testimony to be produced. This was asked without even waiting for the other side to be heard at all in any way, and it has been pressed with a haste that I cannot understand, unless it is the intention to lay before the people of the United States, in order to manufacture public opinion, but one side of this case.

My colleague says that the report of Governor Palmer, Senator Trumbull, Mr. Julian, Mr. Watson, and another gentleman whose name I do not remember at this moment, was made by partisans. If they have manifested more partisanship in this business than my colleague has done—I say it without meaning to be offensive—then I must say that I am no judge of the public acts of men. If they have manifested more partisanship than has been exhibited in other quarters in respect to this, then I am no judge of human action. Why, sir, in the first place, let me say to my colleague, as I said the other day, that the fact that he was requested to go there by the President of the United States, and the additional fact that he is a Senator of the United States, gives him no higher position in this matter than that occupied by any one of the five unofficial gentlemen who went there upon the request of other parties, or went there of their own mere motion. The President of the United States was acting wholly outside of his official duty; I am not condemning him now; but he was acting outside of his official duty when he requested gentlemen to go there at all. In the next place, if he wanted simply to have witnesses there whose report would be satisfactory to the American people and tend to promote peace and acquiescence in the result down there, then it does seem to me that, if there was no partisanship in the business, he might have requested others besides members of his own party to go.

Mr. EDMUNDS. May I ask the Senator a question?

Mr. THURMAN. Certainly.

Mr. EDMUNDS. I should like the Senator to tell us what he means exactly when he says the President acted outside of his official duty in requesting these gentlemen to go.

Mr. THURMAN. I say that it was no part of his official duty, imposed on him by the Constitution or by the laws, so far as I know

them in my ignorance, to request these gentlemen to go down there and witness that count.

Mr. EDMUNDS. To that I agree; but may I ask my friend whether it was not a part of his official right in obtaining information to request any citizen to obtain information for him respecting any matter of public concern?

Mr. THURMAN. I suppose he may write a letter asking a citizen to witness anything, even the blowing up of Hell Gate, if he sees fit to do it in order to get official information.

Mr. EDMUNDS. I hope my friend has such an invitation.

Mr. THURMAN. I suppose he may do that if he sees fit to do it, and I have not censured him for doing it; but I say there is no constitution, there is no statute that imposes that duty upon him. And there is one very singular thing in connection with this, one thing in which one side of this controversy labors under great disadvantage. The President saw fit to request my colleague, a member of the Senate, to be one of this committee. He saw fit to request three or more very distinguished republican members of the House of Representatives to be members of the committee. They went; they served; and therefore there is in the Senate a champion ready to advocate, as we have seen, with the ability that he possesses and the knowledge of the subject that he possesses, his view of this case; and I dare say in the other House there are three champions ready to do the same thing; but the democratic committee down there, if it can be called democratic—a committee that was composed almost entirely of what are called independent republicans, or were but lately so: Governor Palmer, Senator Trumbull, Mr. Julian, Mr. Watson, (once Assistant Secretary of War during the late civil war,) and Governor Bigler is the only Simon Pure democrat, dyed in the wool, in the whole lot, [laughter,] so far as I know—they have no seat on this floor, they have no seat in the House of Representatives. I should like very well to see occupying a seat in this Senate just now my old friend Senator Trumbull, and hear his reply to the speech just delivered by my colleague. I think he would give some reasons for the faith that was in him that would be worthy of the consideration of the Senate.

But, Mr. President, as I am to speak on this question, as there is a disposition to press it, let me notice one or two things that have been said.

Mr. EDMUNDS. May I ask whether three democratic members of this body did not proceed there at somebody's request or voluntarily?

Mr. THURMAN. I can give the Senator a little more history if he wants it. I was requested to go there by somebody.

Mr. EDMUNDS. Certainly, give all there is; but not what there is not.

Mr. THURMAN. I was requested to go there by somebody; but for the life of me I could not see what business I, a Senator of the United States, had to be there.

Mr. EDMUNDS. I am asking about the three Senators who were there.

Mr. THURMAN. I know that some went, and I am not blaming them; I shall not censure them. They saw the matter in a different light from that in which I saw it. I did not think I had any business there, and I did not go. But I was speaking of the fact that of those who did serve on that committee not one has a place in this Senate; not one has a place on the floor of the House of Representatives; and the democratic Senators who did go there did not serve on the committee. Therefore, there is no voice from them such as the voice of my colleague in conducting this discussion on this floor.

Mr. SHERMAN. I hope my colleague will allow me to state here that my friend from Kentucky [Mr. STEVENSON] and my friend from Missouri [Mr. BOGY] and my friend from Indiana [Mr. MCDONALD] were all there; and, so far from there not having been a member of the House there of the democratic persuasion, we had there the gentleman who has now the honor of being Speaker of the House and several other democratic members of the House, among the rest the gentleman who is now chairman of the Committee of Ways and Means of the House and also chairman of the committee that has gone down to investigate Louisiana affairs. I had the pleasure of meeting him in New Orleans. So there was no want of information derived from members of both Houses on the democratic side, if he chooses to consult them. Whether they staid there as long as I did, I do not know. If they came away sooner, they avoided a good deal of hard labor; that was all.

Mr. THURMAN. Nobody has denied that there were democrats down there; and the truth of it is that there were more democrats than anything else in the State of Louisiana and have been for more than six years. There is no question that there were democrats there, plenty of them; but I spoke of that committee that acted for the democratic party in witnessing the transactions of the board.

Now, sir, let us look for a moment at one or two of the questions that have been considered by my colleague; and, first, in respect to the failure to fill up the board. The law was explicit; the law made it their duty to fill up that board, and pray what kind of an excuse does this immaculate Governor Wells give? He says that Arroyo had been appointed and Arroyo resigned, and it was a question whether therefore the democrats had not forfeited their right to have anybody on that board because eighteen months before Arroyo had resigned! One would infer from the speech of my colleague that Arroyo never accepted his appointment at all. According to my recollection Arroyo served on that board until he was so utterly disgusted with its rulings in the celebrated count of January, 1875, that he resigned his position because he would not sign such a report, or, to state it in his own language, he would not be a witness to such wrongs. But does that excuse them for not filling the board? There was the law.

What is the next proposition? Governor Wells, who is no lawyer, has great doubts whether there should have been a democrat appointed, even if they were to proceed to fill the board, because he says when that law passed in 1872 there was no such thing as a democratic party in Louisiana; it was called by some other name; and that is this pure judge; that is this upright man; that is this man upon whose judgment and fairness and integrity we are to rely; that is this man who only looks at the substance of things and disregards quibbles! That is the kind of man! Why, sir, the thing is as bald as it could possibly be. The law is plain enough. They are to be men of different parties; and if there had been an utter dissolution of the democratic party and the formation of some other party, still there is the statute that the board is to be composed of members of different parties. There it is, and they would have been compelled to put on a man of the democratic party there if they had filled that vacancy. Now it will not do for them to say or pretend for one single moment that they could not fill the vacancy. There were 83,000 democratic votes in that State; and to tell me or to tell anybody that out of those 83,000 voters they could not find one man to sit on that board is simply to insult my common sense. They could do it, sir, but they did not intend to do it, for they intended that when they went into that last final session, when there were no committees present, when my colleague was excluded, when Palmer was excluded and everybody but themselves was excluded, then they intended that there should be no democratic eye to see, no democratic ear to hear what they did and what they said. That is the reason of it, sir.

Nor is there any excuse for their not putting on their clerical force some democrat or democrats; but if they had done that, there would have been somebody besides their own partisans to see and to hear what they said and what they did. And yet this thing, so intensely partisan, so intensely unfair, is to be bolstered up by the declarations of my colleague that it is all perfectly right. No, Mr. President, the American people will not take any man's declaration that such a thing, which results in a change of an apparent majority of eight thousand and odd into a minority of three thousand and odd—the American people will not take the assertion of any man, however high he may be and however estimable his character may be, that that is a perfectly fair transaction, unless by an investigation of the facts of the case the American people shall find that that assertion is justified.

But again, my colleague condemns Governor Palmer and his associates as being wrong in law and wrong in fact. He says that wherever they get down to a fact, they are wrong about the fact, and he undertakes to show that that was so in every case by stating that they had asserted that in the five parishes, called by this new-coined word, a compound word, bull-dozed, there were no protests accompanying the returns made out within the time and according to the law of Louisiana. I have not seen the report of Palmer and others. As I said a while ago, it has not been laid on our table, although it was ordered to be printed yesterday morning, I think, was it not?

Mr. KERNAN. The day before yesterday.

Mr. THURMAN. It is not here. I cannot tell why it is not here. I am inclined to think it ought to be here, but I may be mistaken about that. It is not here, and I have not seen it, but as I have understood the position of Palmer and his associates, as read by my colleague, their statement was that within the twenty-four hours and within the parishes there were no such protests; and now every word that my colleague has read corroborates their statement. Every single protest that he has read was made days afterward, and made at the city of New Orleans. What is the excuse? The excuse is that one man has sworn that he could not with safety make the protest in the parish for fear of his life. The returns were given to him. All he had to do was to write his protest and annex it to them, and get the affidavits of three respectable citizens to the same effect. Every officer authorized to administer oaths in those parishes is a republican, I understand, and it was easy to get a republican to administer an oath to a republican certificate. It was easy for them to comply with the law, which required that that thing should be done while the circumstances were fresh in the minds of men. That was easy enough to do, but they did not do it. This poor and miserable excuse that they could not do it for fear of their lives, made by men, I venture to say, who have gone straight back to those parishes, and have been living there in peace ever since, is to my mind one of the most absurd things I ever heard. No, sir; that will not do. I have said that this law about the twenty-four hours in which the protest is to be made is not merely directory as my colleague seems to suppose. If that is the true interpretation of the law, if they can put it off more than twenty-four hours, they can put it off twenty-four days or twenty-four months, if the law postpones the canvassing of the votes that long, according to the interpretation of my colleague. That is not at all the intention of the law. The intention of the law is that the protest shall be made within twenty-four hours, and that the whole package shall then be sealed up and transmitted; not that afterward, days and weeks afterward, elsewhere, hundreds of miles from some of these parishes, protests shall be manufactured according to the exigency of party.

What, asks my colleague, is the importance of the protests being made within twenty-four hours? This board of canvassers have no right to consider whether there has been intimidation or not unless a protest comes up showing a jurisdictional fact. If the protests are made within twenty-four hours then the jurisdiction of the board attaches and it can consider the case. The intimidation is fixed within those twenty-four hours. It is fixed without consultation, without knowing how it is to affect the general result. It is fixed, as it ought to be, without consultation or knowing whether it is necessary to throw this parish or that parish out in order to carry the election for one side or the other. That is the reason, as well as that it ought to be made in view of the facts, that it is required to be made within twenty-four hours; but if you establish that it can be made days afterward, weeks afterward, that it can go to the city of New Orleans, where the board is sitting, and, finding that this parish must be thrown out in order to change the result, then the supervisor can go to work and manufacture a protest—if you allow that, it is simply idle to talk about having any fair count of the votes; and yet that, I understand, is precisely what was done. When they got there they found that these parishes must be thrown out in order to count Tilden out and Hayes in, in order to count Nichols out and Packard in, in order to count this candidate for Congress out and that candidate for Congress in; and then, finding that exigency to exist, these protests are manufactured in the city of New Orleans, and that is said to be according to the law and usage of Louisiana. It is not according to the law, and if it is according to the usage, it is only another proof of how—well, sir, I will not use as strong a term as was on my tongue, but I will say it is another proof of how unrighteous a violation of right and justice the proceedings of Louisiana returning boards are.

I have said all that I can say at this time on the spur of the moment. I did not expect to say one word on this subject, as I had no idea that my colleague was going to make a speech such as he did to go out on the report of Messrs. Palmer and others. I supposed that having made his report, having had it sent in here under the sanction of the President, having his body of testimony here, he would be willing to allow it to go out for the people to judge as far as they could even though that is but a one-sided presentation of the case; but he has seen fit to make an elaborate review of the report of Palmer and his associates, and that, that alone, has compelled me to make the observations which I have submitted to the Senate. As to the merits, as to what this testimony proves, of course I have yet had no time to read it, and if I had had time to read it the other side is not here. I shall do my best to read all I can that is pertinent to the case before I shall be called upon to act in the last and the final resort.

Mr. WEST. Mr. President, I only wish to say a few words in reply to one or two remarks that have been made by the Senator from Ohio [Mr. THURMAN] in regard to the practice of certifying to acts of intimidation in the State of Louisiana by supervisors of election. Whether he correctly interprets the law or not, or whether that law is correctly interpreted by those who practice under it, I think it is well to remember how one side construes the law one day and on another day puts an opposite construction upon it for their own purposes.

In the election of 1872, when the machinery of the election was in the hands of the party to which the honorable Senator belongs, and when the returning board of that State was composed entirely of gentlemen of his political faith, with no republican upon the board as he claims that there should be now a democrat, that board threw out parish after parish, without even a protest from a supervisor, upon affidavits made, as can be quoted from the Carpenter report, in the city of New Orleans eight and ten days after the election. So whatever the republican board has done to-day they have abundant and ample precedent for in the acts of their democratic predecessors, which the Senator from Ohio at that time upheld.

I will submit a proposition to the legal minds of this body, and I should like to have their judgment in the case. I have not seen the report of this committee, but it is alleged, I understand, by them that the act of 1872 repeals all election laws in the State of Louisiana. I ask to be followed to the conclusion that any such opinion leads to. In the first place, the constitution of the State of Louisiana provides that all laws shall express their object in the title. Here is the title of the act that the Senator and the Senator's friends rely upon as having really obliterated all the machinery of the government in the State of Louisiana:

> To regulate the conduct and to maintain the freedom and purity of elections; to prescribe the mode of making returns thereof; to provide for the election of returning officers, and defining their powers and duties; to prescribe the mode of entering on the rolls of the senate and house of representatives; and to enforce article 103 of the constitution.

The concluding section of that law provides—

> That this act shall take effect from and after its passage, and that all others on the subject of election laws be, and the same are hereby, repealed.

The democratic theory to-day is that notwithstanding they had an electoral ticket in that State, notwithstanding that they had a ticket for governor and for every office in the State, in consequence of this repealing clause there was no capacity in the people of Louisiana to elect anybody; in other words, that a law providing for the purity of an election, to protect the sanctity of the ballot, should not be exercised because there could be no election under it. It is an absurdity; it is a miserable subterfuge, an after-thought. See what is the conclusion. You provide for the purity of the election, and at the same time provide that you shall not have any election. I rather think that idea is neither good law nor good sense.

That is all I wish to say. I submit that to the gentlemen who made this learned legal report, that on their theory, first we provide that an election shall be pure and in the same law we provide that we shall have no election. That is an absurdity, just like a good many other absurdities and illusions that will be disclosed before this question is concluded.

Mr. THURMAN. If the Senator will allow me for a moment I will state, if that is the idea upon which the Senator from Louisiana expects to convict Governor Palmer, Ex-Senator Trumbull, and others of uttering absurdities, I think he will have a pretty weak case. They say there are elections to which that statute applies. Its title is to preserve the purity of elections. How it works in practice we have seen. It is to preserve the purity of the elections referred to in that statute.

Mr. WEST. In which statute, will the Senator inform me?

Mr. THURMAN. In the election law of Louisiana.

Mr. WEST. They are all revised and placed together, and you cannot reveal one without repealing all.

Mr. THURMAN. Very well; I am expressing no opinion at all on the question whether there is a law regulating the election of President and Vice-President. I think it very strange if there is no such law; but then there is plenty for the title of the act to operate upon, whether there is such a law or not. While I am on my feet I wish to ask the Senator one question. Is a man who is a candidate for office eligible to a seat in that returning board and a judge of the returns in his own case?

Mr. WEST. There is no law against it.

Mr. THURMAN. Then you have no law to preserve the purity of elections on that point.

Mr. WEST. We shall hear something further on the question of eligibility of candidates by and by.

Mr. KERNAN. Mr. President, I have not had time to read the communication of the gentleman from Ohio [Mr. SHERMAN] and his associates, which it is proposed to print, and I presume no other Senator has had the leisure to do so. There are doubtless questions, and serious ones perhaps, which will arise in the consideration of the return of the electoral vote in Louisiana, and they will at some time come up for consideration before this Congress. I submit to the gentleman from Ohio that he cannot expect that Congress, or this branch of it, will decide such questions on the statement which has been sent in from the gentlemen who went there which it is now proposed to print. This body has sent a committee, a strong and large committee, to investigate and report in reference to the facts which exist there. I assume, therefore, that the question will come up properly when we get their report. The papers tell us that the other House has sent a committee consisting of members of both parties, and they will make a report.

The only suggestion I wish to make is whether it is conducive to the proper and wise solution of this question that day after day, on a mere motion to print, the Senator from Ohio [Mr. SHERMAN] should with so much earnestness assure us that the question is all one way. I assure him that there is great difference of opinion among the mass of citizens of the country and, I doubt not, among Senators, and that it will be best, it will be wisest, in reference to the solution of this question ultimately, that we should refrain from reciting or claiming that it was clearly one way or the other until, at least, we shall get the reports of these committees and all the evidence, and be able to examine them. It is not well for the country, it is not well for this body, that these strong assertions, one way or the other, should be made in the absence of these reports and in the absence of an examination into the evidence which the committees will lay before us. I did understand the Senator from Ohio, although I may have misunderstood him, to assert that the proof is all one way. I do not wish to express any opinion, I do not think I ought to do so, but I appeal to Senators that we allow this troublesome question, for troublesome it may be, to wait for discussion until we have the reports of the committees and all that can be brought before us from either side of this case, that we may act upon it. I am sure when every good citizen reflects a moment he will desire that this question shall be treated without heat as much as possible, that it shall be treated after it has been examined and after we have been able to ascertain what the facts are, in the hope that we may decide it aright; and if we do decide it aright then everybody ought to be, and everybody will be, satisfied. It will only make difficulty in deciding it if, in advance of examination and proper discussion on either side, we are asserting and claiming that it is a case beyond doubt one way or the other. I hope the discussion will await that time.

Mr. SHERMAN. I do not wish to prolong this discussion; and the Senator from New York will remember that my observations were solely on the presentation of this document for printing to be ingrafted and made part of the report made to the President.

Mr. KERNAN. I submit that we should wait, and not attempt to controvert one view or the other until we get the whole case before us.

Mr. SHERMAN. I thought that under the circumstances I was not only justified but that it was plainly and manifestly my duty not to let this paper go on the records of the Senate without pointing out the errors and fallacies to which I referred. I thought I did it in a very temperate manner, but I must confess that when I thought about the

actual testimony in the case I showed a good deal of feeling, and I think my friend from New York would show the same kind of feeling. I do not wish to go into that at all. I am perfectly willing, when the reports of the Senate and House committees shall be made, to go into this discussion upon the facts; and upon those facts I do not think my mind will ever be changed. Therefore, I have to confess myself a prejudged advocate, because I heard the testimony of the living witnesses, and I read it; and upon the facts as they stand I have not an earthly doubt. As to the law of the case and the points made by these gentlemen in the great body of their argument, I think I can discuss them with coolness and perfect fairness; but I was disappointed in the general tenor and scope of their paper. I did expect them to take up and examine the main question in the case, as to whether intimidation did prevail in Louisiana, according to the testimony submitted to the board, to which they had the same access as I had; and when I found that this paper submitted to the people of the United States now, to decide the presidential election, is based upon technicalities so narrow in their scope, so barren as it seems to me, more like the technicalities that would be submitted to an inferior tribunal, it did appear to me that those facts ought to be pointed out, and that the law they commented upon should be read and the opposite construction given, so that the whole might go to the people of the United States together.

I do not wish to prolong the argument, and will say no more.

Mr. MORTON. Mr. President, I will simply add one word to what the Senator from Ohio has said and call attention to the character of this report, which, if rightly considered and looked to, is a confession, is an admission. Here is a report made by a number of gentlemen who went to New Orleans, who were present before the returning board and heard the evidence and, I believe, took part in the argument. They publish an address to the people of the United States after it is all through of some four columns in small type. The great fact before the returning board claimed by the republicans and the great fact before the country was the question of intimidation, of murder, of violence in every form. That was the great, broad, exciting question before the nation upon which the republican party relied, upon which the members of the returning board acted, and that is the great fact upon which the country would want to hear from these democratic gentlemen who went down there. They publish an address of four columns very closely printed, nearly all of which is devoted to mere questions of law, technical difficulties—were the protests filed in twenty-four hours? for example—while the great moving cause, the great question upon which the whole thing must turn—that of intimidation, violence, and fraud—is touched with a single paragraph not as long as your finger, and an attempt is made to ignore it. They could not quite ignore it; they came as near as they could to that; and I want again to call the attention of the Senate to what they say, for after all it is a confession. They did not intend to confess; they did not want to confess; but, as Webster said in the celebrated case in which he made the speech, they were bound to confess and could not help confessing. I will read what they say, and this is all they say on the point, according to my friend from Ohio. I have not read it all, but it is marked as all there is on the subject:

> The evidence taken on both sides, so far as it has been accessible to us, discloses a state of lawlessness in certain parishes, not in the State generally, about the cause of which parties are not agreed.

They admit it does "disclose a state of lawlessness in certain parishes," but the "parties are not agreed" as to the cause of it. Here is the admission of the lawlessness, of the violence. It was dreadful in its character, but they pass over it as lightly as possible:

> The democrats attribute it to the inefficiency and imbecility of the State government, which they allege to be a usurpation.

The democrats attribute it to that. In other words, the democrats admit it, but say that it is the result of the fact that the government was a usurpation; in other words, a government they were not bound to submit to, a government forced upon them, referring to the old Louisiana quarrel—

> a usurpation, resting wholly for support on the Federal Army, without the confidence or respect of the people and without the disposition to prevent or punish crime which they can pervert to political uses.

That is the excuse given for it. The violence is admitted by the democrats, but they say it is because the government is a usurpation, going on further to say that the government did not want to punish crime that could be perverted to political uses.

> Such a state of things, as might be expected, has led to disorder and in some instances to the most shocking barbarities.

Certainly the whole country has been horrified at these barbarities. They cannot help admitting them, but they are excused because the democrats say the government is a usurpation.

> The republicans, on the other hand, attribute the lawlessness to the hostility of the white against the colored race and as largely due to politics.

That is putting it very mildly, putting it very briefly.

> The murders and outrages which have been brought to our notice are frequently committed by persons of the same race upon each other, and in a large majority of cases have no political significance.

And with that they dismiss the whole subject of intimidation and murder, and then talk about technical and legal difficulties. Here, in other words, is an attempt to elect a President of the United States by special demurrer, ignoring those crimes that have shocked the nation and, in fact, the world, admitting them, but endeavoring to palliate a little by saying that the government was a usurpation, as if that would justify them in the least! Take that paper all together, reading it broadly, it is an admission that these crimes were committed; they are not denied, but the fact is offset by technical difficulties and the illegality of it.

Mr. WEST. I just want to say that the remark made by the Senator from Ohio [Mr. THURMAN] just before he took his seat last would leave the inference that there was a member of the returning board of Louisiana who was a candidate for office.

Mr. THURMAN. I was told by a gentleman that one of them was a candidate for State senator.

Mr. WEST. In order that that case should be correctly stated, that there should be no false impression about it, I will say that General T. C. Anderson was a candidate for the State senate, but before serving upon the board he stated that he did not claim the seat; that he knew that his adversary was elected, and that when the returns were compiled he would not sit upon the board in that case. There was no law that prevented him from doing so if he saw proper, but a proper sense of delicacy and propriety on his part induced him to admit the election of his competitor and refrain from acting upon the board in his own case.

Mr. THURMAN. Then I must say he was a good deal decenter man in that particular respect than two of the returning board in the State of South Carolina who were candidates for State offices and did sit on the returns of their own election.

Mr. WEST. South Carolina is not before the Senate.

Mr. THURMAN. If the Senate wishes to take the vote on this matter and no other Senator desires to speak, I will withdraw the motion to postpone.

The PRESIDING OFFICER. The question then recurs on the amendment offered by the Senator from Ohio [Mr. THURMAN] to the resolution reported by the Committee on Printing. The amendment will be read.

The CHIEF CLERK. At the end of the resolution it is proposed to insert:

> And that there be also printed and stitched or bound with the same, the memorial of Messrs. McDONALD, BOGY, and STEVENSON on the same subject, with the papers referred to therein.

Mr. SHERMAN. I think the words "or bound" should be stricken out, because I understand they will not be bound.

Mr. THURMAN. They will be stitched, and ultimately bound among the documents.

Mr. SHERMAN. This relates to what goes into the executive documents.

Mr. THURMAN. It is in the alternative "stitched or bound."

The amendment was agreed to.

The PRESIDING OFFICER. The question is on the resolution as amended.

Mr. WITHERS. Mr. President, I wish to call attention to an objection which has not been urged to the printing of extra copies of this report, at least not to the degree which its importance deserves; and that is that the resolution provides for printing a large, voluminous, and costly document, a portion and certainly the more reliable portion of which must be again reproduced and printed subsequently when the committee which we have raised to examine and report upon that particular subject shall have presented their report. I see no necessity for encountering this double expense, for going through the form of printing this large document, and by the way I would call the attention of the chairman of the Committee on Printing to the fact that his report does not comport with the provision of the standing rule of the Senate as found on page 143 of the Manual, which requires that when any additional number of documents shall be required and the printing of which shall be recommended by the Committee on Printing, this recommendation shall be accompanied with an estimate of the probable cost. No such estimate, so far as I have heard, has been submitted with this proposition to print these additional numbers. Taking that fact into consideration and the additional fact that hereafter the same testimony, or substantially the same testimony, must of necessity be printed when the Senate's own committee shall report it in a more authentic form, I shall vote against the proposition to print this additional number.

Mr. SHERMAN. The Senate has no power to print extra copies of any document to an amount exceeding the cost of $500, and therefore the number is fixed within the $500, as was stated by the Senator from Rhode Island. The number that is provided for by this resolution will cost less than $500; therefore, the number was fixed at 1,850 copies, instead of a large number. If the additional matter that is put on by the amendment of my colleague will increase the cost, it ought to reduce the number so as to come within the limit.

Mr. WITHERS. I was aware of the provision cited by the Senator from Ohio, but I do not see that that takes it out of the provision of the general rule, which is in these terms:

> And when the report shall be in favor of printing additional numbers, it shall be accompanied by an estimate of the probable cost.

Mr. SHERMAN. That was made.

Mr. WITHERS. It was not submitted with the report, if made; at least, not in my hearing.

Mr. ANTHONY. The cost of the first 1,850 copies is within $500. The cost of the 10,000 additional would be $2,500. We have an estimate from the Congressional Printer, we always have an estimate from

him in writing. We do not always report the estimate unless some Senator asks the question. I have it not in my desk, but I can get it in a moment if the Senator from Virginia desires it. However, the 1,850 copies come to $500, and the 10,000 copies will come to about $2,500, or very near that sum. Perhaps that is as near an estimate as could be made.

Mr. DAVIS. Under the present resolution, as I understand, the additional number will come within the five-hundred-dollar limit?

Mr. ANTHONY. Yes, sir; that is the first resolution, and that costs less than $500. It cost 25.9 cents to furnish a copy. It has been already printed. The cost now is the press-work and paper of the additional number, and of course the cost is precisely in proportion to the numbers printed, which is not the case when the type-setting has to be included.

Mr. DAVIS. The chairman of the Committee on Printing will recollect, I have no doubt, that the Senate has ordered that the memorial or statement of the gentlemen representing the other side of the question be printed and stitched with the present number. That will, of course, add a little to the expense.

Mr. ANTHONY. A mere trifle.

Mr. BAYARD. Mr. President, I do not desire to protract this discussion, although I have yet failed to hear any good reason why this order to print should not have been delayed until the report, I may call it the counter-report, of the committee in opposition to the committee headed by the Senator from Ohio, [Mr. SHERMAN,] which I may call the President's committee, should have been laid upon our tables. It is impossible to meet discussion upon the report of this counter-committee unless we know what they have said, and up to this time that is withheld from us, excepting, perhaps, the single copy in a newspaper, perfect or imperfect, which contains the report the Senator from Ohio has used. But there is this reflection——

Mr. SHERMAN. I will state to my friend from Delaware that I read from the only copy I had in the Cincinnati Enquirer. I have no doubt it is printed correctly.

Mr. BAYARD. The Senator will not understand me as denying the correctness of the report which he read. I only said that there is but a single copy which I know of in the Senate at the moment. I have been very desirous of reading this report. I expected it would, in the ordinary course of public printing, be laid on our tables to-day, but for some reason or other that is not the case. I wish it had been here before the refusal to let it go along with the other accompanying documents had been made.

But there is this reflection, sir, which has occurred to me: This voluminous statement, this collection of *ex parte* affidavits contains allegations of crimes which, to use the language of the honorable Senator from Ohio, shock the sense of the civilized world. I do not think that his phrase is at all too strong. I believe it is a terrible catalogue of lawlessness and crime sickening in its details and most saddening in its results. But does not that Senator see, and will not the country see, what has been the cause of such a condition of things, and what a mockery it is to term that a government of laws in which such a condition of affairs can become possible? Why, sir, what is the necessary, the logical result in any man's mind when such a document is presented as the history of the domestic and internal affairs of the State of Louisiana—murders alleged by the wholesale, whippings, scourgings, poisonings, all sorts of loathsome and detestable crimes, and this running through a period of nearly two years? What is the question that any man asks of himself when a crime has been committed? It is, how was it punished, or why has it not been punished? Where is the law? Who is the delinquent? "The judge is condemned when the guilty is absolved," is a maxim older than the language in which we speak.

Grant that every word of these affidavits is true, horribly and strictly true, of what a system are such acts the fruit? What governor of a State, what member of any State government in this Union except Louisiana, would have assisted in preparing a compilation which not only attests the wretchedness and misery of his people, but shows his own criminal negligence and failure in his duty to protect them? Who would array this record of their misfortune and his own delinquency for their condemnation and his own defense?

The fact is known to the honorable Senator from Ohio and to every man in the land that the most shocking and cruel murders or murderous assaults were charged under oath against men walking at large in the city of New Orleans, almost within hearing of the charges so made against them, and not an attempt was made to arrest them, not an exercise of authority to bring them to the bar of that law which they were alleged to have transgressed!

It is a strange commentary upon the whole of these proceedings before the New Orleans returning board that notwithstanding the numberless crimes sworn to in their presence no one of the State officials present, or the distinguished witnesses, including the Senator from Ohio, seems to have sought or suggested the arrest of any perpetrator.

Mr. President, can it be that misgoverning officials are to produce this state of affairs and then to take advantage of their own wrong by alleging the results here in order to disfranchise—whom? The victims of their own misgovernment and neglect of duty? Sir, it is preposterous; it is monstrous. The sense of justice of men and women all over this land and all over the civilized world will revolt at it, and will declare that the community which has been made the victim of such atrocious misgovernment, so betrayed by its rulers, and now stained and defiled by the calendar of their guilt, should not be further despoiled of its political liberties.

It is against a rule which has made such crimes possible that the people of Louisiana have in successive elections raised their voices, and on each occasion in vain. The existence of such crimes unpunished by law constitutes one of the evils and misfortunes against which they have faithfully tried by forms of election to relieve themselves, and at each attempt have been ruthlessly thrust down by the unlawful interposition of the executive power of the United States Government.

It seems to me that the effect of this document, properly considered, will be to consign to everlasting shame and infamy those false men into whose treacherous hands the powers of control of that State have been delivered by fraud and by military force, and who never have performed the first duty of honest magistrates or honest government in suppressing crimes which they now parade as a justification for their further outrages upon the liberties of the unhappy people whom they hold in thrall.

I do not think that such an attempt as this, so short-sighted, has ever been presented before. It is not the truth, ghastly and terrible as it is, that I wish to shut out. Let it be fully known; but let it come accompanied by the knowledge that such are the results of congressional interference with local self-government in Louisiana, these are the results of executive military usurpation and of the throttling of the voice of a people who are crying in vain for mercy and for the attempt to liberate themselves from such a shocking condition of affairs. These are unanswerable arguments that truth and justice will deduce from the alleged facts against the continuation of such a state of affairs as culminates in the statement presented by the honorable Senator from Ohio to the Senate of events in the State of Louisiana for the last two years.

What Louisiana now is she has been made by carpet-bag legislation and government, sustained against the entreaties of her taxpaying citizens by the unwarranted intrusion of Federal military power. Shall she be still more cruelly punished because of her misfortunes?

I have said all and perhaps more than I intended to say in regard to this testimony, the source whence it came, the channel through which it was communicated to the Senate. I am far from denying both the power and the duty of the President of the United States to communicate to the Senate, and to both Houses indeed, all facts concerning the condition of the country which he thinks it advisable for them to know. It is in his discretion that they shall be communicated. Their weight is to be decided first by the Senate and House of Representatives; their weight is also to be considered by that honest and intelligent public opinion by which, in the end, all our acts must be judged and by which men and parties in this country must eventually be sustained or, being condemned, must fall.

Mr. ANTHONY. I wish to reply exactly to the question propounded by the Senator from Virginia, [Mr. WITHERS.] The cost of printing 10,000 copies—I find I had the memoranda in my desk—is $2,500.

Mr. SHERMAN. Mr. President, the Senator from Delaware, [Mr. BAYARD] has approached a portion of this Louisiana controversy which I think ought to be discussed when fairly presented. I do not know that I ought to discuss it now, although I am somewhat prepared to do so. When I went there I frankly confess that the trouble with me was, after ascertaining the facts, as to the remedy and as to the persons who ought to be chargeable with the grievous nature of things I found there. At first it was very natural to put the question put by the Senator from Delaware, why does not the governor of the State of Louisiana put a stop to these outrages; why does not he, armed with executive power, with the courts mostly republican, put a stop to this lawless murder and violence? That was a question that would be put by every honest man who viewed for the first time the actual spectacle of outrage and wrong among the people there, seeing men in the streets of New Orleans, as I did, who it was said were murderers, guilty of most foul murder. It seemed to me the first inquiry should be, why does not the governor of the State, why do not the authorities of the State seize these men and in some way punish them according to law? Upon that point I am prepared to show statements made by the officers whose duty it is to execute the law, that they have done all that the law allows, all that the law would permit. I can say to you that this day there are in the very hotel where all our committees, both of the Senate and House, meet and where they will hold their sessions, men who are known to have human blood upon their hands and upon their souls, and they walk openly upon the streets, well dressed, like gentlemen. I only repeat what my friend from Delaware has said when I say the question presented itself, why are not those men arrested? I have noticed in the papers within a day or two that two or three men have been arrested, charged with murder, in New Orleans, and taken before the courts; but under the laws there offenders cannot be arrested outside of the parish in which the offense was committed, unless it is shown that criminal proceedings have been commenced in that parish and are pending in that parish. The proceedings to carry a man from New Orleans to the parishes for trial can only be in aid of the constitutional right of every man to be tried in the bailiwick or the place in which the offense was committed; and therefore it is not possible to make these arrests in the city of New Orleans. When you go to the parishes, there the evidence is conclusive that this intimidation has gone to the extent that it is not possible even to hold a court in some of the parishes.

Mr. EATON. Will my friend permit me to ask a question. I have not the law of Louisiana; but is it possible that by the law of Louisiana a person charged with crime cannot be arrested anywhere within the limits of the State? Whether he can be tried out of the vicinity is another question. Is it so that by law a man cannot be arrested anywhere within the boundaries of the State?

Mr. SHERMAN. According to the law of Louisiana, as stated in the newspapers—I have not examined it—there must be a proceeding commenced in the nature of an affidavit or there must be an indictment pending in the parish where it is alleged the crime was committed. I have not examined the law myself; but that is as it is stated in the newspapers.

Now let me go a little further. When this question was put directly to Governor Kellogg and he was told distinctly, "These parishes are presided over by republican officers, and why are not evil-doers brought to justice; why are they not punished?" the answer was endeavored to be made by Governor Kellogg, and I have the materials here for a statement that would carry me far beyond what I intended in this debate, and what I will not embark upon; but it shows that this intimidation in certain portions of Louisiana has gone to such an extent as to overawe the courts, as to disperse the juries, and an actual case is shown here, by testimony of witnesses uncontradicted, that these regulators went inside of a court-house in one of the parishes and there demanded that the jury should be discharged, and it was done and every juryman resigned his office. They then sought to break up the court by the intimidation of the judge. The judge mantained his seat there until finally they intimidated the sheriff and shot him, and he was driven off. Another sheriff was appointed, but he could not perform his duties in that parish, and there has been no court there since. Such is the condition of society in Louisiana, if we can believe the testimony of living witnesses who have not been contradicted. The trouble is, I tell my friend from Delaware, that the white people, the lawless young men of the whites of the South, are determined that the negroes shall not exercise the rights that have been conferred upon them by the people of the United States and by the Constitution of the United States. That is the truth; and they have such power because five men can control a hundred negroes. The negroes, ignorant, uneducated, and accustomed to slavery, will flee from a shadow sometimes, and always from real danger; and a few white men can ride rough-shod over them. There is the trouble, that these white men are now engaged in a conspiracy against the Constitution of the United States, which gives to the negroes the right of suffrage. They will not allow them to exercise the right except in subordination to their will; and in carrying out their purpose they will tread down your law, scatter your courts, shoot your sheriffs, and hold that whole community in absolute terror and intimidation. There is the answer. I have here now proclamations issued by Governor Kellogg, which I saw published in the daily newspapers, plenty of them, offering from one to five thousand dollars reward for the prosecution and conviction of open, known murderers. Here their names are given and the circumstances of the murders. And yet such is the intimidation that no man dare seek to recover that reward, because he knows very well that the making of an affidavit against a well-known citizen of a particular parish would be his own death. That is the explanation of it. Now, there are staring you in the face, in the newspapers published in New Orleans at this moment, advertisements offering high rewards for the detection and punishment of murderers; but they cannot be arrested, and no process can be filed against them by reason of this wholesale intimidation. I could go into these particulars——

Mr. WHYTE. Will the Senator from Ohio allow me to ask him a question?

Mr. SHERMAN. Yes, sir.

Mr. WHYTE. I ask the Senator if, after this statement of the turbulent and disorderly condition of Louisiana, he thinks it is proper that the electoral vote of that State should determine who should be President of the whole United States?

Mr. SHERMAN. This condition of intimidation and violence extends wholly to five parishes, and to some extent to seventeen parishes; and if the condition of affairs throughout Louisiana were in the state I have mentioned in all the parishes, I should say with the Senator "No;" but it is localized, and it is confined to one party, though it may be unpleasant for gentlemen to know it; this organized violence is confined to one party. The idea that these white men are afraid of the negroes is absurd. The negroes are a timid, yielding, fleeing race; and when these tumults break out into violence, it is not the white man that is killed except in an isolated case here and there; it is the negro that falls a victim. The purpose is, the object of this whole movement is, not to prevent the election of Hayes so much, or promote the election of Tilden so much as it is to prevent the negro from exercising his right to vote. And yet, strange as it may appear, the Southern States now enjoy thirty-five electoral votes based solely upon the negro vote, based solely upon the negroes living in those Southern States. The white men vote those thirty-five electoral votes, denying to the negro the right to vote except here and there, in places where his vote will not do them any harm; but certainly in those States, where as is admitted by every man, such as Mississippi, and Louisiana, and South Carolina, and Florida, the natural inclinations of the majority would lead them to vote the republican ticket, there the system of terrorism is organized and carried out for the purpose of preventing them from voting.

But, sir, I will not go further into this matter, although I do think that what the Senator from Delaware says is true, that while these things exist there are other questions as to the causes of them and as to the mode of punishing them which he and I have not yet discussed and which ought to be discussed before the American people. I only say now that if I were governor of the State of Louisiana I would put an end to these things or perish in the attempt. I would not allow it to be said of me that I was governor of a people where I could not punish murder, and rioting, and whipping, and violence.

Mr. BAYARD. He is there against their will.

Mr. SHERMAN. That is the question. Is he there against their will? Whose will? The southern people down there cannot embrace in their idea that the will of the negroes is to be considered; and there is the secret of the whole matter—their will, the will of the white people is alone to be considered! If their theory is true, that only white people are to be consulted, then the government of Kellogg is a usurpation and a wrong; and that is their idea honestly entertained. I saw plenty of people, talked with them, honest men who really felt that this idea of negro suffrage and negro government was a humiliation and a shame to them, and that Kellogg was the representative of negro government. But, sir, the negro has the right to vote; he has the right to participate in the government. The laws give it, the Constitution gives it to him; and these men endeavoring to deprive this whole class of people in Louisiana of their right originate and organize all this trouble. If the white people alone were to vote in Louisiana, the Kellogg government has no foundation; and it is because the Kellogg government seeks to protect all these people to the extent of its feeble ability in the exercise of the elective franchise that this whole trouble is brought upon us. There is the key of the whole difficulty. It we ought to abandon as an impossibility the idea of carrying into execution in the Southern States the doctrine of negro suffrage; if that, gentlemen, is the ultimatum; if you say that you will not allow these people to vote where their votes would count against you for President; if that is what you mean, then you ought, in all fairness and honor, to surrender that political power which is based upon the negro; and yet that is the sober fact that, in those States where the negro vote could prevail or be made to prevail with the aid of comparatively few white men—as a matter of course we cannot get these States without the aid of the negro vote—the trouble comes from the effort to deprive the negro of his vote.

Mr. WITHERS. Will the Senator permit me to ask him a question?

Mr. SHERMAN. Certainly.

Mr. WITHERS. In the course of his inquiries there, which seem to have been very widely extended, can the Senator give me any explanation of what seems to be a very remarkable fact, that the negroes are prevented from voting by this terrorism in Louisiana, and yet the same negroes who are thus prevented from voting by bodily fear have no fear of putting themselves on record, signing affidavits to that effect.

Mr. SHERMAN. If my friend will read that mass of testimony of the witnesses, or a few of them, and I can give him the names of the witnesses, he will find an explanation of that whole matter. The uniform testimony of the witnesses, white and black, officers of the Army and others, is that the negroes naturally from the necessary course of things, unless prevented from doing so by intimidation, will vote the republican ticket, and the very few cases furnished of affidavits that have been prepared and in print—did you ever see one of those affidavits?

Mr. WITHERS. Yes, thousands of them.

Mr. SHERMAN. Printed in a formula that a man is called upon to sign.

Mr. WITHERS. Manufactured to order. No difficulty about that.

Mr. SHERMAN. There was the difficulty with the democratic party in the South. They manufactured, according to the statement of my honorable friend from Virginia, these affidavits, because there were affidavits produced of many negroes written out and printed——

Mr. WITHERS. I beg pardon. I merely meant to convey this idea, that the securing of affidavits to any given statement constituted no difficulty in these southern States; and when we have recorded evidence in the official reports before this body establishing the correctness of this assertion, I do not presume it is necessary to go further. Now, the Senator, it seems to me, begs the whole question in assuming that the negroes must of necessity be republicans, and must of necessity vote the republican ticket unless they are intimidated. If that assertion be admitted and accepted as true, that is an end of the whole proposition and he will have proved his case. It would be unnecessary in that case to have any election in any parish, but only go to the census returns and give the return to the candidate representing the race which was in the majority in that particular parish or county.

Mr. SHERMAN. I do not think any man who takes an intelligent view of the actual condition of Louisiana can fail to admit in the outset that, by reason of the unhappy divisions there, as a rule the white people vote the democratic ticket and the negroes the republican ticket. It is estimated, according to the best statements there, and I heard both sides, that there are about 7,000 white republicans and there may possibly be half that number of negroes who are democrats by association with their old masters and from ties of affection and who may have voted the democratic ticket voluntarily; but I

think that general statement of it is unfortunately true. The mass of the negroes, the great body, nine-tenths of them and more than that proportion, instinctively and naturally vote the republican ticket, and there are good reasons for it.

But the Senator from Virginia asks me if affidavits cannot be manufactured. I am afraid they can be; I fear it may be so. Perhaps it has been done on both sides; I do not know; but I know that we in the performance of what we considered to be a duty (and I think the democratic committee are entitled to the same credit) sought to have this testimony in the form of depositions, and the mass of this testimony is in depositions taken which would be valid evidence in the supreme court of Louisiana in a suit as to the title of the best sugar plantation in that State. The great body of this testimony is in the form of depositions, and wherever an affidavit was material testifying to an important fact, that witness was sent for and submitted to a cross-examination on one side or the other.

There is another unfortunate thing. I do not want to arraign the people of Louisiana; but here is their own registration and it shows this unfortunate condition of affairs, which may probably explain something of the charges of perjury. It happens that there are in the State of Louisiana 384,027 negroes who can neither read nor write. It happens that there are 150,759 white people who cannot read or write. That seems to be most appalling, that only one-tenth of the negroes of Louisiana can read or write, and only a little more than one-half of the whites can read and write! That is rather a staggering fact to a person accustomed to a community where everybody can read and write; and I have no doubt that the condition of society in Louisiana is largely to be attributed to the sad fact that education has not yet grown into life upon the population there, either white or black.

These are the sober facts; you have got to deal with these facts; and in dealing with them you will see that what I state to the Senator from Delaware is true, that while in the first instance the governor and the officers of the State ought to be called upon to explain these outrages, and the failure to punish the perpetrators, yet that failure has been sufficiently accounted for, not so fully as I would like to have it done; but I think I could show the Senator himself by the official papers I have, if I had the time to go into them at length, a pretty full explanation of the inability of the governor, by reason of the state of society in certain parishes there, to enforce the law and punish offenders.

Mr. BAYARD. Mr. President, I do not know but that the picture drawn by the honorable Senator from Ohio, [Mr. SHERMAN,] of the condition of the State of Louisiana under its present government is more hopeless and more dreadful than any fact contained in the terrible catalogue of crimes which he has produced here before the Senate. Sir, in every community there will be found lawless and wicked men; but every community that pretends to be civilized proposes to meet with condign punishment the criminals of every grade within its borders. But here, at the end of some eight years of unquestioned, untrammeled power by officials selected by the party to which the Senator from Ohio belongs, and which he desires to see continued in power, we are told by him that to-day a red-handed murderer cannot be arrested in any part of the State of Louisiana until proceedings by affidavit or indictment have been commenced against him in the parish in which his crime was committed.

Why, Mr. President, I cannot but think the Senator is in error, because he does not aver this of his own knowledge or sustain himself by authority, but refers loosely to newspaper declaration, and that not even produced. In such a statement, I cannot but believe he is in error, and that no such shocking condition of affairs does exist in that State. But, if it does exist, it forms but a still stronger fact to enforce the commentary which I was desiring to make. If it does exist, under whose rule has such a condition of law grown up? Who has had the legislative control of that State? Who have officered that State throughout all its departments, in every grade? Who but the very party that holds it to-day, and for whose continuation the Senator is, as ever, an advocate? What is this admission? That here is a community with what he claims to be an emphatic and positive majority of voters, composed chiefly, almost entirely, of colored men, with a mere scattering handful of whites; they hold every office; they fill and control every branch of the government, executive, judicial, legislative—everything is possessed by them; and yet disorder and crime are the only fruits.

Why, Mr. President, I have always heard that constitutions were made for the protection of minorities. It is supposed that when men are in a majority they can protect themselves; that when you arm them with all the powers of government you have not only given them equality of opportunity, which is the great equality in life, but you have given them even more. In this case we have had again and again the forcible interposition of the strong and the lawless arm of Federal power keeping and forcing those who to-day represent *de facto* the government of Louisiana in the seats of power which they have held for eight years.

Mr. SHERMAN. May I interrupt the Senator.

Mr. BAYARD. Yes, sir.

Mr. SHERMAN. I would like to ask him a question. Perhaps he may not want to answer it at present, but would he be willing to so arm, organize, and discipline the negroes of Louisiana as to enable them to defend themselves against this lawlessness?

Mr. BAYARD. Mr. President, I would not treat a black man in Louisiana with any less justice than I would treat a white man there. If I had it in my power he should stand where the law places him, an equal in his rights; but I would not attempt, after I had given him fair and equal opportunity, to eke out his deficiencies of natural capacity or of character by using force to overthrow the law which I have set up for the equal rule of the community. I know that the Senator would not wish to treat me disrespectfully by asking whether I would counsel injustice or illegality. I know he would not ask the question, because it would convey disrespect; but I only say to him that I mean fully what I say.

The laws of the land have given all that human laws can give. They have given to the colored people equality of opportunity. Now, that being given, how are you upon the basis of equal rights to undertake to supply the deficiencies and differences with which the Almighty has seen fit to mark his creatures, both as races and as individuals? We all know that men start in the race of life equipped perhaps with equal opportunities of information; it is so at the bar; it is so in any pursuit; but we start how? We start with the natural gifts which are not created or bestowed by statute law. They did not come from man, and by him they are not to be controlled. You might as well tell me that you could dwarf the intellect of a Webster to the stature of that of some half idiot, and say that because these grand and almost god-like gifts had raised the one to a position of weight where his counsel and thought swayed nations and senates, therefore the weak and the ignorant could, by some poor statute law or amendment to the Constitution, be raised to the level of the gifted and the strong. No, Mr. President, it cannot be and it never will be. All that we can do is to give a fair chance, to give, as I said before, *equality of opportunity* to the people of this country, to the poor boy equally with the rich man's son, to the black man who comes from his hovel or the rich white man who emerges from his palace. They must take their chances in this battle of life, and if they be deficient and defective, do not suppose that an act of Congress can undertake to remedy the fact. It will not do.

The admission of the honorable Senator is that you have not only given equality to the colored people in Louisiana but you have given them more than equal advantage. You have interfered to overthrow the natural advantages which superior intellect or experience in affairs or wealth may have given to the white inhabitants, once the dominant class in that community. Effort by effort has been made. All have been made in defiance of a principle that I tell you will defeat in the future as it has in the past those who suppose that the affairs of this life can be conducted in disregard of laws higher than those of men, and by statutes which disregard human nature, and every teaching of history and experience.

The shocking fact has been confessed by the Senator from Indiana, that a State equipped with all the forms of law, every office filled with the representatives of a party with whom his sympathy lies, has failed, utterly and hopelessly failed, to produce even the ordinary results of civilized government; that unhappiness, ruin, impoverishment, demoralization, confusion, strife, have all followed in the train of that which has been set up as the government of the State of Louisiana. It seems to me that every consideration that binds men together for a common good would join in condemnation and rejection of a system that had only borne such miserable results.

But there are some proofs of great delinquency which cannot be gotten rid of by alleging, as I said before, inaccurately as I think by the honorable Senator from Ohio, [Mr. SHERMAN,] that crimes however monstrous could not be checked by prompt arrest and punishment, unless you should seek the most circumscribed local jurisdiction for the purpose of commencing your proceedings against the criminal. Where else in the civilized world, outside of the State of Louisiana, can it be said that a man charged with murder cannot have the strong hand of the law laid upon his shoulder? Let me show who has created this state of affairs and what has been the history of the government by the present administration of the State of Louisiana.

Beginning on page 1563 of the second volume of the report of the select committee of last summer to inquire into Mississippi affairs, and following up to page 1587, will be found the deposition of E. L. Weber, of the parish of West Feliciana, Louisiana. Mr. Weber states that he is a senator in the Legislature of Louisiana from the twelfth senatorial district, and that he was returned to that office by the joint action of both returning boards in 1873, both by the Warmoth board and by the Kellogg board. He is an active member of the republican party, and, as a member of that party in the Louisiana Legislature, was preparing a report to that Legislature of certain alleged misconduct in parts of Mississippi. He gave his testimony, which is to be found on the pages cited, showing a most disorderly and outrageous condition of affairs in that parish. He was asked who were those who caused this state of affairs and who were the leaders? Among those leaders he described one Colonel Frank Powers. Colonel Powers had been referred to by other witnesses, in other parts of the investigation, as having been a man who would ride over from the border of Louisiana, where he lived, invade the adjoining county of Amite in Mississippi, intimidate the colored men and republicans at the polls, and after creating a riot would ride back to Louisiana. He was stated by many witnesses to be the chief brigand of that district, the head ruffian of the whole affair. At page 1577 Mr. Weber states as follows:

Question. How long have you been acquainted with Frank Powers?
Answer. Since 1870.

Q. You say that he acted with the republican party in 1870, I think you said first?
A. In 1872.
Q. Eighteen hundred and seventy-two, seventy-three, and seventy-four?
A. Yes, sir.
Q. Did he apply through you for office under that party?
A. Yes, sir.
Q. What office?
A. Tax-collector of Feliciana.
Q. How often did he apply through you for that office?
A. Quite a number of times.
Q. Did he finally obtain it?
A. Yes, sir.
Q. When was he appointed?
A. Appointed this spring, I think.
Q. By whom?
A. Governor Kellogg.
Q. Upon whose application and recommendation?
A. Upon our recommendation.
Q. And he holds the office now?
A. Yes, sir.

What is to be said of this case? Here was a citizen of Louisiana, who, if we are to judge by the testimony of some four or five republican witnesses, is the chief leader in all this ruffianism, part of which is described in the bundle of affidavits reported by the Senator from Ohio. If you assail an evil do you look to cure it by striking at the effect or the cause? You might as well tell me that when a man's system is parched with fever you cure it by scraping his tongue, as to tell me that you will cure evils of this kind without removing their real cause. How can ruffianism be abolished? How can law and order and peace be restored in a State when the governor of the State, with the full knowledge of the bad character of such a man as Powers, puts him in a position of high political and pecuniary power?

Why blame those unhappy people when they have not chosen this bad man to rule them, but over whom he has been set up by a governor against whom they have protested and protested in vain for the past five years. Must it not be that this great power which is able to override all law and justice, and to deprive white and black of the right of voting, this power of a State government strong enough within the last fortnight to disfranchise communities by the score and voters by the thousand, and almost the ten thousand, is not strong enough to protect the life, the liberty, and the safety of individuals? It will not do to answer people of common sense and just minds by saying they cannot. That which is so potent for the wrong must surely have some power for the right; but when wickedness and crime are thus placed and kept in power, how can you wonder that crime and wickedness are the results?

Sir, in this case I may trust that I am penetrated by a sense of justice that is not bounded by mere party name or feeling. If I am so biased I am sure that it is without my knowledge; but my sense of justice, the sense of justice that I think is common to every man who hears me, that which I may call the sense of justice of common humanity, must affix the responsibility for these wrongs upon those who have caused them, who have continued them, under whose power and with whose collusion they only could have been permitted to go unchecked and unwhipped of justice.

Statements have been made here, and it is said a great number is contained throughout this large bundle of affidavits, that men could not make affidavit of the facts or the deposition in the place where they lived and where the acts were committed, because their lives would not have been safe if made in that locality. Therefore they were compelled, they say, in disregard of law and under a necessity which knows no law, to go down to New Orleans and, days and perhaps weeks after the occurrence, to make, as lawyers say, *nunc pro tunc*, the statement which the law required to be made immediately upon the occurrence of the events and on the spot where it occurred. If these affidavits had been made public, and the depositions given in open court orally before a multitude, the allegation might have had some color of truth; but when you recollect that the affidavit was secret, that no one would know the contents of the affidavit but the man who drew it and the man who made it, usually the same person, how frivolous and foolish does such a suggestion appear. But I want against even such suggestions as that to state a broad fact which I believe to be sustained by all the evidence.

Since 1870 we have had sundry committees of investigation into the affairs of the Southern States. Upon every one of those committees, until those at the present session of the Senate, I have been assigned to duty; and therefore I have been present at the taking of numberless depositions, and I have given more than usual attention to the contents of those taken elsewhere; and here I am prepared to say that I never yet have heard, and I do not believe there exists a single case, where a man in any of those States has ever been assaulted or punished for giving testimony which we have made known to the world. If there be such a case it never has yet been presented to my knowledge, and when any proof occurs I will be ready to acknowledge it.

I have heard the statement made that there was testimony they were afraid to give. Afraid to give it! There stand sixteen volumes of testimony taken in 1871, and two more volumes taken about the State of North Carolina in 1870; and then two volumes in relation to Mississippi, amounting to something over 2,000 pages, taken this summer. These witnesses spoke freely. They could not have spoken much more freely. If there was anything left uncharged, really it would be hard to imagine it. There was scarcely a question or subject in regard to which they were not inquired of. If there was any wrong of any kind, personal, political, or social, to the class or individuals, they were invited to state it all; and they certainly stated a great deal, much of which was promptly and categorically denied when we would pin them down to names, dates, and precise facts.

Mr. BOUTWELL. If the Senator from Delaware will allow me, I know, if his recollection agrees with mine, he will recall a circumstance which I will mention. I ask him if he does not recollect that on one occasion certainly, and I think more, witnesses asked to be excused from answering questions that were put to them, on the ground of apprehension?

Mr. BAYARD. Yes, sir.

Mr. BOUTWELL. Also that a Mr. Shadd, a colored man living at Vicksburgh, I think, who had been speaker of the house of representatives of Mississippi, desired to be excused from testifying on the ground that he thought his life would be in danger if he came before the committee; and I laid the matter before the committee and he was excused.

Mr. BAYARD. Yes, sir.

Mr. BOUTWELL. That only goes to the fact of apprehension, not of injury.

Mr. BAYARD. I am glad the Senator has mentioned that fact, because whenever a witness, not only in cases of this kind but oftentimes even in civil suits, tells you that his answer will probably involve him in danger, discomfort, or disrepute, or something of that kind, you excuse him from the answer. The witnesses did so say sometimes; there is no doubt about that; and they were never pressed; but here is the question: Witnesses almost by the hundred did not ask for any such exemption, and they told anything, they told everything, they were swift to denounce and reckless in charges; and among the hundreds of those who testified to everything that came into their heads freely, where is the one who has been injured because of his testimony and whose fears of the consequences have ever been realized? Not one. I know some of them have expressed apprehensions. I do not say they did not feel them; but what I mean to say is that their fears were not realized in any single case where the truth, or what they said was the truth, came out openly. I do not desire to impeach the witnesses as a class; I will let the whole testimony do that; but I only mean to say that what I have before asserted is not only I believe perfectly true, thoroughly sustained by the testimony, but it is very pregnant with meaning. If such wholesale and bitter accusations can be made year after year and published with perfect safety throughout scores of volumes of reports, surely violations of election laws can be sworn to in secret without danger to the person who makes this affidavit; so that this professed apprehension and pretended intimidation is disposed of.

This, Mr. President, is about all that I need say at this time. I rose to draw the attention of the Senate as just men, and also the attention of all just men outside of the Senate, to the fact that a community is sought to be condemned for the faults which are expressly and proven to be the faults of those against whose rule they have for years petitioned and protested in vain. It does seem to me that the great heart of the American people will finally be penetrated by this just truth, that you shall not hold a man responsible for evils which you have taken from him the power to prevent; and that this terrible catalogue of alleged crimes, the proofs of misgovernment in this unhappy community, must not be arrayed in vindication of the very men whose default of duty alone could have permitted them to occur.

Mr. SHERMAN. Mr. President, the honorable Senator from Delaware seems anxious to force on this collateral question a discussion of the responsibility for the crimes committed in Louisiana. I am glad we have advanced one step in this debate and that these crimes are no longer denied. The honorable Senator from Delaware has stated the nature and character of these offenses as strongly as I could. Indeed, when I made the statement in my way, no stronger than he did in his, I was generally supposed to be unduly heated and excited. Now we have in the outset an admission that there is a state of society in Louisiana which is shocking to humanity and disgraceful to the civilization of our age, a state of society involving murder and all the crimes prohibited by any law, and that without the possibility of punishment. Here we have the sad fact acknowledged. Who commits those crimes? We shall come to the question of punishment hereafter, but who commits these crimes; in whose name are they committed; for what purpose are they committed? It will be impossible for gentlemen to go back of the sober fact that these crimes are committed for political purposes. Notwithstanding the half shade of expression of my honorable friend from Kentucky [Mr. STEVENSON] who went down to New Orleans, he cannot escape the fact that they are for political purposes; that they are mainly committed by white men to obtain political power; and that the reason why they cannot be punished is because they are above the law.

These are sober facts; and here I will cite a single instance, although I shall not go further into the testimony to show them. I have the report here of a judge where there was an effort made to bring to punishment the murderers of a man by the name of Gair, a most atrocious murder, which was committed, I believe, in East Feliciana Parish some time last fall.

Mr. STEVENSON. Will the Senator from Ohio permit me to ask him if the murder of Gair was in any sense political?

Mr. SHERMAN. The testimony shows it. The statement of the

Gair case would be an episode in itself; it would be a tragic episode with the circumstances which led to the murder of Gair and all the surroundings. It is one of the strangest stories that I ever read in my life. I will not stop now to read it, because I wish Senators to read it in the language of the judge. At any rate an attempt was made to punish those who had murdered Gair and who had murdered a woman also, and here is the statement. I read from the report:

The regular term of court commenced a few weeks afterward. The State authorities determined that, if possible, these crimes should be thoroughly investigated. What followed is stated in the official report of the judge, which is here subjoined:

NEW ORLEANS, *October* 15, 1875.

Hon. C. C. ANTOINE,
Acting Governor of the State of Louisiana.

SIR: Agreeably to your request by telegraph I have the honor to submit the following statement connected with the opening and adjournment of the fifth judicial district court in and for the parish of East Feliciana.

The court opened at ten a. m., October 7, the sheriff, Henry Smith, in attendance. The grand jury was impaneled, charged by the court, and returned to their room with the district attorney, A. E. Read, esq. The civil and criminal dockets were then called and cases assigned.

An appeal case from the parish court was taken up, and the trial proceeding, when the sheriff came into the court-room and in a loud voice, attracting the attention of the court, seemed to be wrangling with some person in the passage leading to the court-room. I directed him to keep order, as the controversy in which he was engaged interrupted the proceedings of the court. He came within the bar and sat down. I then saw several persons in the doorway smoking, with their hats on. I directed the sheriff to request them to take seats within the court-room or to cease smoking and take their hats off. They withdrew from the door into the passage, beyond the view of the court, the sheriff returning within the bar.

The case on trial proceeded, and hearing a disturbance in the passage-way, I called D. C. Hardee, esq., to the bench, and said to him, we must have order or the court cannot go on. He replied that from the appearance of the crowd he saw about the court-house he thought it doubtful whether Smith could keep order; that they were persons not to be trifled with. I rejoined, you know better whether he can control them or not. He then asked me if I was not aware of the opposition to Henry Smith. I replied that I had seen reports in the newspapers, but could not believe they were true. While this conversation was going on, the sheriff left the court room without my knowledge, and, as I was afterward informed and believe, while near the foot of the stairs was set upon by the same persons with whom he was previously disputing. He then ran into the court-house yard, and while there was fired upon by the crowd. I should think twenty pistol shots were fired. I heard some one remark in the court-room that they were shooting at Smith. Including the members of the bar, about twenty persons were then in the court-room. Looking into the court-yard, I saw Henry Smith limping, and an excited crowd talking to him. A consultation took place between several members of the bar, citizens, and myself; some advised that the court adjourn *sine die*, some an adjournment for a few days, others stating that with Smith as sheriff it was impossible for the court to proceed. One gentleman gave as a reason why the court should adjourn *sine die*, that if word should go into the country that Smith had been shot, both whites and colored would flock into town, and a conflict would be inevitable; word of adjournment would stop them.

Then he goes on and gave the reason for an adjournment.

Mr. EATON. Will the honorable Senator give the date of that letter?

Mr. SHERMAN. I did give the date. It is some time in October.

Mr. EATON. When?

Mr. SHERMAN. Last year, October, 1875.

Mr. EATON. Eighteen hundred and seventy-five?

Mr. SHERMAN. I will give you a case later in a moment. Smith was removed by Kellogg on account of the popular excitement and thereupon he appointed a democrat, for I have no doubt Kellogg has been sometimes compelled to appoint democrats:

It was represented that the opposition to Sheriff Smith in East Feliciana was because he was a colored man and ignorant. Governor Kellogg obtained Smith's resignation (he had been elected to his office by a large majority)—

He was not appointed by Kellogg at all. He was elected—

and appointed in his place Dr. J. R. Monahan, an old and respected white citizen of the parish, hoping thereby to secure the enforcement of the laws. But matters simply went from bad to worse.

The result is that there has been no court held there; the judge cannot hold his court. Here I have another statement which I will read, which is of a later date, the statement of a parish judge.

Mr. THURMAN. I understood the Senator from Kentucky [Mr. STEVENSON] to say that the Gair case was not a political murder.

Mr. SHERMAN. I say I think it was a political murder.

Mr. STEVENSON. I think it was not, and I think I can state that upon the authority of Kellogg himself. The subject was discussed before him. I think it grew out of the poisoning by a black woman of a certain family in some parish in Louisiana, and being taken up she acknowledged the fact that Gair had induced her to poison the family; and in the indignation of the moment he was seized, as I understood, by a party of people from Mississippi; but from where it matters not. It grew out of that affair as I was informed.

Mr. SHERMAN. I hope I shall not be further interrupted.

The PRESIDING OFFICER. The Senator from Ohio will proceed without interruption.

Mr. SHERMAN. I am not going into these collateral questions, and I do not want to be interrupted. Whether the murder was political or not it is enough for my argument to state the fact that it occurred. My understanding is that Gair was murdered for his politics, and the testimony taken will show that to be the case. The cases of Gair and Pinkston are marked cases, and I think they were both political murders. I have no doubt my friend from Louisiana [Mr. WEST] could at once tell me. I will cite another case to show that this organized intimidation extends not merely to the poor negro, but that it goes to the fountain of justice.

STATEMENT OF JOHN S. DULA.

I am parish judge of my parish, (parish of West Feliciana.) For the last year there has been an organized band of white democrats, styling themselves bull-dozers and regulators, who patrolled the entire, and, by threats, acts of violence, and burning houses, have intimidated the colored people to such an extent that few have the hardihood to openly declare themselves republicans. These parties I have seen, and speak of what I know. About a year ago, about the 25th of October, 1875, about three hundred regulators, all armed with shot-guns, rifles, and pistols, who I was notified came to demand my resignation as parish judge. About eight o'clock I shut my store and went to the residence of a friend, and shortly afterward they broke into my store, gutted it, and left with a colored man, an acquaintance of mine, a resignation to the governor of my office of judge, and left word that unless I resigned it by the next day at four o'clock they would take my life. I sent them a refusal, and took boat for the city of New Orleans, where I remained for three months. I then returned, and after heard it remarked that the damned radical officials must leave the parish if they value their lives. For the three months just before the election the parish has been patrolled by the bull-dozers. About the 1st of May last—

Here is the particular case to which I wish to call attention—

About the 1st of May, 1876, about fifty or sixty armed democrats rushed into the court-house where I was holding court, and the republican members of the police jury were summoned and commanded to resign at once on pain of death, which they did. There has been several murders within the last three months, one of whom, Isaac Mitchell, a prominent republican, but who was an inoffensive man, and who held no official position, who owned his own farm and worked it, and who attended to his own business, but who refused openly to join the democratic clubs and rebuked colored men who did so.

He afterward goes on to state the murder of Mitchell. Here was a case of a parish judge against whom there was no hostility and who, while pursuing his ordinary duties, was driven from his court. I do not want to go into details. We have got down now to the main facts, and I wish to impress them upon the Senate and the country. First, the degree of crime, offense, and wrong in Louisiana is substantially admitted. That is what is meant by the legal phrase "intimidation." Next, the question is, who is responsible? That is the question put us by the Senator from Delaware. I say distinctly that it is the unlawful conduct of white democratic clubs. There may be here and there instances of violence and murder on other accounts; there may have been murder for other reasons; but had it not been for the overriding power of these democratic clubs, who go armed by night and by day, driving unoffending negroes from their cabins, there would soon be peace there, because there would be an instinct of self-preservation which would make the property-holders rise and put down these disturbances; but when this organization is for political ends and for political purposes, it overawes the whole white population, and the negro population is powerless. These crimes are committed for political purposes. That is my answer. What is the remedy? There is one remedy, it may be; that is the remedy of the Senator from Delaware. He wants these negroes to knuckle down, to surrender their elective franchise, because that is the effect of it.

Mr. BAYARD. I beg the Senator's pardon; does he say "the remedy of the Senator from Delaware?"

Mr. SHERMAN. I say I think that is the result of your remedy.

Mr. BAYARD. Is the Senator referring to anything I said?

Mr. SHERMAN. Not at all. I say the result of the remedy proposed by the Senator from Delaware would be the practical subjection of the negroes to the white race, and I am going on to explain it. His idea is that white men are better, stronger, and have a higher intelligence. They will exercise their due influence undoubtedly. The white men of the South will naturally in the course of time rule in the Southern States, perhaps in all of them; but what I object to is that they should gain that rule by intimidation and lawless acts. If they can win the negroes to their side, even to vote the democratic ticket, let them do it; it is their right. If their intelligence and wealth enable them to do it, we cannot object; but that is not the cause of what we witness in Louisiana.

Mr. BAYARD. May I ask the Senator just there, is there anything that fell from me in this debate or anything ever known by him of me, privately or publicly, that would make him believe or justify him in stating that I desired that any man in this land should be ruled by intimidation and violence?

Mr. SHERMAN. No, I did not state that. My friend is too sensitive entirely. I say that the result of his policy and the result of his ideas would be to subject the black man to the absolute control of the white man. There are three modes of dealing with this question, and the time is coming when we have got to look to it, either during this or the next administration. You may allow these lawless acts of violence to have their natural effect of overawing and intimidating the black race, and thus give to the slave-holders, or those who were slave-holders, increased political power to be exercised by means of these freedmen and through the votes of these freedmen. If so, you will have peace. Let the black men knuckle down and vote the democratic ticket, and you will have peace; but is that the kind of peace we want in this country? Suppose that the natives of this country, who are in the majority, should say to the naturalized citizens, "You have no right to vote in this country; you have no right to rule; you were not born here; we will ride over you rough-shod;" would you like to see the natives successful upon such a proposition? No; the instincts of humanity would be at once for natives as well as naturalized citizens, to resist such an attempt. That is the condition of society in the South, and especially in Louisiana, and I only wish to deal with Louisiana now. The leaders there are organized with the intention of preventing the negroes from exercising the elective franchise. They intend to do it if possible by coaxing, if necessary by throwing

them out of work, and, if that is not effective, by whipping an occasional negro, driving them out from their cabins, and if the worst comes, murder. There is the fact. Is it wise, is it good for the people of this country that this policy should prevail? Down there they call it "the Mississippi policy." They all speak of it as "the Mississippi policy." It came originally, I believe, from Georgia. It is said to have come from Georgia; but, wherever it came from, the effect has been to overawe and keep down the negro vote, and that is the purpose in Louisiana. Now, gentlemen, I say it is not best for the people of this country, it is not best for the Senate, it is not best for any State that this should be the case. If you can win the votes of the negroes, whom you must in the main employ, whose labor is the foundation of your wealth and prosperity, the ancestors of whom lived for generations as your slaves—if you can win them by kindness, God speed, win them; but when you overawe them as you have done in the Southern States, especially in Louisiana, when you seek by violence to intimidate and control them, then you have prescribed a remedy which strikes at the very foundation of our Government. It is a remedy worse than the disease, and I tell you that if it succeeds in this instance in electing a President of the United States, these same scenes of violence now practiced upon the poor negroes, the same degree of intimidation which now holds them as slaves, will extend gradually all over the United States of America and our Government will be at an end. If you once show a successful attempt at this policy, a successful enforcement of it by the election of a President of the United States through force and violence, through intimidation and threats, you destroy the fair fabric of our Government founded upon the blood and achievements of our ancestors and there is an end of republican government. That is "the Mississippi policy," and that policy has been in force in Louisiana. I do not care who he is that has been there, he cannot deny it.

Mr. GORDON. Mr. President——

The PRESIDING OFFICER, (Mr. CLAYTON.) Does the Senator from Ohio yield to the Senator from Georgia?

Mr. SHERMAN. I would rather the Senator would not interrupt me just now. I should be very glad to yield, but I prefer to go on.

Mr. President, that is the condition of affairs there. I say no one will fairly look at the condition of affairs in Louisiana who will not admit the facts. We hear talk about the remedy. I say the remedy which has been proposed to cure the evils of the State government of Louisiana (I may admit that they are many) is worse than the disease. If these white people had come forward in the exercise of the elective franchise and sought to gain the favor of the blacks by quiet means, and they had divided off between the republicans and the democrats, made new issues, any issues whatever, and gained political favor, I should have no objection; but the means they have resorted to is like the gangrene, which spreading inch by inch will destroy the whole body-politic. Therefore we dare not if we would and we would not if we could allow this system of intimidation to prevail. It is not best for us nor for those who are to come after us that the example should now be set, in this centennial year of 1876, of large communities being overawed by intimidation and their votes so cast as to control the election of a President of the United States. Whether Hayes or Tilden is elected is comparatively of little importance. Neither of them can so guide this great country of ours as to turn it from its course. Neither of them as President could exercise such influence as greatly to injure our country; but the result of an election by violence, controlled and overawed by fear, even upon the humblest and weakest of our citizens, is far worse than the election of Mr. Tilden or the restoration of the democratic party to power can be.

There are other remedies, but I do not like to discuss them. If you choose to withdraw and to turn over to the white people there the utter control of this matter and leave the blacks of Louisiana in the same condition that the blacks in Mississippi are, there is the success of the democratic policy. On the other hand, there is another way. We can teach the negroes that they have an inherent right of self-defense. By the law of most of the Southern States—I am informed by the Senator from Tennessee that by the law of Tennessee it is so—any man, black or white, can shoot down these lawless bands that are parading around his home at night; it is justifiable homicide. I am told this is the law in several of the Southern States. Such a thing could not exist in Ohio. If a band of republicans in the strongest republican community anywhere in Ohio should go around and molest or overawe the weakest democrat in the land the whole country would be in arms. It could not occur in Ohio; it should not occur in Louisiana. The law of self-defense can correct it. The negro might soon be taught, especially in those parishes where there are three black men to one white man, that he has the right of self-defense; but who wishes to even suggest or intimate or anticipate such horrors? Who wishes to see a war of races? Yet rather than see what has occurred in Louisiana these men will learn, not from you and me, not from our teaching, but by the instinct planted by Almighty God, that they can resist these outrages; that the negro can defend his cabin, his wife, his children from these outrages; and that he will be justified by the laws of God and man in repelling these assaults, whether they come by day or by night. I do not want to see this done; I fear it; and yet it will come, whatever policy may direct in this country, unless you give to the negroes the rights which are secured to them by the Constitution of the United States.

Another remedy is beyond our reach. A great many cautious and prudent men have feared that they went too far in the passage of the fifteenth amendment; that while this was a barren gift to the negro it has been a bounteous gift to the men who waged war against us; that we have given them thirty-five electoral votes upon condition that the negro should have suffrage, and now they keep the votes and deny the suffrage. That cannot last long. You may win one presidential election upon it, you cannot go further. The instinct of justice, which is implanted deeper than party lines, deeper than sectional lines, will correct this evil before many years roll around, not by revolution, not by bloodshed, but by the strong arm of the popular will, on account of this glaring injustice, made prominent in this presidential canvass, that the men who sought to overthrow the Government, having gained political power, then refuse to give the negroes, upon whose heads and shoulders this power was granted, for whom it was granted, the right to vote, but intimidate them, whip them, kill them occasionally, and terrorize them. It will not do.

These remedies I did not wish to discuss. My friend from Delaware has drawn me into it, and I say now again that the democratic policy does only magnify the evils under which we labor. Kellogg may not have been a good governor, but I do not admit that. He certainly has been unable to put down this violence and wrong. He gives the best reasons he can for his failure to do it, and I think they are good reasons. I do not think he ought to be condemned in advance. The Senator from Delaware himself said in regard to Governor Grover that we ought not to too hastily denounce or criticise the action of so high an officer of a State government; but no such charity has been extended to Kellogg, although he was once a member of this body. His disability there with the whites against him has never been considered with charity. I am not here as his advocate or defender. I am afraid that I ought not myself to be trusted with the power of a governor of the State of Louisiana, for there would be something either cured or made worse in that community.

Sir, the real trouble in this whole matter is the political attempt made in the midst of a presidential election to organize a party upon the color line to ride rough-shod over those who naturally vote the republican ticket, so organized as to be confined to but a few republican parishes, and with the design and purpose of making a man President of the United States who is not elected by the free choice of the American people. This ought not to be, and I believe the sober sense, the candid judgment, the quiet consideration of the people of the United States will not have it so. Not that I anticipate war, or trouble, or bloodshed, but I do believe that the mind of the people of the United States, North and South, is daily going forward to the determination that this thing ought not to be allowed to be consummated by the triumph of the democratic rifle clubs in the State of Louisiana. The remedy will come of itself. All that is needed is a wise, considerate, and just rule in these Southern States. I see no difficulty outside of this. There are no questions arising in the Southern States growing out of the late war. There is no reason why the Southern States and the Northern States should not now be organized upon a basis entirely distinct from the questions of the war, from the questions of slavery, but the only solid basis is equal and impartial suffrage freely yielded, with protection to all, white and black, in their rights and punishment against offenders; and unless you yield that you will be in constant turmoil and trouble; the South cannot revive her drooping industries, she cannot recover her losses by the war. Men who would naturally go to her and mingle their blood with hers and add their labor to hers will never go there with these scenes of outrage continually ding-donged upon their minds and proven by living witnesses. You cannot have that mingling of blood between the North and the South necessary to make a great and a free people; you cannot make it homogeneous under such a condition of things. There is nothing in the condition of society in the South except this one question of race that ought to keep us asunder a moment. Take away the prejudices and jealousies that grow out of this race question and we would mingle, and mingle cheerfully and kindly and happily together. All the political questions of the future that are likely to arise will arise upon other issues than this question if only the South will stop this intimidation, allow these negroes their rights, win them by kindness if they will, and secure them in their rights and protect them against lawless violence. I do believe that under a wise policy, with an administration that will be firm in maintaining the rights of the blacks as well as be generous to the whites, all the clouds that are now lowering upon our house will pass away and be

In the deep bosom of the ocean buried.

Mr. WEST. Mr. President, in this running debate on Louisiana affairs I find myself compelled to continually interject remarks in reply to Senators who either are not informed in regard to the subjects on which they treat, or view matters differently from what I do and from what I think the Senate ought to view them. The question was asked here a few moments ago by the Senator from Delaware why it was, if such a state of intimidation and outrage existed in these parishes, that the witnesses who came to the city of New Orleans to testify before this returning board could return unmolested to their homes and live in peace. I think I understood the Senator correctly.

Mr. BAYARD. If the Senator will allow me, I asked why it was that an affidavit which could be made in New Orleans and published there could not be made and put secretly in a paper in the parish where the law required it to be made and did not require it to be published

at all? If the Senator will permit me, the excuse given in various cases for the non-performance of the laws of Louisiana in not having the affidavits made at the time when the events were fresh and on the spot where they should be made by the party making them, in order to accompany the returns of the election, was that those affidavits were not made according to law as to time and place because of intimidation. Now my question was this: as the affidavits were only to be known to the persons who made them, sealed up and put in envelopes and conveyed in confidence to New Orleans, where was the difference in the amount of danger between the man who makes his affidavit secretly in De Soto, for instance, and the one who makes it openly in New Orleans? In either case New Orleans was to be the only place where publicity occurred.

Mr. WEST. In the city of New Orleans there happen to be at the present time perhaps from six to eight hundred troops of the Federal Army to maintain the peace. It is not a very convenient matter for an ignorant negro in the wilderness of the parishes throughout Louisiana to make affidavits without its being known to these white regulators; but they have come to New Orleans and under the protection of the Federal power they have made these affidavits; and how have they been treated on their return to their homes in the parishes where intimidation prevailed? Night before last I received a telegram from the United States marshal of Louisiana, stating the fact that every witness who had been to New Orleans to testify in regard to these outrages, upon his return to his home had been driven again from there, and was obliged to desert his crops and his home; and in some instances I think it will be proved that even greater violence has been done those witnesses than such as I have stated. At all events, the subject is now in the hands of the proper officers of the law, who will examine it, and I am in the hope that justice will be done; but such was the telegram, that when the witnesses who came to the city of New Orleans to testify under the protection of the National Government returned to their homes, they were persecuted and driven therefrom, and some of them killed.

I wished at one time while the Senator from Ohio [Mr. SHERMAN] was speaking to allude to the case of John Gair. I will state the facts as far as I have knowledge of them. It has been charged that that murder was not a political murder. John Gair was a noted, outspoken colored republican, a natural leader and organizer of his party in the district of country where he lived, obnoxious from his color, obnoxious from his principles, obnoxious from his efficiency, to the other party which undertook to control political matters in that section. A certain Dr. Saunders in the town of Jackson, Louisiana, was taken one day with the colic. Dr. Saunders's cook was John Gair's sister. Dr. Saunders immediately imagined that he had been poisoned and a band of regulators came around the house and took that poor woman under a tree and took her dying confession that she had been instigated to poison Dr. Saunders by her brother, John Gair. The sequel of the poisoning case was that Dr. Saunders in four or five hours got over his colic and this woman, a sister of John Gair, hunted tall timber and was hung to a tree; and this band of regulators after getting through that operation went down to the parish jail where this man Gair was confined on some charge, and took him out upon the allegation that they were going to carry him back to this place and prefer a charge there that he had been an instigator of the poisoning, but they shot him upon the road, and that was the end of Gair. Whether that murder was political or otherwise, is for the country to judge, as many of these deeds of violence have been laid before them and they can form their opinions.

Now we take the case of Powers. The Senator from Delaware was particularly severe upon the governor of Louisiana for having appointed a noted regulator as tax collector. That was the governor's method of making terms with a bull-dozing democrat. He sought the peace of that community when they had expelled the legitimate officer, and made terms with an outrageous murderer.

Mr. BAYARD. Is that the customary action of the governor?

Mr. WEST. I will come to that. I am perfectly willing to admit that if we give the murderers of Louisiana, yes, sir, and perhaps if we give the lawless democracy of this country the offices, probably we shall have no trouble. There was a small example of it in that State. What does Mr. Weber say? The testimony goes to show you that this man Powers was at the head of these regulators. He confessed that he was their chief; he stated what their organization was; and if you will read the testimony you will find that all the while he was hunting office, that if he could only get an office he would stop murdering.

> Question. Did he apply through you for office under that party?
> Answer. Yes, sir.
> Q. How often did he apply through you for that office?
> A. Quite a number of times.
> Q. Did he finally obtain it?
> A. Yes, sir.

I desire to state right here that it was a matter of impossibility, almost, to get a responsible collector to collect taxes. Among those that the governor was considering we recommended Powers. Of two evils we chose the least.

The Senator from Delaware spoke of the unquestioned and untrammeled authority of the republican party in the State of Louisiana. Has the Senator not questioned it here successively for four years? Has he not risen in his place again and again, and once more to-day, and denounced the government of Louisiana as a usurpation? Has he not instigated by his example and by his precept men to revolution and to violence and to murder in that State? Does he remember that in September, 1874, by these very encouragements that had been received from here, a democratic mob rose in the city of New Orleans and undertook to overthrow the governor, sacrificing in that attempt some fifty or sixty lives? Does he not know that throughout that State in consequence of that action republicans were hurled from office even in this very parish? Does he not know that the authority of the republicans is disputed everywhere in that State, with no other redress and no other alternative except the one that the Senator from Ohio has spoken of, that the blacks should arm to protect themselves against the violence of the whites? How futile such an attempt! What was the history of the late rebellion? Could you have conquered the South by merely arming the blacks? Could the General of your armies have rallied around him there a force and pitted them against all the intelligence and courage of the white race of the South and have subdued them? No; but it took all your power here at the North aided by these black men to bring about peace. Now we are again remitted to that contest, and we are asked to let the poor black man fight it out. In this very parish that the Senator speaks of, and many others throughout that State, when an officer holding under republican commission so discharges his duty as to make himself obnoxious to democrats they rise *en masse* and whistle him down the wind; and you talk about untrammeled and unquestioned republican authority!

The governor of that State has been powerless. Whether his policy has been the correct one or not I cannot say; but we see that whenever peace is made by giving a murdering democrat an office then we find that all is tranquil and lovely there, and I have no doubt to-day that if we were willing to forswear and give up our rights as republicans and as citizens of the United States we could make terms there unquestionably, and peace and good order would reign. But that, I am sure, cannot be desired; that, I am sure, cannot be expected from us. If it does, if it ever comes to that, I think we must lay down our manhood by such a renunciation.

Mr. BAYARD. Mr. President, one word. Perhaps the rules of order of this body might have been invoked when any Senator was charged with having by his precept and his example led to lawlessness and outrage. Such was the language in effect used by the Senator who has just taken his seat in regard to me. But I do not invoke the protection of the rules. It seems to me that it might have been wiser for him to have abstained from such remarks; for on the one side stand the records of my debates in this Chamber and stands the record of my personal life, and on the other side stands the charge. I leave them there to those who know both.

One word so far as affects the public interest in this question, and that is all that this debate should touch, for it was the last idea of mine in this debate or any other that there should be a personal suggestion made in it. I had made none except as bearing upon the official action of those who are properly to be considered responsible. But here again in the Senate is made a second confession by those who advocate the continuance of Governor Kellogg's rule in Louisiana, that he has made terms, by appointing to high official station, with a most lawless scoundrel. Why, Mr. President, is there any other State in this Union where if such a fact did exist or were proven but that the governor would be necessarily impeached by the Legislature in accordance with their duty. Think of it. As an excuse for the lawlessness in Louisiana, that the chief executive officer of the State shall make terms with a confessed scoundrel by giving him high office. O, sir, it seems to me that the case grows worse and worse as those who advocate that side of the controversy proceed.

Mr. WEST. Allow me to say that this man Frank Powers, that the Senator speaks of, was highly recommended by the democrats of that parish.

Mr. MORTON. Mr. President, I simply want to congratulate the cause of humanity and of justice upon the evidence of progress we have had here to-day, and that is that the existence of these horrible crimes in the Southern States is no longer denied. The general system of denial which has prevailed for years seems to have been broken down. The character of these enormities has not been denied in the debate to-day; and, according to my recollection, it is the first debate of this kind that I have witnessed on the floor of the Senate where the existence of these crimes has not been denied.

The Senator from Delaware, however, asked why they are not punished. He seemed to put that question as if the fact that they were not punished was a justification for the crimes. "Why," said he, "are they not punished?" Mr. President, the answer to that question is on the surface. They are not punished because that intimidation which prevails in the South enters the court of justice, enters the jury box, enters the witness box, and prevails upon the bench with the judge. You can never have justice in any country where assassination awaits the juror and awaits the witness. The same force and violence that drive men from the polls prevent thousands of men from exercising their right, or compel them to vote a ticket that they abhor; that same force and violence intimidate the judge on the bench, and the juror in the box, and the witness upon the stand.

The Senator asked this question, how can ruffianism be abolished. I will tell him one long step toward abolishing the reign of ruffianism. It is when a great party shall no longer ignore its existence, when a great party shall no longer excuse it, when a great party shall no

longer find justification for it. When its existence is admitted and when you go one step further and denounce it, you have taken a long step toward abolishing the reign of ruffianism. We have witnessed one step upon this floor, and a long step, and that is the admission of its existence. We have seen that a democratic committee that went to Louisiana for election purposes and came back with a plea, and a pettifogging plea, for their cause, were still compelled to admit in that plea the existence of these enormous crimes. One long step has been taken, I hope the next will speedily follow, and that is the denunciation of the terrible crimes that are admitted to exist.

Mr. President, a friend has put into my hands the report of the Mississippi investigation of this year, and as one of the ways in which justice is not administered and to show why these crimes are not punished, I will ask the Clerk to read a letter from William F. Tucker, of Okolona, to the foreman of the grand jury in the district court of the United States, as a reason why bills were not reported and criminals were not punished.

Mr. STEVENSON. The volume and page?

Mr. MORTON. Volume 2 of the Mississippi investigation, page 151 of the documentary evidence.

The Chief Clerk read as follows:

OKOLONA, MISSISSIPPI, *June* 12, 1876.

DEAR BILL: It is reported here that true bills are to be found against all the country around Okolona for the raid on the negro Baptist church and the charge of Stovall's brigade upon the viewless air from Egypt on day of election. If this be true, you ought to know; and I presume you do know that you, and you alone, will be held responsible for the action of the grand jury. You can very well imagine how pleasant a life you will lead among, say, two hundred men, who would all charge you with organizing a prosecution against them. You know I have always been your *personal* friend, and it is as a friend that I write to say if you are not already committed to that line of policy, don't allow the bills to be found. I think you know me well enough to give me credit for sincerity when I make such a suggestion.

I have abundant reasons for making it.

All well.

Yours,

W. F. TUCKER.

Mr. MORTON. There is the threat transmitted by a man who is said to be respectable and a prominent lawyer, to the foreman of the grand jury. I will now ask the Secretary to read the return made by the foreman of the grand jury to the judge of the court on page 150.

The Chief Clerk read as follows:

UNITED STATES GRAND-JURY ROOM,
NORTHERN DISTRICT OF MISSISSIPPI,
Oxford, July 8, 1876.

Hon. R. A. HILL, *Judge, Presiding:*

The United States grand jury for the northern district of Mississippi, at Oxford, June term, 1876, beg leave to report that they have examined two hundred and eighty-one witnesses, and found ninety true bills. A large majority of these bills were for violations of the revenue laws.

Although we have had a protracted session, we have only made a partial and cursory examination of the innumerable cases of violations of the election laws that have come to our knowledge. We regret to report that, from the examination had, we must say that the fraud, intimidation, and violence perpetrated at the late election is without a parallel in the annals of history, and that time would fail us to take the testimony that could be easily introduced demonstrating the fact that there is sufficient ground for the finding of thousands of indictments against persons who are grossly guilty of the above-mentioned violation of the election laws.

From the facts elicited during this grand inquest, and from our own knowledge of the reign of terror that was inaugurated during the late election campaign, we can only recommend to the citizens of Mississippi to make an earnest appeal to the strong arm of the United States Government to give them that protection that is guaranteed to every American citizen; that is, protection in freedom of speech, in their person and property, and the right of suffrage.

We do assert that all these rights were openly violated and trampled in the dust during the late election, and that there is no redress for these grievances under the present State government; and unless the United States Government enforces that shield of protection that is guaranteed by the Constitution to every American citizen, however humble and obscure, then may the citizens of Mississippi exclaim, Farewell to liberty! farewell to the freedom of the ballot-box!"

In conclusion, we would tender our thanks to his honor Judge Hill for his clear and concise charge made to us on our organization as a grand jury, and to the district attorney, Judge T. Walter, and his able assistant, B. W. Lee, for their able and impartial counsel during our sittings, and also to Colonel J. H. Pierce, marshal, and his indefatigable deputies, for their promptness in the discharge of their duties.

Respectfully submitted and adopted by the grand jury this 8th day of July, A. D. 1876.

WILLIAM D. FRAZIE, *Foreman.*
W. H. DODSON, *Clerk.*

The above is a true copy of the report of the United States grand jury at the June term, 1876.

B. W. LEE.
Assistant United States Attorney.

Mr. MORTON. Mr. President, so much on the question why these crimes are not punished. Since these crimes are now admitted, the next proper and natural step is to denounce them. Democratic committees go South; they come back with long pettifogging briefs which they call addresses, and publish them to the country; they admit the existence of these crimes, but have few words of condemnation, expending columns in the discussion of small questions of law, and overlooking the main great issue. This last campaign was a campaign of intimidation everywhere. My friend from Illinois [Mr. LOGAN] has put into my hand an extract from a democratic paper in Atlanta published just before the election, which fairly describes thousands published through the South during the recent campaign. I will ask to have it read.

The Chief Clerk read as follows:

[From the Atlanta, (Georgia,) Commonwealth, November 7.]

If there is any man in Fulton County with a white skin who is so lost to self-respect as to vote for a radical on next Tuesday, the community have an interest in knowing who he is, and we call on the democratic executive committee to see to it that the names of all such are enrolled for publication within three days after election.

Neither money nor social consideration will deter the Commonwealth from publishing the roll of infamy after the election is over. The white men of Fulton who vote the radical ticket on Tuesday are enemies to the people of Georgia, and their names shall be blazoned that all Georgians may know and shun them. This supreme struggle must extend to business and social relations, and he who is base enough to vote for our continued enslavement and degradation must be made to feel that he has committed a crime against his color, his family, and the best interest of the whole people.

Mr. MORTON. That editorial, of course, requires no explanation. That is one form of intimidation; but it is not that form of intimidation of which so much complaint has been made in Louisiana, South Carolina, Florida, and other States. It is that other form which comes with violence, with murder, with every kind of torture and of outrage. Whenever that shall cease to exist, or whenever all parties in the North shall come to condemn it, then we shall have peace in this country; but so long as there is a great party that ignore it, or who find excuses for it, or half way or full justification for it, so long it may be expected to exist.

Mr. BAYARD. Mr. President, I feel compelled, in the performance of a simple duty of justice, to have the other side of this story of the presentment of the grand jury of Mississippi brought before the Senate. The letter of Tucker to Frazie has been read, a letter whose impropriety no man can doubt; a letter for which Frazie showed his contempt by making it public, which gave a very good idea of how much he was intimidated by it. If it had been shown to the judge of the court, as it was Frazie's duty, a bench warrant would very soon have brought Mr. Tucker there to answer for an attempt to influence or intimidate a grand jury. But I find that there was sent into the Senate by the President of the United States a letter from the United States district attorney accompanied by this very report of the grand jury. It appears that that grand jury was composed of twenty-one members, consisting of twenty republicans and one democrat. It appears by the laws of the United States that, while the white men of Mississippi and other States are held accountable for the wrongs and outrages which are committed in the States, they are not allowed to sit upon the juries and raise their voices and give their votes in condemnation and punishment. At this very time and hour—I say it to the discredit of Congress—if any man ever gave even a cup of water to his dying son, if that son had been in arms against the United States, if any man in any way gave aid or comfort to anybody that he knew to be engaged in warfare against the United States, that fact forms a cause of disqualification and a ground of challenge that shall not allow him to sit upon any grand or petit jury in any court of the United States. Mr. President, is this wise or right, thus to keep from the jury that class of men whom you are constantly invoking to enforce the laws, and whom you prevent from taking a citizen's share in their enforcement? Why should not that law be repealed? Twice the House of Representatives has sought to repeal it, and as often the Senate has defeated the attempt. These men are in the Union; they are in the States; they are subject to the jurisdiction of the laws of the Government of the United States. Pray, should they not be as citizens, and ought you not, when you call upon them for the duties of citizens, give them the ordinary and usual privileges and powers of citizens? So it is to-day that on that grand jury there stood twenty republicans and a single democrat. Now I wish to read to the Senate what the district attorney, Mr. Thomas Walton, said in regard to the state of affairs about which that letter was written:

OXFORD, MISSISSIPPI, *July* 15, 1876.

SIR: I have the honor to submit herewith the report of the grand jury lately in session here, together with the evidence on which it is based. This evidence, you will see, plainly required the jury to indict a great many persons for violations of the election laws; but, out of eighteen jurors, seven were found who refused to concur in any such indictment. *I learn, however, that all but one of the jurors voted for this report. All but this one professed to belong to the republican party;* and some of those who finally voted against the eleven who were for the indictments were throughout the whole session apparently the most reliable men we had to sustain the indictments and the most zealous in investigating the cases. *This was particularly true of the man who wrote this report;* yet he finally went against all prosecutions, though we had conceived him to be the most earnest, as he had certainly been the most active, man among us, in bringing to justice, or at least in investigating the election cases.

I can only lament *the shameful failure of justice* which has taken place, and I have little doubt that it must and will give a most unbridled license to lawlessness at the next State, if not at the next Federal, election.

I am, sir, your obedient servant,

THOMAS WALTON,
United States District Attorney.

Hon. ALPHONSO TAFT,
Attorney-General.

Mr. President, you have seen the report, and here you see the explanation of the report given by the United States district attorney. I ask any man, who is to blame for this "shameful failure of justice?" Who is to blame? The Senator from Indiana says you are to blame the white people of the State of Mississippi whom you have excluded from that grand jury and from the petit jury. They are those who are to blame when you have prevented their voice from attempting to procure punishment for evil-doers. The Senator from Indiana made

a great mistake. He sought to use that report for the purpose of staining the white people of Mississippi, and lo and behold it turns out that the whole default and "shameful failure of justice" was entirely at the hands of those who were the warm and earnest partisans of the party to which he is attached.

Now, sir, surely, surely there must be a sense of justice in human breasts. It cannot be that when by law you exclude these men from the jury-box, either grand or petit, and when you have packed or filled the jury-box with partisans of only one political hue, you are to hold responsible for the default of your own party friends those who were prevented from having any voice to make up for their defaults. This is the truth; and I think if the Senator from Indiana had known the whole of the truth he would not have brought forth that portion of it which he did.

Mr. BOUTWELL. I should like to call the attention of the Senator from Delaware to what seems to me to be an erroneous view of the report of Mr. Walton. The report of Mr. Walton to the Attorney-General, as I understand it, is this: That certain members of the grand jury and republicans refused to find, upon evidence which Mr. Walton thought sufficient, true bills against persons who had been engaged in outrages and murders during the canvass and at the election in Mississippi. That is exactly what is alleged. That, as I understand, is the claim of those who maintain that these outrages in Mississippi have not only controlled the elections by preventing men from appearing at the ballot-box and exercising their franchise upon their own judgment, but that these outrages have extended so far that they control the action of juries and intimidate the courts. It may be a weakness in republicans who are called to aid in the administration of the laws as jurors that they are intimidated; but the fact still remains that they are intimidated, and if it be true, as I believe it is true, that Mr. Frazie, the foreman of the grand jury to whom the letter of Mr. Tucker was addressed, was not himself intimidated so that he hesitated to find true bills of indictment against persons charged with crimes, it nevertheless remains true that his associates, to whom the contents of this letter were made known, were intimidated, and it was just as much an arrest of the true and proper course of justice whether this letter was written by a friend who chose to warn Mr. Frazie of what was in store for him, or whether it was written by a political and personal enemy who purposed to take part in the transactions of which Mr. Frazie was forewarned. In either case the effect in interrupting the course of justice was precisely the same.

I think, therefore, that the Senator from Delaware does not give to this letter its full force, and that it is no escape from the position taken that Mr. Frazie, to whom the letter was addressed, was not intimidated if his associates were intimidated. The fact remains that here were twenty-one jurors, no matter if twenty of them were republicans and only one a democrat; they were the servants of the law, called together in conformity to the statute; and it is no excuse or palliation, or defense for these wrongs that the Congress of the United States may not have done its duty by exempting from the inhibition spoken of certain portions of the people of the country; but the fact remains that the course of justice has been upon the return of Mr. Walton interfered with, and that two or three thousand persons against whom indictments should have been found, as is stated by the foreman of the grand jury, escaped. That is the statement.

Mr. THURMAN. Two or three thousand in one county?

Mr. BOUTWELL. In the northern district of Mississippi. This was the United States court presided over by Judge Hill.

Mr. BAYARD. Mr. President, I submit to the sense, the reason of the Senate, what amount of intimidation can there be upon a grand jury which shall openly publish to the world the most extreme charges against everybody and yet withhold its charges against the guilty individuals of the community. What presumption in common sense is there that there was intimidation upon this body of twenty republicans and one democrat, when at the same time they charge the whole community of Mississippi broadcast with the most positive crime and yet omit, according to their oaths, to pick out the guilty individuals and charge them? Is it safer to charge everybody and mingle everybody up with this wholesale abuse, than to pick out the guilty individual and let him alone suffer for the crimes which he has committed? And yet here is the fact that this body agree to and sign a report charging the worst possible condition of affairs upon the community and dare not on their oaths bring forward a single indictment against any one man. Does not the suggestion of the Senator from Massachusetts destroy itself? Nay, further than that, the publication by Frazie probably of the note which he had received shows that he laughed to scorn the idea of intimidating him; that he not only scorned it, but he published it to prove how absurd and ridiculous were such attempts to affect him at all. And the grand jury, to show that they cared no more than he did, published even stronger statements against the whole of their fellow-citizens, but they did not allege that any specific persons were guilty of crime. Neither the district attorney, who is their anxious partisan, nor the grand jury themselves have ventured in either of their communications to allege that they were deterred in the least by intimidation from doing their full duty. The district attorney who sends this very report to the President designated it as a "shameful failure of justice" on the part of that grand jury, and he does not say that they were prevented from doing their duty by anything like intimidation, nor do they say so. The idea is not suggested anywhere; but, on the contrary, it is entirely disproved by the free publication of his letter and by the publication of the report of the grand jury, which I very well remember was at the instance of the honorable Senator from Massachusetts appended to the documentary testimony which we took in Mississippi; and it came to us afterward in the additional shape of a message of the President of the United States, who held that the effect of a call for information as to the state of affairs in South Carolina by some means included a reference to the State of Mississippi. So I submit to the good sense of the Senate that so far from the action of the grand jury suggesting the least intimidation, it is proof positive, both affirmatively and by exclusion, that there was no such thing as intimidation produced upon their minds and that none had been attempted which they did not laugh at.

Mr. STEVENSON. Mr. President, the physical disability under which I have labored for the last week forbids me participating in this debate; but I rise to make a statement of fact. The Senator from Ohio [Mr. SHERMAN] stated that he regarded the killing of John Gair as political in its character. I stated to him that such was not my understanding; that in a conversation which I held with Governor Kellogg in November, 1876, I understood that the killing of John Gair was in no sense political. The Senator from Louisiana [Mr. WEST] rose to correct me in my statement and said that it was political, but he has given me no proof except that John Gair was a colored man. Now I will give to that Senator the statement of a gentleman who ought to be high authority with him. Governor Warmoth in November, 1876, at New Orleans stated to a member of the House of Representatives and a member of the democratic committee that John Gair was hung in 1875 upon an alleged charge of poisoning, that he was hung by men irrespective of party, and that there were as many republicans present at that hanging as there were democrats. I state this that Governor Warmoth may see it. The gentleman to whom he made the statement is now upon this floor.

Mr. President, we stand amid events too momentous to the country, it seems to me, to justify us in attempting to forestall public opinion by the citation of isolated facts of murders which occur everywhere, and which it is now attempted to show are political. I know nothing about these occurrences. I am satisfied that the case of John Gair, which occurred more than a year before the late election in Louisiana, was not political, and I state to the Senator from Louisiana and to the Senator from Ohio that Governor Warmoth is the authority upon which I rest the statement that there were as many republicans engaged in the hanging as there were democrats. I would infer from that that it was in no way political.

Mr. THURMAN. Mr. President, the Senator from Indiana [Mr. MORTON] has said and repeated, for it is very much the habit of the Senator, and perhaps a very wise one, when he says what he thinks a good thing to repeat it, that it has been admitted here to-day that this intimidation of which he complains, by means of riot and murder and the like, has taken place. His words imported that all that he or the republican party have charged on this subject has been admitted here to-day by democratic Senators. Sir, if there has been any such admissions I have not heard it. I heard the Senator's special pleading to prove that it was admitted by the committee at the head of which stood Governor Palmer of Illinois. It seemed to me to be an argument without any satisfactory basis. I am quite sure that when I sat on the bench I never could have given judgment for any such argument as that, for it was altogether too inconclusive. And so, sir, his statement here that these matters have been admitted is a pure creation of his own fancy. Certainly it has not been denied, and it never has been denied, and the Senator cannot recall a single instance of its denial since he has held a place in the Senate, that violations of the law have taken place in the South, as certainly he cannot deny that violations of the law have taken place elsewhere than in the South. He cannot deny that they have taken place in his own State. I cannot deny that they have taken place in Ohio. The Senator from Pennsylvania cannot deny that they have taken place there. And perhaps no Senator on this floor can deny that there have been violations of the law everywhere, and there is not a country on the face of the globe in which the law has not been violated.

But that I have admitted, or that any man on this side of the Chamber has admitted, that these exaggerated statements about intimidation at the South for political purposes are true; that it has been admitted here that the southern people are a set of assassins; that the white people of the South, who have the property and the intelligence and who of all other persons are most interested in the prevalence of law and order, are a set of banditti; that that has been admitted is without the slightest foundation at all. It has not been admitted. That there have been violations of law down there, nobody denies; that violence has gone unpunished, nobody denies; but, pray, is Louisiana the only State in which violations of law have gone unpunished? Did the Senator ever read the history of what was called the whisky insurrection in Western Pennsylvania? Does he not know that hundreds of persons engaged in what was called that insurrection, and which was so much an insurrection that Washington himself was sent with an army against it, were not even indicted in the courts; that no step was taken for their punishment? Does not the Senator know that the men who murdered Joe Smith in Illinois and the men who invaded Nauvoo and reduced it to ruins never were indicted, never were punished? Does he not know that elsewhere in this

country, does he not know that in his own State the men at Seymour who committed murder after murder have never been brought to justice? Does he not know that again and again and again in this country these violations of law have taken place under high popular excitement without the men being brought to punishment? And will he denounce the people of every State in which such things have occurred as being a set of assassins and banditti? No, sir; it will not do.

The Senator was pleased further to say that there can be an end put to this if the democratic party first will confess his indictment—for that is what it comes to—with all its exaggerations, and then will denounce these atrocities. Why, sir, the Senator himself has never denounced more strongly than the democratic Senators on this floor, since I have held a seat here, the violence, the unlawful violence that has occurred in the South. I know we have not exaggerated it as he has; we have not made ten murders out of one murder; we have not said that every murder that took place was a political murder; but where there was a clear case of political violation of the law, against the Ku Klux and against every other set of men who banded to violate the law, the denunciations of the democratic Senators on this floor from the time I took my seat here have been quite as strong as have been the denunciations of the Senator from Indiana. We did not exaggerate; we did not take for fact that which mere rumor said was the fact; we asked for the proof, and when the proof was forthcoming we denounced it. Why, sir, we had more reason than anybody else to denounce it. We knew very well that every such violation was seized upon by demagogues at the North to excite the northern people against the southern people; we knew that it was the staple of republican electioneering, so much so that it got to be baptized with a name, and was called "the waving of the bloody shirt." We know, sir, that it acquired a baptism, because every single instance of that sort that could be adduced, even where it was not well founded in fact, and much more when it was well founded in fact, was used to the injury of the democratic party of this Union, to their injury at the North, and to excite the people at the North against the South, and to furnish still further reason for trampling them under foot. We knew it, and therefore we opposed it, and appealed again and again; and it is seven years I believe, six years certainly, since a Senator from Alabama, a republican Senator, rose in his place in this Chamber and rendered to me personal thanks in a speech delivered to the Senate for the denunciation of the Ku Klux which I uttered on that occasion; and I was not alone; I was only one of the few democratic Senators here, and every one of them spoke the same sentiment. And yet the Senator from Indiana says that if we had acknowledged the fact and denounced it, it would have ceased. Why, sir, he said that six years ago. Sir, I can tell you that these charges of intimidation will not cease as long as under the mere pretense of intimidation you can overthrow the votes of the people of a State. As long as you have this machinery of a returning board, a perfectly irresponsible returning board, according to the present claim that on the vague notion of intimidation you can change the result of an election, as in the case of this very same James Madison Wells's parish in the count of 1875, who disfranchised his whole parish on his own affidavit, deprived it of its three members whom it had elected to the Legislature, and put in three men who had not been elected, on his own mere affidavit, alleging intimidation when he was not there, his affidavit not made in public, not submitted to the inspection of the public, but filed after that board went into secret session, and was never seen by the men who were elected, never seen by their counsel, never seen by the public. As long as such things as that can be done there will be claims of the votes of these States being controlled by intimidation. Why, Mr. President, it is a new feature introduced into the American Constitution and the American system of government. We did think once that the only question about an election was, who has a majority of the votes? That is what we thought; that is what our fathers thought when they made our Constitution; but that is not the question any more. The question is not who has the majority of the votes, but who has the majority of the men who count the votes?

Mr. MITCHELL rose.

Mr. THURMAN. I would rather not yield just now.

If you have a returning board with a majority ready to count out democratic candidates and count in republican candidates, they have a power as great as the tribunes of the Roman people had to veto the voice of the people; not simply to veto what the people have done, but to determine what the people ought to have done, according to their judgment of what they think to be best. That is it, sir.

And now my colleague, in the very impassioned and very eloquent speech he made to-day, says that this results, as I understand him, from the color line. I tell him that I stand prepared to prove that the responsibility for the color line rests on his party. I tell him that I stand prepared to prove that millions of the people's money have been expended to establish the color line. I know very well why the right of suffrage was given to the colored men. It is not matter of speculation; it is not matter of inference; it was openly avowed when the fifteenth amendment was under consideration; openly avowed in this Senate, that the republican party needed the 500,000 negro votes that could be given if the fifteenth amendment were adopted; that the republican party needed them, and that without them the republican party would lose its power in the United States. Yes, sir, the republican party did need them; and the trouble now is that the republican party do not get them. [Laughter.]

Why, sir, they talk of intimidation! Here are thousands of negro men in Louisiana who come up and say "we voted the democratic ticket." I have seen it stated as high as thousands; call it hundreds if you choose; call it any number you please; they come up and say "we voted the democratic ticket." What does the returning board say? Count their votes? Not at all; they say "you were intimidated to vote the democratic ticket." What then? They come up and make affidavit that they voted the democratic ticket, and that they voted it without intimidation. What does the returning board say? "You were intimidated to make the affidavit." And so it goes.

Why, sir, where is the end of this? Cannot any man who has the least honesty and the least sagacity in the world see that if such practices as these be tolerated, anything like republican institutions and free government and a free ballot are at an end. You put the destinies of whole States in the hands of four irresponsible men called a returning board, and then talk about a republican form of government! You want to invoke the whole force of the Government, its Army, its Navy, to secure to a State a republican form of government; and you put in the hands of four irresponsible men, and not of the highest character either, the right to determine upon the phase of the government of that State. And yet you call that a republican form of government!

Mr. President, it will not do; no sir, it will not do. My colleague said, with great force and eloquence, that if elections were to be carried in this country by intimidation there was an end of republican institutions. I agree with him; and I tell him, and I say to each one of you, that if elections are to be carried by the use of the Army of the United States and its intimidation, there is an end of republican institutions. Sir, all the intimidation that ever actually existed on the part of the democratic or the white people of the South, is but as a drop in the bucket to the danger of that intimidation which comes from the standing Army of the United States. Anarchy in any country at last corrects itself, for it cannot be borne; but the use of a standing army to control the people has been fatal to liberty ever since a republic existed. I agree with my colleague that intimidation of the voters is fatal to republican government; but I ask him, while his mind, heated and excited by what he has seen and by what he has heard, is brooding over cases of homicide, of violence, and the like, to think of the far greater danger of intimidation by that organized body which carries the sword and the bayonet and wields the artillery of the Army. I ask him to think of that much graver danger of intimidation from him who shall hold in his hand the purse and the sword. I ask him to remember that there have been Cæsars and Cromwells and Bonapartes in the world who have overthrown republican institutions; but republican institutions never yet have been overthrown by the kind of intimidation of which he speaks.

Mr. MORTON. Mr. President, the Senator says "it will not do; no, sir, it will not do." The Senator likes to repeat a good thing. The Senator has taken the alarm. He now says there have been no admissions made here to-day of the existence of these great crimes. He says he has made none. I do not think he has; or if he has, he can easily take it back. But he cannot take back what the Senator from Delaware [Mr. BAYARD] said. That is on the record. If I heard that Senator aright, he proceeded to say that he did not deny the existence of these crimes which shocked humanity; but he went on to state, among other things, that they were brought about by congressional and executive interference. The Senator cannot take back the admission made by this democratic committee that went to Louisiana and has returned that the existence of these crimes is not denied, but is admitted. But, sir, for the purpose of meeting these slaughters that have occurred from time to time and that have shocked the whole world, the Senator goes back and comes down with great power upon the men who murdered Joe Smith. He is dreadfully worried about the murder of Joe Smith; and that is a set-off. Then he goes to Pennsylvania to the Molly Maguires. He is indignant about those murders, and brings them in as a set-off against these crimes that are committed in the South. It is that kind of thing that has encouraged these crimes, whether so intended or not; it is that kind of defense that has encouraged these men to go on when they find themselves excused or their acts denied or justified. When they are denounced as they ought to be, when their crimes are proclaimed, then we may expect an abatement of them; but so long as they are smoothed over and justified by crimes elsewhere and diminished and belittled, so long we may expect to have them continued.

Mr. HITCHCOCK. I move that the Senate proceed to the consideration of executive business.

Mr. ANTHONY. I hope we shall take the vote on this resolution. It will not interrupt the debate at all to pass the resolution; it will come up on a dozen questions all the time.

The PRESIDENT *pro tempore*. Is there objection to the vote being taken on the resolution?

Mr. THURMAN. When the next resolution comes up, the same amendment will be offered to it, and that will be adopted; and if we vote now on both it does not put an end to the debate.

Mr. ANTHONY. I should prefer to take the vote on both.

Mr. SHERMAN. The second resolution must have the assent of the

House of Representatives. I take it if they want the other document they will get it. They can amend the resolution.

Mr. THURMAN. I want the same amendment on both.

Mr. ANTHONY. Does the Senator object to taking the vote on the first resolution?

Mr. THURMAN. If the Senate want to take a vote on both, I do not object. I do not know whether that is the general desire or not.

Mr. HITCHCOCK. I withdraw my motion for the present.

The PRESIDENT *pro tempore*. The question is on agreeing to the resolution as amended.

The resolution was agreed to.

Mr. ANTHONY. Now let us take up the next resolution.

The Senate proceeded to consider the following concurrent resolution, reported yesterday by the Committee on Printing:

Resolved by the Senate, (the House of Representatives concurring.) That 10,000 additional copies of the letter of the President, with the accompanying documents, on the election in Louisiana be printed; of which 2,500 shall be for the use of the Senate and 7,500 shall be for the use of the House of Representatives.

Mr. THURMAN. I offer the same amendment to that resolution which was made to the preceding one.

The amendment was agreed to.

The resolution, as amended, was agreed to.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. GEORGE M. ADAMS, its Clerk, announced that the House had passed the following bills:

A bill (S. No. 105) for the relief of Dickson Shinault, late assistant keeper of the light-vessel at Wolf-Trap light-station, in the State of Virginia; and

A bill (S. No. 745) to authorize the Secretary of the Treasury to issue a register and change the name of the brig A. S. Pennell to the City of Moule.

The message also announced that the House had rejected the bill (S. No. 338) for the relief of Luther Hall.

The message further announced that the House had agreed to the amendments of the Senate to the bill (H. R. No. 1588) granting an additional pension to Jefferson Bowers, of Mason County, Illinois.

The message also announced that the House had passed the following bills; in which it requested the concurrence of the Senate:

A bill (H. R. No. 4189) authorizing the coining of the standard silver dollar and restoring its legal-tender character; and

A bill (H. R. No. 4197) to provide for the payment of the electoral messengers.

ENROLLED BILLS SIGNED.

The message further announced that the Speaker of the House had signed the following enrolled bills; and they were thereupon signed by the President *pro tempore* of the Senate:

A bill (S. No. 1057) to provide for engraving and printing the portrait of the late Hon. Henry Starkweather, of Connecticut;

A bill (H. R. No. 1588) granting an additional pension to Jefferson Bowers, of Mason County, Illinois;

A bill (H. R. No. 2257) for the relief of J. T. McGinniss, captain Thirteenth Infantry, United States Army; and

A bill (H. R. No. 3693) changing the name of the First National Bank of Amesbury to the First National Bank of Merrimac.

EXECUTIVE COMMUNICATIONS.

The PRESIDENT *pro tempore* laid before the Senate the following message; which was read, and ordered to lie on the table and be printed:

To the Senate of the United States:

In answer to the resolution of the Senate of the 6th instant, requesting information "as to whether troops of the United States were stationed at the city of Petersburgh, in the State of Virginia, on the 7th of November, 1876, and, if so, under what authority and for what purpose," I submit the inclosed letters from the Secretary of War, to whom the resolution was referred, together with the report of the General of the Army and accompanying papers.

These inclosures will give all the information called for by the resolution, and I confidently believe will justify the action taken. It is well understood that the presence of United States troops at polling places never prevented the free exercise of the franchise by any citizen of whatever political faith. If, then, they have had any effect whatever upon the ballot cast, it has been to insure protection to the citizen casting it, in giving it to the candidate of his unbiased choice, without fear, and thus securing the very essence of liberty. It may be the presence of twenty-four United States soldiers under the command of a captain and lieutenant, quartered in the custom-house at Petersburgh, Virginia, on the 7th of November, at a considerable distance from any polling-place, without any interference on their part whatever, and without going near the polls during the election, *may have secured a different result from what would have been obtained if they had not been there* (to maintain the peace in case of riot) *on the face of the returns*. But if such is the case it is only proof that in this one congressional district in the State of Virginia the legal and constitutional voters have been able to return as elected the candidate of their choice.

U. S. GRANT.

EXECUTIVE MANSION, *December* 14, 1876.

The PRESIDENT *pro tempore* also laid before the Senate the following communication from the Attorney-General; which was ordered to lie on the table and be printed:

DEPARTMENT OF JUSTICE,
Washington, December 13, 1876.

SIR: I have the honor to acknowledge the receipt of Senate resolution dated the 12th instant, directing me to communicate the number of deputy marshals employed in connection with the election held the 7th ultimo, the number for each State and each voting precinct, the time of their service, the causes, necessity, and object of their employment, together with the nature of the duties required of them and performed by them.

The information desired is not in the possession of the Attorney-General and can only be obtained from the several marshals of the United States who have the power to appoint special deputy marshals under the title, "The Elective Franchise," Revised Statutes.

This Department will at once seek to procure the information so that it may be transmitted to the Senate at as early a day as practicable.

Very respectfully,

ALPHONSO TAFT,
Attorney-General.

Hon. THOMAS W. FERRY,
President of the Senate.

HOUSE BILLS REFERRED.

The bill (H. R. No. 4189) authorizing the coining of the standard silver dollar and restoring its legal-tender character, was read twice by its title, and referred to the Committee on Finance.

The bill (H. R. No. 4197) to provide for the payment of the electoral messengers, was read twice by its title, and referred to the Committee on Appropriations.

MANNER OF COUNTING ELECTORAL VOTES.

Mr. BAYARD. I desire to present to the Senate as a supplement to the statement made by Mr. McDonald, which is already printed, the corresponding history of the electoral vote in the House of Representatives as carefully compiled from the journals of the proceedings. I have read it; it comes from very careful hands; and I propose to have it printed for the use of the Senate. I ask that it may be done. To-morrow I propose to introduce a resolution, to be referred to the Committee on Printing, to print extra copies to accompany the other compilation.

The PRESIDENT *pro tempore*. Is there objection to the paper being printed. The Chair hears none.

Mr. MORRILL. Let it be referred to the Committee on Printing.

The PRESIDENT *pro tempore*. It will be referred to the Committee on Printing.

Mr. BAYARD. Not the usual number. There is no motion to print extra copies yet. To-morrow I will ask for extra copies.

Mr. MORRILL. I do not understand that this is a paper that comes here by any authority of this House. It is a mere compilation of some gentleman outside, as I understood the Senator.

Mr. BAYARD. It has been made by an extremely careful and competent person.

Mr. MORRILL. I doubt not.

Mr. BAYARD. It represents the action of the House of Representatives in the matter on which our Chief Clerk has compiled the action of the Senate. It is the other half of the history of this important question. I take leave to say that I have made a very fair examination of it, and I believe it will be most interesting and valuable to us all.

Mr. MORRILL. I do not object to the printing of it, but it seems to me that this, like other documents that have more authority than this, should go to the Committee on Printing.

Mr. CONKLING. If Senators will hear me a moment, I beg to suggest that it is precisely on a footing with the other compilation. I was under an error in that regard myself and inquired of the Chair whether the other compilation was not made in response to a resolution; but upon inquiry it turned out that that resolution had been previously answered and therefore that compilation was made by the very competent gentleman who made it, and presented just as the Senator from Delaware presents this. We ordered it to be printed, as I hope we shall order this to be printed, in order that we may get all the light possible. I feel in no danger myself of learning too much or being made too intelligent on any of the things on which we may be called upon to vote; and therefore I hope the Senator from Vermont will allow us all to see this paper in print.

Mr. MORRILL. I withdraw the suggestion.

The PRESIDENT *pro tempore*. There being no objection, the order to print the usual number will be made.

THE MASSACHUSETTS STATUES.

Mr. BOUTWELL. I desire to say, in behalf of my colleague and myself, that on Tuesday next, after the morning hour, we shall ask the attention of the Senate for a few minutes to the presentation of the statues contributed by the State of Massachusetts for the old Hall of the House of Representatives.

ELECTORAL VOTE OF OREGON.

Mr. MITCHELL. In order to leave it the unfinished business for to-morrow, I move that the Senate proceed to the consideration of the resolution in regard to the Oregon electoral vote.

The motion was agreed to.

EXECUTIVE SESSION.

Mr. HITCHCOCK. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After eleven minutes spent in executive session, the doors were re-opened, and (at four o'clock and fifty-eight minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

THURSDAY, *December* 14, 1876.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of yesterday was read and approved.

METRIC SYSTEM OF GOLD COINAGE.

Mr. STEPHENS, of Georgia, by unanimous consent, introduced a bill (H. R. No. 4190) to promote the establishment of the metric system of coinage in the gold coins of the United States; which was read a first and second time, referred to the Committee on Coinage, Weights, and Measures, and ordered to be printed.

NATIONAL BANKS.

Mr. WILLIS, by unanimous consent, introduced a bill (H. R. No. 4191) to provide for existing national banking associations becoming stockholders as such in any newly organized national bank; which was read a first and second time, referred to the Committee on Banking and Currency, and ordered to be printed.

WHALE ROCK, NARRAGANSETT BAY.

Mr. EAMES. I ask unanimous consent to have taken from the Speaker's table and referred to the Committee on Commerce, Senate bill No. 492, making an appropriation for the erection of a light-house and fog-bell on Whale Rock, at the entrance of Narragansett Bay.

There was no objection, and the bill was accordingly taken from the Speaker's table, read a first and second time, and referred to the Committee on Commerce.

MEMORIAL STATUES FROM MASSACHUSETTS.

Mr. HOAR. The delegation from Massachusetts desire to present to the United States the memorial statues of John Winthrop and Samuel Adams. The resolution upon that subject will be taken up in the Senate on Tuesday next and will be sent over here that day. Upon consultation with yourself and the gentleman from Indiana, [Mr. HOLMAN,] the chairman of the Committee on Appropriations, I understand that that time will be most appropriate as regards the business of the House. I therefore ask unanimous consent that it be now ordered by the House that on the reception of that resolution from the Senate on Tuesday next it shall be considered in the House.

There was no objection and it was so ordered.

COMMITTEE CLERKS.

Mr. ROBERTS, from the Committee of Accounts, submitted the following report:

The Committee of Accounts, to whom was referred the following resolution:

"*Resolved*, That the Committee of Accounts be, and they are hereby, instructed to designate the committees of this House which are entitled to clerks under the act of August 15, 1876, and report to this House"—

respectfully state that they have considered said resolution and designate the following committees as entitled to clerks in the manner hereinafter indicated:

1. To the Committee of Elections a clerk.
2. To the Committee on Banking and Currency a clerk, who shall also act as clerk to the Committee on Expenditures in the Treasury Department.
3. To the Committee on Commerce a clerk.
4. To the Committee on the Post-Office and Post-Roads a clerk.
5. To the Committee for the District of Columbia a clerk.
6. To the Committee on the Judiciary a clerk.
7. To the Committee on Indian Affairs a clerk.
8. To the Committee on Education and Labor a clerk, who shall also act as clerk to the Committee on Expenditures in the State Department.
9. To the Committee on Manufactures and the Committee on Agriculture jointly one clerk, who shall also act as clerk to the Committee on the Militia.
10. To the Committee on Naval Affairs a clerk.
11. To the Committee on Military Affairs a clerk.
12. To the Committee on Foreign Affairs a clerk.
13. To the Committee on the Territories a clerk, who shall also act as clerk to the Committee on Expenditures on Public Buildings.
14. To the Committee on Private Land Claims a clerk, who shall also act as clerk to the Committee on Railways and Canals.
15. To the Committee on Revolutionary Pensions a clerk, who shall also act as clerk to the Committee on the Pacific Railroad.
16. To the Committee on Patents a clerk.
17. To the Committee on Public Buildings and Grounds a clerk, who shall also act as clerk to the Committee on Public Expenditures.
18. To the Committee of Accounts a clerk.
19. To the Joint Committee on Printing a clerk, who shall also act as clerk to the Committee on Expenditures in the Post-Office Department.
20. To the Committee on the Revision of the Laws of the United States, and the Committee on Mines and Mining, and the Committee on Expenditures in the Navy Department, jointly one clerk.
21. To the Committee on Expenditures in the Department of Justice, and the Committee on Expenditures in the Interior Department, and the Committee on Expenditures in the War Department, jointly one clerk.

The report was adopted.

Mr. ROBERTS moved to reconsider the vote by which the report was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

HORACE B. GARDNER.

Mr. TEESE, by unanimous consent, introduced a bill (H. R. No. 4192) for the relief of Horace B. Gardner, of Newark, New Jersey; which was read a first and second time, referred to the Committee on War Claims, and ordered to be printed.

H. F. WILLINK.

Mr. HARTRIDGE, by unanimous consent, introduced a bill (H. R. No. 4193) for the relief of H. F. Willink; which was read a first and second time, referred to the Committee on War Claims, and ordered to be printed.

MESSENGER FOR REPORTERS OF DEBATES.

Mr. POWELL, from the Committee of Accounts, reported back the following resolution with a recommendation that it be adopted:

Resolved, That one messenger be added to the list of messengers under the Doorkeeper of the House, to be assigned for duty to the room of the official reporters of debates, which room is now unattended to.

The resolution was adopted.

Mr. POWELL moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

ROBERT V. BOGART.

Mr. BURCHARD, of Wisconsin, by unanimous consent, introduced a bill (H. R. No. 4194) for the relief of Robert V. Bogart, of Beaver Dam, Wisconsin; which was read a first and second time, referred to the Committee of Claims, and ordered to be printed.

CHANGES OF REFERENCE.

Mr. BRIGHT. I have been directed by the Committee of Claims to report back sundry bills, petitions, &c., which have been improperly referred to our committee, and to ask that they be referred to the several committees indicated upon the back of the respective papers.

There being no objection, the Committee of Claims was discharged from the further consideration of the following; which were respectively referred as indicated:

A bill (H. R. No. 3909) for the relief of Columbus Reid, of Louisiana—to the Committee on War Claims.

Petition of John Corruth and others, of Mississippi—to the same committee.

A bill (H. R. No. 3662) for the relief of James Dickson—to the same committee.

A bill (H. R. No. 3744) for the relief of Dr. John H. Long—to the same committee.

Petition of Thomas G. Morgan, praying re-imbursement for losses sustained during the war—to the same committee

A communication from the Secretary of War, dated May 29, 1876, transmitting a report of the Commissary-General of the United States Army upon the bill (H. R. No. 2257) for the relief of Captain J. F. McGinnis, Thirteenth Infantry—to the Committee on Military Affairs.

A communication from the Secretary of the Interior, in regard to the claim of the heirs of Abel Lee, on account of Indian depredations—to the Committee on Indian Affairs.

A bill (H. R. No. 4175) for the relief of the widow of Captain Christopher M. Haile, United States Army—to the Committee on Invalid Pensions.

MARCUS ERWIN.

Mr. VANCE, of North Carolina, by unanimous consent, introduced a bill (H. R. No. 4195) for the relief of Marcus Erwin, of North Carolina; which was read a first and second time, referred to the Committee on Indian Affairs, and ordered to be printed.

THOMAS J. SPENCER.

Mr. A. S. WILLIAMS, by unanimous consent, from the Committee on Military Affairs, reported a bill (H. R. No. 4198) to restore Thomas J. Spencer, late first lieutenant of the Tenth United States Cavalry, to his former rank in the Army; which was read a first and second time, referred to the Committee of the Whole House on the Private Calendar, and, with the accompanying report, ordered to be printed.

EDUCATION OF THE BLIND.

Mr. WATTERSON, by unanimous consent, introduced a bill (H. R. No. 4196) to promote the education of the blind; which was read a first and second time, referred to the Committee on Education and Labor, and ordered to be printed.

COUNTING THE ELECTORAL VOTE.

Mr. KNOTT. I am directed by the Committee on the Judiciary, which has leave to report at any time on this question, to report back the resolution referred to that committee on motion of the gentleman from Iowa [Mr. MCCRARY] and to move the adoption of the following substitute therefor.

The Clerk read as follows:

Whereas there are differences of opinion as to the proper mode of counting the electoral votes for President and Vice-President, and as to the manner of determining questions that may arise as to the legality and validity of returns made of such votes by the several States:

And whereas it is of the utmost importance that all differences of opinion and all doubt and uncertainty upon these questions should be removed, to the end therefore that the votes may be counted and the result declared by a tribunal whose authority none can question and whose decision all will accept as final: Therefore,

Resolved, That a committee of seven members of this House be appointed by the Speaker, to act in conjunction with any similar committee that may be appointed by the Senate, to prepare and report without delay such a measure, either legislative or constitutional, as may in their judgment be best calculated to accomplish the desired end, and that said committee have leave to report at any time.

Resolved, That a committee of seven members be appointed by the Speaker of this House to ascertain and report what are the privileges, powers, and duties of the House of Representatives in counting the votes for President and Vice-President of the United States, and that said committee have leave to report at any time.

Mr. KNOTT. I demand the previous question on the adoption of the resolution.

The previous question was seconded and the main question ordered; and under the operation thereof the substitute was agreed to, and then the resolution, as amended, was adopted.

Mr. KNOTT moved to reconsider the vote by which the resolution as amended was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

TROOPS AT FORT SILL, ETC.

Mr. THROCKMORTON by unanimous consent, submitted the following resolution; which was read, considered, and agreed to:

Resolved, That the Secretary of War be requested to furnish a statement to this House showing the number of regiments or companies of troops now stationed at Fort Sill in the Indian Territory, and at Forts Richardson and Griffin in Texas, and the number of enlisted men and officers at each of said posts.

Mr. THROCKMORTON moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

PAYMENT OF ELECTORAL MESSENGERS.

Mr. WELLS, of Missouri, by unanimous consent, from the Committee on Appropriations, reported a bill (H. R. No. 4197) to provide for the payment of electoral messengers; which was read a first and second time.

The bill, which was read, provides that for the payment of the messengers of the respective States for conveying to the seat of Government the votes of the electors of said States for President and Vice-President of the United States, at the rate of twenty-five cents for every mile of the estimated distance by the most usual route of travel from the place of meeting of the electors to the seat of Government of the United States, computed for one distance only, the sum of $20,000 be, and the same is hereby, appropriated out of any money in the Treasury not otherwise appropriated.

Mr. WELLS, of Missouri. I desire to have this bill put upon its passage at this time. The appropriations made heretofore have been twenty or twenty-five thousand dollars. I am informed that $20,000 will be sufficient to pay the expenses of these messengers, who are now on their way to this city or have already arrived here. It is necessary that the appropriation should be made at once, and I hope there will be no objection to its passage.

The bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. WELLS, of Missouri, moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

EMPLOYÉS OF BUREAU OF ENGRAVING AND PRINTING.

Mr. ROBERTS, (by request,) and by unanimous consent, introduced a bill (H. R. No. 4199) to provide for the payment of a full month's wages to certain of the employés of the Bureau of Engraving and Printing permanently discharged February last, 1876; which was read a first and second time, referred to the Committee on Appropriations, and ordered to be printed.

VIRGINIA E. WHITE.

Mr. WILSON, of West Virginia. I ask unanimous consent to take from the Speaker's table the bill (H. R. No. 1016) for the relief of Virginia E. White, of Ohio County, West Virginia, to which objection was made yesterday; but that objection has now been withdrawn.

The SPEAKER. The Chair understands that the bill is on the Private Calendar in Committee of the Whole House, and therefore it is necessary to discharge that committee from its further consideration.

Mr. WILSON, of West Virginia. I ask unanimous consent for that purpose, and hope no one will object. It is simply a bill to re-imburse taxes forced by distraint directly in opposition to the decision of the Supreme Court of the United States.

Mr. CONGER. I object. There are a good many cases on the Private Calendar preceding that, which ought to be first taken up and considered.

ORDER OF BUSINESS.

The SPEAKER. The morning hour begins at thirty-five minutes past twelve o'clock. The Chair is of opinion that the first business in order in the morning hour to-day is a resolution offered by the gentleman from Illinois [Mr. LE MOYNE] on the 8th of December. On that day, under the operation of Rule 52, two resolutions were offered in the morning hour for consideration. Those resolutions giving rise to debate, were, under the operation of the rule, laid over. There is no other rule of the House directory as to when those resolutions should again be considered; but the Chair thinks it would be a violation of the equity of the rule under which they were introduced, and at variance with common sense, if there was no subsequent time allowed for their consideration. The jumping over of those resolutions by the introduction of other business, as reports from committees, would operate unjustly, and the Chair therefore rules that the unfinished business in the morning hour having been disposed of, these resolutions come up in order. The resolution offered by the gentleman from Illinois will be read. But if any member of the House would like to be heard on this ruling, the Chair will be glad to hear him.

Mr. CONGER. I desire to ask the Chair if such a practice as that indicated in the ruling of the Chair has ever prevailed before in the House.

The SPEAKER. The Chair stated when these resolutions were introduced under the call of States and Territories that it was the first time in his recollection or his knowledge that such resolutions had been introduced in the morning hour under the operation of the fifty-second rule.

Mr. CONGER. It seems to me that if such a construction gave to resolutions which were introduced and laid over when objected to a preference, it might materially interfere with the progress of other business. If the Chair, however, has considered that question, I do not object to his ruling.

The SPEAKER. It is still competent for the House to give any other direction in regard to the bringing of these resolutions before the House for consideration. But the Chair is at a loss to conceive why permission should be given for the introduction in order of a resolution in the morning hour if that resolution should be denied consideration at any subsequent time in the morning hour.

Mr. WILSON, of Iowa. I desire to say a word on this question. This is the only way provided by our rules by which a resolution can be brought before the House as other business is brought before the House to be disposed of by a majority vote. A study of our system and practice will show at once what is in order in the morning hour. It is assigned in the first place for the consideration of reports of committees, a certain length of time being allowed to each committee; and then the States and Territories are placed in the same position relative to business in the morning hour. Heretofore reports from committees only have been considered, but resolutions from States have just the same right.

I have seen members of this House hold resolutions in their hands for three months and never get an opportunity to have them considered, because the call of States after committees was not had. Now, if, as has been announced this morning, these resolutions which were offered, and whose consideration is objected to, cannot be taken up and considered in the morning hour before again proceeding to a call of committees, then there is no time at which a member of the House can offer a resolution for consideration.

The morning hour on Monday can very easily be occupied by the business of the first call, as has been done every Monday morning hour during almost the entire session, and no other time is left for resolutions.

The SPEAKER. The Chair suggests that in that way Rule 52 would be nullified.

Mr. WILSON, of Iowa. Yes; and any other ruling than that of the Chair would be contrary to the spirit of that rule. I am satisfied the Chair has made a correct ruling.

Mr. WOOD, of New York. There is so much confusion in the Hall that I doubt very much whether a large majority of the members on this side of the House understand the importance of this announcement of the Chair. As I understand it——

The SPEAKER. The gentleman from New York [Mr. WOOD] will suspend for a moment until order is restored. Gentlemen will please cease conversation. The Chair desires perfect order while this question is before the House. It is an important one, a new one, and one which every member of the House should understand thoroughly. The Chair will hear the gentleman from New York.

Mr. CONGER. If the Chair would allow me one word, I wish to ask the Speaker to let this pass without a special ruling this morning, that members may examine the rules and see what the effect of such a ruling might be.

The SPEAKER. The Chair cannot let it pass. The decision of this question must be made at this point.

Mr. CONGER. Might not the consideration of these resolutions be proceeded with by unanimous consent?

The SPEAKER. The Chair has no objection to that.

Mr. CONGER. I think it would be safer to adopt that course until we have had time to examine the rules.

The SPEAKER. The question comes up for the Chair to decide: What is the order of business in the morning hour? The Chair has decided that in his opinion these resolutions are in order, and are the first business in order in the morning hour.

Mr. CONGER. I thought that we might perhaps avoid establishing a precedent without the fullest consideration.

Mr. WOOD, of New York. If I understand the announcement of the Chair, the practical effect of the enforcement of this ruling would be that all resolutions to which objection is made at the time of their being proposed to the House would go over and be placed on the Calendar to come up in the morning for action.

The SPEAKER. The Chair decides that where the resolution under a rule of the House is introduced in the morning hour, and has the privilege of being introduced for consideration in the absence of objection, when debate arises and that resolution lies over under the rule, the resolution has the right to be considered in the morning hour whenever the business then pending in the morning hour is disposed of; otherwise this resolution would never again be reached.

Mr. WOOD, of New York. I so understood the Chair. But I desire to call the attention of the Chair to the practical effect of the

enforcement and operation of this rule. As we progress in our session by days and weeks there will be a large collection of these resolutions to be disposed of only in the morning hour, and that would exclude the consideration of reports from committees, and it would interfere materially with the business of the House.

The SPEAKER. It is always within the province of the House, by a majority vote, to dispose of any pending resolution.

Mr. WOOD, of New York. It might be laid aside so that it might not interfere with the pending business.

The SPEAKER. Undoubtedly; but the House has always control of the business pending before it. The gentleman from Michigan [Mr. CONGER] asks unanimous consent that these resolutions be passed over for the present.

Mr. CONGER. I ask unanimous consent that they remain pending without any ruling on the question of order.

The SPEAKER. The Chair cannot bring them in without a ruling.

Mr. COX. I desire to say to the gentleman from Michigan [Mr. CONGER] that there is no inconvenience about this ruling of the Chair. At the last session the same ruling was made, and the unfinished business came up and was disposed of under Rule 56, on page 225 of the Manual, which is as follows:

And the consideration of all other unfinished business shall be resumed whenever the class of business to which it belongs shall be in order under the rules.—*Rule 56.*

This enables us to clear off the docket of this class of business without any trouble at all. I hope the ruling of the Chair will be sustained.

Mr. BURCHARD, of Illinois. The proper construction of the rule would be, that after the reports of committees are called for, then the regular order of business can be proceeded with.

The SPEAKER. That is in the introduction of resolutions, not in their consideration, otherwise their consideration may never be reached.

Mr. BURCHARD, of Illinois. It would be reached in its proper time, which would be after the reports of committees. Resolutions would then be in order, and the rule would require that they be taken up in the order of presentation.

Mr. WILSON, of Iowa. That is what we did yesterday. We took up in the morning hour the bill reported from the Committee on the Judiciary by the gentleman from Iowa, [Mr. MCCRARY,] and proceeded to consider that bill. We are doing now what the gentleman suggests.

The SPEAKER. The Chair thinks there is no doubt as to the propriety of the ruling, and surely none as to the justice of it.

COUNTING THE ELECTORAL VOTE.

The first resolution under this order, introduced by Mr. LE MOYNE on the 8th instant, was read as follows:

Whereas serious differences of opinion may arise between members of the two Houses of Congress as to their jurisdiction and powers in joint session in counting the electoral vote, and the questions involved being questions of law:

Resolved, That the Senate be requested to appoint a committee to act with a committee of five, to be appointed by the Speaker of this House, in presenting to the Supreme Court such questions as either of said committee may deem important in the premises, and in asking the members of the Supreme Court to give to Congress an opinion thereon.

The SPEAKER. In reply to the gentleman from New York [Mr. WOOD] who made the inquiry, the Chair now rules that under Rule 41 the question is, Will the House now proceed to consider this resolution?

Mr. COX. Will it be in order to move——

Mr. HOSKINS. When this resolution was introduced by the gentleman from Illinois [Mr. LE MOYNE] I rose in my place and demanded under the rules that it should lie over one day, as I desired to debate it. If the Chair now recognizes me as entitled to the floor——

The SPEAKER. If the House shall determine that it will now consider this resolution, the Chair will recognize——

Mr. COX. Will it be in order to move to refer this resolution to the Committee on the Judiciary?

Mr. CLYMER. Let it be referred to the special committee authorized this morning.

Mr. WOOD, of New York. I raise the question of consideration in regard to this resolution. I think the House has disposed of this very proposition by its action this morning.

Mr. COX. I move that the resolution be referred to the special committee authorized this morning to be appointed.

The SPEAKER. The Chair will not entertain that motion at present, until the question of consideration is determined. The question is, Will the House now consider this resolution?

The question was taken; and upon a division there were—ayes 80, noes 30.

Mr. COX. I move to refer this resolution to the special committee, and I call the previous question on that motion.

Mr. CONGER. I raise the point of order that no quorum voted upon the question of consideration.

The SPEAKER. That point is well taken.

Tellers were ordered; and Mr. HOSKINS and Mr. COX were appointed.

Mr. COX. I desire to inquire of the Chair who will be entitled to the floor if the House determine to consider this resolution at this time?

The SPEAKER. The Chair will listen to the gentleman from New York [Mr. HOSKINS] who claims the floor to debate the resolution; but the Chair thinks that the gentleman who introduced the resolution [Mr. LE MOYNE] will be entitled to the floor.

Mr. HOSKINS. If the Chair pleases, the gentleman who introduced the resolution yielded the floor at the time he introduced it. I have inquired of him this morning, and he says that he does not desire to discuss it.

The SPEAKER. The Chair cannot understand why the gentleman who introduced the resolution has not control of it.

Mr. HALE. Did not the gentleman from New York [Mr. HOSKINS] rise for the very purpose of debating the resolution, and did not that attitude of his carry the resolution over?

The SPEAKER. The rising to debate a resolution is simply a form of objection to its present consideration under the rule.

Mr. HALE. But does it not entitle the member so rising to debate it to the floor upon it when the resolution is taken up by the House?

Mr. RUSK. It has not yet been taken up.

Mr. HALE. No; and if the House does not take it up then the question will not arise.

Mr. BURCHARD, of Illinois. In order to carry the resolution over the gentleman from New York [Mr. HOSKINS] had to be recognized as being upon the floor and ready to debate the resolution. Thereupon, being so recognized by the Speaker and holding the floor for debate, under the rule the resolution went over.

The SPEAKER. No. The Chair decides that that is a manner of objection provided for by the rules. It would operate most unjustly if it took off the floor the gentleman who introduced the resolution under the rules, without first giving him control of the resolution.

Mr. BURCHARD, of Illinois. He would have control of the resolution by himself rising to debate it or by moving the previous question and having that sustained. But failing to do that, the gentleman from New York [Mr. HOSKINS] is entitled to the floor.

The SPEAKER. The Chair does not think so. The Chair holds that the gentleman from Illinois, [Mr. LE MOYNE,] who introduced the resolution, has a right to be recognized if the House shall determine now to consider it.

Mr. HOSKINS. The gentleman from Illinois upon introducing the resolution took his seat. Thereupon I rose to debate the resolution, and, had the resolution not gone over under the rule, I would have debated it at that time.

The SPEAKER. The Chair does not so understand. The Chair understands that the gentleman from Illinois [Mr. LE MOYNE] desired the resolution to be considered and acted on at that time.

Mr. BURCHARD, of Illinois. And therefore he lost his right to the floor when the gentleman from New York [Mr. HOSKINS] rose to debate the resolution.

The SPEAKER. The Chair does not think so, because the rising of the gentleman from New York [Mr. HOSKINS] is a form of objection provided for by the rule, and upon that objection the resolution went over. All the practice of the House goes to show that the member who introduces the proposition should primarily have the control of it until the House by a majority vote takes it out of his control.

Mr. BURCHARD, of Illinois. Or until he demands a vote upon it, when he loses his right to the floor.

Mr. HALE. The mover of the resolution introduced it and asked that it be passed. He does not from his action presumably desire to debate it. But the rule provides that if any one rises to debate the resolution it goes over. Now, the member introducing this resolution indicated no desire to debate it; on the contrary, he wanted it adopted; and, having introduced it and resumed his seat, the gentleman from New York rose to insist on a privilege which the rules give of debating the resolution. He is the initial party on that consideration; he is the member who indicated a desire to debate it. Therefore I would ask who the Chair decides was upon the floor when this resolution went over?

The SPEAKER. The Chair decides that the gentleman from New York was on the floor under the right given him by the rule to make objection. In further reply to the gentleman from Maine, the Chair would say that never within his recollection has the control of a resolution or bill or report been taken out of the hands of the gentleman introducing it until a majority of the House has acted adversely to him. It would be a very arbitrary rule to allow a single member upon his own motion, without any action of the House, to take from the control of another member a proposition which he introduces.

Mr. HALE. Of course my theory proceeds upon the assumption that the gentleman from Illinois who introduced the resolution had surrendered the floor.

The SPEAKER. The Chair will read a passage from the Manual bearing upon this question:

By parliamentary courtesy the member upon whose motion a subject is brought before the House is first entitled to the floor.

This is a point which appears to admit of very little doubt.

Mr. BURCHARD, of Illinois. But, Mr. Speaker, when the member introducing the proposition demands a vote, as was the case yesterday on a bill then before the House, he loses the right to the floor. The gentleman from New York could only be recognized, not for objection, but for debate. Under the rule a member rising to debate a proposition does not object; he simply rises to debate it, and holding the floor for that purpose, the rule carries the resolution over.

Mr. COX. I rise to a point of order. I submit that debate is not

in order. The House was dividing; there was no quorum; and tellers were appointed.

The SPEAKER. The Chair sustains the point of order. A division had been demanded and tellers ordered. The tellers will take their places.

The House divided; and the tellers reported—ayes 77, noes 84.

So the House refused to consider the resolution.

AGRICULTURAL REPORT FOR 1876.

The SPEAKER. The next resolution lying over under this order of business will now be read.

The Clerk read the following resolution, offered on Friday last by Mr. WILSON, of Iowa:

Resolved, That the Committee on Printing be instructed to report a joint resolution providing for the printing of the report of the Commissioner of Agriculture for the year 1876.

The resolution was adopted.

Mr. WILSON, of Iowa, moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

The SPEAKER. This order of business being concluded, reports from committees are now in order.

W. L. ROBINSON.

Mr. BRADLEY, from the Committee of Claims, reported back adversely the bill (H. R. No. 747) to re-imburse W. L. Robinson, late postmaster at Galesville, New York, and moved that the same be laid on the table.

Mr. TOWNSEND, of New York. I ask that this bill be placed on the Private Calendar.

The SPEAKER. The Chair is of opinion that upon the demand of any member a bill reported adversely must under the practice of the House go to the Private Calendar. Although there is no specific rule directing this course, it is in accordance with the usage of the House heretofore.

Mr. TOWNSEND, of New York. I so understand.

The SPEAKER. The Chair will not overrule the decision of his predecessors in this particular. The bill will be placed upon the Private Calendar.

Mr. BRADLEY. I ask that the report be printed.

There being no objection, it was so ordered.

BRIG A. S. PENNELL.

Mr. HEREFORD, from the Committee on Commerce, reported back, with a recommendation that it pass, the bill (S. No. 745) to authorize the Secretary of the Treasury to issue a register and change the name of the brig A. S. Pennell to the City of Moule.

The bill was read. It provides that the owners of the brig A. S. Pennell, of Portland, Maine, be authorized to change her name to the City of Moule; and the Secretary of the Treasury is directed to issue a register for the same.

The bill was ordered to a third reading, read the third time, and passed.

Mr. HEREFORD moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

DICKSON SHINAULT.

Mr. HEREFORD also, from the same committee, reported back, with a recommendation that it pass, the bill (S. No. 105) for the relief of Dickson Shinault, late assistant keeper of the light-vessel at Wolf Trap light-station, in the State of Virginia.

The bill, which was read, authorizes and directs the proper accounting officers of the Treasury to adjust and settle the account of Dickson Shinault, late assistant keeper of the light-vessel at Wolf Trap light-station, in the State of Virginia, and allow him the sum of $120, being the amount due him as salary for the first quarter of the year 1861.

The bill was ordered to a third reading; and it was accordingly read the time, and passed.

Mr. HEREFORD moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

SCHOONER CARTERET.

Mr. FELTON, from the Committee on Commerce, reported back a bill (H. R. No. 1874) granting a new register to the schooner Undine, with an amendment.

The bill, which was read, authorizes and directs the Secretary of the Treasury to issue a new register or other marine papers, under the name of the Undine, to the schooner or vessel now or lately called the Minnie, now being rebuilt at Hollywood, North Carolina, upon the surrender of her former papers, and filing a carpenter's certificate with the collector of Beaufort, North Carolina, to the effect that said vessel has been substantially built as new under the authority of the act.

The amendment of the committee was read, as follows:

In the fifth line, strike out "Undine" and insert "Carteret."

The amendment was agreed to; and the bill, as amended, was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. FELTON moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

The SPEAKER. By unanimous consent, the title will be amended to agree with the bill as amended.

There was no objection, and it was ordered accordingly.

POST-ROUTE BILL.

Mr. CLARK, of Missouri. I am directed by the Committee on Post-Offices and Post-Roads to report back the bill (H. R. No. 3628) establishing post-roads, and to move non-concurrence in the amendments of the Senate thereto. The amendments of the Senate are very long, and if it is deemed necessary I will state their substance. The amendments of the Senate were not considered in the Committee on Post-Offices and Post-Roads, but were objected to for the reason that they were general legislation and ought not to be attached to a post-route bill. As the House is well aware, it is quite unusual to place general legislation upon such post-route bills. If the amendments are to be passed at all they should be passed in another form.

The amendments of the Senate make appropriations establishing fast mails between New York, Chicago, and other points. They also re-enact the franking privilege, including the franking of letters as well as of documents. They also give the First, Second, and Third Assistant Postmasters-General authority to sign contracts, bonds, &c., coming under their special consideration without reference, as the law now is, to the Postmaster-General. I demand the previous question.

The previous question was seconded and the main question ordered.

Mr. BURCHARD, of Illinois. I hope the amendments of the Senate will be read, or, if they are not read, I hope they will be ordered to be printed, and their consideration postponed until we shall have them on our desks as printed.

Mr. CLARK, of Missouri. These amendments of the Senate contain general legislation, and it has been the practice to omit altogether from post-route bills general legislation of every character. For that reason the committee have recommended non-concurrence in the Senate amendments.

Mr. BURCHARD, of Illinois. We have not been able on this side to hear the gentleman from Missouri, and I hope he will state exactly the substance of these amendments.

Mr. CLARK, of Missouri. It will be observed, Mr. Speaker, that the bill which went from the House was the usual post-route bill. It passed at the last session of Congress, and went to the Senate, where a number of amendments embracing general legislation were added to it. One of the amendments appropriates $350,000 or $400,000 for the purpose of establishing fast mails between the cities of New York, Chicago, and Saint Louis, New York and New Orleans, and other points in the country. Another amendment re-establishes or re-enacts the franking privilege, including the franking of letters as well as of documents by members of the Senate and House of Representatives and the heads of the different Departments. Another amendment gives authority to the First, Second, and Third Assistant Postmasters-General to sign all contracts coming within the purview of their separate departments without being signed by the Postmaster-General, as the law now requires.

The Committee on the Post-Office and Post-Roads have moved non-concurrence, simply upon the ground that these amendments were entirely out of place upon a post-route bill.

Mr. BURCHARD, of Illinois. Do the committee recommend non-concurrence in the amendment establishing the fast mails?

Mr. CLARK, of Missouri. They recommend non-concurrence in all the amendments. The committee were of the opinion that these subjects should be more properly embraced in another bill, and recommended non-concurrence, because it has been held to be impolitic and improper for amendments embracing general legislation to be attached to the usual post-route bill.

The amendments of the Senate were non-concurred in.

Mr. CLARK, of Missouri, moved to reconsider the vote by which the amendments of the Senate were non-concurred in; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

PINKNEY ROLLINS.

Mr. HANCOCK, from the Committee of Ways and Means, reported back a bill (H. R. No. 764) for the relief of Pinkney Rollins, with an adverse report; and the same was laid on the table, and the report ordered to be printed.

JOHN F. SUTHERLIN & BROTHER.

Mr. HANCOCK also, from the same committee, reported back a bill (H. R. No. 3256) for the relief of John F. Sutherlin & Brother, of Parke County, Indiana, with the recommendation that it do pass.

The bill, which was read, authorizes and directs the Commissioner of Internal Revenue to settle the claim or account of the United States against said John F. Sutherlin & Brother, of Parke County, Indiana, distillers, upon the following terms, to wit: Their survey shall be fixed from the beginning at two gallons and seventy-five hundredths of a gallon of proof spirits per bushel of grain; and on that measurement of capacity their accounts shall be settled and adjusted. No

damages or interest shall be charged against them in adjusting their accounts.

Mr. CONGER. I ask that the report accompanying that bill be read.

The Clerk read as follows:

It appears that in 1872, when the Messrs. Sutherlin erected their distillery, they were farmers, residing in Parke County, in the State of Indiana; had no experience as distillers of spirits from grain, but had some as distillers of brandy from apples and peaches. They are represented as illiterate, but honest and well-meaning men. Their distillery was surveyed on the 17th day of June, 1872, by General Frank White, then assessor of that district, and his deputy, Fred. W. Stokes. The capacity of the distillery was put at 58½ bushels of grain daily, to yield 3½ gallons proof-spirits per bushel, which would make the yield 204¾ gallons per day. At the time General White made the survey he says he was of the opinion, under his instructions from Washington, that he could not make the survey less than 3½ gallons per bushel, although he was of the opinion at the time of making the survey that the distillery would not make a yield of 3½ gallons of proof spirits from each bushel of grain used, on account of the machinery of the distillery being defective. In the written application of said Sutherlins, which is under oath, they state positively that they were not aware of the fact that, if they made less than 80 per cent. of proof spirits of their surveyed capacity, they were subject to an assessment to make up the difference between 80 per cent. of their capacity and the actual amount of spirits produced. They supposed that all the Government wanted from them was the tax of 70 per cent. on the gallon for all proof spirits distilled by them.

Their first mash was prepared on the 6th of September, 1872, and the first distillation was made on the 9th. During the months of September and October, under the survey above named, they run their distillery for 41 days. During that time, according to their survey, they ought to have produced, counting 3½ gallons to the bushel, 7,371 gallons; 80 per cent. of that amount would be 5,896.80. The amount actually produced was 2,516.05; difference between 80 per cent. and amount actually produced was 3,380.75.

The tax assessed against them on the 3,380.75 gallons of deficiency, at 70 cents per gallon, amounts to the sum of $2,366 42.

During this 41 days the facts show that there were five mashes that were thrown out to the hogs because spirits could not, for some unaccountable reason, be made from them. These five mashes, according to the capacity of the distillery, counting them at 80 per cent. of that capacity, ought to have produced 1,023.75 gallons of spirits.

During the month of November, 1872, they run their distillery for six days, to-wit, from November 25 to November 30, both inclusive.

During that time they ought to have produced, according to the survey, 1,228½ gallons. 80 per cent. of that would be 982.80 gallons. They actually made 780 gallons. Difference between 80 per cent. and amount produced, 202.80 gallons.

Deficiency tax on that amount, at 70 cents per gallon, would make $141.96; but from some cause the deficiency tax assessed against them on the above amount is put at $43.13. But since that time the Internal Revenue Department has abated of that amount all except the $141.96, which still remains against them.

The amount of the assessment made against them up to December, 1872, amounted to $2,513.38, allowing the abatement made by the Department as above shown. On the 31st day of December, 1872, a new survey was made and the capacity placed at 3 gallons per bushel, instead of 3½ as per first survey. On the 30th day of January, 1874, a new survey was made and fixed at 2.75 gallons per bushel. Since that time the distillery has run at the capacity fixed by last survey.

The sworn statements of the gaugers, store-keepers, and distiller, which accompany their application for an abatement of the above tax, show that the deficiency in the yield of the said distillery was not on account of any improper conduct of the said Sutherlins or any of their employés, but was produced by causes that no one connected with the distillery upon the part of the Government can account for or explain.

The statement of General White, the present collector of that district, shows that said distillery has been operated at a loss to said Sutherlins; that they are poor men, and that for the Government to force them to pay said deficiency with its interest and costs, which now amounts to near $4,000, would break up the Sutherlins and their securities.

The affidavits of the Government officers and the letter of the present collector show that the tax was paid to the Government on all the spirits produced at said distillery at the time said deficiency occurred, and that said Sutherlins have lost heavily in trying to operate said distillery, after all their efforts and losses, as shown by the evidence accompanying the application for an abatement of said tax.

The committee feel that it would be a very great hardship on the Sutherlins to now undertake to collect from them this deficiency, as above stated, and by so doing ruin them and their securities financially.

The Government to settle with them from the beginning upon the basis of the last survey, to wit, 2.75 gallons of proof-spirits per bushel of grain, and not charging them with any interest or damage.

The bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. HANCOCK moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

ORDER OF BUSINESS.

The SPEAKER. The morning hour has expired, and the gentleman from Indiana [Mr. HOLMAN] is recognized for the motion that the House resolve itself into Committee of the Whole on the post-office appropriation bill.

POST-ROUTE BILL.

Mr. CLARK, of Missouri. I ask that by unanimous consent a change be made in the order of the House a short time ago in regard to the post-route bill. There has been a misunderstanding in regard to the non-concurrence in the Senate amendments. It was my intention to move concurrence in those amendments of the Senate which established post-routes and non-concurrence in those amendments which were alluded to in my remarks. I ask that by unanimous consent the order of the House be so changed as that the non-concurrence shall only apply to the amendments that I indicated.

Mr. HOLMAN. The order should be made to concur distinctly in the amendments of the Senate establishing post-routes and to non-concur in all others.

Mr. KASSON. There is no objection to that.

By unanimous consent the change indicated was made in the order of the House.

WILLIAM H. GRAY.

Mr. ROBBINS, of North Carolina, by unanimous consent, from the Committee of Claims, reported back with a favorable recommendation, the bill (H. R. No. 1463) for the relief of William H. Gray, of Kentucky; and the same was referred to the Committee of the Whole on the Private Calendar, and the accompanying report ordered to be printed.

MESSAGE FROM THE PRESIDENT.

A message, in writing, from the President of the United States was communicated to the House by Mr. U. S. GRANT, jr., his Private Secretary.

POST-OFFICE APPROPRIATION BILL.

Mr. HOLMAN. I move that the rules be suspended and that the House resolve itself into Committee of the Whole for the consideration of the post-office appropriation bill; and pending that motion I move that all general debate on the bill in Committee of the Whole be limited to one-half hour.

The motion to limit debate was agreed to.

The motion that the House resolve itself into Committee of the Whole was agreed to.

The House accordingly resolved itself into Committee of the Whole House on the state of the Union (Mr. COX in the chair) and proceeded to consider the special order, being the bill (H. R. No. 4187) making appropriation for the service of the Post-Office Department for the fiscal year ending June 30, 1878, and for other purposes.

The CHAIRMAN. The House is in Committee of the Whole for the consideration of the post-office appropriation bill, and by order of the House all general debate on the bill is limited to one-half hour.

Mr. HOLMAN. I move that the first reading of the bill be dispensed with.

The motion was agreed to.

Mr. REAGAN. Mr. Chairman, in the last session of Congress during the pendency and discussion of the post-office appropriation bill the subject of the mode of compensation of railroads for carrying the United States mails was discussed; and subsequently during the session I believe it was understood that a joint committee of the two Houses should be appointed to adopt some mode that would be equitable and just for compensating these roads. I understand that joint committee was appointed to examine that subject during the recess of Congress and make a report. I see that the bill is reported without reference to any suggestions from that committee, and perhaps their report may not have been made.

Mr. BLOUNT. It has not.

Mr. REAGAN. The necessity for the adoption of some rule different from any that now prevails for the compensation of these roads to reach the ends of justice and fairness and equity as to the roads themselves, and to reduce public expenditures, it seemed to me was eminently necessary. I do not rise for the purpose of offering amendments to bring up that subject now, but simply for the purpose of calling the attention of the House to the fact that after the increase of the cost of this branch of the service by the act of 1873, which was an increase by that single act of about $1,800,000, there was a slight reduction made by the arrangement adopted on the report of a committee of conference between the two Houses at the last session; but having examined this subject of the increase of the cost of that service by the act of 1873, it seemed to me that it was a high duty devolved upon the Appropriation Committee to have made provision for a more equitable mode of compensating the railroads and for a reduction of the expenditures in this respect.

The appropriation now proposed for the cost of railroad transportation is about the same, perhaps a few thousand dollars less than, it was last year. I have before me a pamphlet purporting to be letters to the Postmaster-General by Mr. James N. Davis, of the Post-Office Department, whom I do not know, in which there is a very full discussion of that subject; and there are formulated in some four or five sections a plan for compensating the railroads for this class of service, which the writer states would be more equitable as among the railroads, and save the Government nearly $2,000,000 of expense annually. I regret exceedingly that this pamphlet had not fallen into the hands of the committee, for, so far as I am able to comprehend this subject, the discussion of it there is more clear and more satisfactory than any I have seen, and in truth I must say, not knowing the author of the pamphlet, the only intelligent discussion of the subject I have seen, in which he proposes, as a mode of equalizing the amounts paid for the service according to the value of the service rendered to the Government, to adopt a compound mode of compensation, partly by the weight of the mails and partly by the space of cars occupied. I regret, if I have rightly understood the effect of the propositions contained in these letters, that they have not come before the committee, so that the committee might have examined them and seen if the conclusions they present are of a character that would work a measure of eminent justice in fixing the equities among the railroads as to the value of the service performed, and effecting a considerable saving of expense to the Government. I call attention to this, because I am unwilling that this bill should go by without attention being called to so important a feature in it. But I do not propose without the sanction of the committee, at this time, to undertake to offer amendments that would produce the effect which, it seems to me, ought to have been produced by this bill.

Mr. HOLMAN. The committee have had occasion, or a portion of the members of the committee, to examine the views referred to by the gentleman from Texas, [Mr. REAGAN,] in regard to fixing the mode of compensation of railroad companies for the transportation of mails. The effort made during the last session to adopt a system somewhat similar to that referred in the pamphlet mentioned by the gentleman from Texas failed on account of the absence of definite information on the subject.

And in lieu of the attempt on the part of the House to adopt a new basis of compensation, we finally agreed simply to reduce the compensation for transportation of mails by railroad companies 10 per cent. upon the amount of compensation allowed by the act of Congress of March 3, 1873, and 20 per cent. upon the amount allowed by the act to the railroad companies to which land grants had been made, referring the general subject of fixing the basis of compensation to railroads for transportation of the mails to a commission which has not yet made a report. I understand that that commission has held sessions in all the leading cities in the United States. But a short time since, I noticed that they were upon the Pacific Coast; I believe they have now returned. But I am very confident that the information they will be able to furnish will not be so collated, arranged, and understood during this present session of Congress as to justify any attempt to adopt a new system of compensation at the present session.

From the report of the Postmaster-General we learn that the effect of the change of rates of compensation to railroads made at the last session of Congress was a reduction of the pay to railroads, independent of land-grant roads, amounting to $726,187, and to the land-grant roads a reduction of $260,714; making the entire reduction, which may be made available for the coming fiscal year as well as for the present, of $986,901.

There is this additional fact to be considered, that contracts now existing, and which will expire from time to time, prevent the full effect of that reduction being felt for the present fiscal year. Nor will the full effect of the reduction be felt next year, for there are contracts representing something over $2,000,000 a year still in existence, and which will expire from time to time during the next two years.

If gentlemen will refer to the appendix to the report of the Postmaster-General, page 8, they will see that the cost of transporting the mails by railroads for the last fiscal year was $9,543,134. That amount will be reduced by the reduction effected by the legislation of last Congress by the sum of $986,901, leaving $8,556,233 as the amount that will be expended during the next fiscal year, in the absence of any increase in the cost of railroad transportation of mails or increase of the service.

I suppose, however, that there will be some increase. The Committee on Appropriations by the pending bill proposed to appropriate $9,000,000, being only $100,000 less than the appropriation for the current fiscal year. The better opinion is that under no circumstances will the increased cost of railroad transportation of mails exceed $8,800,000. I think, therefore, that the amount proposed by this bill, $9,000,000, is about $200,000 more than will be actually required.

Mr. GARFIELD. Allow me to ask the gentleman what difference, if any, there is between the estimates of the Committee on Appropriations of the receipts of the Post-Office Department for the coming fiscal year and the estimates of the Department? Last year, I believe, there was a difference, and quite a marked one.

Mr. HOLMAN. The estimate of the Department of the receipts for the coming fiscal year——

Mr. GARFIELD. I mean the whole receipts of the Department. The Department has made, in the aggregate, an estimate of how much it expects to receive in the way of revenue. I desire to inquire if the Committee on Appropriations have treated that as the basis of their action in this bill or whether they have changed the basis by estimating that there will be more revenue than the Department estimates?

Mr. HOLMAN. We accept the estimates of the Post-Office Department. At the last session of Congress the Committee on Appropriations insisted that the revenues of the Post-Office Department would exceed by some $900,000 the estimates submitted by the Postmaster-General at the commencement of the session. The views of the Committee on Appropriations have been proved to be substantially correct, for the receipts have been very materially increased. Still we take the estimate of the Department, $30,645,165, as the probable revenues of the Post-Office Department for the next fiscal year; and we reach the deficit upon that basis.

A single remark further and I will then yield to the gentleman from Michigan, [Mr. WALDRON,] a member of the Committee on Appropriations. The Post-Office Department seems to assume, it does assume in the report of the Postmaster-General, and especially in the report of the superintendent of railroad transportation, that the reductions made by Congress at its last session will not be adhered to. Now, I think that the House will have no occasion to recede from the measures it adopted at the last session upon this subject. On the contrary, I think that the reductions then made were very moderate indeed, considering the general shrinkage of values throughout the country.

Mr. WALDRON. The bill reported by the Committee on Appropriations for the support of the Post-Office Department during the next fiscal year appropriates $1,300,000 less than the corresponding bill of last year, and it appropriates $3,700,000 less than called for by the estimates of the Department. It does this, too, in the face of the natural increase of the service year by year.

As a member of the Committee on Appropriations I have given some little attention to the details of this bill. While I concur with the majority of the committee in many of the reductions from the estimates that this bill proposes, yet as one of the minority of the committee I differ with the majority as to some of these reductions, believing that the majority have reduced the appropriations to an amount that will be inadequate for the efficient working of the postal service.

During the last session of this Congress this post-office appropriation bill was the occasion of a long and earnest discussion in the committee and in the House. I have no desire to re-open that discussion. I shall content myself, as some of these items are reached in their order, by proposing amendments which in my judgment will be for the interest of an efficient postal service.

Mr. REAGAN. I desire to add one word to what I have said about the cost of railroad transportation of the mails. That item of cost is stated at $9,000,000. But there are other items. There is one for railway post-office clerks, $1,125,000, and one for route agents, $845,000; making the total cost of that branch of the service $11,970,000, instead of $9,000,000. I simply desire to add this statement, because it ought to appear as showing the enormous extent to which the cost of this branch of the service has been carried.

Mr. HOLMAN. I concur very fully in the views of the gentleman from Texas [Mr. REAGAN] as to the excessive cost of the transportation of the mails by the railroads. And I think the views expressed in the pamphlet to which he has referred, by a gentleman well informed of the operations of the Post-Office Department, are undoubtedly correct, and that the expense of transporting the mails by railroads ought to be reduced at least two millions of dollars below even the amount which we propose to appropriate for the next fiscal year. There is no branch of the public service in which there has been such an increase of expense as in this branch of the expenditures of the Post-Office Department, the transportation of mails by railroads.

That is in consequence of the powerful influences brought to bear upon the Post-Office Department. These railroads exert a power which is compact and consolidated. They are exacting in their demands, and have steadily sought year by year to obtain an increase of compensation until the last session of Congress. I indulge the hope that the next Congress which shall consider the report of this special commission will find it entirely compatible with the public interest to reduce the expenditures for the transportation of mails by railroads to not exceeding seven millions of dollars per annum, which I think will be a very ample compensation for the service.

The CHAIRMAN. General debate upon this bill is closed, and it will be now read by paragraphs for amendment.

The Clerk read as follows:

Be it enacted, &c., That the following sums be, and the same are hereby, appropriated for the service of the Post-Office Department for the year ending June 30, 1878, out of any money in the Treasury arising from the revenues of said Department, in conformity to the act of July 2, 1836, as follows:

Office of the Postmaster-General:

For mail depredations and special agents, $121,500; and not exceeding $7,500 of this amount may be expended for fees to United States attorneys, marshals, clerks of courts, and counsel necessarily employed by special agents of the Post-Office Department, subject to approval by the Attorney-General.

Mr. WALDRON. I move to amend the paragraph just read by striking out "$121,500" and inserting in lieu thereof "$150,000." I desire merely to call the attention of the Committee of the Whole to the fact that the expenditures of the Department for this branch of the service for the fiscal year ending June 30, 1874, were $165,000 and the appropriation made last year for this purpose $150,000. There are forty-three agents paid under this appropriation, and their salaries and expenses during the last fiscal year amounted to $142,000. The effect of reducing this item of appropriation can only be to cripple the Department in its effort to detect and punish fraud and crimes, and I do not believe that is the intention of the Committee on Appropriations.

Mr. BLOUNT. In reference to this reduction I desire to say that the Committee on Appropriations have seen fit to reduce the number of special agents to seventy-five. The total number of arrests by all these agents during the last year was two hundred and ninety-one, or about eight arrests to each State on an average. They have some other duties to perform connected with the operations of the Departments, but this is the main portion of their business.

The Committee on Appropriations were satisfied that one agent for each State was enough; not only that, but judging from the amount of work which is reported to have been done by them it is more than enough. With a view of reducing the expenditures of the Government wherever it could be done, we have adopted this course in reference to this branch of the service. We have not sought to look backward and see what has been done for the purpose of imitating it; but wherever there have been excesses we have sought promptly to correct them. We are satisfied that not only will the service not be impaired but it will be improved by this reduction.

Mr. HOLMAN. I would suggest that in a general way the Committee on Appropriations, not only at this session but last session, have reached the conclusion that an allowance for special agents on

the basis of about one for each State in the Union—thirty-eight in the aggregate—is very ample. While in some cases more than one agent may be required for a State, yet in other cases a single agent may be sufficient for several States. Putting together the compensation and expenses of these agents (as officials of the Post-Office Department they travel on free passes) the committee thought that $3,000 for each would be a very ample allowance, making the amount $114,000. Adding to that $7,500 for what the committee regard as a very questionable item—allowances to attorneys, marshals, clerks, and other officers connected with the Federal judiciary, the aggregate appropriation is $121,500.

I believe there is a general impression on the part of gentlemen who have examined this subject that an unnecessary number of these special agents are now employed. The whole number of special agents employed during the last fiscal year was sixty-two. The number now provided for by this appropriation is forty three. The committee propose to make provision for thirty-eight, unless the Post-Office Department thinks proper to increase the number by correspondingly diminishing the compensation; for certainly $3,000 is a very large compensation, and greatly beyond the average pay received by other employés of the Government for services of similar character.

Mr. FOSTER. All that is desired, I suppose, in regard to this expenditure is to see that the Department has the necessary help to protect the people from crimes against the postal laws. This bill provides for thirty-eight special agents; and as there are between thirty-six and thirty-seven thousand post-offices in the country, it allows one special agent for about one thousand post-offices. Is it possible for one special agent to take care in this respect of one thousand post-offices?

Mr. BLOUNT. Does the gentleman wish the House to understand that these agents are obliged to go to each of the several post-offices?

Mr. FOSTER. No, sir; I do not understand that to be the fact.

Mr. CLYMER. Does not the gentleman know that most of this labor is really done by the postmasters in the large towns; that they supervise the offices in surrounding districts?

Mr. FOSTER. No, sir, I do not know that to be the fact.

Mr. CLYMER. That is the practice.

Mr. FOSTER. With all due deference to the chairman of the committee and the subcommittee, I think I have given this subject more special attention than they have; for I do not believe they have carefully gone into this question; they have not had before them the special agents in charge. I make the statement that under this proposition we allow but one agent for one thousand post-offices. I think the bare statement of that fact is sufficient without argument to show that the number here provided for is inadequate. I do not propose, however, to make any factious opposition. I merely make these remarks to sustain the Post-Office Department in its estimate that $150,000 is the least that will suffice to meet the needs of the service in this respect.

Mr. HOLMAN. Mr. Chairman, at the risk of being a little out of order I wish to say that the post-office appropriation bill as passed by the House at the last session proposed to appropriate $110,000 as against $121,500 proposed to be appropriated by this bill. It was then urged, however, that from some unaccountable cause, but as was alleged according to all experience, more depredations were committed during the year of a presidential canvass than during other years.

Mr. FOSTER. That was on account of the reform tendencies of the democratic party!

Mr. HOLMAN. The argument was pressed very vehemently. Statistics were furnished to show the absolute necessity for an increased number of special agents during the presidential year; and, strangely enough, the bill did not go through at the last session without a recognition of that fact; so that the appropriation as finally made was $150,000. But, happily for the country, the next fiscal year is not a year for the election of President; so that I think we can very safely, consistently with every interest, reduce this amount to $121,500.

The amendment of Mr. WALDRON was not agreed to.

The Clerk read as follows:

For compensation to clerks in post-offices, $3,290,000; and the Postmaster-General is hereby directed to cause a careful inquiry to be made into the rates of compensation now paid to clerks in post-offices, with a view to a more equitable adjustment and reduction thereof: *Provided*, That such adjustment shall in no case involve an increase over and above the present aggregate compensation as provided in this act.

Mr. CANNON, of Illinois. By instruction of the Committee on the Post-Office and Post-Roads, I move to amend by striking out in the paragraph just read the word "two" in line 34, and inserting "five;" so as to read:

For compensation to clerks in post-offices, $3,590,000.

Mr. Chairman, the amount expended by the Post-Office Department for clerk hire during the year ending June 30, 1875, was $3,414,811.26. The amount expended for this purpose during the last fiscal year was $3,480,730.45. The estimate of the expenditure this year is $3,700,000. The amount recommended in this bill to be appropriated for the next fiscal year is $3,290,000, which I believe is the amount of the appropriation for the present fiscal year.

Now, it will be recollected by the committee that the salaries of postmasters were very materially changed by the legislation of the first session. Salaries that had previously been about $1,500 were slightly increased; while those ranging from $2,000 to $4,000 were very largely diminished. The result is that by cutting off this allowance for clerk hire the candle will be burning at both ends. In many parts of the country, postmasters who heretofore received from $2,000 to $3,000 a year are cut down below $2,000. Now under the law there is no authority to allow clerk hire to postmasters getting less than $2,000 salary, though such postmasters may have an allowance for separating the mails, provided there is any necessity for such an allowance. So that in many important points, for instance in my own State of Illinois, where postmasters get less than two thousand dollars, having got twenty-three hundred and twenty-eight hundred dollars heretofore, there can be no allowance for clerk hire. In some places of that kind they have very heavy duties to perform in separating mails, as, for instance, at the crossing of important railroads.

Now when I go and ask for an allowance of that kind in behalf of these postmasters at the hands of the Postmaster-General, he at once admits the allowance ought to be made but says there is no money out of which the payment can be made. Therefore I think it is right and proper that this allowance should be increased. In my opinion, as a member of the Committee on Post-Offices and Post-Roads, it should be increased to $3,700,000, the amount estimated for by the Department, but after a very full and thorough consideration given to this question the majority of that committee thought it ought to be increased to $3,500,000 instead of $3,290,000.

A MEMBER. Was that a unanimous vote?

Mr. CANNON, of Illinois. Yes; it was a unanimous vote on the part of the Committee on Post-Offices and Post-Roads, and in compliance with the instructions of that committee I move to make the sum $3,500,000 instead of $3,290,000, and hope the amendment will be adopted.

Mr. BLOUNT. Mr. Chairman, the Committee on Appropriations are opposed to this amendment. The question has been carefully considered. It was discussed at the last session and the very same reasoning was then urged for increasing it which is now adduced by the gentleman from Illinois.

Doubtless it is true that in some sections of the country there have not been and there is not sufficient clerical force. But during the discussion of the last post-office appropriation bill we were fully satisfied there were other sections of the country where the clerical force was entirely too large, and that with a proper adjustment the money appropriated for this purpose was ample to provide for the wants of the service.

Instances were given where excessive allowances were made; where the clerical force at some offices was ample to do all the work without any assistance from the postmasters themselves. Various members of the House informed the committee that such was the condition of affairs in their districts. Therefore we determined that we would adhere to this reduction.

Mr. CLARK, of Missouri. Will the gentleman from Georgia allow me to ask him whether the Committee on Appropriations have made any calculation for any increase of this character of service under the Post-Office Department? I notice that the committee in the last appropriation bill made precisely the same appropriation that is now asked for.

Mr. BLOUNT. Certainly.

Mr. CLARK, of Missouri. I desire to know if the Committee on Appropriations have made any calculation for any increase of service, and whether in case of increase of service a larger appropriation will not be required for next year than was required for the present fiscal year?

Mr. BLOUNT. So far as that matter is concerned, there has been at the same time a decrease in the value of labor of every kind; and there is no reason why it should not be felt in the Post-Office Department and in all other Departments of this Government, which are but burdens upon the people, as in any other service. The Committee on Appropriations are determined the people shall have the benefit of this condition of affairs.

Mr. CLARK, of Missouri. But I was speaking in reference to the condition of the force.

Mr. BLOUNT. I so understood, and my reply was with reference to that, and that, while there may have been some slight increase, nevertheless this fund, in view of the reduced price of labor, would go quite as far as the service required.

Mr. HOLMAN. I move *pro forma* to strike out the last word.

Now, Mr. Chairman, the last appropriation bill passed on this subject appropriated for this service $3,292,000. The item occupied a very considerable time in its consideration before the conference committee. The Postmaster-General in his annual report for the last year, not for the present one, called the attention of Congress to the growing tendency to increased expense in this particular branch of the service, and spoke of the importance of devising some method, if possible, by which the postmasters themselves should devote themselves to their duties, instead of the entire duty of the carrying on of the post-offices of the Government being remitted to the clerks allowed to the respective offices by the Post-Office Department.

There are two considerations which induce the committee to report this provision just as it stands, appropriating for the next year the same amount appropriated for this year. The first is that there have been manifestly a steady shrinkage of values in this country since that appropriation was made and a reduction in the compensation for service in all branches of industries in this country much greater, as we

think, than the necessity for any increase in this particular branch of the service. Secondly, if possible, by reducing the amount of the appropriation to a reasonable sum, the object was, in these offices, by the aid of the clerks assigned to the postmasters, that the postmasters themselves should administer the affairs of their offices well and efficiently. The object was not to appropriate so large a sum as to bring about the old order of things, when the whole business was remitted to the clerks, while the postmasters themselves, with their handsome salaries, were relieved from the performance of any duty, throwing the entire labor, and in fact the entire responsibility, of the post-offices upon the clerks furnished by assignment from the Post-Office Department.

We think, Mr. Chairman, upon every ground, Congress is entirely justified in continuing the appropriations for the next fiscal year to the same sum appropriated for this year, that is to say, $3,290,000. I think that sum is ample.

I withdraw my *pro forma* amendment.

The question being taken on the amendment of Mr. CANNON, of Illinois, there were—ayes 76, noes 67; no quorum voting.

The Chairman, under the rule, ordered tellers; and appointed Mr. HOLMAN, and Mr. CANNON of Illinois.

The committee again divided; and the tellers reported—ayes 57, noes 89.

So the amendment was not agreed to.

The Clerk read the following paragraph:

For payment to letter-carriers, $1,750,000. It shall be the duty of the Postmaster-General to carefully inquire into the number of carriers employed in the several cities where the free delivery of mail matter is established, and to reduce the number of carriers and the number of deliveries of the mails by such carriers for each day to the reasonable requirements of the public service.

Mr. STONE. I offer the following amendment:

Strike out "$1,750,000" and insert in lieu thereof "$2,000,000.

The object of this amendment is to place sufficient means in the hands of the Postmaster-General to carry out the provisions of section 3866 of the Revised Statutes, which reads as follows:

The salary of letter-carriers shall be fixed by the Postmaster-General, and shall not exceed $800 per annum; but on satisfactory evidence of diligence, fidelity, and experience, he may increase their salary to any sum not exceeding $1,000 a year each; and in San Francisco, California, he may pay such additional salaries to carriers as will secure the services of competent persons.

For the fiscal year ending June 30, 1876, the appropriation was $1,900,000; and the expenses of that branch were $1,980,795.02. The amount asked for by the Postmaster-General for this service this year is $2,100,000. This branch of the Department is constantly increasing in all the large cities of the United States, and I should think that the amount asked for by the Postmaster-General is not at all too much, when we take into consideration that the amount appropriated for the last fiscal year had to be exceeded $80,795.

Mr. HOLMAN. Mr. Chairman, I do not think this amendment ought to be adopted. The Committee on Appropriations, I believe, is quite unanimous in the belief that the appropriation of $1,750,000 is sufficient for this service. There has been no increase of free-delivery offices during the past fiscal year, and we are not informed that there has been any increase since the close of the last fiscal year. The cost to the people of the United States of free delivery in the various cities, leaving out the three cities New York, Boston, and Philadelphia, is nearly half a million dollars over and above the entire revenue resulting from the free delivery; that is to say, it is not simply the additional one cent that is taken into the account in making up the amount of revenues resulting from this system in the cities, but the entire local postage of two cents is taken into account; and yet, allowing for all the cities where the free-delivery system prevails the entire postage required to be affixed to mail matter, leaving out the three cities I have named, there is a deficit of largely over $400,000 of expenses over and above the revenues resulting from the system. If you take the cities New York, Boston, and Philadelphia in account, then there is about $80,000 more of receipts than expenses; that is to say, receipts growing out of the local postage of these cities. I see that the Post-Office Department makes it a matter of some boast that this system taken as an entirety is not a source of expense; that notwithstanding we lose all of the local postage the revenues resulting from these three great cities, New York, Boston, and Philadelphia, make up the deficit and a little more. But on that principle——

Mr. PAGE. Will the gentleman allow me to ask a question?

Mr. HOLMAN. Certainly.

Mr. PAGE. I would like to ask the gentleman from Indiana if this service is not increasing, instead of decreasing, all the time?

Mr. HOLMAN. It is not materially increasing. As I remarked a moment ago, there was no new office established last year, and we are not informed of any new offices having been established since the close of the last fiscal year. The system becomes very oppressive where you extend it to cities having a population of less than 50,000 inhabitants. Perhaps for cities of greater population it is well enough; but when you extend it to cities below that population, in order that the people may not have to go to their offices to get their mail matter, you impose a hardship upon the whole people of this country. In other words, leaving out the great commercial centers of the east, New York, Philadelphia, and Boston, the industries of this country are compelled to bear a taxation of nearly half a million of dollars to furnish these facilities in cities where persons can go without embarrassment or trouble to the office to get their mail matter. I admit that in great cities like New York, where, without this method, great bodies of people would have to come together to get their mail matter, this system is admirable. But in cities of thirty or forty thousand inhabitants, where the expense is four or five times as much as the revenues, it works an actual hardship.

My friend from Saint Louis [Mr. STONE] represents a great city; and to give that city the benefit of this free-delivery system the people of this country are taxed many thousands of dollars.

Mr. FOSTER. Sixty thousand dollars.

Mr. HOLMAN. Yes; the people of this country are taxed $60,000 to bring the mail matter right to the homes of the citizens of that city, while a large portion of the people of the United States have to travel many miles to get their mails. Let me put the case to my friend from Saint Louis. He insists upon taxing the people of this country $60,000 to bring the mail matter of the citizens of Saint Louis right to their doors, while the great body of the people upon whom that tax falls must go miles for the purpose of getting their mail matter. I will not debate the question, however, as to the large cities Saint Louis, Chicago, or Louisville, or the great cities of the east; but what I do protest against is the extension of this system beyond what is fair and reasonable, and the Committee on Appropriations, I think, with great unanimity believe that $1,750,000, economically applied, are ample to carry into effect this branch of the service.

Mr. BLOUNT. I move to strike out the last word for the purpose, in furtherance of what has been said by the gentleman from Indiana, of calling the attention of the Committee of the Whole to the fact that during the last session of this Congress the following paragraph was made a part of the appropriation bill for the Post-Office Department:

It shall be the duty of the Postmaster-General to carefully inquire into the number of carriers employed in the several cities where the free delivery of mail matter is established, and reduce the number of carriers and the number of deliveries of the mails by such carriers for each day to the reasonable requirements of the public service.

This should have been the course pursued by the Postmaster-General, for it was evidently the purpose of Congress; it was evidently the purpose of this legislation. It has not been done at all. On the contrary, there has been an increase of the number of this class of employés in the service. I trust that after the long discussion of this matter in this House at the last session of Congress, when we had ample time to consider the subject, when the policy of this Congress was fully ascertained and put in the form of legislation, in this short session, and in this hurried manner we will not seek to undo what we then did with deliberation.

Furthermore, I desire to call the attention of the committee to the provision of the Revised Statutes which the gentleman from Missouri [Mr. STONE] read and accompanied by remarks which were calculated to mislead the House. He stated that he desired that the amount of money appropriated for this purpose should be enlarged to a given sum in order that the Postmaster-General might carry out the provision of the Revised Statutes which he read; the idea being that in that provision the salaries were absolutely fixed, and that by reason of a deficiency in the amount of money appropriated, and which the Postmaster-General ought to have had, he could not pay to these men what they were by law entitled to.

I will read, in order that it may be understood, the section of the Revised Statutes upon this subject:

SEC. 3865. Letter-carriers shall be employed for the free delivery of mail matter, as frequently as the public convenience may require, at every place containing a population of fifty thousand within the delivery of its post-office; and may be so employed at every place containing a population of not less than twenty thousand within the delivery of its post-office.

Mr. STONE. It was the next section to which I referred.

Mr. BLOUNT. I will read what the gentleman read:

SEC. 3866. The salary of letter-carriers shall be fixed by the Postmaster-General and shall not exceed $800 per annum; but on satisfactory evidence of diligence, fidelity, and experience, he may increase their salary to any sum not exceeding $1,000 a year each; and in San Francisco, California, he may pay such additional salaries to carriers as will secure the services of competent persons.

Mr. STONE. Will the gentleman from Georgia permit me to ask him right there——

Mr. BLOUNT. In one moment I will. It is evident from the reading of this provision of the Revised Statutes that Congress did not fix the salaries of these letter-carriers, but merely limited the maximum amounts which the Postmaster-General might give, and nothing more. The gentleman seeks to make the House understand that the contrary is true and that their salaries are absolutely fixed by the Revised Statutes independent of the Postmaster-General or any other person.

Mr. STONE. Will the gentleman please tell me what amounts were paid to letter-carriers during the year ending June 30, 1876, under that very provision, the Postmaster-General having authority to appoint the necessary number?

Mr. BLOUNT. I do not see how that can explain the statute; the words of the statute explain themselves. It simply gives a discretion to the Postmaster-General to fix the salaries, authorizes him to pay them up to a certain amount, but directing that he shall not go beyond that amount. The fact that he has paid them the full amounts that he was permitted to pay under the law does not make it the law that he cannot pay them less.

Mr. HALE. I think it likely that there are some portions of this bill where the service may be pinched a little in the appropriations contained in the bill. But upon this particular subject-matter I do not believe there should be any increase. It is a branch of the service that needs watching all the time instead of encouragement. In fact the original object of the letter-carrier free-delivery system in cities has been entirely traveled away from, and it has become a matter of competition on the part of small cities which have ample accommodations in a single post-office to which the inhabitants can go for their mails; it has become a matter of competition on their part to get this free-delivery system extended to them, when it was never intended originally that such should be the action of the Department.

Strictly speaking, and carefully distributing the public revenues, my theory has always been that the free-delivery system should be established only in cities so large that the people cannot be accommodated at a single post-office. When a city becomes so large that the post-office avenues will be choked and gorged, and the inhabitants cannot promptly receive their mails, then as a part of the postal system they should be relieved by a free delivery. But when you apply it to cities of thirty or forty thousand or even fifty or sixty thousand inhabitants, you are taxing all the people for the purpose of giving a luxury, not a necessity, to a few. I do not believe that the letter-carrier free-delivery system ought to be applied to any place having less than 100,000 inhabitants.

But we have gone beyond that; and the result of this competition of some places, taxing the many for the benefit of the few, is that the service is all the time sought to be put up. Every year we are asked to enlarge the number of clerks or otherwise increase appropriations, because when a thing of this kind is started it aggrandizes itself. In the Committee on Appropriations we are constantly met by this demand. It has been the endeavor of the committee heretofore to counteract and check it—to keep it down as much as possible. Sometimes we have not had very good success in that direction. At the last session of Congress the committee made a fight on this subject-matter of the class of cities to which this free-delivery system should apply, and were beaten in the House—I thought wrongly. But we did not seek this year to renew that fight. Accepting the position which the House had taken, not seeking to change the law, we have still thought that it is within our province to curtail the appropriations as far as possible; and I believe that for the present system under the action already taken the appropriation is ample.

Mr. COX. Mr. Chairman, for the purpose of saying a few words on this question I move a formal amendment to strike out the last word. My friend from Indiana [Mr. HOLMAN] and my friend from Georgia [Mr. BLOUNT] ought to be satisfied with cutting down the appropriations in this bill $1,500,000 below the appropriations of last year. This reduction from last year would seem to satisfy any retrenchment necessary to be accomplished in one year. It is quite an advance on a bill of this nature. I think these gentlemen are generous enough to perceive that at the last session some few retrenchments may have been made without proper consideration. We might perhaps reform the reform a little, so as to give adequate compensation to employés of the Government who may have been underpaid.

These letter-carriers are now very inadequately paid. The gentleman from Maine [Mr. HALE] well states the great necessity of this system in the large cities. It is a refinement of civilization. It is an indispensability, not only to the inhabitants of the city, but their correspondents outside. Even the smaller cities seek for this great convenience of letter delivery. But under the compensation as cut down on two occasions by the Postmaster-General under the orders of Congress in 1874 and in 1875, it will be almost impossible to have that prompt, efficient, and faithful service in this respect in our large cities which the public demand. I speak especially from my knowledge of the city of New York. In that city this service is very wearing and onerous. These men trudge from before daylight till late at night, fulfilling faithfully their trust to the people of that city and to the Government. During last summer some of them dropped dead in their tracks while engaged in the delivery and collection of letters.

They cannot maintain themselves decently on the salaries now given them under the orders of Congress; for Congress by reducing the appropriations has, in fact, ordered the Postmaster-General to reduce the salaries. I have here a letter from Postmaster-General Tyner, not complaining in any offensive sense of Congress, but putting the responsibility upon us, which no doubt the Committee on Appropriations will very gladly assume, of cutting down this very meritorious service so far as certain salaries are concerned. I submit for the information of the House this communication:

POST-OFFICE DEPARTMENT,
Washington, D. C., August 8, 1876.

DEAR SIR: I have the honor to acknowledge the receipt of a letter of Joseph Cocks, a letter-carrier in the city of New York, asking that you shall pay some attention to the memorial which that class of employés in the New York post-office, as well as those in the city of Brooklyn, have recently forwarded to the Post-Office Department, praying that the salaries which they lately received, and which have more recently been reduced, shall be re instated.

In reply thereto I desire to put the Post-Office Department precisely right in this communication. The reduction in the appropriation for letter-carriers was made by Congress in opposition to the estimate of this Department, and against its protest. There was but one alternative under the law, either to reduce the number of letter-carriers or to reduce the compensation which they received. If the number were reduced the public service would necessarily have to suffer; but if the loss falls upon individuals, the public will not suffer. Hence I found it necessary either to reduce the salaries of these very faithful employés or create a deficiency in this appropriation. Under no circumstances while I am in charge of this Department shall a deficiency of this kind occur. I therefore beg that you, as an influential member of the House and as a leader of the majority, will consider so much of the prayer of the petitioners as is presented in Mr. Cocks's letter, namely: that justice requires that the appropriation shall be increased to such an extent as to enable the Postmaster-General to re instate the old salaries of letter-carriers, which, as you are aware, were low enough already.

Very truly yours,

JAS. N. TYNER,
Postmaster-General.

Hon. S. S. COX,
House of Representatives, Washington, D. C.

In New York City these men are obliged to pay as rent $300 or $400 in even the worst parts of the city. They make their seven and eight deliveries and their twelve and fourteen collections daily. They go up into tenement houses of sometimes eight floors, some of them containing a thousand people. Yet in spite of the immense labor imposed upon them, they make their deliveries regularly; but it will be impossible to maintain that service in its present condition unless we allow the men a *quid pro quo*, a *quantum meruit*. They are not paid according to the rates paid to the higher class of skilled mechanical labor. Yet when on account of sickness they are unable to attend to their duties, they are obliged to pay for their substitutes, while at the same time they must pay for the medical service required.

The gentleman from Maine said something implying that, in respect to this free-delivery system, the cities were encroaching in some sense or becoming a tax and burden upon the country. Why, sir, in the city of New York the collections have exceeded, by $770,000, those of any other large city, while the service has cost less, in proportion to population, by $140,000, than the service in any other city.

Mr. Chairman, in justice to this class of our public servants the pay should be raised according to the recommendation of the postmaster at New York City and according to the recommendation of the Postmaster-General to the rate fixed by the bill which I had the honor the other day to introduce and have referred to the Committee on the Post-Office and Post-Roads. The basis of those rates is, in fact, the old compensation now fixed by law. This bill provides also that the length of service should be an element in the raising of salaries. Why not? Do not larger experience and established trustworthiness deserve proper recompense? I trust that when we come to that amendment, which will soon be offered, we shall give these men proper consideration.

[Here the hammer fell.]

Mr. W. B. WILLIAMS. I desire to inquire of the chairman of the Committee on Appropriations whether the reduction proposed in this bill is not designed actually to accomplish the object attempted at the last session with reference to cutting down the letter-carrier service in the smaller cities; in other words, whether under the reduction proposed the Postmaster-General will be able to continue this system in the smaller cities where it is now established by law.

Mr. HOLMAN. My answer is that the expenditures made by this Department for the fiscal year ending June 30, 1874, were $1,802,418.68.

Mr. W. B. WILLIAMS. I understand that.

Mr. HOLMAN. For the year ending June 30, 1875, the expenditures were $1,879,210.11; for the year ending June 30, 1876, $1,980,795.02. The number of free-delivery offices is not increasing, as my friend from Michigan is aware. Inasmuch as the number of employés will be substantially the same, the only effect of the reduction made in this bill upon the appropriation made last session for the present fiscal year will be to reduce the compensation of those employés. That is the effect. I do not pretend to deny it.

Mr. BANNING. How much will it reduce each of them?

Mr. HOLMAN. It will be a reduction of somewhere in the neighborhood of 8 per cent.

Mr. BANNING. Does the gentleman think that these men are overpaid now?

Mr. HOLMAN. I think that all the employés of the Government are overpaid—all of them.

Mr. W. B. WILLIAMS. I understand, Mr. Chairman, from the answer given by the gentleman, that if the salaries can be reduced the letter-carrier system will be retained in the smaller cities; but if they cannot be reduced, it will necessarily be lopped off somewhere, either by cutting down the amount of labor performed in the larger cities or by withdrawing the letter-carrier service from some of the smaller cities. If I may judge from the argument of the gentleman from Maine, this would seem to be an effort to reach by indirection the precise question which was thoroughly discussed in this House at the last session, and I thought thoroughly decided. I hope that no effort will be made here to reduce expenditures in such a manner that this system shall be taken away from any city of the Union in which it has been established.

Mr. HOLMAN. Mr. Speaker, I am very apprehensive that after a residence of a very short time in this capital we lose sight of the real condition of affairs in this country. If I understand the gentleman from Michigan, [Mr. W. B. WILLIAMS,] he thinks that no reduction of salaries ought to be made; yet in view of the fact that there is no material increase, if any increase, going on at this time in the free-delivery system——

Mr. W. B. WILLIAMS. I desire to correct the gentleman.

Mr. HOLMAN. I will yield in a moment. The gentleman breaks in upon my sentence.

Mr. W. B. WILLIAMS. I have said nothing about the reduction of salaries; I spoke only of the reduction of service.

Mr. HOLMAN. I am glad, then, that the gentleman is in favor of reduction of salaries, as I am; so that living in the capital does not, it appears, do my friend any harm.

But I was proceeding to say that notwithstanding the fact that within the last three years there has been no material increase in the number of free-delivery offices, no increase at all during the last year, and but slight growth in our cities during the last three years, the gentleman from Missouri actually proposes at this time, when we are getting down to "hard pan" as it were—when every industry of the country is oppressed, when wages in every field of employment are being reduced—the gentleman from Missouri actually proposes to increase the compensation of this class of employés of the Government above what it was in the years 1873 and 1874.

Why, sir, certainly the true basis of compensation by the Government is that which is paid in private employment for services requiring the same degree of integrity and ability; and I can assure the gentleman from Missouri that wages in this country have shrunk 50 per cent. within the last three years. I can point him to large sections of country in which laboring-men who have families dependent upon them, and who bear a portion of the burdens of taxation, are glad to receive a dollar a day as compensation for their services; and this too even in the case of skilled mechanics, many of whom are unable to obtain work even at that rate. Why, sir, you cannot pass along the streets of this prosperous city, where large sums of public money are being expended annually, without meeting men who ask you for work at the lowest possible price consistent with the support of their wives and children. And yet we propose to keep up the salaries of persons in Federal employment!

Gentlemen seem to forget the evil that is now pressing upon us. Was not one of the causes of the fearful contest through which we have recently passed, arraying citizen against citizen in fierce, bitter, unreasonable political conflict, the unworthy motive of venality growing out of our public employment? If this is to be a pure and honest Government—if places are to be sought and obtained through merit, from an honest desire for the welfare of the country and for honorable position—that end is to be secured, not by increasing the motives for fierce antagonism, but by reducing the compensation in public employment to that standard which prevails in the unofficial business of this country. Then we may indulge the hope that honorable ambition will alone inspire the citizen in seeking office under the Government.

I withdraw my *pro forma* amendment.

Mr. STONE. I renew the amendment. The gentleman from Indiana undertakes to say that my purpose in the proposition I have submitted is to increase official salaries. I deny the assertion. I undertake to say that Postmaster-General Jewell on the 1st of July, 1876, reduced the letter-carriers who had been receiving $1,000 to $900; and those who had been receiving $900 were cut down to $800, and so on. My purpose in offering the amendment was to restore the former salaries, not to increase them at all. I do not want to be placed in that position by the gentleman from Indiana.

Mr. BLOUNT. With reference to the amount of money proposed here to be appropriated I desire to call attention to the fact that for the fiscal year ending June 30, 1876, the expenditures were $1,980,795.02. Our bill proposes an expenditure of $1,750,000. The question was asked awhile ago what was the per cent. of this reduction. It is less than 5 per cent.; and during the consideration of the legislative appropriation bill at the last session it seemed to be accepted by this House as a general principle in reference to all these salaries that we would reduce them to the extent of 10 per cent.

Mr. STONE. That reduction applied only to salaries above $1,200.

Mr. BLOUNT. That is a fact. Still it is also a fact that there has been a reduction in the compensation of labor throughout all the industries of the country, to a greater extent than the reduction here proposed.

If the statement made here as to the action of the Postmaster-General is correct—and I believe the statement conforms to the information furnished from that Department—then certainly, instead of carrying out the wishes of Congress, as shown in the last bill on this subject, he has extended the service. Instead of decreasing the service he has ignored the wishes of Congress on this point. And the only method within our power to control this matter is by reducing the amount we appropriate.

So far as regards the estimates of the Department we have become somewhat familiar with its demands upon this House. During the last Congress, in the mere matter of inland transportation, the Department called for over a million of dollars more than it could satisfy the committee the service required. As a result of that examination the Department made a supplementary communication to this House, correcting its previous error. In every direction, wherever money is to be had, there is an excessive demand. During the Forty-third Congress, as many of us are well aware, even gentlemen on the other side of the House in harmony with the Administration were compelled to restrain it within proper limits. It has never been the rule to yield an unquestioning assent to the demands of the Department; and shall we now, who profess to be acting in the interest of economy, who have been proclaiming our intention to reduce the expenditures of the Government, shall we appropriate without question whatever amount the Department may demand? To my mind the amount of money we propose to appropriate in this bill is ample.

The gentleman from New York [Mr. COX] refers to the condition of labor in New York. Sir, there is labor outside of that city. There are burdens everywhere. New York and a few other cities of this country do not make up our vast population. It is in response to the demand of the great popular heart and in behalf of the interests of the people we are making these reductions.

Mr. CANNON, of Illinois. I wish to state in this connection, Mr. Chairman, that the difficulty with the Post-Office Department arises from the policy which the Government has pursued in sending the mails wherever the pioneer goes. It does not arise from the city of New York or the State of New York, nor from the State of Pennsylvania, nor Massachusetts. And I am glad to say that in the last year or two it does not arise from the State of Illinois, and in no considerable extent from the State of Missouri. But it does arise from the mail service in the Western and Southern States.

I have not a single free-delivery office in my district. Indeed there is none in my portion of the State of Illinois.

I wish to call the attention of the House to the fact that the Postmaster-General tells us in his report, in speaking of the free-delivery system, that "the general result of the service during the year is satisfactory. The postage on local matter exceeded the entire expenses $84,375.22."

I want to say that it comes with very bad grace from my friend from Indiana, representing one of the Western States—and with due deference to the gentleman from Georgia the same remark will apply to him—I say it comes with bad grace from such gentlemen to say that the people in the great cities in this country which do more to sustain the Post-Office Department than any other portion of the country shall not have the poor privilege of paying their letter-carriers a sum sufficient to carry on this system when the system is itself a source of revenue to the Department.

Mr. COX. I move to amend the amendment in line 12 by striking out "$1,750,000" and inserting "$1,900,000."

Mr. STONE. I am willing to accept that amendment as a modification of my own.

Mr. COX. The gentleman from Missouri accepts my amendment, and I hope there will be no objection to it.

Mr. BLOUNT. I hope the recommendation of the Committee on Appropriations will be adopted.

Mr. COX. I should like to say a word on that amendment. I may have been misunderstood, and my friend may have been misunderstood, in saying that the gentleman from Indiana, chairman of the Appropriation Committee, would accept this amendment. I did not understand him to say that he would accept it, but that if our amendment is passed in any form, he would prefer it should be on the lower sum. I am ready to accept his statement in that way and hope the House will give us this $1,900,000. I think the Postmaster-General then can in some way or other make this service more remunerative in an honorable and equitable way to those who serve.

Mr. BANNING. That is the same sum we had last year.

Mr. COX. Yes; the same sum.

Mr. FOSTER. It seems to me, Mr. Chairman, that the argument of the gentleman from New York would apply with as much force to any reduction made by the committee as to this. I was of course gratified, and much gratified, at the eulogy he pronounced on the republican administration of the post-office in the city of New York; but, for all that, I am disposed on this proposition to agree with the committee. I think they are right. We have carried this free-delivery system too far, in my judgment. I agree with my colleague on the committee that in all cities under 100,000 this system should be abolished. I went through this subject with a great deal of care, and found that cities under 50,000 population cost the people in the neighborhood of $200,000 to $250,000 for continuing this free-delivery system, while in cities under 100,000 population it costs $100,000 more.

It occurs to me that the committee in this matter should be sustained. The argument of the gentleman from New York would be just as strong on any reduction made by the committee, as on this. His majority is large enough in the city of New York, without any desire to pander to this particular thing. I understand he has fifteen or twenty thousand majority, and there is no need to waste his breath on this class of officers of the Government.

As I have said, I think the committee ought to be sustained, and I hope the amendment will not be agreed to.

Mr. BANNING. I am under a good deal of obligation to these men myself. They delivered my mail regularly during the canvass, and then voted solidly against me. While I am, like my friend from Indiana, in favor of economy, I think we should economize on the larger and not on the smaller salaries.

Mr. BLOUNT. We ought to economize all along the line.

Mr. BANNING. All along the line is not fair, when some men receive five to ten thousand dollars a year, and others only five or six hundred. Last session we did not go below $1,200. You are cutting these men down who deliver your mail in good weather and in bad weather, in snow and in rain, 5 per cent. It would be, I think, a good deal better to cut down the salaries of men who receive larger salaries and let these men have enough to live upon. Their salaries now

are scarcely sufficient to sustain them. If we are to have them they should be decently paid. I hope the amendment of the gentleman from New York will prevail.

I know my friend from Ohio, who says that we ought not to have these carriers in cities of less than 100,000, knows that their salaries are not too large now.

Mr. HOLMAN. I desire to say a single word. I should be very glad to hear my friend from Ohio [Mr. BANNING] draw a comparison between the compensation paid to these letter-carriers, a very respectable body of men undoubtedly, and that paid to the skilled mechanics of his own city; the skilled mechanics, the men who are devoting a life-time to the attainment of the skill which is displayed in the various branches of mechanics in this country. Here are gentlemen who require respectable attainments in scholarship to read and write the inscriptions on letters and papers, but they receive at least twice the compensation that is paid to-day for the skilled labor in his own city. And I think my friend will make the fatal mistake of his public life if he enters on public life with the understanding as a maxim in politics that compensation in public employment should exceed the compensation paid in the private employments of life requiring similar skill, intelligence, and integrity. I predict that in the attempt at civil-service reform in this country, which must come if our republican institutions survive, the effort will be to strike down and remove this motive for struggling into public employment by assimilating the compensation to that which is paid in the private employments of life. If that rule is not adopted it is too manifest to talk about it that our republican institutions will not long survive. Yet here out of thirty millions of revenue you are proposing to appropriate two millions for this service, the recipients of which are paid two and three times as much as the skilled laborers of this country receive. I am surprised that a state of things like this should be allowed to exist in our Government.

Mr. COX. I desire to say just one word more. The gentleman from Indiana gives, I think, a wrong impression to the House. The retrenchment proposed last session was in regard to salaries above $1,200. It was not intended to strike down letter-carriers whose salaries are all fixed by law and are less than $1,200; and because simply of the deficiency in the appropriation the Postmaster-General was compelled to make the reduction.

Mr. FOSTER rose.

Mr. COX. Now, when my friend from Ohio [Mr. FOSTER] undertakes to make an *ad hominem* upon me because last session we fought for retrenchment, I beg to say we did not fight on that line of cutting down salaries below $1,200.

Mr. FOSTER. Let me call the gentleman's attention to a particular point: How about the clerks? Have you not just now favored a reduction of salaries of clerks? And they are under $1,200.

Mr. COX. I do not want to get into an irrelevant controversy with the gentleman about that; but he threw out a little playful remark that I was now working to get the aid of these letter-carriers in my district for some future occasion. I do not need their aid.

Mr. FOSTER. That is what I said.

Mr. COX. I never did need their aid. I never was placed in quite so critical a position. All the people of my district wanted me for Congress, except only about twenty-eight dissentient republican gentlemen. Why, sir, the gentleman from Ohio himself, [Mr. FOSTER,] had he been there, would have caught the general contagion. [Laughter.] There was no difficulty about my election. It was not brought about by intimidation or bull-dozing. It was a fair and square election, and leaves me in such an independent position as that I can speak for justice to these men, whose salaries ought to be placed where the Revised Statutes now place them.

Mr. HOLMAN. How does the statute place them?

Mr. COX. The Postmaster-General fixes them under the statute. We have already discussed that point.

Now, Mr. Chairman, in conclusion, allow me to ask in justice to these men, that the papers be read from the Postmaster-General and the postmaster at New York, and you will see that these men are scandalously and inadequately paid for their services.

Mr. HOLMAN. Allow me to ask the gentleman from New York how many of the skilled mechanics in New York are receiving more than $900, which is the average pay of this class of employés?

Mr. COX. I am informed that the skilled mechanics of New York, who work a less number of hours nearly by one-half than these men are paid more than these men on an average.

Mr. BANNING. And they do not get what they ought to have.

Mr. HOLMAN. I say that mechanics on the average are paid less than the average pay of these men. My friend from Chicago [Mr. HARRISON] tells me that skilled mechanics are receiving $1.50 per day, and yet $900 is the average pay of these employés.

The question being taken on Mr. STONE's amendment as modified, there were—ayes 41, noes 81; no quorum voting.

The Chairman, under the rule, ordered tellers; and appointed Mr. COX and Mr. HOLMAN.

The committee again divided; and the tellers reported—ayes 59, noes 93.

So the amendment was not agreed to.

Mr. STONE. I move to amend the pending paragraph by inserting, after the clause relating to payment of letter-carriers, that which I send to the Clerk's desk.

The Clerk read as follows:

Provided, That from and after the 1st day of July, 1877, the compensation of letter-carriers employed at post-offices in all cities having a population of 100,000 or over shall be as follows: For the first year's service, or for any portion thereof, at the rate of $800 per annum; for the second year's service, or for any portion thereof, at the rate of $900 per annum; and for the third year's service, or for any portion thereof, and thereafter, at the rate of $1,000 per annum: *Provided*, That no increase of annual compensation beyond $800 shall be allowed to any letter-carrier, except on the recommendation of the postmaster at the office at which such carrier may be employed: *And provided further*, That on and after the 1st day of July, 1877, the compensation of letter-carriers employed at post-offices in cities having a population less than 100,000 shall be at the rate of not less than $600 nor more than $800 per annum, according to length of service; and that the rate to be paid to letter-carriers at each of said offices shall be fixed within the above-named limits by the Postmaster-General.

Mr. HOLMAN. I make the point of order on this amendment that it is independent legislation, and is not a measure of retrenchment; and I desire to have that point of order ruled upon.

The CHAIRMAN, (Mr. CLYMER.) The Chair will be glad to hear the gentleman from Indiana [Mr. HOLMAN] on his point of order.

Mr. HOLMAN. The Revised Statutes contain this provision:

Letter-carriers shall be employed for the free delivery of mail-matter, as frequently as the public convenience may require, at every place containing a population of fifty thousand within the delivery of its post-office; and may be so employed at every place containing a population of not less than twenty thousand within the delivery of its post-office.

The word "may" is used in the one instance, and the word "shall" in the other. The next section of the Revised Statutes provides as follows:

The salary of letter-carriers shall be fixed by the Postmaster-General, and shall not exceed $800 per annum; but on satisfactory evidence of diligence, fidelity, and experience, he may increase their salary to any sum not exceeding $1,000 a year each.

My point of order is that the proposed amendment changes the existing law and does not reduce salaries; I do not say it increases them. It changes existing law and is not a measure of retrenchment; that is to say, it does not actually reduce the amount to be appropriated.

Mr. STONE. By section 3866 of the Revised Statutes the minimum amount to be paid to letter-carriers is fixed at $800 a year, and the maximum amount at $1,000. My proposed amendment does not change the salaries at all, but it defines what may be paid to carriers for the first, second, and third year of their services, in no case to exceed $1,000. I do not think, therefore, that the point of order is well taken, for my amendment does not increase or decrease salaries.

Mr. HOLMAN. Certainly it does not increase or reduce salaries, but it changes the law, and is not a measure of retrenchment; it is a change of law without increase or decrease of salary. The rule is peremptory that no change in existing law shall be made upon an appropriation bill except it be as a measure of retrenchment. This proposed amendment is simply a change of the law, without increase or decrease of expenditure.

The CHAIRMAN. Rule 128 provides:

Nor shall any provision in any such bill or amendment thereto changing existing law be in order, except such as being germane to the subject-matter of the bill shall retrench expenditures.

The Chair has no doubt that the amendment is germane to the bill; but it does not show affirmatively that it will retrench expenditures. The Chair therefore rules that the point of order is well taken and that the proposed amendment is not in order.

Mr. STONE. I move to strike out the last word of the pending paragraph simply for the purpose of stating that it would appear to be the idea of some gentlemen that all intelligence in regard to this bill is centered in the Committee on Appropriations, and that no other gentleman upon this floor is to be regarded as having examined into it.

I will ask to have printed as a portion of my remarks, not to be read, some communications which I hold in my hand.

There was no objection.

The communications are as follows:

NEW YORK, *August*, 1, 1876.

To Hon. JAMES N. TYNER,
Postmaster-General:

The undersigned, letter-carriers employed at the post-office in the city of New York, respectfully ask that the orders issued by your immediate predecessor and by yourself, of dates September 22, 1874, and May 3 and July 17, 1876, by which the salaries of letter-carriers have been reduced from the amounts at which they were fixed prior to the first-named date be so modified that their provisions shall not apply to the salaries of letter-carriers employed at this office.

Your petitioners respectfully present the following statements in support of their request for such exceptional action:

First. That while it is a well-known fact that the market prices of provisions, fuel, and clothing in this city are not lower than those which rule in other cities at which the free-delivery system is established, the charges for house rent are much higher than elsewhere, so that amount which is in other cities sufficient to procure ample room and comfortable accommodations is here barely adequate to cover the rental of narrow and inconvenient premises in the most undesirable portions of the city; while the necessity for both early and late attendance at our posts of duty renders our residence in the suburbs impracticable. No apartments in which ourselves and families can reside without being subjected to discomfort and annoyance through offensive surroundings, and the lack of those conveniences necessary to constitute a decent home, can be obtained here for less than from three to four hundred dollars per year—an outlay which leaves but a small margin to cover the other expenditures necessary in the maintenance of a family.

Second. That the duty performed by letter-carriers in New York is far more severe and exhausting than that performed by the carriers in other cities. Seven and eight deliveries, and from twelve to fourteen collections daily, are certainly more than are required from carriers elsewhere, while the great number of crowded tenement houses and of large buildings occupied in some cases by hundreds of fea-

ants engaged in commercial and professional business, and located from the basement to the fifth, sixth, and even eighth floor, renders the performance of the delivery duty here especially onerous and fatiguing. Our labors begin at a far earlier and terminate at a far later hour than those of either mechanics or clerks whose compensation exceeds that which we now receive. Before dawn and far into the night we are compelled to toil, in order to meet the demands of the public for prompt, frequent, and faithful deliveries and collections.

Third. That a conspicuous result of the exceptional amount of duty which New York letter carriers perform appears in the official records of the Department, which show that for the fiscal year ending June 30, 1875, the receipts from local postage at this office exceeded by nearly $750,000 those of the next largest office in the Union, while the cost of the service here was less than $140,000 more in this city than there. We can justly claim that this large contribution to the postal revenues has been the direct effect of the inducements which our frequent and prompt deliveries and collections have presented to the public to avail themselves of the post-office for transmission of their local correspondence, once intrusted to private messengers and expresses; and we venture respectfully to submit the question whether those who have proved themselves exceptionally profitable servants may not fairly receive exceptional consideration in the matter of compensation, without affording substantial ground for any charge of partiality to them or of injustice to others.

Fourth. That in this city, owing to the imperative necessity of meeting the postal requirements of our citizens, especially that large portion of them engaged in mercantile pursuits, and of fulfilling their expectations of a trustworthy *local* service, every temporary absence from duty—even though caused by illness contracted or accident occurring in the course of that duty—occasions us direct and often severe pecuniary loss. Substitutes are at once placed on the routes thus vacant, and for their services we must pay from our scanty earnings, though perhaps at the same time accumulating a burden of debt for medical attendance, of which months of an economy amounting to actual privation are required to relieve us. Your petitioners are aware that, theoretically, they form no exception to the carriers at other cities in this request; that the official regulation on this subject applies to all alike; but from the best information they can obtain they believe that in practice elsewhere the labor of carriers absent through illness is, as a rule, assumed by their comrades in addition to their own—an arrangement impracticable here, where each man's daily task embraces all the labor of which he is physically capable.

In conclusion, and without extending our arguments to tedious length, we respectfully and earnestly ask that you will give careful attention to the prayer of this petition and due consideration to the statements contained therein, and that you will restore to all carriers at this office above the grades of "substitutes" and "auxiliary" the compensation which they received previous to October, 1874, namely, $800, $900, and $1,000 per annum, according to length of faithful service.

With hopes of a favorable reply, and with the expression of our official and personal respect, we are, your obedient servants.

PAT'K H. GOODWIN,
MICHAEL J. SMITH,
JAMES H. HENNESSEY.

POST-OFFICE DEPARTMENT,
Washington, D. C., August 18, 1876.

SIR: I have the honor to acknowledge the receipt, through the hands of Mr. James, postmaster of the post-office at New York City, of your letter inclosing a petition of the letter-carriers at your office, asking for a revocation of the orders of the Postmaster-General, dated September 22, 1874, May 3, 1876, and July 17, 1876, by which the salaries of the carriers were reduced, and also for the restoration of the said salaries to their former standard.

Without replying in detail to the averments of the petition, I will simply say that the reduction in the salaries of this class of employés in the various free-delivery cities of the country was made necessary by the reduction in the appropriations for the current fiscal year. The estimate for the payment of letter-carriers for this year was $2,100,000. The appropriation provided by Congress was $1,900,000. The probable expenditures for this branch of the service during the present year will amount to $1,878,833, most of which is arrived at by a computation of the salaries already fixed and the remainder estimated from reliable data before the Department, which leaves a margin of the appropriation of only $21,167 to cover all the contingencies which may arise during the year. If the prayer of the petitioners for the revocation of the orders of May and July, 1876, were granted, the increased expenditure made necessary thereby would amount to over $56,000, thereby leaving a deficiency of over $35,000. And if the further prayer of the petitioners for the revocation of the Postmaster's order of September 22, 1874, were granted the expenditures of deficiencies would be largely increased over and above the sum just mentioned. In view of the fact that the letter and spirit of the law forbids the creation of deficiencies by the head of any Department, I need not add that I cannot grant the prayer of these petitioners without violating my obligation as a public officer. I am therefore compelled to decline it.

Before closing this reply I beg leave to say that the reduction in the appropriation which has made the decrease in the compensation of this class of faithful employés necessary was not made upon the advice of the Post-Office Department. No officer of this Department who is familiar with the arduous and difficult duties performed by the letter-carriers has ever believed that they were overpaid; and no request for the appropriation which required such a reduction has emanated from the Department. All the facts in connection with this branch of the service, and especially so many of them as related to the injustice that would probably be done to these poorly paid people, were fully laid before the proper committees of the two Houses of Congress at its recent session. If, therefore, hardships shall follow the necessary decrease of pay of the letter-carriers, the fault does not lie with this Department.

I am, sir, very respectfully, your obedient servant.

JAS. M. TYNER,
Postmaster-General.

Hon. T. L. JAMES,
Postmaster, New York.

DEAR SIR: The undersigned, letter-carriers of the city of New York, have been appointed by their associates a committee to bring to your attention the inclosed bill for regulating the salaries of letter-carriers, and to ask that you will, at your earliest convenience, introduce the same and give it your earnest support. Its provisions, we believe, will commend themselves to your approval as simply intended to secure to the letter-carriers throughout the country a fair compensation for faithful service. The rates which they fix are certainly not extravagant, and are in fact identical with those which ruled up to the date of an order of Postmaster-General Jewell, issued under the authority conferred by existing statute. That order reduced the maximum pay of carriers from $1,000 to $900, leaving untouched, however, the pay of those carriers who were then receiving the former amount. A subsequent order from Mr. Jewell extended the reduction to the latter class, and by a still later order the present Postmaster-General again reduced our maximum pay to $875—a measure rendered necessary by lack of sufficient appropriation for free-delivery service.

It is hardly necessary, we believe, to present to you, who have for so many years been a resident here, any facts or arguments with a view to convince you that our present compensation ($675, $775, and $875, according to length of service) is neither a fair equivalent for our labors nor sufficient to enable us to maintain ourselves and families in tolerable comfort and respectability; but we nevertheless take the liberty of inclosing herewith a copy of a petition addressed to the Postmaster-General in August last, and presented to him by Postmaster James, in which the reasons for our request are fully set forth; and to this we respectfully ask your careful attention.

Postmaster-General Tyner, in his reply, a copy of which we also inclose, expressed himself as satisfied of the justice and fairness of the increase asked for, but was compelled, for the reason above named, to refuse the prayer of the petition. We venture to believe that the provisions of the inclosed bill would meet with his cordial approval; and we commit it to your hands, confident that you will do all in your power to secure its passage.

Very respectfully,

PAT'K H. GOODWIN,
MICHAEL J. SMITH,
JAMES H. HENNESSEY.

Hon. S. S. COX, M. C.,
House of Representatives, Washington, D. C.

The Clerk resumed the reading of the bill, and read the following:

Office of the Second Assistant Postmaster-General:

For inland-mail transportation, namely: For transportation on star routes and by steamboats, and all other than railroad routes, $6,000,000; for transportation by railroad, $9,000,000.

Mr. SCHLEICHER. I move to amend that portion of the paragraph just read relating to transportation of star routes and by steamboats by making the amount appropriated $6,237,993. That will restore the amount to the sum estimated for by the Postmaster-General. I will state that the amount proposed by the Postmaster-General for what is called the star and steamboat service, which embraces the entire postal service in the Territories and in many of the Southern States, is $500,000 less than the appropriation for the present fiscal year. During the last session we had a discussion on this subject, and it was then stated that this service had been neglected. It was shown, not upon my statement merely, but upon the statement of gentlemen from various quarters interested, that the service as then carried on was not adequate to the demands of the people. Now I would like to read a few lines showing the basis of the present estimate of the Postmaster-General for this service. I read from his last report:

The cost of transportation on other than railroad routes for 1876 was $5,658,000. Estimating the cost for 1877 at an increase of 5 per cent., the amount would be $5,940,946. At the same rate of increase, the estimate for 1878 is set down at $6,237,993. This is deemed sufficient for the probable requirements of the service, though the sum is $499,858 less than the appropriation for the current year.

In the first place, Mr. Chairman, the basis upon which this calculation was made was the expenditure of $5,658,000 for the service of 1876. But as I said a while ago that service was deficient. The service had been reduced in many places and the money used for the increase of railroad service. Upon this expenditure, under which the service was deficient, it is proposed to make merely an increase of 5 per cent., which I submit is very small, by no means adequate to the increased necessities of the service in various quarters. What calculation has induced the Committee on Appropriations to reduce the amount $230,000 below this I cannot understand. In making up the amount which I ask to have appropriated every item is reduced to the lowest possible figure. The service for 1876 was inadequate; and the addition of 5 per cent. is inadequate; yet the committee propose a reduction of $230,000 upon a result arrived at in this way by the Postmaster-General.

Now, whatever may be said about the Postmaster-General, I will do him the justice to say that he is a gentleman who can calculate closely and who has not shown any particular partiality to this branch of the service. It seems to me, therefore, that we are perfectly safe in following his estimate in this respect. I cannot conceive any ground upon which the Committee on Appropriations reduced the amount except upon the mere consideration that $6,000,000 is less than $6,230,000. Of course, by making this reduced appropriation the expenditures of the Government may be diminished to that extent; but at what sacrifice to the interests of the people! For, as I have already stated, the service has heretofore been deficient. In this statement many gentlemen here will bear me out. Though the addition of 5 per cent. is inadequate, I am willing under the circumstances to take the figures as proposed by the Postmaster-General; but certainly not to go $230,000 below those figures, as the Committee on Appropriations propose.

Mr. BLOUNT. Mr. Chairman, the honorable gentleman from Texas [Mr. SCHLEICHER] concludes his remarks by a statement that he cannot understand how the committee came to the conclusion to make this reduction. Sir, the committee have had this matter under consideration not only during this session but also during the last session. We then brought into this House a bill appropriating a sum which we regarded as entirely sufficient for the purpose. It was immediately given out—you could hear the intimation all through this Hall—that there were to be no more additions to the star-route service; and that intimation came from the Post-Office Department. When that was understood here, the committee was at once abandoned by this side of the House, and large additions were made to the amount which the committee after careful consideration had seen fit to report. The result was that the humiliating statement was made by the Postmaster-General to the committee of conference, that this House in its demoralization had given him for that service more than he desired. That, I say, was a humiliating statement; and I hope no such state of things will occur again.

So far as regards the increase in the service, the report of the Department itself shows an addition of several thousand miles, while there has been a reduction of $480,000 in the cost—a greater amount

than the reduction which the committee deemed proper upon the former bill. I am satisfied that we have not erred in this particular. During the last session we had before us various officials connected with the service; we examined them; we have had the tables of expenditures for several years; we have had before us the various reports. With all this information before us, and conscious that this was a most sensitive service, we have proceeded in reference to it with a great deal of care. I assure gentlemen that there is no reason for alarm in respect to this service; and I do hope the House will see fit to stand by the report of the committee.

Mr. BLAND. Mr. Chairman, if I understand the argument of the gentleman from Georgia, he holds that because the Postmaster-General stated last year that we had given him more than he asked, therefore at this session we ought not to give him what he asks. I am not here to antagonize particularly the report or recommendation of the Committee on Appropriations, but I am in favor of what is called the star service. Large towns and cities can of course be supplied with mail facilities at a less proportional cost than sparsely settled communities; but I understand the object of our mail service to be to furnish mail communication to every American citizen wherever he may reside; and for the purpose of extending such facilities to the frontier, for the purpose of inducing settlement and opening up our country, this star service should above all others receive the support of this House. In the statement of the Postmaster-General at the last session, with reference to the appropriation in behalf of some communities that were not properly supplied, I say that he certainly was mistaken. The trouble is that the appropriation for this service has not been properly distributed. I know that there are communities not properly supplied with mail service under this appropriation. I undertake to say that the deficiency of this service is an almost universal complaint in the Western and Southern States. I submit that we ought not to reduce the amount which the Postmaster-General has recommended for this service, though he may have said that we appropriated at the last session more than he needed.

Mr. HOLMAN. I move to strike out *pro forma* the last word.

Now, Mr. Chairman, I am very anxious to have the attention of the gentleman from Texas, as well as the attention of the gentleman from Missouri, while I explain the basis upon which this appropriation is made. If those gentlemen will refer to the report of the Postmaster-General for the last fiscal year they will find that the expenditures for that year were $6,137,851, that is, for the year 1875, while for the last year, that is, for 1876, the expenditures were $5,658,000.06, being a decrease of $479,850.94. In the mean time there has been a large increase of star service, but a heavy decrease in the expenditure for carrying out new contracts for carrying mails in the steamboat and star service. We appropriate in this bill $479,850.94 more than the expenses for the last year, and I think the gentleman will say that is ample.

Mr. SCHLEICHER. Permit me to ask the gentleman from Indiana one question.

Mr. HOLMAN. Before the gentleman asks me let me make a correction. The amount appropriated by this bill is $342,000 more than was expended last year.

Mr. SCHLEICHER. Even if amended as I propose, is not the amount $500,000 less than the appropriation for the present year?

Mr. HOLMAN. Certainly; but every person understands that. The additional $500,000 was made by this House on the impulse of the moment, and was entirely unwarranted. We frequently do things of that kind, and the very next day the House reverses its judgment. At that time the House did not have before it all the data. We made the appropriation last year $342,000 more than was required.

I wish my friend from Texas to be so satisfied with this that he will withdraw his amendment. I feel myself a special interest in these star lines which carry the mail service to the sparsely settled sections of the country. They are the lines which supply the mails to the pioneers, and it is, I believe, the duty of Congress to be liberal in reference to that service. I think that has been done. But gentlemen must recollect that in consequence of the favorable mail-lettings of the last two years the expenditures have been so reduced that to make an appropriation of $6,000,000 would be an increase of $342,000 over the expenditures of last year.

Mr. GAUSE. Let me ask the gentleman from Indiana how many of the new routes have had star service put upon them by the Postmaster-General?

Mr. HOLMAN. The addition is about three hundred and fourteen thousand miles, not 314,000 miles in distance but 314,000 miles of travel.

Mr. GAUSE. But how much of new star service has been put upon these new post-routes?

Mr. HOLMAN. It is twenty-five hundred and sixty-five miles in aggregate length, a decrease, let me say, as the Postmaster-General says, of $342,000 in the aggregate cost. The contracts made for carrying these mails in the olden time, that is in 1873 and 1874, were at a much higher rate than they can be let for now. As these old contracts expire, from time to time, it is found the expense is much less.

Mr. SCHLEICHER. I should like to state in connection with the question of the gentleman from Arkansas, that the greater portion of the new post-routes proposed at the last session of Congress were contained in the second bill, which was delayed in the Senate, and not reported to this House and acted on until this very day. Those routes are still in abeyance. They have never been acted on by the Postmaster-General at all.

I will further state that I myself, and I have no doubt such has been the experience of others, have repeatedly made application to the Postmaster-General for necessary mail service and that application has not been granted.

The gentleman argues that the Postmaster-General's decision is considered sufficient, but whether that be so or not, it is entirely true that the people consider the service to be insufficient and wish to have it increased to the extent they deem necessary.

The gentleman has left unanswered what I stated in making my remarks in the first instance: that while the Postmaster-General has not shown any great partiality to that kind of service and while we have not been favored to such an extent as our people require and were entitled to, yet in my amendment I go entirely upon his figures. I say that, even if the Postmaster-General has only allowed 5 per cent. additional to a deficient service, I am yet willing to take the amount of his estimate. But the committee has gone under that estimate, for no reason I can see, $237,000.

Another reason stated by the gentleman from Georgia was that, inasmuch as the last time the Postmaster-General received more for that service than he asked and more than he used, he ought to receive less at this time.

Mr. HOLMAN. I wish to call the attention of the gentleman from Texas to the fact that the estimates for this year are simply a repetition of the estimates of last year, and nothing more—the same figures exactly. The committee are not justified of course in going upon that basis, and I think my friend will hardly say the star routes and steamboat service would increase more than $342,000 for the coming year.

And yet that is the excess we appropriate by this bill over and above the expenditures of last year.

Mr. LUTTRELL. Will the gentleman permit me to ask him one question?

Mr. HOLMAN. Certainly.

Mr. LUTTRELL. Do you not know that the Postmaster-General has refused to put on special service, or to put service on new routes established, for the reason that he had not the means to do so?

Mr. HOLMAN. But my friend must see that this very present year he has the difference between the expenditures of last year, $5,658,000, and $6,732,000 for this present year. Congress, of course, cannot direct the Postmaster-General where that mail service shall be.

Mr. LUTTRELL. Does not the law require that wherever a new route is established it is the duty of the Postmaster-General to place a new service?

Mr. HOLMAN. O, no.

Mr. LUTTRELL. Does it not?

Mr. HOLMAN. O, no It never has been and never could be the law. It would be fatal to the Post-office Department. The Postmaster-General must be left to his own discretion.

Mr. LUTTRELL. Does the gentleman not know that there is a bill now pending on the Speaker's table by which some hundreds of new routes will be established as soon as the committee of conference between this House and the Senate shall have acted upon it?

Mr. HOLMAN. O, yes.

Mr. LUTTRELL. And how are you to provide for this unless by an appropriation?

Mr. HOLMAN. The Postmaster-General in his discretion puts the service on such routes as are established. If a citizen of my friend's district sends to him a memorandum asking for a new post-route he drops it into the box at the Clerk's desk and it goes into the post-route bill as a matter of form; but we must leave it discretionary with the Postmaster-General as to the routes on which he shall place service. And when we are proposing to appropriate $342,000 more than the expenditure of last year, and when contracts that are expiring are being renewed on a more favorable basis, and when, I may add, I believe there is a more honest administration in that Department, I feel confident that the $342,000 will greatly exceed the amount of increased service for the next fiscal year.

Mr. LUTTRELL. I desire to say one word in reply to the gentleman from Indiana if he will withdraw the *pro forma* amendment.

Mr. HOLMAN. I withdraw the amendment.

Mr. LUTTRELL. I renew it. In reply to the gentleman's remarks I wish to say that in 1875 there was appropriated for the star service $6,136,851. That money was appropriated and was used. Last year there were nearly $6,000,000 used for the star service; and yet—I speak for my district alone—I know of numbers of places in my district where my people have to employ private individuals to travel ten, fifteen, and twenty miles for their mail matter, but I have been unable to obtain a service on those routes for want of means. And I know that that is the case also in the district represented by the gentleman from Texas, [Mr. SCHLEICHER.]

Now the Post-Office Committee this morning had a session, and by a unanimous vote have instructed our chairman to offer the same amendment that is offered by the gentleman from Texas. We have considered this question all the way through. We find that there will be new routes established at this session of Congress, numbering some hundreds, many thousands of miles in extent. But where are we to obtain the money to place service on those routes unless we shall vote the estimates required by the Postmaster-General?

Mr. HOLMAN. Will the gentleman allow me a question there?

Mr. LUTTRELL. Yes, sir.

Mr. HOLMAN. Has not the same number of routes been established every session of Congress for the last three years? Is not that the fact?

Mr. LUTTRELL. That may be true. At the same time, as the gentleman has remarked, we have succeeded in getting rid of these dishonest bidders, these straw bidders, and we are making contracts on terms much more favorable for the Government than in former years; and for that reason we have been able to extend the service. The gentleman from Georgia [Mr. BLOUNT] has remarked that the Postmaster-General came before the committee of conference last year and stated that we have appropriated more than was actually necessary. Now, if the Postmaster-General's word is good in one case, is it not also good in another, when he makes an estimate and asks for the amount specified in the amendment of the gentleman from Texas? I hope the amendment will prevail. I have had occasion to confer with the Postmaster-General a number of times as a member of the Post-Office Committee, and I say now without fear of contradiction that I believe he is the best Postmaster-General we have had for many years. He thoroughly understands the service, and I believe every dollar he has recommended is required for the postal service.

Mr. HOLMAN. Before the gentleman from California takes his seat I wish to ask him this question: Does he believe, having examined this subject in the Committee on the Post-Office and Post-Roads, that a larger increase of expenditures over that of last year than $342,000 is actually required for next year?

Mr. LUTTRELL. I believe this, that if we obtain the service on the routes which we have established and will establish, it will require every dollar that is proposed by the amendment. I believe that, or I would not vote for the amendment. I know full well that in the far West, in many localities, we have no mail service, and we cannot have mail service unless we give the Postmaster-General money to defray the expenses. And if it is not required this year it will be turned over for the next fiscal year.

Mr. HOLMAN. O, yes! I am surprised at that remark coming from the gentleman from California. [Mr. LUTTRELL.] Why not turn over all the Treasury at once? If that argument is a good one at all it is a good one for unlimited appropriations.

Mr. LUTTRELL. The gentleman may not require much postal service in his district. But I want to tell him that my constituents are reading men and women and require this postal service. I am in favor of appropriating every dollar asked for by the Postmaster-General for this service.

Mr. BLOUNT. The gentleman from Texas [Mr. SCHLEICHER] and the gentleman from Missouri [Mr. BLAND] have seen fit, for the purpose of arguing in favor of this increased appropriation, to refer to a statement which I made. I will restate it in order that the House may understand it.

During the last session of Congress the Committee on Appropriations, among other things, had before them a table coming from the present Postmaster-General, then Assistant Postmaster-General, in which he showed that in 1874 the cost of inland transportation was $15,402,057; for the succeeding year, 1875, the cost of inland transportation was $15,315,369, a decrease of over $75,000 on the cost of inland-transportation service. When he came before the committee last year with his estimates he ran up the cost of that inland transportation to seventeen and a half millions of dollars. When questioned by the committee in connection with other statements he admitted that he was in error.

Mr. CLARK, of Missouri. Will the gentleman allow me?

Mr. BLOUNT. Not now.

Mr. CLARK, of Missouri. I desire to correct the gentleman.

Mr. BLOUNT. Do not interrupt me. The Assistant Postmaster-General then admitted that the increased cost for 1876 would not exceed $300,000. The truth about the matter is that there has been a large reduction of some $400,000 in the expenses of 1876, although there has been an increase of three thousand miles of service, showing how mistaken the Postmaster-General was in his statement to our committee.

I have heard enough about these estimates from the Departments. No matter what party is in power in this House, whether republican or democratic, these Departments seem to think that it is proper for them to resort to such statements in order to get whatever sums of money they may desire. I will say that there has at least been some very bad guessing by the gentlemen who make up these estimates.

Mr. LUTTRELL. One question.

Mr. BLOUNT. Do not interrupt me.

Mr. LUTTRELL. Only a question.

Mr. BLOUNT. I cannot consent to be interrupted; I have not time. In view of these facts, after careful consideration of this matter, the Postmaster-General, as I stated, did say that members of this side of the House had come to his Department and told him that they had voted all that he asked, and that he had more money than he actually wanted. I mentioned it, not that gentlemen should deduce the conclusion that too much had been voted before, but that the estimates of the Departments are no sure guide to us. The best guides this side of the House can have are the committees who have investigated the subject.

In 1875 there was an actual reduction on the cost of 1874; and in 1876 there was a decrease of several hundred thousand dollars. Yet gentleman are insisting, against the proof, that we shall take these estimates on the idea that there is an annual increase of 5 per cent. in the item of inland transportation.

Mr. SCHLEICHER. I would like to say——

The CHAIRMAN. Debate on the pending amendment has been exhausted.

Mr. SCHLEICHER. Then I will move to strike out the last word. The gentleman from Georgia [Mr. BLOUNT] has made some very pointed remarks. I would like to go back to the point from which we started.

When I was at home, I found that every contract for carrying these mails in my district was down to its lowest figure, as low as people could be got to carry the mails. I found, moreover, that the postal service in my district was everywhere deficient. Before I left here last summer, I went to the Post-Office Department—I suppose I am one of those gentlemen to whom the gentleman from Georgia [Mr. BLOUNT] has referred—I went to the Post-Office Department and asked that we should be given the amount of service that the people needed. I asked that it should be given on the ground that the Postmaster-General had been given all the money and more than he had asked for this branch of the service. That was the argument I used with him.

I do not say that the amount of our postal service should depend on the amount of appropriations given to the Post-Office Department. You may give, as you did last year, a half a million more than the Department asks, and the Postmaster-General will not extend the service if he does not see proper to do so. He does not in my district—I do not speak of other districts—give us the amount of mail service which we need. Our service is not such as the people have the right to demand of the Department.

When the Postmaster-General gave as a reason for not granting the service I asked that he had not sufficient money, I told him that sufficient appropriations of money had been given him by Congress. But although the money had been given to him he did not use it and still persists in refusing the necessary service. Gentlemen may draw what conclusions they please, but such is the fact.

The gentleman from Indiana [Mr. HOLMAN] and his associates on the committee, in a burst of generosity—or perhaps it was a mistake which they would have corrected the next day if they had the opportunity—gave more money to the Department than was necessary, and he now quotes the Postmaster-General as authority for that action. It was stated also in the last House that the service was not sufficient; and the House, not in a burst of unthinking generosity, but with a generous and far-seeing recognition of the necessities of the frontier and the more sparsely settled portions of the country, provided the means for rendering this service more nearly adequate to the public demands. The Postmaster-General has not expended the whole appropriation for the purpose intended; but that does not prove to my mind that the appropriation was not necessary. Still in my present amendment I have gone back to the Postmaster-General's ideas, inadequate as they are to the occasion. We shall be satisfied if the House will give us only what he says is necessary, and not appropriate $240,000 less than his inadequate estimate.

[The *pro forma* amendment was withdrawn.]

The question being taken on the amendment of Mr. SCHLEICHER, to insert "$6,237,993" instead of "$6,000,000" as the appropriation for transportation on star routes and by steamboats and all other than railroad routes, there were—ayes 73, noes 45; no quorum voting.

Tellers were ordered; and Mr. SCHLEICHER and Mr. HOLMAN were appointed.

The committee divided; and the tellers reported—ayes 89, noes 57.

So the amendment was adopted.

Mr. WELLS, of Mississippi. I move that the committee rise.

Mr. HOLMAN. I hope the committee will not rise.

The motion was agreed to; there being—ayes 111, noes 46.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. COX reported that the Committee of the Whole on the state of the Union having had under consideration the Union generally, and particularly the post-office appropriation bill, had come to no resolution thereon.

REMOVAL OF SIOUX INDIANS.

The SPEAKER laid before the House the following message from the President of the United States:

To the House of Representatives:

In answer to a resolution of the 7th instant of the House of Representatives asking to be informed whether any, and what, negotiations have been or are being made with the Sioux Indians for their removal to the Indian Territory, and under what authority the same has been and is being done, I submit herewith a report received from the Secretary of the Interior which contains, it is believed, all the information in possession of his Department touching the matter of the resolution.

U. S. GRANT.

EXECUTIVE MANSION, *December* 14, 1876.

Mr. MILLS. I move that the message and accompanying report be referred to the Committee on Indian Affairs.

The motion was agreed to.

Mr. REAGAN. I move that the House adjourn.

The motion was agreed to; and accordingly (at four o'clock and thirty minutes p. m.) the House adjourned.

PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. CHITTENDEN: The petition of the New York Temperance Society, J. N. Stearns, president, that the House of Representatives concur in the passage of the Senate bill to provide for a commission of inquiry concerning the alcoholic liquor traffic, to the Committee of Ways and Means.

By Mr. GIBSON: The petition of Mrs. Emily B. Amory, wife of Charles B. Amory, late captain in the United States Army, for property taken and supplies furnished the United States Army, to the Committee on War Claims.

By Mr. KIDDER: A paper relating to the establishment of a post-route from Glenwood, via Kidder and Brooklyn, to Tunerall, Dakota Territory, to the Committee on the Post-Office and Post-Roads.

By Mr. McFARLAND: The petition of Joseph W. White, late a private in Company G, Fourth Regiment Tennessee Volunteer Infantry, for a pension, to the Committee on Invalid Pensions.

By Mr. ROBERTS: The petition of William Bowen, that the commissioners for the District of Columbia be directed to reconsider his claim for work and labor done under contract with said commissioners, and allow him an additional sum claimed to be due him, to the Committee for the District of Columbia.

By Mr. SEELYE: The petition of James M. Jones, Edward H. Walton, and other citizens of Wilmington, Delaware, for the appointment of a commission to inquire concerning the alcoholic liquor traffic, to the Committee of Ways and Means.

By Mr. VANCE, of North Carolina: The petition of William H. Bradford, William T. Davis, and other citizens of Wilmington, Delaware, of similar import, to the same committee.

By Mr. WILLIAMS, of Delaware: The petition of Thomas M. Corkle, jr., Julius Dodd, and other citizens of Wilmington, Delaware, of similar import, to the Committee on the Judiciary.

IN SENATE.

FRIDAY, *December* 15, 1876.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

The Journal of yesterday's proceedings was read and approved.

BILLS INTRODUCED.

Mr. CHAFFEE asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1078) authorizing the citizens of Colorado, Nevada, and the Territories to fell and remove timber on the public domain for mining and domestic purposes; which was read twice by its title, referred to the Committee on Public Lands, and ordered to be printed.

Mr. KERNAN asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1079) for the extension of the patent known as Reynold's patented brake for power-looms; which was read twice by its title, and, with the accompanying petition, referred to the Committee on Patents.

Mr. CLAYTON asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1081) for the relief of John Jackson; which was read twice by its title, referred to the Committee on Claims, and ordered to be printed.

Mr. WALLACE asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1080) for the relief of James Millenger; which was read twice by its title.

Mr. WALLACE. I move that the additional papers that I now present and those already on file in this case be referred with the bill to the Committee on Claims.

The motion was agreed to.

PACIFIC RAILROADS.

Mr. THURMAN. If in order to make the motion now I move that the bill (S. No. 984) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act, reported from the Committee on the Judiciary at the last session, be made the special order for the second Tuesday in January.

Mr. WEST. Would it not suit the convenience of the Senator from Ohio to postpone the order for a week further? I shall be compelled to be absent from the Senate at that time, if it is in session, and I believe some other Senators also will be away. If he will be kind enough to name the third Tuesday of January, I think it will answer the purpose.

Mr. THURMAN. I certainly have every disposition to accommodate, and it is my duty to accommodate the Senator from Louisiana, who is the chairman of the Committee on Railroads, and who has a bill to which this bill may be said to be in antagonism; but this being a short session the bill might fail for want of time to consider it, especially as political matters may take up so much of our time. If the Senator would prefer to have it taken up before the holidays I would have no objection to doing that. [A pause.] The Senator from Louisiana suggests to me reasons why, I suppose, I ought to yield to his proposition, unless Senators will agree to take it up before the holidays, and perhaps there is no chance to do that. I will therefore say the third Tuesday in January.

The PRESIDENT *pro tempore*. The Senator from Ohio moves that the bill which he has named be made the special order for the third Tuesday in January, which motion requires a two-thirds vote. [Putting the question.] Two-thirds having voted for the motion, the bill is made the special order for that day.

PAYMENT OF ELECTORAL MESSENGERS.

Mr. WINDOM. I am instructed by the Committee on Appropriations, to whom was referred the bill (H. R. No. 4197) to provide for the payment of the electoral messengers, to report it without amendment, and I ask for its present consideration, if there be no objection.

By unanimous consent, the Senate, as in Committee of the Whole, proceeded to consider the bill. It appropriates $20,000 for payment of the messengers of the respective States for conveying to the seat of Government the votes of the electors of said States for President and Vice-President of the United States, at the rate of twenty-five cents for every mile of the estimated distance, by the most usual road traveled, from the place of meeting of the electors to the seat of Government of the United States, computed for the one distance only.

Mr. BAYARD. May I ask if this legislation is to provide for the payment of these persons going and returning?

Mr. WINDOM. But one way.

Mr. BAYARD. Is that the usual provision?

Mr. WINDOM. I was going to make a brief statement as to the law on the subject, as we understand it. By the act of March 1, 1792, section 7, it was provided that they should be paid one way twenty-five cents per mile. By the act of February 11, 1825, it was provided that they should be paid twenty-five cents a mile for both ways, going and returning. The Revised Statutes provide for paying only one way, and the Committee on Appropriations have recommended the appropriation upon the law as it now stands. I believe the Senator from Massachusetts [Mr. BOUTWELL] has some suggestions to make upon the subject. The committee did not feel at liberty to make the appropriation upon any other basis than what they supposed to be the existing law, and we have had information from the Treasury Department that under the Revised Statutes they would pay but one way twenty-five cents.

Mr. BOUTWELL. My attention was called to this subject by the Secretary of the Treasury and I have examined the statutes. I have also a report here from the First Comptroller, from which perhaps the Senate will better understand the state of the law and the change that was made, as I think, by the commissioners in the revision. I have no doubt they altered the statute from what it was before. At any rate they changed the statute as far as the construction of it is concerned at the Treasury. I ask that the copy of the letter of the Comptroller to the Secretary of the Treasury be read.

The PRESIDENT *pro tempore*. The letter will be reported.

The Chief Clerk read as follows:

TREASURY DEPARTMENT, FIRST COMPTROLLER'S OFFICE,
Washington, D. C., December 8, 1876.

SIR: On examination I find there is no appropriation for paying the mileage of messengers bringing the electoral votes of the several States to Washington, and mileage cannot be paid until an appropriation for that purpose shall have been made.

By act of June 10, 1872, an appropriation of $25,000 was made for pay of messengers of that year. The amount paid messengers four years ago was $17,465.25; add for Colorado $914.50; actually required, $18,379.75, if the mileage is not varied from twenty-five cents per mile "going and returning."

In addition there was paid, under deficiency act of March 3, 1873, $638 to a second messenger from Louisiana, who brought another certificate of votes, making the actual payments $18,103.25. By act of March 1, 1792, messengers were allowed twenty-five cents per mile "from the place of meeting of the electors to the seat of Government of the United States."—*Statute*, volume 1, page 240, section 7.

By act of February 11, 1825, (4 Statutes, page 81,) the allowance was the same per mile as in the act of 1792, with the words "going and returning" added, in effect paying both ways.

By act of August 12, 1848, (9 Statutes, 295,) the allowance was fixed at twelve and a half cents per mile, "going and returning," and laws and parts of laws inconsistent were repealed.

By joint resolution of January 6, 1849, (9 Statutes, 417,) the last-mentioned provision was repealed, and another adopted that the messengers for 1848 should be paid as if it had not been passed. This has been construed as reviving the act of 1825, not only for the election of 1848, but for subsequent elections, and messengers have been paid on this construction both ways.

But by section 144 of the Revised Statutes, the law of 1792 is re-enacted, although it had been superseded by the act of 1825, and had had no force for that time, so that now, by virtue of this section 144, the compensation is twenty-five cents per mile one way only, and not "going and returning."

In calling your attention to the needed appropriation for the occasion, I beg also to make this statement concerning the law relating to the rate of compensation.

It is proper also to state that, from public information, it is probable that from each of four of the States two persons will present themselves as messengers bearing the votes of electors, and to say that under existing law one only from each State can be paid. I suggest that, if mileage both ways be authorized, an appropriation of $25,000 be made, and that, if Congress deem it proper to pay two messengers from a State, they so declare.

I am, very respectfully,

R. W. TAYLER, *Comptroller*.

Hon. LOT M. MORRILL,
Secretary of the Treasury.

Mr. BOUTWELL. Not having for myself any doubt that the law was unintentionally changed by the commissioners in the revision, I will move to amend the bill as reported from the Committee on Appropriations so that it shall read twenty-five cents each way, follow-

ing the old statute, and that the appropriation be increased to $25,000, although I am inclined to think, perhaps, that $20,000 would be sufficient.

Mr. WINDOM. The committee left it at $20,000 because, after considering the suggestion of the Senator, they thought that would be enough.

Mr. BOUTWELL. I suppose $20,000 will be enough.

Mr. WINDOM. Probably $20,000 will be enough, or $22,000 at the highest, on the basis the Senator suggested.

Mr. THURMAN. Does the Senator propose to pay twenty-five cents mileage each way?

Mr. BOUTWELL. Yes, sir.

Mr. THURMAN. In addition to per diem compensation?

Mr. BOUTWELL. There is no per diem compensation.

Mr. THURMAN. Twenty-five cents a mile then includes all that they are to receive?

Mr. BOUTWELL. Yes, sir. There is no per diem.

Mr. DAVIS. Has there been an amendment offered?

The PRESIDENT *pro tempore*. The Senator from Massachusetts proposes an amendment.

Mr. DAVIS. I should like to have the amendment read.

The PRESIDENT *pro tempore*. It will be reported.

The CHIEF CLERK. In lines 9 and 10 it is proposed to strike out the words "computed for the one distance only."

Mr. BOUTWELL. That would not be definite enough. I am looking for the old statute. If the Clerk will read the bill I will indicate the words to be inserted.

The Chief Clerk read the bill.

Mr. BOUTWELL. In lines 9 and 10 I move to strike out the words "computed for the one distance only," and insert "going and returning."

Mr. HAMLIN. That is the language of the old statute?

Mr. BOUTWELL. That is what it was.

Mr. SHERMAN. I hope the question will be taken on the amendment.

Mr. ALCORN and Mr. WINDOM addressed the Chair.

Mr. WINDOM. I yield to the Senator from Mississippi.

Mr. ALCORN. I do not desire to take the floor from my friend from Minnesota, and what I was about to say is not of very much importance, but nevertheless I deem it proper to say it.

In the first place, I regard the custom of paying by mileage, since the invention of railroads and the cheapness of travel, as a very unequal way of compensating either members of Congress or other officials coming to the capital upon official business. That is not the proper mode of meting out and awarding just payment, even to old and discharged servants. Members of Congress now, under the operation of the law, are paid, I believe, twenty cents a mile each way for travel. It is a fact known to the country that many members of Congress have railroad passes awarded to them as compliments from railroad presidents, so that it does not cost them a dollar, aside from their sleeping-car berths perhaps and their rations from their homes to this capital, and yet they derive, some of them, as much as $2,500 in the way of mileage. Now, you propose that these messengers shall be paid by the mile, and the honorable Senator from Massachusetts proposes that it shall be both ways. The messenger from California, that comes here at an outlay, if he pays for his ticket each way, of not exceeding $250——

Mr. DAVIS. O, no; $500 probably.

Mr. ALCORN. Well, put it at $500. That is the maximum of his outlay. He is authorized, for about ten days' or two weeks' service at the outside, to draw from the Treasury a sum equal to $2,000 in money. That is a pretty good business, I should say. He makes by the operation at least $1,000 or $1,200 clear cash. The man who comes from Virginia or from Maryland gets not enough to pay his hotel bill during the time he is here presenting his return.

I submit, Mr. President, whether this is an equal and just way to compensate those who perform service for the Government. I say it is unequal, but if that inequality shall continue to exist and if the principle of mileage shall be continued upon the statute-book, in Heaven's name I say that twenty-five cents a mile one way is amply sufficient. It will cover all the expenses of those who live remote from the capital at least, and it will put a very considerable sum of money into the pockets of all those messengers who live at the remote border of the nation.

I shall vote against the amendment of the Senator from Massachusetts, and I shall if I have the opportunity vote against the principle of mileage altogether. I would give these officials such pay as should be estimated by the Secretary of the Treasury as sufficient to cover railroad rates. I would allow them compensation for the amount of their traveling expenses and a certain per diem for their pay. An officer performing duty for the Government of this nature should not look to it as a means of making money. A compensation sufficient to re-imburse the citizen who discharges this duty is amply sufficient. I should be willing to go even further than that, and make contribution in a just manner for his time; but I would not be willing to make compensation here at the rate of $300 a day for the time of some messengers who come from the eastern seaboard to the capital.

Mr. WINDOM. I only wish to say that the Committee on Appropriations endeavored to conform to the existing law on the subject. They were aware of the fact that for several elections past the compensation has been twenty-five cents a mile each way, and it was the impression generally I think that that would be the compensation. It is probably the impression that many of these messengers have. The Revised Statutes, however, which the Senator from Massachusetts thinks have made the change unintentionally, make it but twenty-five cents covering both ways. The committee, therefore, conforming to the statute, have reported the bill, and I submit the question to the Senate whether the amendment should prevail or not. My own judgment is that twenty-five cents per mile one way is pretty fair compensation, and that is what we report. I think it will pay the traveling expenses and allow a fair compensation for the time.

Mr. BOUTWELL. I introduced this amendment chiefly because it conforms to what has been the law and the practice from 1825 without any interruption. In 1847 Congress did pass a resolution reducing the pay of these messengers to twenty-five cents a mile reckoning one way, but in 1848 that resolution was rescinded by Congress and the old rate of twenty-five cents each way re-established. That has continued until the commissioners for revising the statutes incorporated the old act of 1792, paying no regard to that of 1825 or the subsequent legislation. Therefore, acting for the Committee on the Revision of the Laws, I thought it my duty to call the attention of the Senate to this error. But I am also of opinion that the compensation was not disproportionate to the service when you consider the character of the service and the character of the gentlemen who are likely to be intrusted with its performance. It is upon the whole not a large matter for the country that we pay $20,000 once in four years for this service. I suppose twenty-five cents a mile one way will just about pay the expenses of a person traveling over the country and leave him little in compensation for his time. I am of opinion that we ought to re-establish the law, because it is the law, and these places have been taken under the expectation that the old provisions would be observed in the payment. I think also it is only a proper thing for the country to pay compensation as liberal as this will be at twenty-five cents a mile; and if our predecessors twenty years ago could pay it, I think it can be paid now.

Mr. ALCORN. A word, sir, in reply to the Senator from Massachusetts. I do not think that he is warranted in saying that this law, which now rests on the statute-book of the country, was an omission on the part of Congress. I do not think the facts will warrant him in making that assertion. It may be that in this respect it was an omission; but I had the honor to be upon the committee for the revision of the laws and the committee that passed upon this statute, and I am very sure that so far as I am concerned there was no omission in that respect. I remember to have looked at it, and I thought the reason very sufficient for having conformed to the principle that was enacted in 1847 of paying but one way. When, however, in 1875, as the Senator says, Congress passed the law he refers to, we had none other than the dirt-road system in this country. The mode of cheap travel that is now in operation did not then exist. There was another and more expensive and more tedious mode of traveling, and the compensation system by mileage at that time was a proper system; but now the whole thing is changed. Now we have cheap travel, rapid transit, and I insist that the principle of compensation should be different.

If the Senator from Massachusetts desires to change the mode of payment, he should propose to do it by an amendment of the law; it should not go in the form of an amendment upon this appropriation bill. It should be fixed upon the statute-book, that we may know from this time henceforward what the law of the case is. He, however, proposes to go forward here and put this amendment on the appropriation bill of to-day, and he proposes at the same time to leave on the statute-book the law as it has been enacted by the Congress of the United States. Upon what principle does he defend his position? If it is right and proper that this mode of compensation should be changed, and that the compensation should be increased, it is right and proper at the same time that it should be changed by a law placed upon the statutes of the country.

Mr. EDMUNDS. Mr. President, we are about to signalize the fidelity that we professed so strongly at the last session to the immaculate purity of the appropriation bills, by making a dig at these gentlemen, half of whom have already performed the service and are entitled to their money, in order at the next presidential election, which some people think will come on immediately after the 4th of March or the second Wednesday of February or some time, to have another cry about reform and economy. Now I for one am going to stick to the principle that I avowed at the last session and at previous sessions, that it is not right, when a sum of money is to be appropriated to carry out existing law, to feel it to be our duty every time or any time, except in some extreme emergency, to go to tinkering the law itself. Here the statute has fixed the compensation of these gentlemen, and there is plainly no politics in it, for about as nearly even as you can divide there will be an equal number of both parties coming on, and sometimes from the same State.

Now, then, if I can get a chance, I am going to move to strike out all that part of the bill which changes the law, and leave it a simple appropriation, which is consistent with what I, and, I believe, most of us, preached at the last session, that if we want to change the laws we should do it upon considerations, but as long as we have them we will carry them out. Is it in order now to move to strike out?

Mr. WINDOM. The bill does not change the law.

Mr. EDMUNDS. I understood it changed the law.

Mr. WINDOM. No.

Mr. EDMUNDS. If that is not the case, I oppose all amendments.

Mr. KERNAN. I am opposed to the amendment on account of the principle alluded to by the Senator from Vermont and also because I believe twenty-five cents a mile one way is quite enough. I do not think in an appropriation bill or in any other way it should be increased. I ask for the yeas and nays on the amendment of the Senator from Massachusetts.

The yeas and nays were ordered.

Mr. EDMUNDS. Now, I should like to hear the bill read and then the amendment proposed, so that we may know exactly what we are to vote upon.

The PRESIDENT *pro tempore*. The bill and amendment will be read.

The Chief Clerk read the bill and the amendment proposed by Mr. BOUTWELL.

Mr. EDMUNDS. Now, I am going to vote against the amendment; and, if that is defeated, I shall move to strike out all the law-making there is in the bill, so as to leave it on the existing law just as it is and make it a simple appropriation of that sum of money to pay those messengers.

Mr. CONKLING. How much will that give them?

Mr. EDMUNDS. The same sum that the bill does, it is said.

The PRESIDENT *pro tempore*. The question is on the amendment of the Senator from Massachusetts, upon which the yeas and nays have been ordered.

Mr. HAMLIN. I want to state in one word the reason which will induce me to vote for the amendment. The commission to revise the statutes, if I am right in my recollection, had no earthly power to change a statute. We do know that a great many changes were made, some perhaps advisedly; some, it is believed, were made without the knowledge of anybody except the particular individual interested in making the particular change. The statute in this case was twenty-five cents a mile for travel each way. Now, I hold that the change has been made without the knowledge of Congress, and that this amendment is simply to make the law what it would have been if a change had not been made surreptitiously, carelessly, or in some way nobody can tell how. We know how the Revised Statutes were passed. They were passed in a lump, and I am quite sure there are no Senators in this body or probably none outside of the members of the committee who will tell us that they had any earthly knowledge of this change in the law. The amendment proposed puts the law precisely where it was, puts the compensation at precisely what it was; it puts it at what it should be if the statutes had been revised as they ought to have been without a change.

Mr. THURMAN. Mr. President, my first impression was to vote for the amendment, but after hearing the state of the question and the suggestions that have been made, I feel constrained to vote against it, and I wish to say in reply to what has just fallen from my friend, the Senator from Maine, that if we undertake to correct on the appropriation bills all the errors of the Revised Statutes, we shall have our hands full, and our appropriation bills will be a very curious set of documents. I do not know how many errors have already been corrected or been professed to be corrected by act of Congress, but my impression is more than two hundred; and I think the Senator from Massachusetts had a bill at the last session—I do not know whether it passed or not; I do not think it did—that proposed to correct as many more.

Mr. BOUTWELL. We have a long bill now that we shall bring up at the earliest possible moment.

Mr. THURMAN. That is a bill to correct a couple of hundred more. I do not know whether his bill corrects them or changes the law; but it professes to make corrections. I do not think, to use a very familiar, but not elegant, expression, that you can lick the Revised Statutes into shape by amendments to appropriation bills.

Mr. CONKLING. Listening to the Senator from Maine and the Senator from Ohio, I feel moved to say that I think together they do the commissioners dishonor overmuch. It is true, no doubt, that a good many, in number, most of them very trivial, errors, were found, despite all the winnowing process to which the consolidated statutes were subjected, still there. It is not true, however, that either surreptitiously or carelessly, borrowing a phrase from my honorable friend from Maine, the commissioners or anybody else, interpolated into the statutes that kind of error, that kind of change which would naturally be inferred from the tone in which these Senators speak. It is not the duty, it is not the personal interest of the present Committee on the Revision of the Laws, or of any Senator who served on that committee heretofore, to defend as if against some personal reflection the work done upon these statutes. The two Houses of Congress directed not the committee of either or both Houses, but that a commission of external persons, appointed by the proper authorities, changed several times, sitting for years, should go on under the directions given to them and consolidate the statutes. The function of the Committee on the Revision of Laws was not only supervisory merely, but, as every Senator who reflects one moment will see, it must necessarily have stopped with a very superficial supervision. Here were the statutes which had been amassed for eighty-seven years; they were very voluminous; and, if I might make a remark without subjecting myself to the suspicion of being disrespectful to the legislative literature of the country, I should say that they were not all of them so artificially and perspicuously drawn as to make it a very easy task for any commission to deduce a clear and harmonious result. However, the commission for years worked upon these statutes; one commissioner after another tiring of his work, virtually fainting before his task and giving way, resigned and another was appointed; and in the end, in comparatively a brief period, the committees of the two Houses were called upon to act on all this work. The Senator from Ohio—and no Senator had he been on the committee would have been able to do better than he—would have smiled at the idea that he was to take sixteen or eighteen volumes of statutes, and two or three ponderous volumes coming as the result from those, and by comparison, letter by letter and word by word, ascertain the fidelity of the work. But even had all that been done, it would have furnished no security. Why? Because the purpose was not to treasure up these statutes with verbal exactness, but to deduce with exactness from them, in brief phrase, the essence of them all; and therefore, had the committee been able to gather and make a comparison *in extenso*, it would have amounted to nothing.

Then, Mr. President, not to multiply words, the committee in both Houses I believe, as I feel very sure I may say the committee in this House, devoted a great deal of time in subjecting these statutes to all the criticism of which they were susceptible; and then, as the Senator from Maine says, they were reported in block; they were never even engrossed; they were sent to the Printing Office and in an incredibly short time, considering the volume of the work, they were produced in print, the print being treated as the engrossed bill. Now, that typographical errors, that verbal errors and omissions such as this dropping the return phrase so that the twenty-five cents per mile turns out to be applicable to only one way—that such things occured is true, and I submit that they were unavoidable. And I hope I shall be pardoned by the Senate, having been myself at that time a member of the Committee on the Revision of the Laws, if I listen sometimes with a little disquiet to some general observations as if somebody and everybody had been exceedingly heedless and miscellaneous, if I may so say, in the way in which he devoted himself to this work. It is not true. It is not true of the commission; it is not true of the committee. If the whole thing had to be done again, my impression is that it could not be improved on. The committee were very careful, when these statutes were submitted, to remind every Senator cogently that errors of this sort would be found; although they could not particularize them, the nature of the case was such that they could not but foresee them.

But enough on this subject; I want now to say one word about the amendment. I believe the Senator from Massachusetts said that the change made by the Revised Statutes in this instance was an unauthorized change. I think he must be quite right in that, because the law directed the commission to make these statutes in brevity as they were at large. Certainly it did not authorize any change. Making due allowance for that, it nevertheless turns out that a change has been made. The law, for every purpose, in every sense, is now as it reads and as it would be had it been the purpose of every member of the two Houses to make that change. That being so, it cannot be averred that on this appropriation bill we are going to change the law if we follow the law as it is.

I shall vote against this amendment for this simple reason: Assuming that the original tariff of compensation was right in the days of stage-coaches and saddle-horses, I feel able myself to determine upon my own knowledge that twenty-five cents a mile for travel by the present conveyances is very sufficient not only to defray expenses but to leave a considerable surplus. I venture to say that any Senator, speaking now without reference to existing law, would affirm it to be sufficient to be paid at large, to these messengers traveling very long distances and receiving very much mileage, as some of them do; and others, performing more trifling service, by journeying a less distance. If it be true then that as a fact now the compensation is sufficient, finding as we do, although by mistake, the law has been changed from what it used to be to make it so, I can hardly conceive that it is my duty to go back and vote for a compensation which I believe to be excessive because some law which once did, but does not now exist, fixed it, and fixed it upon conditions and for reasons which have passed away.

Mr. THURMAN. I should not say another word, but what has fallen from the Senator from New York makes it proper that I should say that the farthest thing in the world from my intention was to cast any reflection upon either the commission which made the compilation or on the two committees on the Revision of the Laws. I know very well the difficulty of performing such a duty as they attempted to perform. Possibly there is not a Senator who was on the floor then who has not a certain share of the responsibility, because I think the revisers were accustomed to send advance sheets of their work before they made their final report, and perhaps if all the Senators had gone to work and performed the duty they were called upon to perform, and pointed out any errors or omissions, there would have been fewer errors in the revision. But that was not to be expected of Senators in the vacation or in the time they had to spare here. They appointed a commission for that purpose. But, certainly, it is a very lamentable state of affairs that this book, which is all over the whole country in the hands of every judge of a court and in the hands of all the lawyers of the courts, has been changed in between two and three hundred particulars since its enactment in June, 1874.

But little over two years have gone by and more than two hundred changes in the text of these Revised Statutes have been made—I do not know but nearly or quite three hundred—and yet people are acting every day on the law which they find in this book, although it has been changed, and nobody can tell what the law is unless he takes the session laws and takes this book and makes with pen or pencil or in some other way marginal corrections or references to show him what the law is. This is so bad a state of affairs that it seems to me it will not be tolerable, especially if the bill of the Senator from Massachusetts shall pass which will add a couple of hundred more alterations in it; it will not be possible to get along without reprinting this book with the amendments that have been made.

In respect, however, to the accuracy of such things, there is a bit of history in my own State which is worth relating. When a very young man, Salmon P. Chase undertook to publish an edition of all the statute laws that had ever been enacted by Ohio, both in its territorial condition and as a State from 1789 up to 1831. He accomplished that work in three large volumes. He was then a young man unknown to fame. Some of us who were also young men, looking at it and believing it to be a very valuable contribution, petitioned the Legislature to have it printed at the public expense, and it was done; and now, after forty-five years have passed since the publication of that work, I believe I can safely affirm that not one single error has ever been discovered in it.

That is not all. Some years afterward Judge Swan, of Ohio, a single individual, undertook to publish the laws of Ohio as they then existed, which, of course, devolved upon him a similar duty to that performed by these commissioners, because he had to decide what laws had been repealed by implication or how they had been changed by conflict with other statutes. He published what was called "Swan's Statutes," and now I can say here that after thirty years have passed since that compilation was published I do not believe that one single error has been discovered in it.

Mr. BOUTWELL. Will the Senator allow me to ask whether the work of which he speaks in Ohio prepared by Governor Chase was a compilation of existing statutes, or whether it was an abbreviation and reproduction? Was it a revision of the laws or merely an aggregation of statutes?

Mr. THURMAN. I have already stated, if the Senator understood me——

Mr. BOUTWELL. I did not.

Mr. THURMAN. That it was simply a reprint of the laws.

Mr. BOUTWELL. That, I think, is a different work.

Mr. THURMAN. Undoubtedly it is very different indeed, because he had nothing there to decide, but it was not so in the case of Swan's Statutes, for Swan had to decide what laws were in force, what laws had been repealed by implication or modified in any way; and yet in that revision, which was published in 1840 and which contained laws that had been enacted as early as 1802 and from that time down to 1840, I think not one error has ever been detected. I mention this to show that when a very able man with peculiar talents for such work goes to work upon the task of reviewing statutes and takes sufficient time he can make pretty good work.

Mr. CONKLING. Will the Senator allow me to make a suggestion? I never understood before why it was that Ohio was the favorite State to which at least two Presidents resorted for members of this commission. It was the favorite State; commissioners were appointed from there, and when a vacancy occurred again appointments were made from Ohio once or twice. Now that I have heard from the Senator the peculiar and somewhat endemic facility which prevails in Ohio for doing such work, I understand why it was that the rest of the States were not permitted more largely to participate in doing the work. [Laughter.]

Mr. THURMAN. The only trouble is that the President in appointing commissioners did not take men who had proved themselves to be best qualified for this kind of work.

Mr. CONKLING. They were either not living or otherwise engaged. He could not take Chief-Justice Chase.

Mr. THURMAN. No; but Judge Swan is living to-day and Mr. Corwine has also published a revision of the laws and was also living; and Mr. Sayler was then living; but I do not want to go into this. I quite agree with the Senator from New York that almost any man in Ohio in the republican party is qualified for any office within the gift of the people of the country. [Laughter.] That is all I have to say.

The PRESIDENT *pro tempore*. The question is on the amendment of the Senator from Massachusetts, [Mr. BOUTWELL,] upon which the yeas and nays have been ordered.

The question being taken by yeas and nays, resulted—yeas 13, nays 31; as follows:

YEAS—Messrs. Allison, Anthony, Bayard, Boutwell, Burnside, Chaffee, Dawes, Ferry, Hamlin, McCreery, Maxey, Mitchell, and Ransom—13.

NAYS—Messrs. Alcorn, Barnum, Blaine, Bogy, Booth, Clayton, Cockrell, Conkling, Conover, Davis, Dorsey, Eaton, Edmunds, Frelinghuysen, Hamilton, Harvey, Hitchcock, Ingalls, Johnston, Jones of Florida, Kernan, Key, Morrill, Paddock, Price, Sherman, Thurman, Wallace, Windom, Withers, and Wright—31.

ABSENT—Messrs. Bruce, Cameron of Pennsylvania, Cameron of Wisconsin, Christiancy, Cooper, Cragin, Dennis, Goldthwaite, Gordon, Howe, Jones of Nevada, Kelly, Logan, McDonald, McMillan, Merrimon, Morton, Norwood, Oglesby, Patterson, Randolph, Robertson, Sargent, Saulsbury, Sharon, Spencer, Stevenson, Teller, Wadleigh, West, and Whyte—31.

So the amendment was rejected.

Mr. EDMUNDS. I move to strike out all the bill except the simple appropriation of money to pay the messengers, so that it shall stand as a mere appropriation bill under existing laws.

The PRESIDENT *pro tempore*. The amendment will be reported.

The CHIEF CLERK. It is proposed to strike out all after the words "United States," in line 6, as follows:

At the rate of twenty-five cents for every mile of the estimated distance by the most usual road traveled, from the place of meeting of the electors to the seat of Government of the United States, computed for the one distance only.

So as to make the bill read:

That for payment of the messengers of the respective States for conveying to the seat of Government the votes of the electors of said State for President and Vice-President of the United States, the sum of $20,000 be, and the same is hereby, appropriated, out of any money in the Treasury not otherwise appropriated.

Mr. WINDOM. I do not know that there is any objection to the amendment, though I think the bill as reported does not change the existing law.

Mr. EDMUNDS. I know; but it proposes to re-enact it.

Mr. WINDOM. I want simply to explain that the opinion of the committee was that it did not change the existing law, but was in strict conformity to it, and they did not think it necessary to send the bill back to the House on this, to some extent, technical objection. The language used is that by which the Department has construed the existing law, twenty-five cents one way, and we simply put in words that construction, which I think does not change the law substantially. If it did, the committee would not have agreed to it.

Mr. DAVIS rose.

The PRESIDENT *pro tempore*. The morning hour has expired.

Mr. WINDOM. I hope we may complete this bill.

The PRESIDENT *pro tempore*. If there be no objection, the consideration of the bill will be continued as in Committee of the Whole.

Mr. MITCHELL. It will not displace the regular order, I hope.

The PRESIDENT *pro tempore*. The regular order will be subject to call.

Mr. DAVIS. I understood, though not officially, that there was some doubt at the Treasury Department whether it was for travel one or both ways that mileage should be paid. I understood that from a messenger who brought returns here. When I saw the bill, the fact appeared that it was to be but one way; and then hearing the Senator from Massachusetts this morning saying that the Treasury Department construed the law as authorizing the payment of mileage but one way, I supposed it would do no harm to leave the bill as it now stands as there had been some doubt at the Department.

Mr. WINDOM. If the Senator from West Virginia will allow me, I will read a short telegram from the Treasury Department, dated December 12:

It is understood in the Department that mileage is payable only one way and at twenty-five cents per mile.

L. M. MORRILL, *Secretary*.

Upon the construction thus given, the committee did not think it necessary to recommend any change in the bill as it came from the House.

Mr. WRIGHT. I suggest to my friend from Vermont that the bill as it stands now is a mere recitation of the existing statutes; that it is not in terms, nor can it be justly claimed, that it re-enacts the law. It recites the existing statute and says that compensation shall be paid upon the basis of the law as it now stands. I think the bill is not subject to the objection that has been so often urged here and in which I have uniformly concurred. I suggest, therefore, that the better course is to allow the bill to remain as it is. If I thought that by possibility it was subject to such objection or that it could be claimed by possibility that it was a change of existing statutes, I should favor the amendment. I have always favored amendments to appropriation bills that looked to excluding from them anything like legislation.

Mr. EDMUNDS. I do not think that the bill does change the existing law in the sense of making a new law different from what the present law is, but nevertheless it will be the last statute upon the subject, and it certainly undertakes, as we all agree, to put a construction upon the preceding statute. We happen to be apparently unanimously of opinion here that that construction is the correct one. But suppose somebody in the House of Representatives or here next year says, "Here is a precedent for construing a statute;" it is true we all think we construe it right, but some of your people in the next case when you think they are not construing it aright will still have a precedent. The objection is exactly the same. You are undertaking to construe a preceding statute in an important particular by this present law in appropriating money; and that is just as much further legislating as anything could be. It may not be so important particularly where the construction is clear; but it would be just as much legislating in an appropriation bill if this bill had said "pay both ways." You are thus putting a construction on the former law, a construction which I agree with my friend from Iowa it will not bear, and yet at the same time you would be doing precisely the thing you are doing now. You are putting now what we all agree is a right construction on an old law. The next bill will be putting a construction which some will say is right and some will say is wrong. But I do not want to take time about it.

The PRESIDENT *pro tempore*. The question is on the amendment proposed by the Senator from Vermont, [Mr. EDMUNDS.]

The amendment was rejected.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. GEORGE M. ADAMS, its Clerk, announced that the House had agreed to some and disagreed to other amendments of the Senate to the bill (H. R. No. 3057) establishing post-roads.

The message also announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

A bill (H. R. No. 1874) granting a new register to the schooner Carteret; and

A bill (H. R. No. 3256) for the relief of John F. Sutherlin & Brother, of Parke County, Indiana.

The message further announced that the House had passed a resolution providing for the appointment of a committee to act in conjunction with any similar committee that may be appointed by the Senate to prepare and report, without delay, such a measure, either legislative or constitutional, as may, in their judgment, be best calculated to insure a count of the electoral vote for President and Vice-President, and a declaration of the result by a tribunal whose authority can determine the question and whose decision all will accept as final.

NOTICES OF BUSINESS.

Mr. WRIGHT. I wish to give notice that I shall on Monday immediately after the expiration of the morning hour, if I can get the attention of the Senate, call up the bill reported from the Committee on Civil Service and Retrenchment touching the salary of the President of the United States. It will be remembered that that bill was vetoed by a message of the President and was reported by the committee again recommending its passage. I do not propose at that time to take up the time of the Senate in its discussion, but shall ask a vote of the Senate, as I believe to be my duty.

While I am on the floor, I wish to say that to-morrow, or at some time thereafter, I shall ask leave to bring in a bill to provide a method for contests of the office of President and Vice-President of the United States.

Mr. DAWES. I should like to call up the resolution I reported yesterday in regard to the compensation of witnesses in attendance before committees, to be acted on.

Mr. MITCHELL. I have no objection, with the understanding that it is subject to a call for the regular order.

The PRESIDENT *pro tempore*. Is there objection to laying aside temporarily the regular order for the purpose of considering the matter suggested by the Senator from Massachusetts?

Mr. EDMUNDS. I do not rise to object, but to say that two or three days ago I gave notice that I should on the next day move to take up Senate bill No. 1, my purpose having been not for passage or discussion, but to move its reference to a committee. One of my senatorial brethren, for whose wishes I always entertain the highest respect, wished to make some observations upon that bill when it should be taken up, and through indisposition he is unable to go on to-day, when I had intended to move to take it up, as the matter under consideration yesterday occupied the whole day. This leads me to say that I shall not move to take it up to-day; but I had intended, unless something else were done on Monday, to call it up then. Now, however, a resolution from the House of Representatives upon that subject having come over, it is possible that the necessity for a reference of that particular bill, or for action upon that particular bill, may be superseded, as of course the respect that we owe to the House of Representatives, as well as the high importance of the subject to which the resolution they have sent us refers, necessarily lead us to appoint a committee similar to that which the House of Representatives have appointed, and to which, in effect, they invite our attention; so that, when the question comes up, we can deal with it in the one way or the other, as may seem proper. I only say this now, in order to explain my not having moved this morning and not having moved yesterday to take up the bill pursuant to the notice that I had given.

Mr. THURMAN. Is the regular order up?

The PRESIDENT *pro tempore*. The Senator from Massachusetts has suggested that it be laid aside temporarily, and it has been done with the concurrence of the Senator from Oregon for the purpose of taking up a resolution which the Senator from Massachusetts will state.

Mr. DAWES. For the purpose of considering a resolution reported by the Committee on Contingent Expenses fixing the compensation for witnesses before Senate committees. Senators are aware that there are several committees or subcommittees now in various States examining witnesses. There is no fixed rule about their compensation except so far as the statute is concerned, which fixes the compensation of witnesses under certain circumstances. The House of Representatives has adopted a rule, and the committee reported a rule here following the House rule, and that was reported yesterday and lies over. Senators will see the necessity of action on it. The committees now have no fixed rule by which they pay their witnesses.

Mr. THURMAN. I wish to submit some observations on the resolution offered by the Senator from Oregon, and if this matter can be disposed of without debate I shall not object.

Mr. DAWES. I do not think it will lead to debate.

FEES OF WITNESSES.

Mr. MITCHELL. I only consent that it be taken up subject to the call for the regular order.

The PRESIDENT *pro tempore*. The resolution, as amended by the committee, will be reported.

The Chief Clerk read as follows:

Resolved, That the rule for paying witnesses summoned to appear before the Senate, or any of its committees, shall be as follows: For each day a witness shall attend, the sum of $3; for each mile he shall travel in coming to or going from the place of examination, the sum of five cents each way; but nothing shall be paid for traveling when the witness has been summoned at the place of examination.

Mr. MITCHELL. I move to insert after the word "way:"

Provided, That witnesses residing west of the one hundred and tenth meridian shall be paid the sum of seven cents each way for each mile they shall travel in coming to or going from the place of examination when the place of examination shall be east of the Mississippi River.

So that if amended the resolution will read:

Resolved, That the rule for paying witnesses summoned to appear before the Senate, or any of its committees, shall be as follows: For each day a witness shall attend, the sum of $3; for each mile he shall travel in coming to or going from the place of examination, the sum of five cents each way: *Provided*, That witnesses residing west of the one hundred and tenth meridian shall be paid the sum of seven cents each way for each mile they shall travel in coming to or going from the place of examination when the place of examination shall be east of the Mississippi River; but nothing shall be paid for traveling when the witness has been summoned at the place of examination.

Mr. DAWES. I suggest to the Senator from Oregon that instead of that phraseology he adopt the phraseology that any witness who is obliged to travel, in obedience to a summons, over a certain number of miles shall be entitled to seven cents for each mile he travels. I do not know how it may be, but suppose that witnesses are summoned here from the State of Louisiana, or Florida, or Mississippi, as I understand may be done. It would seem that a rule that applies to those summoned from the distant West ought to apply to them also. I make that suggestion.

Mr. MITCHELL. I have no objection to such a rule. I fix the limit at the one hundred and tenth meridian, from the fact that that would enable persons to come from all parts of the United States at five cents per mile, except persons west of the one hundred and tenth meridian.

Mr. DAWES. Senators from the distant southern States can tell better than I can whether five cents a mile is a proper compensation for a witness coming from Florida, or Mississippi, or Louisiana. The Senator will see that witnesses from those States would be excluded from the compensation of seven cents a mile, under his amendment.

Mr. MITCHELL. I will state that it is no farther, in my judgment, from my recollection now, from the most distant portion of the Southern States to Washington than it is from the one hundred and tenth meridian, which crosses the country at or near Salt Lake.

Mr. DAWES. I certainly can have no special desire about it. If those Senators who live in those States think that is a proper compensation for those witnesses, I have nothing to say.

Mr. WEST. If the Senator from Oregon will permit me, I will ask the Senator from Massachusetts whether this resolution provides compensation also for the witnesses who may appear and attend at the summons of the committees that have been sent to the Southern States?

Mr. DAWES. Certainly.

Mr. WEST. Then I will say, so far as my State is concerned, that five cents per mile will not more than just barely pay their expenses, because it is almost all stage-coach or steamer travel.

Mr. SHERMAN. They have compensation besides.

Mr. MITCHELL. Three dollars a day during the time they attend.

Mr. DAWES. They get $3 a day and five cents a mile travel, unless summoned from the place where the committee is in session.

Mr. WEST. Five cents a mile will barely pay them in the State of Louisiana.

Mr. MITCHELL. I will state in justification of the amendment I have offered, that the distance for which members of Congress are allowed mileage from my own State is 4,058 miles. The proposition proposed by the committee would make the compensation of witnesses from that State $200 and a fraction over. I will state that that would not pay the actual traveling expenses of a witness from Oregon. I have made a careful calculation of it, and I think in the neighborhood of $250 would pay the expenses of a witness, provided he was very economical in his disbursements in coming from Oregon here, but nothing less would do it. I hope, therefore, the amendment will be adopted.

Mr. ANTHONY. Suppose a witness is summoned from here to go to Oregon or California, the amendment would not apply in that case?

Mr. SHERMAN. The resolution only applies to committees of the Senate.

Mr. DAWES. This is not changing the law; it is only fixing a rule for Senate committees. If the Senator from Rhode Island thinks there is any danger of committees going over there and summoning witnesses from here, I think it would be better to provide for it in a separate resolution.

Mr. MITCHELL. There is not any danger of that at all.

Mr. WEST. Let the amendment be reported.

The PRESIDENT *pro tempore*. The Secretary will report the amendment.

The CHIEF CLERK. It is proposed to add after the word "way," in the eighth line of the resolution, the following proviso:

Provided, That witnesses residing west of the one hundred and tenth meridian shall be paid the sum of seven cents each way, for each mile they shall travel in coming to or going from the place of examination, when the place of examination shall be east of the Mississippi River.

Mr. DAWES. I call the attention of the Senator from Rhode Island to its present phraseology in order to see that it is right.

Mr. ANTHONY. I merely raised the question. I am willing it shall be settled by those who have the matter in charge. It seemed to me that it provided for paying a witness going a long distance one way and not going a long distance the other way, and the reason given is that there is no occasion to go the other way. I think it may happen, and I think it has happened, that witnesses from here have been summoned by the authority of Congress to go to the Pacific coast.

Mr. MITCHELL. We can provide for that if the emergency arises, but I do not think it is likely to occur.

The PRESIDENT *pro tempore*. The question is upon the amendment of the Senator from Oregon.

The amendment was agreed to; there being on a division—ayes 24, noes 14.

The resolution as amended was agreed to.

ENTRANCE TO THE CAPITOL.

Mr. ANTHONY. I offer the following resolution:

Resolved, That the Committee on Public Buildings and Grounds be instructed to inquire into the expediency of erecting suitable temporary plank stairs on the steps of the Capitol.

I beg to call the attention of my friend the chairman of the Committee on Public Buildings and Grounds [Mr. MORRILL] to this resolution. Those Senators who have had occasion to ascend and descend the steps at the west of the Capitol have noticed that there has been placed there a rickety, shackly, tumble-down thing that has done duty for four or five years. It was a deformity when it was new; and it has been growing worse and worse year after year. I do not think that any respectable farmer in Vermont or Rhode Island would have such an ascent to a crib or a barn, and it is a shame to place it at the entrance of this superb structure. It is necessary to have some wooden steps in order to protect the stone stairs from the ice, but if it cannot be done in a tasteful and elegant way, as it ought to be done, certainly it need not be an unsightly thing as it is now. If there is no money in the Treasury applicable to this purpose I think that the country is not so impoverished that we cannot make a small appropriation for it.

Mr. HAMLIN. I move to amend the resolution by adding:

Or to make such provision as shall be necessary to keep the steps in proper condition.

Mr. ANTHONY. I accept that amendment.

Mr. HAMLIN. I deny that there is any earthly necessity for putting wooden steps there. It may cost a very small sum, a very slight sum, but the ice can be removed almost immediately. Those steps can be kept safe and in a proper condition for a very trifling sum, and it is better that they should be so kept than to be encumbered with anything upon them. That is my idea, and the Senator from Rhode Island accepting that modification, the whole subject will be before the committee.

Mr. ANTHONY. There is a conflict of authority among the Sergeant-at-Arms, the architect of the Capitol, and the engineer in charge of the public buildings and grounds, as to who shall have the responsibility for certain portions of the grounds around this building. I recollect, some years ago when I saw a cow trampling down the grass that had just been put upon one of the eastern plats, I sent for one of the officers to have it turned out, but I was very much in the condition in which I believe the royal household of England was when the family were freezing because it was the duty of one high official to lay the fire and the duty of another to kindle it, and neither could act without the other. I went and drove out the cow myself; but I cannot put these stairs up very well.

Mr. HAMLIN. Mr. President——

Mr. THURMAN. I call for the regular order.

Mr. CONKLING. This is regular order.

The PRESIDENT *pro tempore*. The resolution is before the Senate subject to a call for the regular order.

Mr. ANTHONY. I ask the Senator from Ohio to allow it to pass.

Mr. THURMAN. I do not think it can be passed, from present appearances, without a dozen speeches.

Mr. ANTHONY. I do not think either the Senator from Maine or myself takes the floor so often or occupies it so long that we ought to be snubbed by the Senator from Ohio.

Mr. THURMAN. I certainly am the last man to do it, especially when the Senator from Rhode Island goes into his own biography and gives his experience as a cow-driver. I certainly must call for the regular order unless the vote can be taken.

Mr. HAMLIN. Mr. President, I occupy so much more time in this Senate than the Senator from Ohio, and inflict upon it so many more speeches than he does, that I will not say one word upon the question if we can have a vote.

The PRESIDENT *pro tempore*. The amendment has been accepted by the mover of the resolution. The question is upon agreeing to the resolution as modified.

The resolution, as modified, was agreed to.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. GEORGE M. ADAMS, its Clerk, announced that the House had passed the following bills and joint resolutions; in which it requested the concurrence of the Senate:

A bill (H. R. No. 2278) to change the name of the port of entry of the district of Teche, in Louisiana, from Brashear to Morgan City;

A joint resolution (H. R. No. 171) in reference to congratulations from the republic of Pretoria, South Africa; and

A joint resolution (H. R. No. 172) relating to congratulations from the Argentine Republic.

ENROLLED BILLS SIGNED.

The message also announced that the Speaker of the House had signed the following enrolled bills; and they were thereupon signed by the President *pro tempore*:

A bill (S. No. 105) for the relief of Dickson Shinault, late assistant keeper of the light-house at Wolf-Trap light-station, in the State of Virginia;

A bill (S. No. 745) to authorize the Secretary of the Treasury to issue a register and change the name of the brig A. S. Pennell to the City of Moule; and

A bill (H. R. No. 4197) to provide for the payment of the electoral messengers.

ADJOURNMENT TO MONDAY.

On motion of Mr. WRIGHT, it was

Ordered, That when the Senate adjourns to-day, it adjourn to meet on Monday next.

ELECTORAL VOTE OF OREGON.

The Senate resumed the consideration of the resolution directing an inquiry as to the eligibility of J. W. Watts as an elector for the State of Oregon and the circumstances attending the appointment of electors in that State.

Mr. THURMAN. Mr. President, I shall not weary the patience of the Senate by a discussion of the Oregon case, as it has been called, at any great length. I do not rise to pronounce judgment upon that case. My object in rising is to contribute something to the history of that case which ought to be known, and to show that there are two sides, or, at least, that there is another side than that which has been presented in the speech delivered by the Senator from Indiana, [Mr. MORTON,] who, I regret to see, is not in his seat.

This is a resolution of inquiry which instructs the Committee on Privileges and Elections to make certain inquiries and report the results of their investigations and study to the Senate; and I must confess that that being the case, I was a little surprised to find in the RECORD a prejudgment of the whole case by the chairman of the committee who are to be instructed by the resolution to inquire and ascertain what the case is; and not only a prejudgment of the case, but a prejudgment of it in language certainly very severe, not to say offensive, to the gentleman who fills the office of governor of the State of Oregon. The Senator from Indiana, the chairman of the committee who are to be instructed by this resolution, was pleased to say among other things:

In reference to the action of the governor of Oregon it may be said, in the first place, that the determination upon his part that the postmaster, Watts, was ineligible was a judicial question, one that he had no right to decide. I have examined the constitution of Oregon, and it places in the courts the judicial authority. That was a question he had no right to decide. The governor of Oregon had a simple ministerial duty to perform, and that was to certify who had the highest number of votes. Whether the person having the highest number was ineligible was a judicial question that he had no more power to decide than I have, not living in Oregon at all. The question as to whether the minority candidate was elected was a judicial question of a high character. He had no power to decide it. It was a clear usurpation upon his part. Neither the constitution of Oregon nor of any other State that I know of has conferred judicial powers upon the governor. So far as he is concerned with the electors his duty is simply ministerial, that is, to certify who got the highest number of votes. Whenever he goes beyond that he transcends his duty. For him to undertake to say that Watts was ineligible was to exercise judicial power with which he was never invested, and for him to go beyond that and decide that the minority candidate was elected was the exercise of a judicial power which he did not possess, and it was a decision right in the face of the law, a palpable wrong, for which there is no excuse. None can be offered. In one of the southern states of Europe there used to be a custom that when a man was hanged or executed for a crime, or when he was killed in the commission of a felony, he was to be buried by the roadside, and it was the duty of every traveler who went along to throw a stone upon his grave, so that the monument of his crime might be increased from year to year and from generation to generation; and so in regard to this Oregon transaction, every future historian, from generation to generation, will add comment and condemnation upon that act which will increase its magnitude and its infamy to the latest hour.

It cannot be denied that the Senator from Indiana has begun to throw his stone upon this grave, as he supposes, of the governor of Oregon. I say nothing about the propriety of the chairman of the committee who is to be charged by the Senate with making this inquiry thus prejudging the whole of it, and using such language in respect of the governor of Oregon as he has seen fit to use. I do not deny his right to say it, although differing with him upon the question of taste or propriety; but I cannot help saying that it struck me as a little singular that such a prejudgment should be announced before the resolution had even passed the Senate, and that such language should be used toward the governor of that State. I propose to show, without deciding anything, that there is a question here, and that the governor of Oregon has not acted so palpably wrong as to authorize the Senator from Indiana or anybody else to declare that he is infamous and deserves a monument of his infamy to be erected by every one who shall write the history of the country.

Let us see what are the questions involved in this so-called Oregon case. The first question is, was Watts ineligible to appointment as a presidential elector? I do not suppose that there is the slightest difference of opinion among any of the lawyers or any people who read the Constitution upon that point. I understand it to be universally admitted that he was ineligible, not ineligible simply to be an elector, but ineligible to be appointed an elector, and, therefore, his appointment was absolutely void. So far it is all plain sailing, I suppose. In the second place, I suppose it to be equally admitted by everybody that being ineligible to appointment, it does not matter, so far as the question of his right is concerned, whether the voters of Oregon knew of his ineligibility or not, because to say that their ignorance of his ineligibility to appointment would give him a right to hold the office would make their ignorance superior to the Constitution of the United States, which says that he is ineligible to appointment. I read the law the other day as very properly stated in Cushing's Parliamentary Practice; but it requires no authority to show it. It was there stated that where a person is ineligible to election the votes for him are void no matter whether the electors knew of his ineligibility or not, and that must necessarily be so. Otherwise, as I have said, it would make their ignorance confer a title which is directly prohibited by the Constitution.

We have, then, two questions settled by unanimous consent, I take it: first, that Watts was ineligible to appointment, being a postmaster at the time of the election; secondly, that his ineligibility is not at all affected by the knowledge of the voters of Oregon. In the third place, it follows as a necessary corollary from this, that no resignation by him of the office of postmaster could better his title. Being utterly ineligible to appointment and having no title whatever by the appointment, he could not acquire a title by a resignation of his office afterward. All that is too plain, it seems to me, to require any argument; and I do not understand anybody to gainsay it. I understand further that substantially all three of these questions have been unanimously decided by the judges of the supreme court of Rhode Island in a case that arose this very year and in regard to a presidential elector in that State.

We come then to the next question, what was the duty of the governor of Oregon? The Senator from Indiana says that the question whether Watts was eligible or not was a judicial question, and that the sole duty of the governor was a ministerial duty, that he had no judicial function whatever, that it was therefore his duty simply to certify to the person who received the highest number of votes. He states that in the most absolute manner. If his statement be correct, then, if, instead of voting for Watts, the voters who cast their votes for him had voted for Queen Victoria, it would have been the duty of the governor to issue a certificate of election to Her Majesty the Queen that she was chosen elector of President and Vice-President for the State of Oregon; or, as was wittily suggested to me by a republican Senator the other day, if they had seen fit to vote for Goldsmith Maid, who runs better than even Watts, [laughter,] then it would have been the duty of the governor of Oregon to have certified that that brilliant piece of horse-flesh, Goldsmith Maid, was elected elector of President and Vice-President of the United States for the State of Oregon!

The Senator from Indiana entirely mistakes perhaps what is meant by "judicial functions." It is very true in Oregon, as in every State in the Union and in the Federal Government, that there is a department of government which is called the judiciary and another department called the executive and another the legislative, and the constitutions endeavor to partition out these great powers of government between these three departments; but does it follow from that that no power to judge in any case can be devolved either upon the legislative department or upon the executive department of the government or an executive officer? We could not get along with the Government one day on such an idea as that. The judicial power which the governor of Oregon cannot exercise, which the Legislature cannot exercise, the judicial power that Congress cannot exercise, that the President cannot exercise, is the power of deciding litigated cases that arise in jurisprudence, and is a wholly different thing from the exercise of that quasi judicial power which executive officers are called upon every day to exercise and which they must exercise. Suppose you apply the reasoning of the Senator from Indiana to the Louisiana case; the partition between executive, legislative, and judicial powers in the constitution of Louisiana is as perfect as in that of Oregon; and yet there is a returning board that decides questions of law and fact and upon its decision of questions of law and fact casts out the vote of whole counties or whole precincts. In the same way, where there is a most regular government, where there is no such machinery as this returning board, but where there is a board of canvassers as in every one of the New England States and in every northern State so far as I know, certainly in my own State, where there is a board of canvassers they have to decide many points that involve questions of law as well as questions of fact.

To say, therefore, that this is a judicial question in the sense in which the judicial department of the Government is separated from the executive, as the Senator from Indiana has asserted, is in my humble judgment a confusion of ideas which is not at all warranted by the facts of the case. I shall not, however, undertake to decide that; but I do say that in view of the facts the governor of Oregon might conclude, as I will show before I have done that one at least of the able lawyers of the country did conclude, that he had that power and was bound to exercise it.

Mr. MITCHELL. Will the Senator yield to me for a moment?

Mr. THURMAN. Yes, sir.

Mr. MITCHELL. I desire to ask the Senator from Ohio whether, in his judgment under the law, it was the duty of the governor of Oregon to pass upon the question either ministerially or judicially—I care not which you call it—as to the eligibility of Mr. Watts?

Mr. THURMAN. I said in the outset that I was not going now to pronounce my own judgment upon any of the questions in this case; that my only purpose was to show that there was another side to the case.

Mr. MITCHELL. One other question, if the Senator will allow me; and that is this: If it were his duty to pass upon that question in this individual case, then would it be his duty in every case to pass upon the question of the eligibility of the candidate voted for, provided that question was brought to his notice?

Mr. THURMAN. Well, Mr. President, I hope the Senator will allow me to proceed.

Mr. MITCHELL. I should like to have an answer to that question.

Mr. THURMAN. I cannot answer categorically what the duty of the governor of Oregon under her constitution and laws, with which I am not at all familiar, may be. It is sufficient for my purpose, and that is what I said was my purpose, to show that he does not deserve to have the mark of infamy placed upon him which the Senator from Indiana has endeavored to affix, and that there are two sides to this question.

I will say in answer to the Senator now, that if the voters of Oregon had voted for Queen Victoria, in my judgment it would not have been the duty of the governor of Oregon to give her a certificate that she was elected an elector of President and Vice-President for that State. As I said before, I am not familiar with the statutes of Oregon; but I understand that by the constitution or the laws, or both, of that State, these votes are to be canvassed by the secretary of state in the presence of the governor. I do not perceive why the presence of the governor is necessary there, unless it is to see that there is a correct canvass. I may be wrong about that; but I cannot understand it to be so. The governor is to commission the persons found to be elected, or in the case of electors of President and Vice-President he is to make a certificate of their election. The canvass is to be in his presence. Now, I will put a case. Suppose that the secretary of state, opening the returns and making a tabulated statement of them had counted up so many for Watts, and so many for Cronin, Watts being a perfectly eligible person, we will now presume, or so many for A, an eligible person, and so many for B, an eligible person, and the secretary of state had said, "here A has a majority of one hundred votes in the State," and the governor, looking over it should see that there was an error in the addition, and that, in point of fact, B had a majority of one hundred votes; but the secretary should persist in saying, "No, A has the majority; the addition is right;" would the governor of Oregon be bound to issue a certificate to A? Would he be bound to say, "two and two do not make four?" Would he be bound, because the secretary of state obstinately refused to correct his addition, to issue a certificate to the wrong man? I fancy not. I fancy he is there to see that everything is done regularly, and that the persons who are qualified and receive the highest number of votes shall have a certificate. At least, I do not say so absolutely, but I say it may be fairly argued that that is the case.

Well, then, if the governor had any such power at all to decide to whom the certificate should be given, where the person receiving the majority of votes was confessedly disqualified, let us see what he could do. Let us suppose that these returns are being opened; and there is the governor; and my friend, the Senator from Oregon, or the Senator from Indiana, comes to him and says, "Now, governor, in this condition of affairs it is your duty to certify that Mr. Watts is elected." "But," says the governor, "Mr. Watts is confessedly disqualified to be appointed; how can I certify that he was appointed pursuant to the Constitution of the United States?" His certificate must be that the man was appointed pursuant to the Constitution of the United States and the laws of Oregon. "Can I say that this man was appointed pursuant to the Constitution of the United States when that Constitution absolutely forbids his appointment?" The Senator from Indiana might say to him "that is a question which you are not to decide at all; that is a question that is to be decided in some other way; Congress is to decide it forsooth when it comes to count the votes. But then the Governor says to him "if it goes on until Congress decides the question, Congress must decide under the oaths of the members to support the Constitution that this man was ineligible to appointment; and by that decision Oregon will lose one-third of her power in the electoral college and in the choice of President."

Mr. LOGAN. Will the Senator from Ohio——

Mr. THURMAN. I beg not to be interrupted; I prefer not to be. That would be exactly what the governor might say to him. Now, was it the duty of the governor of Oregon to shear that State of one-third of its power in the electoral college. Certainly that is a question which might well be considered.

If, then, the governor was not bound to certify the election of Watts in direct contravention of the Constitution which declared him ineligible to appointment, perhaps it may be said he should certify only

to the election of two electors, and that, as to Watts, he had received a majority of the votes, but that, being ineligible to appointment, he refused to certify to his election. But the governor might say at once, "That raises a most important question of law and of fact. It raises this question of law: in the case of an ineligible candidate, whose ineligibility is known to the voters, is the man who received the next highest number of votes elected? That is a question. You compel me to decide that question. I must decide it, because if I say that there was a vacancy and only two men have been chosen, then I decide either one or two things; I decide that that is not the law in Oregon, or I decide that that being the law, the fact is that the voters of Oregon did not know of the ineligibility." Therefore you see that it would have been impossible for the governor of Oregon to have decided that he would certify to the election of but two men without deciding that it is not the law in Oregon that the man receiving the next highest number of votes is chosen where the ineligibility of the candidate receiving the highest vote is known to the voters, and also without deciding that if that is the law in Oregon, then he must pass on the question of fact and say that the voters of Oregon did not know of the ineligibility of Watts. So you perceive that he has decided no question of law and no question of fact in giving the certificate to Cronin which he would not have been bound to decide if he had refused to give the certificate to Cronin. The thing was forced upon him; he had to decide it one way or he had to decide it the other. At any rate, without saying absolutely that this is so, this strikes me as being so plainly a view of the case that he might take, and that he might without the slightest reproach upon him as a man or as a lawyer, that I do again affirm that he is not subject to the anathemas which have been hurled against him on account of his action.

But, sir, there is still another thing that is to be considered. Suppose he had taken the course that is suggested and certified only to the election of the two who were qualified and about whose election there was no dispute. Then another question immediately arises and that arises under the laws of Oregon and the laws of the United States. Would there in that case have been a vacancy that could be filled by the two certified electors, or would it be a case of a failure to elect, to be supplied by a subsequent election by the voters of Oregon, or by the Legislature of Oregon, or in such other way as her Legislature might provide? That will be found to be perhaps in this case a very important question. It is argued with great force upon the statutes of Oregon, in an opinion which I shall presently send up and ask that the Secretary may read, that ineligibility did not create a vacancy within the true interpretation of the statutes of Oregon, and that if Cronin were not elected it was a case of a failure to elect, which is provided for in section 134 of the Revised Statutes of the United States in these words:

> Whenever any State has held an election for the purpose of choosing electors and has failed to make a choice on the day prescribed by law, the electors may be appointed on a subsequent day in such a manner as the Legislature of such State may direct.

Mr. CONKLING. What statute is that; the act of 1792?

Mr. THURMAN. No; the act of 1845, now the one hundred and thirty-fourth section of the Revised Statutes. Let us take this case. Here were two gentlemen, whose names I do not recollect, who were undoubtedly elected. Then there was Watts. Now suppose that between Watts and Cronin there had been a tie, would that have created any vacancy which the other two could have filled up? Would it have been the duty of the governor simply to certify two, and then for those two to go on and fill the vacancy? Is it not apparent that a case like that would be a case of a failure to elect, and that the third person could only then be appointed in such manner as the Legislature of Oregon should direct.

The Senate will see, then, that here are questions that must be considered; they are questions that the governor of Oregon in the discharge of his duty was bound to consider; and now I have to say further upon this matter that, so far as I know the history of this case and of that gentleman, who certainly is a gentleman of high standing, so high that for six years he has been the governor of that State, that the Legislature of that State has chosen him to a seat in this body, and that on the 4th day of March next he will take his seat here—enough, I say, of the history of this case and the character of that man is known to protect him against the imputations that have been so freely lavished upon him. That he acted with great care, that he heard arguments on both sides, that he sought information from all sides, I believe is not denied.

And now, sir, I hold in my hand an opinion of one of the most eminent lawyers of my State, a man who has adorned the bench of the highest court in the city of Cincinnati and adorned the bar of the State for more than thirty years, nearly forty, a man of a perfectly spotless reputation, distinguished for his ability, distinguished for his learning, and, above all, distinguished for his integrity. This lawyer, this judge, who never has been a partisan, who has not acted with the democratic party for many a long year until this year, this lawyer, studying this case as an interesting question, sent his opinion as a citizen of the United States, we all being interested in it, to Governor Grover. Being afterward requested by the editor of the Cincinnati Commercial to furnish a copy of the opinion which he had thus sent, he answered that he had kept no copy; but he would from memory and from his notes furnish as nearly as he could a copy of the opinion that he had sent to the governor of Oregon, with such further additions as subsequent study had enabled him to add to that opinion. This paper is the opinion of Judge George Hoadly, of Cincinnati, and, although it is somewhat lengthy, I venture to say that no Senator who reads it will rise from its perusal without instructing and without satisfaction. I ask that it may be read, and when that is read I shall have said all that I desire to say.

Mr. MITCHELL. I was out at the moment. And I desire to inquire of the Senator from Ohio if he stated that this opinion was furnished by Judge Hoadly to Governor Grover?

Mr. THURMAN. You will see in the letter what is stated about that.

Mr. MITCHELL. At whose instance?

Mr. THURMAN. I do not know. All I know about it is contained in the letter itself. The letter is published at the instance of the editor of the Cincinnati Commercial, a republican as we all know.

The PRESIDING OFFICER, (Mr. EATON in the chair.) The paper will be read if there be no objection.

The Chief Clerk read as follows:

DEAR SIR: I should be glad to comply, if it were in my power, with your request to communicate my opinion given to the governor of Oregon relative to his duty in the matter of the presidential election. I wrote three letters to Colonel Pelton, secretary of the democratic national executive committee, on this subject, and forwarded copies of these letters to Governor Grover. I kept, however, no copies myself, and cannot produce them from memory in their original form. Moreover, the subject has been one of constant study on my part since they were written, so that it is impossible for me to produce them as originally prepared. I will endeavor, however, to present to you the arguments which have carried conviction to my mind that Governor Grover has done his exact duty in the premises. This will embrace the substance of the letters referred to, with, however, large additions, the result of subsequent study. I am quite content to bear the odium which may be the result of being considered to have advised the course he took, for I believe he did the right thing, in the right way, at the right time, and with the happiest result, probably the result of preventing a usurping administration, not chosen by the people, and possibly the result of having prevented civil war.

My examination of some parts of this subject is not recent. I was a clerk in the law office of Salmon P. Chase when the Legislature of Ohio passed the famous law of 1848, dividing the county of Hamilton into two representative districts. I became his junior partner on the 1st of February, 1849, during the heat of the contest which arose out of the nullification of that law by the democracy of Ohio. It is within my personal knowledge that Mr. Chase approved from the beginning the course taken by Edward C. Roll, who, as chief clerk of the court of common pleas of Hamilton County, was the returning board of that time, and who, in obedience to his judgment that the law in question violated the constitution of Ohio, gave the certificates of election to George E. Pugh, Alexander N. Pierce, Alexander Long, Henry Roedter, and Edwin L. Armstrong, who had been elected representatives to the General Assembly by the democratic party of this county on general ticket, in defiance of the statute dividing the county for representative purposes. As is well known, Mr. Pugh and his associates obtained and held their seats in consequence of this action of Clerk Roll. John G. Breslin was elected speaker of the house of representatives and Stanley Matthews clerk as the first result. Salmon P. Chase was elected United States Senator, and the black laws of Ohio were repealed as the next result, and thereby it was rendered lawful for a colored man to live and not a felony in courts of justice in Ohio. For this act of independent judgment Mr. Roll was afterward brought to the bar of the court of common pleas, then composed of three whig judges and one democratic judge, and tried for malfeasance in office, but was acquitted by the concurring judgment of the president judge, Hart, with his democratic and one of his whig associates. Since the happy result in 1849 of my lamented friend Roll's independent course, I have never supposed that it was the duty of a returning officer to violate the Constitution of his country or that such violation could be otherwise than mischievous.

The Constitution of the United States, article 2, section 1, provides that each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress, but no Senator or Representative or person holding an office of trust or profit under the United States shall be appointed an elector.

The Revised Statutes of the United States, section 136, provides that "It shall be the duty of the executive of each State to cause three lists of the names of the electors of such State to be made and certified, and to be delivered to the electors on or before the day on which they are required by the preceding section to meet." Section 138 provides that "The electors shall make and sign three certificates of all the votes given by them, each of which certificates shall contain two distinct lists, one of the votes for President, and the other of the votes for Vice-President, and shall annex to each of the certificates one of the lists of electors, which shall have been furnished to them by direction of the executive of the State." Other provisions of the Revised Statutes require the electors to send one of these certificates by messenger and another by mail to the President of the Senate. The third is to be delivered to the judge of the Federal district court for the district in which the electors had assembled. Section 142 is as follows: "Congress shall be in session on the second Wednesday in February succeeding every meeting of the electors, and the certificates, or so many of them as have been received, shall then be opened, the votes counted, and the persons to fill the office of President and Vice-President ascertained and declared agreeably to the Constitution."

I understand the facts to be that on the day of the presidential election, November 7, 1876, John W. Watts, one of the candidates of the republican party for presidential elector in the State of Oregon, was postmaster at Lafayette, the county seat of Yamhill County, in the State of Oregon; that he received a larger number of votes at the election than his highest democratic opponent, E. A. Cronin, but that Lafayette Grover, governor of Oregon, delivered to Cronin the lists provided for in section 136 of the Revised Statutes; that the two republican electors, other than Watts, were named with Cronin as electors in such lists, and that Watts was not named as elector therein; that thereupon the two republican electors whose names were on the lists, either refusing to act with Cronin, or not, in fact, acting with him, accepted the resignation of Watts, elected Watts to fill the vacancy caused by his own resignation, voted for Hayes and Wheeler, and forwarded their certificates without having the necessary lists attached to them; that Cronin elected two other persons to fill the vacancies caused by the non-action or refusal to act with him of the two republican electors, and the college of electors thus created cast two votes for Hayes and Wheeler and one vote for Tilden and Hendricks, and have forwarded the certificates, with the necessary lists furnished by the executive of the State attached, to the President of the Senate and the Federal district judge. It is also to be stated that John W. Watts resigned his office of postmaster on the 13th day of November, 1876. One electoral vote has, therefore, been cast in the State of Oregon in accordance with the forms of law for Samuel J. Tilden for President and Thomas A. Hendricks for Vice-President of the United States, thus securing them the one hundred and eighty-five votes necessary to elect. Presuming that the principle stated by JOHN SHERMAN, Stanley Matthews, J. A. GARFIELD, and their associates, in their reply to the democratic committee at New Orleans on the 16th of Novem-

ber, 1876, in the following words: "It is, in our judgment, vital to the preservation of constitutional liberty that the habit of obedience to the forms of law should be sedulously inculcated and cultivated, and that the resort to extra-constitutional measures of redress for even actual grievances should be void and condemned as revolutionary, disorganizing, and tending to disorder and anarchy," will not be disputed by any republican in the country, and least of all by JOHN SHERMAN, whose name heads the list of signatures to this letter, and who is to be President of the Senate as is now understood, and thus open the electoral vote, and that therefore Samuel J. Tilden and Thomas A. Hendricks will be peaceably declared elected and inaugurated, it is nevertheless an interesting historical question whether Governor Grover did right in investing Cronin with the authority exercised by him.

Mr. SHERMAN. Mr. President, I wish to interrupt that reading. For the first time there has been brought to my attention here a roorback published in the World entirely without foundation. I never heard a word of it in the Senate, and I suppose no Senator ever heard a word of it from anybody else. It is false from beginning to end. What! A conspiracy to elect me President of the Senate! a thing I never thought of. But my friend, Judge Hoadly, who has balked about a good deal backward and forward at any rate, seems to have put that in his letter. I wish now, since it is brought officially to my notice, simply to say that it is a mere newspaper roorback, without any foundation of truth in it; and I did not suppose any sensible man in the United States would be deceived by a lie so palpably absurd.

Mr. LOGAN. Is that part of Hoadly's opinion?

Mr. SHERMAN. Certainly.

Mr. THURMAN. I hope the reading will be allowed to proceed.

The PRESIDING OFFICER. The reading will proceed.

The Chief Clerk proceeded with the reading, as follows:

That Watts was within the inhibition of the Constitution, and could not therefore be appointed an elector, needs no argument. Nevertheless, as the subject has been once brought before Congress and passed upon by some of the greatest men of the time, I will take the liberty of adverting to the action then had, namely, in 1837. But first let me say that a further question is presented by Watts's resignation after the election, which was considered by Congress at the same time. It appears at the presidential election of the year 1836 several postmasters were chosen electors. This fact being called to the attention of Mr. Henry Clay, the usual motion for the appointment of a joint committee of the Senate and House to count the votes for President and Vice-President being pending before the Senate, Mr. Clay, on the 24th of January, 1837, moved that the joint committee be required "also to inquire into the expediency of ascertaining whether any votes were given at the recent election contrary to the prohibition contained in the second section of the second article of the Constitution, and, if any such votes were given, what ought to be done with them, and whether any and what provision ought to be made for securing a faithful observance in future of that section of the Constitution." Mr. Clay's amendment was adopted, and the members of the joint committee to count the votes for President and Vice-President, and to discharge the duties required by Mr. Clay's amendment, on the part of the Senate were Felix Grundy, of Tennessee; Henry Clay, of Kentucky; and Silas Wright, of New York. On the part of the House, Francis Thomas, of Maryland; Churchill C. Cambreling, of New York; John Reed, of Massachusetts; Henry W. Connor, of North Carolina; and Francis S. Lyon, of Alabama. This committee reported unanimously to the two Houses as follows:

"The committee are of opinion that the second section of the second article of the Constitution, which declares that no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector, ought to be carried in its whole spirit into rigid execution, in order to prevent the officers of the General Government from bringing their official power to influence the elections of President and Vice-President of the United States. This provision of the Constitution, it is believed, excludes and disqualifies deputy postmasters from the appointment of electors, and the disqualification relates to the time of appointment, and that a resignation of the office of deputy postmaster after his appointment as elector would not entitle him to vote as elector under the Constitution."

In the debate in the House, Mr. Francis Thomas said that the committee came unanimously to the conclusion that they (the postmasters in question) were not eligible at the time they were elected, and therefore the whole proceeding was vitiated *ab initio*." In the Senate, Mr. Grundy stated that "in some instances not more than four or five electors have been chosen in some of the States who are officers of the General Government, (deputy postmasters,) and that such votes are, in the opinion of the committee, not in conformity with the Constitution. But at the same time the few votes thus given will not vary the result of the election, as it was not contemplated by any one that the appointment of one ineligible elector would vitiate the vote of his State." See Gale and Seaton's Register of Debates in Congress, volume 13, part 1, pages 617 and 698, and part 2, page 1,583. In the case of Searcy *vs.* Grow, 15 California Reports, 118, the opinion was pronounced by Justice Baldwin, Justice Cope, and Chief-Justice Field, now of the Supreme Court of the United States, concurring. It was a contest for the office of sheriff of Siskiyou County. Grow had been returned as elected to that office. At the time of the election he was postmaster of the town of Yreka, the compensation of which exceeded $500 per annum. The court below found for Searcy, and Grow appealed. The constitution of California provides that no person holding any lucrative office under the United States or in their power shall be eligible to any civil office of profit under this State, provided that offices in the militia, to which there is attached no annual salary, or local officers and postmasters, whose compensation does not exceed $300 per annum, shall not be deemed lucrative." Grow was postmaster at the time of the election, but had resigned at the time of his qualification. The supreme court unanimously confirmed the judgment of the court below.

In the opinion Justice Baldwin says, (page 121:) "The people in this case were clothed with this power of choice. Their selection of a candidate gave him all the claim to the office which he has. His title to the office comes from their designation of him as sheriff. But they could not designate or choose a man not eligible, that is, not capable of being selected. They might select any man they chose, subject only to this exception, that the man they selected was capable of taking what they had the power to give. We do not see how the fact that he became capable of taking office after they had exercised their power can avail the appellant. If he was not eligible at the time the votes were cast for him, the election failed. We do not see how it can be assumed that by the act of the candidate the votes which, when cast, were ineffectual because not given for a qualified candidate, became effectual to elect him to office." The same principle has been held by the supreme court of the State of Oregon. In the case of McWhirter *vs.* Brainard, (5 Oregon Rep., 426,) the supreme court of Oregon decided that "the mode of canvassing the vote and the proclamation of the governor are substantially only modes of ascertaining and publishing the result of the vote." As the vote of the people in this case was cast upon the 7th of November, the result of the vote depends necessarily upon the eligibility to appointment as it then existed. It thus appears that Watts was, within the inhibition of the Constitution, incapable of being "appointed an elector," and that the defect was not cured by his subsequent resignation of his office as postmaster.

The duties of the governor of Oregon in the matter of the count are prescribed by the third section of the forty-fourth chapter of the compilation of general laws of Oregon. Oregon General Laws, page 849: "The votes for the electors shall be given, received, returned, and canvassed, as the same are given, returned and canvassed for members of Congress. The secretary of state shall prepare two lists of the names of the electors elected, and affix the seal of the State to the same. Such lists shall be signed by the governor and secretary and be the latter delivered to the college of electors, at the hour of their meeting, on such first Wednesday of December." These are the lists that were given by Governor Grover and the secretary of state to the elector Cronin. The method of returning and canvassing the votes for member of Congress is prescribed by section 33, page 766, of the same compilation, which requires county clerks to make copies of the abstracts of votes in their counties, and transmit them by mail to the secretary of state at the seat of government, whose duty it is made, "in the presence of the governor, to proceed within thirty days after the election, and so omit, if the returns be all received, to canvass the votes given for secretary and treasurer of state, justices of the supreme court, member of Congress, and district attorneys, and the governor shall grant a certificate of election to the person having the highest number of votes for either of such offices, and shall issue a proclamation declaring the election of such person."

Does the power to canvass the vote include the power to reject votes cast in contravention of the Constitution of the United States, as, for instance, for a postmaster for elector? To canvass means (Webster) "to examine returns of votes, to search or scrutinize, to canvass votes for senators." A canvass is, as per the same authority, "examination, close inspection to know the state of, as a canvass of votes." To canvass (Worcester) means "to sift, to examine, to scrutinize." A canvass, by the same authority, is "an examination or sifting as of the opinion of others previous to an election." The word comes from the old French word *canabasser*, "to beat or shake, to examine," and necessarily involves discussion, as is shown by the other meanings of the word, as to canvass a policy, to canvass a district for votes. If in the State of Louisiana, in which by article 73 of the constitution, it is provided that "the judicial power shall be vested in a supreme court, in district courts, in parish courts, in justices of the peace," and in article 94, that "no judicial powers, except as committing magistrates in criminal cases, shall be conferred on any officers other than those mentioned in this title," being the same title which includes also article 73, and in which members of returning boards are not mentioned—if in Louisiana, in which the supreme court has decided that the members of the returning board are officers, (State *ex rel.* Attorney-General, *vs.* Wharton, 25 Louisiana Annual, 2,) it be true, as stated in the letter of Hon. JOHN SHERMAN and others above referred to, that "the laws of Louisiana show that the canvassing board is expressly required in certain cases to exercise judicial as well as ministerial functions," I do not see how it can be successfully denied that the canvassing officers of Oregon have the same power.

Upon the question how votes cast for an ineligible candidate are to be considered, two opinions have obtained in the United States. Unless I am misinformed as to the facts of the Oregon case, Governor Grover's action is not in conflict with either of these views.

The first of these found its earliest expression from the lips of one of the greatest lawyers of the revolutionary period, one of the signers of the Declaration, Chief Justice Samuel Chase, of Maryland, the attempt at whose impeachment when a Federal judge furnishes such a large item in the early judicial history of this country. That Chief-Justice Samuel Chase was a lawyer of the first rank, nobody has ever ventured to deny, but his violent temper exposed him to an attack which nearly cost him his high judicial position. In the case of Hatcheson *vs.* Tilden and Bordley, (4 Harris and McHenry's Rep., 279,) the defendants being judges of the sheriff's election, on the first Monday of October, 1794, declared Jones and Hall duly elected sheriffs of the county of Kent, although Hatcheson had more votes than either of them, on the ground that he was ineligible to election by want of sufficient qualification in real and personal estate, as required by law, whereupon Hatcheson sued Tilden and Bordley in an action on the case for damages for refusing to return him as sheriff elect. Chief Justice Chase, after stating the qualification required by the constitution, says: "All votes given for a candidate not having such qualifications are to be thrown away and rejected as having no force or operation in law. The plaintiff can only be entitled to such votes as were given after he received the necessary qualifications, all votes in his favor previous being illegal and void." The report says that "the plaintiff had received the necessary qualifications about twelve o'clock on the 3d day of the election and from the state of the polls if he had received all the votes taken after that time he could not be elected. Therefore there was verdict and judgment for the defendants."

The subject has been much considered in the State of Indiana. In the case of Gulick *vs.* New, (14 Indiana Rep., 93,) decided in 1860, the court were unanimous, but the importance of the question led to the expression of two concurring opinions, one by Judge Hanna, the other by Judge Perkins. I need not say to any western lawyer that Judge Perkins is one of the first lawyers in the West. The points decided are expressed in the syllabus thus: "The governor may determine, even against the decision of a board of canvassers, whether an applicant is entitled to receive a commission or not, where the objection to his right to receive it rests upon the ground that the constitutional prohibition is interposed. If the governor should ascertain that he has commissioned a person who is ineligible to the office, he may issue another commission to the person legally entitled thereto. Where a majority of the ballots at an election were for a person not eligible to the office under the constitution, it was held that the ballots cast for such ineligible person were ineffectual, and that the person receiving the greatest number of legal votes, though not a majority of the ballots, was duly elected and entitled to the office. The mayor of a city, under the general law, has jurisdiction as a judicial officer throughout the county, and the voters of the county are therefore chargeable with notice of his ineligibility under the constitution to any office other than a judicial one during the term for which he was elected."

In both the opinions in Gulick *vs.* New the judges held, as a principle of public law, that where the ineligibility of a candidate arises from his holding or having held a public office, the people within the jurisdiction of such office are presumed in law to know—are chargeable with notice of such ineligibility. Mr. Grant, in his work on Corporations, page 208, states the rule thus: "A disqualification patent or notorious at once causes the votes given for the candidate laboring under it to be thrown away; the same would probably be held to be the case where the electors had the means of knowledge of the candidate's qualifications, or the contrary, and might have ascertained the facts if they had pleased."

This decision was affirmed in the case of Carson *vs.* McPhetridge, 15 Indiana, 327, and again in Price *vs* Baker, 41 Indiana, 572, decided in 1873, the syllabus of which is as follows: "Where a majority of the ballots at an election are given to a candidate who is not eligible to the office, the ballots so cast are not to be counted for any purpose. They cannot elect the ineligible candidate or defeat the election of the opposing candidate by showing that he did not receive a majority of the votes cast at such election. It follows that the eligible candidate will receive an office, although less than a majority of the votes are cast for him." The same view was strongly presented in the dissenting opinion of Chief-Justice Thompson, in the case of The Commonwealth *vs.* Cluly, 56 Pennsylvania Statutes, 270. I quote from page 277: "But I confess my inability to see, if it must be treated as a preliminary question, why, if the constitutional disqualification of the defendant be established, the relator is not entitled to the office. He had votes enough to elect him, if the votes for the defendant be regarded as thrown away. This cannot be disputed. It seems to me this position cannot be controverted: that if the votes cast for the defendant would not confer the office on him, they do not possess the faculty or capacity

of depriving the plaintiff of his election, having, as already said, enough votes to elect him. The majority of votes operates only in one direction, namely, to elect, and by electing defeat any competitor; but without electing I deny that the effect is to elect a competing candidate. The thing is not possible. If it were, a majority of votes for a notorious candidate or one notoriously ineligible would defeat an eligible candidate. The elective franchise cannot operate in such a way. If people do not vote generally they consent that those that do may elect. This is the rule in all popular elections. It, therefore, people do not vote for candidates who can by law exercise the offices voted for, it seems to me to follow that they tacitly consent that those who do vote for such as are eligible shall elect on equivalent principles. If such an excuse were good for anything, it ought to be good to render effective the votes for the ineligible candidate, and thus give him the office in spite of the existing disqualification." The same principle was upheld in the case of the Commonwealth *vs.* Read, (2 Ashmead, 264,) where the defendant (Read) was held to have been elected treasurer by the county board, having received but one legal vote out of twenty cast. The other nineteen were decided to have been void and ineffectual, because they were cast *viva voce*, and the single vote by ballot to have controlled the election, that being the mode prescribed by law.

Judge Luther S. Cushing, in his work on the Law and Practice of Legislative Assemblies, section 147, states the rule thus: "In England, where a plurality only is necessary to an election and where the votes are given orally, it is also held that if the electors have notice of the disqualification of a candidate every vote given for him afterward will be thrown away and considered as not having been given at all. The effect of this rule is that not only will the election of a disqualified person be held void, but if such election takes place after notice of the disqualification is given to the electors, the candidate having the highest number of votes will be elected. This doctrine, however hard it may seem, is founded in the familiar principle that every man is bound to know the law with reference to any act which he undertakes to do, and consequently that when an elector is apprised of the fact of disqualification of a candidate and notwithstanding gives his vote for him, the elector takes upon himself the risk of losing his vote if his construction of the law turns out to be wrong.

"SEC. 148. In this country it is equally true that the election of a disqualified person is absolutely void, and in those States where a plurality elects, and where the votes are given orally, as in England, votes given for a candidate after notice of his disqualification are thrown away, and the candidate having the next highest number of votes is elected.

"SEC. 149. In reference to elections by ballot, in which secrecy is the distinguishing feature and in which consequently neither the returning officers nor the electors themselves are supposed to know for whom the votes are given until the result is declared, it seems not unreasonable to consider the votes for ineligible candidates to be thrown away in all cases and the opposing candidate elected where the electors know, or must be presumed to know, the disability, and in all cases where there is no such actual or presumed knowledge to hold the whole proceeding merely void."

The other opinion is represented best by the case of The People *vs.* Clute, 50 New York, 451, in which the elaborate opinion of the court by Judge Folger is thus summed up in the syllabus:

"A minority of the whole body of qualified electors may elect to an office where the majority decline to vote or where they may vote for one who is ineligible to the office, knowing of the disqualification. Notice of the disqualifying fact and of its legal effect may be given so directly to the voter as to charge him with actual knowledge of the disqualification, or the disqualifying fact may be so patent or notorious as that his knowledge of the ineligibility may be presumed as matter of law; but not only the fact which disqualifies but also the rule or enactment of law which makes it thus effectual must be brought home so clearly to the knowledge or notice of the elector as that to give his vote therewith indicates his intent to waste it, in order to render his vote a nullity. Where a majority of the electors through ignorance of the law or the fact voted for one ineligible to the office the votes are not nullities; but while they fail to elect, the office cannot be given to the qualified person having the next highest number of votes. The election is a failure, and a new election must be had."

As John W. Watts was the postmaster of the county seat of one of the most important counties in Oregon, I presume that the governor and secretary of state, the canvassing board of Oregon, found in point of fact, if they adopted the rule of the case of The People *vs.* Clute, that this fact was sufficiently notorious to the republican electors of Oregon to charge them, or at least enough of them, with notice of the fact of his ineligibility to bring it within this rule so far as the matter of fact is concerned. So far as the matter of law is concerned a difference is to be observed between this case and the case of Clute, growing out of the fact that the legal disqualification of Watts is not only in the Constitution of the United States, of which no one can be presumed to be ignorant, but that it is a disqualification attached to the very right which the voter was engaged in exercising when he cast his vote for electors of President and Vice-President. It may be true where the disqualification exists in a separate statute, as in the case of Clute, that the elector is not presumed to be aware of the existence of the statute, notwithstanding the rule *ignorantia legis excusat neminem*; but it cannot be the rule that one who exercises a right derived under the Constitution of the United States can be said to be ignorant of the limitations of that right. It is a familiar principle in the law that he who takes a benefit, whether by statute, agreement, or will, takes it *cum onere*—that is, subject to all the restrictions attached—and cannot avail himself of the privilege without bearing the burden. Without knowing, therefore, whether the governor of Oregon adopted the Indiana rule or the New York rule, I think I am authorized to presume that if he espoused the New York doctrine he was satisfied in canvassing the votes that a number of republican electors voting for Watts more than equal to Watts's majority over Cronin knew that he was a postmaster, and that the same number either knew or were bound to know of the constitutional disqualification which attached to the office of Watts.

In Great Britain the rule is well established that votes cast for an ineligible candidate must be taken to have been thrown away. The cases are very numerous. The result of them was stated by Lord Denman in 1847, in deciding the case of Gosling *vs.* Veley, 7 Adolphus and Ellis, N. S., 437, in these words:

"The result of the decisions appears to be this: Where the majority of electors vote for a disqualified person in ignorance of the fact of disqualification, the election may be void or voidable, or in the latter case may be capable of being made good, according to the nature of the disqualification. The objection may require ulterior proceedings to be taken before some competent tribunal in order to make it available; or it may be such as to place the elected candidate on the same footing as if he never had existed, and the votes for him were a nullity. But in no such case are the electors who vote for him deprived of their votes if the fact becomes known and is declared while the election is still incomplete. They may instantly proceed to another nomination and vote for another candidate." (It will be remembered that in England elections are all conducted *viva voce*.) "If it be disclosed afterward, the party elected may be ousted and the election declared void; but the candidate in the minority will not be deemed *ipso facto* elected. But where an elector, before voting, receives due notice that a particular candidate is disqualified, and yet will do nothing but tender his vote for him, he must be taken voluntarily to abstain from exercising his franchise, and therefore, however strongly he may, in fact, dissent, he must be taken in law to assent to the election of the opposing and qualified candidate, for he will not take the only course by which it can be resisted—that is, the helping to the election of some other person. He is present as an elector. His presence counts as such to make up the requisite number of electors, where a certain number is necessary, but he attends only as an elector to perform the duty which is cast on him by the franchise he enjoys as elector; he can speak only in a particular language; he can do only certain acts; any other language means nothing; any other act is merely null; his duty is to assist in making an election. If he withdraws from the choice of A, who is qualified, he must say so by voting for some other qualified. He has no right to employ his franchise merely in preventing an election, and so defeating the object for which he is empowered and bound to attend. And this is a wise and just rule in the law. It is necessary that an election should be duly made and at the lawful time; the electoral meeting is held for that purpose only; and but for this rule the interest of the public and the purpose of the meeting might both be defeated by the perverseness or the corruption of electors who must seek some unfair advantage by postponement. If then, the elector will not exercise the election of A in the only legal way, he throws away his vote by directing it where it has no legal force, and in so doing he voluntarily leaves unopposed and assents to—the voices of the other electors.

"Where the disqualification depends on a fact which may be unknown to the elector, he is entitled to notice, for without that the inference of assent could not be fairly drawn, nor would the consequences as to the vote be just. But if the disqualification be of a sort whereof notice is to be presumed, none need expressly be given; no one can doubt that if an elector would nominate and vote only for a woman to fill the office of mayor or burgess in Parliament, his vote would be thrown away; there the fact would be notorious, and every man would be presumed to know the law upon the fact.

"It follows from these observations that the true ground of the decision is that stated by Lord Mansfield in the case first cited (Rex *vs.* Foxcroft, 2 Burr. 1021): 'Whenever electors are present who do not vote at all, they virtually acquiesce in the election made by those who do.' In that case the numerical majority contented themselves with protesting against the election of him for whom the minority voted. In the case of Taylor against The Mayor of Bath, 3 Luders, 324, the counsel in argument took the distinction between not voting at all and voting for a disqualified candidate. They admit that silence might be held to give consent, but that voting for the other candidate was an express negative; it was the only way, they said, of voting against one to vote for the other. But the court overruled the distinction; to vote for a person not qualified, they said, was the same thing as not to vote at all, which it was admitted would have been a constructive assent."

Lord Campbell held the same doctrine in very vigorous language in the case of the Queen *vs.* Coaks, 3 Ellis and Blackburn, 249. "I must say," said he, "that this appears to me to be a very plain case. It is allowed that it depends on the right of Cundall to act as a councilor on the 9th of November, 1852. If he had a right so to act at that time, the present defendant is not duly elected. Now, as to Cundall's right, who was elected a councilor on the 1st of November, 1851, the case is just the same as if Blake had not been the candidate on that occasion. To be sure, he did stand, but then he was ineligible, and that fact was known to the voters. It is a principle of all election law and of good sense that persons who knowingly throw a vote for an ineligible candidate throw away their votes just as much as if they voted for the man in the moon."

In another report of the same case, namely, 18 Jurist, part 1, page 378, Lord Campbell's language is reported thus: "This is clear; it is allowed that it depends upon whether Cundall had a right to act as city councilor of Norwich on the 9th of November. If he had a right so to act, the present defendant was not duly elected mayor, and is a usurper, and the *quo warranto* properly issued. Cundall was elected a city councilor on the 4th of November, 1851; it is the same as if Blake had not been a candidate, because he was ineligible, and that fact was known to the electors, and if the voters know that a candidate is ineligible, they throw away their votes when they vote for him. They do not vote.

"This is good corporation law, good parliamentary law, and good sense, and there is nothing in statute 6 and 7, William IV, chapter 76, to alter it. Then, Blake's votes being disregarded, Cundall had the greatest number of votes, and he legally elected, he ought to have been returned as one of the city councilors." The latest discussion of this subject in England is found in the case of Drinkwater *vs.* Deakin, Law Reports, 9 Common Pleas, 626.

The same principle has been decided in Ireland in the case of Trench *vs.* Nolan, Irish Rep., 6 Common Law, 464, where the court of common pleas held that "votes given to a candidate who is disqualified, after notice of that disqualification had been given, are thrown away." The same rule was followed in 1875 in the celebrated case of the Tipperary election, Irish Rep., 9 Common Law, 247, where John Mitchel and Stephen Moore were the only candidates for member of Parliament in the county of Tipperary. Mitchel received 3,114 votes and Moore 746. John Mitchel having been convicted in 1848 of treason-felony and sentenced to transportation for fourteen years, having escaped and been naturalized as a citizen of the United States, it was held that he was disqualified to be elected a member of the House of Commons, and that notice of his disqualification having been brought home to the electors who voted for him, their votes were thrown away, and the rival candidate, though numerically in the minority, was entitled to the seat.

Questions similar to those under discussion have often come before legislative bodies and have been variously decided. In the opinion of Judge Folger in the case of The People *vs.* Clute, in the opinion of the majority of the court by Judge Strong and in the dissenting opinion by Chief-Justice Thompson in the case of the Commonwealth *vs.* Cluly, the opinions of legislative committees and legislative bodies are not considered as entitled to much respect. It was claimed in the argument of the case of The People *vs.* Clute, by Mr. Paige, that a majority of the opinions of this kind are in favor of the rule that votes cast for an ineligible candidate are to be treated as votes thrown away. I conceive that much depends in such cases upon the character of the office, as well as of the language of disability. For instance, one entertaining the views that I do may well hold that votes cast for an ineligible candidate for a representative office at least have the effect of preventing an election, for the reason that the office being in its character representative, the officer being during his whole term the spokesman or representative of the people, the candidate receiving the minority can never fulfill the function, and, therefore, can never be declared elected. Such is not the English doctrine, for they are in the familiar habit of seating members in Parliament who received the minority vote where the majority was cast for a disqualified candidate, but it seems to me more consonant to the spirit of American institutions, and that neither the view expressed by the Indiana supreme court and by Chief-Justices Chase and Thompson, nor that of the court of appeals of New York, ought to apply to an election to a representative body, as the Senate and House of Representatives, on the simple principle that a minority can never elect a representative of the whole people. But a presidential elector is not a representative. On the contrary, to treat him as such is a violation of the letter of the Constitution as well as of its spirit and of the known purpose of its founders. The ineligibility of a Federal office-holder to the office of elector must be determined in view of the character of that office as it was understood by the framers of the Constitution, and not by any change of opinion in regard to the character of that office which has since occurred. Again, the language of disqualification varies in various cases. A Federal officer is not eligible to be "appointed." The fourteenth amendment disqualifies those who are within its provisions, not from appointment, but, on the contrary, uses those words:

"No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against

the same, or given aid or comfort to the enemies thereof, but Congress may, by a vote of two-thirds of each House, remove such disability."

Here the disqualification attaches not to the appointment and relates not to the date of the appointment, but to the act of holding the office, and thus to the date of performing its duties. So that a person subject to the disqualifications of the fourteenth amendment may well be appointed, and if eligibility be conferred on him before the time for performance of its duties, may enter upon such office. Therefore votes for a person thus disqualified, as in the case of Vance in the United States Senate, and in the case of General Frost in Missouri, cannot be treated as null and void, but at the most create a vacancy if the disqualification be not removed before the time for the performance of duty in the office has arrived.

I will take the trouble of calling your attention to another question cognate to the above. Suppose votes given for Watts were not to be rejected as null and void, and the doctrine of the Indiana and Maryland cases do not apply; and suppose that these votes cannot be rejected under the rule established by the case of The People against Cook, then a third question is presented, was there a vacancy in the office of elector, and was there a failure to elect which can be treated as a vacancy?

It seems to me perfectly clear that either Cronin was elected or there was no election and no vacancy which could be filled by vote of the other electors, and that the same is true of the election of Sollace in Vermont, and in several other cases of the election of Federal office-holders which have occurred. I come to this conclusion by a consideration of the Revised Statutes of the United States. On general principles, to make a vacancy, it requires that there should have been an office to which some one has been elected. It cannot be said, I suggest, though I have not examined the question fully, that if the people fail at the first election to an office to choose any one, there is, in any proper sense of the word, a vacancy in that office. There has been simply a failure to fill the office. But whether this be so or not, that the omission to elect an elector by the people does not constitute a vacancy is made perfectly clear by a comparison of sections 133 and 134 of the Revised Statutes of the United States. Section 133 is in these words:

"Each State may by law provide for the filling of any vacancies which may occur in its college of electors, when such college meets to give its electoral vote."

Section 134 provides that "whenever any State has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by law, the electors may be appointed on a subsequent day in such manner as the Legislature of such State may direct." These sections treat vacancies as being something quite different from failure to make a choice on the day prescribed by law. In the cases of Watts and Sollace, either their highest competitors were chosen or there was a failure to make a choice on the day prescribed by law. If there was a failure to make a choice on the day prescribed by law there is no doubt that, under section 134, the number of electors not chosen might be appointed on a subsequent day in such manner as the Legislature of such State might direct. But as this is a distinct provision from that for filling of vacancies in section 133, this appointment cannot be made under a provision of law adopted by the Legislature for filling vacancies, for the filling of vacancies is one thing and failure to elect is another, under these statutes; and if the Legislatures of Oregon and Vermont have never provided (they certainly have not in Oregon, whatever may be the case in Vermont—as to which I am not informed) for the case of failure to make a choice on the day prescribed by law, then certainly, if Cronin's and Sollace's highest competitors were not duly elected, at least the vote cast under pretense of filling the vacancy cannot be counted. In Oregon this view is confirmed by the provisions of the Oregon statutes relative to the filling of vacancies. They are in these words, (General Laws, chapter 45, section 2, page 849:)

"The electors of President and Vice-President shall convene at the seat of government on the first Wednesday of December next after their election, at the hour of twelve of the clock at noon of that day; and if there shall be any vacancy in the office of an elector, occasioned by death, refusal to act, neglect to attend, or otherwise, the electors present shall immediately proceed to fill, by *viva voce* and plurality of votes, such vacancy in the electoral college; and when all the electors shall appear and the vacancies, if any, shall have been filled, as above provided, such electors shall proceed to perform the duties required of them by the Constitution and laws of the United States."

Had the Legislature of Oregon intended to authorize any vacancy, however caused, to be filled by the electors present, they would not have used the words, "If there shall be any vacancy in the office of an elector, occasioned by death, refusal to act, neglect to attend, or otherwise." These words, "occasioned by death, refusal to act, neglect to attend or otherwise," are entirely superfluous upon this theory. For the sentence would then have read: "If there shall be any vacancy in the office of an elector, the electors present shall immediately proceed to fill by viva voce plurality of votes such vacancy in the electoral college." The use of these words, "occasioned by death, refusal to act, neglect to attend, or otherwise," indicates that there are cases of vacancy which the electors may not fill, and this view is strengthened by the character of the vacancies thus described, the three named—death, refusal to act, and neglect to attend—being all the result of events occurring after the election. The words "or otherwise," upon canons of interpretation well known to every lawyer, cannot enlarge the preceding words so as to make them apply to every case of vacancy, but only refer to other like cases depending upon conditions similar to the enumerated cases. The maxim applicable is *noscitur a sociis*. So a statute treating of "deans, prebendaries, parsons, vicars, and others having spiritual promotion" is held not to extend to bishops though they have spiritual promotion, deans being the highest persons named, and bishops being of a still higher order. (1 Blackstone's Comm., 88.) In the Ohio mechanics' lien law a similar case of construction is found. The law provides that a subcontractor may serve on the owner an attested account of any sum due him from the contractor, which the owner is required to deduct and pay to the subcontractor out of his subsequently accruing indebtedness to the contractor, and section 6, R. S. & C., 834, provides that "if, by collusion or otherwise, the owner of any building erected by contract as aforesaid shall pay to his contractor any money in advance of the sum due on said contract," he shall be liable to the subcontractor in the same manner as if no such payment had been made.

During the thirty years that I have been a member of the Ohio bar I have known it contended many times, but always unsuccessfully, that these words "or otherwise" had the effect to include the cases of advance payments, rendering the owner liable, so that he might be charged by the subcontractor in any case of advance payment; but the decisions have been uniformly to the contrary. It has always been held that the words "or otherwise" referred to the contextual word "collusion," and meant collusion or other like or deceitful or fraudulent advance payment, and that for the reason that to read it as claimed is to read the statutes as if the words "by collusion or otherwise" were eliminated from it. So, too, the construction proposed will make the Oregon statute read as if the words "or otherwise" had never been introduced into it.

Allow me in conclusion, although not called for by your request, to express the hope that by adopting the principles of civil-service reform, by making the tenure of all Federal officers dependent on good behavior and not on political opinion, by providing that no officer shall be dismissed except for cause, both parties in our country may remove from our presidential elections that which makes them so dangerous, namely, the fact that a political change in the Presidency is followed by what the New York Nation properly calls the most cruel, undeserved, and excessive punishment to thousands of families, namely, withdrawal of their means of support, often as now in the hardest of times.

Yours, respectfully,

GEO. HOADLY.

To the EDITOR OF THE COMMERCIAL.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. GEORGE M. ADAMS, its Clerk, announced that the House had agreed to the third amendment of the Senate to the bill (H. R. No. 4121) to provide for the expenses of certain special committees; and that the House had agreed to the first and second amendments of the Senate to the said bill with amendments; in which it requested the concurrence of the Senate.

The message also announced that the House had passed the following bills; in which it requested the concurrence of the Senate:

A bill (H. R. No. 4204) to remove the political disabilities of William Sharp, of Norfolk, Virginia; and

A bill (H. R. No. 4149) to remove the political disabilities of Lloyd J. Beall, of Virginia.

COMMITTEE ON COUNTING THE ELECTORAL VOTES.

Mr. EDMUNDS. I ask leave to offer a resolution which simply provides for the reference of the message of the House of Representatives about the electoral vote, which I ask may lie over until Monday, and I offer it merely—I do not suppose it is at all necessary under the rule—to guard against the possibility of a single objection carrying the matter away from our consideration on Monday. That is my only object in offering the resolution; and the resolution of the House, if the Chair will lay it before us, I will move to have laid on the table.

The PRESIDENT *pro tempore*. The Chair will lay before the Senate the resolution of the House of Representatives:

The Chief Clerk read as follows:

Whereas there are differences of opinion as to the proper mode of counting the electoral votes for President and Vice-President, and as to the manner of determining questions that may arise as to the legality and validity of returns made of such votes by the several States:

And whereas it is of the utmost importance that all differences of opinion and all doubt and uncertainty upon these questions should be removed to the end therefore that the votes may be counted and the result declared by a tribunal whose authority none can question and whose decision all will accept as final; Therefore,

Resolved, That a committee of seven members of this House be appointed by the Speaker, to act in conjunction with any similar committee that may be appointed by the Senate, to prepare and report without delay such a measure, either legislative or constitutional, as may in their judgment be best calculated to accomplish the desired end, that said committee have leave to report at any time, and that the Clerk of this House inform the Senate of the adoption of this resolution.

Mr. EDMUNDS. I move that the resolution be laid on the table until Monday.

The PRESIDENT *pro tempore*. It will lie on the table, if there be no objection; and printed?

Mr. EDMUNDS. Yes, sir.

The PRESIDENT *pro tempore*. And printed. The resolution which the Senator from Vermont now offers will be reported.

The Secretary read as follows:

Resolved, That the message of the House of Representatives on the subject of the presidential election be referred to a select committee of some seven Senators, with power to prepare and report, without unnecessary delay, such a measure, either of a legislative or other character, as may, in their judgment, be best calculated to accomplish the lawful counting of the electoral votes and best disposition of all questions connected therewith, and the due declaration of the result; and that said committee have power to confer and act with the committee of the House of Representatives named in said message, and to report by bill or otherwise.

Ordered, That the Secretary notify the House of Representatives hereof.

Mr. EDMUNDS. I ask that it lie over until Monday.

The PRESIDENT *pro tempore*. The resolution will lie over and be printed.

EXPENSES OF COMMITTEES.

The Senate proceeded to consider the amendments of the House of Representatives to the amendments of the Senate to the bill (H. R. No. 4124) to provide for the expenses of certain special committees; and

On motion by Mr. WINDOM,

Resolved, That the Senate disagree to the amendments of the House to the amendments of the Senate to the said bill, and ask a conference on the disagreeing votes of the two Houses thereon.

By unanimous consent, it was

Ordered, That the conferees on the part of the Senate be appointed by the President *pro tempore*.

Mr. WINDOM, Mr. LOGAN, and Mr. DAVIS were appointed the conferees.

HOUSE BILLS REFERRED.

The following bills from the House of Representatives were severally read twice by their titles and referred as indicated below:

The bill (H. R. No. 4204) to remove the political disabilities of William Sharp, of Norfolk, Virginia—to the Committee on the Judiciary.

The bill (H. R. No. 1874) granting a new register to the schooner Carteret—to the Committee on Commerce.

The bill (H. R. No. 3256) for the relief of John F. Sutherlin & Brother, of Park County, Indiana—to the Committee on Claims.

The bill (H. R. No. 2278) to change the name of the port of entry of the district of Teche, in Louisiana, from Brashear to Morgan City—to the Committee on Commerce.

The bill (H. R. No. 4149) to remove the political disabilities of Lloyd J. Beall, of Virginia—to the Committee on the Judiciary.

The following joint resolutions from the House of Representatives were severally read twice by their titles and referred to the Committee on Foreign Relations:

A joint resolution (H. R. No. 171) in reference to the congratulations from the republic of Pretoria, South Africa; and

A joint resolution (H. R. No. 172) relating to congratulations from the Argentine Republic.

ELECTORAL VOTE OF OREGON.

The Senate resumed the consideration of the resolution directing an inquiry as to the eligibility of J. W. Watts as a presidential elector in Oregon and the circumstances connected with the appointment of electors in that State.

Mr. WALLACE. Mr. President, I rise with no intention to prejudge the questions which are involved in this resolution, but to endeavor to present to the Senate some of the conclusions toward which my own mind is tending in regard to this important and interesting question. At the outset it is well and proper, it seems to me, that we should be careful in the judgment we pass upon the governor of a State within the performance of a grave, high, constitutional duty. It is just to remember the obligations under which he acts; it is just to remember that he is bound by an oath; and we are bound to believe that he acted conscientiously. No accusation of wrong, no charge of wilful misbehavior should, it seems to me, be sustained by us against a man clothed with high official functions, vested by the people of his State with the executive authority thereof and chosen by its people to a seat in this Hall unless plenary proof, conclusive evidence thereof, be furnished to us by those who make the charge. The presumptions are in his favor, and it is our duty to believe that he acted conscientiously in the performance of his functions until the contrary plainly appears.

Under what obligations has he acted? As governor of the State of Oregon he has acted under the obligation of an oath to support the Constitution of the United States which it, by its own terms, imposes. That instrument in clause 2 of article 6 provides that—

This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.

In recording this oath he accepts the solemn obligation that so far as his official duties go not the laws of Oregon nor Oregon's constitution, but the Constitution of the United States, shall be to him the supreme law. What is the provision of this supreme law in regard to this question? It is found in clause 2 of article 2, thus:

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; *but no Senator, or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.*

This is the supreme law. It is not a statute law nor the constitution of Oregon, but it is the Constitution of the United States that is made the supreme law. The power of the State to appoint its electors is fully given by this clause, but accompanying the power follows the inhibition "no elector shall be appointed who holds an office of trust or profit under the United States." We learn as an undisputed fact that the State of Oregon has attempted to appoint under its own laws, made in pursuance of the Constitution and laws of the United States, the number of electors to which she is entitled, but she violates the inhibition enjoined upon her by selecting as one of her electors a person who enjoys an office of trust and profit under the United States. This is the undisputed condition of the question as now presented. Or it may be stated thus: The State has appointed its electors under its own laws, but in doing so it has violated the supreme law.

The law of the State and the act of Congress concur in this, that they give to the executive of the State exclusive power to certify the appointment of the electors. I read from the Revised Statutes of the United States on that subject:

SEC. 136. It shall be the duty of the executive of each State to cause three lists of the names of the electors of such State to be made and certified, and to be delivered to the electors on or before the day on which they are required, by the preceding section, to meet.

The law of the State as quoted by the Senator from Oregon gives the governor of the State the power to canvass and to certify the vote, and thus it and the law of the United States concur in giving to the governor the exclusive power to certify the appointment of the electors. The governor, thus vested with the power, recognized by the Constitution and the laws of the United States and of Oregon as the power to canvass and to certify, performs his duty. He canvasses the vote, he certifies the lists, and in so doing he obeys the supreme law and refuses to certify for the disqualified official.

The responsibility is cast upon the governor, he is called to the performance of a plain duty, and in its performance he recognizes the binding obligation of his oath to obey the paramount law. The ordinary mind can grasp the whole of this proposition. There are no technical rules, no fine-drawn distinctions, needed in judging of what is the duty of a conscientious man under such circumstances. On the one hand is the plain letter of the supreme law and the oath of the executive, on the other a candidate plainly ineligible with a majority of votes. He obeys the former and holding the votes for the ineligible candidate to be void certifies for the minority candidate. If this be an error he has erred in obedience to his desire to obey his oath and to give representation to his State.

Who complains? A postmaster sworn to obey the Constitution of the United States, who was bound to know that he was ineligible. The governor says, in explanation of the manner of the performance of his duty, that law and fact concur; that the oath and the Constitution go hand in hand in making the man who seems to have a majority ineligible. Is it not just and proper to take his statement upon this subject? The legal question then is an unsettled question. Is it not as plain a duty on the part of the governor to obey his oath to support the Constitution of the United States as it is to give a certificate to an elector in violation of both the Constitution of the United States and his oath? I do not propose now to discuss the main question, but simply to ask, is there any case decided in the United States courts, either on original or appellate jurisdiction, which holds the doctrine contended for adversely to the governor.

Mr. MITCHELL. Will the Senator yield to me a moment?

Mr. WALLACE. Yes, sir.

Mr. MITCHELL. I desire to ask the Senator from Pennsylvania—I take it for granted, of course, that he has examined the law on this question and the facts—whether, in his judgment as a lawyer, it was the duty of the governor of the State of Oregon to adjudicate upon the question as to the eligibility or non-eligibility of Mr. Watts as an elector?

Mr. WALLACE. It is as plainly his duty to recognize the binding force and effect of the supreme law which overrides the law and constitution of Oregon as it is to give a certificate in violation of both.

Mr. MITCHELL. That is not an answer to my question. I want to know of the Senator from Pennsylvania as a lawyer, whether, in his judgment, under the law, it was the duty of the governor of Oregon to adjudicate and pass upon the question as to the eligibility or non-eligibility of Mr Watts as an elector.

Mr. WALLACE. As executive of the State he was bound to take notice of the fact that there was an ineligible candidate and refuse him his certificate. The agency of the governor on this subject has, as the Senator will see when he comes to hear what follows in my argument, is perhaps that of an agency of the General Government acting in behalf of his State. His duties may be purely ministerial, but there is another tribunal that will correct him, if he errs therein. I ask the question, is there any authority settling this question either on appellate or original jurisdiction decided by any of the courts of the United States? I find none. This is a question of United States law, not of State law; I need scarcely say to the Senate that when a State court has settled a question even affecting one of its own citizens that involves a construction of the Federal Constitution that that construction by the State court is not binding upon the courts of the United States.

Mr. MITCHELL. I inquire of the Senator from Pennsylvania if there has ever been any construction by the supreme court of the State of Oregon upon the Federal Constitution on this question or on the laws?

Mr. WALLACE. I do not know anything about that, and it is not necessary to the line of argument which I propose to follow that I should know. The proposition I make is that this is a question of United States law and not of State law, that the inhibition in the Constitution of the United States is broad and full. It in substance is, are the votes void? Who has the right to settle that question? What rule of construction applies? Here is a provision of the Federal Constitution penal in its character to be construed. Does the rule of the common law apply? It is but a short time since we heard protests from the Senator from Indiana against the application of the common law to a provision of the Federal Constitution somewhat penal in character. Is the rule that of State construction, or is it that of Federal interpretation? My mind leads me to the conclusion that this matter is to be settled by Federal interpretation, and not by the constructions of the State courts. I reach that conclusion because I believe that if this question were raised by *quo warranto*, for instance, it would find its ultimate tribunal in the Supreme Court of the United States. If there were a contest between two men as to who should fill the office of elector, certainly it could not be settled by the law of Oregon; it would gravitate, necessarily, to the Supreme Court of the United States, and there be settled. Next, the inhibitions here contained are upon an agency of the State, but that agency is a part of the machinery of the Federal Government itself, without which it cannot exist; and, as a necessary consequence, it follows that the power of the agencies, the courts or the political tribunals of the Federal Government, to discuss, to judge, and to settle any legal question arising therefrom, must remain in full force. If the States alone could control this subject, they could nullify the plain terms of the Federal Constitution in this regard.

Again, the great end to be reached is the culmination of the popular will in the counting of the vote. There is power given here to some agency of the Federal Government to reach that end. The words of the twelfth article are:

The President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. *The votes shall then be counted.*

How? If that power be given, the means necessary to the attainment of the end inevitably and necessarily follow; they follow by necessary implication. Just as under the clause "each House shall be the judge of the elections, returns, and qualifications of its own members," the means are implied to summon witnesses, to examine elections, to judge of eligibility, and to provide the machinery that surrounds a contested-election case under this provision; so under the

power here expressly given to count the vote there is necessarily implied the means and the power to learn whether it is the vote of that State, and to learn whether it be cast by those who are not prohibited by Federal law from so doing.

The Senator from Indiana takes up the cases to convict the governor, and he cites them *seriatim*. As I have already said, no case construes this provision of the Federal Constitution. No case is cited from Federal authority. The People *vs.* Clute, in New York, was a case of ineligibility arising under State law. The case of the Commonwealth *vs.* Cluly, in Pennsylvania, was a question of the ineligibility of a sheriff under the State constitution. The question in the case of Crawford *vs.* Dunbar, the recent California case, was one arising under the constitution of the State of California. The case from 12 Georgia was a case of non-residence. The case from Kentucky was one arising under the constitution of that State, and the case in 14 Wisconsin was a question of naturalization under the act of Congress.

These are the principal cases cited by Senators in proof of their position. I am therefore justified in my assertion that there is no case cited and no doctrine implied from any of them that can control, direct, or settle the interpretation of the Federal Constitution, but that it is to be settled hereafter by some tribunal acting as an agency of the Federal Government and in an enlightened view of the whole subject. I am sustained in this view by the report of Messrs. Grundy, Clay, and Wright in 1837.

Mr. MITCHELL. Will the Senator yield a moment?

Mr. WALLACE. Will the Senator from Oregon permit me to go through? I will answer anything he has to say at the end of my argument. This report made in 1837 came from three men no less famous than Felix Grundy, Henry Clay, and Silas Wright. In that report the committee say:

> The committee are of opinion that the second section of the second article of the Constitution, which declares that "no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector," ought to be carried in its whole spirit into rigid execution in order to prevent officers of the General Government from bringing their official power to influence the elections of President and Vice-President of the United States.

They thus hold that this provision of the Constitution should be carried into *rigid* execution; and are we to hold that the rules of the common law, or the rule of construction by State courts of their own constitution, are to take away from the Federal courts—to take away from this tribunal if it be the one vested with power to judge on this subject—the right to determine and to settle this question? I cannot agree to such a conclusion. I want to hear the facts, to determine our jurisdiction, to grasp this important question in the full light of the grave results that now impend, and so advised to calmly judge.

I have stated that the law is unsettled, and in such a condition of things, with this provision of the Federal Constitution unconstrued, is it not just and wise and proper to give at least a hearing to the other side before animadversions and attacks are made upon the governor and those who act with him?

But another question in this case presents itself to my mind. I make the suggestion for what it is worth, as I have reached no final conclusion on the subject, but I am inclined to believe that there are but two electors lawfully appointed by the State of Oregon. The Revised Statutes fix the time of appointment by the State. This is found in section 131. Section 133 provides as follows:

> Each State may, by law, provide for the filling of any vacancies which may occur in its college of electors when such college meets to give its electoral vote.

What, now, is the statute of Oregon? The Senator from Oregon reads it and, I believe, reads it correctly:

> The electors of President and Vice-President shall convene at the seat of government on the first Wednesday of December next after their election, at the hour of twelve of the clock at noon of that day, and if there shall be any vacancy in the office of an elector, occasioned by death, refusal to act, neglect to attend, or otherwise, the electors present shall immediately proceed to fill, by *viva voce* and plurality of votes, such vacancy in the electoral college, and when all the electors shall appear, or the vacancies, if any, shall have been filled as above provided, such electors shall proceed to perform the duties required of them by the Constitution and laws of the United States.

So that this provision of the act of Congress, section 133, is carried into full force by the provisions of the Oregon statute; and this brings us to the question: What is a vacancy? It is a place unfilled. This is the common interpretation of it as applied to an office; a place unfilled. Before a vacancy can happen in any office it must once have been filled. That is the common-sense meaning, the ordinary interpretation of the word. To assert that a vacancy in an office has been filled implies that it previously had an incumbent.

Mr. EDMUNDS. May I ask the Senator from Pennsylvania whether that was the interpretation put upon the word "vacancy" by Mr. Buchanan, and by his law advisers, and by his democratic predecessors in filling up appointments created by law for the first time, after the Senate had adjourned, that had never been filled in the world?

Mr. WALLACE. It is not necessary to go into any political question at this time.

Mr. EDMUNDS. It is not a political question. I am looking after great precedents and asking my friend for information.

Mr. WALLACE. I will give the Senator the authorities upon which I rely.

Mr. EDMUNDS. But will not the Senator answer my question?

Mr. WALLACE. The Senator, perhaps, has the advantage of me in his assertion of that being a precedent. I do not know whether it was or was not, but, certainly, no court in the land has established any such doctrine; certainly, there has been no such authority given here.

Mr. EDMUNDS. Is the Senator quite sure of that?

Mr. WALLACE. I believe that I am; I do not know. The Senator is at liberty to correct me if I err. I quote now from the cases cited in Brightly:

> There can be no appointment to fill a vacancy until the office has once been full (Ex parte Dodd, 6 English, 152.) In that case Johnson C. J. said: "We consider it perfectly clear that the vacancies contemplated necessarily presupposed that the offices had been once filled, and that the provision for filling those vacancies was solely designed to embrace the unexpired portion of the term that might remain after the happening of such vacancy." And see Johnston *vs.* Wilson, 2 N. H., 202. This question has been the subject of discussion in the Senate of the United States, and the doctrine of Ex parte Dodd is that held by them. In the year 1814 President Madison granted commissions to ministers to negotiate the treaty of Ghent, in the recess of the Senate. The principle acted upon in this case, however, was not acquiesced in, but protested against, by the Senate, at their succeeding sessions; and on a subsequent occasion, (20th April 1822,) during the pendency of the bill for an appropriation to defray the expenses of missions to the South American states, it seemed distinctly understood to be the sense of the Senate, that it is only in offices that become vacant during the recess the President is authorized to exercise the right of appointing to office, and that in original vacancies, where there has not been an incumbent of the office, such a power, under the Constitution, does not attach to the Executive. And in a report of the committee of the Senate, made on the 25th April, 1822, it is declared that the words "all vacancies that may happen during the recess of the Senate" mean vacancies occurring from death, resignation, promotion, or removal.—*Brightly's Leading Cases on Elections*, pages 677, 678.

Judge Story takes the same view and lays the law down in the same way, (section 1559.) But this is not all. What is a vacancy in office that may be filled is defined by the statutes of Oregon thus:

> Every office shall become vacant on the happening of either of the following events before the expiration of the term of such office:
> 1. The death of the incumbent;
> 2. His resignation;
> 3. His removal;
> 4. His ceasing to be an inhabitant of the district, county, town or village, for which he shall have been elected or appointed, or within which the duties of his office are required to be discharged;
> 5. His conviction of any infamous crime, or of any offense involving a violation of his oath;
> 6. His refusal or neglect to take his oath of office, or to give or renew his official bond, or to deposit such oath or bond within the time prescribed by law;
> 7. The decision of a competent tribunal declaring void his election or appointment.—*General Laws of Oregon*, chapter 13, title vii., section 45, pages 709, 710.

These are the seven classes of vacancies authorized to be filled, or declared to be vacancies under the laws of Oregon itself. If this be the declaration by the laws of Oregon of what is a vacancy, then a failure to elect is not a vacancy, and if the doctrine of the cases cited by the Senator from Indiana is sound, it inevitably follows that there is a failure to elect. Mr. Watts was ineligible, the election failed, and there was no vacancy to fill.

Mr. MITCHELL. Does the Senator from Pennsylvania hold that the governor of Orgeon decided that there was a failure to elect?

Mr. WALLACE. I have made no such assertion. I am simply giving the law of Oregon.

Mr. MITCHELL. Will the Senator yield to me a moment?

Mr. WALLACE. I would prefer that the Senator should wait until I get through.

Mr. MITCHELL. What does the Senator from Pennsylvania understand to be the facts of the case as to whether or not the governor of Oregon decided that there was or was not a vacancy?

Mr. WALLACE. I do not know anything about the facts further than as they are admitted. I am simply discussing the question as a pure, naked question of law. I assert that there is a distinction in the laws of the United States between a vacancy that may be filled by the election and a failure to elect; and if there is not a plain distinction in the mind of the Senator, I cannot get it for him. There is a failure to elect. That is the doctrine of all the cases quoted by the Senator from Indiana. Ineligibility, they say, produces a failure to elect; there is no election. What follows? The difficulty then comes within the case contemplated by the provisions of the act of 1845. The act of 1845 fixes the time for choice of electors, and the first proviso to it was in these words:

> *Provided*, That each State may by law provide for the filling of any vacancy or vacancies which may occur in its college of electors when such college meets to give its electoral vote.

There is the case of a vacancy. Next comes the other case:

> *And provided also*, When any State shall have held an election for the purpose of choosing electors, and shall fail to make a choice on the day aforesaid, then the electors may be appointed on a subsequent day in such manner as the State shall by law provide.

This is found in section 134 of the Revised Statutes, thus:

> Whenever any State has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by law, the electors may be appointed on a subsequent day in such manner as the Legislature of such State may direct.

First, notice a double proviso in the act of 1845, and this is simply carried into the Revised Statutes. Why a double proviso? In the one case a vacancy; in the other a failure to elect. If Watts was ineligible and Cronin was not elected then there is clearly a failure to elect, and it comes within the provision of section 134, and the Legislature must provide the means of appointing the elector who has not been chosen.

Mr. MITCHELL. Will the Senator allow me to interrupt him a moment?

Mr. WALLACE. Will the Senator please allow me to conclude what I have to say?

The PRESIDING OFFICER. (Mr. EATON.) The Senator from Pennsylvania declines to yield.

Mr. WALLACE. I am only arguing to its conclusion a legal proposition; why does the Senator desire to interrupt me? The Senator will have an opportunity to follow me.

Mr. MITCHELL. If the Senator declines to yield, I of course submit.

Mr. WALLACE. The constitution and the laws provide for the appointment of electors by the State. They provide for the filling of vacancies where there has been a choice of an elector; they provide for the appointment of an elector in the case of a failure to elect, but in a totally different manner. The electors cannot appoint the one whom the people failed to elect; it must be done as the Legislature provides, and in Oregon the Legislature has made no provision and hence my mind inclines to the belief that there are but two electors legally appointed in the State of Oregon, and that no such vacancy has occurred as authorizes the electors to fill the place; but, on the contrary, it is a failure to elect, and the Legislature of Oregon has not provided means by which this failure to elect shall be supplied.

I reach these conclusions from the written law. I am subject to correction; I may be in error, but I read the law as I find it. Why is section 134 found in the Revised Statutes? If Cronin is not elected and Watts is not elected, then evidently there is a failure to elect, and then the Legislature of Oregon has not provided the means to fill the third place. That is a conclusion that cannot be escaped from if my view of the law be the correct one.

Mr. President, I have deemed it worthy of the time I have occupied to bring these facts and this condition of the law to the notice of the Senate. If I have taken the time of the Senate improperly, I have simply to apologize for so doing.

Mr. MITCHELL. Mr. President, I had not intended to take up the time of the Senate in discussing the questions involved in the resolution pending; but from the course taken in this debate I feel compelled to devote a little while to a consideration of some of the points involved.

We have presented the singular spectacle in this discussion of a case wherein no man, no Senator, nobody, so far as I am advised, raises any question in regard to the vote of the people of the State of Oregon in the recent election. It is not denied, so far as I am advised, by any Senator on this floor, by any man anywhere of any political party, that a majority of the legal voters of the State of Oregon, at the recent presidential election, cast their votes for the electors on the republican ticket. It is alleged, however, publicly proclaimed, generally believed by everybody, that the governor of the State of Oregon, instead of signing the lists which the laws of Oregon required him to sign, certifying to the fact that certain persons had received the highest number of votes, has refused to do that thing, and has issued his certificate of election to one person, admitted by all to have received less than a majority of all the votes cast for presidential elector in that State. I am not surprised that Senators on this floor decline directly to come to the point and defend the action of the democratic governor of the State of Oregon. I am not surprised that the honorable Senator from the State of Ohio, [Mr. THURMAN,] the able and eloquent champion of the democratic party in this honorable body, should decline to assume positively and directly the defense of the action of the democratic governor of the State of Oregon. I am not surprised that in the speech which he has just made to this honorable body he has shielded himself behind the opinion of a lawyer in Cincinnati; that, instead of coming up boldly to the front, before the Senate, before the people, before everybody interested in this great question, he has shielded himself and his position behind the opinion of a man who, probably, for $50 or $500 could have been employed to prepare and deliver an opinion upon the other side much stronger, much abler, much more to the point.

The question, Mr. President, I propose to discuss, is as to the right, as to the power of the governor of the State of Oregon to assume jurisdiction and pass upon the eligibility of Mr. Watts as one of the presidential electors of the State of Oregon. He has assumed to entertain jurisdiction upon that point and to adjudicate in reference to that matter. Is there a Senator on this floor who is willing to come to his defense to-day and to defend his right to do what he has done in reference to that matter?

I have no set speech for this occasion; I have no written speech for to-day. What I want to know from the democratic party of the United States of America, represented upon the floor of the Senate of the United States, is, whether any member of that party is willing to rise in his place to-day to affirm the right of Governor Grover of Oregon to adjudicate upon that question; and I pause for a reply. Not one rises. Not a democrat within the sound of my voice, not a Senator of the United States belonging to the democratic party dare rise in his place to-day on this floor, and upon law, and justice, and right defend the action of the democratic governor of Oregon in his refusal to issue a certificate of election to the person selected by a majority of the votes of the people of Oregon, and in issuing it to a man whom the majority of the people of the State of Oregon decided they did not want as an elector. Am I wrong in my assertion? I pause again for a reply. No Senator from Senator THURMAN down dare rise in his place to-day upon this floor and defend upon law, upon principle, upon justice, the action of the governor of the State of Oregon. I pause again for a reply. They dare not do it. No man who is a lawyer can defend it. It was a gross usurpation of power, a willful violation of law, an attempt upon the part of one official to set at defiance and trample under foot the expressed will of the majority of the people of one of the States of this Union. Does anybody deny it? Does my friend from Ohio deny it? Can he defend it upon the law, upon the facts? He cannot. In the discussion of this question the honorable Senators upon the other side have ignored the fact that the appointment of electors by virtue of the provisions of the Constitution of the United States of America rested with the State of Oregon, that it is to the Legislature of that State that is delegated the power of providing the manner in which electors shall be appointed. The Constitution of the United States, in article 2, provides that—

> Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress.

Now let us examine what the Legislature of the State of Oregon has done in reference to this matter; let us examine what the powers of the executive of the State of Oregon are under the constitution of that State, and then we shall be enabled to determine as to the character of the action of Governor Grover in refusing to sign the list as provided by the law. I call attention in the first place on this point to article 1, section 1, of the constitution of the State of Oregon in regard to the distribution of powers among the different departments of the government of the State of Oregon. Article 3, section 1, provides as follows:

> The powers of the government shall be divided into three separate departments, the legislative, the executive, including the administrative, and the judicial; and no person charged with official duties under one of these departments shall exercise any of the functions of another except as in this constitution expressly provided.

I call attention also to article 22 of the constitution of the State of Oregon for the purpose of showing what the powers of the executive of that State are under the constitution of that State, because it will be admitted by every person that his powers are defined and circumscribed and controlled by the provisions of the constitution of the State of Oregon. Section 1 of article 7 provides:

> The judicial power of the State shall be vested in a supreme court, circuit courts, and county court, which shall be courts of record, having general jurisdiction to be defined, limited, and regulated by law in accordance with this constitution. Justices of the peace may also be invested with limited judicial powers, and municipal courts may be created to administer the regulations of incorporated towns and cities.

Now I call attention to section 9 of the same article; which provides as follows:

> All judicial power, authority, and jurisdiction not vested by this constitution or by laws consistent therewith, exclusively in some other court, shall belong to the circuit courts; and they shall have appellate jurisdiction and supervisory control over the county courts, and all other inferior courts, officers, and tribunals.

I understand that the democratic party is a strict adherent to the doctrine that the powers parceled out by the General Government and by the constitutions of the State governments to the different departments of those governments should be circumscribed and kept within their respective boundaries at all times and under all circumstances, and upon that question I desire to read from Story on the Constitution, section 520:

> In the establishment of a free government, the division of the three great powers of government, the executive, the legislative, and the judicial among different functionaries, has been a favorite policy with patriots and statesmen.
>
> Especially with democratic statesmen—
>
> It has by many been deemed a maxim of vital importance, that these powers should forever be kept separate and distinct. And accordingly we find it laid down with emphatic care in the bill of rights of several of the State constitutions. In the constitution of Massachusetts, for example, it is declared that "in the government of this Commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end it may be a government of laws and not of men."
>
> Again, the writers in the Federalist lay down this doctrine:
>
> The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may be justly pronounced the very definition of tyranny.

No Senator upon this floor will take the position that under these several provisions of the constitution of the State of Oregon, the governor of that State can exercise judicial power. It is claimed, nevertheless, by indirection, by the opinions of outside men, by employed attorneys if you please, that the governor had the right to exercise judicial functions. My point is that under the laws of Oregon, under the constitution of the State of Oregon, judicial power does not belong to the governor of that State; he has no right to exercise judicial power in reference to the matter of elections; he is a mere ministerial officer; his duties are defined; they are imperative; they are emphatic, by the terms of the constitution, and by the terms of the law, and he has no right to go behind these several provisions.

In what I am about to say, I do not intend to enter into the question of the eligibility of Mr. Watts as an elector. I do not enter into the question at all, so far as his appointment is concerned; whether, if a majority of the votes were cast for a person who was ineligible,

therefore the person who was eligible was elected, although he had only a minority of the votes. I desire to confine my argument for the time being to the question of the power of the governor of the State in the premises, and I undertake to say here to-day, without fear of successful contradiction, that the powers of the governor of the State of Oregon, under the Constitution and under the laws, are ministerial purely; that they are not judicial; that he has no power to entertain the question as to whether or not Mr. Watts was eligible as an elector of President of these United States. That is the point I desire to make, and I undertake to say that in assuming to exercise that power the governor of the State of Oregon violated the plain and express provisions of the constitution of his State and of the laws passed in pursuance thereof. That is the point upon which I stand here to-day ready to answer any question that may be propounded by any Senator of the United States upon the other side of this House. They have evaded this question in the discussion that they have presented to the Senate and to the country. They have ignored the constitution of the State of Oregon and the laws passed in pursuance thereof. If he had the power to entertain this question and to pass upon the eligibility of Mr. Watts as a presidential elector, then it must be conceded by the gentlemen on the other side of the House that he would have the power to entertain any suggestion that might be made in regard to the ineligibility of any person elected by the people of the State of Oregon to any office for which he is to issue his certificate. What would this lead to? I desire to attract the attention of the Senate to this point.

I ask the attention of my honorable friends on the other side of the house to certain provisions of the constitution of the State of Oregon, and the first to which I attract their attention is section 9 of article 2, which provides as follows:

> Every person who shall give or accept a challenge to fight a duel, or shall knowingly carry to another person such challenge, or who shall agree to go out of the State to fight a duel, shall be ineligible to any office of trust or profit.

Now, the question I want to propound to my democratic friends is this: Suppose a person who is a candidate for the office of State treasurer, if you please, in the State of Oregon receives a majority of all the votes cast for that office in that State. The secretary of state, under his duty, decides that he has received a majority of all the votes cast for State treasurer, and before the governor has signed his certificate of election a suggestion is made to the governor that the person so elected has been guilty of a violation of this provision of the constitution of the State of Oregon, to wit: that he had given or accepted a challenge to fight a duel, or that he had knowingly carried to another person such challenge, or that he had agreed to go out of the State to fight a duel. I want to know if my democratic brethren on the other side of the house think the governor of the State of Oregon could adjudicate on that question. Could he exercise judicial functions? Could he pass upon that question? Could he determine whether this man, so elected by a majority of the votes of the people, should not only be disfranchised but much worse than disfranchised, by holding that he should not have the right to a certificate of election to the office for which he had been selected by the people? If the governor of the State of Oregon had the power to decide upon the eligibility of Watts as an elector, then, as a matter of course, he would have the power to decide upon the eligibility of a man selected by a majority of the people in reference to whom it had been suggested that he was guilty of sending a challenge to fight a duel.

But not only so; I call your attention further, Mr. President, to section 10 of article 2 of the constitution of Oregon, which provides as follows:

> No person holding a lucrative office or appointment under the United States or under this State shall be eligible to a seat in the legislative assembly; nor shall any person hold more than one lucrative office at the same time, except as in this constitution expressly permitted; provided that offices in the militia, to which there is attached no annual salary, and the office of the postmaster, where the compensation does not exceed $100 per annum, shall not be deemed lucrative.

Will my democratic friends contend that the governor of the State of Oregon can assume judicial functions and pass upon the question on the suggestion of a mere partisan, if you please, that a person selected by a majority of the votes of the people of the State of Oregon is at the same time holding a lucrative office or appointment under the United States or under the State? Does that kind of power belong to the executive of the State of Oregon? Where does he get it?

But this is not all. Section 11 of the same article of the constitution of Oregon provides as follows, and I call especial attention to this provision:

> No person who may hereafter be a collector or holder of public money shall be eligible to any office of trust or profit until he shall have accounted for and paid over, according to law, all sums for which he may be liable.

Suppose a man was selected for the office of secretary of state or of state treasurer or of district attorney, if you please, under the constitution of the State of Oregon by a majority of the voters in that State, and the secretary of state, under his duty, should decide in the canvass of the votes that such person had received a majority of all the votes cast, and yet before the governor signed the certificate, which the law says emphatically he shall sign, some partisan, some man, I care not who, should come in and by affidavit or otherwise suggest to the governor of the State of Oregon that such person was ineligible to his office under section 11 of article 2 of the constitution of the State for the reason that he had been a collector or holder of public money and that he had failed to account for and pay over according to law all sums for which he was liable? Will my democratic friends contend that the governor of the State of Oregon has the power under the constitution and laws to entertain jurisdiction of that question, to investigate that question, to determine that question? No lawyer on the other side of this House will for one moment assume any such position before the Senate or before the country. Why? Because in the first place the office of governor of the State of Oregon in reference to this matter is merely and purely ministerial, and because again there are other insuperable, insurmountable objections to any such assumption; and what are they? The right to hold office under the Government is one of the highest rights that can attach to the American citizen. How is he to be deprived of that right on any allegation of ineligibility? By the mere *ipse dixit* of an executive officer? Not by any manner of means. Only by the adjudication of the judicial department of the Government; by that and by that alone. What does the constitution of the State of Oregon say on that subject? I turn to the bill of rights and I find in the seventeenth subdivision of the bill of rights of the constitution of the State of Oregon this provision:

> In all civil cases the right of trial by jury shall remain inviolate.

Am I, on a mere suggestion of my political adversary, when I have received a majority of the votes of the people of my State, to be disfranchised and deprived of holding an office of honor and trust and profit by the mere *ipse dixit* of the executive officer of my State in reference to my ineligibility under that clause of the constitution which says that "no person who may hereafter be a collector or holder of public money shall be eligible to any office of trust or profit, until he shall have accounted for and paid over, according to law, all sums for which he may be liable?" I take it not. I take it that upon that question I have a right to demand, as the constitution of Oregon says, a trial by jury; and yet the policy suggested, not defended, by the leaders of the democratic party on this floor, because they cannot defend it, would say that I was at the mercy of the executive of my State, that my rights as a citizen of this country were to be determined by an executive officer of the State, when the constitution of my State says that "in all civil cases the right of trial by jury shall remain inviolate." What does it mean when the constitution says that the right of trial by jury shall remain inviolate? There is a clause something like that, if I remember rightly, in the Constitution of the United States, not exactly the same, but substantially this, that in all suits at common law the right of trial by jury shall be preserved where the value in controversy is over $20.

Upon that point I call attention not only to subdivision 17 of the bill of rights of the constitution of the State of Oregon, but I call attention to the Constitution of the United States, article 7; also to Parsons *vs.* Bedford, 3 Peters, 439; Webster *vs.* Reid, 3 Dallas, 297, and to 11 Howard, 437, for the purpose of showing that these provisions include not merely modes of proceeding known to the common law, but all suits not of equity or admiralty jurisdiction by which legal rights are settled and determined. What higher legal right could be suggested than the right to exercise the duties of an office when the majority of the people have selected such person as the person to exercise such office? Therefore, Mr. President, when it is asserted here by implication, because it is not asserted directly, that the governor of the State of Oregon, a mere executive officer, a mere ministerial officer, has the right to pass judicially upon a question as to the eligibility or non-eligibility of this man or that man for whom a majority of the votes of the people of the State have been cast, it is to assume a position that cannot be maintained or defended either here or elsewhere.

But, Mr. President, was the action of Governor Grover in assuming to entertain jurisdiction as to the eligibility or non-eligibility of Mr. Watts the assumption of judicial power? I assert that it was. I assert that it was the exercise upon his part of judicial power of the gravest character. What did he assume? He assumed that there was no vacancy in the election of electors for President and Vice-President of the United States. Now, I desire to call your attention to the laws of the State of Oregon upon this question, by which it will be conceded that Governor Grover should be bound. I cite first section 45 of title 7, page 709 of the code, as to the manner in which vacancies may be created in the State of Oregon:

> Every office shall become vacant on the happening of either of the following events before the expiration of the term of such office:
> 1. The death of the incumbent;
> 2. His resignation;
> 3. His removal;
> 4. His ceasing to be an inhabitant of the district, county, town, or village for which he shall have been elected or appointed or within which the duties of his office are required to be discharged;
> 5. His conviction of any infamous crime or of any offense involving a violation of his oath;
> 6. His refusal or neglect to take his oath of office or to give or renew his official bond, or to deposit such oath or bond within the time prescribed by law;
> 7. The decision of a competent tribunal declaring void his election or appointment.

Then, under the constitution and laws of Oregon, if a person who is ineligible is voted for by the people of that State for any office, how is that election to be declared void? By "the decision of a competent tribunal." Governor Grover assumed to be that "competent tribunal." I assert that he had no power to assume that position or to take any such position; but he did take it. Now I intend to follow

to the end the legitimate results of such a position. He assumed to pass upon the question of the eligibility of Mr. Watts. We all admit that he did pass upon that question. He decided that Mr. Watts was ineligible. What was the result under the laws of Oregon? It was to create a vacancy. How under the laws of Oregon was that vacancy to be filled? Was it to be filled by the governor? Is there any Senator on this floor who can point out to me any authority for the governor of Oregon to fill a vacancy in the office of presidential elector? Not one. Why? Because the matter of the appointment of presidential electors is left to be appointed in such *manner* as the Legislature may direct. The Legislature of the State has provided that in case of a vacancy it shall be filled how? By the governor? No, sir. By the judges of the supreme court? No, sir. By whom? By a new election? No, sir. By whom? By the electors that have been elected. That is the law.

Mr. BOGY. Will the Senator permit me a question?

Mr. MITCHELL. Yes, sir.

Mr. BOGY. Will the Senator read the law which authorizes the electors to fill a vacancy, if that be the case?

Mr. MITCHELL. I will with the greatest of pleasure. I will read from section 2 of the act of October 24, 1864, to be found on page 849 of the General Laws of Oregon, and it reads as follows:

The electors of President and Vice-President shall convene at the seat of government on the first Wednesday of December next after their election, at the hour of twelve of the clock at noon of that day, and if there shall be any vacancy in the office of an elector, occasioned by death, refusal to act, neglect to attend, or otherwise, the electors present shall immediately proceed to fill, by *viva voce* and plurality of votes, such vacancy in the electoral college, and when all the electors shall appear, or the vacancies, if any, shall have been filled as above provided, such electors shall proceed to perform the duties required of them by the Constitution and laws of the United States.

Mr. BOGY. Does the Senator contend under that law that the two electors who were legally elected beyond all doubt could fill what he calls a vacancy there where there had been no election at all? If there had been no election there was no vacancy; or if it may be so called, can that be the vacancy contemplated by law?

Mr. MITCHELL. I do not assume or concede that there was no election, so far as that is concerned; and even if I were to concede that, I would still contend that there was such a vacancy as might be filled by the electors who were elected, because the language is broad.

Mr. BOGY. The reading of that law is that where the elector has been elected, but owing to death, resignation, sickness, no matter what may be the cause, he is unable to reach the place where the college meets, so that there is then a vacancy, the others may fill it; but where there is no election at all—I am perfectly fair in my inquiry because I think this one of the great points, and perhaps the point of this case at last—how can a vacancy of that kind, if it can be called so at all, be filled? As I have understood, a similar case occurred in Vermont and there the Legislature met and supplied by law the omission. The same thing occurred in Rhode Island and there the Legislature met and supplied the vacancy itself. That it is competent for the Legislature to do so I do not deny, because the Constitution says that electors shall be elected in the manner provided by the State Legislature, and they might have appointed anybody to cast votes for electors; but there is no provision of that kind here. You are relying on that law when according to my understanding of that law, though I may be wrong, it is not a vacancy contemplated by it where there has been no election.

Mr. MITCHELL. I do not know what the Legislature of the State of Vermont may have done out of abundant caution and to cover any objection. I am here, though, to answer the Senator's question because he has asked me a perfectly pertinent question. I am not here to say what the Legislature of Vermont may have done out of abundant caution; at the same time I am advised that the laws of the State of Vermont were entirely different from those of the State of Oregon and the Legislature of Vermont made them the same in this respect when it was called together.

I undertake to say that the statutes of the State of Oregon have provided for the filling of any vacancy that may occur in the office of presidential elector from any cause whatever, and that it is the duty of those electors to fill that vacancy. Everybody knows, the Senator from Missouri will admit, that Oregon is entitled to three presidential electors. Now, even conceding for the sake of the argument, which I do not admit as matter of fact, that there was no election in the case of Watts, I still contend that under that clause the two persons who were elected had the power to fill that vacancy, that there was a vacancy, and they not only had the power but it was their duty to fill it.

I assume in the first place that the governor of the State of Oregon had no power to exercise judicial functions; that he had no power to entertain the question suggested to him, no matter by whom, as to the eligibility or ineligibility of Mr. Watts; but, as a matter of fact, as history tells us, he did assume to exercise that power? What is the result? He assumed to pass upon the question as to whether or not the election of Mr. Watts as one of the presidential electors was or was not void; he assumed that he was the "competent tribunal" specified in the statutes of the State of Oregon who should pass upon that question. I say he had no power to do it; but he did it and I now take him at his word, and where does it leave him? He adjudicates that question; he decides that Mr. Watts was ineligible. What then? What follows legitimately? That there is a vacancy in that office; and then the question arises under the constitution and the laws, who has the power to fill that vacancy? Is it the governor? Is it the chief justice? Is it the people of the State of Oregon by a new election? Or is it, as the statute plainly and unequivocally provides, the two men who were elected electors and in reference to whom there is no controversy? They had the power to fill the vacancy, and not the executive.

So, Mr. President, I care not what may be said about the eligibility or non-eligibility of Mr. Watts, in no possible event had the governor of the State of Oregon the right or power under the constitution and the laws to undertake to say that somebody else was elected. I undertake to say that any such action on the part of the executive was usurpation, a violation of law, an indefensible act upon his part that will stand while history stands as an official iniquity in this centennial year which neither time can efface nor posterity condone. What does he do? In the face of the law, in the face of the constitution, which distributes the powers of the different departments to different offices of the government of that State, what does he do? He not only undertakes to exercise judicial functions and to determine as to the question of the eligibility of Mr. Watts, but he goes further and decides what? Decides that Mr. Cronin, a man whom the majority of the people of the State of Oregon selected to stay at home, should cast their vote for President and Vice-President of these United States. That is what your democratic governor of the State of Oregon has done. Are you his defenders? Is it defensible, either upon the law or upon the facts, in reason or upon justice? I take it that it is not. He issues the certificate to Mr. Cronin, and what does Mr. Cronin do? In this connection I call your attention to the law as to the duties of the persons selected as electors; and in that connection I will call attention to the action of Mr. Cronin. Section 2 of the act of October 24, 1864, provides as follows:

The electors of President and Vice-President shall convene at the seat of government on the first Wednesday of December next after their election, at the hour of twelve of the clock at noon of that day; and if there shall be any vacancy in the office of an elector, occasioned by death, refusal to act, neglect to attend, or otherwise, the electors present shall immediately proceed to fill, by *viva voce* and plurality of votes, such vacancy in the electoral college; and when all the electors shall appear, or the vacancies, if any, shall have been filled as above provided, such electors shall proceed to perform the duties required of them by the Constitution and laws of the United States.

Governor Grover issued his certificate to Mr. Cronin, the man whom I have said the majority of the people of Oregon elected to stay at home, and what does he do? He undertakes to comply with section 2 of the act of October 24, 1864, and what is that? He undertakes to *convene*; to *convene himself*. For the purpose of showing how indefensible the action of the governor of Oregon is, I have already called attention to section 2 of the act of October 24, 1864, in reference to the *convening* at the seat of government of the electors.

The electors of President and Vice-President shall *convene* at the seat of government.

This certificate was issued to Mr. Cronin, as we are told, and Mr. Cronin *convened* and declared two vacancies and proceeded to fill them. Webster defines the word "convene," as follows:

To come together; to meet; to unite.

Again:

To come together; to meet in the same place; to assemble.

Just imagine my friend Cronin coming together with himself; imagine him meeting himself, uniting with himself, coming together with himself, meeting together with himself in the same place, assembling with himself! Again Webster defines the word "convened," as follows:

Assembled, convoked.

Imagine my friend E. A. Cronin "assembled together" for the purpose of what? Of electing a President of these United States of America. "Convoked!" E. A. Cronin convoked for the purpose of giving the casting vote in reference to the election of a President of forty-five millions of people! Again, a "convener" by Webster is defined, although the word is obsolete, as—

One who convenes or meets with others.

Just imagine! It reminds me of Dundreary, who, in his sapient application of various homely proverbs, such as "a wise child," &c., says "Birds of a feather flock together;" and his feeble intellect is impressed with the idea and he comments upon it by saying "Flock together! flock together! Of course they do. Who ever heard of a fool of a bird that went off in a flock all by himself?" [Laughter.] Unfortunately we have heard of that fool of a bird in this case who went off in a flock by himself, who convened by himself, who assembled with himself, who met with himself. I am not surprised that my friends on the other side of this House failed to come to the rescue. I am not surprised that they shelter themselves behind the opinions of this lawyer and that lawyer, written perhaps for pay, who have not the honor of holding seats here, for the purpose of defending by indirection the act of the executive of a great State that is indeed perfectly indefensible in any point of view.

What does the statute say further?

The electors present shall immediately proceed to fill, by *viva voce* and plurality of votes, such vacancy in the electoral college.

Did the men who framed that law contemplate any departure from the principles laid down by Dundreary? Certainly not. They never supposed that one fool bird would flock together all by himself. They had no conception of it at that time; but by the phrase the "electors present" they contemplated what? As a matter of course that more than one should be present.

By the way, I have a decision upon that question rendered within the last few days by a very high court in England. I refer to the supreme court of judicature in England, which has been but recently organized to fill the place of the House of Lords in this respect. It is one of the first cases they have decided, and I ask the Secretary to read the report of that case from the London Times of November 22, 1876. It is a law report:

House of Lords, Nov. 21—appeals.
Supreme court of judicature—court of appeals.
Sittings at Westminster before Lord Chief-Justice Coleridge and Lords Justices Mellish, Brett, and Amphlett.

The case is that of Sharp *vs.* Dawes. I ask the Secretary to read it.

The Secretary read as follows:

SHARP VS. DAWES.

In this case the very novel question was raised whether one shareholder in a company could by himself constitute a "meeting" for the purpose of making calls and transacting business generally where there was no provision in the rules for a "quorum." The action was brought for the amount of a call upon certain shares, which call was made at a meeting, duly convened, of a company transacting business in the Stannaries, on the cost-book principle, under 32 and 33 Vict., cap. 19. Proper notices had been given under the rules, of a meeting to be held on the 30th of December, 1874. On that day, at the time of the meeting, only one shareholder attended. He took the chair and passed several resolutions, including a call of 4s. per share upon the capital of the company and ending with a vote of thanks to himself as chairman. The action was tried by Baron Bramwell, without a jury, on the 26th of May last, and the question as to the validity of the call was reserved for the Queen's Bench division, where Mr. Justice Blackburn and Mr. Justice Quain decided that, the meeting having been properly convened, the resolutions passed there by the single shareholder were valid.

On appeal, Mr. Holl, for the appellant, argued that there could be no "meeting" unless at least two shareholders "met" each other. It was merely an abortive attempt at a meeting.

Mr. Brown, Queen's counsel, and Mr. Lane, for the respondents, argued that the meeting was properly convened, and therefore was valid. The shareholders vote according to the value of their shares. Therefore, this one gentleman, if a few other shareholders with a less number of shares had come in, could have out-voted them and passed resolutions. Was he to be deprived of this right because they refused to come. The conditions precedent to make it a meeting had been fulfilled.

Lord Justice MELLISH. You admit that if no shareholder had attended there would have been no meeting?

Lord COLERIDGE. No, he does not, if the conditions precedent have been fulfilled.

The learned counsel urged, if no one is there, of course, nothing can be done. But if one is there he can transact business. The word "meeting" is used in a technical rather than in its popular sense.

Lord COLERIDGE. The question is, what does the word "meeting" mean within the act 32 and 33 Vict., cap. 19? No doubt, it might be that the word might include an assembly of one within the meaning of some particular act, but there are no words here to show that it is used otherwise than in its usual signification. In ordinary language a meeting must be more than one. Therefore, I am of opinion that in this case there was no valid meeting.

Lord Justice MELLISH. I am of the same opinion. It is admitted that if no shareholders come there is no meeting, and I do not see why one should constitute a "meeting" more than none. We must adhere to the plain meaning of language. Lords Justices Brett and Amphlett concurred.

Mr. MITCHELL. Mr. President, I think that ought to dispose of any serious question that might be raised in regard to the propriety or authority of one person undertaking to convene, to assemble together with himself, to have a convocation in regard to the transaction of business. I do not suppose that any Senator on this floor will treat that with any kind of seriousness. I do not understand that any Senator on this floor is here to-day to defend for one minute the action of Governor Grover in undertaking to issue a certificate to Mr. Cronin. If any such defense is to be made, I should like to hear it; I should like to know it. I was a little surprised, and gratified at the same time, at some statements made by my friend from Ohio [Mr. THURMAN] yesterday. I quote from the RECORD:

Why, Mr. President—

Says he—

it is a new feature introduced into the American Constitution and the American system of government. We did think once that the only question about an election was, who has a majority of the votes? That is what we thought; that is what our fathers thought when they made our Constitution; but that is not the question any more. The question is not who has the majority of the votes, but who has the majority of the men who count the votes.

Mr. MITCHELL rose.

Mr. THURMAN. I would rather not yield just now.

If you have a returning board with a majority ready to count out democratic candidates and count in republican candidates, they have a power as great as the tribunes of the Roman people had to veto the voice of the people; not simply to veto what the people have done, but to determine what the people ought to have done, according to their judgment of what they think to be best. That is it, sir.

Sir, what the Senator from Ohio said yesterday is applicable to the case under discussion to-day. We did think at one time, all of us, republicans and democrats, that the only question was as to what the majority of the people had determined; but, as the Senator from Ohio says, the question now is, when applied to transactions that have recently taked place in the State of Oregon: "Not who has the majority of the votes, but who has the majority of the men who count the votes." In the States of Louisiana and Florida and South Carolina there was a question before the American people as to whom the majority of the people of those States gave their votes for President and Vice-President. Is there any such question with reference to the State of Oregon? Does any man or any Senator or anybody deny that a large majority of the people of that State gave their votes for the republican candidate for presidential electors? No such suggestion has been made here.

In what I have said to-day I have not argued the question at all in regard to the eligibility or non-eligibility of Mr. Watts. That was argued *in extenso* heretofore by abler men in this body. I care not what the general rule is upon that question; I plant myself upon the constitution of the State of Oregon and upon the laws passed in pursuance thereof, and I assert that the governor of that State, in assuming the exercise of judicial functions, in attempting to pass upon the eligibility of Dr. Watts, transgressed the law, usurped power, attempted, if you please, by fraudulent practices to set aside and trample upon the will of the majority of the people of one of the great States of the American Union. I say it does not belong to him to pass upon that question, whatever way the question should be decided; and in assuming to entertain jurisdiction of that question he has transgressed the law; he has not only undertaken to trample upon the will of the majority of the people of his own State, but by the same fraudulent practices he has attempted to override the constitutionally expressed will of a majority of the great States of this Union in reference to the selection of the Chief Magistracy of forty-five millions of people. That is what I say, and if I am wrong I want to be corrected now.

But Senators upon the other side of this question who have discussed it have not only ignored the constitution of the State of Oregon and the laws of the State of Oregon, they have talked about abstract questions, they have shielded and sheltered themselves behind the opinions of lawyers who have either volunteered opinions upon this question or who have been paid for the same. I take it for granted that Mr. Judge Hoadly of Cincinnati has acquired all the fame that he ever expected to achieve by his opinion to Governor Grover. He has obtained the notoriety of having his opinion read from that desk to go forth before the people of this country.

Mr. President, I do not desire to detain the Senate longer. My friend from Ohio yesterday [Mr. THURMAN] referred to the Roman tribunes who exercised the power of not only defeating the will of the senate and of the people, but who assumed the right to determine what the people ought to have done. Yes; but a check came to that, let me tell my friend from Ohio. There was a certain Tiberius Gracchus in Roman history who inaugurated the policy that an appeal should be taken to the people from the Roman tribune who should undertake to veto the decision of his associates or the decision of the Roman senate. That policy was inaugurated three hundred years before the Christian era, and if we have a Roman tribune to-day in Oregon who would assume to override the will of the majority of the people of that State, I propose that we have another Tiberius Gracchus, who will appeal to the people, to the people not only of the State of Oregon but the people of this whole country; and in reference to their decision on this question I have no fears. To that tribunal I cheerfully submit the question, and the more cheerfully from the fact that my democratic friends on the other side of this Chamber, instead of coming out openly and above-board and defending the action of their democratic governor in the State of Oregon, seek only to defend that action by indirection, shielding themselves behind the opinions of irresponsible men. Mr. President, it is very late and I shall not detain the Senate further now. I shall have more to say however in reference to other aspects of this case.

Mr. LOGAN. Mr. President——

Mr. EDMUNDS. If the Senator from Illinois will allow me, I will move an adjournment.

Mr. HARVEY. Will not the Senator yield for a short executive session?

Mr. EDMUNDS. I will give way for the motion.

Mr. HARVEY. There is a reason for it which I can explain to the satisfaction of every Senator present.

Mr. EDMUNDS. I withdraw my motion for that purpose.

Mr. HARVEY. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After two minutes spent in executive session, the doors were re-opened, and (at five o'clock and five minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

FRIDAY, *December* 15, 1876.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of yesterday was read and approved.

CONGRATULATIONS ON NATIONAL CENTENARY.

Mr. SWANN. I am directed by the Committee on Foreign Affairs to present two reports which it is very necessary should be acted on at once. I ask that they be read.

The Clerk read as follows:

I am instructed by the Committee on Foreign Affairs to report to this House a communication received in July last from the republic of Pretoria, South Africa,

and referred by the House of Representatives to this committee. In response to the complimentary action of the republic of Pretoria, I am instructed by the Committee on Foreign Affairs to communicate said action to the Secretary of State with the request that (with the approbation of the House of Representatives) we return the acknowledgments of this Government to the republic of Pretoria for the very complimentary terms in which the said republic has referred to the first centennial of our national independence, and our high appreciation of the compliment conveyed in said communication.

In connection therewith the Committee on Foreign Affairs have unanimously adopted the following:

Resolved, That the Secretary of State be requested to communicate to the republic of Pretoria the high appreciation by the House of Representatives of the complimentary terms in which said republic has referred to the first centennial of our national independence in their resolutions to this House in May last.

THO. SWANN, *Chairman.*

The report was adopted.

Mr. SWANN moved to reconsider the vote by which the report was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

Mr. SWANN. I now ask the Clerk to read the other report which I have sent to the desk.

The Clerk read as follows:

The following dispatch having been communicated to the Congress of the United States, July 11, 1876, from the Argentine Republic—

To Congress:

Argentine Congress, inspired by the sacred remembrances to-day raises in freemen's souls, heartily congratulates your Congress on the glorious centenary of that great country.

Given, Congress in session:

MARINO ACOSTA CARLOS GAVARIA,
Secretary.

BUENOS AYRES, *July* 4—

and the same being referred to the Committee on Foreign Affairs, I am instructed by said committee to report the following:

Resolved, That the Secretary of State be and is requested to acknowledge said dispatch and the high appreciation of the House of Representatives of the compliment intended to be conveyed.

THO. SWANN, *Chairman.*

Mr. KASSON. As this report is intended to be an answer on the part of our Government to a compliment extended to the United States, I ask the gentleman from Maryland [Mr. SWANN] whether our action should not be in the form of a concurrent or joint resolution which would represent the whole Government of the United States. I observe that by the language of this report the acknowledgment is by the House alone, though the communication is to the whole people and the Government of the United States. If the committee have considered this question, of course that should be satisfactory. I only suggest the question whether this resolution of acknowledgment which is to be transmitted to a foreign government ought not to be so framed as to represent both branches of Congress by concurrent or joint resolution.

Mr. SWANN. The Secretary of State is the medium through which the Committee on Foreign Affairs have communicated whatever may require his attention. These reports came to our committee during the recess of the House and we have had no time to give them any very extended discussion.

The committee, however, have taken no action in reference to the matter as to whether the resolution should be a joint resolution or whether the response should be made through the Secretary of State. We are under the impression that a communication of the sense of this House to this Argentine Republic through the Secretary of State would answer the purpose for conveying the recognition of the United States of the very complimentary manner in which the centennial anniversary of this Republic has been referred to.

Mr. KASSON. I agree with the gentleman as to the propriety of the resolution, and the only suggestion I have made has been in reference to the form in which it should be passed.

Mr. SWANN. We looked upon the Secretary of State as the channel through which this communication should be made.

Mr. HOAR. A question as to the propriety of the expression used in the last resolution has occurred to me, and I therefore ask that it be again read.

Mr. KASSON. I ask also that the communication referred to be again read.

The report and resolution were again read.

Mr. KASSON. It will be observed, Mr. Speaker, this recognition comes from the Congress of our sister republic to the Congress of the United States, and therefore I think my honorable friend from Maryland will see the propriety of having the answer from the Congress of the United States, which can be done by a slight change in the wording of the resolution.

The SPEAKER. The resolution is open to amendment.

Mr. SWANN. I have no objection to that amendment.

Mr. KASSON. I suggest by common consent that the gentleman from Maryland be allowed to make it a joint resolution of the two Houses of Congress: "Resolved by the Senate and House of Representatives," &c.

Mr. SWANN. We have no objection to that at all, as it accomplishes the purpose we have in view.

Mr. HOLMAN. It might be better to have the response read as it will stand amended.

Mr. KASSON. It is only provided that it shall be in the form of a joint resolution: "Resolved by the Senate and House of Representatives in Congress assembled," &c.

Mr. SWANN. There is no objection to that amendment. I will make it a joint resolution (H. R. No. 172) in response to congratulations from the Argentine Republic.

Mr. HOLMAN. I trust that the gentleman from Maryland, in view of the change in the form of the resolution will take the amendment and prepare it himself. The words "intended to be" should be stricken out.

Mr. KASSON. Let them be stricken out.

The SPEAKER. The amendment suggested will be made if there be no objection.

There was no objection and it was ordered accordingly.

The joint resolution was read a first and second time, ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. SWANN moved to reconsider the vote by which the joint resolution was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

By unanimous consent the resolution already adopted in reference to the Republic of Pretoria was modified to take the form of a joint resolution (H. R. No. 171) in reference to the congratulations from the Republic of Pretoria.

LEGAL REPRESENTATIVES OF WILLIAM S. ROBINSON.

Mr. TARBOX, by unanimous consent, moved to take from the Speaker's table a bill (S. No. 436) for the relief of the legal representatives of William S. Robinson, of Malden, Massachusetts, for reference to the Committee of Claims.

The bill was taken up, read a first and second time, referred to the Committee of Claims, and ordered to be printed.

Mr. TARBOX moved to reconsider the vote just taken; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

EMPLOYÉS OF THE FOLDING-ROOM.

Mr. VANCE, of North Carolina, by unanimous consent, submitted the following resolution; which was referred to the Committee of Accounts:

Resolved, That the Clerk of the House of Representatives be, and he is hereby, authorized and directed to pay out of the contingent fund, to the following named persons, who have been employed at piece work in the folding-room of the House from September 1, 1876, the same amount per annum, less 10 per cent., as was paid the same class of employés of the Forty-third Congress, from the above date to December 15, 1876: C. L. Freeman, W. W. Lester, N. Dawson, W. H. Minix, Patrick Jordan, C. T. Lewis, W. F. Weeks, J. H. Walters, J. N. Wiggins, Allen Wood, C. W. C. Dunnington, J. M. Buchanan, B. E. Hambleton, S. M. Freeman, J. L. Knight, H. T. Murry.

HENRY HADLEY.

Mr. WALKER, of New York, by unanimous consent, introduced a bill (H. R. No. 4200) granting a pension to Henry Hadley, late a private of Company G, Eighty-sixth Volunteers, New York State Infantry; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

TECHE DISTRICT.

Mr. KEHR, by unanimous consent, from the Committee on Commerce, reported back a bill (H. R. No. 2278) to change the name of the port of entry of the district of the Teche, in Louisiana, from Brashear to Morgan City, with the recommendation that it do pass.

The bill, which was read, in the first section provides that the name of the port of entry of the Teche district, in the State of Louisiana, be changed from Brashear to Morgan City.

Mr. HOLMAN. This I understand is but a change of name?

Mr. KEHR. It is simply to have the name of the port of entry conform to the name of the municipality and post-office in that locality.

Mr. HOLMAN. If that be all, there is no objection to it.

The bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. KEHR moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

WILLIAM BOWEN.

Mr. ROBERTS, by unanimous consent, introduced a bill (H. R. No. 4201) for the relief of William Bowen, of the District of Columbia; which was read a first and second time, referred to the Committee for the District of Columbia, and ordered to be printed.

JOHN S. LOGAN AND W. L. SHADWICK.

Mr. REA, by unanimous consent, moved to take from the Speaker's table a bill (S. No. 890) for the relief of John S. Logan and W. L. Shadwick, for reference to the Committee of Claims.

The motion was agreed to; and the bill was taken up, read a first and second time, referred to the Committee of Claims, and ordered to be printed.

Mr. REA moved to reconsider the vote just taken; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

MUTUAL FIRE-INSURANCE COMPANY, DISTRICT OF COLUMBIA.

Mr. BUCKNER, by unanimous consent, introduced a bill (H. R. No. 4202) to amend the charter of the Mutual Fire-Insurance Company of the District of Columbia; which was read a first and second time, re-

ferred to the Committee for the District of Columbia, and ordered to be printed.

REPRESENTATIVES OF C. W. M'CORD ET AL.

Mr. WELLS, of Missouri, by unanimous consent, introduced a bill (H. R. No. 4203) for the relief of the legal representatives of Charles W. McCord and Reuben McCord; which was read a first and second time, referred to the Committee on Naval Affairs, and ordered to be printed.

WILLIAM SHARP.

Mr. GOODE, by unanimous consent, introduced a bill (H. R. No. 4204) to remove the political disabilities of William Sharp, of Norfolk, Virginia; which was read a first and second time.

Mr. GOODE. I ask that by unanimous consent the bill may now be put upon its passage.

Mr. WILSON, of Iowa. Does the usual petition accompany the bill?

Mr. GOODE. Yes, sir.

The bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed; two-thirds voting in favor thereof.

LLOYD J. BEALL.

Mr. HUNTON, by unanimous consent, from the Committee on the Judiciary, reported back with a favorable recommendation the bill (H. R. No. 4149) to remove the legal and political disabilities of Lloyd J. Beall, of Virginia.

Mr. WILSON, of Iowa. The word "legal" should not be in the bill.

Mr. HUNTON. It is merely in the title of the bill. I ask that by unanimous consent the words of the title of the bill "legal and" be stricken out.

There was no objection, and it was so ordered.

Mr. CONGER. Does the usual petition accompany the bill?

Mr. HUNTON. The usual petition accompanies the bill, and it has been unanimously approved by the Committee on the Judiciary.

The bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed; two-thirds voting in favor thereof.

CATHARINE SHEETS.

Mr. VAN VORHES, by unanimous consent, introduced a bill (H. R. No. 4205) granting a pension to Catharine Sheets, widow of Daniel Sheets, late captain of Company C, Seventeenth Regiment of Ohio Volunteer Infantry, and to her minor son, Willie Sheets; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

AMOS WHITEHAIR ET AL.

Mr. VAN VORHES also, by unanimous consent, introduced a bill (H. R. No. 4206) allowing a pension to Amos Whitehair and Eliza J. Whitehair, children of Emery D. Whitehair, late a private of Company F, Third Regiment West Virginia Volunteers; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

F. E. SHEPPERD.

Mr. HUNTON, by unanimous consent, introduced a bill (H. R. No. 4207) to remove the political disabilities of F. E. Shepperd, of Virginia; which was read a first and second time.

The bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed; two-thirds voting in favor thereof.

EXPENSES OF SPECIAL COMMITTEES.

Mr. HOLMAN. I am instructed by the Committee on Appropriations to report back the bill (H. R. No. 4121) to provide for the expenses of certain special committees, and the Senate amendments referred to that committee, with amendments both to the Senate amendments and to the original bill.

I will state, Mr. Speaker, that the bill as it passed the House appropriated the sum of $21,000 to meet the expense of three committees appointed by the House to make investigations in regard to the late elections for President and Vice-President of the United States in the States of South Carolina, Florida, and Louisiana. The Senate amended the bill by adding an additional section appropriating the sum of $50,000 for investigations in the States named and also the State of Mississippi by committees of that body. The Committee on Appropriations have instructed me to make the report which I send to the desk to be read.

The Clerk read as follows:

The Committee on Appropriations, to whom the bill (H. R. No. 4121) to provide "for the expenses of certain special committees," together with the amendments of the Senate thereto, was referred, having considered the same, beg leave to report, and do report, as follows:

They recommend concurrence with the amendment numbered 1 with an amendment as follows: In line 1 of the bill strike out the words "twenty-one" and insert in lieu the word "thirty," and after the word "Florida" in line 7 of the bill insert "and of the committee of five appointed to proceed to the cities of New York, Philadelphia, Brooklyn, and Jersey City, to examine into any alleged fraudulent registration and fraudulent voting for presidential electors and Representatives in Congress." And after the word "the" in line 4 of the bill insert "actual," and after the word "expenses" in the same line insert "necessarily incurred."

They recommend concurrence with amendment numbered 2, (being section 2,) with an amendment as follows: In line 1 of said amendment strike out the word "fifty" and insert the word "thirty," and in line 4, after the word "the," insert the words "actual and necessary," and in line 5, after the word "elections," insert "and other expenses necessarily incurred."

Mr. HOLMAN. That the House may be fully informed of the effect of the amendments proposed by the Committee on Appropriations, I ask that the original bill and the Senate amendments may be now reported.

The bill was read, as follows:

A bill to provide for the expenses of certain special committees.

Be it enacted, &c., That the sum of $21,000, or so much thereof as may be necessary, be, and the same is hereby, appropriated from any moneys in the Treasury not otherwise appropriated, to defray the expenses of the three special committees charged, respectively, with the investigation of the recent elections in the States of Louisiana, of South Carolina, and of Florida; said appropriation to be added to the contingent fund of the House of Representatives, and to be disbursed upon vouchers approved by the chairmen of the respective committees.

The amendments of the Senate were read, as follows:

Insert after the word "committees," in line 7, the words "from the House of Representatives;" so as to read: "To defray the expenses of the three special committees from the House of Representatives," &c.

At the end of the bill, add the following as an additional section:

"SEC. 2. That the sum of $50,000, or so much thereof as may be necessary, be, and the same is hereby, appropriated, out of any moneys in the Treasury not otherwise appropriated, to defray the expenses of the Committee on Privileges and Elections in making the investigations directed by Senate resolution of December 5, 1876, in the several States named therein, said appropriation to be paid into the contingent fund of the Senate. And the disbursing officer of the Senate shall advance such parts of the sum above appropriated to the Sergeant-at-Arms of the Senate as the chairman of said committee shall, in writing, direct, for the purpose aforesaid; and the Sergeant-at-Arms shall, as soon as practicable, make a detailed report of the expenditure thereof, with proper vouchers, which, when so made, shall be received by said disbursing officer and returned with his accounts to the proper officer of the Treasury Department."

Amend the title so as to read:

"An act to provide for the expenses of certain special committees of the House of Representatives and of the Committee on Privileges and Elections of the Senate."

The SPEAKER. The question is upon the amendment reported by the committee.

Mr. HOLMAN. A word of explanation: The House provided for the appointment of three committees, and finally of four: a committee of fifteen to make investigation into the recent election in the State of Louisiana, a committee of nine to make investigation into the recent election in the State of South Carolina, and a committee of six to make investigation into the recent election in the State of Florida; subsequently a committee of five was appointed to investigate the recent election and examine into the question of alleged fraud in the cities of New York, Brooklyn, Jersey City, and Philadelphia. The appropriation for the first three committees was fixed by the House at $21,000, which was believed to be quite an ample sum for that purpose. The Senate provided for enlarging the committee known in that body as the Committee on Privileges and Elections, and provided for three subcommittees, of three members each, to visit South Carolina, Florida, and Louisiana, to make corresponding investigation, with the power, as the Committee on Appropriations understands, on the part of that portion of the committee which remains at the Capitol to make investigations generally into the recent elections, embracing perhaps the State of Mississippi, and all matters concerning the election.

The Senate propose an appropriation of $50,000 to carry out the purposes of the resolution of that body.

On examination by the Committee on Appropriations, it is deemed entirely proper that the appropriation should be about the same sum that the House Committee on Appropriations recommended, and therefore they recommend an increase of the appropriation for the House committees, in view of the enlargement of the committees to four instead of three, from $21,000 to $30,000, in view of the organization of an additional committee, and the appropriation of a corresponding sum of $30,000 to meet the expenses of the committees appointed on the part of the Senate.

The more common practice has been, perhaps it may be said, (although I think there is no common practice upon the subject,) for each House to appropriate the sum which it deems necessary for making an investigation authorized by them. That, however, cannot be regarded as a settled practice by any means, but both Houses must concur as to what are reasonable and proper expenses for any given purpose.

The tendency of late years has been to render our investigations exceedingly expensive, and the expenses of such investigations have grown rapidly in late years. It is believed by the Committee on Appropriations that the sum of $30,000 for each of the two Houses will meet every necessary expenditure growing out of these investigations that may be made. The law is that the members of the two branches of Congress, acting upon investigating committees, shall be paid simply their absolute expenses incurred; nothing beyond that.

It is not intended that a member serving upon a committee of investigation shall receive increased compensation, but that he shall receive only his actual current expenses. This, with the expenses of subpœnaing witnesses and of clerks and stenographers, is covered by this appropriation.

One other word. I notice that in the haste of preparing this amendment the limitation of this appropriation to the actual expenses only applies to the last section of the bill. I ask unanimous consent that the same terms shall be applied to the first section of the bill; that the money shall be applied only to the actual and necessary expenses of these committees, and nothing more.

Mr. HALE rose.

Mr. HOLMAN. I desire to retain the floor upon this bill, but I yield to the gentleman from Maine for a moment.

Mr. HALE. I rise, Mr. Speaker, for the purpose of opposing the reduction recommended in the report of the Committee on Appropriations as affecting the cost of the Senate investigation, which has been cut down from $50,000 to $30,000, and I do it for this reason: The Senate, in the exercise of its undoubted right, has determined to investigate these matters in certain Southern States, upon which the House at first started.

Instead of appointing new committees of the Senate, as we have done, that body has increased one of its committees—the Committee on Privileges and Elections—to fifteen members, and the committee has subdivided and has sent branch committees into three Southern States.

It has in addition to that appointed another large subcommittee that proposes to sit here in Washington and to summon witnesses from certain other States. I learn that witnesses have already been summoned from Oregon, and I understand it is the purpose of the committee to send for a large number of witnesses from Mississippi. Every gentleman will see that this method adopted by the Senate, in the exercise of its discretion, is an expensive method. But the Senate has determined upon this method; it has decided that it will so examine and so investigate. Gentlemen in certain States, upon both sides of the House, have been requested to give lists of witnesses from their respective States to be summoned by the committee. And the Senate has said that it believed that $50,000 will not be too much for the carrying out of this plan.

Now upon a question of this kind I do not believe that my friend from Indiana, [Mr. HOLMAN,] who is an honest economist and wants to save the public money where he can, should insist upon his parsimonious rule. There are some things that are more important to the American people than the expenditure of $20,000, the difference between the amount named by the Senate, and the amount named in the report submitted to this House from the Committee on Appropriations.

This is a subject-matter upon which the American people have intently fixed their minds. The Senate has determined to investigate this subject. The difference of $20,000 may hamper that investigation if denied, or if given may make it free, full, and fair. I do not believe the gentleman from Indiana [Mr. HOLMAN] wants that there should be any pinch upon the committees.

I had occasion not long ago to visit one of these States. I am not going into its condition except very briefly, in order to illustrate my argument in favor of appropriating the sum asked by the Senate. I found there a condition of things that should be investigated. I found that large portions of the State had been patrolled by armed bodies of men who intimidated, as I believe, a defenseless people undertaking to exercise their right of suffrage. By reading certain reports emanating from authoritative sources on the other side, I find that it is denied that this condition of things arose from any political considerations or circumstances. Now, we can afford to give $20,000 to find out whether that is true or not true.

There is to-day in South Carolina a condition of things that attracts the attention of the American people. There are double Legislatures and double governors there; two men have been inaugurated as governor and claim to control all the power of that State. There is also a contest as to the electoral certificate, as to who had the right to cast the electoral vote of the State of South Carolina. The people of this country would be glad to give $20,000 to have that question more fully investigated.

One word more only, as I know the gentleman from Indiana wants to get through with this matter, and that is this: Knowing something of the situation in one of these States, I bid that gentleman and his party Godspeed in the effort to investigate everything by and large. The truth is mighty and will prevail in this matter. I wish a fair committee could be sent to Louisiana (for I know more of that State than of any other) every other day if necessary, in order that the truth may be got at. I do not care how the committee is constituted; I do not care if two-thirds of all these committees that visit these States to probe their wounds and wrongs and bring them to light, are made up from the other side. I know that any committee going down there and investigating will find at the bottom a condition of affairs that will attract and absorb the attention of the American people.

That is why I want to appropriate the largest sum named. If necessary I would double the appropriation for the use of committees; I would have no hinderance put upon any of them, but would let them go down there and visit every parish and take full testimony and report to this House. I venture to say that no voice on this side of the House will be raised against giving them ample money.

Mr. HOLMAN. I did not propose to enter into——

SIOUX INDIANS.

Mr. MILLS. I rise to a privileged motion, a motion to reconsider.

The SPEAKER. The gentleman from Indiana is now on the floor.

Mr. MILLS. Under the rule I have a right to take a member from the floor for the purpose of entering a motion to reconsider.

Mr. HOLMAN. I will yield for that purpose.

Mr. MILLS. I desire to enter a motion to reconsider the vote whereby the House on yesterday referred to the Committee on Indian Affairs the message of the President, with accompanying documents, upon the subject of the negotiation pending for the removal of the Sioux Indians to the Indian Territory.

The SPEAKER. That motion will be entered upon the Journal.

EXPENSES OF INVESTIGATING COMMITTEES.

Mr. HOLMAN. I did not suppose that a bill proposing simply to appropriate money to aid in a legitimate and proper investigation by the two Houses would give rise to a discussion of the merits of the controversy out of which these committees have grown. The gentleman from Maine [Mr. HALE] must see that the merits of this controversy do not come up at all——

Mr. HALE. I did not attempt to go into them.

Mr. HOLMAN. The gentleman should remember further that members upon this side of the House have shown at least as much anxiety for a full and fair inquiry into the events of the late elections in the States named as the gentleman and his friends have done. On the contrary I think my usually fair and frank friend is just at this moment acting upon a principle which has not hitherto controlled his action in this House. If I am not mistaken, my friend very earnestly opposed the organization of committees to visit these States to the South to inquire into the question of the regularity and peacefulness of the elections lately held there.

Mr. HALE. Let me correct the gentleman. I was then on my way from Louisiana.

Mr. HOLMAN. My friend is right.

Mr. HALE. Had I been here, I would have joined heartly in the appointment of every committee sought to be sent down there; for I have been there.

Mr. HOLMAN. I am very glad to hear that statement. But the gentleman's political friends opposed the appointment of those committees with great earnestness, there being I believe but three exceptions on that side of the House.

Mr. KASSON. Four.

Mr. HOLMAN. With but few exceptions the gentlemen on the other side opposed the investigation. Now the gentleman from Maine shall not go farther than I will in favor of full and fair investigation into the events connected with the recent election in any of the States of the South or of the North. I think it is a matter of such high importance that while there should be positive economy in all the expenditures of this Government, the sum really required for this purpose, even if it should prove to be a large sum, should be cheerfully appropriated rather than that the investigation should not be full and complete.

Mr. HALE. Will the gentleman allow me to ask him a question at this point?

Mr. HOLMAN. Yes, sir.

Mr. HALE. The gentleman will allow me to suggest that probably the amount fixed here for the House committee will not be, when all the expenses are in, nearly large enough. The appropriation must cover the expenses of members, of witnesses, of marshals, of stenographers, of rooms, and a thousand and one other expenditures attendant upon the work of a great committee. Does not my friend think that if the appropriation goes through at this limited amount we shall be obliged hereafter to add to it?

Mr. HOLMAN. O, I think not. I have known a committee of this House, consisting of seven members, and employed during the vacation of Congress as well as during its sessions for a period of two years, sitting in almost all the principal cities of this Union embraced within the then lines of loyal territory; and yet the expenditure was only one-fourth the amount we are appropriating for any one of these committees.

Mr. HALE. That was under the stringent administration of the former member from Illinois, Mr. Washburne, as chairman of the Committee on Appropriations.

Mr. HOLMAN. Yes, sir; and all I ask is that such stringent administration shall be restored in regard to these expenditures.

I have observed with some degree of indignation (as I think my friend from Maine has) the extravagance of the Houses of Congress, not only in the organization of committees to be sent abroad, but in the growing expenditures for such purposes. I must say that in my judgment $30,000 appropriated to the committees of each House is very ample. I hope the gentleman from Maine will bear in mind strictly this fact, that the House, with a larger number of members and with the same number of committees, is proposing to appropriate only the same amount for the use of its committees that it concedes to the Senate. The gentleman must bear in mind another fact, that the House is at least as much responsible as the Senate, if not more so, for the proper and economical expenditure of the public money.

Mr. HALE. I grant that.

Mr. HOLMAN. And the House cannot consent to appropriate any more than is absolutely required.

Mr. HALE. Let me call the gentleman's attention upon this point to the distinction to which he first alluded, that the House does not propose that either of its committees shall sit here and summon witnesses from far distant States. That is the most expensive method of conducting an examination, and the Senate does that.

Mr. HOLMAN. And does my friend think that it is the duty of this House out of courtesy (very high courtesy indeed it would be) to permit another branch of the Government, no more responsible for the public expenditures than we are, to adopt the most expensive mode of investigation when a more economical mode could be adopted?

Mr. HALE. Suppose it is done, can we really on a subject of this importance cavil with the Senate upon the sum of $20,000?

Mr. HOLMAN. My friend must see that we make ample appropriations.

Mr. HALE. I fear not.

Mr. HOLMAN. I yield for a moment to my friend from New York, [Mr. COX.]

Mr. COX. Inasmuch as we are about appropriating money for these committees, I desire to say that so far as concerns the committee appointed to investigate alleged frauds in New York, Jersey City, Brooklyn, and Philadelphia, this side of the House is not exactly responsible for any expenditure that may ensue. A resolution contemplati g such investigation came from my distinguished colleague [Mr. MACDOUGALL] on the other side. I do not know whether he expected it to pass or not. This side of the House, however, gave it considerable welcome; and inasmuch as his resolution implied a reproach upon the voters of the city I in part represent and the circumjacent cities, I thought it nothing more than politic, wise, and fair that we should not be accused of alleged unexamined frauds where we have had abundant victories, and thus divert attention and denunciation from the three Southern States where examinations are going on. By refusing a fair examination in northern elections we might subject ourselves to odium from the ignorant and unthinking.

I venture to say that so far as New York is concerned there was no special need of this committee or this investigation. I can say the same for Jersey City; I think I may say the same for Brooklyn. So far as I have heard no United States officer in either of those three cities has impugned the correctness and integrity of the elections there. But the imputation being made by gentlemen on the other side, we felt bound to make this examination with a view to that proper emphasis which belongs to our position in other respects and in other States.

I may say here, Mr. Speaker, with your permission, that when Philadelphia was inserted in that resolution it was inserted at your own special instance. And if, as has been said, the resolution was directed at the fairness of the election to Congress of the present Speaker, he has welcomed any investigation from the city of Philadelphia as we do from the other cities farther north.

Now in response to what fell from the gentleman from Maine, [Mr. HALE.] He is so anxious now for investigation! I wish he had been here to have assisted his friends to a wiser judgment on the first days of the session. And why not now? Cannot he, a leader on that side of the House, call on his friends here to our help, to aid us in Louisiana? Can he not help us to an answer of the questions involved in the electoral vote of Louisiana? Can he not persuade, or in some way aid us to procure the records demanded by the congressional committee, and so contumaciously withheld?

Mr. HALE rose.

Mr. COX. Why does your Governor Wells refuse to give fair, prompt, and honest answer, that the Congress of the United States may know how best to solve this great trouble?

Mr. HALE. Will the gentleman let me answer for one moment?

Mr. COX. That they may know without concealment and without fraud.

Mr. HALE. Will the gentleman yield to me for a moment?

Mr. COX. I always yield.

Mr. HALE. I will tell you. I do not understand that Governor Wells has declined in any instance to furnish certified copies of every paper and document and iota of testimony.

Mr. COX. That will do. [Laughter.]

Mr. HALE. Every iota that went before his board.

Mr. COX. That will do. I know they furnish certified copies, but who would believe their certified copies. [Laughter.] We know as we know that God lives, that the originals are the places where fraud and forgery are to be found.

Mr. HALE. And every item of original documents has been submitted to the committee upon the other side and the committee upon this side, from the opening of the investigation—every document.

Mr. COX. We want the originals. O, the pretext is that they must report first to the Legislature of Louisiana!

Mr. BLAND. We do not know what the board did when it went into secret session.

Mr. COX. The investigation is in reference to the election of electors upon which the Presidency of the United States depends. It is a question going all through this country, giving it anxiety and solicitude without example or precedent. Yet in this perilous time your model board defers to their own bogus Legislature and not to the American Congress. I am ashamed that that side of the House does not at once rise up and instruct their pet, Governor Wells, to respond to the demand of our committee.

Mr. TOWNSEND, of New York. Being ashamed is mutual. [Laughter.]

Mr. COX. My colleague from New York who always breaks in out of order [laughter] has just made a confession before this people. [Laughter.]

Mr. LUTTRELL. And confession is good for the soul.

Mr. COX. I am glad of it. It is good for the soul. He acknowledges that the shame is on the other side of the House. We do not acknowledge any shame on this side.

Mr. TOWNSEND, of New York. You are incapable of it. [Laughter.]

Mr. COX. Now you just sit down for one moment. [Laughter.] He said that the shame was mutual. I suppose he meant it was mutual between the gentleman from New York [Mr. TOWNSEND] and the gentleman from Maine, [Mr. HALE.] [Laughter.] We have no cause for shame. We have no shame.

Mr. TOWNSEND, of New York. That is so.

Mr. COX. And I will give you the reason for it. It is because we have no foundation upon which to build up any shame. Perhaps the little quip of the gentleman will lose some of its sense, and all of its wit and logic when understood. Why, sir, should we be ashamed? Your board sat in secret session.

Mr. HALE. No, sir.

Mr. COX. To hide is a thing most shameful!

Mr. HALE. No, sir.

Mr. COX. The two last days your board sat in secret session.

Mr. HALE. No, sir.

Mr. COX. Not the two last days?

The SPEAKER. The gentleman from New York is entitled to the floor, and the gentleman from Maine is not in order.

Mr. HALE. The Chair must pardon me, as the gentleman said he would yield at any time for correction.

Mr. COX. Why did you not put a democrat on the board? Were you ashamed to be seen by a democrat when you were in secret session?

Mr. HALE. Does the gentleman want an answer to that?

Mr. COX. Yes; I want you to answer that?

Mr. HALE. And I will not take long in answering it. The returning board as originally constituted——

Mr. COX. O, no; I do not want you to go back so far. [Laughter.]

Mr. HALE. I will not. I wish to answer the gentleman, as he gives me leave, and when I get through he will say I have stuck to the text.

Mr. COX. Answer the question, yes or no. Did not they sit the last two days in secret session?

Mr. HALE. They did not. The board examined the papers in open session, and then retired for deliberation as judges; there was no business session of the board in secret. Now, as to the question as to why they did not appoint a democrat——

Mr. COX. That will do.

Mr. HALE. The gentleman asked me why they did not appoint a democrat. Does he decline to allow me to answer his question?

Mr. COX. I decline to be further interrupted.

Mr. HALE. Perhaps I will get the floor by the courtesy of the gentleman from Indiana later to answer this question.

Mr. HOLMAN. I have not much time left.

Mr. HALE. The House will grant the time, I am sure.

The SPEAKER. The gentleman from Maine is not in order. The gentleman from New York declines to be interrupted.

Mr. COX. I will not dispute with my friend from Maine as to the fact whether or not they sat the last two days in secret. But he just now confesses that as judges they were sitting in secret and consulting. Consulting about what? What were they doing? That is just what our committee and the people want to know.

Mr. HALE. They were making up their conclusions.

Mr. COX. O, yes! I have here in my hand a statement signed by gentlemen of probity, Governor Palmer, Ex-Senator Trumbull, Governor Bigler, George B. Smith of Wisconsin, Mr. George W. Julian, (whom we all know as a man of perfect integrity,) and Mr. P. H. Watson, formerly Assistant Secretary of War. All these men were there on the ground and they confirm my statement that there were secret sessions. And why do not the committee have full information in respect to such sessions? Why does not the gentleman instruct his compatriots down there to give us that full investigation which he now professes to so much desire? There never was a more momentous time than the present. The people require a thorough, searching investigation. No secrecy can be allowed. What is the object of your prescript, Mr. Speaker, calling for witnesses, calling for records? What is the object of the *duces tecum* which you have the power to issue for the committee? What is the object of this investigation? Is it simply to skim over the surface? Is it to get such copies as the board chooses to give? No, sir. It is to go below the surface. Our jurisdiction is below the mere shell. We want to know what is under, covered, hid. The question is whether a certificate is good when we get behind the *prima facie*.

I trust, sir, that I am not mistaken in saying that the time will come when that side of the House in accord with the Senate will demand that we shall go below all these superficial paper certifications, and get at the truth as it stood in those parishes of Louisiana and elsewhere, to the end that the legally expressed will of the people shall appear. Thus, and thus only, Mr. Speaker, can this vexed and great question of the Presidency be settled. Thus, and thus only, can come content and peace to our beloved country.

After the discussion which has been had here to-day, I welcome with all sincerity and good faith the efforts of my friend from Maine to make this investigation thorough. Let him take no step backward; and to him shall be the honor that belongs to an honest gentleman and a devoted patriot.

Mr. Speaker, I ask to have this paper printed as a part of my remarks.

Mr. HALE. I ask the gentleman from Indiana to yield to me.

Mr. HOLMAN. For how long?

Mr. HALE. For ten minutes.

Mr. HOLMAN. I can only yield the gentleman five minutes.

Mr. CONGER. I object to the paper sent up by the gentleman from New York [Mr. COX] being printed unless it is read.

Mr. COX. Very well; let it be read.

Mr. HOLMAN. How much is left of the hour to which I am entitled?

The SPEAKER. The Chair understands that this debate has been running by unanimous consent, subject, however, to the control of the floor by the gentleman from Indiana [Mr. HOLMAN] to call the previous question whenever he desires.

Mr. CONGER. Then I object to the debate proceeding further unless this side of the House has an opportunity to participate.

The SPEAKER. The debate has been proceeding by unanimous consent.

Mr. CONGER. I call for the regular order of business.

The SPEAKER. The gentleman has not the floor for that purpose. This bill is regularly before the House, and the debate has been proceeding by unanimous consent.

Mr. CONGER. The Chair did not ask unanimous consent to bring the bill before the House. He said the bill would be read and the Chair would then ask for objections, if any.

The SPEAKER. The gentleman from Michigan will allow the Chair to remind him that this is a report from the Committee on Appropriations. The gentleman from Indiana [Mr. HOLMAN] was recognized by the Chair to make a report from that committee.

Mr. CONGER. But this is not one of the regular appropriation bills, which the committee is authorized to report at any time.

The SPEAKER. No one objected to the report being made, and the bill is therefore before the House.

Mr. CONGER. The Chair said he would have the bill read, and then he would ask for objections.

The SPEAKER. The Chair calls the attention of the gentleman from Michigan to this ruling in the Digest:

After a question has been stated and its discussion commenced, it is too late to raise the question of consideration.

Mr. CONGER. I was misled, then, by the Chair proposing to ask the consent of the House.

The SPEAKER. The Chair does not think that the gentleman was misled by the Chair; he was misled by himself.

Mr. CONGER. I think I know my own motives better than the Chair does; but I was waiting for the Chair to ask for objections.

The SPEAKER. The Chair does not question anybody's motives.

Mr. WILSON, of Iowa. I understand that this debate is running under the hour rule?

The SPEAKER. Yes, sir.

Mr. WILSON, of Iowa. And that when the gentleman from Indiana has occupied the floor for one hour he cannot hold it longer?

The SPEAKER. He can only hold it for one hour.

Mr. HOLMAN. If the Chair holds that from the commencement of this debate the hour began, I will be glad to know how much time has already been consumed.

The SPEAKER. The Chair, as nearly as he can ascertain, thinks that there is about twenty-five minutes of the hour left.

Mr. HOLMAN. The reading may continue, so far as I am concerned.

The SPEAKER. The Chair would suggest that the reading should not proceed so as to cut off the gentleman from Maine, [Mr. HALE.]

Mr. HOLMAN. I do not wish to do that at all. I trust that inasmuch as the discussion has proceeded by unanimous consent, and without objection, that from the time the gentleman called for the regular order the hour began. I think that will be a fair interpretation of the rule.

The SPEAKER. The Chair is reminded by the gentleman from Michigan, [Mr. CONGER,] and also by the gentleman from Iowa, that he must determine under the rule that there is but one hour of debate remaining and the gentleman from Indiana [Mr. HOLMAN] is entitled to the remaining time.

Mr. HOLMAN. I trust, then, by unanimous consent, that the debate will be prolonged, so that there will be half an hour in addition to the usual hour for debate.

Mr. WILSON, of Iowa. How much of that time will this side of the House get?

Mr. HALE. Let this side of the House get half of the extension of time, and let the gentleman from Indiana [Mr. HOLMAN] control the other half.

The SPEAKER. The gentleman from Indiana asks that the rule shall not be enforced to cut off the debate at the end of one hour, but that the debate shall continue for an additional half hour.

Mr. TOWNSEND, of New York. Can we have half of that time? I do not want it for myself.

The SPEAKER. The Chair would suggest that each side be allowed fifteen minutes.

Mr. HOLMAN. I will now ask that the reading be continued, and I trust that before it is concluded the House will be able to come to a satisfactory conclusion.

The Clerk proceeded with the reading of the paper.

Mr. CONGER. [interrupting.] At the request of my friends upon this side of the House I will withdraw the demand for the reading of the paper.

Mr. HILLIKEN and Mr. BANNING insisted on the continuation of the reading.

The Clerk again proceeded with the reading.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of its clerks, announced that the Senate had passed without amendment the bill (H. R. No. 4197) to provide for the payment of electoral messengers.

The message further announced that the Senate had passed a resolution providing for the printing of additional copies of the President's message with the accompanying documents in relation to the election in Louisiana.

EXPENSES OF COMMITTEES.

The House resumed the consideration of the bill reported by the Committee on Appropriations.

Mr. COX. If there is no objection upon the other side of the House, I will ask that this paper be printed so as to afford the gentleman from Maine [Mr. HALE] an opportunity to peruse it.

Mr. CONGER. I think it had better be read; it is very interesting reading.

Mr. HALE. I hope my friend from Michigan will not insist upon that.

Mr. CONGER. The gentlemen opposite refuse to indicate that we should have any portion of time allowed for this debate, and I would rather hear this paper read than hear their speeches.

Mr. COX. Well, let it be read.

The Clerk resumed reading the paper, which is as follows:

To the people of the United States:

The returning board of Louisiana having this day promulgated, as the result of the recent election in that State, that the Hayes and Wheeler candidates for electors received a majority of the votes, we, who by invitation watched the proceedings of the board in opening and canvassing the returns till it went into secret session, deem it our duty to lay before you and the public such facts connected with the election and the returns as will, we think, clearly show that the action of the returning board in proclaiming the election of the Hayes electors is arbitrary, unfair, and without warrant of law, and we adopt as applicable to this canvass the language of a report made to the United States House of Representatives in 1875 by GEORGE F. HOAR, W. A. WHEELER, and WILLIAM P. FRYE, in regard to the canvass of 1872, in which they say:

"The so-called canvass made by the returning board in the interest of Kellogg seems to us to have no validity, and is entitled to no respect whatever." We also adopt the language of this same report upon the condition of Louisiana in 1875: "In the State of Louisiana there is a governor in office who owes his seat to the interference of the national power, which has recognized his title to his office, not by reason of any ascertainment of the facts by legal process, but has based its action solely on the illegal order of a judge."

"In the same State there is a Legislature, one branch of which derives its authority partly from the same order, the other being organized by a majority who have been established in power by another interference of the National Government, and which majority derives its title, not from any legal ascertainment of the facts, but from the certificates of a returning board which has misconceived and exceeded its legal authority."

November 18, 1876, before the returning board commenced the canvass of the electoral vote, the candidates for electors on the democratic ticket presented a protest against its jurisdiction over the subject or its canvass of the votes relating to the same. This protest was summarily overruled by the board, without affording an opportunity for argument. No legal proposition, in our opinion, is clearer than that the board was mistaken as to its powers, and that it had nothing whatever to do with the electoral vote. The Constitution of the United States declares:

"Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress, but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector."

The Legislature of Louisiana has either directed the manner in which the electors shall be appointed or it has not. The election law of 1872 and amendments, under which the returning board is created and acts, makes no provision as to the manner of appointing electors of President and Vice-President, whether by the Legislature or by a vote of the people, nor whether by the State at large or by congressional districts, nor does it contain any provisions as to the qualification of electors, the place where they are to meet, nor for filling vacancies. Section 71 of that act declares as follows: "That this act shall take effect from and after its passage, and that all others on the subject of election laws be, and the same are hereby, repealed." This is not an implied, but a direct repeal of all prior election laws to which it refers, and if it repeals the previous act of 1868, revised in 1870, providing for the appointment of presidential electors, it repeals the whole of it and all its provisions, and there is no law of the State on that subject, and of course the board would have no jurisdiction to canvass votes cast for such officers. If, on the other hand, the act of 1872 does not repeal the law of 1870, then presidential electors must be appointed, and the canvass of the votes therefor must be made in accordance with the law of 1870, and the returning board has no jurisdiction over the subject, as will be seen by reference to some of the provisions of the act of 1870, which are as follows:

"SEC. 2824. Every qualified voter in the State shall vote for electors as follows: Two persons shall be selected from the State at large and one person shall be chosen from each congressional district in this State; and in case any ticket shall contain two or more names of persons residing in the same district, (except the two chosen from the State at large,) the first of such names only shall be considered as duly voted for.

"SEC. 2825. No person shall be considered a qualified elector who is not a qualified voter in the district for which he is chosen, or, in case of being selected for the State at large, then of some parish of the State.

"SEC. 2826. Immediately after the receipt of a return from each parish, or on the fourth Monday of November, if the returns should not sooner arrive, the governor, in presence of the secretary of state, the attorney-general, a district judge of the district in which the seat of government may be established, or any two of them, shall examine the returns and ascertain therefrom the persons who have been duly elected electors."

"SEC. 2829. The electors shall meet at the seat of government on the day appointed for their meeting by the act of Congress, the first Wednesday in December, and shall then and there proceed to execute the duties and services enjoined upon them by the Constitution of the United States, in the manner therein prescribed."

"SEC. 2830. If any one or more of the electors chosen by the people shall fail from any cause whatever to attend at the appointed place at the hour (four p. m.) of the day prescribed for their meeting it shall be the duty of the other electors immediately to proceed by ballot to fill such vacancy or vacancies."

It is immaterial, so far as affects the jurisdiction of the returning board, whether the act of 1870 relating to the appointment of presidential electors is repealed or not. If repealed, there is no law in Louisiana for the appointment of presidential electors; if not repealed, then the canvass of the returns cast for such electors

must be made by the governor, in the presence of the secretary of state, the attorney-general, a judge of the district in which the seat of government may be established, or any two of them, as required by the act of 1870, and in making such canvass they would be confined to an ascertainment of the persons elected, according to the returns, without authority to reject votes. In no event can the returning board have jurisdiction of the returns of electors of President and Vice-President, and their canvass of the same is therefore a nullity, and entitled to no respect from any one. In another aspect it may be important to determine whether the act of 1872 is repealed, for, if it is, the statutes of the State provide no mode of filling vacancies in the electoral college, and it is understood that two of the electoral candidates on the republican ticket held offices of trust or profit under the United States at the time of the election, and could not therefore be appointed electors.

Other objections were made to the jurisdiction of the returning board: that it was anti-republican; that it was in conflict with the constitution of the State, in that it undertook to exercise judicial functions and in that with only four members it was not legally constituted.

The election law declares: "That five persons, to be elected by the senate from all political parties, shall be the returning officers for all elections in the State, a majority of whom shall constitute a quorum, and have power to make the returns of all elections. In case of any vacancy by death, resignation, or otherwise, by either of the board, then the vacancy shall be filled by the residue of the board of returning officers."

The present board consists of only four members, to wit: J. Madison Wells, T. C. Anderson, G. Casanave, and Louis M. Kenner, one of whom, T. C. Anderson, was a candidate for the State senate at the recent election on the republican ticket. All are members of the republican party. They are the same persons who constituted the returning board in 1874 and canvassed the election returns of that year, and of whom a committee of the House of Representatives of the United States, composed of Messrs. HOAR, WHEELER, FRYE, FOSTER, Phelps, Marshall, and Potter, after careful investigation of its action, said: "We are constrained to declare that the action of the returning board, on the whole, was arbitrary, unjust, and, in our opinion, illegal."

The vacancy in the board, occasioned by the resignation of Oscar Arroyo, in December, 1874, has never been filled, although repeated applications by the representatives of the democratic-conservative party of the State and its candidates have been made to the board to fill the same. The foregoing committee of the House of Representatives, commenting on the failure of the board to fill the vacancy in 1874, when it occurred, said: "Your committee think the law as to the constitution of the board was not complied with." If this view be correct the board is not so constituted as to have authority to act at all.

The entire clerical force appointed by the board at its present session to compile the votes cast is also republican, and the board refused an application to appoint any clerk or to allow any person of the opposite party to be present to witness the compilation, and even excluded the United States supervisors of election under the act of Congress.

The laws of Louisiana require a registration of voters every two years by officers appointed by the governor of the State; the registration to commence the last Monday of August preceding the general election in November. The election law of the State contains the following provisions for conducting the election, making returns, &c., to wit:

"SEC. 26. *Be it further enacted, &c.*, That any parish, precinct, ward, city, or town in which, during the time of registration, or revision of registration, or on any day of election, there shall be any riot, tumult, acts of violence, intimidation and disturbance, bribery or corrupt influences at any place within said parish, or at or near any poll or voting-place, or place of registration or revision of registration, which riot, tumult, acts of violence, intimidation and disturbance, bribery or corrupt influences shall prevent, or tend to prevent, a fair, free, peaceable, and full vote of all the qualified electors of said parish, precinct, ward, city, or town, it shall be the duty of the commissioners of election, if such riot, tumult, acts of violence, intimidation and disturbance, bribery or corrupt influences occur on the day of election, or of the supervisor of registration of the parish, if they occur during the time of registration or revision of registration, to make in duplicate and under oath a clear and full statement of all the facts relating thereto, and of the effect produced by such riot, tumult, acts of violence, intimidation and disturbance, bribery or corrupt influences in preventing a fair, free, peaceable, and full registration or election, and of the number of qualified electors deterred by such riots, tumult, acts of violence, intimidation and disturbance, bribery or corrupt influences, from registering or voting, which statement shall also be corroborated under oath by three respectable citizens, qualified electors of the parish. When such statement is made by a commissioner of election or supervisor of registration he shall forward it in duplicate to the supervisor of registration of the parish; if in the city of New Orleans, to the secretary of state, one copy of which, if made to the supervisor of registration, shall be forwarded by him to the returning officers provided for in section 2 of this act which he makes the returns of election in his parish. His copy of said statement shall be so annexed to his returns of election by paste, wax, or some adhesive substance that the same can be kept together, and the other copy the supervisor of registration shall deliver to the clerk of the court of his parish for the use of the district attorney."

"SEC. 13. *Be it further enacted, &c.*, That it shall be the duty of the commissioners of election at each poll or voting place to keep a list of the names of the persons voting at such poll or voting-place, which list shall be numbered from one to the end; and said list of voters, with their names and numbers as aforesaid, shall be signed and sworn to as correct by the commissioners immediately on closing of the polls, and before leaving the place, and before opening the box. If no judge or justice of the peace or other person authorized to administer such oath be present to do so, it may be administered by any voter. The votes shall be counted by the commissioners at each voting-place immediately after closing the election and without moving the boxes from the place where the votes were received, and the counting must be done in the presence of any bystander or citizen who may be present. Tally lists shall be kept of the count; and after the count the ballots counted shall be put back into the box and preserved until after the next term of the criminal or district court, as the case may be; and in the parishes, except Orleans, the commissioners of election, or any one of them selected for that purpose, shall carry the box and deliver it to the clerk of the district court, who shall preserve the same as above required; and in the parish of Orleans the box shall be delivered to the clerk of the first district court for the parish of Orleans, and be kept by him as above directed."

"SEC. 43. *Be it further enacted, &c.*, That immediately upon the close of the polls on the day of election, the commissioners of the election at each poll or voting place shall proceed to count the votes, as provided in section 13 of this act, and after they shall have so counted the votes and made a list of the names of all the persons voted for, and the offices for which they were voted for, and the number of votes received by each, the number of ballots contained in the box, and the number rejected, and the reasons therefor, duplicates of such lists shall be made out, signed, and sworn to by the commissioners of election of each poll, and such duplicate lists shall be delivered, one to the supervisor of registration of the parish, and one to the clerk of the district court of the parish, and in the parish of Orleans to the secretary of state, by one or all of said commissioners in person, within twenty-four hours after the closing of the polls. It shall be the duty of the supervisors of registration, within twenty-four hours after the receipt of all the returns for the different polling places, to consolidate such returns to be certified as correct by the clerk of the district court, and forward the consolidated returns, with the originals received by him, to the returning officers provided for in section 2 of this act, the said report and returns to be inclosed in an envelope of strong paper or cloth, securely sealed, and forwarded by mail. He shall forward a copy of any statement as to violence or disturbance, bribery or corruption, or other offenses specified in section 26 of this act, if any there be, together with all memoranda and tally lists used in making the count and statement of the votes."

Section 2 declares that, "Within ten days after the closing of the election, said returning officers shall meet in New Orleans to canvass and compile the statements of votes made by the commissioners of election, and make returns of the election to the secretary of state. They shall continue in session until such returns have been compiled. The presiding officer shall at such meeting open, in the presence of the said returning officers, the statements of the commissioners of election, and the said returning officers shall, from said statements, canvass and compile the returns of the election in duplicate; one copy of such returns they shall file in the office of the secretary of state, and of one copy they shall make public proclamation by printing in the official journal and such other newspapers as they may deem proper, declaring the names of all persons and officers voted for, the number of votes for each person, and the names of the persons who have been duly and lawfully elected. The returns of the elections thus made and promulgated shall be *prima facie* evidence in all courts of justice and before all civil officers, until set aside after a contest according to law, of the right of any person named therein to hold and exercise the office to which he shall by such return be declared elected. The governor shall, within thirty days thereafter, issue commissions to all officers thus declared elected, who are required by law to be commissioned."

"SEC. 3. *Be it further enacted, &c.*, That in such canvass and compilation the returning officers shall observe the following order: They shall compile first the statements from all polls or voting-places at which there shall have been a fair, free, and peaceable registration and election. Whenever, from any poll or voting place, there shall be received the statement of any supervisor of registration or commissioner of election, in form as required by section 26 of this act, on affidavit of three or more citizens, of any riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences, which prevented, or tended to prevent, a fair, free, and peaceable vote of all qualified electors entitled to vote at such poll or voting-place, such returning officers shall not canvass, count, or compile the statements of votes from such poll or voting-place until the statements from all other polls or voting-places shall have been canvassed and compiled. The returning officers shall then proceed to investigate the statements of riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences at any such poll or voting-place; and if from the evidence of such statement they shall be convinced that such riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences did not materially interfere with the purity and freedom of the election at such poll or voting-place, or did not prevent a sufficient number of qualified voters thereat from registering or voting to materially change the result of the election, then, and not otherwise, said returning officers shall canvass and compile the vote of such poll or voting-place with those previously canvassed and compiled; but if said returning officers shall not be fully satisfied thereof, it shall be their duty to examine further testimony in regard thereto, and to this end they shall have power to send for persons and papers. If, after such examination, the said returning officers shall be convinced that said riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences did materially interfere with the purity and freedom of the election at such poll or voting-place, or did prevent a sufficient number of the qualified electors thereat from registering and voting to materially change the result of the election, then the said returning officers shall not canvass or compile the statement of the votes of such poll or voting-place, but shall exclude it from their returns: *Provided*, That any person interested in said election by reason of being a candidate for office shall be allowed a hearing before said returning officers upon making application within the time allowed for the forwarding of the returns of said election."

Under section 2 of the foregoing provisions, it will be seen that the duty of the board of returning officers is similar to that of State canvassing boards in most of the other States of the Union—simply "to canvass and compile the statements of the commissioners of election," and proclaim the result; and this is the whole duty of the returning board, unless the commissioners of election, or the supervisor of some parish, impose upon it a further duty, as provided in sections 26 and 43. In commenting upon the powers of the returning board, we avail ourselves of the able argument of Judge Spofford made before it.

No one has the right to attack the returns from any poll, ward, or parish in the State on account of undue influence, intimidation, or other acts of violence, unless the foundation therefor be first laid by the statement of the commissioners of election at the particular poll, if the acts occurred on election day, or of the supervisor of registration of the parish, if they occurred during registration, as provided in sections 26 and 43. The board has no legal authority to receive or give effect to statements of outside parties till the proper commissioners of election and supervisor have spoken.

Nor has the board been invested with the power to institute complaints against any poll *ex officio* or of its own motion. It cannot blot out or fail to count a solitary vote returned unless a legal foundation has been laid for inquiry *by the supervisor of the parish where the vote was cast, or by one of the commissioners of election reporting through such supervisor;* and even *they* (the supervisor and commissioners) can only lay a foundation for inquiry in the board by making and forwarding in the prescribed manner their official "statements" contemporaneously with their returns, and in the very form set forth by section 26 of the act in question. Challenging the votes of whole cities and parishes by unofficial persons, even though they are candidates, is a startling and lawless innovation.

No outside protest can be entertained, because even a *supervisor's* "statement" can receive no consideration by the board, but must be wholly disregarded, unless made at a time and in a manner which no outside party could possibly comply with. His "statement," or that of his subordinate commissioner, must form an integral part of his return and official report; it cannot be made up at a different time and place from the return to which the law requires it to be attached "by paste, wax, or some other adhesive substance," and a duplicate thereto must be lodged by him with the clerk of the court *of his parish*. It must be made under oath. It must be "a clear and full statement of *all the facts* and of the effect produced thereby."

Such a statement, so annexed and sent by mail, is the only kind of statement the board can notice at all so as to institute an inquiry into intimidation, &c. The intent of the law is plain and indisputable, that all the supervisors should be engaged simultaneously in their several parishes in completing their returns and statements on the spot where the election was held, without communication with each other or with persons beyond the parish, and before they can obtain information of what has been done in other parishes or of the general result.

And the reason for these minute, mandatory, and imperative provisions is equally obvious. It was precisely to shut out from consideration by the returning board all such *ex post facto* complaints as have been trumped up and illegally thrust in here at the last moment by Mr. Kellogg, Mr. Packard, Mr. Brewster, and even by some of the supervisors themselves. The law has not been complied with. Most of the supervisors who have put in complaints have *not* written them at the proper time and in the proper parish; they have *not* annexed them to their returns, sealed and sent them by mail. They have brought down their returns to this city with no statement so annexed, but have patched up statements here at an improper time and in an improper place. They could only fulfill duties *according to law* by finishing their returns, attached statements and all, and mailing them, sealed up in one envelope, at one of their parish post-offices, within the time required by law.

It is appalling to think that statements thus made contrary to law, after the result of the election through the State was known with approximate accuracy, made

as an after-thought by disappointed candidates and their friends, with an evident view to cast a drag-net of suspicion over parishes enough to reverse the emphatic verdict of the people, made, too, at so late a day, and so great a distance from many of the parishes struck at, that it is impossible to have any fair investigation, should receive consideration.

Commenting upon the foregoing provision of the Louisiana statute, Messrs. GEORGE F. HOAR, W. A. WHEELER, and W. P. FRYE, in their report, made February 4, 1875, said:

"Upon this statute we are all clearly of opinion that the returning board has no right to do anything except to canvass and compile the returns which were lawfully made to them by local officers, except in cases where they were accompanied by the certificates of the supervisor or commissioner provided in the third section. In such cases the last sentence of that section shows that it was expected that they would ordinarily exercise the grave and delicate duty of investigating charges of riot, tumult, bribery, or corruption, on a hearing or the parties interested in the office. It never could have been meant that this board, of its own motion, sitting in New Orleans, at a distance from the place of voting, and without notice, could decide the right of persons claiming to be elected."

* * * * *

"There is no more dangerous form of self-delusion than that which induces men in high places of public trust to violate law, to redress or prevent what they deem public wrongs."

These references to the report of the congressional committee upon the action of this same returning board in 1874, and its construction of the statute, are made that the public may know how this board and its rulings were regarded by prominent gentlemen, one of them a candidate for Vice President at the recent election, at a time when its decision did not affect a presidential election.

We regard it as indisputable that the returning board has no jurisdiction to inquire into and reject the returns from any voting place in the State on account of intimidation, acts of violence, or other causes mentioned in the statute, unless the foundation for such inquiry and rejection is laid at the time and in the manner provided by the statute.

In no case did the supervisor of registration deliver to the clerk of the court of his parish, as required by section 26, a duplicate statement, made and sworn to by the commissioners of election and corroborated by three citizens, of any riot, tumult, acts of violence, intimidation, and disturbance, bribery, or corrupt influences, and of the facts relating thereto occurring on the day of election, nor any like statement of his own that any such acts occurred during the time of registration or the revision of registration. When the returns were opened by the returning board such statements were found among the papers in a few instances, but not in relation to the parishes of either Ouachita, Morehouse, East Baton Rouge, East or West Feliciana, and such were the manifest efforts on the part of the officers of election to conceal their acts and confuse and mislead persons interested in a proper investigation of the facts relating to the election that it was impossible to determine whether any such statements had been made by the commissioners of election or the supervisor of registration and attached to the returns of the supervisor in any parish in the State at the time and in the manner required by sections 26 and 43.

This fact leaves the returning board without jurisdiction to inquire into acts of violence, &c., at the election or during registration, and with no other duty to perform except to canvass and compile the votes returned, as the returning officers of any other State would do; and as the returns opened by them show a majority for the Tilden electors, it ought to be an end of all controversy on the subject. But as the board, in the face of these facts, has come to the extraordinary conclusion to declare that the Hayes electors have a majority, it is proper to look further into its action.

The first meeting of the board attended by us was held November 20, at which an application in behalf of the candidates on the democratic-conservative ticket that all the proceedings of the board should be public, and that interested candidates should have leave to be present, by themselves or counsel, at the opening of the returns, with the right to inspect the same, was refused, and certain rules were adopted, against several of which protests were filed, and particularly against rule 9, which declared that:

"9. No *ex parte* affidavits or statements shall be received in evidence except as a basis to show that such fraud, intimidation, or other illegal practice had at some poll requires investigation; but the returns and affidavits authorized by law, made by officers of election or in verification of statements as required by law, shall be received in evidence as *prima facie*."

Under this rule several hundred *ex parte* affidavits were prepared and sworn to in New Orleans charging intimidation and other illegal acts in distant parishes, were then put into the envelopes inclosing the supervisor's consolidated returns, which had been brought to the city of New Orleans and kept open for the purpose. This was done to support statements of intimidation or other illegal acts interpolated by supervisors, long after their consolidated returns had been made out and sworn to as correct and been filed with the proper district clerk without any protests or allegation of intimidation or other acts of violence.

The proceedings of the board in executive session, to which we were admitted, consisted in opening the returns from each parish and examining the votes for presidential electors. If no protest or objection appeared among the papers and there was no outside protest from any one, the returns were sent to a private room to be tabulated by the clerks, all of whom were republicans, who kept their action secret. If any protest was found among the papers or from outside parties, the returns were laid aside, to be afterward considered by the board in secret. In the few cases in which there were charges of fraud, intimidation, or other illegal acts, the candidates or their attorneys were permitted to take copies of the charges, and testimony taken on written interrogatories was submitted in regard to such parishes.

December 2, after all the returns had been opened, the board went into secret session, and we were not permitted to see the compilation of returns already made, nor to know what rules the board adopted in passing upon contested cases, nor the processes by which it arrived at results.

We have been furnished a triplicate, or a certified copy of the duplicate statement of the commissioners of election at each voting-place in the State, from which has been compiled a consolidated statement of the entire vote of the State for presidential electors.

From this statement, which we believe to be accurate, the majority for the highest Tilden elector over the lowest Hayes elector is 8,957, and the majority for the lowest Tilden elector over the highest Hayes elector is 6,300.

The returns in our possession correspond precisely in most cases with those opened by the returning board. The difference in the aggregate arises mainly from the fact that the board did not have all the returns before it. The supervisors, all of whom were republicans, many of them employés in the custom-house in New Orleans, some non-residents of the State, and one of them under indictment for murder, withheld the statements of the commissioners of election in some instances where democratic majorities were given, amounting in the aggregate to about 1,500 votes. The returning board refused to receive certified copies of the duplicates of these missing returns filed in the offices of the secretary of state and the clerks of the district courts, or to take any effective measures to procure the originals.

The returning board, in proclaiming the result of the vote for electors, makes no statement of the votes cast in the several parishes, but simply announces the aggregate vote for each elector in the State, giving the Hayes electors majorities varying from 4,626 to 4,712.

To accomplish which they disfranchised 13,350 democratic and 2,042 republican voters. This announcement is made in the face of the fact that the statements made by the commissioners of election showed a majority ranging from 6,300 to 8,957 for the Tilden electors. No attempt is made to give a reason for this arbitrary action of the board, nor is there any statement to show what votes were counted and what rejected. As well might the officers canvassing the returns of the election for presidential electors in Ohio or Massachusetts declare the Tilden electors in those States elected, in the face of the fact that the returns showed a majority for the Hayes electors. We have shown that it is questionable whether the Legislature of Louisiana has made provision for the appointment of electors at all; that, if it has made such provision, it has not vested the returning board with authority to canvass the returns of the votes cast for such officers; and that if it were possible to construe the statute as conferring such authority on the returning board, then the same statute limits the authority of the board to the canvass and compilation of "the statements of votes made by the commissioners of election," without authority to reject any on account of intimidation or other acts of violence, unless the foundation therefor be first laid as provided in the statute; and the evidence does not disclose that such foundation was laid in any instance. There is, however, evidence of attempts surreptitiously to lay such foundation after the consolidated returns were completed, and that the supervisors of election in many instances unlawfully withheld their returns for that purpose and interpolated among them *ex parte* affidavits, taken in secret in New Orleans, before a United States commissioner, which the board has no jurisdiction to consider.

The evidence taken on both sides, so far as it has been accessible to us, discloses a state of lawlessness in certain parishes not in the State generally, about the cause of which parties are not agreed. The democrats attribute it to the inefficiency and imbecility of the State government, which they allege to be a usurpation, resting wholly for support on the Federal Army, without the confidence or respect of the people, and without the disposition to prevent or punish crime which they can pervert to political uses. Such a state of things, as might be expected, has led to disorder, and, in some instances, to the most shocking barbarities.

The republicans, on the other hand, attribute the lawlessness to the hostility of the white against the colored race, and as largely due to politics.

The murders and outrages which have been brought to our notice are frequently committed by persons of the same race upon each other, and in a large majority of cases have no political significance.

Many such cases were brought to the notice of the board by *ex parte* affidavits, without regard to the time of their occurrence, and when they did not have the slightest connection with the recent election. Strangely enough, it is assumed by the republicans, who have had complete control of the State government for years, that if they could show that lawlessness prevailed in certain localities, and crime went unpunished that those facts furnished a reason why they should be continued in power, notwithstanding the large majority of ballots cast against them.

Another assumption of the republicans is that all the colored men in the State are necessarily republicans. This is by no means true. We were visited by a large number of colored persons from different parts of the State, including the alleged disturbed districts, who made speeches and took an active part in the canvass in favor of the democratic ticket, and who gave, among other reasons for so doing, that they had been deceived by republican officials, who had proved dishonest and corrupt, had robbed them of their school-money, and burdened them with unnecessary taxes, and that they believed it for the interest of the colored race to unite their fortunes with the whites, whose interests, like their own, were identified with the State.

It is certain that thousands of colored persons voluntarily and actively supported the democratic ticket. The entire vote of the State at the recent election is about fifteen thousand greater than ever before; and even in the parishes where intimidation is charged it exceeds, in the aggregate, any previous vote. The congressional committee, which, it is understood, will soon visit the State, armed with authority to send for persons and papers, and inquire into all the facts connected with the recent election and the action of the returning board, will have greater facilities for arriving at the truth than we possess; but with the law and such facts before us as have been disclosed by the action of the returning board, we do not hesitate to declare that its proceedings as witnessed by us were partial and unfair, and that the result it has announced is arbitrary, illegal, and entitled to no respect whatever.

Fifteen years ago, when Fort Sumter was fired upon by men who sought a disruption of the Union, a million patriots, without regard to party affiliations, sprang to its defense. Will the same patriotic citizens now sit idly by and see representative government overthrown by usurpation and fraud? Shall the will of forty millions of people, constitutionally expressed, be thwarted by the corrupt, arbitrary, and illegal action of an illegally constituted returning board in Louisiana, whose wrongful action heretofore, in all respects similar to its present action, has been condemned by all parties? It is an admitted fact that Mr. Tilden received a majority of a quarter of a million of the votes at the recent election. This majority is ready and willing to submit to the rule of the minority when constitutionally entitled to demand such submission, but is it willing that by an arbitrary and false declaration of votes in Louisiana the minority shall usurp power? These are dark days for the American people when such questions are forced upon their consideration. If it were true, as some insist, that neither the white nor the colored voters have in all instances been afforded an opportunity to give free expression to their wishes at the ballot-box, shall we, by sustaining a fraudulent and illegal declaration of the votes cast, stifle the voice of the millions of voters who have freely expressed their choice, and thus seek to correct a great wrong by committing another immeasurably greater wrong?

Can we sanction such action of the Louisiana returning board, and thereby form a precedent under the authority of which a party once in power may forever perpetuate its rule, and so end constitutional liberty? Shall such be the fate of this Republic at the beginning of the second century of its existence, is the momentous question now presented for the determination of the American people.

JOHN M. PALMER.
LYMAN TRUMBULL.
WILLIAM BIGLER.
GEORGE B. SMITH.
GEORGE W. JULIAN.
P. H. WATSON.

NEW ORLEANS, *December* 6, 1876.

Mr. HALE. (interrupting.) I rise to a point of order. I submit that the hour has expired.

The SPEAKER. The first hour has expired and the Chair now recognizes that the paper is being read in the first fifteen minutes, which are under the control of the gentleman from Indiana, [Mr. HOLMAN,] and the balance of the thirty minutes will then be under the control of the gentleman from Maine, [Mr. HALE.]

Mr. HOLMAN. I will ask unanimous consent that the reading of the balance of the paper be dispensed with.

No objection was made, and it was so ordered.

Mr. HOLMAN. I understand that there is now a half-hour allowed for debate.

Mr. O'BRIEN. I do not understand that there was any agreement that the time for debate should be extended for half an hour.

The SPEAKER. The Chair understood that the time was extended thirty minutes, one-half of it to be under the control of each side of the House.

Mr. O'BRIEN. I did not understand that any such agreement was made. It is not that I object to the extension of time, but I want a longer period.

Mr. HOOKER. The objection certainly comes too late.

The SPEAKER. It is too late to make objection now. The Chair will recognize the gentleman from Maine [Mr. HALE] as now entitled to the floor for fifteen minutes.

Mr. HOLMAN. I understand that there is now half an hour for debate.

The SPEAKER. There is half an hour for debate, and the first fifteen minutes will be under the control of the gentleman from Maine, [Mr. HALE.]

Mr. HALE. Mr. Speaker, I do not propose to occupy the whole of the very limited time now allowed to me. If I had the full fifteen minutes, or much more, I could not go into the merits of this great question. One or two things I wish to say in answer to questions put to me by the gentleman from New York. [Mr. COX.] There are one or two special matters in the knowledge of other republican members in relation to this question, to whom I shall yield a portion of the time.

First, I wish to say that if the gentlemen on the other side of the House are really anxious for a fair investigation into the condition of the Southern States, Louisiana included, here is an excellent opportunity to prove it by granting to the Senate the amount of appropriation that that body has in its discretion asked to conduct its investigation. I leave that for what it is worth, for gentlemen on the other side must decide how they will settle this question, their majority here being very large.

One thing more. I congratulate the other side of the House on their new-born zeal for open investigation. The country witnessed last winter committee after committee sitting in this Capitol under a system of espionage and examining *ex parte* testimony secretly. Now the gentleman from New York, voicing, as he claims, the sentiment of gentlemen upon the other side, demands that everything relating to this investigation shall be open and aboveboard. That is the position we have always held. In relation to this matter of the action of the returning board of Louisiana, it is a marvel to me that any member on this floor should dare to say that the sessions of the returning board of Louisiana were anything but open and free, when the very beginning of that remarkable document which has been partially read here, emanating from the democratic gentlemen who were sent to Louisiana by the democratic national committee, shows that they were present and witnessed the canvass, and I assert that there was never an hour of session after the board met that the committees on each side were not present.

There never was a time when a contested parish was reached that the whole counsel of democrats selected by the party were not invited to be present to scrutinize, and examine, and make full copies. I know of what I speak because I was there myself observing from day to day. It was open and free as daylight, and could afford to be, as there was at the bottom, as was shown, a strong and unanswerable case.

Now I do not know what will be the result of this investigation, so far as the report of gentlemen on the other side of the House shall go to show it. But with all my desire for a full examination into the situation in Louisiana, with my knowledge of democratic methods of examination, I predict that when the committee returns and the report of the majority of that side of the House is seen it will be found to follow the track indicated by the report of the democratic observers, which has been partly read here, and in which nineteen-twentieths of the space is taken up by technical quibbles and declarations that there was no election in Louisiana, that somebody else should have counted the vote, that papers did not get rightly dated and were not opened on the right day, consideration of red tape and sealing-wax, and the opening of returns, while but a finger's length is given to the great underlying question in Louisiana, by which a whole people have been defrauded of their rights in parts of the State.

The gentleman from New York [Mr. COX] asks one other question: Why did not this board appoint a democrat? This board when first coming into the exercise of its duties in 1873 was made up under the statute of Louisiana, which declared that all parties should be represented upon the board. There was upon it one gentleman representing the liberal party, one gentleman representing the conservative party, and three representing the republican party. Those were the titles of all the parties in Louisiana at the time.

When the next occasion for the exercise of their duties came around it was found that the two gentlemen who were appointed as not being republicans had come back with the republicans. They were Governor Wells and Mr. Anderson, who represent, I am glad to say, a most respectable element in Louisiana, who have of late acted with and added strength to the republican party. Then one of the gentlemen originally elected as a republican resigned his place in order that a democrat might be appointed. The place was offered to an eminent gentleman of the bar, a democrat, Hon. John M. Sandige, who declined it. Another, Mr. Ernest Arroyo, was elected and he resigned in the midst of the work of the board. When next the time came around, this year, for the board to exercise its powers and duties the place was offered to half a dozen different democrats, all of whom declined. The board naturally felt that it had not been met in a fair spirit in its efforts to fill the vacancy.

Mr. COX. Will the gentleman give the names of those gentlemen who declined.

Mr. HALE. I have given one or more names.

Mr. COX. Give the names of those who last declined.

Mr. HALE. I cannot give the names.

Mr. COX. I thought so.

Mr. HALE. I have the information directly from the board.

Mr. GIBSON. The gentleman is entirely mistaken; not a democrat was offered the place.

Mr. ELLIS. Will the gentleman allow me——

Mr. HALE. I have not the time.

Mr. ELLIS. I will move that the time of the gentleman be extended.

Mr. HALE. I must yield a portion of my time to other gentlemen and cannot be further interrupted. So the board proceeded with four members, the same number being required for a quorum and to arrive at a result as would have been required had the board been full. The democratic party selected a single member and sought to force him upon the board, which was divided as to selecting him and went on with its duties. But as I said the same number was required for a quorum and to determine the result as if another member had been appointed.

I must not attempt a review of the general condition of things in Louisiana. All I can say is to repeat what I have before affirmed, that any fair investigation cannot fail to bring out the bottom facts. We have listened to column after column of reports from the committee representing the other side. But the main question is avoided and dodged and sought to be sunk under technicalities and under quibbles.

I tell these gentlemen that investigation there will disclose such a condition of things that even the gentleman from New York, [Mr. COX,] who, as he says, has not yet felt shame in his life, will blush blood-red with shame at the atrocities of certain men in his party in that State. I tell them that in many single parishes there have been acts of bloodshed and of murder, and for political opinion's sake, one-tenth part of which at any time within the last hundred years would have revolutionized the politics of the British Empire. Yet we are here treated to technicalities and told that there was no election in Louisiana. It is true that we found the truth out, and I trust that gentlemen on the other side will not balk at this paltry $20,000, but will allow this investigation to be made thoroughgoing and satisfactory to the American people.

I now yield to the gentleman from Massachusetts [Mr. HOAR] for a few minutes.

Mr. HOAR. I do not propose of course to engage in any discussion of this general question. I should not have risen at all but for the allusion in the document just read to a report signed by myself, the honorable gentleman from New York, [Mr. WHEELER,] and the honorable gentleman from Maine [Mr. FRYE] who sits near me.

It is difficult to believe that the gentlemen whose names are signed to that paper, some of whom I have known and respected, could have known its contents, or, if they knew its contents, could have known the contents of the document which they undertake to cite.

That paper grossly perverts and misstates to the American people the document which it assumes to quote. It picks out one or two sentences, mixing them up with sentences from another document coming from another quarter; and thus it is made to appear that that committee said something or came to some conclusion in derogation of the honesty or honor of the returning board of the State of Louisiana. Nothing can be found in that report imputing any fault to that board, except this: We declare that the returning board, following the precedents set them by their democratic predecessors in the same office in 1872, erred in one particular in a construction of their legal powers, which construction was clearly necessary to remedy a defect in the law. We held that where the people of a particular parish had been set upon by armed bands, prevented from making a canvass, prevented from having discussion, prevented from going to the polls and casting their votes, still, unless a particular officer certified to those facts, although he might have been intimidated himself or might have been a part of the conspiracy, there was no law in the State of Louisiana to remove that difficulty.

Mr. ELLIS. No government, the gentleman means.

Mr. HOAR. No law in the State of Louisiana to remove that difficulty. There should have been such a law. Does anybody deny it? Is it an imputation of dishonor upon the gentlemen of the returning board that, following the democratic precedent, they gave such a construction to the law in that particular as removed that clear defect?

Now as to the question in regard to the absence of government, we did not say that Governor Kellogg was not lawfully elected governor of that State. On the contrary, we declared that we believed he was so elected; and this House so recognized him on our recommendation. We said that the democratic party in 1872, conspiring with Governor Warmoth, had destroyed the legal evidence of Governor Kellogg's election, and that therefore we were obliged to resort to the less satisfactory methods which we had followed for ascertaining the real will

of that people. It is true that we pointed out to the American people the grave danger that now exists. We said that it was a serious thing that the true evidence of the election of a State government should be destroyed, as it had been by the democrats of Louisiana, thus leaving us to grope in the dark in order to arrive at the true will of the people. We said, further, that the democratic party of the North, if they would but cause it to be understood that they would have no political affiliation with men who would commit murder for political purposes, could end this whole trouble in a month.

Now the question to-day is, what is the true will of the majority of the legal voters of the State of Louisiana? It is not a question of paper, of parchment, or of statute. Is it true, gentlemen on the other side of the House, that there are counties and parishes in the United States where men cannot cast their votes because they are assailed with murder and assassination? Let us know that. If it be not true, we shall all rejoice; and if the ascertainment that it is not true results in the election of a democratic President, we shall all rejoice that the stigma is removed.

[Here the hammer fell.]

Mr. HOLMAN. I yield five minutes to the gentleman from Louisiana, [Mr. SPENCER.]

Mr. SPENCER. Mr. Speaker, as a representative of the people of Louisiana upon this floor, I cannot consent to sit in silence and allow to pass without challenge the charges which have been made upon this floor this morning by gentlemen on the opposite side. Sir, I unite with those gentlemen and with every man upon this floor who desires an investigation. The people of Louisiana want an investigation of the election which was held there last November. That investigation cannot be too thorough, it cannot be too complete for us. And I now venture the prediction that when this investigation is made, when the bottom facts are found, it will be shown, as the mass of this nation already believe, that that State was carried fairly and freely by the democratic party.

Mr. Speaker, the old hue and cry of intimidation is raised again. The same thing was done in 1874. The same cry of murder, rapine, and violence went up after the election of 1874 that goes up now; and this House, then republican, sent its committee to the State of Louisiana to investigate it, with the honorable gentleman from Massachusetts [Mr. HOAR] as its chairman and the gentleman from Ohio [Mr. FOSTER] as chairman of the subcommittee. What did that committee report? They came back here and reported to this House that they had investigated the question of intimidation; that the republican party who had control had failed to show that there was any intimidation of the blacks by the whites, but that it had appeared that intimidation had been practiced by the colored republicans upon the colored democrats. I say now—and I am perfectly willing to rest upon the proof which will be taken by this committee—that the same state of facts will be disclosed again.

Why, Mr. Speaker, we are not afraid of investigation. We court it. The whole machinery of the election law was in the hands of our adversaries. In the so-called bull-dozed parishes—East Feliciana, East Baton Rouge, West Feliciana, Ouachita, and Morehouse—United States troops were stationed at almost every poll on the day of the election; and how do you account for the fact that these are the very parishes where the colored men voted most solidly the democratic ticket? Take the parish of East Feliciana; take the parish of Ouachita. There the colored men were under the protection of the United States Army on the day of the election, and it only added to the solidity with which they voted the democratic ticket. Sir, coming from the parish of Concordia, one of the largest and most densely populated colored parishes in the State, I do not hesitate to say that, if we could have had five hundred United States soldiers stationed at the polls on the occasion of that election, it would have made a difference of 1,000 votes in favor of Mr. Tilden and General Nicholls.

Why, sir, hundreds of colored men in that parish—because I was born among them and they have known me from my infancy—hundreds of colored men in that parish came to me and told me they desired to vote the democratic ticket, but they did not dare to do it for their lives. They were threatened with social ostracism, expulsion from their churches, and it went even so far that their leaders openly and publicly advised the wives of those men who sought to join the democratic party to quit them, and in many instances it was done.

Those are the facts, sir; and yet the supervisor of that parish, a republican, made his return to the returning board, and what did he do? He excluded three of the polls in that parish from the count because of this intimidation and this violence practiced by republican colored men on democratic colored men! That fact was sanctioned by the oath of the three commissioners at every one of those polls. But did the returning board notice it? No; and yet return was made strictly in conformity with law. It was supported by the oath of the supervisor of registration that there had been such intimidation of colored men upon colored men that there was no freedom or fairness in the election. It was supported by the oath of the commissioners of election. It was supplemented by the oath of more than a hundred citizens, both republicans and democrats; and yet the returning board did not deign to notice it. O, no; because that affected the vote of the republican party.

Now, Mr. Speaker ——

Mr. NASH. Will the gentleman allow me to ask him a question?

Mr. SPENCER. Mr. Speaker, it is a very remarkable thing to me that these gentlemen, who in 1874 confessed and admitted in a report to this House that the democratic party clearly and honestly carried the State of Louisiana, should now come here and in a fit of virtuous indignation say that the State of Louisiana is essentially and necessarily republican. Did not the gentleman from Ohio, [Mr. FOSTER,] did not the present candidate for Vice-President, [Mr. WHEELER,] did not both of them recognize and report the fact that the democrats had carried the State in 1874? And yet, sir, they talk about intimidation, intimidation when the vote in 1876 is several thousand larger than ever known before.

They talk about the colored people in these parishes of East Feliciana, Baton Rouge, and Morehouse being intimidated! There were United States soldiers there. They were the only parishes where they were at the polls. Yet the result was that the colored men voted solidly for the democratic ticket.

As for that returning board, the record made by the republican party against the very individual men who constitute it is a full answer to everything that they may say upon that subject now.

The SPEAKER. The time of the gentleman from Louisiana has expired.

Mr. HOLMAN. I will extend his time a few minutes longer.

Mr. SPENCER. I do not know that I could better illustrate the character of that returning board than by reading a letter which has been addressed to it by a gentleman from the parish of De Soto; and I will send it to the desk and ask the Clerk to read it.

Several MEMBERS. O, no; let it be printed.

Mr. SPENCER. I ask to have it printed, then, as part of my remarks.

Mr. CONGER. No; let it be read.

The Clerk read as follows:

DE SOTO PARISH, LOUISIANA, *December* 12, 1876.

Hon. J. MADISON WELLS, *President Louisiana Returning Board:*

I have learned that your honorable body has returned me as elected to the lower house of the Legislature from the parish of De Soto. Permit me to return my thanks for the honor conferred, but at the same time permit me to say that I am unwilling to accept the position. I am a republican from the firm conviction that the principles of that party are best for the whole country.

It is also true that I was the regular nominee of the party in the parish of De Soto for the Legislature, and did more than any member of the party in that parish to organize it and advance its interests; but, sir, knowing as I do that I was fairly defeated at the polls, no intimidation or fraud having been practiced by the opposite party at any precinct in the parish, so far as I have been able to ascertain, after a thorough investigation, my self-respect will not permit me to accept the position. I hope you will pardon me for taking a step that, at first glance, may be thought calculated to cast some discredit upon the party with which I have allied myself, but I am a planter not a politician; all my interests are here, but, sir, I cannot believe the good of the State or of the national republican party can be promoted by returning as elected a candidate so clearly defeated as myself.

[Applause and laughter.]

In fact I am convinced that very much of the disturbance that has prevailed throughout the State for several years past is justly attributable to the fact that in many parishes men not elected by the people have been returned elected and maintained in office by the power of the Government. I must believe that you and your associates have been grossly deceived as to the manner in which the late canvass and election in De Soto was conducted, and as to the result.

Very respectfully,

JOHN J. LONG.

Mr. SPENCER. The conduct of the returning board in this case is only a fit conclusion to its action in the same parish in 1874. In 1874 the parish of De Soto was carried by the democratic party by 1,000 majority; and what was done in order to prevent that being counted? The supervisor of registration was one of Mr. Kellogg's appointees, and I wish it understood that there was not an election officer in the State who was not an appointee of Mr. Kellogg. That supervisor took the returns of that parish and deposited them with a lewd woman in the city of New Orleans, and offered them for sale, and in proof of this fact I quote from the report of Hon. GEORGE F. HOAR to the Forty-third Congress, as follows:

So in the parish of De Soto, in which the returns showed a conservative elected by over 1,000 majority, it was alleged that the supervisor of registration had brought the returns to New Orleans, and had left them with a woman of bad character, who offered to produce them on payment of $1,000. The conservative committee took legal proceedings to compel their production; but the court held that it had no jurisdiction to that end. They then caused to be produced before the board the duplicate of those returns from the office of the secretary of state, together with the tally-sheets, poll-lists, &c., filed there according to law. These duplicates corresponded exactly with the alleged result of the compiled returns which the said woman had produced; and of these alleged facts undisputed proof was also submitted to the board. Nevertheless, the board refused to count the vote for that parish.

And I wish to say this, Mr. Speaker: I was born in the State of Louisiana and have lived there all my life; and if anybody knows the people of that State I think I do know them. I took an active part in the canvass during the last election—I was not a candidate—and I say now that, so far as my knowledge extends, and it was extensive, that a freer, fairer election, so far as the white people were concerned, was never held in any State of this Union.

[Here the hammer fell.]

The SPEAKER. But four minutes of the time allowed for debate remain.

Mr. SPENCER. The Chair cut me off in the middle of a sentence. I desired to say that so far as the action of the white people toward the colored people was concerned an election could not be fairer, or freer from intimidation and violence.

Mr. COX. I desire to say that this side of the House did not begin this debate on the merits of this appropriation. And I desire to say

to the gentleman from Maine, [Mr. HALE,] who is now so concerned about investigations—and I say it in all good will in the hope that we may approach these questions with deliberation, moderation, and judgment—that had he been here when these resolutions for investigation were introduced, he might have saved our Speaker the trouble of giving a casting vote to carry them through the House. The gentleman says that copies of returns are all sufficient. I know that copies oftentimes in cases of ejectment, &c., after the mutilation and destruction of the originals are regarded legally as proofs; but they do not always answer the purpose morally. Moreover, I wish to say to the gentleman in correction of another statement that this year there has been no tender of a place on that board to a democrat. Last year a gentleman named Arroyer, a democrat, resigned his place on the board, because he would not be responsible for its fraud and badness. This year the democrats, according to information given me by my friend from Kentucky [Mr. WATTERSON] who was down there, appealed to the board to place on it Dr. Hugh Kennedy, a Union man and a fair man. The request was refused.

And, now, where is the "shame." The shame is in hiding. I have a book here, an unabridged dictionary, from which I find that shame means—

A painful sensation excited by a consciousness of guilt.

[Laughter.]

I have no such feeling on this occasion. The gentleman says that he has felt shame. He knows, then, what shame is. Very well.

Mr. KELLEY. I said you are absolutely shameless.

The SPEAKER. The gentleman from Pennsylvania will preserve order.

Mr. KELLEY. I said no such thing as the gentleman from New York attributed to me. I said he was absolutely shameless.

Mr. COX. I heard no such remark from him, and was not replying to him.

The SPEAKER. The gentleman from Pennsylvania will preserve order.

Mr. COX. The gentleman from Massachusetts [Mr. HOAR] comes here to defend his report, and tells the House that he did not make the objurgatory remarks quoted about this board, or something to that effect. He said his committee never decided that Governor Kellogg was not elected. I do not know that they did so, technically. Nobody charged that, I think. But they took away in their report the rotten foundations on which that election was based. I have here the report of January 14, 1875, and here is what the gentleman and his committee said:

Without now referring to other instances, we are constrained to declare that the action of the returning board, on the whole, was arbitrary, unjust, and in our opinion illegal.

Mr. HOAR. Mr. Speaker, that is not an extract from the report which was signed by myself and Mr. WHEELER.

Mr. COX. The report is submitted by "GEORGE F. HOAR, chairman," and this portion of it is signed by "CHARLES FOSTER, William Walter Phelps, Clarkson N. Potter."

And the report goes on:

The evidence on which the subcommittee base their conclusions not yet being written out, will be submitted hereafter, if it shall be deemed desirable.

Mr. HOAR. I presume the gentleman from New York does not wish to get this wrong. He has been reading from the report written by Mr. Clarkson N. Potter.

Mr. COX. I am reading now what the gentleman from Massachusetts says at the end of the report. I am doing him no injustice:

The committee thereupon voted to adopt the report, and also to report the same to the House with the recommendation that the same be printed and recommitted.

For the committee,

GEO. F. HOAR, *Chairman.*

I did not say that the gentleman from Massachusetts wrote what I was reading a moment ago.

[Here the hammer fell.]

Mr. HOAR. I hope the gentleman from New York will allow me half a minute to explain this.

The SPEAKER. The time of the gentleman from New York has expired.

Mr. HOAR. He certainly does not want this to be misunderstood.

Mr. COX. The gentleman has asked time from me after my own time is gone.

Mr. HOAR. I wish to say that the committee sent a subcommittee to New Orleans, and they made their report.

Mr. COX. I desire to have included in my remarks some extracts from this report.

Mr. HOAR. I can give an explanation in one sentence.

Mr. COX. I would allow you to explain, but my time is gone.

The SPEAKER. The gentleman from Indiana [Mr. HOLMAN] demands the previous question.

Mr. HOAR. That is the style, then, in which you deal with us when we want to state the facts.

Mr. COX. I have no control of the floor now.

Mr. HOAR. I only ask time to utter a single sentence.

The SPEAKER. Is there objection?

Mr. HOLMAN. I hope the gentleman from Massachusetts may have the privilege he asks for.

Mr. CARR. I object.

Mr. HOLMAN. I hope the objection will not be insisted on.

Mr. LUTTRELL. I will object, unless two minutes in reply be allowed to the gentleman from New York, [Mr. COX.]

The SPEAKER. Is there objection to the gentleman from Massachusetts being heard, with that understanding?

There was no objection.

Mr. HOAR. I do not propose to abuse the courtesy of the other side of the House by saying anything which should not be said. I only wish to say that the subcommittee went down first and made their report to the general committee. I, as chairman of the general committee, communicated that report to the House, stating that it was the report of the subcommittee of which Mr. Potter, Mr. FOSTER, and Mr. Phelps were members. It was from that report of the subcommittee that my friend from New York read last. Then the whole committee went down, I myself acting as chairman, and made a report.

Mr. COX. The gentleman will not deny that the committee voted to "adopt the report" of the subcommittee.

Mr. HOAR. O, no! But they stated that they had not seen the evidence, but proceeded to lay before the House the report of the subcommittee.

Mr. COX. I believe two minutes are to be allowed to this side of the House. I will do the gentleman from Massachusetts no injustice. I was reading this sentence:

The committee thereupon voted to adopt the report, and also to report the same to the House, with the recommendation that the same be printed and recommitted.

GEO. F. HOAR,
Chairman.

They say on page 5 of the report:

Without now referring to other instances, we are constrained to declare that the action of the returning board, on the whole, was arbitrary, unjust, and in our opinion illegal, and that this arbitrary, unjust, and illegal action alone prevented the return by the board of a majority of conservative members of the lower house.

And so again in the report, on page 8, it is said:

Indeed it is conceded by all parties that the Kellogg government is only upheld by the Federal military. Withdraw the military and that government will go down. This was true before the 4th of January as well as now.

Now my conclusion is this: that the members of a returning board so tainted with fraud through and through and standing convicted by a republican committee of this House are not the people to refuse us inquiry into the returns. It is not for them to refuse a fair investigation now being demanded by a committee of this House.

Mr. HOLMAN. I now move the previous question.

The previous question was seconded and the main question ordered.

Mr. HOLMAN moved to reconsider the vote by which the main question was ordered; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

The first question was upon the amendment reported by the Committee on Appropriations to the amendment of the Senate, which was read, as follows:

In section 2, strike out "$50,000," and insert in lieu thereof "$30,000."

The question was put; and there were—ayes 119, noes 69.

Mr. HALE. I call for the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 140, nays 82, not voting 67; as follows:

YEAS—Messrs. Adams, Ashe, Atkins, Bagby, John H. Bagley, jr., Banning, Bland, Blount, Boone, Bradford, Bright, John Young Brown, Buckner, Samuel D. Burchard, Cabell, John H. Caldwell, William P. Caldwell, Candler, Carr, Cate, Caulfield, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Collins, Cook, Cowan, Cox, Cutler, Davis, Dibrell, Douglas, Durand, Durham, Egbert, Ellis, Faulkner, Felton, Finley, Forney, Franklin, Fuller, Gause, Gibson, Goode, Goodin, Gunter, Andrew H. Hamilton, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Henkle, Hereford, Abram S. Hewitt, Goldsmith W. Hewitt, Hill, Holman, Hooker, Humphreys, Hunton, Frank Jones, Kehr, Knott, Lamar, Franklin Landers, George M. Landers, Lane, Le Moyne, Levy, Lewis, Lord, Luttrell, Lynde, Mackey, Maish, McFarland, Metcalfe, Milliken, Money, Morgan, Mutchler, Neal, O'Brien, Odell, Payne, Piper, Powell, Rea, Reagan, John Reilly, James B. Reilly, Rice, Riddle, John Robbins, William M. Robbins, Roberts, Savage, Scales, Schleicher, Shakkley, Simmons, William E. Smith, Southard, Sparks, Spencer, Stanton, Stenger, Stevenson, Stone, Swann, Tarbox, Terese, Terry, Thomas, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Waddell, Charles C. B. Walker, Walsh, Warner, Watterson, Erastus Wells, Whitehouse, Whitthorne, James Williams, Jeremiah N. Williams, Wilshire, Benjamin Wilson, Fernando Wood, Yeates, and Young—140.

NAYS—Messrs. John H. Baker, William H. Baker, Ballou, Blair, Bradley, William R. Brown, Horatio C. Burchard, Burleigh, Campbell, Cannon, Cason, Caswell, Chittenden, Conger, Crounse, Davy, Denison, Dobbins, Eames, Evans, Flye, Fort, Foster, Freeman, Frye, Hale, Haralson, Benjamin W. Harris, Hathorn, Haymond, Henderson, Hoar, Hoskins, Hunter, Hyman, Kasson, Kelley, Leavenworth, Lynch, Magoon, MacDougall, McCrary, McDill, Miller, Monroe, Nash, Norton, Oliver, Packer, Page, William A. Phillips, Pierce, Plaisted, Platt, Potter, Pratt, Rainey, Robinson, Rusk, Sampson, Schumaker, Seelye, Sinnickson, A. Herr Smith, Strait, Stowell, Martin I. Townsend, Tufts, Van Vorhes, Wait, Waldron, Alexander S. Wallace, John W. Wallace, White, Whiting, Willard, Andrew Williams, Charles G. Williams, William B. Williams, James Wilson, Alan Wood, jr., and Woodworth—82.

NOT VOTING—Messrs. Abbott, Ainsworth, Anderson, George A. Bagley, Banks, Bass, Beebe, Bell, Blackburn, Bliss, Chapin, Cochrane, Crapo, Culberson, Danford, Darrall, De Bolt, Dunnell, Eden, Garfield, Glover, Hays, Hendee, Hoge, Hopkins, House, Hubbell, Hurd, Hurlbut, Jenks, Thomas L. Jones, Joyce, Kimball, King, Lapham, Lawrence, McMahon, Meade, Mills, Morrison, New, O'Neill, Phelps, John F. Philips, Poppleton, Purman, Miles Ross, Sobieski Ross, Sayler, Singleton, Smalls, Springer, Stephens, Thompson, Thornburgh, Washington Townsend, Gilbert C. Walker, Walling, Ward, Warren, G. Wiley Wells, Wheeler, Wigginton, Wike, Alpheus S. Williams, Willis, and Woodburn—67.

So the amendment to the amendment of the Senate was agreed to.

During the roll-call,

Mr. FOSTER said: I desire to state that my colleague, Mr. GARFIELD, is absent on account of sickness.

The next amendment to the amendment of the Senate was to insert in the fourth line of the second section, after the word "the," "actual and necessary;" so as to make it read: "to defray the actual and necessary expenses," &c.

The amendment was agreed to.

The third amendment reported to the amendment of the Senate was to insert in the fifth line, after the word "elections," the words "and other expenses necessarily incurred."

The amendment was agreed to.

Mr. HOLMAN moved to reconsider the vote by which the amendments to the amendment of the Senate were concurred in; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

The amendments reported from the Committee on Appropriations to the original bill were read, as follows:

In the first line strike out "$21,000" and insert "$30,000" as the appropriation for expenses of House committees;

In line 4 before the word "expenses," insert the word "actual" and after the word "expenses" insert the words "necessarily incurred;"

In the fifth line, after the words "special committees," insert the words "from the House of Representatives;" and

In line 7, after the word "Florida," insert the words "and of the committee of five appointed to proceed to the cities of New York, Philadelphia, Brooklyn, and Jersey City to examine into any alleged fraudulent registration and fraudulent voting for presidential electors and representatives in Congress."

The amendments were agreed to.

Mr. HOLMAN moved to reconsider the vote just taken; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

The amendment of the Senate to the title was read, as follows:

Amend the title so as to read: "An act to provide for the expenses of certain special committees of the House of Representatives and of the Committee on Privileges and Elections of the Senate."

The amendment of the Senate was agreed to.

ORDER OF BUSINESS.

Mr. BURCHARD, of Illinois. I call for the regular order.

The SPEAKER. The regular order being called for, the morning hour will now begin at three o'clock and five minutes, and the first business in order will be the call of committees for reports of a private nature.

Mr. HOLMAN. If a motion is not in order at this time to suspend the rules and go into Committee of the Whole for the purpose of resuming the consideration of the post-office appropriation bill, I will ask unanimous consent that that order be now made.

The SPEAKER. The Chair would rule that that motion is not now in order.

Mr. HOLMAN. I suppose it is not. I ask unanimous consent that that be done, in order that we may finish the bill to-day.

The SPEAKER. The Chair will direct the Clerk to read the rule upon this point.

The Clerk read as follows:

On Fridays, which under Rule 128 are set apart for the consideration of private business, the motion to go into Committee of the Whole House on the Private Calendar takes precedence of the motion to go into Committee of the Whole House on the state of the Union; but upon a failure of the former motion the latter motion may be entertained on those days. If the previous question shall have been seconded upon any pending proposition, under the practice it is not in order to entertain the motion to go into Committee of the Whole until it is disposed of.

The SPEAKER. The Chair will rule that the motion to suspend the rules and go into Committee of the Whole on the post-office appropriation bill is not in order on Friday until after the morning hour.

Mr. HOLMAN. I ask unanimous consent that the House now resolve itself into Committee of the Whole for the purpose of resuming the consideration of the post-office appropriation bill.

Mr. ASHE. I must object until I have submitted some reports from the Committee on the Judiciary.

Mr. HOLMAN. I trust the gentleman from North Carolina [Mr. ASHE] will be permitted to make those reports.

The SPEAKER. The gentleman from North Carolina must wait until his committee is reached during this call.

GIBBES & CO.

Mr. ROBBINS, of North Carolina, from the Committee of Claims, reported back, with a favorable recommendation, a bill (H. R. No. 3865) for the relief of Gibbes & Co., of Charleston, South Carolina; which was referred to the Committee of the Whole on the Private Calendar, and the accompanying report ordered to be printed.

GEORGE H. GIDDINGS.

Mr. WADDELL, from the Committee on the Post-Office and Post-Roads, reported as a substitute for House bill No. 3888 a bill (H. R. No. 4208) for the relief of George H. Giddings; which was read a first and second time.

Mr. WADDELL. I ask that this bill may be considered at this time.

The bill was read. It directs the Postmaster-General to pay to George H. Giddings, of Texas the sum of $2,967.43 in full of his claim for balance due for mail service on route No. 12900, from Santa Fé, New Mexico, to San Antonio, Texas.

Mr. HOLMAN. I think that bill should go to the Committee of the Whole.

The SPEAKER. If the point of order is made, the Chair must sustain it.

Mr. HOLMAN. I make that point of order.

The bill was accordingly referred to the Committee of the Whole on the Private Calendar, and with the accompanying report ordered to be printed.

W. T. PATE AND S. Q. HOWE.

Mr. ASHE, from the Committee on the Judiciary, reported back with a favorable recommendation the bill (H. R. No. 2899) giving the Court of Claims jurisdiction to hear and determine the claim of William T. Pate and Silas Q. Howe, now pending in said court; which was referred to the Committee of the Whole on the Private Calendar, and the accompanying report ordered to be printed.

LEONIDAS HASKELL.

Mr. ASHE also, from the same committee, reported back adversely the bill (H. R. No. 2000) to authorize the Court of Claims to hear and adjudicate upon the cases of the heirs and legal representatives of Leonidas Haskell, deceased, on their substantial merits; which was laid on the table, and the accompanying report ordered to be printed.

JESSE J. SIMKINS.

Mr. HUNTON, from the Committee on the Judiciary, reported back with a favorable recommendation a bill (H. R. No. 4118) for the relief of the sureties of the late Jesse J. Simkins, collector of the port of Norfolk, Virginia; which was referred to the Committee of the Whole on the Private Calendar, and the accompanying report ordered to be printed.

ORDER OF BUSINESS.

Mr. KNOTT. I am instructed by the Committee on the Judiciary to report to the House the resolution which I send to the Clerk, and to ask its adoption.

The Clerk read as follows:

Resolved, That the Clerk of the House be and he is authorized and required to pay out——

Mr. CONGER. Is that resolution in order at this time?

The SPEAKER. It is not in order.

Mr. ASHE. I now withdraw my objection to the motion of the gentleman from Indiana, [Mr. HOLMAN.]

The SPEAKER. The gentleman from Indiana [Mr. HOLMAN] asks unanimous consent that the House now resolve itself into Committee of the Whole on the post-office appropriation bill.

There being no objection, it was so ordered.

ENROLLED BILLS SIGNED.

Mr. HARRIS, of Georgia, from the Committee on Enrolled Bills, reported that the committee had examined and found truly enrolled bills of the following titles; when the Speaker signed the same:

An act (S. No. 105) for the relief of Dickson Shinault, late assistant keeper of the light-vessel at Wolf Trap light-station, in the State of Virginia; and

An act (S. No. 745) to authorize the Secretary of the Treasury to issue a register and change the name of the brig A. S. Pennell to the City of Moule.

LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted as follows:

To Mr. GARFIELD, indefinitely on account of illness.

To Mr. WALKER, of New York, for two weeks on account of important business.

To Mr. BURLEIGH, for one week, on account of important business.

POST-OFFICE APPROPRIATION BILL.

The House resolved itself into Committee of the Whole (Mr. COX in the chair) and resumed the consideration of the bill (H. R. No. 4187) making appropriations for the service of the Post-Office Department for the fiscal year ending June 30, 1878, and for other purposes.

The Clerk read as follows:

For compensation to railway post office clerks, $1,125,000.

Mr. MILLER. I move to amend the clause just read by striking out "125" and inserting "350;" so as to make the amount of the appropriation for this purpose $1,350,000. Mr. Chairman, I notice in the report of the Postmaster-General that the amount expended in paying these railway post-office clerks for the year ending June 30, 1876, was $1,278,340; $153,340 more than the amount proposed in this bill. The amount appropriated for this purpose at the last session was $1,225,000; $100,000 more than is now proposed in this bill. If the Committee on Appropriations will give me their attention for a moment, I desire to ask why they propose this year to appropriate for this purpose $100,000 less than was appropriated last year. Why do they propose to economize on the economy of last session, and to reduce an appropriation which has proved wholly inadequate for the current year? Have the committee discovered any new light showing that we appropriated last year $100,000 more than was necessary? I think not. The fact is, as we find in the report of the superintendent of railway service, that the only reason he has been able to get along during the current year with this inadequate appropriation is that the service has been very largely reduced by the cutting off of the fast mail. Mr. Vail, the superintendent of railway service, de-

clares in his report that, on account of the inadequate appropriation, he has been obliged to reduce both the force and the salaries, and that he has been enabled to reduce the force from the fact that the fast mails were taken off from the Hudson River, the New York Central, the Pennsylvania Central, and the Southern Michigan Railroads, and from other important lines; that if this service is to be restored, as the Department is now trying to restore it, a larger appropriation must be made this year so as to furnish sufficient postal clerks to do this work.

Now I insist (and I wish the House to understand it) that the cutting down of this appropriation means the preventing of the restoration of the fast-mail service; and that is not what the people of this country want and demand; not what the intelligent people require at our hands. I am as much in favor of economy as any one; but it is no economy and no statesmanship to try to save money by cutting off the work which the people require to be done. Anybody can economize in that way. If you tell us that you will not provide for the work that we want done, of course you can save money. But we want the work done; and then let it be done at the lowest possible expense.

The people demand these mail facilities. They are in earnest about it. The intelligent people, even in the rural districts, (and I represent one of those districts,) understand this question. They demand that this service shall be kept up as it was started last year or shall be improved if need be. We know that with the fast-mail service in operation, mail communication between New York and Chicago was from twelve to twenty-four hours quicker than it is now; and so with all the points reaching West. The people demand the restoration of this service.

If, by reducing your appropriation, you could merely cut down salaries, the people might possibly endure it, though I think in such action there would be gross injustice. Supposing that you do not cut down the force but try to cut down the salaries, the present salaries of these postal clerks are only $1,150 now. Their duties call them constantly away from home, so that they must incur expense by boarding at hotels. They are now working from seven to nine hours per day, and it is the hardest kind of work, requiring them to be on their feet for hours in fast traveling trains. It is not mere manual labor that they are required to perform, although handling heavy mail-bags is hard enough work. They must have a quick eye to read the addresses of letters, quick perception and quick thought to decide in an instant which is the best and nearest route for a letter to take in reaching its destination. Now you are getting this work done at an average price of $1,150, and these employés pay all their own expenses, boarding most of the time away from their families at hotels. I declare that I know of no set of officers under this Government, no employés of any kind, who are doing so much work and such hard work for so little pay.

[Here the hammer fell.]

Mr. HOLMAN. One would suppose that the ingratitude of republics was absolutely without limit. I have never known any class of employés to come before this House for compensation without being informed that they are the hardest worked and poorest paid of all mortals who inhabit the face of the globe. Yet, sir, when one meets with these gentlemen everywhere one is gratified to find they are so unconscious of their misery. [Laughter.] These gentlemen are employed but one-half of the time and for the remainder of the time are to a certain extent gentlemen of elegant leisure.

Mr. MILLER. Is the gentleman quite sure of that?

Mr. HOLMAN. They are off nearly every alternate week.

Mr. MILLER. I know that the route-agents on the routes I am familiar with do not have any such leisure.

Mr. HOLMAN. It depends on the length of the route, but that is the general rule in the service. So far as we know they are a class of officials who in common with other employés of the Government perform their duties very well or at least well enough. This branch of the public service is well performed, but the gentleman from New York proposes to perpetuate the high and extravagant rates of compensation which were allowed under the system of inflation which in its gradual decline has brought us down to the reality of values.

My friend seems to attach great importance to the report of Mr. Vail. Now let me call his attention to a few of the facts. He will find in the appendix a transcript from the Treasury showing that the expenditures for the last year were $1,223,750. On page 160 we are told by the superintendent of railway mail transportation that the expenditures were $1,278,340. There is a difference of $55,000 in the two statements. The gentleman from New York is familiar with this subject and I would be glad to have him reconcile these statements, in which there is a difference of $55,000 in regard to this one item of postal railway clerks.

The gentleman will perceive that we make a reduction here of $78,000 from war times, from the salaries of the inflated period. It is a reduction of between 7 and 8 per cent.

The Committee on Appropriations, Mr. Chairman, insist that the number can be reduced without interfering with the salaries, but that if the number cannot be reduced so as to pay the present high salaries, this class of public employés, in common with other employés of the Government, shall suffer a slight reduction in what they are to receive.

The appropriation made in the last fiscal year for the present year was the result of a compromise between the two bodies. The Committee on Appropriations entertain no doubt that the appropriation of $1,125,000 for this service is ample. I am well aware that my friend from New York greatly interests himself in this question, and that he has undoubtedly studied it; but he overlooks two facts: first, the everlasting pressure brought to bear upon the Post-Office Department to increase its employés, and especially in this department, independently of any consideration of the fast-mail service. And, secondly, my friend does not propose any reduction in the salaries, when he must admit that a moderate modification of all salaries in every department of this Government is inevitable.

Mr. MILLER. Under the appropriation made last year the salaries had to be largely reduced. Now does the gentleman from Indiana propose to make a further reduction?

Mr. HOLMAN. O, no: the reduction then amounted to almost nothing for the present fiscal year. I attach no importance to the appropriation for the present fiscal year, but base my judgment upon the expenditures for the last fiscal year. My friend must see that the report of the Second Assistant Postmaster-General, in the appendix, the transcript from the Treasury is to be depended upon in regard to the expenditures. That shows $1,233,250.19 was the reduction from the expenditure over last year; or between 7 and 8 per cent. And I wish to say to my friend another thing——

Mr. MILLER. Let me interrupt the gentleman right here. I see on page 9 of the report of the Second Assistant Postmaster-General that the amount for the year 1876 is $1,278,340. The same amount is given by the superintendent of the railway mail service on page 160.

Mr. HOLMAN. O, no; the appropriation for salaries for the railway post-office clerks, for the year ending June, 1876, is $1,225,000, as against the expense for the year 1876 of $1,278,340. If my friend had looked on page 241, as tabulated, he would have found $1,223,750.19.

Mr. MILLER. I think that is likely an error. Look at the tabulated report on page 9.

Mr. HOLMAN. If my friend will go over the report of the superintendent as to railway post-office clerks, route-agents, and local agents, he will find a discrepancy of over $100,000.

Mr. Chairman, I do not regard the subject of fast-mail lines as being involved in this discussion. Still I will ask to have read the views expressed by a leading commercial newspaper of the Northwest, the Cincinnati Commercial, as to the fast-mail system as it strikes the great heart of the western country.

The Clerk read as follows:

THE POSTMASTER GENERAL'S REPORT.

The report from the Post-Office Department makes an intelligent showing of that branch of the public service. Inasmuch as the whole people have an interest in that service second only to that of the Treasury Department, the report will doubtless receive a considerable share of attention. Its patronage is large, but it will appear doubtless to most persons as less extensive, at least in its demoralizing tendency, than most persons ordinarily suppose. It will be seen that Mr. Tyner reasons himself into an appreciation of the fast-mail service even at the expense of an apparent conflict between his approval of that nonsensical experiment and his recommendations as to economy. The practical workings of the experiment should have received more of his intelligent consideration, and then he could have discovered the folly of its having increased compensation.

The practical workings of the Department are made to appear on a very good footing. Especially interesting are the statements as to the money-order system and its foreign connections.

It is to be expected that the people at large will be gratified to find that a Department in which they are so particularly and directly interested is made to appear to so good an advantage.

Mr. HOLMAN. My friend will perceive that, even on one of the great lines on which the fast-mail service was established, a leading commercial newspaper, and one of the fairest of the newspapers of this country, does not regard the subject with any favor. I hold in my hand an article which I have clipped from the Cincinnati Gazette, a paper which my friend is aware has occupied for half a century a leading position in that section of the Union.

The Clerk read as follows:

Thus the fast-mail train seems to have been in all matters a thing of false pretenses, crooked ways, and of no intelligent purpose. Besides, there was an odious feature in the striking unfairness of providing one city in the nation with an extraordinary train for its morning newspapers and leaving out the great cities of the interior and West, which have newspapers of equal news pretensions and of as large an area of circulation, such as Cincinnati and Chicago, not to mention others. And there was also an absurdity in running a train at extra speed one way only, and returning at the ordinary rate. Under all these circumstances of unfairness in inceptions and false pretenses as to costs and objects, it is not strange that Congress should omit to make an extra appropriation for this extra mail. A more honest, direct, fair, and efficient way of improving the mail service can be devised by ordinary intelligence and business capacity. It is to be hoped that Postmaster-General Tyner will look to such general progress rather than tie himself to the blunders of his predecessor.

Mr. HOLMAN. This was published last summer about the time the service was abolished. I do not wish to be understood, however, as myself raising any objection to the fullest facilities which the mail system can furnish. The pretense to which the Cincinnati Gazette refers was the pretense of Mr. Bangs, then superintendent of railway transportation, that it was not to be attended with any increased expense, when we discovered, ultimately, that it was a source of enormous expense; and what was still more remarkable in connection with that system was that it affected but a comparatively small portion of the Union. Even this southern line from New York and Philadelphia, by way of Cincinnati, to Saint Louis had no appreciable effect. I am not aware that any class of persons, whether engaged in com-

merce or not, regard the continuance or discontinuance of the line as a matter of any moment.

[Here the hammer fell.]

Mr. CANNON, of Illinois. I move to strike out the last word.

Mr. Chairman, I do not expect to be able to say anything that will be of effective use to the gentleman from New York [Mr. MILLER] in the adoption of his amendment. Indeed, I should have kept silent were it not that the gentleman from Indiana has, as I conceive, made an unjust attack upon the fast-mail system. The gentleman says the fast mail added greatly to the expense of mail transportation. I do not so understand it. On the contrary, I state without fear of successful contradiction that the fast mail was cheaper than the slow mail; and I will prove it. Under the law where a railway transports 5,000 pounds daily of mail over the whole length of the road for one year the pay is $200 per mile, and for each ton of mail over the 5,000 pounds transported daily over the whole length of the road the pay is at the rate of $25 per mile in addition. To illustrate: if the road carry 10,000 pounds of mail, the pay for the first 5,000 pounds is $200 and for the second 5,000 pounds is $62.50, making the total cost for 10,000 pounds $262.50, provided it is carried upon one line of road. But suppose it is carried by two different lines of road, 5,000 pounds by each; then the Government pays each road $200, making for the two roads $400 pay for the same service that one road would have performed for $262.50. So any one can see that it is the interest of the Government to mass these great through mails upon one line of road at the minimum compensation instead of dividing the same among all the lines leading from the East to the West at the maximum compensation.

Prior to the legislation of last session the New York Central and Lake Shore furnished a special train that carried nothing but the mails, and made fast time at the lowest price for transportation. Since that time the special mail train has been discontinued and the mails are divided between several different routes at the maximum compensation. Now, in the reckless economy of last session, under the lead of the Committee on Appropriations, 10 per cent. was taken off the pay to all roads without discrimination, as well off of the cheap service that was being performed by the road that carried forty to fifty thousand pounds of mail as of the expensive high service that was being performed by the road that carried only five thousand pounds of mail. The result was that the special, exclusive mail trains were discontinued on account of the refusal of the roads to longer run the same for the diminished compensation.

Yet the gentleman, with these facts staring him in the face, makes his attack upon the fast mail.

[Here the hammer fell.]

Mr. HOLMAN. I move that the committee rise.

The motion was agreed to.

So the committee rose; and the Speaker having resumed the chair, Mr. COX reported that the Committee of the Whole had had under consideration the bill (H. R. No. 4187) making appropriation for the service of the Post-Office Department for the fiscal year ending June 30, 1878, and for other purposes, and had come to no resolution thereon.

PAYMENT OF THE ELECTORAL MESSENGERS.

Mr. HARRIS, of Georgia, from the Committee on Enrolled Bills, reported that the committee had examined and found truly enrolled a bill of the following title; when the Speaker signed the same:

An act (H. R. No. 4197) to provide for the payment of the electoral messengers.

POST-OFFICE APPROPRIATION BILL.

Mr. HOLMAN. I now move that the House resolve itself into Committee of the Whole on the state of the Union on the post-office appropriation bill, and pending that motion I move that all debate upon the clause now before the committee be closed in ten minutes.

The question was taken on the motion to close debate, and it was agreed to.

The question was then taken on the motion to go into the Committee of the Whole on the state of the Union, and it was agreed to.

The House accordingly resolved itself into Committee of the Whole House on the state of the Union (Mr. COX in the chair) and resumed the consideration of the bill (H. R. No. 4187) making appropriation for the service of the Post-Office Department for the fiscal year ending June 30, 1878, and for other purposes.

The CHAIRMAN. All debate upon the pending paragraph will close in ten minutes.

Mr. HOLMAN. How much time does the gentleman from Illinois require?

Mr. CANNON, of Illinois. Five minutes.

Mr. HOLMAN. I yield, then, to the gentleman from Illinois.

Mr. CANNON, of Illinois. In addition to what I have stated before, I will call the attention of the gentleman from Indiana to the statement in the papers that a fast mail is about to be put upon some of the roads even at the diminished compensation for such service. The gentleman from Missouri [Mr. STONE] says it goes into operation on Monday next. And I want to say in this connection that I believe the amendment of the gentleman from New York [Mr. MILLER] should be adopted as a measure of economy; for if you cut down the force of postal clerks who distribute the mails in transit upon the trains you will have to increase the force of clerks in the large post-offices to make the distribution of the mails as well as increase the accommodations or room for them to work in, which would be more expensive and give less speedy and effective service, and I am informed at the Post-Office Department that even now there is an increased demand at some of the largest offices for additional clerks to secure an efficient service.

Nor do I agree with the gentleman that as a rule the postal clerks are overpaid. It is a laborious, hard service, requiring fidelity, accuracy, and constant application; and I can say without fear of successful contradiction that postal clerks receive less pay for work done than any other employés of the Government.

In conclusion I will state that the gentleman from Indiana, [Mr. HOLMAN,] in my opinion, believes he is right in opposing this amendment and opposing the fast mail; but, with due deference to the gentleman as well as to the Committee on Appropriations, I submit that in consequence of their manifold duties they have not gone to the bottom of this question.

Mr. CLYMER. It would seem to be a fair proposition that the pay of post-office route-clerks should be about that of other persons who perform like service. I think it is well known that upon most of the railroad routes of the country conductors of trains do not receive on the average more than $800 a year. I think that is the full average. Now, by the report which we have before us upon this subject, it seems that the average pay of route-agents amounts to $1,150 per year and the average about one hundred and thirty-one miles travel per day.

I think the average number of miles traveled by railroad conductors is something near two hundred miles a day, and therefore for performing one-third more service the railroad conductors receive about $350 a year less than the pay of route-agents. I think by reducing the pay of these route-agents to $1,000 a year, which would be a saving of $150 on each a year, it would effect the total saving to this service of $156,300. The cost of the service last year, according to the report, was $1,233,750. If we make the reduction I propose, the estimate furnished by the committee will be ample for the performance of this service, paying the route-agents liberally as compared with those who perform like services; for it cannot be doubted that the services of the railroad conductor, who is constantly on his feet, who has to live from home, subject to cares and duties which are not ordinarily imposed upon the class who perform similar services. I think, therefore, that the action of the committee should be sustained, as it is liberal and just and should receive the support of the Committee of the Whole.

The question was taken upon the amendment offered by Mr. CANNON, of Illinois; and on a division there were—ayes 29, noes not counted.

So the amendment was not agreed to.

The Clerk resumed the reading of the bill; and read as follows:

For route-agents, $945,000.

Mr. MILLER. I move to amend that clause by striking out "$945,000" and inserting in lieu thereof "$1,050,000."

Of course, Mr. Chairman, after the very decisive vote against the amendment which I last offered, I am not going to persist in making speeches upon these amendments. The route agents, as the gentleman says, upon our railroads receive now about $950 a year. They are like postal clerks, away from their homes on expenses at hotels, and their net earnings cannot be more than $500 or $600 a year. Now, I wish the gentlemen of the committee to tell me if they believe that a class of men fit to discharge the duties of this position can be or ought to be obtained at a less sum than the average obtained by persons now performing this service, namely, $950 per year. Under the appropriation now proposed, which is very much less than the appropriation of last session for the current year, the salaries will be much less than this meager sum of $950.

I do not suppose the Committee of the Whole will give the subject very much attention, but I assure them that, if they allow this bill to pass without a larger appropriation for this branch of the public service, they will be doing great injustice to a worthy and hard-working class of public servants.

Now the gentleman says that in every case where an attempt is made to reduce salaries we hear the cry that the men to be affected by the reduction are laboring men. I will again call his attention to this fact, that these men with a salary of $950, having to board themselves away from home, do not realize as net earnings more than five or six hundred dollars a year, and are poorer paid than any class of employés under the Government. A clerkship of the first class in any Department in Washington is a sinecure compared to this; and this position requires as much talent as the clerkship and harder work.

Mr. HOLMAN. I only wish to call attention to the fact that the expense of this service last year amounted to $940,151.97 and we appropriate $5,000 more in this bill than was expended last year, and certainly that amount ought to be sufficient.

Mr. MILLER. I speak of cost in the year 1876, and from a table which I find here it was $975,280.

Mr. HOLMAN. I call the attention of the gentleman from New York to the fact that he is quoting from the report of the superintendent of railroad transportation.

Mr. MILLER. I beg pardon; I am quoting from the report of the Assistant Postmaster-General.

Mr. HOLMAN. What page?

Mr. MILLER. Page 9 of the tables.

Mr. HOLMAN. If my friend will look at the table of receipts and expenditures of the Post-Office Department covering the years 1874, 1875, and 1876, on pages 24 and 25 of this document, he will find that for last year the expenditures for mail-route agents were $940,151.97. By this bill we appropriate $5,000 more for this purpose than was expended last year.

Mr. MILLER. I cannot allow that statement to go out without a reply. I find here that for 1876 the expenditures for this purpose were $975,280. That appears in a table sent to us from the office of the Postmaster-General.

Mr. HOLMAN. There must be some error.

The CHAIRMAN. Debate upon the pending amendment has been exhausted.

Mr. HOLMAN. Then I move to strike out the last word. I do not know who ought to have the last word on this question.

Mr. MILLER. I give the report.

Mr. HOLMAN. To be more certain that my vision is not imperfect I will put on my glasses and read the figures from the document. The expenditures for this service, for the year ending June 30, 1876, were $940,151.97. Has my friend the page?

Mr. MILLER. What page is it?

Mr. HOLMAN. It is page 24. The expense for the first quarter in round numbers was $230,000, for the second quarter $238,000, for the third quarter $232,000, and for the fourth quarter $239,000, making for the whole $941,151.97. And by this bill we appropriate $5,000 more for this purpose than was expended last year. I withdraw my formal amendment.

The question recurred upon the amendment moved by Mr. MILLER; and it was not agreed to.

The Clerk then resumed and concluded the reading of the bill.

Mr. HOLMAN. The deficit provided for by the last section of this bill should be increased to the extent of $235,000 if the House shall adopt the amendment which has been adopted by the Committee of the Whole. But inasmuch as the House may think proper on consideration not to adopt that amendment, I will move that the committee now rise and report the bill to the House. If the House shall adopt that amendment then the deficit can be provided for.

The motion of Mr. HOLMAN was agreed to.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. COX reported that, pursuant to the order of the House, the Committee of the Whole on the state of the Union had had under consideration the Union generally, and particularly the special order, being the bill (H. R. No. 4187) making appropriations for the service of the Post-Office Department for the fiscal year ending June 30, 1878, and for other purposes, and had directed him to report the same back to the House with an amendment.

Mr. HOLMAN. I believe but one amendment to this bill was made by the Committee of the Whole, in regard to the appropriation for the star routes and steamboat mail service. I call the previous question on the bill and amendments.

The previous question was seconded and the main question was ordered.

The amendment reported from the Committee of the Whole was, in line 63 of the printed bill, to strike out "$6,000,000" and to insert in lieu thereof "$6,237,993," so that the clause would read:

For inland mail transportation, namely: For transportation on star routes and by steamboats, and all other than railroad routes, $6,237,993.

Mr. HOLMAN. I desire to say a word in regard to this amendment. I think the appropriation made by this bill for this service is sufficiently large; and it appears to me that the House should not increase it beyond the manifest necessities of the public service. I think that we have appropriated by this bill a much larger sum for mail transportation than the public service requires.

The amount appropriated for the transportation of mails by railroads is $9,000,000. A more careful examination demonstrates the fact that that amount is beyond the necessities of the public service. Indeed I think that for that purpose an appropriation of $8,800,000 would be found to be very ample; and that $6,000,000 is a sufficient appropriation for the service on the star routes and on steamboats; that I think is very manifest. Even then we would have for the expenditure of next year $342,000 more than the expenditures of last year.

My objection to the appropriation of money beyond the actual wants of the service is this: Nothing tends so much to demoralize the public service and to beget a spirit of extravagance in their expenditures as ample resources. Until within the last twenty years, I might say within the last fifteen years, Congress deemed it of the highest importance that just the sum required for a given public service and no more should be appropriated. It sought to impress upon all the employés of the Government the necessity of not using a dollar of public money beyond the wants of the service. We have all seen the effects of ample revenues. The extravagance of this Government during a number of years was actually appalling, and it grew out of the superabundant revenues. When we gathered into the Treasury $350,000,000 or $400,000,000 annually, economy was absolutely impossible.

As long as you appropriate a large margin for expenditures beyond the wants of the Government, the reign of extravagance will continue, and that, too, notwithstanding the heads of Departments may be not only honest men, but eager that the public expenditures should be kept upon a basis of fair and just economy. It is for that reason that the appropriation of money is placed especially in the charge of Congress, in order that we the representatives of the people may direct that no money shall be expended except upon their appropriation.

The various departments of the Government must realize that it is the determination of the legislative department to exercise a rigorous control over expenditures and to maintain a strict economy. Gentlemen, I do not think that you can indulge in any hope of economical government as long as you appropriate moneys that cannot be demonstrated to be absolutely necessary to the public service. I know that my friend from Texas [Mr. SCHLEICHER] will not say that he has any reason to believe that there will be required for the next fiscal year an increased expenditure of $342,000 beyond the expenditures of last year. If my friend desires to be heard upon this bill, I yield the floor to him of course. I understand from him that ten minutes will be sufficient.

Mr. SCHLEICHER. Mr. Speaker, I did not anticipate that this question, which was so fully discussed yesterday, would have to be gone over again to-day. The gentleman from Indiana [Mr. HOLMAN] made yesterday a gallant defense of the position of the Committee on Appropriations. In doing so, he took advantage of every point, going so far as to make the objection that no quorum had voted, although the sentiment of the majority of the House was clearly indicated. After all the debate then had, and when the vote had been taken in three different ways, it appeared that the Committee of the Whole, by a majority of 32, was in favor of my amendment. Yet now the gentleman from Indiana brings the matter up again and preaches to the House a sermon upon the general principles of economy. He exhorts us not to run into extravagance. Why, sir, yesterday, on a full discussion of this whole question, it was shown that this amendment is not at all in the direction of extravagance; that on the contrary, if it be adopted, the appropriation still falls $500,000 below the appropriation for the present year. I have shown that the Postmaster-General has never been partial to this service; that he has not used for its support even the means placed at his disposal—not because the facilities for this branch of the service were abundant; on the contrary, as I have stated, they were deficient. But although the Postmaster-General has not used for this service the means he might have used, and which the necessities of the service demanded, I have refrained from saying anything against his views. I have adopted his views in framing my amendment, and have only insisted that the House should not go below his most limited standard. My amendment merely follows the recommendation of the Postmaster-General, which I repeat is half a million dollars less than the appropriation for the present fiscal year.

I have already stated that the establishment of a large number of new mail-routes, which have been asked for, has been delayed from the last Congress to the present for reasons known to every member. Because the Senate has undertaken to attach to the post-route bill the revival of the franking privilege, that bill has not yet been finally acted on. A very large number of the new routes that would have been created were asked for in my district, and were exceedingly necessary. The failure of the post-route bill creating those new routes was one of the reasons a portion of the appropriation was not used.

Our population is increasing every year by reason of an immense immigration; and for gentlemen to maintain that because two years ago the expenditure was smaller we should not now appropriate the limited amount asked for by the Postmaster-General, who as I say has not been partial to this service—to maintain that the appropriation for this service should be reduced $240,000 below his estimate, appears to me exceedingly unreasonable.

I thought that after the question had been so fully explained, after three or four gentlemen had participated in the debate, my friend from Indiana would yield with good grace to the decision of the House. Yet he brings up this fight again. I appeal to the fairness of members here to stand by the decision they have already made upon a full hearing of the argument. The appropriation proposed by my amendment is—I will not say fair, for it is less than fair. The term "extravagance" is altogether misapplied by the gentleman from Indiana in characterizing this amendment. It provides only for necessary service. The estimate of the Postmaster-General has been made upon an exceedingly limited basis. Yet the Committee on Appropriations saw fit to go below that estimate, not for any reasons that they could state, not upon any allegation that too much is paid upon contracts or that there are too many routes, but merely upon the general views which the gentleman from Indiana now enforces again in his sermon to the House—that appropriations when made in higher sums than are required demoralize and debauch the public service and that as a general principle the House should stand upon the very lowest amount.

Mr. HOLMAN. I now yield five minutes to the gentleman from Texas, [Mr. THROCKMORTON.]

Mr. THROCKMORTON. Mr. Speaker, I do not rise to discuss this question, but simply to sustain the position taken by my colleague, [Mr. SCHLEICHER.] The district which I represent in this House is larger than the State of New York; and in the bill passed at the last session, and in the bill which came before us yesterday, a number of new routes were provided for in my district as well as that of

my colleague. A number of these routes were not embraced in the last advertisement of the Department; and I have good reason to believe that a large number will be omitted from the new advertisement, for the simple reason the Department says the appropriations are not sufficient to put service upon the lines proposed.

I will state further, that in the district which I represent the service has been taken off a large number of routes upon which it has been carried for a number of years; and upon other lines on which the service was twice or three times weekly it has been reduced. The only reason given is that the appropriations made by Congress are not sufficient to afford to the people the mail facilities that they have heretofore enjoyed. Yet the State of Texas is rapidly increasing in population; and instead of having its mail facilities thus curtailed they should be enlarged. If there is any object for the support of which liberal appropriations are indorsed by the people of the United States it is the mail service. This a question which more nearly than almost all others affects the great interests of the people. They will not sustain us in attempting to cut down this important branch of the public service.

Mr. HOLMAN. Certainly I would not consent by any vote of mine to do the slightest injustice to the State of Texas or any other State of this Union. But my friend should bear in mind that in a district as old and populous as mine, settled for three-quarters of a century, not to exceed two-thirds of the routes established by law have ever had any service put upon them. I live in the country and understand, I think, the question of the necessities of local convenience.

Mr. BLAND. I should like to ask the gentleman a question.

Mr. HOLMAN. Wait a moment. I must say again that if we appropriate all the money required to put mail service on every route, that instead of $37,000,000 it will require twice that amount to carry on the Post-Office Department of this Government.

Mr. BLAND. I desire to ask the gentleman how many routes have been cut down—how much service has been withdrawn? I know it has been so in my district and I have here petitions for the restoration of service to routes where it has been dropped.

Mr. HOLMAN. The appropriation now under the control of Congress is not less than $1,000,000 above the expenditures of last year. In other words, sir, the expenditures for last year were $5,688,000, while the appropriation made for the present year is $6,737,000. My friend must see that not only is it now proposed to appropriate $579,000 more than the expenditure last year, but this is proposed at a time when every day we know more favorable contracts are being made, that where old contracts expire new ones are made at greatly reduced rates, thus reducing expenditures in this branch of the public service.

The gentleman from Texas [Mr. SCHLEICHER] asks us to appropriate $579,000 more than the expenditures of last year when by expiration of old contracts new contracts are made, costing only 50 per cent. of the cost of the preceding contracts.

Mr. SCHLEICHER. Does not my amendment as adopted propose $500,000 less than for the present fiscal year?

Mr. HOLMAN. Certainly it does. The appropriation for this year furnishes no criterion at all. On the contrary, we must look to the expenditure for last year. The gentleman asks us to appropriate $579,000 more than was expended last year.

Mr. CONGER. During the last year, Mr. Speaker, there were almost one thousand applications for post-offices which could not be established because there were no funds provided. During the last year there were seventy-five money-order offices refused, and a circular was sent to the places where they had been promised, saying that they were not established because the appropriation would not warrant it. In my district, where Congress has established post-routes, post-offices have been asked where men have to go fifteen miles to the nearest post-office; and I have been refused the establishment of those offices because the appropriation will not warrant it. I can repeat over and over again many more cases of that kind.

Mr. HOLMAN. I can say the same thing in my own neighborhood. I do not suppose there is any exception to it.

Mr. CONGER. Let me ask the gentleman a question.

Mr. HOLMAN. I will answer it.

Mr. CONGER. I wish to ask whether when he says the Department asks for more money than is needed——

Mr. HOLMAN. They do not ask it.

Mr. CONGER. When he says they did not use up all the money, whether there is any refusal to use the appropriation in any portion of the country where there was money to meet it?

Mr. HOLMAN. I presume it is within the experience of all of us that in the carrying on of this great postal system there must be some head to the Department to determine where it is proper the mail service should be established. I have neighborhoods which complain of the want of mail facilities. I presume every gentleman has. There must be some reasonable limit to the expenditures in this branch of the public service. There is no people upon the face of the globe, with anything like our extent of country, who have such mail facilities as our people have furnished for themselves. I think there is no great complaint—at least I think there is no just ground for complaint of the acts of the Post-Office Department in trying to promote reasonable economy. But Congress seems to invite extravagance by offering to the Post-Office Department, in voting for this amendment of $579,000, more than the expenditures of last year, when the appropriations were sufficient to meet the present necessities of the service.

Mr. CONGER. Will the gentleman allow me three minutes?

Mr. HOLMAN. Certainly.

Mr. CONGER. Now, Mr. Speaker, I will venture it is within the knowledge of every member upon this floor that in his own district there are constant applications for increased mail facilities, which are refused and have to be refused. I venture that there is no member upon this floor but will agree with me that it is the duty of this Government, if it undertakes to carry the mail to the people, to give at least ordinary reasonable facilities to the people of the country, however sparsely settled the country may be. In counties which I have the honor to represent, there are places where there are no post-offices within fifteen, and even within twenty miles, of hundreds of inhabitants in my district, where I have urged the establishment of offices, where the petitions have been sent up to me for the last year—the last two years—and where Congress has established mail routes in order that post-offices might be established; and yet I believe, with no particular disregard of my wishes or those of my constituents, the Department is unable to comply with the reasonable demands of my people. I venture to say that that is the experience of all members that represent the newer portions of our country.

Now, if we adopt the rule that the Post-Office Department shall be self-sustaining, that the Government shall only afford facilities to those parts of the country that can pay, as the gentleman suggests, the people must pay for it themselves—let that be the determination of this Congress, and I venture to say the people of the United States will send a different set of men to determine even in regard to their postal relations with the Government. This is a crying evil. I hear complaints wherever I go, and from every member with whom I talk, that postal facilities, especially in the more sparsely settled regions of the country, are denied to the people of the United States. There is more complaint of that in my own district than of any other one thing. It is time that Congress should furnish those facilities. I have voted for these increased appropriations that those facilities may be given. There are many places in my district where money-order offices are sought to be established as self-sustaining institutions; and yet the clerks in the Department are cut down so low, as I am informed at the Department, that they cannot increase the number of money-order offices because they have not clerks enough here in Washington to examine and pass upon the accounts. Is that statesmanship? Is that economy?

I had hoped that when the excitement of the political campaign was over and members met here to legislate for the good of the country they would make such appropriations as, with a due regard to economy, should best meet the interests, the wants, and the necessities of the American people. This bill cuts down even below the appropriations of last year, which were insufficient to give these facilities. I have voted with others to increase them, and so I shall vote whenever the opportunity comes. If I could by my vote defeat the passage of this bill until proper facilities were provided for the American people in their postal service, my vote should defeat it here today and whenever it came up for action.

Mr. HOLMAN. Mr. Speaker, the observations of my friend from Michigan [Mr. CONGER] would be certainly much more potential in favoring this item of increase to the amount of $237,000 if he ever opposed any increase of expenditures. But I can bear witness to the uniform consistency of my friend from Michigan. He steadily supports every appropriation that is proposed and does it with an earnestness that gives force of argument to his utterances.

Mr. CONGER. If the gentleman will allow me I wish to say that, while I cannot at this moment produce it, I will at another time bring the gentleman's own statement, made on the floor of this House, that he has always found me among the most economical members of the House.

Mr. HOLMAN. I have no doubt I have been trying to conciliate my friend sometime or other.

Mr. CONGER. I hope the gentleman will never do that at the expense of veracity.

Mr. HOLMAN. What I said was certainly in a general way.

I do not wish to occupy the time of the House further on this item. I desire simply one fact to be borne in mind, that we are asked by this amendment to appropriate $579,000 more than the expenditures of last year, when every contract now being made is made upon a more favorable basis than the contracts which are expiring.

I do not believe in the argument that appropriations of money can be made safely if there is confidence in the integrity of the Department. You will preserve the integrity of the departments of this Government just in proportion as you remove temptation; and the more upright and honorable your Departments are in their heads, the more important it is that by the carefulness and the economy of your appropriations you impress upon every department of the Government the fact that the people through their Representatives do demand economy.

Mr. GAUSE. Will the gentleman yield to me for a moment?

Mr. HOLMAN. Yes, sir.

Mr. GAUSE. It is upon the expenditures of last year that the gentleman bases his argument, is it not?

Mr. HOLMAN. Yes, sir.

Mr. GAUSE. I presume, then, that in his estimates for this year there is nothing for service upon the new routes.

Mr. HOLMAN. Certainly there is.

Mr. GAUSE. The great evil we suffer from, and of which we complain, is that we have not mail contracts enough.

Mr. HOLMAN. And I tell my friend that we have provided $342,000 for that purpose by the bill as it stands.

Mr. GAUSE. Last year they reduced the contracts on our routes.

Mr. HOLMAN. That is not the result of the appropriations. Somebody must determine where the postal service shall be put.

Mr. GAUSE. The Postmaster-General has assured me, and I have no doubt many other gentlemen from the West and South, that it was utterly impossible for him to place service on routes established in the West and South, because he had not money appropriated for that purpose.

Mr. HOLMAN. The gentleman must see that the appropriations have been ample all the time.

Mr. GAUSE. I have the assurance of the Postmaster-General to the effect I have stated.

Mr. HOLMAN. And if the House rejects this amendment there is still $342,000 for the increase of the service.

Mr. GAUSE. If the appropriations have been sufficient and the Postmaster-General has not placed service on the star lines, what has become of them?

Mr. HOLMAN. I am satisfied the Postmaster-General has only maintained reasonable economy in these expenditures. He cannot put service on every mail route.

Mr. SCHLEICHER. Will the gentleman yield to me for only one minute?

Mr. HOLMAN. Yes, sir.

Mr. SCHLEICHER. I believe that there are many members of the House who do not understand to what year the gentleman from Indiana refers. This debate ranges over three years. For the present year the expenditure is unknown. The gentlemen refers to the last year, passed in June last, and we are now discussing the appropriation for the year to begin June next. The allowance made for increased demand is 5 per cent. only for each year, but it must be borne in mind that the population of Texas, in addition to the natural increase, has been very largely augmented by immigration.

Mr. HOLMAN. We have only the expenditure for the year ending June 30, 1876.

Mr. SCHLEICHER. The amount of increase is allowed only 5 per cent., when the increase in our population is larger than that.

Mr. HOLMAN. I am always afraid when gentlemen get on statistics and figures.

Mr. SCHLEICHER. I am sure you are.

Mr. HOLMAN. I only desire to add a word further upon this measure. I wish to say to the gentleman from Michigan [Mr. CONGER] that the ground assumed last fall on the stump, that the attempt on the part of the Representatives of a majority of the people for retrenchment and reform was but a spasmodic movement and purely political, has no foundation whatever. I think I can assure the gentleman from Michigan that there is a determination, so far as this side of the House is concerned, without reference to political results, to restore if possible economy and integrity to the administration of the Government, conscious at the same time that the one method in which it can be accomplished is by impressing on every department of the Government in the appropriation bills that retrenchment is demanded and must be had. I wish him to understand that the movement is not spasmodic.

The question was on the amendment reported from the Committee of the Whole on the state of the Union; and being put, there were—ayes 71, noes 45.

Mr. HOLMAN. No quorum has voted.

Mr. CLYMER. I call for the yeas and nays.

The yeas and nays were ordered.

Mr. STONE. I move that the House do now adjourn.

The motion was agreed to; and accordingly (at four o'clock and thirty-five minutes p. m.) the House adjourned.

PETITIONS.

The following petitions were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. BANNING: The petition of William Moseley, late a hospital steward, United States Army, that the cause of his discharge from the service before the term of his enlistment expired be investigated, to the Committee on Military Affairs.

By Mr. FRYE: The petition of Z. James Belt, John B. Price, and other citizens of Wilmington, Delaware, for a commission of inquiry concerning the alcoholic liquor traffic, to the Committee on the Judiciary.

Also, the petition of C. K. True, D. D., and other Methodist Episcopal clergymen of the preachers' meeting of New York City, of similar import, to the same committee.

By Mr. MAISH: The petition of A. H. Jenks, of York, Pennsylvania, late a private in Company E, One hundred and thirty-sixth Regiment United States Army, for a pension, to the Committee on Invalid Pensions.

By Mr. MACKEY: The petition of Frederick Hoffman, late a private in Company H, Fourteenth Regiment United States Infantry, to be restored to the pension-rolls, to the same committee.

By Mr. O'BRIEN: The petition of William T. Malsters, of Baltimore, Maryland, to have paid to him out of the Treasury $3,000 retained as fines for not completing the construction of the United States steamer Laurel within the time required by the contract, to the Committee of Ways and Means.

By Mr. ROBBINS, of North Carolina: The petition of citizens of North Carolina, complaining of abuses by United States revenue officers and asking a change in the revenue laws, to the same committee.

By Mr. VAN VORHES: The petition of Catharine Sheets, of McConnelsville, Ohio, widow of Daniel Sheets, late captain Company C, Seventeenth Regiment Ohio Volunteer Infantry, for a pension for herself and her minor son, Willie Sheets, to the Committee on Invalid Pensions.

Also, the petition of Civilla Shaffer, who was the wife of Emery D. Whitehair, deceased, late a private in Company F, Third Regiment West Virginia Infantry, of Amos Whitehair, and of the guardian of Elisa J. Whitehair, that a pension be granted to said Amos and Elisa Whitehair from the date of the death of said Emery D. Whitehair until they arrive at the age of sixteen years, to the same committee.

By Mr. WILLIAMS, of Delaware: The petition of Philip Henry, late a private Third Regiment Delaware Infantry, for a pension, to the Committee on Invalid Pensions.

By Mr. WOOD, of New York: The petition of the National Temperance Society, (William E. Dodge, president, J. N. Stearns, secretary,) that the House of Representatives concur in the passage of the Senate bill to provide for a commission of inquiry concerning the alcoholic liquor traffic, to the Committee on the Judiciary.

HOUSE OF REPRESENTATIVES.

SATURDAY, *December* 16, 1876.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of yesterday was read and approved.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of its clerks, announced that the Senate had disagreed to the amendments of the House to the amendment of the Senate to the bill (H. R. No. 4121) to provide for the expenses of certain joint committees, asked a conference on the disagreeing votes of the two Houses thereon, and had appointed Mr. WINDOM, Mr. LOGAN, and Mr. DAVIS the conferees on the part of the Senate.

POST-OFFICE APPROPRIATION BILL.

The SPEAKER. The pending question at the adjournment yesterday was the post-office appropriation bill, which had been reported from the Committee of the Whole on the state of the Union with an amendment, upon which the previous question was seconded and the yeas and nays ordered.

The amendment reported from the Committee of the Whole was, in line 63 of the printed bill, to strike out "$6,000,000" and to insert in lieu thereof "$6,237,993;" so that the clause would read:

For inland mail transportation, namely: For transportation on star routes and by steamboats, and all other than railroad routes, $6,237,993.

The question was taken; and there were—yeas 101, nays 77, not voting 111; as follows:

YEAS—Messrs. Adams, Ainsworth, Anderson, Ashe, Bagby, William H. Baker, Ballou, Banning, Bell, Blair, Bland, Bradford, Bradley, Horatio C. Burchard, Cabell, John H. Caldwell, Campbell, Cannon, Carr, Caswell, Cate, John B. Clark, jr., of Missouri, Conger, Crounse, Culberson, Davis, Denison, Dibrell, Durham, Eames, Egbert, Evans, Faulkner, Felton, Finley, Forney, Franklin, Gause, Glover, Goode, Hancock, Haraison, Benjamin W. Harris, Hartridge, Hatcher, Haymond, Henderson, Hereford, Goldsmith W. Hewitt, Hill, Hyman, Frank Jones, Kasson, Kelley, Franklin Landers, Levy, Lewis, Lord, Luttrell, Magoon, MacDougall, McCrary, McDill, McFarland, Mills, Monroe, Norton, Oliver, William A. Phillips, Powell, Rea, Reagan, James B. Reilly, Rice, Riddle, William M. Robbins, Rusk, Sampson, Schleicher, Siemons, Sparks, Stone, Swann, Terry, Thomas, Throckmorton, Van Vorhes, Robert B. Vance, Waddell, Alexander S. Wallace, Walsh, G. Wiley Wells, Whitthorne, Willard, Andrew Williams, Jeremiah N. Williams, William B. Williams, James Wilson, Alan Wood, jr., Fernando Wood, and Ycates—101.

NAYS—Messrs. Atkins, John H. Bagley, jr., John H. Baker, Blount, Boone, Bright, John Young Brown, Buckner, William P. Caldwell, Candler, Chittenden, John B. Clarke of Kentucky, Clymer, Cook, Cowan, Cutler, Fort, Foster, Frye, Fuller, Andrew H. Hamilton, Robert Hamilton, Henry R. Harris, John T. Harris, Hartzell, Holman, Humphreys, Hunton, Hurd, Kehr, Knott, Lamar, George M. Landers, Metcalfe, Milliken, Morgan, Neal, Pierce, Piper, Poppleton, Potter, John Reilly, John Robbins, Savage, Scelye, Sheakley, Singleton, A. Herr Smith, William E. Smith, Southard, Spencer, Springer, Stanton, Stenger, Teese, Turney, John L. Vance, Wait, Waldron, Charles C. B. Walker, Warner, Warren, Erastus Wells, Whitehouse, Whiting, Alpheus S. Williams, and James Williams—77.

NOT VOTING—Messrs. Abbott, George A. Bagley, Banks, Bass, Beebe, Blackburn, Bliss, William R. Brown, Samuel D. Burchard, Burleigh, Cason, Caulfield, Chapin, Cochrane, Collins, Cox, Crapo, Danford, Darrall, Davy, De Bolt, Dobbins, Douglas, Dunnell, Durand, Eden, Ellis, Five, Freeman, Garfield, Gibson, Goodin, Gunter, Hale, Hardenbergh, Harrison, Hathorn, Hays, Hendee, Henkle, Abram S. Hewitt, Hoar, Hoge, Hooker, Hopkins, Hoskins, House, Hubbell, Hunter, Hurlbut, Jenks, Thomas L. Jones, Joyce, Kimball, King, Lane, Lapham, Lawrence, Leavenworth, Le Moyne, Lynch, Lynde, Mackey, Maish, McMahon, Meade, Miller, Money, Morrison, Mutchler, Nash, New, O'Brien, Odell, O'Neill, Packer, Page, Payne, Phelps, John F. Philips, Plaisted, Platt, Pratt, Purman, Ramey, Roberts, Robinson, Miles Ross, Sobieski Ross, Sayler, Scales, Schumaker, Simpkinson, Smalls, Strait, Stephens, Stevenson, Stowell, Tarbox, Thompson, Thornburgh, Mar-

tin I. Townsend, Washington Townsend, Tucker, Tufts, Gilbert C. Walker, John W. Wallace, Walling, Ward, Watterson, Wheeler, White, Wiggington, Wike, Charles G. Williams, Willis, Wilshire, Benjamin Wilson, Woodburn, Woodworth, and Young—111.

So the amendment was agreed to.

During the roll-call the following announcements were made:

Mr. SPENCER. I desire to say that my colleague, Mr. ELLIS, is detained from the House by illness.

Mr. DAVY. I desire to state that I am paired upon this question with my colleague, Mr. WILLIS. I am not prepared to state that I am able to state how my colleague would vote if he were present, but I should vote ay.

Mr. HOLMAN. On yesterday I called the attention of the Committee of the Whole to the fact that the amount appropriated by the second section of this bill to meet any deficiency in the revenues of the Post-Office Department might require to be changed in consequence of the action of the House. The House having agreed to the amendment reported from the Committee of the Whole, I ask unanimous consent that the second section of the bill be amended by increasing the sum therein mentioned by the amount of $237,993, that being the amount added to the bill by the adoption of the amendment.

There was no objection, and it was so ordered.

The bill, as amended, was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. HOLMAN moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

LOUISIANA INVESTIGATION.

The SPEAKER laid before the House the following:

NEW ORLEANS, *December* 15, 1876.

Hon. SAMUEL J. RANDALL, *Speaker of the House, Washington, D. C.:*

Every obstacle has been and will be interposed to hinder this committee in the discharge of its duty. Republican witnesses have been threatened, and dare not testify without incurring the loss of position and personal danger. Production of papers and telegrams is refused, it is believed, upon assurances of protection from Washington. Without the power of the House to enforce obedience to its process the committee cannot discharge its duties. The House should remain in session.

Have just received the following:

NEW YORK, *December* 15, 1876.

SIR: Subpœnas have been served upon several of the employés company, directing them to produce before the congressional committee of which you are chairman all the messages in the possession of the company sent and received by the persons named in the subpœnas during several months of the present year. I have delayed a reply to these demands in the expectation that similar applications would be made by a committee of the Senate, also charged with the investigation of matters connected with the presidential election and canvass in the several States, so that the action of the company, being the same in respect to the messages of both political parties, could not be attributed to a desire to prejudice or promote the interests of either. No subpœnas have yet been served upon us by order of the Senate committee, and as further delay might appear to be a discourtesy to yourself and your committee, it does not seem proper to postpone further this answer. The subpœnas were served before the investigation which the committee had been directed to make was begun, and before evidence had been presented to the committee, either that the persons named in the subpœnas had sent any messages whatever, or that any messages sent by them related to the subject-matter of the investigation.

It appears to have been assumed that persons holding high official positions under the Federal and State governments, and others prominent in public affairs, were in the habit of sending messages by telegraph, and without attempting to ascertain if any of these messages were material to the investigation, the officers and agents of this company have been commanded to lay aside the business in which they are engaged to become spies and detectives upon and informers against the customers who have reposed in us the gravest confidences concerning both their official and their private affairs. I have never believed that the Congress of the United States, with this subject fairly before them, would permit committees to violate the secrecy of the telegraph in this manner, and it seems to me that the present is an opportunity which it would be unwise to forego for obtaining a decision directly from the representatives of the people. If the messages of persons connected with one political party are spread before the public, a like course will be taken in respect to those of the other party. Both parties, therefore, have the same interest in publishing to the world the secrets of the telegraph offices, or of preventing such publicity. It has, therefore, been decided to decline very respectfully to permit the employés of this company to produce before any committee of either House of Congress messages sent or received by the representatives of either the democratic or the republican party, at least until after Congress shall have approved the subpœnas of the committees and direct that their demands be enforced.

I am, with great respect,

WILLIAM ORTON,
President.

Hon. WILLIAM R. MORRISON, *Chairman, &c., New Orleans, Louisiana.*

And have made this reply:

NEW ORLEANS, *December* 15, 1876.

Mr. ORTON, *President, &c., New York:*

I have nothing to do with your motives for refusing to obey the process of the House of Representatives. My duty will be performed by invoking its aid to enforce such process. Regretting your refusal of information necessary to ascertain the whole truth as to the Louisiana election,

I am, yours respectfully,

W. R. MORRISON.

Mr. WOOD, of New York. In connection with this communication from Mr. MORRISON, the chairman of the select committee now in Louisiana, I desire to submit a resolution for the consideration of the House. I will only say this, that I believe this House will not be slow to vindicate its rights and its prerogatives. I send to the Clerk's desk a resolution upon which I call the previous question.

Mr. HOAR. I rise to a question of order.

The SPEAKER. The gentleman will state his question of order.

Mr. HOAR. My point of order is that this matter is not properly before the House, that no committee can report by telegraph.

Mr. WOOD, of New York. It is a question of privilege.

Mr. HOAR. As I understand it, no committtee of this House is authorized to report by sending to the Speaker a telegraphic dispatch; and the Speaker has no right to lay such telegrams before the House and make them subjects for the consideration of the House to the exclusion of other business. In that respect the Chair has no right other than that of other members.

The SPEAKER. The Chair will read from the Manual, page 136:

Whenever the Speaker is of the opinion that a question of privilege is involved in any proposition, he must entertain it in preference to any other business.

And lower down on the same page is an enumeration of the various questions of privilege, among which is this:

Failure or refusal of a witness to appear before committees of the House, or refusal to testify.

Mr. HOAR. My point of order is not yet apprehended by the Chair. It is not that the refusal of a witness to testify is not a matter of privilege; but it is that the Speaker is to rule as to what is a privileged question on proper communications made to this House by its members; and that a telegraphic dispatch sent by a particular member is not a proper mode of communicating to this House, and not the proper mode of submitting a report from a committee.

The SPEAKER. Does the gentleman question the authenticity of the dispatch?

Mr. HOAR. I have no knowledge of the authenticity of the dispatch?

The SPEAKER. The Chair believes that the communication comes through the ordinary telegraphic channel.

Mr. LUTTRELL. Is not the telegram signed by the chairman of the committee?

The SPEAKER. It is sent by him.

Mr. HOAR. My point of order is that this purports to be a report of a commitee of a given state of facts, and that such report cannot be made to this House merely by sending a telegraphic dispatch to the Speaker.

The SPEAKER. The Chair overrules the point of order.

Mr. WOOD, of New York. I have sent the resolution to the Clerk's desk and call the previous question on it.

Mr. WILSON, of Iowa. I reserve my right to object to the resolution until it is read.

Mr. CONGER. For myself and other gentlemen who were not present at the commencement of the reading of this communication, I would like very much that it be again read, or at least the first part of it.

The SPEAKER. It will be again read if there be no objection.

There was no objection, and the Clerk began the reading of the communication; but, before concluding,

Mr. WOOD, of New York, said: I object to the further reading of this communication. Every member has not only heard it read here but has read it in the papers of to-day.

Mr. KELLEY. I have neither heard it read, nor have I seen it in the papers.

The SPEAKER. This paper can only be read again by unanimous consent if the gentleman from New York [Mr. WOOD] objects.

Mr. KELLEY. Is not objection too late, after the reading has been commenced?

Mr. WOOD, of New York. At one o'clock there is a special order that will come before the House.

Mr. HOAR. Of course the special order will be postponed if necessary.

The SPEAKER. The Chair sees no difficulty in regard to that point. The Chair would rule that this, being a question of high privilege, would have to be disposed of.

Mr. WOOD, of New York. Then I withdraw my objection to the second reading of these papers.

The SPEAKER. Rule 141 in regard to the reading of papers provides that—

When the reading of a paper is called for, and the same is objected to by any member, it shall be determined by a vote of the House.

That is the rule. But in this case the Chair did ask unanimous consent for the second reading of these papers, and such consent was given. In the opinion of the Chair the papers ought to be read.

The Clerk resumed and concluded the reading.

Mr. FOSTER. Is the dispatch of Mr. MORRISON signed officially?

The SPEAKER. The communication is addressed to the Chair as Speaker; and the Chair desires to say in reference to his ruling this morning that he finds upon examination that it is in harmony with the conduct of the House in the third session of the Thirty-third Congress in the case of W. B. Chace; in the third session of the Thirty-fourth Congress in the case of J. B. Simonton; in the first session of the Thirty-fifth Congress in the case of J. D. Williamson; in the same session in the cases of John W. Wolcott and Robert W. Latham; in the third session of the Fortieth Congress in the cases of Henry Johnson, Florence Scannell, and John H. Bell; in the Forty-second Congress in the case of Joseph B. Stewart; in the second session of the Forty-third Congress in the case of Richard B. Irwin; and again in the last session of the present Congress in the case of Hallet Kilbourn.

Mr. KASSON. Will the Chair be good enough to say what point

he regards as being supported by these precedents? Do they sustain the laying of a telegraphic dispatch before the House?

The SPEAKER. They sustain the point that this is a question of privilege.

Mr. KASSON. No point has been made on that. The point made was that this is a communication which does not purport to come from a committee, but is signed simply by a member of the House who is absent, and it comes in the form of a telegraphic dispatch instead of a formal communication.

The SPEAKER. The communication is addressed to the Speaker of the House.

Mr. KASSON. Undoubtedly; but the point was made that it was not a report of a committee; that it was a simple communication from a member and made by telegraph.

The SPEAKER. The Chair may be permitted to state a case. Suppose the gentleman from Iowa [Mr. KASSON] while *en route* for this city to take his seat as a member of this House should be arrested in violation of the constitutional provision that Senators and Representatives "shall in all cases except treason, felony, and breach of the peace be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same;" would not the Congress of the United States, upon the gentleman's telegraphic communication, have the right to take cognizance of his arrest as a violation of the privileges of the House?

Mr. KASSON. Yes, sir; to institute inquiry as to the facts.

The SPEAKER. Inquiry may be the purpose of the resolution of the gentleman from New York, [Mr. WOOD,] which has not yet been read. The gentleman from Iowa [Mr. KASSON] can of course reserve any point of order upon the resolution.

Mr. KASSON. Yes, sir, all points of order are reserved.

The SPEAKER. The Clerk will read the resolution.

The Clerk read as follows:

Resolved, That the communication presented by the Speaker from Hon. WILLIAM R. MORRISON, chairman of the select committee appointed to investigate certain matters relating to the late election in Louisiana, be referred to the Committee on the Judiciary, with instructions to report at the earliest practicable moment what action this House should take in the premises to enforce its rightful authority.

Mr. KASSON. My only objection to the resolution is that it misrecites the dispatch, which is not signed "WILLIAM R. MORRISON, chairman of the select committee." [Cries of "O!" "O!"]

Mr. WOOD, of New York. All the world knows the fact of Mr. MORRISON'S official position as chairman.

Mr. KASSON. But this dispatch is not signed officially; and the difference is between the dispatch of a private member and that of the chairman of a committee.

Mr. HOAR. As I made the original point of order, I desire to say that it seems to me on reflection that the position of the Chair is entirely right.

The SPEAKER. The Chair is very happy to hear the gentleman say so, because he desires on all questions to rule fairly and in strict accordance with parliamentary law.

Mr. WOOD, of New York. I demand the previous question on the adoption of the resolution.

The previous question was seconded and the main question ordered; and under the operation thereof the resolution was adopted.

Mr. WOOD, of New York, moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

OBSEQUIES OF HON. MICHAEL C. KERR.

Mr. HAMILTON, of Indiana. Mr. Speaker, I rise for the purpose of submitting resolutions of respect to the memory of our late Speaker; and I ask that the resolution introduced by me, making these memorial services a special order for to-day at one o'clock, be read.

The Clerk read as follows:

Resolved, That the special order for Saturday, December 16, at one o'clock, shall be the presentation of suitable resolutions on the death of Hon. M. C. KERR, Speaker of this House during its last session, and the expression by the members of the esteem in which he was held for his unblemished character, for his eminent services as a Representative, and for his ability and impartiality as a presiding officer.

Mr. HAMILTON, of Indiana. MICHAEL C. KERR was born at Titusville in the State of Pennsylvania, March 15, 1827. When he was twenty-five years of age he entered upon the practice of the law in the city of New Albany, Indiana. At twenty-seven he was city attorney; at twenty-eight prosecuting attorney of Floyd County; at twenty-nine took his seat in the Legislature of Indiana; at thirty-five was the official reporter of the supreme court of that State and edited five volumes of its reports; at thirty-seven was elected to the Thirty-ninth Congress of the United States and was afterward elected to the Fortieth, Forty-first, Forty-second, and Forty-fourth. He died the Speaker of the House, at seven o'clock and thirty minutes p. m. on the 19th day of August, A. D., 1876, at Rockbridge Alum Springs, in the State of Virginia, at the age of forty-nine years, five months, and four days.

Such is the brief record of one, who for twenty-two years, nearly a quarter of a century, had been selected by the people, among whom he lived, to hold important trusts.

At each step of his career, he firmly established his footing, so that it was easy to ascend. Scarcely had he been ready to surrender an office, when one more prominent was tendered him. So well did he discharge the duties assigned him, so exemplary was his conduct that the people of his district delighted to honor him. His home was in a portion of the State, which was early settled, on the Ohio River, the highway of travel. He was surrounded by able men, yet he was selected to be the recipient of such honors, as the voters of his own and adjoining counties could bestow. When he was the democratic candidate for Congress in 1872, for the State at large, he was defeated by only 162 votes, while the other democratic candidates on the State ticket, with the single exception of Thomas A. Hendricks for governor, were defeated by majorities ranging from 533 to 2,568. And in the November election following, General Grant's majority was 22,507. Yet he was not one, who could have been called a popular man. He was not all things to all men. With a will of iron, he never could have been bent from his convictions of duty. Place and power would have been too dearly bought by even the slightest concession.

He obtained the offices, which he filled by the confidence, which was felt in his integrity, so convinced was every one, that, under no circumstances, would he ever sacrifice his personal purity, the people's interests, or his country's honor. In his campaigns he was earnest, but not impassioned. He appealed to the judgment, not to the prejudices of his audience. A candidate for the Fourty-fourth Congress, differing from the greater portion of his constituents, who were members of the same party, on the financial question, he would not compromise. He made his contest squarely on that issue. Though he did not carry his district by its full democratic strength, yet he was elected by a majority of over 1,500, many of those, who did not agree with him in his financial views, were so firmly convinced of his integrity and so proud of his record, that they cast their votes for him; and yet he was opposed by a man, who had achieved a State reputation and, who, up to that time, had stood among the foremost men of the democratic party in that portion of Indiana.

Mr. KERR took his seat, for the first time, in the Thirty-ninth Congress. He early obtained a prominent position and not only maintained it, but also advanced his reputation year by year.

During the sessions when he stood upon the floor of the House, he was with the minority. It was in stormy periods; but even in the midst of debate he commanded the respect of all, and yet he was, at times, severe and denunciatory.

As the presiding officer, he was calm, dignified and impartial. What he might have been as the Speaker, had he been in perfect health, can be easily determined by what he was, when worn to a shadow, with disease preying upon his vitals and torture rending his frame. With the exception of a lack of breath and a countenance, which told of suffering, there was nothing in his manner, as a presiding officer, of the invalid, whose life hung upon a thread; there was none of the irritability, which usually accompanies the disease that is incurable.

Mr. KERR was a partisan—I mean by a "partisan" one, who does not swerve from the views and principles which are promulgated by those connected with him in a political organization, but on the contrary, with unflinching tenacity, clings to them and advocates them; carries out those measures, which advances them and endeavors with boldness and energy to place his party in power—yet, as "The Speaker," he knew neither friend nor foe, he recognized only the individual rights of the members and parliamentary law.

The moral power—unstained honor, true faith in pure motives, unswerving devotion to principle, unsullied patriotism—is, as the combination of genius and talent—or genius educated—in the mental organization, an inherent characteristic, educated and increased by the man himself, which places him upon an elevation, from which it were not possible for him to descend. This power Mr. KERR possessed.

During all the years of his public service, not a breath of suspicion was ever directed toward him until a baseless charge was brought to offset charges against other public men—a charge so unfounded and unsupported, that even his political opponents, blushed for their connection with it. His intense energy sustained him during that most extraordinary trial. When the accusation came, he asked no postponement on account of ill-health. Raising himself from what his friends knew to be his dying-bed, his strong will overcame his illness, put temporary life and vigor into his emaciated and tottering frame and bore him calm and dignified before the committee and his accuser where he demonstrated the utter falsity of the charge.

When the negative man dies there is no muffled bell tolling in the heart of the people.

He is like the worm, a part may be cut off and crushed, but each of the hundred other parts have a similar life, which still continues. But when the man of positive character—of high sense of public duty and a will to carry out at all hazards his convictions—is taken away, there is a feeling that a vacancy has been created which cannot be filled, not that a piece of the long body of humanity has been cut off and that the rest can crawl along as well without it. MICHAEL C. KERR could have led a forlorn hope. He could have breasted popular opinions and gone to the stake a martyr to his principles.

At any time the death of a pure man, an upright statesman occasions a blank which it is difficult to fill. But in an age like this, when a deviation from public probity is looked upon as a slight affair, when public men who have soiled their hands oftentimes, instead of

being denounced have been indorsed by the people, then the loss of a man, who has no defilement on his person, nor a stain upon his garments, is irreparable. Years have passed, and years to come may sleep among the by-gones, and the student not be able to find a more perfect parallel to Andrew Marvel, in his firmness and decision of character, and in his pure and lofty patriotism than is afforded by the life of MICHAEL C. KERR.

Immaculate, he stands out a tall palm tree in the moral desert of the age, gladdening the heart of humanity a cheering evidence that the wells of political probity and public honesty have not all dried up. The distinguished member of this House from Massachusetts, in the Senate Chamber arraigned the public men of the day for their dishonesty and corruption. How gratifying it must be to an American, to turn from the picture he draws to the name (*nomen clarum*) of MICHAEL C. KERR on the monument in a cemetery of the State, which has reason to be proud of the example it has given to the country, of unimpeachable integrity.

The resistance Mr. KERR made to the advance of the disease which was to terminate his existence—the determination to occupy his place in this House in spite of the ravages made upon his system—the manner in which he endured physical and mental torture—was marvelous. He demonstrated that he had learned—

> Life's hardest lesson—without groan
> To suffer and endure.

The final summons came. The response was not merely the calm "*adsum*" but also the "*semper paratus*" of the man who felt that his life had been unspotted, and who had used well the talent which had been intrusted to him.

As—

> The days lay down their brightness,
> And bathing in splendor die,

so MICHAEL C. KERR went to his rest, surrounded by a halo of moral beauty, followed to the tomb by the regrets of the entire nation and left behind a name synonymous with public probity and public honor.

> He has done the work of a true man;
> Crown him, honor him, love him;
> Weep over him tears of woman;
> Stoop manliest brows above him!

Mr. KELLEY. The sudden death of a strong man in the vigor of early manhood fills his companions with awe and constrains the strongest and most youthful of them to pause and consider how frail may be his tenure of life. We all remember the thrill that ran through the House when, near the close of the last session of Congress, the local telegraph brought us notice of the instant death of that magnificent specimen of manhood, Hon. E. Y. Parsons, of Kentucky, whose manly beauty had commanded our admiration, and whose conversation pregnant with intelligence, wit, and humor, had charmed some of us but a little hour before.

The death of Hon. MICHAEL C. KERR was not sudden. We had all seen from day to day, or week to week, the fatal inroads disease was making on his always slender frame. In his case we saw how high purpose and overmastering will could hold death at bay; for common consent denied him three months of life from the day on which he entered upon his duties as Speaker of the House; yet it was not until after the close of an unusually long session that in the presence of his wife and only child, a son in whom he hoped his virtues would live, he welcomed death as release from pain, and with serene courage passed to the unknown.

I first met Mr. KERR when he entered the Thirty-ninth Congress, but years elapsed before I came to know him intimately. Indeed, until we were associated on the Committee of Ways and Means of the Forty-second Congress I had felt that we should never know each other well. Starting from almost any given stand-point in the investigation of public questions, such were our instincts or had been our early training, that we traveled in diverging lines and rested in opposite conclusions.

He seemed to me to have little special fitness for public life. He not only never attempted the arts of the demagogue, but loathed them in his inmost soul. Social life, other than the charmed circle which graced his home, seemed to offer him no attraction. His conversation was grave, and rarely, if ever, sparkled with wit or was softened by a stroke of humor. His tendencies were evidently not toward the excitement of public life. He loved his profession—the law—the labors of which were congenial to his tastes, and when he sought honor at the hands of his fellow-citizens it was in the line of that profession; thus though admitted to practice in 1852 he was elected city attorney by the people of New Albany in 1854; in the next year the citizens of Floyd County promoted him to the office of prosecuting attorney, and in 1862 the Legislature elected him reporter of the supreme court of Indiana, which office he filled till elected to the Thirty-ninth Congress. The fidelity and ability with which he performed the duties of this office is attested by the esteem in which the five volumes of reports that bear his name are held by the profession. During his service on the Committee of Ways and Means the impression I express was confirmed by the fact that he was ever ready, though his strength was even then much impaired by disease, to give special study to any question referred to the committee which involved legal intricacies or nice judicial consideration. I can recall several such cases, and remember that in reporting his judgment in each of them it was the jurist and not the politician who spoke. I am sure that all our colleagues on that committee will confirm my judgment on this point.

Yet Mr. KERR was a man of positive political convictions and had the courage of his opinions, which, on the cardinal questions that divided parties during his service in Congress, were those of his party, and his fearless expressions of them won for him its confidence in a remarkable degree. So strong was his will and so absolute were his convictions, that it was impossible for him to trim or play the time-server. In none of his numerous speeches during the time Congress was engaged in the work of reconstruction can a sentence of double or doubtful meaning be found.

On the question of the best method of raising revenue for the support of the Government and the extinguishment of the debt, he and I were in constant antagonism. He regarded duties imposed either incidentally or directly for the protection of capital ventured in manufactures in the hope of developing our natural resources and establishing our commercial independence, as a violation of the Constitution and an injury to the consumer. He would, could he have found it practicable, have abolished all custom houses, and laboring to that end he steadily strove to reduce impost duties to the lowest possible rate and to limit their application to the smallest number of articles. Here, again, the integrity of his intellect and purposes were shown. He left it to others to prate of revenue reform while really intending the establishment of free trade and the overthrow of the protective system. He had faith in the intelligence of the people, and believed that he who discussed such questions was bound to state his faith with perfect clearness, and to submit to those he would influence the arguments on which it rested.

He was a whole-hearted and courageous man, and none could know him well, as I learned to do in the committee-room and during the last session of Congress when his sufferings frequently attracted me to his side, without finding under his rigid exterior a gentleness of character and a depth of affection that was most winning.

If truth is made apparent by the vigorous conflict of opinion, and if, as I believe, the grandest treasures of a republic are its men of manly purpose and dauntless will, our country suffered greatly in the early death of Mr. KERR; for while life and strength permitted, he was ever ready to discuss with absolute integrity of purpose and expression every question that concerned the welfare of the Republic.

It must have been the strength of his convictions on political questions that tempted him to yield to the persuasive voice of friends and enter the arena of national politics, and I have often thought had it not been for the exciting labors into which he was thus drawn, his life would probably have been prolonged and his name filled an exalted place in the judicial records of his adopted State and the nation at large.

Mr. HAYMOND. Mr. Speaker, we have assembled on an occasion of unusual solemnity. The late distinguished Speaker of the House of Representatives, Hon. MICHAEL C. KERR, is no more. He was stricken by the hand of death soon after the close of the first session of this Congress. He has passed away; his mission on earth has ceased and his labors have been finished. We shall see his face and hear his voice no more, but his good name, his well-earned fame, and his noble qualities still live in the memory of all who knew him, and will not be soon forgotten. Universal sympathy was extended to him during his protracted sufferings from mortal disease, and the whole country beheld with surprise and admiration the pertinacity and bravery exhibited by him in the discharge of the responsible and laborious duties of his office. A nation, without respect to party, mourns his untimely departure, and it becomes appropriately the duty of those who were his associates on this floor to render a heartfelt and formal tribute of respect to his memory.

It is a charitable sentiment, at least, that no one should speak ill of the dead; that their errors, faults, and frailties, whatever they may have been, should be covered by the mantle of oblivion; but it does not follow from this that their virtues, their endearing qualities, their noble deeds and valuable services to the state should remain unrecorded and suffered to pass without appropriate notice and action on the part of their associates and survivors. These should be appropriately recorded and transmitted that the light which once shone and illumined the pathway of thousands should not return to darkness. It is a duty devolving upon the living to perpetuate the memory of those who were good or great, who achieved distinction in some department or sphere of life, who filled high positions with credit to themselves and benefit to their country, and who by their talents or genius have rendered valuable service to mankind. The character and personal history of such belong to the people, and should descend as a legacy to posterity. What is a country without a biography of its distinguished men and its public benefactors? What a blank would there have been in the history of Greece and Rome if there had been no biographical sketches or special mention made of their philosopher, poets, orators, statesmen, and heroes? It would have been a shadow without substance; a skeleton divested of those vital parts essential to form—life and beauty. The character of a nation and the criterion of its civilization may be judged by the intelligence, honesty, and purity of those who are appointed its rulers. It is our boast to rejoice in the eminent qualities of the founders of this Re-

public. While the spirit of freedom pervades the minds of the American people they cannot cease to hold in veneration the illustrious champions of independence. The names of Washington, Adams, Franklin, Jay and Hamilton, Marshall and Jefferson, will be handed down from generation to generation and sounded with praise while free institutions exist upon the earth. Those names will be transmitted as synonyms of great ideas—liberty and self-government.

The duties and responsibilities of men never cease. Each generation at every stage of progress, will have new perplexities to encounter, new labors to perform, and new difficulties to surmount. "Peace hath its victories no less renowned than war," and to the statesman of the present time there is open a wide and constantly expanding field of usefulness, in which there is room for the exercise of disinterested patriotism, of the highest order of abilities, and of the most diversified and extensive knowledge. Hence while our Government endures new events will enter into its history and new actors from time to time will appear upon the political stage. Their names will deserve to be honored for whatever valuable service they may render to the country, for their eminent qualities, and for their fidelity to the great principles of self-government.

The name of the late Speaker deserves to be mentioned in honorable connection with his departed and distinguished predecessors. I shall make but few allusions to his personal history, but leave this duty to those who have been longer and more intimately acquainted with him than myself; and what has been already said in this respect by others need not be repeated by me. No fulsome adulation can add anything to his well-earned reputation or to the perpetuity of his fame. I shall attempt nothing beyond what a brief personal acquaintance with him, the impressions formed of his character, and what may be inferred from his public acts, will justify me in stating. Though cut down in the prime of life, at that period when the mental faculties had just attained their full development, he had already achieved distinction in his own State for his public services and sterling ability, and had also won for himself a national reputation as a legislator.

Mr. KERR was endowed by nature with a strong and well-balanced intellect. It was of the synthetic order and peculiarly adapted to the investigation of subjects requiring the highest reasoning powers.

Though an able and forcible speaker, he was not gifted with the commanding eloquence of a Clay or Webster, but as a practical statesman he evinced unusual sagacity and a thorough comprehension of public affairs as well as of the theory and powers of the Federal Government. With ample opportunities, health, and years, he would have ranked among the foremost statesmen the country has produced. His talents were of a high order, but he did not alone trust to natural endowments. His life from early age was that of an ardent and indefatigable student. His chief ambition was to acquire knowledge and gain mastery of whatever he undertook. His pecuniary circumstances in early life were very limited, but his ambition to obtain a good education, both literary and professional, was reached by his devotion to hard study and by his indomitable perseverance. A successful career of professional life opened before him. His talents and qualifications were duly appreciated. He had but fairly entered upon this course when he was called by the people to important public trusts.

As a member of the Legislature of Indiana, as a reporter of the supreme court of that State, as a Representative in Congress and Speaker of the House of Representatives, he discharged every duty with unswerving fidelity and with rare ability. In every capacity of public employment which he was elected to fill he exhibited the traits of honesty, inflexible integrity, and a sacred regard for the inviolability of public trust.

His honesty, purity of character, and integrity were unimpeachable and above suspicion. He never compromised his principles for the sake of expediency, but carried his convictions of justice, honor, and right into whatever he undertook. He guarded the public interests intrusted in his hands with the same jealousy and care that he would his own private affairs. He occupied a position in American politics similar to that attributed to Aristides, "surnamed the just," in the affairs of Athens. Like the great "commoner" Henry Clay, he "*would rather be right than President.*"

A man's character is generally formed by himself. Adventitious circumstances may divert the mind into unexpected channels for a while, but when there is an inflexible purpose founded upon sound convictions, the character of the man will be molded in accordance therewith.

Mr. KERR shaped the course of his life in pursuance to a fixed purpose. The acquisition of knowledge was one of the chief objects of his life, and his assiduity and perseverance to obtain this end were seldom equaled. He had none of that ambition that would lead him to aspire to places of honor by any means that would conflict with his well-confirmed notions of justice, morality, and integrity. He had no sectional ambition or animosity to gratify. His patriotism was of that character not bounded by State lines, but which comprehended the interests of the entire country. He was ever a champion of the great principles of self-government and constitutional liberty. He was ever jealous and watchful of all encroachments of power against the bulwark of freedom, the Federal Constitution.

His recent services as Speaker of this House affords us a clear conception of his nature and the sublime traits of his character. In pursuance to his convictions of duty, he essayed each day to preside over the deliberations of the House, and only retired from his post when his wearied and exhausted frame would no longer permit him to remain. His indomitable will and wonderful energies supported him after it was apparent that his physical powers were unequal to the task. But hope seemed to cheer him on with its delusive promises. His mind was clear and unsubdued, while the earthly tabernacle was sinking from the consuming fires within. Summer came, and its depressing heat, so overcame him that he was at length forced to abandon his post of duty, leave the city, and seek refuge in the salubrious atmosphere amid the mountains of Virginia. But the change produced only a temporary effect. His soul calmly resigned the tenement no longer fitted to retain it, and took its peaceful flight to that "house not made with hands, eternal in the heavens." The death of such a man as the late Speaker, at this perplexing period of our history, is a national calamity.

His broad patriotism, his unsullied integrity, and his unswerving fidelity to principle and justice, were such as commanded the respect of the whole country, and would have proved invaluable had he continued with us. The Commonwealth whose interests he has so faithfully guarded will long miss his services in the national councils, and mourn the loss of one of her brightest jewels.

> His life was gentle, and the elements
> So mixed in him, that Nature might stand up
> And say to all the world, *This was a man.*

Mr. MONROE. Mr. Speaker, I was not favored with such a degree of intimacy with the late distinguished Speaker of this House as was enjoyed by many members, and hence may not present so accurate, and certainly cannot present so complete, a view of his character as could others. But such opportunity as I had to become acquainted with him greatly interested me, and it may not be amiss to state frankly just the impression which his qualities of mind and heart made upon me.

In listening to him, whether in conversation or in debate, the first quality which arrested attention was his intellectual clearness. His thought came to him well defined and in a strong light. He had a certain, definite thing to say; he knew precisely what it was and what he wished to accomplish by saying it. What he clearly saw, he clearly communicated. The hearer could seldom be in doubt as to his meaning. He was called reticent. But until he could think and speak clearly, he had nothing to say. The habit of his mind could accept no other conditions of speech. In debate, his single aim was to be understood. No temptation to appear eloquent or sparkling could turn him aside from this end. His mind rejected ornament. Illustration by means of comparison and figures of speech, he did not much need. A severe simplicity and directness marked all his efforts.

With this perspicuity of thought and expression, not unnaturally was associated a high degree of intellectual force. He had power of statement, felicity in arrangement, logical skill, and depth of conviction. These qualities gave great vigor and effectiveness to his discourse. His argument always looked strong, if not impregnable, and he was always in earnest. One who differed from him and refused to accept his conclusions, was compelled to admit that they were urged with a certain convincing force which it was not easy to resist.

To these intellectual qualities must be added another which was largely moral—the judicial candor and fairness of his mind. This was not always very apparent upon first acquaintance. He exhibited a certain outward severity in debate which did not give promise of that capacity for impartial judgment which he really possessed. His sharp-cut sentences sometimes wounded the feelings and gave offense. But further acquaintance showed that this sternness was more of manner than of spirit. It was in great measure due to nervous conditions resulting from ill-health, and did injustice to his real character. One who approached him to call attention to new aspects of questions under discussion, found him not only an attentive listener but often willing to admit a measurable modification of his own views. His convictions, when clearly formed, were, no doubt, firmly held; but he antagonized principles rather than men, and respected the character and the argument of his opponent. This quality of judicial fairness became more apparent after his election to the office of Speaker. I think it must then have been evident to the whole House that it was his earnest desire to administer the duties of his high place with perfect impartiality.

Closely allied to this quality of judicial candor was his undoubted goodness of heart. It must be admitted that this, also, was not always freely acknowledged at first. In the Forty-second Congress I sometimes heard him spoken of as cold, reserved, and unsympathetic. But those who knew him well felt that this coldness was superficial. It sprung in part from a diffidence which was both genuine and creditable. The really modest estimate which he placed upon his own powers and accomplishments, made him slow to engage the attention of others, except as duty demanded. His reserved manner grew, in part, also, out of the state of his health. We sometimes forget, that that uninterrupted flow of cordial feeling which is so charmingly expressed in the manner of some men, is often as much the result of sound physical conditions as of sweetness of disposition. We should not mistake a bad digestion for a bad heart or confound a torpid liver with moral indifference to the happiness of others. All who had admission to the inner circle of his friendships bear witness, that he was essentially warm-hearted, kindly, and affectionate, and that his attachments were as tenacious and enduring as they were disinterested

and cordial. That he deeply appreciated kindness and a just estimation from others, was especially evident on one marked occasion, when several gentlemen had shown a friendly interest in his good name, upon this floor. With tears coursing down his cheeks he said to a distinguished member of this House, "Convey to those gentlemen the thanks of a dying man." It was done, and the message was received with a feeling almost as deep as that which prompted it.

But, after all, the distinguished and crowning virtue of his character was his absolute integrity and uprightness. Of course I do not mean merely that he was honest and pure in all pecuniary affairs, but that he had a hearty love for truth and rectitude for their own sake and in all their applications. He had the keenest sense of honor and feared a stain upon his fame more than political defeat—more than death. A fact bearing upon this point I have from the best authority—that of his able successor in this place. The last time he was nominated for Congress it was well known that he was, in the phrase of the day, "a hard-money man." But there were large numbers of "soft-money men" in his district, and his friends feared that the open advocacy of his views would greatly reduce his majority, if it did not result in his defeat. A committee waited upon him and suggested that it might be more prudent in his addresses to the people not to speak at length upon the importance of a return to specie payments. "Gentlemen," was his reply, "it would be better that I should be defeated, and that my party should be defeated in me, than that I should knowingly lead one man to vote for me under a delusion."

To conclude, though often weak in body he was thoroughly strong and sound in all that constitutes a rational being—sound in mind, sound in heart, sound in character; and he died, as such a man might be expected to die, in the profession of that Christian faith whose mission it is to impart health and soundness to the race of man.

To us it belongs to speak rather of character as it is revealed to us here than of the destiny which awaits it hereafter; but as I sat this morning pondering my sad and yet inspiring theme, there involuntarily recurred to me the well-known lines of that remarkable man of our time who has written the sweetest and most thoughtful memorial poetry in all literature:

> And, doubtless, unto him is given
> A life that bears immortal fruit
> In such great offices as suit
> The full grown energies of heaven.

Mr. HOLMAN. Mr. Speaker, in the closing hour of the last session of Congress, as we were preparing to leave this Hall and return after a weary absence to the blessed shelter of our homes, in the midst of the tumult and excitement incident to that event, there was a pervading sentiment that we could not adjourn without expressing to MICHAEL C. KERR, the then honored Speaker of this House, then absent from the capital and seeking in the mountains of Virginia a reinvigoration of his failing powers, some words of sympathy; and we all remember how well the universal sentiment of this House was expressed by the eloquent and kindly words of the distinguished gentleman from Massachusetts, [Mr. BANKS.] This message of friendship and of generous sympathy from his associates in a high public trust, from this House representing the views and guarding the fortunes of a great people, was the last utterance that fell upon his ear from the great theater on which his own high reputation had been achieved, and from which he had so recently withdrawn never to return. Who shall say how soothing and consoling this message was to our departed friend in that final vicissitude of life! As it fell from the lips of his distinguished associate and friend, the gentleman from New York, [Mr. COX,] who shall say how it buoyed up his drooping spirits! The sympathy of a nation, mingling with the love of wife and child and friends, closing the one life even while the new opened with glimpses of the infinite and the immortal!

We had scarcely reached our homes when the announcement came, MICHAEL C. KERR is dead, and the heart of a great people uttered a sigh of regret. MICHAEL C. KERR had scarcely reached the prime of his manhood; he had been in public life for a comparatively brief period; and yet his natural abilities and attainments and the struggles of an honorable ambition had placed him in the foremost rank of the citizens of the Republic, while his just conceptions of public duty, his singleness of purpose to promote the general welfare in the employment of political power, and, above all, the severe and impartial integrity of his judgment in public affairs had secured to him respect and confidence of a great people. Surely his was a fortunate life; fortunate for his country, of high honor for himself.

Mr. KERR, with more than ordinary attainments in the general field of intellectual culture, had devoted his most valuable and maturer years to the learning connected with his public duties. His chief study was the science of government, the laws of political economy, and the principles of the social fabric of life in its relations to the State. He was not an enthusiast, but a severe and impartial seeker after truth. He was in no sense a Utopian. His opinions were based on precedents and the teachings of history, and he questioned with impartial purpose the institutions of government which have perished as well as those which have survived for the just principles of political society and the true relations of the citizen to the state. His opinions were convictions, and he stood by them with unflinching courage. His temper was neither compromising or conciliatory; he sought to convince, not to persuade, and shrank from no contest where his principles were involved. He had carefully studied the early history of the Republic, and was thoroughly imbued with the spirit and the opinions of its founders. He esteemed the vigorous maintenance of constitutional limitations on delegated power the most perfect safeguard of public liberty that human intelligence could devise. His theories of the social compact limited the domain of government to the maintenance of public order and the administration of justice, leaving all else to the untrammeled enterprise of the citizen and the moral power that springs from self-reliance, enlightened conscience, and cultivated intelligence of the people.

He was a true American, and gloried in the commanding influence of his country among the nations; and following the result of his deductions as to the just principles of government, as an outgrowth of the implied social compact, he believed in the fraternity of the nations, "that the world of mankind should not be considered in fragments, but that all peoples were reciprocally dependent;" hence he insisted that the intercourse of the nations should be untrammeled, that true statesmanship would bring the cultivated world together, and that commerce should be free.

As a legislator Mr. KERR accepted the maxim "the world is governed too much." He abhored special and class legislation and every form of monopoly, demanding the just equality of all the citizens of the state. He held that a plain, simple government, with severe limitations on delegated powers, frugally administered, was the noblest outgrowth of the cultivated intelligence of our age.

While neither impulsive nor an enthusiast, but cool, dispassionate, and logical in his mental organization, he was most earnest and devoted in his friendships, but asked nor gave quarter in conflicts of opinion. He was frank, ingenuous, and incapable of deception, a lover of truth and justice, controlled by a high sense of duty, even if time shall here and there demonstrate, as it reasonably may, the fallibility of his judgments, (and what perfection in judgment or attainments in statesmanship can escape this?) the records of Congress will for all coming time bear testimony with what unswerving fidelity, in the light of his conscientious convictions he fulfilled his high trust as a representative of the people. He followed his principles without fear or hesitation to their logical results as a Representative on this floor. No fear of the consequences to himself deterred him. He yielded without reserve to the mastery of his convictions, and trusted to time and events to vindicate the integrity of his opinions.

Mr. KERR was not in the ordinary sense of the term an orator. He never seemed to speak with a view to rhetorical effect. He seldom if ever appealed to the passions or prejudices of his hearers; yet he was the master of a very high order of eloquence. He had a complete mastery of the English language. His style of composition was elevated and elegant, compact, clear, and logical; his delivery at times fervid or impassioned, and always clear, distinct, and powerful. In the current debates on this floor his distinct, concise, positive, and logical method of reasoning never failed to arrest the attention of the House.

Mr. KERR was not only an intellectual man, but his will was absolutely the master—a mastery that only death itself could subdue. After his election as Speaker of this House, surrounded by embarrassment in arranging the details of organization, prostrated by a fatal malady, feeble and suffering, he applied himself to the task with unfaltering purpose. When he left this Hall never to return, with the hand of death upon him, the fortitude of his mind was unshaken. The fresh breezes of the mountains did not arrest the decay of nature, and with the fortitude of a Christian and the composure of a sage, assured of an honorable remembrance by his country, he met the inevitable fate—

> Like one who wraps the drapery of his couch
> About him and lies down to pleasant dreams.

MICHAEL C. KERR is dead. The record of a good life is complete. May that record perpetuate his virtues and the services he has rendered to his country as long as time shall endure.

Mr. BURCHARD, of Illinois. Mr. Speaker, although Death with busy hand has repeatedly snatched Senators and Representatives from the post of duty, never before has he stalked boldly into this Hall and taken away a Speaker of the House—its presiding officer and head.

During this Congress the grim tyrant has unmistakenly displayed his resistless power and remorseless will. When the Representatives assembled one year ago, at the commencement of the first regular session, the Capitol was draped in mourning. Henry Wilson, Vice-President of the United States, had been stricken and numbered with the dead. His mortal remains, with national honors, as became the office and the man, had been borne to their last resting-place in the bosom of the Commonwealth he so warmly loved and so long represented.

Again assembled, the somber emblems of sorrow that surround the vacant Speaker's seat and front the waiting Representatives anticipate the official announcement that MICHAEL C. KERR, the Speaker of the House, for the last time has presided over its deliberations. To-day we banish the excitement of legislative debate and withdraw our thoughts from the great events and grave and momentous ques-

tions of the hour, to bestow the accustomed and merited honors and pay a grateful tribute to the memory of a friend and associate, a Representative of the people, and a presiding officer of the House.

Rightly to estimate the public character and services of MICHAEL C. KERR, it must be considered in connection with the times in which he lived and the great questions in which he took a part.

Mr. KERR entered congressional life in the closing scenes of a historic drama, played by real and living characters in successive acts, which opened with legislative discussion, culminated in bloody strife, and ended in the establishment of universal liberty and political equality throughout the nation. For nearly a century slavery, the evil genius of American institutions, presaged disaster and endangered the perpetuity of the Union. Its overthrow and utter annihilation was the grand historic event in the first century of the Republic. Its constitutional prohibition had already been secured (and the last of the confederate forces had surrendered) when in December, 1865, Mr. KERR became a member of the Thirty-ninth Congress as Representative from the State of Indiana. He, with the other statesmen of that Congress, was brought at once to consider what plan was safest and wisest for the restoration of the seceding States to their practical relations to the Union. Great constitutional and legal questions were involved.

His mind, trained to habits of logical reasoning and judicial investigation, subjected every measure to the closest scrutiny. He did not shrink from encountering in debate upon these subjects the oldest and most experienced members of the House. By apt citation of precedent or authority in support of his views he at once took rank as an able debater and diligent student of constitutional law.

A strict constructionist in interpreting the grants of Federal power, he sharply criticised and earnestly opposed the policy and measures then adopted as the basis of reconstruction in the seceding States. We are perhaps too near and many of us have been too prominent actors to be able to pass unbiased judgment upon the results achieved or failures that may have ensued. If fears have not been realized, and evils predicted and objections urged have proved illusory, we cannot say that an opposition which secures more deliberate consideration and seeks to point out supposed defects and injurious consequences is profitless.

My personal acquaintance with Mr. KERR commenced in the Forty-first Congress, and by assignment to the same committee-duty in the Forty-second Congress our personal association became frequent and intimate. In the daily discussions of great public interests and economic questions, for months under consideration in that Congress, no one who heard Mr. KERR in committee or on the floor will deny him honesty of purpose, fearlessness in the avowal of his convictions, and ability in presenting and explaining his conclusions. He rose above personal considerations. Friendship could not allure him to support a measure he disapproved. He despised all shams and pretenses. He was a stranger to deceit. He gave no comforting assurances to a claimant with a hopeless case. Special legislation was his aversion. He hated monopolies and congressional favoritism. His bold and manly course in avowing and advocating a financial policy at variance with the supposed current of popular opinion in his own State challenged the admiration and won the respect of even political opponents, as well as the thoughtful men of the country. It doubtless made him Speaker of this House. In that high position he did not disappoint the expectations of friends or the country.

In his rulings and decisions all acknowledged that he aimed to be, as a worthy Speaker should, impartial, just, fair, and absolutely right. He presided with dignity, observing as well as exacting the courtesy due to members and to the Chair.

Such was the record and impression made by the late Speaker ere declining strength compelled him to designate other occupants, and finally leave the Chair in order to seek restoration of failing health away from the exciting scenes of congressional life.

The hopes and prayers of a devoted wife and loving son, the ministrations of watchful friends, were vain and futile. Amid the then incipient excitement and rising storm of political discussion and partisan passion incident to a presidential campaign, his peaceful spirit deserted its earthly tenement and was wafted to its eternal rest.

Thus the all-conquerer, again exulting, reminds us of his resistless power. The law-maker is not beyond his mandate. The mighty and the lowly are alike subject to his will. But death triumphs only over man's mortal frame. Its material elements dissolve and commingle with their mother-earth. Dust returns to dust. But this is the limit to death's power.

The man, his character and achievements still survive in memory, in influence, and far-reaching results.

Great deeds, grand heroic words, and thoughts beautiful or sublime strike responsive chords and are re-echoed and reproduced in other sympathetic souls. They live and inspire, mold, guide, and sway present and future generations.

The manly form of MICHAEL C. KERR will never again enter this Hall. He rests from his labors and conflicts. Triumphs and honors cannot allure him to earthly scenes.

His mortal remains are moldering in the dust, but his lofty character, his example, and influence will live and remind us that manly sincerity, integrity, and honesty of purpose ennoble and exalt the possessor more than high position and earthly honors.

Mr. COX. Mr. Speaker, the Representatives of thirty-seven independent States this day pause in their deliberations for the welfare of forty-five millions of people to offer to the memory of a great and good man the solemn anguish of a nation for its loss, and their sympathy with a family and a constituency in their bereavement.

The lapse of time which heals up the green and bleeding wounds of sorrow, and which makes too often ceremonies like this the mere mockery of woe, has had no balm save that which preserves the recollection of our friend, no dew of refreshing save the sweet dew of his memory.

It is eminently fitting that this House should place upon the tomb of its late presiding officer, and the third officer of the Government a civic crown!

The catalogue of American representatives is a catalogue of mortality. Our political system has in it much of popular caprice, and more of providential vicissitude. Of those that were here when I first entered this Hall but four or five remain. As I look about this Hall I perceive one and only one of my Ohio colleagues [Mr. W. S. Groesbeck] who was a member of the Thirty-fifth Congress; and he will share my thought and feeling. The first death which we were called upon to mourn was that of a beloved southern statesman and soldier, John A. Quitman. Subsequently and how frequently have others fallen!

I feel almost isolated, standing between the many dead, who were friends, and the living who in a few years will be numbered with the dead; but in all these chances and changes of time it has been my lot to cheer and not to sadden. In the home and among kindred for two generations it was not for me to weep, but to dry the tear of others. When the great moan went up that Douglas was indeed dead, and in that solemn hour for the country, I came forth to the stricken men who surrounded my Ohio home to hear the last telegraph—not to mourn but to comfort them with hope. In the dark hour when the country was filled with battle-cries and blood, I lifted on high, not the wail of Jeremiah, but the joy of Isaiah—in the hope that soon the waste-places would be built up and the old leaf and bloom return with the spring. I tried to bring good tidings to bind up the broken-hearted, and to them that mourn in Zion—to give unto them beauty for ashes, the oil of joy for mourning, and the garment of praise for the spirit of heaviness.

On another and recent occasion, and as the shadows gathered over the Rockbridge Mountains, it was my place to give what of comfort I could, by fringing the cloud with golden hope to the stricken. But on this occasion it is my privilege and my infinite relief to mourn as one who has not merely lost a friend, but as a citizen who has lost a compatriot, and, as a Representative, to deplore a brother who in this dire trial of our institutions is not with us to guide.

It may not be out of place here to say that, in spite of marked contrasts of character, I shared with Mr. KERR many of the burdens, studies, and sympathies of life. It was a sad pleasure to stand with him at the last, on the shore of that vast ocean which he knew that he must sail so soon. Racked with more than mortal anguish in his last sickness; harassed with a false accusation which touched the very heart and marrow of his character; his body shrinking and shrinking to the very imagery of death the skeleton; yet his spirit was as calm as a still, sweet morning—as it rises above yonder azure mountains where he died, and his will as firm as their rocky base. Unappalled by the terrors of the unknown world, he passed away out of the beautiful valley where he sojourned into the valley of the shadow. Naught remained but the mere phantom of a body. This was borne to his home in Indiana. The theme over his remains was well chosen: "A good name is rather to be chosen than great riches, and loving favor rather than silver and gold." Until the last flower faded from the earth around his home, loving crowds thronged to the cemetery, and every Sabbath his friends and constituents made their pilgrimages to lay, with their sympathy, immortelles upon his grave.

He died at the Alum Springs, West Virginia. It is an old resort, an intervale of beauty, a charming little park sweetly embosomed in the Blue Ridge; a lonely spot, with now and then a habitation, but with a bracing air, a splendid forest, and grand mountains. There is a primeval quietude there, almost a summer afternoon feeling, as if the lotus eaters of Tennyson had made it a resort aloof from the cries of people that do come and go. The only noise is that of murmuring waters. It was amid these solemn silences that his last weeks and hours were passed. It was amid those remote and pleasant nooks of nature that God unloosed his weary star. His was no sudden call. All preparations, secular and spiritual, possible were made by his own direction. The silver cord was not cut hurriedly, nor the golden bowl broken in an instant. No holocaust of fire snapped his life's cord suddenly. The cord was gently untied; the golden bowl melted away as if it were a scarf of vapory amethyst, or rather as the light fades away from the firmament at the coming on of evening mild. Just as the sun went down, his spirit peacefully departed. The pearl dropped from its wasted shell, as the sun passed behind the mountain. There he lay in the lap of a lovelier nature by stiller streams and fairer meadows than we are wont to fancy in some blest Aready; but when death came it seemed to make the beauty of the mountains as barren as the desert; the flowers and leafage and rocks and hills lost their charm, the breeze its freshness, the song of birds its music, and the sweet shine of the sun was all joyless.

> But in the mountains did he feel his faith.
> All things responsive to the writing there
> Breathed immortality, revolving life,
> And greatness still revolving—infinite.
> There littleness was not; the least of things
> Seemed infinite.

What was that faith? I could not speak truly and say it was the accepted dogmas of any church. He could no more be a mystygogue than a demagogue. If he could not accept all that was written about the Saviour, he fully sanctioned and truly lived up to the code of morals which Christ gave. He believed an honest man to be the best Christian. His plan of life was to get all the knowledge he could, and use it in doing all the good which he could.

Though his life may have seemed to some reserved, yet his austerity was but the visor which concealed generosity, tenderness, and trustfulness. He sympathized with all men, and only repelled those who were exacting and dishonest. His faith was in honest work. It was characteristics like these that made his home a sacred spot, refined and beautiful, ennobled by delightful intimacies and old-fashioned hospitality. It is not a new standard by which he regulated his life. *Laborare est orare*, is as old as the fathers of the church. That he made integrity his religion, work his orizon, and truth his idolatry, is only repeating the words of the wise and good of all ages. He wrought

> With human hands, the creed of creeds
> In loveliness of perfect deeds.

To be kind to the widow and fatherless was one of its canons; and this man never in his profession would receive a reward for serving them! To be faithful to his public trust—and this man no more flinched from uttering unpopular, than worthy thoughts. Pericles in his last illness said: "No Athenian in consequence of any action of mine had ever put on mourning." Mr. KERR could truthfully say the same in a better sense.

When I went at his request to Virginia and to his bedside, and after delivering the messages from his friends here, I asked him if he were ready to meet the unseen world; with a glance of gentleness, and a pressure of my hand, he declared that he was ready. We talked of the mysterious realm. His faith was abiding that in that future there was reward for a just life here. As he said, half playfully, he stood upon his record.

It was this pious probity which he impressed upon his people, upon Congress, upon his own life, and upon his son. It had its source in the heart as well as the head. This is especially observable in the care which he gave to his son's tuition, even to the last hours of his life. He seldom left his house on his return from his office. As has been so well said by his colleague, [Mr. HAMILTON,] who offered these resolutions, he scarcely mingled with the masses of the people, even his own constituents, but with kind cheerfulness was wont to retire to his home and library. There he studied his favorite authors, examined his son in the studies of the day, and filled up each hour with some useful thought or exercise. The speech of Plato to the Athenians he expressed in his life: "For the glory of parents is an excellent and an honorable treasure to their children, making up for the lack of possessions and dignities." "*Jos est magna parentium virtus.*" (Hor. Od., xxiv, lib. 3.) May I not read from the Chicago Times the record of his last advice to his son to illustrate the paternal care and gentle worth of this our best representative man?

> A few days before his death Mr. KERR had a conversation with his son, in the course of which he said: "I have nothing to leave you, my son, except my good name. Guard it and your mother's honor, and live as I have lived." He further said: "Pay all my debts, if my estate will warrant it without leaving your mother penniless. Otherwise pay what you can, and then go to my creditors and tell them the truth, and pledge your honor to wipe out the indebtedness.

The source of this man's power was not altogether intellectual; it was in the affections. What a void has been made in his western home! Who can tell the anguish of the bereaved! Even the delights of the old home in the West intensified it. "She was at home," writes the bereaved son of the widowed mother, "among friends; but she could not feel at home, for *he* was not there. Everything suggested father to her. Something would requicken her sorrow. The finding of an old letter, the half-read book with the mark of leaving off, and all those thousand ever-recurring, inconsiderable reminders that keep the heart of sorrow painfully darkened by the shadow of him who has gone; these things lengthened out and intensified the grief till the burden became too hard to bear." For such human agony there is no compensation in the honors and preferments of our life. The current of domestic bliss which once flowed so calmly, reflecting the very heavens on its mirrored bosom, when thus overshadowed—where is the adequate return in the plaudits and honors of men? To wait and wish, and to hear no step, no voice of husband and father; the olden aid which directed, supported, and comforted, gone; gone; no advent to glorify the gloom—this is to the overworn and wearied watcher what mere mechanism of tongue or pen cannot express. Expression only benumbs the soul of such griefs as these. Our tears freeze at the fountain, our sympathies die in the attempt to express them.

History and oratory have been spent in haranguing about the heroes of war. Military genius and renown have been themes of encomium to quicken patriotism and endear private virtues. In the funeral orations over the dead Greeks who fell in fight, Mars alone received apotheosis. We have orations by Pericles, Lysias, and Plato preserved in the crystal beauty of Thucydides. All the muses and graces do obeisance to the solemn rapture of the eloquent hour when in graceful periods and imperishable language the orator came forth from the monument, ascended the tribunal, and, with panegyric beyond the reach of modern art, displayed the virtues of the dead. But these eulogies were in praise only of martial glory. Only once do I recall the words of an inspired Greek, who forgetting for a moment the custom of the time, admonished the people "that the whole earth was the sepulcher of renowned men," whether renowned for honorable exertion in war or peace. It is the old vaunting story of the Bible even: "Saul has slain his thousands, but David his tens of thousands." The helmet, the plume, the spear, the sword, the onset—these are the themes of classic funeral eloquence. Men are prone to forget what has been done by the gifted and great whose associations were those of art, literature, benevolence, and science. We seldom remember long those whose lives were rounded with the humility of good deeds and gentle affections. Men rear monuments and arches to the captains of armies, rarely to the leaders of opinion. Few mounds of green turf remain to recall the great thoughts which lived in the heroic lives of such men as Plato, Newton, St. Xavier, Howard, or Cobden. Monuments to military men overshadow the little hillocks on whose breast tears fall and over whose dust blossoms cluster. Rome has her arch to Titus, her column of Trajan. The grave of Agamemnon has been found and glorified by a German scholar; and the exhumed Atridæ are more honored by emperors and kings than the blind bard who sung their praises along the blue Agean.

But, thanks to a better civilization, even the successful general today must have something more than the brute instinct which led Pelissier to smoke the Kabyles in their caves. He must have more than the engineering skill of Todleben and Von Moltke. He must have that knowledge of human nature by which to rule men, not merely in the ranks, but in the senate, in the forum, and among the masses. He must be, as was said of Wellington, something more than a commissary or clerk. He must minister to peaceful states; he must think like lightning, and strike with its vehemence and fatality, for tranquil homes and human happiness in great crises; he must have the gentle amenities of culture along with the heart of the hero. Above all, he must have inwoven like threads of light the patriotic devotion which sees in his country's flag a symbol of order and unity and in his country's civil glory his highest hope and inspiration. The legends and songs, flags and heraldry, with their beasts and boastings, show through all time that prowess in the encounter of body with body is the barbaric yet almost universal code of honor. But when the sword of patriotism is jeweled in the hilt with civil virtues, then a Washington rescues the mere wager by battle from its irrational fame, and gives added glory to the gem and new splendors to the magisterial sword!

May something, sir, be pardoned to the spirit of eulogy, when I say that these elements of true grandeur found a rare combination in MICHAEL C. KERR.

Patient in study, gentle yet firm in his feelings and determinations, inspired with the courage of true patriotism, defying as he did the mob with the same energy with which he analyzed a tariff or denounced an exacting monopoly—arranging, classifying, assimilating details for practical service,—making his conscience his religion—he stands, more than most of the men who have taken part in our councils since the war, as an exemplar of intelligent and fearless, pure and gentle patriotic duty. Yet he was not all judgment, else he would not have been a patriot; he was not all passion, else he would not have been a statesman. In debate, as in private talk, he had at times great vehemence of manner and great intrepidity in action. He did not toss his thoughts about easily; he was at times timid in their utterance till thoroughly assured by patiently marshaling them; and then he was eloquent. Spurning traditions and legends, believing in no law not revocable; not anxious to force men to do what he thought was best for them; with a noble rage at wrong and a disgust of parasites, he would add no largess to bad gains and greeds, any more than he would allow wrong to breed fresh wrong. What were the meshes of old custom to his fresh inquiring mind? While he never turned away from a new truth, while he had no respect for mere antiquity, while he would clear away the lush growth over our select shrines of duty, he revered the ancient ways of the Constitution and all its muniments with the ardor of a neophyte. Sensitive to every point of honor, he was not less careful of his own fame when assailed by perjury than of the financial and patriotic honor of his country.

But, sir, while the contemplation of his character is no compensation for his loss, it is not less instructive than proper for us to know the sources of that magic which won the support of his constituency and the preferments of this Congress. The secret of this talismanic power lay in the discipline of his mind. He was an example, by no means uncommon in this country, of one who was strengthened by wrestling with adversity. The first half of his life was a struggle with poverty, the last with disease. Rising above the trammels of early life he thought more of brain than of brawn. Desiring a larger range of usefulness and ambitions of thorough education, he struggled out of difficulty into a profession where his naturally keen analytic mind had full play. He was not only a good lawyer and advocate, but his mind had a judicial cast, which he would no doubt have illustrated in the chair had he lived, and for which rare trait he was

selected as the reporter to the supreme court of Indiana. He believed in settled principles of authority, binding as firmly as the pagan gods were bound by the decree of fate. But while he loved law, he loved liberty. He loved progress, as well as repose. As a Massachusetts scholar has said, "He loved them together," and because, like the nitrogen and oxygen of the atmosphere, they give vitality when combined in proper proportions.

To my mind he does not rate so highly as the lawyer, only because he was more of the scholar and the statesman. His pre-eminence in the last character came from his constant preparation in the first. Every speech of his was a study, a treatise. When he spoke on matters connected with the laws of wealth, trade, and currency, his lucid and cogent style was not more remarkable than his abundant information.

How was this preparation made? He seldom read works of fiction or frivolity. The weightier and more solid authors were to his taste and preference. He never read but one or two novels, and those in the last of his life. George Eliot's Adam Bede attracted him because it endeavored to solve problems of social science. He seldom read poetry, save Homer's Iliad and Milton; though Shakespeare was always near him, and the Bible frequently consulted. In this respect he was not unlike Tristem Burgess, the orator, of Rhode Island. He never intertangled the roses of poetry with the bearded grain of his philosophy. Still he was a great reader of books. His first act when he came to his home from the office was to take up an unfinished book. He left a library of twenty-five hundred volumes, each bought one by one, read, marked, and digested. His library is full of standard works on political economy, to which he always added more, almost until the day of his death.

For a man apparently so uncongenial and cold, the liberalities of his culture, taste, and logic are remarkable. He excluded no volume, however heterodox or orthodox, from his library or his mind. Jefferson was his ideal of a statesman and Webster of an orator; pictures of both hang in his library. His scrap-book was kept for the "best thoughts" of the fathers, as he called them. No ethical or partisan bias controlled his reason. You will see in his library Rénan's Life of Jesus huddling close to McCosh's Evidences of Christianity; Tyndall shakes hands with Paley; Draper's Religion and Science stands by Buckle's History of Civilization; Barnes's Notes keep company with Tom Paine; Jefferson and Madison are almost inbound with Hamilton and Jay; Henry C. Cary lies between Wayland and John Stuart Mill to bridge the abyss between free trade and protection. Of his library, it may be said without exaggeration:

> Here all the rage of controversy ends
> And rival zealots rest like bosom friends;
> Socinians here with Calvinists abide
> And thin partitions angry chiefs divide;
> Here wily Jesuits simple Quakers meet
> And Bellarmin has rest at Luther's feet.

Friends and enemies were alike welcome to his mind, and he tested them all in the crucible of his reason.

Out of this abundant reading he was enabled by his method, his regularity and discipline, to evoke general thoughts for practical life. By his masculine understanding, steady perseverance, and unwearied resolution he rose above illness, professional avocations, and the local demands of his constituency to a higher plane than most statesmen. This element of persistency belonged to his natural traits of character. It was illustrated during his life. It was illustrated in the chair in the struggle with disease, to fill his duty. It was illustrated in the last hours of his tenacious life, for his reason remained unimpaired to the end.

I have said that his reason and conscience were his religion. It was his habit to submit everything to this test. He squared his life with scrupulous reason. No temporal interest of his own or that of his family swerved him from following this guiding element of his character.

He was a scholar; he was a disciple of the positive philosophy, devoted to the tenets of Herbert Spencer, John Stuart Mill, Compte, and Buckle. His political science was drawn, as most political science is, from those of similar philosophic inclinations. Jeremy Bentham was his teacher, consciously or unconsciously. His ideas were not transcendental, but utilitarian. The bent of his mind was increased by his studies in this school of philosophy, but there was no unreasoning skepticism in his character.

Despite his unwillingness to believe in anything miraculous or improbable, his heart was reverential before the great Omniscience. With him reason was the first born, and, though twin with faith, both inherited the blessing. If he had any bias in his mind it was toward reason, though his faith walked timidly hand in hand with it. It is said that the sun is reason, while faith is the lesser orb that shines by night; MICHAEL C. KERR made the great light to rule his busy day. How far the lesser ruled in the contemplations of the night only God knows. If faith shines only so long as she reflects some faint illumination from the brighter orb what casuistry shall discard this man's religious nature from the shrine of a true religion.

It is not necessary to renew the scenes of his death-bed here and now. Only this may be said, from competent medical authority, that rarely has one of our race been gifted with such a tenacity of life. He lived after his pulse ceased to beat. This fact may serve somewhat to account for the positiveness of his purposes in life and the positive philosophy to which his intellect inclined.

He was a democrat on principles fixed by his studies and philosophy, I was about to say, by his religion. Yet (as has been truly said) he was averse to the rough encounters of the hustings. It was difficult to induce him to speak outside of his neighborhood. Once in New York he promised to talk for five minutes to my friends, but when on his feet, and with an audience sympathizing with his free-trade ideas, he held the audience for two hours in one great plea for his favorite liberalities of commerce, and against the mercenary inequalities of protection. These were his favorite themes to illustrate his general political ideas. They were to him an enthusiastic sentiment—his principle of action. He traveled abroad to study them. He came to Congress to give them vigor and effect.

He was averse to the crowd. When writing to him about my *pro tempore* visit to the great exposition, he expressed his regret that he did not see the grand engine and its wonderful ramifications of harnessed forces; but at the same time he said that he shrank from such throngs like the sensitive plant before the human touch. Yet his political thoughts were ever "broad, based upon the people's will." His dissection of the questions growing out of reconstruction and the southern ballot, which had been to him a special study, show the ultimate scorn of a mind utterly hating fraud, and the lofty patriot who reverenced all sections and respected all rights. It is said that the spectroscope reveals that there is a star which burns gold for its illumination. By a wonderful coincidence it is the distant star Aldebaran—far off in the group of Hyades—which the Rosicrucians, who sought to transmute all metals into gold, worshiped. That star was their fateful genius for inspiration and alchemy. Not less precious to him, than if it were a star of gold, was each State, distinct in individuality and like to each other in a common right, interest, and destiny, whether shining near or afar!

O, that God would raise up for our instruction and guidance other men of the same exalted type of American manhood—men as just, other haters of corruption as earnest, other tribunes of the people as peerless and fearless, and other statesmen as lofty and pure in patriotic devotion! When, sir, I perceive the emblem of mourning over the seat he so lately occupied, shrouding our ensign, the omen is sadly portentous and painfully suggestive. Were he with us in this hour of our solicitude I know, sir, that he would not fail with courageous counsel. He would revive the heroism of that parliamentary band, before which royal prerogatives cowered—when before the privilege of the Commons and its staunch Speakers, the bills of right of a free people were made paramount to the thunders of the throne!

His fame was not quenched by death, only his opportunity. It was said by Theodore Parker, of Samuel Adams, that he was not in one sense a Christian man, but one of Plutarch's men. So was MICHAEL C. KERR. His human worth can only be reckoned by the gravity of his loss to us, in this perilous and anxious trial for the stability and genius of the Government. If liberty through his death has lost from this Hall of the people one of her purest devotees; if liberty, like Algernon Sydney, must go to the scaffold, yet from the scaffold she will ascend to another sphere where there is a better code of justice and right; and there in that realm, who will give her less stinted and more welcome than the immortal spirit of MICHAEL C. KERR.

Under such patriotic thoughts as were his, still surviving death, our country may cease from its passionate discord. Then peace will bind our States as sheaves are bound in the harvesting, season after season, till the latest generation. You, Mr. Speaker, and ye who are your brothers in these exalted trusts, ye who have the keeping of this bruised and broken land, can ye not all rise under the admonition of such a life as our late Speaker lived, into a higher sense of duty and a more self-sacrificing patriotism? Can we not encompass our beloved land around with a wall of fire that will not burn, but guard? Shall we not do this before its grave yawns; that grave where there is no work, nor knowledge, nor device, nor wisdom? Thus faithful unto death in our trusts, as he was, may we not have the promise of a crown of everlasting life which I trust in God he wears. [Applause on floor and galleries.]

Mr. CLYMER. Mr. Speaker, this Congress, from the hour of its meeting in December, 1875, until the day of its adjournment in August, 1876, stood in the shadow of an impending calamity! A Speaker was elected who, by reason of his long service, his large experience, and pre-eminent ability, was deemed worthy of the exalted station. He brought to the discharge of its duties a clear head, a sound heart, an impartial judgment, and a resolute will; but, sir, it was painfully evident to every one that a mortal and fast-consuming malady had possession of him. In the very hour of his triumph, when he had scaled the heights and reached the goal of his ambition; when there lay before bright prospects of future usefulness and still higher honor; when he had a right to feel that he was about to enjoy the full fruition of a laborious and well-spent life, he was summoned to the dread conflict with the last enemy, one in which we must all engage and in which no mortal may triumph. For days and weeks and months we stood sad and helpless spectators of the fierce struggle. We well knew it to be hopeless, and our sorrow was scarcely lessened by our admiration for the heroic courage, the sublime fortitude, the dauntless spirit with which he marched forth to meet and embrace death.

Mr. Speaker, it was not my good fortune, as it was yours and that of others who hear me, to have served with him in former days, when he stood upon this floor the peer of any one in intellect and

ability; and therefore I leave it to those who have personal knowledge to speak of his merits and services as a legislator and statesman. My personal acquaintance with him began with the first session of this Congress. Under ordinary circumstances it would necessarily have been slight, but painful events, fresh in the recollection of all of us and of the whole country, placed me in such relations to him as to render it almost a duty, as it is a mournful satisfaction, to put on record my estimate of his character as a man.

After years of public service, here and elsewhere, he stood at the threshold of the grave, comparatively poor in this world's goods, and, to his great honor be it spoken, rich in nothing save his good name, his character for spotless integrity, his unblemished reputation for purity in public and private life. These were his jewels; these were the treasures which he had garnered; these he valued more than houses and lands or all mere earthly possessions. But, sir, when weak and worn by disease, when even hope had fled, when the dark shadows of death were closing about him, a base and cowardly attempt was made to rob him of his good name and send him to his grave disgraced and dishonored. It became my painful duty to inform him of the nature of the charge preferred against him. He met it with a philosophic composure and stern defiance which told of his conscious innocence. Courting the most searching investigation, he demanded to meet his base accuser face to face. For long and weary days the investigation proceeded. I will not attempt to describe the proud and defiant spirit with which he met and braved the terrible ordeal. So broken and disabled in body those who knew him best had grave fears that death would seal his lips before he could make reply; but the very exigency seemed to rekindle and vivify his expiring energies, to endow him with new and almost superhuman power. To him it was a struggle more grave and terrible than that which he had been making for prolonged existence: it was for untarnished reputation, for unsullied honor. To the dying man these were dearer and far more precious than mere existence, for without them it would have been a curse. The hour of his triumphant vindication came, when in this Chamber each representative of the American people then present rose solemnly in his place and declared his profound conviction of his purity and innocence. Thus the dark cloud which threatened to obscure the brightness of his setting sun was rolled away, and a blessed peace, a serene tranquility came to the great heart of the dying Speaker.

I may not lift the veil which rightfully separates his inner and private from his outer and public life, but it would be unjust to his memory did I fail to record his lively sense of this crowning act of kindness and justice on the part of those whose good opinion was so dear to him. To his sensitive and dying ear it told of the verdict which after-times would render. It brought profound consolation to him, and thereafter he was fully prepared to say "*Nunc dimittis.*"

His was a proud, sensitive, and imperious nature, ever shrinking from familiarity with the world, asking little of its sympathy and caring less for its applause. He chose to be judged by his acts rather than by professions. His convictions were deep and decided upon all questions, and he did not hesitate to obey and follow them to their ultimate and logical results. He controlled and led his fellow-men by the sheer force of his intellect rather than by the influence of his heart. He was always a teacher, a leader; never an imitator or servile follower. In any era of our history he would have been a character of mark, his moral courage and his mental powers alike fitting him for the performance of duties of gravest moment. His death would have been a great public loss at any time; in this hour of doubt, uncertainty, and danger, it is next to irreparable, when we consider the character of the man, the dignity and power of his place, the hold he had upon the confidence of the people and the stern and unyielding fidelity with which he would have dared to perform his whole duty.

To-day, Indiana stands chief mourner for the son of her adoption, MICHAEL C. KERR; close and next by her side stands Pennsylvania, on whose soil he was born and partly reared. She claims a sister's sacred right to mourn the loss of an honored child. My poor and broken utterances but feebly express her estimate of his worth, her profound regard for his memory!

Mr. MCCRARY. I esteem it a privilege as well as a duty to offer on this occasion my humble tribute to the memory of our late lamented Speaker. I do so not as a mere empty ceremony, but prompted by a profound respect for the great qualities of mind and heart which adorned his life, which sustained him in sickness and in death, and the memory of which will live long in the history of his country and in the hearts of his countrymen. I desire to speak a few words in remembrance of his virtues in this place, which was the scene of so much of his public career, and on this day, which our records are to dedicate sacredly to his memory, because I knew him well and esteemed and honored him in life, while I deeply and earnestly lament his death. My personal acquaintance with Mr. KERR began in the Forty-first Congress, in which we served together on the Committee of Elections, and although it never ripened into confidential intimacy it was of that kind which enabled me, as I think, to form a just estimate of his character. His active participation in the proceedings of Congress, his prominent position among the leaders of his party, his fearless, bold, and outspoken action upon all public questions, brought him prominently before the House and the country, and his associates upon this floor, whether personally intimate with him or not, could not fail to know him as a Representative, to appreciate him as a man, and to realize his great power. He was a man of commanding ability. Toward the close of his life his powers were of course in some degree impaired by disease; and yet we all know how remarkably clear and vigorous were all his rulings as Speaker as well as his statement of the ground upon which he placed them. When in the full vigor of health, he was seldom matched and I think never overmatched in debate upon this floor. He was a careful student and thinker and though he spoke frequently it was never at random, but he always uttered what had been carefully matured and settled in his own mind. He was a profound lawyer, and in his own State as well as elsewhere he stood very high in the ranks of his profession. He was a man of intense convictions and always uttered what he thoroughly believed to be true and defended what he thoroughly believed to be right, while his denunciation of what he deemed false and wrong was always earnest and vigorous. To these rare qualities he added thorough honesty and the utmost purity of life in all its relations, whether public or private. I may not from personal knowledge speak of the beauty and sweetness of his home-life and of his purely private and domestic relations, but these have been since his death, as they were in his life, the theme upon which those who were very near to him have most loved to dwell.

It is praise, indeed, to say of one departed, "he was a good husband, a good father, and a good citizen," and when we may add "he was a true patriot, an able and faithful public servant, and a wise and sagacious statesman," the eulogy is complete. As a presiding officer our late Speaker was a model of dignity, urbanity, and impartiality. His course while in the chair was such as not only to command the respect but also to win the esteem and confidence of his political opponents, as well as his party associates. I take this occasion to bear willing and emphatic testimony to this fact. I refer to it with great pleasure because in it I find an illustration of that devotion to duty and faithfulness to public trust which distinguished him and which must characterize the life of every really great man. Here is to be found one of the surest tests by which to discover a really lofty character. When such a character is called to a position where he is to decide questions arising between his fellow-men, he is sure to rise above every consideration except those which concern justice and the law. Mr. KERR was an active participant in many exciting partisan contests upon this floor during his service here, and few men ever defended in debate their party or its principles with greater zeal and ability; but as Speaker he seemed to know no party. He took his great office with a firm resolve to administer it with perfect fidelity, to be absolutely faithful and just, and he kept that purpose to the end.

I speak thus of the deceased Speaker with all the more pleasure because, while we were personal friends, we were political opponents, and I feel that on that account my poor words of eulogy would be very grateful to him if he could hear them, and that they may be a source of consolation to the bereaved ones he has left behind. It is according to the genius of our institutions that political differences should never engender personal animosities. The right of private judgment and of free speech is a right so sacred, and belongs so sacredly to all, that we are bound to recognize it and respect it in our opponents if we would preserve it for ourselves. The great American principle of toleration lies at the foundation of our civil as well as our religious liberty; and that principle is obeyed in its true spirit only by those who have learned, not merely to tolerate an opponent, but to honor and respect an honest and manly adversary. Such an adversary was MICHAEL C. KERR; and as it was my pleasure while he lived upon all proper occasions to bear testimony to his exalted character, it is still my pleasure, now that he has passed on into that higher and better life, to speak in praise of his many virtues and in honor of his memory.

Mr. ATKINS. Mr. Speaker, at this stage of these memorial ceremonies I consult the emotions of my heart rather than the dictates of my judgment in attempting to speak on this mournful occasion.

The fame and popularity of the distinguished dead, in the State of Tennessee, makes it meet that some one of her Representatives should pay a sincere tribute of respect to the memory of one who so largely commanded her admiration and esteem.

Truly Tennessee gives utterance of her sorrow and sympathy with Indiana who keeps vestal watch over the honor of one of her favorite and most distinguished sons, and would remind her that she, too, yea, that a nation, claims the patrimony of his fame and in his death shares the spoliation and the loss.

This mute assemblage, these gloomy faces, these pendant trappings of national sorrow, bespeak a more than ordinary occasion of sadness. It is the heartfelt lamentation of the American people, through their Representatives, over the loss of a wise statesman, a pure patriot, and an honest man; while it is a proper manifestation of the personal grief, mellowed a little by time, which pervades this entire Hall over this unusual if not altogether unprecedented bereavement, in the death of its presiding officer.

Already have we gazed with intense admiration upon the living portrait of this truly noble man, as it has been faithfully drawn to-day by his colleagues and peers. Starting with the first buddings of character in infancy amid the sports and freaks of childhood until ripe

and stronger traits unfolded themselves, hardened by the iron touch of poverty, when at length he boldly entered the emulous walks of a self-reliant manhood; winning this trophy, bearing off that honor, gaining this triumph, all the time assuming responsibilities and enlarging the scope of his duties and deepening the foundations of his popularity by the most devoted consecration to the public interests, until finally he aspired to the exalted and distinguished office of Speaker of this House, and was fortunate enough to have the aspiration of his noble ambition crowned with brilliant success.

It is reserved, however, for the hand of affection to trace and gather up the incidents and events of his inward life and domestic feelings, which, inseparably interwoven, form the woof of his private history. These all will be laid away as golden treasures in memory's casket, which only is in the keeping of domestic love and filial devotion never again to meet with the world's harsh encounter. These tender associations let us leave inurned within the sacred chambers of inconsolable private grief; but of his outward life and public services we may speak, for they belong to the country and to society.

Nor can we fairly forecast his true character even as a public man without analyzing in some degree his elementary characteristics.

Indomitable energy and unflagging perseverance, linked with an earnestness born of deep and abiding conviction, marked all of his efforts and enabled him almost invariably to succeed in whatever he undertook. With him action always followed conviction. Sprung from the ranks of the people, all of his sympathies and principles were in accord with them. He was truly a tribune of the people. Although devoted to party organization he never surrendered or sacrificed to partisan advantage any real or substantive right which belonged alike to all. He was a partisan, but his partisanship was used as a means for the accomplishment of just public undertakings, and not as an end in the abstract. Watching his career as a public man, he impressed me as an honest inquirer after truth. He had a simple, child-like faith in its omnipotence, and wherever its clarion notes sounded thitherward he bent his steps, and there planted the standard of his unswerving fealty. Of course he could not be other than reliable, conscientious, and consistent. His character panoplied with these noble principles, it was not astonishing that public sentiment of all parties, recently, should have rushed to his rescue, to ward off the poisoned javelins of calumny and detraction, before even the courts of justice or a committee of Congress were enabled to pronounce the decree of his complete vindication. His mind turned with instinctive horror from every appearance of indirection, deceit, or dishonorable action, sustaining with true courage whatever he believed to be right and opposing with his whole nature what he conceived to be wrong. Like Burke, he believed bad men capable of doing any evil, however dark and wicked; hence he had no intimate associations or personal relations only as acquaintance and time developed the character and justified the friendship. As a consequence his personal friendships were limited, strong, unchangeable, and unsuspecting. Such a man was worthy of being the leader of the people as he was unquestionably their advocate and defender. He did not feel that his official duties, exalted, responsible, and honorable as they were, made him an irresponsible ruler or constituted in him any superiority to his constituency. He ever bowed with graceful and patriotic submission to the adverse will of the majority when constitutionally expressed. These attachments to popular rights and his unfeigned profession of political faith and doctrine created within his manly bosom the broadest and profoundest love of country.

No statesman knew better than he the true nature of our Government, the genius of our free institutions, our past history, foreign and domestic relations, and the real temper and interests of the people. No one knew better than he that the truest and most steadfast friends of liberty are a frugal, intelligent, and virtuous rural population. No one knew better than he from the pages of history that avarice, vice, and national vanity, when once allowed to obtain a hold upon the rulers of a nation, smother the love of country and drive out those simple, manly virtues in the people, by long accustoming them to acts of usurpation and doubtful authority, until they finally cease to care to what power they owe allegiance—by what they are governed. These dangerous and insidious inroads, gradually made upon the rights of the masses and which so often have befallen free governments and caused their overthrow, ever caught the fire of his jealous eye and encountered in their incipiency the whole weight of his uncompromising opposition.

> And thou in this shalt find thy monument,
> When tyrant's crests and tombs of brass are spent.

Clothed with the delicate trust by party suffrage of exercising magisterial authority over the Representatives of all the people, he never forgot that he best vindicated the honor and dignity of his high position by observing the utmost fairness in his rulings and maintaining toward all, without regard to partisan distinctions, perfect impartiality.

As the mother of the Gracchi, when asked for her jewels, pointed to her sons, so do a free constituency regard the representative whose private life presents a stainless escutcheon, while the mirror of his public record reflects only the images of truth, virtue, and patriotism.

While this matter-of-fact world excludes even the contemplation of the ideal and counts nothing worth save the practical and the true, yet where in all the land whose reputation of all of our public men for the last quarter of a century would furnish the artist a truer model or the poet a more perfect ideal of human virtue and worth than the moral and mental traits which made up the manly and noble character of MICHAEL C. KERR?

Alas! he has passed away, but his name is one of the household words of this Hall of Representatives, and will live with the truest and noblest who have worn its chief honors.

> To live with fame
> The gods allow to many, but to die
> With equal luster, is a blessing Heaven
> Selects from all her choicest boons of Fate,
> And with a sparing hand, on few bestows.

Mr. HEREFORD. Mr. Speaker, if I had consulted my own wishes and inclinations I should have been silent during the present sad hour; but having been requested to join in the ceremonies of the occasion, with sadness of heart and trembling hand I lay my wreath upon his bier, humble though it be.

I feel proud to be able to class myself as one of the earliest and warmest friends of the deceased; not only his friend, but advisor. For several years we served together in this House; during that time I watched his career; each day he grew upon me; not only so, but he grew upon the country until he was called to fill yonder chair, now draped in mourning. He became the Speaker of the Forty-fourth Congress, filling, and filling worthily, the position held by such men as Muhlenberg, Clay, Stevenson, Polk, Winthrop, Linn Boyd, and BANKS.

MICHAEL C. KERR illustrated in his own person one of the excellences of our form of government, the possibility, right, and power of any of its citizens to fill its highest, most honorable, and most responsible positions, provided he deserved them, deserved them by his ability, energy, and integrity. He was pre-eminently the architect of his own fortune. He had not the adventitious aid of family or fortune.

But unaided and alone he climbed the ladder of fame until he had almost reached its topmost round. It may be truthfully said of him as was said of Aristides and Cato, "that he advanced himself to great honor and dignity in the commonwealth by no other means than his own virtue and industry." The young men of our country have in him a bright examplar to cheer them on in their lonely struggles for place and position, and I only hope that like him they may never swerve from the path of high honor and unyielding integrity. In all his congressional career he labored most assiduously for his country and the Constitution; truly could he adopt the language that Plutarch applied to himself: "*This service*, I say, *is not for myself;* it is for my country. Among all his colleagues on this floor I knew no one who more fixedly and constantly made the Constitution his polar star. He kept his eye steadily upon it. When any question arose in our deliberations upon which he was called to act, the first question he propounded to himself was "Is this measure constitutional?" If not, he opposed it.

With that as his chart and compass he felt confident of guiding the great ship of state safely through all storms, however high the billows might rise or however black and angry the clouds might become. He had a living and abiding faith that the billows would subside, the clouds pass away, the stars again shine out brightly, the night pass away, and the sun of the morrow rise brightly upon the vessel and its noble crew.

I never knew a man who had stronger convictions and clearer conceptions, and these convictions he followed most scrupulously to their logical results without turning to the right or left, or stopping to see the result. The sordid, selfish arts of the demagogue or political trickster he utterly loathed. He adopted as his guide the following language of Aristotle: "Popular governments in which the constitution and laws are supreme afford no place for demagogues. Where, however, the laws are not sovereign, demagogues spring up." O, that in this centennial period, this our hour of peril, these lines and this sentiment were emblazoned upon the dome of this Capitol, written in letters of living light over the Speaker's chair, upon every public building and private house throughout our broad, beloved, and distracted land. I know of no public man of his day who more thoroughly demonstrated in his public life the sentiment of William Pitt, the Great Commoner of England, when he said: "I will not go to court if I may not bring the constitution with me."

As a debater he had few equals on this floor or elsewhere; clear, concise, and logical, as a steady opponent of jobs, rings, subsidies, and partial legislation he yielded to no one. Who of all his colleagues does not not recall that clear, ringing voice of his in clarion tones denouncing what he deemed corrupt and pernicious legislation? As a presiding officer, though emaciated and feeble physically, he gave evidence of being equal to any who had preceded him, always commanding the high respect, confidence, and admiration of the whole House irrespective of party.

He had the high purpose, the firm resolve, and dauntless courage of a statesman of the highest order. With him the blandishments of power had no influence; he yielded neither to its behests nor was allured by its trappings. While he had the very highest respect for the voice of the people *constitutionally* expressed, he heeded not the frowns of the infuriated mob goaded on by designing demagogues. He never crooked "the pregnant hinges of the knee where thrift may follow fawning."

His aims were unselfish, his hands were clean, his life was pure and full of the tenderest affection for a noble and loving wife and a fond and obedient son.

But he is no more. He has been called to his long home. His labors on earth are closed. His voice will no more be heard in these Halls. His last remains lie buried beneath the soil of his adopted State, Indiana. No more shall we meet his tall, manly form and be permitted to grasp his unsoiled hand. He will no more go in and out before us. But may we all meet him again in that better land, on that "great day for which all other days were made, for which earth sprang from chaos, man from earth, and God from eternity."

Mr. KNOTT. It may be considered a work of supererogation on my part, Mr. Speaker, to offer a single remark in addition to what has already been so eloquently said by other gentlemen on the present melancholy occasion, yet there are certain circumstances which will perhaps excuse me, if indeed they do not render it peculiarly appropriate that I should beg the brief indulgence of the House at this time, not for the vain purpose of attempting to express my own private grief for the death of our lamented Speaker—for at the tomb of a loved and honored friend the anguish of genuine friendship can find no voice—but that I may contribute my assistance, feeble as it may be, in crystallizing in the history of the country to whose service he dedicated the best years of his life some of the evidences of his merits derived from long and intimate personal association.

It was in the midst of one of the most refined and cultivated communities in the district I now have the honor to represent upon this floor that Mr. KERR first stepped upon the arena of active manhood. It was at the beautiful little town of Bloomfield, in the State of Kentucky, that he laid the foundation of his subsequent career of usefulness and honor while engaged as a faithful, earnest, and efficient instructor of youth. There in the intervals of his arduous duties as a teacher, which others might have devoted to idleness and pleasure, he mastered the fundamental principles of jurisprudence and political philosophy with which in after life, both as a lawyer and a statesman, he showed himself so remarkably familiar. There his indefatigable energy, his indomitable will, his unwearying industry, and, above all, his immaculate integrity are still held up for the emulation of the aspiring youth who in the face of penury and misfortune would achieve an honorable distinction among his fellowmen. There those striking traits of a manly character which distinguished him through life, and which have already been so happily portrayed by the eloquent gentlemen who have preceded me, won for him the confidence, the respect, and the affections of a large circle of warm-hearted, generous friends, who, sympathizing in all his laudable aspirations and proud of his well-earned success, delighted to do him honor when he had struggled far up the rugged steeps of a justly merited fame.

Of his early friends at Bloomfield he delighted to speak in terms of the most affectionate remembrance and I have heard him frequently remark that the happiest, proudest moment of his life was when they welcomed him back in their midst after years of absence, to a grand ovation to which they had invited him just after his last election to Congress.

My own personal acquaintance with Mr. KERR began in July, 1867, when I met him for the first time on the floor of this House, as a member of the Fortieth Congress. A variety of circumstances soon brought us into frequent, intimate, and confidential intercourse with each other, and afforded me the most favorable opportunities of becoming familiarly acquainted with one of the most admirable characters with which I have ever come in contact; a character which perhaps but few have ever fully appreciated in all its excellence, because but few have studied it from the same stand-point and under similar circumstances to those I was so fortunate as to enjoy.

The most remarkable trait in that character, indeed the key to Mr. KERR's whole life, public and private, was his unswerving, unfaltering, inflexible fealty to Truth under all circumstances and upon all occasions whatever. In the light of that single fact, every act and utterance of his public and private career should be viewed. It was this that led him to act in everything upon the maxim of Aristotle, that incredulity is the source of all wisdom—to take nothing for granted, but to satisfy himself by actual investigation of the real foundation as well as the ultimate conclusion of every proposition upon whatever subject that might be submitted to his mind. Hence resulted those habits of indefatigable labor, careful analysis, patient research, profound meditation, and deliberate utterance, for which he was so distinguished. It was this same devotion to the truth as he understood it that gave him the reputation among some who had not made a careful analysis of his character, of being unduly obstinate in the maintenance of his own opinions. His was truly a firmness that would have led him to a martyr's stake; but it was a firmness resulting from a conviction of duty and not from any mere false pride of opinion. It was this same fealty to truth that made him the very impersonation of personal honor and official integrity. Slow, and at times apparently timid in arriving at his conclusions, reaching them usually after patient and laborious investigation, and ever impelled by an inexorable sense of duty, none of the blandishments of flattery, no allurement of place, or power, or fame, no threat of defeat or unpopularity, no influence of mere private friendship could swerve him a hair's breadth from the right as he understood it, or deter him from the honest outspoken expression of his own fixed opinions. There was but one possible way to move him, and that was to convince him of his error, and when convinced no one was ever more ready to confess or retract his mistake. It was this same fidelity to truth which infused into his oratory that peculiar fervor and energy of expression which frequently characterized it, not only in stating his deliberately conceived opinions, but when indulging, as he sometimes did, in flashes of fierce invective when his indignation was aroused by the detection of falsehood or hypocrisy, for whatever was false, or fraudulent, or in any wise deceptive, his innate love of truth led him to despise with an intensity almost beyond the reach of expression. And finally, sir, it was owing to his fealty to truth that some were led into the strangest of all possible misconceptions of his character. There were those who regarded him as a singularly cold, unfriendly man, while the truth was a truer, warmer, tenderer heart, or one more loyal to its friends never beat in human bosom. He scorned, from the very depths of his soul, the arts of flattery and dissimulation, and had the manly courage, so rare, so difficult to find, to remind his friends plainly, candidly, and truthfully of their faults.

But, sir, I will not abuse your patience by a further analysis of the character of our dead Speaker. It stands out amid those of his compeers, a Doric column, symmetrical in its solidity, beautiful in the utter absence of all meretricious ornament, and immaculate in the material of which it was reared. Few like it illustrate the annals of our race.

Mr. VANCE, of Ohio. Mr. Speaker, in rising to-day to give utterance to my feelings of personal bereavement, I feel—as one does not often feel on occasions of this character—that the loss of one is the loss of all. In giving this feeble token of my grief that we no longer have MICHAEL C. KERR of Indiana in our midst, I but utter what every patriotic citizen of his State and our country must feel: that our grief is no common grief; our loss, no common loss; and that it will be long ere the void made by the death of our lamented Speaker will again be filled by such a man as he. When a man by the resolute force of his own invincible character attains exalted station, and is charged with the performance of important public functions—and that, too, at a time when circumstances seem such that considerations of party fealty are likely to determine the choice in favor of those who have earned recognition by partisan services, rather than that the prize should be adjudged to unostentatious merit—his removal by the hand of death is a circumstance so unfortunate as to arouse the sympathies of even the hardest of hearts. To be denied the light of his counsel and the encouragement of his voice is a deprivation of no ordinary magnitude; a national calamity that all must deplore.

Although my acquaintance with the late Speaker was formed during the latter years of his life, yet familiarity with his many excellent qualities depended not upon the length of time one was thrown in contact with him. To appreciate the manly, genial, and conciliatory turn of his mind, one has but to glance at his conduct during the organization of the present House; to know his worth and truly appreciate the most exalted phases of his character, one should be of the number of those who originally had some other preference for the Speakership. But from whatever stand-point one studies him, whether as a supporter or as an opponent, the honest observer must acknowledge the stability and rectitude of his character, the firmness of his purpose, and the geniality of his heart. The trying flame of physical suffering only seemed to bring forth more brilliantly the golden treasures of his judgment. With a rich and varied experience such as seems essential for a truthful knowledge of human nature, he was placed in the Speaker's chair at a time when his public career was seemingly opening before him a wide field of usefulness. The sad story of his physical decline and untimely death are written in indelible characters in the hearts of every one who during the last session saw the almost superhuman exertions he made to appear in the chair of the House and perform his trying duties—duties that, had he been in ordinary health, would have weighed upon him as a straw upon the arm of a giant.

Who, were the power granted him, would willingly enter into the secret thoughts of the strong man, struck with mortal disease, conscious of his infirmity, aware of its nature, and knowing only too well its inevitable end? The evils of life tell all of us that there are callings among the occupations of men which bring those who assume their duties into contact with sickness and distress, to whom such sad stories are among the daily incidents of life. A cultivated mind, and the consciousness of ability to mitigate suffering and alleviate anxiety, may be some compensation for the strain to which human feeling is subjected; but who, I again ask, not of those professions, would willingly enter into the secret thoughts of one conscious of his rapidly approaching end, and share with the sufferer the terrible distress which must arise when he sees the dark, unknown future rapidly drawing upon him, soon doomed to separate him from the present, with all its cares, all its responsibilities? To one in robust health the thought even is replete with pain. How great, then, must have been the fortitude, the power of resisting suffering, and the ability to banish thought of self in our late Speaker during all those long, weary days when, borne down by disease and racked with pain, he still persisted in performing the duties of his office? Nothing but an abiding sense of the importance of the task devolved upon him, and a deep consciousness that it was better for him to persevere and die in performance of his duty, rather than shrink from its execu-

tion, kept him at his post at a time when all were conscious that he was wearing away his life. At a time and under circumstances when almost any other man would have dismissed thought of public cares from his mind and devoted attention to himself, Mr. KERR knew no other course than that which inspired him to let all else go, and abide by the demands of that country to whose service he had already devoted many of the best years of his life. The result we all know. Many men have fallen martyrs on the field of battle. To MICHAEL C. KERR it was reserved to offer his life and his all on the altar of his country, unanimated by the clamor of contest or the shock of battle—a martyr to conviction—one who died for his country in giving her those services she stood so much in need of.

Mr. HAMILTON, of Indiana. Mr. PHILIPS, of Missouri, is absent by order of the House, but has left in manuscript remarks which I ask may be inserted in the RECORD as part of this day's proceedings.

There was no objection. The following are the remarks prepared by Mr. PHILIPS, of Missouri.

Mr. PHILIPS, of Missouri. Mr. Speaker, the voice of Missouri ought not to be silent on an occasion like this. As a part of the Louisiana Territory acquired from France, Missouri was first under the pupilage of Governor Harrison, of Indiana. The civil polity of her local institutions was thus impressed upon the very childhood of Missouri. Her brave and hardy yeomanry came with those of Kentucky as the pioneers who penetrated the wilds of the western bank of the Mississippi and hushed the shout of the red man, felled the forests, and blazed out the pathways for the coming legions of civilization. Allied by history and tradition, recounting the perils, privations, and achievements of a common ancestry, when Indiana presented the name of her distinguished citizen for the Speakership of this Congress Missouri had neither prejudice nor jealousy to overcome in yielding him her support. She has cause to mourn his loss, and lays claim to a share in the glory of his name and fame as a part of her rightful heritage.

It is no purpose or province of mine to review his life. That office belongs to those who knew him best. Nor shall I offend his memory by fulsome eulogy. Nothing could have been more distasteful to him when living. "Paint me as I am," said Oliver Cromwell, while sitting to young Lely. "If you leave out the scars and wrinkles I will not pay you a shilling." Such would be the request of Mr. KERR, could he now speak to us.

He was always averse to display. He despised shams of all sorts. His character was real. Mere idealism and speculation found no place in a mind occupied and surcharged with the realities of actual life. Rugged in thought and severe in habit, the world regarded him as austere and cold. Drawn into that isolation often unavoidable to the professional man and close student, he was esteemed unsocial.

He was eminently a man of convictions. He had no model. He investigated and thought for himself. He hung not in the midair of hesitancy or doubt, but always reached a conclusion. He grappled with his subject and mastered it. Hence his convictions were not visionary or momentary. They were of the conscience acting through the judgment, and were abiding. He never yielded a principle for mere expediency. He never abandoned the right for success. He did not believe with Shakespeare in applying "craft against vice;" but he believed rather with Hobbes, that craft is "crooked wisdom; a sign of pusillanimity." Mere policy in affairs of state he regarded as too often the abandonment of the field of justice and patriotism for a triumph empty and short-lived. He carried no concealed dagger, and while he courted no unnecessary contests he shrank not from the open field and an equal sword.

During the heated discussion had on this floor last session over the question of the surrender of Hallet Kilbourn to the District court, I met Speaker KERR near the door to the left of his chair and said to him: "What do you think of the policy of sending Kilbourn to the court and leaving the responsibility of the judgment of the court with the republican party?" With nervous emphasis he instantly replied: "It will not do at all. This matter involves one of the important constitutional prerogatives of this House. To yield it would be to place ourselves in the just contempt of the country and to confess our imbecility."

We are told by naturalists that birds of paradise fly swiftest against the wind. While the contrary winds serve to display the brightness of their plumage, in drifting behind them their gorgeous train of feathers, they gather strength as their flight is entangled with the gale. So, with some men, the stormy day is better for their mental qualities than the calm. Mr. KERR'S congressional career was amid scenes of almost revolutionary excitement; when political virtue and constitutional principles were subjected to unexampled tests. It was a time that tried men's souls, and how few withstood the test! It was the development of Mr. KERR. It aroused the latent fires of his soul, and with undaunted courage he stood in the forefront of the battle for constitutional liberty which he conceived to be imperiled. On the ramparts of the Constitution he stood the sleepless, intrepid sentinel. Like the chivalric Henry V on the field of Agincourt, charging the chafing, desperate Duke of Alençon, he led the serried little band on this side of the House with a skill and courage that extorted applause from even those who were impaled by his unyielding lance.

Mr. Speaker, the true heroes of this world are not always recognized. The devotion of the deluded fakirs as they mangle their bodies and practice all manner of austerities, the reckless daring of the fireman, the animal courage of the soldier, fail not to win the applause of the common herd of men. But there is a moral heroism of man in adhering to duty and the right, in breasting the storm of popular opinion under circumstances of intimidation and temptation, of which the world takes little note, but is as grand and glorious as martyrdom itself. In these days of moral cowardice, of mock joustings and tourney-loving masses of political hacks; of the men "of mint and anise and cummin;" of empiricism and social and political shoddyism, when counterfeit pretension passes for the pure coin of solid merit and brazen impudence challenges public confidence, and admiration even, such men as MICHAEL C. KERR, who lifted against these tawdry trappings of a vicious age the blazing buckler of a more heroic epoch, are a nation's glory and the people's hope.

He was not what the world commonly calls a genius. But if genius be defined the faculty of appreciation, he has claims to the coveted gift. He certainly appreciated "the eternal fitness of things." He spoke without ornamentation, directly to the pending issue, with a depth of earnestness and stress of emphasis that convinced if it did not charm. He seems to have adopted the motto of Somers, "*Prodesse quam conspici.*" He never dropped the iron links of argument for the gossamer threads of rhetoric. If he failed in the glamour of an exuberant fancy, or seldom touched the deeper chords of impassioned eloquence, he at times glowed like the furnace in which the richer material is separated from the dross and better fitted for the uses of the world. If he was imperious in opinion, he was not an unreasoning dogmatist. If he was austere in manner and reserved in intercourse, he was no demagogue nor fawning sycophant. Idiosyncrasies and prejudices he may have had, but he never betrayed a trust, deceived or deserted a friend.

Mr. KERR was a man of inexorable honesty. His active public life lay through a period of excessive vice, of shameless profligacy, and unblushing corruption; yet perhaps no man living or dead kept his official garments purer. No stain is on them. No unclean thing ever touched his ermine. No serpent's trail crossed his path. No cloud of dishonor shadows his grave.

When amid the season just passed, of intense party rancor, there were found those who dared attempt to asperse the unsullied name of this exalted citizen, the instinctive chivalry of the whole American people rebelled against the foul imputation. It was during this saddest hour of the night of his life I saw him most and learned the stuff he was made of. Prior to this his friends saw the danger to his life by his continued labor in the public service; but he seemed to have adopted the sentiment of the Roman patriot, *Necesse ut eam non ut vivam.* When his integrity was assailed his determination was fixed to die with his harness on.

What a spectacle that was! Disease had marked him as a victim and had him in its toils. The angel of death had kissed his wan cheeks and left the hectic flush there. The voice, one utterance of which was once a command to silence and attention to listening Congresses and multitudes, was broken and gone. His palsied limbs refused longer to bear the burden of even his emaciated body. He was almost a disembodied spirit. There was left to him his indomitable will which seemed to refuse submission to the dominion of death. Sensible of his danger, and sensitive of his honor—the best legacy he had to bequeath to wife and child—yet conscious of his utter helplessness and dependence, he felt the breath of political intrigue and slander amid the very ice of death gathering on his face.

"How living and how deep the wound" of such assault!

Like a giant pricked and thrust by the barbed arrows of pigmies, he writhed, not afraid to die, but craving only to live to see the hour of his vindication. That hour came even though the messenger of death waited without.

With my good friend, the honorable member from Kentucky, [Mr. BLACKBURN,] I called at his sick chamber to express my sympathy and offer my congratulations. It was our last interview. His eyes, in which the fires of genius yet gleamed as if inextinguishable, spoke the emotions of a heart too full for utterance. The long, earnest pressure of the hand once so warm, but now almost cold with the touch of death, I shall never forget.

We, young and ardent, filled to overflowing with indignation at the wretch who had attempted to swear away the good name of this man, as basely as the two men of Belial swore away the life of Naboth, suggested that he be prosecuted and punished for perjury. With voice broken with intervals of difficult respiration he said, "O, no; that poor creature is unworthy of my hate. To his conscience and God we'll leave him. I am in no condition for further excitement. I would not disturb the good feeling and harmony in the House over my unanimous vindication by pursuing the matter into the courts."

What an illustration that was of his staid judgment, his lofty spirit, and undisturbed equipoise! On his tomb could be fitly written, as a tribute to the quality of his mind, *Mens aequa in arduis.* His star of life sunk ere yet it had reached its full promise—

> Snatched all too early from that august fame
> That on the serene heights of silvered age
> Waited with laureled hands.

But though life was sweet and luring, yet he so died that nothing in his life "became him like the leaving it."

In the old State of Virginia, the home and resting-place of his great political mentor, Thomas Jefferson, under the ceaseless vigils of wife and son and the benisons of the whole Republic, he passed to the land beyond the sea.

Mr. CARR. Mr. Speaker, standing within the saddening shadows which have fallen upon this floor from the broad wings of the angel of Death, who has so recently and so unwelcomely hovered over this stately Hall, and amid the flood of silent sorrows which pour in upon us on this mournful occasion, it is with great depression of spirits that I essay a discharge of the solemn duty I, in common with you all, owe the distinguished dead whose last funeral rites we perform to-day; but coming into this Hall as I do to fill the seat upon this floor made vacant by his untimely death, and from the large constituency which have so often loved to honor him while living, and who revere his memory when dead, it were eminently proper that I, in my own behalf and for them, should add my assent to and express our approval of the many eloquent but truthful eulogies that have been placed, like fragrant immortelles, upon the casket of his glorious memory.

For the first time in the history of our Government has the organization of the House of Representatives been disturbed and its members saddened by the death of its presiding officer. Though often, far too often, the cold hand of that ever-unwelcome visitor has been laid upon the prominent of its honored members, for the first time has he stalked silently and remorselessly across this floor, ascended to that exalted chair, and stricken with his chilling and killing blow the head of this great national council; and this fact should give a more serious current to our train of thought on this unusual occasion.

MICHAEL C. KERR was a native of Titusville, Pennsylvania, where he was born on the 15th of March, 1827. His parents were people in moderate circumstances, and of that old, sturdy Pennsylvania stock, whose children may be found scattered in every section of the country, giving life and vitality to every department of human enterprise. He was chiefly self-educated, but studied at the Erie Academy, whence he was graduated at the age of eighteen. During his attendance at the academy, Mr. KERR became attached to Miss Coover, and immediately after his graduation married her. By teaching school Mr. KERR earned the means to defray his expenses at the Louisville University, where he received the degree of bachelor of laws in 1851. In 1852 he removed to New Albany, Indiana, and began the practice of law. He early developed those traits of character which have since made him an enduring name among his countrymen. He was elected attorney of the city of his adoption, and in the performance of the duties intrusted to him he most ardnously devoted himself and attracted public attention to his abilities. At the end of one year's service he was elected prosecuting attorney for the county of Floyd, serving in that capacity but a single year, when, in 1856, he was nominated as a candidate for the Legislature, and in the October following was elected. It was during this year that attention was first attracted to his powers as an orator. In 1862 he was elected reporter of the supreme court of Indiana, and while occupying the position he prepared five volumes of reports, which are regarded as the best of the entire series issued from that court.

The effectiveness of Mr. KERR on the hustings pointed to him as the leader of his party in the second congressional district of his adopted State, and on the 12th of August, 1864, the district congressional convention at Jeffersonville nominated him as the candidate of his party to represent the district in the Thirty-ninth Congress, and at the October election following he was elected by a large majority. Upon taking his seat in Congress he was assigned to two committees of the House—Private Land Claims and of Accounts—serving with faithfulness to the interests of the public. Again, in 1866, he was returned as a member of the Fortieth Congress, and served on the Committees of Elections, and Railways and Canals. In 1868 his constituents returned him as a member of the Forty-first Congress, in which he served as a member of the Civil Service Committee, and it was during this session that he first assumed a prominence among his colleagues. In 1870 the people of the second district declared him their choice, and he was elected by the usual majority. Upon taking his seat in the Forty-second Congress he was placed upon the Committee of Ways and Means. During the two following, as in the preceding two years, he was frequently heard upon the floor of Congress in the advocacy of sound and statesmanlike views upon the subjects of the currency and taxation, and in opposition to every species of monopoly.

In 1872 Mr. KERR refused to enter the canvass for the nomination in his district. But at the meeting of the State convention he consented to accept the nomination for Congressman at large, but was defeated by Hon. Godlove S. Orth, by a majority of only 126 votes in the entire vote of the State; but he was only two years out of the House, coming in again by a great majority in 1875, when, as all the country remembers, he was chosen to preside over the deliberations of the body of which he was conspicuously and confessedly one of the ablest members.

MICHAEL CRAWFORD KERR was no ordinary man, but one formed by his Creator to fill an important mission in the stirring events of his stewardship here, and to this end he was endowed with clear conceptions, sound judgment, and a will to dare and do that which his convictions conceived to be right. But these convictions were never hastily nor recklessly formed. In the investigation of a subject brought before him for action, calmness and deliberation were always invoked, and when thus a conclusion was reached no sophistry, no mercenary motives, no sinister influences could suffice to move or sway him; but there, like the coast-rock beating backward the surging waves of ocean, he stood, fixed and immovable; and if overpowered by superior forces, like the sturdy oak whose head is bowed by the hurtling tempest, when the storm had passed he stood erect again, conscious of the correctness of his views. In that warfare which is ever being waged between the principles of right on the one hand and the errors of wrong on the other, he always stood the unyielding and aggressive champion of honor and rectitude, armed with a falchion whose very brightness dazzled and subdued. Nor did he wait to strike until the command for the reserve to advance was passed to the rear of the grand army of noble intellects; but, spurred on by high impulses and nerved by exalted instincts, he stood in the foremost ranks with his armor ever on and his trenchant blade drawn from the scabbard.

Though weak in physical powers

* * * His mind
Was formed to combat with his kind.
Strong in his will and of a mood
Which 'gainst the world in war had stood
And perished in the foremost rank
With joy.

It is not strange, therefore, that such a nature scorned to be led, but was proud to lead where honor and duty blazed the way. It was this which restrained him from yielding to the mistaken fancies or erring clamor of the masses. He was not

* * * That soul
Which creeps and winds beneath the mob's control;
That courts the rabble's smile, the rabble's nod,
And makes, like Egypt, every beast its god.

When public sentiment was right he was foremost among its advocates, but when wrong, like another Socrates, he braced himself manfully against the erring flood. In this he was truly a great man. The world hath need of all such noble natures which God hath blessed us with, and the loss of his self-sacrificing patriotism, his exalted precepts, and his noble example is irreparable. When he fell the ranks of the gallant few with whom he fought and kept the faith lost a power they could illy spare, and where he fell there was left a vacancy in the ranks which all our prayers and tears for the regretted dead can never fill.

To this strong characteristic must be added the no less commendible trait of character which everywhere and at all times stamp him as a man pre-eminently honest and pure. Descended from an ancient Highland Scottish clan whose name he bore, he seemed to have inherited largely that sturdy, honest, and incorruptible nature which so distinguished the Wallace, the Douglass, the Bruce, and the Roderick Dhu of those better days. This attribute so inwrapped him like a robe as to shield him from the advances of the mercenary and corrupt. So strong, so marked was this phase of character that in a long and active public life, in which the bitter animosities of rivals and political adversaries were often excited, but once was an assault ever made upon it, and then the shafts aimed by envy and propelled by base designs fell harmless at his feet, covering his accusers with confusion and shame. The attempt was as harmless as the casting of a toy-dart at the Colossus of Rhodes, and as futile as an attempt to darken the heavens with a miniature cloud of dust. The investigation, like the testing ordeal for the purer metals, left him the brighter for the friction and the more universally appreciated for the seal of national approval which it stamped upon his immortal memory. To lose a public man with two such rare and desirable traits of character in times like these, when the fibers of our free institutions seem ready to burst asunder from the increasing strain produced by the degenerating tendencies of the age, adds a patriotic poignancy to our grief and an intensified depth to the shadows of a nation's sorrows, which shall be lifted only when the sunlight of better days shall dispel the dangers which brood over us like the menacing hand of a Nemesis.

Bringing into his public life and places of trust such Spartan virtues, it is not surprising that he so rapidly ascended from the lowest to the highest plane of prominence, and commanded at all times renewed and increasing confidence, admiration, and preferment, until, caught up in the ready arms of an approving nation, he was seated in that exalted chair, once occupied by America's greatest and most distinguished statesmen: Trumbull, Macon, Dayton, Clay, and Polk—a place second only, to the highest honor and most precious gift in the power of this Republic to bestow. Here, while in that proud position, presiding over the councils of a great people, shaping the legislation of a mighty nation, in the flood-tide of his prosperity and usefulness, it pleased the mighty God who holds alike the destinies of nations and individuals in his omnicient hand to remove him from the field of his labor and place his ashes in that sacred urn, among that constellation of statesmen whose names are inscribed in characters of never-fading light upon the tablets of our history. It was a sad bereavement to his afflicted friends; it was a national misfortune, but we bow in meek submission to the decrees of that superior and divine wisdom which "doeth all things well."

It is not for me to extol the labors of the deceased while a member and officer of this House. That task were more fitly done and has been more ably performed by those of his eloquent colleagues who have preceded me, and whose encomiums I shall bear with me to the bosom of his immediate constituency with a just pride and satisfaction. To be assured that throughout all his congressional career, and much of it embracing the darkest hours of this Republic, he occupied the high grounds of statesmanship and never for once descended to the level of the mere politician; that his utterances were ever for the needs of the whole country and were never circumscribed by the demands of mere party; that his efforts were ever for the great good of

the many and never to their exclusion, in the interests of the few, confirms the conceptions formed of him at home and makes universal the picture engraven upon the hearts of his own people.

While the deceased stood thus distinguished from the masses of men in his public life, in his private virtues he was pre-eminently a man—the highest and best type of man. While many of the most celebrated characters of history have had their glories dimmed with reflections from dark spots upon their private lives, Mr. KERR was wholly free from any great private fault whose presence detracted from the public esteem in which he was held. He was temperate and sober, honest and upright, frugal and charitable, generous and just, conscientious and a Christian, a warm friend, a constant husband, and an affectionate father. He had his likes and dislikes, but they were distributed by reason and controlled by causes. He had his partialities and his prejudices, but they were never wholly without foundation. He had his peculiarities, but they never approached distasteful eccentricities, and with all the details of character the aggregated whole rendered him a desirable neighbor, a useful citizen, and an esteemed man.

We have inadvertently pronounced him dead. True we have placed his mortal remains in the tomb of his fathers and his ashes are mingling with the dust from which they arose, but he is not dead. Such men never die. There has been a change, yet it has been one in which but the grossness of earth-life has been swept away, leaving only the intellectual, the spiritual, and therefore the higher and purer life, to commune with us, teach us, and lead us onward and upward. He lives in his work and example; nor will they die wholly until in the dim distance of future time the obliterating waves of oblivion shall submerge all that has been and now is, and the dark funeral pall shall be thrown over all the glories of the past and greatness of the present.

As a proper closing of these solemn ceremonies, I now offer the following resolutions, and move their adoption:

Resolved, That the sad announcement of the death of MICHAEL C. KERR, late member from the State of Indiana, and Speaker of this House, is received by us in the deepest sorrow and profoundest regret, and that in his untimely decease the House of Representatives of the United States has lost an impartial, competent, and noble presiding officer, a faithful and patriotic member.

Resolved, That in testimony of our respect for the memory of the deceased Speaker, his chair be draped in mourning during the unfinished term of the Forty-fourth Congress, and as a further evidence of our continuing esteem for the dead, the officers and members of this House will wear the usual badge of mourning for the space of thirty days.

Resolved, That the Senate be informed of the death of the late Speaker by forwarding to that body a copy of these resolutions, and that the Clerk transmit a copy of the same to the afflicted family of the illustrious dead.

Resolved, That, as a further tribute of respect to the departed officer, this House do now adjourn.

The question being taken on the resolutions, they were unanimously adopted; and accordingly (at three o'clock and forty-five minutes p. m.) the House adjourned.

PETITIONS.

The following petitions were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. FELTON: The petition of 60 citizens of Polk and Haralson Counties, Georgia, for a post-route from Rock Mart, Polk County, to Buchanan, via Tallapoosa copper mines in Haralson County, Georgia, to the Committee on the Post-Office and Post-Roads.

By Mr. RIDDLE: The petition of J. D. Bond & Brother, of Davidson County, Tennessee, to be refunded $171.75 taxes illegally collected from them, to the Committee of Claims.

By Mr. SHEAKLEY: The petition of William Spillon, late a private in Company A, Fourteenth Regiment New York Cavalry, for a pension, to the Committee on Invalid Pensions.

IN SENATE.

MONDAY, *December* 18, 1876.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

The Journal of the proceedings of Friday last was read and approved.

PETITIONS AND MEMORIALS.

Mr. CAMERON, of Pennsylvania, presented the petition of Job H. Jackson, Joseph G. Moore, and other citizens of Pennsylvania, praying for prohibitory legislation for the District of Columbia and the Territories; the prohibition of the foreign importation of alcoholic liquors; that total abstinence be made a condition of the civil, military, and naval service; and for a constitutional amendment to prohibit the traffic in alcoholic beverages throughout the national domain; which was referred to the Committee on Finance.

He also presented the petition of William A. H. Allen, passed assistant engineer United States Navy, praying to be allowed the increased pay of his grade from the date at which he completed his term of sea service as required by law in his previous grade; which was referred to the Committee on Naval Affairs.

Mr. DAWES presented the petition of the Methodist Episcopal church of Natick, Massachusetts, signed by its pastor and other officers, praying for prohibitory legislation for the District of Columbia and the Territories; the prohibition of the foreign importation of alcoholic liquors; that total abstinence be made a condition of the civil, military, and naval service; and for a constitutional amendment to prohibit the traffic in alcoholic beverages throughout the national domain; which was referred to the Committee on Finance.

Mr. CRAGIN presented the petition of the Grand Lodge of the Good Templars of the State of New Hampshire, officially signed, representing 1,200 members, praying for prohibitory legislation for the District of Columbia and the Territories; the prohibition of the foreign importation of alcoholic liquors; that total abstinence be made a condition of the civil, military and naval service; and for a constitutional amendment to prohibit the traffic in alcoholic beverages throughout the national domain; which was referred to the Committee on Finance.

Mr. BOUTWELL presented the memorial of Messrs. Howes and Crowell, and 38 others, merchants and importers of Boston, Massachusetts, in favor of action upon the bill (H. R. No. 2685) for the distribution of the unappropriated moneys of the Geneva award; which was referred to the Committee on the Judiciary.

Mr. BAYARD. I have received the petitions of certain Sons of Temperance, sent to me through A. M. Powell, of Washington, District of Columbia, to be presented, praying that the National Government shall take cognizance of the trade in alcoholic liquor. I move the reference of the petitions to the Committee on Finance.

The motion was agreed to.

REPORTS OF COMMITTEES.

Mr. CRAGIN, from the Committee on Naval Affairs, to whom was referred the bill (S. No. 152) relating to the promotion of commodores on the retired list of the Navy, reported it adversely, and moved its indefinite postponement, a House bill of similar import having passed at the last session of Congress; and the motion was agreed to.

He also, from the same committee, to whom was referred the bill (S. No. 771) regulating the accountability for clothing and other property in the Quartermaster's Department of the United States Marine Corps, reported adversely thereon; and the bill was postponed indefinitely.

CONTESTED PRESIDENTIAL ELECTIONS.

Mr. WRIGHT, agreeably to notice, introduced a bill (S. No. 1082) to establish a court for the trial of contested elections in the offices of President and Vice-President of the United States; which was read twice by its title.

Mr. WRIGHT. Mr. President, I shall not ask at this time a reference of the bill. I have drawn it, I may be allowed to say, without consultation with any person. It embodies my views touching legislation as indicated by the title just read by the Secretary. I am not so committed to its terms nor so wedded to its plans but that I shall be very cheerful indeed to receive any suggestions from others looking to its perfection. I at all times mistrust my judgment upon any matter and the correctness of my action, and I especially do so upon a question of this magnitude and this gravity.

I may be allowed to say that I do not share the feelings of many who imagine that troubles and dangers are in advance of us. I have confidence that these feared troubles will vanish as we approach them. There may be threats and there may be turbulence, but in my judgment the Constitution and the law of the land will ride supreme over all of them. My confidence is in the practical common sense and patriotism of the people of this country. We have in this country almost a traditional love of peaceful political methods. We have in this country a traditional hatred of everything like license and violence. My confidence is that this traditional love of patriotic, peaceful methods, legal methods, and this hatred of vices and violence, will triumph.

The bill that I have introduced is in the direction indicated. It looks to a tribunal to settle the question as between contestants after the vote shall be declared. I belive we have the power to thus legislate, and I believe that a law can be passed which will meet the great emergency.

I ask that the bill which I have introduced may lie on the table for the present, and shall ask that it be referred either to a select committee, if such shall be raised, or to such other committee as I may indicate. I desire to say also that if a recess should take place I shall embrace the earliest opportunity after the convening of the Senate to present some views in favor of this measure. If no recess shall take place I shall probably ask the Senate to hear me some time next week.

Several SENATORS. Let the bill be printed.

The PRESIDENT *pro tempore*. The bill will lie on the table and be printed.

BILLS INTRODUCED.

Mr. CHAFFEE asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1083) to amend an act entitled "An act granting the right of way through the public lands to the Denver and Rio Grande Railway Company," approved June 8, 1872; which was read twice by its title, referred to the Committee on Railroads, and ordered to be printed.

Mr. WINDOM asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1084) for the relief of John N. Hall; which was read twice by its title, referred to the Committee on Finance, and ordered to be printed.

Mr. DORSEY asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1085) allowing pay to certain watchmen and others therein named; which was read twice by its title, referred to the Committee on Appropriations, and ordered to be printed.

Mr. WRIGHT asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1086) granting a pension to Isaac Herring; which was read twice by its title, referred to the Committee on Pensions, and ordered to be printed.

Mr. HITCHCOCK asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1087) to divide the State of Nebraska into two judicial districts; which was read twice by its title, referred to the Committee on the Judiciary, and ordered to be printed.

He also asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1088) to establish a post-road; which was read twice by its title, referred to the Committee on Post-Offices and Post Roads, and ordered to be printed.

Mr. EDMUNDS asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1089) relating to evidence in causes of the United States; which was read twice by its title, referred to the Committee on the Judiciary, and ordered to be printed.

PAPERS WITHDRAWN AND REFERRED.

On motion of Mr. DAVIS, it was

Ordered, That the petition of Hoy McLean be taken from the files and referred to the Committee on Claims.

COMMITTEE ON COUNTING THE ELECTORAL VOTES.

Mr. EDMUNDS. I move to take up the resolution which I offered on Friday last for the appointment of a select committee in answer to the message of the House.

The motion was agreed to; and the Senate proceeded to consider the following resolution, submitted by Mr. EDMUNDS on the 12th instant:

Resolved, That the message of the House of Representatives on the subject of the presidential election be referred to a select committee of seven Senators, with power to prepare and report, without unnecessary delay, such a measure, either of a legislative or other character, as may, in their judgment, be best calculated to accomplish the lawful counting of the electoral votes, and best disposition of all questions connected therewith, and the due declaration of the result; and that said committee have power to confer and act with the committee of the House of Representatives named in said message, and to report by bill or otherwise.

Ordered, That the Secretary notify the House of Representatives herewith.

The resolution was agreed to.

By unanimous consent, the President *pro tempore* was authorized to appoint the committee.

FOURTH ARKANSAS CAVALRY VOLUNTEERS.

Mr. CLAYTON. I move to take up the bill (S. No. 683) for the relief of the officers and privates of the Fourth Arkansas Cavalry Volunteers.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill.

The bill was reported from the Committee on Military Affairs with an amendment to strike out all after the enacting clause and insert in lieu thereof the following:

That the Secretary of War, upon the possession of evidence of service which to him may seem satisfactory, is hereby directed to cause to be investigated the claims of the forces known as the Fourth Arkansas Cavalry Volunteers, enlisted for twelve months, under the authority of Major-General Frederick Steele, in Arkansas, dated November 21, 1863; and if he find the troops performed actual service, he shall cause the officers and soldiers thereof to be paid at the same rates for their actual services rendered, while absent from their homes, as were allowed by law to other volunteer forces in the military service at the same time. And in estimating the amount due the said force, the officers and non-commissioned officers thereof shall be paid under the mustering regulations of the Army in force at the time the regiment was under recruitment. And no allowance shall be made for any troops who did not perform actual military service in full co-operation with, and subject to the orders of, the United States authorities.

Mr. EDMUNDS. Will the Senator from Arkansas be kind enough to explain this bill, if there is no written report?

Mr. CLAYTON. The bill was reported by the Senator from Missouri [Mr. COCKRELL,] but I am familiar with the facts in the case. This is the case of a fragment of a regiment of troops that was called into service by Major-General Steele commanding the Department of Arkansas. They served less than twelve months. After they had been in service some time the War Department decided that their services were not needed, and a question arose as to whether they were properly organized. The order for their organization came, as I say, from the major-general in command of the department and not from the War Department. These men did this service. Congress passed a bill of a similar character to relieve another fraction of a regiment some two or three years ago. There were two regiments, one of infantry and one of cavalry, raised in this way. Congress passed a bill to relieve the infantry regiment, but there was no relief provided for the cavalry regiment. This bill merely provides that the Secretary of War shall be authorized to make inquiry as to the organization of this regiment and as to whether these men did actual service, and if he finds that they did actual service for the Government that they shall be paid as other volunteers were paid. It is the re-enactment of another bill which was passed some two or three years ago to cover a similar case of an infantry regiment in that State. As I understand, the cases are alike. The Senator from Missouri can state the facts more fully perhaps.

Mr. COCKRELL. There was an act passed for another regiment, an infantry regiment, and under it the Secretary of War acted upon some cases, and I believe had the fortune of rejecting every solitary one of them, nothing being allowed; but still he investigated the matter. This bill is drawn precisely as that act and follows its exact language. This bill was reported by me, and I think I drew it in the exact language of the other bill, which was drawn by the Secretary of War.

Mr. EDMUNDS. I should like to inquire whether General Steele was an officer of the Army of the United States?

Mr. CLAYTON. He was the major-general commanding the department of Arkansas.

Mr. EDMUNDS. This bill assumes, and therefore settles the fact, that General Steele did enlist these companies of cavalry. I submit to the Senator from Arkansas whether the bill, unless we have some evidence on the subject, ought to assume that fact? If we are going to refer anything to the Secretary of War, ought not the Secretary of War to be authorized to inquire whether this enlistment was made under the authority of the laws of the United States?

Mr. CLAYTON. I think if it was based upon that, the relief would fail, because if these men had been enlisted under the laws of the United States they would have received their pay at once. The difficulty in the way is that the major-general commanding the department assumed to accept the services of these men. They were citizens of Arkansas who remained true to the Union and entered the service, I think, during the year 1863 or 1864. The major-general of the department assumed to organize them, and did put them into the service. They served for about six months as a small fragment of a regiment, and at the expiration of that time the question arose at the War Department as to their authority for enlistment and they were discharged. This bill is to cover that case. Of course, if there is any doubt as to whether Major-General Steele did make this enlistment, that question might be left to the Secretary of War to determine; but there is no question about that; he did issue the order for their enlistment; but then if the Senator from Vermont desires to leave that also a question of inquiry with the Secretary of War, I have no objection to having the bill so amended. The only thing we ask is that if these men did render service to the Government they shall have an opportunity to be paid as other soldiers were paid.

Mr. EDMUNDS. What were these troops employed about?

Mr. CLAYTON. They were employed as soldiers.

Mr. EDMUNDS. Yes; but were they employed as soldiers in merely keeping the peace in the State, as soldiers in Vermont were employed often during the war—not often, but on one grand occasion when we were invaded from the north by the confederates—or were they employed to make war against the common enemies of the country?

Mr. CLAYTON. They were armed and equipped by the Government of the United States, and were under the command of the military officer there, and were employed as other soldiers were employed.

Mr. EDMUNDS. Were they put into any general Army that was moving from place to place, or stationed somewhere by themselves?

Mr. CLAYTON. I think they were put in the Army with the others. That is my recollection of the case; but that can be all left subject to inquiry, if it is desired.

Mr. EDMUNDS. I wish we could have a report from the Secretary of War showing exactly what the history of this regiment was before we are called upon to do this thing.

Mr. COCKRELL. The matter was referred to the Secretary of War and he wrote back referring to the act which we passed applicable to the infantry regiment, stating that he did not discover that it covered only the infantry regiment, and he stated what he had done under that act.

Mr. EDMUNDS. Is his letter among the papers?

Mr. COCKRELL. His letter is with the papers.

Mr. EDMUNDS. I should like to hear the letter of the Secretary of War read.

Mr. COCKRELL. The Secretary of War thought when he examined it that an act had already been passed covering this case, and referred to that act which had been drawn with a great deal of care and which covered the whole case.

Mr. EDMUNDS. I should like to hear the letter of the Secretary of War read.

The PRESIDENT *pro tempore*. The letter will be read.

The Chief Clerk read as follows:

WAR DEPARTMENT,
Washington City, April 17, 1876.

SIR: Acknowledging the receipt of your reference of the petition of William J Patton, for payment of members of the four companies of the Fourth Arkansas Cavalry, enlisted under an authority from Major-General Fred. Steele, I have the honor to inclose herewith copy of the report of the Adjutant-General, which embraces information touching the several questions contained in your letter of the 3d instant.

I also return the petition of Mr. Patton.

Very respectfully, your obedient servant,

ALPHONSO TAFT,
Secretary of War.

Hon. F. M. COCKRELL,
Of Committee on Military Affairs, United States Senate.

Mr. EDMUNDS. Now let us hear the letter of the Adjutant-General read.

The Chief Clerk read as follows:

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
April 12, 1876.

Respectfully returned to the Secretary of War.

By act of Congress approved March 18, 1870, the Secretary of War, upon the possession of evidence which to him might seem satisfactory, was directed to investigate the claim of the force known as the Fourth Arkansas Mounted Infantry, enlisted for twelve months (without the sanction of the War Department) under an authority from Major-General Fred. Steele; and, if he found that the force performed actual service, in full co-operation with and subject to the orders of the United States authorities, to cause the officers and enlisted men thereof to be paid the same rates as were allowed by law to other volunteer forces in the military service at the same time.

On the promulgation of this law numerous claims were presented, including sets of rolls by claim agents and others.

Those claims were carefully investigated in connection with the official records of this office, and it was found:

1. That the returns of the district of Northeast Arkansas, made at the time of the actual enlistment of the force and based on presence, regimental and post returns, show for the months of January, February, March, April, and May, 1864, a much smaller force than that on and covered by the rolls submitted.

2. Men whose names appear on the rolls referred to have heretofore been paid as members of other organizations for the period for which pay is claimed.

3. Notations setting forth the loss of horses appear on one set of rolls which are not enumerated on other rolls on file.

4. Men enlisted by one officer are claimed to have been enlisted by another, and even then the dates of enlistment as claimed to have been made by each are entirely at varience.

5. One set of rolls bears the name of a man as an officer, while on another he is borne as a corporal.

6. The rolls certify to company organizations existing, when it is known from the records of this office that the companies, as such, were never organized.

The foregoing, in connection with the fact that contradictions as to when, where, and by whom many of the force were enlisted, indicated clearly that fraud permeated the claims to a greater or less extent, and, under the rulings of the Treasury Department, that fraud, in a portion of claim, invalidated the whole, and justified the military branch of the Government in withholding any claim to which was attached a suspicion of fraud, which would invalidate such claim in law. The department declined to accept the rolls submitted as correct evidence of service.

The foregoing facts were officially communicated to Hon. Elisha Baxter, June 28, 1872, and to his attorneys, Messrs. Lowe and Archer, on May 13, 1875.

Since the latter date no new evidence has been submitted in the premises.

The bill for the relief of the Fourth Arkansas Mounted Infantry was carefully prepared by the War Department, alike to protect the interests of the Government, as well as those of all legal claimants, and it is held that, as the law now stands, any and all just claims can be met without further legislation by Congress.

The petition of Mr. William J. Patton is returned herewith.

E. D. TOWNSEND,
Adjutant-General.

Mr. CLAYTON. This report was made through misapprehension on the part of the Secretary of War. The case which he there speaks of having investigated is in regard to another organization, an Arkansas infantry organization. This bill is intended to cover a cavalry organization, which is entirely different from the one on which he made this report. As will be seen, this bill, which is in the exact language of the law he refers to there, will give the Secretary of War full power to investigate this case. A similiar bill did authorize the investigation of the claims under this infantry organization and resulted in their getting nothing; the claims were ruled out. All that this cavalry organization ask is that they may have the same opportunity of settling their claims, and if the Secretary of War finds that they are not just he will only treat them as he did in that case I presume.

Mr. EDMUNDS. I move to amend the amendment. I am satisfied after the explanation that the case ought to be investigated; but I move to amend the amendment reported by the committee in the manner I have suggested in the bill which I send to the Chair, which I believe is satisfactory to my friend from Arkansas.

The PRESIDENT *pro tempore*. The amendment will be read.

The CHIEF CLERK. In line 6 of the amendment of the committee, after the word "volunteers," it is proposed to insert "alleged to have been;" so as to read:

That the Secretary of War, upon the possession of evidence of service which to him may seem satisfactory, is hereby directed to cause to be investigated the claims of the forces known as the Fourth Arkansas Cavalry Volunteers, alleged to have been enlisted for twelve months, under the authority of Major-General Frederick Steele, in Arkansas, dated November 21, 1863.

The amendment to the amendment was agreed to.

The next amendment to the amendment was in line 10, after the word "service," to insert "for the United States;" and in line 11 to strike out the word "their" before "actual" and insert "such;" so as to read:

And if he find the troops performed actual service for the United States he shall cause the officers and soldiers thereof to be paid at the same rates for such actual services rendered, while absent from their homes, as were allowed by law to other volunteer forces in the military service at the same time.

The next amendment to the amendment was at the close to insert the words "and for the United States;" so as to make the clause read:

And no allowance shall be make for any troops who did not perform actual military service in full co-operation with, and subject to the orders of, the United States, and for the United States.

The amendment to the amendment was agreed to.

Mr. CLAYTON. That is satisfactory.

The amendment, as amended, was agreed to.

The bill was reported to the Senate as amended, and the amendment made as in Committee of the Whole was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

PROPOSED HOLIDAY RECESS.

Mr. CAMERON, of Pennsylvania, submitted the following resolution for consideration, giving notice that he would call it up to-morrow:

Resolved by the Senate, (the House of Representatives concurring,) That when the two Houses of Congress shall adjourn on Friday, the 22d day of December instant, they adjourn to meet on Wednesday, the 3d day of January, 1877.

REPAVEMENT OF STREETS IN WASHINGTON.

Mr. DORSEY. I move that the resolution I offered the other day be taken up at this time for consideration.

The motion was agreed to; and the Senate proceeded to consider the following resolution submitted on the 12th instant:

Resolved, That the Committee on the District of Columbia be, and hereby is, directed to inquire into the necessity and expediency of repaving or otherwise improving all or any portion of the streets and avenues named in the schedule hereto annexed, and to ascertain, as near as may be, the cost of such work, and the proportions to be borne respectively by the United States, the District of Columbia out of its general revenues, and the property-owners along said streets and avenues, and to report by bill or otherwise.

Worn-out wood pavements.	Between what limits.	Approximate estimate of number of square yards.
E street, N. W	New Jersey avenue and Fourth street, N. W.; Fifth and Seventh streets, N. W.; Eighth and Ninth streets, N. W.; Ninth and Tenth streets, (half square.)	211,433
F street, N. W	Ninth and Thirteenth streets; Seventh and Fifth streets; Fourth street and New Jersey avenue.	15,867
I street, N. W	Fifth and Tenth streets	12,720
L street, N. W	New Jersey and Pennsylvania avenues	22,555
M street, N. W	Third and Fourteenth streets; M street bridge and Montgomery street.	30,667
Bridge street, Georgetown	Intersection of Potomac street	1,330
Potomac street, Georgetown	Second block north of Bridge street	1,284
High street, Georgetown	Bridge and Second street	5,400
East Capitol street	First and Sixth streets, E	3,242
Pennsylvania avenue, S. E	First and Eighth streets	14,172
Pennsylvania avenue, N. W.	Circle and Rock Creek	14,370
A street, S. E	First and Second streets	584
C street, N. E	First street, W. and Third street, E	12,570
First street, E	B and C streets, S.; B and C streets, N.	3,770
Delaware avenue, N. E	B and C streets	3,667
New Jersey avenue, S. E	B and E streets	9,509
New Jersey avenue, N. W	B and H streets; K and N streets	26,614
Massachusetts avenue, N. W	New Jersey avenue and Seventh street; Ninth and Fourteenth streets.	29,947
First street, N. W	Pennsylvania avenue and E street	7,467
Second street, N. W	B and H streets	10,525
Sixth street, N. W	E street and Louisiana avenue	4,300
Seventh street, N. W	I and N streets	10,683
Seventh street, S. W	C and L streets	18,530
Eighth street, N. W	E and F streets	1,400
Tenth street, N. W	K and M streets	3,804
Fourteenth street, N. W	N and Rhode Island avenue	4,200
Fifteenth street, N. W	Pennsylvania avenue and B street; Rhode Island avenue and K street	11,667
Eighteenth street, N. W	K and L streets	1,555
B street, N. W	Fourteenth and Twelfth streets; Ninth and Sixth streets.	9,528
Total		303,015

I certify that the above is correct:

J. W. PHILLIPS,
Overseer.

The resolution was agreed to.

SALARY OF THE PRESIDENT.

Mr. WRIGHT. I gave notice on Friday that I should ask the Senate to proceed to the consideration to-day of the bill (S. No. 172) fixing the salary of the President of the United States, a bill which was reported from the Committee on Civil Service and Retrenchment on the 25th of May, 1876. I stated at the time I gave this notice that I did not propose to enter into any discussion of the bill, but stated that I deemed it to be my duty to the committee and to the Senate and to the question to at least ask that a vote be taken by the Senate at this time. I therefore move that the Senate proceed to the consideration of this bill.

The motion was agreed to; and the Senate proceeded to reconsider the bill (S. No. 172) fixing the salary of the President of the United States.

Mr. WRIGHT. That bill, having passed both Houses, was vetoed by the President of the United States. The question now is on the passage of the bill, notwithstanding the objections of the President of the United States.

The PRESIDENT *pro tempore*. This bill having been returned by the President of the United States with his objection——

Mr. EDMUNDS. I should like to hear the message of the President read. It may furnish a good reason for not passing the bill; presumptively it does.

The PRESIDENT *pro tempore*. The message will be reported.

The Chief Clerk read as follows:

To the Senate of the United States:

Herewith I return Senate bill No. 172, entitled "An act fixing the salary of the President of the United States," without my approval.

I am constrained to this course from a sense of duty to my successors in office, to myself, and to what is due to the dignity of the position of Chief Magistrate of a nation of more than forty millions of people.

When the salary of the President of the United States, pursuant to the Constitution, was fixed at $25,000 per annum, we were a nation of but three millions of people, poor from a long and exhaustive war, without commerce or manufactories, with but few wants, and those cheaply supplied. The salary must then have been deemed small for the responsibilities and dignity of the position, but justifiably so from the impoverished condition of the Treasury and the simplicity it was desired to cultivate in the Republic.

The salary of Congressmen under the Constitution was first fixed at $6 per day for the time actually in session—an average of about one hundred and twenty days to each session—or $720 per year, or less than one-thirtieth of the salary of the President.

Congress have legislated upon their own salaries from time to time since, until finally it reached $5,000 per annum, or one-fifth that of the President, before the salary of the latter was increased.

No one having a knowledge of the cost of living at the national capital will contend that the present salary of Congressmen is too high, unless it is the intention to make the office one entirely of honor, when the salary should be abolished—a proposition repugnant to our republican ideas and institutions.

I do not believe the citizens of this Republic desire their public servants to serve them without a fair compensation for their services.

Twenty-five thousand dollars does not defray the expenses of the Executive for one year, or has not in my experience. It is not now one-fifth in value what it was at the time of the adoption of the Constitution in supplying demands and wants.

Having no personal interest in this matter, I have felt myself free to return this bill to the House in which it originated, with my objections, believing that in doing so I meet the wishes and judgment of the great majority of those who indirectly pay all the salaries and other expenses of Government.

U. S. GRANT.

EXECUTIVE MANSION, *April* 18, 1876.

FORTY-FOURTH CONGRESS OF THE UNITED STATES OF AMERICA,

At the first session, begun and held at the city of Washington on Monday, the 6th day of December, 1875.

An act fixing the salary of the President of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the 4th day of March, 1877, the salary of the President of the United States shall be $25,000 per annum; and that all acts and parts of acts inconsistent herewith be, and the same are hereby, repealed.

MICHAEL C. KERR,
Speaker of the House of Representatives.
T. W. FERRY,
President of the Senate pro tempore.

I certify that this act did originate in the Senate.

GEO. C. GORHAM,
Secretary.

Mr. THURMAN. Mr. President, I am satisfied that Samuel J. Tilden desires to bring back the simplicity and frugality of the fathers, and that he is able to live on $25,000 a year. I can therefore safely vote for the bill.

Mr. EDMUNDS. He will live on less, so far as the United States is concerned, I hope. [Laughter.]

Mr. MCCREERY. Mr. President, since the beginning of the session the Senate has borne a striking resemblance to a debating society, occupying much of its time in discussion, and it looks somewhat like a new departure that so important a document as the message of the President should be passed upon without the utterance of a single word.

If the convention that formed our Federal Constitution could have foreseen the range of presidential action as well as the dangers and perplexities involved in the presidential question, it might have furnished an argument against the establishment of that branch of the Government. We have been engaged for some time in trying to arrange a plan of counting in or counting out a President, and we are now confronted with the solid and substantial question of executive compensation. The bill under reconsideration, incumbered as it is at present by presidential objection, was reported and recommended by the Committee on Civil Service and Retrenchment. As I have the honor to be a member of that committee, it is proper that I should say something. I desire to say enough and no more than to place me in a proper attitude upon the record.

The will of the people and the wishes of the States, as expressed through their chosen representatives, seem to have small weight with their chief executive officer. Another veto message admonishes us of the fact that the legislation of the country must in every particular harmonize and accord with his own peculiar views of public policy. The argument of the President is based upon the assumption that the restoration of the former salary would seriously impair the dignity of the position, which, to say the least of it, is rather a sandy foundation for such a structure. Nor does his appeal to his own experience make it more conclusive, since it is cheerfully admitted that every man may expend more than his income, if he has the requisite capital or credit.

How or where the President could have obtained the information which satisfies him that his course will be approved by the judgment of the great majority of tax-payers, it is impossible to conjecture. Was there ever a petition presented praying for the increase of his salary? Has there ever been a remonstrance against the reduction? Or can the unaided sagacity of the President enable him to understand the wants and the wishes of the people better than they are comprehended and understood by their own immediate representatives? In the long line of his illustrious predecessors there was not probably a single man who felt that it was undignified or unbecoming to serve the people at $25,000 a year. From George Washington to Andrew Johnson, through all changes of administrations and parties, through all fluctuations in currency and through all the vicissitudes of peace and war, President and people seem to have been satisfied with the rate of executive compensation. But on an unlucky day the Congress of the United States, with a lofty appreciation of the value of their past services, voted that which looks very much like a donation of $5,000 to each of its own members, and, to provide against all contingencies, an additional allowance of $100,000 was made to the President who signed the bill, to be paid during his subsequent term of service. If this tremendous increase was effected through the agency of an appropriation bill, how did it happen when the same agency was invoked for reduction that it was treated with scorn and contempt, as if it were a novelty and an outrage upon the well-settled principles and practices of the Government? If the Senate insist that the law must be changed before appropriations are reduced and refuse to change the law, that is a most effectual bar to all progress in the way of economy.

During a former session I heard comparisons instituted between the salary of our President and the enormous incomes of the kings and potentates of Europe. It must not be forgotten or overlooked that our Government was neither formed nor fashioned after the model of the despotisms of the Old World. Previous to the Revolution, America was under a monarchy, and so little taste had she for that institution that for seven long years her fields were wasted by fire and her sons were mown down by the sword, that the crowned head as well as titled noble might offer their homage to the sovereignty of the people. Whatever may have been spoken, written, or believed of "the divine right of kings" to plunder and oppress their subjects for their own aggrandizement, was tried on this continent by wager of battle, and the verdict was in favor of the people; so that royal prerogative and royal incomes, whether great or small, are entitled to no consideration in the adjustment of any question touching the administration of our affairs.

Our Government may exercise the powers delegated by the Constitution. It was intended to be plain and simple in its operation, and its machinery was designed to run, not in the exclusive interest of office-holders, but for the common benefit of all the people. The harmony of our system is its chief attraction. In building a house for the occupation of the President, the capitals of Europe were not ransacked for plans and specifications of a gorgeous palace, but a plain structure of solid material was erected, a fit residence for a republican president, and the salary was fixed at a sum not to excite cupidity but to give him a decent support while in the discharge of his duty. Let us bring it back to the old amount, and if there is less of ostentation it will be more in accordance with the spirit and genius of our free institutions. I give it as my deliberate opinion that there should be a very considerable reduction in all official salaries. The distressed condition of the country and the very existence of the Republic demand it. Ambition and avarice are the most irrepressible and insatiate passions of human nature, and they will not hesitate to employ fraud and force in carrying out their objects. If this Government shall recover from the shock of the last presidential election, it cannot withstand the frequent repetition of such imbittered contests. In view, then, of the importance of securing tranquillity in the future, of establishing order and maintaining inviolate the rights of the citizen, let us purify ambition by striking down the temptations of avarice.

Mr. BAYARD. Mr. President, a test of the sense of the Senate upon the subject is now to be taken in what I consider a proper method. A proposition was made at the last session of the Senate by ingrafting this measure on an appropriation bill to coerce the executive branch of the Government, at the cost of losing an appropriation bill necessary for the support of the Government, into adopting a measure which he had complete justification under the Constitution as an independent branch of the Government, and, as I believe, under the facts of the case, for refusing to sanction. I am glad that the question has been brought up for the consideration of the Senate in the proper manner, in which each Senator, according to his judgment of the advisability of the measure, shall vote.

I have heretofore given to the Senate my reasons for concurring in the main with the judgment of the President of the United States on this subject. I consider that so far as I have representative power I am compelled to use it for the interest of the public according to my best judgment. My best judgment in this case accords in substance with the views expressed by the President, and therefore I for one will vote against this measure to diminish the official salary of the President of the United States after the 3d day of next March.

Mr. CONKLING. I wish in very few words to assign the reason which will constrain me to vote for the passage of this bill, the objections of the President to the contrary notwithstanding. Exactly by what measure I should gauge, in these times of pecuniary stringency, the sum which ought to be paid by the nation to its Chief Magistrate, and exactly the sum which that measure would indicate, I am not at this moment prepared to say. It does not necessarily concern the vote which I am called on to give to make such a determination in my own mind. The answer I shall return to my name will stand upon a different footing.

On an appropriation bill, in the dying hours of a session, coming to the Senate and going to the House from a conference committee, so that the entire bill without changing the dot of an *i* or the cross of a *t* must be adopted or must fail, came provisions raising from $5,000 to

$7,500 a year the compensation to be paid to the members of each House; also as parcel of these provisions one which doubled the salary of the President of the United States. The first of these provisions to which I have alluded has already gone down, removed by repeal from the statute-book, removed by a repeal urged on the attention of both Houses by the strenuous—(to use no stronger word)—manifestations of popular disapprobation, which manifestations were accepted by both Houses, I do not mean as the reason for action, but as a fair indication and measure of what the public judgment indicated that legislative action should do. The statute which added that $2,500 to congressional pay was repealed and congressional pay was put back at $5,000, where it stood for a long time anterior to the enactment. There it stands now; and my judgment, I turn aside to say, the remark being suggested by one which fell from the Senator from Delaware, is that $5,000 a year, considered in any way in which it can truly be considered as compensation for the President, is compensation quite as adequate, to say the least, as is $5,000 a year for a member of this body. However that may be, the legislation to which I have referred was undone, the law was re-established, members of both Houses declaring that they so re-established the old law and the old compensation, not as matter of judgment speaking to what of right it ought to be, but because the character, the circumstances, the various considerations surrounding this legislation which had been put upon an appropriation bill were such as to call loudly for its undoing, for setting back the law where it stood before this interposition occurred.

Now, Mr. President, I am aware that the case of members of the Senate, sitting here on the last night of the session, voting upon the question of their own compensation, and that relating back to the beginning of the Congress, is distinguishable somewhat from another feature of the same provision of the bill; to wit, doubling the salary of the President of the United States. But, making allowance for that difference, my apprehension has always been that it was the judgment of a majority of the two Houses on the last occasion when action was taken on this subject, as it was my judgment, that, under the circumstances, the whole of that legislation upon the appropriation bill ought to be expunged; the whole thing should be put back, the whole act should be undone; and then, whatever might be wise or proper as to fixing over again the compensation of the members of the two Houses, the compensation of the members of the Cabinet, the compensation of the President and Vice-President or of any or all other officers, should be taken up anew, unembarrassed by the odium which, in many minds, attached to the way in which a part of this was once done, and should be considered on its merits as applicable to the future. And at this moment I am reminded of a thing which I had forgotton and which is quite pertinent to the line of my remarks. If I have fallen into an error, Senators will correct me. My impression is that this same legislation on the appropriation bill raised the annual salary of members of the Cabinet, whose compensation surely is inadequate if the compensation of the President of the United States is inadequate. They received $8,000 a year; it was raised to $10,000. In the reformation which took place, the legislation to undo what had been done, we did not omit to strike down the members of the Cabinet to the old $8,000.

Mr. THURMAN. I think you are wrong.

Mr. CONKLING. No; here sits the honorable Senator from Massachusetts [Mr. BOUTWELL] who was then a Cabinet officer, who, in addition, is always accurate, and he tells me that I am right. So we find that we did not stop with the compensation of the members of the two Houses in repealing; we extended it to the members of the Cabinet; and I am bound to say—and there at least, I think, the honorable Senator from Delaware [Mr. BAYARD] will agree with me—that I am utterly unable to distinguish between the propriety of leaving the salary of members of the Cabinet to stand at $10,000, $2,000 having been added, and leaving the salary of the President to stand at the $50,000 to which it had been advanced.

Mr. DAWES. Will the Senator allow me to make a suggestion?

Mr. CONKLING. I will if I have time. I see that the morning hour is about out.

Mr. DAWES. The Senator is aware, of course, that it extended to a great many other officers, and we undid everything that the Constitution allowed us to undo.

Mr. CONKLING. I am very much obliged to the Senator from Massachusetts for making that suggestion. I rose without reflection, and several of the incidents pertinent were not in mind, and it did not occur to me that the action was so broad as stated by the Senator from Massachusetts [Mr. DAWES.]

Mr. CRAGIN. As the Senator from New York expresses a desire to do away with all the legislation in reference to the increase of salary, I would inquire of him what he proposes to do with the judges of the Supreme Court.

Mr. CONKLING. I propose to do with the judges of the Supreme Court and with all other judges, and with all other men not judges, and with all other things with which I am called upon to act, exactly what the Constitution of the United States commands me to do; and inasmuch as within the commands of the Constitution I cannot touch the judges of the Supreme Court in the way indicated by the question of the honorable Senator, I propose to do nothing in that regard. But inasmuch as the Constitution of the United States does commit this question to our consideration, and inasmuch as I am not able to select this one single thing and say that that should be saved from a condemnation so sweeping that it has omitted nothing else in repealing the legislation to which I have referred which was deemed so obnoxious, I must in consistency, in accordance with the votes I have given heretofore, in accordance with the original vote which I recorded against the proposition, in accordance with the vote which I have given on one or two previous occasions to repeal the provision increasing the salary, I must now, notwithstanding the views of the President, adhere to my belief that consistency and reason require that we shall complete the repeal of this legislation, all the rest of which has vanished except as the Senator from New Hampshire suggests where the Constitution itself so hedges it about that it has forever passed beyond our reach.

Mr. HAMLIN. Mr. President——

The PRESIDENT *pro tempore*. The morning hour has expired. Is there objection to the Senator proceeding?

Mr. WRIGHT. I trust there will be no objection. The Senator from Illinois [Mr. LOGAN] who is entitled to the floor on the unfinished business is not present, and I trust that this matter will be allowed to proceed.

The PRESIDENT *pro tempore*. The Chair hears no objection. The Senator from Maine is entitled to the floor on the bill called up by the Senator from Iowa.

Mr. HAMLIN. In the vote which I shall give on the question now pending, it is to me a matter of perfect indifference who may be our next President. Whether it shall be a man who has an ample fortune, and without encroaching upon which he may be able to bestow the hospitalities of the nation as they should be bestowed, and who might discharge the duties of Executive without a dollar of compensation, or whether it may be a man of humble means requiring the contributions of the Government as a compensation for the services which he shall discharge to the country; whether it shall be the one or the other, so far as the vote which I shall give upon this question is concerned, I am entirely indifferent. I confess I was surprised at the speech of the Senator from Ohio, [Mr. THURMAN,] made in one single sentence. I will not characterize that speech as I think it deserves; I will not characterize it as I think the calm judgment of the public will estimate it.

I shall vote against the passage of this bill, not because I voted against it when it originally passed, not because I voted against it when it was in a bill coupled and conditioned with a variety of other salaries, but I shall vote against the passage of this bill because my judgment tells me that it is right so to vote. When the bill was passed, I could see no possible course for the President to pursue but to return it to us with his objections, as he has done. The salary had been increased; he had received that increase of salary; and for him to approve of this bill would place him in a position which made him distinct from all other persons who had held the executive authority of this country. Consistent with his own position, aside from the true merits of the case, I did not see how he could avoid vetoing the bill as it is called, returning it to us with his objections for that reason. But it was of course a reason he would not state. He has, however, stated in his message returning the bill to us reasons which I think ought to be conclusive with us. I do not myself believe that there was any objection in the community to the increase of the salary of the President when connected with that of others. I heard none, and my recollection of the discussion of the press is that it was very generally believed and stated that it would have been a right thing to do to increase the President's salary, but the wrong consisted in the increase of the other salaries connected therewith.

Now, take the condition of our Government at the present time and contrast it with what it was when the President's salary was fixed; look at the population then and now; examine the duties devolved upon the President then and upon the President now; look upon the hospitalities that belong to that position, which are the hospitalities of the nation; and the compensation of $50,000 is meager to-day in comparison with what the original salary was when it was established. I think, sir, that in the eyes of many persons from other nations who visit us they estimate us very much by the hospitality of the nation. It is at least one standard by which foreign people measure us as a people, and perhaps our institutions.

But looking at it in its broad and comprehensive sense, looking at the condition of things then and the condition of things now, I hold that the sum which the law at present allows is but a meager one as a just equivalent for the responsibilities assumed and the duties discharged. We know, all of us, that many of our Presidents have left the Executive Mansion absolutely poor, and I have myself, on more than one occasion, on several, contributed by indirection sums which became absolutely necessary for their support in after life. Who does not know that purchase of work after work of this statesman and that, who was President of the United States, has been made by Congress that never would have been made but for the absolute poverty of the individual? Does it reflect to our character as a people, does it come home to our judgment, that we shall ask the best heads of the best of our statesmen in guiding and directing the destinies of this Government and then turn them out in after life to little less than absolute poverty? I think that an adequate compensation should be given to every public officer, and believing the present is not adequate, I certainly shall vote to keep it where it is rather than to diminish it. I hope, sir, that such will be the judgment of the Senate. I believe such is the judgment of the American people, and

that the people themselves will characterize the whole movement as one which I will not characterize here.

The PRESIDENT *pro tempore*. Shall the bill pass, the objections of the President of the United States to the contrary notwithstanding? On this question the vote will be taken by yeas and nays.

The question being taken by yeas and nays, resulted as follows:

YEAS—Messrs. Alcorn, Bogy, Clayton, Cockrell, Conkling, Cragin, Davis, Dawes, Eaton, Ferry, Goldthwaite, Harvey, Hitchcock, Johnston, Kernan, Key, McCreery, Maxey, Morrill, Morton, Price, Sherman, Thurman, Whyte, and Wright—25.

NAYS—Messrs. Anthony, Barnum, Bayard, Blaine, Booth, Bontwell, Burnside, Cameron of Pennsylvania, Chaffee, Dorsey, Edmunds, Hamlin, Ingalls, Jones of Florida, Mitchell, Norwood, Paddock, Windom, and Withers—19.

ABSENT—Messrs. Allison, Bruce, Cameron of Wisconsin, Christiancy, Conover, Cooper, Dennis, Frelinghuysen, Gordon, Hamilton, Howe, Jones of Nevada, Kelly, Logan, McDonald, McMillan, Merrimon, Oglesby, Patterson, Randolph, Ransom, Robertson, Sargent, Saulsbury, Sharon, Spencer, Stevenson, Teller, Wadleigh, Wallace, and West—31.

The PRESIDENT *pro tempore*. On this question the yeas are 25 and the nays 19. Two-thirds of the Senators present not having voted for the same, the bill is not passed.

ELECTORAL VOTE OF OREGON.

Mr. MITCHELL. I call for the regular order.

The PRESIDENT *pro tempore*. The unfinished business is the resolution relative to the electoral vote of Oregon.

Mr. MITCHELL. The Senator from Illinois [Mr. LOGAN] was entitled to the floor this morning on this proposition, but I regret to say that he is laboring under very severe indisposition to-day and is not able to be in the Senate. He is very desirous, however, of being heard on the resolution, and has sent me word to that effect. Of course, so far as I am concerned, I am very desirous to accommodate him. I understand, however, that there are some other Senators who desire to speak upon the subject, and I propose that we go on, but I do not wish to ask for a vote to-day for the reason that the Senator from Illinois is not able to be here. I understand the Senator from Tennessee [Mr. KEY] desires to submit some remarks.

Mr. KEY. Mr. President, the advantage, or rather one of the advantages, which we claim for our form of government is, that the people select their rulers. The voice of the majority is said to be potential, and when it fails to have force and expression, under legal authority—when it is or shall be suppressed by power or subterfuge or other means—it is or will be time that our gravest fears should be excited and strongest apprehensions aroused in regard to the safety of our liberties and the perpetuity of republican institutions. It becomes a subject of deep concern, not to one party or the other, but to the whole body of the people, and affects alike the interests of the present and the future. If the voice of the majority shall be stifled and disregarded, the proud boast of republican institutions will be gone, and the nod of faction or beck of the tyrant will take the place of the people's voice. We at this moment stand on the brink of danger, and we should pause long and consider well before doubtful steps are taken. I am no alarmist. I am not afraid of civil war. I do not believe that it is near at hand in any threatened event. The lessons of our late struggle are too fresh; its events are too recent; its scenes of carnage and death too vividly impressed; its agonies, distress, and losses too apparent and well-remembered, to permit another and similar contest. Our widows are yet in mourning; the orphans' tears are not yet dried; and all around are the lame and the wounded. The places made waste and desolate have not yet been rebuilt, nor do they blossom. The southern section of the Union is shorn of power, and must submit to contumely, reproach, and injustice, if they be heaped upon it. Its people are without remedy for wrongs, if the Constitution and laws of the land fail them. As one of the members of this august body from that section, I am sent here with no threatening message. If our voice be disregarded, our valid elections set aside, we may complain; we may invoke peaceful remedies, but we cannot, will not, resort to violent measures. It were madness in us to attempt it.

The closeness of our centennial presidential election, its peculiar features, and the methods of obtaining results have attracted profound interest, and the whole country is now in anxious suspense and excitement in respect to the entire subject, in all its aspects. Senators, let us be calm, considerate, and, as far as possible, dispassionate, in all that we shall say and do in regard to this important matter. Let us remember that in an election which, by law, belongs to the people the will of the majority is sovereign and conclusive, and must be respected and obeyed as such. There is no revising power or tribunal to which we may appeal from its decision without violation of essential principles which underlie and sustain our Government.

I assume this proposition as sound and indisputable: On a doubtful question, involving the theory or practice of the Government, that construction ought to be given which is consonant with the spirit of our institutions, and in harmony with the general principles of our fundamental law. That is to say, if one construction, in case of an election by the people, gives force and effect to their ascertained will, and the other failed to do so, that construction ought to be given which is in favor of and gives efficiency to the popular will, and this must be peculiarly so when the choice of the highest officer of the nation is involved. I do not wish to be understood as maintaining that an election held contrary to law, or in violation of law, is to be sustained, however clear and decisive the voice of the majority may be expressed; but I do insist that in a legal election, fairly held according to law, and honestly and lawfully conducted, no doubtful interpretation of law or fact should defeat the will of the people, but that construction should be given which upholds the popular will. Take, for instance, the case of the democratic elector in Oregon. That State voted for the Hayes and Wheeler electors by a majority of about fifteen hundred votes. The people of Oregon declared in that election that they desired that the electoral votes of that State should be cast for General Hayes for President, and Mr. Wheeler for Vice-President of the United States. Much could be said on both sides as to the result of the ineligibility of the postmaster selected as one of the electors; as to whether his resignation created a vacancy which might be filled by the other electors under the law of the State of Oregon; or whether his ineligibility was of such character that he could not be elected to the office, so that a vacancy could not be created in his case. I do not question the honesty, the motives, or the patriotism of Oregon's governor, but had I been in his stead, and with my views in regard to the premises I have assumed, I should have held so as to give force to the spirit and intention of the general law; that there was a vacancy which could be filled, and thus have carried out the verdict of the people, who had been called on to determine the question. The other construction defeats the fundamental object of the election.

But let us go to a broader field. On the 7th of last November, a majority of the people of the United States, amounting to two hundred and forty-eight thousand or about that, counting the votes of Louisiana, South Carolina, and Florida as determined by the returning boards, declared that they desired that Samuel J. Tilden should be President of the United States, and Thomas A. Hendricks their Vice-President. Under our electoral system, it does not follow that these gentlemen have been elected to these offices, but in the determination of doubtful questions affecting the electoral vote, the doubt should weigh in favor of the voice of the majority. The apparent majorities in Louisiana and Florida, at all events, are in favor of Tilden and Hendricks, but their returning boards have adjudged illegalities in the votes of these States sufficient to reverse the majorities in those States. The distinguished Senator from Ohio [Mr. SHERMAN] said to us the other day, speaking of the returning board of Louisiana:

> The members of the returning board are just as much officers in the performance of a limited judicial duty as your Supreme Court is in a broader one, just as much as a justice of the peace is. The judicial powers and duties of that tribunal must be respected by the tribunals of the United States. The Constitution of the United States declares that the electors shall be elected according to the laws of the States. It is Louisiana that says how her electors shall be elected; it is Texas that says how hers shall be elected; it is Ohio that says how hers shall be elected. The United States have no power to interfere with their laws. Their laws and their tribunals, their mode of returning and contesting, have to be regarded. It is by their laws that this case must be decided, and by the laws of Louisiana this returning board is required to pass upon these returns. It has done so, and I feel bound as a man who saw them do it, who witnessed their proceedings, to say that they did it in a manner to demand and require of you the same respect for their decision as would be given to the decisions of the Supreme Court of the United States. Their decision is final, made so by the law of Louisiana and by the supreme law of the land.

Now, if all this be true of Louisiana and its returning board, it is equally true that it is Oregon that says how her electors shall be elected. The United States have no power to interfere with her laws. Her laws and her tribunals, her mode of returning and contesting, have to be regarded. It is by her laws this case must be decided, and by the laws of Oregon—

> The secretary of state shall prepare two lists of the names of the electors elected and affix the seal of the State to the same. Such lists shall be signed by the governor and secretary, and by the latter delivered to the college of electors at the hour of their meeting on such first Wednesday of December.

The returns must be transmitted to the secretary of state, at the seat of Government, and it is made the duty of the secretary of state, in the presence of the governor, to canvass the votes, and then the governor must certify as before stated. In other words, the laws of Oregon constitute the secretary of state and governor its returning board. It is by the laws of Oregon this case must be decided, and by the laws of Oregon the secretary of state and governor are required to pass upon these returns. They have done so, and we are bound to give their decision the same respect that would be given the Supreme Court of the United States. Their decision is final according to the law of Oregon and the supreme law of the land. We cannot go back of it to see whether it was properly made or not. If the governor of Oregon certified that Cronin was elected, his decision is final as a judgment given by the Supreme Court. We must take it as true. This must be so, if the position assumed by the Senator from Ohio [Mr. SHERMAN] be true. And equally true must be the converse of the proposition. If we may go behind the certificate of the governor of Oregon and review and change his decision, we may, in a like manner, go behind the certificates of the returning board in Louisiana and review and determine the merits of its decision. Both reverse apparent majorities, and each has the same dignity and force in this respect. But, sir, it seems to me that we should take a broader view of the subject. In each case the tribunal has decided in favor of its own political party, and in doing so has changed majorities—reversed them, and these changes meet party necessities in the hour of party extremity. In neither case did the opposite party have counsel or representation. Each tribunal was partisan and decided in favor of its party, when each understood that its party triumph could not be assured without the decision it has given should be made. The country will never have confidence in either. Our Government is weak indeed, if its administration is to be chosen by the action of return-

ing boards or governors against the will of the people. It is weak indeed, if we may not go behind the fraudulent decision of a returning board or governor and must accept it as final, though we may know it was erroneous or corrupt, and thus allow the will of the people to be thwarted. Such a proposition is an admission that our Government is not strong enough to protect and defend the privileges and franchises of freemen and our public liberty.

I have said that I did not agree with the determination of Cronin's case by the governor of Oregon. Far more reprehensible do I esteem the action of the returning boards of South Carolina, Louisiana, and Florida. It will not do to let these or either of these defeat the will of the majority of forty millions of people, by mistake, erroneous proceedings, or fraud. Notwithstanding the eulogies we now hear pronounced over the Louisiana returning board, it would seem that the President was in want of confidence in it, as well as in those in South Carolina and Florida; for though the election was a State matter with which Congress or the President had nothing to do, notwithstanding as asserted by my friend from Ohio, [Mr. SHERMAN,] "it is Louisiana that says how her electors shall be elected, * * * and the United States have no power to interfere with her laws," and, as a consequence, with her count of the vote under these laws, yet the President of the United States called upon several of the most distinguished members of the republican party to go and watch the count of the votes by this board, and see that there was a fair count of the votes cast; and these gentlemen felt that it was best that the count made by these gentlemen should be watched, for they did go as the President requested, though there was no official or other compulsory obligation on them to do so. The manner of the count and its results excite suspicion, for, though the law requires the Louisiana board to be composed of men of both political parties, there was not a democrat upon the board. These boards managed also in all these States to count out by the most meager majorities generally all the democratic candidates for governor, and most of the democratic candidates for Congress. This is notably so in Florida. Now is it not remarkably strange that the points of intimidation should have been so conveniently situated so as to procure a successful count in favor of the republican party by republican returning boards? The circumstances are all suspicious, and I maintain that these boards are not so sacred, and their acts clothed with such final official sancity, that we may not lift the curtain and peep behind it to see what is there. But I do insist that if the doctrine of *stare decisis* is to control in the case of the certificates of these returning boards, it must also apply to the certificate of the governor of Oregon. The same reasons exist therefor save one, and that is the decision of one is the action of a republican tribunal and the other of a democratic one.

Eliza Pinkston has fearfully wrought up the feelings, the sympathies, the indignation of the Senator from Ohio, [Mr. SHERMAN.] Her story does not make the impression on my mind it did on his, because I do not believe it; he does. The murder of the husband, the massacre of the helpless innocent babe, the character of the injuries to the woman are not the work of the white race or any other civilized race. They never occurred as detailed. I know nothing of the facts except as I have seen them in the papers; but I undertake to say that no white man was concerned in the outrages detailed by Eliza Pinkston. My friend from Ohio will learn that as a general proposition negro testimony is not of the highest character of credibility. It is no matter of surprise that this is so. The ancestors of this people were savages when brought to our shores. Their descendants were born in slavery. The school-house was shut against them. The law was violated in teaching them to read and write. Slavery and ignorance demoralize the slave. Their associations were with their own race, and even the free colored man was not permitted to mingle with the slaves. Under such circumstances it was impossible that they should be the subjects of many refining influences, or that their moral perceptions should be clear and distinct. They were not to blame for all this; but the result was, as every one knows who understands the subject at all, that with most of them truth was not appreciated, chastity was held in little repute, and the obligations of an oath were not understood, for they were scarcely ever in courts or examined as witnesses. There are many and glorious exceptions to this statement; and since the emancipation of the colored race the evidence of a marked, I think I may say an astonishing, improvement in all these respects is most encouraging. But history and experience teach us that when a race or people have been demoralized by any cause, there are many of them who never can be recovered or elevated.

I beg to assure my friend from Ohio [Mr. SHERMAN] that there are not so large a number of banditti and savages among the white people of the South as he has been led to suppose by the testimony he heard before the Louisiana returning board. About the 1st of May, 1866, what was called the Memphis riots occurred. During the first session of the Thirty-ninth Congress the House of Representatives appointed a select committee, with our present distinguished minister to the government of France at its head. This committee heard testimony detailing brutalities, outrages, and ferocities equal, or nearly so, to those detailed by Eliza Pinkston. Among the witnesses examined by that committee were Frances Thompson and Lucy Smith. By referring to the report of that committee (House Representatives Report No. 101, first session Thirty-ninth Congress) the testimony of Frances and Lucy may be found. According to Frances's story, she and Lucy lived together; seven Irishmen came to their house, insulted her and Lucy, beat and choked and robbed them, and four of the Irishmen outraged Frances's person, and three of them Lucy's. Lucy attempts the corroboration of Frances's testimony; says that she and Frances lived together; that she was seventeen years old; that but one Irishman violated her person. The next one said she was so near dead that he would have nothing to do with her, so he struck her a blow and left her. The impression this testimony made on the minds of that committee was as strong and vivid as that made by that of Eliza Pinkston on the judgment and feelings of the Senator from Ohio, [Mr. SHERMAN.] On pages 13 and 14 of Mr. Washburne's report will be found what he says on the subject. He tells us that—

> The colored girl, Lucy Smith, who was before the committee, said to be sixteen or seventeen years old, but who seemed from her appearance to be two or three years younger, was a girl of modest demeanor and highly respectable in appearance.

He speaks of Frances thus:

> She had been a slave, was a cripple using crutches, having a cancer on her foot.

So atrocious was the story of these wrongs that the blood of Mr. Washburne boiled over at the horror of its details, as did that of the Senator from Ohio [Mr. SHERMAN] over Eliza Pinkston's, and he tells with a burst of righteous indignation, that—

> It is a singular fact that while this mob was breathing vengeance against the negroes, and shooting them down like dogs, yet when they found unprotected colored women they at once "conquered their prejudices," and proceeded to violate them under circumstances of the most licentious brutality.

That committee believed, honestly believed, all this was done. Frances Thompson some years after was arrested for violation of the law, and upon examination of the case it was discovered that Frances was a man, a fact no doubt known all the while to Frances's bedfellow, the young, modest, and "highly respectable" Lucy Smith. The testimony of these witnesses was utterly and necessarily untrue, and so is that of Eliza Pinkston, as is most apparent from its face. She says that she had her baby in her arms; that some of the men laid its little head upon her arm and cut its throat, and then they went to cutting her; they shot her twice, once in the throat and once in the leg. This was all done in the house. They then got her out of doors, and cut her jaw into the jaw-bone, and cut her throat. They then got the axe which she chopped wood with, and struck her a blow on the head with it with such violence that it broke the iron axe just at the eye. They cut her headstrings off. The Senator from Ohio [Mr. SHERMAN] says they hamstrung her and violated her person. Here was this woman, shot in the breast and leg, with her throat and jaw and headstrings cut, stricken on the head with an axe with such force that the axe was broken, hamstrung, and violated, who was able to get over into the cotton-field, and thence to Mr. Tidwell's house, and then to Epsy Williams, and then to Miraud Gates's, where she staid a few days. How far these places were apart she does not tell us. A salamander is nothing to Eliza. She tells us that they left Henry Pinkston unburied, and her for dead, and yet they took the body of the dead child a quarter of a mile away and threw it into a lake. And on this testimony, the falsehood of which is so apparent on its face, a State is to be disfranchised and a President whom the people never elected is to be placed in office. My friend from Ohio lets his heart runaway with his head in giving credence to Eliza's story. The brutal treatment of the husband, the murder of the child, and the injuries to Eliza were not the deeds of white men or any other race. I do not believe they occurred as detailed. And, sir, these darkest deeds are done, we are told, in a State which is under republican control, and no warrants issued, offenders arrested, and no efforts made to punish the guilty monsters.

Before southern States and people are held guilty of such gross outrages there ought to be a sufficient amount of kinship between the sections not to allow each other to be convicted of the most fiendish crimes on such false and unreasonable testimony. It would be better to hold that all presumptions of crime are against the southern people, and that they are conclusive. O, sir, it is time that we become infused with more of that charity which "thinketh no evil and is kind;" it is time that we should have that confidence which would allow us to repose trust in each other. It is time for us to make our Government one of law instead of force. It is time that offenders should be tried and punished and not those who are innocent. The wicked should be condemned and not communities or States because wicked men are in them. If a people lose confidence in the good faith and justice of their government or the government lose confidence in its people, there will in such a country soon be an end of liberty and free institutions. Before the people of my own State in the canvass lately ended I on all occasions indorsed the candidates of the republican party for President and Vice-President as patriotic and honest men, of whom any party or country might be justly proud. I supported Mr. Tilden and Mr. Hendricks because I thought them in every way worthy for the high offices to which they aspired. My opinion of none of them has changed. None of them desire the offices for which they were supported against the will of the people as expressed under the methods provided by law. We must be actuated by the same spirit. We must settle this question in some fair, just, and honorable mode, at once peaceful and conciliatory. The peace, the harmony, the liberty of the people are of far greater importance than the question as to who shall be the occupant of the presidential chair. Success should be sought only on the merits of the case. Neither party should seek the advantage under technical theories or by force of physical power, but the right should

be reached by honest, non-partisan, and peaceful methods and the country, the whole country, be uppermost in all minds and hearts.

Mr. BRUCE. Mr. President, I wish to ask the Senator from Tennessee simply one question. I have no desire at this time to reply to his argument; but I ask him if he believes that the outrages committed on Mrs. Finkston must have been committed by black men because of the revolting and atrocious character of the outrage committed?

Mr. KEY. I will say to the Senator from Mississippi that I did not say they were committed by black men. I said they were committed by savages, or those who had the instincts of savages. I did not say they were committed by white men or committed by black men. The expression I used was "savages, or those who had the instincts of savages."

Mr. BRUCE. Then I misunderstood the Senator, and I beg his pardon; but I wish to ask him if it is proved conclusively to his mind that those outrages were not committed by white men? I think the Senator has read the report of the outrages committed at Coushatta, at Grant, and Colfax Parishes, and I ask if he really believes that those outrages were committed by other than white men? I do not assert that white men would commit outrages that black men would not commit; I do not hold that black men are better than white men; and, while I have no wish to discuss this matter this morning, I am somewhat surprised at the Senator from Tennessee when he casts a gross reflection upon a race that certainly does not deserve his censure.

Mr. KEY. The Senator is mistaken in what I did say, as I have remarked.

The PRESIDING OFFICER, (Mr. MORRILL in the chair.) The question is on the amendment reported from the Committee on Privileges and Elections. Is the Senate ready for the question?

Mr. MORTON. The Senator from Oregon [Mr. MITCHELL] called the attention of the Senate to the fact that the Senator from Illinois [Mr. LOGAN] desires to be heard on this question and that he is indisposed to-day and cannot be present. I suggest, therefore, that it would hardly be proper to take the vote at this time.

Mr. MITCHELL. I do not desire the vote to be taken until the Senator from Illinois can be present.

The PRESIDING OFFICER. If there is no objection, the resolution will be laid aside informally. The Chair hears no objection to that course being taken.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. GEORGE M. ADAMS, its Clerk, announced that the House had passed the following bills; in which it requested the concurrence of the Senate:

A bill (H. R. No. 4187) making appropriations for the service of the Post-Office Department for the fiscal year ending June 30, 1878, and for other purposes; and

A bill (H. R. No. 4207) to remove the political disabilities of F. E. Shepperd, of Virginia.

DEATH OF SPEAKER KERR.

The message also communicated the following resolutions, which had been passed by the House:

Resolved, That the sad announcement of the death of Michael C. Kerr, late member from the State of Indiana and Speaker of this House, is received by us in the deepest sorrow and profoundest regret, and that in his untimely decease the House of Representatives of the United States has lost an impartial, competent, and noble presiding officer, a faithful and patriotic member.

Resolved, That in testimony of our respect for the memory of the deceased Speaker, his chair be draped in mourning during the unfinished term of the Forty-fourth Congress, and, as a further evidence of our continuing esteem for the dead, the officers and members of this House will wear the usual badge of mourning for the space of thirty days.

Resolved, That the Senate be informed of the death of the late Speaker by forwarding to that body a copy of these resolutions, and that the Clerk transmit a copy of the same to the afflicted family of the illustrious dead.

Mr. MORTON. In reference to the obsequies of the late Speaker of the House, regarding which we have just received the resolutions of the House, I beg leave to say that my colleague, [Mr. MCDONALD,] a long personal friend of the late Speaker, Mr. Kerr, is absent on duty, and it would be agreeable to his wishes as well as to mine and to the friends of the deceased that this matter should lie upon the table until the return of my colleague, and then a time will be fixed when it will be taken up in the Senate. I therefore ask to have the resolutions lie on the table.

The PRESIDING OFFICER. The resolutions will lie on the table.

RULES OF THE SENATE.

Mr. FERRY. I move that the Senate proceed to the consideration of the report of the Committee on Rules on the revision of the rules. I call the attention of the Senate to the fact that at the last session a resolution was passed instructing the Chief Clerk to prepare a new Manual, and it was thought advisable that the new Manual should include the new rules, if they should be adopted by the Senate. The Senators are well aware that the present edition of the Manual is so far exhausted that all Senators have not been supplied. The new Senators who have been lately sworn in have no copies and many of the senior Senators have none. In order to meet that, as well as to perfect our rules, I ask that the Senate now proceed to the consideration of that report.

Mr. DAVIS. The chairman of the Committee on Rules, I take it, knows that the Senator from North Carolina [Mr. MERRIMON] is not present; but he knows best whether the Senator from North Carolina ought to be or intended to be here when these rules are considered.

Mr. FERRY. I am aware of the fact that the Senator from North Carolina, a member of the Committee on Rules, is absent. The Senator from North Carolina understood that if there was an opportunity I would endeavor to call up the report, and it is with his assent that I do so. The report is the unanimous report of the committee, and I call it up simply to avail myself of an opportunity when I see the Senate is not particularly engaged, that the subject may be acted upon before the recess, in order that we may have these rules, if adopted, placed in the hands of the Chief Clerk, that he may incorporate them in his Manual.

Mr. CONKLING. To avoid the necessity of asking to have read enough of this report to enable us to understand what it is, I ask the Senator from Michigan to state sufficiently to denote to us the rules in which changes have been made, indicating in such general terms as he no doubt conveniently can what these changes are.

Mr. FERRY. There are but very few of the rules that have been changed. Substantially there is but very little difference between the present report and the current rules of the Senate. In one particular the rule is changed in regard to the attendance of Senators. We have heretofore found difficulty when without a quorum.

Mr. JOHNSTON. I should like to ask if these rules have been printed?

Mr. FERRY. They have been printed; they were printed at the last session. The present rule as reported by the committee gives the Senate the power to compel the attendance of Senators. In that respect, and in that only, does the new rule on that subject differ. Then, in relation to the relevancy of amendments to appropriation bills, we have found the difficulty of settling the relevancy of amendments, and the present report provides that the question of entertaining such amendments shall be submitted to the Senate instead of being decided by the Chair. All the other subjects that might be considered materially different between this report and the present rules consist in bringing the practice of the Senate into the form of rules. It is well known to all Senators that there are many decisions based upon the practice of the Senate, and we find a great deal of difficulty when a question comes up if there is no rule for it. We have to adhere to the practice of the Senate, and the practice is not so familiar to Senators as the rules because those decisions are not before them so much. The report covers that practice and reduces it to form, and in that respect it differs from the present rules of the Senate. I think if the Senate should take up the rules and proceed with their consideration, I have notes here by which I can show Senators, if need be, where the present report differs from the rules of the Senate as contained in the Manual.

Mr. DAVIS. May I ask the Senator whether I understood him aright to say that the report was unanimous, and that the Senator from North Carolina agreed with him as to these changes?

Mr. FERRY. He did; the Senator is correct. I would also state that the committee have given a great deal of attention to this matter. I might revert to the fact that the present report has reclassified the rules, placing them under their various subjects; and in that respect it would be a great advantage, if in no other, as will readily be seen by reference to the report. The report is printed; it was printed at the last session, and can be laid upon the tables of Senators, or probably it is there now.

The PRESIDING OFFICER. The question before the Senate is on the motion to take up the report of the Committee on Rules for present consideration.

The motion was agreed to.

Mr. FERRY. I now ask that the report be considered as in Committee of the Whole, and that the rules be taken up *seriatim*.

The PRESIDING OFFICER. That course will be pursued if there be no objection. The first rule reported will be read.

The Chief Clerk read as follows:

QUORUM—READING THE JOURNAL.

1. The presiding officer having taken the chair, and a quorum being present, the Journal of the preceding day shall then be read, and any mistake made in the entries may be corrected.

Mr. FERRY. If the Clerk will allow me to interrupt him at this moment, I wish to state the difference between this and the present rule, and Senators will see the force of the change. The present rule reads—

To the end that any mistake may be corrected that shall be made in the entries.

That is, that you shall correct errors that shall be made in the future, "shall be made in the entries." We provide that "any mistake made in the entries may be corrected," applying to the past. That is all the difference between the present report and the old rule. What follows of rule first is new matter.

The Chief Clerk resumed the reading of Rule 1, as follows:

The reading of the Journal shall not be suspended unless by unanimous consent; and when any motion shall be made to amend or correct the same, it shall be deemed a privileged question, and proceeded with until disposed of by the Senate.

Mr. FERRY. That is merely bringing the practice down into a rule. I think there can be no objection to that.

Mr. BOGY. Will the Senator from Michigan allow me to inquire what has become of the resolution of the Senator from Oregon?

Mr. FERRY. It was informally laid aside for the purpose of considering this report.

Mr. BOGY. I desire to know whether it was laid aside until to-morrow, or whether it is likely to be called up at any time to-day. If it lies over until to-morrow, which I presume was the intention of the Senator from Oregon, I shall know how to govern myself, as I desire to offer an amendment to the resolution. I understand the resolution lies over until to-morrow.

The PRESIDING OFFICER. It was laid aside in consequence of the illness of the Senator from Illinois [Mr. LOGAN] who will not be present to-day.

Mr. BOGY. So that, of course, it will lie over until to-morrow. I so understand it.

The PRESIDING OFFICER. The Chair will take it to be the pleasure of the Senate that unless objection is made each rule as it is read, thus presented as an amendment to the existing rules, is assented to. The first rule will be regarded as agreed to.

Mr. EDMUNDS. Are we in Committee of the Whole?

Mr. FERRY. Yes, sir. The rules will be reported to the Senate hereafter.

Mr. EDMUNDS. All right, then.

Mr. FERRY. I will now state for the information of the Senate that rule second is new matter.

The Chief Clerk read as follows:

WHEN A QUORUM IS NOT PRESENT.

2. If either at the commencement of any daily session of the Senate, or at any time during its daily sessions, a question shall be raised by any Senator as to the presence of a quorum, the presiding officer shall forthwith direct the Secretary to call the roll of Senators, and shall announce the result to the Senate; and these proceedings shall be without debate.

Mr. FERRY. This has been the practice of the Senate. It is really reducing the practice to form. We have hitherto had no rule that controlled it.

Mr. HAMLIN. In this connection I want to say to the Senate that, while I was one of the committee which aided in preparing these rules, I did not deem it advisable to press upon the consideration of that committee an amendment to this rule, which I think, after we shall have gone through it in Committee of the Whole, I shall offer; and I make the statement now for the purpose of asking the consideration of Senators to the point. It is an amendment which will authorize a less number than a quorum, when the Senate shall be found in that condition, to compel the attendance of absent Senators. The rule which has always existed has been based upon the supposition that absent Senators if notified will appear; while you and I, sir, know that the rule has been, if not "more honor'd in the breach than the observance," often dishonored in the breach; and I believe the time has come when the same power should be vested in a number less than a quorum here that is vested by the rules of the House in a number less than a quorum there. We often find ourselves at midnight, or even at a later hour, without a quorum of members present. The majority of that number present are seeking to accomplish an object. We do know, and now I speak as an individual, who are not present and ought to be; and legislation is thus defeated. I think there ought to be an absolute power provided by rule to allow the Senators present, being less than a quorum, to compel the attendance of absent Senators; and I think I will offer an amendment at the proper time to that effect.

Mr. FERRY. I desire to call the attention of my colleague on the committee to Rule 3, where he will see, I think, that that case is covered, if I understand him correctly; but I may have misunderstood him. It provides that a majority of Senators present may compel the attendance of Senators.

Mr. HAMLIN. I was not aware that it was put in.

Mr. FERRY. It covers the question, I think.

Mr. INGALLS. Why did the committee omit the definition of "quorum" contained in the second clause of the first rule as it now stands?

Mr. HAMLIN. The Constitution does that.

Mr. FERRY. It is in the Constitution.

The PRESIDING OFFICER. If there be no objection, the second rule will be considered as agreed to and the third rule will be read.

The Chief Clerk read as follows:

ABSENT SENATORS SENT FOR TO MAKE A QUORUM.

3. No Senator shall absent himself from the service of the Senate without leave first obtained. Whenever it shall be ascertained that a quorum is not present, a majority of the Senators present may direct the Sergeant-at-Arms to request, and, when necessary, to compel the attendance of the absent Senators, which order shall be determined without debate; and, pending its execution, and until a quorum shall be present, no motion, except a motion to adjourn, nor debate, shall be in order; and all proceedings under this rule shall cease upon an adjournment.

The PRESIDING OFFICER. This rule will be considered as agreed to, if there be no objection, and the fourth rule will be read.

The Chief Clerk read as follows:

PRESIDENT PRO TEMPORE TO BE CHOSEN.

4. In the absence of the Vice-President, the Senate shall choose a President *pro tempore*, and the presiding officer shall have the right to name a Senator to perform the duties of the Chair; but such substitution shall not extend beyond an adjournment.

The Chief Clerk next read as follows:

MAKING UP THE JOURNAL.

5. The proceedings of the Senate shall, briefly and accurately, be stated on the Journal. Messages of the President, in full; titles of bills and joint resolutions, and such parts as shall be affected by proposed amendments; every vote, and a brief statement of the contents of each petition, memorial, or paper presented to the Senate, shall be entered.

The Chief Clerk read next as follows:

SEPARATE JOURNALS TO BE KEPT.

6. The legislative proceedings, the executive proceedings, the confidential legislative proceedings, and the proceedings when sitting as a court of impeachment, of the Senate, shall each be recorded in a separate book.

Mr. FERRY. The next rule is a new one.

The Chief Clerk read as follows:

PRESENTATION OF CREDENTIALS.

7. The presentation of the credentials of Senators-elect and other questions of privilege shall always be in order, except during the reading and correction of the Journal, while a question of order or a motion to adjourn is pending, or while the Senate is dividing; and all questions and motions arising or made upon the presentation of such credentials shall be proceeded with until disposed of by the Senate.

The PRESIDING OFFICER. No objection being made, this rule will be considered as agreed to and the eighth rule will be read.

The Chief Clerk read as follows:

ORDER OF BUSINESS.

Morning hour.

8. One hour next after the reading of the Journal shall be designated as the morning hour, during which the order of business shall be as follows:

First. The presiding officer shall lay before the Senate messages from the President, reports and communications from the heads of Departments, and other communications addressed to the Senate; and such bills, joint resolutions, and other messages from the House of Representatives as may remain upon his table from any previous day's session undisposed of.

Second. The presiding officer shall then call for, in the following order:

The presentation of petitions and memorials.

Reports of the standing and select committees.

The introduction of bills and joint resolutions.

Concurrent and other resolutions.

Until the business of the morning hour shall have been concluded and so announced from the Chair, no motion to proceed to the consideration of any bill, resolution, report of a committee, or other subject upon the Calendar shall be entertained by the Chair, unless by unanimous consent; and if such consent be given, the motion shall not be open to amendment and shall be decided without debate upon the merits of the subject proposed to be taken up; nor shall the consideration of any subject taken up during the morning hour, except a motion to amend the Journal, or a motion pertaining to the credentials of a Senator-elect or his admission to his seat, be extended, unless by unanimous consent, beyond the expiration of the morning hour.

If any portion of the morning hour shall remain after the call for resolutions, the presiding officer shall lay before the Senate, in their order, resolutions and concurrent resolutions introduced on any prior day, and the same shall be proceeded with, but not beyond the expiration of the morning hour, unless by the unanimous consent of the Senate.

Mr. FERRY. I desire to propose an amendment from the committee, and that is to insert after the word "after" in the first line of this rule the words "and including," so that it may include the Journal and not have the morning hour fluctuate with the length of time required for the reading of the Journal.

The amendment was agreed to.

The PRESIDING OFFICER. The rule, as amended, will be agreed to, no objection being made, and rule ninth will be read.

The Chief Clerk read as follows:

UNFINISHED BUSINESS.

9. Immediately upon the expiration of the morning hour, the presiding officer shall lay before the Senate the unfinished business at its last adjournment, which shall take precedence of the special orders, and shall be proceeded with until disposed of by the Senate.

The Chief Clerk next read as follows:

CALENDAR OF GENERAL ORDERS.

10. At the expiration of the morning hour, if there shall be neither unfinished business nor special order, the Senate shall proceed with the Calendar of General Orders, unless it shall otherwise determine; and the subjects upon the Calendar of General Orders shall be taken up in the order in which they stand, and, if not finally disposed of, shall retain their respective positions on said Calendar until such final disposition. And in all cases where the Senate shall take up the Calendar of General Orders, and shall not have gone through therewith, when the same shall be resumed, it shall be at the point which was reached when last under consideration.

The PRESIDING OFFICER. No objection being made, this rule will be considered as agreed to.

Mr. FERRY. As this rule has been agreed to, I ask that it be transposed to follow Rule 13. The rule as to "general orders" should follow the rule as to "special orders." Then they will be in this order: first the unfinished business, next the special order, and then the general orders. This should be Rule 13 instead of 10. It simply regards the order of arrangement.

The PRESIDING OFFICER. That will be done by unanimous consent.

Mr. DAVIS. I understand that this report is being read now as any bill, and that it may be committed or amended after we shall finish the reading. I believe that I am correct in that view.

The PRESIDING OFFICER. The report is in committee now, and will be passed upon again.

Mr. FERRY. I understand that it is in Committee of the Whole, and we are now passing upon each rule and making amendments, and then the whole body of rules will have to come into the Senate subject to control as usual in the Senate.

The PRESIDING OFFICER. The next rule will be read.

The Chief Clerk read as follows:

SPECIAL ORDERS.

11. Any subject or matter may, by a vote of two-thirds of the Senators present, be made a special order; and when the hour fixed for the consideration of a special order shall arrive, it shall be the duty of the presiding officer to lay such special order before the Senate, unless there be unfinished business of the preceding day, in which case the unfinished business shall have precedence.

Mr. BAYARD. Is that a change in the existing rule? I wish the honorable Senator who has this matter in charge whenever he comes to a point in which there has been an alteration in the rules would indicate the extent of the alteration and the effect.

Mr. FERRY. I will state to the Senator from Delaware that this is the language of the present rule:

No bill, joint resolution, or other subject shall be made a special order for a particular day and hour without the concurrence of two-thirds of the Senators present.

It is simply a change in phraseology.

Mr. CONKLING. What is the number of that rule?

Mr. FERRY. The number of that rule is 31 in the present Manual.

Mr. CONKLING. Mr. President, I have no objection to this particular rule. I rise, however, to remark that it is quite out of the question that the Senate this morning shall render any essential aid to the Senator having this matter in charge in considering these rules. In one sense the report is accessible; I have it in my hand. It does not indicate at all the changes which have been made; it is printed here as a novelty, entire, by itself. The rules are recast as to their order, as the Senator says, classified; so that a Senator with the Manual before him cannot make the comparison. We have now before us an instance of it. Here is Rule 13 of this revision. You turn to the corresponding rule in the Manual and it turns out to be Rule 31; and the Senator from Delaware adds that Rule 11 refers to a rule far succeeding that number. I suggest that if we are to do this intelligently at all, or intelligibly at all, accurately speaking, we must do one of two things: the Senator from Michigan must state in respect of these rules exactly what the proposed change is, or else this report must be printed, as it seems to me it ought to have been printed originally, showing the amendments, so that by looking at the paper you may see the changes that have been made; but to go on and read these separately gives no light whatever. We might just as well adopt them in a lot. I have great confidence myself in the Committee on Rules; but I submit that these rules ought either to be reprinted, putting in brackets or italics the matter added or the matter stricken out, and referring to the present rules, and then giving notice of the day when the matter shall be taken up and considered, so that Senators may possess themselves of it; or else the Senator ought in each case to state whether the rule remains the same or not, and, if a change has occurred, state, as the fuller material before him no doubt will enable him to do, just what the change is.

Mr. FERRY. I stated when the report was taken up that I had notations here of the differences between the present report and the rules as they now exist in the Manual adopted by the Senate; and I am prepared to give the changes. At the same time, if the Senator from New York or the Senate desire to have the rules reprinted and put in the form which he proposes, it might be a more intelligent way of reaching the object. This matter has been before the Senate ever since last session. The revision was printed then and distributed; and my object in calling it up now was to facilitate the completion of the Manual. But if we can arrive at a conclusion more intelligently and accurately by having it reprinted and the changes put in italics, I am disposed very readily to yield to that method or any other that will reach the end.

Mr. CONKLING. If the Senator will allow me a moment, I will not interpose such suggestion unless some other Senator does, as I have already intimated that I have great confidence in the Committee on Rules and certainly no wish to add to their annoyance or trouble in making any compilation of the rules which we have. I shall be quite satisfied if the Senator will take the trouble, in the case of each rule read, to indicate to us the change that has been made, if any, and if so the nature of that change. Further than that, I will not ask him to go; but I should like as one member of the Senate to understand the subject intelligently.

Mr. FERRY. I would be glad to do that, Mr. President.

Mr. HAMLIN. If my friend will allow me, I will state that I am very strongly impressed with the idea that we shall make more progress if we adopt the suggestion made by the Senator from New York. Indeed I supposed the rules when printed for our consideration would show in the imprint the precise pages that were amended. I thought they would be so printed. The Senator from North Carolina, [Mr. MERRIMON,] not now in his place, and the Senator from Michigan [Mr. FERRY] and myself constitute this Committee on Rules, as the Senate know. We have devoted to this subject a very great deal of attention. I cannot say how many meetings we had, but I think we had twenty on this subject. We took the rules and we considered them rule by rule, line by line, sentence by sentence. We sought first to classify them so that they would be grouped in their appropriate manner. We sought to strike out that which was somewhat ambiguous and make the language of each rule plain, conforming to what was the practice of the Senate. We sought to incorporate a few new rules which would carry out the uniform practice of the Senate that had been had without rules; and I may say that when we got through we were unanimous in our opinion. I am quite sure that we have made some improvements, and yet the changes cannot be as familiar to Senators as to the committee who have examined the subject, and I am inclined to the opinion, and I am going to make the suggestion directly to the chairman, that if we reprint so that a Senator shall see right before him whether any rule is changed at all, if changed how changed, or if a rule be a new one what practice of the Senate it covers, if a rule has been modified how modified—I think if we have that in print for each Senator we shall make more progress than we shall by acting on the mere suggestion of the Senator who is so familiar with them. The chairman of the committee will state precisely, and yet that will not be as satisfactory to the Senate or to Senators as if they have the whole matter precisely before their own eye in print.

I therefore suggest to the chairman, and I think it will help forward the matter, to have this report reprinted with all the changes, showing precisely what they are. I thought it was so printed. I did make that precise suggestion in committee myself, and when I took the report up this morning I supposed I should find it just in the shape that I suggest now it ought to be.

Mr. DAVIS. I am disposed to add a word to what has been so well said by the Senators from New York and Maine. I fully concur in their opinion. I endeavored to follow the Clerk as he read the rules to find what the changes were, but like the Senator from New York and the Senator from Delaware it was impossible for me to do so from the fact that some of the rules were changed perhaps as much as four or five or six pages from one another.

Mr. HAMLIN. If the Senator will pardon me, he will see in a moment how this became necessary. We classified them and if any old rule was not in its proper place we transferred it to another place.

Mr. FERRY. I should like to make another suggestion to the Senator from West Virginia before he takes his seat, which is that many of the old rules are made up to cover several subjects, and in the reclassification they have been distributed to their proper places, therefore dividing up and distributing the rules, so that in the case of a rule in the Manual it may be distributed into two or three other rules, and for that reason the Senator will see the difficulty of quoting the rule from which one of these is taken, because there may be more of that rule, or the present rule may include more than the corresponding rule in this revision. I had taken the pains to note the difference in each particular wherever there was a change; I have it here in the margin.

Mr. DAVIS. I notice that some of the rules which the Senate has been acting under, perhaps from the beginning of the present form of government, are changed. That is very important; so much so that I think we ought to see these proposed changes in print and have an opportunity of examining them before the Senate acts upon this report. I hope the suggestion of the Senators from New York and Maine will be adopted, and that the chairman will have printed his marginal notes so that each Senator may see for himself just what the changes are and where they will lead us to. As I said a moment ago, the report changes some of the rules, some of the practices of the Senate that have been in force since the present form of government, and we certainly ought to go slowly before we make radical changes in rules which have stood so long and which have answered our purpose up to the present time. I believe that many of the changes that have been indicated by the new rules are proper and ought to be adopted, but we ought to know what we are doing. I hope, therefore, that the suggestion coming from the other Senators will be adopted and that there will be a reprint indicating such changes as have been made and including the marginal notes which the chairman of the Committee on Rules has before him. He can make his own notes and prepare them in such a way that the proposed rules may be printed in that shape.

Mr. INGALLS. I do not regard this subject as of the slightest importance or consequence, for rules are never observed in this body; they are only made to be broken. We are a law unto ourselves, and it is entirely immaterial in my judgment whether we have a code of rules or not. But I do not agree with the Senator from Maine that this subject will be better treated by being postponed. If we are to consider it at all there is no better time than now. We have an unoccupied afternoon that certainly cannot be more innocently employed than in the discussion of these rules that are never to be observed, and I am entirely willing to take the action of the committee on trust. A resolution has already been offered for an adjournment over the holidays, and a postponement now would probably result in a delay of this question until after the beginning of the new year. Every Senator knows that subjects of much greater magnitude and importance will soon press upon our attention, and if we are to have any action at all, it had better be had now. As some Senator has observed, there is a great necessity for a reprint of the Manual. It was ordered at the last session of Congress and has been postponed, as I understand, until the present time for the purpose of enabling the Chief Clerk to incorporate into it the present body of rules reported from the committee. The inconvenience resulting to Senators from the want of that Manual has already been very great, and I would suggest that we had better continue this afternoon, taking the statement of the committee on trust, believing them to be entirely accurate, and finish this matter.

Mr. THURMAN. The fact stated by the Senator from Kansas that the rules are very little observed in the Senate is the best proof I know of two things: first, of the inutility of the rules and, second, of the good behavior of Senators; and these two facts show that this

matter may be well laid over without any detriment to the public service or to the convenience of the Senate.

Mr. INGALLS. We want the Manual.

Mr. THURMAN. That is true; but we can get along without the Manual well enough, and would get along if there were no Manual. I am not afraid to trust the action of seventy-four gentlemen on this floor. I agree with the Senator that very little attention has been paid to the strict rules of the Senate, and yet I can say here, after nearly eight years' service, that I do not know of a single act of injustice to any Senator, on this floor by the enforcement of any rule or by the omission of the enforcement of any rule. But if we are to have any change in the rules, as some Senators think we ought to have, let us know what we are about, let us have a print of the rules with the proposed amendments, and then every Senator can judge for himself as to the propriety of the proposed alterations. I do not think we ought to hurry this thing through in the way suggested by the Senator from Kansas without actually knowing what are the changes proposed. I hope, therefore, that the suggestions that have been made by the Senator from New York, the Senator from Maine, and the Senator from West Virginia will be followed, and that this matter will be laid over until the rules can be printed in the manner proposed, so that the suggested alterations will be accessible.

Mr. FERRY. Mr. President, I will make a suggestion to the Senator from Ohio directly and to the Senate, that we go through with the rules, as the committee have two or three modifications to make, and then have them reported to the Senate and printed, according to the suggestion of the Senator from New York, that the modifications shall be in italics or in some form that shall be plain to all the Senators.

I wish to state in this connection, verifying what has been stated by my colleague on the committee, that the Committee on Rules have given a great deal of time and attention to these rules. They spent all the leisure of last session; whenever it was possible for them to meet consistent with other duties they met and devoted their time to the perfection of these rules. So far as the classification is concerned, which appears so apparent to Senators, I think it is pretty generally conceded that it is a great convenience and in that respect it would be a great object to have them adopted and become a part of our Manual.

So far as the modification of the rules is concerned, I stated at the outset there is no substantial difference; that this is merely bringing into form what has been the practice of the Senate. We have labored under a great difficulty whenever questions of order have arisen; we have frequently referred to the practice of the Senate rather than to the rules. Practice of course becomes rule; but yet there is such ambiguity and such uncertainty in the minds of Senators where they are guided by their recollections rather than by the form of the rule lying before them, that in order to obviate that the committee desired to put into form that practice, so that we should have the rules plain and explicit and be governed hereafter by them.

Now, if there be no objection, I will suggest that we go through with these rules and make the modifications that the committee propose, agree to the little transpositions they would make of one or two rules; then let them be reported to the Senate and ordered to be printed in the form suggested by the Senator from New York and reiterated by the Senator from Ohio. In that way we shall have made progress, and I am exceedingly desirous that this thing should be done. We are going into a recess by which we shall lose a couple of weeks so far as business is concerned. If we do this much we can have our work printed, and then if we are prepared before the recess we can take it up; if not, it will be ready to be taken up at the resumption of the session. I trust that so much will be done to-day.

Mr. DAVIS. I should like to suggest to the chairman of the Committee on Rules whether or not, if his plan be adopted, we gain anything? The Senate will not be prepared to take up and pass upon the new rules without seeing what they are. When they are called up again they will have to be reread, and therefore there will be nothing gained by going on now. No Senator, no matter how desirous of following the Clerk through the reading now, can tell what the changes are without explanation from the Senator who has charge of the subject. I see nothing to be gained by going on to-day. We listen to the reading to be sure. If the object is not to read them when we take up these rules again, then we should gain, but the gain I think would be in the wrong direction. I suggest to the Senator in charge whether I am not correct in that position. I cannot see how the business will be forwarded if we are to read the rules again when they are taken up; and if they are not to be read then, the Senate must act upon them without reading them at the time when action is taken.

Mr. FERRY. I desire to say in reply to the Senator from West Virginia that we shall gain this much: If we print the amendments in italics and the Senator has a rest of some two weeks, and that is before him, he will be prepared when he comes back here, as his colleagues will be, to adopt the amendments, if they suit them, without the formal reading of the whole rules. The question will then be on the adoption of the amendments as they appear in the italics. Therefore we shall have gained that much time.

Mr. THURMAN. Will the Senator from Michigan allow me to ask him a question?

Mr. FERRY. I will.

Mr. THURMAN. Does the Senator propose that we shall go through with the rules to-day and then have them printed? What is meant by going through the rules? Does he mean that we are to go through and adopt them, or just have them read? If we are to go through and adopt them, then there is no use of talking about correcting them afterward.

Mr. FERRY. We are in Committee of the Whole. I suppose we have two stages. We report from the Committee of the Whole to the Senate, and then the report will be open to amendment on the question of concurring in the amendments made as in Committee of the Whole.

Mr. CONKLING. Suppose you want to reconsider, then you must reconsider the vote reporting the measure to the Senate, and get it back into Committee of the Whole to act on it. If you do not want to reconsider, you will not save any time.

Mr. FERRY. The question will be on concurring in the amendments.

Mr. CONKLING. But practically there can be no time saved. If the Senate is agreed, as I hope the Senate will be, in the main at all events, to these propositions, considering them will be merely to read them in Committee of the Whole, and they will be assented to. If you assume that will not be so, it is because discussion, difference of opinion is to arise. In the last event, by reporting them to the Senate you simply put one additional impediment in the way; then you will have to reconsider and go back; whereas if the Senator thinks, as the Senator from Maine suggested, that it will be convenient and suitable that Senators have an opportunity before they vote to advise themselves what the changes are, manifestly I submit to the Senator from Michigan the economical way in respect of time is to have this printed now before it goes further, to the end that in place of retracing our steps one single going through may do. So it occurs to me.

Mr. FERRY. I may be somewhat obtuse, but I cannot see the point the Senator from New York makes. If we go through and adopt these rules, when they are reported to the Senate the question will be on concurring in these amendments. I do not see how the question of reconsideration can apply when the question will be upon concurring in the amendments made in Committee of the Whole.

Mr. CONKLING. It will not be unless you want to go back for a general revision. Here you strike out certain matters in Committee of the Whole. It will be in order to concur or non-concur in that. But suppose you want to change it, suppose you want to put back what has been stricken out, suppose you want to make some of the various motions which cannot be made in the Senate and which can be made in Committee of the Whole, then the only way is to reconsider and go back. If no such thing arises, you lose no time by letting it stand as it is, provided always you are going to wait for the reprint and allow Senators to understand and exercise their judgment upon it. I have no choice myself as to the mode; but I suggest to the Senator that if he thinks the suggestion of weight enough to induce him to reprint these rules, then the simple way is to reprint them at the point where we are, to the end that we may act advisedly all the way, and not be called upon to retrace our steps or get into any jangle as to what has been or has not been agreed on and what may or may not be changed.

Mr. FERRY. I have no desire to get into any jangle. I am seeking the interest of the Senate and its good order, and it is for that reason I am representing the Committee on Rules in this report. I supposed that there would be time gained by going through this report now and making the modifications the committee desire to make. I do not wish to be tenacious about this matter; I only desire to serve the best interests of this body. There are modifications which the committee desire to make and which should be included in the print. If the Senate have any confidence in the report of the committee, these modifications are also suggested by the committee and should go with the report so that all may be printed together. Now if there be no objection that informally the committee shall include these suggestions in the proposition to reprint and have them go together, I shall waive any preference that I may have, so far as I am concerned, and let it be done.

Mr. HAMLIN. We all agree to that.

Mr. FERRY. If there be no objection, then, I will ask that the report of the committee, with the modifications proposed, be printed, and that all the modifications be put in italics, or in such plain manner that the amendments made by the committee and the original rules will be easily distinguishable.

Mr. EDMUNDS. And with references in the margin to the number of the old rule in each case.

Mr. FERRY. And, as suggested by the Senator from Vermont, with references in the margin to the old rules, and to the several rules composing the rules now reported, where there is a consolidation.

Mr. CONKLING. And also with the little foot-notes printed with each rule in the Manual stating when it was adopted, and a reference to the other rules in the Manual relating to the same subject, which is perhaps a matter of adding one hundreds words in printing. Then we shall have the whole matter before us.

Mr. FERRY. Including the suggestion of the Senator from New York, which I suppose the Clerk has.

Mr. ANTHONY. I hope the suggestion which has been made that the consideration of these rules be postponed until after the recess, will not prevail. I think it quite desirable that the rules should be adopted now. We have been waiting for a year nearly to reprint the

Manual, which is entirely out of print. The new Senators have no copies of it; the old Senators frequently require them for public purposes, and it is impossible to get them. I had occasion some time ago to try to get a Manual for a person whom the whole Senate would be very glad to oblige, and it was impossible to find one. We do not wish to reprint the Manual until we have the amended rules.

The Senator from Kansas very justly says the rules are not greatly observed, and it is very much to the credit of the Senate that they are not, because the rule of the Senate has been its own sense of propriety and dignity, and the rule that prevailed in this body, and I trust always will, has been the rule of courtesy. It is very seldom that the strict requirements of parliamentary law are enforced or are needed to be enforced here; but still we should have rules, and whenever they are necessary we should have them in the best form, in the form most acceptable to the Senate. Therefore the modification which has long been needed ought to be acted upon before the recess, that the Manual may be printed and may be laid upon our tables as soon after the recess as possible. If the rules are not adopted until after the recess, we shall not get the Manual probably until near the close of the session.

Mr. EDMUNDS. We have not agreed to any recess yet.

Mr. ANTHONY. We shall have a recess practically whether we have one nominally or not. There will be no business done in this body next week, no matter whether we are formally in recess or whether we meet here and adjourn from day to day. For my own part, I would much rather sit here and transact the public business if it were possible; but long experience and repeated trials have shown me that it is entirely impossible to transact any business during the holidays.

Mr. HAMLIN. I want to put in my distinct *caveat* to what has been said here on this floor, that we do not observe the rules of this body. I affirm that the rules of this body are our guide, and that we do observe them. It is true that, as the body is composed of different men at different times, you find, precisely as you find in your courts, now and then, a decision overruled; but we are a law-abiding body, and the law is the rule of the body.

I wish to say that I hope the simple motion to postpone and print will be made, without any limitation, and the reasons have been stated by the Senator from Rhode Island very clearly. A motion to postpone and print leaves it in our power to take up this report so soon as we can after it shall have been printed. That is the best form to leave it in, and I hope the Senator from Michigan will so make his motion, and I shall be very glad if the Senate will so agree to it.

Mr. DAVIS. I did understand from the chairman of the Committee on Rules by his nodding that he assented to the views of the Senator from New York as to references, &c., to the dates of the adoption of the former rules and other things——

Mr. FERRY. I stated that the reprint, as proposed by me, would include all that.

The PRESIDING OFFICER. Does the Senator from Michigan assent to the suggestion of the Senator from Maine?

Mr. FERRY. In a moment. I desire to say to the Senator from West Virginia that I stated that my motion included the proposition of the Senator from New York, and included the date of the passage of each rule as it now stands on our Manual. I believe that is the object the Senator has. I wish to state, in connection with that, that there will be no possibility of having this ready before the recess, if a recess is taken at the time suggested here this morning. So far as I am concerned, I am disposed to remain here, and expect to remain here and continue to transact the public business without a recess; but I am persuaded we shall have a recess, as we always do; or, if not, we shall find ourselves without a quorum, and be compelled to take a recess practically by doing no business day after day. I desire the Senate to understand that it will be impossible to arrange this report for the printer in time to have it printed for information before the recess, if a recess is taken this week.

Now, Mr. President, I move that the subject be postponed, and that the report of the committee with these modifications be printed.

The PRESIDING OFFICER. The motion is to postpone the consideration of the present report and that it shall be reprinted with all the modifications and notes that have been suggested by the Senator from Michigan and other Senators.

Mr. BAYARD. I ask the Senator from Michigan whether this is limited for the purpose of having the report now printed with references to the matter of the old rules by numbers, so that when we want to know in considering this question what changes and amendments have been made we shall find a reference in the report of the committee to the number of the rule under which the subject has been treated in our present compilation. I ask also whether it is to include the foot-notes of dates which are a historical record of the rules originally, and the various amendments to which they have been subjected, so that the report now to be furnished to us will present these facts. Unless it does, I fear that we shall scarcely be able, in the current examination of the report during the sessions of the Senate, to contrast the changes proposed by the committee now with the rules under which we have heretofore been acting so as to understand the scope and extent of the proposed amendments.

Mr. FERRY. I suppose the Senators understand thoroughly now the rules of the Senate as contained in the Manual which I hold in my hand. I understand the suggestion of the Senator from Delaware to be that the print shall cover opposite each rule, or included in it, in different type the rules from which it is taken or with which it differs. I do not understand, however, that foot-notes, with a history of each original rule, are to be given, since the rules were adopted. The date of the passage of each rule, as contained in the Manual, and that I understand is to be included. The Senator will also see that some of these rules contain parts of two or three of the rules in the Manual, so that, in order to bring them into juxtaposition, you will have to bring the several rules or parts of the different rules opposite the one proposed to be adopted.

Mr. BAYARD. There will be no difficulty, I suggest, where a rule now proposed is composed of two or more preceding rules—in other words, where there has been a consolidation of rules—in noting that fact at the foot of the report now made. Let me illustrate what I mean:

Mr. HAMLIN. Will the Senator from Delaware allow me to put a question to him?

Mr. BAYARD. With pleasure.

Mr. HAMLIN. Let me ask the Senator if he means simply to add what is in the Manual at the foot of each rule, to wit, the time when it was adopted, and if changed the time when changed?

Mr. BAYARD. Yes.

Mr. HAMLIN. There is no trouble in doing that.

Mr. FERRY. That has already been included.

Mr. BAYARD. It is that the historical notes which accompany the present Manual shall be carried into the new compilation; but there is also this: Take Rule 11 as reported by the committee; it relates to special orders. The corresponding number in our old rules to Rule 11 relates to precedence of motions when a question is under debate. In recasting the rules the numbers no longer consist. What I mean is that when the Senator brings this matter back for the consideration of the Senate, we shall be enabled by glancing at the report to find a reference to the present rule as now numbered, so that we can observe the new treatment of the subject-matter to which the rule relates, and with that also will come the matter referred to by the honorable Senator from Maine that these foot-notes contained in our present compilation giving the history of the origination of each rule and its amendment may be continued in the new publication.

Mr. FERRY. The Senator from Delaware, I think, has misapprehended the rule in the Manual to which Rule 11 of the report refers. It refers to Rule 31 in the Manual, both referring to special orders. I have the reference in the margin.

Mr. BAYARD. That is true, but the rule as to special orders is numbered 31 in the present Manual; it is numbered 11 in the report now made. I merely wish the new report to make reference to the old rules, so that in comparing the two we may see what changes have occurred, and may be able readily to understand it.

Mr. FERRY. That I understand to be done. Now I move that the report be recommitted and printed with the notations as suggested by the several Senators.

The PRESIDING OFFICER. Senators have heard the motion.

The motion was agreed to.

GIBBES & CO.

Mr. WRIGHT. I move that the Senate proceed to the consideration of Senate bill No. 946. It is a private bill to which I do not think there will be objection.

Mr. MITCHELL. Let it be subject to a call for the regular order.

Mr. WRIGHT. Certainly.

There being no objection, the bill (S. No. 946) for the relief of Gibbes & Co., of Charleston, South Carolina, was considered as in Committee of the Whole. It provides for the payment of $4,045.11, being a balance due Gibbes & Co. on account of money deposited by them with the Secretary of the Treasury.

Mr. BOUTWELL. Is there a report in that case?

Mr. WRIGHT. There is a report that I have here, and it can be read.

The Chief Clerk read the following report submitted by Mr. WRIGHT from the Committee on Claims on the 19th of July last:

The Committee on Claims, to whom was referred the bill (S. No. 946) for the relief of Gibbes & Co., of Charleston, South Carolina, submit the following report:

The facts in relation to this claim, furnished, at the request of your committee, in a letter from the Secretary of the Treasury, dated July 10, 1876, are as follows:

"Late in the year 1865 certain cottons in Augusta, Georgia, were seized or detained by Treasury agents as confederate or blockade cottons. They were claimed by Gibbes & Co., of Charleston, as being in part their property, and in part the property of certain English firms, of whom they were the agents. Upon evidence produced by the claimants the Secretary of the Treasury, on the 27th of February, 1866, directed that the cottons be restored to them upon their payment to the United States of all costs, charges, and expenses paid or incurred by Treasury agents in connection with the cottons restored.

"The amount so paid as charges was principally due to Savary & Co., who were engaged in putting in order Government cottons and in transporting and shipping the same. The amount of their bill for expenses, &c., on the Gibbes & Co. cotton, $44,217.48, was deposited by Gibbes & Co., and went into the hands of the United States Treasurer. Afterward it was ascertained by Gibbes & Co. that there had been delivered to them by mistake one hundred and sixty bales of cotton which did not belong to them, and which they accordingly returned. In the bill rendered by Savary & Co. there was charged the sum of $7,733.04 as expended by them on this lot of one hundred and sixty bales. This sum Gibbes & Co. claimed should be returned to them by the United States. To this demand Savary & Co. interposed a further bill of expenses, not included in this first bill, which they claimed they had incurred on the Gibbes & Co. cottons. Their second bill amounted to $4,756.92. Gibbes & Co. alleged that the charges made by Savary & Co. were generally excessive, but consented to receive at that time from the United States the difference

between their bill of $7,733 04 and the bill of Savary & Co., $4,576 92, namely, $3,156 12. Afterward Savary & Co. applied to the Secretary of the Treasury for payment of their bill of $4,576 92. Upon a close examination of all their accounts it was found that their charges which had been paid to them in connection with Government cottons and cottons seized, but released by the Secretary, were excessive to an amount greater than their claim of $4,576 92 against the United States. The payment of this claim was therefore refused.

"The balance (namely, $4,576 92) of the bill of $7,733 04 paid by Gibbes & Co., as expenses on cottons returned to the United States, has never been paid to them. Justice would seem to require the payment of this balance."

In answer to inquiries made by your committee of the Secretary of the Treasury as to whether this claim, if properly presented, would not have been cognizable by the Department without the intervention of Congress, the Secretary, under date of July 13, 1876, replies:

"That prior to the 30th day of March, 1868, the question to whom the sum of money now claimed by Gibbes & Co. was due, whether to them or to Savary & Co., had not been decided. On that day was passed the joint resolution of Congress requiring all moneys derived from captured and abandoned property to be covered into the Treasury. The money in question was included in that fund, and was accordingly covered into the Treasury. Since that time no appropriation has been made by Congress out of which the claim of Gibbes & Co. could properly have been paid.

"Under this state of facts, we think claimants clearly entitled to the relief asked, and therefore report back the bill and recommend its passage.

Mr. BOUTWELL. On that report I do not see how this money should be paid to Gibbes & Co. The report sets forth, as I understand it, that there was held by the Government a sum of $4,000 to be paid to Savary & Co. for services performed upon Gibbes & Co.'s cotton which had been overcharged; that ultimately the Government, instead of paying this sum, refused to pay it, upon the ground that Savary & Co. had overcharged the Government for work done on the cotton, and that as between the Government and Savary & Co. there was nothing due to Savary & Co., and that they held this money to compensate the Government for overcharges.

Mr. WRIGHT. My friend from Massachusetts does not understand this matter. Gibbes & Co., who are these claimants, have paid the demand of the Government upon them. This demand of the Government upon them was for money paid Savary & Co. for their care in and about this cotton. When Gibbes & Co. found that there were one hundred and sixty bales of their cotton, of cotton upon which Savary & Co. had made charges, that did not belong to them, they returned it to the officer of the Treasury, and they then claimed that so much of the expenses included in the bill of Savary & Co. as applied to these one hundred and sixty bales should be returned to them. The Government said "You ought to have that money;" and thereupon Savary & Co. said they were entitled to still additional charges, some four thousand, I omit the odd dollars. Gibbes & Co. said, "Our claim upon these one hundred and sixty bales of cotton that have been returned is some $7,000." Savary & Co. claimed $4,000 more. Gibbes & Co. say, "We will take the difference between the seven and the four," and did take, say, $3,000. When they came to make inquiry into the claim of Savary & Co. for the work they had done, the officers of the Treasury found that they had no such claim, and, finding that they had no such claim, they decided that Gibbes & Co. ought to have the balance of this $7,000 which was in the Treasury; but, inasmuch as it had been covered into the Treasury by the act of 1868, they could not pay it, and, therefore, they come to Congress.

Mr. BOUTWELL. That would be so if it were true that the excess charged by Savary & Co. to the Government had been upon cotton that belonged to Gibbes & Co.; but if it were upon cotton generally which had been seized by the Government, the case would be different. The report is not explicit upon that point. It says:

Upon a close examination of all their accounts it was found that their charges which had been paid to them in connection with Government cottons and cottons seized, but released by the Secretary, were excessive to an amount greater than their claim of $4,576.92 against the United States.

Mr. WRIGHT. Allow me to just read from a portion of the report preceding that, and the Senator will see that it is clear of doubt:

In the bill rendered by Savary & Co. there was charged the sum of $7,733.04 as expended by them on this lot of one hundred and sixty bales. This sum Gibbes & Co. claimed should be returned to them by the United States.

It is therefore shown that this $7,000 was expended on the one hundred and sixty bales that were returned.

Mr. BOUTWELL. I do not think it appears so from this report. If this report be considered as a whole, it does not show clearly whether the extra charges of Savary & Co. against which the Government set up this claim were charges upon cotton that was restored to Gibbes & Co., or were charges upon other quantities of cotton seized by the Government, put into their hands, and on which expenses were incurred and afterward released. It may be so; and, if so, they are entitled to this return.

Mr. WRIGHT. My friend will find that this report also states this fact:

To this demand Savary & Co. interposed a further bill of expenses, not included in their first bill, which they claimed they had incurred on the Gibbes & Co. cottons. * * * Afterward Savary & Co. applied to the Secretary of the Treasury for payment of their bill of $4,576.92. Upon a close examination of all their accounts it was found that their charges which had been paid to them in connection with Government cottons and cottons seized, but released by the Secretary, were excessive to an amount greater than their claim of $4,576.92 against the United States.

I think it fairly appears that this $7,000 was excessive upon these one hundred and sixty bales, and when they came to re-investigate their accounts the officers found that they were not entitled to any such sum. The Secretary of the Treasury also says, as the Senator will see, that justice would seem to require that this amount should be returned to these parties. We were governed not a little by the opinion of the Secretary of the Treasury that it ought to be returned and that he would have returned it but for the act of 1868.

Mr. BOUTWELL. I dare say it is all right, but the report, I am quite satisfied, does not show that the charges are properly set off against this item. But I do not object to it.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

EDWIN ROGERS.

Mr. HAMLIN. I ask the Senate to take up Senate bill No. 991, for the relief of Edwin Rogers.

There being no objection, the bill (S. No. 991) for the relief of Edwin Rogers was read the second time and considered as in Committee of the Whole. It authorizes the Secretary of the Treasury to pay $525, to re-imburse Edwin Rogers for postage-stamps stolen from his possession as postmaster at North Adams, in Massachusetts, on or about the 13th of May, 1876.

Mr. HAMLIN. There is a report accompanying the bill. It is for a small sum, and I believe it comes within the rule the Senate have adopted in all such cases. Let the report be read.

The Chief Clerk read the following report submitted by Mr. HAMLIN, from the Committee on Post-Offices and Post-Roads, on the 15th of July, 1876:

The Committee on Post-Offices and Post-Roads, to whom was referred the petition of Edwin Rogers, postmaster at North Adams, Massachusetts, for relief, having had the same under consideration, respectfully report:

That on or about the 13th day of May, A. D. 1876, said postmaster was robbed of postage-stamps to the amount of $525; that every effort was made through the police authorities to detect the thief, without avail; that the postmaster immediately notified the Department at Washington of the robbery, and a special agent was detailed to examine the case and report the facts to the Department, which was done, and the amount of stamps there stolen was found to be $525. It was also found that the postmaster had used due care with the property of the Government, and that these stamps thus lost or stolen were so lost or stolen without his fault.

No suspicion rests upon the postmaster or his clerks.

The committee recommend the passage of the accompanying bill.

The bill was reported to the Senate, ordered to be engrossed for a third reading, and read the third time.

Mr. ALCORN. Mr. President, since I have had the honor of a seat in this body, I have uniformly opposed legislation of this character. The case before us is one that I the more readily oppose because I understand from the committee there is no question that the petitioner is honest in the declaration which he makes, that there is no reasonable doubt that he was set upon by robbers and that he lost $500 in postage-stamps; and the bill now before the Senate proposes to shift this loss from the shoulders of the postmaster who gave bond faithfully to discharge his duties and faithfully account for all public moneys and post-office stamps that came into his hands. The Government by this legislation is to relieve the postmaster of his obligation and assume the loss. The principle is wrong. It is one that if continued by Congress must necessarily work a change in the administration of the Government when applied to officers intrusted with public funds.

The principle for which I contend has been repeatedly contested and decided in the Supreme Court of the United States, not upon any special statute but upon general legal principles and grounds of public policy, and the doctrine is now well settled that the case of officers who receive public moneys under bond to collect and pay over, perform, fulfill, &c., differs from ordinary bailees, first, because the forcible taking of money from an officer, whether by robbery or otherwise, is not within the conditions or covenants of his bond, and constitutes no answer to a suit on that instrument, and, second, because public policy forbids that such a defense should be allowed. I cannot otherwise so well state the reasons for this view of the subject as in the language of Mr. Justice McLean in delivering the opinion of the Supreme Court in the case of the United States *vs.* Prescott *et al.*, 3 Howard, 578. He says:

This action was brought in the circuit court for the district of Illinois, on a bond given by Prescott, with the other defendants as his sureties, for his faithful performance of the duties of receiver of public moneys, at Chicago, in the State of Illinois. The defense pleaded was that the sum not paid over by the defendant, Prescott, and for which the action was brought, had been feloniously stolen, taken, and carried away from his possession by some person or persons unknown to him, and without any fault or negligence on his part; and he avers that he used ordinary care and diligence in keeping said money and preventing it from being stolen.

To this plea the plaintiffs filed a general demurrer; and on the argument of the demurrer the opinions of the judges were opposed on the question whether "the felonious taking and carrying away the public moneys in the custody of a receiver of public moneys, without any fault or negligence on his part, discharged him and his sureties and may be set up as a defense to an action on his official bond?" And this point is now before this court, it having been certified to us under the act of Congress.

On the part of the defendant it is contended that the defendant Prescott was a depositary for hire; and that unless his liability was enlarged by the special contract to keep safely, he is only subject to the liabilities imposed by law upon such a depositary; that the special contract does not enlarge his liability.

This is not a case of bailment, and consequently the law of bailment does not apply to it. The liability of the defendant Prescott arises out of his official bond and principles which are founded upon public policy. The conditions of the bond are, that the said Prescott has "truly and faithfully executed and discharged, and shall truly and faithfully continue to execute and discharge, all the duties of said office," "of receiver of public moneys at Chicago," "according to the laws of the United States; and, moreover, has well, truly, and faithfully, and shall well, truly, and faithfully, keep safely, without loaning or using, all the public moneys collected by him, or otherwise at any time placed in his possession and custody, till the same had been or should be ordered by the proper department or officer of the Government to be transferred or paid out; and when such orders for transfer or payment had been or should be received, had faithfully and promptly made, and would faithfully and promptly make, the same, as directed," &c.

The condition of the bond has been broken, as the defendant, Prescott, failed to

pay over the money received by him when required to do so; and the question is whether he shall be exonerated from the condition of his bond on the ground that the money had been stolen from him.

The objection to this defense is that it is not within the condition of the bond; and this would seem to be conclusive. The contract was entered into on his part, and there is no allegation of failure on the part of the Government. How, then, can Prescott be discharged from his bond? He knew the extent of his obligation when he entered into it, and he has realized the fruits of this obligation by the enjoyment of the office. Shall he be discharged from liability contrary to his own express undertaking? There is no principle on which such a defense can be sustained. The obligation to keep safely the public moneys is absolute, without any condition, express or implied; and nothing but the payment of it when required can discharge the bond.

The case of Foster *et al.*, *vs.* The Essex Bank, 17 Massachusetts Reports, 479, was a mere naked bailment, and of course does not apply in principle to this case. The deposit in that case was for the accommodation of the depositor, and without any advantage to the bank, as the courts say, "which can tend to increase its liability. No control whatever of the chest, or of the gold contained in it, was left with the bank or its officers. It would have been a breach of trust to have opened the chest, or to inspect its contents."

Public policy requires that every depositary of the public money should be held to a strict accountability. Not only that he should exercise the highest degree of vigilance, but that "he should keep safely" the moneys which come to his hands. Any relaxation of this condition would open a door to frauds, which might be practiced with impunity. A depositary would have nothing more to do than to lay his plans and arrange his proofs, so as to establish his loss, without laches on his part. Let such a principle be applied to our postmasters, collectors of customs, receivers of public moneys, and others who receive more or less of the public funds, and what losses might not be anticipated by the public. No such principle has been recognized or admitted as a legal defense. And it is believed the instances are few, if indeed any can be found, where any relief has been given in such cases by the interposition of Congress.

As every depositary receives the office with a full knowledge of its responsibilities, he cannot, in case of loss, complain of hardship. He must stand by his bond and meet the hazards which he voluntarily incurs.

The question certified to us is answered, that the defendant Prescott and his sureties are not discharged from the bond by a felonious stealing of the money, without any fault or negligence on the part of the depositary, and, consequently, that no such defense to the bond can be made.

The principles and policy of this decision have been emphatically reiterated in the late cases of the United States *vs.* Morgan, 17 Howard, 161; The United States *vs* Dashiel, 4 Wallace, 182; and the United States *vs.* Keibler, 9 Wallace, 86.

The case I have quoted is argued by Mr. Justice McLean, and to that argument no answer can be made. It is useless to multiply words; but in order to illustrate the force of his reasoning and suggestions, I will, by permission of the Senate, recite a case which occurred in the State of Mississippi while I had the honor to be governor of that State. A sheriff was in default to the State for a sum amounting to about $4,000. He went to the Legislature, backed by his securities, protesting that his office had been entered and he robbed of the public funds of the State. His story was, that late at night, while at the court-house, where he kept his safe, his safe-door being open and he engaged in counting his funds and preparing his papers for settlement with the auditor of public accounts, suddenly a half-dozen men with drawn pistols rushed upon him, knocked him down, gagged and bound him hand and foot, and he was told that if he made any noise his life would pay the forfeit. The funds were taken; the thieves escaped. After a time, suffering great torture on account of the gag that was in his mouth and the strong manner in which his limbs were bound, he commenced his cries, suppressed as they were by the gag. Relief came to him; he was unbound, contusions were found upon his head. These were the blows that had been given him by the robbers. Witnesses testified as to the condition in which he was found. His story was believed. The Legislature of the State without hesitation passed a bill for his relief.

When considering the bill, I called the sheriff before me and after cross-examining him for some time my suspicions were aroused that the case was one put up by him. The principle itself was wrong and I should have vetoed the bill anyhow upon this ground, but I was the more ready to do so after I discovered what I supposed to be some badges of fraud. I vetoed the bill. It went back to the Legislature, but the sympathy for the sheriff was so great that the Legislature soon passed the bill over my veto, and the sum was passed to his credit. About six months subsequently some detectives in working up a case of a violation of law in the county in which this sheriff resided came upon a clew which led to a discovery that the sheriff in the case I have recited had committed a fraud upon the State.

The charge was made, prosecution was about to be entered, but the sheriff fled. It was unmistakably a case of successful conspiracy. This shows how easy it is, and how great the inducement is for officers who have in their hands large sums of public money, to engage in conspiracies of this kind in order to rob the Government.

The Senate is now about to apply the principle in the face of the decision of the Supreme Court to a postmaster. Let this principle be carried out, Mr. President, and in ten years' time I venture to say that the public officials of this Government will represent half their number in public robbers. Not less, I judge, than one million dollars have been voted out of the public Treasury under this character of legislation within the last five years. I have sat by and witnessed it, and occasionally have entered my protest. I now repeat that protest although satisfied this bill is to pass, and would impress upon the Senate the necessity of reform in our legislation upon subjects of this nature so frequently coming before Congress for relief.

The PRESIDING OFFICER, (Mr. WRIGHT in the chair.) The question is on the passage of the bill.

The bill was passed.

CATHERINE THRUSH AND WILLIAM B. STONE.

Mr. WHYTE. I ask unanimous consent to take up House bill No. 732.

There being no objection, the bill (H. R. No. 732) for the relief of Catherine Thrush and William B. Stone, owners of the schooner Flight, was considered as in Committee of the Whole.

The Committee on Naval Affairs reported an amendment to the bill, striking out all after the enacting clause and inserting:

That the claim of the legal owner or owners of the schooner Flight, her cargo, freight, and personal effects, alleged to have been sunk by collision with the United States steamer Tallapoosa, October 8, 1873, be referred to the Court of Claims, to hear and determine the same to judgment, with right of appeal as in other cases: *Provided*, That no suit shall be brought under the provisions of this act after six months from the date of the passage thereof.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

It was ordered that the amendment be engrossed and the bill to be read a third time. The bill was read the third time, and passed. The title was amended so as to read: "An act referring the claim of the owners of the schooner Flight to the Court of Claims."

WILLIAM H. WARD.

Mr. JOHNSTON. At the request of the Senator from New Hampshire, [Mr. WADLEIGH,] chairman of the Committee on Patents, I ask unanimous consent of the Senate to proceed to the consideration of the bill (S. No. 419) for the relief of William H. Ward.

Mr. BOGY. If this requires unanimous consent, I object.

The PRESIDING OFFICER. It does not require unanimous consent. The Chair understood the Senator from Virginia to move to proceed to the consideration of the bill.

Mr. JOHNSTON. Yes, sir.

The PRESIDING OFFICER. The question is on that motion.

Mr. CONKLING. May I inquire from what committee the bill comes?

Mr. JOHNSTON. The Committee on Patents.

Mr. CONKLING. A Senator near me inquires whether it is the unanimous report of that committee. I should like to know.

Mr. JOHNSTON. I have the report here.

Mr. CONKLING. Is it the unanimous report to the committee?

Mr. JOHNSTON. I believe so. I know nothing to the contrary. There is a report in print and it can be read. It was made by the chairman of the committee, and I make the motion at his request.

Mr. CONKLING. I do not feel at liberty to object to the bill. My impression is that the Senate has always been very guarded about allowing any court to cast the Government in damages or royalties for the use of inventions or apparatus covered by letters patent; and in that view the title of this bill when I came to hear it struck me. I will not interpose, having no knowledge of this subject, to prevent the consideration of the bill. If it be taken up, however, I shall ask that we may hear the report read or the special circumstances stated which except this case from the general rule.

Mr. JOHNSTON. I shall ask that the report be read.

The PRESIDING OFFICER. The question is on the motion to take up the bill for consideration.

The question being put, there were on a division—ayes 14, noes 7; no quorum voting.

Mr. CONKLING. A motion to adjourn is in order, I believe.

The PRESIDING OFFICER. It is.

Mr. CONKLING. I submit that motion.

The PRESIDING OFFICER. The Senator from New York moves that the Senate do now adjourn.

The motion was agreed to; and (at three o'clock and twenty-five minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

MONDAY, *December* 18, 1876.

The House met at twelve m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of Saturday last was read and approved.

ORDER OF BUSINESS.

The SPEAKER. The morning hour commences at nine minutes past twelve o'clock, and this being Monday, the first business in order is the call of States and Territories, beginning with the State of Maine, for the introduction of bills and joint resolutions for reference to their appropriate committees, not to be brought back on motions to reconsider. Under this call memorials and resolutions of State and territorial Legislatures may be presented for reference and printing.

TIMBER IN COLORADO.

Mr. HALE introduced a bill (H. R. No. 4209) to authorize citizens of the State of Colorado to fell and remove timber on the public domain for building, agricultural, mining, and domestic purposes; which was read a first and second time.

Mr. HALE. I ask that the bill may be read.

The bill was read at length; and was referred to the Committee on Public Lands, and ordered to be printed.

JOSEPH BROWN.

Mr. FLYE introduced a bill (H. R. No. 4210) for the relief of Joseph Brown, postmaster of Newcastle, Maine; which was read a first and second time.

Mr. FLYE. I ask that the bill may be read.

The bill was read at length; and was referred to the Committee on the Post-Office and Post-Roads, and ordered to be printed.

EDUCATION OF THE BLIND.

Mr. HOSKINS introduced a bill (H. R. No. 4211) to promote the education of the blind; which was read a first and second time.

Mr. HALE. Let the bill be read.

The bill was read at length; and was referred to the Committee on Education and Labor, and ordered to be printed.

NEGOTIATION OF BILLS OF LADING, ETC.

Mr. HEWITT, of New York, introduced a bill (H. R. No. 4212) to facilitate the negotiation of bills of lading and other commercial instruments, and to punish fraud therein; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

GEORGE PARSONS.

Mr. JOHN REILLY introduced a bill (H. R. No. 4213) granting a pension to George Parsons, late a private in Company E, Forty-ninth Regiment Pennsylvania Volunteers; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

SAMUEL S. SMOOT.

Mr. O'BRIEN introduced a bill (H. R. No. 4214) for the relief of Samuel S. Smoot, of the District of Columbia; which was read a first and second time, referred to the Committee on War Claims, and ordered to be printed.

CLAIMS OF OFFICERS OF REVOLUTIONARY ARMY.

Mr. DOUGLAS introduced a bill (H. R. No. 4217) to provide for the settlement of the unpaid claims of those officers of the line of the revolutionary army who served till the close of the war of Independence and are returned on the books of the Treasury; which was read a first and second time, referred to the Committee of the Whole on the state of the Union, and ordered to be printed.

INTERNAL-REVENUE LAWS.

Mr. VANCE, of North Carolina, presented resolutions of the General Assembly of the State of North Carolina concerning the internal-revenue laws; which were referred to the Committee of Ways and Means, and ordered to be printed.

He also presented resolutions of the General Assembly of North Carolina concerning the internal-revenue laws; which were referred to the Committee of Ways and Means, and ordered to be printed.

MRS. EDITH F. ROSS.

Mr. HOOKER introduced a bill (H. R. No. 4215) for the relief of Mrs. Edith F. Ross; which was read a first and second time, referred to the Committee on Expenditures in the Post-Office Department, and ordered to be printed.

REPRESENTATIVES OF JAMES F. JOHNSON.

Mr. MONEY introduced a bill (H. R. No. 4216) for the relief of the administrators or legal representatives of James F. Johnson, deceased, of Montgomery County, Mississippi; which was read a first and second time, referred to the Committee on the Post-Office and Post-Roads, and ordered to be printed.

COUNTING THE ELECTORAL VOTE.

Mr. KNOTT introduced a bill (H. R. No. 4218) prescribing the method of counting the electoral vote for President and Vice-President of the United States, and determining and declaring the result; which was read a first and second time.

Mr. SAMPSON. I call for the reading of the bill.

The bill was read at length; and was referred to the select committee of seven on the mode of counting the electoral vote, and ordered to be printed.

CAPTAIN R. F. BERNARD.

Mr. McFARLAND introduced a bill (H. R. No. 4219) for the relief of Captain R. F. Bernard, of First Regiment Cavalry, formerly second lieutenant of cavalry; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

IMPROVEMENT OF TENNESSEE RIVER.

Mr. DIBRELL introduced a bill (H. R. No. 4220) to improve the Tennessee River; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

AMENDMENT OF INTERNAL-REVENUE LAWS.

Mr. DIBRELL also introduced a bill (H. R. No. 4221) to amend the internal-revenue laws; which was read a first and second time, referred to the Committee on Ways and Means, and ordered to be printed.

CAPTAIN ROBERT W. SILL.

Mr. HAYMOND introduced a bill (H. R. No. 4222) for the relief of Captain Robert W. Sill, of the Forty-sixth Regiment of Indiana Volunteers; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

MRS. HELEN B. FOSTER.

Mr. HARTZELL introduced a bill (H. R. No. 4223) granting a pension to Mrs. Helen B. Foster, widow of Edwin R. Foster, deceased, late first lieutenant of Company G, in the Eightieth Regiment Illinois Infantry Volunteers; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

CLAIM OF EDWIN R. FOSTER, DECEASED.

Mr. HARTZELL also introduced a bill (H. R. No. 4224) for the relief of Mrs. Helen B. Foster, widow of Lieutenant Edwin R. Foster, deceased, late first lieutenant of Company G, in the Eightieth Regiment Illinois Infantry Volunteers; which was read a first and second time, referred to the Committee on War Claims, and ordered to be printed.

PETER W. TAYLOR.

Mr. CANNON, of Illinois, introduced a bill (H. R. No. 4225) for the relief of Peter W. Taylor, late lieutenant-colonel Fortieth Regiment Ohio Volunteer Infantry; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

EXPATRIATION.

Mr. KEHR introduced a bill (H. R. No. 4226) concerning expatriation and change of allegiance; which was read a first and second time, referred to the Committee on Foreign Affairs, and ordered to be printed.

FRANKING PRIVILEGE.

Mr. SLEMONS introduced a bill (H. R. No. 4227) to establish the franking privilege; which was read a first and second time, referred to the Committee on the Post-Office and Post-Roads, and ordered to be printed.

BIRD SMITH.

Mr. SLEMONS also introduced a bill (H. R. No. 4228) for the relief of Bird Smith, of Columbia County, Arkansas; which was read a first and second time, referred to the Committee of Claims, and ordered to be printed.

HARRIET S. BAKER.

Mr. WALDRON introduced a bill (H. R. No. 4229) granting a pension to Harriet S. Baker, of Lenawee County, Michigan; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

JOHN EGGEMAN.

Mr. A. S. WILLIAMS introduced a bill (H. R. No. 4230) for the relief of John Eggeman; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

MEXICAN VETERANS' MEDAL BADGE.

Mr. A. S. WILLIAMS also introduced a joint resolution (H. R. No. 173) granting permission to the officers and enlisted men of the Army and Navy to wear the medal badge of the National Association of Veterans of the Mexican war on occasions of ceremony; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

GEORGE A. LAMB.

Mr. SCHLEICHER (by request) introduced a bill (H. R. No. 4231) to authorize and direct the Secretary of War to refer the claim of George A. Lamb to the Court of Claims for settlement; which was read a first and second time, referred to the Committee on War Claims, and ordered to be printed.

RE-ORGANIZATION OF THE NAVY.

Mr. MILLS introduced a bill (H. R. No. 4232) to reduce, re-organize, and render more efficient the Navy of the United States; which was read a first and second time, referred to the Committee on Naval Affairs, and ordered to be printed.

PRACTICE OF MEDICINE IN THE DISTRICT OF COLUMBIA.

Mr. McCRARY introduced a bill (H. R. No. 4233) to regulate the practice of medicine and surgery in the District of Columbia; which was read a first and second time, referred to the Committee for the District of Columbia, and ordered to be printed.

GENERAL LAND OFFICE TESTIMONY.

Mr. WILSON, of Iowa, introduced a bill (H. R. No. 4234) to provide for the taking of testimony to be used in the General Land Office; which was read a first and second time, referred to the Committee on Public Lands, and ordered to be printed.

MATTHEW BERRY.

Mr. LUTTRELL (by request) introduced a bill (H. R. No. 4235) granting a pension to Matthew Berry, late a captain in the United States Army; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

OFFICIAL SHORT-HAND REPORTER FOR A UNITED STATES COURT.

Mr. PAGE (by request) introduced a bill (H. R. No. 4236) to provide for the appointment of an official short-hand reporter for the United States courts in and for the District of California; which was read a first and second time, referred to the Committee on the Judiciary, and ordered to be printed.

SURVEY OF THE SOUTHERN BRANCH OF THE POTOMAC RIVER.

Mr. FAULKNER introduced a bill (H. R. No. 4237) to authorize an examination and survey of the Southern Branch of the Potomac River, in West Virginia; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

EFFICIENCY IN THE MARINE HOSPITAL SERVICE.

Mr. HEREFORD introduced a bill (H. R. No. 4238) to promote efficiency in the marine hospital service; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

HENRY MEHRING.

Mr. KIDDER introduced a bill (H. R. No. 4239) for the relief of Henry Mehring; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

HOSPITAL STEWARDS IN THE UNITED STATES ARMY.

Mr. KIDDER also introduced a bill (H. R. No. 4240) to provide for the better compensation and to fix the rank and define the duties and responsibilities of hospital stewards of the United States Army; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

ORDER OF BUSINESS.

The SPEAKER. The call of States and Territories having now been completed, the Chair will receive bills for reference from gentlemen who happened to be absent from the House when their States were called.

HENRY C. PARRY.

Mr. JAMES B. REILLY introduced a bill (H. R. No. 4241) for the relief of Henry C. Parry, late an assistant surgeon in the United States Army; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

A. BURWELL.

Mr. SINGLETON introduced a bill (H. R. No. 4242) for the relief of A. Burwell; which was read a first and second time, referred to the Committee on the Judiciary, and ordered to be printed.

LOCUST PLAGUE.

Mr. HATCHER introduced a bill (H. R. No. 4243) making appropriation for a commission to investigate and report on the best means of destroying or providing a remedy against the plague of locusts; which was read a first and second time, referred to the Committee on Appropriations, and ordered to be printed.

HEIRS OF WILLIAM ADAMS.

Mr. WHITE introduced a bill (H. R. No. 4244) for the relief of the heirs of William Adams, late a private in Company I, Eleventh Kentucky Cavalry Volunteers; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

SUITS AGAINST MEMBERS OF CONGRESS.

Mr. HARRIS, of Massachusetts, (by request,) introduced a bill (H. R. No. 4245) in relation to civil suits against members of Congress of the United States in the courts of the District of Columbia; which was read a first and second time, referred to the Committee on the Judiciary, and ordered to be printed.

ORDER OF BUSINESS.

The SPEAKER. The call of States and Territories for bills on leave having been completed, the Chair will now proceed to call the States and Territories for resolutions.

CLAIMS OF SOUTHERN-MAIL CONTRACTORS.

Mr. WILSON, of Iowa. I submit that there is some business pending under this call coming over from the last session which has not yet been disposed of and which is now in order.

The SPEAKER. There is no rule on this subject, but the Chair is of the opinion that the equity of the case requires that that business shall be disposed of.

Mr. WILSON, of Iowa. It should be resumed, as it belongs to this class of business.

The SPEAKER. The resolution to which the gentleman refers came in by unanimous consent and not under the call.

Mr. WILSON, of Iowa. Still it had to go somewhere to be disposed of.

The SPEAKER. There is no direct rule on the subject, but the equity seems to point that it should be considered now.

Mr. WILSON, of Iowa. Otherwise there would have been unanimous consent to offer a resolution which could never be considered.

The Clerk then read the resolution offered by Mr. THROCKMORTON on the 27th of January last; which is as follows:

Resolved, That the Postmaster-General be respectfully requested to furnish the House of Representatives with a statement showing the amount due contractors for carrying the United States mails in Southern States at the beginning of the civil war, and which has not been paid in consequence of such contractors being unable to take the oath required by law.

Mr. WILSON, of Iowa. We had better have the yeas and nays on the resolution.

Mr. GARFIELD. That information has already been furnished, and was before the Committee on Appropriations at a former session. I do not think we ought to cumber the record with a repetition of the same thing.

Mr. THROCKMORTON. One word in reply to the gentleman from Ohio, [Mr. GARFIELD.] I was advised that the information here asked for was furnished to the Committee on Appropriations. I have had occasion to examine the subject, and I find that that information is not as full as it ought to be.

Mr. GARFIELD. If there is any imperfection or deficiency in the information furnished, then it occurs to me that we had better have a resolution to insure the completion of it rather than a repetition of the whole thing. If I remember aright it is a very voluminous package and would require the services of many clerks and for a long time to prepare a copy of it. I think it would be better to impower the Committee on Post-Offices and Post-Roads, for instance, to have the information completed.

Mr. THROCKMORTON. I have no objection to that suggestion, and will modify the resolution accordingly.

The resolution, as modified, was then adopted.

Mr. THROCKMORTON moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

ORDER OF BUSINESS.

The SPEAKER. Resolutions are now in order from the State of Maine.

PROTECTION OF VOTERS.

Mr. HALE submitted the following resolution; which was read:

Be it resolved by the House of Representatives, That it is the first duty of all organized governments to protect their citizens both at home and abroad, and that as one of the highest privileges of a citizen of a republic is the right to cast his ballot freely, the Government of the United States should guarantee to each qualified voter the full and free exercise of his constitutional right to this great privilege; and that this protection should be especially afforded in those States of this Union where any portion of the legal voters have been prevented by intimidation and violence from freely casting their ballots.

Mr. HALE. Mr. Speaker——

Mr. WOOD, of New York. I rise to debate this resolution.

Mr. HALE. I was myself on the floor for that purpose. I supposed the gentleman rose to make a point of order, and I was willing to listen to him.

The SPEAKER. That is a point of order.

Mr. SPRINGER. I object to debate, and therefore the resolution goes over.

Mr. HALE. I was on the floor for the purpose of debating the resolution.

The SPEAKER. Then under the rule the resolution will lie over for one day.

Mr. HALE. I holding the floor?

The SPEAKER. Certainly.

CONGRESSIONAL ELECTIONS IN MISSISSIPPI AND ALABAMA.

Mr. FRYE submitted the following resolution, upon which he called the previous question:

Resolved, That a committee of six members of this House be appointed to inquire into and report upon the manner in which the election was conducted for members of Congress in November last in the sixth district of the State of Mississippi and in the fourth district of the State of Alabama, and whether in said congressional districts there was any intimidation of candidates or voters during the canvass or on the election day, or any fraud or intimidation in respect to registration or voting, or the returns thereof, in said election, or in any way affecting the result of said election; and that said committee may employ a stenographer and be attended by a deputy sergeant-at-arms, and shall have power to send for persons and papers.

Mr. HOOKER. Is that resolution debatable now? Will objection carry it over until to-morrow for consideration?

The SPEAKER. Does the gentleman rise to debate it?

Mr. FRYE. I have called for the previous question upon it.

Mr. GARFIELD. If the call for the previous question shall not be sustained, then if a member rises to debate it it will go over; but if the previous question shall be sustained, then the resolution must be voted upon now.

Mr. HALE. Is it not the right of the mover of a resolution to endeavor to bring the House to action upon it now?

The SPEAKER. The Chair has not carefully considered this point. Rule 130 reads:

All resolutions which shall give rise to debate shall lie over for discussion.

Under the terms of that rule the Chair inclines to the opinion that the ordering of the previous question would destroy the right to debate under that rule.

Mr. GARFIELD. That is in the power of the House, if the House shall so wish. If the House shall not second the demand for the previous question, then the gentleman from Mississippi [Mr. HOOKER] or any other gentleman rising to debate the resolution it would go over. That has been the practice repeatedly.

The SPEAKER. The gentleman will observe that under this rule an individual member has the right to rise and propose to debate the resolution. If the call for the previous question shall be entertained by the Chair, that would cut off the right which is clearly given by the rule.

Mr. BURCHARD, of Illinois. It has been the invariable practice, so far as I can recollect, that the gentleman introducing the resolution may demand the previous question upon it for the purpose of having immediate action.

The SPEAKER. Yes, but the rule provides that if the resolution gives rise to debate it must go over.

Mr. BURCHARD, of Illinois. But no gentleman can take the floor to debate the resolution while the demand for the previous question is pending.

The SPEAKER. The Chair will be glad to hear members on this question.

Mr. HOAR. The Chair will see that the discussion now as to the particular disposition of the pending resolution is not of much practical importance. If the gentleman who introduces the resolution calls for the previous question the yeas and nays cannot be called upon seconding the demand for the previous question. If the majority of the House shall vote down the second, then some one may get up and propose to debate the resolution and it must go over, without there being any call of the yeas and nays.

But if the majority of the House shall second the call for the previous question, they have the same right to cut off debate by ordering the previous question on this resolution as they would have to cut off debate by ordering the previous question on any other proposition. I desire to remind the Chair that the practice of this House has been uniform, at least since we have been in it together; it is one of the most common instances that can come up, and it has always been ruled that the call for the previous question is in order.

Mr. Speaker, your predecessors in that chair have always held that under this second call if a member offering a resolution demands the previous question, it must first be ascertained whether there is a second; and if the previous question should not be seconded, then a member may rise to debate the resolution and it goes over.

The SPEAKER. The Chair is aware that the practice of the House has been as stated by the gentleman from Massachusetts; but, notwithstanding that fact, the Chair is of opinion that the right to introduce resolutions under Rule 130 implies the reciprocal right of objection, which is exercised by a member rising to debate the resolution.

Mr. HOAR. The Chair will allow me to point out one consideration which I think may affect his judgment. If the construction of the Chair be correct, then it would be absolutely impossible for a resolution offered under this second call on Monday morning to be adopted by the House if a single member should object.

The SPEAKER. Not at all. The resolution may be acted on after it is laid over one day.

Mr. HOAR. I mean that it would be impossible to have such a resolution adopted on the day of its introduction.

The SPEAKER. The Chair would remind the gentleman that this morning a resolution which had been offered in the same manner as this, and had come over, was reached in regular order and was adopted.

Mr. HOAR. The Chair does not understand my proposition. My point is, that unless the House has the power to order the previous question, it is impossible for any resolution introduced under the second call on Monday to be adopted on the day of its introduction.

The SPEAKER. The Chair desires to say that upon this point the practice of the House has been one way while his opinion is another. He is entirely willing to submit the question to the determination of the House, and will therefore entertain the motion for the previous question. The question is on seconding the demand.

Mr. HOSKINS. Will the Speaker hear me just a moment?

The SPEAKER. Certainly.

Mr. HOSKINS. Is it not the object of a member in moving the previous question upon a resolution under this call to take it out from the operation of that part of the rule which would carry the resolution over?

The SPEAKER. If the previous question were sustained, it would undoubtedly take the resolution right out from the operation of the rule.

Mr. HOSKINS. Very well. As long as the member offering the resolution holds the floor and demands the previous question, the right to debate the resolution does not arise, unless there is a failure to second the call for the previous question.

The SPEAKER. But the rule gives another member the right to rise in his place and propose to debate the resolution.

Mr. HOSKINS. But he cannot do so as long as another gentleman is on the floor. If the House refuses to second the demand for the previous question, of course any gentleman may rise to debate the resolution, and it goes over.

The SPEAKER. The Chair will submit the question to the House on seconding the demand for the previous question.

The previous question was not seconded.

Mr. WOOD, of New York. I believe the morning hour has expired.

The SPEAKER. The morning hour has expired. The resolution lies over.

Mr. HOLMAN. I hope that, by unanimous consent, the gentleman may be permitted to introduce a resolution to examine into these questions as they affect the States of Mississippi and Alabama, (not confining it to a particular locality,) and as to the interference, if any, by the military in the elections in those two States.

Mr. REAGAN. Before action is taken on this subject I desire to call attention to this point——

Mr. FRYE. I rise to debate the resolution.

Mr. REAGAN. Each House, by virtue of the Constitution, has the right to "judge of the elections, returns, and qualifications of its own members," but by this resolution, we are proposing to investigate the elections, returns, and qualifications of members of another Congress.

Mr. HOLMAN. If this inquiry is extended to the entire State of Mississippi——

Several members objected to debate.

INVESTIGATION OF LOUISIANA ELECTION.

Mr. GARFIELD. I desire to call the attention of the Chair to a question of privilege. I observe by the RECORD that on Saturday last a dispatch was read before the House and referred to a committee as a question of privilege. As part of the same subject-matter, I desire to read the following for the information of the House, and then I will state my point:

NEW ORLEANS, *December* 16, 1876.

HON. J. A. GARFIELD:

The dispatch sent from MORRISON to RANDALL is without the knowledge or consent of the committee, who have never been consulted on the matter.

S. A. HURLBUT.

I desire to say, Mr. Speaker, that I observe in the RECORD——

The SPEAKER. In what respect is this a question of privilege?

Mr. GARFIELD. Only as the subject-matter to which it refers has been so ruled. I should not myself say that either was a question of privilege. But I believe the Chair has so ruled. Therefore I simply wish that this dispatch may take the same reference as the other.

The SPEAKER. The Chair would suggest that this is an entirely different case. Mr. MORRISON is chairman of the committee; and his dispatch was addressed to the Speaker, an officer of the House. This is the dispatch of an individual member addressed to another individual member. Still, as the Chair supposes, the gentleman's object is obtained.

Mr. GARFIELD. But I wanted to call the attention of the Chair to the fact that the dispatch as read on Saturday and printed in the RECORD does not claim to be a dispatch from the chairman of the committee. It is signed by Mr. MORRISON in his individual capacity alone; and this is a disclaimer——

The SPEAKER. The gentleman is out of order in proposing to debate the matter.

Mr. GARFIELD. I then ask that the telegraphic dispatch be referred to the Committee on the Judiciary, to which this subject has been referred. I ask unanimous consent; and, if unanimous consent be not granted, I shall move to suspend the rules.

The SPEAKER. The gentleman from Ohio is not entitled to the floor. The gentleman from Missouri [Mr. FRANKLIN] was recognized when the gentleman from Ohio rose to what he stated to be a question of privilege. The Chair will in proper time recognize the gentleman from Ohio.

REVENUE STAMPS.

Mr. FRANKLIN. I move to suspend the rules and pass the following resolution:

Resolved, That the Committee on Expenditures in the Treasury be, and are hereby, directed to make a full inquiry as to what action the Secretary of the Treasury has taken in reference to the engraving and printing of internal-revenue stamps in the Bureau of Engraving and Printing, as provided for by an act entitled "An act making appropriations for the legislative, executive, and judicial expenses of the Government for the year ending June 30, 1877, and for other purposes," and more particularly by the following clause of said act:

"For dies, paper, and stamps, $466,000, said engraving and printing to be done in the Bureau of Engraving and Printing of the Treasury Department, provided the cost does not exceed the price paid under existing contracts."

And to this end the said committee shall have power to send for persons and papers, to administer oaths, to take testimony, to employ a stenographer, and shall have leave to report by bill or otherwise at any time.

Mr. HOAR. I rise to a parliamentary inquiry. I wish to know if that leave to report at any time granted to this committee will give to the reports of this committee precedence over the reports of the Committee on Appropriations. I do not see the chairman of the Committee on Appropriations present.

The SPEAKER. The Chair would not so regard; but, as the gentleman from Massachusetts has suggested the exception, if there be no objection the resolution will be so modified as not to interfere with reports from the Committee on Appropriations.

There was no objection, and the resolution was modified accordingly.

The rules were suspended, (two-thirds voting in favor thereof,) and the resolution, as modified, was adopted.

LOUISIANA AFFAIRS.

Mr. GARFIELD. Mr. Speaker, I desire to say that as the first dispatch from Mr. MORRISON was referred to the Committee on the Judiciary I move that the dispatch which I have received this morning from Mr. HURLBUT take the same reference.

Mr. WOOD, of New York. The dispatch from Mr. MORRISON, chairman of the committee, came officially before this House. It came officially from the chairman of the committee.

Mr. GARFIELD. I ask the gentleman's pardon; it was not signed as from the chairman.

Mr. WOOD, of New York. It was sent from Mr. MORRISON to the Speaker of this House, and Mr. MORRISON is the chairman of the committee.

The SPEAKER. Debate is not in order.

Mr. WOOD, of New York. I object to its reference.

Mr. GARFIELD. I move to suspend the rules and refer the communication to the Committee on the Judiciary.

The rules were suspended, (two-thirds voting in favor thereof,) and the dispatch was accordingly so referred.

JUDGE HUGH L. BOND.

Mr. WARREN moved to suspend the rules and pass the following resolution:

Resolved, That the Committee on the Judiciary be directed to inquire and report whether the action of the House is requisite concerning the official conduct of Hon. Hugh L. Bond, judge of the United States circuit court for the fourth circuit; and especially whether such judge has in his recent action in the case of certain persons, said to have been in custody under an order of the supreme court of the State of South Carolina, transcended the legal jurisdiction vested by the Constitution and laws of the United States in him or in said circuit court, or has improperly exercised his legal jurisdiction, if any such he had in the case; and that said committee have power to send for persons and papers, and may report at any time.

Mr. KASSON. I should like to ask the Chair a parliamentary question.

The SPEAKER. The Chair will hear a parliamentary question.

Mr. KASSON. I wish to ask whether that does not involve an appeal from that circuit court?

The SPEAKER. It is not the province of the Chair to answer, any more than it is for the gentleman to ask, such a question, as it is not a parliamentary question.

Mr. GARFIELD demanded the yeas and nays.

The yeas and nays were ordered.

The question was taken; and it was decided in the affirmative—yeas 138, nays 75, not voting 76; as follows:

YEAS—Messrs. Ainsworth, Anderson, Ashe, Atkins, Bagby, John H. Bagley, jr., Banning, Bell, Bland, Blount, Boone, Bradford, Bright, John Young Brown, Buckner, Cabell, John H. Caldwell, William P. Caldwell, Campbell, Candler, Carr, Cate, Caulfield, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Cook, Cowan, Culberson, Cutler, Davis, Dibrell, Douglas, Durand, Durham, Egbert, Ellis, Faulkner, Felton, Finley, Forney, Franklin, Gause, Glover, Goode, Gunter, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Haymond, Henkle, Hereford, Abram S. Hewitt, Goldsmith W. Hewitt, Hill, Holman, Hooker, Humphreys, Hunton, Hurd, Frank Jones, Kehr, Knott, Lamar, Franklin Landers, George M. Landers, Lane, Lewis, Lord, Mackey, Maish, McFarland, Metcalfe, Milliken, Mills, Money, Morgan, Mutchler, Neal, O'Brien, Payne, Piper, Poppleton, Potter, Powell, Rea, Reagan, John Reilly, James B. Reilly, Riddle, John Robbins, William M. Robbins, Roberts, Savage, Scales, Schleicher, Sheakley, Singleton, Slemons, William E. Smith, Southard, Sparks, Spencer, Springer, Stanton, Stenger, Stevenson, Stone, Swann, Tarbox, Teese, Terry, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Gilbert C. Walker, Walsh, Warner, Warren, Watterson, Whitthorne, Wike, Alpheus S. Williams, James Williams, Jeremiah N. Williams, Willis, Wilshire, Benjamin Wilson, Fernando Wood, and Yeates—138.

NAYS—Messrs. Adams, George A. Bagley, John H. Baker, William H. Baker, Ballou, Blair, Bradley, William R. Brown, Horatio C. Burchard, Cannon, Cason, Chittenden, Conger, Croome, Davy, Denison, Dobbins, Eames, Evans, Five, Fort, Foster, Freeman, Frye, Garfield, Hale, Haralson, Benjamin W. Harris, Hathorn, Hendee, Henderson, Hoar, Hoskins, Hunter, Hyman, Kasson, Kelley, Leavenworth, Magoon, McCrary, McDill, Miller, Monroe, Nash, Norton, Oliver, O'Neill, Page, William A. Phillips, Pierce, Plaisted, Platt, Pratt, Rainey, Rusk, Sampson, Sinnickson, A. Herr Smith, Strait, Thornburgh, Martin I. Townsend, Tufts, Van Vorhes, Wait, Waldron, Alexander S. Wallace, John W. Wallace, White, Whiting, Andrew Williams, Charles G. Williams, William B. Williams, James Wilson, Alan Wood, jr., and Woodworth—75.

NOT VOTING—Messrs. Abbott, Banks, Bass, Beebe, Blackburn, Bliss, Samuel D. Burchard, Burleigh, Caswell, Chapin, Cochrane, Collins, Cox, Crapo, Danford, Darrall, De Bolt, Dunnell, Eden, Fuller, Gibson, Goodin, Andrew H. Hamilton, Hays, Hoge, Hopkins, House, Hubbell, Hurlbut, Jenks, Thomas L. Jones, Joyce, Kimball, King, Lapham, Lawrence, Le Moyne, Levy, Luttrell, Lynch, Lynde, MacDougall, McMahon, Meade, Morrison, New, Odell, Packer, Phelps, John F. Philips, Purman, Rice, Robinson, Miles Ross, Sobieski Ross, Sayler, Schumaker, Seelye, Smalls, Stephens, Stowell, Thompson, Thomas, Washington Townsend, Waddell, Charles C. B. Walker, Walling, Ward, Erastus Wells, G. Wiley Wells, Wheeler, Whitehouse, Wigginton, Willard, Woodburn, and Young—76.

So (two-thirds not having voted in the affirmative) the rules were not suspended.

During the roll-call the following announcements were made:

Mr. A. S. WILLIAMS. I desire to state that the gentleman from Kansas, Mr. GOODIN, is absent on account of sickness.

Mr. SCALES. I desire to state that my colleague from North Carolina, Mr. WADDELL, is absent by order of the House.

Mr. DURHAM. My colleague from Kentucky, Mr. BLACKBURN, and Mr. ROBINSON, of Indiana, are paired on all political questions.

The result of the vote was announced as above recorded.

JAMES MADISON WELLS.

Mr. BANNING. I ask unanimous consent to introduce for adoption at this time the resolution which I send to the desk.

The Clerk read as follows:

Whereas the President having sent to this House a report of certain gentlemen sent to Louisiana to be present at the canvass of the electoral vote of that State in which the returning board is indorsed and sustained as a board made up of gentlemen of patriotism and integrity, and referring to James Madison Wells, president of the board, as follows: "Two of them, Hon. James Madison Wells, president of the board, and General Thomas C. Anderson, next senior member, are southern-born, and of old and highly respectable families. The father of the former was Hon. Levi Wells, of the parish of Rapides, who in 1812 represented it in the convention called to frame the constitution of the State of Louisiana. The son received a liberal education and was early engaged in the care of the planting and other interests of his father. He was a Union man from the time the war broke out, and although he suffered greatly by it in the loss of property, he never faltered in his devotion to the Union cause. Under the Banks reconstruction scheme he was chosen lieutenant-governor on the ticket with Hon. Michael Hahn, who was elected governor, and upon the election of the latter to the Senate, a year after, Mr. Wells became governor of the State, to which office he was almost unanimously re-elected under the reconstruction plan of President Johnson. His experience in public life has been great and varied, and his capacity to discharge the duties assumed cannot be questioned." Therefore,

Be it resolved, That the Secretary of War be, and he is hereby, directed to furnish this House, at the earliest possible day, from the War Department records, copies of General Sheridan's orders dated New Orleans, June 3, 1867, removing J. Madison Wells from the office of governor of Louisiana; also General Sheridan's letter of June 7, 1867, directed to J. Madison Wells; also General Sheridan's letter of June 3, 1867, to Secretary of War Stanton explaining the reasons why he removed Governor Wells; also copies of all reports, orders, letters, telegrams, indorsements, and memoranda in the War Department connected with the removal of J. Madison Wells from the governorship of Louisiana by General Sheridan in 1867.

Mr. BANNING. I suppose there will be no objection to this resolution.

Mr. GARFIELD. Certainly there is. I object. The House has nothing to do with these historical events.

Mr. BANNING. Well, I move to suspend the rules and adopt the resolution.

The question being taken on suspending the rules,

The SPEAKER stated that in the judgment of the Chair two-thirds had not voted in the affirmative.

Mr. BANNING. I call for the yeas and nays. But I think if I might be allowed a word of explanation——

Mr. CONGER. I object to debate.

Mr. HOLMAN. I suggest to the gentleman from Ohio that he take a division first, before demanding the yeas and nays.

Mr. BANNING. Very well. I call for a division.

The House divided; and there were—ayes 121, noes 67; two-thirds not voting in the affirmative.

Mr. BANNING. I call for the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 133, nays 79, not voting 77; as follows:

YEAS—Messrs. Ainsworth, Ashe, Atkins, John H. Bagley, jr., Banning, Bland, Blount, Boone, Bradford, Bright, John Young Brown, Buckner, Cabell, John H. Caldwell, William P. Caldwell, Campbell, Candler, Carr, Cate, Caulfield, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Cook, Cowan, Culberson, Cutler, Davis, Dibrell, Douglas, Durand, Durham, Egbert, Ellis, Faulkner, Felton, Finley, Forney, Franklin, Fuller, Gause, Glover, Gunter, Andrew H. Hamilton, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Haymond, Henkle, Abram S. Hewitt, Goldsmith W. Hewitt, Hill, Holman, Hooker, Humphreys, Hunton, Hurd, Frank Jones, Kehr, Knott, Lamar, George M. Landers, Lane, Lewis, Lord, Luttrell, Maish, McFarland, Metcalfe, Milliken, Mills, Money, Morgan, Mutchler, Neal, O'Brien, Payne, Piper, Poppleton, Powell, Rea, Reagan, John Reilly, James B. Reilly, Riddle, John Robbins, William M. Robbins, Roberts, Savage, Scales, Schleicher, Sheakley, Singleton, Slemons, William E. Smith, Southard, Sparks, Spencer, Springer, Stanton, Stenger, Stevenson, Stone, Swann, Tarbox, Teese, Terry, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Gilbert C. Walker, Walsh, Warner, Warren, Watterson, Whitthorne, Wike, Alpheus S. Williams, James Williams, Jeremiah N. Williams, Willis, Benjamin Wilson, Fernando Wood, and Yeates—133.

NAYS—Messrs. Adams, George A. Bagley, John H. Baker, William H. Baker, Ballou, Blair, Bradley, William R. Brown, Horatio C. Burchard, Cannon, Cason, Chittenden, Conger, Croome, Davy, Denison, Dobbins, Eames, Evans, Five, Fort, Foster, Freeman, Frye, Garfield, Hale, Haralson, Benjamin W. Harris, Hathorn, Hendee, Henderson, Hoar, Hoskins, Hunter, Hyman, Kasson, Kelley, Leavenworth, Lynch, Magoon, McCrary, McDill, Miller, Monroe, Nash, Norton, Oliver, O'Neill, Page, William A. Phillips, Pierce, Plaisted, Platt, Potter, Pratt, Rainey, Rusk, Sampson, Seelye, Sinnickson, A. Herr Smith, Strait, Stowell, Thornburgh, Martin I. Townsend, Tufts, Van Vorhes, Wait, Waldron, Alexander S. Wallace, John W. Wallace, White, Whiting, Andrew Williams, Charles G. Williams, James Wilson, Alan Wood, jr., and Woodworth—79.

NOT VOTING—Messrs. Abbott, Anderson, Bagby, Banks, Bass, Beebe, Bell, Blackburn, Bliss, Samuel D. Burchard, Burleigh, Caswell, Chapin, Cochrane, Collins, Cox, Crapo, Danford, Darrall, De Bolt, Dunnell, Eden, Gibson, Goode, Goodin, Hays, Hereford, Hoge, Hopkins, House, Hubbell, Hurlbut, Jenks, Thomas L. Jones, Joyce, Kimball, King, Franklin Landers, Lapham, Lawrence, Le Moyne, Levy, Lynde, Mackey, MacDougall, McMahon, Meade, Morrison, New, Odell, Packer, Phelps, John F. Philips, Purman, Rice, Robinson, Miles Ross, Sobieski Ross, Sayler, Schumaker, Smalls, Stephens, Thomas, Thompson, Washington Townsend, Waddell, Charles C. B. Walker, Walling, Ward, Erastus Wells, G. Wiley Wells, Wheeler, Wigginton, Willard, William B. Williams, Wilshire, Woodburn, and Young—77.

So (two-thirds not having voted in the affirmative) the rules were not suspended.

During the roll-call,

Mr. MACKEY said: I am paired with my colleague, Mr. PACKER, on political questions. If he were present I should vote "ay," and he would vote "no."

The result of the vote was then announced as above recorded.

DISTRICT OF COLUMBIA BUSINESS.

The SPEAKER. The hour of two o'clock having arrived, the Chair recognizes the gentleman from Missouri, [Mr. BUCKNER,] chairman of the Committee on the District of Columbia, which at two o'clock on the third Monday of each month has the exclusive control of the floor to make reports.

Mr. BUCKNER. I am authorized by the Committee on the District of Columbia to ask unanimous consent that, instead of proceeding to-day, the committee may on Saturday, the 6th of January, at two o'clock have the same privilege as belongs to it to-day.

Mr. HOAR. Suppose the House should not be in session on that day?

The SPEAKER. That is for the House to determine. The gentleman from Missouri must take his chance of that.

Mr. BUCKNER. I anticipate no difficulty on that ground.

The SPEAKER. Is there objection to the request of the gentleman from Missouri?

There was no objection, and it was so ordered.

CLAIMS FOR WAR LOSSES.

Mr. HUNTER. I move that the rules be suspended and that the preamble and resolution which I send to the desk be adopted.

The Clerk read as follows:

Whereas fears have been and still are entertained by the people of the United States that Congress may at some time in the future pass laws by which the Government of the United States may be compelled to pay a large amount for damages that were incurred during the late war by persons residing within the States that were then in rebellion against the United States; Therefore, in order to allay such fears and prevent the payment of such claims,

Be it resolved, That the Committee on the Judiciary be instructed to report to this House within twenty days, and permission is hereby given for that purpose, an amendment of the Constitution of the United States in substance as follows, to wit:

ARTICLE XVI.

No claim shall ever hereafter be allowed or paid by the United States, in the shape of damages or otherwise, for any kind of property, real or personal, used, consumed, injured, or destroyed by United States troops, or by or through any officers, civil or military, acting under or by authority of the United States, or from any other cause whatever, during the suppression of the late rebellion in any of the States that were in rebellion against the Government of the United States; or, for any property used, consumed, injured, or destroyed during such rebellion outside of said States that were in rebellion, and which belonged to persons residing within such States that were in rebellion, unless the persons owning the property so used, consumed, injured, or destroyed were during all the time of such rebellion loyal to the Government of the United States and gave neither aid nor encouragement to the enemy.

Mr. SPRINGER. There is no objection to that.

Mr. HUNTER. I call for the yeas and nays upon the motion to suspend the rules.

Mr. SPRINGER. I stated in reference to this resolution that there was no objection to it. I wish to say further——[Cries of "Regular order!" "No debate!"] I ask the gentleman to so modify the resolution as to make it simply a reference to the committee and not a positive instruction.

Mr. TOWNSEND, of New York. No, not the change of a word; you must vote on it as it is.

Mr. CLYMER. I desire it to extend to all the States.

Mr. SPRINGER. I want it more sweeping than it now is. [Cries of "No debate!"] I should prefer the amendment in such a shape as to prohibit the payment of all such claims in future by special act of Congress.

Mr. HEWITT, of Alabama. I would like to ask the gentleman from Indiana [Mr. HUNTER]——[Cries of "Object to debate!"]

The SPEAKER. No debate is in order on a motion to suspend the rules.

The yeas and nays were ordered.

The question was taken; and there were—yeas 152, nays 63, not voting 74; as follows:

YEAS—Messrs. Adams, Anderson, Bagby, George A. Bagley, John H. Bagley, jr., John H. Baker, William H. Baker, Ballou, Banning, Bell, Blair, Bland, Bradley, William R. Brown, Buckner, Horatio C. Burchard, Campbell, Cannon, Cason, Cate, Caulfield, Chittenden, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Conger, Crounse, Cutler, Davy, Denison, Dobbins, Durand, Eames, Ellis, Evans, Flye, Fort, Foster, Freeman, Frye, Fuller, Garfield, Glover, Hale, Andrew H. Hamilton, Robert Hamilton, Haralson, Hardenbergh, Benjamin W. Harris, Harrison, Hartzell, Hathorn, Haymond, Hendee, Henderson, Henkle, Abram S. Hewitt, Hoar, Holman, Hoskins, Humphreys, Hunter, Hurd, Hyman, Frank Jones, Kasson, Kehr, Kelley, Franklin Landers, George M. Landers, Lane, Leavenworth, Le Moyne, Lord, Luttrell, Mackey, Magoon, Maish, McDill, Metcalfe, Miller, Monroe, Morgan, Mutchler, Nash, Neal, Norton, Oliver, O'Neill, Page, Payne, William A. Phillips, Pierce, Piper, Plaisted, Platt, Poppleton, Potter, Powell, Pratt, Rainey, Rea, John Reilly, James B. Reilly, John Robbins, Roberts, Rusk, Sampson, Savage, Seelye, Sheakley, Sinnickson, A. Herr Smith, Southard, Sparks, Spencer, Springer, Stanton, Strait, Stenger, Stevenson, Stone, Stowell, Swann, Tarbox, Teese, Thornburgh, Martin I. Townsend, Tufts, Turney, Van Vorhes, John L. Vance, Wait, Waldron, Alexander S. Wallace, John W. Wallace, Warner, Watterson, White, Whitehouse, Whiting, Wike, Willard, Andrew Williams, Alpheus S. Williams, Charles G. Williams, James Williams, William B. Williams, Willis, James Wilson, Alan Wood, jr., and Woodworth—152.

NAYS—Messrs. Ainsworth, Ashe, Atkins, Blount, Boone, Bradford, Bright, John Young Brown, Cabell, John H. Caldwell, William P. Caldwell, Carr, Cook, Cowan, Culberson, Davis, Dibrell, Douglas, Durham, Faulkner, Felton, Finley, Forney, Franklin, Gause, Goode, Gunter, Henry R. Harris, John T. Harris, Hartridge, Hatcher, Hereford, Goldsmith W. Hewitt, Hill, Hooker, Hunton, Knott, Lewis, Lynch, Milliken, Mills, Money, O'Brien, Reagan, Riddle, William M. Robbins, Scales, Schleicher, Singleton, Stemons, William E. Smith, Terry, Throckmorton, Tucker, Robert B. Vance, Gilbert C. Walker, Walsh, Warren, Whitthorne, Jeremiah N. Williams, Wilshire, Benjamin Wilson, and Yeates—63.

NOT VOTING—Messrs. Abbott, Banks, Bass, Beebe, Blackburn, Bliss, Samuel D. Burchard, Burleigh, Candler, Caswell, Chapin, Cochrane, Collins, Cox, Crapo, Danford, Darrall, De Bolt, Dunnell, Eden, Egbert, Gibson, Goodin, Hancock, Hays, Hoge, Hopkins, House, Hubbell, Hurlbut, Jenks, Thomas L. Jones, Joyce, Kimball, King, Lamar, Lapham, Lawrence, Levy, Lynde, MacDougall, McCrary, McFarland, McMahon, Meade, Morrison, New, Odell, Packer, Phelps, John F. Philips, Purman, Rice, Robinson, Miles Ross, Sobieski Ross, Sayler, Schumaker, Smalls, Stephens, Thomas, Thompson, Washington Townsend, Waddell, Charles C. B. Walker, Walling, Ward, Erastus Wells, G. Wiley Wells, Wheeler, Wigginton, Fernando Wood, Woodburn, and Young—74.

So (two-thirds voting in favor thereof) the rules were suspended and the preamble and resolution were agreed to.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of its clerks, announced that the Senate had passed a bill (S. No. 683) for the relief of the officers and privates of the Fourth Arkansas Cavalry Volunteers; in which he was directed to ask the concurrence of the House.

The message further announced that the Senate had passed the following resolution:

Resolved, That the message of the House of Representatives on the subject of the presidential election be referred to a select committee of seven Senators, with power to prepare and report, without unnecessary delay, such a measure, either of a legislative or other character, as may in their judgment be best calculated to accomplish the lawful count of the electoral vote, and best disposition of all questions connected therewith, and a due declaration of the result, and that said committee have power to confer and act with the committee of the House of Representatives named in said message and to report by bill or otherwise.

EXPENSES OF SPECIAL COMMITTEES.

Mr. HOLMAN. I move that the House concur in the request of the Senate for a committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the amendment of the Senate to the bill (H. R. No. 4121) to provide for expenses of certain special committees.

The motion was agreed to.

The SPEAKER subsequently announced as the managers of the conference on the part of the House, Mr. HOLMAN, Mr. ATKINS, and Mr. HALE.

DISTRIBUTION OF UNITED STATES TROOPS.

Mr. JOHN REILLY. I move that the rules be suspended and that the following resolution be adopted:

Resolved, That the Secretary of War be, and is hereby, directed to furnish this House with the number of men enlisted under the act of August 15, 1876, to aid in suppressing the Indian rebellion, to what regiments said recruits were assigned, what amount of appropriation therefore has been expended, the necessity, if any, of retaining said troops longer in the service; also, the present distribution and location of all troops in the United States Army.

The question was taken; and upon a division there were—ayes 145, noes 12.

So (two-thirds voting in favor thereof) the rules were suspended and the resolution was adopted.

Mr. HOLMAN. I move that the House now adjourn.

Pending the motion to adjourn,

EL PASO, TEXAS.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, transmitting communications from a special agent of the Treasury and the collector of customs at El Paso, Texas, in reference to a change of that port of entry to Tucson, Arizona; which was referred to the Committee on Commerce, and ordered to be printed.

OSAGE INDIANS.

The SPEAKER also laid before the House a letter from the Secretary of the Interior, transmitting a draught of a bill to allow the Osages in the Indian Territory to expend $50,000 of their fund in the Treasury to supply present urgent necessities; which was referred to the Committee on Indian Affairs, and ordered to be printed.

EXPENDITURES IN WAR DEPARTMENT.

The SPEAKER also laid before the House a letter from the Secretary of War, transmitting inspection reports of the money accounts of that Department, made in accordance with the law of 1874; which was referred to the Committee on Expenditures in the War Department, and ordered to be printed.

SMITHSONIAN INSTITUTION.

The SPEAKER also laid before the House a letter from the Secretary of the Interior, transmitting corrected estimates made by Professor Henry, of the Smithsonian Institution, and recommending their substitution for those already printed in Executive Document No. 5; which was referred to the Committee on Appropriations, and ordered to be printed.

LEAVE OF ABSENCE.

Mr. YOUNG was granted leave of absence for twenty days on account of important business.

Mr. EGBERT was granted indefinite leave of absence on account of the sudden death of his brother-in-law.

Mr. WALDRON was granted leave of absence for two weeks from Thursday next.

Mr. TOWNSEND, of New York, was granted leave of absence for ten days from Friday next on account of important business.

Mr. PLATT was granted leave of absence for two weeks.

Mr. LORD was granted leave of absence for twelve days on account of important business.

Mr. HARRISON was granted leave of absence for ten days from the 22d instant.

ORDER OF BUSINESS.

Mr. SPRINGER. I ask the gentleman from Indiana [Mr. HOLMAN] to yield to me——

Many MEMBERS. Regular order; regular order.

Mr. SPRINGER. I desire to offer a resolution in relation to the election in Mississippi.

Renewed cries of "Regular order!"

The SPEAKER. The regular order being called for——

Mr. SPRINGER. I ask the gentleman from Indiana to yield to me.

The SPEAKER. The regular order being called for, the gentleman has no right to yield. The question is upon the motion to adjourn.

The motion was agreed to, upon a division—ayes 130, noes 30; and accordingly (at three o'clock p. m.) the House adjourned.

PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. BAKER, of Indiana: The petition of Captain A. Housinger, of Philadelphia, for compensation for damages done to the steamer Brazil by reason of a collision with the United States gunboat Lexington, caused by the neglect of the officers of said gunboat, to the Committee of Claims.

By Mr. BUCKNER: The petition of Pat. O. Hawes for pay and allowances as additional Representative from Nebraska, to the Committee of Accounts.

By Mr. HALE: Memorial of the Board of Trade of Denver, Colorado, that Denver be made a port of entry, to the Committee on Commerce.

By Mr. McCRARY: The petition of William E. Hawthorne, late a private in Company K, Thirteenth Regiment Iowa Volunteers, for a pension, to the Committee on Invalid Pensions.

By Mr. ROBBINS, of North Carolina: Resolutions of the General Assembly of North Carolina, instructing the Representatives in Congress from that State to use their influence to so alter the revenue laws relating to whisky, brandy, and tobacco as to make said laws less oppressive on the citizens, and if this cannot be accomplished to vote for the repeal of the same, to the Committee of Ways and Means.

Also, resolutions of the General Assembly of North Carolina, requesting the Representatives in Congress from said State to use their influence to so modify or repeal the revenue laws of the United States as to give to the producer the right to distill, for his own use, his fruit; also, to repeal or modify the tax on leaf tobacco, to the same committee.

By Mr. VANCE, of North Carolina: The petition of certain employés of the House, relating to payments to them for services in the folding-room of the House, to the Committee of Accounts.

By Mr. WALDRON: Papers relating to the petition of Harriet S. Baker, for a pension, to the Committee on Invalid Pensions.

IN SENATE.

TUESDAY, *December* 19, 1876.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

The Journal of yesterday's proceedings was read and approved.

EULOGIES ON THE LATE SPEAKER KERR.

Mr. MORTON. Yesterday resolutions of the House of Representatives were transmitted to the Senate communicating intelligence of the death of Mr. Kerr, the late Speaker of the House. I had a conversation with my colleague, [Mr. McDONALD,] who is now absent from the Senate in the discharge of official duty, and it would be entirely agreeable to his feelings and mine to have the resolutions lie upon the table until my colleague returns to the Senate, and then a day will be fixed upon for considering the matter in the Senate.

The PRESIDENT *pro tempore*. If there be no objection the resolutions will lie upon the table until the Senators from Indiana desire to have them called up.

HOUSE BILLS REFERRED.

The bill (H. R. No. 4187) making appropriations for the service of the Post-Office Department for the fiscal year ending June 30, 1878, and for other purposes, was read twice by its title, and referred to the Committee on Appropriations.

The bill (H. R. No. 4207) to remove the political disabilities of F. E. Shepperd, of Virginia, was read twice by its title, and referred to the Committee on the Judiciary.

POST-ROUTE BILL.

The PRESIDENT *pro tempore* laid before the Senate the action of the House of Representatives disagreeing to certain amendments of the Senate to the bill (H. R. No. 3628) establishing post-roads.

Mr. HAMLIN. I move that the bill be referred to the Committee on Post-Offices and Post-Roads that it may receive the consideration of the committee before we take any action on the disagreeing votes of the two Houses.

The motion was agreed to.

EXECUTIVE COMMUNICATION.

The PRESIDENT *pro tempore* laid before the Senate a letter from the Secretary of State, transmitting, in compliance with section 208 of the Revised Statutes, a statement of the names of consular officers, not citizens of the United States, to whom salaries have been paid during the fiscal year ending June 30, 1876; which was ordered to lie on the table and be printed.

PETITIONS AND MEMORIALS.

Mr. NORWOOD presented the petition of John R. F. Tattnall, of Georgia, praying for the removal of his political disabilities; which was referred to the Committee on the Judiciary.

Mr. SPENCER presented the petition of the Methodist church of Allston, Massachusetts, signed by the pastor and officers, praying for prohibitory legislation for the District of Columbia and the Territories; the prohibition of the foreign importation of alcoholic liquors; that total abstinence be made a condition of the civil, military, and naval service; and for a constitutional amendment to prohibit the traffic in alcoholic beverages throughout the national domain; which was referred to the Committee on Finance.

Mr. MITCHELL presented the petition of F. G. Schwatka, of Oregon, praying compensation for damages alleged to have been sustained by him by the use and occupancy by the United States authorities of certain lands in Oregon, known as donation lands, upon which he had settled; which was referred to the Committee on Claims.

REPORT OF A COMMITTEE.

Mr. WINDOM. I am instructed by the Committee on Appropriations, to whom was referred the bill (H. R. No. 4120) making appropriations for the payment of invalid and other pensions for the year ending June 30, 1878, to report it without amendment and recommend its passage. If there be no objection, I will ask that it be put upon its passage now. The bill has been printed and the committee report it back without any amendment.

Mr. EDMUNDS. O, no. I object. I am in favor of the bill, but I object to its present consideration.

BILL RECOMMITTED.

Mr. MORRILL. I am instructed by the Committee on Finance to move that the bill (S. No. 1040) to allow the late collector of internal revenue for the fourth district of Georgia his salary, hitherto withheld, be recommitted to that committee.

The motion was agreed to.

BILLS INTRODUCED.

Mr. MITCHELL asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1090) for the relief of Assistant Surgeon Jenkins A. Fitzgerald, United States Army; which was read twice by its title, and, with the accompanying petition, referred to the Committee on Military Affairs.

Mr. HARVEY asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1091) to establish a post-road; which was read twice by its title, referred to the Committee on Post-Offices and Post-Roads, and ordered to be printed.

He also asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1092) for the relief of Jerome Kunkel; which was read twice by its title, referred to the Committee on Military Affairs, and ordered to be printed.

Mr. PADDOCK asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1093) granting a pension to C. H. Frederick; which was read twice by its title, and, with accompanying papers, referred to the Committee on Pensions.

THOMAS DAY.

Mr. WRIGHT. I move that the Senate proceed to the consideration of the bill (H. R. No. 3504) for the relief of Thomas Day.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill.

It authorizes the Secretary of the Treasury to pay to Thomas Day, of Indiana, $640.75, in full payment and satisfaction for the use of nursery grounds at Madison, Indiana, by the United States, in the year 1863, for a military post and for barracks and hospital purposes.

Mr. DAVIS. There is a report, I presume, in that case?

The PRESIDENT *pro tempore*. There is a report.

Mr. DAVIS. Let it be read.

The PRESIDENT *pro tempore*. The report will be read.

The Chief Clerk read the following report, submitted by Mr. WRIGHT, from the Committee on Claims, July 28, 1876:

The Committeee on Claims, to whom was referred the bill (H. R. No. 3504) for the relief of Thomas Day, submit the following report:

The report of the House committee is as follows:

"That this claim was before the Forty-third Congress, and a favorable report thereon made by Mr. JAMES WILSON, of the War Claims Committee of that Congress, now a member of this committee.

"This claim is for the use and occupation of nursery-grounds by the United States, situated in Jefferson County, Indiana. Said grounds were occupied and used during the war of the late rebellion as a military post for barracks and hospital purposes. Your committee believe, from the evidence, that the claimant is entitled to the sum of $640.75 as a compensation for the said use and occupation. They report the accompanying bill, and recommend its passage."

This committee only add that the testimony abundantly supports the findings, and also shows that the Quartermaster's Department declined to pass upon the claim, as it was for damages, a subject over which it had no jurisdiction, and remitted the same to Congress. The grounds were taken possession of in January, 1863, and at a time or season of the year when it was impossible to move the trees.

We recommend the passage of the bill.

Mr. MORRILL. May I ask the Senator from Iowa if there was not an adverse report made by a Senate committee on that claim some years ago?

Mr. WRIGHT. Not to my knowledge.

Mr. MORRILL. I think there was.

Mr. WRIGHT. The record was examined very thoroughly, and my impression is that there was no adverse report by any committee, either of this body or of the House.

Mr. EDMUNDS. How do you account for this long delay?

Mr. WRIGHT. There was a favorable report in the Forty-third Congress from the committee of the House. The case has been pending for about six or eight years.

Mr. EDMUNDS. I have the impression that some claim like that has once been reported adversely here.

Mr. WRIGHT. I feel very certain that my friend is mistaken. I know that the record was examined very thoroughly by our clerk and also by the members of the committee, and no such claim has ever been passed upon adversely.

Mr. EDMUNDS. What is the name?

Mr. WRIGHT. Thomas Day.

Mr. EDMUNDS. I rather think that had better lie over until to-morrow, and we can look at it.

Mr. WRIGHT. The bill is already before the Senate.

Mr. EDMUNDS. Was it reported to-day?

Mr. WRIGHT. O, no; it was reported at the last session.

The PRESIDENT *pro tempore*. The bill is in the Committee of the Whole and open to amendment.

Mr. EDMUNDS. Then we cannot help it.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. GEORGE M. ADAMS, its Clerk, announced that the House insisted upon its amendments to the amendments of the Senate to the bill (H. R. No. 4124) to provide for the expenses of certain special committees, agreed to the conference asked for by the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. WILLIAM S. HOLMAN of Indiana, Mr. JOHN D. C. ATKINS of Tennessee, and Mr. EUGENE HALE of Maine managers at the conference on its part.

REPRESENTATIVES OF SAMUEL WARE.

Mr. BOGY. I move to take up the bill (H. R. No. 97) directing the Commissioner of the General Land Office to issue a certificate of relocation for six hundred and forty acres of land in the Territory of Missouri to legal representatives of Samuel Ware.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill.

The preamble recites that Samuel Ware was the owner of land claim No. 438, located in the county of New Madrid, in the then Territory of Missouri, for six hundred and sixty arpents, which was confirmed by act of Congress of the 29th of April, 1816; that the lands having been injured by earthquakes, he availed himself of the provisions of the act of the 17th of February, 1815, whereby persons owning lands in the county of New Madrid which were materially injured by earthquakes were authorized to locate the like quantity of lands on any of the then Territory the sale of which was authorized by law; that, in pursuance of this law, Ware relinquished his claim to the land confirmed as No. 438, under the act of the 29th of April, 1816, and applied for a certificate of relocation; and that on the 16th of August, 1816, Frederick Bates, recorder of land titles, did issue to Samuel Ware certificate of location No. 63, which was afterward located on the east half of section 12, township 24 north, of range 17 east, and the west half of section 7, township 24 north, of range 18 east, on Wolf Island, in the Mississippi River, upon the supposition that the island was in the State of Missouri; and that it has been decided by the Supreme Court of the United States (11 Wallace, 395) that the island belonged to the State of Kentucky: Therefore,

The bill requires the Commissioner of the General Land Office to issue a certificate of new location to the legal representatives of Samuel Ware, authorizing them to locate the certificate on six hundred and forty acres of any land in what was Missouri Territory, subject to sale.

Mr. EDMUNDS. What committee reported this bill?

Mr. BOGY. It was reported from the Committee on Private Land Claims. The Senator from Vermont is a member of that committee. There is no objection to it.

Mr. EDMUNDS. Is there a report?

The PRESIDENT *pro tempore*. There is a House report, the Chair understands.

Mr. EDMUNDS. I should like to hear it.

Mr. BOGY. There is no report, because the preamble so fully explains the whole object. I can explain the case in a minute. There was a location of a claim on an island called Wolf Island, in the Mississippi River, and which for many years was believed to be in the State of Missouri. After a time the question was tested as to the fact whether the island was in the State of Missouri or in the State of Kentucky, and it was decided by the Supreme Court that the island was in Kentucky and therefore the location was void. Now his representatives desire to locate the same quantity of land in the State of Missouri. I presume the Senator is familiar with the facts. The matter was considered very fully before our committee, of which I believe he is a leading member, and we agreed to make a unanimous report on this bill at the last session.

Mr. EDMUNDS. That leads me to have some question about this claim. If a committee of which I am a leading member unanimously agreed to report this private claim, I begin to think there must be something wrong about it. [Laughter.] But what I wish to ask, as I remember the matter generally, but it is a little out of my mind, is whether it appeared clearly before the committee that this claimant had actually failed to obtain the land, whether in Missouri or Kentucky, which his location called for?

Mr. BOGY. I remember the point was raised before the committee and the information was conveyed to the committee—I am not prepared fully to go into the details—that Ware actually lost his land on the island.

Mr. EDMUNDS. Very well; if that be so, of course he ought to have it somewhere else.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

N. H. VAN ZANDT.

Mr. WITHERS. I move the present consideration of House bill No. 2736.

The motion was agreed to; and the bill (H. R. No. 2736) to remove the political disabilities of N. H. Van Zandt, of Virginia, was considered as in Committee of the Whole.

The Committee on the Judiciary proposed to amend the bill by striking out the words "act of July 2, 1862, and the" before "fourteenth;" so as to make it read:

That all the political disabilities imposed by the fourteenth amendment to the Constitution of the United States upon N. H. Van Zandt, a citizen of the State of Virginia, be, and the same are hereby, removed.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time, and passed by a two-thirds vote.

WILLIAM S. MORRIS AND OTHERS.

Mr. WALLACE. I move to take up the bill (S. No. 405) for the relief of William S. Morris, William S. Mann, Charles A. Oakman, George W. Hillman, the Union Transfer Company, all of Philadelphia, Pennsylvania; the Union Transfer Company of Baltimore, Maryland; and John R. Graham, late of Philadelphia, now of Washington, District of Columbia.

Mr. SHERMAN. Let the report be read.

The Secretary read the following report, submitted by Mr. WADLEIGH, from the Committee on Claims, on the 2d of August, 1876:

The Committee on Claims, to whom was referred the bill for the relief of William S. Morris and others, respectfully report:

The parties named in the bill were all engaged in the business of carrying passengers and baggage in the city of Philadelphia.

The collector of internal revenue for the district in which these parties did business assessed and collected from them taxes aggregating the amounts respectively named in the bill, under the alleged authority of section 104, act of June 30, 1864, which provides as follows:

"That any person, firm, company, or corporation carrying on or doing an express business shall be subject to and pay a duty of 3 per cent. on the gross amount of all the receipts of such express business."

It appears that in a large number of cities the officers of the revenue did not construe this law as applicable to persons engaged in business similar to that of the parties named in this bill; that the carrying of passengers and baggage on no continuous or fixed route was not "an express business within the intent of the statute;" but that in some cities now, notably New York, Philadelphia, and Chicago, taxes for such business were assessed and collected.

It appears that, in consequence of this want of uniformity, on April 16, 1870, the Commissioner of Internal Revenue instructed S. B. Dutcher, supervisor, New York, that "it is only those who do their business on regular routes that should be regarded as engaged in an express business and liable under section 104. * * * If taxes under section 104 have been assessed contrary to the above rule * * * you will see that collection is suspended and claims for abatement prepared."

Subsequently, as a consequence of this ruling of the Revenue Department, various parties who had paid such taxes made claims to have them refunded. Among these, Dodd's Express Company, of New York, filed claims July 14, 1870; Parmlee's Local Express Company, of Chicago, August 28, 1871; Westcott's Express Company, of New York, September 22, 1874, and the parties named in the bill under consideration, at various times during the years 1871 and 1873. All of these claims were rejected by the Commissioner of Internal Revenue, and, as a consequence, Parmlee's and Dodd's Express Companies brought suit in the United States courts, and, obtaining judgments in their favor, the Commissioner of Internal Revenue reopened all their claims that he had previously rejected, and refunded the taxes they had paid.

It appears from the evidence on file that the parties named in this bill did not bring suit to recover the taxes paid by them, for the reason that they were given to understand, by the officers of the Internal Revenue Bureau, that the Department would govern itself by such decision as might be given by the courts in the Dodd case, and after that decision, if in claimant's favor, would re-open their cases and decide them in accordance therewith.

On application, however, to Hon. D. D. Pratt, who succeeded to the office of Commissioner of Internal Revenue, that these cases be re-opened and reconsidered in view of the decision of the courts and the fact that other similar claimants had been refunded the taxes paid by them, he declined to re-open them on the ground that "these claims were all rejected by my predecessors in office, and under the rules governing this office I have no authority to re-open them." It appears, however, that after refusing to re-open the cases of these parties he did re-open the case of Westcott's Express Company, of New York, whose claim was originally filed at about the same time as that of these claimants, and refunded to them $21,559 37. In a letter to your committee, April 5, 1876, he states, "I understand that the claims are of the same nature as the claim of the Westcott Express Company;" though he adds, as a reason for his difference of action in the cases, that "the only difference in their status at the time of my entrance upon the duties of this office being that the former stood rejected while the latter was a pending claim."

It appears, therefore, to the committee that claims filed at the same time as those of the parties named in this bill, and of precisely the same nature, have been paid, and that the only obstacle to the claimants in this case having their cases reconsidered under the same rulings that have been applied to all other similar cases is a purely technical one, caused by a change in the incumbency of the office of Commissioner of Internal Revenue. And it further appears that the claimants have no other method of relief except by an act of Congress that will authorize the Commissioner to review the cases, as their long pendency in the Revenue Department, through no fault of the claimants, has caused the time to elapse within which they could bring their cases before the courts.

The committee, therefore, are of the opinion that the bill should pass. In this opinion we are sustained by the Commissioner of Internal Revenue, who states "that as the bill does not direct the refunding of the amount claimed, but simply directs the Commissioner to re-open and reconsider the claims, I can see no objection to its becoming a law." He further says, "I would suggest an amendment at line 5 in the bill, so that it may read 'taxes alleged to have been improperly and illegally assessed and collected.'"

The committee recommend that line 5 of the bill be amended so as to read "of taxes alleged to have been improperly and illegally assessed and collected," and report that the bill thus amended ought to pass.

The PRESIDENT *pro tempore*. The question is on the motion to take up the bill for consideration.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill.

The Committee on Claims reported an amendment to the bill in

line 5, after the word "taxes," to insert the words "alleged to have been;" so as to read:

That the Commissioner of Internal Revenue be directed to re-open and reconsider the following claims for the refunding of taxes alleged to have been improperly and illegally assessed and collected.

The amendment was agreed to.

Mr. WALLACE. I move to strike out all from and including the word "or" in the twenty-second line to the end of the bill. The words I propose to strike out are "or that shall appear to be unjustly or illegally assessed or collected," so that it shall be simply "to refund and pay back all of said taxes erroneously assessed and collected," and not for those which shall appear to be so.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

Mr. WRIGHT. May I be allowed to inquire of the Senator from Pennsylvania whether the last amendment was an amendment from the committee or an amendment suggested by himself?

Mr. WALLACE. An amendment suggested by myself.

Mr. WRIGHT. I should be very glad to have the amendment reported again. I was engaged at the moment.

Mr. WALLACE. The last clause of the bill is, "or that shall appear to be unjustly or illegally assessed or collected." I moved to strike out all after and including the word "or," so that the Commissioner will only be authorized to refund the taxes erroneously assessed and collected and not those which shall appear to be unjustly or illegally assessed or collected. It certainly will not hurt the Government.

Mr. EDMUNDS. I should like to inquire of somebody who knows whether there has been any judicial decision that covers cases of this character, going to show that this money was illegally exacted?

Mr. WALLACE. The report of the committee refers to a case which went to the Court of Claims standing on precisely the same footing in which the Court of Claims ruled that——

Mr. EDMUNDS. What volume is that?

Mr. WALLACE. I am unable to say.

Mr. EDMUNDS. What is the name of the case?

Mr. WALLACE. The Dodd case.

Mr. EDMUNDS. Did it go to the Supreme Court of the United States?

Mr. WALLACE. I know nothing of that. It was decided by the Court of Claims. The report, as the Senator will see, is based on a letter of the Commissioner of Internal Revenue.

Mr. EDMUNDS. I see that; but it is Congress and not the Commissioner of Internal Revenue that is to decide whether money shall be paid out of the Treasury after this great lapse of time, and therefore I shall be glad to be convinced myself, instead of taking it *ex cathedra* from the Commissioner of Internal Revenue.

The appearance of this case, briefly stated, is this: During the time of war taxes were imposed upon the express business, and there were in the city of Philadelphia and in New York and in almost every other city of any considerable size what were called baggage expresses. The officers of the Treasury compelled the owners of them to pay certain money upon their business as a tax upon the express business. Now it is stated that the Court of Claims has decided that that class of business did not fall within the statute under which these taxes were levied and paid; and that having been decided, after a period of ten years or more, Congress is called upon to re-open the subject and to refund those taxes that may appear to have been erroneously or illegally collected.

In my opinion this is a subject that we ought to enter upon with the greatest possible reluctance and only in a case of the clearest illegality. The tax laws of the United States, like all other tax laws, are complicated, difficult of application, whether they are customs duties or excise or internal revenue or whatever they may be. One Secretary of the Treasury, one collector of internal revenue will with entire intelligence and perfect uprightness hold that the law covers a certain class of business and that the taxes are to be paid upon it, while his successor will hold exactly the reverse, and his successor will go around to the first opinion and so on, because the laws are so vague, as in complicated cases they always have been in all countries, that it is difficult for all men to see them exactly alike. But practically it almost always happens in the case of such laws that substantial justice is done and nobody in the community bears more than his fair proportion of the burdens of government. Now, to turn around upon nice discriminations, after the thing is all over, after the baggage-express people have got enough on their baggage to pay their taxes and make money besides, and upon some fine-spun doubt or distinction touching the meaning of the law to re-open the laws collecting taxes and the business of collecting taxes ten years ago, is, in my opinion, a very unsatisfactory piece of business. If you are to follow out the logic of that, there would scarcely be a single subject of taxation during the war or before the war or since that would not fairly fall within the province of the Commissioner of Internal Revenue under a bill of this kind if you would only enlarge it according to its own principles, and the Secretary of the Treasury and the other tax-officers of the United States to re-examine all the taxes that have been levied in various ways and strike a fresh balance and see whether too much had not been obtained. Of course, everybody would cry no to that at once; and yet we are asked in this way, if you take it up piece-meal, two or three cases at a time, to go back and split hairs over the statute, which substantially, as anybody can see, whatever a court may have decided, meant to cover this, which was an express business in fact just as much as Adams Express or anybody else's. Substantial justice has been done, and substantially a just contribution has been made to the Treasury. Now we propose to invite the Commissioner of Internal Revenue to take the opinion of the Court of Claims as his guide, not the opinion of the Supreme Court of the United States; but to take an opinion in one case as his guide and try to apply that to the people named in this bill, and if he can figure out a result against the Government, to pay them the money. For one I am opposed to it.

Mr. MORRILL. May I ask my colleague if he thinks that there could be any proper discrimination as to the kind of property carried in the express business which should exempt baggage rather than merchandise? I suppose the law levied a tax upon express business. Now is it possible that you can exempt baggage any more than you could other merchandise?

Mr. EDMUNDS. The act of Congress on this subject is:

That on and after the 1st day of April, 1863, any person or persons, firms, companies, or corporations, carrying on or doing an express business, shall, in lieu of the tax and stamp duties imposed by existing laws, be subject to and pay a duty of 2 per cent. on the gross amount of all the receipts of such express business.

I take it it would be perfectly clear that under the previous stamp act every parcel they carried would have had to pay a stamp tax; but that was found to be inconvenient, and it was turned into a tax in gross upon gross receipts of 2 per cent.; and now, after the statute of limitations has long since run against them and the thing has gone by for a dozen years, it is proposed to invite the Commissioner of Internal Revenue to see whether he cannot, in the light of Dodd's case, figure out a result for the repayment of these taxes that were honestly and justly levied, and from which, as I should certainly say, with great respect to the court, very likely it will turn out that Dodd's case is entirely distinguishable. I do not know, but I should say, and I think everybody who hears this report read would say, this is just as plainly and in substance an express business as anything can be. It is the carriage of a particular class of parcels for hire, insuring them on their way from one place to another; and I am unable to see how it makes a difference whether you carry them from one railway to another in a city or from a railway to a house or hotel in the city, or whether you carry them as Adams Express does, a part of the way by rail and a part of the way by wagon to your house or hotel in a city. I do not see how it is possible to put such a construction on the law.

But here you propose first to open the statute of limitations in favor of these claimants. In all other cases, customs duties of every kind and internal taxes, the statute of limitations imposes a strict bar, and men stand upon their rights; and, if they think they have paid any taxes that they ought not to pay, they commence their suit in the proper court in season, when the testimony respecting the particular circumstances of the case and the application of the law is at hand. Now it is proposed, in the case of this particular class of business in the United States during the war, to say, first, that the statute of limitations shall not apply, and, second, that the Commissioner of Internal Revenue shall reconstrue the law and be himself the judge, and, if he can find that the United States have improperly construed that statute, then he shall give back the money.

Mr. President, I hope this bill will not pass.

Mr. WALLACE. I can only answer the argument of the Senator from Vermont against this bill by saying that here is a statute, which statute has been construed by the Commissioner of Internal Revenue himself as excluding this case and this class of cases. Now, it is not a question of construction to-day; it is a question of what the officers of the Government construed the law to be long since. They construed it to be exclusive of this class of business, and in pursuance of that construction Dodd's Express Company and others made their claim. They were refused payment by the Department, and then they proceeded in the courts, and they obtained a decree in favor of their claim. Thus we have the construction of the statutes by the decision of the courts; and now, having made the rule in these three modes, we came to this case that awaited the action of the Government itself; and, awaiting the action of the Government, the statute of limitations seems to have closed on the case. Because the parties did not sue, waiting the action of the Government, therefore they ought not to have their claim! A rule of law has been made by the Government, not during the war, but under a statute passed in 1864, construed in 1870, which rule has been carried into effect as regards all the rest of the companies; and now, although the others have been paid, although it was just to pay them, it is not just to pay these people who have waited! That is the argument of the Senator from Vermont in effect. It does seem to me that the statute of the Government, and the construction of the statute by the Commissioner himself, and the decision of the courts upon this law and this ruling have settled, not what the law is to be now, but what the law was when it was made, and that rule of law is to settle and conclude all cases of the same character. As these claimants are within this provision of the statute of 1864 as settled by the courts, why are they not within its justice and equity? Is there any good reason why this claim should not be paid? Simply the statute of limitations. The Senator rises in his place and interposes the statute. The Westcott Express Company have got their claim; Dodd's Express Company have got their

claim in pursuance of the statute, in pursuance of the construction, in pursuance of the decree of the courts; but time has elapsed, and therefore these parties are not to be paid! Mr. President, I hope they will be paid.

Mr. SHERMAN. I should like to look at the Dodd case. It all depends on that. It may be that on reading that case we shall see the reasonableness of the decision. Let the bill lie over informally for the present.

Mr. BAYARD. I have sent for the decision.

Mr. EDMUNDS. I ask for the yeas and nays on ordering the bill to a third reading.

The yeas and nays were ordered.

The PRESIDENT *pro tempore*. The bill will be laid over temporarily, if there be no objection, according to the suggestion of the Senator from Ohio.

PHILIP PENDLETON.

Mr. DAVIS. While the Senate is waiting for some information about the bill under consideration, I ask leave to call up House bill 735.

There being no objection, the bill (H. R. No. 735) for the relief of Philip Pendleton was considered as in Committee of the Whole. It is a direction to the proper accounting officers of the Treasury to re-open and re-adjust the accounts of Philip Pendleton, late a paymaster in the United States Army, and allow him such additional credits in the settlement of his accounts as, under the circumstances or in the opinion of the accounting officers, may be just and equitable, for errors and losses of money received by him as such paymaster, if any, growing out of shorts in package of money received by him, which shall be established before them by satisfactory evidence.

Mr. EDMUNDS. Let us hear the report read.

The PRESIDENT *pro tempore*. The report will be read.

The Secretary read the following report, submitted by Mr. COCKRELL, from the Committee on Military Affairs, on the 3d of July, 1876:

The Committee on Military Affairs, to whom was referred the bill (H. R. No. 735) for the relief of Philip Pendleton, have duly considered the same, and submit the following report:

The Committee on War Claims in the House of Representatives, on April 21, 1876, made the following report:

"The Committee on War Claims, to whom was referred the bill (H. R. No. 735) for the relief of Philip Pendleton, report:

"That a bill for the relief of Major Pendleton was reported favorably by the House Committee on Claims in the Forty-second Congress, and the bill was reported by Mr. Blair, chairman of the committee, and passed the House. (See Journal, third session Forty-second Congress, page 371.)

"The bill went to the Senate, was not reached in that Congress, and the papers were returned to the House files. In the last Congress the claim was again presented, and referred to the Committee on Military Affairs, but no action was had, as the papers were withdrawn by petitioner, on leave of the House, April 17, 1874.

"The report cannot be found on the files of the House, or with the papers.

"It appears from the evidence that Major Pendleton was appointed a paymaster in the United States Army in the early part of 1861, and served as such until the month of August, 1864. That, during that time, he disbursed very large sums of money in payment of troops in West Virginia, Illinois, Missouri, Mississippi, Kansas, Nebraska, Wyoming, and Colorado. Much of the duty performed was done under the most trying circumstances. He was in many instances (scarcely ever otherwise, according to the evidence before this committee) ordered to start at once on expeditions to pay troops without being given time to count the funds turned over to him. He was compelled to take the packages of money for the sums marked on them and receipt for such sums, as thus marked, without any opportunity of opening the packages and counting the money to verify their correctness before so receipting. In some instances the packages fell considerably short of the amount they were supposed to contain. Owing to the excitement of the times, and the continual and rapid changes from one place to another, Major Pendleton had no opportunity offered him to have these errors corrected. By the statement of Comptroller Brodhead, as well as that of the claimant and others, it was notorious that many errors occurred in the Treasury Department in putting up and marking packages of money; that such errors were inevitable and unavoidable by reason of the hurry of putting up the packages and the enormous business transacted at the time. Major Pendleton reported these errors to the Paymaster-General at various times, claiming that he had accounted for every dollar he had received, and that he was, by reason of the amounts receipted for by him, apparently behind in his accounts, when in fact he had not received all the moneys so receipted for. After the close of the war, Major Pendleton tried to have his accounts settled; the war excitement was then over, and the Department was not disposed to allow credits without the strictest compliance with law. Although he had reported deficits, he was held to his receipts hurriedly given. By the accounts, Major Pendleton appeared to be indebted $14,374 50. The petitioner alleges and urges that there are errors in the account and settlement with the Secretary of the Treasury greatly to his injury, and prays for leave to have his accounts referred and re-adjusted by the proper accounting officers of the Treasury.

"Your committee, therefore, after a careful consideration of the case—the confusion of the times, the haste and emergencies under which the Secretary was forced to transact the business of his Department, and the risks and difficulties encountered by disbursing officers in keeping their accounts, while in the field and on active duty, in a business-like manner—are of the opinion that Major Pendleton ought to be allowed the privilege of a resettlement of his accounts before the Secretary of the Treasury, and respectfully recommend the passage of the accompanying bill as amended."

Your committee addressed a letter of inquiry to the honorable Secretary of the Treasury, and, through him, received an answer from the Second Comptroller, in which he says:

"In answer to the inquiries of Senator COCKRELL, I have to state that, should the bill become a law, the action of this office would depend upon the evidence furnished. If upon examination of Major Pendleton's accounts under this act there should be found a balance due him, payment could not be made unless the bill is amended so as to carry with it an appropriation for the same."

As this bill makes no appropriation of money, and only authorizes a re-opening and re-adjustment of his accounts, your committee recommend the passage of the House bill.

The bill was reported to the Senate without amendment.

Mr. EDMUNDS. I should like to inquire a little what the bill means. It says that this gentleman is to be paid such losses as shall be just and equitable in his accounts, and afterward it says growing out of shortages in packages. Now, if the bill means growing out of the fact that he is charged with more money than he actually received, that is one thing, and there would seem to be considerable force in it if it were not so long ago; but if it means that they are to take his accounts and allow for shortages in packages after he received them, then it appears to me that it would not be an extremely good bill to pass at any time. The language, it seems to me, is remarkable vague and somewhat mixed. If the point is merely to allow him as a credit such money as he can prove is charged to him that he never received, then, I respectfully submit, the bill ought to say so in very careful language; but if it is to allow the accounting officers of the Treasury to make a general guess over the whole period of his operations and allow him what was short in packages, which may have been in his possession for weeks before they were opened, and would still be an apparent "short" on his side in the packages, I do not think it would be right; and I doubt whether my friend from Missouri who reported the bill would think it to be right. I submit to him that the bill is rather extraordinary or rather loose in that respect.

Mr. COCKRELL. The bill makes no appropriation. It simply authorizes the Treasury Department and the officers of that Department to re-open and re-examine this matter; and if they find on re-examination and re-adjustment that anything is due, they have no authority to pay it, but are to report the facts to Congress and then the whole matter will come up before Congress. It was simply to give them the power to re-open and re-adjust this matter that this bill was reported.

Mr. DAVIS. I am not familiar with all the particulars connected with this case, though Major Pendleton is a citizen of the State which I in part represent. The Senator from Missouri examined the case and reported the bill, which appears to have been carefully examined in the House, and the only object, as I understand, is that Major Pendleton may have his accounts re-adjusted. He thinks, as I understand, that the Government is indebted to him some portion of the $14,000 which he and his sureties had to pay, and the object of the bill is to have a re-adjustment of his accounts. I think it just.

The PRESIDENT *pro tempore*. The morning hour has expired.

Mr. DAVIS. I hope this bill will be disposed of.

Mr. COCKRELL. It will only take a moment to act on this, and I hope it will be continued.

Mr. EDMUNDS. In order to make this bill clear according to what is stated in the report, that it is merely meant to cover, as it clearly ought only to cover, if you are to have paymasters responsible to all, overcharges of money to him that in fact never reached him, because the ostensible amounts in the packages were greater than the amounts really were when he got them, I move to amend by striking out the words "equitable" and "errors and losses of," and to insert the words "true" and "charged as," and striking out the word "or" in the eighth line; so that it will read:

And allow him such additional credits in the settlement of his accounts as, under the circumstances, in the opinion of said accounting officers, may be just and true, for money charged as received by him as such paymaster, and not in fact received.

And then to strike out "growing out of shorts in package of money received by him."

In that way you leave to the accounting officers but one single question, and that is the single question that the report of the committee of the House covers, that the paymaster claims and thinks he can show that the packages sent to him purporting to contain certain sums of money contained on sundry occasions less, so that he ought not to be charged with more money than he actually received. That is the uttermost extent to which I should be willing to go.

Mr. DAVIS. I ask that the bill be read as it would be if amended.

The Chief Clerk read as follows:

That the proper accounting officers of the Treasury be, and they are hereby, authorized and directed to re-open and re-adjust the accounts of Philip Pendleton, late a paymaster in the United States Army, and allow him such additional credits in the settlement of his accounts as, under the circumstances in the opinion of said accounting officers, may be just and true for money charged as received by him as such paymaster, and not in fact received, if any, which shall be established before them by satisfactory evidence.

Mr. DAVIS. I make no objection to the amendment.

The amendment was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

ORDER OF BUSINESS.

The PRESIDENT *pro tempore*. The morning hour has expired.

Mr. BOUTWELL. Mr. President——

Mr. CAMERON, of Pennsylvania. I ask the Senate to take up the resolution which I had the honor to offer yesterday in relation to a recess. I am desirous that the question shall be decided now. I do not care to press the question particularly myself, but I think it had better be settled now, so that we can make our arrangements.

The PRESIDENT *pro tempore*. The Chair will lay before the Senate the unfinished business, which is the resolution relative to the Oregon electoral vote.

Mr. BOUTWELL. I will yield to the Senator from Pennsylvania if the subject he wishes to call up does not give rise to debate. If it does I should prefer to ask the Senate to take action——

Mr. MITCHELL. I desire to know if the Oregon resolution is the unfinished business?

The PRESIDENT *pro tempore*. It is.

Mr. MITCHELL. I am willing to give way to this provided it does not displace the unfinished business.

Mr. BOUTWELL. I yield to the Senator from Pennsylvania on condition that the subject does not give rise to debate.

Mr. EDMUNDS. The yielding cannot be conditional.

Mr. BOUTWELL. Then I must hold the floor.

Mr. CAMERON, of Pennsylvania. Rather than have any debate I will withdraw at once. As I stated before, my only motive is to have the question decided now. We have been in the habit for long years of adjourning about this time to go home to our families, and it has been understood everywhere that we would do so this year; but if there is any unwillingness to go now, very well. I can see no reason why we should not do now what we have done in former years; but I will make no contest about it. I only offered the resolution that the Senate might have the question before them and decide whether they will adjourn or not. I only ask for a vote on it.

Mr. BOUTWELL. I ask that the pending business be laid aside temporarily.

The PRESIDENT *pro tempore*. The Senator from Massachusetts asks that the unfinished business be laid aside temporarily. The Chair hears no objection.

STATUES OF WINTHROP AND ADAMS.

Mr. BOUTWELL. Mr. President, I ask the attention of the Senate to the statues that have been contributed by the State of Massachusetts to the old Hall of the House of Representatives. I ask, first, that the letter of the commissioners of the State to the delegation in Congress may be read.

The PRESIDENT *pro tempore*. The paper will be read.

The Chief Clerk read as follows:

COMMONWEALTH OF MASSACHUSETTS,
State House, Boston, July 10, 1876.

To the Hon. Senators and Representatives of Massachusetts in the National Congress:

The undersigned, under the provisions of chapter 64 of the resolves passed by the General Court in the year 1872, were appointed a commission to procure from Massachusetts artists two statues in marble or bronze, to be erected in the Capitol at Washington, as the contribution of this Commonwealth to the National Statuary Hall, in response to the invitation by Congress in the act approved July 2, 1864.

The commission was directed to procure, in the manner before provided, a statue of Samuel Adams, and a statue of either John Winthrop, John Carver, William Bradford, William Brewster, Miles Standish, or Edward Winslow, as might seem to them expedient, as fitting representatives of the colonial and revolutionary periods.

Under the direction of the resolve the commission contracted with Anne Whitney for a statue of Samuel Adams, and by virtue of the discretion vested in them they procured from Richard S. Greenough a statue of John Winthrop, first governor of the Massachusetts colony. Both the artists were born in Massachusetts, and both statues are in marble.

Having been received and accepted, the commission has caused the statues to be placed in the Statuary Hall of the Capitol ready for presentation to the nation.

The commission congratulate themselves that they are able to present the contribution of Massachusetts in the centennial year of the events with which the fame of Adams is so inseparably connected and which were the natural and glorious fruitage of the labors, sacrifice, and doctrines of Winthrop and his contemporaries of the Plymouth and the Massachusetts colonies.

Having progressed thus far in the discharge of the duty imposed upon us by the Commonwealth, we respectfully request you, its representatives in the national Congress, to call to the attention of that body the response of this State to its gracious invitation in such time and manner and with such formality as usage and propriety may seem to you to require and your good taste and judgment may commend.

And we subscribe ourselves, very respectfully and truly, your obedient servants,

W. B. WASHBURN.
HORACE H. COOLIDGE.
JOHN E. SANFORD.
GEORGE F. RICHARDSON.
ERASTUS P. CARPENTER.
FREDERIC W. LINCOLN.
JOHN B. D. COGSWELL.

Mr. BOUTWELL. Speaking for my colleague as well as for myself, in behalf of the Commonwealth of Massachusetts, and by the authority of its commissioners, we now present to the Senate and to the country the statue of John Winthrop, the father, founder, and first governor of the Puritan colony of Massachusetts; and the statue of Samuel Adams, the earnest advocate, and most logical exponent and defender of the principles of the American Revolution.

The history of Massachusetts begins with the landing of the Pilgrims at Plymouth in the year 1620, and gathering as in one view all those who in the long period of two and a half centuries have contributed to the prosperity, asserted the liberties, defended the rights, supported the principles, advanced the honor, or extended the renown of that ancient Commonwealth, John Winthrop and Samuel Adams have been selected as most worthy of place in the illustrious group now assembling in the old Hall of the House of Representatives of the United States.

The first choice was made from the men of the colonial period of our history, and the second from the men of the revolutionary era.

In the selection of a person to represent the colonial period there was a difference of opinion between the descendants of the Pilgrims and the descendants of the Puritans; but when the concession was made to the Massachusetts colony there was no difference as to the person entitled to the high distinction of the first choice, and John Winthrop stands as the representative not only of colonial Puritan Massachusetts, but in his principles, ideas, and purposes in government he stands as the representative of the Commonwealth of Massachusetts as it has been, as it is, and as it ever must continue to be.

The Pilgrims came to Plymouth to secure and enjoy religious freedom; the Puritans came to Salem and Boston to found a Christian commonwealth and to extend a Christian civilization.

The Pilgrims had a higher idea of the rights and dignity of man; the Puritans had a broader view of the power of Christianity in the public affairs and concerns of mankind. The success of the Pilgrims has been full and complete, not only within the little colony which they founded at Plymouth, but for all the English-speaking States of America.

As religious liberty is the basis of the higher and purer forms of Christian civilization, the Puritans were compelled, finally, to accept the leading idea of the Pilgrims as a part of their public policy and essential to their undertaking. Thus the principles of the Pilgrims and the purposes of the Puritans were blended into a public policy of religious and political freedom and equality, destined to be as extensive as the civilization and as enduring as the institutions of this continent.

In 1630 the Puritans in England were a class, but not a sect. They sought a better life, but they did not demand unity of opinion in religious affairs. Generally, they condemned the practices and ceremonies of the Church of England, but many of them accepted its creed and participated in its sacraments.

Winthrop and his associates in their letter of farewell say we "esteem it our honor to call the Church of England, from whence we rise, our dear mother, * * * ever acknowledging that such hope and faith as we have obtained in the common salvation we have received in her bosom."

In 1630 the Puritans were a large minority, if they did not constitute a majority, of the people of England; but they had not then sought power nor agreed upon a public policy. In 1640, ten years after Winthrop's departure, the great contest between the church and the Puritans, the king and the people, became active and the peril imminent.

The people protested against the Catholic and against the English Church. Fifteen thousand of the inhabitants of London and seven hundred clergymen of the established church asked that the powers of the bishops and the character of the ceremonies might be radically changed. These concessions were made in form and to some extent in fact.

Political changes in the nature of revolution followed. Strafford was executed, the court of high commission was broken up, the Star Chamber was abolished, the judicial department was separated from the Crown, taxation by the king was relinquished, all ending in the trial and execution of Charles I.

The reign of English Puritanism was brief; but brief as was its career and sudden as was its fall, it left traces of its influence and the footmarks of its power not only in England but in France, Germany, Switzerland, Spain, and the low countries, in the West Indies and the colonies on the continent of America.

The administration of Cromwell forms the most brilliant epoch in British history. He advanced the power and elevated the name of his country wherever it was known. His qualities as a statesman, soldier, and diplomatist were respected or feared in Western Europe and in the European settlements of America. His policy, compared with that of the past, was liberal and wise. He broke at once from the leading-strings of kingcraft and monopoly and put the government of England upon a more liberal policy, and prepared the people to receive more liberal ideas. But twenty years spent in strife, in civil war, in the discussion of questions of policy, foreign and domestic, had robbed Puritanism in England of its power as the advocate of a better religion.

Cromwell left England greater than he found it, and the England of to-day owes much to his administration; but the influence of the puritanism of the seventeenth century is no longer visible in the politics or civilization of that country. Its moral power was destroyed in the effort to establish its authority by force.

In the little colony of Massachusetts its authority was not questioned seriously, either in the church or the state; and never on this continent did pritanism seek to propagate its opinions or gain power by arms. In one particular the Puritans have been misunderstood.

They accepted the truth that there might be a state without a king or a bishop, but they did not realize the kindred truth that there might be a state without a church and a creed. They did not deny the right of private judgment in religious matters, but in their system of government the state and the church were one, and whatever disturbed the peace of the church, in their view, also endangered the existence of the state. If the otherwise fair fame of the Massachusetts Puritans suffers from the charge of persecution, it is to be said in palliation, if not in justification, of their conduct that it was not their purpose to compel others to conform to their opinions, but to save their state from the dangers to which they thought it exposed.

Of Winthrop even more might be said. In 1642, and in his capacity as governor of the colony, he received with kindness and gave aid and comfort to one La Tour, a Roman Catholic, who arrived at Boston from Rochelle, in France. His conduct was the occasion of severe criticism, but in his defense he says "If there were not other sins which God may have a controversy with us for, I should little fear any harm from this."

But it can with truth be said of the Puritan colony and of its ad-

ministration that the public-school system established in 1642 is based upon the distinct assertion of the right of private judgment in religious matters. If we consider the public school as the only contribution made by the Puritans, it is in the fact and in the ideas which it embraces, the most important contribution to the human race ever made by any set or body of men. It is at once and always better security than can be otherwise obtained for freedom of opinion in all things, for equality of rights in all the relations of life, for the diffusion of the spirit of justice, and a capacity for right-doing without the intervention of law, and at last for governments of the people, by the people, and for the people.

I cannot doubt that John Winthrop is the most important figure in American colonial history. His fortune in England was ample to supply the wants and to support the house of a country gentleman. He was in the practice and in the enjoyment of the income of an honorable profession. When he identified himself with the colony and accepted the office of governor, the most important step, indeed the saving step, was taken in support of the enterprise. During the winter of 1629–'30 one-fifth of the settlers at Salem and Charlestown died of exposure and disease. The survivors did not number more than three hundred, and these were broken and disheartened, and filled with the gravest apprehensions for the future. Several of the settlements had been abandoned, and the very existence of the colony was in peril. Winthrop brought with him about one thousand persons, chiefly immigrants from Suffolk county, and they were re-enforced in the next twelve months by at least a thousand more.

These accessions were from the educated, competent, self-sustaining classes. In six years, and in their capacity as a colony, they founded and organized the college at Cambridge. In six years more they passed the memorable ordinance establishing a system of universal education which is in itself an effectual refutation of the exaggerated eulogy which Buckle has pronounced upon Adam Smith. In thirteen years after the arrival of Winthrop, upon his suggestion, and largely under his guidance, the colonies of Massachusetts, Plymouth, Connecticut, and New Haven entered into a union for mutual protection, which was the type of the confederation and of the Union of the American States.

Winthrop was governor twelve years of the nineteen years of his life in the colony, and there appear to have been but slight interruptions to his authority in the management of public affairs. His religious character and life, his devotion to the interests of the colony, his wisdom, his spirit of conciliation, his power of statement, and his rare ability in argument gave him the post of leader without a rival. Indeed, Washington is not more exalted above his associates of the revolutionary period than is Winthrop above his associates of the colonial.

The statue of John Winthrop is the contribution of the State of Massachusetts. If the influence of his life and opinions and of the institutions which he aided in founding were limited to that Commonwealth it would be an inadequate recognition of the value of his example. The little colony which Winthrop founded was the germ of a new civilization—a civilization whose chief force lay in ideas. These ideas have subjugated states, advanced across a continent, and are now in actual contact with the older civilization of the Asiatic world. In the opinion that this new civilization is an improved civilization we can assert that other states and even other countries are bound with Massachusetts to recognize the services and to extend the fame of John Winthrop.

Mr. DAWES. Mr. President, there has been no hesitation in the delay of Massachusetts to respond to the invitation of the nation to furnish for the old Hall of the House of Representatives, "statues of two of her deceased citizens illustrious for their historic renown or distinguished for their civic or military services and most worthy of such a national commemoration."

It was no easy task for her to so execute this national commission as to command the approval of the present, and bear the test of future generations, as she turned for that purpose to the long line of her illustrious citizens who had closed lives full of immortal deeds, and conspicuous in history for the rarest virtues.

It was only after much deliberation that she made her selection of the first colonial governor of Massachusetts Bay, illustrious both as the founder of her civil polity and as the father of a long line of her citizens distinguished in each successive generation for eminence in talent, virtue, and patriotism—and still most potential among her people for all that is good and worthy of renown—and with him one, *primus inter pares* among those great leaders who, a century and a half after her Puritan governor, guided that colony and her twelve sisters through revolution to free and independent States and to their position as one among the nations of the earth. Massachusetts accordingly presents this day to the nation, to be preserved among those of the illustrious dead of her sister States, in that old hall, itself immortal, the statues of John Winthrop and Samuel Adams, the one first in her colonial, and the other first in her revolutionary history. In the discharge of the agreeable duty thus imposed by her upon her representatives here, it has fallen to my lot to speak of the character of Samuel Adams.

He was born in Boston on the 16th of September, 1722, O. S., in the third generation, in direct line from that John Adams who was the great-grandfather of the illustrious patriot and citizen bearing the same name, the second President of the United States. In 1736 he entered Harvard College, and graduated in regular course in 1740; commenced, but did not pursue, the study of the law, entered a counting-house and adopted mercantile business for his pursuit in life, from which, however, he was early turned by the stirring events destined soon and completely to absorb his whole being and control his whole future. He was twice married; first to Miss Elizabeth Checkly, and afterward to Miss Elizabeth Wells. By the former he had five children, only one of whom survived him. He died in the town of his birth, as he had always lived, in poverty, October 2, 1803, at the age of eighty-one years.

Such is the simple and naked record of his birth, life, and death, carefully and unostentatiously traced, as is the custom of the New England family, in the Bible that comes down from father to son, preserving between the books of the Old and New Testaments the genealogy of the families through which it passes, and whose religious character it feeds and supports.

If from this simple page we turn to the *story* of his life, it will be found to have been one of the most eventful, influential, and positive of all the lives of the great men who, under Providence, molded and determined the destiny of this nation, out of small beginnings, through feeble instrumentalities, and sometimes by mysterious agencies, but at all times by a wisdom and forecast, by a consecration and sacrifice little short of superhuman.

As his life began, so did his work, earlier than that of any of those who worked with him to the final consummation. As early as 1743, thirty-three years before the Declaration of Independence, and when the surface of absolute British rule on this continent had not as yet been ruffled by the slightest breeze of popular discontent, on the occasion of his master's oration at college, he, then just entering on his majority, disturbed the repose of the colonial governor and his subservient council by maintaining the thesis that "it is lawful to resist the supreme magistrate if the commonwealth cannot be otherwise preserved." Thus early in his own life and earlier in that of the nation he helped to create, for it was before the reign of George III had begun, while Washington and John Adams were mere children, and Jefferson was an infant just born, did Samuel Adams, with a forecast then all his own, prepare the way for coming events whose shadow had not yet appeared. The spirit of the Revolution seemed to have been born in him and to have been cherished as a passion from his infancy. Yet he was the most patient of men and awaited its development in others with the calmness and faith of a prophet.

The fire and zeal of the youth were held in check by the wisdom and prudence of maturity. He took on that day only the first step, the sacred *right* of revolution. But it was a step taken, taken firmly and intelligently, and thereafter maintained against all comers. From that day he seems to have consecrated himself to this new mission. Scarcely a trace of him remains elsewhere or in any other pursuit. An ineffectual effort at the bar, an unsuccessful mercantile venture, and all the rest of that remarkable life was one harmonious growth and wonderful development of the germ which that day put forth its first sign of life. And how marvelously it took root and grew in that genial soil! Though beset on all sides with discouragement and obstacles, confronted with opposition and loaded with obloquy, in perils often from open foes and among false brethren, yet his heart never failed him in his work, and never for an instant did he give over effort till the final and glorious consummation gladdened his eye and ravished his soul.

Nevertheless, for thirty long years from that day it was mostly a work of preparation, ripening only by slow progress and at an almost imperceptible pace into organization, leading ever, though not always by the open way, to that actual resistance from which there could be no retreat, and whose successful issue he never doubted. These were the most remarkable and eventful years of his life, and of the life of any American save Washington yet born. Indeed every hour of revolutionary research makes it more and more apparent that had there been no Samuel Adams, there had been no Washington. The Father of the Revolution must needs precede the Father of his Country.

In his work he was not always understood and was often misunderstood, but he stopped not to explain and wasted no time or strength in vindication.

Recognized by the unerring instinct of the people, from the moment that progress ceased to be silent and unseen and the gathering forces assumed order and direction, unappointed and without other commission than comes in great emergencies from commanding talent, unfaltering faith, and cloudless vision, he stood at all times at the head of the column pointing the way. He constantly encouraged the wavering, urged on the bold, and dispelled the clouds that darkened the path, till the surcharged elements of revolution broke with the clash of arms on the 19th of April, 1775.

In the early morning of that day, forewarned, he left, in company with John Hancock, his retreat in the town of Lexington as the approaching tread of pursuing soldiers was heard in the distance. But the hour of resistance had come and the curtain seemed for a moment to lift from the future, and its coming glories to open before him. Turning toward the first gray of the morning, as it began to light up the eastern sky and direct their unattended footsteps, he exclaimed to his companion, "What a glorious morning is this."

In that period of his life which preceded the open outbreak of hostilities there can be no doubt, I think, that his most important work was done. On this his fame will in the future rest. As its difficulties and complications, its delicate and doubtful methods, its inces-

sant labor and sleepless vigilance, all dominated by one great idea, and pressed forward with an unflinching courage, shall come to be better known by the student of the causes and instrumentalities of which the Revolution was born, so will its luster constantly increase. No adequate sketch even of that work can be attempted here.

Bancroft has truly said that—

It is impossible to write the history of the American Revolution without the character of Samuel Adams, and it is impossible to write the life of Samuel Adams without giving a history of the Revolution, for he was the father of the Revolution.

A bare outline would extend these remarks beyond justifiable limits and only a few prominent points can be touched upon in years crowded with efforts the most efficient, well directed, and successful in awakening, educating, organizing, and inspiring the spirit of the Revolution.

He had scarcely attained his majority and stirred the blood of his rulers by the "incipient treason," as it was called, which lurked in his last college effort, when, recognizing the press as the most essential and efficient instrumentality in any great work dependent upon the popular will, he induced a few of his political friends to form a club for the special consideration of public affairs. By writing and debate and the establishment of a newspaper he endeavored to disseminate among the people the opinions and discussions of this club. The Public Advertiser, whose first number was published in Boston, January 1, 1748, thus became the organ of the first political association in the colonies for the promulgation of those principles which led in after years to the American Revolution.

Samuel Adams was the leader and master spirit among this bold and efficient band of pioneers. He was henceforward a most able political writer, not only for this paper, but in the columns of every other paper in New England to which he could gain access, and over a great number of different signatures, that he might not appear to the people to be working single-handed, but as one of many able and cogent writers upon subjects every hour pushed home to the public conscience and judgment with increasing force. His political writings during this period would, if it were possible to rescue them from oblivion, fill many volumes and would now be of immense value to the student of political history and to a just estimate of the men and measures of that epoch. But from various causes the larger part of this invaluable treasure has been lost. The great variety of names under which they appeared from time to time, and the necessity of concealment to the personal safety of their author growing more and more an object of anxiety and care as troubles thickened, and the carelessness of subsequent custodians having no conception of their value, have all contributed to the loss of a large part of the writings of the ablest political philosopher and statesman of that critical and important period. But enough of them have survived all the casualties which their author's fame encountered in revolutionary times to justify the high estimate which the future generations of the Republic are sure to put upon them.

It was the wont of the towns in the Massachusetts Province to furnish their representatives to the general court with written instructions, some of which were very elaborate and able. Those for the year 1764 from the town of Boston were from the pen of Mr. Adams, and were remarkable for the boldness with which new ideas were enunciated and the measures suggested for their maintenance. Says Mr. Adams:

We therefore, your constituents, take this opportunity to declare our just expectations of you that you will constantly use your power and influence in maintaining the invaluable rights and privileges of the province of which this town is so great a part, as well those rights which are derived to us by the royal charter as those which, being prior to and independent of it, we hold essentially as free-born subjects of Great Britain.

And the instructions conclude with this, in the light of subsequent events, most important suggestion:

As His Majesty's other North American colonies are embarked with us in this most important bottom, we further desire you to use your endeavors that their weight may be added to that of this province, that, by the united application of all who are aggrieved, all may obtain redress.

This was in 1764, ten years before the first meeting of the colonies in Carpenter's Hall in consultation for the common welfare, and is believed to be the earliest suggestion of the Union through which all our glories have arisen. In the next year he held the general court of the colony up to resolve "that there are certain essential rights of the British constitution of government which are founded in the law of God and nature, and are the common rights of mankind;" and "that the inhabitants of this province are unalienably entitled to these essential rights in common with all men, and that no law of society can, consistent with the law of God and nature, divest them of these rights."

These now fundamental doctrines of our polity were then so new that they "startled the whole provice," and we are told that they were received in England as the "ravings of a parcel of wild enthusiasts."

His pen was constantly active in all the following years, feeding the growing popular excitement and leading the public mind and heart unconsciously for a time, perhaps, but steadily and step by step up to the one great act from which there could be no retreat with life and honor.

In 1768, Mr. Adams prepared the celebrated letter of instructions from Massachusetts to her agent in London, which was published in England as the "true sentiments of America," and also addresses in the name of that colony to the ministry and to the friends of America in the mother-country, and a circular letter to each legislative assembly on this continent. Thus all along, and almost in the same breath, did he exhort and encourage the people at home, enlighten and remonstrate with the Government abroad and appeal to the sister-colonies for union in resistance. As early as this year, eight years before the final declaration, Mr. Adams became convinced that the policy of Great Britain toward the colonies was unalterable and that independence or slavery was the alternative before the Anglo-Saxon race on this continent. He did not hesitate himself nor for a moment doubt the choice of the people, so soon as they should see clearly as he did that the choice must be made. From that hour, more or less openly and positively, but never faltering or retreating, he addressed himself to the removal of all doubts and to the clearing of the mists from all visions. How far in advance of all others he was in this great work those can judge who remember that John Adams and Jefferson for years afterward were laboring for a solution, short of separation, of the questions which had arisen between the mother-country and her colonies, and Washington himself confessed, only two months before the Declaration was adopted, that when he took command of the Army, July 2, 1775, he "abhorred the idea of independence."

When the massacre of unarmed citizens in the streets of Boston by British troops quartered in town by a cowardly governor had aroused the people to a pitch of excitement bordering on madness and had crowded the Old South Church with an assembly of men burning with indignation, Samuel Adams was put at the head of a committee to demand again of the governor, in the name of an outraged people, a removal of the troops, which that morning he had refused to the town authorities. The meeting in solemn silence awaited the result of the mission with intense anxiety. The first report that one regiment might be removed had been met by a response from three thousand voices, making the very roof of that venerable edifice to shake, that every soldier must depart.

Mr. Adams, at the head of a new committee, returned to deliver to the quaking governor this response. The scene in the council chamber where he presented to the governor and the commanders of the regiments the reply of the meeting is the most impressive scene of all the Revolution. The orator stretching forth his hand, like Paul before the trembling Felix, said:

It is the unanimous opinion of the meeting that the reply to the vote of the inhabitants in the morning is by no means satisfactory; nothing less will satisfy them than a total and immediate removal of the troops. If you have power to remove one regiment, you have power to remove both. It is at your peril if you refuse. The meeting is composed of three thousand men. A thousand men are already arrived from the neighborhood, and the whole country is in motion. Night is approaching; an immediate answer is expected. Both regiments or none!

There was no mistaking this determined spirit, and the governor, quailing before it, gave the order for the removal of the troops.

The artist has chosen for reproduction in marble, from among all the eventful scenes in the life of this remarkable man, the moment of the utterance of these words, the reply to which was awaited by Mr. Adams, calmly, with folded arms and with compressed lips and firmly knitted brow. And to all coming generations, while one stone shall remain upon another around that historic Hall, shall this marble thus commemorate the courage and heroism to which British authority first surrendered on this continent.

But in the years that immediately followed the great power of Mr. Adams as a leader of the people was even more manifest than when he appeared, in the morning of that eventful day controlling the tempest of popular passion in Faneuil Hall and the Old South Church, and in the evening confronting and overawing royal authority and insolence. Great depression followed this intense excitement. Reaction had set in and the people had begun to falter. Elliott said that "it might be as well not to dispute in such strong terms the legal right of Parliament." James Otis, jealous of Samuel Adams, placed obstacles in his way, and even John Adams, retiring from the Colonial Legislature as if to private life, ceased to write in the cause, "disgusted with the apparent subsidence of the patriotic spirit." The Legislature itself, abandoning the lead of Adams, followed that of the doubting and hesitating, and he was left in a minority. The loyalists were exultant and the patriots disheartened. Then the resolute soul of this great man lifted him to the height of the occasion, and with pen and voice and personal argument, mid obstacles almost insurmountable, he kindled afresh the fires of the Revolution and inspired with new animation and hope and courage the desponding spirit of patriotism.

The people rallied, the dead-point was passed, and the danger was escaped. A weak man may float with the current, a stout one only can stem it.

From this time forward he labored incessantly for union, as in one common cause, of all who complained of despotic rule; first for a general league of Massachusetts towns, and later, as the cause broadened, in an earnest and formal call for a Continental Congress.

In March, 1774, more than two years before the immortal Declaration, in the spirit of prophecy he wrote to Arthur Lee, in England, that by persistency of the British government in its course "will be brought to pass the entire separation and independence of the colonies."

Hutchinson had, nearly a year before, reported him to Lord Dartmouth as the chief incendiary, "determined to get rid of every governor obstructing their course to independency."

He stands out in the history of the progress of the great struggle, not only as among the very earliest in resistance to British aggression,

but the first to see the futility of all attempts at compromise, and to proclaim that the hour for separation had come. He moves in the Colonial Legislature the appointment of delegates to a Continental Congress in Philadelphia. The royal governor in alarm attempts to dissolve the assembly, but the door is locked in his face and the key is in the pocket of Mr. Adams. His leadership was as well understood in England as at home, and it won for him with Hancock the immortal distinction of being exempted by name from an otherwise general offer of pardon upon submission to royal authority. In all the sessions of the Continental Congress he was, as at home in Massachusetts, a leader in counsel and in labor, guiding constantly toward and striving ever to reach that day when formal and irrevocable proclamation of independence could be made.

He bore a most conspicuous part in the final production and adoption of that great instrument, and affixed his name to it as the fruition of years of prayer and struggle.

He returned to Massachusetts as poor as when contributions from unknown sources had furnished the very clothes which he wore in Philadelphia. And yet he had scorned the tempter with the gold and the peerage of England in his hand. Incessant devotion to the public service and entire consecration of every energy to the cause of his country had wrought upon him poverty and need. He found himself without even the shelter of a roof he could call his own. He struggled with his necessities as best he could, but failed in his advanced age to better his fortunes and continued to the end of his life to lack many of its comforts.

But he could not be kept from the service of the people, and entered at once into that of his native State, first as president of its senate and later as its governor for three successive terms, and retiring only under the burden and at the command of advancing age.

Mr. Adams was thoroughly democratic in all his instincts and faith. His trust in the people was implicit and unbounded. His political education and his early training as a statesman were in the New England town-meeting the nearest approach to the ancient democracy of any modern political institution, and largely through it he had seen wrought out the wonders of the Revolution. Therefore that form of government for the future States which was the nearest approach to the democratic ideal won his warmest support. He accordingly, with others of the same school, shrank from the present Constitution and was opposed to its ratification by Massachusetts as too centralizing and as cramping the powers and functions of the States. It was only when that ratification was to be accompanied with proposed amendments, giving further guarantees to the liberties of the people and powers of the States, that he finally saw his way clear to advise its adoption by his native Commonwealth.

The sincerity and weight of that advice contributed much to the ultimate adoption of that instrument not only by Massachusetts but by a sufficient number of her sister-States also to make it ultimately the organic law of the land.

This tendency of his mind led him directly, in the division of the country at the end of Washington's administration into parties upon the different rules of construction of the Constitution and consequent differences in policies of administration, to take the side of Jefferson against his own kinsman and co-laborer, John Adams.

Age alone prevented him from becoming a member of Jefferson's first cabinet. A temporary estrangement between the two Adamses followed this political divergence. It was, however, soon forgotten, and the Ex-President, surviving his elder compatriot many years, never stinted his appreciation and commendation of that undischarged debt this nation owes to him who was leader in all the great works of the Revolution.

Mr. Adams died at the age of eighty-one, in the fullness of his years and with his work and fame complete. As they pass in review at the end of the century which their crowning glory ushered in, how grandly they stand out, foremost in the front rank! His was a great, and will ever remain, a historic character, indissolubly linked with every critical, decisive, or glorious step in the progress of the Revolution, from the feebleness of its inception to the grandeur of its consummation. All his life-work led him through ways hitherto unmarked by the footsteps of the statesman and beset with perils, and he walked under a burden of responsibilities few if any others ever bore. On a single misstep hung the life of the nation; yet, in that wisdom and forecast, that boldness and strength, that power at his will alike to inspire and restrain, to stir the popular heart and to hold it in check—essentials all to the success of the great work on hand—he had no equal among the chiefs of the Revolution.

Massachusetts has been slow in doing honor to her illustrious son. But if she comes late to a public manifestation of her gratitude and appreciation she has chosen well the manner and the occasion. At her command, one of her own artists, a lady of rising fame and great promise, has with marked success reproduced, in imperishable marble, the stately form and commanding features of the great popular leader.

One hundred years in the history of the Republic he contributed so much to create have been numbered, and now his native Commonwealth is proud to bear witness at once to his love for her and to his greater love for the nation of which she was forever to be a part. To-day, in acknowledgment of a debt that can never be discharged and full of pride in the name and fame of Samuel Adams, Massachusetts presents his statue to the United States, to be kept in perpetual trust as a memorial of her gratitude and a pledge of her fidelity to the cause of self-government, to which his whole life was consecrated.

Mr. INGALLS. Mr. President, I offer the resolutions which I send to the desk to be read.

The resolutions were read, as follows:

Resolved by the Senate, (the House of Representatives concurring,) 1. That the statues of John Winthrop and Samuel Adams are accepted in the name of the United States, and that the thanks of Congress are given to the State of Massachusetts for these memorials of two of her eminent citizens whose names are indissolubly associated with the foundation of the Republic.

2. That a copy of these resolutions, engrossed upon parchment and duly authenticated, be transmitted to the governor of the State of Massachusetts.

Mr. INGALLS. There have been citizens of Massachusetts more illustrious for their historic renown, or from distinguished civic and military services, than those whom she has chosen as worthy of this national commemoration.

The stranger who pauses before the memorial marbles in future years may forget that Sumner and Wilson had so lately departed from this Chamber that they could not become competitors for admission to that silent society of fame; but he will remember that our predecessors had heard the majestic periods of Webster, and the gorgeous rhetoric of Choate and Everett; that upon the floor he treads had fallen "the old man eloquent" at the close of a memorable career. The effigies of the revolutionary heroes around him will recall the memory of Hancock, the first signer of the Declaration of Independence, and of Warren, who died at Bunker Hill; while against the dark and stormy background of the desolate colonial epoch will appear in dim procession the names of Bradford, Winslow, and Miles Standish, and he will ask why the old Commonwealth turned away from these conspicuous sons, and selected for this perpetual, enduring, and eternal honor, as the representatives of her birth and growth; the exponents of her purposes and her convictions; the apostles of her mission and the prophets of her destiny, these less illustrious citizens—John Winthrop and Samuel Adams.

The race to which we belong is characterized by resistless energy. Descending the slopes of the great central Asiatic plateau in prehistoric times, it has moved westward through Europe by some mysterious impulse, subverting empires, displacing populations, substituting languages, imposing new policies and institutions, and giving rise to an organic series of nations which have succeeded each other like the annual harvests of the earth. It was not till the seventeenth century that this great column in its prodigious migration reached the shores of America, and found here for the first time in its eventful march an unlimited field for unrestricted growth and development. To an unoccupied continent, whose river-valleys and mountain ranges compel national unity, it brought the ideas which it has preserved amid all vicissitudes; ideas whose vigor had successfully resisted the modifications of climate, soil, and physical conditions; which had defied repression, and when restrained by power too great to be overcome had preferred deserts and inhospitable solitudes rather than enervating submission to tyranny. Refusing to adulterate its blood with inferior races, it had not degenerated nor lost its intellectual methods and traditions. It loved to make laws and then to render obedience to them. It preferred charters to the sword. It was profoundly religious and expressed its faith in solemnities and creeds.

Since the Christian era there have been no great political movements that have not had their impulse in religious sentiment. The idea of a Messiah has preserved the national existence of the Jews during two thousand years of persecution, and of dispersion to the uttermost parts of the earth. The dogmas of Mohammed changed the destiny of three continents. The protest of Luther against Romanism gave direction to the whole current of modern history. The Reformation gave the Commonwealth to England and the Puritan to America.

Foremost among these pioneers was John Winthrop, a voluntary exile, seeking unrestricted liberty of conscience. The little community that gathered around him necessarily assumed political relations. The idea of personal freedom and independence permeated the fabric and became its controlling impulse. As new colonies crossed the sea, the necessities of defense compelled an association upon the same principle, and when at last the exactions of England grew again to be intolerable, Samuel Adams became one of the apostles of the political gospel that all men were created equal.

In the interval that has followed the final removal of exterior obstacles the ideas of Winthrop and Adams have advanced with inexorable vigor, subduing a continent for their habitation, and molding with despotic sovereignty the institutions and laws of forty millions of men. It has been said that the Puritans came to America to worship God according to the dictates of their own consciences, and to compel everybody else to do the same. Whether this be true or not, it is certain that the political system based upon the ideas of Winthrop and Adams has been inflexibly aggressive and intolerant. During the early years of the Republic it regarded with increasing discontent the advance of human slavery. Its opponents were not warned in time. Democracies are generous but they are jealous. They endure much but when they are wronged they sometimes take more than their due. When dissatisfaction assumes the form of resentment, one volume of a nation's history is closed and another is opened.

The irrepressible conflict was proclaimed and the contest waged with increasing intensity. Political complications deferred the crisis till the issue was precipitated upon the plains of Kansas, and John Brown of Osawatomie there raised anew the standard of universal freedom under which he marched to Harper's Ferry, and which the nation seized at the gallows of Charlestown and bore in triumph to

Appomattox Court House. Whatever may be said of the policy or expedience of these great movements, history will not fail to record that those who inherited the political principles of Winthrop and Adams were inexorably logical and courageous, and that they shrank from none of the consequences of their convictions. They were not only determined to be free themselves, but that all who were accessible to their influence should be free also whether they wanted to be or not. They promptly relinquished the rights of conquerors, and admitted the vanquished to the full exercise of unrestricted citizenship. Following their doctrines to their logical conclusions they made citizenship national; they enfranchised the illiterate millions who had been relieved from bondage and intrusted them with the ample prerogatives of freedom. It was a terrible experiment. Self-government was never subjected to such a stress before. Whether it will survive the shock remains to be determined. The portentous emergency that confronts us to-day is one of its inevitable results, and it will require the active co-operation of all the higher forces of society to prevent destructive organic changes.

The tendency of the democratic idea in America has not been destructive as in other countries. It has not striven to tear down, but to construct and build up; to repair and not to waste. It has always exhibited an impulse toward the coalition of all its elements. Whether in the feeble days of the colonies or the succeeding era of our growth and glory, this instinct has always been visible and it has developed into a purpose whose conservative and beneficent influence cannot be overestimated, not only in the present but in all future crises that may threaten the nation. This purpose is national unity, the determination that the United States shall be a great continental Republic, powerful and indissoluble, offering a refuge and asylum to all who love liberty, and sovereign among the nations of the world. To realize this sublime conception incredible sacrifices have been made. Personal rights for a long period were cheerfully surrendered. Armies and navies have been organized for military and naval operations commensurable in magnitude with the great fields upon which they were conducted. Hundreds of thousands of lives have been sacrificed and hundreds of millions of treasure expended to establish the national integrity. It is not too much to say that this purpose is so deeply imbedded in the convictions of the American people that it can never be abandoned. It has cost too much to be peacefully surrendered. We are now in a transition period. We have acquired a habit of subordination, and may confidently anticipate the acknowledged supremacy of law.

In view of these considerations, this interruption of the proceedings of the Senate in the presence of questions of momentous interest ceases to be inopportune or formal. It is an admonition of profound significance. Massachusetts turns from her warriors, her statesmen, her orators, and acknowledges her supreme allegiance to those potential ideas which for two hundred and fifty years have defined the path of her progress. She announces that against the temptations of policy or place or expediency she shall recognize morals as an element in politics and the golden rule as a maxim of government; that in the future as in the past she will insist upon national integrity, equality before the law, universal education, the elevation of the masses, the protection of labor, the promotion of the material interests of the country, and the continued activity of those great moral forces which underlie true national grandeur.

I move the adoption of the resolutions.

The resolutions were adopted unanimously.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. GEORGE M. ADAMS, its Clerk, announced that the House had passed the following bills and joint resolutions; in which it requested the concurrence of the Senate:

A bill (H. R. No. 2606) for the relief of Catherine Harris;

A bill (H. R. No. 4188) making appropriations for fortifications and for other works of defense, and for the armament thereof, for the fiscal year ending June 30, 1878, and for other purposes;

A bill (H. R. No. 4246) to provide for the holding of terms of the district and circuit courts of the United States at Bay City, Michigan;

A bill (H. R. No. 4248) for the relief of Emanuel Klauser, late corporal of Company H, Fifty-fourth Regiment Illinois Volunteers;

A joint resolution (H. R. No. 174) authorizing the issue of clothing to Private Patrick Noonan, Company G, Fifth United States Infantry;

A joint resolution (H. R. No. 175) authorizing the issue of clothing to Company A, Second Regiment United States Cavalry;

A joint resolution (H. R. No. 176) authorizing the issue of clothing to Private Francis Hegner, Company F, Seventh Cavalry, and Private John C. Collins, Company G, Seventh Cavalry; and

A joint resolution (H. R. No. 177) authorizing the issue of clothing to Sergeant Herman Theune, Company I, Twenty-third United States Infantry.

The message also announced that the House had passed a concurrent resolution for the printing of 4,000 copies of the report of R. W. Raymond on mining statistics for 1875, with the accompanying engravings, in which the concurrence of the Senate was requested.

ELECTORAL VOTE OF OREGON.

Mr. MITCHELL. I call for the regular order.

The PRESIDING OFFICER, (Mr. WRIGHT in the chair.) The regular order is called for, being the resolution directing an inquiry as to the eligibility of J. W. Watts as an elector for the State of Oregon and the circumstances attending the appointment of electors in that State.

Mr. MITCHELL. Mr. President, this resolution has been under discussion from time to time for something over one week. I have made no particular effort to bring it to a vote, but I trust the Senate, if the discussion is through or if it can be finished within any reasonable hour to-day, will remain until a vote is taken. I consented that the matter might go over yesterday from the fact that the Senator from Illinois [Mr. LOGAN] desired to speak, and I was very anxious to have him speak. He is still laboring under physical disability and is unable to be here. So far as I am concerned, I intend to take but very little time in addition to that already taken. There are a few things, however, to which I desire to call the attention of the Senate in reference to this matter before the vote is taken, and I allude particularly to the statement made by Governor Grover in justification of his action in regard to the certificates that were issued to presidential electors in Oregon.

It is not often that a judicial officer or a person acting legitimately in a judicial capacity feels constrained, after he has rendered his decision and delivered his opinion, to come out in a card in the public papers and give reasons in justification of his course. It is perhaps, however, not so strange that when a ministerial officer, clothed solely and purely with ministerial powers transcends his plain and explicit commission and assumes judicial functions, exercises judicial functions, passes upon rights, adjudicates upon questions, he should feel called upon to come out in a card over his own signature and give reasons for the action taken by him. That seems to be the case in this particular instance. I hold in my hand what purports to be, and which I have no doubt is, a card over the signature of Governor Grover, of Oregon. It is published in the New York Herald of the 8th of December, and it is to some extraordinary statements in that card that I desire, before a vote is taken on this resolution, to call the attention of the Senate very briefly. Governor Grover in that card uses this language in part justification of his course:

That instrument—

Referring to the Constitution of the United States—

declares that no person holding an office under the United States shall be an elector. J. W. Watts, one of the electors voted for in Oregon, was on the 7th day of November holding an office of trust and profit under the United States, to wit, postmaster at La Fayette, Yam Hill County, and he so held that office for more than three years.

Now I call special attention to what follows:

Many more than the number of voters constituting his majority had actually passed in and out of his office on official business. His official character was generally known and was mentioned during the political discussions of the canvass.

There is the broad statement of the governor to the effect that many more than the number of voters constituting Watts's majority had actually passed in and out of his office on official business. Now, then, to the facts. Let us see whether that is precisely so. How are we to arrive at a correct conclusion in regard to that matter? First, by ascertaining what the majority of Mr. Watts was in the State of Oregon over Mr. Cronin. Mr. Cronin received 14,157 votes, all told; Mr. Watts received 15,206, all told. Watts's majority, therefore, in the State was 1,049. Now take the county of Yam Hill, in which the post-office is located, of which Mr. Watts was postmaster, and ascertain what the whole vote is in that entire county, not merely in the precinct in which this post-office is located, but in the whole county, and we find that in the county of Yam Hill Mr. Cronin received 674 and Mr. Watts received 810 votes, all told. So that it is necessary, under Governor Grover's statement—that is, to make his statement conform to the truth—that not only every republican voter among the patrons of this office, but that every republican voter in the county of Yam Hill should have gone in and out of this post-office on official business, and still after that had been done Watts would have a majority of nearly 300. But how many more post-offices are there in Yam Hill County? How much of a post-office was this office at La Fayette, in which so much official business was transacted, according to the statement of Governor Grover? In addition to this post-office at La Fayette, there are eleven other post-offices in the county of Yam Hill. There are twelve post-offices, all told, in that county; and, that the Senate may understand still more fully the insignificance of the business transacted in that office and the facts in reference to the extraordinary statement of the governor that more than Watts's majority in the State had gone in and out of that office on official business, I beg to read a dispatch I have just received from Hon. H. W. Scott, of Oregon, a member of the national republican committee for that State, in answer to one I sent him yesterday for information on this subject. The dispatch is as follows, addressed to myself:

PORTLAND, OREGON, *December* 18, 1876.

Total vote La Fayette precinct—

That is the precinct this office is in—

Hayes, 106; Tilden, 83. Precinct includes considerable scope of territory outside of town, and nearer other post-offices. There is a post-office at Saint Joseph, in La Fayette precinct, at which a number get their mail. Others in La Fayette precinct are nearer Dayton, and get their mail there. It is not probable that more than one hundred voters of both political parties regularly get their mail at La Fayette.

This statement of the governor is so wild of the truth, so unjustifiable, as it seems to me, that I have felt called upon to submit these facts for the consideration of the Senate.

But that is not all in reference to this card of Governor Grover. He

states further it will be observed, that "his" [Watts's] "official character was generally known." Does Governor Grover presume to say to the Senate or to the people of the United States, to whom perhaps this card is addressed, that the republicans of the State of Oregon are all such consummate asses, such benighted fools, that they would proceed with the canvass to an election with a person known to them to be ineligible as a candidate for elector for the office of President and Vice-President? Is that the kind of a compliment the governor of our State desires to pay to persons constituting the party to which he does not belong in that State? But he says further:

His official character was generally known and was mentioned during political discussions of the canvass.

Well, that is possible, but I scarcely think it probable. I traversed that State from one end to the other, from north to south and east to west during the campaign for six weeks before the election and up until the day of the election; I was there in the State in my own precinct on the day of the election; I voted; and I remained in the State for four days after the election was over; and I state to the Senate that up to that time I never heard the suggestion made from man, woman, or child, in the State of Oregon, that Watts was a postmaster. There was no paper that said anything about it. There was no man, so far as I know, who ever called attention to the fact. But still Governor Grover says:

His official character was generally known and was mentioned during political discussions of the canvass.

Mr. MORTON. Let me ask the Senator whether the republican party of Oregon had a State central committee with power to supervise the canvass and take notice of any mistake of that kind and correct it if discovered?

Mr. MITCHELL. We have a republican State central committee in Oregon with a most vigilant chairman who devoted his time exclusively to the campaign, and as a matter of course if any suggestion of this kind had ever been made in the State by anybody it would have been corrected.

Mr. BOGY. I will ask the Senator a question. Did he not himself know that Watts was postmaster?

Mr. MITCHELL. If my attention had been called to the fact I have no doubt I should then have remembered that I had known it some time before, because I presume the fact is that he was appointed on my recommendation.

Mr. BOGY. Does not my friend think that Mr. Watts knew that he was a postmaster himself?

Mr. MITCHELL. I have no doubt about that.

Mr. BOGY. Knowing the fact that he was postmaster, he being an intelligent citizen of Oregon, cannot the Senator suppose that he knew he was not eligible as an elector?

Mr. MITCHELL. I think it is very doubtful in reference to that; and in saying that I do not undertake to cast any reflection upon the intelligence of Dr. Watts

Mr. BOGY. Can it be, in the Senator's estimation, that he is less intelligent than this large population of whom he has just spoken in Oregon who were so intelligent that they must have known that he was not eligible? They knew the fact that he was postmaster. Were they less intelligent than the men who voted for him?

Mr. MITCHELL. As to just how intelligent Mr. Watts is I would refer my friend from Missouri to the democracy of Oregon who suffered pretty severely under his campaign in the last election.

Mr. BOGY. I am only applying the Senator's own rule of argument; that is all.

Mr. MITCHELL. As a matter of course Watts knew that he was postmaster; but I have very grave doubt, he not being a lawyer, not being in the habit perhaps of consulting the Constitution of the United States as a great many very good men are not in the habit of doing, whether Dr. Watts knew that the fact of his being postmaster made him ineligible as an elector.

Mr. BOGY. What becomes of your vindication of the rest of the people of Oregon? Are they all lawyers, the remainder of those voters, that they must have known that he was not eligible if they knew the fact that he was postmaster?

Mr. MITCHELL. I have not been talking about the question of knowledge of the law; I have been talking about a matter of fact; the question as to knowledge of the disqualifying law was argued here the other day, and Governor Grover places his vindication upon that idea, that in order to elect the minority man it is necessary that a sufficient number of voters to overcome the majority of the majority man should have known not only the disqualifying fact but the disqualifying law also. In other words, the doctrine of the law, *ignorantia legis excusat neminem*, does not apply in a case of this kind, but the fact of the existence of the disqualifying law must be brought home to the actual notice of the party. But I was not talking about that; I was talking about the question of fact. Governor Grover undertakes to defend his action on several grounds. One ingredient entering into that self-vindication is the statement made by him that more than this majority, to wit, more than 1,049 republicans of Oregon, went in and out of this post-office on official duty before Postmaster Watts, and they must as a matter of fact have known of the existence of this disqualifying fact. That is what I was talking about.

Then further, in order to bring his case within the rule of the law, namely, that knowledge of the disqualifying law and of the disqualifying fact must both be brought home by actual notice, the governor says:

The law was known and the fact was known, rendering it disgraceful in him to be an elector.

There is where Governor Grover plants himself in vindication of this extraordinary conduct upon his part. I say, in the absence of my colleague, [Mr. KELLY,] who is away—whether on official duty or not I do not exactly know—that the constitutional inhibition was not known generally, and it is no poor compliment to the intelligence of the people of Oregon when I say it either; and, so far as the fact is concerned, I am absolutely certain it was not known by more than one-tenth, at the very most, of the majority that Watts received over Cronin. I feel perfectly assured of that. Now what does the Governor say further? He says:

A protest was filed in the executive office by prominent citizens objecting to the issuance of a certificate to Watts as a person disqualified, accompanied by proof of his disqualification, and demanding the issue of the same to the eligible person having the next highest number of votes. A reply was filed objecting to anything but a count of the votes and a certificate of the count, and making no denial of the disqualifying facts.

And then the governor resolves himself into a court; he files the pleadings; he perhaps hears witnesses; without the power to swear a witness, he tries a great fact, or at least he establishes a principle, if he does not try a fact, in this case that would in many other cases compel him to try important facts; and then after having heard the case what does he say? He says:

It was ruled in the case—

By the governor, of course—

that when the objection to an applicant's right to receive a certificate rests upon the ground that a constitutional provision is interposed, the governor, acting under oath to support the constitution, is bound to entertain and determine the question.

But further:

It was also held that, the law and the fact being well known—

Was the governor justified in making any such statement as that in vindication of his course, that the law and the fact were well known, when, as I have shown from the records, his statement in reference to the facts is very far from being justified by the facts themselves?

It was also held that, the law and the fact being well known, the votes cast for the ineligible candidate cannot be counted for any purpose, and the eligible candidate having the next highest number of votes was duly elected.

And then he says:

This ruling was based upon standard authorities, such as Cushing and Grant, the decisions of many courts like the supreme court and the court of appeals of New York,

When in truth and in fact the court of appeals of New York have decided the very reverse in reference to a parallel case.

The latter is also the uniform practice in the United States House of Representatives.

Here again is a statement that will not be borne out by the facts or by the record of the House of Representatives.

And—

Says he—

it is in accordance with the great weight of all English authorities, both parliamentary and judicial.

What further does he say, and I call attention to it to show that he has misstated, to use a mild term, the law of his own State in making this vindication of himself. He says:

The law of Oregon providing for filling all vacancies in the electoral college, recognizes a vacancy only in cases where there has been an incumbent and such incumbent has died, has refused to act, neglected to stand, or is otherwise absent.

I call attention to the closing words in that sentence, "or is otherwise absent." That is not the law; that is not the reading of the law; and how that can be the construction of the law is more than I am able to say. The statute on that subject reads as follows:

The electors of President and Vice-President shall convene at the seat of government on the first Wednesday of December next after their election, at the hour of twelve of the clock at noon of that day, and if there shall be any vacancy in the office of an elector, occasioned by death, refusal to act, neglect to attend, or otherwise, the electors present shall immediately proceed to fill, by *viva voce* and plurality of votes, such vacancy in the electoral college, and when all the electors shall appear, or the vacancies, if any, shall have been filled as above provided, such electors shall proceed to perform the duties required of them by the Constitution and laws of the United States.

The statute says: "By death, refusal to act, neglect to attend, or otherwise." Governor Grover says: "Refused to act, neglected to stand, or is otherwise absent." The governor interpolates the word "absent" which is not in the statute at all. The statute stops with the word "otherwise." The governor adds the word "absent." An argument was made the other day by the honorable Senator from Pennsylvania [Mr. WALLACE] on the subject of vacancies to the effect that there could be no vacancy where there was a failure to elect. That very often is so in many of the States and the adjudications are different in different States. Pennsylvania has decided one way and California has decided the other; and Missouri and other States have differed. But all these questions must be determined, and are determined—how? By the constitutions and the laws of the respective States; and that is the very reason we find different adjudications upon this question in different States. It is because the constitution and the laws are different on these matters in the different States, and the question as to whether or not there is a vacancy in the office of presidential elector in Oregon must be determined, not by the adjudi-

cation of this State or of that State, but by a fair and reasonable construction of the constitution and the laws of the State of Oregon; and I say that any lawyer, who will take the trouble to take up the laws of Oregon on this subject from beginning to end and examine all their provisions, will not hesitate to come to the conclusion that a vacancy occurs in the office of presidential elector when for any cause the whole number are not there on the day fixed for their meeting by the act of Congress.

Our statute in Oregon on the subject of vacancy contemplates—what? It contemplates the right of a competent tribunal to declare void an election that is void for any cause, by reason of ineligibility if you please of the party voted for; and there is no vacancy, at least so far as State offices are concerned, to which the same rule does not apply that is applicable to this matter, because the manner of appointment of presidential electors is left to the State. I say the law of Oregon does provide for declaring a vacancy by the decision of a competent tribunal where the election as a matter of fact is void, as I will show. I call attention to section 45, on page 709 of the Code of Oregon, providing how offices shall become vacant:

Every office shall become vacant on the happening of either of the following events before the expiration of the term of such office:

1. The death of the incumbent;
2. His resignation;
3. His removal;
4. His ceasing to be an inhabitant of the district, county, town, or village for which he shall have been elected or appointed or within which the duties of his office are required to be discharged;
5. His conviction of any infamous crime or of any offense involving a violation of his oath;
6. His refusal or neglect to take his oath of office or to give or renew his official bond, or to deposit such oath or bond within the time prescribed by law;
7. —

And this is what I call special attention to—

7. The decision of a competent tribunal declaring void his election or appointment.

So that the law of Oregon provides in terms that, where a person is voted for for any office by the people of that State who is ineligible, then, upon a declaration to that effect from a competent tribunal, it is a case of a vacancy, not a case of a failure to elect, as was argued by the Senator from Pennsylvania the other day. And will anybody question the right of the Legislature of Oregon to establish its own rules in reference to this matter? It cannot be contended for a moment that this was a case of a failure to elect and that there was no vacancy. Governor Grover himself assumed to be "the competent tribunal" mentioned in the statute which might declare void an election or appointment. He acted upon the assumption that he was the competent tribunal. He declared the election void. If he was "the competent tribunal" and if he did rightfully declare the election void, what result followed? Under the plain provision of the statute of the State, a vacancy occurred, and not a case of a failure to elect simply; and, there being a vacancy, then in any possible view of this matter who had the right to fill it? That is the next question. We all agree on this. There is no dispute here. Governor Grover himself must necessarily concede that if there were a vacancy he had no right to fill it; but that that right belonged to the other electors, as provided in another section of the statute to which I called attention the other day and which I read a moment ago. That statute declares:

The electors present shall immediately proceed to fill, by *viva voce* and plurality of votes, such vacancy in the electoral college.

I do not know whether Judge Hoadly obtained his cue from Governor Grover or Governor Gover obtained his cue from Judge Hoadly. Judge Hoadly says, if I remember rightly, that he prepared his opinion for Governor Gover at the instance of Mr. Pelton, who is I believe the private secretary of Governor Tilden. In that opinion or at least in his communication to the Cincinnati Commercial, giving that paper a statement of the points presented in his opinion, Judge Hoadly uses this language:

As John W. Watts was the postmaster of the county seat of one of the most important counties in Oregon, I presume that the governor and secretary of state, the canvassing board of Oregon, found in point of fact, if they adopted the rule of the case of the People *vs.* Clute, that this fact was sufficiently notorious to the republican electors of Oregon to charge them, or at least enough of them, with notice of the fact of his ineligibility to bring it within this rule so far as the matter of fact is concerned.

* * * * * * *

Without knowing, therefore, whether the governor of Oregon adopted the Indiana rule or the New York rule, I think I am authorized to presume that if he espoused the New York doctrine he was satisfied in canvassing the votes that a number of republican electors voting for Watts more than equal to Watts's majority over Cronin knew that he was a postmaster, and that the same number either knew or were bound to know of the constitutional disqualification which attached to the office of Watts.

Mr. President, I have said about all that I have to say in reference to this matter. I have felt it to be my duty to call attention to these statements in the card of Governor Grover, and let me once more call the attention of the Senate to the slender authority, to the slender structure upon which Governor Grover could stand legitimately in an exercise of the extraordinary power that he took unto himself. Under the statutes of Oregon it is no part of the duty of the governor of Oregon even to issue a certificate to presidential electors. All he has to do in the matter is to sign his name to certain lists which the statute says shall be prepared by the secretary of state and to which the secretary of state shall attach the great seal of the State. Section 3 of the laws of Oregon providing for the election of presidential electors reads as follows:

The votes for the electors shall be given, received, returned, and canvassed as the same are given, returned, and canvassed for members of Congress. The secretary of state shall prepare two lists of the names of the electors elected and affix the seal of the State to the same. Such lists shall be signed by the governor and secretary, and by the latter—

The secretary—

delivered to the college of electors at the hour of their meeting on such first Wednesday of December.

Remember now they are to be "given, received, returned, and canvassed," not certified, "as the same are given, returned, and canvassed for members of Congress." In reference to members of Congress, the governor of the State under the law is made to do an additional duty to that devolved upon him in reference to the certification as to presidential electors. Let us turn to that act and see. Section 33, page 706 of the code provides for canvassing and returning the votes for members of Congress; I will read it:

The county clerk, immediately after making the abstract of the votes given in his county, shall make a copy of each of said abstracts, and transmit it by mail to the secretary of state, at the seat of government; and it shall be the duty of the secretary of state, in the presence of the governor, to proceed within thirty days after the election, and sooner, if the returns be all received, to canvass the votes given for secretary and treasurer of state, justices of the supreme court, member of Congress, and district attorneys, and the governor shall grant a certificate of election to the person having the highest number of votes for either of such offices, and shall issue a proclamation declaring the election of such person.

Now in reference to the election of members of Congress the governor does what? He sits by; he is present when the secretary canvasses the vote. When the vote is canvassed, then, so far as relates to members of Congress and State officers, it is the duty of the governor to do what? To issue a certificate to whom? He has no judicial power there, not a particle; but he is to issue his "certificate of election to the person having the highest number of votes."

The Senator from Ohio [Mr. THURMAN] said the other day, "suppose Queen Victoria had the highest number of votes;" I say he had no discretion in the matter but to issue his certificate to Queen Victoria. He said, "Again suppose Goldsmith Maid had the highest number of votes, what then?" I say then no person would have been voted for; and he would not issue any certificate at all. But what I wanted to say was that this last duty that the governor has to perform with reference to members of Congress, namely, to issue a certificate and make a proclamation, are things that he does not have to do with reference to the presidential electors, because the votes for presidential electors are given, received, returned, and canvassed the same as those for members of Congress; but they are not certified to the same as members of Congress. Why? Because the law in the one place as to members of Congress says that the governor shall issue his certificate and make proclamation, while in the other case in reference to presidential electors the law says this:

The secretary of state shall prepare two lists of the names of the electors elected, and affix the seal of the State to the same. Such lists shall be signed by the governor and secretary, and by the latter delivered to the college of electors, at the hour of their meeting, on such first Wednesday of December.

So there is the structure and the only structure upon which Governor Grover could stand in reference to any action that he may have taken in reference to presidential electors; and if any lawyer in Christendom, if Judge Hoadly, after a careful examination of all these provisions—and he evidently did not canvass them all—can come to any such conclusion as that the executive of the State of Oregon had the right to exercise judicial functions or quasi-judicial functions and pass upon this important matter, then I confess I have read law in vain and know nothing about it whatever.

I have nothing more to say except this: My friend from Delaware [Mr. BAYARD] suggested an amendment, and he has appealed to me to accept that amendment. It is an amendment which modifies the preamble of this resolution. I regret to say that so far as I am concerned I cannot accept it, and I hope it will not prevail. One reason why I cannot accept it, one reason why I think it ought not to prevail, is this: I upon my own motion asked that this resolution with its preamble might by a vote of the Senate be sent to the Committee on Privileges and Elections, in order that the Senate might have the benefit of the opinion of that committee both as to the form and propriety of the preamble. The resolution went to that committee by a vote of the Senate. It was taken up by that committee, carefully considered, modifications proposed and adopted, and the result is before the Senate. A majority of that committee have recommended the adoption of the resolution and the preamble as it now stands before the Senate. That is one reason. Another reason why I shall oppose the amendment in regard to the preamble is because the preamble is right, because it ought to be there, because the resolution would not be complete without it, and if objection at all exists to the preamble it is to be found in the fact that it is mild, moderate, merciful; and it is not unusual to prefix preambles to resolutions; and it seems to me that it is eminently fit, when a resolution of extraordinary character, as the one before the Senate is, is presented for the consideration of the Senate, that the reason in a mild form at least should be stated as a preamble to the resolution, especially if the resolution seeks to inquire into the conduct of officials. If the public charge that is made is a venial one, let the preamble be mild. If it is a grave one, then I say justice to the per-

son charged, justice to Governor Grover, justice to the Senate, justice to everybody requires that the reasons be given in the preamble for the proposed action. Therefore I hope that the amendment suggested by the Senator from Delaware will be voted down; and begging pardon of the Senate for taking up so much time, I submit the matter, and hope we may get a vote to-day if possible.

Mr. MORTON. Mr. President, in my absence, I believe on Friday last, the Senator from Ohio [Mr. THURMAN] replied to some remarks that I had made on this question, and I propose now to answer them very briefly, not at all complaining that they were made in my absence. My being absent was my fault entirely.

The Senator from Ohio read what purported to be a brief which had been submitted by Judge Hoadly, so called I believe, of Cincinnati, to the governor of Oregon, and upon which it is said the governor of Oregon acted. In law this paper is exceedingly brief, and I think I but do it justice when I say it is the thinnest and poorest pettifogging I ever saw put upon paper. While purporting to discuss the law governing the question of elections, it ignores the great current of American authorities, refers to three American authorities which have no connection whatever with the case, and wholly fails to state the substance of the fourth opinion, which is chiefly relied upon. But the great current of American authorities upon this question is ignored, as also the action of the two Houses of Congress. In this opinion of Judge Hoadly we find the following statement:

Upon this question how votes cast for an ineligible candidate are to be considered, two opinions have obtained in the United States. Unless I am misinformed as to the facts of the Oregon case, Governor Grover's action is not in conflict with either of these views.

Here we have the extraordinary statement that Governor Grover's conduct is not in conflict with either view that has obtained in the United States. The mere reading of that statement ought to be a sufficient answer to all that there is in it. He refers to the case in 15 California to show that where a candidate was ineligible at the time of his election that difficulty cannot be cured afterward so as to make him eligible to take the office; but he utterly ignores the two strong direct California decisions to the effect that the minority man is not elected. That was hardly dealing frankly with Governor Grover. If he himself was not a lawyer and this opinion was sent to instruct him, when the California reports were referred to by Judge Hoadly, he ought to have stated that that court had decided that the minority candidate was not elected where the majority candidate was ineligible. I read the authorities the other day and need not again refer to them. Judge Hoadly refers to the case in 4 Harris and McHenry, the case of Hatcheson *vs.* Tilden and Bordley. There the majority candidate brought suit for the purpose of recovering possession of the office. The office, I believe, was that of sheriff. He was ineligible because he owned no real estate, which the law of Maryland required a sheriff to own. The ineligibility was removed at twelve o'clock on the day of the election, and he brought suit to recover the office. The only question in that case was whether he was made eligible at that time. As to whether the minority candidate could be elected nothing was said. The minority candidate did not claim the office; there was no question of that kind referred to; and yet Governor Grover is gravely referred by this Cincinnati judge to that case as if it had something to do with the matter. He then refers to the case of the Commonwealth *vs.* Read, 2 Ashmead's Reports. That was a case of a corporation election. The law required the corporation in electing a treasurer to vote by ballot. Nearly all the members voted orally, *viva voce*. One man voted by ballot. The court held that the others were no votes at all—which was very correct—because they had not voted by ballot. And that is referred to as an authority bearing upon this question. Now I come to the fourth case, and that is the Indiana case, upon which he places the most stress. He only states a part of that case. I am going to read what he says about it. He makes this quotation:

Where a majority of the ballots at an election are given to a candidate who is not eligible to the office, the ballots so cast are not to be counted for any purpose. They cannot elect the ineligible candidate or defeat the election of the opposing candidate by showing that he did not receive a majority of the votes cast at such election. It follows that the eligible candidate will receive an office, although less than a majority of the votes are cast for him.

That is the part he quotes. If he had quoted the whole case, it would have shown that the Indiana case does not cover the Oregon case at all. I call the attention now of the Senator to the fact that this Indiana case, which is so often referred to, does not cover the Oregon case at all, and if Judge Hoadly had quoted the whole case to Governor Grover it would have so appeared.

I may remark that the Indiana case, going as far as it does, has been, I believe, condemned by every court that has passed upon it outside of Indiana. It has been expressly condemned by a committee of this body and by the action of this body. It has been expressly condemned by a committee of the House of Representatives and by the action of that House repeatedly. But coming to that case in its full length and breadth, it does not help Governor Grover one bit. Now, I am going to read that case, and I call the attention of Senators to it. In that case Wallace was a candidate for sheriff in the county of Marion, in which is the city of Indianapolis. He had been elected mayor of the city of Indianapolis. The law expressly gave to the mayor of the city of Indianapolis a criminal jurisdiction throughout the county. He became a candidate for sheriff in the same county and was elected. Under the constitution he was ineligible. What did the court say in that case, and, by the way, a case that has been condemned everywhere? The court said:

Where the ineligibility of a candidate arises from his holding, or having held, a public office, the people within the jurisdiction of such office are held in law to know—are chargeable with notice—of such ineligibility, the votes given for such candidate are of no effect, and his highest eligible competitor is elected.

The court below fell into error on this point by viewing Wallace simply in the character of mayor of Indianapolis. As mayor, he was simply a corporation officer, and perhaps necessarily known as such only within the city limits. But he was more than a city officer; he was a judicial officer, a judge of a court, with jurisdiction co-extensive with the county limits, created to administer the general laws of the State to the extent of his jurisdiction. In this capacity of judge, the people of the county were bound to know him, and were bound to know the disability as to the right to hold other offices which his character as judge brought upon him by the constitution and laws of the State.—14 *Indiana Reports*, 103, 104.

The point there decided was that inasmuch as his criminal jurisdiction extended to the whole county, the people of that county had constructive notice that he was ineligible. Apply that to the Oregon case. Let us suppose that the people within the mail delivery of the postmaster at La Fayette, Oregon, were bound to take notice that he was a postmaster and ineligible. That would be the furthest that this constructive notice would extend. How far would that go? I saw a dispatch to-day, I believe in the hands of the Senator from Oregon, and will thank him if he will let me have it. Here is a little post-office that is not a presidential appointment, as I am informed; not large enough for that, in the town of La Fayette, in the county of Yam Hill:

Total vote of La Fayette precinct—

That is the whole township—

Total vote of La Fayette precinct, Hayes 106, Tilden 83. The precinct includes considerable scope of country outside of town, and nearer other post-offices. There is a post-office at Saint Joseph in La Fayette precinct—

In the same township—

at which a number get their mail. Others in La Fayette precinct are nearer Dayton and get their mail at that point. Not probable that more than 100 voters of both parties regularly get mail at La Fayette.

Now apply the case of Gulick, this Indiana case, to the Oregon case. Let us hold that the people within that post-office delivery were bound to take notice. How many were there? Taking the votes of both parties there would not be, as we are informed, 200 votes in that post-office delivery.

Mr. MITCHELL. The salary is $268.

Mr. MORTON. The salary is $268. Suppose we strike out all the votes in that post-office delivery Watts still has a majority of 800 votes left, men who had no notice, constructively or otherwise, that he was postmaster, so that if Hoadly in presenting the Indiana case to Grover had given him the whole case, it would show that it did not cover what he was required to do. I understand that my friend from Pennsylvania, the Senator on my left, [Mr. WALLACE,] does not advance the idea that Cronin was elected. He was presenting us a sort of color for Grover's action; he was constructing merely a fig-leaf. My friend from Ohio [Mr. THURMAN] was also trying to form a fig-leaf to cover the nakedness of the action of Governor Grover. My friend from Pennsylvania in the course of his remarks did not say whether in his opinion Cronin was elected, and I should like to ask him that question now. I will give him the floor if he will answer it.

Mr. WALLACE. As I am put on the witness stand by the Senator, I will state that I said distinctly that my opinion in that case was that there had been a failure to elect in the State of Oregon.

Mr. MORTON. I overlooked that part of the Senator's speech. The Senator believes that Cronin was not elected and that the governor of Oregon had no right to issue a commission to him. The Senator from Tennessee on my right, [Mr. KEY,] I believe, on yesterday stated that in his opinion Cronin was not elected, and I believe I have heard no one yet in the Senate advance the opinion that Cronin was elected. I think the Senator from Ohio [Mr. THURMAN] cannot say so, because it would be in conflict with the views of the law that he has before strongly expressed in the Senate. But they say there was no election.

This Indiana case therefore may be left entirely out of view. I am referring to this brief of Hoadly's, which seems to have been intended to form an excuse for the action of the governor of Oregon. He himself has brought it forward and has volunteered the statement that he was the man who furnishes the law to the governor of Oregon. I say that this brief of Hoadly's misstates the law and the fact. It suppresses the great current of American authorities, the action of the two Houses of Congress, and represents to him what is not the law in any State in this Union, not even in the State of Indiana. If he had been frank to the governor of Oregon and read to him the whole Indiana case it would have shown that even that furnishes no excuse for his conduct whatever.

The best that has been attempted in the Senate in regard to the action of the governor of Oregon has been to say that he had some color. Nobody has ventured an opinion thus far that Cronin was elected, but the attempt has been to form a sort of excuse for him. So far as this fig-leaf is concerned it is my purpose to even tear that away to show that there was no color, and that the action of the governor of Oregon was directly in the face of the statutes of that State, not to say of the general law of the land.

Mr. BOGY. If the Senator will pardon me, I do not understand his observation. We contend that Cronin was elected and I think every Senator on this side of the Senate will assert so. He did not receive

a majority of the votes, but yet he was elected, for being elected the governor certified to his election. That is the proposition.

Mr. MORTON. My friend says all the Senators on that side contend that the action of the governor of Oregon was right, and Cronin was elected, when the Senator from Pennsylvania has said within two minutes that there was no election; that Cronin was not elected. My friend did not hear his friend from Pennsylvania; he did not hear his friend from Tennessee, who said that Cronin was not elected. This is the first time that I have heard it said by any Senator that Cronin was elected. The Senator from Ohio took good care not to say that, and he will not say it to-day. I venture that assertion——

Mr. BOGY. Cronin could not have received the certificate of election, unless he had been elected, unless the man who gave the certificate thought he was elected, surely.

Mr. MORTON. He did receive the certificate of election, not having been elected. That has been often done. That is the very thing we are complaining about, that he was not elected, but was falsely certified to be elected. Now I call the attention of the members of the Senate and of the country to the statutes of Oregon that have just been read by my friend from Oregon. My friend read the thirty-third section of the act, which shows that the votes for secretary of state, treasurer of state, justices of the supreme court, members of Congress, and district attorneys shall be opened and canvassed by the secretary of state in the presence of the governor. The governor is merely a witness; the work is to be done, the counting is to be done by the secretary of state. The governor is simply to be present; that is all; he has no connection with it otherwise; he takes no part in it; but it is to be done in the presence of the governor by the secretary of state. And then the law reads thus:

The governor shall grant a certificate of election to the person having the highest number of votes for either of such offices, and shall also issue a proclamation declaring the election of such person.

That takes away all discretion upon the part of the governor. He shall issue a certificate "to the person having the highest number of votes."

It may be that the supreme judge or the secretary is ineligible; it may be that the member of Congress is ineligible; but the statute is positive that the governor shall certify to the man having the highest number of votes. That is all he has got to do. If he does less than that, or if he does more than that, he comes short of his duty. That cuts off all judicial power, it leaves him no discretion whatever. It is positive like the New Jersey statute I had occasion to examine to-day. The governor is simply to certify to the man who has the highest number of votes. That is the positive obligation of the statute of Oregon. I want Senators to notice that when they make their arguments trying to justify the action of that governor.

The votes for the electors shall be given, received, returned, and canvassed as the same are given, returned, and canvassed for members of Congress.

The thing to be done just as it is done for members of Congress. That is all. He has no more power to decide upon questions of eligibility than he has in regard to members of Congress. The canvass is to be made precisely as for members of Congress, and in regard to members of Congress the statute says that he shall certify to the man having the highest number of votes; and that was Watts in this case, so that he violated the statute of Oregon directly and expressly. The section further provides:

The secretary of state shall prepare two lists of the names of the electors elected, and affix the seal of the State to the same. Such lists shall be signed by the governor and secretary, and by the latter delivered to the college of electors at the hour of their meeting on such first Wednesday of December.

These votes are to be opened and canvassed as for members of Congress. The secretary of state shall make out a list of who is elected and the governor shall certify to it. He has no discretion; it is a simple ministerial duty. The law says that the governor shall certify to the list thus made out by the secretary. If there is any discretion anywhere it is in the secretary, it is not in the governor, because this statute says that he *shall* certify the list thus made out by the secretary. That is all he has to do about it. He has got no more discretion than a page, not a particle. The statute is obligatory and positive that he shall certify to the list made out by the secretary, and the secretary shall canvass the votes just as for a canvass in case of members of Congress; and in regard to members of Congress the statute is positive and peremptory that the man who has got the highest number shall be certified. Therefore this governor had no more power to pass upon the question of eligibility than he had in regard to members of Congress or in regard to a State officer, and in regard to those he has to certify to the man who has the highest number of votes.

Looking at these statutes, even the fig-leaf is gone. There is no possible excuse for this conduct; there is no color for it; it is a direct and positive violation of the statutes of Oregon, and it is so entirely outside of the question of the decision being wrong. If he had discretion then he decided right against the law, right in the teeth of the law as it has been laid down in the Senate on various occasions, by the House of Representatives, and by every court in the land, I believe, save one, and even that has not gone to the extent of covering this action in Oregon. Now I come to another point:

Such lists shall be signed by the governor and secretary, and by the latter delivered to the college of electors at the hour of their meeting on such first Wednesday of December.

The list is to be delivered to the college of electors, the phrase "college of electors" being used; and that means more than one elector. It means at least the majority. It speaks of them as an organized body; it speaks of them as the "college;" it does not say that the certificate shall be delivered to each elector to make it an individual concern. O, no; but the law says that the lists shall be delivered to the "college of electors." That means delivered to the electors when they are together and have assembled to perform their functions. How did the governor observe that part of the law? Did he deliver the certificates to the college of electors? No, sir; they were delivered to this man Cronin, who himself had never been elected and who carried them off out of the room. They should have been delivered to the college because the law of Oregon requires it, and when they were delivered to one man, even had he been elected, that was a violation of the law. He had no right to give them to an elector, however honestly elected. They are to be delivered to the college; that is to say, to the electors when assembled to perform their functions. That is the law of Oregon. If Cronin had been lawfully elected, to give to him the certificates and for him to have carried them off would have been as clear a violation of the law as could be imagined. It will require a very ingenious horticulturist or agriculturist to construct a fig-leaf big enough to cover this part of the transaction.

Mr. BOGY. I would say to the Senator that being delivered to the college they had to be delivered to one member of the college.

Mr. MORTON. No, sir, not to one member of the college; the certificates are to be delivered to them when in session, to all of them.

Mr. BOGY. They were not in session.

Mr. MORTON. No, sir, they were not in session; but they were delivered to a man who did not belong to the college and who carried them off. That is the way of it. It was all a part of the arrangement; and this man to whom they were delivered, himself never elected, went off and constituted himself a quorum. It generally takes at least a majority to make a quorum, and this man who was never elected constituted himself a quorum; he went off to another room, and there he appointed two other men and they cast the vote of Oregon. My friend smiles at that. It is too ridiculous and contemptible to be gravely discussed anywhere; and yet that is the trick that is to control the election of a President of the United States. Heaven save the mark! By the way I want to speak of another matter.

While the Senator from Oregon was speaking about this constructive knowledge of the people of Oregon my friend from Missouri, who is exceedingly alive to the importance of this question, asked him whether Watts himself did not know that he was a postmaster. I suppose he did. He wanted to know if the Senator from Oregon himself did not know it. Suppose he did know the fact, yet that that fact made him ineligible even did not occur to the Senator from Oregon, good lawyer that he is. I might turn that a little. My friends turn it away. There is a certain man living in Saint Louis by the name of Frost, a man of a good deal of notoriety, who was in the confederate army, and ineligible under the fourteenth amendment.

Mr. BOGY. I deny that.

Mr. MORTON. My friend says he denies it. I suppose it did not occur to my friend that Frost was ineligible. He is a much more public man in Missouri than Mr. Watts is in the little State of Oregon, very much more. He has been an officer of the Army of the United States, has been in the senate of Missouri, was a prominent man, and a man of character; and his public career was well known throughout that State. He was a graduate at West Point, had served in the old Army, went into the confederacy and was disqualified by the fourteenth amendment, and has never been relieved by this body.

Now my friend, according to his authority, according to his rule of logic, was bound to take notice of that; and when he voted for Frost he voted for him knowing that he was ineligible, and so with every democrat in the State of Missouri knowing that Frost was ineligible, whereas I suppose not one in a thousand ever thought about it, just as in the case of Oregon. They might have known that he was in the confederate army and an old officer of the United States, for he is a man remarkably well known; but the fact that that made him ineligible under the law did not occur to my friend from Missouri or his fellow-democrats, intelligent as they are. I might refer to other cases by way of argument. If the action of Grover was right in Oregon and the law that he acted upon is good law, then it must have been good in Missouri, and there the certificate should have been given to Steifel, the highest republican candidate for elector in that district; but, as the farmer said to the lawyer, "circumstances alter cases," and what was good law in Oregon was not good law in Missouri.

I want to call the attention of my friend from Pennsylvania and others to the statute of Oregon in regard to filling vacancies:

The electors of President and Vice President shall convene at the seat of government on the first Wednesday of December next after their election, at the hour of twelve of the clock at noon of that day; and if there shall be any vacancy in the office of an elector—

Not "by absence;" O, no—

any vacancy in the office of an elector occasioned by death, refusal to act, neglect to attend, or otherwise, the electors present shall immediately proceed to fill, by viva voce and plurality of votes, such vacancy in the electoral college.

If there shall be any vacancy by death, refusal to act, neglect to attend, or otherwise, a vacancy from any cause whatever, then the electors present shall immediately fill the office.

This is the broadest statute that I know of in any State; very

much broader than that in the State of Missouri, as I can show to my friend. This provides for filling a vacancy for any cause. If they voted for but two men in the first place, and thus left a vacancy, they can fill it under that provision. If they thought they were electing a man, and they failed by mistake of law, by accident, or mistake of fact, and did not elect him, they can fill it. Here is a broad statute authorizing them to fill a vacancy from any cause whatever. There may have been no election at all, and yet they can fill the vacancy. You cannot conceive a vacancy existing from any cause that could not be filled by the electors in Oregon. Therefore, this goes far beyond the statute of Missouri, as I can show to my friend; and he will readily admit it. This comes directly within the act of Congress. I want to call the attention of my friend to the act of Congress. I turn now to the one hundred and thirty-fourth section of the Revised Statutes:

Whenever any State has held an election for the purpose of choosing electors and has failed to make a choice on the day prescribed by law, the electors may be appointed on a subsequent day in such a manner as the Legislature of such State may direct.

This provides for a case where there was no election at all. We will suppose that the people of Oregon only put two names on their ticket, and did not vote for three electors, only voted for two, and, therefore, there is a vacancy, an original vacancy, if you please. Then under this act the Legislature may provide for supplying that vacancy at a subsequent day. That vacancy may be supplied in any way that the Legislature of Oregon shall provide. This brings the statute of Oregon to the very case referred to. They have provided for filling that vacancy by authorizing the electors to fill a vacancy occasioned in any manner whatever, arising from any cause, because the words "or otherwise" are just as broad as they can be made. They might have written a whole page, but could not make it any broader. It comes directly in the wake of the act of Congress. The act of Congress authorizes the State of Oregon to do just what she has done, and she has authorized the electors to fill a vacancy arising from any cause. There is a complete chain of title. There is not a link of it out.

In the case of the statute of Missouri—I have not got it before me, but I remember it well—that provides for a vacancy occurring by reason of the absence of any of the electors appointed, first requiring them to be appointed. It declares that, if there is a vacancy among the electors that have been appointed, the electors may fill that vacancy, so that it is very much more narrow; and yet it was considered broad enough in Missouri to include the case of filling a vacancy of a man who was ineligible under the fourteenth amendment. I would say to my friend from Missouri, if he is looking for technical objections to an elector, that he should bestow his attention nearer home than the State of Oregon.

Mr. MITCHELL. Did the majority of electors fill the vacancy in that case in Missouri?

Mr. MORTON. I think so.

Mr. MITCHELL. I should like to know of the Senator from Missouri if that is a fact, if the majority of the electors in Missouri filled the vacancy, whatever it was?

Mr. BOGY. Yes, sir.

Mr. MORTON. And a vacancy of an elector who has first been appointed, mind you; there must have been an election and then a vacancy. He must be dead, absent, resigned, or refused to act, but first under the statute of Missouri to authorize electors to act the electors must have been appointed. That is not the case in Oregon. It goes much beyond that.

Enough, Mr. President, on that point. Now in reply to my friend from Ohio, who somewhat criticised my argument the other day, I want to say that I am willing to let the result of this case abide by his report to this body in the case of Abbott, and upon the very able speeches that were made in support of his report in that case. I will ask the Secretary to read those passages that I have marked on the two hundred and thirty-fifth and two hundred and thirty-sixth pages of the Globe of the session of 1871–'72. I will state that these speeches were made in the Abbott case where a seat was claimed for Mr. Abbott as the minority candidate, because Vance, the majority candidate, was ineligible under the fourteenth amendment and that the votes cast for him were considered as void and thrown away.

The Chief Clerk read as follows:

Again, in the English cases the intention of the voter to throw away his vote might well enough be imputed to him, because, as I said, it belonged to him, and if he knowingly and willfully voted for a man whom he knew would never be allowed to hold the office, the natural presumption was that he intended to throw away his vote; and it is upon this ground, that he did willfully throw away his vote, that his vote is rejected from the count. This can be proved in a sentence almost. If the English voter voted for a disqualified man, not knowing of the disqualification, even the minority man is not elected. We all agree to that. Every case says that. The bare fact, then, of disqualification or disability on the part of the man receiving a majority does not elect the minority man. It is necessary not only that the majority man shall be disqualified, but that the voters shall have had clear, positive, certain knowledge of this disqualification, and yet contumaciously, willfully, and knowingly cast their votes for him; and when that is the case they may well enough be presumed to have intended the natural result of their act, intended to throw away their votes.

* * * * * * *

I proceed to show further differences between the English cases and the case before us. In the English cases the voter knew to a moral certainty that the person for whom he voted would never be permitted to hold the office. There was nothing in the British constitution, nothing in any act of Parliament, nothing in any judicial or parliamentary decision that held out the least idea or hope that the disqualification of the person voted for would be removed, and he be permitted to take and hold the office.

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4. Again, in England numerous decisions had settled the law. The Senator from Wisconsin said it had been settled for three hundred years. I do not care about going into the chronology to know whether that settlement was perfectly exact or not, but it was well settled in England that in elections of the kind that have been referred to, if the voter knowingly cast his vote for a disqualified man, that vote would be rejected. Every voter, therefore, casting his vote for a disqualified man, knowing him to be so, knew that the minority man would be seated, and therefore he might be held to have assented to the seating of that minority man. But no such thing was known to the General Assembly of North Carolina. They had no right to think any such thing, for from the very foundation of this Government down to this day, at least from 1793, down to this day, there is an unbroken chain of cases in both Houses of Congress against the idea of seating a minority man, while there is not one single instance from the foundation of the Government to this day in which a minority man has been seated in either branch of Congress on the ground that the man who received a majority of the votes was a disqualified person.

Mr. MORTON. There is the strongest possible statement made by the Senator from Ohio in his speech. He says there is not a single instance in the Congress of the United States where it was ever done. Again he says:

Again, here is another thing that the Legislature of North Carolina had a right to know—and that distinguishes this case from the English cases—and that is, that the weight of judicial decision in the United States is decidedly against the claim of a minority man to an election. That is an element wholly wanting in the English cases. In England the entire current of decisions was that the minority man could have the seat. In America the decided weight of judicial opinion, in fact every case but one—

And that is the case in Indiana—

in fact every case but one decided by a supreme court is against the pretensions of the minority candidate; and that the Legislature of North Carolina had a right to look at and to build their expectations upon when they voted for Mr. Vance.

I could not possibly state the law any more strongly than it was stated by the Senator from Ohio. Again he said:

Here, then, are no less than six or seven important, nay almost every one of them conclusive, elements in this case, not one of which was in the English cases; and yet it is contended that the Senate of the United States is to disregard the first principles of republican government, and seat a man who did not receive one-third of the votes of the Legislature upon the doctrine of the English cases, when those cases and the case before us stand on wholly different foundations.

The Senator from Ohio here said that this doctrine of seating the minority man was antirepublican and in violation of the very first principles of republican government. If I were to try, I could not state the law so broadly and strongly as he has done, and yet the Senator from Ohio, with all his learning, did make a mistake in regard to the English law because he gave to it a force and an effect that it never had; and I will call the attention of my friend from Delaware [Mr. BAYARD] to the reference he made the other day. I have here a late English case in which this whole doctrine is discussed at great length and with ability and it is just as much against the claim in this case as are the American cases. I refer to the case of The Queen *vs.* The Mayor, Aldermen, and Burgesses of Tewkesbury in the law reports of 1867 and 1868. This case was decided in 1868:

Held, that the mere knowledge on the part of the electors who voted for B. that he was mayor and returning officer, did not amount to knowledge that he was disqualified in point of law as a candidate; and therefore their votes were not thrown away, so as to make the election fall on the fifth candidate.

And this whole case, as I will read, goes to show that mere knowledge of the fact that a man holds an office which disqualifies him does not make the votes given for him void. The voters are not presumed to know the law, but it must be shown that they knew the law as well as the fact, and the doctrine that all men are presumed to know the law does not apply to a case of that kind. I will now ask the Secretary to read what I have marked, but before reading the whole case I want to read a little summary from it in the conclusion, though I desire the whole case to go into my remarks because it discusses the whole question of presumptive knowledge of the law. The court say in conclusion:

But it does not seem to me consistent with either justice or common sense, or common law, to say that, because these voters were aware of a certain circumstance, they were necessarily aware of the disqualification arising from that circumstance, and that therefore their votes are to be considered as mere nullities. Upon this ground I do not think the votes given in ignorance that Blizard was in law disqualified are made out to have been wholly thrown away, and that Moore is entitled to act as town councilor.

There the officer who was disqualified presided at the election. His presiding there gave notice of his disqualification. The fact was known to all the electors, because the disqualified officer was there in the performing of the act which disqualified him. That is to say, he could not be a judge in his own election. And yet the court held that the voters were not presumed to know the law that made that fact a disqualification. I will now ask my friend the Secretary to read commencing page 635, from there to the conclusion of the case.

The Chief Clerk read as follows:

It is therefore necessary to decide whether the mere knowledge of the fact that Blizard was the mayor and returning officer must be taken to involve knowledge of his being disqualified for election. Every elector in the borough must have known that Blizard was the mayor, and every elector who saw him presiding at the election must have known as a fact that he was the returning officer, and every elector who was a lawyer, and who had read the case of Reg. *vs.* Owens, would know that he was disqualified. From the knowledge of the fact that Blizard was mayor and returning officer was every elector bound to know as matter of law that he was disqualified? I agree that ignorance of the law does not excuse. But I think that in Martindale *vs.* Falkner, Maule, J., correctly explains the rule of law. He says: "There is no presumption in this country that every person knows the law; it would be contrary to common sense and reason if it were so. In Jones *vs.* Randall, Dunning, *arguendo*, says: 'The laws of this country are clear, evident, and certain; all the judges know the laws, and knowing them administer justice with

uprightness and integrity.'" But Lord Mansfield, in delivering the judgment of the court, says: "As to the certainty of the law mentioned by Mr. Dunning, it would be very hard upon the profession if the law was so certain that everybody knew it; the misfortune is that it is so uncertain that it costs much money to know what it is, even in the last resort." It was a necessary ground of the decision in that case that a party may be ignorant of the law. The rule is that ignorance of the law shall not excuse a man, or relieve him from the consequences of a crime or from liability upon a contract. There are many cases where the giving up a doubtful point of law has been held to be a good consideration for a promise to pay money. Numerous other instances might be cited to show that there may be such a thing as a doubtful point of law. If there were not, there would be no need of courts of appeal, the existence of which shows that judges may be ignorant of law. That being so, it would be too much to hold that ordinary people are bound to know in what particular court such and such a practice does or does not prevail.

I take this to be the rule of law applicable to this case. I think the knowledge that Blizard was the mayor is clearly brought home to every voter, but the question is not merely whether every vote given for him was thrown away in the sense that it was given for a disqualified candidate—in that sense it was undoubtedly thrown away; but whether it was thrown away in the same manner as if the vote had been given for a dead man, or had not been given at all. I think that where a voter is informed that a certain circumstance in point of law disqualifies a candidate, even although he may hold a different opinion, yet if he afterward votes for that candidate, his vote is thrown away. In the present election a voter may possibly have been told by the one party that Blizard being returning officer could not be elected, by the other party that he could be; if this could be shown the vote would be thrown away; but the case merely shows as a fact that Blizard was returning officer, from which a lawyer would be aware that he was disqualified, and, in my opinion, the knowledge that Blizard was returning officer does not in law necessarily involve the knowledge that he was disqualified.

It must be observed that when a voter is said to have notice of disqualification in a candidate, the word notice is ambiguous. In Rex *vs.* Hawkins the question is thus stated: "If the law be that at the election of corporate officers the votes given for an incapable candidate, after notice of such incapacity, are to be considered as thrown away, *i. e.*, as if the voters had not given any vote at all, then this will be a good election of Spicer; unless the time when notice of his incapacity was given, namely, after two persons had given their votes for each of the candidates can be considered as making any difference."

The general proposition, that votes given for a candidate after notice of his being ineligible are to be considered as the same as if the persons had not voted at all, is supported by the cases of Reg. *vs.* Boscawen, Easter, 13 Anne; Reg. *vs.* Withers, Easter, 8 Geo. 2; Taylor *vs.* Mayor of Bath, M. 15, Geo. 2; all which are cited in Cowper, 537, in Rex *vs.* Munday, in the first Boscawen *vs.* Roberts the two candidates had an equal number of votes; but because Boscawen was incapable, the votes given for him were considered as thrown away, and the other duly elected.

In the second case, Withers had 5 votes out of 11; and the other 6 refusing to vote at all, the court held Withers duly elected, and that the 6 who refused to vote were virtually consenting to the election of Withers.

In the third case, Taylor, Bigg, and Kingston were candidates. Bigg was objected to, as a disqualified person; notwithstanding which, Bigg had 14 votes, Taylor 13, and Kingston only 1. There Lee, C. J., at *nisi prius* directed the jury that if they were satisfied that the electors had notice of Bigg's want of qualification they should find for the plaintiff, (that was Taylor, who had only 13 votes,) because Bigg, not being qualified, was to be considered as a person not *in esse*, and the voting for him a mere nullity. The jury found for the plaintiff; and the court, on motion for a new trial, agreed with the law as laid down by Lee, C. J., and refused a new trial.

The whole of this reasoning goes to show that those who voted for the disqualified candidate, knowing of his disqualification, were to be treated as voting for a person not *in esse*, so that there must be an actual knowledge of his disqualification in law. And Lord Eldon similarly grounds his decision on the fact that the majority knowingly voted for a disqualified candidate, or, as he terms it, "for a dead man." Certainly he seems to have thought that the *ratio decidendi* was the knowledge of the disqualification in law, and that the votes given with that knowledge were mere nullities.

In Reg. *vs.* Coaks, Lord Campbell, C. J., says: "Blake was, in fact, a candidate, but he was an alderman, and, therefore, ineligible, and that fact was known to the electors. Now it is the law, both the common law and the parliamentary law, and it seems to me also common sense, that if an elector will vote for a man who he knows is ineligible, it is as if he did not vote at all or voted for a non-existent person; as it has been said, as if he gave his vote for the man in the moon."

It seems to me that Mr. Campbell's opinion was this: The reason why the vote given for a dead man is not to be counted is that the voter knowingly votes for a person whom he knows to be incapable of election, and therefore the result is the same as if he had not voted at all. Voting for a dead man or for the man in the moon are expressions showing that, in order to make the vote a nullity, there must be willful persistence against actual knowledge. But it does not seem to me consistent with either justice, or common sense, or common law to say that, because these voters were aware of a certain circumstance, they were necessarily aware of the disqualification arising from that circumstance, and that therefore their votes are to be considered as mere nullities. Upon this ground I do not think that the votes given in ignorance that Blizard was in law disqualified are made out to have been wholly thrown away, and that Moore is entitled to act as town councilor.

Under these circumstances the election ought to be considered as void and a new election ought to be held.

LUSH J. I am of the same opinion. We have not the materials before us to enable us to find out whether the prosecutor had a majority over the legal votes given for his opponent, the notice of disqualification not having been published before the election commenced; therefore it becomes necessary to ascertain what is the principle governing the decisions in the cases cited, in which it was held that votes given for a candidate whom the voters knew to be disqualified are thrown away, that is, are to be treated as if they had not been given at all. The fact that Blizard, who presided at the election, was mayor, was known to all the voters; and it is necessary to decide whether the vote, given by an elector who knows a fact which, by construction of law, operates as a disqualification of the candidate, is of itself a mere nullity, or whether, in order to nullify the vote, it is necessary that the elector should be aware not only of the fact, but also of the legal consequences annexed to it.

For the reasons given by my brother Blackburn, I am of opinion that it is not enough to show that the voter knew the fact only, but that it is necessary to show sufficient to raise a reasonable inference that he knew the fact amounted to a disqualification. It cannot be said in all cases that the mere knowledge of a fact which, in law, disqualifies a candidate must be taken to be knowledge of all the accompanying circumstances. That would be a step far beyond the principle in the cases cited, which show that, in order to nullify a vote, it must be proved that the person giving it must have known that he was doing an act of no avail whatever.

A maxim has been cited which, it has been urged, imputes to every person a knowledge of the law. The maxim is *ignorantia legis neminem excusat*, but there is no maxim which says that, for all intents and purposes, a person must be taken to know the legal consequences of his acts. Here the voter's ignorance of the disqualification of the candidate does not make his vote valid; but it is a very different question whether we are to say now that the candidate who was in the minority is to be declared duly elected, and that those persons who voted for Blizard must be taken to be in the same position as if they had not voted at all, merely because they knew the fact from which, by construction of law, the disqualification arose. Therefore, I am of opinion that the *mandamus* cannot issue.—*The Queen vs. The Mayor, Aldermen, and Burgesses of Tewkesbury; Law Reports, Queen's Bench*, 3, 1867–68.

Mr. MORTON. I refer to that case to show that under the broadest construction of the English law it furnishes no ground whatever for this action in Oregon. In whatever way we look at this case, it seems to be utterly indefensible. In the first place the statutes of Oregon require the governor to certify who received the highest number of votes. His duty was simply ministerial. He had no power to judge as to the disqualification of a candidate for elector, for Congress, for supreme judge, for State officers, for any office whatever. He was to certify to the election of the man who had the greatest number of votes, and then the law required that that certificate should be delivered not to an individual member of the electors but to the college of electors, to the electors when assembled, and not to be delivered to a pretender to be carried off by him, but to be delivered to the college which would be to the majority of the electors, but this law of Oregon was expressly violated.

The PRESIDING OFFICER, (Mr. WRIGHT.) The question is on the amendment proposed by the Senator from Delaware [Mr. BAYARD] to the amendment of the Committee on Privileges and Elections.

Mr. BOGY. Mr. President, I would like to make an inquiry of the Chair first as to the condition of the question before the Senate, and whether the amendment of the Senator from Delaware is now pending.

The PRESIDING OFFICER. The question before the Senate is on the amendment proposed by the Senator from Delaware to the amendment of the Committee on Privileges and Elections.

Mr. BOGY. There being two amendments, of course the proposition cannot now be amended further. I would like to offer an amendment which I will move later, if necessary.

I do not rise, Mr. President, after this question has been discussed so lengthily and so ably, to do more than to add a few words to vindicate the conduct of the governor of Oregon. In my estimation, he did his duty with perfect honesty; he could have done nothing less and be a faithful public officer.

Much learning has been displayed on this question; many authorities have been cited and very able arguments have been advanced upon both sides; but at last the question is simply this: An election was held in the State of Oregon for electors of President and Vice-President, that State being entitled to three electors. One of the candidates was clearly, beyond all doubt, beyond all dispute, (and no man denies that fact,) ineligible because he held an office of profit and trust under the Government of the United States. That being so, he was clearly ineligible. Yet he received a majority of the votes cast in the State of Oregon, a majority of 1,049 votes. That fact is made to appear by the returns. The next step which has to be taken necessarily is the evidence of the election of these electors. That evidence is supplied by the governor of the State. He, under his oath of office, is bound to give the certificate not to the person who has received the highest number of votes, but to the person or persons who shall have been elected. Now can it be said by anybody that Mr. Watts was elected when the Constitution says that he cannot be elected, and that he is not eligible? In that case what is the governor to do? To certify that Mr. Watts had been elected was to certify to that which was false. He could not have done it under his oath of office, because Watts had not been elected and could not be elected. He was not eligible any more than if he had been a non-resident of the State and never had been in the State. He was disqualified by the Constitution, and the votes given for him were a mere nullity. Gentlemen may say what they please, quote as many authorities and as much law as they please, and argue as they please, the fact is that he was not elected because he was not eligible, and not capable of being elected.

What was the governor to do? He could not certify to his election. These gentlemen say he had then no right, under the decisions made both in this country and in England and in accordance with the weight of authority, to give the certificate to the next highest person who had been voted for. Now, without arguing that point at all, it is undoubted that there has been very great diversity of opinion on that subject.

Some contend that it turns upon the point as to the knowledge of the voters in Oregon whether Mr. Watts was eligible or not. I do not believe that that is the law in a case of this kind. I do not believe that that is the law where the person voted for is ineligible by the fundamental law of the country. Everybody is presumed to know the provisions of the Constitution. Whether they knew them in Oregon or not, it is presumed to be known as well there as everywhere else, and as he was ineligible, the voters were presumed to know the fact. Being clearly ineligible, the votes given to him are nullities and amount to nothing at all. Now the State of Oregon is entitled to three votes. The governor of the State by his action could secure three votes to the State, or by his non-action the State would have but two votes.

Gentlemen argue that under the law of Oregon the remaining two electors could have supplied the vacancy by an election. The Senator from Oregon argues that at length; and the Senator from Indiana argues it with ability and with great zeal; nevertheless, in my humble opinion, these two gentlemen are entirely mistaken as to the law

of Oregon. It seems to me that this law is so plain that it is not a matter to be argued. It has been read very often; but as it is the turning point in this case, I will read it again:

The electors of President and Vice-President shall convene at the seat of government on the first Wednesday of December next after their election, at the hour of twelve of the clock at noon of that day, and if there shall be any vacancy in the office of an elector, occasioned by death, refusal to act, neglect to attend, or otherwise, the electors present shall immediately proceed to fill, by *viva voce* and plurality of votes, such vacancy in the electoral college.

The Senator from Oregon commented with severity upon the change of language used by the governor of Oregon in a telegram, I presume, sent to a paper in New York. I believe the construction of the governor of Oregon is entirely correct. I will now explain my understanding of this law:

If there shall be any vacancy in the office of an elector—

There must have been "an elector." The Senator from Indiana speaks of the law of Missouri being different, because it says "an elector appointed." Although the word "appointed" is not here, it means it. Why? Because a man cannot be an elector unless he has been appointed to be an elector. The vacancy to be filled may be occasioned by death. By the death of whom? Of the elector. So by "refusal to act." Of whom? Of the elector. "Neglect to attend?" Whose neglect? The elector's. "Or otherwise." Whether an elector is prevented by death, neglect, or otherwise prevented, that vacancy, so occasioned, is to be filled; and whatever may be the cause why the elector does not attend, whether on account of death, resignation, refusal to attend, insanity, matters not. It might have been insanity. He might have got drunk and been unable to go there and attend.

Mr. MITCHELL. Will the Senator yield to me a moment to ask a question?

Mr. BOGY. I am willing.

Mr. MITCHELL. The Senator from Missouri says there must be a vacancy in the office of elector. I want to know from the Senator if the office of elector is not a continuing office existing all the time in each of the States to the number of the representation of that State in Congress, and if there may not be a vacancy by a failure to elect the requisite number by the people just as much as in any other way?

Mr. BOGY. I have no question that the law could be drawn to provide for just such a case as took place in Oregon; but take the law as it is, and that law says that if there be a vacancy in the office of an elector—not a vacancy in the electoral college, but in the office of an elector—presuming, admitting, and the whole argument is founded on this, that there must have been an elector who has died, resigned, or refused to act, then there is a vacancy because he has died or refuses to act, and so he creates a vacancy by his act or he neglects to attend and he creates a vacancy because he does not attend; and who in the name of common sense can give any other construction to this? There is no lawyer in the world acting as a judge who would not so hold, not even the Senator from Indiana; but I will not say that because he is a judge; he is the chairman of the committee to investigate this matter, and I am a little astonished—I say it without being his censor at all—it seems to me a very strange position for the chairman of the committee who is to be the presiding judge to pass on this question that he should construe it before the case is submitted to him, before it has been argued, and before the facts are presented. We know his opinion beforehand.

Mr. President, there is no room for doubt. On a question of this kind submitted to an impartial tribunal there would be no room for doubt. It must be a vacancy of an elector occasioned by death, occasioned by refusal to act, occasioned by neglect to attend, or otherwise occasioned; nothing more and nothing less.

Mr. MITCHELL. It is a vacancy in the office, is it not?

Mr. BOGY. A vacancy in the office, of course. If an elector has died, I take it, his office is effectually vacant.

Mr. MITCHELL. Or if there has been none elected, then it is effectually vacant, is it not? It is a continuing office, existing all the time, as long as the Government stands.

Mr. BOGY. It may not continue. If there had been but three candidates in that State and one of them had not been eligible, certainly but two could have been elected and one could not have been.

Mr. MITCHELL. Would there not then be a vacancy in the office of elector in Oregon?

Mr. BOGY. I do not know that there would be. Under this law there would not be. If the people of Oregon had voted for two electors, being entitled to three, although in fact there would be a vacancy, in law there would not be under this statute. Certainly there would be no vacancy there, because if a certain man had never been elected he could not have died while elector, he could not have refused to act, he could not have neglected to attend, or he could not otherwise have been kept away from that place, because he never existed. The law of Oregon and the law of Missouri, although not in the same language, are virtually the same. The law of Vermont, the law of Rhode Island, the law of Oregon, the law of Missouri, and the law of Michigan—I have examined them all—are substantially the same.

Mr. MITCHELL. May I ask the Senator one other question? The Senator, I concede, will presume that it was within the province of the Legislature of the State of Oregon to determine what does and what does not constitute a vacancy in the office of presidential elector or any State office in that State?

Mr. BOGY. That it is competent for the Legislature to provide?

Mr. MITCHELL. That is, what shall or shall not constitute a vacancy. The Senator will concede that, I presume?

Mr. BOGY. I not only concede that but I go further; I think the law of Congress on that subject is a nullity.

Mr. MITCHELL. Now I want to know if the Legislature of the State of Oregon has not provided in the very code on the Senator's desk as to what shall and what shall not constitute a vacancy, and if it does not include in the class of cases the case where the election is void, where a person for instance is voted for who is ineligible. Does not the act of the Legislature of the State of Oregon plainly provide that in a case of that kind, when the void election is declared void by a competent tribunal, then there is a vacancy in that office?

Mr. BOGY. The Senator, I think, is a very singular logician or I am, one or the other.

Mr. MITCHELL. That may be.

Mr. BOGY. I admit that under the Constitution of the United States clearly the States have the right to provide for a case of this kind. The States have the sole right to provide the mode and manner of appointing electors. The Legislatures have the right to appoint the electors themselves. The Legislature of a State might authorize the governor to appoint the electors. They might authorize any man in the State to appoint the electors. That power is given to them without limit. Having the power to appoint electors, as a matter of course they have the right to provide how any vacancy may be filled. There is no question about that. While I admit that, I do not admit that the Legislature of Oregon has done that thing. That is the point. I think they have failed to do it. I think they failed to do it in Rhode Island; I think they failed also in Vermont.

Mr. MITCHELL. I call the Senator's attention to that provision of the statute which provides what shall constitute a vacancy.

Mr. BOGY. It is what I have been trying to read. I have been trying to get it into the Senator's head.

Mr. MITCHELL. The Senator is not reading from the same statute I am talking about. There is another statute in the same book, on a separate page, in a different section, which goes on to provide what shall constitute a vacancy, and one of the cases included in that provision is where the election of the person voted for is void for any reason.

Mr. BOGY. Will the gentleman show me that law?

Mr. MITCHELL. I will with pleasure. It is on page 709 of the code of Oregon. It provides as follows:

Every office shall become vacant on the happening of either of the following events before the expiration of the term of such office:

1. The death of the incumbent;
2. His resignation;
3. His removal;
4. His ceasing to be an inhabitant of the district, county, town, or village, for which he shall have been elected or appointed, or within which the duties of his office are required to be discharged;
5. His conviction of any infamous crime, or of any offense involving a violation of his oath;
6. His refusal or neglect to take his oath of office, or to give or renew his official bond, or to deposit such oath or bond within the time prescribed by law;
7. The decision of a competent tribunal declaring void his election or appointment.—*General Laws of Oregon*, chapter 13, title vii, section 45, page 709, 710.

Mr. BOGY. Now, Mr. President, that just shows how weak this case is. The other law in relation to electors stands by itself, a law complete in itself, made for a very different purpose, and it is attempted to be sustained by a law providing for the mere ministerial officers of the State. Under this law many of the offices in Oregon no doubt might be filled either by the governor or the Legislature as the law provides if there be a vacancy caused by death, resignation, or ineligibility; but does that control the law standing by itself, made for a purpose independent, important, which is intended to cover the whole ground and which is complete in itself? I hope the Senator will excuse me if I am compelled to call that pettifogging. I do not mean to be offensive, but it is nothing else. The law in relation to electors stands by itself, intended to provide for the election of the highest officers in the Government. The office of elector is the highest office in our Government. It is in some respects higher than the Presidency because it makes the President. In accordance with the theory of our Government the elector was to be an independent man voting for whom he pleased, and the position of an elector in theory was to be the most elevated, the most dignified, the most responsible position that a citizen of this country could hold under the Constitution. The law of Oregon, like the law of all the States, provides that if one of the persons chosen to this high office is unable to discharge the duty imposed upon him by law the remaining members of the college of electors shall fill his vacancy. But there must have been an election. How was it in Vermont? I have not the law of Vermont before me, but I have read that law and there the Legislature was called together for the purpose of passing a law authorizing the vacancy to be filled in a case precisely similar to the case in Oregon.

Mr. MITCHELL. The Senator is mistaken. The law of Vermont was dissimilar to that of Oregon, was not like it. The Legislature were called together and they made it like it, and then the other electors filled the vacancy. That was all there was about it.

Mr. BOGY. It is not a very proper way to argue for one gentleman to assert a thing to be a fact and another to deny it to be a fact.

Mr. MITCHELL. I simply think the Senator was mistaken.

Mr. BOGY. I said the law of Vermont was substantially the same as that of Oregon, not in the same words. These laws are not in the same words, but throughout the United States the law upon this subject is pretty much similar for a very good reason. Many years ago nobody ever dreamed that this question would ever come up. It was supposed that a vacancy in the office of elector might be created by death, by resignation, by inability to attend, or otherwise; but it was not believed that persons would run for the office who were not eligible; and hence no provision was made for a vacancy of that kind. There is none in my State, none in Vermont, none in Rhode Island, none in Michigan. I have the law of Michigan before me. I say, according to my understanding of the law of Vermont, it is the same as the law of Oregon. There a person was voted for as an elector who was not eligible. The Legislature was called upon to assemble for the purpose of passing a law authorizing that vacancy to be filled. That law was passed under the act of Congress found in the Revised Statutes, and I think it is a very doubtful question, one which I intend by an amendment to this resolution at the proper time to submit to this Committee on Privileges and Elections. We might get the opinion of the chairman of that committee before he starts to investigate the matter. The law of Rhode Island is virtually the same. Now look at the decision of the supreme court of that State on that very subject. The supreme court of Rhode Island, upon a law virtually and substantially the same as the law of Oregon and of every other State, says:

Before any person can decline under this section—

A section authorizing the electors of that State to fill a vacancy in case an elector declines or is prevented by any cause from serving—

he must be elected.

So say the supreme court of Rhode Island.

And no person can be elected who is ineligible or, in other words, incapable of being elected. Resignation, said Lord Cockburn, chief justice, in The Queen *vs.* Blizzard, L. R., 2 Q. B., 55, implies that the person resigning has been elected unto the office he resigns. A man cannot resign that which he is not entitled to and which he has no right to occupy. We think the disqualification is not removed by the resignation of the office or trust unless the office is resigned before the election. The language of the Constitution is that no person holding an office of trust or profit under the United States shall be appointed an elector. Under our law the election by the people constitutes the appointment.

This is the decision of the supreme court of Rhode Island, made but a short time ago, on the first day of this month, in a case I may say precisely the same. A person was voted for in that State who held an office of trust and profit, and under the constitution was ineligible. The case was submitted to the supreme court, and this court made the decision I have just read to the Senate saying that a person cannot resign that of which he is not possessed, and in that case, as in the case of Vermont, the Legislature passed a law to supply whatever was necessary.

The case of Oregon has been decided by the action of Vermont and Rhode Island beyond a doubt. The cases are in every respect the same. I have read them all. They are not in the same language, but substantially alike, and present a question worthy of being examined, not only for the effect it may have upon the present contest now pending, but as a guide to those who may come after us, and who may have to pass upon similar cases, and I regret very much, that a question of this importance, peculiarly requiring cool, calm, impartial investigation, has been so prejudged in this body. The proper way would have been to refer it to the committee, and let the committee be impartial, if a committee of this body can be impartial.

Now, sir, a word with regard to the State of Missouri, so that that case may not be prejudged. In Missouri we had no doubt that General Frost was eligible to the office of elector, and at the proper time we will state the case before the committee. It is not worth while to argue it in advance; but there can be no doubt that he was eligible under the Constitution, under the law, under the fourteenth amendment, and under all conditions and circumstances, as much as any other citizen of the United States could possibly be; but so as to avoid any controversy, under our law he failed to attend and his vacancy was properly filled. Nevertheless, if he were not eligible there would be no vacancy such as was contemplated by the law of Missouri, because no elector had been appointed in that case standing exactly as the law of Oregon stands. If it turn out on investigation that General Frost was not eligible, then Missouri will lose one of her votes, as I contend under the condition of things Oregon would have lost one of her votes if the governor, acting I have no doubt from high patriotic motives, had not used his official power to secure to the State its due weight in the electoral college. If it be true—and who denies it?—that Mr. Watts was not eligible, Oregon had voted then for but two electors, and if it be so, as I contend, that under the law of Oregon this vacancy could not be filled by the two remaining electors, it became the duty of the governor to use the power of his office to preserve to his State its due weight in the electoral college, which was three votes, and if he had not done so Oregon would have been cut down to two votes. To secure that he was compelled to do that which he did do. I contend that he was compelled to do it under the law. In addition to the law he certainly must have been influenced as a patriotic man by what was due to his State, for otherwise that State by the action of the people of Oregon themselves would have been cut down to two votes.

Now it is not worth while here, and there is nothing gained by it I will tell the Senator from Oregon, to try to make this a fight as against Governor Grover personally. I do not know him; but I have seen nothing that has come before my eyes that tells me in the slightest manner that he did not do his duty. On the contrary, we do know that he took a long time to investigate; we do know that he consulted the best legal minds of the country; and that he sent away to the valley of the Mississippi for the opinion of one of the best jurists in that valley. My friend from Indiana may laugh at him as much as he pleases. I know no lawyer in Indiana his superior as a lawyer. My friend spoke rather lightly of Indiana a little while ago, for he said that even in Indiana this would not be law.

Mr. MORTON. I said the Indiana case would not go to the extent claimed here at all.

Mr. BOGY. We do know that Governor Grover took this case under advisement for a long time, that he consulted the best legal minds in the State, and also one of the best legal minds in the valley of the Mississippi. I have not the honor of knowing Judge Hoadly personally, but the Senator may know him, and if he does not know him personally he knows that he is a man of fine reputation, one of the finest intellects in our section of the country, and one of the best lawyers.

Mr. MORTON. I never heard of it.

Mr. BOGY. There are many things you and I never heard of. [Laughter.] It is nevertheless true. The Senator has been out of the profession many years, and I doubt if he is familiar with the men who have acquired distinction in the law in the last ten years. They have grown up since he has become a public man. The fact is that Judge Hoadly in the city of Cincinnati stands the peer of the best lawyers in that city. Now in view of all these facts that are known, it is not worth while to be finding fault and trying to make it appear that this gentleman occupying the high office of governor of that distant State has been guilty even of telling lies as the Senator from Oregon has intimated this morning, of telling horrible lies unworthy not only of a governor but unworthy of any man.

Mr. MITCHELL. I did not use any such language.

Mr. BOGY. The Senator did not use that language, I admit; I did not intend to say that he did; but his remarks were intended to make that impression before the country that he had stated falsely with regard to the number of persons who must have known that Mr. Watts was disqualified, that in making that statement he stated that which he knew was untrue, and that in plain language was a lie.

Mr. MITCHELL. I simply stated the facts. If they convict Mr. Grover of misrepresentation, I cannot help it.

Mr. BOGY. That may be so. His effort was made before this Chamber to show that this officer holding this high office had been guilty of telling that which was not true in stating facts. Of course the Senator did not use the word "lie," but that was the amount of it. It is not worth while to argue the case in that way. To use the language of the Senator from Indiana, "We cannot elect a President in that manner." Ah, sir, there are many ways that modern times have taught us how Presidents are attempted to be elected; but they are novel. The old way was for the people to vote in their respective States, those votes to be counted, the electors to meet and the majority of the electors appointed to speak the voice of the people of the United States. But that day has passed. How is it in Louisiana? How is it in South Carolina? How is it in Florida? One of the men sent there by the President of the United States in a letter published but yesterday admits himself that the State of Florida voted for Tilden. His own report made to the President of the United States, which ought to have been sent here as the Louisiana report was sent, but which was not sent, virtually admits that Florida cast her vote for Tilden. In the report published but yesterday Mr. Barlow admits that Florida voted for Tilden. We know the fact that, as far as the vote is concerned, the people of Louisiana voted, by a majority of about eight thousand votes, for Tilden. And yet what has become of that vote? A returning board there is commended; its decisions are held equal to those of the Supreme Court of the United States, and when the governor of Oregon, acting in obedience to law, doing that which he was compelled to do and could do nothing else, is censured and is held up here as a man who has disgraced his high office and acted unworthily.

Ah, Mr. President, that will not do. The people of the United States, it seems to me, expect that we in Congress will meet this question in a different way. As far as I am individually concerned, if I am satisfied that Mr. Watts is eligible under that law and that the remaining electors had the right or the power under that law to fill that vacancy, if it can be so called, I, as a Senator, would give to the State of Oregon three votes for Mr. Hayes and would not hesitate at all.

Mr. MITCHELL. Will the Senator object to giving way for a motion to adjourn? It is so late that we shall not be able to get a vote to-day, and I do not think it worth while for us to remain any longer.

Mr. BOGY. I am nearly through now; but if I start again in the morning, I cannot tell how long I shall talk. [Laughter.] But I will give way to a motion to adjourn.

Mr. MITCHELL. I move that the Senate adjourn.

The motion was agreed to; and (at four o'clock and fifty-five minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

TUESDAY, *December* 19, 1876.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of yesterday was read and approved.

CLERK OF COMMITTEE ON COINAGE, WEIGHTS, AND MEASURES.

Mr. O'BRIEN. I ask consent to submit for consideration and adoption at this time the resolution which I send to the Clerk's desk.

The Clerk read as follows:

Resolved, That the clerk to the Committee on Coinage, Weights, and Measures be, and he is hereby, allowed the same compensation per diem now allowed to the clerks of the other standing committees.

Mr. WILSON, of Iowa. Has that resolution the indorsement of the Committee of Accounts?

The SPEAKER. The Chair is not able to answer that question.

Mr. WILSON, of Iowa. I ask the gentleman from Maryland [Mr. O'BRIEN] if the resolution has had the indorsement of the Committee of Accounts?

Mr. O'BRIEN. I have no doubt it would be indorsed by that committee if necessary.

Mr. WILSON, of Iowa. I think it had better be referred to the Committee of Accounts.

Mr. O'BRIEN. I do not think it at all necessary to refer it.

Mr. KELLEY. I object to the resolution.

Mr. O'BRIEN. Then I ask that it be referred to the Committee of Accounts.

Mr. KELLEY. I have no objection to that.

There being no objection, the resolution was received and referred to the Committee of Accounts.

REPORT ON MINING STATISTICS.

Mr. VANCE, of Ohio, from the Committee on Printing, reported back the following resolution, with a recommendation that it be adopted:

Resolved by the House of Representatives, (the Senate concurring.) That there be printed of the report of R. W. Raymond on mining statistics for 1875, with the accompanying engravings, 2,500 copies for the use of the House of Representatives, 1,000 for the Senate, and 500 for the Secretary of the Treasury and Commissioners.

The resolution was adopted.

Mr. VANCE, of Ohio, moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

ELECTION IN LOUISIANA.

Mr. VANCE, of Ohio. I ask unanimous consent that a concurrent resolution from the Senate providing for printing extra copies of the President's message and accompanying documents in regard to the Louisiana election be taken from the Speaker's table and referred to the Committee on Printing.

There being no objection, the following resolution was taken from the Speaker's table, read, and referred to the Committee on Printing;

Resolved by the Senate, (the House of Representatives concurring.) That 10,000 additional copies of the letter of the President, with the accompanying documents, on the election in Louisiana be printed; of which 3,000 shall be for the use of the Senate and 7,000 shall be for the use of the House of Representatives; and that there be also printed and stitched or bound with the same the memorial of Messrs. BOGY, MCDONALD, and STEVENSON and the papers referred to therein on the same subject.

FRANCIS A. PAGE.

Mr. MUTCHLER, by unanimous consent, submitted the following resolution; which was read and referred to the Committee of Accounts:

Resolved, That the Clerk of the House of Representatives be, and he is hereby, authorized and directed to pay out of the contingent fund to Francis A. Page, an employé of this House on the "soldiers' roll," the amount of his salary as disabled soldier from July 15, 1876, the date when he was last paid, to December 1, 1876.

CHARLES F. CHANDLER.

Mr. VANCE, of Ohio. I ask unanimous consent that the bill (S. No. 722) for the relief of Charles F. Chandler be taken from the Speaker's table and referred to the Committee on Patents.

There being no objection, the bill was taken from the table, read a first and second time, and referred to the Committee on Patents.

Mr. WILSON, of Iowa. Let it be understood that this bill shall not be brought back on a motion to reconsider.

The SPEAKER. It cannot be brought back except by unanimous consent.

Mr. WILSON, of Iowa. I believe that the rule refers only to the introduction of House bills.

Mr. VANCE, of Ohio, moved to reconsider the vote by which the bill was referred; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

ADMINISTRATOR OF WILLIAM A. LLOYD.

Mr. WILLIAMS, of Wisconsin. I ask unanimous consent that the bill (S. No. 784) for the relief of Enoch Totten, administrator of the estate of William A. Lloyd, deceased, be taken from the Speaker's table for reference to the Committee of Claims.

There being no objection, the bill was taken from the table, read a first and second time, and referred to the Committee of Claims.

The SPEAKER. The motion to reconsider the reference of this bill will be laid on the table.

ORDER OF BUSINESS.

Mr. WILLIAMS, of Wisconsin. I ask unanimous consent to make a report from the Committee on Foreign Affairs.

The SPEAKER. The Chair suggests that the Committee on Foreign Affairs will probably be called during the morning hour.

Mr. BLAND. I call for the regular order.

The SPEAKER. The regular order being called for, the morning hour begins at twenty-two minutes after twelve o'clock; and the first business in order is the calling of committees for reports.

UNITED STATES COURT IN MICHIGAN.

Mr. HURD, from the Committee on the Judiciary, to whom was referred the bill (H. R. No. 966) to provide for the holding of terms of the district and circuit court of the United States at Bay City, Michigan, reported a substitute therefor, (H. R. No. 4246;) which was read a first and second time.

The substitute provides that there shall be two terms of the United States district and circuit court for the eastern district of Michigan held at Bay City, Michigan, in said district, each year from and after the passage of the act, the time and length of the terms to be fixed by the judges of said court respectively.

The second section provides that the clerk of the district court of the eastern district of Michigan, the marshal, and the district attorney for said district, shall perform the duties appertaining to their offices, respectively, for said courts; and the clerk and marshal are each authorized to appoint a deputy to reside and keep their offices at Bay City, and who shall in the absence of their principals do and perform all the duties appertaining to those offices respectively; provided that the local authorities shall furnish a suitable court-room where the court shall be held without cost or expense therefor to the United States.

The bill was ordered to be engrossed and read a third time; and it was accordingly read the third time, and passed.

Mr. HURD moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

PAYMENT FOR INDIAN DEPREDATIONS.

Mr. SEELYE, from the Committee on Indian Affairs, reported back adversely the bill (H. R. No. 346) authorizing payment to certain citizens of New Mexico for Indian depredations; which was laid on the table, and the accompanying report ordered to be printed.

SUPPLIES TO SIOUX INDIANS OF MINNESOTA.

Mr. SEELYE. I am also directed by the Committee on Indian Affairs to report back, with an adverse recommendation, the bill (H. R. No. 325) to authorize the Secretary of the Interior to ascertain the amount due to citizens of the United States for supplies furnished to the Sioux or Dakota Indians of Minnesota subsequent to August, 1860, and prior to the massacre of August, 1862, and providing for the payment thereof. As there is a minority as well as a majority report in this case, I move that this bill instead of being laid on the table be placed on the Private Calendar.

Mr. MORGAN. I desire to present the views of the minority on the bill just reported by the gentleman from Massachusetts, [Mr. SEELYE.]

The SPEAKER. The bill will be referred to the Committee of the Whole on the Private Calendar, and the majority and minority reports printed.

JOHN H. PICKERING.

Mr. VAN VORHES, from the Committee on Indian Affairs, reported back favorably a joint resolution (H. R. No. 149) for the relief of John H. Pickering; which was referred to the Committee of the Whole on the Private Calendar, and, with the accompanying report, ordered to be printed.

HILLBORN C. MILLER.

Mr. COOK, from the Committee on Military Affairs, reported back adversely a bill (H. R. No. 1687) to change the date of muster-in as second lieutenant of Hillborn C. Miller, late of Company G, First Ohio Heavy Artillery; which was laid on the table, and the report ordered to be printed.

GEORGE G. GUSTIN.

Mr. COOK also, from the same committee, reported back adversely the petition of George G. Gustin; which was laid on the table, and the report ordered to be printed.

PATRICK NOONAN.

Mr. COOK also, from the same committee, reported joint resolution (H. R. No. 174) authorizing the issue of clothing to Private Patrick Noonan, Company G, Fifth United States Infantry; which was read a first and second time.

The resolution, which was read, authorizes the Secretary of War to issue to Private Patrick Noonan, Company G, Fifth United States Infantry, clothing in lieu of and equal in amount to that lost by him at the burning of the stables at Fort Leavenworth, Kansas, on the 23d day of January, 1875, as shown and recommended in the report of the board of survey convened under provisions of General Order No. 13,

War Department, by Special Order No. 29, headquarters Fort Leavenworth, Kansas, of date of March 9, 1875.

The joint resolution was ordered to be engrossed for a third reading; and being engrossed, it was accordingly read the third time, and passed.

Mr. COOK moved to reconsider the vote by which the joint resolution was passed; and also moved to lay the motion to reconsider on the table.

The latter motion was agreed to.

ISSUE OF CLOTHING TO UNITED STATES CAVALRY.

Mr. COOK also, from the same committee, reported joint resolution (H. R. No. 175) authorizing the issue of clothing to Company A, Second Regiment United States Cavalry; which was read a first and second time.

The joint resolution, which was read, authorizes the Secretary of War to issue to fifty enlisted men of Company A, Second Regiment United States Cavalry, clothing in lieu of and equal in amount to that lost by them at the fire which occurred in the camp of Company A, Second Cavalry, on the 16th day of July, 1874, as shown and recommended in the report of the board of survey, convened under Special Order No. 138, headquarters Fort Laramie, Wyoming Territory, of date of July 17, 1874.

The joint resolution was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. COOK moved to reconsider the vote by which the joint resolution was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

ISSUE OF CLOTHING TO PRIVATES HEGNER AND COLLINS.

Mr. COOK also, from the same committee, reported a joint resolution (H. R. No. 176) authorizing the issue of clothing to Private Francis Hegner, Company F, Seventh Cavalry, and Private John C. Collins, Company G, Seventh Cavalry; which was read a first and second time.

The joint resolution, which was read, authorizes the Secretary of War to issue to Private Francis Hegner, Company F, Seventh United States Cavalry, and Private John C. Collins, of Company G, Seventh United States Cavalry, clothing in lieu of and equal in amount to that lost by them respectively at the burning of the cavalry stable at Fort Abraham Lincoln, Dakota Territory, November 10, 1874, as shown and recommended in the report of the board of survey, convened by Special Orders No. 213, headquarters Fort Abraham Lincoln, Dakota Territory, of the date November 11, 1874.

Mr. WILSON, of Iowa. Are these joint resolutions accompanied by reports?

Mr. COOK. They are.

Mr. WILSON, of Iowa. One of the reports, then, should be read, so it may appear of record upon what grounds the Committee on Military Affairs reports for action at this time these joint resolutions.

Mr. COOK. These cases are all based upon communications from the War Department, which set forth all the facts, inclosing the report of the board of survey in each case. The executive documents are numbers 52, 53, 54, and 55 of the last session of Congress. The Committee on Military Affairs have examined the evidence in each case, and are satisfied that the resolutions should pass.

The joint resolution was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. COOK moved to reconsider the vote by which the joint resolution was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

SERGEANT HERMAN THEUNE.

Mr. COOK also, from the Committee on Military Affairs, reported a joint resolution (H. R. No. 177) authorizing the issue of clothing to Sergeant Herman Theune, Company I, Twenty-third United States Infantry; which was read a first and second time.

The joint resolution, which was read, authorizes the Secretary of War to issue to Sergeant Herman Theune, Company I, Twenty-third United States Infantry, clothing in lieu of and equal in amount to that lost by him at the burning of the old post-hospital at Fort Whipple, Arizona Territory, on the 13th day of November, 1874.

The joint resolution was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. COOK moved to reconsider the vote by which the joint resolution was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

FORT READING MILITARY RESERVATION.

Mr. JOHN REILLY, from the Committee on Military Affairs, reported as a substitute for House bill No. 1950 a bill (H. R. No. 4247) for the transfer of the Fort Reading military reservation in Shasta County, California, to the Interior Department, and authorizing the sale of the same; which was read a first and second time, referred to the Committee of the Whole on the state of the Union, and ordered to be printed.

DONATIONS OF CONDEMNED CANNON.

Mr. JOHN REILLY also, from the same committee, reported back, with an adverse recommendation, the bill (H. R. No. 976) authorizing the Secretary of War to deliver to the city of Port Huron, Michigan, certain condemned cannon and balls for a soldiers' monument in Lake Side Cemetery; and moved that the committee be discharged from the further consideration of the same and that it be laid on the table.

Mr. CONGER. I ask that that bill may be recommitted that I may have an opportunity to appear before the committee.

Mr. JOHN REILLY. I have no objection to that.

The bill was accordingly recommitted to the Committee on Military Affairs.

Mr. JOHN REILLY also, from the Committee on Military Affairs, reported back, with an adverse recommendation, the bill (H. R. No. 849) granting four condemned cannon and sixteen cannon-balls to the Soldiers' Monumental Association of Salem, Ohio, for monumental purposes; and moved that the committee be discharged from the further consideration of the same, and that it be laid on the table.

Mr. WOODWORTH. I ask that that bill be put upon the Private Calendar.

The SPEAKER. That is the gentleman's right.

The bill was referred to the Committee of the Whole House on the Private Calendar, and the accompanying report ordered to be printed.

Mr. JOHN REILLY also, from the Committee on Military Affairs, reported back, with an adverse recommendation, the bill (H. R. No. 1996) donating condemned cannon to Post No. 71, Grand Army of the Republic, at Holyoke, Massachusetts; and moved that the committee be discharged from the further consideration of the same, and that it be laid on the table.

Mr. SEELYE. I move that that bill be referred to the Committee of the Whole on the Private Calendar.

The motion of Mr. SEELYE was agreed to; and the bill was referred to the Committee of the Whole on the Private Calendar, and the accompanying report ordered to be printed.

Mr. JOHN REILLY also, from the Committee on Military Affairs, reported back, with an adverse recommendation, the bill (H. R. No. 2911) donating certain condemned cannon to the soldiers' monument at Muscatine, Iowa; and moved that the committee be discharged from the further consideration of the same, and that it be laid on the table.

Mr. TUFTS. I move that the bill be referred to the Committee of the Whole on the Private Calendar.

The motion of Mr. TUFTS was agreed to; and the bill was referred to the Committee of the Whole on the Private Calendar, and the accompanying report ordered to be printed.

Mr. JOHN REILLY also, from the Committee on Military Affairs, reported back the following bills, and the same were severally ordered to lie on the table, and the accompanying reports ordered to be printed:

The bill (H. R. No. 3935) authorizing the Secretary of War to deliver certain condemned ordnance to the municipal authorities of Boston, Massachusetts;

The bill (H. R. No. 3938) donating condemned cannon for soldiers' monuments to be erected at Yonkers and Sing Sing, and by The Battle of White Plains Monument Association of West Chester County, State of New York;

The bill (H. R. No. 698) donating condemned cannon and cannon-balls to the Colchester Monument Association of Colchester, Connecticut, for monumental purposes;

The bill (H. R. No. 845) condemning two pieces of brass ordnance for a soldiers' monument at Caldwell, Ohio;

The bill (H. R. No. 697) donating condemned cannon and cannon-balls to Ledyard Monumental Association of Ledyard, Connecticut, for monumental purposes;

The bill (H. R. No. 1228) donating condemned cannon and cannon-balls to Samuel Orr and Philip Harnbrook;

The bill (H. R. No. 3661) donating condemned cannon for monumental purposes to Post No. 3, Grand Army of the Republic, of Taunton, Massachusetts;

The bill (H. R. No. 3697) authorizing the Secretary of War to deliver to the commissioners of Forest Park, Saint Louis, Missouri, eight condemned cannon to be used in constructing the base of the statue of Ex-Attorney-General Edward Bates;

The bill (H. R. No. 848) donating condemned cannon and cannon-balls to the corporate authorities of the town of Oberlin, Ohio, for monumental purposes;

The bill (H. R. No. 1831) to authorize the Secretary of War to appropriate condemned ordnance for the erection of a monument to the memory of the soldiers and sailors of Orange County, New York, who fell during the late war;

The bill (H. R. No. 3286) donating condemned cannon and cannon-balls to monumental purposes of the Grand Army of the Republic post organization at Lawrence, Massachusetts; and

The bill (H. R. No. 3353) donating condemned cannon to the town of Winchester, Massachusetts, for monumental purposes.

Mr. JOHN REILLY also, from the Committee on Military Affairs, reported back, with an adverse recommendation, the petition of Jonas A. Champney and 60 others, for one condemned cannon and two cannon-balls for ornamenting the burial ground, South Adams, Massachusetts; and the same was laid on the table, and the accompanying report ordered to be printed.

EXPENDITURES FOR CAMP AND GARRISON EQUIPAGE.

Mr. JOHN REILLY also, from the same committee, to whom was referred Executive Document No. 788, relating to expenditures for camp and garrison equipage, reported that the legislation referred to therein having passed the House, it is returned with the recommendation that it lie on the table.

The committee was discharged from the further consideration of the same, and the executive document was ordered to lie on the table.

EQUALIZATION BOUNTIES.

Mr. JOHN REILLY also, from the same committee, to whom was referred the preamble and resolutions adopted by a mass meeting of soldiers of Allegheny County, Pennsylvania, in favor of the bill equalizing bounties, reported that the legislation asked for having already passed the House, they are returned with the recommendation that they lie on the table.

The committee was discharged from the further consideration of the same, and they were ordered to lie on the table.

ADVERSE REPORTS.

Mr. BANNING, from the Committee on Military Affairs, reported back, with adverse recommendations, the following papers; and the same were severally laid on the table, and the accompanying reports ordered to be printed:

Resolutions of the Cincinnati Chamber of Commerce, requesting the President and Secretary of War to have Newport Barracks, Kentucky, again occupied as a military post, and that the troops and military band be returned to said post.

Letter from the Secretary of War, with reports from chiefs of bureau of War Department, from Lieutenant-General Sheridan, with indorsement of General of the Army on the House bill No. 2935;

Resolutions and petitions of the city council of Covington, Kentucky, for the re-occupancy of the military post at Newport as formerly used by the Government;

The petition of Cincinnati physicians, asking the passage of Senator LOGAN'S bill for the re-organization of the medical staff of the Army;

The petition of George H. Ewing, praying to be favorably discharged from the military service; and

The petition of Capt. Reuben M. Potter, United States Army, asking the passage of a law retiring officers over seventy years of age, when they desire it.

SETTLERS ON THE SAN JUAN ORCAS.

Mr. BANNING also, from the same committee, reported back House bill No. 3878 for the relief of settlers on the San Juan Orcas and other islands lately in dispute between the United States and Great Britain; and moved that the committee be discharged from the further consideration of the same, and that it be referred to the Committee on Public Lands.

The motion was agreed to.

Mr. BANNING moved to reconsider the vote by which the bill was referred to the Committee on Public Lands; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

ADVERSE REPORTS.

Mr. BANNING also, from the same committee, reported adversely upon the following bills, &c.; which were severally laid upon the table and the accompanying reports ordered to be printed:

The bill (H. R. No. 2257) for the relief of J. T. McGinniss, captain of the Thirteenth Infantry United States Army;

The petition of soldiers of the late war, to receive one hundred and sixty acres of land and $200 in money;

Executive document relating to the testimony of Lieutenant-Colonel Jones;

Concurrent resolutions of the State of Kansas, against the reduction of the Army and for the defense of the frontiers;

The petition of D. W. Biiss, president of the Soldiers and Sailors' National Beneficial Association, and 1,060 of the members of said association, asking for the passage of a bill for the equalization of soldiers' bounties;

The memorial of the heirs of Benjamin Moore, asking compensation for the services of said Moore in perfecting certain improvements in the manufacture of small-arms;

Executive Document No. 184, relating to the military expedition against the Sioux Indians;

Executive Document No. 5125, transmitting the letter of Lieutenant-Colonel Roger Jones, Inspector-General United States Army, and

Executive document transmitting a letter from the Secretary of the Interior, asking the return of papers in the claim of Carter & Crary.

Mr. HARDENBERGH, from the same committee, made adverse reports in the following cases; which were severally laid on the table and the accompanying reports ordered to be printed:

The petition of H. S. Lathe;

The memorial of A. Watson; and

The bill (H. R. No. 1762) declaring the land ceded to Fort Crook military reservation, in Shasta County, California, subject to preemption and homestead entry.

Mr. GLOVER, from the same committee, made adverse reports in the following cases; which were severally laid on the table and the reports ordered to be printed:

The bill (H. R. No. 1683) authorizing and directing the Secretary of War to give John Kirk, late lieutenant of Company E, Ninety-second Regiment Ohio Volunteer Infantry, an honorable discharge;

The bill (H. R. No. 760) for the relief of Hiram B. Riddle;

The bill (H. R. No. 1568) for the relief of Rice M. Brown;

The bill (H. R. No. 1007) for the relief of officers of the Fourth and Fifth Indian Regiments;

The memorial of the city of Boston, Massachusetts, that Congress will fulfill its pledge to erect at Yorktown, Virginia, a marble column commemorative of the last grand battle of the Revolution;

Resolution of the Legislature of Texas, in relation to the claims of soldiers and sailors of the late war with Mexico;

The bill (H. R. No. 1338) for the relief of Adelbert C. Fassett;

The bill (H. R. No. 3094) for the relief of Calvin B. Hinkley, late captain in the Nineteenth Maine Volunteers and First Maine Heavy Artillery;

The bill (H. R. No. 761) for the relief of Anson B. Sams;

A letter from the Secretary of War, transmitting, with disapproval, a plan for a change in the present system of paying enlisted men, by Captain Pollock, Twenty-third Infantry, United States Army;

A petition for the relief of Francis B. Thompson, of Illinois, late surgeon Fifty-sixth Regiment Illinois Volunteers;

The petition of 84 soldiers in the Union Army for the equalizing of bounties; and

The petition of William M. Burnett, late chaplain of the Third Tennessee Cavalry, for pay.

Mr. A. S. WILLIAMS, from the same committee, reported adversely upon the following; which were laid on the table, and the reports ordered to be printed:

The bill (H. R. No. 3882) to authorize the President of the United States to enlist recruits for the Army of the United States, to serve not more than six months, to aid in suppressing the hostilities of certain bands of Sioux Indians;

Joint resolution (H. R. No. 150) to authorize the President of the United States to accept the services of volunteers to aid in suppressing Sioux Indian hostilities in the Northwest;

A bill (H. R. No. 2901) for the payment of non-commissioned officers according to duties discharged by them;

Executive Document No. 861, relative to a chief of artillery;

A bill (H. R. No. 3794) to retire an Army officer from active duty on account of age and distinguished services;

A bill (H. R. No. 2446) to correct the date of commission of a certain officer of the Army;

A bill (H. R. No. 3253) to change the position in the Army Register of the name of Walter F. Halleck, first lieutenant, retired;

A letter from the Secretary of War relative to the loan of tents to Mexican war veterans; and

A bill (S. No. 73) to extend the time for filing claims for additional bounty under the act of July 28, 1866.

Mr. STRAIT, from the same committee, reported adversely upon the following; which were laid on the table, and the accompanying reports ordered to be printed:

A bill (H. R. No. 389) for the relief of William Carruthers;

The petition of Captain J. C. Bacon and Lieutenant R. A. Davis, late of the Seventeenth Regiment Kentucky Cavalry;

The petition of Louis Sontagg, of Company I, Third New Jersey Cavalry;

The petition of Jacob Taylor, for services as private in Company K, First Missouri Volunteer Cavalry;

The petition of William P. Inness, colonel First Michigan Engineers and Mechanics, for pay from date of commission to the date of muster;

The petition of Nelson Shelton, private Company E, Fourth Regiment Tennessee Volunteer Cavalry, for commutation of rations, &c;

A bill (H. R. No. 2151) to compensate Jean Louis Comeaux for services in the late war;

A bill (H. R. No. 2597) for the relief of Herman Mann, of Rochester, New York;

The petition of Adam Berg, private Company C, Twenty-eighth Ohio Infantry Volunteers;

A bill (H. R. No. 2154) for the relief of the heirs at law of John W. Cameron;

A bill (H. R. No. 206) to amend the record of military service of Seth Bonney; and

A bill (H. R. No. 2056) directing the Second Auditor of the Treasury to settle the pay and bounty accounts of Moses Lord.

EMANUEL KLAUSER.

Mr. STRAIT also, from the same committee, reported a bill (H. R. No. 4248) for the relief of Emanuel Klauser, late corporal Company H, Fifty-fourth Regiment Illinois Volunteers; which was read a first and second time.

The question was upon ordering the bill to be engrossed and read a third time.

The bill directs the Secretary of War to remove the charge of mutiny against Emanuel Klauser, late corporal Company H, Fifty-fourth Illinois Infantry Volunteers, and to grant him an honorable discharge.

The bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. STRAIT moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

CATHERINE HARRIS.

Mr. STRAIT also, from the same committee, reported back with a favorable recommendation House bill No. 2606, for the relief of Catherine Harris.

The question was upon ordering the bill to be engrossed and read a third time.

The bill directs the Secretary of the Treasury to pay to Catherine Harris, widow of Matthias Harris, late a chaplain in the United States Army, the amount of pay and allowances due him as a chaplain from the 5th day of February, 1864, to the 10th day of October, 1864.

Mr. WILSON, of Iowa. Let us have read the report accompanying that bill.

The report was read.

The bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. STRAIT moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

FORT DODGE MILITARY RESERVATION.

Mr. TERRY, from the same committee, reported, as a substitute for House bill No. 1540, a bill (H. R. No. 4249) authorizing the Secretary of War to sell a portion of the Fort Dodge military reservation in Kansas to the Dodge City Town Company; which was read a first and second time.

The question was upon ordering the bill to be engrossed and read a third time.

The bill authorizes the Secretary of War to sell at public auction to the highest bidder, after duly advertising time, place, and terms of sale in two newspapers that will give fair notice of the sale, all that part of the Fort Dodge military reservation in Kansas lying west of a north and south line extending from the southeast corner of the southwest quarter of section 25, Township 26 south, range 25 west, due south to the Arkansas River, and containing one hundred and ninety-four acres more or less; and before exposing said tract of land for sale the Secretary of War shall cause the land to be duly appraised by three disinterested and competent persons, and shall not sell said tract of land for less than its appraised value.

Mr. FORT. I make the point of order that that bill should receive its first consideration in Committee of the Whole.

The SPEAKER. The Chair sustains the point of order.

The bill was accordingly referred to the Committee of the Whole on the state of the Union, and ordered to be printed.

FORT CAMERON MILITARY RESERVATION.

Mr. TERRY, from the Committee on Military Affairs, reported, as a substitute for House bill No. 2248, a bill (H. R. No. 4258) to provide for the payment for certain improvements on lands now embraced in the military reservation of Fort Cameron, in the Territory of Utah; which was read a first and second time.

The bill authorizes the Secretary of War to appoint a commission, composed of three Army officers, whose duty it shall be to investigate the claim of W. J. Allred and Alonzo A. Noon for improvements made upon lands now embraced in the military reservation at Fort Cameron, in the Territory of Utah, and to estimate and report upon the value of said improvements. In making such estimate of value of improvements, the board of officers may take into consideration the proceedings of a board of officers who assembled at Fort Cameron February 15, 1875, and such other evidence as may be brought before them, and report also upon the title of the claimants to the land embraced in the reservation.

Mr. HOLMAN. The morning hour, I believe, has expired.

The SPEAKER. It has. The bill goes over as unfinished business.

Mr. CONGER. I desire to make a point of order upon the bill.

The SPEAKER. What point of order?

Mr. CONGER. That the bill proposes to dispose of public property.

The SPEAKER. The point of order will be regarded as pending; and the decision of the Chair will be reserved till the bill comes up again.

ADJOURNMENT FOR THE HOLIDAYS.

Mr. WOOD, of New York. The Committee of Ways and Means have directed me to report the following resolution; upon which I ask the previous question:

Resolved, That when the House adjourns on Saturday, the 23d instant, it shall adjourn to meet on Wednesday, the 27th instant; and when it adjourns on Saturday, the 30th instant, it shall adjourn to meet on Wednesday, January 3, 1877.

Mr. WILSON, of Iowa. Allow me to suggest to the gentleman from New York [Mr. WOOD] that this proposition is not fair play toward the western members who may desire to go home. An adjournment of the kind proposed will interfere very seriously with any work that may be intended to be done in the House, while at the same time it will keep members here who may not desire to be absent if there is a possibility of any public business being done. The gentleman from New York must see at once that under this resolution we cannot go home; and at the same time he is interrupting the business of the House to such an extent that little can be done.

Mr. WOOD, of New York. The Committee of Ways and Means gave very mature consideration to this question, and considered the very points which my friend from Iowa suggests. But in view of the exigency of the times and the condition of the country, it was supposed that the duty of the House was to remain in session with the exception of two brief adjournments for Christmas and New Year's, which, of course, we all expect. This is the unanimous report of the committee.

Mr. BURCHARD, of Illinois. O no.

Mr. WOOD, of New York. So I understood. The gentleman from Illinois [Mr. BURCHARD] says "O no." I believe we had one dissenting vote.

The question being taken on seconding the demand for the previous question, there were—ayes 110, noes 57.

Mr. WILSON, of Iowa. I call for tellers.

Tellers were ordered; and Mr. WOOD, of New York, and Mr. WILSON, of Iowa, were appointed.

The House divided; and the tellers reported—ayes 100, noes 62.

So the previous question was seconded.

The question then recurred on ordering the main question.

Mr. WOOD, of New York. I desire to say that it is the understanding of the committee that on Saturday the House will simply meet and adjourn without transacting any business.

The SPEAKER. That will be within the province of the House on that day to determine.

Mr. WOOD, of New York. But I think that is generally understood; so that if gentlemen desire to leave on Friday it probably will not be necessary for them to remain here.

Mr. BURCHARD, of Illinois. As the gentleman from New York [Mr. WOOD] has alluded to the action of the committee, I desire to say that some members of the committee were of the opinion that if the Committee on the Judiciary, to whom was referred the other day the matter of privilege, should report within the next few days on that subject the House might take its usual adjournment, and that until the committee shall report it is rather premature to undertake to settle the question of adjournment.

The main question was ordered.

The question being on the adoption of the resolution,

Mr. WILSON, of Iowa, called for the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 121, nays 92, not voting 76; as follows:

YEAS—Messrs. Ashe, Atkins, John H. Bagley, jr., Banning, Bland, Bliss, Blount, Boone, Bradford, Bright, Buckner, Cabell, John H. Caldwell, William P. Caldwell, Campbell, Candler, Cate, Caulfield, Chittenden, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Cook, Cowan, Davis, Dibrell, Douglas, Durand, Durham, Egbert, Ellis, Faulkner, Felton, Finley, Forney, Fuller, Ganse, Glover, Goode, Goodin, Gunter, Andrew H. Hamilton, Robert Hamilton, Hancock, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Henkle, Hereford, Abram S. Hewitt, Goldsmith W. Hewitt, Hill, Holman, Hooker, Humphreys, Hunton, Hurd, Kehr, Knott, Lamar, Franklin Landers, George M. Landers, Lewis, Lynde, Mackey, Maish, McFarland, Metcalfe, Milliken, Mills, Money, Mutchler, O'Brien, Payne, Pierce, Powell, Rea, Reagan, John Reilly, James B. Reilly, Riddle, John Robbins, William M. Robbins, Roberts, Scales, Schleicher, Sheakley, Singleton, Siemons, William E. Smith, Southard, Sparks, Spencer, Stenger, Stone, Swann, Teese, Terry, Thomas, Throckmorton, Tucker, Turney, Robert B. Vance, Gilbert C. Walker, Warner, Warren, Watterson, Erastus Wells, Whitthorne, Willard, Alpheus S. Williams, James Williams, Jeremiah N. Williams, Willis, Wilshire, Benjamin Wilson, Fernando Wood, and Young—121.

NAYS—Messrs. Ainsworth, Anderson, Bagby, George A. Bagley, John H. Baker, William H. Baker, Ballou, Bell, Blair, Bradley, William R. Brown, Horatio C. Burchard, Cannon, Carr, Cason, Collins, Conger, Cromse, Culberson, Cutler, Davy, Denison, Dobbins, Eames, Evans, Flye, Fort, Foster, Franklin, Freeman, Frye, Haralson, Hardenbergh, Benjamin W. Harris, Hathorn, Hendee, Henderson, Hoskins, Hunter, Kasson, Kelley, Leavenworth, Le Moyne, Luttrell, Lynch, Magoon, McCrary, McDill, Miller, Monroe, Morgan, Nash, Neal, Norton, Oliver, O'Neill, Packer, Page, William A. Phillips, Piper, Plaisted, Platt, Poppleton, Potter, Rainey, Sampson, Savage, Seelye, Sinnickson, A. Herr Smith, Springer, Stanton, Strait, Stevenson, Tarbox, Thornburgh, Martin I. Townsend, Tufts, Van Vorhes, John L. Vance, Wait, Alexander S. Wallace, John W. Wallace, Whitehouse, Whiting, Andrew Williams, Charles G. Williams, William B. Williams, James Wilson, Alan Wood, jr., Woodworth, and Yeates—92.

NOT VOTING—Messrs. Abbott, Adams, Banks, Bass, Beebe, Blackburn, John Young Brown, Samuel D. Burchard, Burleigh, Caswell, Chapin, Cochrane, Cox, Crapo, Danford, Darrall, De Bolt, Dunnell, Eden, Garfield, Gibson, Hale, Haymond, Hays, Hoar, Hoge, Hopkins, House, Hubbell, Hurlbut, Hyman, Jenks, Frank Jones, Thomas L. Jones, Joyce, Kimball, King, Lane, Lapham, Lawrence, Levy, Lord, MacDougall, McMahon, Meade, Morrison, New, Odell, Phelps, John F. Philips, Pratt, Purman, Rice, Robinson, Miles Ross, Sobieski Ross, Rusk, Sayler, Schumaker, Smalls, Stephens, Stowell, Thompson, Washington Townsend, Waddell, Waldon, Charles C. B. Walker, Walling, Walsh, Ward, G. Wiley Wells, Wheeler, White, Wigginton, Wike, and Woodburn—76.

So the resolution was adopted.

During the vote,

Mr. GOODIN stated that the gentleman from Oregon, Mr. LANE, was absent at the bed-side of a sick friend.

The vote was then announced as above recorded.

Mr. WOOD, of New York, moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

FRANK C. HOPKINS.

Mr. WOOD, of New York, also, by unanimous consent, from the Committee of Ways and Means, submitted the following resolution; which was read, considered, and agreed to:

Resolved, That the Clerk of the House be, and he is hereby, directed to pay from the contingent fund of the House to Frank C. Hopkins the sum of $600 for services rendered as clerk to the Committee of Ways and Means in the absence of the clerk of that committee during the Forty-fourth Congress.

Mr. WOOD, of New York, moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

TONNAGE AND IMPORTS OVERCHARGE.

Mr. WOOD, of New York, also, by unanimous consent, introduced a bill (H. R. No. 4250) to provide remedies for overcharge of duties on tonnage or imports; which was read a first and second time, referred to the Committee of Ways and Means, and ordered to be printed.

SOUTH PASS, MISSISSIPPI RIVER.

The SPEAKER, by unanimous consent, laid before the House a communication from the Secretary of War, transmitting the report of Major Comstock, of the Engineer Corps, on the condition of the works on the South Pass of the Mississippi; which, on motion of Mr. CONGER, was referred to the Committee on Commerce, and ordered to be printed.

JOHN B. MONTEITH.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of the Interior, transmitting a letter from the Commissioner of Indian Affairs recommending an appropriation for the relief of John B. Monteith; which was referred to the Committee on Indian Affairs.

CONSULAR OFFICERS.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of State, transmitting a statement of the names of consular officers, not citizens of the United States, to whom salaries have been paid during the fiscal year ending June 30, 1876; which was referred to the Committee on Foreign Affairs.

CLAIM OF R. R. WALLER.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of War, transmitting, from the Adjutant-General, a report of the claim of R. R. Waller, late lieutenant Twentieth Kentucky Volunteers; which was referred to the Committee on Military Affairs.

LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted in the following cases:

To Mr. ROSS, of Pennsylvania, indefinitely on account of illness.

To Mr. WILLIAM B. WILLIAMS, for two weeks on account of important business.

To Mr. BALLOU, from the 28th instant to the 3d of January.

To Mr. CANNON, of Illinois, from the 20th instant to the 5th of January.

To Mr. MILLER, from the 22d instant to January 4 on account of important business.

To Mr. BRADLEY, for two weeks from to-morrow.

To Mr. BROWN, for ten days on account of important business.

To Mr. BAGBY, until the 1st of January on account of important business.

To Mr. SAVAGE, from the 20th instant to January 5 on account of important business.

To Mr. HENDERSON, for ten days from the 22d instant on account of important business.

To Mr. KELLEY, indefinitely, from the 22d instant.

To Mr. BAKER, of New York, from the 22d instant until January 10 on account of important business.

To Mr. TEESE, from the 21st instant until the 3d of January on account of important business.

To Mr. NASH, for twenty days on account of important business.

To Mr. LEAVENWORTH, for two weeks.

To Mr. TURNEY, for two days from Thursday next on account of important business.

To Mr. MORGAN, from December 27 to December 30, inclusive, on account of important business.

To Mr. WAIT, for ten days from the 21st instant on account of important business.

To Mr. DAVIS, for ten days from Thursday next on account of important business.

To Mr. HARDENBERGH, for ten days from December 22.

To Mr. JOHN REILLY, from to-day until Monday next on account of important business.

To Mr. ADAMS, for one week from the 26th instant on account of important business.

To Mr. GEORGE A. BAGLEY, for ten days from the 27th instant.

Mr. HOLMAN. If these are all granted, it will leave this House without a quorum during that period of time.

The SPEAKER. It is within the power of the House to refuse them.

Mr. HOLMAN. I do not object, but that is the fact.

The SPEAKER. The leave has been granted as requested.

CONSULAR AND DIPLOMATIC APPROPRIATION BILL.

Mr. SINGLETON, from the Committee on Appropriations, reported a bill (H. R. No. 4251) making appropriations for the consular and diplomatic service of the Government for the year ending June 30, 1878, and for other purposes; which was read a first and second time.

Mr. SINGLETON. I move that the bill be printed and that it be referred to the Committee of the Whole House on the state of the Union, and that it be made a special order for consideration therein to-morrow after the morning hour.

Mr. CONGER. I ask if the bill can be printed so that members can have it in time for consideration to-morrow?

Mr. SINGLETON. Yes, sir.

Mr. HOLMAN. It will be on our desks to-morrow morning.

Mr. CONGER. I reserve all points of order on the bill.

The motion of Mr. SINGLETON was agreed to.

PAY OF HOUSE EMPLOYÉS.

Mr. SPRINGER. I ask unanimous consent to offer the following resolution in reference to the pay of the employés of the House for action at this time:

Resolved, That the Clerk be authorized to issue to the officers and employés of this House on the 23d instant checks for their salaries for the month of December.

Mr. HOLMAN. I do not understand the effect of this proposition.

The SPEAKER. The effect would be to pay the officers their month's salaries prior to the adjournment over Christmas.

There was no objection, and the resolution was adopted.

Mr. SPRINGER moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

CONDITION OF THE SOUTH.

Mr. SPRINGER. I ask unanimous consent to submit the resolution which I send to the desk for reference to the Committee on Printing.

The Clerk read as follows:

Resolved, That there be printed for the use of the House 1,900 copies each of report No. 261 of the House select committee at the second session of the Forty-third Congress, on that portion of the President's message relating to the condition of the South, together with the views of GEORGE F. HOAR, W. A. WHEELER, and WILLIAM P. FRYE, of the said committee; also the views of S. S. Marshall, of the said committee, and report No. 101, of Mr. GEORGE F. HOAR, to the House of Representatives at the second session of the Forty-third Congress, on behalf of the special committee on that portion of the President's message relating to the condition of the South, to be bound in one volume.

Mr. CONGER. I object.

Mr. SPRINGER. My motion is to refer the resolution to the Committee on Printing.

Mr. CONGER. I object to that.

Mr. FORT. We might as well print the whole history of the war.

The SPEAKER. Objection being made, the resolution is not before the House.

JOHN W. DODD & CO.

Mr. LANDERS, of Indiana, by unanimous consent, introduced a bill (H. R. No. 4252) for the relief of John W. Dodd & Co., of Indianapolis, Indiana; which was read a first and second time, referred to the Committee of Ways and Means, and ordered to be printed.

LEAVE OF ABSENCE.

The SPEAKER. The Chair lays before the House the following additional requests for leave of absence:

From Mr. WOOD, of Pennsylvania, from Friday, 22d inst., to January 3.

From Mr. EVANS, for ten days from the 23d to attend to important business.

From Mr. WARNER, for ten days from the 21st instant on account of important business.

From Mr. WILLIAMS, of Delaware, for one week from the 22d instant.

From Mr. SINNICKSON, for two weeks from the 20th instant.

Mr. HOLMAN. For the present I must object to any further leaves of absence.

The SPEAKER. Does the gentleman from Indiana object to these?

Mr. HOLMAN. I do for the present.

Some time subsequently,

Mr. HOLMAN withdrew his objection, and the requests were granted.

VENEZUELA MIXED COMMISSION.

Mr. MONROE, by unanimous consent, from the Committee on Foreign Affairs, reported the following resolution; which was read, considered, and agreed to:

Resolved, That the President of the United States be requested, if not incompatible with the public interests, to transmit to this House all correspondence between this Government and the republic of Venezuela, since the 15th day of May last, in reference to the Venezuela mixed commission, held under the convention of April 25, 1866.

Mr. MONROE moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

DENVER AND RIO GRANDE RAILWAY.

Mr. JOHN REILLY, by unanimous consent, introduced a bill (H. R. No. 4253) to amend an act entitled "An act granting the right of way through the public lands to the Denver and Rio Grande Railway Company;" which was read a first and second time, referred to the Committee on the Pacific Railroad, and ordered to be printed.

MINERAL LANDS.

Mr. WILSHIRE, by unanimous consent, introduced a bill (H. R. No. 4254) to exempt the State of Arkansas from the provisions of certain sections of chapter 6 of the Revised Statutes of the United States, entitled "Mineral Lands and Mining Resources;" which was read a first and second time, referred to the Committee on Mines and Mining, and ordered to be printed.

MARY J. SHEPHERD.

Mr. HUNTER, by unanimous consent, introduced a bill (H. R. No. 4255) for the relief of Mary J. Shepherd; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

A. W. GREELY.

Mr. HUNTER also, (by request,) by unanimous consent, introduced a bill (H. R. No. 4256) for the relief of A. W. Greely, Fifth Cavalry; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

E. K. DOUGLASS.

Mr. SPENCER, by unanimous consent, submitted the following resolution; which was read, considered, and agreed to:

Resolved, That the Clerk of the House be, and he is hereby, authorized and directed to pay out of the contingent fund to E. K. Douglass, from June 1 to August 16, inclusive, at the rate of $3 per day for services rendered as a messenger.

Mr. SPENCER moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

SURVEY OF THE DISTRICT.

Mr. LEAVENWORTH, by unanimous consent, submitted the following resolution; which was referred to the Committee for the District of Columbia:

Resolved, That the Committee on the District of Columbia be, and they are hereby, instructed to inquire into the necessity of causing, at an early day, all that part of the District of Columbia lying north of the cities of Washington and Georgetown to be surveyed, laid out, and mapped, and the necessary monuments set to each block and public square; and also into the propriety of laying out the same in general conformity to the manner in which the city of Washington is laid out; and that said committee have leave to report by bill or otherwise.

FORTIFICATIONS APPROPRIATION BILL.

Mr. HALE. I move that the rules be suspended and that the House resolve itself into Committee of the Whole for the consideration of the fortifications appropriation bill; and pending that motion I move that all general debate on the bill in Committee of the Whole be limited to five minutes.

The motion to limit debate was agreed to.

The motion that the House resolve itself into Committee of the Whole was agreed to.

The House accordingly resolved itself into Committee of the Whole House on the state of the Union (Mr. DURHAM in the chair) and proceeded to consider the special order, being the bill (H. R. No. 4188) making appropriations for fortifications and for other works of defense, and for the armament thereof, for the fiscal year ending June 30, 1878, and for other purposes.

The CHAIRMAN. By order of the House all general debate on this bill is to be closed in five minutes.

Mr. HALE. I ask unanimous consent that the first reading of the bill be dispensed with.

Mr. DOUGLAS. I object.

The Clerk read the bill, and then proceeded to read the bill by clauses for amendment.

Mr. REAGAN. Mr. Speaker, I offer the following to come in as an additional clause to the bill:

For the commencement of a fortification at such place as may be selected on Galveston Island by the Secretary of War, $100,000.

Mr. HALE. I must raise the point of order that that provides for a new work.

Mr. REAGAN. I do not know the extent to which the point of order might influence our action. We are engaged in appropriations for fortifications, and I desire to say a word in reference to the amendment which I have offered.

Mr. HOLMAN. Let the point of order be reserved.

Mr. REAGAN. I see by the bill that no appropriation is made for new works. The amendment which I propose here is for the purpose of commencing a new fortification on Galveston Island. Upon that island is the proper seaport of the State of Texas, and a city of some forty thousand inhabitants, with a very considerable commerce, a commerce of more than $30,000,000 annually. It is the port through which the exports and imports of the State of Texas pass, and the trade also of other States and Territories to some extent passes through that seaport and city. That seaport and city is so situated at this time, in view of the great range which is given to artillery by improvements and experience in the last few years, that the city might be at any time bombarded and destroyed by a vessel outside the bar. There is no protection of any description for it. I venture the suggestion that there is no city on the seacoast of the United States of such magnitude and importance, and no place where so great a commerce exists, where there is such imminent danger to the city and its commerce in case of war by a hostile power. No provision has yet been made heretofore for the fortification of this place and the protection of its people and commerce. The city lies immediately upon the open gulf. It is the gateway to the commerce of a single State of more than fifteen hundred thousand population; it is the gateway also to the commerce of additional people, the number of whom I am not able to state at this moment. It is certainly the policy of the Government to see that its great commerce is protected. This is one which requires attention and consideration from the Government. A single man-of-war, in case of hostility with a foreign power, can now destroy that city and its commerce without entering the harbor at all.

I have not time in five minutes to elaborate the subject and state the necessities for action, which I might state if I had more time to. It is sufficient to say that the city of Galveston is a city of considerable size and commerce, with a rapidly growing population in accordance with the growth of the State and its contiguous territory.

It seems to me that, if in time of peace we should prepare for war, there is no more necessary and appropriate provision that could be made than this for the defense of the seacoast and the protection of the commerce and people at this point, who would be exposed in case of war to destruction by a hostile naval force.

I trust therefore that, although I am not able to state enough facts to enable the House to judge as fully as they should do, the House will consent to do this act of justice and necessity for the protection of the commerce and population of one of our most important seaports.

Mr. GARFIELD. I desire to ask the gentlemen if his amendment asks for an appropriation that will be available for the protection of the seacoast against Mexico, in case of any difficulty with that Republic. I simply wish to say that anything that looks to conferring strength on our seacoast and preparation for any possible trouble with Mexico ought to be carefully considered by the House, and, although I was not in to hear all the gentleman said, I ask the gentleman who has charge of this bill to oppose no measure that gives reasonable protection to the coast of Texas in case of Mexican hostilities.

Mr. REAGAN. I do not know that Mexico is particularly formidable by sea. Our contiguity to Mexico is upon the line of the Rio Grande. My object is to give security to this important seacoast town. I have stated that it is a city of more than forty thousand inhabitants; that it is the principal seaport of a State of more than a million and a half of population, rapidly growing, and that it is also the seaport of a portion of the adjoining territory. I state further that the commerce amounts to more than $30,000,000 a year; and I further state that the city of Galveston might be bombarded and destroyed by a foreign vessel without its entering the harbor.

Mr. KASSON. What are the present defenses of the city?

Mr. REAGAN. It has no defenses of any kind at this time. The object of this defense is not with reference to Mexico particularly, or any other power. I offered the amendment with a view to the protection of the city, to save it and its commerce from destruction in case of hostilities with any foreign power.

Mr. HANCOCK. I have here a communication from the War Department upon this subject which I would like to have read in connection with the amendment offered by my colleague.

The Clerk read as follows:

The Secretary of War has the honor to transmit to the House of Representatives, for the information of the Committee on Military Affairs, in response to letter from the chairman of said committee, report of Chief of Engineers on House bill No. 2089, to "provide for the erection of military fortifications on Galveston Island, in the State of Texas."

The attention of the Military Committee is respectfully invited to the amendment suggested by the Chief of Engineers.

ALPHONSO TAFT,
Secretary of War.

WAR DEPARTMENT,
March 18, 1876.

OFFICE OF THE CHIEF OF ENGINEERS,
Washington, March 15, 1876.

SIR: I have the honor to inclose a letter and bill (H. R. No. 2089) received from Hon. H. B. BANNING, chairman Military Committee, House of Representatives, asking the views of this Department as to the necessity of fortifications for the harbor of Galveston, Texas.

The harbor and city of Galveston are not provided with any defenses against an enemy's operations from the decks of his vessels, and are within a few days' steaming from the West Indian ports of maritime nations.

The fortifications proposed by the Department for that city and harbor are an eight-gun battery on Pelican Spit, at an estimated cost of $40,000; an eight-gun battery on Bolivar Point, at an estimated cost of $23,000; and a two-gun battery on Galveston Island, at an estimated cost of $17,000.

The bill, in my judgment, should be passed into a law, first striking out in lines four and five the words "on Galveston Island, in the State of Texas."

It is respectfully suggested that this communication be transmitted to the chairman of the Military Committee of the House.

Very respectfully, your obedient servant,

A. A. HUMPHREYS,
Brigadier General and Chief of Engineers.

Hon. ALPHONSO TAFT,
Secretary of War.

OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D. C., December 12, 1876.

SIR: In reply to your communication of the 11th instant, I have the honor to inclose herewith copies of the correspondence of March last respecting House bill No. 2089. No further suggestions upon the matter of this bill occur to me at the present moment.

Very respectfully, your obedient servant,

A. A. HUMPHREYS,
Brigadier-General and Chief of Engineers.

Hon. H. B. BANNING,
Chairman Military Committee, House of Representatives.

HOUSE OF REPRESENTATIVES,
Washington, D. C., March 15, 1876.

DEAR SIR: I send you a bill introduced by General HANCOCK "to provide for the erection of military fortifications on Galveston Island, in the State of Texas." Please advise me of the necessity for such fortifications (if any) and reasons therefor.

Very respectfully, &c.,

H. B. BANNING.

General HUMPHREYS,
United States Engineer.

Mr. HANCOCK. This subject has been considered by the Committee on Military Affairs, and I believe the members of that committee are unanimously in favor of the fortification indicated by the correspondence just read. The commercial importance of the city of Galveston is second only to New Orleans on the coast of the Gulf of Mexico. It is a place rapidly increasing in population and business. It has no defensive fortifications whatever, and is entirely exposed to depredations, if there should be any war between the United States Government and any other government, however feeble, it might be. It is so much exposed that it might in a single hour be destroyed.

The amount contemplated by the report of the Chief of Engineer Corps is comparatively insignificant in comparison to the great importance that is apparent for some protection to that rapidly increasing commercial emporium for a vast district of country. This subject has received the full and careful consideration of the Committee on Military Affairs, and this committee is in possession of all the facts necessary to enable them to act understandingly in reference to the appropriation of the small amount here asked for, for a fortification that is deemed important both by the committee and by the War Department, as shown by the document just read.

I trust there will be no objection to appropriating the small sum asked, and that it may be incorporated in this bill in such phraseology as will enable the Engineer Department to make the fortification in the manner indicated, that being no doubt best for the purpose desired.

Mr. STEVENSON. What is the amount asked for?

Mr. HANCOCK. The amount named in the amendment is $100,000, or so much thereof as may be necessary. I trust the amendment will be adopted.

Mr. GARFIELD. I desire to say a single word only.

Mr. BANNING. I desire merely to suggest that the amount asked for in the bill which was introduced by the gentleman from Texas [Mr. HANCOCK] was $50,000. That was the amount recommended by the Chief of Engineers and the amount that was agreed to by the Committee on Military Affairs. I suggest to the gentleman from Texas [Mr. REAGAN] to modify his amendment so as to make the appropriation $50,000 instead of $100,000, as that was the amount agreed to.

Mr. HOLMAN. I believe the point of order is not disposed of as yet.

The CHAIRMAN. It is not.

Mr. BANNING. I desire to say that $50,000 was the amount recommended both by the Secretary of War and by the Chief of Engineers, when the subject was brought to the attention of the committee by the bill introduced by the gentleman from Texas, [Mr. HANCOCK,] and sent to that committee.

Mr. GARFIELD. A single word. I hope that not an extravagant appropriation will be asked for this purpose. I desire to make this single remark in furtherance of what the gentlemen from Texas have said. I must say I have felt a sense of being personally rebuked for my ignorance and inattention to one class of national interests when I saw in the city of New Orleans a line of shipping that I was informed by gentlemen competent to speak upon the subject far exceeded in amount the shipping ordinarily lying in the harbor of New York, not only home shipping but foreign shipping. Visiting as I did the mouth of the Mississippi, and seeing the enormous commerce that sweeps down that river and out into the Gulf, I felt that there had not been sufficient attention paid to the protection of that part of our coast.

I do not know that this particular island of Galveston is the place where the most protection is needed. But I resolved within myself that, whenever the opportunity was presented of turning the current of our national thoughts in the way of defense and of protection of that Gulf and coast, I would not again lose the opportunity of doing so. Without having any special knowledge whether this is the place where the fortification ought to be erected, I will only say that the motion to put a fortification anywhere on the waters of that Gulf, especially those waters looking toward the Mexican line, meets with my concurrence, provided the engineers of the Army say that such a work is needed and reasonable. The papers which have been read at the Clerk's desk seem to indicate that they have thus given their assent. I trust therefore that the point of order will not be pressed; but I hope also that the gentleman from Texas [Mr. REAGAN] will reduce the amount proposed in his amendment, for perhaps a considerable smaller sum may be sufficient to begin the work.

Mr. HOLMAN. I wish to say in regard to the point of order that a bill is now pending in the House to authorize this work, that bill has never passed, and as yet there is no law authorizing this work. This is, therefore, an appropriation not authorized by law. That is the ground upon which this point of order rests.

Mr. HALE. I am very desirous that this bill should be got out of the way because it is hindering the gentleman from Massachusetts, [Mr. HOAR,] who wishes to bring up another matter. But if no one else renews the point of order I would have no objection to allowing a vote to be taken on this amendment. But I must remind the gentleman from Texas [Mr. REAGAN] that when he seeks to put upon this bill this appropriation, which may be meritorious, he should reflect that this House last year adopted in regard to fortifications the sweeping rule that whatever might be the need or the menace there should be no money appropriated for any new works whatever; so that in pressing this amendment he is opposing the policy that was adopted last year and the policy which the Committee on Appropriations, acting on that basis, have adopted this year.

I have no objection to withdrawing the point of order so that, if no other gentlemen renews it, a vote shall be taken at once upon this proposition.

Mr. BANNING. But let the amount of the appropriation be reduced to $50,000.

Mr. HOLMAN. I must insist on the point of order.

Mr. HALE. If the gentleman from Indiana [Mr. HOLMAN] renews the point of order, then of course it is good.

Mr. REAGAN rose.

The CHAIRMAN. Does the gentleman from Texas rise to discuss the point of order?

Mr. REAGAN. Yes, sir. Mr. Chairman, I am not so familiar with the rules as the gentleman from Indiana or the gentleman from Maine. But amendments like this, looking to the public defense, the carrying on of the public service, and making an appropriation for a specific object, have been very common in the history of our legislation; nothing has been more common. I have not had my attention turned to the particular rule now in question, and therefore I am not able to say that there may not exist a rule which is conclusive upon this subject; but I rely upon the general history of our legislation as to appropriation bills to establish the fact that it has been common to insert in such bills provisions for maintaining the public defense and specifying what is not specified in any existing law, the particular portion of the public service for which the appropriation is made.

I trust very much that the gentleman from Indiana will consent to withdraw the point of order; and if he does I am prepared to accept an amendment which will be offered by the gentleman from Ohio, [Mr. BANNING,] conforming to the idea of the Committee on Military Affairs as to the amount of the appropriation, and which would also carry out the particular recommendations of the War Department in relation to the location of the fortifications at that place. Certainly this is a work of very great necessity; and to interpose an objection of possibly doubtful authority to prevent the appropriation for this necessary part of the public service, it seems to me, would operate somewhat harshly. We have the judgment of the War Department and also of the Committee on Military Affairs as to the necessity for this work. My colleague [Mr. HANCOCK] and I have stated some of the facts in regard to the necessity for this work of public defense; and surely an appropriation of $50,000 cannot be complained of unless the objection is that this proposed work is to be done in Texas and not somewhere on the Northern or Pacific coast.

Mr. BANNING. As the gentleman from Indiana makes his point of order for the purpose of saving money, I propose that the gentleman from Texas accept the following amendment, reducing the amount $50,000:

That the Secretary of War be, and he is hereby, authorized and directed to have erected suitable military fortifications for the defense of the commerce of the city of Galveston; and the sum of $50,000 is hereby appropriated therefor.

The CHAIRMAN. The point of order must be disposed of before any further proceedings can be had upon the amendment.

Mr. BANNING. I was going to say in regard to the point of order that the gentleman from Indiana makes the point for the purpose of saving money, and this amendment, which will save $50,000, will probably be satisfactory to him.

Mr. HOLMAN. Without withdrawing the point of order, I wish to answer the gentleman from Texas [Mr. REAGAN] by saying that the action of the House at the last session accords with the provisions of this bill in applying the same rule to the northern coast that we apply to the southern. My friend from Texas cannot pretend to say that there is any discrimination in this respect. This is a new work not authorized by law. I insist that the rule, which is so valuable and important, shall be adhered to.

The CHAIRMAN. As the Chair understands, the point of order is not withdrawn.

Mr. HOLMAN. It is not.

The CHAIRMAN. The Chair sustains the point of order, and rules out the amendment.

Mr. HALE. I move that the committee rise and report the bill to the House.

The motion was agreed to.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. DURHAM reported that the Committee of the Whole on the state of the Union had had under consideration the Union generally, and particularly the bill (H. R. No. 4188) making appropriations for fortifications and for other works of defense, and for the armament thereof, for the fiscal year ending June 30, 1878, and for other purposes, and had directed the same to be reported without amendment and with a recommendation that it be passed.

The question being on ordering the bill to be engrossed and read a third time,

Mr. HALE called for the previous question.

The previous question was seconded and the main question ordered; and under the operation thereof the bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. HALE moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of their clerks, informed the House that the Senate had passed, without amendment, bills of the House of the following titles:

A bill (H. R. No. 97) directing the Commissioner of the General Land Office to issue a certificate of relocation for six hundred and forty acres of land in the Territory of Missouri to the legal representatives of Samuel Ware; and

A bill (H. R. No. 3504) for the relief of Thomas Day.

The message further announced that the Senate had passed, with amendments, in which the concurrence of the House was requested, bills of the following titles:

A bill (H. R. No. 732) for the relief of Mrs. Catherine Thrush, and William B. Stone, owners of the schooner Flight;

A bill (H. R. No. 735) for the relief of Philip Pendleton; and

A bill (H. R. No. 2736) to remove the political disabilities of N. H. Van Zandt, of Virginia.

The message further announced that the Senate had passed and requested the concurrence of the House in bills of the following titles:

A bill (S. No. 946) for the relief of Gibbes & Co., of Charleston, South Carolina; and

A bill (S. No. 991) for the relief of Edwin Rogers.

The message further announced that the Senate had passed and requested the concurrence of the House in resolutions in relation to the statues of John Winthrop and Samuel Adams from the State of Massachusetts.

STATUES OF JOHN WINTHROP AND SAMUEL ADAMS.

Mr. HOAR. I now call up the special order fixed for to-day.

The SPEAKER. The resolution of the Senate will be read.

The Clerk read as follows:

IN THE SENATE OF THE UNITED STATES,
December 19, 1876.

Resolved by the Senate, (the House of Representatives concurring,) 1. That the statues of John Winthrop and Samuel Adams are accepted in the name of the United States, and that the thanks of Congress are given to the State of Massachusetts for these memorials of two of her eminent citizens whose names are indissolubly associated with the foundation of the Republic.

2. That a copy of these resolutions, engrossed upon parchment and duly authenticated, be transmitted to the governor of the State of Massachusetts.

Attest:

GEO. C. GORHAM,
By W. J. MCDONALD,
Chief Clerk.

Mr. HOAR. Mr. Speaker, the Commonwealth of Massachusetts, in obedience to the invitation of Congress, presents to the United States the statues of John Winthrop and Samuel Adams, to be placed in the old Hall of the House of Representatives, and to be kept reverently in that beautiful and stately Chamber so long as its columns shall endure.

Different kinds of public service, various manifestations of intellectual and moral greatness, have been held by different nations and ages to constitute the chief title to their regard. With all her wealth in other departments of glory, England chiefly values the men who have done good fighting in her great wars. Marlborough and Nelson and Wellington crown the stateliest columns in the squares and streets of her chief cities. When we would picture to ourselves the republics of Italy, four laureled heads of famous poets stand out upon the canvass. The statue of Erasmus, the great scholar of Holland, with a book in his hand, looks down upon the busy market-place of Rotterdam. The judgment of mankind has probably determined that through the great jurists of the days of the empire Rome has made her deepest impression on the world. The names of great soldiers, founders of nations, jurists, ministers of state, men of science, inventors, historians, poets, orators, philanthropists, reformers, teachers, are found in turn on the columns by which the gratitude of nations seeks to give immortality to their benefactors.

In deciding which of these classes should be represented or who of her children in each is worthiest of this honor, Massachusetts has not been driven to choose of her poverty. Is the choice to fall upon a soldier? Sturdy Miles Standish, earliest of the famous captains of America—"in small room large heart inclosed"—Sir William Pepperell, the conqueror of Louisburg, may vie with each other for the glory of standing by the ever youthful and majestic figure of Warren.

Would the reverence of the nation commemorate its founders? To the State made up of the blended colonies founded by Endicott and Winthrop and the men who, on board the Mayflower, signed the first written constitution that ever existed among men, more than one-third of the people of the United States to-day trace their lineage.

No American state, no civilized nation, has contributed more illustrious names to jurisprudence than Parsons and Mason and Story and Shaw.

The long roll of her statesmen begins with those who laid the foundation of the little colony deep and strong enough for an empire. It will end when the love of liberty dies out from the soul of man. Bradford and Carver; Endicott and Winthrop; Vane, the friend of Milton and counselor of Cromwell; Otis and Samuel Adams and Quincy and Hawley, the men who conducted on the side of the people that great debate by which the Revolution was accomplished before the first gun was fired; John Adams and his son, whose biographies almost make up the history of the country for eighty years; Pickering, who filled in turn every seat in the cabinet; Webster, the greatest teacher of constitutional law, save Marshall; Andrew, the great war governor; Sumner, the echoes of whose voice seem yet audible in the Senate Chamber, by no means make up the whole of the familiar catalogue.

Science will not disdain to look for fitting representatives to the State of Bowditch and John Pickering and Wyman and Pierce, and which contains the birth-place of Franklin and the home and grave of Agassiz.

Are we to hold with Franklin that the world owes more to great inventors than to all its warriors and statesmen? The inventor of the cotton-gin, who doubled the value of every acre of cotton-producing land in the South; the inventor of the telegraph, at whose funeral obsequies the sorrow of all nations throbbing simultaneously around the globe was manifested; the discoverer of the uses of ether in surgery, who has disarmed sickness of half its pain and death of half its terrors, may dispute with each other a palm for which there will be no other competitors.

Among historians the names of Bancroft and Sparks and Motley and Prescott and Palfrey and Parkman will endure till the deeds they celebrate are forgotten. "Worthy deeds," said John Milton, "are not often destitute of worthy relators, as by a certain fate great acts and great eloquence have commonly gone hand in hand."

> Native to famous wits
> And hospitable, in her sweet recess,

Massachusetts contributes to the list of poets who have delighted the world the names of Bryant and Emerson and Whittier and Longfellow and Lowell and Holmes.

Among the foremost of Americans in oratory, that foremost of arts, stand Quincy, the Cicero of the Revolution; Otis, that "flame of fire;" the persuasive Choate, the silver-tongued Everett, the majestic Webster.

Of the great lovers of their race, whose pure fame is gained by unselfish devotion of their lives to lessening suffering or reforming vice, Massachusetts has furnished conspicuous examples. Among these great benefactors who have now gone to their reward, it is hard to determine the palm of excellence. To the labors of Horace Mann is due the excellence of the common schools in America, without which liberty must perish, despite of constitution or statute.

If an archangel should come down from heaven among men, I cannot conceive that he could give utterance to a loftier virtue or clothe his message in more fitting phrase than are found in the pure eloquence in which Channing arraigned slavery, that giant crime of all ages, before the bar of public opinion, and held up the selfish ambition of Napoleon to the condemnation of mankind. "Never before," says the eulogist of Channing, "in the name of humanity and freedom, was grand offender arraigned by such a voice. The sentence of degradation which Channing has passed, confirmed by coming generations, will darken the fame of the warrior more than any defeat of his arms, or compelled abdication of his power."

Dr. Howe, whose youthful service in the war for the independence of Greece, recalling the stories of knight-errantry, has endeared his name to two hemispheres, is yet better known by what he has done for those unfortunate classes of our fellow-men whom God has deprived of intellect or of sense. He gave eyes to the fingers of the blind, he taught the deaf and dumb articulate speech, waked the slumbering intellect in the darkened soul of the idiot, brought comfort, quiet, hope, courage, to the wretched cell of the insane.

To each of these the people of Massachusetts have in their own way, paid their tribute of honor and reverence. The statue of Horace Mann stands by the portal of the State House. The muse of Whittier and Holmes, the lips of our most distinguished living orators, the genius of his gifted wife, have united in a worthy memorial of Howe. The stately eloquence of Sumner, in his great oration at Cambridge, has built a monument to Channing more enduring than marble or granite, but Channing's published writings, eagerly read wherever the English language prevails, are better than any monument.

Yet I believe Channing and Howe and Mann, were they living to-day, would themselves yield precedence to the constant and cour-

ageous heroism of him who said, "I am in earnest; I will not equivocate; I will not retreat a single inch; and I will be heard;" whose fame

> Over his living head, like heaven is bent
> An early and eternal monument.

The act of Congress limits the selection to deceased persons not exceeding two in number for each State. Massachusetts has chosen those who while they seemed the fittest representatives of what is peculiar in her own character and history have impressed that character on important public events which have been benefits to the nation at large.

That peculiarity is what is called Puritanism. To that principle, which I will try to define presently, I think it would not be difficult to trace nearly everything which Massachusetts has been able to achieve in any department of excellence. But it has a direct national importance in three conspicuous eras. One of them is too recent to allow of dispassionate consideration. The others are the eras of the foundation of the State and of the American Revolution.

Of the first, John Winthrop, twelve times governor of Massachusetts, from 1630 to 1649, is the best type. Of the second she has selected Samuel Adams, sometimes called "the last of the Puritans," as the representative.

"The true marshaling," says Lord Bacon, "of the degrees of sovereign honor are these: In the first place are *conditores imperiorum*, founders of states and commonwealths, such as were Romulus, Cyrus, Cæsar, Ottoman, Ismael." Whatever rank shall be assigned to our Commonwealth by history compared with the states of Romulus and Cyrus and the rest, the same "degree of sovereign honor" must be awarded to the man who founded it as compared with those named by Lord Bacon.

When you look upon the statue of John Winthrop you see the foremost man of that little company of Englishmen who abandoned wealth, comfort, rank, to found a Christian church and a republican State in the wilderness of New England. He was born in Suffolk on the 12th day of January, 1587. He was a gentleman of good estate and descent, and of wide and powerful family connection. He was educated at Trinity College, Cambridge, bred to the bar, and had a considerable practice as an attorney of the court of wards and liveries. A large portion of his private papers and letters to his family and friends have been preserved. I know of no other man of his time of whose mental and spiritual life from his childhood up we have such full particulars. He was a man industrious, modest, wise, brave, generous, affectionate, a lover of home, of kindred, and friends, tolerant, religious, moderate, chaste, temperate, self-sacrificing. He had studied the laws of England, and thought deeply and clearly upon the principles of civil liberty. He was a member and communicant of the Church of England. From his early youth his letters to his family and near friends and numerous private manuscripts reveal his most secret religious meditations and aspirations. They breathe a sincere, liberal, catholic spirit of love to God and man, uttered in forms in which religious men of all denominations could unite. If these simple and eloquent utterances were found in a meditation of Pascal or A Kempis, in a confession of Saint Augustine, in a sermon of Jeremy Taylor, in a journal of John Wesley, or an essay of Channing, I do not think that any disciple of either would deem them out of place. His style is simple and serious, rising sometimes to a grave and majestic eloquence. There are passages in his letters of exquisite beauty and "in the loftiest strain of religious faith and devotional fervor." There was probably no man in England with tastes less inclined to the part of an adventurer, and with less personal ambition.

Such, in the year 1629, at the age of forty-three, was this model English gentleman, dwelling on his own landed estate, surrounded by affluence, engaged in honorable public employments, happy in home, friends, honor. He had heard of a rocky and ice-bound region, the gloom of whose eternal forests was tenanted by savage beasts and men more savage. He had heard of a little company of Englishmen, who had landed on that coast ten years before, at mid-winter, half of whom had perished before spring, "at one time only six or seven having strength enough left to nurse the dying and bury the dead," and who for ten years had maintained a precarious and doubtful struggle with famine and pestilence and the rigorous climate. But what should drive him, of all mankind, to leave the delights of rich and luxurious England, to abandon the pleasant vales of Suffolk, for the rocks and sands of Massachusetts? "Founders of states, such as were Romulus, Cyrus, Cæsar, Ottoman, Ismael." A founder of states *such as these were not* was John Winthrop. No legions flushed with foreign conquest demanded that he should lead them across the Rubicon to found an empire on the ruins of his country. No milk of the she-wolf mingling with the streams of his blood made him the fit founder of an asylum for a clan of banditti. No fanatical passion for conquest, no dream of sensual paradise, no restless nomadic habit, disturbed the even tenor of his life. But he was one of those men to whose happiness civil and religious liberty were absolutely essential. The third Parliament of Charles I had just been dissolved. England was entering upon a period of ten years of absolute monarchy, her civil and military administration in the hands of Strafford, her spiritual affairs in the hands of Laud. Winthrop agreed in opinion with those who were disposed to submit to neither.

A charter had been earlier obtained. A few colonists had gone over to New England and established a government in subordination to the company in England. On the 26th day of August, 1629, Winthrop and eleven others signed an agreement at Cambridge "to embark for the said plantation, to the end to pass the seas (under God's protection) to inhabit and continue in New England; provided always, that the whole government, together with the patent for the said plantation, be first by an order of court legally transferred and established to remain with us and others which shall inhabit upon the said plantation." This condition was performed. In October thereafter the record of the company recites "the court having received extraordinary great commendations of Mr. John Winthrop, both for his integrity and sufficiency, as being one every way well fitted and accomplished for the place, the said Mr. Winthrop was with a general vote chosen to be governor for the ensuing year."

It is more than probable that the accession of Winthrop to their society was the condition of the whole emigration. It is more than probable that the coming over of Winthrop and his fleet of ships saved the whole Puritan settlement from being abandoned. It is certain that for the nineteen years for which he was chief director of the affairs of the colony he impressed upon it his own character and qualities. He took farewell of England "in a flood of tears." He begged his brethren of the English church for their prayers, "which will be a most prosperous gale in our sails." To narrate his remaining life would be only to tell again the well-known tale of the history of Massachusetts for its first nineteen years.

The qualities which the greatest rulers of free States have displayed in the most difficult times were all needed in the governor of the infant Commonwealth. No other American so nearly resembles Washington. "He was, indeed," says the old annalist, "a governor who had most exactly studied that book, which, pretending to teach politics, did only contain three leaves, and but one word on each of those leaves, which word was 'moderation.'" Another Puritan writer calls him "that famous pattern of piety and justice." He was reproved by the clergy of the colony for his "overmuch lenity," in the month Roger Williams was banished. He preserved unbroken his friendship with Williams, who wished him to be the governor of his own plantation in Rhode Island. He poured out his estate in charity, leaving but £100 at his death. He gave his last measure of meal to a poor woman, when the colony was starving, a ship laden with provisions from England arriving just in time for their safety.

When impeached for an act of necessary authority, he took his place modestly and meekly at the bar of the court of which he had been head, where he defended himself in a discourse defining the true nature of civil liberty which for grave and majestic eloquence has been pronounced by high authority "equal to anything of antiquity."

The questions which divided the Roundhead from the Cavalier, the Puritan from the high churchman, are not yet at rest. Until they are, men will differ in their estimate of the generation to which John Winthrop belonged and of the Commonwealth of which he was the chief founder. But the concurrent judgment of all lovers of America now accepts the estimate which has been eloquently expressed by his distinguished biographer and descendant, your accomplished predecessor in that chair: "A great example of private virtue and public usefulness; of moderation in counsel and energy in action; of stern self-denial and unsparing self-devotion; of child-like trust in God and implicit faith in the gospel of Christ, united with courage enough for conducting a colony across the ocean and wisdom enough for building up a state in the wilderness."

When John Winthrop died, in 1649, the colony of which he had been the foremost planter was firmly established as a Christian state. Thirty flourishing towns, in which every freeman had an equal vote, were represented in the Legislature. The college, the schools, the churches, agriculture, and trade and fisheries were prospering. The little Commonwealth did its full share to keep up the glory of the English flag at Louisburg, at Quebec, at Martinique, and the Havanna, and many another well-fought field. But the people kept a wary lookout for any encroachment by King, Parliament, or governor on the natural and inalienable rights of Englishmen, as declared by their charter. In 1763 the great drama was fairly opened which ended with the separation from England and the adoption of the Constitution of the United States. The Legislature hesitated a good while whether Samuel Adams, or his illustrious kinsman, John Adams, should be chosen as the representative of the revolutionary age. I think the even-hanging balance was inclined at last by the thought of the ample compensations which life brought to the latter for his services and sacrifices in his country's cause.

I can conceive of nothing which the human heart can desire in satisfaction of a pure ambition which did not fall to the lot of John Adams. As was well said by Mr. Webster, "he was attended through life by a great and fortunate genius. He had written his name where all nations should behold it, and where all time should not efface it." He lived to see the independence of his country achieved. His was the rare good fortune to take part in a great revolution from its beginning to its successful issue. The proscribed rebel was received by the sovereign who had hated him as the representative of a great and free people. He was deemed by his countrymen worthy to be associated with Washington in the inauguration of the Government, and succeeded him in the great office of the Presidency. He was the foremost champion of the Declaration of Independence on the floor of Congress, and his famous prophecy will cause his name to be remembered by his countrymen as its anniversary returns until time

shall be no more. He was the chief author of the constitution of his native State. He rejoiced in the congenial companionship of one of the most affectionate of wives and most intellectual of women. His life ended on the spot where it began, at the great age of ninety, in a strong, vigorous old age, made happy by private affection and public reverence. By a coincidence almost miraculous, his death took place when millions of his countrymen, happy and at peace, under the Presidency of his son, were celebrating the great day he had made famous. "If the chariot and horses of fire had been vouchsafed to him, he could scarcely have had a more splendid translation or departed in a brighter blaze of glory."

Samuel Adams, on the other hand, lived and died poor. His only son preceded him to the grave, leaving none to inherit his name. He held no considerable public office, except that of delegate to the Continental Congress, until he succeeded Hancock as governor in his seventy-second year, when in his own opinion the weight of years and infirmities was beginning to unfit him for further service.

But for more than thirty years, beginning when most of the great actors in the Revolution were unborn or were children, he was the unquestioned leader of the contest for liberty in Massachusetts. I shall not repeat the familiar story. Samuel Adams was, I think, the greatest of our American public men in civil life; greatest, if we judge him by the soundness and sureness of his opinions on the great questions of his time and of all time; greatest, as shown by the strength of original argument by which he persuaded the people to its good; greatest in the imperial power of personal will by which he inspired and compelled and subdued the statesmen of his day who were his companions; greatest in the sublime self-denial which contented itself with accomplishing public results without seeking personal reward either of fame or office.

"If there was any Palinurus to the Revolution," said Thomas Jefferson, "Samuel Adams was that man." From the day when on taking his degree at Harvard in 1743 he maintained that it is lawful to resist the supreme magistrate if the commonwealth cannot otherwise be preserved, down to the time when the Declaration severed the tie between England and the colonies, he conducted the great debate of liberty. In the achievement of great revolutions which mark and secure the progress of liberty, three kinds of leaders are alike indispensable: the philosopher, who establishes great principles; the statesman, who frames great measures, fills great executive offices, leads popular and legislative assemblies; the politician, without whose marshaling of political forces civil contests must be carried on by mobs, and not by parties. Adams was all three. With clear logic he derived his great argument from its foundations in the immmutable laws of ethics and the inalienable rights of human nature. With consummate wisdom, he directed all the measures of the Massachusetts Assembly, never driven from his position or taking a false step. He was the most dextrous politician that ever planned an election or managed a caucus. He laid down the pen in the midst of a profound treatise which Locke or Hooker might have envied to mingle with the workmen at the rope-walk or the crowd at the street corner to plan the conduct of the coming town-meeting. I know no second instance in history where these three characters have been so wonderfully combined. Yet, what is more wonderful still, Adams was free from the faults which commonly beset each. A profound political philosopher, his feet always touched the ground. He was never led astray by his theory. A statesman, he was without personal ambition. A politician, he was without a wile. There is no more hurtful error than the notion of our *doctrinaires* that the function performed in free states by men who are termed politicians is not dignified, honorable, serviceable, and honest. When wars are brought to successful issue without planning the campaigns; when battles are won without generals, disposition of forces, or discipline, good results will come to pass under popular governments without politicians. But whether concerting his plans in the caucus or addressing the people in Faneuil Hall, which was called his "throne," the absolute truth and simple honesty of Samuel Adams were unstained. He would not have deceived that people if thereby he could have redeemed a world from bondage.

With unerring wisdom, earlier than any other person in his own State, he saw the principles on which the American cause was based, and the means by which public opinion should be convinced, combined, and made effective in their support. He saw the power of the newspaper when it was almost unused as a political force. He was the author of the most important state papers, the instructions of the town of Boston to its representatives, of the assembly to its agents in England, its answers to the royal governors, wherein the natural rights of men, the chartered privileges of the people, and the limits of executive and legislative power were established on foundations from which they have never been removed. It was said of him that he had the eyes of Argus and as many hands as Briareus, and in each hand a pen. His style was simple, severe, chaste, restrained, as became the great themes he had to discuss. But it conveyed his weighty meaning alike to the understanding of the people and the apprehension of his antagonists. "Every dip of his pen," said Bernard, "stung like a horned snake."

He always put other men forward when glory was to be gained or desirable public office to be filled—never when responsibility or peril was to be encountered. Behind the conspicuous presence of Hancock, the brilliant rhetoric of Otis, the British governors felt and dreaded the iron hand of Adams. With his own lips he gave the signal for the movement of the tea party. With his own hand he carried to the council the impeachment of Oliver. On the day of the Boston massacre Adams intrusted no other messenger with the demand for the removal of the regiments. Yonder statue represents the great popular leader and chieftain, king of men, the genius of American liberty speaking through his lips, as he stood in the presence of the royalty of England represented by Governor Hutchinson: "If you have the power to remove one regiment you have power to remove both. It is at your peril if you refuse; night is approaching; an immediate answer is expected. Both regiments or none." "It was then," said Adams afterward, "if fancy deceived me not, that I observed his knees to tremble. I thought I saw his face grow pale, and I enjoyed the sight."

He was among the earliest of American advocates, I think in nearly every case the earliest, of doctrines which, when he first uttered them, were deemed paradoxes or utopian dreams, but to-day are the accepted maxims of constitutional liberty. Among these he maintained that the right to life, liberty, and property are essential and inalienable rights of human nature;

That Magna Charta is irrepealable by Parliament, (citing in support of this view the curse pronounced by the church in presence of King Henry III and the estates of the realm upon all who should make statutes or observe them contrary to it;)

That representation of America in Parliament was impossible;

That King or Parliament, together or separately, had no right to affect the liberties of the colonies;

That, therefore, Parliament had no power to legislate for the colonies in any case;

That the union of the several powers of government in one person is dangerous to liberty;

That the Crown had no right to grant salaries to colonial judges or governors;

That kings and governors may be guilty of treason and rebellion, and have in general been more guilty of them than their subjects;

That the welfare and safety of the people are paramount to all other law;

That governments are founded on equal rights;

That the people have natural right to change a bad constitution whenever it is in their power;

That American manufactures should be a constant theme

He was never weary,

Says his biographer—

of promoting a widely diffused common school system, whereby the poorest might educate his children to a point where talent might win its way on equal terms with their more wealthy neighbors. This was democratic doctrine in its purest form and, as Mr. Adams conceived it, was the principle on which the Revolution had been accomplished.

The instinct of Hutchinson did not err when it pronounced him the first man in America who advocated independence.

The first public denial of the right of Parliament to tax America, the first public opposition to the stamp-act, the first suggestion of a general union of the colonies, are in the instruction of the town of Boston to its representatives, adopted in 1764 and drafted by Samuel Adams. This preceded by twelve months Patrick Henry's resolution in the Virginia House of Burgesses of May, 1765. In that life of incessant activity, constantly engaged in debate in the assembly, in controversy in the press, a writer of such originality that the doctrines must have seemed to the men of his day paradoxes, having to meet a powerful and unscrupulous government by combining popular forces, no instance can be found of his advancing a doctrine which is not to-day accepted, or of his proposing a measure from which he was compelled to recede.

It has been charged that the "glittering generalities" of the Declaration of Independence were the result of the French tastes of Jefferson, and were acquiesced in—not believed in—by his associates in the Continental Congress to conciliate his supposed influence in Virginia. The criticism has been made by Mazzini, I think repeated by Bismarck, that it asserts that the security of rights, not the performance of duties, is the object of the state. The statement and the criticism are unlike unfounded. Every sentiment of the Declaration can be found anticipated in the writings of Samuel Adams. It contains the matured opinions of the most religious race of men that ever lived at the most religious period of their history. The men who believed that "the chief end of man is to glorify God and enjoy him forever" did not lightly put on record their creed as to the object of the state and the purpose for which governments are instituted among men. They knew that to add a political sanction to religious or moral duty, or to enlist the forces of the state for its performance is impossible without trenching upon that liberty of conscience, which they valued even more than their political rights.

Burke, in his famous delineation of the character of the colonists in his great speech on conciliation with America mentions as among the marvels of history the formation of voluntary government by the people when the ancient government of Massachusetts was abrogated by Great Britain. That voluntary government, obeyed, as Lord Dunmore said of that in Virginia, "infinitely better than the ancient ever was in its most fortunate periods," was largely the work of Samuel Adams.

His respect for law and horror of lawless violence were remarkable in the leader of a revolution. When the mob attacked the house

of Hutchinson he declared he would rather have lost his right hand. It was through his influence that Quincy and John Adams defended Captain Preston, and the soldiers who had fired on the people and secured their acquittal. He restrained the impatience of the people, waiting patiently for eight years till the time should come when his opponents should be put clearly in the wrong by first resorting to force.

He had a marvelous personal magnetism which few men could resist, by which he attracted many brilliant and able men to the cause of his country. John Adams declares in his diary that "to my certain knowledge from 1758 to 1775, that is, for seventeen years, he made it his constant rule to watch the rise of every brilliant genius, to seek his acquaintance, to court his friendship, to cultivate his natural feelings in favor of his native country, to warn him against the hostile designs of Great Britain." He gives us a few names out of many thus brought to the cause of America, Hancock, Warren, and Quincy. To these names he might have added his own, as abundant passages in his diary bear witness.

Samuel Adams seems to have been a man without a selfish personal desire. You cannot trace in him the slightest evidence of the passions that so commonly beset the path of men in public life. The love of fame, the love of money, the love of pleasure, the love of ease, the love of power, the love of office, were alike without influence on that heart in which the love of liberty burned with a perpetual flame. The authorship of many of his ablest papers remained unknown till long after he died. The agents of the King more than once tried to tempt him with money or office. Most of his companions in the public service found means to gain competent fortunes by their own industry. Adams once declared that a guinea never glistened in his eyes. But for a small inheritance received late in life from his son, he must have been supported in his old age by charity and buried at the public charge. His only relaxation from his unrepaid public cares was in conversation, especially with little children, of whose society he was passionately fond, and sometimes in listening to or joining in sacred music, in which he especially delighted.

The judgment of historians, the voice of the people, the praises of friends, the anger of enemies, bear concurrent witness to the great qualities of Samuel Adams.

Bancroft calls him "the chief of the Revolution." He says "his vigorous, manly will resembled in its tenacity well-tempered steel which may ply a little but will not break."

Sir James Grahame says "Samuel Adams was one of the most perfect models of disinterested patriotism, and of republican genius and character, that any age or country has produced."

Jefferson called him "the Palinurus of the Revolution." He declared "he was truly a great man, wise in counsel, fertile in his resources, immovable in his purposes, and had, I think, a greater share than any other member in advising and directing our measures in the northern war. I always considered him more than any other man the fountain of our important measures."

Patrick Henry writes from Williamsburgh, when Virginia was about to frame her constitution, "Would to God you and your Samuel Adams were here."

James Warren said he was "the man who had the greatest hand in the greatest revolution in the world."

John Adams exhausts the language of eulogy in his praise: "He has the most thorough understanding of liberty and her resources in the temper and character of the people. He was born and tempered a wedge of steel."

Stephen Sayre calls him "the Father of America."

Josiah Quincy says "many in England esteem him the first politician in the world."

A distinguished clergyman of his time calls him "one of Plutarch's men."

Hutchinson, the tory governor, calls him "the all in all," "the great incendiary leader of Boston." When the ministry wrote to Hutchinson "Why has not Mr. Adams been taken off from his opposition by an office?" he replied, "Such is the obstinacy and inflexible disposition of the man that he never would be conciliated by any office or gift whatever." When Hutchinson went back to England he was received to an audience by King George in his closet, where king and governor vied with each other in denunciation of Sam. Adams.

Galloway, the Philadelphia tory, declared in his examination before the House of Commons that "the lower ranks in Philadelphia were governed in a great degree by Mr. Adams."

Gage, in June, 1775, excepts from the general offer of pardon "Samuel Adams and John Hancock, whose offenses are of too flagitious a nature to admit of any other consideration than that of condign punishment."

And so, Mr. Speaker, it has come to pass that in the centennial year, Massachusetts brings the first and the last of her great Puritans to represent her in the nation's gallery of heroes and patriots. Two hundred and forty-six years have gone by since John Winthrop landed at Salem. It is a hundred years since Samuel Adams set his name at Philadelphia to the charter of that independence which it had been the great purpose of his life to accomplish. Their characters, public and private, have been the subject of an intense historic scrutiny, both hostile and friendly. But the State, not, we hope, having failed to learn whatever new lessons these centuries have brought, still adopts them as the best she has to offer.

I do not use the word Puritan in a restricted sense. I do not mean the bigots or zealots who were the caricature of their generation. I do not discuss the place in history of the men of the English commonwealth. Whether the hypocritical buffoon of Hudibras or the religious enthusiast of Macaulay be the fit type of that generation of Englishmen before whom Europe trembled, we do not need to inquire. I use the word in a large sense, as comprehending the men who led the emigration, made up the bulk of the numbers, established the institutions of Massachusetts, Connecticut, and Plymouth, and administered their affairs as self-governing republics in all but name for more than a century and a half.

Through the vast spaces of human history there have resounded but a few heroic strains. Unless the judgment of those writers who have best conceived and pictured heroism—Milton, Burke, Carlyle, Froude—be at fault, among these there has been none loftier than the Puritanism of New England. The impress which a man makes upon mankind depends upon what he believes, what he loves, what are his qualities of intellect and of temper. You must consider all these to form a just estimate of the great generations with which we are dealing. The Puritan loved liberty, religious and civil; he loved home and family and friends and country with a love never surpassed, and he loved God. He did not love pleasure or luxury or mirth. He dwelt with the delight of absolute certainty on the anticipation of a life beyond the grave. His intellect was fit for exact ethical discussion, clear in seeing general truths, active, unresting, fond of inquiry and debate, but penetrated and restrained by a shrewd common sense. He saw with absolute clearness the true boundary which separates liberty and authority in the state. He had a genius for making constitutions and statutes. He had a tenacity of purpose, a lofty and inflexible courage, an unbending will, which never quailed or flinched before human antagonist, or before exile, torture, or death. The Puritan was a thorough gentleman, of dignified, noble, stately bearing, as becomes men who bear weighty responsibilities, deal with the greatest interests, and meditate on the loftiest themes. Read John Winthrop's definition of civil liberty or his reasons for settling in New England and judge of the temper of those men, who, of free choice, made him twelve times their governor.

The Puritan believed that the law of God is the rule of life for states as for men. He believed in the independence of the individual conscience and in self-government according to the precedents of English liberty, because he believed that both were according to the will of God. "It is the glory of the British constitution," said Samuel Adams, "that it hath its foundation in the law of God." "The magistrate is the servant," said John Adams, "not of his own desires, not even of the people, but of his God." He derived the knowledge of that will from a literal interpretation of Scripture, which he thought furnished precepts or examples for every occasion. Yet it is wonderful how soon the common sense of the Puritan wrought out the principles of sound administration, and freed him from the errors into which other men fell. He interpreted literally the divine command, "Thou shalt not suffer a witch to live." Yet the witchcraft delusion, disgrace of all Christian nations, never reached Plymouth or Connecticut, and touched Massachusetts but lightly. In England, from 1600 to 1680, 40,000 persons were put to death as witches, and in Scotland nearly as many. On the continent of Europe the victims were numbered by hundreds of thousands. In Massachusetts the number never reached a score. The little Swiss city of Geneva put to death five hundred persons for this crime in a single year. A child of nine years old was executed for witchcraft in Huntingdon, England, in 1719. The laws against witchcraft remained in force in England till 1736, and in Scotland till 1738, fifty years after the time when, first of all mankind, Massachusetts repented of the delusion, the opinion of her whole people being uttered in the ever memorable confession of Sewall, the Puritan chief justice. They had sacrificed almost every thing else that man values to enjoy the worship of God after their own fashion. Yet they were among the first of mankind to establish complete religious toleration. I have heard the Puritans of New England taunted for religious bigotry by the representatives of States who, as late as 1741, put men to death for the crime of being Catholics.

The Puritan believed in a future life, where just men were to enjoy immortality with those whom they had loved here; and this belief was his comfort and support in all the sorrow and suffering which he encountered. But he believed also in the coming of God's kingdom here. He had a firm faith that the state he had builded was to continue and grow, a community of men living together in the practice of virtue, in the worship of God, in the pursuit of truth. It has been said of each of two great Puritan leaders, "Hope shone like a fiery pillar in him when it had gone out in all others. His mind is firmly fixed on the future; his face is radiant with the sunrise he intently watches."

Lastly, the Puritan believed in the law of righteous retribution in the affairs of nations. No departure from God's law of absolute justice, of absolute honesty, of absolute righteousness, could escape, so it seemed to him, its certain and terrible punishment. The oppressor who deprived the poorest or weakest of mankind of the equal right with which God had endowed him, the promise-breaker, who juggled with public obligation, the man who gained power by violence or fraud, brought down, as he believed, the vengeance of God upon himself and upon his children, and upon the nation which permitted him, to the third and fourth generation.

Mr. Speaker, the State that the Puritan planted has opened her gates to men of other lineage and of other creed. It may be that in the coming centuries his descendants are to yield to another race the dominion of his beloved New England and that only in gentler climes and on the shores of a more pacific sea men will delight to remember that their fathers were of the company of Winthrop or sat in council with Adams. But the title of the Puritan to remembrance will not depend upon locality. In that mightier national life, drawn from so many sources—of many, one; of many States, one nation; of many races, one people; of many creeds, one faith—the elements he has contributed are elements of perpetual power: his courage; his constancy; his belief in God; his reverence for law; his love of liberty; his serene and lofty hope. [Applause.]

Mr. WARREN. Massachusetts presents to the United States the statues of two of her representative men. She has selected for her heroes no brilliant but erratic genius, general, orator, or poet, for a time the wonder of mankind, but two men, each of whom owes his fame to the unselfish devotion of a life-time to the cause in which his youth embarked. Not that they were either of them common men. Both were born leaders. They were men of unusual firmness and persistency; both men who scorned to be turned aside from the work to which they had dedicated their lives by any thought of personal gain or office or honor. But their right to leadership was built upon the fact that in themselves they embodied and illustrated the most powerful moving sentiments of the time in which they each of them lived.

We must leave out of view, when we would ascertain what at a given epoch is the most powerful influence that is operating to shape or transform the political or religious life of a country, all that large class, the majority in fact of its people, who give no time to thought and readily subscribe to whatever dogmas in politics or religion may be current, so long as the trade in silks or woolens, in corn or cotton, is active and remunerative. Such are not the men whose acts and whose will overturn empires, reform religions, and lead mankind in new paths of progress. Such are not the men who are troubled about the shortcomings of the dominant church, or who tremble at the first insidious attacks made by power upon liberty. But we, who are of English stock, may make it our boast that in each succeeding age a large body of the people, in all classes in society, have acknowledged the duty they owed to the church and to the State, to keep the first pure and the second true to the great charter of our liberties.

The leaders of thought and afterward in action must clearly perceive the danger to be overcome, whether it arises from the perversity of those intrusted with power or the indifference of the people; must devise the remedy and combine and marshal the forces necessary to uproot the prevailing wrong, and create or renew correct opinions and practices in religion or politics.

We need not be reminded that from the time when John Winthrop attained his manhood down to the day of his death one strong purpose animated and controlled the serious and solid men of England. I do full justice to the manly and chivalrous devotion of the cavaliers to the throne, to the zeal and love of the churchmen for the established religion. But the men who beheaded a Strafford, who overthrew a Land, who conquered a monarch and established two commonwealths, one at home, ill-conditioned and short-lived, the other, *esto perpetua*, on these shores, were the men who impressed themselves on their age and have left their impress upon all future generations. They were the men who saw and believed that their liberties, civil and religious, were in danger; who knew no duty but in attempting to recover their rights. In the mind and character of some the religious element predominated; in others, the determination to recover the ancient rights and privileges of the British subject was the ruling motive. But among all who were active on the side of the people in the stirring events of that time both motives combined.

I know how unsafe it is to generalize on any historical subject. What is gained in point and effect is lost in accuracy. But it is not too much to assert that the revolution against the kingly power owed its commencement to those who, while sufficiently religious, yet felt most keenly the wrong done by the king to the civil and political rights of the subject; while on the other hand the founding of the Massachusetts Commonwealth was due to those who, not unmindful of the danger to political liberty, were impelled primarily by their belief that their foremost duty was to bring their lives into absolute subjection to the will of God. The latter subordinated their duty to the state, yes, and the state itself, to what they conceived to be the law of God. The former had, from education, from family, and from tradition, that almost superstitious veneration for what was termed the constitutional rights of Englishmen which made them start at any infraction of the provisions of that constitution and eventually take arms in defense of its integrity. And it is a singular fact that when the revolution against the power of the King, commenced by the friends of civil liberty, was well-nigh failing, it owed its revival and ultimate success to the strength that was imparted to it by those whose ruling motive was the religious one. For it was Cromwell and Ireton and the men who prepared for the fight by prayer who proved invincible to all the dash and impetuosity of Rupert and his squadrons. On the other hand—I trust it is not a fanciful comparison—our colony founded by John Winthrop, and for over a century sustained by the influence of him and men like him, who would use the state itself only as a means to glorify God and make all men keep his commandments, never reached its full stature as a perfect commonwealth until new encroachments upon political rights caused the descendants of the Puritans to turn their whole attention to the preservation of their liberties. Then, as John Winthrop, the representative man of his day, was chosen by his peculiar fitness to lead a devoted band to build up the church in the wilderness, so Samuel Adams, equally the representative of the men of his time, was at once recognized as the one man fitted to lead in the work of the new revolution against royal aggression.

It derogates nothing from the merit of Winthrop or Adams that each was the product of the time in which he lived. It rather heightens their claim to the gratitude and reverent regard of their contemporaries and of posterity that they possessed the clearness of vision to understand and the forgetfulness of self and firmness of purpose to carry into execution the best if not the only measures which would secure in the earlier time the religious independence and in the later period the civil and political freedom which of right belonged to all free-born Englishmen.

As in the mother-country the love of freedom needed the aid of religious zeal before it could succeed in its struggle against power, so on the other hand in New England its religious zeal and constancy needed the liberalizing aid of the spirit of democracy in order that full freedom of conscience in things religious might be guaranteed to all men. And so Massachusetts regards herself to-day as built upon the two foundations of religion and of liberty. In her belief one cannot exist apart from the other. Religion is the main reliance to prevent liberty from degenerating into license. A devotion to liberty and the equal rights of all will alone guarantee that toleration without which religion itself becomes either a matter of form or an engine of oppression.

It is most fitting, then, that Massachusetts should present to the United States the statues of Winthrop and of Samuel Adams. The one is the true type of the religious element; the other, the full embodiment of the spirit of liberty; both together represent the Commonwealth itself, the perfect result of the full blending of religion and liberty, working in harmony in the cause of human progress.

It is not for me to present to you an analysis of the characteristics of the Puritans or to show in what manner and by the possession of what qualities they have exerted so great an influence upon the fortunes of our country. If I desired I could add nothing to the completeness of the picture drawn by my colleague who has preceded me. I should only mar the beauty and symmetry of his portraiture were I to add so much as a single touch. Let me rather say that whatever may have been the rivalries between Puritans and Pilgrims or between the early settlers of the *New* England and those of more southern colonies, the differences between them bear no comparison to the points of similarity. Wherever we turn in the history of Massachusetts or Virginia, we shall find all through its pages the evidence that the people of both States descended from a common stock, that both made it their chief boast that the ancient rights and privileges of Englishmen were theirs; that when freedom was assailed both sprang with equal alacrity to its defense; that, when both had shaken off the shackles of colonial dependence and came to adopt a declaration of rights and a frame of government suited to a free people, the constitutions of Massachusetts and of Virginia differed in no essential particular; and that in the task of establishing the Federal Union for the common defense against foreign enemies and the common security against domestic violence, while at the same time the States and the people were guaranteed the rights essential to the preservation of liberty, Samuel Adams of Massachusetts and Thomas Jefferson of Virginia found themselves in perfect accord.

In the next place I do not dwell upon the contrasts that may be discovered between the colonists of 1630 and the revolutionists of 1775. There was never a time when religious zeal was powerful enough in the colony to cause the people or the magistrates to lose sight of the great bulwarks of civil freedom. The principles and forms of the common law were constantly followed. The Parliament was supported in its contest with the King. And from first to last there was manifested a firm determination to insist on all the rights and the substantial independence conferred by the original charter of the company.

On the other hand, at the time of the Revolution and long after, the power and the influence of the clergy were felt in state as well as church, and the habit of referring to the words of Scripture as authority in things temporal as well as in things spiritual was almost universal. For two centuries at least after the first settlement of Boston, the building up of the church and the preservation of their liberties were the prime motives that inspired the conduct of the men of Massachusetts. At one time one motive predominated, at another the other, but both were always active.

I have said that these men owe their fame not to any single brilliant exploit. It is on the other hand only by the well-rounded work of a life-time that they so truly represent two centuries of Massachusetts history. But not only because they best illustrate the times in which they live, but also because they most clearly foresaw what was needed in the future of their country, it is proper that their statues should have an honorable place among those contributed to our National Gallery. In these days when office is without honor, when the possession of wealth is almost of itself a ground of suspicion against its possessor, and when culture instead of conferring strength is too often only a badge of inefficiency, one can but be struck by the contrast which the

first and second centuries of our history present to the present time.

In John Winthrop were united social station, official rank, refined culture, and, until late in life, a sufficient fortune. Adams was undoubtedly a man most democratic in his tendencies; yet in his day due respect was rendered to the magistrates; honor to the man of learning, and wealth was esteemed as the fair reward of honest and patient endeavor. In these respects Winthrop and Adams but reflect the habit of their own times. But a public man's influence upon posterity depends upon what he has thought out and wisely said in the way of solving the political, religious, or social problems, with which the future must deal.

In Winthrop's time it was hoped and believed that the colonial charter contained a sufficient guarantee for the substantial independence of the colony. It was not then deemed either desirable or practicable to bring about a complete separation from the mother country; yet every step taken by Winthrop and his contemporaries was preparatory to the actual and complete independence which was to follow. Before his death Winthrop witnessed the entire success of his enterprise, and he had been mainly instrumental in giving such a foundation and such a direction to the public sentiment of the people as would keep the rising state always in the path which he had marked out for it when he determined on removing to the New World.

Adams, when he came upon the stage, had another century of the experience of England and the colony on which to draw for instruction. He could also learn from the development of the country and from its constant disputes with the home government what its future must be and what the basis on which government here must rest.

His views were always singularly clear, and those of his earlier years required little modification even in his old age. Hear him at the age of twenty-six, discussing what is true loyalty:

> The true object of loyalty is a good, legal constitution, which, as it condemns every instance of oppression and lawless power, derives a certain remedy to the sufferer by allowing him to remonstrate his grievances, and pointing out methods of relief when the gentle arts of persuasion have lost their efficacy. Whoever, therefore, insinuates notions of government contrary to the Constitution, or in any degree winks at any measure to suppress or even to weaken it, is not a loyal man. Whoever acquaints us that we have no right to examine into the conduct of those who, though they derive their power from us to serve the common interests, make use of it to impoverish and ruin us, is in a degree a rebel—to the undoubted rights and liberties of the people.

This was in 1748. Twenty years later, when troops were stationed in Boston and their removal was demanded by the citizens, Adams thus wrote to the Boston Gazette:

> Where military power is introduced, military maxims are propagated and adopted which are inconsistent with, and must soon eradicate, every idea of civil government. Do we not already find some persons weak enough to believe that an officer is obliged to obey the order of his superior though it oe even against the law? And let any one consider whether this doctrine does not directly lead even to the setting up of that officer, whoever he may be, as a tyrant?

I may not go on with quotations.

For over a quarter of a century after this he continued in public life, and so long he continued to repeat and enforce his arguments in favor of a constitutional government, based upon universal liberty and secured by the safeguards of religion and popular education.

So Massachusetts, in presenting their statues, presents herself again to the United States. She claims for her people that, recognizing the merits of these two men, she recognizes the truths for the sake of which they spent their lives, and she promises for herself that she will not fail in religiously performing every constitutional duty. Whenever an attempt shall be made to subvert our institutions, whether by the reckless employment of force or by a resort to the subtler method of deception and fraud practiced on the people, Massachusetts must forget her traditions and her memories if she fails to be first in the field to resist all illegal conduct and protect the rights of her citizens.

She has placed these statues on either side of the entrance to that Hall where in a later day another Adams fell at his post of duty, so that we, who in these busy and perhaps most critical times are sent here to do what in us lies to preserve and transmit unimpaired that constitutional liberty which is an inheritance, must in going out from this Hall after our daily service pass between the silent forms of Winthrop and of Adams.

Whatever son of Massachusetts can leave this Hall with the consciousness that in act or vote or speech he has been true to the ancient renown of his State, has resisted every attempt to subvert the principles on which the permanence of our liberties depends, has religiously held his allegiance to truth and firmly opposed all falsehood and fraud and trickery, has not forgotten his country in his zeal for party nor forfeited his self-respect and the respect of good men by his desire for office and personal gain, finally who has imitated the life and conduct of these two men whose example we offer to the imitation of all lovers of free government, may hold his head erect, and look full in the face those almost speaking statues, and feel as if a blessing were resting upon his pathway.

But if at any time any recreant son of the old Commonwealth should dare to use his position here to undermine the institutions of his country, to stifle the voice of a free people through the instrumentality of fraud or force, or both combined, should use his office for personal gain or to secure a party triumph at the sacrifice of truth and of justice, then I fancy I see that man, as he passes out of yonder portal, crouching between the stately images at which he dares not look, and as it expecting the marble lips to part and utter the curse which he so well would merit. [Applause.]

Mr. Speaker, up to this day, as the virtues and merits of John Winthrop and Samuel Adams have never been unrecognized, so in each generation since his death some descendant of Winthrop and for four generations some kinsman of Adams has filled an honorable place in the service of the State. Far distant be the day when any future generation in the old Commonwealth shall be deprived of the service of a Winthrop or an Adams. Far distant be the day when there shall be wanting many, many descendants of the early Puritans who will be prompt to do honor to the memory and imitate the unselfish devotion to duty of John Winthrop and Samuel Adams. [Applause.]

Mr. GARFIELD. Mr. Speaker, I regret that illness has made it impossible for me to keep the promise which I made a few days since to offer some reflections appropriate to this very interesting occasion. But I cannot let the moment pass without expressing my great satisfaction with the fitting and instructive choice which the State of Massachusetts has made, and the manner in which her Representatives have discharged their duty in presenting these beautiful works of art to the Congress of the nation.

As, from time to time, our venerable and beautiful Hall has been peopled with statues of the elect of the States, it has seemed to me that a third house was being organized within the walls of the Capitol—a house whose members have received their high credentials at the hands of history, and whose term of office will outlast the ages. Year by year, we see the circle of its immortal membership enlarging; year by year, we see the elect of their country, in eloquent silence, taking their places in this American Pantheon, bringing within its sacred circle the wealth of those immortal memories which made their lives illustrious; and, year by year, that august assembly is teaching a deeper and grander lesson to all who serve their brief hour in these more ephemeral Houses of Congress. And now, two places of great honor have just been most nobly filled.

I can well understand that the State of Massachusetts, embarrassed by her wealth of historic glory, found it difficult to make the selection. And while the distinguished gentleman from Massachusetts [Mr. HOAR] was so fittingly honoring his State by portraying that happy embarrassment, I was reflecting that the sister-State of Virginia will encounter, if possible, a still greater difficulty when she comes to make the selection of her immortals. One name I venture to hope she will not select; a name too great for the glory of any one State. I trust she will allow us to claim Washington as belonging to all the States, for all time. If she shall pass over the great distance that separates Washington from all others, I can hardly imagine how she will make the choice from her crowded roll. But I have no doubt that she will be able to select two who will represent the great phases of her history as happily and worthily as Massachusetts is represented in the choice she has to-day announced. It is difficult to imagine a happier combination of great and beneficent forces than will be presented by the representative heroes of these two great States.

Virginia and Massachusetts were the two focal centers from which sprang the life-forces of this Republic. They were, in many ways, complements of each other, each supplying what the other lacked, and both uniting to endow the Republic with its noblest and most enduring qualities.

To-day, the House has listened with the deepest interest to the statement of those elements of priceless value contributed by the State of Massachusetts. We have been instructed by the clear and masterly analysis of the spirit and character of that Puritan civilization, so fully embodied in the lives of Winthrop and Adams. I will venture to add, that notwithstanding all the neglect and contempt with which England regarded her Puritans two hundred years ago, the tendency of thought in modern England is to do justice to that great force which created the Commonwealth, and finally made the British Islands a land of liberty and law. Even the great historian Hume was compelled reluctantly to declare that—

> The precious spark of liberty had been kindled and was preserved by the Puritans alone; and it was to this sect that the English owe the whole freedom of their constitution.

What higher praise can posterity bestow upon any people than to make such a confession? Having done so much to save liberty alive in the mother-country, the Puritans planted, upon the shores of this New World, that remarkable civilization whose growth is the greatness and glory of our Republic.

Indeed, before Winthrop and his company landed at Salem, the Pilgrims were laying the foundations of civil liberty. While the Mayflower was passing Cape Cod and seeking an anchorage, in the midst of the storm, her brave passengers sat down in the little cabin and drafted and signed a covenant which contains the germ of American liberty. How familiar to the American habit of mind are these declarations of the Pilgrim covenant of 1620:

> That no act, imposition, law, or ordinance be made or imposed upon us at present or to come but such as has been or shall be enacted by the consent of the body of freemen or associates, or their representatives legally assembled.

The New England town was the model, the primary cell, from which our Republic was evolved. The town meeting was the germ of all the parliamentary life and habits of Americans.

John Winthrop brought with him the more formal organization of

New England society; and, in his long and useful life, did more than perhaps any other to direct and strengthen its growth.

Nothing, therefore, could be more fitting, than for Massachusetts to place in our Memorial Hall the statue of the first of the Puritans, representing him at the moment when he was stepping on shore from the ship that brought him from England, and bearing with him the charter of that first political society which laid the foundations of our country; and that near him should stand that Puritan embodiment of the logic of the Revolution, Samuel Adams. I am glad to see this decisive, though tardy, acknowledgment of his great and signal services to America. I doubt if any man equaled Samuel Adams in formulating and uttering the fierce, clear, and inexorable logic of the Revolution. With our present habits of thought, we can hardly realize how great were the obstacles to overcome. Not the least was the religious belief of the fathers—that allegiance to rulers was obedience to God. The thirteenth chapter of Romans was to many minds a barrier against revolution stronger than the battalions of George III:

> Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God. Whosoever therefore resisteth the power, resisteth the ordinance of God.

And it was not until the people of that religious age were led to see that they might obey God and still establish liberty, in spite of kingly despotism, that they were willing to engage in war against one who called himself "king by the grace of God." The men who pointed out the pathway to freedom by the light of religion as well as of law, were the foremost promoters of American Independence. And of these, Adams was unquestionably chief.

It must not be forgotten that while Samuel Adams was writing the great argument of liberty in Boston, almost at the same time, Patrick Henry was formulating the same doctrines in Virginia. It is one of the grandest facts of that grand time that the Colonies were thus brought, by an almost universal consent, to tread the same pathway, and reach the same great conclusions.

But most remarkable of all is the fact that, throughout all that period, filled as it was with the revolutionary spirit, the great men who guided the storm, exhibited the most wonderful power of self-restraint. If I were to-day to state the single quality that appears to me most admirable among the fathers of the Revolution, I should say it was this: that amidst all the passions of war, waged against a perfidious enemy from beyond the sea, aided by a savage enemy on our own shores, our fathers exhibited so wonderful a restraint, so great a care to observe the forms of law, to protect the rights of the minority, to preserve all those great rights that had come down to them from the common law, so that when they had achieved their independence they were still a law-abiding people.

In that fiery meeting in the old South church, after the Boston massacre, when, as the gentleman from Massachusetts has said, three thousand voices almost lifted the roof from the church in demanding the removal of the regiments, it is noted by the historian that there was one, solitary, sturdy "nay" in the vast assemblage; and Samuel Adams scrupulously recorded the fact that there was one dissentient. It would have been a mortal offense against his notions of justice and good order, if that one dissentient had not had his place in the record. And, after the regiments had been removed, and after the demand had been acceded to that the soldiers who had fired upon citizens should be delivered over to the civil authorities to be dealt with according to law, Adams was the first to insist and demand that the best legal talent in the Colony should be put forward to defend those murderers; and John Adams and Josiah Quincy were detailed for the purpose of defending them. Men were detailed whose hearts and souls were on fire with the love of the popular cause; but the men of Massachusetts would have despised the two advocates, if they had not given their whole strength to the defense of the soldiers.

Mr. Speaker, this great lesson of self-restraint is taught in the whole history of the Revolution; and it is this lesson that to-day, more perhaps, than any other we have seen, we ought to take most to heart. Let us seek liberty and peace, under the law; and, following the pathway of our fathers, preserve the great legacy they have committed to our keeping.

The question being taken, the resolutions of the Senate were unanimously concurred in.

And then, on motion of Mr. REAGAN, (at four o'clock and thirty-five minutes p. m.,) the House adjourned.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. BAKER, of Indiana: The petition of Mary Barr, widow of Martin Barr, late a private in the One hundred and forty-second Regiment Indiana Volunteers, for a pension, to the Committee on Invalid Pensions.

By Mr. BRADFORD: The petition of citizens of Clay County, Alabama, for the establishment of a post-route from Delta, by way of Flint Hill to Union, Clay County, Alabama, to the Committee on the Post-Office and Post-Roads.

By Mr. CALDWELL, of Alabama: The petition of citizens of Jackson County, Alabama, for the extension of route No. 17115, Alabama service, from Paint Rock Station to Princeton in said county, so as to connect with route 17 from Larkinsville to Hunt's Station, in the State of Tennessee, to the same committee.

By Mr. CHITTENDEN: The petition of Baldwin Cann, late first lieutenant Fourth New York Volunteer Cavalry, for a pension, to the Committee on Invalid Pensions.

By Mr. FELTON: The petition of Isaac Sewell, of Cobb County, Georgia, who remained loyal to the Government of the United States during the late war, for a rehearing of his claim for $1,380 for property taken and used by the United States Army, rejected by the southern claims commission, to the Committee on War Claims.

Also, the petition of Charles J. Shepard, of Cobb County, Georgia, who remained loyal to the Government of the United States during the late war, for a rehearing of his claim for $1,695.50 for property taken and used by the United States Army, rejected by the southern claims commission, to the same committee.

By Mr. GARFIELD: The petition of Sarah Howells, widow of Thomas Howells, deceased, late a private in Company C, Nineteenth Regiment Ohio Infantry Volunteers, to the Committee on Invalid Pensions.

By Mr. GLOVER: The petition of John M. Butler, of Washington, District of Columbia, for compensation for work done for the Committee on Jay Cooke Indebtedness and Real-Estate Pool during the recess of Congress, to the Committee of Accounts.

By Mr. HOAR: The petition of T. L. Nelson, president of the board of directors of the Free Public Library of Worcester, Massachusetts, and of the officers of other libraries in various sections of the Union, for the purchase by Congress of the papers of the General Count de Rochambeau, the commander of the French forces sent to aid Washington in our revolutionary struggle for national independence, to the Joint Committee on the Library.

By Mr. HOLMAN: The petition of H. M. Beadle, of Indiana, for the printing by the order of the House of the reports on the Louisiana troubles made to the Forty-third Congress, to the Committee on Printing.

IN SENATE.

WEDNESDAY, *December* 20, 1876.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

The Journal of yesterday's proceedings was read and approved.

EXECUTIVE COMMUNICATION.

The PRESIDENT *pro tempore* laid before the Senate a letter from the Secretary of War, transmitting, in compliance with the provisions of paragraph 10, of the fourth section of the river and harbor bill of March 3, 1875, the fifth report on the improvement of the South Pass of the Mississippi River, showing the condition of the works on November 18, 1876, by C. B. Comstock, major of engineers; which was ordered to lie on the table and be printed.

HOUSE BILLS REFERRED.

The following bills and joint resolutions from the House of Representatives were severally read twice by their titles, and referred to the Committee on Military Affairs:

A bill (H. R. No. 2606) for the relief of Catharine Harris;

A bill (H. R. No. 4248) for the relief of Emanuel Klauser, late corporal of Company H, Fifty-fourth Regiment Illinois Volunteers;

A joint resolution (H. R. No. 174) authorizing the issue of clothing to Private Patrick Noonan, Company G, Fifth United States Infantry;

A joint resolution (H. R. No. 175) authorizing the issue of clothing to Company A, Second Regiment United States Cavalry;

A joint resolution (H. R. No. 176) authorizing the issue of clothing to Private Francis Hegner, Company F, Seventh Cavalry, and Private John C. Collins, Company G, Seventh Cavalry; and

A joint resolution (H. R. No. 177) authorizing the issue of clothing to Sergeant Herman Theune, Company I, Twenty-third United States Infantry.

The bill (H. R. No. 4188) making appropriations for fortifications and for other works of defense, and for the armament thereof, for the fiscal year ending June 30, 1878, and for other purposes, was read twice by its title, and referred to the Committee on Appropriations.

The bill (H. R. No. 4246) to provide for the holding of terms of the district and circuit courts of the United States at Bay City, Michigan, was read twice by its title, and referred to the Committee on the Judiciary.

REPORT ON MINING STATISTICS.

The PRESIDENT *pro tempore* laid before the Senate the following concurrent resolution from the House of Representatives; which was referred to the Committee on Printing:

Resolved by the House of Representatives, (the Senate concurring,) That there be printed of the report of R. W. Raymond on mining statistics for 1875, with the accompanying engravings, 2,500 copies for the use of the House of Representatives, 1,000 for the Senate, and 500 for the Secretary of the Treasury and commissioners.

PETITIONS AND MEMORIALS.

Mr. MITCHELL. I present a joint memorial of the Legislative Assembly of the State of Oregon, in which it is represented that "several years since the United States authorized and directed a geological survey of the then Territory of Oregon, and made a limited ap-

propriation therefor, but, owing to an extensive field proposed to be examined and the limited allowance made for the same, but little work of importance was accomplished." It is further represented "that the geology of Oregon is of the most interesting character; that there are indications of vast beds of coal and iron, the most valuable lodes of silver and gold and other precious metals; that no undeveloped region of the United States offers better prospects for the investment of capital in mining than the State of Oregon." It respectfully prays therefore "that Congress will make an appropriation in the interest of science and general commerce to defray the expenses of a scientific and thorough geological survey of this part of the public domain." I move that the memorial be referred to the Committee on Mines and Mining.

The motion was agreed to.

Mr. WITHERS presented additional papers in relation to the claim of John Y. Worthington for compensation for wood furnished the United States troops during the late war; which were referred to the Committee on Claims.

Mr. BOGY presented the petition of John S. Marmaduke, of Missouri, praying the removal of his political disabilities; which was referred to the Committee on the Judiciary.

REPORTS OF COMMITTEES.

Mr. WRIGHT, from the Committee on Claims, to whom was referred the bill (S. No. 47) for the relief of John Cummins, late collector and disbursing agent of the United States internal-revenue district of Idaho, submitted an adverse report thereon; which was ordered to be printed, and the bill was indefinitely postponed.

He also, from the same committee, to whom was referred the bill (S. No. 219) for the relief of Robert Johnston, late collector of internal revenue for the third district of Alabama, reported adversely thereon, and moved that the bill be indefinitely postponed; which was agreed to.

He also, from the same committee, to whom was referred the petition of David J. Browne, an alien resident of Mississippi, praying for indemnity for eight hundred and fifty-six bales of cotton destroyed by United States forces during the war of the rebellion, reported adversely thereon, and moved that the claim be rejected; which was agreed to.

Mr. WRIGHT. The same committee, to whom was recommitted the bill (H. R. No. 3503) for the relief of Philip Rohr, of Virginia, for tobacco seized for use of the Army, in connection with additional papers or proofs, again recommend that the bill be indefinitely postponed and that the claim be rejected.

Mr. JOHNSTON. I move that the bill be placed on the Calendar.

Mr. WRIGHT. I have no objection.

The PRESIDENT *pro tempore*. The bill will be placed on the Calendar with the adverse report of the committee.

Mr. WRIGHT. The same committee, to whom was referred the petition of H. H. Lemmon, late a member of the Capitol police, praying compensation for damages sustained by falling through a trap-door at the Capitol in the discharge of his duties, ask to be discharged from its further consideration. In that connection we also desire to state that if this person has anything that can approach a claim upon the Government it is a matter that appeals alone to the clemency or grace of Congress, and as such resolutions usually come as a voluntary matter from the Committee on Public Buildings and Grounds we ask to be discharged, as far as we are concerned, and that the claim as a claim be rejected.

The report was agreed to.

Mr. WRIGHT. The same committee, to whom was referred the bill (S. No. 165) for the relief of Michael W. Brock, late a private in Company D, Tenth Tennessee Volunteers, have had the same under consideration and find this to be the state of the case: This bill was passed at the last Congress, went to the President and was vetoed by him; and it was returned with the President's message setting forth the grounds on which he was unable to approve the bill. The matter has been again referred to the War Department, and from the evidence now received from that Department we are satisfied that the bill should not have passed originally; and we now recommend, therefore, that the bill be indefinitely postponed and the claim rejected.

Mr. DAVIS. What bill is that?

Mr. WRIGHT. The bill for the relief of Michael W. Brock.

Mr. CONKLING. For what?

Mr. WRIGHT. He was a volunteer in a regiment of Tennessee cavalry and claimed $225 for some property that was charged to him, that he said was improperly charged.

The report was agreed to.

UNION PACIFIC RAILROAD ACTS.

Mr. WRIGHT. I desire, before I take my seat, to give notice that I shall on Friday morning, if able to obtain the floor, ask the Senate to proceed, immediately after the expiration of the morning hour, to the consideration of the bill (S. No. 60) declaring the true intent and meaning of the Union Pacific Railroad acts approved July 1, 1862, July 2, 1864, and July 3, 1866, and for other purposes. In giving this notice at this time, I desire to say that there is a report from the Committee on the Judiciary which sets forth the entire facts very fully. I do not propose to discuss the bill myself, but I think it will be my duty to call it up at that time, and, if I can, to obtain the action of the Senate upon it.

Mr. CONKLING. Is that the Central Branch bill so called?

Mr. WRIGHT. It is.

BILLS INTRODUCED.

Mr. HITCHCOCK asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1094) supplemental to an act entitled "An act for the apportionment of Representatives to Congress among the several States according to the ninth census;" which was read twice by its title, referred to the Committee on Privileges and Elections, and ordered to be printed.

Mr. HARVEY asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1095) for the relief of George A. Schreiner; which was read twice by its title, referred to the Committee on Claims, and ordered to be printed.

LAW OF DOWER IN THE DISTRICT.

Mr. WRIGHT. If there be no resolutions this morning, I move that the Senate proceed to the consideration of the bill (H. R. No. 2043) to improve the law in relation to dower in the District of Columbia, reported from the Committee on the Judiciary on the 25th of July last.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill.

The bill was reported from the Committee on the Judiciary with an amendment to strike out all after the enacting clause, and to insert in lieu thereof the following:

That one third in value of all the equitable estate in real property owned and held by the husband within the District of Columbia at any time during the marriage, to which the wife has made no relinquishment of her right, shall be set apart to said wife as her dower-right in such property. Said dower may be assigned specifically by metes and bounds or as of a third part of the net annual value of the rents, issues, and profits of the lands and tenements or interest therein, in which the dower right exists.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The amendment was ordered to be engrossed and the bill to be read the third time.

The bill was read the third time, and passed. Its title was amended so as to read: "An act in relation to dower in the District of Columbia."

PROPOSED TERRITORY OF PEMBINA.

Several Senators addressed the Chair.

Mr. HAMLIN. I think the Senator from Nebraska [Mr. HITCHCOCK] may have risen for the same purpose as myself, and, if so, I yield to him.

Mr. HITCHCOCK. I move that the Senate proceed to the consideration of the bill (S. No. 606) to establish the Territory of Pembina, and to provide a temporary government therefor.

The PRESIDENT *pro tempore*. The motion pending is a motion to reconsider the vote by which the bill was passed, offered by the Senator from Missouri, [Mr. BOGY.]

Mr. HITCHCOCK. I desire to say that there are some reasons why the motion should prevail, and I hope it will prevail, not for the reason for which the Senator from Missouri seeks a reconsideration, but for another and a different reason, which, if the Senate takes up the bill, will be indicated.

The PRESIDENT *pro tempore*. The Chair hears no objection, and the question is on the motion to reconsider the vote by which the bill was passed.

The motion to reconsider was agreed to.

The PRESIDENT *pro tempore*. The vote is reconsidered and the bill is before the Senate.

Mr. HITCHCOCK. The Senator from Maine [Mr. HAMLIN] has some amendments which he will offer.

The PRESIDENT *pro tempore*. Then it will be necessary to reconsider the vote by which the bill was ordered to its third reading.

Mr. HAMLIN. I move to reconsider the vote by which the bill had its third reading.

The motion to reconsider was agreed to.

The PRESIDENT *pro tempore*. The bill is now open to amendment.

Mr. HAMLIN. I propose to amend the bill by adding after the word "provisions" in line 4 of section 2 the words "respecting other Territories," and by inserting in the same line after the word "one" the words "and also in sections 1907, 1909, 1910, 1912, 1923, and 1935;" so as to read:

That the said Territory of Pembina, and the several officers thereof, shall be invested with all the rights, powers, and privileges, and shall be subject to all the regulations, restrictions, and provisions respecting other Territories, contained in chapter 1, and also in sections 1907, 1909, 1910, 1912, 1923, and 1935, of title 24, of the Revised Statutes of the United States, except as is herein otherwise provided.

This amendment is proposed simply for the purpose of making the reference in the statute to the existing provisions of law more clear and distinct as applicable to this Territory. I have conferred with the chairman of the committee and he is himself satisfied that without such an amendment the provisions which are named in those sections will not apply to the Territory of Pembina.

Mr. HITCHCOCK. I have examined the matter to which the Senator from Maine alludes, and I believe that the amendment is necessary and proper, and I hope it will be adopted.

The amendment was agreed to.

Mr. HAMLIN. I now offer another amendment as an additional section to the bill. Let it be read and I think it will speak pretty clearly just what it means.

The PRESIDENT *pro tempore*. The amendment will be reported.

The CHIEF CLERK. It is proposed to add as section 7 to the bill the following:

That all laws enacted by the legislative authority of the Territory of Dakota in force in that part of said Territory which by the provisions of this act is contained in the Territory of Pembina shall continue in full force therein, so far as applicable thereto and consistent with the laws of the United States, subject to be amended and repealed by the legislative authority of said Territory of Pembina; and, until otherwise provided by such legislative authority, all persons holding office or places of trust under said law shall continue to hold and exercise the same during the terms for which they may respectively have been elected or appointed; and all actions returnable to or pending in district courts of the Territory of Dakota held in counties contained by the provisions of this act in the Territory of Pembina may be entered, heard, and determined in the district courts of the Territory of Pembina to be held at the same times and places now fixed by law for the holding of district courts therein until such times and places shall be changed by the governor or legislative authority of said Territory. The district courts of said Territory of Pembina may issue executions on unpaid judgments heretofore recovered in counties contained in said Territory, and may do and perform therein all acts which the district courts of the Territory of Dakota could do or perform if said Territory of Pembina had not been established; and the necessary records for the performance of such acts, or copies of such records, shall be transferred to or deposited with said courts of the Territory of Pembina.

Mr. HAMLIN. I think the amendment will suggest itself as proper to every Senator who has listened to it. It is, first, to prevent an interregnum between the time when this Territory shall become such and when its governmental machinery shall be at work, and it provides that the officers there by virtue of the law of Dakota now shall remain until that takes place, and it is designed to preserve also the rights of all existing suits. I think that is about all there is in it; and it is eminently proper, I think, that the amendment should be made.

The amendment was agreed to.

Mr. BOGY. Mr. President, I desire to change the name of this proposed new Territory from Pembina to some Indian name. I would prefer myself the name of Algonquin, because it is the name of a numerous tribe of Indians that may be called a nation of Indians, because from that large nationality, to use that word, have sprung many tribes. But the name is objected to by many persons because it does not sound very well and is rather long, and my friends around me here suggest the name of Huron as being a very proper name. As it is a short name, sounds well, and is sonorous and beautiful I suggest that the name be changed to Huron. I am rather anxious to retain some of these Indian names as a part of the history of our country. I think it is well to retain these little links of history and also to retain names that are handsome. Now, Pembina is not a handsome name; it is not a historic name; it is not an Indian name.

Mr. SHERMAN. I will ask my friend, if he wants to take one of the names of the old tribes, why not take that surviving longest, the name of Wyandotte? It is one of the old Indian tribes that has survived longest.

Mr. BOGY. I have no objection. I have no choice. I prefer the name of Algonquin myself because it is a generic name. The Wyandottes were Algonquins; the Hurons were Algonquins. The Algonquin tribe was the most numerous tribe on the shores of the Atlantic, and extended from the bay of Chesapeake away up into the State of Maine, and occupied all this vast country. Pocahontas was an Algonquin; and the Hurons, the Wyandottes, the Delawares, the Senecas, and many other tribes of Indians were Algonquins. I have no particular choice. My object is only to retain an appropriate name and a historic name, peculiar to our country, and at the same time one that will sound well.

As I was saying a while ago, the name of Pembina is not an Indian name; it is a corruption of two French words. *Pem* is a corruption of the French word that means "bread" and *bina* is a corruption of the old *béni*, "holy," or holy bread; that is the origin of the term. I am familiar with it, and have traced it up. It is even pronounced very awkwardly. It is called *Pembinaw*, when, in point of fact, it is *Pembi'na*.

Mr. MORTON. What is there out there that it is called from?

Mr. BOGY. That region of country is called the Pembina region. There is a large river flowing from the boundary line of the United States, I think, into Hudson's Bay, called Pembina; but these are all new names of modern growth. The name of Pembina was given to a plant that was found there, an acid plant. I suggest a change of name; whether it be called Huron or Wyandotte I have no particular choice. I will, however, suggest the name of Huron; but, if any gentleman prefers another Indian name, I have no objection.

Mr. SPENCER. Mr. President, if I am correctly informed, that section of country is occupied by the Sioux tribe of Indians. There are four powerful nations among the Sioux—the Yanktons, the Brûlés, the Sissetons, and the Ogallaleas. I should think the name of Ogallalea would be a very good name.

Mr. BOGY. The Ogallaleas are not in that locality.

Mr. SPENCER. I think they are.

Mr. BOGY. No; they are not within the Territory.

Mr. SPENCER. I thought they were.

Mr. BOGY. The Yanktons are not in that region of country. They are away west. They are Sioux Indians, but they are not in that portion of the country. The Sissetons are there, but not the Yanktons or the Ogallaleas.

Mr. HITCHCOCK. Mr. President, I do not know that it is a matter of very great importance what name shall be given to this Territory, I am opposed, however, and I know the people now there are opposed to the name of Algonquin which has been formerly suggested by the Senator from Missouri. The Senator claims that Algonquin is a proper name because it is the generic name of the Indian tribes which formerly inhabited the country from the Potomac to Maine. It might, therefore, be applied to a Territory within that geographical limit; but I do not see the historic application of that name to a Territory thousands of miles away from that locality.

So far as the name Huron is concerned, which the Senator now suggests, and as I understand proposes as an amendment in lieu of the name which is now given to the Territory by the bill, I do not know that there is any particular and specific objection among the inhabitants there to that particular name. I have none; but I do not see that it is particularly either a more musical or a prettier name than Pembina. I have a letter here from the Delegate who now represents the Territory, which is very short, and with the permission of the Senate I will read it. This letter is addressed to me and is dated December 8, 1876. It is as follows:

Knowing that a motion is pending in the Senate to change the name of the bill to organize the Territory of Pembina to Algonquin, I desire to state to you that during the last two months I have traveled over a large portion of the Territory that is now contemplated to be organized, and have made inquiry of many of the residents therein of various nationalities, and I failed to find one person who desired to have the name changed, but all with whom I conversed on the subject are suited and prefer the name of Pembina to any other name.

Very respectfully,

J. P. KIDDER.

That is all I care to say on the amendment of the Senator from Missouri.

The PRESIDENT *pro tempore*. Does the Senator from Missouri move an amendment?

Mr. BOGY. I move an amendment that the name be changed from "Pembina" to "Huron."

Mr. HAMLIN. I think the Senator had better include in his motion to strike out also wherever the word "Pembina" occurs in the bill and insert "Huron."

Mr. BOGY. Certainly, to make the correction in the whole bill, wherever the name occurs.

The PRESIDENT *pro tempore*. The amendment will be understood as covering the name wherever it occurs in the bill. The question is on the amendment.

The amendment was agreed to.

Mr. SHERMAN. I think we have not selected the best name. There are several names that might be taken, and I think we should take one of the names of the old tribes formerly in New York. I think we had better take the name of Wyandotte or Seneca, or some of the names from the old New York Indians. "Huron" I do not think is an Indian name, though I am not prepared to go exactly into the derivation of it; it is certainly not so harmonious to my ear as some other names. The names of the New York Indians are very beautiful, Wyandotte, Seneca, Miami; and besides, the Wyandotte are altogether the most powerful of all these Indian tribes, now merged and all of them citizens of the United States. They became very wealthy while occupying for a long time a reservation in Ohio, and gradually moved to Kansas and there became Christianized and civilized and have been ingrafted on our population. The Hurons I think disappeared long ago as a tribe and never were anything like as important as either of the other tribes named. They were also in Ohio. At the same time in choosing a name we ought to take a euphonious name, and if we take an Indian name we ought to take one representing a powerful and strong Indian tribe. If it is in order, therefore, I will move to insert Wyandotte.

Mr. BOGY. The Hurons are one of the remnants of the Six Nations.

Mr. SHERMAN. I know that; but they disappeared long ago.

Mr. HITCHCOCK and others. Let it go.

Mr. SHERMAN. I do not care much about it. I will not press my amendment.

The bill was ordered to be engrossed for a third reading; and was read the third time, and passed. The title was amended by striking out "Pembina" and inserting "Huron."

SAMUEL T. ANDERSON.

Mr. WHYTE. I move to take up the bill (S. No. 986) for the relief of the administrator of Samuel T. Anderson.

The PRESIDENT *pro tempore*. The bill will be read for information.

The Secretary read the bill, which refers the claim of Daniel G. Wright, as administrator of the estate of Samuel T. Anderson, late naval storekeeper United States Navy, for compensation on account of extra services rendered by Anderson as acting purser and superintendent of transportation during the war of 1812, to the Court of Claims, with authority to adjust the same on principles of equity and justice.

Mr. INGALLS. Is there a report in the case?

The PRESIDENT *pro tempore*. There is.

Mr. INGALLS. I should like to hear it read.

The Secretary read the following report submitted by Mr. WHYTE, from the Committee on Naval Affairs, on the 13th of July, 1876:

The Committee on Naval Affairs, to whom was referred the petition of Daniel Girard Wright, administrator of the estate of Samuel T. Anderson, have had the same under consideration, and submit the following report:

When the war of 1812 broke out, Samuel T. Anderson was naval storekeeper at the New York navy-yard, and was taken by Commodore Chauncey to the lakes as his confidential clerk, with the rank of chaplain. His duty, as assigned him, was to superintend the transportation of ordnance, provisions, &c., from Baltimore, Philadelphia, New York, and elsewhere, to the lakes. He was also charged with the duties of acting purser, all of which he faithfully performed.

He remained in the service until August, 1813, and while on duty contracted a disease, resulting in total deafness, thereby rendering it impossible for him (by reason of said disability) to do any business, and this appears to be very clear from the papers before us.

It also appears that during his service he was a most valuable public servant, and his efforts in behalf of the Government have been highly commended by all the officers connected with him in the discharge of his official duties.

After many years of struggle against continued misfortunes and privations, the sequence of his disability, he applied for a pension, and the Secretary of the Navy, on the 10th of March, 1846, ordered his name to be placed upon the pension-roll at the rate of $20 per month, to date from July, 1844. He claimed during his life-time that the Government should pay him for the extra services performed as acting purser and superintendent of transportation, and his administrator now asks that the Court of Claims be empowered to adjust this whole matter on principles of equity and justice.

The services rendered were highly meritorious, and the committee are of the opinion that his legal representative should receive additional compensation for them, the amount to be left to the sound discretion of the court, when the facts susceptible of proof shall have been placed before them. They report the accompanying bill and recommend its passage.

Mr. INGALLS. Mr. President, I dislike to object to the consideration of a claim so venerable as that. Its age certainly ought to entitle it to respect. It might be said to be one of that class of claims whose hoary top is bald with dry antiquity. Something over sixty years have elapsed, according to the report, since these services were rendered, and unless there is some stronger reason than appears in the report for a re-opening of the case and re-investigating it, it appears to me the bill ought not to pass.

Mr. WHYTE. Mr. President, the cause of the case being one of long antiquity has been owing to the fact that the bill has passed one or other of the Houses of Congress constantly; but, by reason of neglect on the part of some person who had the bill in charge, it has failed in obtaining the sanction of the other House at the same Congress. It has been passing backward and forward, allowance having been made in some of the bills for thirty years.

Mr. INGALLS. What is the amount involved?

Mr. WHYTE. But a very few hundred dollars, probably not over a thousand dollars, or two thousand dollars at the outside. The family are in very indigent circumstances, and the case has been passed upon, as I say, by the Committee on Naval Affairs over and over again favorably. This is merely to submit the question to the Court of Claims, and, if the proof is sufficient to justify an allowance, that the administrator of the deceased may have an opportunity of collecting the small amount that may be found due.

Mr. WRIGHT. I wish to say just one word in reference to this matter. As I understand from the report, these services were rendered some sixty-odd years ago. The Senator from Maryland makes explanation for the delay in the fact that the claim has been passing between the two Houses and there has never been concurrence. I think, in the first place, the very antiquity of this claim should be an all-sufficient reason why there should be no allowance. I think, in the next place, the provision here that the court make such allowance as equity and justice may admit, opens the door to this: that the Court of Claims may feel compelled not only to allow this claim but interest for the entire time, following the decision that they have made in a very similar case. I think this bill ought at least to be so framed as that there should be no allowance of interest back of the time that the demand was made. As it is now, should the claim be, say, $400 or $500, it will be seen at once that the amount of interest would so accumulate that it would be a very large claim against the Government. I shall vote against the claim upon the ground that I see no reason why it should not have been prosecuted long since, and why Congress should not have acted upon it. Not only so, but if the party had a claim he could have gone to the Court of Claims long ago. He has not gone there, and now he asks Congress to allow him to go there and have such allowance as justice and equity may admit. Under that rule, the Government will be compelled to pay upon this old, stale claim five or ten times what they were originally liable for, if there ever was any liability in the case.

Mr. BOUTWELL. I ask for the reading of the first part of the report. If I understood the report correctly, it states that this Mr. Anderson was holding an office in the service of the Government, for which I suppose he was paid, and this claim is for compensation for performing services not required by the office which he held; but it still remains true that he was receiving pay from the Government during this period of time.

Mr. WRIGHT. And he received a pension also.

Mr. BOUTWELL. It would be safe to assert that there are thousands of persons living now who have, while holding office for which they were receiving compensation, performed other and different duties for which they have received no special recompense from the Government, and this case does not differ from hundreds of cases that arise every year in every Department of the Government.

In the next place, I agree with the Senator from Iowa that if this claim is to be sent to the Court of Claims it should be sent there to be adjudicated upon by the law as it was when this service was performed. On "principles of justice and equity" very likely the claimant will get a commission for whatever money may have passed through his hands, which, instead of being a thousand dollars, may be ten or twenty thousand dollars with the accumulation of interest. But whether the claim should be great or small, it is a claim which the Government ought not to entertain for a moment unless they intend to open the door to thousands of others equally good with this. Within my own experience as the head of a Department, I should say there were at least a thousand persons who have claims of this sort upon whom, while serving the Government, duties not required by the law were imposed which they performed.

Mr. WHYTE. Mr. President, the report shows that this gentleman was merely a confidential clerk of Commodore Chauncey, and had the rank of chaplain. I presume the Senator from Massachusetts knows that at that time a chaplain received no pay from the Government of the United States. Consequently according to the papers he was not in the actual service of the United States, was a mere secretary to Commodore Chauncey, and he rendered these valuable services, all of which have been certified to by the officers at that time. He was not paid for them; but thirty years after the service was rendered he was placed upon the pension-roll and for a few years he drew a small pension. It is a case which has been before Congress for years and years and it is quite hard that now its antiquity should be set up as an objection to it. Although he has been at the doors of Congress asking according to the papers for more than thirty years that his claim may be disposed of in some way, I hardly think its age under such circumstances ought to operate against its justice.

I have no objection, if there is any danger of the case being swelled by enormous charges of interest, to the insertion of the words "without interest," so that his heirs will get only pay for services actually rendered, although it comes at this late day.

The PRESIDENT *pro tempore*. The question is on the motion to take up the bill for present consideration.

The question being put, there were on a division—ayes 17, noes 11; no quorum voting.

The PRESIDENT *pro tempore*. Does the Senator insist on the motion?

Mr. WHYTE. No, sir.

The PRESIDENT *pro tempore*. The Senator does not insist on his motion, and the bill is not taken up.

THOMAS VAN DUZEN.

Mr. BOGY. I move to take up House bill No. 1026.

The motion was agreed to; and the bill (H. R. No. 1026) for the relief of Thomas Van Duzen and his assigns for lands was considered as in Committee of the Whole.

The preamble recites that by the organic act of Washington Territory, approved March 2, 1853, sections 16 and 36 of the public lands in each township were reserved for school purposes; that the Legislature of Washington Territory, by an act passed January 23, 1863, did authorize the board of county commissioners of any county to sell at private sale such portions of the sixteenth and thirty-sixth sections as were by prior settlement in the *bona fide* possession of any person at the time of the approval of the organic act; that the county commissioners of Jefferson County, in that Territory, did, at a regular term thereof, held at the county seat on the 3d of February, 1864, under and by virtue of the power given in the act of January 23, 1863, sell and convey to Thomas Van Duzen, for $1.50, gold coin, per acre, the northeast quarter of section 36, township 29, range 1 west, he being a *bona fide* settler on that land prior to the passage of the organic act; and that the sale and conveyance were made in good faith, and with the belief that the county commissioners had power to make it, and the money has gone into the common-school fund of the Territory, and that Thomas Van Duzen and his assigns have made valuable improvements on the land, and are without remedy. Therefore the bill confirms the title to the tract named unto Thomas Van Duzen, his heirs and assigns, in fee-simple.

Mr. BOGY. This is a bill reported from the Committee on Private Land Claims. If it is desired by the Senate, I can explain it. It is altogether very proper. If there is any objection, I will explain the bill, although it is so worded that it explains itself.

Mr. MITCHELL. I hope the bill will pass. I think it is very meritorious.

Mr. INGALLS. What is the reason that the title was not confirmed to Mr. Van Duzen?

Mr. BOGY. I will state. Under the organic law organizing the Territory of Washington it was provided that the sixteenth and thirty-sixth sections should be set apart for school purposes, providing at the same time that if any portion of those sections were occupied by pre-emptors the pre-emptors' rights should be respected, and that the Territory should have the right to locate elsewhere the same quantity of land. This man was a pre-emptor, and the Territory of Washington sold the land, believing they had the right to sell it. And the money has been appropriated to school purposes. By the ruling of the Land Commissioner it is now decided that that land was occupied at the time of the passage of the act, and it was not optional with the Territory of Washington to take that land, but it was compelled to locate elsewhere the same quantity of land. The courts of Washing-

ton Territory had decided differently. Nevertheless, there is a shadow of title in the United States. By the passage of this bill the Government does not lose one acre of land; it only makes this man's title good. It is recommended by our committee and by the Land Department; it has passed the House, and it only makes his title good to the one hundred and sixty acres of land within the thirty-sixth section.

Mr. INGALLS. Was Mr. Van Duzen the pre-emptor of the land to whom it was sold by the local authorities?

Mr. BOGY. He was the pre-emptor of the land, and as a pre-emptor the property was sold to him and he paid $1.50 an acre, which was the minimum price, and the money has gone into the school fund. Now, under the ruling of the Land Commissioner it is made the duty of the Territory in a case of that kind to take land elsewhere and to respect this pre-emptor's right. Now he himself comes here to us to make his title good, he having made valuable improvements, and he wants the Government to relinquish what title there may be in the United States to him.

Mr. INGALLS. Is there an adverse claim?

Mr. BOGY. There is no adverse claim. The bill went to the Committee on Private Land Claims and met the approbation of my friend from Vermont, [Mr. EDMUNDS,] and I think that is pretty good evidence that it is right.

Mr. MITCHELL. If he had not acted on the faith of the Territory of Washington, he would have been entitled to his land elsewhere, but he did act in good faith on the course taken by the Territory.

Mr. BOGY. The Government is not affected to the extent of an acre of land. It only makes this man's location good in that place. That is all.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. GEORGE M. ADAMS, its Clerk, announced that the House had concurred in the resolution of the Senate accepting the statues of John Winthrop and Samuel Adams in the name of the United States, and extending the thanks of Congress to the State of Massachusetts for these memorials of two of her eminent citizens.

BILL RECOMMITTED.

Mr. MORTON. The bill (H. R. No. 256) for the relief of Herman Hulman, of Terre Haute, Indiana, was reported back adversely in July last and indefinitely postponed. I think there was a misunderstanding about it, and I desire to have the bill recommitted. I make that motion.

The motion was agreed to.

PENSION APPROPRIATION BILL.

Mr. WINDOM. I move that the Senate proceed to the consideration of House bill No. 4120, known as the pension appropriation bill. It will occupy only five or ten minutes.

The motion was agreed to; and the bill (H. R. No. 4120) making appropriations for the payment of invalid and other pensions of the United States for the year ending June 30, 1878, was considered as in Committee of the Whole.

Mr. WINDOM. The Committee on Appropriations recommend the passage of this bill as it came from the House. The House bill conforms exactly to the estimates of the Department. The bill is $1,000,500 less than last year's appropriation bill for the same purpose. Unless some gentleman desires some further statement about it I shall not say anything further. The decrease is due to the falling off in the number of pensioners.

Mr. DAVIS. The bill was discussed at considerable length in the Committee on Appropriations and information asked of the Commissioner of Pensions. The information given on certain questions was not satisfactory to myself and I have endeavored in a personal interview at the Pension Office to get an explanation of the large amount that is reported to have been paid over the amount needed to pay the pension-roll, which is between $2,000,000 and $3,000,000; I will give the exact figures hereafter. So as to get the information for another year as to what that two or three millions is for, I offer an amendment which I hope will be acceptable to the chairman. It does not limit the amount at all, but will cause additional information in the next annual report. The wording of the amendment I am not particular about, so that the substance is secured. I ask the chairman to listen to the amendment, and if he approves it to agree to it, or if he suggests any change to carry out the object I shall make no objection.

In line 13, after the word "interior," I move to insert:

Which shall be stated in the annual report of the Commissioner of Pensions; and hereafter he shall report the total annual amounts paid on additions, also reductions in the pension-roll.

Mr. WINDOM. The Senator from West Virginia was kind enough to submit that proposition to me a few moments since. I am not authorized by the committee to accept it, but I see no objection to it. It will give a little additional information in the next report.

Mr. DAWES. Is not the information already given?

Mr. WINDOM. He states the number of pensioners and the amount paid them; but he does not give the amount as it is affected by the reductions and the additions to the roll.

Mr. INGALLS. It appears to me that that provision, while it is just and meritorious, ought not to be placed as a burden on the pension appropriation bill. If it is adopted it requires the House to act upon it and still further delays the passage of the bill. The information that the Senator desires to obtain can be very readily secured by addressing a resolution, which the Senate will pass undoubtedly, to the Commissioner of Pensions to provide for the incorporation of that information in his report next year. I should think it ought not to go on the bill.

Mr. WINDOM. Before the Senator from West Virginia proceeds, I was going to suggest that the only objection I see to his amendment is that it is legislation on an appropriation bill, and might as well be provided for elsewhere. I see no objection to it in itself; but perhaps we had better not encumber an appropriation bill with it.

Mr. DAVIS. It will be noticed that it is not legislation, but asking in the next annual report of the Commissioner of Pensions additional information. The Pension Bureau now gives the total reduction made yearly as well as the addition to the number of pensioners, but fails to state the amount which the reductions make or the additions make in the sum paid. The Commissioner is required now to give an account of the incidental expenses of the office, which, by the approval of the Secretary, are provided for by him. My amendment adds but one thing; and that is, that in his next annual report where he states the number of pensioners and the number of the reductions on the pension-roll and the additions to it, he shall also state the amounts that the roll is affected thereby. Such a provision I do not think is legislation. It is true it is amending the bill; but there can be no objection to it; it goes with the bill. The object is certainly desirable. Take the Pension Commissioner's report and you will find that he tells you on page 7 that the whole number of pensioners on the roll required the payment of $25,526,324.69. On the same page you will find that he says there was paid on account of pensions last year $28,354,569.69; which is a difference of between $2,000,000 and $3,000,000.

It will be recollected that last year when this same bill was before us there was a question as to the amount necessary to be appropriated. An amendment was offered then calling for an explanation in the next annual report of the difference between what the roll amounts to and what is said to be actually paid. It will of course be kept in mind by all Senators that in the legislative appropriation bill provision is made for the expenses for clerk hire, officers, &c., and there is a special provision in the present bill, as there has been in other bills, for all other incidental expenses of the Pension Bureau. Hence it is a mystery to me, and to others who have examined this subject, what becomes of the difference between the amount of the annual roll and the amount said to have been paid. The difference, as I have stated, is between $2,000,000 and $3,000,000. There ought to be some explanation. The Committee on Appropriations called for an explanation and one was given. I looked at it as carefully as I knew how, and, while it gives some reasons and explains some portion of this $2,000,000 or $3,000,000, yet it just says in wholesale that a large proportion of it comes from the additions to the roll. We know that the roll is decreasing. Last year, according to the Commissioner's report, the roll decreased twenty-six hundred and eighty-four names. That was the total reduction after having given the additions made during the year. Now, instead of the amount paid being more than the roll called for, it occurs to me it ought to have been less. Why? Because the number of pensioners is decreasing. The year commences with July, for instance. On the next day, probably, some one dies or some child becomes of age, some widow remarries, thus reducing the roll. It is true there are new cases added by legislation of Congress and some by examination at the Pension Office, but that number is much less than the decrease; so that the two or three million I spoke of is unaccounted for in the report of the Pension Bureau.

Mr. President, it will be remembered that when this bill was under discussion at the last session the chairman of the Committee on Pensions——

Mr. MITCHELL. Will the Senator yield to me? I do not wish this bill to displace the regular order, but I do not object to its going on for a few minutes. If there is going to be a long discussion over this bill, I shall call for the regular order, because I am anxious to have it disposed of to-day.

Mr. DAVIS. So far as I am concerned, unless there is some additional cause to what I now know, there will not be a long discussion. Perhaps ten minutes will suffice for me to say all that I desire to say. Calling for the regular order is a matter with the Senator himself. This is an appropriation bill, which is generally given precedence.

Mr. WINDOM. I appeal to the Senator from Oregon to pass by informally the regular order for a few moments. I think we can conclude this bill very soon.

Mr. MITCHELL. I have no objection to that.

The PRESIDING OFFICER, (Mr. ANTHONY in the chair.) The regular order will be laid aside informally, subject to be called up by any Senator.

Mr. DAVIS. I was about saying that the able and accurate chairman of the Committee on Pensions, [Mr. INGALLS,] in discussing this bill last year, stated in substance that in his opinion one-sixth of the amount appropriated was improperly applied. Again, in the same statement, if I recollect aright that Senator's remark, he said that he believed that $5,000,000 per annum was in some way improperly paid out upon pensions, of course intimating that it was done fraudulently

by fraudulent claims and by persons continuing on the roll when their pensions ought to have ceased. But there is, in my judgment, a large amount on the pension-roll that ought to be carefully looked into, and I hardly think we can have too much information. It will need very little work to furnish what I desire, and I hope the chairman of the Committee on Appropriations will not object to what belongs to the bill going upon it. The amendment asks additional information only as to the number of pensioners. The increases and decreases are given already, and now we ask the amount that is thereby added to or taken from the roll per annum. I hope the chairman will accept the amendment. If it is not in proper shape, I am perfectly willing that it should be put in any shape that the chairman or any other member may desire, so that it brings the information.

I have stated as plainly as I could that the roll, as given by the Commissioner of Pensions, amounts to twenty-five and a half million dollars, while there is said to have been paid out $28,354,000. There is certainly room for inquiry between these two amounts. Taking into consideration the fact that the expenses of the office in this city are put upon the legislative bill, and when you consider the further fact that the bill now before us appropriates specific sums for the different objects, such as pension agents, examining surgeons, and all other expenses belonging to the Department, and makes a separate appropriation for Navy and other pensions, and when you also remember that the amount paid for pensions is growing less each year, (which is very gratifying to the country, and so far as that is concerned it is gratifying not only to the country but to myself and to others who look into this matter,) the propriety of the amendment is apparent. There should also be borne in mind the statement of the chairman of the Committee on Pensions, that he believed there were $5,000,000 per annum improperly paid out; and certainly in view of all these facts an amendment ought not to be objected to which will secure some explanation of the difference between the amount on the roll and the amount actually paid.

Mr. WINDOM. I can more briefly answer the honorable Senator from West Virginia by asking the Secretary to read a letter from the Commissioner of Pensions. Before doing so, however, I wish to refer to his matter of congratulation to the country that the pension list is decreasing. I doubt whether it is a matter entirely gratifying in all respects that the old pensioners are dying off so rapidly. But there is another reason why the pension list is decreasing. We refused last session to appropriate money enough to the Surgeon-General's and to the Adjutant-General's Offices to bring up the arrears of pensions, and in their reports this year they inform us that they are two years behind and that it would require fifty additional clerks to bring up the pension applications to-day. So that there are two reasons why the pension-list is rapidly decreasing; one is that the old pensioners are dying off and the other is that we refused to appropriate money enough at the last session of Congress to bring up the present applications, and they are lying back two years behind. I ask the Secretary to read the letter of the Commissioner of Pensions in explanation of this discrepancy to which the Senator has referred.

Mr. DAVIS. One word before that is read. The chairman of the Committee on Appropriations is undoubtedly right as to the appropriation for limbs, &c.; but he will bear in mind that this bill does not, nor did the bill last year, cover that item. It is another and entirely different appropriation.

The PRESIDING OFFICER. The letter will be read.

The Chief Clerk read as follows:

DEPARTMENT OF THE INTERIOR, PENSION OFFICE,
Washington, D. C., December 18, 1876.

SIR: In response to inquiries made in behalf of the Committee on Appropriations by Mr. Cleaves, its clerk, on the 14th instant, to wit—

First. Explanation of the difference in the amounts under the following headings of Table II of my annual report for the year ending June 30, 1876: "Total amount paid for pensions during the year," $28,351,599.69, and "whole number of pensioners and the yearly value of their pensions," $25,596,324.69—

I have the honor to inform you that the last-named sum represents one year's pension only to each of the 232,137 pensioners whose names were on the rolls on the 30th day of June last, while the first-named sum represents the amount of money paid out to pensioners, and includes about $2,500,000 allowed as arrears upon newly adjudicated cases, besides a considerable sum which accrued in cases adjudicated in former years, and not previously paid, because of its being unclaimed, or because payments of the pensions was suspended for some cause. (Failure to demand payment and suspensions happen in many cases each year.) It also includes the salaries and fees of pension agents, as well as the fees paid for medical examinations.

Second. Also an explanation of the apparent discrepancy between the amount stated by the Secretary of the Treasury as paid on account of pensions for the fiscal year 1875, $29,456,216.92, and the amount stated by the Commissioner of Pensions as paid during the same fiscal year, $29,683,116.64.

It is to be remembered that the Commissioner of Pensions is not an auditing officer of pension accounts, but made up this statement as approximately correct, from the data furnished to him by the pension agents. I am not informed how the Secretary of the Treasury made up his figures, and cannot, therefore, make any reliable explanation of the difference, but beg to call your attention to a table in the Third Auditor's report for the same year, accompanying that of the Secretary of the Treasury, found on pages 376 and 377. This shows the payments to the Army pensioners to have been $29,171,179.55, and a table in the Fourth Auditor's report, also accompanying the report of the Secretary of the Treasury, found on page 386, shows that an additional sum of $521,829.60 was paid for Navy pensions, which, together with the Third Auditor's figures for payments on account of Army pensions, makes a round sum paid for pensions in 1875 of $29,693,009.15, being $9,892.52 in excess of the statement made by the Commissioner of Pensions. Without knowing it to be the fact, yet I presume this difference upon examination will be found to consist mainly of changes in or corrections of the pension agents' statements made by this office after their receipt by it.

3. The Pension Office requires no appropriation for artificial limbs, &c. Under a law passed at the last session of Congress, the expenditure of moneys for that purpose was turned over to the Surgeon-General, and I presume he has an estimate for such an appropriation.

In a personal interview with Senator DAVIS, of the Committee on Appropriations, on Friday last, he requested me to inform the committee in this letter what annual compensation each pension agent received, and in compliance therewith I annex hereto a sheet showing the salary and fees of each agent for the year ending June 30, 1876. Sections 4781 and 4782 of the Revised Statutes make provision for this compensation.

I am, sir, very respectfully, your obedient servant,

J. A. BENTLEY,
Commissioner.

Hon. WILLIAM WINDOM,
Chairman Committee on Appropriations, United States Senate.

Mr. DAVIS. The sheet referred to there gives the amount of compensation of each one of the fifty-eight agencies in the United States; and though the law, as I construe it, and as I believe the Commissioner of Pensions construes it, says that no salary or compensation of the agents shall exceed $4,000 per annum, yet we find from this statement that some of them get as high as $14,000, nearly $15,000 one of them, and several of them between $11,000 and $14,000. The explanation of that, in part, as I understand, is that there are expenses attending the office. But the expenses attending the office of many of these agents are, in my judgment, far in excess of what they ought to be. There ought to be some reduction in many of these offices. At one agency, for instance, where a certain amount of money is distributed, the expenses of the office are a thousand or fifteen hundred dollars, while the expenses of another agent, under the same circumstances, disbursing the same amount, are five or six thousand dollars. That is certainly a point that ought to be looked into and properly cared for. But that belongs to the Department, as I understand, and, I take, it it will be looked into.

Mr. President, it will be noticed that the Commissioner does not explain the large difference between the pension-roll and the amount actually paid. The object of the amendment offered by myself is that in the next annual report there shall be some explanation. I presume there is an explanation, but I think the Senate ought to have it in the annual report.

Another important point the Commissioner speaks of is that he cannot tell exactly why the differences in some cases are so very large between the amount reported paid by himself and that reported by the Secretary of the Treasury. If you take the year 1865, for instance, you find that the Secretary of the Treasury says there were $16,347,621.34 paid for pensions, while the Commissioner of Pensions says there were $8,542,885.27 paid the same year—a difference of over seven million dollars. Take the next year, 1866, and the difference is $2,354,000. The year following, 1867, it is two million and a quarter. Certainly the accounts of the Commissioner of Pensions and those of the Treasury as to the amounts paid for a particular year ought to agree more closely, if not exactly, than $7,000,000 or $2,000,000, as the case may be. I have a list in my hand since 1860 of each year, and in no single year, I believe, do the amounts exactly agree between what is reported as having been paid by the Commissioner of Pensions and what the Secretary of the Treasury reports to Congress as having been paid. There is certainly something wrong between these two offices in some form or other. Almost uniformly the amount is increased at the Treasury Department. For instance, take from 1860 to 1870 inclusive, and the difference is over thirteen million dollars. The Commissioner reports that he paid for pensions $13,000,000, or over, less than appears in the reports of the Treasury Department. There ought to be an explanation of why this immense difference between these two Departments in keeping accounts occurs.

The amendment I have offered I think will in some degree be a step in the right direction. Of course it cannot cover all that I think ought to be properly explained; but I hope, without going further into the discussion, that the chairman of the Committee on Appropriations will admit in some language, in his own language if he does not like mine, some amendment on this bill so that in the next annual report of the Commissioner we shall get more definite information as to the large difference between the annual roll and the amount purporting to have been paid for pensions.

Mr. WINDOM. I suggest to the Senator from West Virginia that a resolution of inquiry extending back over the years he has named would give us full information on the subject. The letter which I caused to be read from the Commissioner of Pensions I think satisfactorily explains those differences during the last two years. The Senator refers to years prior to those, about which there is no explanation before us, and I have no doubt it would be as satisfactory as any of those that we have already read. I would prefer a resolution asking for information; but, if the Senator insists upon it and the Senate in its discretion thinks it best to insert this amendment, which is somewhat legislative in its character, I see no objection to it except that I see no great advantage that will be derived from it. A resolution of inquiry I think would be better.

Mr. DAVIS. I was unfortunate enough not to make myself properly understood. My object was not so much to go back (though I stated what did occur in previous years) as to secure a remedy for the future. My object is in the next annual report of the Commissioner to get some definite information.

Now, as to a resolution asking for information as to what has taken place, I think, with all respect to the chairman of the committee of which I am a member, we have that information here. It is contained in the reports of the two Departments, that of the Interior and

that of the Treasury. As the chairman has no objection to the amendment, I hope no one else will object to it, and that it will be adopted.

The PRESIDING OFFICER. The question is on the amendment proposed by the Senator from West Virginia.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time, and passed.

ELECTORAL VOTE OF OREGON.

The PRESIDING OFFICER. The Senate resumes the consideration of the unfinished business, which is the resolution directing an inquiry as to the eligibility of J. W. Watts as an elector for the State of Oregon and the circumstances attending the appointment of electors in that State, on which the Senator from Missouri [Mr. BOGY] has the floor.

Mr. BOUTWELL. Will the Senator from Missouri allow me a moment to give a notice to the Senate? I desire to say to the Senate that after the disposition of the resolution now pending I shall ask the Senate to consider the House bill for perfecting the revision of the laws. It is an important measure, not likely to be an exciting subject of debate.

Mr. DAVIS. For fear that some Senator may have been absent when I gave notice that I should present resolutions relative to the eulogies of my late colleague, Mr. Caperton, I will repeat that the time fixed is soon after the morning hour to-morrow.

Mr. BOUTWELL. By this notice I did not intend to interfere with that.

Mr. DAVIS. I know that, but I thought it as well to notify the Senate of the fact again.

Mr. BOGY. Mr. President, had I not been arrested yesterday by a motion to adjourn, it was my intention to terminate my remarks very speedily. It is not my desire this morning to detain the Senate beyond a very few moments.

The question before us has assumed very great importance, and is presented, it seems to me, at an unfortunate time. Nevertheless it is before us and has been forced upon this body, and, of course, the question has to be met. I will briefly restate the argument which I intended to present yesterday. In obedience to the law providing for the election of electors of President and Vice-President on the same day throughout the United States, an election for these officers was held in the State of Oregon. That State is entitled under the law of apportionment to three electors. One of the candidates for elector was by the Constitution of the United States ineligible, because at the time that he was voted for he was holding an office of profit and trust under the Government of the United States. This gentleman, whose name is Watts, received, with his two colleagues on the republican ticket, an undoubted majority of the voters of Oregon. I believe the majority was 1,049 votes. The votes being returned to the office of the secretary of state and counted by that officer, the next step which has to be taken necessarily is a certificate of election to be given by the governor of the State. At this period of the proceedings a protest by the citizens of Oregon is filed and presented to the governor of that State, making known to him the fact that this Mr. Watts, who had received a majority of the votes of that State, was not eligible for the reason that he held at the time an office of profit and trust under the Government of the United States. We are informed that the governor then took the subject under consideration. We are furthermore informed that he considered the subject with great care and for a long time; that he called to his aid the best legal advice of that State, and that he also sent at a distance, so as to avoid any local influence, to obtain the legal advice of a gentleman of great distinction residing in the city of Cincinnati. This legal advice was given to him by this gentleman; and I repeat what I said yesterday, that this man, Judge Hoadly, is a man of great legal ability, of high standing, and the peer of any man in the valley of the Mississippi. His opinion was read here; and although it was severely criticised by the Senator from Indiana, [Mr. MORTON,] nevertheless, I say I believe it is correct. I believe the law laid down by him is correct. I believe that the action of the governor of Oregon was a necessity. When the fact was made known to him that Mr. Watts held an office, it was not in his power, acting under the law of his State, the law of the United States, and the Constitution of the United States, to give him a certificate of election; because the law provided that a man in that condition could not be elected.

Then the next question which necessarily comes up is who is to be certified as elected, if anybody? He decided it to be his duty to give the certificate to the person receiving the next highest number of votes after Mr. Watts. I believe that decision to be correct. I believe it to be good law, sustained by the authorities. Gentlemen may quote authorities as much as they please; I believe that to be the correct conclusion, that the person receiving the next highest number of votes under the condition of the case of Oregon should receive the certificate of election.

In addition to this, Governor Grover must have felt it his duty as the chief magistrate of that State to see that it did not lose an electoral vote in the college of electors. But the Senator from Oregon says that the law of Oregon was ample to provide a remedy so as to avoid that contingency. I said yesterday and I repeat to-day that according to my construction of that law it does not provide for filling a vacancy of that kind; that it only provides for filling a vacancy of an elector who being an elector, having been appointed an elector, is unable to attend the meeting of the electors when assembled as a college of electors, or unwilling or prevented by any cause, whether it be by death, by resignation, by sickness, by high water, or by anything else that may possibly happen. If he is not present at the meeting of the college of electors, in that case it becomes the duty of the electors who are there assembled to fill that vacancy. Governor Grover believed, as I believe, that under the law of Oregon this could not be done. I say again that a similar case arose in Vermont and there the Legislature was called together to supply what was necessary to be done. A similar occurrence took place in the State of Rhode Island. There the subject was referred to the supreme court of the State, and I read yesterday an extract from the decision of that court. The Legislature was called to supply what had to be done.

Mr. MITCHELL. Has the Senator from Missouri the law as amended by the Legislature of the State of Vermont?

Mr. BOGY. I have not. I have been trying to get it and have not been able to obtain it. My impression is that the law of Vermont, the law of Rhode Island, the law of Oregon, the law of Missouri, and the law of every other State on that subject are very similar. I do not mean to say that in all the laws the same words are used, but substantially they are alike.

Hence, in conclusion of this branch of my argument, I cannot see how the governor of Oregon could have done anything else but what he did do. It was not in his power as an honest man and a faithful public officer to have done anything else. He was bound to recognize the fact that one of the men voted for at the election was not eligible.

Mr. President, I have been at a loss, and I am at a loss now, to know how this question has been forced on this body for discussion at the present time. It is upon a resolution introduced by the Senator from Oregon [Mr. MITCHELL] to refer the subject for investigation to the Committee on Privileges and Elections; and before we get a report from that committee, before the subject has been investigated by that or any other committee, it is discussed and virtually and prematurely decided by the Senate. My understanding has always been that the duty of a committee is very much like that of a court. A subject being referred to a committee is to be investigated, the facts are to be ascertained in the best way within the reach of the committee, and the law to be applied to those facts, and whatever conclusion may be the result of a just application of the law to the facts must be the conclusion which the committee will arrive at, regardless of what that may be. But here we are discussing the subject in advance of its reference to the committee, and I may say that we know in advance what will be the action of the chairman of that committee. A subject is to be referred to him and his colleagues on that committee to be investigated by them that they may give the Senate the result of their calm, cool, impartial deliberation; and yet before the subject reaches the committee we have the opinion of the chairman expressed, not once, but frequently and with great ability and great vim in the Senate here. What will be his action as a member of that committee? Sir, it presents a very singular condition of things; and it is a singular thing also to what great importance in modern times this Committee on Privileges and Elections has got. It is the most important committee of the Senate to-day. No man elected by any of the States to a seat in the Senate can set his foot in this Chamber until he has passed through the ordeal of that committee, and many men thus elected have never successfully gone through it. They have failed there and have never reached this body though elected to it. Others have come here that some persons thought ought not to have been admitted; but they went through, fortunately for them. We have to-day a committee called the Committee on Privileges and Elections that assumes all power over the elections of all the States, a power which is enormous; and I will say more, that the power in the hand of the Senator from Indiana is really a great power, for he is himself a man of power; and being at the head of that committee he stands at the head of the Senate and controls it. No man can be a Senator, no matter whether he be elected by his Legislature by a unanimous voice or not, unless he is also elected by the Senator from Indiana; and some men who have been elected by Legislatures, by not receiving his vote, have never been able to set their feet in this Chamber. It reminds me of what we call in modern times a returning board. The Committee on Privileges and Elections has got to be the great returning board of the Senate, regardless of the election, unless the person elected also receives the approbation and the vote of that committee, like the persons voted for in some of the Southern States, who have to go through their returning boards or they do not appear to have been elected.

We have made great improvements in modern times. This country has acquired a high position among the nations of the world as one of great enlightenment, progress in the arts and the sciences, progress in religion, and particularly progress in politics. We had placed ourselves at the front rank of the civilized nations as the teachers of the new doctrine of advanced political civilization, and perhaps this new step of returning boards became a necessity. The nations of Europe are following us very closely. Liberty and free institutions are spreading over all Europe. In England we know the progress there; we

know the struggles in Italy; we know the struggles in Spain; we know that France to-day has a republic. As they are coming up on the same platform that we have been occupying for a hundred years, as the leaders of the world in the great science of politics we had to take another step, and the invention of returning boards is the greatest step in the way of political improvement that has ever been made in the history of the human race! There is nothing like a returning board.

It has been stated very often that the majority of the popular vote for Mr. Tilden in the United States was about three hundred thousand. While Mr. Tilden has a majority of three hundred thousand, Mr. Hayes has three returning boards, and the three returning boards are as powerful if not more powerful than the three hundred thousand voters, so that, ciphering the thing down, a returning board is just about equal to a majority of a hundred thousand voters in the United States; and with the growth of the returning board it promises in time, when it becomes a national institution, and we shall have a great national returning board, ahead of the Committee on Privileges and Elections, in the hands of able men it will be equal to all the voters of the United States.

Mr. MITCHELL. Will the Senator allow me to make a suggestion?

Mr. BOGY. With a great deal of pleasure.

Mr. MITCHELL. I suggest to the Senator that if the returning board in Oregon could carry out his purpose it would be equal to forty-five millions of people.

Mr. BOGY. That is a very good suggestion. I am very much obliged for it; and I will in a few moments, if I do not forget it, (and I hope the Senator will not permit me to forget it,) give him a full answer. The institution of returning boards is one of the most wonderful improvements of modern times, and it is to be regretted that it was not known many years ago. What a useful thing a returning board would have been in England during the days that Wilkes annoyed the ministry so much. Suppose they had had a returning board in the British Parliament, they might have permitted the people to amuse themselves as much as they pleased in the county of Middlesex, and they might have elected Mr. Wilkes every day if they chose, but the returning board would have said, "No, sir, you did not get the majority and therefore you cannot take a seat here." What a good thing it would be for the ministry of England if they would adopt it. A returning board in the hands of the ministry of England would be making a ministry in perpetuity. An efficient returning board with efficient aid, such as the returning board got in New Orleans, could keep a ministry in power forever. It is much to be regretted that it was not known in France in the days of the revolution. What a beautiful institution that would have been in the hands of a man like Robespierre. He was driven to a most cruel mode of keeping himself in the majority of the convention. For that purpose was invented a machine called the guillotine in France. It was a bloody instrument, and was used to cut off the heads of refractory patriots. When such men were returned to the convention in the days of Robespierre, they were guillotined so that he might maintain his majority in the convention. If he had had a returning board, he would have been spared this cruelty which has thrown a shade, a black spot, over his fame; and which was also a very cruel thing for the fellows who were guillotined. It would have been a beautiful institution, and it is to be regretted that it was not known at that day.

A returning board in Oregon, the Senator from Oregon reminds me, has nullified the votes of forty-five millions of people. There are not so many people in Oregon, are there? [Laughter.] What has taken place in Oregon has been a sort of providential thing; it has changed the status of the question in this country; it has changed the position of my distinguished friend from Indiana. He and others believed that a *prima facie* case was all that was necessary; and whenever a *prima facie* case was presented that was the end of the question. To make that efficient it was generally understood that the President of the Senate should have the right, as he has under the Constitution, to open the returns, and in addition the right to count the votes. A *prima facie* case in the hands of the President of the Senate, who has the right to open the votes, and if to that is also added the right to count, would make a returning board the most complete system of political machinery on the face of the earth. There would be nothing like it anywhere. The fact that this thing occurred in Oregon I think is providential, and I am glad that there happened to be a man of integrity governor of that State; a man of will, who dared to face what he knew to be the malignity and the malice of his political opponents. I am glad that there was an honest man of will and of purpose in that State, and he met the question as a true man ought to have met it. That fact returns to us here a *prima facie* case of one vote for Mr. Tilden, making the magic number of 185, which leaves Mr. Hayes, 184. According to the *prima facie* law that we were taught but a few weeks ago, that would have been the end of the whole contest; and this discussion would not have taken place here to day, and I should not now be inflicting a speech upon the Senate. But when that return was made, as it ought to have been made, the idea of a *prima facie* case passed away and you have never heard from that day to this the words *prima facie* in connection with the question of the presidential election. They have passed out of circulation, nobody talks of a *prima facie* case now.

But in advance of the discussion, and in advance of the meeting of the two Houses appointed under the Constitution to count these votes, we discuss the Oregon case here. We go behind the returns, we examine everything, and we are to decide, as far as we are concerned, whether the vote of Oregon will be a good vote. We are to decide, as far as we are able, whether the action of the returning board in Louisiana is proper or not. We are also to decide for South Carolina; and also for Florida; and all this has been brought about, in the language of my friend from Oregon, by the returning board of Oregon that has changed the purpose of forty-five millions of people. It is a most fortunate thing, and we are to thank God for it, for it has prevented us from doing a thing that would have been a blot upon the history of this country forever. It has opened this question as it ought to have opened it, and instead of a *prima facie* case being conclusive, no matter how obtained, through fraud and intimidation and the use of the Army and executive power and the perversion of judicial authority, the question is now open for investigation by the Congress of the United States, and under the eye of the nation. That has been the result of this thing in Oregon, and if that vote had not been returned my friend from Oregon and my friend from Indiana would yet be talking about a *prima facie* case, and the power would be, as far as they could make it, in the hands of the President of the Senate to count the vote. It was supposed at one time that the now President of the Senate perhaps might have some delicacy as to counting those votes. So the papers said. I am not certain of that, and cannot say whether the statement is exactly correct, but I have some reason to believe it. It was supposed that the President of the Senate perhaps might not be willing to do that, and hence another gentleman who is not now in his seat, the Senator from Ohio, [Mr. SHERMAN,] who had committed himself in writing over his name in a letter addressed to myself and others in New Orleans on this subject of a *prima facie* case, and the right of the President of the Senate to open and count, it was supposed would be selected to become the successor of his illustrious predecessor. But that perhaps has been changed, and in changing that the Senator from Ohio may have lost that position, which is a misfortune for him. But these are rumors perhaps not well founded. I state them as rumors. We who are not in the secret were rather inclined to believe that they are true. The Senator from Indiana can tell whether they are true or not. He knows.

Now all this is changed. Such a thing as a *prima facie* case is a thing of the past, so much so that we do not even wait for the meeting of the two Houses in their joint session, appointed under the Constitution to count the votes. We open the ballots in advance; we discuss the question in advance; we are discussing it now; we are passing upon it long before the time, far in advance. This change in the relation of things has been brought about by the action of the governor of Oregon. That has been the result, and I think it is fortunate for the country and for free institutions. Otherwise this idea of a returning board having the power to return whom they please as electors and the inability of Congress to go behind that return would soon have established returning boards throughout the United States, and in a very short time the return of the returning boards would have elected a President of the United States, even though not elected by a majority of the people.

As I said a while ago, the idea of returning boards is one of the most wonderful inventions not only of modern times but of all time. There is nothing like it in political science; its power is omnipotent. In New Orleans it is backed by the courts of Louisiana, and my friends say you cannot go behind that; you cannot appeal to the courts there because the supreme court in Louisiana has said there was no appeal from the returning board, it is an omnipotent institution. Very well, that is the law in Louisiana. In South Carolina, where the judiciary happens to be a little different, the court say, "We have a right to look into the doings of the returning board;" and they have reversed the action of the returning board; but then there stand the Army under the President and that says, "You, Mr. Judiciary, have no right to interfere in this thing; we stand by the returning board;" and it makes that returning board efficient. There the judiciary is discarded. So it is in Florida to-day. The judiciary is yet pounding away at the question, but the returning board, backed by the Army in Florida has already passed upon the question and the return of the returning board has been sent to the city of Washington. When you come to look at this condition, in one State the returning board is sustained by the action of the judiciary; in another State it is sustained by executive power through the Army, and in one way or another the returning board is one of the most wonderful institutions of modern times. There is no end to its power. I have no doubt if adopted in Europe that the monarchs of Europe would be able to concede to their subjects that which the nations of the world have for ages been panting for—universal suffrage. Why, sir, Russia could afford to give universal suffrage to all the Russians with a returning board backed by the army of Russia. Let the people vote as they please in Russia, if the Emperor had a returning board and the votes were returned to the great national returning board, what could the Russian people do? They could do as much as in this country; they would have the gratification of voting, that is all; but they could not accomplish anything unless they could in some way or other wipe out that returning board.

The Senator from Indiana spoke the other day of the governor of Oregon, I thought, in rather unkind terms. I think he has as much of human kindness, somewhat mixed perhaps, but as much of it in him as anybody else has. Yet he permitted his feelings, I think, to lead

him astray. He likened the offense of the governor of Oregon to that of a suicide; and said that in olden times men who committed suicide were buried alongside of the road or near a cross-roads, so that as the passers-by for all time went along, they could throw a stone upon the grave, and so day by day a monument of infamy would rise to that poor unfortunate man who had committed suicide; and he commenced throwing stones at this governor of Oregon who is not yet dead, and he threw his stone, with all his power, and all his might. He thought that as time rolled on a monument would be erected to him in that way. I do not know that his history is correct. Suicides were thus treated in England under the common law; but I do not know that it was elsewhere so. Let that be as it may, I do not know that the men who commit suicide are so very guilty in the eye of the civil law; they are unfortunate men who are borne down by misfortune, by crosses too heavy to carry in the world.

Mr. MORTON. My friend is mistaken. I did not speak of that as being done in regard to suicides.

Mr. BOGY. Then what character of felons have a stone thrown on their graves?

Mr. MORTON. I said that where a man had been executed for a high crime or was killed while in the act of committing a felony, he was buried by the roadside; and it was the duty of each traveler who went along to throw a stone on his grave.

Mr. BOGY. Then I take that part of my speech back that had any relation to suicide. I misunderstood him. I thought that he stated that the governor of Oregon had committed political suicide.

Mr. MORTON. Not in my friend's mind, but in my own he might.

Mr. BOGY. In conclusion of this whole case I have no hesitation in saying, not as a party man but something beyond and above party, that the occurrence of this affair in Oregon about this vote is a most fortunate thing. It has compelled our friends on the other side to investigate all these questions as they ought to be investigated. It has compelled them to do away with the false idea that under no condition of circumstances could Congress go behind what they called a *prima facie* case; that although every man in the joint session might know that every vote sent there was the production of fraud and perjury, yet they would be powerless to remedy that thing because they could not go behind a *prima facie* case. The occurrence of this fact in Oregon has changed that view, and now we come back to examine, and the only thing left is whether we will come to a correct conclusion. I am somewhat afraid that the influence of the Senator from Indiana is too great for the good of the country and that he has already committed himself. I am afraid he has committed himself on the case from my State also, about which there ought to be no doubt. But if that be not so, the fact that this has occurred in Oregon enables us to approach this subject as it should be approached, and ascertain in the best way in our power what has been the honest vote of any State of the Union, and no matter what that vote may be carry it out as the will of the sovereign people. Without this occurrence in Oregon the case could never have been presented in that way. A *prima facie* case would have been held up to us as the essence of the Constitution, and it would have been asserted that no man could go beyond it.

Mr. President, I am sorry that I have been compelled to detain the Senate this morning. I am anxious to yield because I see that my friend from Indiana is extremely anxious to say something, and therefore I will yield to him, because it always gives me much pleasure to listen to him.

Mr. MORTON. Mr. President, I always listen with pleasure to my distinguished friend from Missouri. However much I may differ from him I know that he speaks in good nature and without malice. My friend says that a returning board is a new invention. I beg leave to take issue with him. Returning boards are older than the Constitution of the United States. There is no State in this Union that has not a returning board. Sometimes they are called boards of canvassers, sometimes they have no particular name, but they consist of a person or persons who are authorized to count the votes and to certify who has been elected. Names go for nothing. In some States these returning boards have discretionary powers, judicial powers, as in the State of Louisiana and other States that might be named. Perhaps there are a dozen or more States in the Union where they have powers conferred upon them to cast out fraudulent or illegal votes within certain rules. In some States they are required simply to count the votes and give the certificate to the man who has got the highest number of votes. There is a returning board in the State of Missouri, there is one in the State of Indiana, one in the State of Oregon, and another in Louisiana. The power which these boards have depends upon the law of the State creating them. It may be a simple power, as in the State of Oregon, to certify the vote, or they may have judicial powers as in the State of Louisiana. Whether there is an appeal from these returning boards if they make a wrong decision, depends upon the law of the State. Unless the law creating them gives to some court the power to supervise their decisions, there is no such power, their decision is final. The thing must end somewhere and must end just where the law provides that it shall end. If the law makes the action of the returning board final, there it must stop. It depends upon the law of the State. The difference between Louisiana and Oregon, of which my friend talks, is that in Oregon the returning board has no discretionary power, no judicial power, but is absolutely required by the law of its creation to certify to the man who has the highest number of votes. It has no power to cast out a fraudulent vote; it has no power to withhold a certificate from a man because he is ineligible; but the law says in express terms that the certificate shall be given to the man who has the highest number of votes. In Louisiana the returning board has a broad judicial power. You may say the law is wrong; but there it is; and I believe that was the law before the rebellion. It has been the law of Louisiana for a good many years. It may be a good or a bad law; but that is the law of Louisiana, giving to its returning board, certain persons appointed for that purpose, the power to pass upon the character of the vote within certain rules.

What we complain of in regard to Oregon is, first, that the governor of Oregon is not the returning board under the law of that State. The secretary of state is the returning board. I read the statute yesterday. The secretary of state is to count the vote, and he is to count it in the presence of the governor. The governor is simply a witness, but is to take no part in it whatever. The secretary of state is the returning board in the State of Oregon, and when he has made out the count the governor shall certify—so says the law—who has the highest number of votes; and that is all he has got to do with it. What we complain of is that the governor of Oregon assumed to be the returning board; that he assumed to have judicial powers when he had none. First, he determined that Watts was not eligible. He had no power to pass upon that question. Then he determined that Cronin was elected. He had no power to pass upon that question; and if he had the power it would have been a false decision, a decision in the face of all the authorities in this country. So far as Louisiana is concerned, the returning board had the power to do what it did do. It may have made a wrong decision—I will not discuss that now—but it had the power to pass upon the votes that were given and determine whether they were legal or illegal. The governor of Oregon had no such power. The returning board of Louisiana exercised power given to it by the law. The governor of Oregon exercised power not given to him, not given to anybody, so far as the counting of the votes is concerned.

My friend from Missouri is happy because he has found an honest man. He has been going about with a lantern these many years and has at last found an honest man in Oregon, in the governor of Oregon, who had the boldness and the manliness and the courage to stand up in the face of his malignant enemies and assume to be the returning board of Oregon when he was not. He assumed the power to decide that Watts was ineligible when he had no such power, and he assumed the further power to decide that Cronin was elected when in point of fact he was not elected. The governor of Oregon had the will to do that in the face of his malignant enemies, and therefore he has excited the admiration of my distinguished friend from Missouri.

But I simply rose for the purpose of correcting what I regard to be a misstatement on the part of my friend, that returning boards are late inventions. They exist in every country, and always have, where officers are elected by the people. There must be somebody to count the votes, and whoever is commissioned to count the votes under the law of the State constitutes the returning board.

The PRESIDING OFFICER, (Mr. SPENCER in the chair.) The question is on the amendment to the amendment.

Mr. BOGY. Is that the amendment offered by the Senator from Delaware, [Mr. BAYARD?]

The PRESIDING OFFICER. The amendment offered by the Senator from Delaware.

Mr. BOGY. I should like to have it reported.

The PRESIDING OFFICER. The Clerk will report the amendment.

The CHIEF CLERK. It is proposed to strike out all after the word "alleged" in the first line of the pending amendment, and insert:

That the governor of the State of Oregon has issued a certificate of election to one E. A. Cronin as one of the electors of said State instead of issuing such certificate to one J. W. Watts, alleging that the said Watts was ineligible to the said office of elector on November 7, 1876, the time of said election:

Mr. BOGY. I ask for the yeas and nays upon the amendment to the amendment.

Mr. CONKLING. Allow me to make a suggestion to the Chair. I think the vote is first on the resolution before even an amendment to the preamble or anything concerning the preamble is voted upon. I, therefore, suggest that the vote had better be taken first upon the resolution, and then an amendment to the preamble and a vote on the preamble itself will be in order.

The PRESIDING OFFICER. That course will be adopted if there be no objection. The question then will be on agreeing to the resolution.

Mr. BOGY. As I am informed there is no objection to the resolution.

Mr. CONKLING. So I supposed; that passes as a matter of course; and then the preamble will be in order, and the Senator can move his amendment to it.

Mr. MITCHELL. I ask for the yeas and nays on the passage of the resolution.

The PRESIDING OFFICER. It is usual to take the vote on the main question first and on the preamble afterward, and that course will be adopted if there be no objection.

Mr. RANDOLPH. Let the resolution be read.

The PRESIDING OFFICER. The Clerk will report the resolution.

The Chief Clerk read as follows:

Be it resolved, That the Committee on Privileges and Elections is hereby instructed to inquire into the eligibility of said J. W. Watts, and investigate the

facts attending the appointment of said electors and pretended electors, and report the same to the Senate; and for this purpose may employ a stenographer, send for persons and papers, administer oaths, and examine witnesses.

Mr. MITCHELL. I am not particular about the yeas and nays on that. There is perhaps no objection to the resolution.

The PRESIDING OFFICER. The Senator from Oregon withdraws his call for the yeas and nays. Does the Senator from Missouri insist upon the yeas and nays?

Mr. BOGY. My request was with reference to the amendment of the Senator from Delaware, not this proposition.

Mr. CONKLING. And that is an amendment to the preamble, and not to the resolution.

Mr. BOGY. I do not call for the yeas and nays on the adoption of the resolution.

The PRESIDING OFFICER. This is an amendment to the original resolution, an amendment, the Chair understands, of the committee. The question is upon the adoption of the amendment.

Mr. CONKLING. Is it an amendment to the resolution or to the preamble?

The PRESIDING OFFICER. It is an amendment of the committee to the resolution, not an amendment to the preamble.

Mr. DAVIS. Did the Clerk read the resolution as it will read if amended or as introduced by the Senator from Oregon? Let the Clerk report it again as it will read as amended.

The CHIEF CLERK. The resolution as introduced by Mr. MITCHELL is in the following words:

Resolved, That the Committee on Privileges and Elections is hereby instructed to investigate the facts attending the appointment of said electors and pretended electors, their action as electors and pretended electors, and the action of the governor and secretary of state in respect to them, and report the same to the Senate; and for this purpose may employ a stenographer, send for persons and papers, administer oaths, and examine witnesses.

The amendment reported to that resolution is to strike out all after the word "resolved" and insert:

That the Committee on Privileges and Elections is hereby instructed to inquire into the eligibility of said J. W. Watts, and investigate the facts attending the appointment of said electors and pretended electors and report the same to the Senate, and for this purpose may employ a stenographer, send for persons and papers, administer oaths, and examine witnesses.

Mr. BOGY. There is no objection to the amendment.

Mr. EATON. Is the question upon the amendment of the Senator from Delaware?

The PRESIDING OFFICER. No; the amendment of the Senator from Delaware is an amendment to the preamble. The question is now on the amendment of the committee to the resolution.

Mr. EATON. Mr. President, I do not care at this late hour of the discussion to consume very much of the time of the Senate. In my judgment this discussion has been premature. I have no objection to the passage of the main resolution; I have no objection that a committee of this body should take into consideration the action which has been had in Oregon. I regret that the chairman of that committee has prejudged the case. I regret, and I think I have a right to regret, any discussion at this period upon a question that is as grave as this, the result of which may or may not determine who shall fill the chair of the Executive of this country. The question is a grave one. Every patriotic man, every honest man in this broad land, no matter what his politics may be, will unite with me in saying that the question is a grave one. It ought then to be approached in a proper and a grave manner. There should be no taunts, no flings. But my honorable friend from Oregon [Mr. MITCHELL] in discussing this subject the other day was betrayed into the use of language which, in my judgment, he will regret on cool reflection. In a vehement and violent, not to say insolent manner, he dared democratic Senators upon this floor to speak their views upon this subject. He dared a Senator upon this floor; he dared the democratic Senators upon this floor. Let me tell that Senator that the democratic Senators upon this floor are to be dared by nobody, by no man, by no set of men. The democratic Senators on this floor, like the people of this land, dare to do right; they dare to do what they think is just. I belong to the democratic organization, and always have belonged to it. I believe in the purity of its principles, and always have. In that opinion and belief I know I am honest. Its principles may be wrong, but my convictions are honest; and I shall dare here and elsewhere to assert those principles and carry them to their just conclusion.

Mr. MITCHELL. Will the Senator allow me to ask a question?

Mr. EATON. With great pleasure.

Mr. MITCHELL. Will the Senator from Connecticut dare, in justice to himself as a Senator, in justice to his own reputation as a lawyer, to state upon the floor to-day that in his judgment Mr. Cronin was elected one of the presidential electors in Oregon and that the governor of that State did right in issuing a certificate to him?

Mr. EATON. Before I get through, unless I forget myself, the honorable Senator from Oregon will find that he had no need to put that question. I say, belonging as I do to the democratic organization, I dare to assert that I am an independent member of that organization, that I do not belong to anybody connected with that organization, that I would not count a vote wrong to elect the man who, in my judgment, has been triumphantly elected by the American people. That I dare say. Returning boards or no returning boards, governors of States or scoundrels elsewhere, I do not desire the advantage of any wrong in this canvass of votes by the American Senate: there will be none so far as I am concerned. I was taught in a different legal school from the governor of Oregon. I do not stand here to say anything as a lawyer that I cannot defend as a lawyer. My teaching has been different from the teaching of the governor of Oregon. I believe the law in the United States to be as I shall state it, with the exception of a few of the States. I say, however, right here, in opposition to the opinion of my distinguished friend from Indiana, that his State has gone on all-fours with the governor of Oregon, and so have other decisions in the United States; but my opinion as a lawyer, my teaching as a lawyer has been that the man who did not get a majority of the votes the people did not want. This was very well illustrated once in my own State by a chief-justice where two lawyers were candidates for the office of grand juror, a prosecuting office in my State and worth in some of the cities considerable money, three or four thousand dollars a year. Two young lawyers were candidates. One received a thousand votes more than the other; but it turned out that he was not a citizen of Connecticut; he was a native of the State, a former resident of the town where he then resided, but he had removed to New York, become a citizen of New York and had not been long enough back in the State of Connecticut to have regained his citizenship there; and therefore by the constitution and laws of Connecticut he could not be elected to the office. The chief-justice had some peculiarities about him. The *mandamus* came at last and he said to the young gentleman who contested, whose first name was Jonathan, "Jonathan, there may be some doubt whether the good people of New Haven desire a grand juror at all; but there is one thing pretty clear, they did not want you; if they had, they would have given you a couple of thousand more votes than they did." He went further, of course, and argued the case; but he settled the law so far as Connecticut was concerned, and I believe he settled it properly with that remark.

Now, sir, apply it to Oregon. Watts was one of the republican candidates for elector and Watts received more pieces of paper with his name upon them than Cronin. I use the expression understandingly. They were not votes; they were as blank pieces of paper. I will call them, for convenience as I pass along, "votes," but before I get through I will endeavor to show that in no sense are they or were they votes. Watts received a thousand more votes than Cronin. Therefore, if Watts was an eligible candidate, Watts was elected; if he was not an eligible candidate he was not elected. The governor of Oregon, on what he regards as good authority and good law, has said that Watts was an ineligible man, an ineligible candidate, and that the man having the next number of votes was elected to the office for which Watts was a candidate. That is the opinion of the governor of Oregon, in my judgment an honest man, in my judgment a truthful man, in my judgment resting his case upon what he regards, and has a right to regard, as good law. I differ with him. I do not attack his integrity; I throw no stone upon the pile to commemorate his infamous act, as it has been called, for I do not so regard it. He acted as he believed was honest. He acted upon the opinion of able counsel, as well as upon his own opinion. In my judgment he was wrong as to Cronin; but in no sense could he have certified the election of Watts by any law either of Oregon or of the United States. Watts was not elected. Watts was ineligible, and every vote cast for Watts was a blank. Taking that view of the case—and I have no doubt that the governor of Oregon did take that view of the case—he saw his way clear to give Cronin the certificate of election because Cronin did have votes, acknowledged votes; he was an eligible candidate; and therefore every vote thrown for him was a proper, legal vote thrown for a proper candidate. That there is no doubt about, I apprehend, in the mind of the Senator from Oregon or the Senator from Indiana.

Mr. MORTON. Will my friend allow me to ask him a question?

Mr. EATON. Certainly.

Mr. MORTON. I want to suggest to my friend from Connecticut that the law of Oregon did not require the governor to certify that Watts was elected, but it required him to certify who got the highest number of votes; and that was a thing he could do whether Watts was eligible or not. That was a question he was not to pass upon; but the law of Oregon required him to certify who had the highest number of votes.

Mr. EATON. The law of Oregon, with all due deference to the opinion of my distinguished friend, required no such thing. I know the words; I have read them and heard them read. By a strict construction of the law of Oregon, I beg leave to say to my friend from Indiana the certificate of the election of Cronin is right and proper. The other man got no votes; he could not get any; he was inelectible, ineligible, and every vote thrown for him was a blank piece of paper, not to be counted at all. It was not a vote. A vote is the evidence of the will of the individual holding in his hand a paper to be cast for an eligible candidate for any given office. That is a vote. But, as was well said on this floor by my honorable friend from Ohio, [Mr. THURMAN,] would a piece of paper cast for Her Britannic Majesty Queen Victoria have been a vote, a vote to be counted? It is perfectly absurd. The very statement of the case shows its absurdity. And yet, sir, calling these pieces of paper votes, according to the theory of the honorable Senator from Indiana and the honorable Senator from Oregon, a piece of paper with the name of Queen Victoria must have been counted and returned, and gravely returned, by the exec-

ntive of Oregon to the Congress of the United States. Now let me read:

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

I read from article 2, section 1, of the Constitution of the United States. This man Watts was a postmaster, holding an office of more or less trust and of more or less profit under the United States. He was ineligible. A vote for him, in the opinion of every court that I know of, every supreme court of any State within this Union—a vote for him, in the opinion of the Queen's Bench, was void, a blank, a nullity. In other words, it was not a vote. It could not legally be counted. Reading that clause of the Constitution of the United States, the question with regard to the law of Oregon, if there be a law of Oregon in contradistinction to this law of the United States, falls to the ground; it is not to be considered; it is worthless; it is void.

If I am right in my conclusions that a pretended piece of paper cast for an ineligible candidate is not a vote, a legal, proper vote, then there is an end to this case.

Mr. MITCHELL. Will the Senator allow me to ask a question?

Mr. EATON. Certainly.

Mr. MITCHELL. Does the Senator from Connecticut understand that the office of a presidential elector is a State office and one that would be governed, so far as eligibility is concerned, by inhibitions in the State constitution as well as in the Federal Constitution?

Mr. EATON. Which question is it my friend wants me to answer? If he will ask one at a time, I will answer.

Mr. MITCHELL. I want both.

Mr. EATON. Ask one at a time.

Mr. MITCHELL. In the judgment of the Senator, is the office of presidential elector a State office?

Mr. EATON. It is.

Mr. MITCHELL. Very well. That being conceded, would a provision in the constitution of the State to the effect that certain things should render a person ineligible to office under that constitution apply to the office of presidential elector?

Mr. EATON. What would? I do not quite get my friend's idea.

Mr. MITCHELL. Would a provision in the constitution of the State of Oregon to the effect that "no person who may hereafter be a collector or holder of public money shall be eligible to any office of trust or profit until he shall have accounted for and paid over, according to law, all sums for which he may be liable," apply to the office of presidential elector?

Mr. EATON. I do not know that I am on the stand to answer a question that has no reference whatever to the matter now under discussion.

Mr. MITCHELL. I beg pardon of the Senator. If he will allow me, it has direct reference, in my judgment.

Mr. EATON. I do not think so. I cannot be driven from my point to answer a question that in my judgment has no reference to the matter in issue. If it be said that Mr. Cronin owes a debt, has public moneys in his hand which he has not paid over to the State of Oregon, then there might come a question here whether he should be a candidate for elector.

Mr. MITCHELL. If the Senator will allow me now—I do not wish to disturb him——

Mr. EATON. It does not disturb me at all except that I do not want to stand very long on the floor.

Mr. MITCHELL. I do desire to get the opinion of the Senator upon this very point. Suppose in the case of Watts, for instance, he had not been a postmaster, but suppose the suggestion had been made to Governor Grover that he, Watts, had been a collector or holder of public money and that he had not accounted for and paid over all that money according to law, what I want to get from the Senator is whether Governor Grover's duty would have been to have tried that question and passed upon his eligibility.

Mr. EATON. Well, Mr. President, I do not choose to answer that question. My friend shakes his head and I hope it is not for the same reason that somebody else once shook his head. My friend shakes his head. I beg leave to say to him that my opinion here rests upon the organic law of the whole country, the Constitution of the United States, and not the constitution of Oregon, and questions are not to be put to me to divert me from my line of thought. By the Constitution of the United States if Grover had given a certificate in favor of this man Watts he would have violated the Constitution of the United States and done what he knew to be wrong, absolutely wrong, and against the supreme law of the land. The great trouble with my friend is that he finds fault with the governor of his State for following the Constitution of the United States.

Mr. MITCHELL. Not at all.

Mr. EATON. He did follow it. He did not give a certificate to an ineligible candidate, to a man who could not be voted for under the Constitution of the United States, and therefore he did right in refusing to give a certificate to Watts. With regard to his giving a certificate to Cronin I do not go into that question any further than I have. I have expressed my opinion upon the law of that case. Therefore I need only say that in my judgment he should have certified the election of two men and only two men as electors for Oregon. Acting in my place as a member of this body I could not vote, and, had I the power to vote, as I claim that I have the power, I would not vote to place in the chief executive chair of the United States the candidate of the democratic party upon the vote of the democratic elector, so called, of Oregon. That is my opinion, and unhesitatingly I announce my opinion on that subject. Perhaps hereafter I may have an opportunity to call on my friend from Oregon to exercise his judgment upon a case of far greater wrong than the case of Oregon. I ought to say here what I believe I have a right to say, taking the very stand-point which the honorable Senator from Oregon occupies, that it strikes me his political stomach is disordered by a very small matter when it can stand the garlic of Louisiana, Florida, and South Carolina.

I do not propose to discuss at length any other question than the one properly before the Senate, and I am sorry to be compelled to say a word upon that subject, and I should not have said it except that it was proper that the people whom I in part represent on this floor should know exactly where I stand upon the question of Oregon. Under no circumstances, in my judgment, will either of the Senators from the State of Connecticut vote to claim the election of Mr. Tilden upon the Oregon elector. I want no election covered over as that would be with wrong; in my judgment, not fraud, but wrong, erroneous judgment in the executive officer of Oregon; and I shall approach the discussion of other questions, when we arrive at them, in the same feeling; and ask my friends on the other side of this Chamber to stand with me to maintain the purity of the elective franchise throughout the whole country.

So, Mr. President, while I could vote very readily for the naked resolution which is here, I cannot vote for the preamble which has been put upon that resolution. It implies wrong, not error, but absolute fraud, in the executive of the State of Oregon. From all that I have heard of that gentleman, he is a man of high character, stainless reputation; and I have yet to learn that an error in law, if it be an error, should stamp his or any other man's name with infamy. Nobody has ventured to say a word against the reputation of this executive of one of the States of the Union, a man the Legislature of whose State has recently elected him to a seat on this floor, the peer of the honorable Senator from Indiana and the honorable Senator from Oregon. In advance, before the taking of his seat, is he to be called a fraud in his own State? A man guilty of fraudulent acts in his own State? Mr. President, no such resolution as that ought to be voted for.

The honorable Senator from Indiana said that this was a trick—I use his own word—a trick to control the election of a President of the United States. If the law of Indiana, if the law of two other States in this Union, (but perhaps not to the full extent,) if the law of Judge Hoadly of Cincinnati, if the law of the governor of Oregon, is right—and it is right if the reading of the statute by the honorable Senator from Indiana is right—where does the "trick" come in? Look at the position of the case. First, pretended ballots cast for an ineligible candidate are not votes; they are as blank pieces of paper, and the casting of them is absolutely and utterly void. Then the second position is, taking the statute of Oregon as read by the Senator from Oregon, that that person having the greatest number of votes must be certified up by the governor of Oregon. If that be so, then that elector is Cronin, for the other man was not a candidate and had no votes. Those cast for him were all blank pieces of paper. Taking that view of the case—and I am bound to suppose that the governor of Oregon did take that view of the law; I must suppose it—then the position he assumed is not only defensible but justifiable. My friend from Indiana is not always right. His legal opinion, my legal opinion, is not always right. It may possibly fall out that the governor of Oregon is right in this matter and the honorable Senator from Indiana and myself both wrong, and therefore, in my judgment, the word "trick" is a stigma that should not be used. It leaves a mark upon this man which should not be made. He acted defensibly; as he believed, justly. If he acted justly in his own judgment, then there is no trick.

Mr. President, there is such an intimate connection between this subject and the one that was up here the other day that I desire to read a letter which I have before me. I am very glad that the honorable Senator from Ohio [Mr. SHERMAN] is in his seat. He has placed before us his opinion in regard to certain matters in the State of Louisiana; now I desire to read this letter:

DE SOTO PARISH, LOUISIANA,
December 12, 1876.

Hon. J. MADISON WELLS,
President Louisiana Returning Board:

I have learned that your honorable body has returned me as elected to the lower house of the Legislature from the parish of De Soto. Permit me to return my thanks for the honor conferred, but at the same time permit me to say that I am unwilling to accept the position. I am a republican from the firm conviction that the principles of that party are best for the whole country.

It is also true that I was the regular nominee of the party in the parish of De Soto for the Legislature and did more than any member of the party in that parish to organize it and advance its interests; but, sir, knowing as I do that I was fairly defeated at the polls, no intimidation or fraud having been practiced by the opposite party at any precinct in the parish, so far as I have been able to ascertain after a thorough investigation, my self-respect will not permit me to accept the position. I hope you will pardon me for taking a step that at first glance may be thought calculated to cast some discredit upon the party with which I have allied myself; but I am a planter, not a politician; all my interests are here; but, sir, I cannot believe the good of the State or of the national republican party can be promoted by returning as elected a candidate so clearly defeated as myself.

In fact I am convinced that very much of the disturbance that has prevailed throughout the State for several years past is justly attributable to the fact that in many parishes men not elected by the people have been returned elected and maintained in office by the power of government. I must believe that you and your associates have been grossly deceived as to the manner in which the late canvass and election in De Soto was conducted and as to the result.

Very respectfully,

JOHN J. LONG.

Now, Mr. President, I want to say that one witness like this man weighs down a thousand affidavits. Here is a candidate of the republican party in the parish of De Soto who says himself that he was fairly defeated; says himself that there was no intimidation or, to use a common expression which has recently obtained, no bull-dozing in the parish of De Soto; and yet the honorable Senator from Ohio comes with affidavits, as I understand, saying that there was intimidation in that very parish. I desire to place this letter on the record for what it is worth. The time will come, by and by, when we come to the discussion of the question regarding Louisiana, when this letter will be valuable testimony. It is testimony behind which the republican party ought not to go.

Mr. President, let me be indulged in a word or two more with regard to the importance of the matters now before us, and then I shall have done with an unpleasant duty. I did not desire to say a word at this time on this subject. As I said in the outset the questions now pending before the Congress of the United States are of the most grave character. I assume that every member of this Congress, of the Senate and of the House of Representatives, desires fair action. I think I can speak for every one of my friends on this side of the Chamber: no unfair action is desired by us. No matter where it strikes, no matter whether Mr. Tilden or Mr. Hayes shall be declared to be the honestly elected President of the United States, so that it is fair and honest, there will be no trouble here. If Mr. Hayes is honestly elected President of the United States, he will be inaugurated the President of the United States. If not, not. There can be no intimidation in this question; nobody can be intimidated in a country like ours. When every man requires justice and justice only, the question of intimidation cannot come before us. Crazy men may talk; partisan newspapers on the one side or the other may rave; but the representatives of the people, who have in their hands the well-being of forty-five millions, cannot afford to do wrong.

The President of the United States is quoted by this man and that man, by this paper and that paper, as saying this thing and that thing, as that he will deliver over his office to the man who is inaugurated. He has nothing to do with it. The man who is elected and inaugurated takes the position of President of the United States without any action at the hands of the present Executive. He becomes—such is our law, and God be thanked that it is so; may it always be so—he becomes a private citizen of the United States, and is no more than any other of the citizens of the United States. It will not do to talk about enforcing anything. The good sense of the people of this country, operating on and passing through their representatives, will see to it that justice is done here. What right have I to suppose that my friend the Senator from Massachusetts, or my friend the Senator from New York, or my friend the Senator from Rhode Island has any desire to do what is wrong because they belong to another political organization than myself? God forbid that I should entertain any such opinion.

It has been said that the President of the Senate has stated that he, the President of the Senate, has the entire control of the votes and that no votes can be counted except by himself. Sir, I do not believe the President of the Senate has ever said any such thing. The President of the Senate has no more right to count the votes than one of the pages. My friend from Massachusetts [Mr. DAWES] smiles. I say the President of the Senate has no more right to count the votes for President than one of the pages. The Constitution devolves a certain duty upon the President of the Senate, but nothing else. The Constitution of the United States says that "the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted." By whom? If the convention that formed the Constitution of the United States had intended that the counting of the votes should be done by the President of the Senate, that convention would have so stated, in my judgment.

It has been said by partisan newspapers that the President of the Senate would be the president of the convention of the two Houses, and as president of the convention would hold supreme power. Sir, I desire to say another thing right here; it might as well be said now as at any other time; and that is that the President of the Senate is not the president of the joint convention unless he be appointed by that convention. Nowhere does the Constitution determine who shall be the president of the two Houses when they come together. I agree that by usage, by precedent, the President of the Senate has always been the presiding officer of the two Houses. I am not about to say that I would not prefer him to any other man for the presiding officer. What I do say is that the Constitution gives him no such place. He is simply the custodian of the votes, and as the custodian opens the votes. He is not by law or by rule or by constitution the president of the joint convention. I desired, sir, although this my close has nothing to do with the question of Oregon, to say just this much with regard to the power belonging to the presiding officer of this body.

I trust that every Senator, every member of the House of Representatives, appreciating to its fullest extent the gravity of the situation in which Congress is placed, will go into the critical examination of the votes with the same determination which I have, to do what is honest, just, and fair; and I believe that all will. I know my own feelings on that subject, and I have no right not to presume, on the contrary I am glad to believe, that my associates occupy the same plane, the same ground that I do, and that the scrutiny of votes which will be given by Congress on the 14th of February will be just and fair and honorable and right.

Mr. SHERMAN. Mr. President, my attention was called before this debate to a letter purporting to be from Mr. Long as to his election as a member of the Legislature of Louisiana from De Soto Parish. I know nothing about the letter except that I saw it in the public prints. I do not know whether he was a candidate, but I presume that he was, and that he thinks he was not elected and surrenders all claim to the election. I am not informed that the board returned him elected. I have seen no statement of the return of the legislative ticket. I think the gentleman has probably leaped before he came to the stile. Probably no return has been made of his name; but whether there has been or not I do not know. I only know that I have before me the testimony as to De Soto Parish, which is printed on pages 545 to 548 of the volume sent to us by the President, and here are the depositions of sundry witnesses, among the rest one who is evidently a very intelligent man, J. M. Carter, who was examined and cross-examined by both parties. There are also some *ex parte* affidavits, but there are two or three witnesses who were examined and cross-examined whose testimony shows certainly irregularities at certain polls in that parish. The nature of these irregularities is pointed out in the testimony. The effect they had on the returning board I do not know. Whether they excluded any votes on account of them I do not know, nor is the Senator from Connecticut any better informed than I am. It is sufficient for me to say, however, that De Soto Parish is not one of the controverted parishes upon which the testimony was taken. The whole testimony in regard to De Soto Parish is confined to four or five pages and relates only to two or three wards in the parish. As to whether Mr. Long was elected or not, I do not know.

Mr. MORTON. Was the parish thrown out?

Mr. SHERMAN. No; there was no parish thrown out.

Mr. BOGY. There were parishes thrown out.

Mr. SHERMAN. I do not know. How does the Senator know?

Mr. BOGY. It is so.

Mr. SHERMAN. The Senator does not know. There is the trouble. There is nothing in the testimony with regard to De Soto Parish except the few pages I have referred to; and I think on looking over the testimony it would justify the throwing out of certain polls, but on that question I am not prepared to pass an opinion because I do not know all the particulars and details.

This is all that it is necessary to say about De Soto. The parish of De Soto was not one of the parishes where intimidation was alleged, and proved as clearly as any historic fact, in my judgment, from the birth of Adam down to our existence at this moment. Therefore, it is a mere fly on the wheel and has nothing to do with this case.

I cannot fail to express my gratification at hearing some of the observations made by the Senator from Connecticut. He has told us that neither he nor his colleague from Connecticut nor the candidate of the democratic party for President desires the election of Mr. Tilden by trick or fraud, or, to use his own much more proper phrase, wrong. That, certainly, ought to be the feeling of all of us; and it seems to me that if the whole American people and both Houses of Congress and every one who has anything to do with this business shall act upon that rule, the strict rule of right, we shall have no difficulty in ascertaining who has been elected President of the United States.

So far as the Oregon case is concerned, I said the other day that it did not rise to the dignity of a dispute, nor in my judgment does it, because it is perfectly apparent that three living persons, citizens of Oregon, received a majority of the votes at the election in Oregon. They were all republicans. It was alleged that one of them was ineligible for the office because he held a post-office yielding him the enormous profit of $248 in the course of a year, I believe. Is that it?

Mr. MITCHELL. Two hundred and sixty-eight dollars.

Mr. SHERMAN. Two hundred and sixty-eight dollars in the course of the year. Therefore he was technically ineligible. I might stop here and dispute with Senators as to whether this is an "office of trust or profit," which I believe is the language of the Constitution; whether it is within the meaning of the language of the Constitution an office of trust or profit, and therefore whether he was ineligible. But that is not material. It is certain that he resigned, that though he received a majority of the votes he resigned and did not attempt to hold the office under that election but was afterward elected to fill a vacancy after his disability had been removed, so that the will of the people of Oregon, honestly, fairly expressed, would entitle Governor Hayes to the three votes of the State of Oregon, because his electors confessedly received a majority of the votes cast at the election in Oregon. That ought to settle that matter.

Mr. BOGY. How about Florida?

Mr. SHERMAN. I am perfectly willing to apply the same rule to Florida. But there is another provision of the Constitution which is mandatory, and which I am surprised that my friends on the other

side of the House do not seem to give force and effect to. What is that? The Constitution provides that these electors shall be elected in the mode pointed out by the laws of the State. It is purely an election by the respective States, to be governed by their laws. I am very certain that if Governor Hayes should become satisfied, or if I should become satisfied, so far as my action may bear on this question—I do not know that it will—that Governor Hayes did not receive the honest vote of a State or that he did not have a fair majority of the votes legally cast he would not desire the electoral vote of any of the disputed States. If it should be clear that in South Carolina, or Florida, or Louisiana, Governor Hayes did not receive a majority of the legal votes cast at the election in either of those States, I would not have him—God forbid that he should—accept the office of President of the United States with such a conviction upon his conscience. Any man who would do it would be dishonored before men and before God. But the trouble is that in the investigation of these matters we must not only pursue the forms but the spirit of the law. In the case of Louisiana the law has been in existence, more or less precisely as it is now, for six years, which authorizes certain officers named by the senate of the State to canvass the returns. It gives them full and plenary powers—powers that are not given except in about half a dozen States of the Union. It is admitted that that board was legally organized. Although it is claimed that it failed to fill a vacancy, yet I have heard no lawyer insist that that defeated the legality of the board or destroyed the power of the board. This board, then, legally created by the laws of Louisiana, have acted on these returns. They have acted upon them openly in the light of day. That is conceded on all hands.

Mr. BOGY. I do not admit that they acted openly in the light of day, nor do I admit as a member of this body that that board was legally organized. I think it was not legally organized. My friend has a right to state his views, but he must not state them as those of all of us.

Mr. SHERMAN. My friend is the only doubting Thomas I have heard in the Senate. I will speak for all that I think are right. That that was a legally constituted board has been disputed, it seems, by the Senator from Missouri. It is provided for by the law of Louisiana in so many words. It exercised functions under a law somewhat similar in character in 1872, and under precisely the same law in 1874. A committee of the House of Representatives, having power to do it in the investigation of the election of a member of the House and also in the investigation of the Louisiana election generally, held that they made a mistake of law. They construed it that they had power to act in excluding votes when there was no formal complaint or protest made by the officers who held the election. The committee set aside the action of the board to that extent for the purpose of founding a compromise in Louisiana, but at the same time they certified to the honorable character and general good conduct of the board, and the only difference was in regard to a legal opinion, and the chairman of that committee the other day in debate in the other House, to which we may refer as part of the history of the times, repeated again, and I am sorry I have not now his language before me, that that committee never did arraign the returning board for personal misconduct or arraign its legality. They acknowledged its legality. It was a conceded fact.

Mr. WHYTE. Will the Senator from Ohio allow me to interrupt him for the moment? I hold in my hand a report, and he will allow me to read just that one section.

Mr. SHERMAN. I am referring to what Mr. HOAR said in the House of Representatives the other day.

Mr. WHYTE. But I understood the Senator to refer to the report made by Messrs. FOSTER, Phelps, Potter, and Marshall.

Mr. SHERMAN. On the contrary, I did not. That is not the report of the committee. That was the report of a subcommittee. If my friend will allow me to go on, I will ask the Secretary to get me the debate in the House, I think on Friday last, containing the statement of Mr. HOAR in regard to that report and hand it to me; I have not got it before me.

I repeat that the report to which the Senator from Maryland now refers is the report of a subcommittee, which was afterward reconsidered and re-examined by the whole committee that went there and made a full and formal report, and that is the report; and of that report Mr. HOAR, the chairman of the committee, made his statement the other day, in which he showed that the legality of that board was not questioned nor the personal conduct of the members of the board, but that the committee did hold that they had no power to exclude the returns in certain cases where certain formal protests had not been presented.

Mr. HAMLIN. Will the Senator allow me to say that my colleague in the House, [Mr. FRYE,] another member of that committee, in the public press has made the precise statement that Mr. HOAR made in the House?

Mr. SHERMAN. I know, and I want read, so that Senators may see exactly how the fact stands, the statement made by Mr. HOAR so often commented upon. Senators have sometimes confounded a report made by a subcommittee of this committee with the report made by the committee. That subcommittee reported back to the whole committee and the whole committee, acting on the report of the subcommittee, proceeded, in pursuance of the previous instructions of the House, to examine the whole subject-matter as a full committee. It is the report made by the whole committee that I referred to, and in that report Mr. HOAR says the legality of the board was not contested, was not called in question; it was only its construction of the law; and Mr. HOAR very properly says that if everybody should be arraigned as a rascal because he fell into an erroneous construction of his own power, all of us perhaps, might be arraigned in the same way.

I say, then, that the board of returning officers in Louisiana were a legal, valid tribunal under the laws of the State of Louisiana to pass on these returns, and they have done it. Now, so far as public opinion is concerned, so far as good faith is concerned, it is perfectly right and proper for Senators and editors and everybody else to show that this board acted wrongfully or acted corruptly. I do not deny that fraud, open, palpable fraud would defeat any act whatever. Even the judgment of the Supreme Court of the United States might possibly in certain cases be impeached for fraud, gross, palpable fraud. But here is a board, with legal powers, legally constituted, in the exercise of a duty imposed by the State. Here is the Constitution of the United States which makes the laws of the State conclusive and gives to the State Legislature full authority to prescribe the mode and manner of choosing electors. This board then acted on these returns. The result is sent to us under the certificate of the governor and secretary of state of the State of Louisiana.

Now I ask Senators how they can open up this case except as an appeal to public opinion, to show that the board acted wrongfully and corruptly? I say for one that if it should appear that any of the boards in the disputed States have been wrongly, corruptly, abusing and grossly misusing their powers even under the State authority to make a false return, I for one would not desire to see Governor Hayes or anybody else have the benefit of that return. There is no question of controversy about that. The real difficulty we have to deal with is behind that; how we shall get at these facts; what power the House has; what power the Senate has; what power Congress may have in enacting a law prescribing the mode and manner in which the count shall be made. These are questions that gentlemen may debate with reason and moderation, and I, for one, am prepared to consider them whenever they are presented by any one. When you come to the questions presented by the action of these returning boards, their powers, &c., as to whether they acted right in De Soto, whether instead of throwing out 19 votes they ought to have thrown out 20 or only 10, I say you are traveling beyond the record. Unless your allegations go to impeach the honesty and good faith and integrity of the board, its action is final and conclusive upon us.

I will now ask the Secretary to read what Mr. HOAR said:

The CHIEF CLERK. This is in the RECORD of December 16:

Mr. HOAR. I do not propose of course to engage in any discussion of this general question. I should not have risen at all but for the allusion in the document just read to a report signed by myself, the honorable gentleman from New York, [Mr. WHEELER,] and the honorable gentleman from Maine [Mr. FRYE] who sits near me.

It is difficult to believe that the gentlemen whose names are signed to that paper, some of whom I have known and respected, could have known its contents, or, if they knew its contents, could have known the contents of the document which they undertake to cite.

Mr. SHERMAN. I will say that the speaker was commenting on the paper which was read here the other day, the report of Mr. Trumbull and others.

The Chief Clerk continued the reading, as follows:

That paper grossly perverts and misstates to the American people the document which it assumes to quote. It picks out one or two sentences, mixing them up with sentences from another document coming from another quarter; and thus it is made to appear that that committee said something or came to some conclusion in derogation of the honesty or honor of the returning board of the State of Louisiana. Nothing can be found in that report imputing any fault to that board, except this: We declare that the returning board, following the precedents set them by their democratic predecessors in the same office in 1872, erred in one particular in a construction of their legal powers, which construction was clearly necessary to remedy a defect in the law. We held that where the people of a particular parish had been set upon by armed bands, prevented from making a canvass, prevented from having discussion, prevented from going to the polls and casting their votes, still, unless a particular officer certified to those facts, although he might have been intimidated himself or might have been a part of the conspiracy, there was no law in the State of Louisiana to remove that difficulty.

Mr. ELLIS. No government, the gentleman means.

Mr. HOAR. No law in the State of Louisiana to remove that difficulty. There should have been such a law. Does anybody deny it? Is it an imputation of dishonor upon the gentlemen of the returning board that, following the democratic precedent, they gave such a construction to the law in that particular as removed that clear defect?

Now as to the question in regard to the absence of government, we did not say that Governor Kellogg was not lawfully elected governor of that State. On the contrary, we declared that we believed he was so elected; and this House so recognized him on our recommendation. We said that the democratic party in 1872, conspiring with Governor Warmoth, had destroyed the legal evidence of Governor Kellogg's election, and that therefore we were obliged to resort to the less satisfactory methods which we had followed for ascertaining the real will of that people. It is true that we pointed out to the American people the grave danger that now exists. We said that it was a serious thing that the true evidence of the election of a State government should be destroyed, as it had been by the democrats of Louisiana, thus leaving us to grope in the dark in order to arrive at the true will of the people. We said, further, that the democratic party of the North if they would but cause it to be understood that they would have no political affiliation with men who would commit murder for political purposes, could end this whole trouble in a month.

Now the question to-day is, what is the true will of the majority of the legal voters of the State of Louisiana? It is not a question of paper, of parchment, or of statute. Is it true, gentlemen on the other side of the House, that there are counties and parishes in the United States where men cannot cast their votes because they are assailed with murder and assassination? Let us know that. If it be not true, we shall all rejoice; and if the ascertainment that it is not true results in the election of a democratic President, we shall all rejoice that the stigma is removed.

Mr. SHERMAN. The statement of Judge HOAR has the appearance of judicial fairness, and no doubt is the deliberate conviction of his own mind; and I assent to every word there stated. Now what does he show in regard to this returning board? Two years ago they fell into the same mistake of law, in the opinion of the committee, that the democratic board had done two years previous to that.

Mr. BOGY. And this year.

Mr. SHERMAN. No, sir; I understand not. The Senator will find that that is a mistake. There was no protest whatever, no complaint made by the legal officers of the election two years ago. The question as to whether it should be done within twenty-four hours after the election did not come up at all. There was no complaint made, no written formal complaint made under the law of Louisiana, and therefore the law was not complied with. It was held four years ago by the democratic board that, under the last clause of section 26 of the election law of Louisiana, any candidate might make that complaint and the board might pass upon the complaint. Our House committee, however, held them to a more rigid construction of the law, but they say they did not call in question their integrity or their conduct, because they had simply fallen into an erroneous construction of a law following a democratic board that preceded them only two years before.

Now, when Senators come here and admit that Governor Grover has participated in what is called a wrong, because that was the statement made by the Senator from Connecticut, when it is conceded that Governor Grover and the secretary of state of Oregon participated in what is called a wrong, although, as the Senator from Connecticut says, without wrong intent but simply through a mistake of the law: when he is so kind and generous and merciful to the governor of Oregon and the secretary of state of Oregon, why can he not have a little kindness and mercy and generosity to the returning officers of Louisiana? Is there anything in the conduct of these two classes of men that should make one rule to apply to one and another to another? Here is a returning board, acting under the law of Louisiana, pursuing what they regard as their plain duty, a board legally organized, acting for the third time under, I believe, the same law and having made their decision in plain conformity to the law of Louisiana; they are to be denounced, and the newspapers contended and still insist that the committee of the House have denounced these men in some unmeasured language. I felt bound to have read to the Senate this statement of Judge HOAR that the committee of the House never did make such a denunciation, that the original charge was made by a subcommittee of the House committee, and that that report of the subcommittee was afterward revised and reconsidered and re-examined by the whole committee and it was upon the final action of that committee that the people of Louisiana, through their leading members of both political parties, finally settled the dispute in regard to Kellogg and the State Legislature, the house being given by the decision of the committee to the democrats and Kellogg recognized as the governor of Louisiana.

Now the gentlemen who made that decision declare that they never said one word against the integrity or conduct of the board, but simply pointed out an error of law into which they had fallen and corrected that error. That is all they did. Yet they are denounced, and the newspapers, notwithstanding the manifest statements that had been made of fairness in the conduct of their proceedings, still insist on arraigning this board as men guilty of some great wrong and fraud. There is no evidence of that kind. While my friend from Missouri will not yield anything or confess to anything, he must remember that the committee appointed by himself and other gentlemen did say that they were present at all these proceedings except the sessions when they took up the final returns and made their decisions; that is, every paper was opened in their presence, every document bearing on the case, every scrap of testimony was filed in their presence and in the presence of others; and so far as any one could see the proceedings of the board were open, honest, fair, and their rules were reasonable. It is a very remarkable thing, too, that the very rule that they prescribed as to the admission of persons to see this count has been adopted by the committees of the House and of the Senate, by the committee of the Senate certainly, sent to Louisiana. They allowed four gentlemen on each side representing the respective parties, they allowed the representatives of the press to report their proceedings, and a few others besides to be present, and excluded the great mass of the crowd outside. They adopted the very rule of publicity of our own Senate committee composed of honored members of this body of both political parties. That committee adopted the very same rule in conducting the proceedings that this board, so often arraigned, did in their examination of the returns of Louisiana.

Sir, I wish to consider the acts of all these officers with charity and kindness. When I gave my opinion the other day that the case in Oregon in my judgment would not in the minds of the people of the United States stand as a question of dispute, I said nothing about Governor Grover, nothing of the officers who performed their duties as they thought conscientiously. I would not arraign those officers; but I appeal to the same charity for the returning board of Louisiana and for these other returning boards that you ask us to extend to Governor Grover and the secretary of state of Oregon, who participated in what my friend from Connecticut calls a wrong. If gentlemen could show that these boards acted corruptly, and thus struck at the foundation of their whole proceedings, they might make a different case for public opinion to act upon. I say for one that, rather than see Governor Hayes elected by a fraudulent return, an illegal return, a return that violates honor and justice, I would see him anywhere else than in the office of President of the United States, and I know I but speak his sentiments when I say that, if you convince him that any of these boards have acted corruptly and fraudulently and dishonestly, he will make no claim to the office of President of the United States, and I know I can speak for thousands of friends of his who believe he is fairly and honestly elected that they will make no such claim.

It is in the absence of all such proof, in the absence of all such allegation, when we produce you the regular return of these officers of the State governments, that you at once attack the officers of the State governments and attack the laws of the States; and the laws creating these returning boards are denounced. Why, sir, the Constitution declares that the States shall prescribe the mode and manner of doing this thing; and are you, who have always been the defenders of the rights of the States, you who insist that Congress is trampling down the rights of the States—are you the men to denounce the exercise of a plain, legal duty by the officers of a State government? That is the attitude in which you are placed. No, no, Mr. President. All these questions I believe will be decided by the general acquiescence of the American people. As the case now stands, it does seem to me that the returns from the three disputed States, Louisiana among them, are on exactly the same footing and foundation of law and honor as the returns from the State of New York or Ohio. The case of Oregon has already been sufficiently disposed of, and it is not necessary for me to comment upon it. There is no occasion in the examination of this question for any undue excitement. If the question of fraud in the action of a returning board should come up as a matter of public opinion, then probably it would be time enough to discuss the evidence; but in the case of Louisiana, although I would not be able to show and could not from the nature of the testimony be able to show that the action of the returning board as to a parish officer or as to a member of the Legislature or as to local matters was correct, I think I can show upon this testimony, by every rule of evidence that I have ever read in a law book or known to exist in morals, that judging by the evidence the vote of Louisiana ought fairly to be counted for Governor Hayes.

Mr. BURNSIDE. Mr. President, I have decided to vote for the amendment of the Senator from Delaware, [Mr. BAYARD;] but in casting that vote I do not desire to be understood as placing myself in accord with the logic, the argument, or the conclusion of my honorable friend the Senator from Missouri, [Mr BOGY.] I must confess that while listening to his argument I felt he had lost sight of the usual fairness with which he deals with subjects on this floor.

I am not ready to cast any vote, or to make any remark on the floor of this Chamber which would cause anybody to believe that I for one moment can estimate a man as an honest, patriotic governor of a State who will by an act of his allow the credentials of a whole electoral college to be placed in the hands of one man, that one man being his political friend and the remainder of the members of that college being his political opponents. No man can convince me, upon the showing which this Senate has, and which the whole country has of this case, that Governor Grover can be regarded as an upright, high-toned governor, because no honest man will pursue a course of that kind. But I do hold that in introducing resolutions of inquiry in this body preambles which assert that there is guilt, when a committee is charged with the duty of discovering whether there is guilt or not, are undignified, to say the least, and ought not to accompany such resolutions.

I am glad to be quite in accord with my friend the Senator from Connecticut [Mr. EATON] in many of the expressions of opinion he has made to us to-day, and it is my earnest hope that I may perform the duty now resting on us with a conscientious regard for the law, the facts, and the justice of the case. But, Mr. President, in view of the information of which we are possessed, information derived from the public prints, from the correspondents of newspapers, from the statements of Governor Grover himself, and from the statements of both sets of electors, I do not see how any Senator can come to the conclusion that in any event that man Governor Grover can be an honest and fair man; and if these statements of the case are shown to the American people to coincide with the facts of the case, it is my honest belief that his name will stand before the country as the synonym for trickster.

Mr. BOGY. I will ask my friend from Rhode Island a question. I think he finds fault with the governor of Oregon because he handed, as he says, the certificate of the election of electors to Mr. Cronin. That is the point of the objection the Senator makes.

Mr. BURNSIDE. That is the point I make. He handed all the certificates to his political friend. That political friend, by the present showing of the case, declined to hand the certificates belonging to the republican electors to them except upon certain conditions.

Mr. BOGY. What Mr. Cronin did I do not know; but the electors were in session, and the certificates could only be handed to one man—and they were handed to Mr. Cronin. Now, my friend from Rhode Island very well knows that there must have been a contest between those men growing out of the peculiar condition of things, which contest the governor of Oregon had nothing to do with; and he could not hand these certificates to all the men at once.

Mr. BURNSIDE. Then I should say that the governor of Oregon ought to have disclaimed the act of the man Cronin and say he was no party to it; that it was his distinct intention that each elector should have his certificate.

Mr. BOGY. The time has not come to disclaim that fact. There has been no charge made, except by the Senator.

Mr. BURNSIDE. The time has come, it seems, for him to publish a long statement to the country to justify himself. It would not have taken him a half a minute to add just that one sentence: "I disclaim the action of Mr. Cronin in this respect; it was my distinct and honest intention that the republican electors should have their certificates."

Mr. BOGY. The point made is simply this, that the governor of Oregon gave the certificate to one man. He could do nothing more. They were in session. It had to be given to one. It could not be given to all. Whatever sharp practice might have been perpetrated by those men afterward is neither here nor there. But if I am not interrupting my friend from Maryland [Mr. WHYTE] I should like to say a few words in answer to the Senator from Ohio, [Mr. SHERMAN.]

He makes pretty much the same statement to-day that was made the other day. He sustains the action of the returning board of Louisiana. First he says that it is not denied by a single Senator on the democratic side of this Chamber that the returning board of Louisiana was legal and legally organized. I say that he has not heard one single democratic Senator admit that fact; on the contrary, it has been denied, because the law provides for five members of the returning board, and these men, in violation of that law, as the Senator from Ohio well knows, went on and assumed to discharge their duty when there were but four members of the board; thus destroying all its legality. Powers were conferred on five men, who must be by law members of different political organizations. It contained but four men, being all republicans, and they would not appoint the fifth man, who by the law had to be a democrat; and hence that board was not legally organized. The Senator is mistaken when he puts into our mouths the words that we admit the legality of that board. He is furthermore mistaken when he says that that board proceeded in accordance with the law. It never did. It did now as it did in 1874, as it did in 1872; and its action in 1872 is claimed as a precedent; and he calls that a democratic precedent. Why, sir, there has not been a democratic organization of that kind in Louisiana for years. It was a republican organization. At the head of that board in 1872 stood Lynch. Do you call Lynch a democrat? Backed by whom? By Warmoth. Who ever called Warmoth a democrat? He may for a while have confederated with the democracy—to their shame I say it—but he never was a democrat; and it is not correct to say that there was a democratic returning board in Louisiana in 1872.

And, sir, when the Senator from Ohio says that the committee appointed by the House of Representatives did not censure the doings of that board, I assert that he is mistaken, and I hope that my friend from Maryland will, before we close the debate, read the report which he has on his table before him. I say that Mr. Phelps and Mr. FOSTER, two republicans, did make a report, and it became the majority report, and is so printed, and that report said that these men had acted illegally.

Mr. SHERMAN. What does my friend say to the statement made by Mr. HOAR in the House?

Mr. BOGY. I am only sorry that Mr. HOAR could so far have forgotten what he had done himself before as to make a statement of that kind, because it is not correct, it is not sustained by the record, it is not sustained by the report, which I hope my friend from Maryland will soon read. It is an after-thought. He does not sustain himself by his own history. A report was made by Mr. FOSTER and Mr. Phelps characterizing this board as men not worthy, to say the least, and all united in saying that they had done that which the law did not authorize them to do. They claim that they were authorized by precedent which the Senator from Ohio calls the precedent of a democratic board in 1872. Does not the Senator know well that there was no democratic board in Louisiana in 1872?

Mr. SHERMAN. On the contrary, I know exactly the reverse, and I tell the Senator that he has fallen into an error. There were two boards in 1872. The first board organized under this very law was the democratic board. That was the board which returned McEnery. The other was the Lynch board, and the democratic board was the De Feriet board. That was the first board organized under the act under which this very board is now acting; and my friend is mistaken, therefore, when he says that there was not a democratic board. In 1872 the first returning officers under this law were a democratic board. The republican board or Lynch board was acting under the law of 1870. That first democratic board established the rule in regard to this matter of protests that was followed by the present board two years afterward.

Mr. BOGY. The De Feriet board, which he calls the democratic board, was not a democratic board, although there was a kind of combination in Louisiana which had combined with the democracy; but it was a mixed board. Let that be as it may, the precedent that is spoken of here is the precedent established by the Lynch board, which was a republican board; and what was that? They permitted testimony to be received by that board in violation of the law, because the law is positive. The Senator is mistaken again when he says it was not thought to be of any importance before that the return of intimidation, or fraud, or bad conduct in the different parishes should be made within twenty-four hours. It has always been considered a most essential thing, and the law is positive in two sections that, if anything of this kind transpires on the day of election or on the day of registration, it shall be the duty of the commissioner and of the supervisor of registration or election to make that return within twenty-four hours; and that has always been considered the law and has always been violated by the returning board of Louisiana, and the committee of the House stigmatized it in very mild terms as something illegal; it was more than illegal; it was a fraud. That same thing was done there a short time ago when the Senator was there. Few, if any, returns of intimidation had been made from any parishes in Louisiana. Perhaps there was none at all; but if there were any, they were few indeed, and none had yet been made when I was in New Orleans, weeks and weeks after the election, and we inquired into it. They were made even days after the Senator was in New Orleans. Made how? Affidavits taken in the city of New Orleans from the scum, and the sewers, and the sidewalks, and *faubourgs* of that city by men who could not sign their names, and, of course, could not read what was written for them; and, on the affidavits of such men, a majority of 8,000 votes in the State has been overturned and an apparent majority of near 4,000 votes given on the other side. If that is fair, I have yet to learn what fairness is. Thus this board did that in violation of law which had been done by the board in 1874, and which the board in 1874 felt justified in doing because the board in 1872 had done it; but the committee of the House said it was wrong; and yet when that report of the committee was known to these men, known to the Senator from Ohio, this present board pursued the same course in violation of law.

Now, sir, if a return of that kind, made in violation of law, can elect a President of the United States, why should not the return of the governor of Oregon be as good and also able to elect a President of the United States? The Senator's effort has been from the beginning of this contest to sustain the action of this board, its purity, its character; to show that it has pursued the law; but it has violated the law in every respect, first, in not organizing with five men, as the law required; second, in receiving affidavits of intimidation and bad conduct on the day of election, in violation of the law. And yet the Senator says they have acted in exact accordance with the law and with great propriety; that these are immaculate men, good men, pure men, the peers of the judges of the Supreme Court of the United States, whose decision is entitled to as much respect as the decision of the Supreme Court of the United States! The Senator is making a great effort to sustain the bull-dozing of the State of Louisiana. I do not think he will succeed.

I am happy to have heard him make the declaration to-day—and as I believe him to be an honorable man I think it will be carried out—that if he ever can be satisfied that the conduct of that board has not been fair and honest and legal, he will himself not sustain the acts of the board. If he cannot be satisfied of that fact when the time comes, then he would not be satisfied if a man should come from the dead or speak with the voice of an angel, because the fact will be made so plain that the blind can see it; no man on earth but will admit the action of the returning board of Louisiana has not been what it should be.

I am compelled to say these things, Mr. President, and it is the position I assumed from the beginning and the Senator is only repeating what he said when this discussion took place in his effort to sustain the board. I say that the board has not placed itself before the country in a way to be entitled to credit. I have no personal feelings of animosity to its members—none at all. I know Mr. Wells but very slightly. But the question arises above that. It is a fact that they are not men of standing at home. They have been held up before this country as unworthy and some of them are men of no attainment, of no character, of no reputation, none at all at home; and the idea of these men returning the vote of that State and being sustained in the plausible, gentle, insinuating way of the Senator from Ohio is what I cannot myself submit to. I say the board was illegally organized and no democrat has ever admitted that the board was legally organized; but it proceeded illegally. A committee composed of republicans in the House heretofore sent down there say so and the law says so; and all their proceedings are now illegal because no certificates of intimidation or protests were made within twenty-four hours and forwarded with the returns in compliance with the law.

Mr. HAMLIN. I move that the Senate proceed to the consideration of executive business.

Mr. WINDOM. Before the motion made by the Senator from Maine is put, I desire to make a statement with reference to a conference report which is expected every moment from the House. I received information a few moments ago that the conference report on the bill appropriating money for the expenses of the committees going south would be sent here within ten or fifteen minutes. It is very important that it should be agreed to to-day, as the committees on both sides are anxious it should be. I hope the Senate will not adjourn until we act upon that conference report.

Mr. ALLISON. We are only going into executive session.

Mr. WITHERS. Can we not proceed to the consideration of executive business with the understanding that when the doors are re-opened the conference report shall be acted upon?

Mr. WINDOM. If the Senate will not adjourn in executive session

but return from executive session to consider the report, I have no objection.

The PRESIDING OFFICER. The Senator from Maine moves that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After fifteen minutes spent in executive session, the doors were re-opened, and (at four o'clock and twenty minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

WEDNESDAY, *December* 20, 1876.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of yesterday was read and approved.

SENECA INDIANS.

Mr. SEELYE, by unanimous consent, from the Committee on Indian Affairs, reported a substitute (H. R. No. 4257) for the bill (H. R. No. 258) to amend an act entitled "An act to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany reservations, and to confirm existing leases," approved February 19, 1875, and moved that the same be recommitted to the committee and ordered to be printed, not to be brought back on a motion to reconsider.

The motion was agreed to.

REFORM SCHOOL, DISTRICT OF COLUMBIA.

Mr. STEVENSON. I ask unanimous consent to report back from the Committee for the District of Columbia joint resolution (H. R. No. 169) authorizing the Secretary of War to supply blankets to the Reform School of the District of Columbia.

The joint resolution was read.

It authorizes and directs the Secretary of War to deliver, for the use of the Reform School of the District of Columbia, two hundred Army blankets from any in his custody belonging to the United States.

Mr. WILSON, of Iowa. Is there a report accompanying that joint resolution?

The SPEAKER. There is none at the desk.

No objection was made to the consideration of the joint resolution, and it was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. STEVENSON moved to reconsider the vote by which the joint resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

CLERK TO A COMMITTEE.

Mr. HARTZELL, by unanimous consent, submitted the following resolution; which was read, and referred to the Committee of Accounts:

Resolved, That the Committee on Expenditures in the Treasury Department be allowed a special clerk for the remainder of the session, to be appointed by the chairman thereof, and to receive the same compensation as clerks of regular committees.

RICHARD H. FOUTS.

Mr. WOODWORTH. At the close of last session, when I was absent by leave of the House, the bill (H. R. No. 2807) for the relief of Richard H. Fouts was reported upon adversely from the Committee on Military Affairs and laid upon the table. I ask unanimous consent that it now be placed upon the Private Calendar.

Mr. BANNING. I object.

PERSONAL EXPLANATION.

Mr. WOOD, of New York. I rise to a question of privilege.

No objection was made.

Mr. WOOD, of New York. Mr. Speaker, I ask the indulgence of the House for a few moments on a matter personal to myself.

It is the first time that I have obtruded anything upon its attention of a merely personal character.

A newspaper of this city has been made the vehicle for circulating false and calumnious charges against me. Most of these refer to business transactions which took place over thirty years ago, and which were then refuted, and retracted by their authors. Those which purport to have occurred since that time have been proven equally without foundation.

These facts are known or should have been known to the parties who are now reviving them, doubtless for the purpose of deterring me from the performance of my public duties at this juncture. I have risen, therefore, to say that each and every allegation affecting my personal integrity in these publications are void of foundation, that they were originally created for purposes of black-mail, that they were promptly met by me then, and completely refuted, without yielding to the money demands which had been made on me, and have been revived since by political and personal enemies for objects obvious to every one.

I ask the Clerk to read a letter sent to me this morning, without solicitation, from Mr. Spofford, the highly esteemed Librarian of Congress, which properly characterizes the nature of these assaults, and the source from which they now emanate.

The Clerk read as follows:

LIBRARY OF CONGRESS,
Washington, D. C., December 19, 1876.

DEAR SIR: My attention has just been called to a highly scurrilous assault upon you in this morning's National Republican of this city. My purpose in writing this note is to pronounce the assertion prefixed to that article, that one of the Library attendants told the writer that the pamphlet referred to had been "stolen from the Library," a falsehood in every particular. Mr. Morris, the assistant who informed the Republican reporter of the absence of the pamphlet, informs me that the interview as printed is a base and willful fabrication. Its author, I understand, is one A. M. Soteldo, lately of the New York Free Lance, a journal devoted chiefly to libels.

Very respectfully, A. R. SPOFFORD,
Hon. FERNANDO WOOD *Librarian of Congress.*

I repeat that every charge, of every nature or character, which the paper referred to has made is, like the one referred to by Mr. Spofford, equally without foundation.

I thank the House for granting me this indulgence. I promise not to trouble it again about any matter so purely personal.

CONGRATULATION FROM IRELAND.

The SPEAKER. The Chair desires to state to the House that he has information that there is in this city a gentleman who bears to the people of this country from the Irish nation congratulations to our people on this centennial year.

Mr. HOLMAN. For the purpose of preparing for consideration of the House such expression as may be deemed appropriate in recognition of this friendly act of the people of Ireland, I submit the following preamble and resolution:

Whereas it has been announced to this House by the Speaker that Mr. John O'Conner Power, M. P., has been deputed to present to the people of the United States congratulations of the Irish nation on the centenary of American Independence: Therefore,

Be it resolved, That the subject of his mission be referred for consideration to the Committee on Foreign Affairs, with instructions to report what action should in their opinion be taken in the premises.

Mr. SWANN. I rise for the purpose of seconding the proposition of the gentleman from Indiana, and I will state for the information of the House that the Committee on Foreign Affairs has already had this subject under consideration and will report upon it as soon as possible, in accordance with the instructions contained in the resolution. We have and will accord him all the courtesies in the power of the committee of which I am chairman.

Mr. TOWNSEND, of New York. I would like to ask the gentleman from Indiana if it would not be better to say the "Irish people" rather than "nation?"

Mr. HOLMAN. Inasmuch as the term "nation" used in its general sense is not inappropriate in this connection, I think it may very properly be retained.

Mr. TOWNSEND, of New York. I am in favor of the resolution in any shape.

Mr. HOLMAN. There is a sense in which the term "nation" is very properly applied to the "Irish people."

I ask the previous question upon adopting the preamble and resolution.

The previous question was seconded.

Mr. HOAR. What is the national authority deputed to this gentleman?

Mr. HOLMAN. It comes from that portion of the Irish people who now reside within the limits of Ireland. He is their representative, deputed by them by general expression as a people.

Mr. HOAR. In what mode is the deputation made or authenticated?

Mr. HOLMAN. By general popular expression, as we are informed. That is one of the subjects which will properly be considered by the Committee on Foreign Affairs. It is the expression of a people, not of organized government, as the country is informed.

Mr. HOAR. The gentleman from Indiana by this resolution makes the House allege as a fact that this gentlemen has been deputed by the Irish nation. Now it is proper, if the House is to assert that fact, that it should know it. The gentleman from Indiana, [Mr. HOLMAN,] who offered the resolution, I understand does not know that fact. My question to him is, What is the national authority? And suppose the Irish nation should say next week that they did not depute this gentleman.

Mr. HOLMAN. The technical point raised by the gentleman from Massachusetts [Mr. HOAR] is clear enough.

Mr. BANNING. Is debate in order?

The SPEAKER. The demand for the previous question has been seconded. The question is upon ordering the main question.

Mr. HOAR. I would say to the gentleman that perhaps it would be better to use the words "alleged to be deputed."

Mr. HOLMAN. There seems to be no question of the fact. The term "nation" used in this preamble is manifestly as used synonymous with the term "people."

Mr. HOAR. Why not say so?

Mr. HOLMAN. I trust the resolution will be adopted in its present form. There is no impropriety or ambiguity in the terms used. The whole subject will go before the Committee on Foreign Affairs for consideration.

The main question was then ordered; and under the operation thereof the preamble and resolution were adopted.

Mr. HOLMAN moved to reconsider the vote by which the preamble

and resolution were adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

FORT CAMERON MILITARY RESERVATION.

The SPEAKER. The morning hour now begins at twenty-one minutes before one o'clock, and the House will resume the consideration of the unfinished business at the expiration of the morning hour of yesterday.

The unfinished business was the bill (H. R. No. 4258) reported from the Committee on Military Affairs as a substitute for House bill No. 2248 to provide for the payment for certain improvements on lands now embraced in the military reservation of Fort Cameron, in the Territory of Utah.

Mr. WILSON, of Iowa. I call for the reading of the report accompanying the bill.

Mr. TERRY. There is no report accompanying the bill. A point of order was made on this bill yesterday, but I understand that the gentleman who made the point of order is willing to withdraw it.

The SPEAKER. The Chair agreed with the gentleman from Michigan, [Mr. CONGER,] who made the point of order, that in case he was not in his seat this morning the point of order should be regarded as pending against the bill.

Mr. TERRY. The gentleman was in his seat a moment ago.

Mr. CANNON, of Utah. The gentleman intimated to me, after I had given him an explanation of the character of the bill, that he would withdraw the point of order.

The SPEAKER. The gentleman from Michigan [Mr. CONGER] is now present, and the Chair would call his attention to the fact that on yesterday he made a point of order against the bill pending at the expiration of the morning hour.

Mr. CONGER. I withdraw my point of order.

Mr. WILSON, of Iowa. I would like to hear some explanation from the gentleman from Virginia [Mr. TERRY] who reported this bill before I give up the right to make a point of order against it. I will reserve my right to object until I hear the explanation.

Mr. BURCHARD, of Illinois. Let the title of the bill be read, so that we may understand what it is.

The SPEAKER. The Chair will direct the Clerk to read the bill.

The Clerk read the bill, which authorizes the Secretary of War to appoint a commission, composed of three Army officers, whose duty it shall be to investigate the claim of W. J. Allred and Alonzo A. Noon for improvements made upon lands now embraced in the military reservation at Fort Cameron, in the Territory of Utah, and to estimate and report upon the value of said improvements. In making such estimate of value of improvements, the board of officers may take into consideration the proceedings of a board of officers who assembled at Fort Cameron February 15, 1875, and such other evidence as may be brought before them, and report also upon the title of the claimants to the land embraced in the reservation.

Mr. TERRY. Prior to the location of this reservation, these claimants allege that they were *bona fide* settlers upon this land and had made improvements upon it. After the reservation was located there, the post commander appointed a commission to estimate the value of these improvements in order that the claimants might come before Congress and obtain payment for the same. It is conceded that the post commander had no right to appoint a commission for this purpose. The original bill provided for paying these claimants for these improvements, but the Committee on Military Affairs have deemed it right to report, not a bill in favor of paying these claimants, but a bill authorizing the Secretary of War to appoint a commission of Army officers to go upon the reservation and ascertain first whether these claimants had any title, and, if so, what compensation should be paid to them for their improvement.

Mr. HOLMAN. I desire to make a single suggestion upon the point of order which I understand is still pending.

The SPEAKER. It is held in abeyance.

Mr. HOLMAN. I desire to call attention to the fact that it has been uniformly held that even the reference of a claim to the Court of Claims comes within the rule. Although that claim may not again come before the House for action, it might result in making an appropriation or requiring one to be made. So in the case of creating an office; the bill creating or establishing the office makes no appropriation for it, but it probably would involve an appropriation of money, and on that account it has been held that bills of that class are subject to the point of order. I would call attention to Rule 112, on page 191 of the rules of the House, which is as follows:

> All proceedings touching appropriations of money, and all bills making appropriations of money or property, or requiring such appropriations to be made, or authorizing payments out of appropriations already made, shall be first discussed in a Committee of the Whole House.

The term made use of in this rule has resulted in the class of decisions to which I refer. This is a proceeding touching the appropriation of money; that is to say, it may involve such an appropriation and probably will; and when a measure so nearly involves an appropriation of money as would the reference of a bill to the Court of Claims or the creation of an office, then of course the subject must be referred under the rule to the Committee of the Whole.

Mr. WILSON, of Iowa. But, Mr. Speaker, I think the gentleman from Indiana will see that when this report is made by this board and a bill based on the report is brought into the House, the point may then be made against the bill; but I do not think it necessary to insist on the point of order now.

The SPEAKER. As the gentleman from Iowa [Mr. WILSON] who made the point of order does not insist upon it, the Chair understands that the bill is before the House free from the operation of the point of order.

Mr. KASSON. Is it in order, then, to offer an amendment?

The SPEAKER. It is.

Mr. KASSON. I suggest, then, to the gentleman having charge of the bill that after the clause providing for the reception by the board of such evidence as may be brought before them, the words "or may be obtained by them" should be added. As I understood the bill from the reading, it provides for the consideration of two items of evidence. First, the report of the former commission; secondly, the evidence that may be brought before them. I think the board ought also to have the power to obtain evidence, which seems to be excluded by the present language of the bill.

Mr. TERRY. I have no objection to adding any language which will make the bill more effective.

Mr. KASSON. I move then to insert after the words "such other evidence as may be brought before them" the words "or may be obtained by them.

Mr. TERRY. There is no objection to that amendment.

The SPEAKER. In the absence of objection, the Chair will regard the amendment as part of the text of the bill. The question is on ordering the bill to be engrossed and read the third time.

Mr. HOLMAN. I hope the bill will be read as amended. As I understand, there is no allegation that these parties had any right to settle on these lands. I do not understand that they were pre-emptors or homesteaders.

The bill, as amended, was read.

Mr. CANNON, of Utah. Mr. Speaker, at the time this fort or reservation was located at Beaver these parties were settlers on this land, cultivating it. They had taken the steps necessary to secure a Government title to it. They had been occupying the land for some time. Colonel Sheridan, under the directions of Lieutenant-General Sheridan, went down and located Fort Cameron at Beaver, in Utah Territory. After the location of the fort at this point a board of officers was empowered to sit and value the improvements that had been made by the original settlers, who had been dispossessed of the occupancy of the land for the purpose of a military reservation. That board of officers did sit and value the land; they received testimony, and the proceedings were submitted to the War Department.

When these parties called at the War Department to have their claims settled, they were told that there were no funds with which to settle the claims; and they were referred to Congress. A bill was introduced in this House early last session to furnish the funds necessary to pay these claimants; but, upon examination of the case by the Committee on Military Affairs, it was found that there was a defect in this proceeding; that the board of officers had sat without authority from the commander of the Department of the Platte. Therefore the Committee on Military Affairs deemed it proper to present this bill, authorizing the Secretary of War to appoint a new board, who shall sit and take into consideration the evidence that was presented to the previous board.

Mr. HOLMAN. The principal question here is as to the nature of the claim of these parties to this land, whether they occupied it under the homestead or pre-emption laws, or by some other mode. If they were mere squatters on this land, without any authority, the Government of course would not be responsible for the value of any improvements which they may have made. Now, if they had taken up this land under the homestead or pre-emption law, how could their claim be divested by the action of the military authorities?

Mr. CANNON, of Utah. It is well known that for twenty-five years settlers in Utah Territory had no title to their lands except that of squatters. I am not informed whether this land had been surveyed or not. But if they had no title to the land, if they were without title and did not enter the land when they had opportunity, that matter can of course be taken into consideration by this board. My impression, however, is that these two persons had taken every step that they could take under the circumstances to secure themselves a title to the land.

Mr. TERRY. To meet the very difficulty which the gentleman from Indiana [Mr. HOLMAN] suggests, this substitute provides that this board of officers shall inquire into the title of these claimants.

Mr. HOLMAN. I had supposed that this information could be obtained very readily from the General Land Office, thus avoiding perhaps the expenditure of a very large sum of money.

The bill was ordered to be engrossed and read a third time; and it was accordingly read the third time, and passed.

Mr. TERRY moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

ROBERT H. FLAVELL.

Mr. TERRY, from the Committee on Military Affairs, reported back, with an amendment, the bill (H. R. No. 1688) for the relief of Robert H. Flavell, sergeant Company F, Seventh Missouri.

The bill, which was read, directs the Secretary of the Treasury to pay to Robert H. Flavell, late sergeant Company F, of the Seventh Regiment of Missouri Volunteers, the sum of $99.80 for extra pay for services from April 5, 1863, to May 7, 1863, and commutation for loss of clothing and personal effects by sinking of steamer Tigress while running the blockades of Vicksburgh, Warrenton, and Grand Gulf, the latter amounting to $82.80; such payment to be in full satisfaction of all demands by said Flavell for said matters and to be made out of moneys in the Treasury not otherwise appropriated.

The amendment of the committee was read, as follows:

In line 6 strike out "$98.80," and in lieu thereof insert "$40.30."

The amendment was agreed to.

The bill, as amended, was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. TERRY moved to reconsider the vote by which the bill, as amended, was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

ADVERSE REPORTS.

Mr. TERRY also, from the same committee, moved that the committee be discharged from the further consideration of the following joint resolution, bills, petitions, and memorials, and that the same be laid on the table; which motion was agreed to:

A bill (H. R. No. 2788) for the relief of certain settlers on the Camp Lowell military reservation, Territory of Arizona;

A bill (H. R. No. 2554) to extend the time within which the Court of Claims may hear and determine the claims of the officers and soldiers of the late war, growing out of services therein;

A bill (H. R. No. 52) to pay certain persons therein specified for horses illegally taken from them by officers of the United States;

A bill (H. R. No. 2605) for the relief of Thomas B. Doe, of Virginia;

A bill (H. R. No. 3082) for the relief of Richard T. Jacob, jr., lieutenant Sixth United States Infantry;

A bill (H. R. No. 2789) for the relief of Charles A. Luke;

A joint resolution (H. R. No. 67) authorizing the Secretary of War to detail and assign to duty Army officers in connection with the centennial exposition;

A bill (H. R. No. 3724) for the relief of First Lieutenant J. A. Yeckley, Twentieth United States Infantry;

A bill (H. R. No. 227) to equalize the credits of officers of the Army in computing longevity allowance of pay;

A bill (H. R. No. 1293) for the relief of Albert G. Peabody, jr.;

A bill (H. R. No. 1004) to provide for the removal of the Walla Walla, Cayuse, and Umatilla Indians from the Umatilla reservation in Oregon, and for the sale of their lands;

A bill (H. R. No. 2497) granting an honorable discharge to Benjamin F. Trine, Company A, Second Battalion, Fifteenth United States Infantry;

A bill (H. R. No. 2891) for the relief of Eliza J. Font, widow of Jeremiah Keeton, late of Company D, Second Virginia Cavalry;

A bill (H. R. No. 3155) for the relief of James Richardson, late a private in Company E, Thirteenth Indiana Volunteer Cavalry;

A bill (H. R. No. 2350) for the relief of Lieutenant Mason Carter, United States Army;

A bill (H. R. No. 4099) for the relief of Lieutenant Thomas Nugent, Company H, Twenty-seventh Indiana Volunteers;

A bill (H. R. No. 3806) for the relief of Edward Corselius, Colby Short, James W. Jubb, Sylvanus Avery, J. J. Hosmer, George Hopkins, W. M. Wright, W. E. Clark, G. W. Cramton, M. McDermott, E. Allen, late members Michigan Veteran Volunteer Cavalry;

A bill (H. R. No. 2917) to restore C. T. Speer, of Colorado Territory, to his rank and position as second lieutenant in the Eleventh United States Infantry;

The petition of First Lieutenant James M. Bell, Seventh Cavalry, United States Army, for pay for loss and damage to property in transit while changing stations from Fort Lincoln, Dakota Territory, to Shreveport, Louisiana;

The memorial of the disabled volunteer officers late of the Union volunteer Army, now at the National Home of Disabled Volunteer Soldiers at Dayton, Ohio, relative to the inequality in the pay of retired officers and pensioned officers of corresponding rank and disability;

The petition of William Mosely, late a hospital steward, United States Army, requesting that the cause of his discharge from the service (before expiration of term of service) may be investigated; and

Petition of William Geisel, late second lieutenant Company C, Sixth Kentucky Volunteer Infantry.

TRADING ESTABLISHMENTS AT MILITARY POSTS.

Mr. BANNING, from the same committee, moved that that committee be discharged from the further consideration of a bill (H. R. No. 2564) to prevent monopoly and exorbitant charges in trade establishments at military posts and to secure good order at the same, and that the same be laid on the table; which motion was agreed to.

ARMY PROPERTY AND MONEY DEPARTMENTS.

Mr. BANNING also, from the same committee, moved that that committee be discharged from the further consideration of a bill (H. R. No. 2530) to re-organize the property and money departments of the Army, and for purposes connected therewith, and that the same be laid on the table; which motion was agreed to.

SERVICES OF MONTANA VOLUNTEERS.

Mr. BANNING also, from the same committee, reported back, with an adverse recommendation, the bill (H. R. No. 3995) to authorize the President of the United States to accept the services of Montana Volunteers for the suppression of Indian hostilities; and moved that the committee be discharged from the further consideration of the same, and that it be laid on the table.

The SPEAKER. The Chair will state to the gentleman from Ohio and to the House that in case of adverse action by a committee on any matter referred to them it is the rule that there should be a report. That is the only way in which Congress is protected against acting favorably at some future time on a bill which had previously been reported upon adversely.

The motion of Mr. BANNING was agreed to.

CAPTAIN EDWARD S. MEYER.

Mr. BANNING. I am also instructed by the Committee on Military Affairs to report that the committee have had under consideration the message from the President of the United States assigning reasons for not approving the bill (H. R. No. 36) to restore Captain Edward S. Meyer to the active list of the Army. This bill passed the House, passed the Senate, went to the President, and was vetoed. The committee concur in the veto message of the President, and instruct me to report back the bill with the recommendation that it lie upon the table.

The message of the President was as follows:

To the House of Representatives:

For the reasons stated in the accompanying communications submitted to me by the Secretary of War, I have the honor to return herewith, without my approval, House bill No. 36, entitled "An act to restore the name of Captain Edward S. Meyer to the active list of the Army."

U. S. GRANT.

EXECUTIVE MANSION, *August* 14, 1876.

[H. R. 36.—44th Congress, 1st session.]

In the Senate of the United States, July 14, 1876.—Read twice and referred to the Committee on Military Affairs.

An act to restore the name of Captain Edward S. Meyer to the active list of the Army.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be, and he hereby is, authorized to restore to the active list of the Army the name of Captain Edward S. Meyer, of the Ninth Regiment of Cavalry, who was retired on the 24th day of August, 1872, for reason of physical disability, resulting from wounds received at the battle of Chancellorsville, from which he has since sufficiently recovered to return to active duty, and to assign him to any vacancy in his grade now existing, or which may hereafter occur, in any of the cavalry regiments of the Army: *Provided*, That the time that he has been on the retired list not be counted in his service in giving promotion.

MILTON SAYLER,
Speaker of the House of Representatives pro tempore.
T. W. FERRY,
President of the Senate pro tempore.

WAR DEPARTMENT,
Washington City, August 4, 1876.

SIR: I have the honor to return House bill 36, "to restore the name of Captain Edward S. Meyer to the active list of the Army," and beg to invite your attention to the inclosed report of the Adjutant-General of this date, stating objections to the approval of the bill.

Very respectfully, your obedient servant,

J. D. CAMERON,
Secretary of War.

The PRESIDENT.

ADJUTANT GENERAL'S OFFICE,
August 4, 1876.

Respectfully returned to the Secretary of War.

Edward S. Meyer served as a private in the Fourth Ohio Volunteers (three months) from May 4, 1861, to August 18, 1861. He again enlisted as private Nineteenth Ohio Volunteers, September 10, 1861, was promoted first lieutenant November 1, 1861, and resigned September 27, 1862. He was commissioned captain One hundred and seventh Ohio Volunteers November 11, 1862; was wounded at Chancellorsville, Virginia, May 2, 1863, and discharged for physical disability January 1, 1865. He was again mustered into service February 8, 1865, as major Fifth United States Veteran Volunteers, (Hancock's Corps,) and mustered out March 20, 1866. Was brevetted lieutenant-colonel, colonel, and brigadier-general of volunteers March 13, 1865.

He was appointed captain Thirty-fifth United States Infantry July 28, 1866; became unassigned August 12, 1869; assigned to Nineteenth Infantry August 5, 1870; and transferred to Ninth Cavalry January 1, 1871. Retired August 24, 1872.

July 8, 1869, Captain Meyer applied for retirement on account of wounds received at Chancellorsville May 2, 1863, by which he was incapacitated for active service. No action was then had on the request, pending action by Congress reducing the Army.

October 6, 1869, he asked to be placed on waiting orders, being unfit for duty, and no possibility of improvement without going North. He was accordingly relieved from duty and ordered home to await orders.

December 18, 1869, he called on the Secretary of War and asked to be assigned to duty.

January 4, 1870, he again applied to be assigned to duty with some regiment on the frontier, stating that his wound had healed, &c., and asking to withdraw his previous request for retirement; this was accompanied by a similar request from his father, Mr. S. Meyer, of Ohio.

July 29, 1870, he applied the third time to withdraw application for retirement and to be assigned to duty. On January 1, 1871, in accordance with his repeated requests to be assigned to duty, he was assigned to the Ninth Cavalry, serving in Texas. He joined the regiment, and on March 4, 1872, he renewed his former request to be ordered before a retiring board, stating that he found his injuries would not allow him to remain on duty on the frontier; that his disability was constantly increasing, &c. The medical director of the department approved the request, and added that Captain Meyer's wounds certainly unfitted him for service on the frontier.

April 13, 1872, Senator SHERMAN joined in requesting retirement of Captain Meyer. He was ordered before the retiring board, and on August 20, 1872, was examined. The board found Captain Meyer incapacitated for active service, and that said incapacity

results from a gun shot wound received in his lower jaw at the battle of Chancellorsville, Virginia, May 3, 1863, when captain in One hundred and seventh Ohio Volunteers. He was retired in accordance with the finding.

March 21 and December 6, 1873, Captain Meyer asked restoration to active service and re-appointment as a captain of cavalry, which application was disapproved by the General of the Army.

Pending the action on the bill before Congress, no reports were called for, as to the official facts of record in the War Department, and no evidence has been filed in this office showing that he has sufficiently recovered.

The absence of such evidence, and the fact that after one assignment to active duty he has failed to be sufficiently recovered, are submitted as objections why the ill should not be approved.

E. D. TOWNSEND,
Adjutant-General.

Mr. BANNING. The recommendation of the committee is that the bill and message do lie on the table.

The SPEAKER. The Chair is of opinion that under the Constitution the yeas and nays must be called. The language of the Constitution is very clear on this point. It says:

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it with his objections to that House in which it shall have originated, who shall enter the objections at large on their Journal, and proceed to reconsider it. If after such reconsideration two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But in all cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the Journal of each House respectively.

Under that provision of the Constitution the Chair rules that in all cases of action by the House upon a veto message the yeas and nays must be taken.

Mr. BANNING. I was about to suggest to the Chair, but the suggestion I suppose is too late now, that this has not been the practice. I call the Speaker's attention to Barclay's Digest, page 226, which says:

A veto message and bill may be referred, or the message alone and the bill may be laid on the table.

In addition to this, I find in the Journal of this House of August 10, 1841, page 1256, the House having under consideration a veto message—

A motion was made by Mr. James Cooper that the bill do lie on the table.

Mr. William Cost Johnson objected to this motion as not in order, for that, according to the Constitution, the House must proceed to the reconsideration of said bill. The Speaker decided the motion to lay on the table was in order. From this decision Mr. William Cost Johnson appealed to the House, which appeal was, on motion of Mr. Fillmore, ordered to lie on the table, and the opinion of the Speaker stands. The question was then put that the bill do lie on the table, and passed in the affirmative—yeas 97, nays 73.

Mr. HOAR. I desire, Mr. Speaker, to suggest whether, as the yeas and nays must be clearly called upon the question under the ruling of the Chair, it is not better to put the question, "Shall the bill pass notwithstanding the objections of the President?"

It is true that the motion to lay on the table is under our usages a method of final disposition of such a measure. Still, it is not strictly and technically a disposition of the measure. It is technically the laying of a measure on the table from which it might be again taken.

The SPEAKER. The Chair is clearly of the opinion that the proper way to proceed is that suggested by the gentleman from Massachusetts. There is only one instance, or perhaps two, in which it has been varied from——

Mr. HOAR. If the Chair will pardon me, as this is a very important point——

The SPEAKER. The Chair will hear the gentleman as far as he wishes to proceed.

Mr. HOAR. I desire simply to suggest as a reason for the ruling of the Chair that the yeas and nays must be taken, that the object of this provision of the Constitution was the protection of the people against the possible encroachment of the executive power. Therefore Congress having once passed a bill, if the President returned it, in order that the House or Senate might not change their minds as to what the good of the people require in consequence of any undue pressure from the executive department, it was ordained for the protection of the people that the names of the persons voting should be on the Journal, in order that they might do it under the responsibility of the public knowledge of the vote. That, of course, applies to every mode in which the bill is disposed of.

The SPEAKER. The Chair concludes from the statement and suggestion of the gentleman from Massachusetts that he coincides with the Chair in his ruling?

Mr. HOAR. Entirely.

The SPEAKER. The question would first be on the reconsideration of the vote by which the bill was passed. Is the House ready for the question?

Mr. HOAR. Is not the true question, "Shall the bill pass notwithstanding the objection of the President?"

Mr. BURCHARD, of Illinois. This is the statement in the Digest:

The main question in the consideration of a vetoed bill is, "Will the House on reconsideration agree to pass the bill?"

The SPEAKER. The practice as recorded in the Digest—

The main question in the consideration of a vetoed bill is, "Will the House on reconsideration agree to pass the bill"—

would seem to make necessary the question which the Chair has presented to the House, "Will the House reconsider the vote by which the bill was passed?"

Mr. KASSON. If the Chair will allow me, I would suggest that it is the first reconsideration brought about by returning the bill to the House that that refers to. The President returned the bill here; it is reconsidered by the House; and the question that is then arrived at is, "Will the House agree to pass the bill?"

The SPEAKER. That has not been the practice, but it clearly saves a motion.

Mr. GARFIELD. It seems to me that the veto power of the President is misnamed when it is called a veto power. The only power the President has is to move a reconsideration. He moves a reconsideration of the bill; and when he sends it back here it is reconsidered and the motion is, "Shall the bill now pass, notwithstanding the objections of the President?" We do not need ourselves to vote to reconsider. The President has the power to put the bill in the attitude of one under reconsideration.

The SPEAKER. The words prescribed in the Manual are these: "Will the House on reconsideration agree to pass the bill."

Mr. GARFIELD. That is the reconsideration now pending.

Mr. WILSON, of Iowa. I think there is a little difference between the word "reconsideration" used in the Constitution and the word "reconsideration" as used in our practice. I think in the Constitution it will bear the construction, Will the House after further consideration agree to pass the bill? and I think the proper question would be, Will the House after reconsideration agree to pass the bill?

The SPEAKER. The Chair will put the motion: Will the House agree to pass the bill notwithstanding the veto of the President?

Mr. GARFIELD. That is it.

The SPEAKER. Upon this motion the yeas and nays must be taken.

Mr. BANNING. I merely wish to understand how the question stands. The instructions of the committee was that I should make the motion which I have made, to lay the bill upon the table. That motion was made in accordance with the Manual, and I understand that it is ruled out by the Chair.

The SPEAKER. The Chair rules it out.

Mr. BANNING. Then I ask for a vote upon the question Shall the bill pass notwithstanding the veto of the President? so that the matter may be disposed of.

Mr HOLMAN. What is the motion?

The SPEAKER. The Chair desires to state that the report from the committee was substantially that the bill should not pass, or, in other words, that the veto of the President should be sustained.

The question will now be taken, Shall the bill pass notwithstanding the veto of the President?

The question was taken; and there were—yea 1, nays 197, not voting 91; as follows:

YEA—Mr. Terry—1.

NAYS—Messrs. Adams, Ainsworth, Anderson, Ashe, Atkins, George A. Bagley, John H. Bagley, jr., John H. Baker, William H. Baker, Ballou, Banning, Bell, Blair, Bland, Bliss, Blount, Boone, Bradford, Bradley, Bright, William R. Brown, Horatio C. Burchard, Samuel D. Burchard, Cabell, William P. Caldwell, Campbell, Candler, Cannon, Carr, Cason, Cate, Caulfield, Chittenden, John B. Clarke of Kentucky, Clymer, Collins, Conger, Cook, Cowan, Cronse, Culberson, Cutler, Davis, Davy, Dibrell, Dobbins, Douglas, Durand, Durham, Eames, Ellis, Evans, Faulkner, Felton, Finley, Forney, Foster, Franklin, Freeman, Frye, Fuller, Garfield, Gause, Gibson, Glover, Goode, Goodin, Gunter, Andrew H. Hamilton, Robert Hamilton, Hancock, Haralson, Hardenbergh, Benjamin W. Harris, Henry R. Harris, John T. Harris, Hartridge, Hartzell, Hatcher, Hathorn, Haymond, Hendee, Henderson, Hereford, Abram S. Hewitt, Goldsmith W. Hewitt, Hill, Hoar, Holman, Hoskins, Humphreys, Hunter, Hunton, Hurd, Kasson, Kehr, Knott, Lamar, George M. Landers, Lane, Leavenworth, Levy, Lewis, Luttrell, Lynch, Mackey, Magoon, Maish, McCrary, McDill, McFarland, Metcalfe, Miller, Milliken, Money, Monroe, Morgan, Mutchler, Neal, Norton, O'Brien, Oliver, O'Neill, Packer, Page, Payne, William A. Phillips, Pierce, Piper, Plaisted, Platt, Poppleton, Potter, Powell, Pratt, Purman, Rainey, Rea, Reagan, James B. Reilly, Riddle, John Robbins, William M. Robbins, Rusk, Sampson, Scales, Schleicher, Seelye, Singleton, Sinnickson, Slemons, A. Herr Smith, William E. Smith, Southard, Sparks, Spencer, Springer, Stanton, Strait, Stenger, Stevenson, Stone, Swann, Tarbox, Thomas, Thornburgh, Martin I. Townsend, Tucker, Tufts, Van Vorhes, John L. Vance, Robert B. Vance, Wait, Gilbert C. Walker, Alexander S. Wallace, John W. Wallace, Warner, Watterson, Erastus Wells, White, Whitehouse, Whiting, Whitthorne, Willard, Andrew Williams, Alpheus S. Williams, Charles G. Williams, James Williams, Jeremiah N. Williams, William B. Williams, Willis, Benjamin Wilson, James Wilson, Alan Wood, jr., Fernando Wood, Yeates, and Young—197.

NOT VOTING—Messrs. Abbott, Bagby, Banks, Bass, Beebe, Blackburn, John Young Brown, Buckner, Burleigh, John H. Caldwell, Caswell, Chapin, John B. Clark, jr., of Missouri, Cochrane, Cox, Crapo, Danford, Darrall, De Bolt, Denison, Dunnell, Eden, Egbert, Flye, Fort, Hale, Harrison, Hays, Henkle, Hoge, Hooker, Hopkins, House, Hubbell, Hurlbut, Hyman, Jenks, Frank Jones, Thomas L. Jones, Joyce, Kelley, Kimball, King, Franklin Landers, Lapham, Lawrence, Le Moyne, Lord, Lynde, MacDougall, McMahon, Meade, Mills, Morrison, Nash, New, Odell, Phelps, John F. Philips, John Reilly, Rice, Roberts, Robinson, Miles Ross, Sobieski Ross, Savage, Sayler, Schumaker, Sheakley, Smalls, Stephens, Stowell, Teese, Thompson, Throckmorton, Washington Townsend, Turney, Waddell, Waldron, Charles C. B. Walker, Walling, Walsh, Ward, Warren, G. Wiley Wells, Wheeler, Wigginton, Wike, Wilshire, Woodburn, and Woodworth—91.

So (two-thirds not voting in favor thereof) the bill was not passed.

The SPEAKER. The morning hour has expired.

INVESTIGATING-COMMITTEES' TELEGRAMS.

Mr. LYNDE. I rise to a question of privilege. I am instructed by the Committee on the Judiciary to submit a report with accompanying resolution, which I send to the Clerk's desk, and upon which I ask the previous question.

The Clerk read as follows:

Report of Committee on the Judiciary on House resolution of the 16th of December instant.

Your committee have had under consideration the communication presented to the House by the Speaker, from Hon. WILLIAM R. MORRISON, chairman of the select committee appointed to investigate certain matters relating to the late election in Louisiana, and respectfully report that the communication fails to inform the House of the names of the person or persons who refuse to produce papers and telegrams, or the circumstances under which the refusal was made. The House has the power to compel the production of books, papers, and telegrams mentioned in the investigation before the committee, and any witness who shall refuse to produce such papers or telegrams when required should be brought to the bar of the House to answer a violation of the privilege of the House.

The committee report the following resolutions and recommend their adoption:

Resolved, That whenever any witness duly subpœnaed to appear before any committee of investigation of the House refuses to appear before such committee, or refuses to produce any books, papers, or telegrams in his possession or under his control, when required, the committee shall report the name of such witness and the facts and circumstances relating to such refusal, for the action of the House.

Resolved, That whenever a witness has been duly subpœnaed to appear before a committee of this House, any person who shall tamper with such witness in regard to the evidence to be given by him before the committee, or who shall interfere with or prevent the attendance of such witness before the committee to give testimony, or interfere with or prevent or endeavor to intimidate or prevent such witness from producing any books, papers, or telegrams required by the committee, on the facts being reported to the House such person shall be brought to the bar of the House to answer for a breach of the privileges of the House.

Mr. McCRARY. I understand that the gentleman from Ohio [Mr. HURD] desires to offer an amendment on behalf of the minority of the committee.

The SPEAKER. The Chair recognized the gentleman from Wisconsin [Mr. LYNDE] as having the floor, and he has demanded the previous question.

Mr. McCRARY. I think the Chair misunderstood the gentleman from Wisconsin.

The SPEAKER. The Chair is certain that he did not misunderstand the gentleman; he heard him call the previous question.

Mr. LYNDE. I will yield to the gentleman from Ohio [Mr. HURD] to present his amendment.

Mr. HURD. In behalf of the minority of the Committee on the Judiciary, I desire to offer a resolution in addition to those reported by the majority.

The SPEAKER. Does the gentleman from Wisconsin [Mr. LYNDE] admit this amendment for information or for action?

Mr. LYNDE. For action.

Mr. KNOTT. Permit me to make a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. KNOTT. Should the amendment offered by the gentleman from Ohio [Mr. HURD] be agreed to, will it be then in order for me to offer a report for the substitute as amendment?

The SPEAKER. Should the call for the previous question be sustained, that would cut off any further amendment.

Mr. LYNDE. I understand that the amendment offered by the gentleman from Ohio [Mr. HURD] is in the form of an additional resolution.

Mr. HURD. That is all.

The SPEAKER. The amendment will be read.

The amendment was read, as follows:

Resolved, That the subpœnas issued by House committees commanding telegrams, books, papers, and other documents to be produced should describe them with such convenient particularity as may be, in order that they may be made capable of identification; and in cases where telegrams are ordered to be produced they should be described by reference to the names of the parties sending and receiving the same, the general subject-matter of their contents, and the date as near as may be of their transmission; but the committees charged with the inquiry shall not be required to make such description when, after having determined that they have reasonable ground to believe that telegrams are material to such inquiry, they shall be ignorant of the parties to such telegrams, of their contents and dates; but any description which will enable such telegrams to be identified shall be deemed sufficient.

Mr. LYNDE. I now call the previous question on the resolutions reported from the committee and the additional resolution submitted by the gentleman from Ohio, [Mr. HURD.]

Mr. KNOTT. Would it be in order to move a substitute for the original resolutions and amendment?

The SPEAKER. If the previous question is sustained it will cut off further amendment.

Mr. ATKINS. Let the substitute of the gentleman from Kentucky [Mr. KNOTT] be read.

Mr. LYNDE. I will yield to allow the substitute to be read for information.

The proposed substitute was read, as follows:

Resolved, That there is nothing in the law rendering a communication transmitted by telegraph any more privileged than a communication made orally or in any other manner whatever; that this House has the power through its subpœna, under the hand and seal of its Speaker, to require any person to appear before any committee to which it has given authority to examine witnesses and send for persons and papers, and bring with him such books or papers, whether the papers be telegraphic messages or others, for the inspection of such committee, as such committee may deem necessary to the investigation with which such committee may have been charged; and that such committees may order and direct any witness who may be brought before it to produce to the committee any book or paper, whether such paper be a telegraphic dispatch or other, which may appear to be in his possession or under his control, which said committee may deem necessary to the investigation with which it may have been charged; and that any person upon whom such subpœna shall have been served, who shall disobey the same, or having appeared as a witness shall disobey the order of such a committee to produce any book or paper which he shall have been ordered by such committee to produce, should be brought to the bar of the House upon a report of the facts by the committee to answer for a contempt of the authority of the House, and dealt with as the law under the facts may require.

Resolved, That any person who shall prevent, or attempt to prevent, any person who shall have been subpœnaed to appear before any committee of this House from so appearing or from testifying before said committee, or from producing any book or paper which such witness may have been required to produce, or prevent or attempt to prevent any such witness from speaking the truth before such committee, should, upon a report by the committee of all the facts, be brought to the bar of the House to answer for a contempt, and dealt with as the law under the facts may require.

The SPEAKER. The Chair will inform the House in reference to the manner of voting upon these questions. The gentleman from Wisconsin, [Mr. LYNDE,] as the Chair understands, has demanded the previous question upon the original resolutions reported from the Committee on the Judiciary and upon the amendment submitted by the gentleman from Ohio, [Mr. HURD.] If the previous question shall be sustained it will prevent a vote upon the proposed substitute by the gentleman from Kentucky, [Mr. KNOTT.]

Mr. CONGER. I desire to inquire of the Chair whether it is in order to demand a separate vote upon the two resolutions reported by the majority of the Committee on the Judiciary.

The SPEAKER. The Chair would so decide.

Mr. CONGER. Then I will ask for the vote upon those resolutions to be taken separately.

Mr. LYNDE. If it is in order I will ask that a vote may be taken upon the substitute offered by the gentleman from Kentucky, [Mr. KNOTT.]

The SPEAKER. If the demand for the previous question is voted down by the House, then the gentleman from Kentucky will be recognized by the Chair to offer his substitute.

Mr. KNOTT. But suppose the previous question is withdrawn?

Mr. GARFIELD. I would suggest to the gentleman from Wisconsin [Mr. LYNDE] not to insist upon the previous question at present, but to allow some debate within reasonable limits.

Mr. KNOTT. The question I ask is this: If my friend from Wisconsin should withdraw the demand for the previous question in order to allow me to submit a substitute for the resolutions of the report and the resolution of the gentleman from Ohio, would it be in order for me to do so?

The SPEAKER. The Chair would entertain such a motion of course.

Mr. KNOTT. Then I ask the gentleman to yield to me to offer my substitute.

The SPEAKER. The Chair understands the gentleman from Wisconsin to yield first to the gentleman from Ohio [Mr. HURD] for his amendment, and then to the gentleman from Kentucky [Mr. KNOTT] for his substitute; and then he demands the previous question.

Mr. LYNDE. I do.

The previous question was seconded, there being—ayes 114, noes 62.

Mr. KASSON. Before the main question is put, as several of us came in at the conclusion of the reading of these various propositions, I ask that they may be again read.

There was no objection.

The SPEAKER. If there be no objection the several propositions will be again read.

Mr. O'BRIEN. Before that is done I desire to ask a parliamentary question. Do I understand that, should the main question be ordered, we shall have the right to vote upon the resolutions introduced by the chairman of the Judiciary Committee, [Mr. KNOTT?]

The SPEAKER. The Chair has so stated. The first question will be on the amendment of the gentleman from Ohio, [Mr. HURD.]

Mr. O'BRIEN. And if that be defeated, then upon the substitute offered by the gentleman from Kentucky?

The SPEAKER. Whether it is defeated or not.

Mr. O'BRIEN. That is all I want.

The resolutions reported by Mr. LYNDE were again read.

Mr. CONGER. I desire to call the attention of the gentleman who reported this proposition to the fact that it is not confined to committees authorized to send for persons and papers, but refers to any committee. I suggest whether a modification in that respect is not necessary.

The SPEAKER. The Clerk will now read the amendment submitted by the gentleman from Ohio.

The amendment offered by Mr. HURD was again read, and also the substitute proposed by Mr. KNOTT.

The question was then on ordering the main question.

Mr. CONGER. The gentleman who reports the resolutions of the majority of the committee proposes to ask the consent of the House to modify those resolutions so as to apply to committees authorized to send for persons and papers.

The SPEAKER. The previous question has been seconded.

Mr. CONGER. But the gentleman may modify his own resolution.

The SPEAKER. Only by unanimous consent.

Mr. LYNDE. I ask unanimous consent to modify the second resolution.

The SPEAKER. This is a report from a committee, and the Chair does not believe that it can be modified in this way.

Several MEMBERS. It can be by unanimous consent.

The SPEAKER. It cannot be done except by unanimous consent. Is there objection to the modification suggested by the gentleman from Wisconsin?

Several MEMBERS. What is the modification?

Mr. LYNDE. I propose to modify by inserting after the word "committees" the words "authorized by the House to send for persons and papers."

Mr. TOWNSEND, of New York. I object.

Mr. FRYE. This report having been made by the gentleman from Wisconsin, [Mr. LYNDE,] I understand he has an hour for debate upon the subject.

The SPEAKER. The previous question has been seconded, and the question is now upon ordering the main question. If the main question should be ordered the floor will of course be under the control of the gentleman from Wisconsin, if he chooses to occupy it.

The main question was ordered.

The SPEAKER. The first question is upon the amendment of the gentleman from Ohio, [Mr. HURD.]

Mr. HOAR. A very large number of members on both sides have suggested that it would be agreeable to them to have these several propositions printed and made a special order for to-morrow morning, if that can be done without delaying the matter any further, which nobody desires.

The SPEAKER. That can be done by unanimous consent.

Mr. O'BRIEN. There is objection to that.

Mr. GARFIELD. I wish to say that these propositions involve very grave questions of right and of law, and it would be a great convenience to every one to be permitted to see them in print before being required to vote upon them. For myself, upon hearing casually the reading of these papers, I scarcely feel able to decide how I ought to vote. I hope, therefore, that the consent now asked will be given.

The SPEAKER. There has been objection.

Mr. FRYE. Mr. Speaker——

The SPEAKER. Debate is not in order.

Mr. FRYE. I rise to a question of order: whether the gentleman from Wisconsin is not now entitled to an hour for debate.

The SPEAKER. The Chair has already answered that question.

Mr. FRYE. I ask the gentleman from Wisconsin whether he will not take the hour to which he is entitled, in order that there may be some discussion of this subject.

The SPEAKER. The gentleman's question is in the nature of debate, which is not in order, as the main question has been ordered.

Mr. CONGER. I rise to a question of order: whether it would be in order to move the postponement of the consideration of this subject until to-morrow morning after the morning hour, so that these resolutions may meanwhile be printed.

Mr. SPRINGER. The effect of the previous question is to order this question to be now put.

The SPEAKER. Does the gentleman rise to a point of order?

Mr. SPRINGER. No, sir; but I wish to suggest that the motion to postpone is not now in order. Rule 32 states the precedence of motions to be in the following order: "to adjourn, to lie on the table, for the previous question, to postpone to a day certain, to commit or amend, to postpone indefinitely." The House has already ordered the main question to be now put, and but two other motions can now be made, namely, to adjourn or to lay the subject under consideration on the table.

The SPEAKER. The Chair rules that the motion to postpone is not in order, the previous question having been seconded and the main question ordered.

Mr. WOOD, of New York. I desire to ask the Chair to state, so it can be understood by the House, the precise attitude of the three different propositions before the House and what will be the effect of a vote on it.

The SPEAKER. The first question is on the adoption of the amendment, as submitted by the gentleman from Ohio, [Mr. HURD,] to the original report of the committee.

Mr. WOOD, of New York. If that shall be adopted, what then?

The SPEAKER. Then the question will come up on the substitute of the gentleman from Kentucky, [Mr. KNOTT.]

Mr. LYNDE. I wish to explain to the House, if I have the floor.

The SPEAKER. The gentleman, under the rules, is entitled to the floor.

Mr. LYNDE. I will first explain the effect of the amendment of the gentleman from Ohio [Mr. HURD] to the original resolution reported by the committee. The amendment offered by the gentleman from Ohio prescribes the description which shall be used by the committee requiring the production of papers. It limits to some extent the authority of the committee in requiring the production of books or papers. It is true that the last clause of the gentleman's amendment provides that, where the committee do not know the name of the person who has sent the paper or the date of the communication, then they may give a general description, and the witness shall then produce the books or papers on that general description.

The objection which the majority of the committee had to the resolution as proposed by the gentleman from Ohio was that it left it in some measure within the discretion of the witness himself, as we thought, to determine whether the writ issued by the committee required the production of a paper or not. That question we regarded as a question for the committee in the first instance to decide and for the House finally to determine, and that the witness should have no right to decide or determine whether the papers sought for came within the requirements of the writ or not. To illustrate to the House, in Mr. Orton's communication to Mr. MORRISON he states in the first place that he is informed that employés of the telegraph company have been subpœnaed to bring before the committee certain communications between certain parties during certain months, specifying the months, and that the question was whether that was a proper form of subpœna and whether the committee was authorized to require the production of papers on so general a description. I think it was the opinion of a majority of the committee that it was specific enough, for it might not be within the power of the committee to designate any more specifically the papers they desired to have before them. Therefore the committee declined to adopt the resolution now presented to the House by the gentleman from Ohio.

Mr. KASSON. Now please state what will be the effect of the proposition of the gentleman from Kentucky, [Mr. KNOTT.]

Mr. LYNDE. The proposition of the gentleman from Kentucky embraces perhaps what is already contained in the proposition presented by the committee, perhaps in a more direct form, but it does not conflict, as I understand, with the resolutions of the committee. I now yield to the gentleman from Ohio.

Mr. HURD. Mr. Speaker, the amendment reported by the minority of the committee relates to a subject-matter entirely different from that treated of by the resolutions of the majority of the committee and the substitute of its chairman. It relates to the form which shall be given to all subpœnas issued by the committees of this House for the purpose of requiring the production of telegrams and other papers. It recognizes the power of the House to issue subpœnas *duces tecum* requiring the production of papers. It recognizes the power of the House to punish for contempt of its authority those who have refused to produce papers in compliance with the terms of the writ. It recognizes likewise the power of the House to punish for contempt those who may have been guilty of tampering with witnesses who have been duly subpœnaed by the authority of the House. But it declares that no subpœnas shall issue for papers or telegrams unless there shall be contained in the subpœna such convenient description of the papers or telegrams sought as will enable persons upon whom the process may be served to identify them. It provides that in case of telegrams there shall be a description which shall give the names of the parties receiving and sending them, the general subject-matter of their contents, and as nearly as may be the date of their transmission. But in cases where the parties issuing the subpœnas may be ignorant of these facts the last provision of the resolution declares that such other description shall be deemed sufficient which enables the telegram to be identified.

This resolution is introduced to prevent a practice which has arisen in some places of issuing subpœnas which may be regarded as drag-net subpœnas, as they have been termed, which may call upon telegraph operators at any given point to bring before the committee all telegrams which may be in their possession, thus enabling the committee not merely to produce the evidence which relates to the particular matter of investigation, but also to bring before them the private telegrams of many other individuals, which may be irrelevant to the subject-matter of the inquiry.

The rule that this resolution proposes to adopt declares that, first, there shall be a finding on the part of the committee that certain telegrams are thought or supposed to be material, and then that the subpœna shall contain the description of such telegrams to which I have alluded. In making this recommendation it follows the well-established rule of courts of justice upon this subject; and while the gentleman from Wisconsin [Mr. LYNDE] has suggested as an objection that it would leave to the witnesses themselves the power to determine the relevancy or materiality of the testimony, I will say in reply to the suggestion that such is the case in every *duces tecum* that is issued by the courts in the administration of justice. The designation, the description, should be such as to enable third parties to identify the telegram or the instrument desired. And I will say that in this recommendation the minority of the committee has followed the precedent which was set at the last session of Congress by the Judiciary Committee, when a subpœna was issued after full deliberation for the production of telegrams in what is known generally as the Blaine investigation.

Under these circumstances I submit that it is proper that there should be this limitation. Not a telegram which this committee can properly desire for the purpose of giving them information will be cut off from them. It only prevents this committee and other committees from issuing subpœnas for telegrams which have no connection with the subject-matter of the inquiry and no relevancy to it. I submit that, while it may be as stated in the resolution introduced by the gentleman from Kentucky, [Mr. KNOTT,] that there is nothing in the law which makes any difference between telegrams and other communications between individuals, yet there is in the public mind a difference between them; and justly so, because the telegrams that are sent all over the country by thousands of men relate to all possible concerns of human life, relate to all possible questions of business; and nothing would be more unfair and unreasonable than that, without a great interest or necessity requiring it, these private telegrams should be brought before committees or courts for inspection.

Mr. LYNDE. As regards the clause of the resolution of the gentleman from Ohio [Mr. HURD] which provides that in case the committee do not know the names of parties who have sent communications or received communications, or the dates of the communications, then

a more general description might be adopted. I would ask what possible benefit this amendment would effect? Suppose the writ is issued under that clause by a committee; can the witness be permitted, or can any one else be permitted to question whether the committee did know more particularly the paper they intended to reach by the process? Therefore it seems to me the last clause in the resolution will gain all the effect the gentleman seeks to gain by the first clause of his resolution.

But, Mr. Speaker, an investigation by the House in regard to the conduct of a public officer, or in regard to a question of great public interest, is entirely different in its character from a proceeding in a court of justice. The same rules of evidence do not apply to the two cases. While, if the investigation in the House relates to private interests, the rules of evidence as adopted by the courts of law prevail, they do not prevail in an inquisitorial investigation in regard to the conduct of public officers. And they should not prevail there; for, if they are held to prevail, then the efficiency of these investigations is entirely destroyed. In a private suit a party who is litigating is supposed to know all of the incidents, all of the papers, all of the communications that relate to his interest which he seeks to establish. But a committee of investigation of the House is appointed because the House does not know the facts which they seek to reach, and they should have authority to investigate so far as the public interest requires, and use every legal means for the purpose of promoting the public interest in that respect.

I would ask the attention of the House to a few orders which have been made in the British House of Commons. The British House of Commons on the 31st of January, 1809, entered the order which I shall read. Upon an investigation by the house, the committee of the house appointed to investigate the conduct of His Royal Highness the Duke of York, commander-in-chief, in regard to promotions, exchanges, and appointments to commissions in the army and staff of the army, used in raising levies for the army, the following was one of the orders:

Ordered, That a proper person from the banking-house of Messrs. Biddulph, Cocks & Ridge do attend the committee at the same time, and bring with him the banking-books of the said house for the month of July, 1805.

Here was an order of the House of Commons requiring the banking books to be produced in this investigation as to the official conduct of His Royal Highness the Duke of York, and requiring all the books for that month to be brought before the committee for their examination for the very purpose of ascertaining what they disclosed in regard to the conduct of the Duke of York.

On the 10th of February, 1809, in that same case, in that same investigation, the House of Commons entered the following order:

Ordered, That a proper person from the banking-house of Messrs. Marsh, Sibbild, Stracey, Fauntleroy & Stewart do attend the committee at the same time, and bring with them a list of the checks that affect Mrs. Clarke's account with the late Messrs. Birkett, silversmiths.

Mrs. Clarke was the person through whom these appointments were made, in consequence of her influence with His Royal Highness the Duke of York; and she was accustomed to receive money for her services with the Duke of York in bringing about these appointments. And it seems that Mrs. Clarke had purchased of Messrs. Birkett, silversmiths, silver plate; and upon that information coming to the House of Commons they entered the general order that some person from the banking-house should produce the banking-books containing a list of all the checks affecting Mrs. Clarke's account with the silversmiths.

On the 3d and 4th of February in the same year, in the same case, this order was entered:

Ordered, That a proper officer from the office of the commander-in-chief do forthwith attend the committee of the whole house who are appointed to investigate the conduct of His Royal Highness the Duke of York, the commander-in-chief, with regard to promotions, exchanges, and appointments to commissions in the army, and bring with him the books containing any application for purchase by subalterns within that period in which Captain Malin had his then commissions with him.

Now these orders, as it seems to me, are far more general than the orders which are complained of here. I will now call the attention of the House to Cushing's Parliamentary Law and Practice, section 968:

In regard to the course of inquiry a distinction must be made corresponding to that by which the different subjects of investigations are distinguished, namely, between inquisitorial proceedings and those which are judicial and relate to private individuals. In the former the utmost latitude both as to the form and the subject-matter of the questions proposed is allowed, the house being governed only by its own discretion—having reference to the public interest—in permitting or restraining the course of inquiry. The rule is thus stated by Mr. Wynne: "It was clear that the house was at liberty to exercise the fullest discretion upon every question which it was proposed to ask of any witness at their bar. In a court of justice the parties have the right to put any question they choose. The judge had only to determine whether it was a legal one, and if it was he could not refuse to admit it. In that house the case was widely different. There the questions were those of the whole body, though proposed by an individual member; there could be no obligation upon any one to consent to a question being put which he conceived to be irrelevant, immaterial, or in any way inexpedient for the public interests." In the course of the inquiry relative to the conduct of the Duke of York Mr. Whitbread said that "the committee were not fettered by settled forms or principles of evidence as was the case in the courts last year. If once such a limit was imposed upon the investigations of the House of Commons there was an end to the inquisitorial power of Parliament." And Sir Samuel Romilly said that the object was very different from that of courts of justice, and therefore the house could not be bound by the same ties.

Now, Mr. Speaker, it seems to me that for this House to trammel its own exercise of discretion by any rule whatever except the rules well established by parliamentary law would be wrong. I am opposed, therefore, to the amendment of the gentleman from Ohio, [Mr. HURD.] I now yield five minutes to the gentleman from Kentucky, [Mr. KNOTT.]

Mr. KNOTT. Mr. Speaker, on last Saturday a communication addressed to yourself from Hon. WILLIAM R. MORRISON, chairman of the committee of investigation at New Orleans, accompanied by a communication from the president of the Western Union Telegraph Company, was read and referred to the Committee on the Judiciary. Mr. MORRISON's communication disclosed the fact that certain persons had been summoned to appear before the committee of which he is chairman, with directions to bring certain telegraphic dispatches, and that the subpœna had been disobeyed and the communication from Mr. Orton disclosed the fact that it was by his directions that that disobedience to the subpœna of the committee took place, and that he had given the direction because in his opinion telegraph dispatches were in their nature privileged communications and could not be brought before a committee of investigation on a subpœna *duces tecum*, accompanied with the intimation, however, that he would yield his opinion to the judgment of the House. Referring these two communications to the Committee on the Judiciary required them to pass upon two questions, and two only. The first was, has this House the power to cause persons to bring papers before its investigating committees at all, and, secondly, whether telegraphic communications were surrounded by that peculiar odor of sanctity that the gentleman from Ohio and some others suppose; whether Mr. Orton or any one else had authority to prevent the custodian of such dispatches from producing them in obedience to the mandate of the House.

The two resolutions I have offered as a substitute for the report of the committee are substantially the same as that report, only stating, in my judgment, the sense of the House in plainer and more unmistakable terms. The only point, therefore, in dispute is as to whether the House ought to adopt the amendment offered by the gentleman from Ohio, [Mr. HURD.] I think it ought not, and for this reason: The power of the House to issue a subpœna at all is a matter of law; what may be inserted in that subpœna is also a matter of law. Can this House, therefore, by a mere resolution change the law? Manifestly it cannot; and consequently the resolution, if passed, would be mere *brutum fulmen* and nothing more, so far as their legal effect would be concerned; but there will be and there can be no dispute beyond that. The gentleman offers as a reason for opposing this amendment that the committee commissioned by this House to make this investigation may violate the law, that it may transcend its duties. Now, sir, for one I will never anticipate such a malversation on the part of a committee of this House. How do we stand in the face of the world here distrusting our own committee and saying that for fear they may transcend a law and violate their duties, we will circumscribe those duties and say "Thus far shalt thou go and no farther," no matter what may be the exigencies by which you are surrounded? I do not think the House will be guilty of such discourtesy to its committee. I believe that it will conclude, until it has evidence to the contrary, that the committee will conform to the law as it exists, and will not undertake in advance to give them direction as to their conduct. The passage of this resolution will not take a single iota from the powers that it possesses under the law.

Mr. LYNDE. I now yield five minutes to the gentleman from Iowa, [Mr. MCCRARY.]

Mr. MCCRARY. Mr. Speaker, it occurs to me that this is a favorable opportunity for settling a rule upon a sound basis that shall govern in future the conduct of committees of investigation. There seems to be no effort on either side to prevent the publication of the particular dispatches called for or mentioned in the communication of the chairman of the investigating committee now in Louisiana. On the contrary, I have seen the statement that there is no objection, and I suppose it may be taken to be the fact, that neither of the great political committees of the country, during the recent canvass, have committed important secrets to the telegraph offices of the country.

Therefore I say this is a favorable opportunity for settling upon a reasonable and safe basis the rule which should govern in such cases. The minority of the Committee on the Judiciary believe that there are rights of private citizens which should be considered as well as the rights and interests of the Government and the people. We think that two things at least should be required before the custodian of a private telegraphic dispatch should be required to produce it before a committee of this House. First, that the committee should determine in some way that there is reasonable cause to believe that there are dispatches in the possession of some person that will be material to the matter under investigation. We do not hold that it is necessary to establish that fact any further than this, that the committee shall have reason to believe that there are such dispatches. And, secondly, that in the subpœna which is issued to require the custodian of these private papers to bring them before the committee the papers shall be designated in some manner so that the party in possession of the dispatches may be able to identify them. In other words, we do not think that the practice which has obtained to some extent, of calling for telegraphic dispatches in the gross, of calling for all the dispatches in a particular office, or calling for all the dispatches sent by a particular individual, without any reference to the subject-matter of them, is a reasonable and proper practice.

There can be no difficulty growing out of the adoption of the ru

as proposed by the minority of the Committee on the Judiciary and embodied in the resolution offered by the gentleman from Ohio, [Mr. HURD.] It is impossible to conceive of a case where a committee of investigation shall have reason to believe that there are telegraphic dispatches in the hands of anybody which are of any value or of any materiality in the course of any investigation and they shall not be able to describe them as accurately as required by the proposition of the gentleman from Ohio, [Mr. HURD.] If the committee know who have sent the dispatches and to whom they have been sent, that fact can be stated; or if they know the subject-matter of the dispatches, that fact can be stated. And certainly they cannot know or have reason to believe that any dispatch is material to the subject of investigation without knowing what the dispatch is about.

What we object to is the manner of directing subpœnas which has been resorted to in some cases. If I am correctly informed, there has been in one of the committee-rooms of this House a very large number of private telegraphic dispatches, I think some thousands in number, which were brought into the committee-room, not upon any well-founded belief that there was anything in them that the committee desired to know, but they were brought into the committee-room in order that they might look them through to ascertain whether there was anything in those dispatches that they could use in their investigation. And the evil of this very practice will be evident when I state that in some way from among those dispatches a very large number of private telegrams, not relating at all to any subject of inquiry before that committee, have been published in the public press of the country.

I say there is no propriety in, there is no necessity for, carrying to this extent the rule in regard to this kind of evidence. There is no danger that we shall ever be deprived of the right to bring before any committee any paper they ought to have simply by requiring the committee to describe it in the manner proposed by the resolution of the gentleman from Ohio, [Mr. HURD.]

[Here the hammer fell.]

The SPEAKER. The time of the gentleman from Iowa [Mr. MCCRARY] has expired.

Mr. LYNDE. I now yield to the gentleman from New York, [Mr. WOOD.]

The SPEAKER. For how long?

Mr. WOOD, of New York. I will want only five or ten minutes.

Mr. LYNDE. I will yield to the gentleman for five minutes.

Mr. WOOD, of New York. I shall not probably detain the House longer than five minutes. It appears to me that the question really before the House is not of that character which brings it within the consideration of the rules of evidence or the practice in courts of justice. In my judgment the investigation we have ordered goes further than any other investigation ever authorized by either House of Congress, from the beginning of this Government.

We have appointed a committee, clothed with ample power to send for persons and papers, to take testimony, and to compel the attendance of witnesses. We appointed this committee for the purpose of ascertaining the truth on a question that may determine who shall be the next President of the United States. And in order that that great question now agitating the people of this country shall be determined truthfully and rightfully according to the facts of the case, we have instituted an investigation and delegated to the committee entire power to execute the order of the House. I submit that any attempt to restrain or curtail the power of the committee, any attempt by indirection through legal technicalities to hamper the efficiency of this investigation and prevent its full execution and enforcement, to render it at all difficult to obtain all of the facts, whether those facts depend upon epistolary correspondence or telegraphic communications, appears to me would show that we fall far short of our duties, and we would stand before the world as failing to execute the power which the people have delegated to us to determine this great question.

If it were an ordinary investigation, if it were an original proposition as to what authority we should confer upon a committee, I might myself coincide with some gentlemen who have spoken as to the immorality of attempting to interfere with the sacred privacy of individual correspondence. But in a question of such magnitude, when we are called upon to sustain our own organ in an investigation in a distant part of the country where this House itself cannot convene, where such stupendous consequences, too, may depend upon the ascertainment of these very facts in regard to acts that may have been conducted and controlled by telegraph, I submit with all due respect to the opinions of other gentlemen that, having ordered a full investigation, we should carry out the request of this committee and clothe them with the authority which they have asked of us.

In addition to this, I am informed that the like committee of the Senate have sent out a similar request for the production of everything bearing upon this election; in other words, they propose to institute a "drag-net" investigation, as has been said here to-day. I think, therefore, that we shall do wrong if we do not fully sustain the committee of investigation that we have sent to Louisiana. Hence I am in favor of the report of the Judiciary Committee as made by its chairman; and under no possible circumstances shall I be induced to vote for the proposition made by the gentleman from Ohio, [Mr. HURD,] the adoption of which, in my judgment, would be tantamount to defeating any investigation whatever in that direction.

Mr. LYNDE. I now yield five minutes to the gentleman from Mississippi, [Mr. HOOKER.]

Mr. HOOKER. Mr. Speaker, I think the House should at once respond to the very proper distinction which has been suggested by the gentleman making the report of this committee between an investigation conducted by a committee of this House and an investigation conducted before a legal tribunal. In the latter case, in a contest between parties litigant before a court of judicature, the private papers of either party are not subject to production unless the party calling for them makes out such a preliminary state of facts as, in the opinion of the presiding judge, authorizes their production, because of their pertinency and relevancy to the subject-matter in litigation between the parties. But that, I take it, is not the rule in an investigation before a committee of a parliamentary body. The gentleman has well said that such a committee has a broader, less-restricted power; that it is indeed with reference to public matters inquisitorial in its character. To maintain that such a committee, engaged in an important public investigation, should be limited by the rule which applies in a court of law or equity between parties litigant with reference to private rights, would so hamper the power of investigation which this House possesses with reference to matters of public concernment as to render it almost entirely nugatory.

Mr. Speaker, I do not see any very great distinction between the principles embodied in the report of the majority of the committee and the more specific amendment which has been offered by the gentleman from Kentucky, [Mr. KNOTT,] the chairman of the Judiciary Committee. But inasmuch as the latter proposition is a response on behalf of the committee, and in obedience to the order of the House, upon the specific matter referred to the committee for their action, and as, in my judgment, it more fully and completely asserts the power and authority of the House and of committees acting under its orders, the inclination of my mind is to give to the proposition of the gentleman from Kentucky a preference even to the report of the majority of the committee.

Sir, in a case referred to by the gentleman from Ohio, [Mr. HURD,] for whose legal judgment and acumen I have profound respect, in a case occurring at the last session of this Congress, when an attempt was made to assert the power and authority of the House in subjects of investigation, we saw that power and authority defied and rendered nugatory by a refusal to produce papers pertaining to the subject-matter under investigation by a committee. I refer to the well-known case of Hallet Kilbourn.

In the present case the examination by the committee of telegrams sent to and from the city of New Orleans is a resort to a source of information which can alone in all probability yield to the committee the desired facts concerning which this House has instructed them to inquire; for it is natural to suppose that these telegrams were resorted to during the period of the election by both parties, and that the communications between distant portions of the country were conducted by these telegrams. It was not possible for the committee to make a more specific designation than they did in their demand for the production of particular telegrams to which they referred, sent during limited periods. I think therefore that the proposition of the gentleman from Kentucky conforms more fully and explicitly to the parliamentary rule than does the report of the committee. I call attention to the rule as stated by Cushing. I ask the Clerk to read section 936 of Cushing's Law and Practice of Legislative Assemblies.

The Clerk read as follows:

The order for the attendance of witnesses, or for the issuing of a speaker's warrant to summon them, may also require the production of books, papers, and records. In the former case the order ought to be as specific and to describe the books, papers, or records to be produced with as much certainty as the nature of the case will admit of; in the latter the order may be in as general terms (as, for example, for such books or writings as shall be desired) as the order for issuing the warrant; but the warrant itself should be as specific and as certain as above mentioned. It does not appear to be necessary, however, that the name of the particular witness who is required to produce a paper or other document should be mentioned in the order or warrant, provided he be otherwise designated or may be ascertained with sufficient certainty. Thus the order may direct that the proper person or officer shall attend with the books, papers, or record desired; as, for example, a proper person from a banking-house named, with their banking-books for a particular month; or the proper officer with a specified paper from one of the public offices; or a particular paper may be ordered to be laid before the house, without specifying by whom it is to be done.

[Here the hammer fell.]

Mr. LYNDE. I now yield five minutes to the gentleman from Ohio, [Mr. GARFIELD.]

Mr. GARFIELD. Mr. Speaker, if we take the position suggested by the gentleman from Kentucky, [Mr. KNOTT,] that there is no difference between telegraphic communications and oral communications so far as this privilege is concerned, we need only take one other step to destroy the last possible protection that the American people enjoy against the invasion of their privacy by their servants, the House of Representatives. If we now declare that the telegraph is to be put down on the level of mere oral communication, that one of the greatest corporations of the country is, turn common informer against all private citizens, the next and last step will be to declare that the post-office is to be put on the plane of the telegraph.

Here is a great institution (unknown to the old law writers) which has grown up within the last thirty-five years, and which is probably to-day, next to the post-office, the custodian of more secrets in relation to public and private affairs than any other institution on earth. Every day hundreds of thousands of our fellow-citizens intrust their

most sacredly private affairs to the telegraph companies under the seal of its confidence. It is now proposed that all the transactions conducted through this great instrumentality shall be put down to the level of open, oral communications. All that public or private malice needs is to seize the telegraph operator at any office, require him to bring in his bundle of dispatches, and this inquisitorial body can fish out from among them whatever evidence may happen to suit its passion or its caprice.

There never was an Anglo-Saxon law in any country of the Anglo-Saxon world that would permit so great an invasion of private rights.

Besides destroying the telegraph as a great instrument of commerce and business intercourse, you break down in the minds of our people that security under the law which they have enjoyed for so many generations. I say to gentlemen frankly that you and I have never yet seen a congressional investigation the objects of which were sufficiently important to warrant so great a change in the laws of the country. It were better that every thief should go unwhipped of justice than that the old guarantees of the law should be destroyed in order to secure his punishment.

Now I happened in 1870 to have this question come up in the committee of which I was chairman, the Committee on Banking and Currency, before which a very important investigation was going forward, and there are some gentlemen here who sat with me upon that committee. We were called to investigate the causes which led to the gold panic on what was known as Black Friday. After a large amount of testimony had been taken it was found that at a given moment the Secretary of the Treasury, under direction of the President, wrote a dispatch ordering the sale of gold in New York City; and within a few minutes thereafter the gold market had broken 20 or 30 per cent. (My time is up I see, but if the gentleman will allow me a single moment further I will conclude.) But the break came about ten minutes before the official dispatch reached New York City; and it was strongly probable that some trusted officer of the Government had been faithless and had privately informed parties in New York that the order was coming. It was vitally important to the honor and good faith of the nation that it should be known whether that supposition was true or not. We called the telegraph manager before us to inquire how far they felt at liberty to disclose to us what had passed over their wires between Washington and New York within the brief period of half an hour; and by the unanimous agreement of the committee, democrats and republicans alike, we framed the question narrowed down in this way: First, that within a period of about twenty minutes of time we would make our inquiry; second, that it should only relate to telegrams bearing upon the Government order to sell gold; and, third, that if the telegrams disclosed under these conditions were any of them clearly private, they should be returned to the telegraph company, and not one of them published. That was as far as I thought we could go, and I think it was a wise precedent.

We shall make a most serious mistake if we break over the well-settled rules established for the protection of the business correspondence of citizens. I do not know that the questions now proposed will harm any man of either party. But we ought to remember that the safeguards of liberty are only in danger in times of public passion, and in such times it becomes all thoughtful men to take special heed of their steps, and make no precedents which may come back in calmer times to plague the inventors.

Mr. LYNDE. I will now give two minutes to the gentleman from New York, [Mr. HEWITT.]

Mr. HEWITT, of New York. Mr. Speaker, I subscribe to the doctrine which the gentleman from Ohio [Mr. GARFIELD] has laid down as to the protection which the law throws around the post-office, but I believe that the law does not throw any such protection around communications by telegraph. I think, however, that the law should throw such protection around communications by telegraph, and I should be glad to see it done.

But, sir, I rise now for the purpose of saying to the House and to the gentleman from Ohio that I have good reason to think that the protection which the law secures to citizens as to communications coming through the post-office is more of a delusion and a mistake than he supposes it to be. I wish to say that during the last month my attention has been called to my own letters passing through the New York post-office, and according to the best judgment I can form, and the best judgment of gentlemen to whom I have submitted my letters, they are apparently not infrequently opened in the post-office, and reclosed by the use of mucilage, but so affected that the steam used is shown upon the envelope, which has a puckered appearance. I have of course no means of proving this charge except by the appearance of the envelopes, but I am ready to submit my letters from day to day to the judgment of experts, and I think the gentleman will find the post-office protection is not such as good citizens desire, and such as comes down to us from the old Anglo-Saxon institutions of which he is such an admirer.

And, moreover, I wish to say to him that if there be a protection or should have been a protection for all communications by telegraph, the violation of that protection did not come from the democratic side of the House, but was initiated by a distinguished republican from the State of Massachusetts (General Butler) in the famous impeachment trial of President Johnson. And I can say further that proof of such violation has been afforded by committees of investigation that have been sitting during the present Congress, and notably by the Senate committee of investigation which went into the State of Mississippi, issuing a drag-net subpœna for all of the telegrams which passed to and from Colonel George, of that State.

So while I subscribe and will subscribe to the doctrine that the communications of individuals should be protected as much by telegraph as by mail, I wish to say that there is no choice for us at this time but to open them up freely on both sides. And, sir, I am glad to be able to state that I have during the recent political campaign sent no telegraphic communication which I am not willing and glad to have published. And I have already authorized the president of the Western Union Telegraph Company to produce every telegram which bears my signature. [Applause.]

The SPEAKER. The gentleman from Wisconsin [Mr. LYNDE] has six minutes of his time remaining.

Mr. LYNDE. I yield three minutes to the gentleman from Illinois, [Mr. SPRINGER.]

Mr. GARFIELD. Will the gentleman from Illinois [Mr. SPRINGER] allow me to say a single word?

Mr. SPRINGER. Yes, sir.

Mr. GARFIELD. I desire to say if the gentleman from New York [Mr. HEWITT] believes his mails have been tampered with, I think it is his duty, and I will assist him, to have the matter investigated to the bottom. I hope he will move for a committee to investigate that question.

Mr. SPRINGER. There are several propositions, Mr. Speaker, pending before the House on which we are called upon to vote at this time. First to be voted upon is the amendment of the gentleman from Ohio, [Mr. HURD,] in reference to the nature of the papers that may be called for by these investigating committees. I think his proposition states the rule governing such cases more narrowly than is supported by the authorities, and especially than is laid down in Cushing's Manual and other authoritative works on parliamentary law. I think the rule was correctly stated by the gentleman from Mississippi, [Mr. HOOKER.] He referred to Cushing's Manual in support of his position, and called the attention of the House to section 936 of that work. I can see no difference between telegraphic communications and the accounts of a banking association. In the section cited it appears that the books of a banking-house "for a particular month" may be called for. It has been the rule of this House to examine the private banking accounts of various persons; and, notably, the banking account of the President of the United States, Andrew Johnson, during or before his impeachment trial.

The object of this inquiry, instituted by the committee in New Orleans, is the production of official papers of the returning board in one instance and of the telegrams forwarded by certain officials of this Government to the officials in New Orleans, in reference to the count of the votes polled in that State. It is of the utmost importance that all the facts bearing upon this important investigation should be brought to light at this time. Much depends upon this information. We desire the three committees now in the Southern States to get at the bottom facts in relation to the recent elections in those States.

Although it has been announced by certain distinguished gentlemen that we, the representatives of the people, have nothing to do with those facts; that all that remains to be done is in the hands of the President *pro tempore* of the Senate, who is to receive and to count the votes, and to declare the result as to who has been elected; that this House and the Senate have nothing further to do in the premises. Yet, I maintain that this House and the Senate and the country have a right to know all the facts necessary to a full knowledge of the subjects now being investigated by our committees in South Carolina, Florida, and Louisiana. The committees of this House "are authorized to summon and compel the attendance of all persons, within the limits of the United States, as witnesses, and to bring with them papers and records, in the same manner as is practiced by courts of law." (Cushing, section 634.) The House of Representatives possesses all the powers of jurisdiction, in a judicial way, which are recognized by the common parliamentary law. It has power "to institute inquiries into all grievances of the citizen which are remediable by legislative enactment, and into all abuses of power by persons in office, with a view to their removal or impeachment; it has power to investigate all such subjects, by the examination of witnesses or otherwise, in the same manner as is practiced by grand juries." (Cushing, section 641.) Would not a court of justice or a grand jury have the right to compel the production of telegraphic dispatches in the progress of their investigations? This question has already been passed upon by the courts, and the right to compel the production of telegraphic messages, or to prove their contents, when they cannot be produced, has received judicial sanction. I desire to call the attention of the House to the following authorities upon this subject:

In the case of Henisler *vs.* Freedman, 2 Parsons' Select Cases, 274, the court held:

> It must be apparent that, if we adopt this construction of the law, the telegraph may be used with the most absolute security for purposes destructive to the well-being of society; a state of things rendering its absolute usefulness at least questionable. The correspondence of the traitor, the murderer, the robber, and the swindler, by means of which their crimes and frauds could be the more readily accomplished, and their detection and punishment avoided, would become things so sacred that they never could be accessible to the public justice, however deep might be the public interest involved in their production.

The court in the same case further held:

The law is jealous of extending the circle of persons excused or interdicted from giving testimony. Parents are required to testify against children; children against parents, brothers against brothers, friends against friends. Communications by letter made under the deepest obligations of friendship, affection, or honor, still must be produced if deemed necessary to the ascertainment of truth, and the administration of justice by the public tribunals. To this great end of social organization all secondary causes are required to give way.—*Allen's Telegraph Cases*, page 3.

In another case the rule has been laid down as follows:

Nor can telegraphic communications be deemed any more confidential than any other communications. Telegraphic communications are not to be protected to aid the robber or assassin in the consummation of their felonies, or to facilitate their escape after the crime has been committed. No communication should be excluded, no individual should be exempt from inquiry, when the communication, or answer to the inquiry, would be of importance in the conviction of crime or the acquittal of innocence, except when such exclusion is required by some grave principle of public policy. The honest man asks for no confidential communications, for the withholding the same cannot benefit him. The criminal has no right to demand exclusion of evidence because it would establish his guilt. (The State *vs.* Alden Litchfield, 58 Maine, 267.)

In Nova Scotia an important case on this subject has been decided, in which the lord chief-justice took time to consider, and afterward delivered the following judgment:

In this case, after a full consideration of the general law relating to privileged communications, and as to the true construction of legislative enactment set forth in the special case, and of the decision of Lord Ellenborough in Lee *vs.* Barrell, 3 Camp., 337, under circumstances so very analagous, I do not entertain a doubt that the communications or messages through the telegraph offices are not in law privileged communications; and that when Mr. Waddell, and others in similar positions, are compelled to attend a judicial proceeding, they are bound to disclose the contents of such messages, and that in so doing they do not at all violate the oath they have taken, that they will not "*willfully* divulge" the contents of messages, nor do they subject themselves to any prosecution under the enactment. At the same time let it not be supposed that my decision at all affects the obligation such parties are under "not to *willfully* divulge the contents of messages confided to them. (Waddell's case, 8 Jur., [N. S.,] part 2, page 181; also see Allen's Telegraph Cases, page 497.)

Such being the current of authorities on this subject, I shall favor the substitute submitted by the gentleman from Kentucky, [Mr. KNOTT,] which is entirely in harmony with judicial and parliamentary precedents. All that is necessary in calling for telegraphic messages or other papers is that they should be described with sufficient certainty to enable the witness to clearly understand what messages or papers are required. And such description must of necessity be given in every case. It is not necessary, therefore, that the House should adopt the amendment of the gentleman from Ohio, [Mr. HURD.] In all cases where our committees desire telegrams or other papers, the parties required to produce them will be sufficiently informed by the *subpœnas duces tecum* to enable them to comply with the summons. This is all that the law requires, and affords all the protection which a witness can rightfully claim.

The SPEAKER. The gentleman from Wisconsin [Mr. LYNDE] has three minutes of his time remaining.

Mr. LYNDE. I yield that time to the gentleman from Massachusetts, [Mr. HOAR.]

Mr. HOAR. I only rise to express my profound regret that, in this most grave question of the constitutional powers of this House and the constitutional privileges of American citizens, the gentleman from New York [Mr. HEWITT] alone, on either side of the House, should have seen fit to give an excited partisan turn to the discussion, which I am happy to congratulate the House has not appeared in the other speeches on either side. If the communications of that gentleman through the post-office have been dealt with as he suspects, the use to be made of such a fact is not to throw it into a grave constitutional discussion with excitement and anger. Let him rise in his place, under his responsibility, and demand an investigation; and no matter whether it be a democratic or republican correspondence that has been tampered with, if he have any proof of a charge like that against any official charged with the administration of the Post-Office Department of this country, he knows, he must know, that he will find abundant support on this side of the House in probing the matter to the bottom and in bringing the offenders to condign punishment. But the fact is utterly out of place in a discussion of the character this House is now engaged in.

The SPEAKER. The first question is on the amendment of the gentleman from Ohio, [Mr. HURD.]

The question being taken, there were—ayes 72, noes 111.

Mr. MCCRARY called for the yeas and nays.

The yeas and nays were ordered.

The question was taken, and there were—yeas 93, nays 122; not voting 74; as follows:

YEAS—Messrs. Adams, Anderson, George A. Bagley, John H. Baker, William H. Baker, Ballou, Bell, Blair, Bradley, William R. Brown, Horatio C. Burchard, Cannon, Cason, Chittenden, Conger, Crounse, Davy, Dobbins, Durand, Eames, Evans, Foster, Freeman, Frye, Garfield, Goodin, Hale, Andrew H. Hamilton, Hancock, Haralson, Benjamin W. Harris, Hathorn, Haymond, Hendee, Abram S. Hewitt, Hoar, Hoskins, Hunter, Hurd, Kasson, Lane, Leavenworth, Luttrell, Lynch, Magoon, McCrary, McDill, Miller, Monroe, Neal, Norton, Oliver, O'Neill, Packer, Page, William A. Phillips, Pierce, Plaisted, Platt, Potter, Pratt, Purman, Rainey, James B. Reilly, Roberts, Rusk, Sampson, Seelye, Sinnickson, A. Herr Smith, Southard, Strait, Stevenson, Stowell, Thornburgh, Martin I. Townsend, Tufts, Van Vorhes, Wait, Waldron, Alexander S. Wallace, John W. Wallace, White, Whitehouse, Whiting, Andrew Williams, Charles G. Williams, William B. Williams, Willis, Wilson, Alan Wood, jr., Woodworth, and Yeates—93.

NAYS—Messrs. Ainsworth, Ashe, Atkins, John H. Bagley, jr., Banning, Bland, Bliss, Blount, Boone, Bradford, Bright, Buckner, Samuel D. Burchard, Cabell, William P. Caldwell, Campbell, Candler, Carr, Cate, Caulfield, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Collins, Cook, Cowan, Culberson, Cutler, Davis, Dibrell, Douglas, Durham, Ellis, Faulkner, Felton, Finley, Forney, Franklin, Fuller, Gause, Gibson, Glover, Goode, Gunter, Robert Hamilton, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Henkle, Hereford, Goldsmith W. Hewitt, Hill, Holman, Hooker, Humphreys, Hunton, Frank Jones, Kehr, Knott, Lamar, Franklin Landers, George M. Landers, Le Moyne, Levy, Lewis, Lynde, Mackey, Maish, Metcalfe, Milliken, Mills, Money, Morgan, Mutchler, O'Brien, Payne, Piper, Poppleton, Powell, Rea, Reagan, Ribble, John Robbins, William M. Robbins, Scales, Schleicher, Sheakley, Singleton, Simmons, William E. Smith, Sparks, Spencer, Springer, Stanton, Stenger, Stone, Swann, Tarbox, Teese, Terry, Thomas, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Gilbert C. Walker, Warner, Watterson, Erastus Wells, Whitthorne, Willard, James Williams, Jeremiah N. Williams, Wilshire, Benjamin Wilson, Fernando Wood, and Young—122.

NOT VOTING—Messrs. Abbott, Bagby, Banks, Bass, Beebe, Blackburn, John Young Brown, Burleigh, John H. Caldwell, Caswell, Chapin, Cochrane, Cox, Crapo, Danford, Darrall, De Bolt, Denison, Dunnell, Eden, Egbert, Flye, Fort, Hays, Henderson, Hoge, Hopkins, House, Hubbell, Hurlbut, Hyman, Jenks, Thomas L. Jones, Joyce, Kelley, Kimball, King, Lapham, Lawrence, Lord, MacDougall, McFarland, McMahon, Meade, Morrison, Nash, New, Odell, Phelps, John F. Philips, John Reilly, Rice, Robinson, Miles Ross, Sobieski Ross, Savage, Sayler, Schumaker, Smalls, Stephens, Thompson, Washington Townsend, Waddell, Charles C. B. Walker, Walling, Walsh, Ward, Warren, G. Wiley Wells, Wheeler, Wigginton, Wike, Alpheus S. Williams, and Woodburn—74.

So the amendment was not agreed to.

The question recurred upon the substitute offered by Mr. KNOTT for the resolutions reported by the committee; and, being put, there were—yeas 116, noes 33.

So the substitute was agreed to.

The resolutions reported from the committee, as amended, were then adopted.

Mr. LYNDE moved to reconsider the vote by which the resolutions were adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of its clerks, announced that the Senate had passed, without amendment, the bill (H. R. No. 1626) for the relief of Thomas Van Duzen and his assignees, for lands.

The message further announced that the Senate had passed, with amendments in which he was directed to ask the concurrence of the House, bills of the following titles:

A bill (H. R. No. 2043) to improve the law in relation to dower in the District of Columbia; and

A bill (H. R. No. 4120) making appropriation for the payment of invalid and other pensions of the United States for the year ending June 30, 1878.

The message further announced that the Senate had passed a bill (S. No. 606) to establish the Territory of Huron and to provide a temporary government therefor; in which he was directed to ask the concurrence of the House.

TAMPERING WITH THE MAILS.

Mr. PLATT. I ask unanimous consent to offer the following resolution:

Whereas ABRAM S. HEWITT, a member of this House, has asserted on this floor in public speech that his letters, deposited in the post-office at the city of New York, have been illegally opened before delivery and while in charge of the postal officers or employés of the United States: Therefore,

Resolved, That a committee of five members of this House be appointed to investigate said charge, and whether the same be true or false, and by whom, if by any person, said criminal act or acts were committed, and report thereon to this House as early as practicable; and that said committee have power to send for persons and papers.

Mr. LUTTRELL. I object to this resolution. It is the duty of the Post-Office Department to make that investigation itself.

PAY OF COMMITTEE CLERKS.

Mr. KNOTT. I ask unanimous consent to offer the following resolution:

Resolved, That the Judiciary Committee be instructed to inquire whether by the appropriation act of August 15, 1876, the twenty-one clerks to committees of the House therein mentioned are entitled to receive as compensation during the fiscal year ended June 30, 1877, the amount per diem designated in said act for their actual services.

Mr. HOLMAN. I have no objection to the inquiry, but I know what the intention was, and if there is any uncertainty as to the intention, the matter ought to be provided for by law; it was prospective only.

The SPEAKER. Does the gentleman from Kentucky ask for the adoption of the resolution, or simply for its reference?

Mr. KNOTT. I ask for its adoption.

Mr. KASSON. What is the object of the resolution?

The SPEAKER. It is a resolution instructing the Judiciary Committee to make inquiry as to certain language used in an appropriation bill.

Mr. KASSON. There can be no objection to that.

No objection being made, the resolution was received and adopted.

Mr. KNOTT moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

ADMINISTRATION OF THE NAVY DEPARTMENT.

Mr. MILLS, by unanimous consent, introduced a bill (H. R. No. 4259) to re-organize and render more efficient the administration of the

Navy Department; which was read a first and second time, and referred to the Committee on Naval Affairs.

ALASKA SHIP-BUILDING AND LUMBER COMPANY.

Mr. PIPER, by unanimous consent, introduced a bill (H. R. No. 4260) granting to the Alaska Ship-building and Lumber Company the right to occupy and purchase certain lands in the Territory of Alaska, paying the Government price therefor, and for other puposes; which was read a first and second time, referred to the Committee on Public Lands, and ordered to be printed.

SALE OF DESERT LAND.

Mr. LANE, by unanimous consent, from the Committee on Public Lands, reported as a substitute for House bill No. 125 a bill (H. R. No. 4261) to provide for the sale of desert lands in certain States and Territories; which was read a first and second time, recommitted to the committee, and ordered to be printed, not to be brought back on a motion to reconsider.

PROFESSOR HAYDEN'S REPORT.

Mr. VANCE, of North Carolina, by unanimous consent, introduced a concurrent resolution to print 4,500 copies of the Geological and Geographical Survey of the Territories for 1875 by Professor Hayden; which was referred to the Committee on Printing, and ordered to be printed.

FUNDING LEGAL-TENDER NOTES.

Mr. CHITTENDEN. I ask unanimous consent to introduce and have referred to the Committee on Banking and Currency the preamble and joint resolution which I send to the Clerk's desk to be read.

The Clerk read the preamble and joint resolution, as follows:

Whereas the legal-tender notes of the United States when first issued were by a provision of the act authorizing them fundable at the option of holders into bonds of the United States bearing 6 per cent. annual interest;

And whereas but for such provision for funding neither the Secretary of the Treasury or either House of Congress would have consented to their issue;

And whereas the exigencies of a prolonged civil war led to the temporary withdrawal of the said funding provision of the legal-tender act;

And whereas it is apparent in the present and prospective condition of the commerce of the country that the amount of paper money in circulation is greatly in excess of the proper demands of trade;

And whereas the Government of the United States is solemnly and firmly bound by act of Congress approved January 14, 1875, to provide for the redemption in coin of its legal-tender notes on and after the 1st day of January, 1879;

And whereas it is obvious that in order to resume coin payments in the manner and at the time fixed by the aforesaid act of Congress the previous withdrawal from circulation of a considerable portion of said legal-tender notes is an indispensable act of preparation;

And whereas it is now apparently practicable to fund said notes in bonds having forty years to run at a rate of interest not exceeding 4 per cent. per annum, without commissions or cost to Government;

And whereas the United States must, like all other debtors public or private, provide for and pay all its honest obligations to the extent of its means and resources, or be discredited and dishonored; Therefore,

Be it enacted, &c., First, That the Secretary of the Treasury be, and is hereby, authorized to withdraw, as soon as the necessary preparations can be made, the legal-tender notes of the United States whenever presented by the holders thereof, and issue therefor, dollar for dollar of face value, coupon or registered bonds of the United States in the spirit of the original legal-tender act: *Provided*, That the bonds authorized by this act shall be payable in gold at the expiration of forty years from the 1st day of January, 1877, and bear interest at the rate of 4 per cent. per annum, payable quarterly in gold.

Second. That the bonds authorized by this act shall be available for deposit in the Treasury of the United States for banking purposes under the various provisions of law relating to national banks.

Third. That the legal-tender notes received in exchange for bonds under this act shall be destroyed, under such regulations as the Secretary of the Treasury may prescribe.

Fourth. That all laws inconsistent with this act are hereby repealed.

Mr. HOLMAN. I object to the introduction of this joint resolution.

SALE OF LANDS IN KANSAS.

Mr. PHILLIPS, of Kansas. I ask unanimous consent to have taken from the Speaker's table House bill No. 1984, to provide for the sale of certain lands in Kansas, with the amendments of the Senate thereto, for the purpose of moving a non-concurrence in said amendments and requesting a committee of conference.

Mr. HOLMAN. Let the amendments be reported.

The amendments were read, as follows:

Page 1, line 4, after the word "act" insert "in accordance with the provisions of said former act, except as hereinafter stated as to price."

Page 2, lines 2 and 3, strike out "or a delegation thereof duly authorized."

Page 2, lines 5 and 6, strike out "or of a delegation thereof duly authorized."

Mr. PHILLIPS, of Kansas. I move that the amendments of the Senate be non-concurred in and that a committee of conference be requested.

The motion was agreed to.

EXPENSES OF INVESTIGATING COMMITTEES.

Mr. HOLMAN submitted the following; which was read:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill of the House No. 4124, to provide for the expenses of certain special committees, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the amendment No. 1 and agree to the same, with an amendment as follows:

In lieu of "30" insert "35" (making the appropriation $35,000) and add at the end of the section amended the following:

"And the Clerk of the House shall pay such parts of the sum above appropriated as the chairmen of the said committees respectively shall, in writing, direct for the purposes aforesaid to the Sergeant-at-Arms of the House, who shall, as soon thereafter as practicable, make report, in writing, to the House of the manner in which the sums thus paid to him have been expended, accompanied with vouchers in detail; which report and vouchers, when examined and approved by the Committee of Accounts of the House, shall be deemed a sufficient settlement of his accountability for the money thus paid to him; and any unexpended balance remaining in the hands of the Sergeant-at-Arms after such settlement shall be paid by him into the Treasury of the United States, to the credit of the fund for which it was appropriated."

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the amendment No. 2 and agree to the same, with an amendment as follows: In lieu of "30" insert "35," (making the appropriation $35,000;) and the House agree to the same.

WM. S. HOLMAN,
J. D. C. ATKINS,
EUGENE HALE,
Managers on the part of the House.
WM. WINDOM,
H. G. DAVIS,
Managers on the part of the Senate.

Mr. HOLMAN. I wish to say a word in explanation of this report. Gentlemen will remember that the bill as originally passed by the House appropriated $21,000 to meet the expenses of three special committees appointed to visit the States of South Carolina, Florida, and Louisiana, respectively. That bill was amended by the Senate by the addition of a new section appropriating $50,000 to meet the expenses of four committees of the Senate, three of them to visit the States of South Carolina, Florida, and Louisiana, respectively, and the other to remain at the Capitol.

When the bill came back to the House thus amended, the House increased the appropriation for its committees from $21,000 to $30,000, there having been appointed an additional committee of the House to investigate the recent election in the cities of New York, Philadelphia, Brooklyn, and Jersey City, and reduced the appropriation for the Senate committees from $50,000 to $30,000, making the appropriation for this purpose the same for each House.

The House also by its amendments to the bill, after it came back from the Senate, provided for limiting the expenditure of the money thereby appropriated to the actual and necessary expenses of the members of the committees, making the actual and necessary expenses the rule of expenditure by both the committees of the House and the committees of the Senate.

Gentlemen understand that heretofore no very definite rule on this subject has prevailed. Sometimes the allowance has been ten cents a mile for travel and as high as $6 a day for hotel expenses. That has been perhaps as uniform a rule as any other. Ten cents a mile for travel is of course greatly above the actual expenditure and $5 or $6 a day greatly above the actual expense for hotel bills. The object of this bill was to establish, both as regards the House and the Senate, the principle that only actual expenses should be paid by the Sergeant-at-Arms.

The result reached by the conference committee is not altogether satisfactory. It is one of those inevitable compromises out of which a great deal of our legislation grows. The House indulged the confident belief that, although its committees were the larger and occupied a wider field, $30,000 would still be a sufficient sum to be appropriated for them. The Senate, on the other hand, thought $50,000 as small a sum as would suffice for the expenses of its committees. Witnesses are now being subpœnaed by the Senate from Oregon, from Mississippi, and from various other sections of the country. The House has adopted, as a rule of compensation for witnesses, five cents a mile for travel (which is very ample) and $3 a day for expenses while in attendance. The Senate, on the other hand, allows five cents a mile for travel (except, I believe, where the travel is from beyond the one hundredth parallel, in which case the rate is seven cents a mile) and $4 a day for expenses during the attendance of the witness.

The Senate committees having charge of these investigations, as well as the conferees upon the part of the Senate, were of opinion that $50,000 was not too large a sum. The subject was finally adjusted upon an appropriation of $35,000 for each body. In view of the fact that in the one case the sitting of the committee is at the Capitol and in the other case at the scene of the matters investigated, it is very manifest that little or no difference will exist between the two bodies as to the actual expenditure. Therefore the appropriation on very fair grounds should be about the same for the two bodies. Hence the committee of conference finally agreed to fix the appropriation at $35,000 for each branch of Congress and to provide for returning to the Treasury any surplus that may remain. I indulge the hope that a very considerable amount may be left unexpended at the close of these investigations.

Mr. CONGER. Will the gentleman from Indiana allow me to ask one question?

Mr. HOLMAN. Certainly.

Mr. CONGER. If the committee on the part of the House thought that $30,000 was enough for the House committees, why should they have yielded to the demands of the Senate and increased the appropriation to $35,000?

Mr. HOLMAN. I presume the gentleman has been on committees of conference, and has found that it is somewhat difficult for either House to have absolutely its own way.

Mr. CONGER. But I understood the gentleman to say that the House committee were of opinion that an appropriation of $30,000 for the House was enough. Why then should they have been forced by the Senate to vote $35,000?

Mr. HOLMAN. It is very clear that, if $35,000 will be required to meet the current expenses of four committees on the part of the Senate, it will require at least as much to meet the expenses of the committees on the part of the House; for, as the gentleman is aware, the House committees are larger in number. The House sends to States of the South thirty members to investigate concerning the recent elections in Louisiana, Florida, and South Carolina. The Senate, on the other hand, sends but nine members. The gentleman must see that, if it was proper for the House to concede an appropriation of $35,000 for Senate committees, it was proper that at least as large a sum should be appropriated on the part of the House; for, if $35,000 will be required for the Senate committees, it is very clear that at least the same amount, if not more, will be required for the House committees.

Mr. CONGER. I understood that the committee on the part of the House thought $30,000 enough for this body.

Mr. HOLMAN. My belief still is that $30,000 is all that can be properly expended for either House. The House conferees, contrary to their wishes, compromised this question.

Mr. O'BRIEN. I desire to ask the gentleman a question almost equivalent to the question put by the gentleman from Michigan, [Mr. CONGER.] I wish to ask the gentleman how in his conscience he could find any authority whatever on the part of this committee to raise the appropriation for the House from $30,000 to $35,000, when in his solemn judgment as expressed upon this floor $30,000 was more than sufficient.

Mr. HOLMAN. I greatly admire the tender conscience of my friend.

Mr. O'BRIEN. I call the gentleman's attention to this consideration: what right had he to yield to the judgment of the Senate in this matter, and what influence has been brought to bear upon him by the Senate in order to control his judgment?

Mr. HOLMAN. I supposed my friend wished to ask some pertinent question. I yield to the gentleman from New York, [Mr. WOOD.]

Mr. O'BRIEN. As the gentleman cannot answer my question, I presume he has no conscience in this matter.

Mr. WOOD, of New York. I am not sure whether I correctly understood this report as it was read, but if I did, the expenditures on the part of the House are to be audited and passed upon by the Committee of Accounts upon actual vouchers.

Mr. HOLMAN. Yes, sir.

Mr. WOOD, of New York. But I do not understand that in the conference report any such rule is made applicable to expenditures on the part of the Senate. Now I would like to know how this conference committee on the part of the House can reconcile it to their sense of justice and propriety that the Senate should be permitted in this way to legislate as to how we shall expend the money for our own purposes when the rule is not made applicable to the Senate committees.

Mr. HOLMAN. The rule as to the House fixed by this report is substantially the same for both bodies. The gentleman from New York is aware that the practice of the two bodies in reference to the drawing and expenditure of money out of the contingent fund is different. Unless we provide in this way for the auditing of the expenditure of this money on the part of the Sergeant-at-Arms by the Committee of Accounts, it could not be audited at all. In the Senate the auditing of accounts occurs between the Sergeant-at-Arms and the Clerk of the Senate, while here it occurs between the Sergeant-at-Arms and the Committee of Accounts of the House. There is by this conference report provision for the auditing in both bodies, here by the Committee of Accounts and in the Senate by the Clerk of the Senate. The gentleman from New York, therefore, will perceive that the rule is substantially the same in both bodies.

Mr. WOOD, of New York. If that be the rule then why put it in this conference report?

Mr. HOLMAN. I wish it to be the law. I am not aware of any well-established rule in the House on this subject. I hope never to see a dollar of the public money placed in the hands of any officer of the House, under any circumstances, in reference to which provision is not made for the auditing of its expenditure. I want all accounts to be audited by some recognized committee of the House or by some recognized officer.

Mr. BUCKNER. Is not the expenditure confined to the actual and necessary expenses?

Mr. HOLMAN. The Committee of Accounts here determines what is actual and necessary, and in the Senate provision is made for auditing what are actual and necessary expenses. The result is the same, as the gentleman from New York will perceive. I now demand the previous question on the adoption of the report.

The previous question was seconded and the main question ordered; and under the operation thereof the conference report was adopted.

Mr. HOLMAN moved to reconsider the vote by which the report of the conference committee was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

ADDITIONAL LAND DISTRICT, IDAHO.

Mr. FENN, by unanimous consent, moved to take from the Speaker's table a bill (S. No. 538) to create an additional land district in the Territory of Idaho; which motion was agreed to.

The bill was then taken up, read a first and second time, referred to the Committee on Public Lands, and ordered to be printed.

CITADEL, CHARLESTON, SOUTH CAROLINA.

The SPEAKER, by unanimous consent, laid before the House a letter from the Secretary of War, transmitting, in answer to a resolution of the House, the report of Lieutenant-Colonel Gillmore, of the United States Army, relative to the building and grounds known as the Citadel, Charleston, South Carolina; which was referred to the Committee on Public Buildings and Grounds.

TROOPS AT FORT SILL, ETC.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of War, transmitting a statement of the number of troops now at Fort Sill, Indian Territory, and Forts Griffin and Richardson, Texas; which was referred to the Committee on Military Affairs.

COLUMBIA HOSPITAL FOR WOMEN.

The SPEAKER announced that he had appointed Mr. MACKEY as a member of the board of directors for the Columbia Hospital for Women, to fill the vacancy caused by the resignation of the Speaker.

LEAVE OF ABSENCE.

By unanimous consent leave of absence was granted in the following cases:

To Mr. POWELL, for one week from the 22d instant on account of important business.

To Mr. MONEY, from Thursday next until January 3.

To Mr. ODELL, until January 2 on account of important business.

To Mr. O'NEIL, for three days from the 26th instant.

To Mr. BAKER, of Indiana, from the 27th to the 30th of December, inclusive.

To Mr. WILLIAMS, of Alabama, from the 26th instant to the 5th of January.

To Mr. VANCE, of North Carolina, from the 21st instant until January 2.

To Mr. STEVENSON, for ten days from Friday next on account of important business.

To Mr. OLIVER, for two weeks from Thursday next.

To Mr. SEELYE, for ten days from the 22d instant.

To Mr. HARRIS, of Massachusetts, from Friday the 23d instant, until January 3.

To Mr. WILLIAMS, of New York, for ten days from the 22d instant.

To Mr. ASHE, for ten days from the 23d instant.

To Mr. HAMILTON, of Indiana, from the 27th instant to January 10.

To Mr. ROBBINS, of North Carolina, from the 23d instant to January 3.

To Mr. WARREN, for three days from the 26th instant.

And then, on motion of Mr. PAGE, (at four o'clock and ten minutes p. m.,) the House adjourned.

PETITIONS.

The following petitions were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. DURAND: The petition of disabled soldiers of Michigan, for an appropriation for artificial limbs, to the Committee on Appropriations.

By Mr. HEWITT, of Alabama: Petition of citizens of Blount and Winston Counties, Alabama, for the passage of the bill introduced by Mr. G. W. HEWITT for the relief of settlers on lands claimed by the South and North Railroad, to the Committee on Public Lands.

By Mr. WALKER, of Virginia: The petition of R. A. Brock, corresponding secretary and librarian of the Virginia Historical Society; James McDonald, State librarian of Virginia; W. H. Ruffner, superintendent of public instruction of Virginia; J. C. Southall; P. C. Nicholas, librarian of the Virginia State Law Library; J. William Jones, secretary Southern Historical Society, Richmond, Virginia, and of the officers of libraries in different sections of the country, for the purchase by Congress of the papers of the General Count de Rochambeau, the commander of the French forces sent to aid Washington in our revolutionary struggle for national Independence, to the joint Committee on the Library.

IN SENATE.

THURSDAY, *December* 21, 1876.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

The Journal of yesterday's proceedings was read and approved.

EXECUTIVE COMMUNICATION.

The PRESIDENT *pro tempore* laid before the Senate a letter from the Secretary of the Treasury, transmitting a report made to that Department by Carlisle P. Patterson, Superintendent of the United States Coast Survey, stating the progress of that work during the year ending June 30, 1876; which was ordered to lie on the table and be printed.

PETITIONS AND MEMORIALS.

Mr. MITCHELL. I present a memorial of the Legislative Assembly of the State of Oregon, in which they represent "that there are extensive tracts of the public lands in Eastern Oregon which may be properly termed 'desert lands,' being such on account of the lack of

water to furnish the necessary irrigation for the production of crops; that there are also other extensive tracts of land in Eastern Oregon producing grass, but which are unavailable for grazing purposes, on account of the absence of streams of water or springs sufficient to furnish water for herds or flocks grazing upon the same. These lands cannot be disposed of by the United States under existing laws, for the reason that they are not available for the purposes of settlement on account of want of water as aforesaid." They therefore pray "that an act of Congress be passed authorizing the sale of these tracts, in quantities greater than one hundred and sixty acres to a single purchaser and at rates less than the minimum price of $1.25 per acre, upon condition that the same be irrigated by the purchaser, by means of artesian wells or artificial canals, so as to render the same productive and available for grazing and agricultural purposes." I move that the memorial be referred to the Committee on Public Lands.

The motion was agreed to.

Mr. FRELINGHUYSEN presented a petition of citizens of the United States, soldiers in the late war, praying the passage of a law for the equalization of bounties; which was referred to the Committee on Military Affairs.

He also presented a petition of the New Jersey State Temperance Alliance, praying for prohibitory legislation for the District of Columbia and the Territories; the prohibition of the foreign importation of alcoholic liquors; that total abstinence be made a condition of the civil, military, and naval service; and for a constitutional amendment to prohibit the traffic in alcoholic beverages throughout the national domain; which was referred to the Committee on Finance.

REPORT OF A COMMITTEE.

Mr. ALLISON, from the Committee on Pensions, to whom was referred the bill (H. R. No. 3497) granting a pension to James B. Treadwell, major of the Eighty-fifth Regiment Pennsylvania Volunteers, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

Mr. MORRILL, from the Committee on Finance, to whom was recommitted the bill (S. No. 1040) to allow the late collector of internal revenue for the fourth district of Georgia his salary hitherto withheld, reported it with an amendment, and submitted a report thereon; which was ordered to be printed.

BILLS INTRODUCED.

Mr. CLAYTON asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1096) to remove the political disabilities of R. C. Gatlin, of Arkansas; which was read twice by its title, and, with the accompanying petition and a letter from Judge Parker, of the United States district court of Arkansas, referred to the Committee on the Judiciary.

Mr. BOOTH (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1097) to provide for the appointment of an official short-hand reporter for the United States courts in and for the district of California; which was read twice by its title, referred to the Committee on the Judiciary, and ordered to be printed.

Mr. SPENCER (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1098) granting a pension to S. M. B. Johnson; which was read twice by its title, referred to the Committee on Pensions, and ordered to be printed.

He also (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1099) granting a pension to Amy King; which was read twice by its title, referred to the Committee on Pensions, and ordered to be printed.

Mr. MITCHELL asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1100) making appropriations for the improvement of Lower Willamette and Columbia Rivers from Portland, Oregon, to the sea; which was read twice by its title, referred to the Committee on Commerce, and ordered to be printed.

COMMITTEE SERVICE.

Mr. JOHNSTON. I ask to be excused from further service on the Committee on Patents.

The PRESIDENT *pro tempore*. Is there objection? The Chair hears none, and the Senator from Virginia is excused.

By unanimous consent, the President *pro tempore* was authorized to fill the vacancy.

Mr. BARNUM, on his own motion, was excused from further service upon the Committee on Manufactures; and the President *pro tempore*, by unanimous consent, was authorized to fill the vacancy.

Mr. JOHNSTON was appointed to fill the vacancy.

The PRESIDENT *pro tempore* also appointed Mr. BARNUM to fill the vacancy upon the Committee on Patents occasioned by the resignation of Mr. JOHNSTON.

MANNER OF COUNTING ELECTORAL VOTES.

Mr. ANTHONY. There lies on the table a resolution from the Committee on Printing to print some additional copies of a document prepared by the Chief Clerk of the Senate on the action of the two Houses in regard to the manner of counting the electoral vote. It has been lying over for some time, I believe, at the suggestion of some Senator who desired something else to be added to it. The committee wish to have the resolution acted upon before the recess in order that the type may not be kept standing.

The PRESIDENT *pro tempore*. The Senator from Rhode Island moves that the resolution be taken from the table.

The motion was agreed to; and the Senate proceeded to consider the following resolution, reported from the Committee on Printing December 13:

Resolved, That 5,000 copies of the statement prepared by the Chief Clerk of the Senate in regard to the manner of counting the electoral votes for President and Vice-President from 1789 to 1873 be printed for the use of the Senate.

The resolution was agreed to.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. GEORGE M. ADAMS, its Clerk, announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. No. 4124) to provide for the expenses of certain special committees.

The message also announced that the House had passed the following bills; in which it requested the concurrence of the Senate:

A bill (H. R. No. 1688) for the relief of Robert H. Flavell, sergeant Company F, Seventh Missouri; and

A bill (H. R. No. 4258) to provide for the payment for certain improvements on lands now embraced in the military reservation of Fort Cameron in the Territory of Utah.

PROPOSED HOLIDAY RECESS.

Mr. ANTHONY. There is a resolution upon the table introduced by the Senator from Pennsylvania [Mr. CAMERON] who is not in his seat—I am not sure that he is in the city to-day—providing for a recess. I suppose there is no parliamentary objection to stating what the other House has done in this respect. We all know that the House of Representatives has agreed to adjourn over for the constitutional period, to meet each day of adjournment and adjourn again, and so on until Wednesday, the 3d of January. If the Senate is disposed to take a recess, as I suppose it is, inasmuch as it is manifest there will be no quorum here, we might either pass the resolution that is now upon the table, with the concurrence of the House, confining the recess to the Senate but asking the concurrence of the House, or there might be a general understanding like that which has been adopted in the House; there, I believe, by a formal resolution. I think some Senators object to a formal resolution to this effect here on the ground that it would not be valid; and it certainly would not be valid against any subsequent vote of the Senate. If no other Senator has a suggestion to offer, I suggest that the Senate adjourn from to-morrow until Tuesday and from Tuesday until the next Friday; that is as long as we can adjourn; and then from that Friday until Tuesday, the 2d of January. Let that be the general understanding.

Mr. FRELINGHUYSEN. And from Tuesday the 2d of January to Wednesday the 3d?

Mr. ANTHONY. And from Tuesday to Wednesday the 3d of January. That would make our recess the same length as the recess of the House, and leaves it in the power of the Senate, if any exigency should occur, to take any action that might be deemed necessary. I make that suggestion if no Senator has any other suggestion to make or any formal resolution to offer.

Mr. JOHNSTON. What is the suggestion?

Mr. ANTHONY. I suggest that by general consent the Senate shall adjourn from to-morrow until Tuesday; that on Tuesday it adjourn until Friday, and on Friday that it adjourn until Tuesday following, and from that Tuesday until Wednesday the 3d of January.

Mr. RANDOLPH. Without the transaction of business in the mean time?

Mr. ANTHONY. Without the transaction of any business in the mean time.

Mr. FRELINGHUYSEN. Unless by special call.

Mr. ANTHONY. Of course it is possible that something may occur, though I anticipate nothing, which would make it necessary for the Senate to transact business, in which case there should be a special call and notice given. I do not suppose the Senate would pledge themselves or that they could pledge themselves not to transact business if any great emergency should arise, which no one anticipates, however. This is the way it has been done on several holidays.

Mr. SHERMAN. I ask that the resolution be read.

Mr. ANTHONY. I do not propose a resolution. The resolution of the Senator from Pennsylvania to take a regular holiday recess is the basis of my suggestion.

Mr. SHERMAN. Is the House resolution pending?

Mr. ANTHONY. The House passed a resolution that does not require the concurrence of the Senate, referring only to its own action.

Mr. SHERMAN. What is the proposition pending before us now?

The PRESIDENT *pro tempore*. The suggestion of the Senator from Rhode Island. No formal proposition is before the Senate.

Mr. SHERMAN. I read the resolution of the House, and I supposed it would be communicated to the Senate, but probably it will not be as it is a mere resolution of the House. I think that resolution embodies about what the Senate ought to do. If the House for any purpose have some fear that there may be a necessity, on account of public business to aid in the investigations pending, to call the House together, (because it leaves the body in a state of organization so that it may be organized,) I do not see why the Senate may not do the same by a vote of the Senate. We have the power to do it, I think.

Mr. FRELINGHUYSEN. I would suggest to the Senator from Ohio

that I suppose the reason why this is put in the shape of a suggestion rather than as a resolution, is the doubt as to the right of the Senate to pass such a resolution as has been passed by the House. We can only adjourn over for three days, and it is avoiding that rule for us to pass a resolution in advance that at the end of the third day we will adjourn for three days more, and so on, while we can have this general understanding.

Mr. SHERMAN. I have no doubt at all that if at the end of the three days' adjournment any Senator should demand a division and the division should show the absence of a quorum, those who were present would have to adjourn only until the next day. That is perfectly clear. You cannot make an adjournment by the action of the Senate alone for a longer period than three days; but it seems to me it is better to have that understanding in the form of an open resolution. Of course no one would violate an obligation of that kind; but all assenting to it that would be the end of it. I do not care about the mode in which it is arrived at. As a matter of course, any Senator may prevent the adjournment, whether it be agreed upon in the form of a suggestion or in the form of a resolution. If any one demands a division so as to show the absence of a quorum, the number present less than a quorum cannot do anything except to adjourn until the next day, and then the next day, and so on, the Senators in that way coming and going.

Mr. INGALLS. The constitutional provision which declares that neither House during the session of Congress shall without the consent of the other adjourn for more than three days, evidently does not require a joint adjournment of both Houses at the same time. As I understand that provision, either House with the consent of the other can adjourn for a period of more than three days, and the House consenting may still remain in session. It occurs to me that if the Senate desires an adjournment for a period longer than three days, by passing a resolution to that effect and transmitting it to the House of Representatives and asking their consent, as the Constitution provides, there would be no objection; and it appears to me that inasmuch as an adjournment from day to day, or for a period of three days only, would leave those Senators who live at a distance from the seat of Government unable to visit their constituents without the liability of business being transacted, that would be the proper course to pursue. I merely make that suggestion for the further action of the Senate.

Mr. HAMLIN. I suppose the suggestion made by the Senator from Rhode Island was for the purpose of avoiding an objection which I remember to have been made in this body at one time. I think a proposition very similar to that of the House was once made here and objected to, and according to my recollection the whole Senate concurred in the doctrine that we could not fix a day of adjournment beyond the three days to which we might adjourn under the Constitution, for another and an additional adjournment. The Senate may adjourn to-day for three days; such is the Constitution; but until that time comes—such was the objection of the Senate then, I recollect—it is not competent for the Senate to fix an additional adjournment; but when that time comes it may do it. By adopting the suggestion of the Senator from Rhode Island we avoid that trouble. That is all there is of it.

Mr. CONKLING. Mr. President, we do avoid that trouble, I beg to suggest to my honorable friend, provided there be a quorum present, that quorum which alone the Constitution says may transact business, any business, this business among others. The Constitution provides:

> Each House shall be the judge * * * and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each House may provide.

I suggest to the Senator from Rhode Island who has this matter in charge that if by an understanding, or in any other way, it should be proposed that the Senate adjourning on Friday should stand over till Monday, and on Monday should adjourn further until Thursday, then if on Monday there were no quorum here, less than a quorum could do nothing but adjourn from day to day. Very likely that might in another way really answer the Senator's purpose. An understanding no doubt would be observed, indeed necessarily must be observed, as to doing business, because only a quorum could proceed to transact business. Less than a quorum could not adjourn for over three days but could simply adjourn from day to day. The Senator from Maine referred to a matter in the Senate, which in my recollection arose as to the power of both Houses. It was suggested that inasmuch as both Houses could adjourn together *sine die* or for a period, it was competent for the two Houses acting together to instruct the presiding officers on a certain day to adjourn their respective Houses to another day, and on that day, unless otherwise ordered, to adjourn their respective Houses to another day, the purpose being to enable a quorum to assemble on either of those days and otherwise order, so that the two Houses would be left in session. I think that was the instance to which the honorable Senator from Maine referred. However, that is not very important for this purpose. I see no difficulty in having a three days' adjournment, and then in the absence of a quorum proceeding to adjourn from day to day. I should see great difficulty in any understanding, or rather in any attempt to execute any understanding under which a number of Senators less than a quorum were to do any business whatever, except to adjourn from day to day.

Mr. ANTHONY. I made not a motion, but a suggestion. We might have an informal understanding on this subject, precisely as we often have, that we will take a certain vote at four o'clock. That understanding we frequently make; it is binding upon nobody except as a matter of honor; it is parliamentarily binding upon no one. I suppose the objection which the Senator from New York suggests would not arise because if there was no quorum for the purpose of business, the absence of a quorum would not be brought to the attention of the Chair, as we frequently transact business when there is no quorum. I suppose a motion would be made to adjourn for three days, and it would be put and carried; but certainly if the attention of the Chair was brought to the absence of a quorum, if that test were applied by any division being called for, there being an absence of a quorum disclosed, I suppose the Senate could adjourn only from day to day. Therefore I suggested that there be an informal understanding that to-morrow we shall adjourn for three days, and then for three days, and then for three days again, which has been frequently done here, and it is done now by the House. It is done in the House by a formal resolution. I propose that we shall do it informally because it does not seem to us to be in our constitutional power to make such a form of adjournment formally.

Mr. BAYARD. Mr. President, I am unable to concur in any agreement or even tacitly to consent to any agreement that shall indicate the power of either House of Congress to adjourn for more than three days unless under the joint consent of the two Houses. I do not construe the Constitution as the honorable Senator from Kansas [Mr. INGALLS] has done. I do not hold that the Senate may give the House the power to adjourn for thirty days, the Senate itself remaining in session, or *vice versa* the House permit the Senate to adjourn for thirty or sixty days, the House remaining in session. I consider that it was contemplated by the Constitution that the sessions of Congress should be continuous and not broken by the variant action of one House by adjourning for more than three days.

Such being my view, it being the intention that the legislative operations of the country represented by the Congress should not be broken in upon by the sole action of one House by adjourning for more than three days at a time, it would seem to me highly objectionable that we should by this open proclamation adopt the indirect machinery of the power of adjourning for nine days under the pretext that we simply were agreeing to adjourn for three.

I am perfectly aware that the practical result will be that stated by the honorable Senator from New York. We adjourn under our right and power for three days; at the end of that time it is in the power of any Senator present to disclose by a call for a vote by yeas and nays the absence of a quorum. Then nothing is in order but a motion to adjourn, which may be carried by less than a quorum; so that, in substance, the same thing would be reached; but I cannot assent that there shall be a proposition made as made by the honorable Senator from Rhode Island, that we should here now, practically, to-day settle three consecutive adjournments of three days each, aggregating nine days, under the power to adjourn for three. I do not think that is regular, nor am I willing by my silence to consent to it. I do not know whether the House resolution of adjournment is before the Senate or not.

Mr. CONKLING. It has not been sent here at all. It was simply a resolution of their own.

Mr. BAYARD. I had heard indirectly that there was a proposition to adjourn from to-morrow until Wednesday, which is a day longer, that we can probably concur in, and on next Wednesday whether there be or not a quorum present the fact will be easily ascertained, and then if there be not a quorum undoubtedly it will be in the power of the Senate to transact no business except to adjourn, which can be done by less than a quorum.

Mr. ANTHONY. There is a resolution drawn by my friend from Vermont, [Mr. EDMUNDS,] which I think covers the case and relieves us from all difficulty. I offer it.

The PRESIDENT *pro tempore*. The resolution will be read.

The Chief Clerk read as follows:

> *Resolved*, That when the Senate adjourns on Friday the 22d instant it be to meet on Tuesday the 26th instant; and that, unless otherwise then ordered, when it adjourns on the 26th instant it be to meet on the 29th instant; and that, unless otherwise then ordered, when it adjourns on the 29th instant it be to meet on Tuesday, January 2, 1877.

The PRESIDENT *pro tempore*. The question is on agreeing to the resolution.

Mr. ANTHONY. I offer that in lieu of the pending motion.

Mr. MORTON. I think that resolution is proper. The Senate can meet and sit on its own adjournment without consulting the House, so that it is not over three days. We can agree to meet every other day, instead of every day, if we choose, or we can agree to meet on a series of days named in a resolution like this without consulting the House, provided the adjournment in each case does not extend over a period of three days. The Senate can fix its own periods of adjournment, so that they do not extend over three days, or we can fix a series of days on which we may meet, as this resolution does, without the consent of the House. We can pass the resolution without at all violating the Constitution.

Mr. CONKLING. Mr. President, I venture to say one word about this resolution. I cannot vote for it, although I should be very willing to see its object accomplished in another way. The Constitution

declares that neither House shall adjourn for more than three days without the consent of the other. That means something, and I supposed I knew what it meant. If the meaning generally ascribed to it is the true meaning, how can it be that by an indirection so slight as that now proposed we can circumvent the whole thing? Obviously, the same power which permits an adjournment in that mode for nine days, in the same mode would permit an adjournment for ninety days. Can that be, that by making a stepping stone once in three days in a resolution passed in the beginning, once for all, either House can adjourn for the entire session? You have only to extend it and to say that when they meet on the last day named they shall adjourn three days, and on that day three days more, and so continue that till the 4th of March. Can that be the meaning of the Constitution? I differ, with deference of course, with the Senator from Rhode Island who offers this resolution and one of the Senators from Vermont who is referred to as having approved it. But having attended somewhat to a discussion on one occasion especially which I think was the one referred to a few moments ago by the Senator from Maine, I have a very fixed opinion that this is beyond any suggestion of power heretofore made.

I remember very well that when a resolution was offered a few years ago in the Senate, a discussion arose upon this form of the question. As I before suggested, it was proposed, both Houses concurring, not to adjourn *sine die*, but to direct the presiding officers in the usual form to adjourn their respective Houses on a certain day; nobody doubted that power; but the resolution went on to provide that on that day, unless a quorum assembled and ordered otherwise, the respective presiding officers should adjourn the Houses until another day; and that when that day arrived, unless a quorum met and ordered otherwise, the presiding officers should adjourn their respective Houses to a further day. Many Senators doubted the power even to do that, but of course it did not touch this question. There was the concurrent action of both Houses. Confessedly, they could adjourn for any time within constitutional limits. They could not adjourn beyond the first Monday of the succeeding December, because the Constitution said they should meet on that day, or if not the Constitution in terms, an act of Congress passed to execute the Constitution, and without repealing that they could not pass that period. But within that period the two Houses could adjourn to any time they saw fit. The question was whether, having exerted that power and fixed a day of meeting, they could in advance direct that on that day a further adjournment should occur, and so on.

The power which in that case was invoked at the hands of the two Houses and questioned somewhat, (although I confess I had no doubt about it myself then and I have never seen any reason to doubt it since,) it is proposed now to exercise by dint of the resolution of one House. I confess my understanding has been otherwise; and although I have no objection to the purpose being accomplished in this way if the Constitution permits it, I think that an understanding by which the Senate is to adjourn from day to day for a certain time unless some paramount necessity for being here arises would be the more convenient way of getting at it, and, except in the light of some instruction which I have not, I must think this resolution goes beyond the permission of the Constitution.

Mr. EDMUNDS. It does not appear to me that this proposition of the Senator from Rhode Island is open to any constitutional objection. The Constitution declares that neither House shall adjourn for more than three days without the consent of the other. Now, this resolution provides for an adjournment for three days, beginning to-morrow. I suppose nobody would probably question our capacity to pass to-day an order as to what hour the Senate should adjourn or for what length of time within the constitutional limit of three days. That brings us then—as I am sure my friend from New York will agree—lawfully and constitutionally to Tuesday next. The Senate then meets. It has the capacity by this order of its own, framed for that purpose, either to go on with its business or to adjourn as it likes; but it is taken for granted that the present wish of the Senate, not to do any business on that day, will continue unless the Senators then present shall think it advisable to proceed. If they do think it advisable to proceed, then this resolution provides that on that occasion, without anything lying over for a day for consideration, but by an order made then, they may provide for any other adjournment or for no adjournment at all, according to their convenience; and so on upon the next occasion.

So it is not a mandate to the presiding officer of this body that on Tuesday next he shall execute the present order of the Senate to adjourn this body for three days more; but it is only a provisional mandate that, everybody consenting—that is the substance of it—the Senate consenting, a majority consenting, he shall proceed to declare a further adjournment. If a majority does not wish to assent then, it has the complete constitutional power to stay. In the other point of view there would be great force in what the Senator from New York suggests, because on Tuesday next, if we had an absolute and peremptory order, it would be the duty of the presiding officer to execute it; and he could receive no motion, because it would be his business to execute the order, and, the order being executed, there would be no Senate to receive any motion or to act upon it. But in this case the Senate on next Tuesday meets with entire control of the subject, only, if it should happen that there should be no quorum present, the Senate would not be competent to prevent the adjournment that had been provided for.

Mr. FRELINGHUYSEN. I would ask my friend whether the adjournment on next Tuesday would not be by virtue of the action of to-day?

Mr. EDMUNDS. Yes.

Mr. FRELINGHUYSEN. And, if so, are we not, in fact, adjourning for more than three days?

Mr. EDMUNDS. No, Mr. President. It is by virtue undoubtedly of the original action of this day, but it is also by virtue of an action which is submitted to the will of the Senate again to change on the day when it does meet and adjourn. That is the difference which makes to my mind a broad difference between the case argued by the Senator from New York and what is implied in my friend's question. I think I quite agree with the Senator from New York that what is said to have taken place in the House of Representatives is outside of the Constitution, and clearly so if it provides as the newspapers seem to say for an adjournment for four days instead of three days, which apparently from the newspapers was the case. But it is not my purpose, and it is not my right, to comment, except as upon a public question of law, on any action the House of Representatives sees fit to take.

So then I do not think there is any difficulty in the way of this resolution if the Senate wish to get over these holidays without obliging the presiding officer to come here every day, and with a unanimous understanding that we are to do nothing, which morally is just as unconstitutional as anything else, for aught I know. When it comes to the effect of the thing, I am quite willing to work the whole time except on Christmas and New Year's days, and am still more willing to play if the rest desire to do that. I have no affirmative disposition to adjourn at all, except for these two holy days; but at the same time, as I have found after great resistance for many years, that it is impossible to have it otherwise, I am quite willing that everybody else shall go home for Christmas and New Year's, if he wishes to do so. We have found as a fact that it is practically impossible to do any business during the period named; and when we have undertaken to do it the effort has always proved a disastrous failure, as well in what little we did do generally as in what we omitted to do. So I have concluded to make a virtue of what is inevitable and give as little trouble to other people, including the presiding officer, as possible.

Mr. CONKLING. Mr. President, the Senator from Vermont [Mr. EDMUNDS] made, as I felt sure he would if he took that view of the question, the best statement which can be made in vindication of the power asserted by the resolution. After hearing him, I suggest this to the Senator from Vermont and to the Senate: When this interval has passed by, how will this resolution and the action occurring under it stand on the Journal and stand in history? To-day the Senate makes an order which adjourns the Senate three days hence. On that day, no Senator appears, no quorum appears, no action is taken, and another three days elapse in the absence of the Senate. At the end of those three days no quorum appears; no action is taken. Three days more elapse in the absence of the Senate. In the absence of the Senate why and how? Because alone of the order passed to-day. The Senate has been vacant, has been absent, has been in the language of the Constitution in adjournment for nine days by virtue of what action? Not the action of both Houses, which the Constitution suggests as an appropriate action, but by the action of the Senate alone, not saying in terms "we adjourn for nine days in bulk," but saying "we adjourn nine days, three days at a time, and we do it all at once; we do it by one single act which speaks but once, upon which action is taken but once, and which covers the whole nine days." If it does not, it would be a lawless disregard of duty for Senators not coming here. The only excuse for their not appearing three days hence is that the order of the Senate dispenses with that appearance and does not intend to require them to be here until the lapse of six days after that.

Mr. EDMUNDS. May I be allowed to put a question to the Senator?

Mr. CONKLING. Certainly.

Mr. EDMUNDS. I ask whether we do not now have a standing order, which is imperative until it is changed, that we shall adjourn over from Saturday to Monday on every occasion. Now, suppose saying that Sunday is a *dies non*, we had a standing order that we should adjourn every week from Friday to Monday, does the Senator think that would infringe upon the Constitution?

Mr. CONKLING. Well, I should think in that case it would not, for several reasons, one of which will probably suffice. It is that intermediately of each two of these Fridays, happening between each two of these recesses, is a meeting and presence of the Senate, thus totally separating and isolating from each other each of those adjournments. But if we were to pass an order that we shall adjourn from Friday to Monday each week, and that on Monday we shall adjourn until Thursday and on Thursday shall adjourn to Friday of each week, my honorable friend would have a case parallel to this; and in either case, I submit to him, that he ascribes to the House—I choose to say the House for illustration—the power to say this week or next week that there shall not be another day during the present session of Congress which will not be *dies non*.

Mr. EDMUNDS. No, I do not maintain that position.

Mr. CONKLING. I did not suppose the Senator maintained it; but I say he concedes it as a matter of argument, as I understand the law. I do not mean to put any words into his mouth.

Mr. EDMUNDS. I do not concede that. I think I agree with the Senator about that.

Mr. CONKLING. Let me state in other words what I mean; and I do not intend to detain the Senate on this matter. If it be true that the House of Representatives by adjourning three days at a time, by at once, by a single order, putting it in that form, could carry itself over for nine days, it is true it could carry itself over for ninety days, and the only difference is the trouble it would give to the scrivener to continue this repetition and expansion of the resolution. As matter of power, if the Constitution does not nominate three days and only three as the time and the whole of it during which either House may absent itself without the consent of the other, then ninety days is not the limit, nor is there a limit until you find a constitutional or statutory provision which fixes a day on which the two Houses must meet. It is said in the act of 1792 that on the second Wednesday of February in every fourth year the Congress shall be in session, the purpose being that the presidential vote shall then be counted. Whether in view of that statute such a resolution as this which should make the second Wednesday in February one of the days when the House is not to be in session, would or would not be effectual is a question to be determined by the force of that statute, perhaps; but saving a case where a statute requires the presence of the House, I submit to the Senate that, if this resolution be within the purview of the Constitution, either House may adjourn, simply saying in the resolution they do it three days at a time, for ninety days, or for any other period within the life of that House.

Mr. President, I do not desire, particularly with so small an inducement of convenience as there seems to be here, to try a pioneer experiment of this sort. I speak with some confidence when I say that such a thing was never done in the history of either House. I would not venture to assert that upon general recollection; but having had a few years ago considerable to do with a resolution asserting the power of both Houses to go from day to day, and having looked with some care at that time at the precedents, and having heard disquisitions by much more learned men which I remember, I venture to state with some confidence that there is not in the parliamentary history of this country a resolution like this or resembling it sufficiently to suggest any such power. If it be the pleasure of a majority of the Senate to take a vacation over the holidays, the mode of doing it is so very simple,—by adjourning for three days with a general understanding among Senators that they are not to expect each other to attend at the next meeting and that at that time, there will be doubtless somebody here to move an adjournment from day to day—it is so simple to adjust it by an understanding of that sort, that I repeat the inducement of convenience even seems to me very small; but even if it were a great inducement, I should hesitate to affirm the judgment of the Senate in favor of a power which I can see, exerted by one House or the other, might be inconvenient and hurtful, I am sure, to say the least.

Mr. EDMUNDS. Mr. President, I will only occupy a single moment of the time in reply to my friend from New York. I think the essential difference between the case that he discusses, and which he has discussed in such a way as to very strongly incline me to agree with him on that case, and this is manifest. When the Senate meets here on next Tuesday, the first period of the adjournment, it meets for business. This order, if adopted, would not prevent the Senate sitting continuously if it liked to do so for a week or for any other length of time that the public interest should require. It only says that when it adjourns on that day, unless otherwise ordered at that meeting, the adjournment shall be for a certain period within the letter of the Constitution. Now, if on next Tuesday only two Senators come, and they wish to otherwise order, they are not bound to adjourn, they have a right to direct the Sergeant-at-Arms to request the attendance of all the others, and to stay here until they are brought in, and to go on then with the business of the country as long as they like.

Mr. MORTON. Allow me to ask the Senator a question. By the rule now the Senate meets every day, Sundays excepted, unless otherwise ordered. We may change that general rule and agree to meet every other day unless otherwise ordered. May we not, then, fix the days, name them, instead of measuring the time the other way, so that we do not put it over the three days? What is the difference in principle?

Mr. EDMUNDS. I do not see the difference if you always keep within the control of the Senate the power, on the day at which the fresh order or the old order operating anew is to operate, to prevent its operation and to go on with business. I think this is an entirely different proposition from what one would be directing the presiding officer of the Senate on Tuesday next peremptorily to adjourn this body for one day, or for two, or for three, because it is no worse constitutionally to adjourn for three days than it is for one, and so on from day to day. That would be one thing that would fall within the very forcible observations of the Senator from New York. But if on the day when you meet you have all the power that the Constitution gives you to stay and do business as long as you like, and simply provide that when you do adjourn that day, unless you choose to fix some other time, it shall be to the next day or to the next day but one, or to the third day, I fail to see any in fractionof the Constitution in it.

Mr. HAMLIN. Mr. President, I think it was the wise man who said that there was nothing new under the sun. If he had lived to-day I do not think he would have uttered that exclamation. I think we have got something new here. Certainly in my judgment it is entirely new. If we can adjourn over three days at a time without the concurrence of the other branch of the Legislature, we can come here and adjourn during the whole session, sitting only every third day. If that is not in contravention of the plain meaning and intent of the Constitution, then I do not understand the force of language.

Now I want to put this case; I want to show the force of this resolution if it be adopted. It is adopted, I will assume, and I will assume that on Tuesday next this body meets, and having met, some Senator in the body may come to the conclusion that it is appropriate, that the public exigencies demand that there shall be some public business transacted; but the body finds itself without a quorum. The Constitution says that this body may transact all legislative business, but it provides that it shall require a quorum of members to do it. The Senate finds itself without a quorum. What then are its powers? The Constitution says that the body consisting of less than a quorum may adjourn from day to day. What could the body do on Tuesday next with a less number than a quorum? They could adjourn only from day to day while under this order they would adjourn over three days. We are therefore fixing an order to-day that contravenes the express grant of power in that particular, if I can understand it.

I do not want to take up time in discussing this resolution. I have my own ideas. I am very sorry that it is offered here. I do think that it is a very bad precedent to set. I think it is in contravention of the Constitution as clearly as anything can be. I will not express any opinion in relation to the propriety of an adjournment over, whether it be by agreement or in any other way; but if we are going to do it I do hope we shall do it in that way which will leave no doubt upon the mind of any one.

The discussion which took place in this body to which I referred, and which the Senator from New York has more distinctly called the attention of the Senate to, was on a proposition far less broad in its scope, and if that proposition were an objectionable one, this it does seem to me is in a very much greater degree. I regret that it has been offered.

Mr. MORRILL. Mr. President, I move to strike out all after the words "26th instant." It seems to me that we are spending time upon a matter that we do not practically differ at all about. If we adjourn from to-morrow until the 26th instant with a general understanding that we shall then adjourn to the 29th instant, and that on the 29th instant we shall adjourn to January 2, I think it will be obeyed by what members of the Senate are present as one of the laws of the Medes and Persians.

Mr. EDMUNDS. But suppose there is no quorum?

Mr. MORRILL. I have no idea that there will be a quorum, but I have also the same faith that the point of the absence of a quorum will not be raised after a general understanding has been had that the Senate proposes to adjourn from time to time and to transact no business here between this and the 2d of January. I am very sure from what I have heard from different members that there will not be a quorum here for the next ten or twelve days. Quite a number of Senators are away on committees, and it has been even difficult for the last week to obtain a quorum in the last hours of the day's session. I know of a considerable number that are proposing to visit their homes during the holidays at Christmas and New Year's, so that I have not the slightest idea that there is going to be a quorum here during the next week; but I think that the object of the resolution of the Senator from Rhode Island can be accomplished and the purpose of all Senators can be realized by just adopting the first branch of this resolution and then by a general understanding we shall reach the same conclusion on each of the days mentioned in that part of the resolution which I propose to have stricken out.

The PRESIDENT *pro tempore*. The morning hour has expired.

Mr. MORRILL. I hope this matter will be continued until disposed of.

The PRESIDENT *pro tempore*. If there be no objection, the question is on agreeing to the amendment offered by the Senator from Vermont [Mr. MORRILL] to the resolution.

EXPENSES OF COMMITTEES.

Mr. DAVIS. I ask that the report of the committee of conference which has been received from the House be concurred in. I send the report to the desk and ask that the Senate concur.

The Chief Clerk read the report, as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill of the House No. 4124, to provide for the expenses of certain special committees, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the amendment numbered 1 and agree to the same, with an amendment as follows:

In lieu of "30" insert "35" and add at the end of the section amended the following:

"And the Clerk of the House shall pay such parts of the sum above appropriated as the chairmen of the said committees respectively shall, in writing, direct for the purposes aforesaid to the Sergeant-at-Arms of the House, who shall, as soon thereafter as practicable, make report, in writing, to the House of the manner in which the sums thus paid to him have been expended, accompanied with vouchers in detail; which report and vouchers, when examined and approved by the Committee of Accounts of the House, shall be deemed a sufficient settlement of his accountability for the money thus paid to him; and any unexpended balance remaining in the hands of the Sergeant-at-Arms after such settlement shall be paid by him into the Treasury of the United States, to the credit of the fund for which it was appropriated."

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the amendment numbered 2 and agree to the same, with an amendment as follows: In lieu of "30" insert "35," and the House agree to the same.

WM. WINDOM,
H. G. DAVIS,
Managers on the part of the Senate.
WM. S. HOLMAN,
J. D. C. ATKINS,
EUGENE HALE,
Managers on the part of the House.

Mr. ANTHONY. I understood that the difference between the two Houses was in the amount of money which the Senate thought proper to appropriate for the use of its own committees. Is that so?

Mr. DAVIS. I was one of the conference committee, and the chairman of the committee is absent this morning, and at his request I ask that the report be concurred in. The difference between the two Houses was that the House originally asked $21,000 and the Senate $50,000. In conference it was agreed to make them equal: $35,000 each.

Mr. ANTHONY. I understand that the House of Representatives and the Senate are both engaged in certain investigations, investigations which are of the highest importance and which exercise the highest powers of the two Houses, powers which, I think, have sometimes been abused in both Houses. The House of Representatives required a certain sum of money, in the judgment of the House, to carry on its investigation. I hope that all that the House requires will be voted, even if we think it is too much. They are responsible to their constituents and responsible to themselves. I also hope that the Senate will insist on having all that its committee thinks proper. I think it is almost necessary to the independency of the two Houses that, if they are to exercise these great powers, they should have whatever means each House may think proper to carry these powers into effect. I would never vote to restrict the House of Representatives in any amount which it requires to carry on its own investigations, nor will I vote to submit to any such restriction on the part of the Senate. If the House thinks it is not fair that the Senate should ask for a greater amount than it asks itself, then let it raise its amount it it sees fit, but not cut ours down.

I hope that the report will not be agreed to, but that, giving the House of Representatives all the money that it requires to carry on its investigations, we shall demand the same for ourselves.

Mr. DAVIS. Mr. President, it is true, as the Senator from Rhode Island has stated, that the Senate originally asked more than the House, and after a full conference there was no special disagreement, but it was concluded that the amount the House had asked was too small, and it was agreed unanimously on the part of the Senate that $35,000, probably, would be a proper amount, and that was, as I understand, after a consultation on the part of the chairman of the Senate conferees, who is now absent, with the chairman of our investigating committee. I heard no particular claim that the Senate had not a right to ask for what they wanted. That question did not arise in the committee. I hope no obstacle will now be put in the way of adopting the report, because both sets of committees, the committees of the Senate and of the House, are out, and as I understand the only money they have with which to pay their expenses has been advanced by the Sergeants-at-Arms of the respective Houses, and both are in need at once, as I understand, of the appropriation. One of the Sergeants-at-Arms has said to me that there is no money to answer the wants of the committees. It was said in conference that if there should be a further sum necessary on the part of the Senate it could be easily asked for by resolution.

Mr. ANTHONY. I suppose the reason why the Senate committee agreed to advance the sum from $21,000 to $35,000 for the House was because the conference committee representing the House asked for it, and if it asked for one hundred thousand dollars I think our committee should have given it. I think each House can be trusted to manage its own expenses, the cost of its own committees, and its own investigations, and since the Senate asked for the sum of $50,000, I shall not vote to take anything less.

Mr. LOGAN. I should like to ask the Senator from West Virginia a question. I was notified that I was appointed on the conference, but I presume I was not from the fact that I never received any notice from the committee to meet with them. I should like to ask the Senator if they had any information from the Committee on Privileges and Elections as to the amount required.

Mr. DAVIS. It is true, as the Senator from Illinois has said, that he was one of the conference committee appointed, but he was not present.

Mr. LOGAN. I was not present from the fact that I was not notified.

Mr. DAVIS. But the Senator was unwell, we understood.

Mr. LOGAN. I was unwell, but the committee perhaps might have met at my room as conveniently as at some other room. I make no point on that, however. I only say I know nothing about it.

Mr. DAVIS. I will answer the Senator's further question. I am not able to speak for the chairman of that committee, with whom I agreed; but when we agreed he spoke for himself, as I understood, and for the Senator from Illinois. That is to say, in committee we thought the Senator from Illinois would agree with us; but that is a matter of speculation only. What information the chairman had from the Committee on Privileges and Elections I have no knowledge. I only know that as he was obliged to be absent to-day, and thought it important that the report should be agreed to, he asked me when it came over from the House to move concurrence.

Mr. LOGAN. I make no point as far as I myself am concerned. I have nothing to say on that account. I do not know that I could have met with the committee. I only said that I had received no notice of its meeting. That, of course, will have no effect on the report, but I desire to say that I appeared before the Committee on Appropriations. Whether the Senator from West Virginia was present then or not, I will not now state, but my impression is that he was. I was delegated by the Committee on Privileges and Elections to appear before the Committee on Appropriations. I did so appear, and made the statement of that committee as to the amount required. I was asked the question whether the committee had considered the question, and I replied they had, and that they had asked for the smallest amount they thought they could get along with, and this was the unanimous statement of the Committee on Privileges and Elections. I made that report to the Committee on Appropriations. This subsequent action I know nothing about. I only state the facts.

Mr. MORTON. Perhaps I ought to state that I was consulted by the Senator from Minnesota not now in his seat [Mr. WINDOM] on this matter, and told him that I was satisfied that the amount of $35,000 was not sufficient, but that there was an immediate demand for money, and perhaps it would be as well to take this appropriation now, but with the understanding that more would probably be asked for. We cannot well afford to delay this appropriation bill any longer, and as a disagreement in regard to this conference report would probably result in such delay, I suppose we had better take it. I do not believe it will be sufficient, and I concur entirely in the remarks of the Senator from Rhode Island that either House should have such an amount appropriated as in the judgment of that House may be necessary. I think this is due to the courtesy between the two Houses and due to the full exercise of the powers with which each House is invested.

Mr. DAVIS. As the Senator from Indiana has said, he had a conversation with the chairman of the conference committee, and as the Senator is chairman of the Committee on Privileges and Elections I supposed that the report met with his concurrence. Therefore I hope that the report will be agreed to; and as was said in committee, or at least in the Committee on Appropriations, if there should be any further sum necessary it can be asked for and there will be no particular objection.

Mr. LOGAN. I desire to say that I had no knowledge of the chairman of the committee having any conference on this subject.

Mr. MORTON. That was within a day or two.

Mr. LOGAN. I only repeated what I was delegated to state to the Committee on Appropriations. I did convey to them the unanimous request of the Committee on Privileges and Elections.

Mr. ANTHONY. The committee of conference might well have an understanding that if any further sums were wanted they should be asked for; and I suppose they could be asked for without any such understanding. I do not suppose that the committee of conference could have any understanding that the sums asked for should be granted.

Mr. DAVIS. I hope the Senator did not misunderstand me. I said that there was something said of that, not that there was an understanding on the subject in the Committee on Appropriations; I do not know that it was in the conference committee. I hope the Senator did not understand me as saying that the committee agreed that it should be done. I did not mean to intimate such a thing.

Mr. ANTHONY. I can only say that while I am ready to grant to the House of Representatives all the money it wants for such purposes, I shall not vote for an appropriation less than what the Senate in its judgment has thought proper to ask.

The PRESIDENT *pro tempore*. The question is on concurrence in the report of the committee of conference.

The report was concurred in.

PROPOSED HOLIDAY RECESS.

The PRESIDENT *pro tempore*. The question recurs on the amendment to the resolution of the Senator from Rhode Island [Mr. ANTHONY] respecting the adjournment proposed by the Senator from Vermont, [Mr. MORRILL.] The amendment will be read.

The CHIEF CLERK. It is proposed to strike out all after the words "26th instant;" so that, if amended, the resolution will read:

Resolved, That when the Senate adjourns on Friday the 22d instant it be to meet on Tuesday the 26th instant.

The amendment was agreed to.

The PRESIDENT *pro tempore*. The question is on the resolution as amended.

Mr. SHERMAN. Let it be read as it stands now.

The Chief Clerk read as follows:

Resolved, That when the Senate adjourn on Friday the 29th instant, it be to meet on Tuesday the 26th instant.

Mr. MORRILL. And with the general understanding, which seems to be manifest on all sides of the Chamber, that when we meet again on the 26th we shall adjourn over until the 29th, and on the 29th to the 2d of January.

Mr. EDMUNDS. We cannot do that without a quorum, for it would violate the Constitution worse than the other would.

Mr. MORRILL. Of course it will not be ascertained that there is no quorum, when we have this general understanding.

Mr. EDMUNDS. It will be if I am here.

Mr. SHERMAN. It all comes to this, that any Senator can on the 26th demand a session the next day.

Mr. MORRILL. Of course.

Mr. SHERMAN. Of course; it must depend on the unanimous consent of every Senator.

Mr. EDMUNDS. Certainly; and I hope there is not any understanding about it now, Mr. President.

The PRESIDENT *pro tempore*. The question is on the resolution as amended.

The resolution, as amended, was agreed to.

HAYDEN'S REPORT.

Mr. ANTHONY submitted the following resolution; which was referred to the Committee on Printing:

Resolved by the Senate, (the House of Representatives concurring.) That there be printed 4,500 copies of Professor Hayden's annual report of the geological and geographical survey of the Territories for 1875 and 1876; 3,000 copies of which shall be for the use of the House of Representatives, 1,000 for the use of the Senate, and 500 copies for the use of the office of the survey.

LEGAL TENDER OF SILVER COIN.

Mr. MITCHELL. I call for the regular order.

Mr. MAXEY. Mr. President——

Mr. LOGAN. I desire to say that I obtained the floor when this question was before the Senate and was being discussed some days ago, and intended to submit some remarks. I have been very unwell since, and therefore am willing that the Senator from Texas shall occupy the floor in my stead this morning; but I desire to call the attention of the Senate and of the chairman of the Committee on Finance to the bill (S. No. 1026) for the issue of silver coin and to make the silver dollar a legal tender, now before the committee, and also to a bill of a similar character passed by the House of Representatives within a few days. Senate bill No. 1026 was introduced by myself at the last session. I think it is very important that the Senate should take early action on the question and settle it one way or the other; and without submitting any views on the question, more than a general statement, my views concur with the action of the House to a certain extent; that is that the old silver dollar should be made a legal tender and be recoined.

I desire now to ask the chairman of the Finance Committee at what time he thinks it will be likely the committee can report this bill or some bill to the Senate of the United States for their action? I was not with the committee at the last meeting for the reason that I was not well enough to be there. At the meeting before I was present, and without saying anything about what transpired I suggested this matter myself, and something was said in reference to a report of a committee or commission appointed on the subject. But inasmuch as I feel a great interest in this measure and desire to urge it at all times that I can before the Senate, I wish to know prior to the adjournment if there is any probability of early action by the committee in presenting the question to the Senate of the United States.

Mr. SHERMAN. I can only state to the Senator that the committee have not yet had an opportunity to consider the question and have been delayed somewhat by the fact that the silver commission, as it is called, has made no report on the subject. I am informed in a general way that they will be able to make a report soon. As a matter of course the subject is pending before the Committee on Finance and will be promptly acted upon after the adjournment; but how soon I do not know, certainly at an early period of the session. I am in favor of very speedy action. Whether my views agree with those of the Senator or not will be developed hereafter; but I can assure him, I think, that immediately after the adjournment, so far as the Committee on Finance are concerned, they will be ready to act on this question, especially if in the mean time the silver commission should make their report. It seems to me they ought to make their report before we take any final action.

Mr. LOGAN. I feel myself that that is very proper, but I do not see the chairman of that commission present, nor do I propose to find any fault with their action—I have no right to do so—but I do desire to say that I think it very important that that commission should report, and report at a very early day, if the Committee on Finance is waiting for the report of the silver commission, so called, unless they intend to make a report so voluminous that it will never be read, and if they do, action might as well be had without it. If they intend to make a report that can be read during this session, I hope they will make it as soon as possible, for the reason that if the report is not made until late in the session in all probability there will be no action on the question. I deem it a question of as much importance as any that is before the country now, and the action of the Senate on it is very important to the country in view of the action of the House of Representatives.

I do not desire to be understood as casting any reflection whatever upon the commission, but I merely say what I do in order that they may be urged to make their report as speedily as possible, because that certainly was contemplated by the action of the Senate when they were appointed and required to report at this session.

ELECTORAL VOTE OF OREGON.

The Senate resumed the consideration of the resolution directing an inquiry as to the eligibility of J. W. Watts as an elector for the State of Oregon and the circumstances attending the appointment of electors in that State.

Mr. MAXEY. Mr. President, yesterday evening, in the discussion of the resolution presented by the Senator from Oregon, the Senator from Ohio, [Mr. SHERMAN,] among other things, said:

I am very certain that, if Governor Hayes should become satisfied, or if I should become satisfied, so far as my action may bear on this question—I do not know that it will—that Governor Hayes did not receive the honest vote of a State or that he did not have a fair majority of the votes legally cast, he would not desire the electoral vote of any of the disputed States. If it should be clear that in South Carolina, or Florida, or Louisiana Governor Hayes did not receive a majority of the legal votes cast at the election in either of those States, I would not have him. God forbid that he should—accept the office of President of the United States with such a conviction upon his conscience. Any man who would do it would be dishonored before men and before God.

I was very greatly rejoiced to hear that utterance from the Senator from Ohio, and I will state that if it should be clear that in South Carolina, or Florida, or Louisiana, Governor Tilden did not receive a majority of the legal votes cast at the election in either of those States, I would not have him—God forbid that he should—accept the office of President of the United States with such a conviction upon his conscience. Any man who would do it would be dishonored before men and before God.

In a very grave question like this, of the very deepest concern to the whole American people, it is a matter of infinitely more concern that the vote should be fairly and legally counted than the result of that count. What is now of the utmost consequence to the peace, prosperity, and well-being of the country is that such a course should be taken by the two Houses of Congress in counting the electoral vote as to convince the American people that the count has been fair, honest, honorable, and lawful. If there is anything for which the American people are specially noted, it is for fair play. What the people now want is a fair and honest count of the vote. Whatever the result of such a count may be is a matter of secondary importance. "Fair play and no cheating around the board" is what is demanded.

Mr. President, I hope that every Senator in this body and every member of the House will come up in the spirit of the utterance I have quoted from the Senator from Ohio, determined to do his part toward securing a fair and honest count of the legal votes; and if we will all act with that earnest purpose to do justice, to do the very right between the contending candidates, and carry out that purpose, the American people will be satisfied with the result; but if the people of the United States come to the conclusion that, by indirect means, by trick, by chicanery, by fraud, by cunning, or by any unlawful means, a man has been declared to be President of the United States who was not fairly and honestly elected, there will be mutterings loud and deep, and it will be the severest shock to American institutions that they have ever yet received. I say, then, that we here, the trusted embassadors of the States of this Union, have in our charge a matter of the gravest concern which may have a direct bearing upon the future prosperity and well-being of this country. I trust in God that reason, love of country, and an honest desire to do right unswerved by party bias will pervade the Senate and House and the whole country until this question is settled, and if we so act, I have no doubt of a solution that will satisfy the country, and that business will instantly resume its wonted channel with ever-increasing prosperity.

Mr. President, at the opening of this debate, in the first speech in the series of speeches made by the Senator from Ohio on presenting the labors of the committee sent to the State of Louisiana and the city of New Orleans at the request of the President of the United States, he took occasion to send forth to the world his conviction, under his *imprimatur* of the personal integrity of the members of the returning board of Louisiana and of the legality of their work. Sir, we all know that when the work of that board and the personal character of the members of that board are vouched for by a citizen of the distinguished reputation of the Senator from Ohio, necessarily that indorsement will have its weight and its influence. That the Senator was sincere in the statement that they were entitled to and enjoyed as much respect for their personal character and standing as any Senators on this floor, I do not gainsay; but it is a question of judgment, and upon a question of judgment honest men may differ.

So far as I am personally concerned, I do not propose to pass any judgment based on personal knowledge upon the honesty or dishonesty of those men who constituted the returning board of the State of Louisiana, but it is a part of the history of the country, and as such I have a right to refer to it, that during the days of reconstruction Lieutenant-General Philip H. Sheridan was sent by the Government to the city of New Orleans as the military commander of the department composed of the States of Louisiana and Texas for the purpose of carrying out and executing the reconstruction acts. At that time, 1867, the present chairman of the returning board of the State of Louisiana, J. Madison Wells, was governor of that State. It is part of the history of this country, published to the world by Lieutenant-General Sheridan, that J. Madison Wells, then governor of the State of Louisiana, was by him removed from that high position because he was an impediment to reconstruction; and in support of that charge,

for which he removed him, General Sheridan said he was a dishonest man and surrounded himself by political tricksters, and that he, General Sheridan, could not discharge the duties which he was sent to the State of Louisiana to discharge with such a man in office.

That, I say, is the opinion of General Sheridan. Now, General Sheridan is a man of distinguished reputation in this country. The Senator from Ohio is in like manner a man of distinguished reputation. Here we have two men of the same party, both occupying honorable positions, directly differing as to the character for integrity of the chairman of the returning board of the State of Louisiana. And it was not a mere idle utterance of General Sheridan; it was not simply something to put in a newspaper for general publication, but it was an official act. That utterance was given by him to the President as the reason for the removal of Mr. Wells, and he was removed from the governorship of Louisiana for the reasons assigned by Lieutenant-General Sheridan.

So far so good. There I have the Senator from Ohio on one side and the Lieutenant-General of the Army on the other side in respect to the character of Mr. Wells. But the Senator goes further and states in respect to this same returning board:

A committee of the House of Representatives, having power to do it in the investigation of the election of a member of the House and also in the investigation of the Louisiana election generally, held that they made a mistake of law. They construed it that they had power to act in excluding votes when there was no formal complaint or protest made by the officers who held the election. The committee set aside the action of the board to that extent for the purpose of founding a compromise in Louisiana, but at the same time they certified to the honorable character and general good conduct of the board, and the only difference was in regard to a legal opinion, and the chairman of that committee the other day in debate in the other House, to which we may refer as part of the history of the times, repeated again, and I am sorry I have not now his language before me, that that committee never did arraign the returning board for personal misconduct or arraign its legality. They acknowledge its legality. It was a conceded fact.

Mr. President, the committee to which the Senator refers was a special committee appointed by the House of Representatives of the Forty-third Congress, of which Hon. GEORGE F. HOAR, of Massachusetts, was the chairman.

Mr. SHERMAN. If my friend from Texas will allow me there, (because it may perhaps save me from further remarks at another stage,) I will now state to him the exact condition of that committee. I was substantially correct in my statement last evening, and I will now state it more precisely, because I have it from Mr. HOAR himself. That committee, I believe, was organized upon the motion of Mr. HOAR, and was composed of seven members. Instead of going in a body, the whole seven, to New Orleans to witness the inauguration of the State government, they sent three gentlemen, Mr. FOSTER, Mr. Phelps, and Mr. Potter, as a subcommittee. That subcommittee returned with their report, and it is probably from that report that the Senator is about to read. At any rate that was the report of the subcommittee, not of the majority of the whole committee. That report was communicated by the committee, not indorsed, but simply communicated to the House as the report of the subcommittee. That is the information given to me by Mr. HOAR. Afterward the committee, in pursuance of the powers conferred upon it, did undertake to go and did go down to New Orleans, Mr. HOAR, Mr. WHEELER, Mr. FRYE, and perhaps some one else—Mr. Marshall, I believe. At any rate, the other members of the committee who had not participated with the subcommittee went down.

Mr. BAYARD. To settle the accuracy of the Senator, I will state that the committee was composed of seven members and was represented by a subcommittee consisting of Messrs. Phelps, FOSTER, and Potter. When they came back their report was joined in and signed by Mr. Marshall, making four of the seven who signed their report. That will appear on reference to the record.

Mr. SHERMAN. I do not know how that may be; but at any rate the rest of the committee, four in number, went to New Orleans and there made what I always speak of, and spoke of yesterday, as the report of the committee, the report signed by HOAR, WHEELER, and FRYE, which led to the compromise arrangement made in Louisiana. When I speak of the report of the committee, I hope my friend will not quote the first document on me. He may comment on it; but that was not what I meant by "the report of the committee." I meant the paper signed by Mr. HOAR, Mr. WHEELER, and Mr. FRYE.

Mr. BOGY. The report of the minority. The other was the majority report.

Mr. MAXEY. I am very glad to hear the statement of the Senator from Ohio, and I think I know something of the transaction myself. The report from which I propose to read is Report No. 101, made to the Forty-third Congress, second session, by "Mr. GEORGE F. HOAR, from the select committee on the condition of the South," as follows:

Mr GEORGE F. HOAR, on behalf of the special committee on that portion of the President's message relating to the condition of the South, reports as follows:

In pursuance of the order of the full committee, of December 22, a special committee of three visited New Orleans, and proceeded with an investigation, the result of which they report to the general committee as follows:

Mr. SHERMAN. Yes.

Mr. MAXEY. Now comes in their report. Then I will go on to show that this report, from which I propose to read, is not limited to the report of the subcommittee Hon. CHARLES FOSTER, William Walter Phelps, and Clarkson N. Potter, but it is the report of the whole committee, as you will see by this. Going on and embodying in the report made by Mr. HOAR to the House the report of the subcommittee made by the subcommittee to the general committee, Mr. HOAR adds this:

The evidence on which the subcommittee base their conclusions not yet being written out, will be submitted hereafter, if it shall be deemed desirable. The committee thereupon voted to adopt the report, and also to report the same to the House with the recommendation that the same be printed and recommitted.

For the committee:

GEO. F. HOAR, *Chairman.*

It appears here that the testimony was not at that time written out, and for the reason, I take it, that the report and the evidence should go hand in hand this report was recommitted, and the testimony having subsequently been published, (three hundred and forty-one pages,) that was put out as a part of the report of the committee, and, this document being marked Report No. 101, that containing the evidence was marked Report No. 101, part 2. Therefore the evidence referred to by Mr. HOAR as not at that time having been written out was, after this recommittal, published along with the report as part of the report, and the two were together.

Mr. DAWES. Let me make an inquiry of the Senator.

Mr. MAXEY. If the Senator will permit me, I am trying to make a connected argument on this subject.

Mr. DAWES. I rose in reference to the report of Mr. HOAR. Perhaps there is a point upon which the Senator will give me a little light.

Mr. MAXEY. Yes, sir.

Mr. DAWES. I should like to inquire of the Senator whether after this subcommittee's report was taken by the whole committee, and laid before the House and printed, and then recommitted, the committee, with Mr. HOAR at its head, did not visit Louisiana, and make a full report to the House of Representatives of a very different character? I make inquiry as to the fact.

Mr. MAXEY. I think there was another report made.

Mr. DAWES. Upon that subject.

Mr. SHERMAN. If my friend will allow me, I promise not to interrupt him again. It is very common, as the practice is in this body and the other body, for committees to report a document to be printed and recommitted. The recommitting and printing does not commit the committee to what is reported and printed.

Mr. DAWES. The only word upon which the Senator from Texas bases his remark that the Representative from Massachusetts, the chairman of the committee, and his colleagues spoke through that report, is the word "adopted." They took the word "adopted" as a way to express the fact that they received from their subcommittee this report and ordered it to be printed for information and recommitted that the whole committee might still have control of it. After that the whole committee, as a committee, went to New Orleans and reviewed the whole subject and came back and made a report as a committee, not as a subcommittee, but a report as a committee. I think the Senator from Texas, if he desires to do exact justice to the committee as a committee, should turn to the leaves of that report, which is the report of the committee, and there he will find what the committee meant to be responsible for as a committee.

Mr. MAXEY. The report which I read is report No. 101 of the Forty-third Congress, second session, and is signed "GEO. F. HOAR, chairman."

The report to which I presume the Senator from Massachusetts refers was subsequent to the one I am referring to, and after, as I understand it, the return of Messrs. HOAR, FRYE, WHEELER, and I believe Mr. Marshall.

Mr. Marshall united in the report of the majority with Messrs FOSTER, Phelps, and Potter, and the report to which the Senator refers was a minority report, but, as I insist, does not do away with the "adoption" of the report I refer to. This report which I read is reported as having been adopted by the general committee and is reported "For the committee;" and signed "GEO. F. HOAR, chairman;" and it embodies within it the report of the subcommittee, Honorables CHARLES FOSTER, William Walter Phelps, and Clarkson N. Potter. Following that, the next report is a report from the majority of the committee on the state of the South, marked "majority report No. 261." That is signed by CHARLES FOSTER, William Walter Phelps, Clarkson N. Potter, and Samuel S. Marshall. The next report is the report of a portion of the special committee, which is a minority report, as will be seen by the names signed by "GEO. F. HOAR, WM. A. WHEELER, WM. P. FRYE," a minority of the committee. This I presume is the report the Senator refers to.

Mr. DAWES. Mr. President——

Mr. MAXEY. I desire further to say in that connection that the majority report distinctly states, signed, as I have stated, by FOSTER, Phelps, Potter, and Marshall, that—

The undersigned, a majority of the Committee on the state of the South, respectfully report that they cannot agree to the report made to the committee by Messrs. HOAR, WHEELER, and FRYE.

Mr. DAWES. Now, if I do not trouble the Senator too much, I desire to ask him if he does not do my colleague in the House injustice when he undertakes to make him responsible for those views submitted to the other branch by those other gentlemen who say that they do not agree with the opinions to which Mr. HOAR himself placed his signature, and for which he is responsible. This is all I desire to say. I simply desire to have my colleague set right.

Mr. MAXEY. I do not intentionally do Mr. HOAR injustice. The character and standing of Mr. GEORGE F. HOAR, as I am advised and

believe, is that of an honorable gentleman, but I take the reports as I find them, and I beg to say that, high as the character of Mr. HOAR is, it is in no respect higher, he is no more a trusted republican than Mr. CHARLES FOSTER or than Mr. William Walter Phelps, nor is it higher than that of the democrats, Mr. Potter and Mr. Marshall; and I have read from the report of Messrs. FOSTER, Phelps, Potter, and Marshall from the report of the subcommittee incorporated in a report made by Mr. HOAR, as chairman, and which he states in his report was adopted by the full committee. Certainly the testimony of these gentlemen is as good as the testimony of the chairman of that committee. Certainly the testimony of the majority of that committee is as reliable before the country as the testimony of the minority. As I said before, I have simply stated the facts that this report which I hold in my hand was reported by Mr. HOAR, signed by him as chairman of that committee, and in it he states that the committee "thereupon voted to adopt the report and also to report the same to the House, with the recommendation that the same be printed and recommitted." I think the words mean what they say. The reason why it should be recommitted I have stated; that he had said in the report that the testimony had not been written out, and therefore it was recommitted; and as an evidence of that fact, when the testimony was written out, it was printed as part of this document which is signed by the chairman of that committee. That is part 2 of Report No. 101.

Now, the Senator from Ohio says further that this committee "acknowledged the legality of that board." The committee say:

The law provides that this board shall consist of five persons "from all political parties." It consisted at the opening of their last session of five republicans; upon the resignation of one of whom (General Longstreet) Mr. ARROYO, a conservative, was taken to fill the vacancy. After protesting against the action of the board in secret session he resigned about the conclusion of their labors, and his place was not filled, so that, as your committee think, the law as to the constitution of the board was not complied with.

When this report was subsequently made by the majority of the committee they report the same thing, that the law was not complied with. So far, then, I think the Senator from Ohio was in error when he said that this committee said nothing in regard to the illegality of that transaction. But I want to go further. He said that the House committee when it came to the personal character of that board said nothing against it. He used this language also, "but at the same time they certified to the honorable character and general conduct of the board." Now let us see whether or not the report carries out that. On page 2 of the report the committee say:

The public sittings of the returning board were attended by the counsel of the republican and conservative State committees. Objections were received from the counsel of the respective parties to the returns from different polls. The objecting party was generally allowed to produce affidavits to support the objection, and the other party to reply by affidavits. A day was fixed when these proofs were to be closed. After these public sessions the board went into private or as they were called, executive sessions, where the proofs and matters in dispute were discussed and a decision arrived at.

I call the attention of the Senate to this:

The minutes of the board are very meager; they contain little more than a record of its meeting, going into executive session, and its adjourning, and some formal public orders. They contain no minutes whatever of the proceedings in executive session, and furnish, therefore, little light upon the findings of the board.

Now I read what refers especially to the chairman of that board, Mr. J. Madison Wells, and let us see whether or not the ideas of this committee who visited the city of New Orleans for the very purpose of ascertaining the truth in regard to the official action of these gentlemen correspond with the ideas of the Senator from Ohio.

The parish of Rapides chose three members of the Legislature. The returns elected all three conservatives. When the proofs closed, the only paper filed with the returning board was the affidavit of the United States supervisor that the election was in all respects full, fair, and free.

Mark you, three conservatives were returned, and it was sworn to by the supervisor that the election was fair, full, and free in the parish of Rapides.

It was not known in the parish that any contest existed against these members. They left their homes and proceeded to New Orleans to be present at the opening of the Legislature, no intimation of contesting their seats or objection to their election having been given by their opponents. At one of their last sessions the returning board declared all the republican members elected from that parish.

The supervisor reported the three conservatives elected. There was no contest; no paper whatever was filed except the proper paper of the supervisors; thus it went up; and it is only at the last session of the returning board that they declared all the republican members elected from that parish. Now let us see how that was accomplished, by what strange means, by what legerdemain it was that the three conservative members from the parish of Rapides were thrown out during one of the last days of their session and one of their last sessions and three republican members counted in in their place. And it will be remembered that the same four men, with the same chairman, who constituted the board to which the committee refers constitute the board now.

The committee say:

When the papers of the returning board were produced before your committee, there was found among them an affidavit by Mr. Wells, the president of the board, declaring that intimidation had existed at certain polls in that parish, and that the returns from those polls should therefore be rejected. The counsel for the democratic committee testified that they had had no opportunity to contradict the statements of this paper; that they never had seen or known of it before, and that upon an examination of the papers before the board, when the proofs closed, it was not among them. The counsel for the republican committee reserved the right to make explanation upon this point, but offered none. The affidavit was dated the —— day of December, 1874. It appeared that Governor Wells was not himself in the parish on the day of the election.

I ask honorable Senators how it was possible for an honest man to file an affidavit stating that intimidation occurred in that parish on election day when he was not in that parish on the day of the election?

And though at the opening of their first session your committee declared their intention to examine into the action of the returning board, Governor Wells never came forward as a witness.

That is one time he declined.

At the close of our proceedings leave was asked that his deposition might be given in. This was declined, and Mr. Wells was himself invited to appear before the committee, but he never came. Leave was also given for taking his testimony by commission if he desired, but was not availed of.

Thus we have opportunity after opportunity offered to the witness where the opposite party would have the power of cross-examination and the searching out of the very truth, and yet on every occasion he declined to come forward and subject himself to the rigidity of a cross-examination.

Your committee are therefore constrained to declare—

Using the word "constrained." It is the report of honest men against the interest of their own party—

Your committee are therefore constrained to declare that the action of the returning board, in rejecting these returns in the parish of Rapides and giving the seats for that parish to the republican candidates, was arbitrary, unfair, and without warrant of law.

I ask honorable Senators if an honorable man can knowingly do an unfair thing, and, when the subject of the act is brought directly in question, when he is invited in all the modes known to the law to come forward and give his testimony, decline to give it in any shape or manner either by personal appearance or by deposition or by commission and interrogatories.

If the committee were to go behind the papers before the board and consider the alleged charge of intimidation upon the proofs before the committee, their finding would necessarily be the same.

How? Here Mr. J. Madison Wells swears that there was intimidation, and a committee with a majority of his own party, or a subcommittee, in that clause upon examination, state that if they were required to go behind the papers before the board that their report would be the same.

It was asserted in Governor Wells's affidavit that the McEnery officials had usurped the offices of the parish, and thereby intimidated voters. Immediately after the 14th of September, when the Kellogg authorities in New Orleans were put out by the Penn authorities, certain changes took place in some of the parishes. When the news from New Orleans reached these parishes the McEnery officials demanded their places of the Kellogg officials, and they were at once given up. When the Federal Government intervened and unseated the McEnery authorities, the Kellogg officials demanded and received back their places; but in Rapides some time seems to have elapsed before the Kellogg officials took their places back; indeed, the McEnery register of deeds was still acting as such when your committee were in New Orleans, the Kellogg register never having come to reclaim the place, which was said to be worth nothing.

That is a good reason why they did not want to remove him.

Now in Rapides the Kellogg clerk was Mr. Wells's son. Having yielded his place to the McEnery competitor in September, he does not appear to have reclaimed it, and he was accordingly sent for, after the election, to come from his residence, some miles distant, to sign the returns of the election, which he did. Your committee are at a loss to see, in this action, any intimidation of Mr. Wells, still less of the electors of the parish.

And yet the affidavit of J. Madison Wells did state, although he was not there to know the truth whereof he testified, that the electors in that parish were intimidated. This is not a democratic paper that I am reading. I am perfectly willing to take the testimony of CHARLES FOSTER, William Walter Phelps, and Clarkson N. Potter in a case of this kind, or any kind—men whose reputation is known. The first two are trusted members of the republican party, and the last I know stands high in the ranks of the democratic party, and is one of the ablest lawyers that practices in the country. As to their integrity no one has brought it in question, and cannot. Then it does not make any difference to me whether it be that this is Mr. HOAR'S report or whether it is not Mr. HOAR'S report. It is the report of men as good as Mr. HOAR, and of the same political faith and order, whose business it was to go down there to investigate facts and make a report after full investigation.

I will read what they say in regard to this parish of Rapides, which they have discussed:

It so happens that that parish was taken as a sample parish of intimidation.

If they could not establish intimidation in Rapides, and that was the sample they had taken, the case failed.

Many witnesses from both parties were examined in reference to it; they show beyond question that there was a free, full, fair, and peaceable election and registration there.

And yet the president of this board, Mr. Wells, swears that there was intimidation there.

There was no evidence of any intimidation of voters practiced on the day of election, although it was asserted that intimidation of colored men before election had been effected by threats of refusal to employ them, or discharge them, if they voted the republican ticket. No evidence, either of discharge or of refusal to employ, was produced. Certain witnesses, themselves every one office-holders, testified generally to such action; but hardly any one was able to specify a single instance in which he heard of any employer so threatening or discharging any voter, or knew of any employé being so threatened or discharged. Not one single colored man throughout the entire parish was produced to testify, either to such a threat or to the execution of such a purpose, whether before or after the election.

The action of the returning board in the parish of Rapides alone changed the political complexion of the lower house, but their action in other parishes was equally objectionable.

They then go on and give the facts in regard to other parishes; but I will pass on, to save time, to De Soto:

So in the parish of De Soto, in which the returns showed a conservative elected by over 1,000 majority, it was alleged that the supervisor of registration had brought the returns to New Orleans, and had left them with a woman of bad character, who offered to produce them on payment of $1,000.

That is a place for them!

The conservative committee took legal proceedings to compel their production; but the court held that it had no jurisdiction to that end. They then caused to be produced before the board the duplicate of those returns from the office of the secretary of state, together with the tally-sheets, poll-lists, &c., filed there according to law. These duplicates corresponded exactly with the alleged result of the compiled returns which the said woman had produced; and of these alleged facts undisputed proof was also submitted to the board. Nevertheless, the board refused to count the vote for that parish.

Here is a parish which gives an unquestioned and undisputed majority of 1,000 votes. The return from that parish is placed in the hands of the supervisor and he brings those returns down to the seat of government at New Orleans, and instead of filing them where the law required them to be filed, they are turned over to a woman of bad repute who asks $1,000 for them. These facts are brought to the attention of that board, and nevertheless the board refused to make a demand for them and refused to count the vote for that parish; and yet this is a board which the Senator has seen fit here to say was composed of men as honorable as any Senators on this floor. In the conclusion upon that part of the case they say:

Without now referring to other instances, we are constrained to declare that the action of the returning board, on the whole, was arbitrary, unjust, and, in our opinion, illegal; and that this arbitrary, unjust, and illegal action alone prevented the return by the board of a majority of conservative members of the lower house.

We are told that the action of this board is as binding upon the country, and is entitled to as much respect, as the court of last resort, the Supreme Court of the United States. I ask when it was that any man in all this land has ever accused the Supreme Court of the United States of arbitrary and unjust decisions? They may have decided questions about which lawyers may differ as to the true construction of the law, but so far as their action is concerned the charge of arbitrary and unjust conduct has never yet been made against that august court. An honorable man, with a knowledge of the facts, cannot act unjustly. Governor Wells when he made his affidavit in regard to the parish of Rapides should have known the truth whereof he testified. The testimony before this board shows that Governor Wells himself was not in the parish of Rapides on the day of election, and therefore that he testified in regard to a subject about which it was impossible for him to know, and which, upon investigation, the committee report turned out to be untrue. The law of evidence characterizes this kind of testimony.

I should not have troubled the Senate with making these statements and with quoting from the testimony of General Sheridan in regard to the personal character of the chairman of that board, or the testimony of these gentlemen, Messrs. FOSTER, Phelps, and Potter, in regard to the arbitrary, unjust, and illegal conduct of this board and their sharp criticism in regard to J. Madison Wells but for the fact that the Senator from Ohio [Mr. SHERMAN] saw proper in his opening remarks upon the Louisiana matter to send forth to the world as honest men this returning board, and to further say that their action is entitled to as much credit as the decision of the Supreme Court of the United States. It is, therefore, but just and proper that the testimony of men of his own party with equal facilities for knowing the character and integrity and the work of these men should go before the country also. They might possibly be mistaken. I cannot well see how they could upon the facts be mistaken, but at all events the Senator from Ohio has indorsed the personal integrity and official action of this board, and the committee do not.

In respect to the report of the President's committee, we know by experience that party influences and party biases sometimes warp our judgment. If the President designed to secure a perfectly reliable report from the State of Louisiana, it seems to me that it would have been more prudent and more politic and wiser to have selected representative men from both of the great political parties so that the bias or prejudice which each party might have in respect to the evidence or the facts before the board might be corrected by the other party. In this manner the truth could have been deduced and then a joint report signed by both sides would have been entirely acceptable to the American people, but it is a matter of fact that every one of those who were sent down there at the President's instance are of the same political faith as the President.

There is another point I desire to refer to. So far as my information of affairs in the State of Louisiana goes, I do not remember to have seen a single publication charging intimidation, threats, or violence toward voters on account of political sentiments during the entire canvass. So far as the publications went that fell under my observation the canvass was fairly and peaceably conducted. The first news that came up from Louisiana, undisputed so far as I know, was that the election had been absolutely fair and peaceful in every precinct in the State, yet we have now charges of intimidation whereby we have a democratic majority of nearly 9,000 wiped out and a majority of some 4,000 counted in on the other side, making a difference of about 13,000 votes. This startling fact must be fully and satisfactorily explained before the American people will believe it just. If the testimony when it comes to be examined shows it to be right and in accordance with the votes legally cast that the State of Louisiana should be counted for the Hayes electors, if it is just, if the will of the people of that State, fairly expressed through the ballot-box, was for him, then it should be so counted; and if it was for the electors for Governor Tilden then it should be counted for Tilden. Whatever may be the truth of the case the decision should be in accordance with the law and with the facts. The democratic party court the most searching investigation of the disputed returns.

The Senator from Ohio agrees to that sentiment, but his trouble seemed to be as to who had authority to make this investigation. Can any one believe for an instant that when our system of laws on the subject of elections is so jealous of the rights of the people that there are tribunals for establishing by contest the right to the smallest office in a State, from constable up to governor, it is so fatally defective that there is no constitutional and legal tribunal to determine who has received a majority of the electoral votes cast for President and Vice-President? The power to open all the certificates is, by the Constitution, in the President of the Senate, and the power to examine the votes and determine questions raised as to their validity or invalidity, and of counting what are thus ascertained to be valid legal votes, is, in my judgment, vested by the Constitution in the two Houses. My opinions about this, expressed in the debate at the last session, have undergone no change. I will say in respect to this matter in Oregon that I have no objection to the investigation. There is a difference of statement on a point of great concern between the Senator from Oregon [Mr. MITCHELL] and the governor of that State; that is to say, as to the publicity, and its extent, of the alleged ineligibility of one of the Hayes electors. The governor says:

[By telegraph to the Herald.]

SALEM, OREGON, *December 7, 1876.*

To the Editor of the Herald:

At your request I give you some of the grounds of my action in granting certificates to electors in Oregon.

The laws of Oregon require the governor to grant certificates to electors duly elected. In taking his oath of office the governor is sworn to support the Constitution of the United States and of this State. In the election of President and Vice-President the Constitution of the United States is the paramount law. That instrument declares that no person holding an office of trust or profit under the United States shall be appointed an elector. John W. Watts, one of the electors voted for in Oregon, was on the 7th day of November holding an office of profit and trust under the United States, to wit, postmaster at Fayette, the county seat of Yam Hill County, and had so held that office for more than three years. Many more than the number of voters constituting his majority had actually passed in and out of his office on official business. His official character was generally known, and was mentioned during the political discussion of the canvass. The law was known and the fact was known rendering him disqualified to be an elector.

A protest was filed in the executive office, by prominent citizens, objecting to the issuance of a certificate to Watts, as a person disqualified, accompanied by proof of his disqualification, and demanding that the same issue to the eligible person having the next highest number of votes. A reply was filed, objecting to anything but a count of the votes, and a certificate on the count, and making no denial of the disqualifying facts. It was ruled, in the case, that where the objection to an applicant's right to receive a certificate rests upon the ground that a constitutional prohibition is interposed, the governor, acting under oath to support the Constitution, is bound to entertain and determine the question; not only that, but is to determine in such a way as to enforce the constitutional mandate to the extent of his executive power. It was also held that, the law and the fact being well known, the votes cast for the ineligible candidate cannot be counted for any purpose, and the eligible candidate having the next highest number of votes was duly elected. This ruling was based upon standard authorities, such as Cushing and Grant; the decisions of many courts, like the supreme court and the court of appeals of New York; the later uniform practice in the United States House of Representatives, and the great weight of English authorities, both parliamentary and judicial.

The law of Oregon providing for filling vacancies in the electoral college recognizes a vacancy only in cases where there has been an incumbent and such incumbent has died, refused to act, neglected to attend, or is otherwise absent. In this case there was no incumbent, unless the next highest candidate should take the position, and there was no vacancy which could be filled by the other members of the electoral college. The next highest candidate eligible under the Constitution of the United States was, therefore, certified to be duly elected.

L. F. GROVER,
Governor of Oregon.

The Senator from Oregon states that he made twenty-five speeches in the interest of the republican party in that State and did not hear the ineligibility of Watts mentioned. Then there is a question which, it seems to me, is proper for investigation; and, however this may result, whoever is fairly, honestly, and lawfully entitled to the disputed vote of Oregon should have it, and the same course should be pursued in South Carolina, Florida, and Louisiana. I do not believe that philippics, that denunciations do any good here and do much harm elsewhere. We all ought to look at this from a temperate standpoint; every man ought to be controlled by reason, judgment, and common honesty; and if we come up to the work with that spirit, with the earnest purpose and desire of declaring the very truth as to who is lawfully entitled to be inaugurated my judgment about it is that everything will pass off peacefully and harmoniously, and the people will be satisfied with whomever the truth may declare as lawfully entitled by fair election, conducted by the methods of the Constitution and laws to the exalted positions of President and Vice-President of the United States.

Mr. MORTON. Mr. President, the Senator from Texas started out with expressing the opinion that the will of the people should be carried out, in which I fully concur. He said that the election returns should be counted fairly and squarely, and that there should be no cheating around the board; that the result should not be determined by fraud and chicanery. In all that I agree; but I should have been glad if the Senator from Texas had gone one step further and said that violence and bloodshed and intimidation before the election should not be allowed to control the result, and that returns of elections obtained by bloodshed and all manner of violence should be rejected. I think my friend from Texas ought to have said that, and he and I

would then fully agree. The vote should be fairly counted, the will of the people should be expressed, and if there has been fraud in the count it ought to be corrected. If the results have been obtained by violence and murder and crimes of the darkest hue, then the fruits of these crimes should not be enjoyed. If the result in a particular parish or county has been obtained by murders, by the commission of high crimes, the party who committed those murders or countenanced them should not have the fruits. Those results should be cast out. You cannot stop to count the drops of blood. You cannot stop to count how many have been killed or how many men have been terrified or driven from the polls; but wherever it is shown that murder and these crimes have entered largely into the result of the election those results ought to be cast out. Murder is the highest crime known to the law, and neither individuals nor parties should be allowed to profit by it. I will say so long as murder is profitable so long it will be continued; so long as murder is defended and excused so long murder will be committed.

The question is not as to the character of the returning board in Louisiana. With all due respect to my friend from Texas, that is simply a voiding the issue. They may be good men or bad men; that is not the question. The question is what were the facts before them, what was the character of that election. The Senator cannot answer what has been said and what has been proven by saying that Wells is not a good man or that Anderson is not a good man. That is simply begging the question. That is not to the purpose at all.

The question is, what was the evidence before that board and what was the character of that election? [Holding up a book.] Here is a volume of testimony that has been printed. it is before the whole country. It is ignored; treated as if it had never taken place, and by an attack upon the character of the members of the returning board the whole thing is sought to be avoided. We have had instances of that before, where the defendant's counsel was instructed to attack the plaintiff's attorney. Instead of meeting this case by responding to these terrible charges that cannot be ignored, (and the time has gone by when they can be ignored, and Senators ought to understand that,) we are told that the members of the returning board were not men of good character. I am not now called to pass upon this question. I do not know what the Louisiana matter has to do with the discussion of this resolution; but it is brought here.

It is said by my friend from Texas that effect should be given to the voice of the people, and so say I. We should not let things turn on technicalities upon the great question of electing a President for the government of this nation. We should give effect to the voice of the people; we should put by small technicalities, little things that do not go to the substance.

In regard to Oregon there are in the first place two or three things which are not disputed by anybody. The first is that there is no charge of fraud in the election in Oregon. I have not heard that charge on either side. The election was admitted to be fair and honest, and it was admitted that the republicans carried that State by nearly twelve hundred majority. Now when an attempt is made to defeat the vote in that State and the voice of that people by saying that one elector was ineligible, the governor assuming to commission another man who was not elected and that man assuming to commission two electors who were not elected and thus to cast the vote of the State of Oregon, I want to apply to that State the doctrines laid down by my friend from Texas. I say we have got to trample under our feet these technicalities and tricks, to use a word I have used before, by which an attempt was made to take the electoral vote of Oregon from the republican party. Nobody respects what was done there. Even my friend from Missouri, [Mr. BOGY,] with all his ability and all his eloquence, cannot make the Oregon transaction respectable. It will always stand out on the page of history solitary, bald, and hideous.

To come down to the State of Louisiana, my friend referred to the report and to attacks made upon the members of the returning board. As I said before, I shall not stop now to defend those men; that is all foreign to the question. The question is not how old they are, what their occupation is, what their character has been; but the question is as to the character of the case before them, and as to the character of the election. And here we have a vast volume of testimony.

Mr. MAXEY. Will the Senator permit me to interrupt him?

Mr. MORTON. Yes, sir.

Mr. MAXEY. The remarks which I made in introducing the testimony of General Sheridan and the report of Mr. Foster, Mr. Phelps, and Mr. Potter was in answer to what had been said in regard to the personal integrity of the board by the Senator from Ohio, [Mr. SHERMAN.] If it was legitimate for him to indorse their personal integrity, it is unquestionably legitimate for us to show the other side of this question.

Mr. MORTON. Suppose that what General Sheridan said was true, how does that affect this question? Suppose he was mistaken, still how does it affect this question? If my friend is going to take the testimony of General Sheridan, I will read to him a passage from what General Sheridan has said, in which he states:

Number of political murders in the State of Louisiana from 1866 to 1875 were:

Killed	2,141
Wounded	2,115
Total	4,256

Mr. MAXEY. The Senator from Indiana is referring to that as the report of the committee. I think he will find upon an examination that it is a minority report signed alone by three republicans, whereas the majority report is signed by both republicans and democrats.

Mr. MORTON. So far as those facts are concerned which were reported upon by Judge HOAR, I believe there is but very little dispute. I simply want to say that if we are to talk about fairness of elections, we cannot ignore great crimes by which political results are brought about. If it can be shown, or if it has been shown, that the election in Louisiana was controlled by murder and violence in every form, I have to say that every such return should be cast out, and that is the great question. It is not to be dodged by attacking the plaintiff's attorney. Here is a mass of evidence laid before the board upon which it acted. There is the evidence running back through ten years, showing more than two thousand murders and more than two thousand men wounded before the year 1876 for political purposes. Louisiana has been a great slaughter-house of republicans for political purposes; and the fact cannot be dodged by talking about the plaintiff's attorney, by attacking the private character of the members of the returning board.

Here is a terrible state of facts alleged by General Sheridan; and if my friend places so much reliance upon what he has said of him let him take that statement along with the rest.

No, Mr. President, what the Senator refers to is trivial; it is not part of the *res gestæ*. What has been the character of the election in Louisiana? There is a volume of testimony placed on our table by the Senator from Ohio, [Mr. SHERMAN.] At least it has been brought here and printed by the order of this body. I might take a single parish. I find the testimony of the coroner; I find copies of reports of coroner's juries in the single parish of Baton Rouge, eleven cases of murder in the last year, of men shot and of men hung by armed bodies of regulators; and taking this evidence altogether, it is proof of a vast mass of crime which controlled that election.

Referring to the report made by Judge HOAR in regard to Louisiana, we find that in that report he refers to the slaughter of the convention in the city of New Orleans in 1866 where nearly two hundred men were killed and wounded, unarmed and without having committed any offense. He then refers to the evidence which shows that over two thousand persons were killed and wounded in that State just prior to the presidential election of 1868. He then refers to the Colfax massacre, where nearly or quite one hundred men were murdered in cold blood in 1873. He gives the circumstances, and the whole matter is summed up by General Sheridan in the statement of between four and five thousand being killed and wounded in that State since 1866.

Whenever murder shall be condemned in the South and denounced by all parties then it will cease, but so long as it is profitable it will be continued. If elections can be carried by violence we shall have violence. Then we shall have this country Mexicanized. What we want is fair elections. If the State of Oregon has been carried fairly by the republican party it should have the vote of Oregon. If the State of Lousiana has been carried fairly by the democratic party it should have the vote of Louisiana, but if on the other hand Louisiana has been carried by violence and murder and by a repetition of the crimes that have been going on there for ten years, then it should not have the vote of Louisiana, it should not have the benefit of these crimes.

Mr. BOGY. Then does the Senator think the vote should go to Hayes without him having any votes at all?

Mr. MORTON. If the votes fairly cast were for Hayes he should have it, and those votes which were cast by fraud and violence should be thrown out.

Mr. SHERMAN. That is the law of Louisiana.

Mr. MORTON. It is the law of Louisiana, and it is the law of justice. It is the law everywhere. There is a notorious republican State, republican by a large majority, and if it can or has been shown that that majority was overcome by violence, those who committed that violence should not have the benefit of it. To give them the benefit of their crime is equally against the law of God and against the law of man. There is no use now in saying that these was no crime; we do not know anything about it. It has been going on too long and the whole world knows it. Only the other day a committee of gentlemen sent down there on the part of the democratic party to watch this count were driven to admit the existence of these terrible crimes. They could not conceal them although they tried to divert the issue and place it upon immaterial matters.

Mr. BOGY. Mr. President, if it be true that the election in Louisiana has been carried by fraud, by murder, by the shedding of blood, by anything which would prevent a fair election from having been held, of course the vote of Louisiana should not be counted by the party that carried the election in that way; the vote of Louisiana should not be counted at all; but I have put a question to my friend from Indiana before, and I have put it to my friend from Ohio before, and they have never answered it. They cannot answer it. I say that there is no evidence of that fact besides what is found upon my friend's table, which evidence was not taken in accordance with the law of Louisiana. The law of Louisiana requires that any evidence of murder, of intimidation, of the shedding of blood, to affect the election, shall be returned within a given time, say twenty-four hours, with the return of the votes of the different parishes. That law has not been com-

plied with, and why was it not complied with? Because the fact stands before the world that there was no intimidation and no murder and no bloodshed. The fact is beyond all controversy in the city of New Orleans among republicans and democrats that the election throughout the State of Louisiana was peaceful, and quiet, and orderly, and that these affidavits that are found in that report on the Senator's desk were of men picked up in the stews and gutters and purlieus and faubourgs of the city of New Orleans, men not known, many of them, and all of them, no doubt, perjured themselves. The law of Louisiana requires that any evidence of fraud shall be returned with the vote. That law has not been complied with. When you speak of the returning board, there is another fact, which these gentlemen cannot or dare not deny. That board after having got the evidence, after receiving the testimony before the committees that were there present, retired privately and threw out what they pleased; and to this day neither the committee of the democratic party nor my friend's committee know the vote of any parish in the State of Louisiana. They then made an aggregate return sweeping away at one dash a majority of 8,000 votes given to the democratic party and giving a majority of nearly 4,000 votes to the republican party; and that was done in secret session, no one but themselves being present.

After my friend from Ohio spoke as he did yesterday, you would suppose that the committees were present during all those investigations. I say that the two committees were present as a matter of form, a mere deception, at the opening of the proceedings; but what votes were returned, what were thrown out, and what were received beyond that nobody knows. Everything was done in secret; and that by the report of the committee that went there two years ago, composed of a majority of republicans, has been declared to be an improper way of transacting the business. The report of Mr. HOAR and his colleagues stigmatized that as being illegal and improper. The report says that the receiving of affidavits not having been returned with the votes is not allowed by the laws of Louisiana; and yet I do say as a fact which never has been contradicted, and which never can be contradicted, that when the returns of the votes of the different parishes were made there was no evidence of intimidation with them; and who can doubt for a moment if intimidation existed, if men had been shot, if murder had been committed, if all those horrid things embraced in that document had taken place, that that fact would have been returned? All these officers in the parishes of Louisiana were republicans; all the commissioners of registration and supervisors of election were republicans and the appointees of Governor Kellogg. These men, all belonging to one party, made no return of such things at the time, and made none for weeks afterward; and yet both of my friends admit that if there is evidence of fraud the vote should not be counted. The evidence is that there was fraud committed by the board; what appears in that book is not authorized by the laws of Louisiana. Neither of my friends can say that that thing was authorized by the laws of Louisiana. The law is positive that the evidence must be returned with the votes by the supervisors of registration and the commissioner of the parish. It was not done, and not being done, that board had no right to take jurisdiction; it had no right to fabricate and to create testimony which is upheld by my friend from Ohio in that able and, I will not say cunning, but most successful way that he has employed more than once on this floor. The testimony in the report upon my friend's table was not taken in accordance with the laws of Louisiana. If there has been intimidation; if there has been fraud, I am not myself in favor of receiving votes cast in that way. I have no doubt if we had a proper appreciation of the high office of President the vote of Louisiana ought to be thrown out altogether. Let it be so, and let those men, having experience, know better hereafter. Those men admit themselves that the vote was actually given for Mr. Tilden, but charge that that result was brought about by fraud, by the shedding of blood, and murder. I do not admit it; but does that prove that the vote of Louisiana should be given to the other party? Parishes were thrown out by the action of a board sitting in secret, and they dare not now appear before the committee that is in New Orleans and show what they did. They are resisting the investigation to-day, if what we see in the papers be true. Let the character of the board be what it may, good or bad, we say its action is not sustained by the law of Louisiana, and the report of a House committee composed of a majority of the republican party shows that its action is not in accordance with the law of Louisiana in declaring the result of the vote given at the last election.

Mr. DAVIS. Mr. President——

THE POSTAL SERVICE.

Mr. HAMLIN. Before the Senator from West Virginia proceeds, I desire to present the evidence which the commission to examine into the mail service have taken, and I ask that it be printed. We shall soon have the various subjects to which it relates before us and all Senators want the information which it contains. I move that the usual number be printed.

The motion was agreed to.

COMMITTEE ON COUNTING THE ELECTORAL VOTES.

The PRESIDENT *pro tempore* appointed as the special committee respecting the counting of the electoral votes authorized by the resolution of the 18th instant, Messrs. EDMUNDS, MORTON, FRELINGHUYSEN, LOGAN, THURMAN, BAYARD, and RANSOM.

DEATH OF SENATOR CAPERTON.

Mr. DAVIS. Mr. President, according to notice heretofore given I now submit two resolutions having for their object the furnishing of an opportunity for the Senate and House of Representatives to bear testimony to the character and public services of ALLEN T. CAPERTON, and ask their present consideration.

The PRESIDENT *pro tempore*. The resolutions proposed by the Senator from West Virginia will be read.

The Chief Clerk read as follows:

Resolved, That as an additional mark of respect to the memory of ALLEN T. CAPERTON, late a Senator from the State of West Virginia, business be now suspended that the friends and associates of the deceased may pay fitting tribute to his private and public virtues.

Resolved, That the Secretary of the Senate communicate this resolution to the House of Representatives.

The resolutions were agreed to unanimously.

Mr. DAVIS. Mr. President, the Senate is again called upon to suspend its ordinary proceedings, that it may in a proper manner mark its respect for one of its former members whose death it laments; to testify to his private worth and public virtues and give expression to its sorrow.

Scarcely a session of this body passes but it is invaded by death and some familiar face, some associate, is summoned hence and called to rest forever from all earthly care.

In my single term of service here, yet incomplete, the painful duty now upon us has been, alas! too frequently performed.

We have followed to the grave and shed the tear of affection over some of the ablest and most distinguished men of our day and time.

Our late President of the Senate, Vice-President Wilson, the nation's and people's friend; the learned and gifted Sumner; Ex-President Johnson, self-taught and self-educated, who by force of energy and native abilities hewed his way from the humblest walks of life up to the executive chair of the nation; the patriot governor, Buckingham; the amiable and affectionate Ferry; and the earnest, able, and fearless Davis, all have passed away.

In this instance it has fallen to the lot of West Virginia to mourn and render up one of her ablest, best, and truest sons.

Toward the close of the last session of the Senate, prolonged as it was into the late summer, when the heat was most oppressive and fatigue and exhaustion rested upon all, after but a brief illness of organic disease of the heart, on the 26th day of last July, death found Mr. CAPERTON at his post of duty.

It is not my purpose on this solemn occasion to pronounce any studied words of praise and commendation over my friend and dead colleague, believing that the best eulogy upon so noble a character will be the plain and simple story of his life.

ALLEN T. CAPERTON was descended from an old Virginia family, and was born at Union, Monroe County, Virginia, (now West Virginia,) November 21, 1810. His ancestors on the paternal side were English and on the maternal Scotch, a commingling of nationalities that has produced some of the greatest men of our country. His great-grandparents on both sides were among the earliest settlers on the head waters of the Kanawha, then overrun by hostile Indians; and the fact that his grandmother was captured by savages, her infant child butchered before her eyes, and she detained in captivity for four years, will give some idea of the courage it took and the dangers that had to be encountered in opening to civilization that fertile and beautiful mountain region.

Hugh Caperton, the father of the late Senator, was a man of great ability, high character, and commanding influence in the section of Virginia where he resided. He represented his district in the Thirteenth Congress and was the intimate friend and admirer of the great statesmen Clay and Webster, and other leaders of the whig party, to which he belonged.

Mr. CAPERTON passed the earlier years of his life at the home of his father, near Union, and at that village received the rudiments of his education. At the age of fourteen he went to Huntsville, Alabama, to attend school, making the long journey on horseback in company with an elder brother. He afterward attended the University of Virginia, and completed his education at Yale College in 1832, graduating seventh in a class of fifty-three at the age of twenty-two. In college he was noted, as in after-life, for his studious habits, industry, and good deportment; though modest and reserved, he was popular with his fellow-students and beloved and esteemed by his professors.

After leaving college he studied law under the late Judge Briscoe Baldwin, at Staunton, Virginia; was admitted to the bar in 1834, and commenced the practice of his profession at his native town. His natural ability, eloquence, and close attention to business soon secured for him a prominent position as a lawyer, and his practice rapidly extended throughout the southwestern portion of the State. He was not, however, long permitted to confine himself solely to his professional duties, but in 1841, at the solicitation of his friends and neighbors, he took part in politics and was elected to the house of delegates of Virginia, and in 1844 to the senate, after which, until 1850, he was at various times a member of both houses of the State Legislature. In 1848 he was a member of the national convention that nominated President Taylor. Although elected to the Legislature at an early age and at a time when some of the ablest and most brilliant men of the State were members, he soon advanced to the

front rank and gained an enviable reputation throughout the State as a useful legislator and a ready and forcible debater.

His service in the Legislature was marked by his untiring efforts and best exertions in favor of every measure looking to the progress and prosperity of the State generally, but more particularly to the opening up and development of the vast resources of the portion he represented. All propositions for internal improvements and public works found in him a zealous and energetic supporter, and he was held in the highest esteem by all parties.

A newspaper correspondent, speaking of him in 1858, says:

A. T. CAPERTON, of Monroe, is a whig and has long enjoyed the confidence of the whole people of his section. He has never been defeated for office. MR. CAPERTON is one of the handsomest men in the Legislature, the ablest member of his party on the floor, and would make a valuable and useful member of Congress.

During all this time, notwithstanding his service in the Legislature and the interest he took in politics, he not only continued the practice of his profession with success, being engaged in almost every important suit in his section of the State, but found time to devote to agriculture and stock-growing, of which he was very fond, and was reputed among the most successful in the State.

He was also the active friend and supporter of nearly all important enterprises projected and put in operation in the southwestern portion of Virginia.

He was one of the most influential directors in the James River and Kanawha Canal, looked upon in that day and time, as now, a work of national importance, its object being to connect the waters of the East and West, and furnish means of transportation between the distant sections of the country.

In 1850 and 1861 he was elected a member of the constitutional convention of Virginia, and, like many prominent members of the whig party in the South, was a conservative-union man, and opposed secession until the commencement of actual hostilities, when he felt, as many others did, that his duty was to link his fortunes with those of his State. In 1862 he was elected by the Legislature of Virginia as a member of the Confederate States senate, which position he filled until the close of the war in 1865; after which he returned to his home, accepted the result of the war in good faith, and resumed the practice of his profession, devoting much of his time and energies, as in the past, to the opening up and developing the resources of West Virginia, particularly adverting and bringing to the attention of foreign capitalists her fine coal, timber, and grazing lands; and in this direction he accomplished much and his efforts were crowned with reasonable success.

On the 17th of February, 1875, after a spirited contest, he was almost unanimously elected a member of this body to succeed Hon. Arthur I. Boreman, and took his seat on the 4th of March following. His election was received with general satisfaction throughout the State. He brought to the Senate great strength of character, matured experience in public affairs, sound judgment, and an accurate knowledge of the history of the Government and the necessities of the country, and particularly the South. He had the liveliest appreciation of the responsibility resting upon a Senator and his duty to the General Government and his State. He recognized in the amplest manner that old issues were dead and that a glorious and prosperous future awaited the whole country if good feeling could be restored between the sections. His greatest concern and deepest anxiety was over the unsettled condition of our political affairs, and had he lived I have no doubt his voice would have been raised and energies exerted in behalf of peace and harmony.

Such is a brief outline of the early life and public services of my departed colleague.

For thirty-five years, it may be said, he was constantly under the eye of the public, filling many important positions of trust and confidence to which he had been elevated by the partiality of his neighbors and fellow-citizens. And during this long term of public service, quite an ordinary life-time, embracing and covering as it does a period as important, stirring, and exciting as has occurred in our history as a country, I have the pride and pleasure of recording that his conduct and character was so pure, so high, and so elevated that neither suspicion nor taint ever rested on either; and in all of his official acts and doings, in his professional and business dealings, he did his duty well, wronged neither state or individual, and was uniformly just and honorable.

He was a man of scholarly attainments, positive character, fixed principles, and strong convictions, a despiser of all tricks and *narrow doings*, a sound lawyer, modest and reserved, though a ready debater, thoroughly versed in the history of the country and politics, a lover of the Constitution and a close student of its wise provisions; all of which was supplemented by a large experience with men and affairs. Thus thoroughly equipped by nature and cultivation he came up to our best ideas of an American Senator and statesman.

The term of service of Senator CAPERTON as a member of this body, less than two years, was so short that there was scarcely sufficient time for his associates to know him well and understand his noble character; but I believe I am authorized in saying that, even brief as it was, he enjoyed the esteem and respect of all, and none was more dearly beloved.

Of commanding presence and dignified deportment he inspired the respect of all with whom he came in contact. He was eminently social. Possessed of rare conversational powers and a cultivated mind, amiable disposition, and genial manner, warm-hearted and affectionate, he drew around and cemented to him friends wherever he went. He made but few speeches in the Senate, but when he did speak he brought to the subject careful and accurate thought, close research, and sound judgment. His highest ambition, best purpose, and most earnest wish were that the estrangement growing out of our late unfortunate war should forever disappear and be replaced by harmony and good feeling between the people of the whole Union, believing when this happy end should be attained there was a brilliant and prosperous future before the country.

He was an earnest advocate of internal improvements on the part of the General Government, feeling that if Congress could inaugurate and carry out a proper system it would prove of incalculable benefit to the country and help to bring about the harmony and friendly feeling between the people of the States which he so much desired and believed necessary to the perpetuity of our free institutions.

His speeches on the Centennial and river and harbor bills, delivered during the last session of Congress, breathe a spirit of progress and patriotism and hope for the future.

But it was at his own home, in the midst of his neighbors and friends of a lifetime and in the quiet sacredness of the domestic circle, where he was best known, that he was loved most.

A fond and affectionate husband, a generous and loving father, he enjoyed the devotion of his family.

It was my lot to be one of the number who accompanied his remains from this capital to their final resting-place at his home, and his popularity and the affection cherished for his memory were marked by the general grief and gloom that pervaded all classes as we drew nearer to the end of our sad journey. His death was not only a great loss to his State and the country, but particularly to his family and the community in which he lived. He was endeared to all classes, and in the long procession of relatives, friends, and neighbors that followed his remains to their last resting-place, among the grief-stricken and those who stood nearest the grave, were some of his former slaves.

Although cut off in the midst of his usefulness and at a time when he could apparently do the most good for his country and State, we bow with better submission to this dispensation of a divine Providence, believing and knowing that society, the times, and the age were better for his having lived.

Mr. WRIGHT. Mr. President, I should be unmindful of the strong promptings of friendship, indifferent to duty, and unjust to the memory and many sterling qualities of head and heart of the late Senator CAPERTON, if I did not add something to what has just been so appropriately said by his surviving colleague. I first met the late Senator when he appeared to enter upon his duties here in March, 1875. From that time until his death our relations, official and personal, for those theretofore strangers to each other, were more than usually intimate. Among other duties, he was assigned to the committee of which I was then made chairman, a committee (Claims) where he found hard work, drudgery, need of patience, care, thoughtfulness, watchfulness, and where, certainly equal to any other in this body, there is abundant opportunity to test the fidelity of its members to duty and their ability to dispose of the many perplexing and important questions arising. And I am sure that I but express the united judgment of his associates there when I say that no man could have been more faithful, painstaking, or attentive to every question arising, nor more solicitous to do even and exact justice to the claimant and the Government, than our late colleague.

In the committee-room, as in the Senate, he was the same affable, courteous, polite, and courtly gentleman, and in both, as in private and social life, never in an unseemly or untimely manner pressing his views, never seeming to obtrude his opinions in the spirit of the determined and obstinate antagonist, but mildly, pleasantly, and yet with a firmness which satisfied you that he knew his ground, had studied it well, and that his convictions or conclusions were the result of thought and care, and not of passion, prejudice, or other than what was to him the very right of the case. He could listen to and take part in fair and just argument; to aught else than this and the very law and justice of the matter presented, he ever turned a deaf ear.

Senator CAPERTON was educated at Yale, and had as his classmates and fellow-students, among others, John and Wellington Gordon, of Virginia; Rhett and Rutledge, of South Carolina; Shorter, of Georgia, as well as others who were afterward of distinguished prominence in their several States and in the nation. One of these (Hon. Henry Sherman, now of this city) says of him as a student that "He was of fine personal appearance, courteous in his address, of high moral character, and very popular among his fellow-students." And following him through after-life this friend adds that "He was eminent in his profession, prominent in his State; in his business he was a man of large conscientiousness and high-toned honor and integrity. I frequently found him, after he entered upon his duties in the Senate, very late at night, pouring over voluminous records and laboring with the utmost care and industry. His laborious and persistent attention to business, in my judgment, shortened his days."

In private life, as we have already heard, the goodness and greatness of the late Senator appeared in the most conspicuous manner. The man who—as another friend, who was for years brought into the closest and most intimate relations to him, in a letter now before me

says—I say the man who, "tender and guileless as an infant himself, could and did attach to him the affections of the young and the poor, enter into their plans and pleasures, identify himself with their interests, who had the almost sublime adornment of wife and children, and who returned this with a devotion attracting the attention of all who knew him, who despised a little thing beyond expression, who with that vigor of language of which on such occasions he was complete master denounced all things little and mean and wicked, who ever took an interest unequaled in the struggles and trials of those in distress and trouble, who as a man was exemplary in all the relations of life"—such a man, I repeat, could not be otherwise than good; and greatness most logically and certainly followed, for goodness leads to greatness; goodness is greatness.

Senator CAPERTON belonged to that school of politics which taught the power and constitutionality of the General Government to engage in a general system of internal improvement.

Entertaining these convictions, he was, as his public life will show, ever the most active supporter in his own State and in the nation of all those measures which tended to the material development, by a system of internal improvement or otherwise, of the old State which he loved so well, and of any and almost all schemes under the patronage and fostering care of the General Government which in his opinion might contribute in any manner to its growth, greatness, and material prosperity. On this subject or on these matters he never, as far as I can learn, and as his public record will attest, had any the least constitutional scruples. And yet it is perhaps not strange, in view of his associations, education, and from his devotion to his State, that he could quite naturally incline to side with his State in the late unpleasant and deprecated struggle. Hence he took a prominent part in that contest for what he thought were the rights of his State and his people. And yet the sincerity of the man and his convictions, his adherence to his principles as to the powers of the Government, and his, as I must believe, patriotic devotion to the Union and country in whose service he was engaged at the time of his death, is well shown by what he said to a near friend in almost his last hours as given to me when, referring to his public life, he said, "You know the influences under which I have lived and been brought up and strengthened in the views of States' rights, consistent with which I could not do otherwise than I did. But," he added, "I am clear of those views now, and I accepted my present position with a firm determination to support the Union and Government of the United States, and my first ambition is to enforce upon the people of the State which I represent my conviction that our greatest good is to make the State of West Virginia as great a State in the Union as the Old Dominion of Virginia was in her palmy days."

Such, Mr. President and Senators, were some of the characteristics and virtues, as they impressed me, of our late colleague; such almost his last words. Standing by his tomb and admonished by the occasion, our present surroundings, the scenes here enacted each day, how we should each be led to reflect upon the vanity and littleness of all human ambitions and aspirations! How fitting that we should for the passing hour, and indeed for time, bury the asperities, the bitterness, the criminations and recriminations of party and political strife, and upon their tomb build higher and still higher a love and devotion to that Union which is the only sure hope of our present and future greatness; that Union which should know neither sections nor parties; that country which our deceased colleague was, as I believe, in his service here, seeking to make stronger and better and purer; that country and that Union bequeathed to us by the noblest ancestry of the ages and saved to us by the best blood of their equally noble children.

Mr. WITHERS. Mr. President, amid the many appropriate and graceful tributes to the memory of our departed associate, I ask the privilege of depositing a modest chaplet on the same sacred shrine.

To the interesting biographical sketch, the acute analysis of character, the warm expressions of appreciation and esteem to which the Senate has listened, little need be added. Yet I feel in this connection that something is due from the State which gave him birth, the State toward which his true and loyal heart was ever wont to turn with filial love and never-failing reverence. Though by the exigencies of the times he appeared on this floor as one of the faithful representatives of that fair daughter which had been so rudely carved from the mutilated form of that dismembered State, ALLEN T. CAPERTON was *intus et in cute* a Virginian of Virginians. His interest and his affections, refusing to be restrained within the narrow confines of West Virginia, included in their loving embrace all Virginia, whether old or new. Nay, sir, I may go farther and say that while Virginia held the first place in his affections, no portion of his country, whether East or West, North or South, was excluded. His expansive patriotism, disdaining the restricted limits of State boundaries, embraced the interests of the whole people.

Reared amid those grand old mountains which, like heaven's sentinels, keep watch and ward around that loved ancestral home where his progenitors for generations had "lived and moved and had their being," it is not surprising that his mind was early imbued with that undying devotion to the principles of liberty and free government which in all ages has been deemed a characteristic of "the dweller among the hills."

Blessed with a fine person, a strong and vigorous intellect improved by culture; of refined literary taste, with an exquisite and quiet humor; of temperate habits and genial disposition, it is not remarkable that he should have been early called to assume the duties and responsibilities of public life. Of that public career, long and honorable as it was, I shall speak very briefly.

By inheritance, as well as by the convictions of his maturer judgment, he was an earnest but not a blind adherent of that grand old party which under the leadership of the "great commoner" attained such enviable distinction for its probity, its purity, and its patriotism as will in all time provoke the emulation of all political organizations; a party which, if not always fortunate in the inauguration of its schemes of statecraft and the election of its candidates, ever maintained as its cardinal doctrine that the interests of the whole country were to be held superior to the gratification of individual ambition, and the prosperity of the people more to be valued than the triumph of the politician.

These principles found in Mr. CAPERTON a steadfast and uncompromising adherent. His intellect, naturally acute, was expanded by culture and disciplined by study in both northern and southern schools until it attained a breadth and comprehensive scope which was fatal alike to the narrow dogmatism of the sectionalist and the destructive frenzy of the fanatic. He was no one-idea man. In politics he knew no higher law than the Constitution of his country, was ambitious of no distinction except that incident to the faithful discharge of representative trust. He sought no selfish end, labored not for personal aggrandizement. His devotion to duty was so absolute and unquestioning, his abnegation of self so utter and complete, that they overshadowed that prudence which ordinarily prompts us to regard personal comfort and personal safety superior to all other considerations, and thus doubtless accelerated the final catastrophe by which an honorable and useful career was so suddenly and sadly closed. Enervated by the excessive heat and exhausted by the unusually arduous and protracted labors of the last session, with vital powers perceptibly waning day by day, he yet, with brave heart and unblenching spirit, refused to seek amid other and more congenial surroundings that repose upon which his very existence depended. In his opinion the interests of his constituents required his personal attention and demanded his continued presence here. The members of the Senate will not, I am sure, soon forget the earnest and almost impassioned tones of his voice as they fell for the last time upon our ears pleading for the inauguration and consummation of such enlarged and comprehensive policy of internal improvements as would develop and enrich not only his own immediate constituency, but would redound to the advantage of the whole country.

In his stern devotion to duty, in his delicate sense of honor, in his contempt for all that was little and mean, and in the fearless bravery of his loyal heart he seemed better suited to the chivalric than to the present utilitarian age. But it was in the domestic circle, amid the sweet endearments of home, that the most lovable and lovely traits of my friend's character found their fullest development. His appreciation of home joys and domestic pleasure was unusually acute, and however appreciated and honored might be his public service, he ever turned with unfailing zest and keen enjoyment to the delights of that mountain home whose elegant hospitalities he so much delighted to dispense, and to that family in whose affectionate ministrations he found his highest happiness. In the sacred *penetralia* of that home there is "an aching void the world can never fill." I will not with rude hand attempt to draw back the veil which shrouds sorrows which it cannot wholly conceal. To "time, the comforter," and "to Him who doeth all things well," they can look alone for the healing of their yet green wounds, assured that when that time shall come, they will feel a just appreciation of his reputation as a public servant, and will forever cherish as their dearest heritage the memory of his sweet domestic virtues.

Mr. President, to arrest the sweeping current of heated political discussion which has since the commencement of the present session borne down everything before it, to still for a time the tones of mutual denunciation which have so persistently vexed the ear of the Senate; to withdraw our minds for a brief space from the consideration of the exciting questions which press upon us with such engrossing interest, and to turn with saddened hearts and subdued utterances to the performance of the touching duty of paying this tribute of respect and affection to the memory of our departed associate, is eminently judicious and must be productive of good.

These ceremonies bring us face to face with the last great enemy, before whom the struggles of political parties are dwarfed into insignificance, and compel you to remember that "there is no work nor device, nor knowledge, nor wisdom, in the grave whither thou goest."

The dreams of ambition, the mad quest for power and place, the aspirations of purest patriotism, alike pass away with the fleeting breath, and thus we "bring our years to an end as a tale that is told:"

> For the living know that they shall die: but the dead know not anything. Also their love, and their hatred, and their envy, is now perished; neither have they any more a portion forever in anything that is done under the sun.

Such is the conclusion of Him to whom was given wisdom beyond that which has ever fallen to man, and it becomes us well to ponder His words and so apply our hearts to the true wisdom that when our star sets at life's close "it may set as sets the morning star, which goes not down behind the darkened west, but melts away into the brightness of the coming day."

Mr. EDMUNDS. Mr. President, Mr. CAPERTON took his seat in this body as one of the representatives of West Virginia for the term of six years on the 4th of March, 1875. He died on the 26th of July, 1876.

A law higher than constitutions and a power greater than that of states terminated the high trust his State had committed to him before one-fourth of its period of usefulness and honor had elapsed. The daily lesson of mortality, repeated in every age and every clime in the only language common to all the inhabitants of the earth, speaks as clearly to those in the most exalted as to those in the humblest stations. The cabinets and audience-chambers of kings and the halls of senates are as obedient to its inexorable voice as the lonely tent or wigwam of the poorest dweller in the desert. Misery and happiness, want and affluence, are equal before it; and so day by day there disappear from the scene of human endeavor as well the actors of the great parts as the simple figures who only pass unnoticed across the shadows of the most distant parts of the stage.

In the brief career of Mr. CAPERTON among us, he had endeared himself to the whole body of his senatorial associates. Political friends and political opponents alike found in him those qualities of personal uprightness and independence that do so much always to mitigate the overzeal and soften the asperities of party strife. A man of much sensitiveness of temper and of strong opinions, the self-reverence and self-control flowing from a gentle spirit, a cultivated intellect, and long intercourse with his fellow-men in many stations of trust made him always courteous in manner and conciliatory in advancing his own opinions and in opposing those of others. He has been suddenly taken from the sphere of labor for his State and his country, upon which he had but just commenced. As we join in the sorrows of the young Commonwealth he represented, we naturally look backward to his predecessors and to her singular history. Mr. CAPERTON was only the third Senator of his class from that State. Mr. Boreman immediately preceded him, and Mr. Van Winkle preceded Mr. Boreman, and was one of the first two Senators from West Virginia, Mr. Willey being his colleague. Out of the convulsions of the rebellion there was born a new and welcome sister in our great family of States.

The substantial power of the old Commonwealth of Virginia, glorious in all her previous history—east of the mountains having carried her in 1861 into the rebellion—although during a short period afterward she had representatives in the Senate—the people of the forty-eight counties of the western part of the State, lying among the beautiful and fertile valleys of the Alleghanies, in 1862 framed a constitution and government for a separate and independent State. The great majority of this people were loyal to the national unity of the Republic, and naturally felt deeply anxious that their fortunes should not be linked with those of Eastern Virginia in its sad attempt to break up the Government of the Union. After much consideration and many doubts, on the 31st of December, 1862, an act of Congress was passed providing for the creation of the new State of West Virginia, and on the 19th of June, 1863, she became the thirty-fifth State of the Union, and the twenty-second of the new States. The character of the political body that, as the Legislature of Virginia, assented to the dismemberment of the State was not the clearest, as being the constitutional Legislature of the old State; but Congress exercised its undoubted political power to recognize it as such, and the State of West Virginia became an accomplished and unchangeable fact. It is not one of the least evils flowing from powerful assaults upon lawful government that the government itself is often forced to extreme measures and to the verge of its authority to preserve and protect itself; and thus it sometimes transmits to later times unsatisfactory precedents and examples that many in less emergencies are too apt to resort to as the justification or excuse for other steps dangerous to the common weal. As we reflect upon the characters and careers of departed statesmen and bring up to view the events with which they were connected in times of trouble and distress, can we not repeat with fervent emphasis?

> Beware of desperate steps. The darkest day,
> Live till to-morrow, will have passed away.

Neither the purest motives nor the most exalted patriotism can prove an antidote to the poison of measures of any government beyond its constituted power, however apt they may be for the exigencies of an existing occasion, or for an appeal to any other force than that of the law for the redress of grievances arising in a government constituted upon principles of justice and equal rights, and wherein, from period to period, recourse must be had to fresh expressions of the popular will. The men of the time and the excitement of the hour pass away, but the institutions and the body of the people, old and yet ever new, remain to rectify, in the sober light of truth and reason, the evils that ignorance or passion, prejudice or corruption, may have inflicted upon society.

To-day we make memorial to a prominent figure in the government of a great nation. One of that very small body of men, to whom, as "the sheet-anchor of the Government," the security and happiness of more than forty millions of people are chiefly committed, has been called, suddenly and forever, from his place. Such an event, although certain to occur very often, cannot fail to be solemn and impressive, not only—indeed not chiefly—from our awe of death, or from our friendship and respect for the man who has gone, but from considerations that relate to the connection of particular individuals, or indeed selected bodies of men, with affairs of state, and the little contribution the most fortunate are actually able to make to the sum of human events.

In this body itself, the most permanent in its personality of any under the Constitution except the judiciary, a very few years suffice to change almost entirely the elements of its composition. There now remain to us only three Senators who occupied their places at the beginning of Mr. Lincoln's administration, or who participated officially in the long tragedy of the rebellion; and there are only eleven who in 1868 were members of the high court that tried and acquitted the President. The accused and the greater part of his judges have long since left the forum—some for the simple duties and pleasures of citizenship, and some, with the chief personage in that great drama, have gone to their long repose, and to whose constantly increasing number has now been added one of the most recently appointed of the members of this body.

Surely the works we personally do for our country must be few and small in the aggregate of history, and their permanent value must depend, not upon the glamor of oratory, the polish of scholarship, or skill in discussion, but rather on that deep spirit of truth and justice, and the courage to follow them always, that make up the character of him—

> Who, whether praise of him must walk the earth
> Forever, and to noble deeds give birth,
> Or must go to dust without his fame,
> And leave a dead, unprofitable name,
> Finds comfort in himself and in his cause,
> And, while the mortal mist is gathering, draws
> His breath in confidence of Heaven's applause.

Mr. BAYARD. Mr. President, on the 4th of March, 1875, our lamented associate ALLEN TAYLOR CAPERTON took his seat in this body, having been elected to serve until March, 1881. Death closed his career when but little more than a single year of his senatorial service had been performed. During this short period there was little to signalize his service here, and in the quiet, steady, undemonstrative performance of his duty must be found the basis of any commentary we may now make.

I have said his period of service here was short, yet it was long enough to cause all who came to be acquainted with him to mourn that it should not have been longer. It was long enough to impress those whose acquaintance he then first made with respect and confidence.

He came into this body with a high and unblemished personal repute, not built upon noisy professions and sustained by sensational advertisement, but firmly founded in the appreciation of his personal qualities by his friends, his neighbors, and that wide-spread circle of men of all shades of political opinion in Virginia and West Virginia amid whom his modest and virtuous life had been spent and where a worthy ancestry had preceded him from the first foundations of civil government in that country.

The term declared by the psalmist to be the years of a man had been nearly passed by him, for he had reached his sixty-seventh year when the "dread arrest" was felt. But he had so lived that he did not fear to die, and although wrung with pain he met it as the immediate and recognized precursor of death, with that fortitude which had characterized his whole life. He had lived remote from cities, and in the comparative seclusion of a country life had found his theater of usefulness, duty, and quiet happiness.

From the most venerable and one of the most highly respected institutions of learning in our country he had received, in 1832, his diploma of scholarship, and as a graduate of Yale College entered upon the study and soon the practice of the law. He attained high standing in the ranks of his profession, and gained and kept the confidence and affection of those around him, as was attested by the many important public trusts he was called upon to execute.

When Virginia, his native home, felt in 1861, in common with all other members of our Federal Union, the terrible convulsions of political strife, it was almost inevitable that a citizen so eminent and esteemed by men of all parties as Mr. CAPERTON should be called upon in that critical hour to represent his people in the public counsels.

While he sought not distinction for himself, he shrank not from responsibility, nor kept in the background when danger showed itself at the front, for no man in a land where courage is the rule was more constant in that quality, morally and physically, than he.

He was in politics a whig—a conservative Union man—and with such views became a member of the State convention of Virginia of 1861. This is not the occasion to relate nor I the fit historian of the longing, lingering look, cast back upon that Union, in so great degree the work of her sons in field and council, of her treasure and her territory, by the great State of Virginia as she reluctantly withdrew from its political association.

The conscience and training of ALLEN CAPERTON bade him follow the political fortunes of his State, and in obedience to the call of her Legislature he became a member of the Confederate States senate in 1862, and served there throughout its stormy existence and until the end of that short-lived government. Ten years after that government had passed away, to be known no more except in history, Mr. CAPERTON was in the vicissitude of human affairs chosen to represent the State of West Virginia in the Senate of the United States.

Mr. President, I have never felt more penetrated with a sense of

the wisdom of prompt and thorough reconciliation of our fellow-countrymen, so lately and violently at strife, than when I recognized in the course of my confidential relations of private friendship with ALLEN CAPERTON how truly and wholly his heart beat for the happiness and prosperity of our whole country, and for the perpetuation of its constitutional government. Would that now the power could be given to me to picture in all its glowing and truthful reality the fidelity of his honest soul, that has so lately taken its flight, to the integrity and welfare of our Government and the happiness of all its people.

Sure am I that distrust and suspicion toward men such as he, and from the section of country with which he was politically identified, would vanish, and forever, from the breasts of their fellow-countrymen of the more northern section of the Union.

Honor and truth are *not* mere idle abstractions. They are the living and practical realities upon which men and women found their best reliance for personal happiness, and which constitute the real bulwarks of a nation's welfare and safety, without which written constitutions are mockeries and laws mere pitfalls.

In the life of the modest gentleman whose death we mourn these qualities were constantly exemplified, and from our contemplation of them and their exercise may we not take new resolve to pay them due respect in our memory of the dead, and call for their recognition and practice in our intercourse with the living.

Mr. BOOTH. Mr. President, we have paused in our daily labor, turned aside from the routine of business and from the consideration of those grave questions which disturb the public mind with vague alarm, to pay tribute of respect to one who in his brief service in this body, by his kindness, courtesy, and frankness, made each of us his friend, and who discharged his public duties with industry, intelligence, fidelity, and honor.

This Chamber is the arena of intellectual combat, and when the great monarch drops his baton the conflict of opinion is suspended.

In all stations, in every allotment of life, it is well that we should sometimes be brought to the absolute contemplation of death, and the realization that to each of us it is inevitable and near. The days of our life are numbered; at each sunset there is one less. The sands of our life are measured. While I speak they are wasting.

Though death is as "common as any, the most vulgar thing to sense," though it hath been "cried from the first corse till he that died to-day '*this must be so*,'" it still remains the great mystery whose overshadowing presence awes us into a sense of our insignificance, and shows us the objects of our pursuit and passionate desire in their cold, naked reality. And this is its office to the living. Not lips touched with the fire of genius can so solemnize us to a sense of duty, so plead for the right, so admonish us of the vanity of human expectation as the dumb, cold lips of the dead. Beneath these forms and trappings, beneath this covering of flesh, our skeletons are marching to the grave. And everything on earth that we long for, seek, strive for, is but a covered skeleton. Adorn it as we may, cheat ourselves as we will, "to this complexion it must come at last;" and then dust and ashes.

SIX months ago, if ALLEN TAYLOR CAPERTON had entered this Chamber and passed to his seat, it would have been a commonplace incident, as little noted as your or my coming to-day. If he should enter that door now, what an awe would fall upon us all. If he should rise at his desk to speak, with what rapt suspense we should listen. Not the most eloquent words that ever fell from mortal lips could so enchain attention as the lightest syllable from his.

Yet if he could come back from the "undiscovered country" and speak to us as in the flesh, do we not know what his message would be? Would he not counsel peace and good-will? Could he inculcate a higher lesson than that taught of old, that "righteousness exalteth a nation;" that "error shall pass away like a shadow, the truth shall endure forever?" Could he not tell us that self-seeking is not the highest wisdom, that safe guidance is not found in passion; and that institutions can neither be built nor preserved by hatred or violence? Could he reveal a diviner precept than "love," a more sacred duty than "charity?" If it has been permitted him to pass in review the procession of events in the unnumbered ages since man appeared on the earth and to realize that history has but begun, that in the curtained future there are countless ages to be, could he not tell us that in the grand sweep of destiny mere personal success, the pride of place, the lust of power, are of as little worth as the foam on the river?

This *is* the message from the dead past to the living present; this is the lesson of the silent centuries; this is the voice from the grave of all who have gone before.

Those who knew Senator CAPERTON better than I have already spoken of the traits of his character and the incidents of his life. In our brief acquaintance he impressed me as a man of culture and refinement; of strong practical sense, impatient with what he regarded as abstractions, zealous for the promotion of every material interest, and devoted to a reunion of hearts and hands through all the land. His neighbors told me he was a man of active habits, interested in every enterprise for the advancement and improvement of the country where he lived, strong in his convictions, outspoken in his opinions, steadfast in his friendship, and of bountiful hospitality.

He had this true test of genuine worth—his character and temper softened and mellowed with years and experience. Children loved him, and the dumb beast regarded him as a natural protector.

He lived, where his ancestors had for several generations, in a region of great beauty of landscape—a high plateau with mountain-peaks in the distance, with intervales and opening vistas of surpassing loveliness—off the great lines of travel, and where the stream of life seemed to eddy into a quiet circle. It was a spot where old customs survive, old fashions prevail, and old faiths are cherished. From his beautiful home, through the broad English lawn—almost a park—we bore his remains to the village church, where his old friends and neighbors had gathered from all the country round. The solemn service for the dead was spoken. We followed him to the grave-yard on the hill and left him with his fathers.

His task is finished. He has no part or lot in all that is done beneath the sun. No more for him the voice of love, the song of gladness, the load of care, the cup of sorrow. Not for him the beauty of spring, the splendor of summer, the glory of autumn, the uncrowned majesty of winter. Flowers will spring from his grave; storms will beat upon it; morning will greet it with her earliest light, night crown it with her stars, and the earth, rolling in her great orb in infinite space, will bear his dust with hers, till time shall be no more.

Ah, mystery of death, and greater mystery of life; both are in the hand of Him without whose knowledge not a sparrow falls; obedient to whose will the tides of human destiny ebb and flow, and unto whom a thousand years are but as yesterday when it is gone, or a watch in the night.

Mr. PRICE. Mr. President, I was no doubt better acquainted with the deceased than was any other Senator here. We lived in adjoining counties, practiced law in the same courts, were members of the same Legislatures and the same conventions, and generally had the same interests to represent. Our acquaintance extended back to his early manhood, when he first commenced his professional and entered upon his public career.

He was the son of Hugh Caperton, esq., a gentleman of fascinating address and popular manners, of great compass and energy of mind, and who, by his energy and sound judgment, had amassed a large fortune, which he left unimpaired and unembarrassed to his children. He was repeatedly called on by the citizens of his county to represent them in the popular branch of the State Legislature; and he always served them to their entire satisfaction. He was also elected to Congress from his district at a critical period in our history and rendered service satisfactory to his district.

ALLEN TAYLOR CAPERTON, the subject of our remarks to-day, was born on the 21st day of November, 1810, in the town of Union, Monroe County, Virginia, now West Virginia, and departed this life on the 26th day of July, 1876. He inherited his father's popularity and a large estate. He received the rudiments of an English education at the village school of his native town. At that time there being no schools of a high grade in that immediate neighborhood, he was sent to the academy at Huntsville, Alabama, where he remained two and a half years. He was then sent to the Lewisburgh Academy, which was presided over by that historic character Rev. Dr. John McElhenny, the pioneer preacher in the Presbyterian Church, a veneration for whose person and character Mr. CAPERTON cherished during the remainder of his life.

In early manhood, (the date I have not obtained,) Mr. CAPERTON became a student at Yale College, where he remained four years and until he was graduated. Upon his return to Virginia he went to the university of that State, where he was also graduated. He finally finished his education at General (afterward Judge) Baldwin's law school in Staunton, Virginia, and immediately thereafter commenced the practice of his profession.

He was married in the twenty-second year of his age to Miss Harriet Echols, a lady of great intellectual, social, and moral worth, whose acquaintance he made while a student at Yale College, and who remains his survivor.

Mr. CAPERTON filled many offices of trust and importance.

The first office that he filled was a State directorship in the James River and Kanawha Company as successor to his father, who had held that office and resigned. This, though not a lucrative office, having neither salary nor perquisites, was deemed one of great State importance, as it was then expected that by this improvement the waters of the Chesapeake would be connected with the waters of the Mississippi through the State of Virginia.

In April, 1841, he became a candidate for the State Legislature, and was elected to represent his native county in the house of delegates.

In April, 1844, he was elected to the State senate from the counties of Monroe, Giles, Montgomery, Floyd, Greenbrier, and Mercer. During this term, which was one of four years, he had the misfortune to lose his venerated father. He filled no political or civil office from that time until 1850. He was the executor of his father's will, which devolved upon him a large mass of business which, with a large and increasing professional business, gave him full employment without being involved in the mazes of politics.

In August, 1850, a convention being called to amend the State constitution, his fellow-citizens of Monroe, Giles, Tazewell, and Mercer Counties called on him to become one of their representatives, to which call he responded affirmatively and was elected. In this convention he took a prominent part, the great question before that body being the basis of representation in the two houses of the Legislature, one party assuming that white population should be the basis, the other that population and taxation combined should be the basis. He, in

common with his western friends, advocated the white basis. The question was finally settled by a committee of compromise of which he was a member.

He was twice upon the whig electoral ticket as elector, but failed to secure his election because his party was in the minority in the State at both elections.

In 1859 he was induced to become again a candidate for the house of delegates, with a view of pushing on the great central improvement which is now known as the Chesapeake and Ohio Railroad. He was elected and served two sessions. It would scarcely be necessary for me to say that he was one of the leading members of that body, if not the very leader.

While he was thus serving in the house of delegates, he, in 1861, was elected a delegate to the State convention known as the secession convention. He entered that convention with a determination to save the Union if he could; but when President Lincoln called for money and troops to subjugate the South, he did not think the Union could be preserved, and voted for the separation.

In 1862, Hon. William Ballard Preston, one of the senators in the confederate congress having departed this life, Mr. CAPERTON was elected to fill the vacancy.

In 1875 he was elected by the Legislature of West Virginia a Senator in this body, which he remained to the time of his death.

This is his public history, the principal part of which is known to your humble speaker.

I said in the outset that he inherited his father's popularity and a large estate, which assertion I again repeat with the addition that he added greatly to both. By the rehearsal which I have given of the chronology of his public life, it will be seen that his popularity grew with his growth and strengthened with his strength; that his last days were his most popular days; and he added to his fortune as well as to his popularity, and died possessed of a large estate.

As a lawyer he was always ingenious and persuasive. He understood law as a science, and practiced with great success. He was generally engaged in all the important cases that arose within the range of his practice. He generally argued his cases with marked ability, though he was not always equal to himself. He required to be aroused; without that his utterance was a little hesitating, and his mind seemed timid in taking hold of the subject; but when thoroughly aroused his language flowed copiously and his mind worked smoothly and vigorously. He could not only follow up his subject in argument, but could add beauty to strength; he could cull flowers for the jury and carry on a playful dalliance with everything he met with on the wayside. He was probably the best lawyer I ever knew who did not commence the practice of law from necessity, poverty being as a general thing necessary, as I think, to professional success. I can unite with another friend of his who said just before the senatorial election in 1875, "Mr. CAPERTON is an accomplished man in every respect." His disposition was genial and his fund of information copious, which made him attractive as a social companion.

His last illness was short. No one thought the symptoms of his case were alarming. Some of his family were with him, not as watchmen at the bed of death, but as nurses around the bed of sickness. He was bolstered up in bed with pillows and said to his children who were present, "Hoist the window; hoist it quickly," and swooned away and died. The winged messenger was sped with too fatal an aim. Death had struck its victim, and he is no more. "He is gone from us and will not come to us, but we may go to him."

"The ways of Providence are inscrutable and past finding out." But this we know, that "it is appointed unto men once to die." He has gone before us. We must soon follow.

To say that he was an affectionate husband and a kind father would be commonplace and almost a mockery in terms, for his family not only reverenced him but almost adored him. They have sustained the "*irreparable* loss," and no one can realize the deep meaning of this expression who has never experienced it. We need not go into the sanctuary of the family to find mourners; they are found in the streets, in the by-ways and the hedges, and everywhere where Mr. CAPERTON was known.

Deeply sympathizing with his family and other friends in humble sorrow we submit to the fiat of an all-wise and inscrutable Providence.

Mr. President, as a further testimonial of respect to the memory of the deceased, I move that the Senate do now adjourn.

The motion was agreed to unanimously; and (at four o'clock and eleven minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

THURSDAY, *December* 21, 1876.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of yesterday was read and approved.

W. N. HALDEMAN.

Mr. MILLIKEN, by unanimous consent, introduced a bill (H. R. No. 4263) for the relief of W. N. Haldeman; which was read a first and second time, referred to the Committee of Ways and Means, and ordered to be printed.

R. D. SALMANS AND OTHERS.

Mr. MILLIKEN, also, by unanimous consent, introduced a bill (H. R. No. 4264) for the relief of R. D. Salmans and others; which was read a first and second time, referred to the Committee on War Claims, and ordered to be printed.

BUSINESS ON THE SPEAKER'S TABLE.

Mr. KASSON. I ask that the bills from the Senate now on the Speaker's table may be taken therefrom, simply for reference, that they may be put in possession of the committees before the holidays.

The SPEAKER. The motion would be in order after the morning hour; but the gentleman from Iowa may ask unanimous consent that the motion may be entertained at this time.

Mr. HOLMAN. I trust that after the morning hour all the business on the Speaker's table may be disposed of, so as to be properly referred before the holiday recess.

Mr. KASSON. If it is preferred, I will postpone the motion for the present.

The SPEAKER. The Chair will recognize the gentleman after the morning hour.

ORGANIZATION OF THE NAVY DURING PEACE.

Mr. WILLIS, by unanimous consent, introduced a bill (H. R. No. 4264) providing for the organization of the Navy during peace; which was read a first and second time, referred to the Committee on Naval Affairs, and ordered to be printed.

CUSTOM-HOUSE AND POST-OFFICE AT HARTFORD, CONNECTICUT.

Mr. LANDERS, of Connecticut, by unanimous consent, introduced a bill (H. R. No. 4265) making appropriations for continuing the construction of the custom-house and post-office at Hartford, Connecticut; which was read a first and second time, referred to the Committee on Appropriations, and ordered to be printed.

DEVELOPMENT OF MINING RESOURCES.

Mr. O'NEILL, by unanimous consent, introduced a bill (H. R. No. 4266) to amend section 2325 of the Revised Statutes relating to the development of the mining resources of the United States; which was read a first and second time, referred to the Committee on Mines and Mining, and ordered to be printed.

MRS. ELIZABETH B. C. HARE.

Mr. O'NEILL also, by unanimous consent, introduced a bill (H. R. No. 4267) for the relief of Mrs. Elizabeth Binney Cadwallader Hare, widow of George H. Hare, late a lieutenant in the United States Navy; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

OSCAR B. KNOTT.

Mr. VAN VORHES, by unanimous consent, introduced a bill (H. R. No. 4268) granting a pension to Oscar B. Knott, late a private in Company K, One hundred and sixty-first Regiment Ohio Volunteer Infantry; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

OSAGE INDIANS.

Mr. SCALES. I ask unanimous consent to report from the Committee on Indian Affairs a bill authorizing the issue of certain funds now in the Treasury belonging to the Osage Indians, for the benefit of said Indians, and am instructed by the committee to move that the bill be now put upon its passage. If the House will allow me I desire briefly to explain the object of the bill.

The SPEAKER. The Chair will hear the gentleman from North Carolina. [MR. SCALES,] reserving the right of gentlemen to object.

Mr. WILSON, of Iowa. Let the bill be read.

The bill was read, as follows:

Be it enacted, &c., That the Secretary of the Interior be, and he hereby is, authorized to issue a sum not exceeding $50,000 from funds now in the Treasury belonging to the Osage Indians under an act of July 15, 1870, to be expended for their benefit, to aid them in agriculture, for their care and support, and in extending improvements already begun on their reservation, and in any other manner to promote their civilization and improvement.

Mr. SCALES. I desire to make a brief statement. The bill is based upon a report made by the agent who has charge of those Indians. It comes from Superintendent Nicholson, who, I think, is one of the best and most faithful superintendents we have in the whole service. It is recommended by the Commissioner of Indian Affairs and the Secretary of the Interior, and reported favorably by the Commissioner of Indian Affairs.

The bill only provides that the Osage Indians, who are perhaps the richest tribe of Indians we have in this country, shall be permitted to use $50,000 of their own funds now in the Treasury. According to a report made by the Commissioner of Indian Affairs they have now in the hands of the Treasurer nearly one and a half millions of dollars. They are in a destitute condition. They need this money badly. These are the representations made to us; and this simply provides that these Indians be allowed the use of $50,000 of the fund which belongs to them, and which is now in the Treasury.

The SPEAKER. Is there objection to the reception of the bill?

Mr. WILSON, of Iowa. Does it come from the Committee on Indian Affairs.

Mr. SCALES. Yes, sir; it is a report from that committee.

There being no objection, the bill (H. R. No. 4272) was received, and read a first and second time.

Mr. HOLMAN. I ask that the bill be again read. And I would suggest to the gentleman from North Carolina that the act of 1870, to which reference is made in the bill, be also read.

Mr. SCALES. It was by the act of 1870 that these lands were sold and the proceeds put into the Treasury. This is the interest on that money. They are in need of it. They did not get it last year.

Mr. HOLMAN. This only applies to the interest on the fund?

Mr. SCALES. This $50,000 will not take the whole interest.

The bill was again read.

The bill was ordered to be engrossed and read a third time; and it was accordingly read the third time, and passed.

Mr. SCALES moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

CONTESTED LAND TITLES.

Mr. KIDDER, by unanimous consent, reported back from the Committee on Public Lands, with amendment, the bill (H. R. No. 2114) to give parties contestant time to file on or enter lands under the pre-emption, homestead, or timber-culture acts after the contests shall have been finally decided; which was ordered to be printed and re-committed, not to be brought back on a motion to reconsider.

AMENDMENT OF REVISED STATUTES.

Mr. KASSON, by unanimous consent, introduced a bill (H. R. No. 4269) to amend section 3880 of the Revised Statutes; which was read a first and second time, referred to the Committee on Coinage, Weights, and Measures, and ordered to be printed.

Mr. WALKER, of Virginia, by unanimous consent, introduced a bill (H. R. No. 4270) to amend section 2002, and to repeal sections 1980, 5220, and 5528 of the Revised Statutes of the United States; which was read a first and second time, referred to the Committee on the Judiciary, and ordered to be printed.

MARY E. CAMPBELL.

Mr. HUNTON, by unanimous consent, reported back, with a favorable recommendation, from the Committee on Revolutionary Pensions a bill (H. R. No. 1985) granting a pension to Mary E. Campbell; which was referred to the Committee of the Whole on the Private Calendar, and the accompanying report ordered to be printed.

W. & W. H. LEWIS.

Mr. BLISS, by unanimous consent, introduced a bill (H. R. No. 4271) authorizing William Lewis and William H. Lewis to make application to the Commissioner of Patents for the extension of their patent for new and useful photographic-plate-holders; which was read a first and second time, referred to the Committee on Patents, and ordered to be printed.

GRASSHOPPER PLAGUE.

Mr. HATCHER, by unanimous consent, presented a memorial of the governors of Missouri, Illinois, Iowa, Kansas, Nebraska, Dakota, and others, for action on the part of Congress in reference to the grasshopper plague; which was referred to the Committee on Appropriations, and ordered to be printed.

TAMPERING WITH THE MAILS.

Mr. PLATT. I ask unanimous consent to offer the following resolution:

Whereas ABRAM S. HEWITT, a member of this House, has asserted on this floor in public speech that his letters, passing through the post-office at the city of New York, have been illegally opened before delivery and while in charge of the postal officers or employés of the United States: Therefore,

Resolved, That a committee of five members of this House be appointed to investigate said charge, and whether the same be true or false, and by whom, if by any person, said criminal act or acts were committed, and report thereon to this House as early as practicable; and that said committee have power to send for persons and papers.

The SPEAKER. Is there objection to the introduction of this resolution?

There was no objection.

The SPEAKER. The question is on the adoption of the resolution.

Mr. WILSON, of Iowa. The gentleman from New York [Mr. PLATT] ought to provide in this resolution that the committee shall have leave to report at any time.

Mr. PLATT. I accept that amendment.

Mr. HOLMAN. I hope that the resolution will be again reported.

Mr. SPRINGER. I object to the introduction of the resolution.

The SPEAKER. The objection comes too late. The Speaker asked whether there was objection, and made the usual hesitation before announcing that there was no objection.

Mr. HOLMAN. It seems to me that this inquiry might be made by the Postmaster-General. I suggest the propriety of so modifying the resolution as to instruct the Postmaster-General to make the inquiry.

Mr. PLATT. I claim that I have the right to the floor.

The SPEAKER. The gentleman from New York [Mr. PLATT] has the floor.

Mr. PLATT. I desire to submit a telegram from the postmaster at New York City.

The Clerk read as follows:

NEW YORK, *December* 30, 1876.

Hon. THOMAS C. PLATT, *House of Representatives, Washington:*

The Times and Herald have called my attention to remarks said to have been made by Mr. HEWITT gravely affecting this office. I have just telegraphed Mr. HEWITT as follows:

"I am informed that you charge on the floor of Congress that your letters passing through this office are or have been opened before reaching your hands. Do you charge that it is or has been actually or probably done in this office? If so, please supplement your charge with a motion for immediate investigation, as I pronounce such an accusation utterly and absolutely false."

T. L. JAMES.

Mr. PLATT. I move the previous question.

Mr. HEWITT, of New York. Will the gentleman allow the resolution to be again read?

Mr. HOLMAN. I trust that the resolution will be left open for amendment.

The SPEAKER. If the previous question is not sustained, of course the resolution will be open to amendment.

Mr. HEWITT, of New York. I ask that the resolution be again read. I was unfortunately not in my seat when it was presented.

The resolution was again read.

Mr. HEWITT, of New York. Mr. Speaker——

The SPEAKER. For what purpose does the gentleman from New York rise?

Mr. HEWITT, of New York. I rise to what I suppose is a point of order. The preamble of this resolution alleges that I made certain statements which I did not make. The RECORD shows the statement that I made; and if the gentleman wishes to have this resolution adopted, I think he will do better to quote the language which I used, and not put into my mouth words which I did not use.

The SPEAKER. The Chair would state that that is hardly a point of order.

Mr. HEWITT, of New York. Is it a question of privilege?

Mr. KASSON. I would suggest to the gentleman who introduced the resolution to withdraw his call for the previous question.

Mr. PLATT. I am willing to modify the preamble of the resolution so as to make it conform to the language which the gentleman used on yesterday.

The SPEAKER. The Chair would rule that if one member misstates the language of another, the member so aggrieved has a right to rise to a question of privilege.

Mr. HEWITT, of New York. I rise to a question of privilege, and desire to correct the language used in the preamble.

Mr. PLATT. I will consent to the correction.

The SPEAKER. The Chair understands that the gentleman from New York [Mr. PLATT] proposes to change the language of the preamble. He will please come forward to the Clerk's desk and do so.

Mr. HEWITT, of New York. I ask that the Clerk shall read from the RECORD the language which I used on yesterday.

Mr. BURCHARD, of Illinois. I hope the gentleman from New York [Mr. PLATT] will withdraw his call for the previous question, and allow his colleague [Mr. HEWITT] to make a statement.

Mr. PLATT. I will withdraw the call for the previous question and yield to my colleague. [Mr. HEWITT.]

Mr. HEWITT, of New York. Now that this resolution has been introduced and is before the House it is proper for me to make a statement of the facts which gave rise to the remarks which I uttered yesterday. About a month ago, as near as I can now recollect, immediately after the close of the presidential election, that is, just after the 7th of November, I received a letter without signature stating that the writer was an employé of the New York post-office and that he felt bound to communicate to me the fact, to use the language of the letter, that "Slade's little tea-kettle" was at work upon my letters. The letter being without signature, the only attention that I felt called upon to pay to it was to observe the appearance of my letters from that time. I did observe them, and I found that a considerable number of them presented, so far as I could judge and as others thought, the appearance of having been opened, and the flap of the envelope presented a puckered or corrugated appearance. I called the attention of gentlemen in my office to this fact, and they were able to pick out two classes of letters, those which had apparently been opened and those which had not been opened.

After I came here to Washington I was struck with the fact that the letters which I received from Boston, Chicago, and other points had a perfectly smooth surface upon the flap of the envelope; whereas letters received from New York frequently presented this corrugated appearance. It so happened that meeting a gentleman who was on this floor yesterday who brought on the electoral vote of the State of New York, Mr. Parke Godwin, who is a friend of the postmaster of New York City, I handed him one of these envelopes and said "Look at that, has not that been opened?" He said that it looked so. I said, "You are going down town and will see Mr. James; take that and show it to him." Now I have the most entire confidence in Mr. James, and believe him to be a model public officer. And I have heretofore said on this floor that whatever mutations of politics may come to pass I trusted his valuable services would be retained. And I wish gentlemen here to understand now that I do not think Mr. James could be or would be a party to any tampering with letters that were addressed to me or to anybody else. The anonymous note that came to me stated that it was done in a private place in the post-office.

I have had letters in this House, and one morning I showed two of them casually to the gentleman from Maine [Mr. HALE] and pointed out to him the corrugated appearance presented by the flap of the envelope. He said to me, and very properly, "You ought to call the attention of the House to this matter, if you think these letters have been tampered with." I replied to him that from the nature of the case it would scarcely be possible for me to bring any other evidence than the letters, showing by their appearance that they had been opened.

I do not know that these letters have been opened, and therefore I have not stated as a fact that they have been tampered with, nor do I now state it as a fact. But I do say that I have a suspicion which amounts to a belief that my letters have been opened, and I have acted upon that belief, so far as to send special letters by express, and to request gentlemen who have special letters to send to me to send them by express. It may be that I have been taking unnecessary precautions, that my eyes have deceived me, and on the other hand that a committee of investigation may get at facts of which I have no knowledge.

I have myself no objection to the appointment of a committee of investigation. I think that probably no good will come of it, that no facts will be discovered. Hence it is that I myself have not been willing to put the country to an expense of an investigation of this matter. If gentlemen, however, think it would do any good, I certainly will cheerfully assent to it.

Unfortunately I threw my anonymous letter into the waste-basket, as I always do with such letters. I receive from ten to twenty such letters in the course of a week, and I throw them all away. And so with these envelopes, the peculiar appearance of which I have described. I have shown them to gentlemen and those gentlemen can be produced before the committee, but the envelopes themselves have been thrown away.

It is a most remarkable thing that this morning my letters present a marked difference in appearance from those which I have heretofore received. Not a single letter in my package this morning presents this corrugated appearance. I do not know how to account for it; I simply state the facts to the House. Having stated the facts, I am perfectly willing to have a committee of investigation appointed, and I will furnish whatever evidence I have in my power to furnish; but I do not believe that any evidence can be furnished to this House or to the committee that will be at all satisfactory.

Mr. KASSON. I ask the gentleman from New York to yield to me for a moment.

Mr. PLATT. I will yield to the gentleman from Iowa.

Mr. KASSON. I have but a word to say to the House on this subject. I have myself favored the introduction and adoption of a resolution of this sort, not merely because it concerns the administration of an officer whose reputation is of the very highest in the country and an office of the last importance to the country, but for the reason especially that the public confidence should not be destroyed without cause in the Post-Office Department anywhere in the United States. The importance of the transactions of communications through the New York post-office is of such vast consequence that perfect, absolute secrecy and inviolability should be secured, every member of the House feels deeply.

I wish to say, sir, that during my connection with the Department at the opening of the late war, so sacred was this rule even in time of war that, when repeated applications were made by local postmasters of the importance of ascertaining hostile proceedings through letters deposited in the war districts of the country, an order issued from the Department prohibiting the slightest detention, delay, or tampering in any manner with such letters. And everything was required to be sent to the Department in Washington, and in that Department not a single officer or clerk was permitted to touch any returned letter or to open it, except those who had the sanction of law in what is known as the Dead-Letter Office. And in view of what I know to be the record of that Department in respect to the inviolability of letters under the most provoking circumstances, now at this time, when no such circumstances exist, it is with pain I learn that the confidence of myself or any of the people of the country should be assailed in respect to the security of the correspondence passing through the Department.

The only alternative suggested is that the Postmaster-General should make the investigation. He has not the power a committee of the House has to make such investigation. He can send special agents, but the power to summon witnesses and take testimony does not exist as it does exist in a committee of the House. Unless, therefore, the gentleman from New York will satisfy the public mind by stating that he has not sufficient ground for his charge, I do not see how the House can withhold their assent to the resolution that an investigation may be had, and so long as the charge stands from a responsible member upon this floor it seems to me to be the duty of us all to so investigate it that the public may be satisfied one way or the other that their correspondence is or is not safe. If there were any other way of arriving at the result except that suggested by the gentleman from New York I would be glad to take it, but for myself I see no other way.

Mr. PLATT. I yield now to the gentleman from Maine, [Mr. HALE.]

Mr. HALE. Now it is very clear, Mr. Speaker, that this is a matter which the House should not let drop. The inviolability of the post-office is a thing which should be maintained, as I hold, by every power of the Government. It is of more importance now that this channel should be undisturbed and unmolested because yesterday this House took from one branch of communication between man and man all that it has ever had of inviolability. The post-office remains, and this House, sir, can do nothing better, in the exercise of its highest power, than to probe such a matter as this to the very bottom. I would have investigation made the most searching and complete to let us know whether there has been any interference with the correspondence of any gentleman, and more especially of the gentleman from New York, [Mr. HEWITT,] who bears the high relation he does to one of the political parties of the country and who has held so foremost a place here. He believes that his correspondence has been broken into, and he has lost his confidence in a great Department of the Government. Catching his eye the other day when some of those letters were in his hands, he showed me at the desk here two, which I examined, and I became convinced as I looked at the envelope upon this side of it—as I am now looking upon this one I now hold up—that the letter had in some way been opened—had been torn apart. Whether the two which I saw had been torn apart in the post-office or had been torn apart by the writer, as is frequently done, and then resealed, neither he nor I then knew. I said to him at that time, "There is no proof as to how this is done," and he said frankly, "I have no proof." And I do not believe, (as he has said this morning,) I do not believe that the postmaster of New York has had any complicity or knowledge, provided they were surreptitiously opened. But I say, Mr. Speaker, that he really believed that his correspondence had been tampered with, and that is enough for this House to set at work every power of the House we have to see whether this great Department of the Government is safe for citizens to send their correspondence through. Under the circumstances, therefore, I hope there will be no objection to making an investigation. When it is done let it be done thoroughly.

Mr. PLATT. I yield to the gentleman from Indiana, [Mr. HOLMAN.]

Mr. HOLMAN. While from the statements made by gentlemen who have addressed the Chair it is not probable that any very satisfactory light will be thrown on this question, if it is still deemed important and desirable that this investigation should be made, I suggest to the gentleman from New York, [Mr. PLATT,] on the score of economy, at least, if nothing else, that this duty be devolved on the committee of which Mr. COX, of New York, is chairman, which is already prosecuting investigations in that city. The committee is now there, and I therefore, unless the gentleman from New York shall object, move to amend the resolution as follows——

Mr. PLATT. I do not yield for any amendment.

Mr. HOLMAN. I trust the gentleman will allow it to be read.

Mr. PLATT. I will allow it to be read.

The Clerk read the proposed amendment, as follows:

Strike out the words "a committee of five members of this House be appointed," and insert the following in lieu thereof: "the committee now in New York, of which Mr. COX is chairman, be authorized and directed."

Mr. HOLMAN. I hope there will be no objection to that amendment.

Mr. PLATT. I do not yield for that.

Mr. HOLMAN. Then I will seek to introduce this amendment if the House will vote down the previous question.

Mr PLATT. I call for the reading of the original resolution, and will then move the previous question.

Mr. HALE. If the gentleman from New York [Mr. PLATT] will allow me, I desire to say that I hope he will not consent to any such modification of the resolution as is now suggested, putting the duty upon another committee which is charged with the investigation of an entirely distinct matter.

Mr. WILSON, of Iowa. The committee of which Mr. COX is chairman will hardly have time enough to accomplish the work it has in hand now.

Mr. PLATT. I ask that the resolution as now modified be read.

The Clerk read as follows:

Whereas ABRAM S. HEWITT, a member of this House, on this floor in public speech used the following language: "I wish to say that during the last month my attention has been called to my own letters passing through the New York post-office, and according to the best judgment I can form and the best judgment of gentlemen to whom I have submitted my letters, they are apparently not infrequently opened in the post-office and reclosed by the use of mucilage, but so affected that the steam used is shown upon the envelope, which has a puckered appearance:"

Resolved, That a committee of five members of this House be appointed to investigate said charge, and whether the same be true or false, and by whom, if by any person, said criminal act or acts were committed, and report thereon to this House as early as practicable; and that said committee have power to send for persons and papers, with leave to report at any time.

Mr. PLATT. I call for the previous question.

Mr. HOLMAN. I hope it will be voted down.

The question being taken, there were—ayes 92, noes 81.

Mr. HOLMAN. I call for tellers.

Tellers were ordered; and Mr. PLATT and Mr. HOLMAN were appointed.

The House again divided; and the tellers reported—ayes 77, noes 79.

So the previous question was not seconded.

Mr. HOLMAN. I now offer the following amendment:

Strike out the words "a committee of five members of this House be appointed," and insert in lieu thereof the following: "The committee now in New York, of which Mr. COX is chairman, be authorized and directed."

Mr. BUCKNER. Is it in order to move to lay this whole subject on the table?

The SPEAKER. It is.

Mr. BUCKNER. I make that motion.

Mr. HALE. Will the gentleman from Indiana [Mr. HOLMAN] listen to me for a moment?

Mr. HOLMAN. Certainly.

Mr. HALE. Let me suggest to the gentleman, if there is any objection to the framing of the resolution as drawn by the gentleman from New York, [Mr. PLATT,] (and I understand that there is some verbal objection to it,) that that be corrected, so that it may be satisfactory, in every way, both to him and to the gentleman who called the subject up yesterday; and that then he shall not insist upon this important question going to another committee which has already in its charge very grave and important matters that must occupy all the time it can give to them previous to a date when it ought to report. I do not think the gentleman himself wants to cripple the investigation. He must see, as I do and all of us do, that this is a very serious charge; that it ought to be gone into carefully, and that it will take several days. And I do not believe the gentleman from Indiana with his usual fairness wants to put this in a condition or a place where it will be in limbo and nothing come out of it. Let me repeat, then, the suggestion that I made when I rose, that the language of the resolution be made satisfactory to both sides and that then this proposed substitute be withdrawn.

Mr. HOLMAN. I recognize the fairness of the proposition of the gentleman from Maine; and my answer is that it is manifest, from the statement of the gentleman from New York, [Mr. HEWITT,] that the facts that will be obtained from any investigation will be of no great practical moment; that the real investigation will be that which will take place at the suggestion and by the act of the Postmaster-General in regard to a charge affecting one of the important branches of his Department. The important investigation will be there, and undoubtedly, from the publicity which has been attached to this transaction, that investigation will be made.

The committee of which Mr. COX is chairman is intrusted with a comparatively small duty; the investigation is confined to a very narrow range and to a comparatively small number of persons, from the necessities of the case. That committee, now in New York, is a very efficient committee, and, like the gentleman who makes this motion, the chairman of it is a citizen of the State of New York, and of course familiar with the localities and with the persons who might be called upon to testify upon such a question. The investigation cannot be an extensive one, and I submit to my friend from Maine that an efficient committee right there on the ground, in the absence of any prospect of valuable facts being eliminated, even on the score of economy, with due regard to efficiency also, should make the investigation; and I feel very confident that so far as subserving the public interest is concerned it will be as effectually accomplished through this channel as by the expensive organization of a committee with the powers conferred by this resolution.

Mr. HALE. The committee need not be an expensive one. I think the gentleman is losing sight of the importance of this question when he says that a bare investigation is all that is necessary. This is something more than an ordinary case of tampering with the mails. It is a breach of the privileges of this House through one of its members. His correspondence has been broken into. At least that is the charge. And this House cannot afford, Mr. Speaker, to let this matter drop when the correspondence of one of its members has been tampered with. It is not a matter for the Post-Office Department to investigate, the very Department found fault with. It is a subject which we should lay our strong hand on and investigate ourselves, and not stop at what little expense may be incurred, because it is an expenditure that could be well afforded.

Mr. HOLMAN. Certainly the subject-matter is sufficiently important to justify any committee that may be suggested by any member of the House, if it were possible for anything beneficial to result therefrom. But with an efficient committee right there on the ground, it seems to me that the public interests will be subserved by referring the matter to that committee. I call for the previous question.

The previous question was seconded and the main question ordered.

The SPEAKER. The question is on the motion of the gentleman from Missouri [Mr. BUCKNER] to lay the whole subject on the table.

Mr. HALE. Upon that question I call for the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 53, nays 143, not voting 93; as follows:

YEAS—Messrs. Ainsworth, Ashe, Atkins, Bell, Blount, Boone, Bradford, Buckner, John H. Caldwell, Candler, Carr, Cate, Chapin, John B. Clarke of Kentucky, Clymer, Cook, Cowan, Dibrell, Douglas, Felton, Finley, Forney, Fuller, Goode, Robert Hamilton, Henry R. Harris, John T. Harris, Hartridge, Haymond, Hurd, Knott, George M. Landers, Lynde, Mutchler, Piper, Reagan, Riddle, John Robbins, William M. Robbins, Roberts, Scales, Sheakley, Singleton, Slemons, William E. Smith, Southard, Spencer, Swann, Tarbox, Warner, Whitehouse, Willis, and Yeates—53.

NAYS—Messrs. Adams, George A. Bagley, John H. Bagley, jr., John H. Baker, William H. Baker, Ballou, Banning, Blair, Bland, Bliss, Bradley, Bright, William R. Brown, Horatio C. Burchard, Cabell, William P. Caldwell, Campbell, Cason, Caulfield, Chittenden, John B. Clark, jr., of Missouri, Collins, Conger, Croonse, Cutler, Davis, Davy, Dobbins, Durand, Durham, Eames, Evans, Faulkner, Fort, Foster, Franklin, Freeman, Frye, Garfield, Gause, Goodin, Gunter, Hale, Andrew H. Hamilton, Hancock, Haralson, Hardenbergh, Benjamin W. Harris, Hartzell, Hatcher, Hathorn, Hendee, Henkle, Hereford, Goldsmith W. Hewitt, Hoar, Holman, Hooker, Hoskins, Humphreys, Hunter, Hunton, Hyman, Frank Jones, Kasson, Kehr, Franklin Landers, Lane, Leavenworth, Le Moyne, Levy, Lewis, Lynch, Mackey, Magoon, Maish, McCrary, McDill, McFarland, Metcalfe, Milliken, Mills, Money, Monroe, Morgan, Neal, Norton, O'Brien, Oliver, O'Neill, Page, Payne, William A. Phillips, Pierce, Plaisted, Platt, Potter, Powell, Pratt, Ramey, Rea, James B. Reilly, Rusk, Sampson, Schleicher, Seelye, A. Herr Smith, Sparks, Springer, Stanton, Stevenson, Stone, Terry, Thornburgh, Throckmorton, Martin I. Townsend, Tucker, Tufts, Van Vorhes, John L. Vance, Robert B. Vance, Wait, Gilbert C. Walker, Alexander S. Wallace, John W. Wallace, Warren, Watterson, Erastus Wells, White, Whiting, Whitthorne, Willard, Andrew Williams, Alpheus S. Williams, Charles G. Williams, James Williams, Wilshire, Benjamin Wilson, James Wilson, Alan Wood, jr., Fernando Wood, Woodworth, and Young—143.

NOT VOTING—Messrs. Abbott, Anderson, Bagby, Banks, Bass, Beebe, Blackburn, John Young Brown, Samuel D. Burchard, Burleigh, Cannon, Caswell, Cochrane, Cox, Crapo, Culberson, Danford, Darrall, De Bolt, Denison, Dunnell, Eden, Egbert, Ellis, Elye, Gibson, Glover, Harrison, Hays, Henderson, Abram S. Hewitt, Hill, Hoge, Hopkins, House, Hubbell, Hurlbut, Jenks, Thomas L. Jones, Joyce, Kelley, Kimball, King, Lamar, Lapham, Lawrence, Lord, Luttrell, MacDougall, McMahon, Meade, Miller, Morrison, Nash, New, Odell, Packer, Phelps, John F. Philips, Poppleton, Putman, John Reilly, Rice, Robinson, Miles Ross, Sobieski Ross, Savage, Sayler, Schumaker, Simmickson, Smalls, Strait, Stenger, Stephens, Stowell, Terese, Thompson, Thomas, Washington Townsend, Turney, Waddell, Waldron, Charles C. B. Walker, Walling, Walsh, Ward, G. Wiley Wells, Wheeler, Wigginton, Wike, Jeremiah N. Williams, William B. Williams, and Woodburn—93.

So the motion to lay on the table was not agreed to.

During the roll-call,

Mr. PLAISTED said: My colleague, Mr. ELYE, is absent on account of sickness; if present, he would vote "no."

The question recurred on Mr. HOLMAN'S demand for the previous question.

Mr. HOLMAN. To enable the gentleman from Illinois [Mr. CAULFIELD] to submit a substitute, I withdraw for a moment the call for the previous question.

Mr. CAULFIELD. I offer the following as a substitute for the resolution:

Resolved, That the committee now in New York, of which Mr. COX is chairman, be authorized and directed to investigate whether any letters passing through the New York post-office have been tampered with, and, if so, by whom, and to report to this House as early as practicable; and that said committee have power to send for persons and papers in the prosecution of this inquiry.

Mr. HOLMAN. I now call for the previous question.

Mr. BURCHARD, of Illinois. Is that a substitute for the original proposition?

The SPEAKER. It is a substitute in the nature of an original proposition.

Mr. HALE. Suppose that it occurs that the committee is ready to go to Philadelphia or Jersey City?

Mr. HOLMAN. They are right there.

Mr. HALE. But is not the gentleman from Indiana defeating his own object, as this resolution refers to the committee in New York? Suppose the committee has left New York and is in Philadelphia, or Jersey City, or Brooklyn?

Mr. HOLMAN. O, there will be no difficulty about that.

The question was put upon seconding the previous question; and upon a division there were ayes 83, noes not counted.

So the previous question was seconded and the main question ordered.

Mr. HALE. I now ask that the resolution of the gentleman from New York, for which this is attempted to be substituted, be read, including the language of the gentleman from New York.

The Clerk read the resolution, and the language of Mr. HEWITT, of New York, as follows:

I wish to say that during the last month my attention has been called to my own letters passing through the New York post-office, and according to the best judgment I can form, and the best judgment of gentlemen to whom I have submitted my letters, they are apparently not infrequently opened in the post-office, and reclosed by the use of mucilage, but so affected that the steam used is shown upon the envelope, which has a puckered appearance.

Mr. HOLMAN. I wish to state that this is a substitute only for the resolution, not for the preamble; the preamble will stand.

The question was put upon agreeing to the substitute; and there were 94 votes in the affirmative.

Mr. HALE, (before the negative vote was taken.) We may as well save time. I therefore call for the yeas and nays upon the substitute.

The yeas and nays were ordered.

The question was taken; and there were—yeas 114, nays 69, not voting 106; as follows:

YEAS—Messrs. Ashe, Atkins, John H. Bagley, jr., Banning, Bland, Blount, Boone, Bradford, Bright, Cabell, John H. Caldwell, William P. Caldwell, Campbell, Carr, Cason, Cate, Caulfield, Chapin, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Collins, Cook, Cowan, Culberson, Davis, Dibrell, Douglas, Durand, Durham, Faulkner, Felton, Finley, Forney, Franklin, Fuller, Gause, Goode, Goodin, Andrew H. Hamilton, Robert Hamilton, Hancock, Henry R. Harris, John T. Harris, Hartridge, Hartzell, Hatcher, Haymond, Henkle, Hereford, Abram S. Hewitt, Goldsmith W. Hewitt, Holman, Hooker, Humphreys, Frank Jones, Knott, Lamar, Franklin Landers, George M. Landers, Lane, Le Moyne, Levy, Lewis, Lynde, Mackey, Maish, McFarland, Metcalfe, Milliken, Morgan, Mutchler, Neal, Payne, Piper, Rea, Reagan, James B. Reilly, Riddle, John Robbins, William M. Robbins, Roberts, Scales, Schleicher, Sheakley, Singleton, Slemons, William E. Smith, Southard, Sparks, Spencer, Springer, Stanton, Stenger, Stevenson, Swann, Tarbox, Terry, Throckmorton, Tucker, John L. Vance, Robert B. Vance, Warner, Warren, Watterson, Erastus Wells, Whitthorne, Alpheus S. Williams, James Williams, Willis, Benjamin Wilson, Fernando Wood, Yeates, and Young—114.

NAYS—Messrs. Adams, Ainsworth, George A. Bagley, John H. Baker, William H. Baker, Ballou, Blair, Bliss, Bradley, William R. Brown, Horatio C. Burchard, Chittenden, Conger, Croonse, Cutler, Davy, Dobbins, Eames, Evans, Fort, Foster, Freeman, Frye, Garfield, Haralson, Hardenbergh, Benjamin W. Harris, Hathorn,

Hendee, Hoar, Hoskins, Hyman, Kasson, Kehr, Leavenworth, Lynch, Magoon, McCrary, Monroe, Norton, O'Neill, Page, William A. Phillips, Pierce, Plaisted, Platt, Potter, Powell, Pratt, Rainey, Rusk, Sampson, Seelye, A. Herr Smith, Stone, Thornburgh, Tufts, Van Vorhes, Watt, Alexander S. Wallace, John W. Wallace, White, Whitehouse, Whiting, Andrew Williams, Charles G. Williams, James Wilson, Alan Wood, jr., and Woodworth—69.

NOT VOTING—Messrs. Abbott, Anderson, Bagby, Banks, Bass, Beebe, Bell, Blackburn, John Young Brown, Buckner, Samuel D. Burchard, Burleigh, Candler, Campon Caswell, Cochrane, Cox, Crapo, Danford, Darrall, De Bolt, Denison, Dunnell, Eden, Eglert, Ellis, Flye, Gibson, Glover, Gunter, Hale, Harrison, Hays, Henderson, Hill, Hoge, Hopkins, House, Hubbell, Hunter, Hunton, Hurd, Hurlbut, Jenks, Thomas L. Jones, Joyce, Kelley, Kimball, King, Lapham, Lawrence, Lord, Luttrell, MacDougall, McDill, McMahon, Meade, Miller, Mills, Money, Morrison, Nash, New, O'Brien, Odell, Oliver, Packer, Phelps, John F. Philips, Poppleton, Purman, John Reilly, Rice, Robinson, Miles Ross, Sobieski Ross, Savage, Sayler, Schumaker, Sinnickson, Smalls, Strait, Stephens, Stowell, Teese, Thomas, Thompson, Martin I. Townsend, Washington Townsend, Turney, Waddell, Waldron, Charles C. B. Walker, Gilbert C. Walker, Walling, Walsh, Ward, G. Wiley Wells, Wheeler, Wigginton, Wike, Willard, Jeremiah N. Williams, William B. Williams, Wilshire, and Woodburn—106.

During the roll-call the following announcements were made:

Mr. WILLIAMS, of Wisconsin. I desire to announce that upon all political questions Mr. CANNON, of Illinois, is paired with Mr. SAVAGE.

Mr. SPRINGER. I desire to announce that Mr. HARRISON is paired on all political questions with Mr. W. B. WILLIAMS, of Michigan. If they were here Mr. HARRISON would vote "ay," and Mr. WILLIAMS would vote "no."

Mr. CONGER. I desire to announce that Mr. WALDRON is paired upon all political questions with Mr. CANDLER.

Mr. TOWNSEND, of New York. Upon political questions I am paired with Mr. WILLIAMS, of Alabama, and therefore will abstain from voting.

The result of the vote was then announced as above recorded.

The question recurred upon agreeing to the resolution as amended; and, being put, the resolution was agreed to.

Mr. HOLMAN moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

ENROLLED BILLS SIGNED.

Mr. HARRIS, of Georgia, from the Committee on Enrolled Bills, reported that the committee had examined and found truly enrolled bills of the following titles; when the Speaker signed the same:

An act (H. R. No. 97) directing the Commissioner of the General Land Office to issue certificate of relocation for six hundred and forty acres of land in the Territory of Missouri, to legal representatives of Samuel Ware;

An act (H. R. No. 1026) for the relief of Thomas Van Duzen and his assigns for lands; and

An act (H. R. No. 3504) for the relief of Thomas Day.

APPOINTMENT OF A CONFERENCE COMMITTEE.

The SPEAKER announced that he had appointed as the managers of the conference committee on the part of the House on the disagreeing votes of the two Houses on the bill (H. R. No. 1984) to provide for the sale of certain lands in Kansas Mr. SCALES, Mr. MORGAN, and Mr. SEELYE.

CONTINGENT FUND OF THE POST-OFFICE DEPARTMENT.

The SPEAKER laid before the House a letter from the Postmaster-General, transmitting, in compliance with the act of June, 1872, a statement of expenditures from the contingent fund of the Department for the fiscal year ending June 30, 1876; which was referred to the Committee on Expenditures in the Post-Office Department.

COAST SURVEY.

The SPEAKER also laid before the House a letter from the Secretary of the Treasury, transmitting the United States Coast Survey Report for the year of 1876; which was referred to the Committee on Printing.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of its clerks, announced that the Senate had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the bill (H. R. No. 4124) to provide for the expenses of certain special committees.

LOUISIANA INVESTIGATION—RECUSANT WITNESSES.

The SPEAKER laid before the House the following; which was read by the Clerk:

NEW ORLEANS, *December* 20, 1876.

Hon. SAMUEL J. RANDALL,
Speaker of the House of Representatives, Washington, D. C.:

I have the honor to communicate the inclosed record of proceedings in the case of E. W. Barnes, manager of the Western Union Telegraph Company in this city, a recusant witness.

WM. R. MORRISON,
Chairman of Louisiana Affairs Special Committee.

FORTY-FOURTH CONGRESS, SECOND SESSION, CONGRESS OF THE UNITED STATES.

IN THE HOUSE OF REPRESENTATIVES, *December* 5, 1876.

On motion of Mr. A. S. HEWITT,

Resolved, That three special committees, one of fifteen members to proceed to Louisiana, one of six members to proceed to Florida, and one of nine members to proceed to South Carolina, shall be appointed by the Speaker of the House to investigate the recent elections therein and the action of the returning or canvassing boards in the said States in reference thereto, and to report all the facts essential to an honest return of the votes received by the electors of the said States for President and Vice-President of the United States, and to a fair understanding thereof by the people; and that for the purpose of speedily executing this resolution the said committees shall have power to send for persons and papers, to administer oaths, to take testimony, and, at their discretion, to detail subcommittees with like authority to send for persons and papers, to administer oaths, and to take testimony, and that the said committees and the subcommittees may employ stenographers, clerks, and messengers, and be attended each by a deputy sergeant-at-arms; and said committee shall have leave to report at any time by bill or otherwise.

The Speaker appointed Mr. MORRISON of Illinois, Mr. JENKS of Pennsylvania, Mr. MCMAHON of Ohio, Mr. LYNDE of Wisconsin, Mr. BLACKBURN of Kentucky, Mr. MEADE of New York, Mr. HOUSE of Tennessee, Mr. PHELPS of Connecticut, Mr. NEW of Indiana, Mr. ROSS of New Jersey, Mr. TOWNSEND of Pennsylvania, Mr. DANFORD of Ohio, Mr. HURLBUT of Illinois, Mr. CRAPO of Massachusetts, and Mr. JOYCE of Vermont the said committee to proceed to Louisiana.

Attest:

GEO. M. ADAMS, *Clerk.*

IN THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES,
December 7, 1876.

The Speaker appointed Mr. BEEBE, of New York, in place of Mr. LYNDE, of Wisconsin, on said committee to proceed to Louisiana.

Attest:

GEO. M. ADAMS, *Clerk.*
By GREEN ADAMS, *Chief Clerk.*

Under said resolution the committee, as aforesaid in conformity with the powers therein conferred, have sent for persons and papers. The committee caused a *subpœna duces tecum* to be issued and duly served on one E. W. Barnes, manager of the Western Union Telegraph Company at New Orleans, Louisiana. Said subpœna is in the words and figures following, to wit:

By authority of the House of Representatives of the United States of America.

To JOHN G. THOMPSON, esq.,
Sergeant-at-Arms, or his special messenger:

You are hereby commanded to summon E. W. Barnes, manager of the Western Union Telegraph Company at New Orleans, Louisiana, to be and appear before the Louisiana affairs special committee of the House of Representatives of the United States, of which Hon. WILLIAM R. MORRISON is chairman, and with you bring all telegrams sent or received by William Pitt Kellogg, S. B. Packard, John P. Casey, J. R. G. Pitkin, Henry C. Dibble, H. C. Warmoth, George W. Carter, and General Augur at the office of the Western Union Telegraph Company, New Orleans, from and after the 15th day of August, 1876, in their chamber in the city of New Orleans, Saint Charles Hotel, forthwith, then and there to testify touching matters of inquiry committed to said committee. Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 13th day of December, 1876.

[SEAL.] SAMUEL J. RANDALL, *Speaker.*

Attest:

GEORGE M. ADAMS, *Clerk.*

The return indorsed on the foregoing is in words and figures as follows, to-wit:

Served personally with a copy of the within at one and one-half o'clock p. m., December 13, 1876.

JOHN G. THOMPSON,
Sergeant-at-Arms.
By J. W. POLK,
Special Messenger.

NEW ORLEANS, *December* 18, 1876.

Committee met at eleven o'clock a. m., pursuant to adjournment. Present: the chairman, Mr. MORRISON, Messrs. JENKS, MCMAHON, BLACKBURN, MEADE, PHELPS, NEW, ROSS, BEEBE, TOWNSEND, DANFORD, HURLBUT, CRAPO, and JOYCE.

Said E. W. BARNES appeared as a witness before the committee on the 18th day of December, 1876, and, after being duly sworn according to law, was interrogated as follows:

By Mr. MORRISON:

Question. Where do you reside?

Answer. In New Orleans.

Q. How long have you resided there?

A. Two years at the present time, but I have lived here before about ten or twelve years.

Q. What is your occupation?

A. Manager of the Western Union Telegraph office in this city.

Q. Have you been subpœnaed to appear here before the committee?

A. I have.

Q. Have you a copy of the subpœna with you?

A. I have. [Witness produced copy of subpœna.]

Q. Have you in your possession any dispatches sent by or received by the persons named in this subpœna?

A. I presume I have some.

Q. In relation to the late election or the counting of the votes?

A. I am not in the habit of reading all of them, but there have been dispatches sent during the canvass to these persons.

Q. In relation to the election and counting of votes for presidential electors?

A. I cannot speak as to the contents of the telegrams. It is very seldom that I read them.

Q. As a matter of fact, have you not looked over them since you were subpœnaed?

A. No, sir; I have not looked over them.

Q. You say you have knowledge that telegrams have passed, and from some of these parties, concerning the election?

A. I assume that there is; but I have no personal knowledge.

Q. You may state to the committee whether it is true, after you were subpœnaed, that you made any arrangement about producing these dispatches; and, if so, with whom, and what it was.

A. I had an interview with you after being subpœnaed. A sergeant at arms called on me and asked me to see the chairman at seven o'clock and speak to him in regard to it, which I did. I introduced myself and asked what he wished. He told me he wished copies of the dispatches mentioned in the subpœna. I think I told him it was great labor to get them and our employés were very busy and we could not well take them off for this purpose, but that I could engage others. He asked me what it would cost. I said probably it would cost $30. He said he had no money appropriated for that purpose, but that it was an object to get them quickly, and he thought the committee would agree to expend the $30, and asked me what time I thought I could get them, and told him by Monday next. That is to-day. I mentioned that in these cases we always resisted an order to produce telegrams as far as we could. I had had no communication from the company at that time in regard to the matter.

Q. State whether, as a matter of fact, you did not promise me upon my agreeing to pay the expenses that you would furnish the dispatches to-day?

A. No, sir; I did not understand it so.

Q. Was not the agreement made that I was to pay expenses; that you would put on clerks, and furnish them to-day?

A. I did not understand it so. So far as I understand the matter I had telegraphed our company that such demand had been made, and at seven o'clock I had not received an answer, and I did not know whether I would be prevented from producing those dispatches or not; but I was careful in my mind not to say anything only what I could do and not what I would do.

Q. Did not you agree that I was to pay the expenses?

A. If you would pay the expenses that I could furnish them, not that I would, I had no power, without instructions, to furnish them, and we always try to evade these demands upon the telegraph office.

Q. You did not tell me that you would not furnish them to-day?

A. No, sir; I could not have told you, for I had to get the power myself from the company.

Q. You did not say anything about that to me?

A. No, sir; I had telegraphed to the company, but not received an answer up to seven o'clock that evening.

Q. Have you any of these dispatches with you?

A. No. With me? No sir.

Q. Have you been instructed by the president of the company not to deliver them?

A. Yes sir; not directly by the president, but by our general superintendent.

Q. Are your instructions similar to this? [Letter shown witness from President Orton of Western Union Telegraph Company, to the chairman.]

A. I should have acted on these instructions without any others on this letter to you.

Q. Have you any?

A. I have only instructions from Mr. Orton to do nothing in the matter; that Mr. Orton would relieve me from all responsibility.

Q. Your instructions from Mr. Orton are not to produce the messages?

A. I understand that is my instructions from Mr. Van Horne, the division superintendent. I consider these instructions confirmed by this message to you.

Q. Then you refuse to produce these telegrams?

A. Yes, sir; I must do so according to my instructions.

Q. What did you say was the name of the division superintendent?

A. Mr. Van Horne.

Q. Where does he reside?

A. In New York.

Q. You say this is the notice you received to appear, the subpœna?

A. Yes, sir; this is the one.

Q. You answer that you were subpœnaed to appear and produce telegrams sent by and received by parties named in this subpœna?

A. Yes, sir.

Q. Do you recollect whether William Pitt Kellogg is named in this subpœna?

A. Yes, sir.

Q. S. B. Packard?

A. Yes, sir.

Q. J. E. G. Pittkin?

A. Yes, sir.

Q. Henry C. Dibble?

A. Yes, sir.

Q. H. C. Warmoth and others?

A. Yes, sir.

Q. You now still refuse to produce the telegrams?

A. Yes, sir.

Q. (By Mr. HURLBUT.) I understand you were served with a subpœna. At what time?

A. At about two o'clock on the 15th.

Q. Did you report the fact of such service to your superior?

A. I did.

Q. Have you instructions from your superior officers in the telegraph company not to furnish the messages?

A. Yes, sir.

Q. Have you any written instructions, any formal instructions?

A. I have no other instructions than what I have mentioned.

Q. Telegraphic instructions?

A. Yes, sir.

Q. Have you a copy of that instruction?

A. No, sir; but that is the purport of it, a dispatch from Mr. Orton saying he would assume the responsibility.

On motion of McMAHON,

Resolved, That for the efficient prosecution of the inquiry ordered by the House the chairman of the committee communicate to the House for its consideration the refusal of E. W. Barnes to produce before the committee the telegrams referred to in the subpœna upon him December 13, 1876, his refusal being in contempt of the Representatives.

The above is a true copy of the proceedings in relation to E W. Barnes, manager of Western Union Telegraph Company, a recusant witness, with letter of President Orton referred to in testimony of said Barnes annexed, dated New Orleans, Louisiana, December 19, 1876.

W. R. MORRISON, *Chairman.*

Attest: R. D. HUNTER, *Clerk Special Committee.*

LETTER OF WILLIAM ORTON, PRESIDENT WESTERN UNION TELEGRAPH COMPANY.

NEW YORK, *December* 15, 1876.

SIR: Subpœnas have been served upon several employés of this company directing them to produce before the congressional committee of which you are chairman all messages in possession of the company sent and received by the persons named in the subpœnas during several months of the present year. I have delayed a reply to these demands in the expectation that similar applications would be made by a committee of the Senate also charged with the investigation of matters connected with the presidential election in canvass in several States, so that the action of the company being the same in respect to the messages of both political parties could not be attributed a desire to prejudice or promote the interest of either. No subpœnas have yet been served upon us by order of the Senate committee, and as further delay might appear to be a discourtesy to yourself and your committee, it does not seem proper to further to postpone this answer. The subpœnas were served before the investigation which the committee had been directed to make was begun and therefore evidence had been presented to the committee either that persons named in the subpœnas had sent any messages whatever or that any messages sent by them related to the subject-matter of the investigation.

It appears to have been assumed that persons holding high official positions under the Federal and State governments and others prominent in public offices were in the habit of sending messages by telegraph, and without attempting to ascertain if any of these messages were material to the investigation the officers and agents of this company have been commanded to lay aside the business in which they are engaged to become spies and detectives upon and informers against the customers who have reposed in us the gravest confidence concerning both their official and their private affairs. I have never believed that the Congress of the United States, with this subject fairly before them, would permit committees to violate the secrecy of the telegraph in this manner; and it seems to me the present is an opportunity which it would be unwise to forego for obtaining a decision directly from the representatives of the people. In the messages of persons connected with one political party are spread before the public, a like course will be taken in respect to those of the other party; both parties therefore have the same interest in publishing to the world the secrets of the telegraph offices or of preventing such publications.

It has therefore been decided to decline very respectfully to permit the employés of this company to produce before any committee of either House of Congress messages sent or received by the representatives of either the democratic or the republican party, at least until after Congress shall have approved the subpœnas of the committees and directed that their demands be enforced.

I am, with great respect, &c., &c.,

WILLIAM ORTON, *President.*

Hon. WILLIAM R. MORRISON,
Chairman, &c., New Orleans, Louisiana.

Mr. KNOTT. I offer the resolution which I send to the Clerk's desk to be read, and upon it I call for the previous question.

Mr. GARFIELD. I desire to ask if this telegraphic communication that has been laid before the House——

The SPEAKER. The Speaker received this late last night at his house.

Mr. GARFIELD. By telegraph?

The SPEAKER. By telegraph.

Mr. GARFIELD. And there is no signature to it except that made by the telegraph operator?

The SPEAKER. The paper is signed "WM. R. MORRISON," and a subsequent paper is signed "Wm. Orton."

Mr. GARFIELD. The signatures on the paper which is now in the presence of the House are signatures made by the telegraphic operators, are they not?

The SPEAKER. It comes exactly as all telegrams come, in the handwriting of the telegraphic operators, of course.

Mr. GARFIELD. There is no handwriting of any officer of the House?

The SPEAKER. It is duly authenticated; the Speaker has the official envelope here with the telegraphic charges. No officer of the House has had anything to do with it.

Mr. GARFIELD. All I wanted was to show that the paper now before the House was not signed by any officer of the House, but was signed by the telegraphic operator as from an officer of the House.

The SPEAKER. The Chair will submit to the House the question whether——

Mr. GARFIELD. I do not make any question upon that. I only wanted it spread upon the record that the paper which has been laid before the House was not signed by Mr. MORRISON, the chairman of the committee.

The SPEAKER. It is in every respect the same as other telegraphic dispatches.

Mr. KNOTT. I desire to say that the paper is signed by WILLIAM R. MORRISON, and his signature has been read. I call the previous question upon the resolution.

The resolution was read, as follows:

Resolved, That the Speaker of this House issue a warrant under his hand and the seal of the House of Representatives, directing the Sergeant-at-Arms of this House, either by himself or his special deputy, to arrest and bring to the bar of the House without delay E. W. Barnes, to answer for a contempt of the authority of this House and a breach of its privileges, in refusing to produce to the special committee of which Hon. WILLIAM R. MORRISON is chairman, now sitting in the city of New Orleans, certain telegraphic dispatches in obedience to a *subpœna duces tecum*, served on him on the 13th day of December, 1876, and to be dealt with as the law under the facts may require.

The question was upon seconding the call for the previous question.

Mr. WILSON, of Iowa. I desire to make a parliamentary inquiry of the Chair.

The SPEAKER. The gentleman will state his inquiry.

Mr. WILSON, of Iowa. Is the Chair aware whether it is the well-settled practice of this House or of any deliberative body that a telegram can be properly construed as the report of a committee? Does the Chair hold that this is a privileged report from a committee?

The SPEAKER. The Chair holds that this communication is a privileged one, involving the dignity of this House.

Mr. WILSON, of Iowa. That feature of it I do not question. But is it well settled that a telegram, without the actual signature to the paper of the chairman of the committee delegated by the House to make certain inquiries, is sufficiently well authenticated and proved to be regarded as the report of the committee?

The SPEAKER. Reports of committees are not usually signed by members of the committee; they are presented to the House by the chairman or by some other member of the committee. This comes to the Speaker——

Mr. WILSON, of Iowa. But the Chair will observe that reports made by committees are made in person. This is presumably the report of a committtee. But is it sufficiently well known to the House that this is a report of this committee and of the action of the committee to justify the extreme step that is now proposed to be taken? That is what I want the Chair to say.

The SPEAKER. The report of a committee comes through a member of the committee, and his word is taken for it that it is a report from the committee.

Mr. WILSON, of Iowa. Yes.

The SPEAKER. This communication comes through the Speaker of the House. The Speaker of the House is satisfied as to its authenticity, and therefore presents it to the House.

Mr. WILSON, of Iowa. One word more, if the Chair pleases. I do not question the manner in which the Speaker of the House received this report. But are we justified in arresting an American citizen and

depriving him of his personal liberty on a telegram that may possibly not have emanated from a committee?

The SPEAKER. That is a question for the House to determine. It is not a question of order, neither is it a question that calls for any expression of opinion on the part of the Chair.

Mr. WOOD, of New York. The criticism of the gentleman from Ohio [Mr. GARFIELD] and of the gentleman from Iowa [Mr. WILSON]——

The SPEAKER. The gentleman from New York [Mr. WOOD] will permit the Chair to state that debate is not in order pending the call for the previous question.

Mr. WOOD, of New York. I do not propose to debate this question; I merely desire to correct some erroneous statements which, as I understood, were made by the two gentlemen on the other side who have spoken upon this question. This communication contains an extract from the minutes of the proceedings of the committee in session in New Orleans, attested by the clerk of the committee, those proceedings being participated in by all the members of the committee.

Mr. WILSON, of Iowa. How does the gentleman from New York know that?

Mr. WOOD, of New York. It is stated upon the face of the document as it has been read.

Mr. WILSON, of Iowa. Suppose that I should telegraph to the Speaker of the House a statement of this kind and should sign myself "WILLIAM R. MORRISON," who would know whether it came from him or not?

Mr. WOOD, of New York. The other members of the committee would have notified their friends, as the gentleman from Ohio [Mr. GARFIELD] was notified the other day, if there had been any dispute about this matter.

Mr. HOLMAN. Authentication by telegraph is now universally recognized in this country.

The SPEAKER. The Chair has stated that this is an authentic dispatch. The question is on seconding the call for the previous question.

Mr. GARFIELD. I appeal to the gentleman from Kentucky [Mr. KNOTT] to allow some debate on this very remarkable proposition.

Mr. KNOTT. I think the House understands it.

The question being taken on seconding the call for the previous question, there were—ayes 113, noes 11; no quorum voting.

Tellers were ordered; and Mr. WILSON of Iowa and Mr. KNOTT were appointed.

The House divided; and the tellers reported—ayes 116, noes 7; no quorum voting.

During the count by tellers,

Mr. GARFIELD said: If we can have a reasonable time for debate there will be no delay. All we ask is that an hour be allowed for debate. I hope there will be no objection to that.

Mr. KNOTT. I do not consent to that.

The result of the vote was announced as above stated.

Mr. KNOTT. I move a call of the House.

The motion was agreed to.

The roll was called, and the following-named members failed to answer:

Messrs. Abbott, Bagby, Banks, Bass, Beebe, Blackburn, John Young Brown, Samuel D. Burchard, Burleigh, Cannon, Caswell, Cochrane, Cox, Crapo, Crounse, Danford, Darrall, DeBolt, Denison, Dunnell, Eden, Egbert, Ellis, Flye, Gibson, Glover, Gunter, Harrison, Hays, Henderson, Hill, Hoge, Hopkins, House, Hubbell, Hurlbut, Hyman, Jenks, Thomas L. Jones, Joyce, Kelley, Kimball, King, Lane, Lapham, Lawrence, Lord, MacDougall, McMahon, Meade, Miller, Money, Morrison, Nash, New, O'Brien, Odell, Phelps, John F. Philips, Poppleton, Purman, John Reilly, Rice, Robinson, Miles Ross, Sobieski Ross, Savage, Sayler, Schumaker, Sinnickson, Slemons, Smalls, Strait, Stephens, Stowell, Teese, Thomas, Thompson, Washington Townsend, Turney, Waddell, Waldron, Charles C. B. Walker, Walling, Walsh, Ward, G. Wiley Wells, Wheeler, Wigginton, Wike, Jeremiah N. Williams, William B. Williams, and Woodburn—93.

Mr. LUTTRELL. I wish to announce that my colleague [Mr. WIGGINTON] is absent by leave of the House.

Mr. REAGAN. I was requested by the gentleman from Maryland [Mr. O'BRIEN] to announce that he was compelled to leave the Hall on account of sickness.

Mr. PLAISTED. I desire to state that my colleague [Mr. FLYE] is confined to his house on account of sickness.

The SPEAKER *pro tempore*, (Mr. CLYMER in the chair.) One hundred and ninety-six members have answered to their names. There is, therefore, a quorum present.

Mr. WOOD, of New York. I understand the Chair to announce that a quorum of the House is present.

The SPEAKER *pro tempore*. Yes, sir.

Mr. WOOD, of New York. I wish to say that, so far as this side of the House is concerned, there is no disposition to prevent any gentleman from discussing this proposition. I suggest therefore that, after the previous question shall have been sustained, one hour be allowed for debate, to be divided equally between the two sides of the House.

Mr. GARFIELD. That is all we have been insisting upon.

Mr. WOOD, of New York. I believe my friend from Kentucky [Mr. KNOTT] agrees that after the previous question has been seconded an hour be allowed for debate.

Mr. HALE. Will there be opportunity for submitting amendments?

Mr. WOOD, of New York. Amendments will not be in order after the previous question is sustained.

Mr. HALE. But the gentleman's proposition is that by unanimous consent the previous question shall be considered as ordered and then an hour allowed for debate. Now is it not fair, as an accompaniment of that proposition, that an opportunity should be given to this side of the House to offer amendments?

Mr. WOOD, of New York. I have made this suggestion with a view to debate only, and not for the purpose of permitting amendments.

The SPEAKER *pro tempore*. If the previous question should be sustained, the gentleman from Kentucky [Mr. KNOTT] would be entitled, under the rule, to one hour.

Mr. KNOTT. I have no objection to yielding half of the time to gentlemen on the other side.

The SPEAKER *pro tempore*. The Chair would suggest that the first motion in order is that all proceedings under the call be dispensed with.

Mr. HOAR. I think the Chair fell into an inadvertence in the announcement which he has just made. This is not the report of a committee, and therefore under the rules no hour is allowed for debate after the previous question has been seconded.

The SPEAKER *pro tempore*. By unanimous consent, it was agreed that there should be an hour.

Mr. GARFIELD. The unanimous consent granted was that there should be an hour for debate before the vote was taken, that hour to be equally divided between both sides of the House.

Mr. WOOD, of New York. That was the proposition which was agreed to, as I understand it.

The SPEAKER *pro tempore*. Is there objection that the previous question shall be considered as seconded and the main question ordered, and that one hour shall be allowed for debate, to be divided equally between one side and the other? The Chair hears no objection, and it is ordered accordingly.

Mr. WOOD, of New York. I move that all further proceedings under the call be dispensed with.

The motion was agreed to.

Mr. KASSON. I desire, Mr. Speaker, to present a point of order before the debate proceeds. I have reduced it to writing and I ask the Clerk to read it.

The Clerk read as follows:

It appearing to the House that the resolution is based upon a mere telegraphic copy of an alleged report of a committee, without any official certificate of its accuracy and without verification of the signatures to the alleged copy, all the signatures being made by an alleged telegraphic operator, and without any other verification, I make the point of order that there is no legal or proper parliamentary ground for adopting an order of arrest of an American citizen; and that therefore the resolution is not in order.

Mr. KASSON. Only a single word. I desired to put it in such shape as would go upon record without designing to appeal from the decision of the Chair. It is the view which is taken on this side of the House that the proper ground does not exist for the adoption of such an order. In my experience, and so far as I can learn in that of others the action of the House has never been asked upon such a telegraphic dispatch, and I desired it might go upon record that we upon this side of the House find no justification for such a proposed order.

I supposed both sides of the House were waiting a properly signed and verified report before adopting this order.

I agree with gentleman that *prima facie* disobedience of a witness to a subpœna under these circumstances justifies an order of arrest when the proper ground is laid, and that the proper time for debating the propriety of punishing for contempt and the validity of the ground laid is when the party arrested for *prima facie* contempt is brought before the House. At this time I desire to say this on behalf of my associates, as a point of order, that this may not be regarded as an undisputed precedent for the action of future Houses of Representatives.

The SPEAKER. The Chair desires to say this communication to him comes through the usual channel of telegraphic communication. He believes it to be authentic. He believes therefore there is a proper verification for the facts set forth, and again overrules the point of order made. But it is for the House to determine as to the arrest, which is not within the province of the Chair. The point of order is overruled.

By unanimous consent, one hour is allowed for debate, to be divided equally between the two sides. The gentleman from Kentucky is entitled to the floor.

Mr. KNOTT. I will yield to any gentleman on the other side for half an hour.

Mr. GARFIELD. I wish the House to understand in the first place, Mr. Speaker, that there is on this side no purpose whatever to resist any thorough and complete investigation which has been ordered by the House touching the late election. We are more desirous, if possible, than they can be, that the investigation now being prosecuted in the State of Louisiana shall be thorough and complete. The deeper they get down into that subject, and the more truth they bring out by their investigation, the more I shall hail the result of the inquest; for I have myself looked far enough into this question of the late election in Louisiana to know that any investigation carried on honestly and thoroughly can but be valuable to the cause of truth in this country. We have of all men, therefore, the least reason either to see obstructed or to aid in obstructing any legitimate investigation.

I say this without expressing any opinion, at present, upon our constitutional right to go behind the action of any State, under its own laws, in reference to its electoral vote.

But, Mr. Speaker, there are some things in this country that perhaps are even more valuable than the ends to be reached by any investigation. Methods are sometimes more important than ends; and the methods of doing things are frequently the instrumentalities by which a country is ruined. Now in all I shall say in the few moments I may speak, I shall not refer at all to the subject-matter of the investigation. I hope at some time, not far distant, to speak of Louisiana affairs and of the absorbing question agitating this country; but to-day what I shall say will relate to the methods of this House, in reference to which there ought to be no party difference; methods which to-day you may employ, and which next year we may employ, and which the year after another party may employ; methods which ought to be a part of the immortal forces playing alike upon all parties and all political proceedings.

In the first place, it is very important, when we are about to adopt a new method of conducting business before the House, when, for the first time, a telegraphic dispatch, and in this one case containing twenty-four hundred and ninety-nine words, has been received by the Speaker, and which purports to represent the authentic proceedings of an authorized committee of the House, that we consider carefully the consequences of the precedent we are making. This dispatch may be a perfectly correct report of what transpired yesterday in the city of New Orleans; but it is attended by all the possibilities of failure in transmission, all the accidents of mistakes by being repeated through three or four hands. And we are called upon now, for the first time, so far as I know, in the history of America, to take so grave a step as to act upon a dispatch which has come through alien hands, not those of officers of the House, and to treat every word of it as a genuine authoritative document. And upon such statement, coming in such a way, it is proposed to arrest a citizen of the United States and bring him as a prisoner, more than a thousand miles away from his home, under the cloud of the heavy displeasure of this House, and arraign him at the bar of the House to receive its sentence.

Now, shall we make the first break in the old barriers of personal security in this new way, without a moment's reflection, without referring the question to a committee of the House, without taking any of the usual precautionary steps which it has been the uniform habit of this House to take, and proceed at once, on the mere reading of a telegram at the Clerk's desk, and act upon it as if it were entirely accurate and genuine? I remember very well when, during the war, I was a member of a court-martial, and for the first time, I believe, in the history of courts-martial, a stenographer took the testimony, recorded the questions and the answers, that a careful, thoughtful member of the court raised this question. The articles of war provided that all questions propounded to a witness shall be written, and should be reduced to writing and submitted by the judge-advocate to the court, so that the witness might have the opportunity to see the written question before him; and that his words in answer should be carefully written down, so that thus the whole proceeding might be made certain and authentic. Now, a member suggested that never before had the use of the phonographic art been employed at a trial by court-martial, and raised the question whether it would not be a violation of the law and an infringement of the rights of witnesses to conduct the examination by the phonographic report alone. After a full discussion it was agreed that in order to prevent a breaking down of the protections of the law, the phonographic clerk should himself take down a question, and, before it was answered, should read it out from his phonographic notes, and the answer should then be made. I give that as an example of the carefulness with which those who believe in following law watch their steps when any innovation is proposed.

Now a marked innovation on the usual methods is proposed in the case of this paper; and we ought to pause and refer it to our law committee, that they may carefully inquire whether this paper can properly and rightfully be treated as though it were the authentically signed report of the committee of this House. But no such action is to be taken. Everything is taken for granted. No mistakes are assumed to exist in this paper.

That is the first point I urge upon the consideration of the House as a reason why we ought to refer this to a committee. Again, it appears from the paper, assuming it to be as it may be, entirely authentic, that our committee in New Orleans, out of their fancy or from their information, I do not know which, have draughted a resolution assuming that dispatches had passed over the wires to New Orleans since the 1st of August last; and wanting to get hold of some testimony of whose existence they know nothing, they picked out seven conspicuous politicians at New Orleans, all republicans, all officers of that State, or candidates for office, the governor of the State, who was also a candidate for elector, the gentleman who ran as the republican candidate for governor, a gentleman who ran for the office of representative in the Legislature of Louisiana, another who ran for Representative in Congress, but was defeated, and several others. All the seven thus selected are members of one political party, and on the general presumption that they may have received telegrams during the time of registration and election and since, without laying any foundation in fact that any dispatch had been received by any one of them, a resolution was adopted by our committee in New Orleans commanding the managers of the Western Union Telegraph Company to come before the committee and bring all dispatches, public or private, political or commercial, that may have gone over the wires during the months of August, September, October, and November, and until the date of the subpœna, in December, upon all subjects whatever. There was no limitation of subject-matter in the subpœna. I am not sure but in some of the cross-examination reported in the dispatch it was confined to political subjects, but the subpœna is general and sweeping. And these seven citizens are all selected from one political party, not according to the principle announced here yesterday, that it should be made general and embrace all political parties, for the majority of this committee can select their men, and we see they have selected only republicans.

Now this manager of the telegraph in New Orleans is required to bring every dispatch that for a period of more than four months may have been sent to all those seven citizens, and lay them upon the table of the committee, to be made public for any use or any construction that political passion may require. I beg the attention of gentlemen to this consideration: Suppose the case had been reversed; for if this thing can be done a similar course can be taken by the Senate committee, and all the magnates of the democratic party may be named in a subpœna, and every dispatch sent to them for four months, or five months, or ten months, may thus be seized and made public.

I beg gentlemen to reflect how great and how dangerous a step we are proposing to take under the previous question and upon telegraphic dispatches. If it may be seven citizens, why not seven hundred or seven thousand? Why not all the population of America? The right to demand this, under these circumstances, is the right to demand everything everywhere about every man in the United States.

I do not say that we cannot properly, under the old guards of the law, take public or private dispatches whenever a proper foundation has been laid for taking them in the course of judicial or legislative investigations. I have no doubt we can. But I deny that we can justly do so upon the naked, foundationless demand which has been made for these dispatches. There is no evidence before us that either of these citizens, Warmoth, Kellogg, Packard, General Augur, or any one of them, have appeared anywhere in the testimony in the proceedings as having received any particular dispatches relating to the subject-matter of legislative inquiry. It is not even pretended that the slightest foundation is laid for this proceeding. The bolt was launched out of a clear sky. These gentlemen are struck merely because somebody thought it possible that such a course might possibly lead to the discovery of secrets which the committee would like to know. If this rule prevails, all that any committee will need is to suspect that somewhere an American citizen possesses a secret, and they may call upon the Western Union Telegraph Company to become the great national informer against every citizen who has ever been conspicuous enough to receive a telegraphic dispatch.

I do not know how it may strike the Anglo-Saxon minds around me; but I must say that since I entered public life I have never heard a proposition advanced that was so far-reaching in its consequences, so unjustifiable by any of the maxims of the old common law or practice of our courts in its influence upon private rights, as the pending proposition.

Now, Mr. Speaker, as this side of the House was awarded thirty minutes, I suggest that whatever gentlemen on the other side desire to say should be heard now, and that the remainder of the time allotted to our side be occupied at the conclusion of the debate.

The SPEAKER. The gentleman from Kentucky [Mr. KNOTT] will be entitled to close the debate.

Mr. GARFIELD. Let him reserve his right so as to allow some gentlemen on this side to be heard after the views of the other side have been stated.

Mr. KNOTT. The gentleman from Ohio can make what disposition he pleases of the half hour allotted to him.

Mr. GARFIELD. All I desire is that some gentlemen who want to take part in this debate later shall have an opportunity of doing so, so that the debate may be in alternate order.

Mr. KNOTT. I do not know whether I want to say anything or not, so far as I am concerned.

Mr. GARFIELD. How much time have I left?

The SPEAKER. The gentleman has twelve minutes.

Mr. GARFIELD. I will yield to the gentleman from Iowa, [Mr. MCCRARY;] but I think it would be just that gentlemen on the other side shall go on and make their remarks, so that he can speak in reply. But, as there seems to be no disposition to adopt the alternate order, I will now give a portion of my time to the gentleman from Iowa, [Mr. MCCRARY.]

Mr. MCCRARY. Mr. Speaker, I have neither the time nor the disposition to enter into a discussion of the very important question that is now before the House. I do not place my opposition to the adoption of this resolution upon the question of order that has been raised regarding the authenticity of the dispatch. I take it for granted that the dispatch is genuine, and at least substantially accurate, and I prefer that the House should stand upon that, and that we should meet fairly and squarely the other, and to the American people the exceedingly important, question that is presented. I speak not of this particular investigation, but of the powers and duties of the House in investigations generally.

By reference to the subpœna which is embodied in the papers before the House two things will be observed; first, that there is no pretense in any of these papers that the committee at New Orleans had any reason to believe that there were any dispatches in the possession of this witness that were material to the investigation then going on. There was no inquiry upon that subject prior to the issue of the *subpœna duces tecum*. No foundation whatever was laid for the seizure of these papers, much less for the arrest of anybody. A subpœna has been issued for the purpose of ascertaining whether there might not be in that telegraph office dispatches addressed to these seven gentlemen touching the subject-matter of investigation.

Mr. HALE. I call the attention of the gentleman to the *subpœna duces tecum*. It does not even contain what the House yesterday put into its resolution, that the committee deemed this testimony necessary to the investigation with which it is charged.

Mr. McCRARY. There is nothing whatever of that character in it. It fails utterly to make a case under the resolution of yesterday. But there is another thing that I beg the House to consider. This is a proposition to call upon the telegraph officers of a certain company to produce the telegraphic correspondence of seven citizens of this country during a period of four months and to lay it before an investigating committee of this House. Mark you, the call is for all dispatches upon all possible subjects, without any limitation whatever as to the subject-matter of the telegrams.

In other words, we have to meet this question whether an investigating committee can call upon any number of our fellow-citizens to bring before that committee all of their private correspondence, all of their private papers, upon all imaginable subjects, to be examined by the committee in order to ascertain whether there may be among those private papers anything that may possibly be pertinent to the subject-matter of their investigation. That is precisely what this House is called upon to-day to decide, for there is not one word in all these papers touching the subject-matter of the telegrams which are called for. The operator of the telegraph company is called upon to produce all the telegrams received by a certain number of citizens within four months of time, whether they relate to their private affairs, whether they relate to their domestic relations, whether they may be telegrams between husband and wife; whatever they may be, this telegraph officer is called upon, is commanded under pain of imprisonment by the order of this House, to bring everything that either of these gentlemen may have sent or received within this period of time by telegraph, and to lay it upon the table of the investigating committee. It is the instinct of every freeman to resist to the utmost such a demand. It is a scandal to the American name that such a demand should be made and be enforced by this House under the pains and penalties of imprisonment.

Now if this be a proper course of proceeding, if this be allowable under the laws of this land, if this be within the proper jurisdiction of this House, then there is no security for the citizen in regard to his private papers. The provision of our Constitution which declares that "the right of the people to be secure in their persons, houses, and effects against unreasonable searches and seizures shall not be violated" may be rendered nugatory by an investigating committee of this body. The proposition, when seen and considered in all its length and breadth and possible consequences, is simply monstrous.

I ask the House to look at the principle involved in this resolution which we are asked to adopt. If you may select these seven gentlemen and issue your *subpœna duces tecum* to a telegraph officer, commanding him to bring to the room of one of your committees all the telegraphic dispatches which these seven gentlemen may have received within four months, then there is no rule of law that limits you to seven citizens nor to four months, nor to one telegraph office. If you can name seven men, you may name seven hundred or seven thousand. If you can command one telegraph operator to do this, you can command every telegraph operator in this country to bring every dispatch upon every imaginable subject upon which any number of our fellow-citizens may have sent or received dispatches and lay them before an investigating committee so that they may look them over and hunt them through and see if they can find anything that may by any possibility have a bearing upon the subject-matter of their investigation or that may gratify curiosity or feed scandal. If you can go back four months you can go back four years. The principle is the same.

Some gentlemen yesterday spoke about the inquisitorial power in the hands of an investigating committee. I do not like that word. And if this is what these gentlemen meant by "an inquisitorial power," then it is time that the American people understood it, and that the American Congress understood it.

There is no need of going to this extent; there is no need of establishing such a dangerous precedent as this; there is no necessity for it. If your committees have good reason to believe that there are telegrams of importance that are material, let them name the persons who have sent them and the persons who have received them, and the subject-matter of them, or otherwise describe them so that they may be identified. Lay your foundation properly by making an inquiry as to their existence and materiality, but I beg of the House not to assert the right to issue a drag-net subpœna to bring before a committee of this House all the twenty-five millions of private dispatches sent in this country, to be handed over to that committee in order that they may see if perchance something may not be found among the private correspondence of the American people pertinent to the inquiry they are making. That is what is involved in the principle of this resolution, and that is what I object to; and I can assure gentlemen on the other side, that in my humble judgment the time will come when the madness of these times is past, when sober reason resumes its sway, when it will be acknowledged on all hands that our safe course is to be found in following lawful methods, in respecting the rights of the citizen, and in avoiding the exercise of powers not given us by the Constitution or laws, and which are unwarranted, assumed, arbitrary, and not even excused by the presence of any overshadowing necessity.

Mr. KNOTT. I now yield fifteen minutes to the gentlemen from New York. [Mr WOOD.]

The SPEAKER. The time allowed for the other side has not yet expired.

Mr. GARFIELD. How much time have I left?

The SPEAKER. Five minutes.

Mr. GARFIELD. If gentlemen have no objection we will use those five minutes a little later.

Mr. WOOD, of New York. Mr. Speaker, I regret very much that this whole question, so far as the law is concerned, is not under some statute regulation. I regret that there is no law which may be made to apply to the question now under consideration, so far as the privileges of telegraphic communications are concerned.

So far as I am personally concerned, I would violate no great principle of individual right, not even under these circumstances. I am opposed to either legislation or congressional action as a mere matter of expediency to meet any particular case or emergency that may arise. I believe that we should have general laws, passed at a time when there is no public excitement as at present, which laws may be made applicable to these dispatches which are now claimed to be sacred and so private, in order that hereafter we may have no trouble or difficulty.

I differ very much, however, with the gentleman from Ohio [Mr. GARFIELD] and the gentleman from Iowa, [Mr. McCRARY,] especially in their idea of the private, sacred character of these telegraphic communications. I believe these gentlemen are wrong in their assumption of facts. A letter that passes from myself to another person through the mails is known only to the writer and to the receiver. Not so with a telegraphic dispatch. It is known not only to the writer and to the receiver, but to two subordinates of the telegraph company at the two ends of the line. They are persons clothed with no particular authority except that which a private corporation may confer upon them. They are subject to no law, to no punishment for any violation or betrayal of confidence. They are restrained by no considerations of any kind, character, or nature whatever. Therefore in my judgment telegraphic dispatches do not partake of that particular private character which attaches to letters which are transmitted through the mails.

Again the gentleman from Ohio [Mr. GARFIELD] will remember, and we all remember, that during the late civil war many of our military operations were conducted by means of telegraphic dispatches emanating from the War Department in this city. Many of the most important military movements were undertaken in consequence of arrangements and programmes and plans which originated in this capital. We know that for many, many years persons were arrested, incarcerated, and imprisoned, not only for criminal but political offenses, simply by a telegraphic dispatch.

We know moreover that whenever a person guilty of crime in this country seeks to evade American justice and go abroad we constantly telegraph (as we did in the case of Tweed recently) and hold him a prisoner there till he can be reclaimed by our own country for trial and conviction.

Moreover at this very moment the important political affairs of Europe, upon which hangs the question of a general European war, are being conducted to a large extent, if not altogether, by telegraph. This agency has become an open, practical means of communication. It has lost all privacy and secrecy—so much so that every important communication of every character even in commerce and trade is conducted in cipher, not by the ordinary language.

I will say just here that, in my judgment, it would be very difficult indeed to trace in any political communication that may have recently passed in this country from one party to another anything to criminate anybody. Hence my position on this question does not arise from any anxiety to procure or any belief that we can procure in this way for our committee anything that will be substantially important in determining any great event.

But, sir, here is the practical question. Gentlemen on the other side are discussing certain great principles in regard to the arrest of an individual simply in consequence of a telegraphic dispatch sent here from the committee at New Orleans. Such considerations should have been presented and discussed yesterday, because we then determined this whole question. We discussed the question on both sides of the House; we voted upon it by yeas and nays, and we finally laid down certain principles to guide the conduct of this House in every case that might arise. Our action was then made applicable directly to the case of Mr. Orton; it is now made applicable directly to the case of the subordinate of Mr. Orton in New Orleans; to-morrow it may be applicable to a case in New York; the next day to a case in Columbia, South Carolina, or Tallahassee, Florida. In the substitute

adopted yesterday, upon yeas and nays, by a very large majority, we laid down certain principles; and what are they?

Resolved, That there is nothing in the law rendering a communication transmitted by telegraph any more privileged than a communication made orally or in any other manner whatever; that this House has the power through its subpœna, under the hand and seal of its Speaker, to require any person to appear before any committee to which it has given authority to examine witnesses and send for persons and papers, and bring with him such books or papers, whether the papers be telegraphic messages or others, for the inspection of such committee, as such committee may deem necessary to the investigation with which such committee may have been charged; and that such committees may order and direct any witness who may be brought before it to produce to the committee any book or paper, whether such paper be a telegraphic dispatch or other, which may appear to be in his possession or under his control, which said committee may deem necessary to the investigation with which it may have been charged; and that any person—

This has direct reference to the case now before the House—

and that any person upon whom such subpœna shall have been served, who shall disobey the same, or having appeared as a witness shall disobey the order of such a committee to produce any book or paper which he shall have been ordered by such committee to produce, should be brought to the bar of the House upon a report of the facts by the committee to answer for a contempt of the authority of the House, and dealt with as the law under the facts may require.

The statement communicated by the Speaker from the committee at New Orleans presents all the facts. It gives the questions put to this witness and his answers, in which he refused peremptorily and positively to answer satisfactorily to the committee. He denied practically the authority of the committee and the authority of this House. He refused to produce these dispatches. He has thus placed himself in contempt, and that is the whole case. If the House carries out the rule which it laid down for its own action and government yesterday, it has nothing to do but to bring before it the body of this recusant witness, that he may show cause why he should not be held to answer for contempt.

Mr. CONGER. The gentleman from New York will allow me to say that the action of the House yesterday was after the alleged contempt; and therefore the refusal of the witness cannot have been in contempt of our action yesterday. The refusal was before the action of the House.

Mr. WOOD, of New York. The gentleman from Michigan [Mr. CONGER] will recollect that the action of the House yesterday virtually determined this and every other like case. This witness brings himself within the rule established by the House; and he is in contempt.

Mr. CONGER. But the House never promulgated such a rule until yesterday.

Mr. WOOD, of New York. But the committee of the House had full authority; they have proceeded regularly and in order according to the usage in this House from time immemorial.

Mr. HOAR. If the gentleman from New York will pardon me, I wish to put to him an inquiry for my own satisfaction. I am inclined myself to agree with the decision of the Speaker that this telegraphic communication to us is reasonably satisfactory evidence of the facts; and I do not make objection on that ground. What I desire to know is whether this subordinate (the question of law being deemed somewhat doubtful) did not make this original refusal under the direction of Mr. Orton, his principal. Mr. Orton, I understand, has addressed to the chairman of the Judiciary Committee a statement expressing his desire to know the opinion of the House and his purpose to submit to that opinion when declared. It was declared yesterday. Now as the principal officer under whom this subordinate is acting has said "I wish to do just what the House thinks I should" and as the House said yesterday that he should produce these dispatches, I submit whether the House should now send down to New Orleans a peremptory order to arrest the subordinate until he has had an opportunity, after this expression of the House as made yesterday, to go again before the committee and make his answer. I understood Mr. Orton's letter to the chairman of the Judiciary Committee to declare in substance "As soon as the House expresses its judgment I will direct my subordinates to obey." Now if that be true, should not this resolve, instead of providing for a peremptory order to arrest this subordinate, provide merely for his arrest unless, upon the communication of our resolution, he should answer satisfactorily? The gentleman must easily see that a subordinate telegraphic operator down at New Orleans cannot be expected to understand all these propositions of law.

Mr. WOOD, of New York. Mr. Speaker, under the principles established by this House there is no difficulty in the case presented by the gentleman from Massachusetts, [Mr. HOAR.] Even after the House has taken a peremptory order for the arrest of a witness and his production before the House it is entirely usual for him to say, "I will answer." This witness in New Orleans has nothing to do except, under the direction of Mr. Orton, to say "I will answer." Then of course the order of the House would not be operative. Hence the difficulty which the gentleman from Massachusetts sees cannot possibly arise.

Mr. HOAR. If that be true it is a good answer; but I ask the gentleman to reflect whether the order of the House should not be that the arrest take place unless the witness shall in the mean time have answered to the satisfaction of the committee.

Mr. WOOD, of New York. I would not change the phraseology of the order. I think there will be no difficulty in case the witness chooses to put himself in a position of readiness to answer.

The SPEAKER. The Chair now recognizes the gentleman from Ohio [Mr. GARFIELD] for the five minutes remaining of his time.

Mr. GARFIELD. I will yield whatever time remains to me to the gentleman from Iowa. [Mr. KASSON.]

Mr. KASSON. Mr. Speaker, I have only partially examined the alleged report of the committee laid before the House by the Speaker, as to the foundation which has been laid by the committee for this order of arrest; but I have examined it so far as to find that there is no proof presented in that report of the existence of the dispatch for the non-production of which it is proposed to arrest this witness. The gentleman from New York [Mr. WOOD] and myself had a great deal of service, he will remember, in connection with the rights of the House and the rights of witnesses in a very famous examination some three years ago. I do not think that he can refer me or the House, and I certainly cannot refer the House, to any case in which we have arrested a witness for the non-production of papers, the existence of which papers have not been shown. I ask the gentleman from New York if he has within his memory any instance in which the House has arrested a witness for the non-production of papers the existence of which is not shown prior to asking an order of arrest. Does the gentleman remember any such instance?

Mr. WOOD, of New York. This witness admits he has possession of the dispatches.

Mr. KASSON. That is where I differ with the gentleman. I have been examining the record to find that fact and he does not state as to a single person the fact that he has in his possession any such paper or book.

Mr. WOOD, of New York. I think he admits he has telegrams from Kellogg and Packard and to them. And, moreover, I remind the gentleman that at the last session of Congress a witness admitted he had possession of certain books, which he declined to produce because they contained other peoples' accounts.

Mr. KASSON. The gentleman is right where the existence of the papers or books is shown; there is no difference between us on that. But so far as I have read this report, and gentlemen who are more familiar with it will turn to it and read the evidence, the witness says that he does not know that there are any dispatches between those parties relating to the elections. In the latter part of the examination it may be shown, and I have not had time to read it through; but where the questions are first put to him he cannot say that there are any such dispatches within the terms of the questions put to him. Under these circumstances, unless the evidence can be found in this report that these telegrams exist, I submit to every legal gentleman on that side, there is no precedent or reason for arresting a witness for the non-production of a paper the existence of which is not shown.

Mr. TUCKER. Will the gentleman from Iowa yield to me to ask him a question?

Mr. KASSON. Certainly.

Mr. TUCKER. How could the committee know the existence of a telegram without asking the witness whether one had been sent.

Mr. KASSON. They did ask the witness, and the witness did not answer it existed.

Mr. TUCKER. Then how can they ever find that out?

Mr. KASSON. Of course if they want evidence they have to produce it. They must ask the witness summoned, who is alleged to have the papers. That is the best evidence whether he has them. If not, they can summon another witness who knows where they are. And the gentleman as a lawyer will not affirm that we can arrest a man for contempt in not producing a paper where there is no proof of the existence of the paper. That is the point where a new precedent is about to be established by the House, if they adopt this resolution.

It is for these reasons, among others, I agree with my honorable friend from Ohio, [Mr. GARFIELD,] that we had better ask the Committee on the Judiciary to carefully examine this report, and the authorities for it, to see whether the ground is laid for the issue of this warrant of arrest. In all the observations, and the various debates we have had upon the report of the Committee of Ways and Means in reference to a celebrated case when I was a member of it, we never carried the doctrine so far that when a witness does not deny he had a paper, or in other words does not admit he had a paper, therefore we can arrest him for the non-production of it.

I think we are carrying the precedent of the House dangerously far in the proposed action of the gentleman from Kentucky. I desire to maintain all the privilege of the House in respect to the duties of witnesses and the obtaining of evidence. I am not willing, however, now more than I have ever been before, to carry it to the extent of the unwarranted arrest of a citizen without a legal foundation being laid for that arrest. It is a dangerous precedent for the House, and it is a dangerous precedent for the citizens of the United States.

Mr. HOLMAN. I call the attention of the gentleman from Iowa [Mr. KASSON] to the fact that this communication certainly shows that the witness admitted the fact of having possession of a portion of the telegrams referred in the *subpœna duces tecum*.

Mr. KASSON. I desire to say to the gentleman that I have not seen that, so far as I have read the report. I cannot speak in regard to what appears in the rest of the report, because I was called to my feet before I had finished reading it. But if that is so, then I think the recital of the refusal should be limited to correspond with the evidence in the case. We cannot be too careful in this business of arresting citizens. The House owes it to itself and the country to be careful and prudent; and I think it would be better if the Judiciary

Committee would make a careful examination of this report before the House is called upon to act on it.

The SPEAKER. The gentleman from Kentucky [Mr. KNOTT] has thirteen minutes of his time remaining.

Mr. KNOTT. The House on yesterday, very correctly in my judgment, laid down the doctrine that there was nothing in the law making a communication transmitted by telegraph any more privileged than a communication made orally or in any other manner whatever. In order to show that that principle is correct, and that there is no ground for supposing that there is any unusual sanctity about a telegraphic dispatch, I desire to call the attention of the House to an adjudication directly upon that point in the State of Pennsylvania arising under a statute which made it a penal offense for a telegraphic operator to disclose the contents of any dispatch in his possession. The operator was brought into court upon a *subpœna duces tecum*, and the objection was made that there was a peculiar sanctity, by reason of this express statute, about a telegraphic dispatch, which precluded the witness from testifying as to its contents or exhibiting the message. And here is what the court said:

It must be apparent that, if we adopt this construction of the law, the telegraph may be used with the most absolute security for purposes destructive to the well-being of society—a state of things rendering its absolute usefulness at least questionable. The correspondence of the traitor, the murderer, the robber, and the swindler, by means of which their crimes and frauds could be the more readily accomplished and their detection and punishment avoided, would become things so sacred that they never could be accessible to the public justice, however deep might be the public interest involved in their production.

And the court goes on further to say:

The law is jealous of extending the circle of persons excused or interdicted from giving testimony. Parents are required to testify against children, children against parents, brothers against brothers, friends against friends. Communications by letter made under the deepest obligations of friendship, affection, or honor still must be produced, if deemed necessary to the ascertainment of truth and the administration of justice by the public tribunals.

The language here used by this learned tribunal seems to me to be sufficient to dispel forever this curious and new sentiment that there is something about a telegraphic dispatch that makes it more sacred than the holy name of Deity, which formerly could only be pronounced, I believe, once a year, and that by the high priest in the *sanctum sanctorum* of the temple. The fact is, sir, there is no such distinction, and none such should be made.

Now to the point directly before the House. I yield to no member here in my veneration of the safeguards which our Constitution and laws throw around the liberty of the citizen. But to protect the liberty of the citizen the law as it is must be enforced. What then is the question? It has been communicated to the House that a witness has been legally summoned before the committee at New Orleans, that he has been legally required to produce telegraphic dispatches before that committee, and has contumaciously refused to produce them. These are the facts communicated to the House, and the question is not how they have been communicated, but does the House believe them to be true? Now if there is a solitary gentleman on the other side of the House who doubts the authenticity of these facts, why has he not stated it? Who has expressed a doubt of the existence of the facts as stated in this dispatch? The gentleman from Iowa [Mr. MCCRARY] with his usual candor admits that he believes the dispatch to be authentic and that the facts as therein set out actually transpired, and the gentleman from Massachusetts [Mr. HOAR] admits the correctness of the Speaker's ruling, that the matter has been correctly brought to the attention of the House, and I venture to say that there is not a member upon this floor who doubts the facts as communicated to the House in the report just read; and, sir, if these facts are true, the recusant witness is in contempt of the authority of the House, and has been guilty of a breach of its privileges. This is the naked conclusion, stripped of all new-fangled sentimentality about the sanctity of telegraphic messages; and you cannot escape it.

The gentleman from Iowa [Mr. MCCRARY] says that he objects to ordering this mandate because the terms of the original subpœna were too broad. The House on yesterday very properly refused to lay down a Procrustean rule as to the terms to be employed in framing a *subpœna duces tecum*, and very wisely did it, as this very case shows. Now look at the testimony of this witness, and you find him prevaricating from beginning to end. Suppose you limit your *subpœna duces tecum* to such terms as the gentleman would prescribe; that it should command the witness to produce only such communications as bear upon the subject under investigation. The witness appears, and he says: "O, I know I have got the dispatches," just as this witness says; "but whether they relate to the subject under dispute or not, I do not know; I have not read them." And he never will read them, and you cannot compel him to do it. Or he may say, "I have got the dispatches and I have read them, but in my judgment they do not relate to the subject." There you make the witness the judge of the relevancy of the testimony that the committee is commanded by the order of this House to procure for the enlightenment of its judgment. Do the lawyers upon the other side contend that an investigation should be thus trammeled, and that the object of any investigation, however important, may be defeated by evasions and subterfuges such as these? I imagine not. Now, sir, I repeat that this very case is an ample verification of the wisdom of the House on yesterday in refusing to define the precise terms in which a *subpœna duces tecum* should be couched.

Now according to the report just read the subpœna commanded this witness to appear before the committee, and to bring dispatches that had been sent and that had been received by certain named persons within a certain prescribed period of time. He came before the committee and testified that he had the dispatches, but that he had been ordered by the superintendent not to produce them. Can that excuse him? Who made the superintendent his master? Who gave the superintendent the right to abrogate the law of the land and to exonerate or excuse this witness from bringing before the proper tribunal the papers he was required to produce? So far from that order being binding upon the witness, it simply renders the superintendent liable to be arrested and brought here for a contempt of the privileges of the House, in thrusting himself between a committee appointed by this House to ascertain facts for its information and the discharge of their legitimate duty, and tampering with a witness summoned before them. So far from the subordinate being excused by any such order his obedience to it presents a double offense to the consideration of the House.

Mr. GARFIELD. Will the gentleman allow me to ask him a question?

Mr. KNOTT. Yes, sir.

Mr. GARFIELD. Has the gentleman any evidence that the witness has received or has any know edge of the order of the House that he is to answer? The House has never ordered the witness to deliver these dispatches to its committee.

Mr. KNOTT. The gentleman has on several occasions spoken very confidently about Anglo-Saxon law, so confidently that one would imagine him as familiar with it as with his alphabet, and I beg him to remember that the same Anglo-Saxon law for which he has such a profound veneration presumes that every man knows the law, and that when he is summoned to appear as a witness and produce papers in his possession he is bound to do so, no matter who may order him to the contrary. I tell him further that the Anglo-Saxon law presumes that the witness knew little more than even that, namely, that in refusing to obey a subpœna of the House he lays himself liable to proceedings for contempt. The gentleman must know that it did not require the enunciation of the principles laid down on yesterday to establish them as law. They were law before the resolution of the House passed, as much so as they are now.

Mr. GARFIELD. Will the gentleman allow me to ask him whether we punish a witness for refusing to answer a committee or for refusing to answer the House? Now, if the House commands a witness to answer a certain question and he refuses to do it, punishment will follow.

Mr. KNOTT. The gentleman's question calls to my mind a quatrain in Hudibras:

> In logic he's a mighty critic,
> Profoundly skilled in analytic.
> He could distinguish, and divide
> A hair, 'twixt south and southwest side.

Does not the gentleman know that the committee is the organ of the House—simply its agent? That the process by which a witness is brought before a committee is the process of the House issued under the hand of its Speaker by its authority and authenticated by its seal? Does he not know that disobedience to such process is a disobedience of the authority of the House itself, and that when a witness refuses to obey the mandate of the House he is then in contempt of the House and should be brought to it to answer for that contempt and show why he has not obeyed the subpœna of the House, as the law requires him to do? It is a very plain duty, sir, and as easily performed as understood, especially in this instance, where the witness is only required to produce telegrams which he admits that he has in his possession.

[Here the hammer fell.]

Mr. BUCKNER. I ask that an amendment that I desire to offer may be read.

Mr. KNOTT. It is too late.

The question was taken on the resolutions, and they were agreed to.

Mr. KNOTT moved to reconsider the vote by which the resolutions were adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

ENROLLED BILL SIGNED.

Mr. HAMILTON, of Indiana, from the Committee on Enrolled Bills, reported that the committee had examined and found truly enrolled a bill of the following title; when the Speaker signed the same:

An act (H. R. No. 4124) to provide for the expenses of certain special committees of the House of Representatives and of the Committee on Privileges and Elections of the Senate.

LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted as follows:

To Mr. DURAND, until January 3.

To Mr. WELLS, of Missouri, until January 3.

To Mr. VAN VORHES, for ten days.

To Mr. JONES, of New Hampshire, for ten days.

To Mr. LANDERS, of Indiana, for two weeks from the 22d instant.

To Mr. NORTON, for one week from Wednesday next.

To Mr DAVY, for ten days from the 22d instant.

To Mr. MAGOON, for one week on account of important business.

To Mr. JAMES B. REILLY, for four days from the 27th instant on account of important business.

To Mr. SPARKS, for ten days on account of important business.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of its clerks, communicated the proceedings of the Senate in regard to the death of Hon. Allen T. Caperton, late a Senator from West Virginia.

DEATH OF SENATOR CAPERTON.

The SPEAKER. The Chair lays before the House the following resolutions, received from the Senate:

Resolved, That as an additional mark of respect to the memory of ALLEN T. CAPERTON, late a Senator from the State of West Virginia, business be now suspended that the friends and associates of the deceased may pay fitting tribute to his private and public virtues.

Resolved, That the Secretary communicate this resolution to the House of Representatives.

Mr. HEREFORD. Mr. Speaker, for the first time since the State of West Virginia was organized as a separate State are we called upon to mourn the death of one of her representatives in the national councils.

We are told in the sacred writings that:

It is better to go to the house of mourning, than to go to the house of feasting: for that is the end of all men; and the living will lay it to his heart.

May it prove so in this instance. May we lay this visitation of divine Providence to our hearts, and leave this Hall better men, better citizens, and better legislators, legislating for the whole country and the continued peace thereof.

ALLEN TAYLOR CAPERTON is no more. He was born in Union, Monroe County, Virginia, (now West Virginia,) November 21, 1810; after having attended the schools in his native village, he went to the University of Virginia and Yale College, graduating with honor at the latter institution in 1831; after which he studied law with Judge Briscoe G. Baldwin, at Staunton, Virginia; he was admitted to the bar and up to his death practiced his profession in his native county and several adjoinining counties. Having all the advantages of a thorough education, and being of studious habits and fond of his profession, he soon ranked among the very ablest lawyers in the State. He had a mind peculiarly adapted to the law, its catholic spirit, the broad principles of even and exact justice he found in the pages of the law library were in perfect consonance with his own nature. His lofty spirit disdained the arts of the pettifogger. In his practice he was never guilty of deception. He deceived neither client, court, nor jury, retaining to the last the confidence and respect of each. He took peculiar delight in the companionship of his brother members of the bar, as all can attest who ever met him professionally, or under his hospitable roof; but he did not confine himself exclusively to the labors of his profession. He took great interest in developing the material interests, the agricultural and mineral resources of his State; he was a director of the Thames River and Kanawha Canal, in which he took a great interest up to the time of his death; he had a great and life-long desire to see by the construction of this magnificent work the waters of the mighty West connected with those of the East.

He was for several years a member of the State house of delegates and of the State senate of Virginia, his last senatorial term being from 1859 to 1860. During his service in the Legislature, enabled as he was by his store of knowledge, he assisted very materially in molding the code of laws of that State. He was also a member of the constitutional convention of that State in 1851. At the breaking out of the late war he was originally opposed to extreme measures, believing with many others that the rights they claimed could be more certainly obtained by battling for the right within the Union; but when his State decided otherwise he followed. During the war he was elected to the confederate senate, which position he held at the close thereof. As soon as hostilities ceased he turned his face to the future, and from that time to the day of his death he did all in his power to restore peace, harmony, and fraternal feeling to this distracted land.

As long as the whig party was in existence he was one of its strongest and ablest supporters; he defended its principles and devoted himself to its success with knightly courage and devotion. Oft and again in earlier days has his manly form been seen going from county to county, along valley and over mountain-heights, for the purpose of addressing his fellow-citizens in stirring and eloquent appeals to rally them to the standard of Henry Clay. Wherever the white plume of his great captain, Harry of the West, was seen, there was he.

On February 17, 1875, after a protracted struggle he was elected to the United States Senate to succeed Arthur I. Boreman. How short his career on that theater! Truly hath the wise man said:

Boast not thyself of to-morrow; for thou knowest not what a day may bring forth.

During the last session of Congress we had rooms in the same building, and it was my fortune to see more of him in his last sickness than any other person. It was my lot and sad pleasure to minister to his varied wants in his last days on earth. His suffering at times was very great, after which he was easy and very cheerful. He bore his paroxysms of suffering with heroic fortitude, never repining. A short time before the critical moment his only son and eldest daughter, with other relations, were summoned to his bed-side; his noble and devoted wife being too feeble to travel. He was not aware his end was so near. On the last morning of his earthly existence, thoughtful as he always was of the pleasure of others, he suggested to his son and another gentleman near and dear to him who was in attendance to go to the Hall of the House of Representatives to hear a certain discussion that was to take place in which he felt a great interest. They yielded to his request, and only returned an hour or two before he had another and his last paroxysm. About four o'clock p. m. of that day, July 26, 1876, he was sitting up in his bed conversing with his son. All at once he said quickly to him, "Raise that window," which was done, and he immediately expired.

"Raise that window!" How typical! how suggestive! As the window of his earthly mansion was raised that of the eternal was opened to receive his spirit into the "House not made with hands, eternal in the heavens."

His remains now lie buried amid the mountains where he was born, and over which he delighted to ramble in his boyhood days and riper years.

If any one had ever doubted the high esteem in which he was held at home, they would have doubted no longer if they had been present on that last sad day when his remains were lowered into the grave. For miles around his friends came from their mountain homes to mingle their tears with his weeping family—men and women of all stations in life, the rich and poor, white and black; among the latter of whom were many who once were his slaves. That was a sad, sad day for the little village of Union. Sadness and silence reigned over that mountain village as if they had lost their last and dearest friend.

But a few weeks preceding this scene a similar one had been witnessed. Augustus A. Chapman, a former member of this House for two terms, had paid the debt of nature. CAPERTON and Chapman in one brief summer. A. A. Chapman was also a man of mark and distinction, beloved by all, disliked by none—a noble and generous soul. Both have left behind them fond, devoted wives, noble specimens of true womanhood, and each a son worthy to bear the names of their respective fathers, and each several daughters inheriting all the nobler and finer traits of character of their fathers. Mr. CAPERTON was of pure and spotless character, public and private.

If it be true, as has been said, that public men are the true reflex of their constituents, then indeed may West Virginia take high rank among the great sisterhood of States.

Cicero tells us that in his day—

The senators, that is, the *senes* or old men of the state, dwelt in the country and lived on their farms.

So did Mr. CAPERTON; and to its fullest extent did he adopt the sentiment of Cicero when he said:

There is nothing more profitable, for there is not in nature, in my opinion, anything more beautiful or affecting than to behold a plantation with all the parts of it in complete and perfect order.

He delighted in horse-back exercise. He was devoted to his home and his State. He delighted in natural scenery, and at times he seemed to be enchanted.

Well do I recollect one bright, beautiful morning, when we were returning from Charleston on horseback, just as the sun was gilding the eastern horizon, we reached the highest point of Sewell Mountain, when suddenly he called to me to halt, and said, "Behold the beauty, grandeur, and sublimity of this view." Below us lay the morning fog as one broad sea, with here and there some peak taller than the others rising through the fog and presenting the appearance of so many islands, covered with the most beautiful emerald, in the midst of the ocean.

Again he burst forth in his ecstasy and exclaimed—

See yonder mountains, the everlasting mountains; how peerlessly they rise
Like earth's gigantic sentinels discoursing to the skies.

He could not tolerate tyranny or oppression either in the individual or state; he was a noble specimen of truest manhood, most eloquently and happily illustrated in that expression of George W. Summers, West Virginia's most gifted orator, when, describing the State and her people, he said:

Her people are a bold, daring, liberty-loving people; they are lulled to sleep at night by the roaring of her cataracts and awakened in the morning by the scream of the eagle as he takes his flight sunward.

He had a kind, tender, and grateful heart. Well do I remember on another occasion, when again traveling on horseback over our lofty mountains, when arriving at a certain spot he pointed to a farm some distance from the road and said "There lives a generous, kind-hearted man; I shall never forget him; directly after the war as I was passing that point he came out to me and said: 'Mr. CAPERTON, you are going to Charleston; although you are a rich man in this world's goods I know you can have no money, for the war has just closed; here are a few dollars in silver that I had buried; take it.' I thanked him, but declined his generous offer."

He was a man of scholarly attainments, a fine lawyer, a man of enlarged views on all subjects, a devoted husband and father, a warm friend, a generous neighbor, and a worthy example to old and young, at home and abroad, in public and private. He scorned everything like duplicity.

In the selection of men to fill the offices of our State, from the highest to the lowest, he always urged that none should be elevated to po-

sition but men of ability and spotless character, both in public and private, having an eye single to the good of the State and all the people thereof.

But I must detain you no longer. He is gone, gone to his long home. Who will dare say the world was not better by his having lived in it? No more shall we look upon his manly brow and delicately chiseled features; no more will we hear his merry laugh or words of encouragement and sound wisdom.

> His life was gentle; and the elements
> So mixed in him, that Nature might stand up
> And say all to the world, "This was a man!"

Mr. GOODE. Mr. Speaker, the representatives of the American people are again called upon to pause in their deliberations for the public good, to recognize the hand of death and to render a just tribute of respect to the memory of a worthy compatriot and faithful public servant in the other end of the Capitol.

On the 26th day of July, 1876, ALLEN TAYLOR CAPERTON, a Senator from the State of West Virginia, was suddenly stricken down in the midst of an honorable and useful public career, and his mortal remains were borne hence to his beautiful home in the mountains of West Virginia, where they were tenderly consigned to the grave by his bereaved neighbors and friends who had known him long and loved him well. As one of the Representatives from the State of Virginia, I feel that I would disappoint the just expectations of my constituents if I failed to utter their voice of sympathy on this memorial occasion and to give some expression, however inadequate, of the respect and esteem in which they held the distinguished dead. Virginia claims the mournful privilege of laying a simple wreath upon the tomb of her departed son. Mr. CAPERTON was born upon the soil of Virginia. He was educated at her great university. He was identified with her works of internal improvement. He was for many years an active member of her General Assembly in both branches. He was a conspicuous member of her convention in 1861, and served her with fidelity and zeal in the senate of the Confederate States until the close of the war in 1865. He loved his native State and all her traditions. He cherished with filial devotion the hallowed associations and historic glories which cluster about her honored name. When that mother Commonwealth, so rich in historic treasures, shall stand up in after years and point with maternal pride and tenderness to her long line of devoted and illustrious sons, the name of ALLEN TAYLOR CAPERTON will not be forgotten.

My personal acquaintance with him commenced in the Virginia convention of 1861. He had come into that body earnestly opposed to the separation of the States. He was ardently and devotedly attached to the Federal Union. He was bound to it by the strongest and closest ties of affection. He was exceedingly reluctant that Virginia should attempt to dissolve her connection with it. He remembered with pride that the Union was in a great measure the creation of her own hands; that it was her son who had penned the Declaration of American Independence; that it was her son whose heaven-born eloquence had first kindled the fires of the American Revolution; that it was her son who was confessedly the father of the American Constitution. When the Union was dissolved he exerted all his great powers and exhausted all his persuasive eloquence in an effort to bring about its restoration. He was instrumental in inaugurating the peace congress here at Washington. He advised that commissioners should be sent to the seceding States of the South. But after the war had been commenced, and Virginia had been fired upon while bearing the olive-branch of peace, he felt that every consideration of duty and of honor required that she should take her position with her southern sisters, and, with a full knowledge of all the fearful odds against her, he deliberately voted to adopt her ordinance of secession. While the war continued, Virginia was swept throughout all her borders by the besom of destruction. Her sleeping cities were awakened by the music of bursting bombs. The thunder of hostile cannon echoed and re-echoed along all her coasts, and her green fields were made red with the best blood of her children. But in that trying ordeal through which she was called to pass the great heart of ALLEN T. CAPERTON never quailed and his heroic spirit never faltered in devotion to that cause which he believed to be the cause of civil liberty and constitutional government.

As a Virginia Senator he supported all the war measures of the confederate government with alacrity and zeal, and never withheld a man or a dollar until the confederacy had fallen prostrate, bleeding and exhausted before the victorious legions of the Union. Such was the intrepidity of his nature and such the cheerfulness of his courage that he moved steadily forward in the path of duty unawed by danger and uninfluenced by any consideration save those which concerned the honor and welfare of his people. But, when the war had terminated and the long night of agony and of woe had been spent, Mr. CAPERTON, as an acknowledged leader of public opinion in his section, was one of the first to come forward and advise his countrymen that it was the dictate of wisdom and patriotism to submit manfully and cheerfully to the logic of events. He believed with Edmund Burke that true statesmanship consists in a proper adjustment of the conditions in which we find ourselves placed. He indorsed the sentiments of that eminent British classic who said that "to the future and not to the past looks true nobility of soul." Instead of indulging vain regrets over the issue of our unsuccessful struggle, he felt that it was a high and patriotic duty to extinguish the bitter memories of the war and with uplifted brow to look bravely and hopefully to the future. He felt that it was no reflection upon southern manhood to imitate, in all respects, the great example of our immortal chieftain whose watchword was duty and who from the day of his surrender at Appomattox to the day of his death at Lexington never failed to inculcate the doctrine that having renewed our allegiance to the American Constitution, we too had duties to perform as American citizens. His heart's desire and prayer to God was that we might have peace—peace between the sections and peace between the races. He well knew that without a lasting and enduring peace there could be no development of our material resources, no revival of our prostrate industries, no restoration of hope and of confidence to our distracted and afflicted country.

As one of the results of the war, the State of West Virginia was carved from the side of old Virginia and the county of Mr. CAPERTON'S residence was embraced within the limits of the new State. Notwithstanding the fondly cherished associations of a life-time were thus rudely sundered, he did not, like the captive Israelite of old, hang his harp upon the willow and sit down by the waters to weep, but, like a true man as he was, he immediately addressed himself to the task of developing the untold wealth and the magnificent resources of that young and highly favored State. Nowhere else upon this continent can be found a more fertile and productive soil or a more genial and delightful climate. Her beautiful blue mountains abound in iron, copper, coal, lead, and other minerals. Her magnificent rivers murmur, as they roll, the music of her power. Mr. CAPERTON fully appreciated her great capabilities and her immense natural advantages, and instead of calling upon Hercules for help, he advised the people to go to work and help themselves. They have gone to work with an unfaltering purpose and an indomitable will worthy of the heroic race from which they sprang. They have exhibited recuperative energies which have not been surpassed by any people in any age.

Such was the high estimate in which Mr. CAPERTON was held by the people of West Virginia that they embraced the first opportunity to send him as one of their representatives in that august body, the Senate of the United States. It is a sufficient eulogy to say of him that he was equal to the occasion and worthy of the exalted station. He was not a brilliant orator but a wise and safe counselor. He was not a fierce gladiator in debate, but a modest, dignified, prudent Senator. Descended from an ancient stock, he was always and everywhere a gentleman of the old school. He was a man of such lofty character and incorruptible integrity that he would have felt a stain upon his personal honor like a wound. What a happy day it would be, Mr. Speaker, if every position of honor and of trust in our land could be filled by a man of character, who would avoid corruption in office as he would flee from the "pestilence that walketh in darkness and the destruction that waiteth at noonday." But, sir, our true and noble and gallant friend has gone from among us forever. No more will his manly form be seen in these Halls. No more will we receive the friendly, cordial grasp of his hand. No more will we hear his words of sympathy and of cheer to comfort and to strengthen us in the great battle of life.

> The mighty flood that rolls
> Its torrents to the main,
> Can ne'er recall its waters lost
> From that abyss again.
> So days and years and time,
> Descending down to night,
> Can thenceforth never more return
> Back to the sphere of light.
> And man, when in the grave,
> Can never quit its gloom,
> Until th' eternal morn shall wake
> The slumber of the tomb.

Mr. Speaker, when the Forty-fourth Congress first assembled the Representatives of the people found the Capitol draped in mourning for the loss of Henry Wilson, the favorite son of Massachusetts and the second officer of the Government. During the existence of this Congress they have paused amid the bustle and turmoil of legislative life to chronicle the deaths of the lamented Starkweather of Connecticut, the gifted Parsons of Kentucky, the high-toned CAPERTON of West Virginia, and our late beloved Speaker, Michael C. Kerr of Indiana, whose genius and virtues have illustrated the grandeur of American institutions and lent additional luster to the American name. What mean all these dispensations of Divine Providence? What mean all these habiliments of woe which now surround the Speaker's chair and meet the eye of the Representative of the people as he enters this Hall? The solemn lesson which they convey to each one of us is "Be still, and know that I am God."

Mr. WILSON, of West Virginia. Mr. Speaker, one of the most beautiful traits of the human character is that the living mourn the loss of the dead. When relatives or friends or acquaintances are removed from earth, it forces upon us a renewed realization that man is born to die, that life is but a span, and eternity hath no end; it arouses in our breasts the feeling of man's obligation to his God. How impressive and sorrowful the reflection that from the prime of life and the vigor of manhood we may, under the providence of God, be stricken down in the twinkling of an eye. It verifies the teaching of divinity that in the midst of life we are in death.

At an early hour upon the morning of the 27th of July last I was shocked with the intelligence, communicated by a friend, that Senator CAPERTON was dead. How sad that solemn announcement! Sudden, perhaps, to me than to any other member on this floor, for the thought rushed upon my mind that but a few brief weeks before that time, when a protracted, dangerous, and wasting sickness had carried me almost to death's door; when my family, physicians, and friends had well-nigh ceased to hope for my recovery—even when the announcement of my death had flashed along the wires to my constituents—I remember, ah! well and gratefully do I remember, the deep and anxious solicitude with which the distinguished dead whose loss we mourn here to-day lingered at my bed-side; well do I remember the words of comfort he whispered in my ear, and the tender care with which he administered to my almost dying wants. Under the providence of a merciful God I have been restored to health again, but my friend, O, my friend! where is he? Gone! gone to that bourn whence no traveler returns. I follow him with my prayers and beseech for him grace and pardon from a just and righteous God.

At six o'clock in the evening of the 25th of July, 1876, ALLEN TAYLOR CAPERTON, Senator from the State of West Virginia, departed this life, in the sixty-sixth year of his age, in the city of Washington. His disease was that technically known as *angina pectoris*. His last illness was of brief duration, and was at no time regarded dangerous. His devoted wife was then unhappily confined to a sick-bed, at Richmond, Virginia, and for that reason was unable to attend her husband in his last hours. His son and daughter, assisted by other relatives, kept faithful watch over their fond father and were flattered by the hope of his speedy recovery. Upon the morning of the day of his death he was feeling so comfortable that he advised his son to attend the session of the House to hear the speech of an able friend. When the son returned he found his father sitting up in bed, brushing his whiskers. He suddenly called to the son to hoist the window, and immediately sank back on his pillow, and expired without a groan. We can better imagine than describe the anguish of those children, and the untold grief and agony that entwined itself around the heart of that wife when the startling, crushing news fell upon her ear that one whose very existence formed part of her own was called to lie down in the cold damp ground to sleep the sleep that knows no waking.

Mr. CAPERTON was born near Union, Monroe County, Virginia, now West Virginia, November 21, 1810. He attended school, first in Virginia, then at Huntsville, Alabama, next at the University of Virginia, and graduated at Yale College in 1839. He afterward studied law with Virginia's distinguished jurist, Judge Briscoe G. Baldwin, at Staunton, was subsequently admitted to the bar, and practiced his profession with ability during the remainder of his life. He served as a director of the James River and Kanawha Canal, and was for several years a member of the Virginia senate and house of delegates. His last senatorial term in the Legislature ended in 1860, and in 1861 he was elected a member of the State constitutional convention which passed the ordinance of secession, and was afterward elected by the Legislature of Virginia a member of the Confederate States senate, in which body he served until the close of the war.

After the close of the war he returned to his home in the mountains of his nativity, where, borrowing the idea from another, it may be said, the air is pure, heaven serene, and God is near. Here he intended to spend the evening of his life in his professional and private pursuits and in the enjoyments of his home. He engaged actively in presenting to eastern capitalists the vast and superior coal and timber regions of the southwestern portion of his State, and to his energy and ability perhaps as much as to those of any other gentleman are the citizens of the East and West indebted for that development which gives cheap fuel, cheap lumber, and promises of cheap transportation. But his mission had not yet been fulfilled; his people had further need of his talent, his experience, his learning, and his purity, and after an exciting and somewhat bitter contest between other gentlemen for a seat in the United States Senate in the winter of 1874–75 the Legislature of his State conferred that high honor upon him. He was an element of compromise acceptable to all, and the honor was the more thankfully and graciously received because it came to him unsought.

In early life he was a whig in politics, was an admirer of Henry Clay, Josiah Randall, and their compeers, and a co-worker with them. The most cordial personal relations existed between himself and Mr. Randall, and the visits of the latter gentleman to the mineral springs of Virginia, and to his landed interests in the coal regions on the Great Kanawha, brought them into frequent association. Upon the disintegration of the whig party Mr. Randall was prominent in heading the movement to unite the whigs with the conservative-democratic party. His great speech, delivered at Chambersburgh, Pennsylvania, on the 6th of August, 1856, at the request of the democratic convention of that State, defined the policy of the wing of the party who aided the democrats in achieving the victory of that year. In this movement he was ably seconded by Mr. CAPERTON, and during the remainder of their lives they co-operated in carrying out the policy thus inaugurated.

Mr. CAPERTON discharged the duties of the various positions he was called upon to fill with honor to himself and benefit to his constituents. It was in the constitutional convention of Virginia, in 1861, that I became intimately acquainted with him. He there, as always before and since, displayed the fine culture, high character, and conservative views that drew around him the love and confidence of his people. He was a conservative-union man, opposed to secession, and declared that it was not the remedy for the evils of which his State complained—that secession would lead to coercion, coercion would produce war, and war would result in distress and desolation. It was not until his State had taken the fatal step that he determined to follow, but, being of that school which regarded the doctrine of paramount allegiance to the State, when his mother, Virginia, cast her fortune with the confederate government, he threw his influence for weal or for woe with that mother and determined to share her fate, whatever that fate might be. Upon the close of the war he accepted the situation, and acquiesced in the abandonment of secession and the overthrow of the institution of slavery.

He also acquiesced in the validity of the thirteenth, fourteenth, and fifteenth amendments to the Constitution of the United States, giving to them the broadest interpretation placed upon them by the courts of the country; but he also tenaciously clung to those other familiar provisions of the Constitution, one of which guarantees to every State in the Union a republican form of government, and the other reserving to the States respectively, or to the people, the powers not delegated to the United States nor prohibited by it to the States. His earthly career is ended, and his friends in their grief point with satisfaction to his life as one well spent—upon which neither spot nor blemish can be found. The chief feature of his character was its purity and unbending integrity; he lived and died an honest man—the noblest work of God. Sorrow for such a one is an affliction we cherish and brood over in solitude; we would not wipe out from our recollection if we could the memories of the man. "The love which survives the tomb is one of the noblest attributes of the soul." "There is a voice from the tomb sweeter than song—there is a recollection of the dead to which we turn, even from the charms of the living."

Let me mingle tears with thee,
Mourning for him who mourned for me.

Mr. TUCKER. Having known Mr. ALLEN TAYLOR CAPERTON, late Senator from West Virginia, intimately for more than a quarter of a century, it is fit that, as his friend and as a representative of his mother-Commonwealth, I should speak of his public and private character to-day.

He sprang from a race which removed from the south of France to the north of Ireland; and thence his great-grandfather, Adam Caperton, came to America.

His grandfather went to Kentucky, in its early history, and was killed by the Indians in a battle known as Estill's defeat.

His father, Hugh Caperton, began life in Monroe, then Greenbriar, County, Virginia. He was a prominent man, was esteemed a gentleman of honor, and was a citizen of great public spirit and wide influence, and full of good deeds to the people among whom he lived and died.

He was a member of the State Legislature and for several terms a Representative of his district in this House of Congress, in which body he established a cordial and permanent friendship with such men as Henry Clay and Daniel Webster.

His distinguished son, whose death we now deplore, was liberally educated at the University of Virginia and then at Yale College, being graduated at the latter institution in 1831. He studied law at Litchfield, Connecticut, and afterward under the late eminent Judge Briscoe G. Baldwin, of the court of appeals of Virginia.

He began the practice of the law in his native county, and rose rapidly in public confidence as a counselor, advocate, and man. He was successively a member of both houses of the Legislature of his native State, of her constitutional conventions of 1850 and 1861, and was elected by her Legislature in 1863 to the senate of the Confederate States, in which he served honorably to the close of the war. Two years ago he was elected to the Senate of the United States by the State of West Virginia, and died in July last while faithfully doing his duty in that body.

His career, so full of manifestations of public esteem, gives evidence of rare mental and moral endowments, and justifies me, who knew him well, in attempting to portray them as they were grouped in his noble character.

His intellect was active, acute, and vigorous, with a substratum of shrewd and masculine common sense, which constituted him a wise and sagacious counselor. He had imaginative powers superadded, which gave fervor and earnestness to his convictions and made him an able and often an eloquent advocate at the bar, on the hustings, and in the Senate. His culture was liberal, and, while his study of his profession and of political science did not rank him with the most learned and profound lawyers of the country, yet he was most efficient in the conduct of his cause, very successful in the management of business, eminently safe as an adviser, and an able public servant.

In the very depths of his soul he was brave, disinterested, generous, and true. He was sincere and constant in his friendships; open, manly, and magnanimous, though stern and resolute to his foes. Deceit could not cross the confines of a heart whose inmost citadel was held by honor and truth. He was frank and candid, and in his word absolute reliance was reposed; for as his sincerity was undoubted, so his courage was a pledge to make it good to his friend, or against his opponent.

To these sterling and manly virtues were united all the gentleness

of a tender and loving nature. To his friends his society was a genial sunshine. Good sense, with wit and humor; earnestness of purpose, with perennial pleasantry; the manly activities of a firm and resolute nature, with a taste for poetry and music; gentle loves and ardent friendships in the midst of the fierce struggles with adverse fortune or malign influences—these were mingled in beautiful proportions on the page of his history.

His mountain home was the seat of a hospitality where his guest forgot it was not his own, or only recalled it as he admired the easy freedom and graceful dignity of a host who banished all formality in the nobleness of his welcome and the simplicity and generosity of his entertainment.

He had the warmest sympathies for his own people. "The short but simple annals of the poor" ever found his ear attentive. Their early traditions, their homely thoughts, their sturdy and healthful sentiments, he heard, appreciated, and cherished. To his equals he seemed proud and reserved, until friendship melted the surface, beneath which was the warm current of his affections; but he was never haughty to the lowly, the poor, or the helpless. To these he was gentle, tender, and sympathetic; so that popularity followed him unsought. He charmed childhood by his playfulness; won the esteem of the gentler sex by his attractive manners, his cordial deference, his genuine respect, and his chivalrous courtesy and manhood paid homage to his liberality, his courage, his honesty, his magnanimity, and his good sense.

In his own household—I pause upon its sacred threshold but to utter one word: As husband and father he merited the grief which can only be assuaged by Him whose promise is sure, to be the husband of widowhood and the father of orphanage!

I have spoken of Mr. CAPERTON as a man adorning society by his presence and as a citizen blessing his people by his beneficence.

I must speak of him as a public man. He was animated by a high public spirit, lending his aid to all schemes which would benefit and advance the interests of his community, his State, and his country, in its largest sense.

He was a whig in politics in early life, and adhered to that party until 1860 with consistent and unshaken fidelity. After the presidential election of that year he was elected to the convention of 1861 as a Union man. He was a patriot, who loved the Union of our fathers with a depth of devotion which was only surpassed by his veneration for Virginia. And he adhered to the Union until the proclamation of Mr. Lincoln of April 15, 1861, summoning Virginia to assist in the war upon her southern sisters, when he decided to follow her into the southern confederacy, and was faithful and true to its cause until it perished by war in 1865.

But Mr. CAPERTON was no visionary or dreamy abstractionist. His mind was sagacious and practical. In the overthrow of the confederacy he saw the divine decree that the future fortunes of the South were bound up in the restored Union under its constitution, and that duty demanded of him to devote his future life to building up the waste places of his own loved land, to repairing the breaches in the Federal system, and to promoting the liberty and the progress of the people of these reunited States.

I know that such was his patriotic purpose and has been his earnest effort. He fell at the post of his duty, and has left to his friends and to his countrymen a name without a stain, a character for spotless and lofty integrity, and the perpetual memory of a noble and honorable life.

Mr. CAPERTON and our late Speaker died within a few weeks of each other. Mr. KERR passed away amid mountain-scenes in Virginia resembling those familiar to the eye of Mr. CAPERTON. Virginia may well mourn them together: the one her faithful son, the other who, drawing the inspiration of his opinions from our State, ever held her in a reverence which merits the tribute of her sorrow, as his eminent virtues and abilities won the esteem of her Representatives. In this Hall, where lately eloquence lent its voice of praise to the memory of KERR, we may speak, above the graves of both, our sincere conviction that in their death the country has lost the sagacious counsels of two patriot statesmen, never more needed than in this critical period of her history to guide her in the path of prosperity and honor and an enduring peace.

Mr. Speaker, I have thus endeavored to delineate the character of my friend in simple words and with fidelity to truth. I dare not trust myself to speak of the personal relations which bound us for many years nor of the beautiful memories of the past which crowd upon my mind.

In this desperate battle of life, as we near its close, so many who began the march with us have fallen like leaves in wintry weather, that we naturally feel as if the friends who are gone were more numerous than those who remain. What we are meant to learn from these providential events is not merely the trite lesson of the uncertainty of our life, but that as death ends so life must be filled up with duty. Duty is indeed the *whole* of our life, the sublimest word as it is the grandest thought of our race. As we look in the face of our honored dead, where passion's flush has yielded to perpetual pallor—we feel how solemn it is to die and close forever the book of human purpose, and human activity, and human obligation. But life is more solemn than death, and of deeper import. It is our only opportunity for responsible work, to make up that record which must stand of duty done in the fear of God and for the good of our race.

Brother Representatives, we have buried one who, with us, represented the voice of the people of these States in our Federal Union. We stand to-day at the grave of one of the representatives of an organic State, in its equipollent relations to its sister Commonwealths. Each in our respective Houses have solemn relations to this great system of government, and fraught with momentous results in the near future of our history. May we be endued with wisdom from on high so to perform these important functions that when our summons comes, as soon it must come, we may render our dread account without fear; and, life's weary warfare done, and well done, may sink peacefully and honorably, with firm faith and humble hope, to our welcome rest from all the work that wearies, and enter with immortal energy upon the activities and the aspirations of an eternal life in the presence of our Father and our God!

Before decay's effacing fingers
Have swept the lines where beauty lingers,
And marked the mild, angelic air,
The rapture of repose that's there,

Mr. KASSON. Mr. Speaker, I regret that I cannot adequately contribute another to the fitting tributes already rendered to a character so respected and so amiable as that of the late Senator CAPERTON. His life here in Washington was so quiet, his public service in the American Senate so short, that comparatively few of us on this floor had the pleasure of even a personal acquaintance with him; but so many of us as did know him—and I am glad to have been one of that number—most sincerely unite with the delegation from his own honored State in a common regret at his departure from these scenes of his official duty, and in a common grief that his presence will never again brighten the hours of our social intercourse.

Sir, there has always been, both in the Senate and House of Representatives, a body of useful men, rarely claiming the attention of the public press, rarely consuming the hours devoted to debate, but sound in their judgments, attentive to the duties of committees, patient in labor for their constituents, and conscientious in their votes. The applauding clamors of the public never fall to their share, never quicken their vanity, or give them a deceptive pleasure. No wreaths of earthly glory are woven for their brows. No eager, selfish ambitions induce them to provoke or to participate in popular tumults, in the turbulence of which they may rise to temporary distinction. They love peace for themselves and peace for their country. Their reward is not sought in popular applause, but in an approving conscience. The God who speaks in a "still, small voice," not He who speaks amid the rending winds of tumultuous praise or in the earthquake of civil strife, is the object of their worship. Faithful to duty as they see it, their lives pass, giving and receiving blessing, tranquilly to their end.

To this class of useful men and trustworthy public servants Senator CAPERTON belonged during the period of my acquaintance with him, faithful to his constituents, faithful to his own convictions of duty, giving to his country the benefit of his large experience in affairs without conceit and without ostentation. In social life his quiet nature gave an illumination to the circle in which he moved. Even his presence served as a bar to discord and an invitation to conciliation. Elected to a position in the confederate senate during the years of our national trouble, it might have been expected that he would enter the Senate of our reunited States with prejudices which would mar his record or impair his usefulness. But his character was too true, direct, and sincere to admit such a result. From the moment he took his official oath as a member of that exalted body charged with the vast interests of this Republic, he seemed to have no thought which was at discord with his patriotic duty. He became a true son of his united country, and not a word from his lips ever fanned the dying embers of civil strife. His action in the Senate, in committees, and in society was an assurance of returning fraternity. So far as we have any knowledge, no angers, personal or political, remained to be buried in his grave. No one there had need to suppress a frown. Only those who bore to him the sentiments of kindness and affection could be found in all the range of his social relations.

Thus, Mr. Speaker, this House knows no distinction of party names as we gather to this memorial service. We all reluctantly bid farewell to our late associate in Congress. We all honored him living; we all revere his memory, dead. We all wish to lay some fond tribute upon his tomb. All of us deeply sympathize with those who were nearest to him in the ties of kindred and with his congressional associates from his own State. We all are to see his face no more on earth. We all pray for a meeting in the other and happier world to which he has gone.

Mr. HARDENBERGH. Mr. Speaker, death's hurricane again has passed and a stately tree has fallen, rich in the foliage and fruits of its gathered years, at once an ornament, a beauty, and a blessing.

A stricken family bewails its loved one lost; a sovereign State mourns an illustrious son, called away in the maturity of his power; the Senate drapes again with the devices of mourning a Senator's chair, and we attest by our spoken grief that another member of the Forty-fourth Congress has passed through the portals of the tomb and a spirit ascended to the bosom of its Father and its God.

It is right that we should pause in our avocations, and while laying out garlands upon his tomb give fitting expressions to the thoughts which instinctively well up in the heart. It is also right that as representatives of the people we should bear our testimony to the virtues which gave dignity to and adorned his character, for he was *true to his high trust*, and the sentiment is at once chaste and beautiful that marks an immemorial custom when death enters here, as State joins with State, to attest the common sorrow as mourners at the grave of an associate and a friend. We cannot repress our grief when the "good man" dies. Society feels the vacuum when an educated mind is withdrawn forever from its service and a ray of broadest light expires, light furnished by that inward and immortal lamp which when its mission upon earth has ended is trimmed anew by angel hands to shine forever in the land beyond.

The mind of man in its sphere and destiny is essentially immortal. It is true it has its periods of youth and age; its rise, its progress, its decline; yet, like the oak whose withered branches have withstood the storms and gales of centuries, when its leaves are strewn by wailing winds and angry blasts, from the small but gradual unfolding of that vital substance spring forth into life and beauty as a new creation the buds and blossoms of another year.

There have been many vacant seats since first we gathered at our country's call. Massachusetts weeps still at Wilson's grave, for he was her gifted son, reared from toil, and the record of his useful public service in times that gave development to greatness will alike forever adorn her own and the nation's annals.

Connecticut has lain away with tender hands a gallant Senator and a faithful Representative once of us here. Kentucky's tears fell thick and fast as the manly form of Parsons was borne away to repose beneath her generous sods. A few days since and all the eloquence of woe was heard within this Hall, as we rested from our pursuits of legislation at Indiana's and the nation's loss that our Speaker, her sturdy son of Roman type, lay buried from our sight; and now West Virginia, virgin State, born into the Union amid the mightiest of earth's great warfares, has veiled her temples in mourning as the sad procession again was formed to bear her departed Senator o'er her hills and through her vales at once to his home and to his grave. Born upon her soil, with gifted powers early trained in academic groves, he gave to her his noblest services. And for these *she larel him* and crowned him with her highest civic honors. It was right it should thus be. That country best honors itself as it confers its dignities upon its worthiest and most illustrious sons, for the record of their lives will mark the noblest pages of its career.

There was a period in Grecian history denominated the "heroic age." The mystic spirit of that classic race had invested men with the dignity of gods. So wonderful had been their achievements, so exalted their career, that the mere attributes of ordinary humanity were not sufficient to account for the virtues they possessed. Their names were inscribed upon the warrior's shield, lifted up as the silent guardians of the public weal, adorned the temples dedicated to justice; for in all places and on all occasions where patriotism sought example the heroes of classic Greece claimed the reverence and affection of the people.

Mr. Speaker, may not the intelligent inhabitants of a hemisphere unknown to the ancient kingdoms of the world when truth was veiled in fiction and before the revealment of a superior wisdom to mankind, as we cross the threshold of our new centennial, give higher witness to our own "heroic age" as memory reverts amid such touching scenes as this to the long list of minds of giant mold from those who founded to those who in the providence of God may preserve this best of human governments? Standing as we do by the new-made graves of Wilson, Ferry, and of Starkweather, of Parsons, Kerr, and CAPERTON, shall we not learn lessons anew of the patriot's duty and the legislator's high responsibility, that passion and prejudice and envy shall be quenched in that nobler spirit of endeavor whose patriotism is the love of country, whose code of morals is the love of man? Then the pillars of our Republic will be the firmer set, its destiny the surer be, and then indeed shall be given a purer emphasis to the language of the Roman bard:

> Ye have raised monuments more lasting than brazen statues—higher than the royal pyramids—which cannot be destroyed by wasting rains or the fury of the winds, by the series of countless ages, or the flight of the eternal years.

Mr. FAULKNER. Mr. Speaker, my colleague who sits near me, [Mr. HEREFORD,] having, as it was altogether appropriate for him, given a somewhat detailed sketch of the life and services of the individual whose death has just been announced, it will only be expected from me to give my personal recollections and impressions of the deceased, as derived from my occasional official and private association with him. Although we were both natives and citizens of the same State, and of the same grand division of the State, yet we were widely separated by distance from each other, and rarely met except when engaged in the public councils of our State or of the nation. This is not an occasion, in my view of it, for indiscriminate or exaggerated eulogy, but a very fit and appropriate occasion to portray the real character of the deceased, and to let the story of his life suggest such reflections as the facts may fairly warrant.

Mr. CAPERTON was not among the most distinguished men of either of the two States which have honored him with their confidence; but he was a fair and honorable representative of a high-toned and educated class of country gentlemen who gave a character to Virginia society and exercised a salutary influence upon the particular neighborhoods in which they lived. Inheriting a large landed estate from his immediate ancestor, he was removed above the necessity of pursuing any profession as a means of livelihood; and yet, as was not uncommon among youths similarly situated with himself in that State, he received the benefits of a liberal and classical education, and passed through the curriculum of Yale and the University of Virginia with credit and distinction. Such an education at that period usually embraced a course of municipal, constitutional, and national law, and was sought after by our young men of inherited fortunes, not as a means of gain or profit, but as a source of intellectual enjoyment, and as a stepping stone to political preferment. Blessed with a sound constitution, a handsome person, frank and engaging manners, an easy flow of language, an ample fortune, and animated by noble but modest aspirations for public service, no young man could have commenced life with promise of a more useful and honorable career.

His mind was quick, sprightly, penetrating, and accurate, but not of the highest and most robust order. It had not been disciplined by habitual labor nor invigorated by the stern collision of intellectual gladiatorship. His memory was tenacious and his fancy occasionally brilliant, while a suppressed and gentle humor gave a peculiar charm to his conversation. His literary taste, naturally acute and delicate, had been assiduously cultivated and improved by a careful study of the best English classics.

As a statesman he was essentially conservative in all his views. He was a sincere believer in the superiority and value of free institutions and an inflexible advocate of all the just rights of the people; and yet he was no demagogue. His appeals were always to the reason, not to the passions or prejudices of his hearers. He never flattered popular follies, but often exhibited a peculiar pride in avowing an unpopular opinion if he had himself full faith in its soundness. He looked with intense admiration upon the wisdom and sagacity displayed in the Constitution of the United States, and was disposed especially in his earlier life, to give too broad and liberal a construction to its implied powers. He was the stern and inflexible supporter of what he believed to be the right; and perhaps treated with too much levity and harshness what was deemed by others expedient in morals and politics. His maxim in life was *Nihil vero utile, quod non idem honestum.*

There was one quality which strikingly distinguished Mr. CAPERTON, and which all will recognize who enjoyed the pleasure of his acquaintance, and that was an elevated tone of mind and morals, which rendered him incapable of countenancing a low or mean action. He shrank from all humbuggery, imposture, and false pretension as something vile and contaminating. He was a stranger to the gnawings of envy; he stabbed no man in the dark; he took no unmanly advantage of an opponent; he was modest in the assertion of his own merit; disdained to appropriate credit or honor to himself which he had not fairly and honestly earned, but did full justice to all who were associated with him in joint labors of any kind. He never sought to impress himself upon the world as something greater or better than he really was. In other words, he was throughout life a sincere, truthful, honest and honorable man.

My acquaintance with Mr. CAPERTON commenced at Richmond, in 1841. He was then a delegate from the county of Monroe, one of the transmontane and western counties of that State. The agricultural interests of his constituents were at that time suffering severely from the want of a cheap and convenient transportation of their products to market, and he, keenly sympathizing with their necessities, became soon recognized as an ardent and earnest friend of a liberal system of internal improvements. At that time the great scheme which absorbed the attention of the State was a continuous line of water communication between the seaboard and the Ohio River by the valleys of the James and Kanawha Rivers—an enterprise suggested by the unerring foresight of the Father of our Country—shown to be practicable by the engineering science of McNeil, Ellet, Fisk, and Lorraine, and pushed forward in its construction by the labors of Cabell and the eloquence of McDowell. Mr. CAPERTON attracted attention by his earnest advocacy of this great national thoroughfare, a work which now challenges the attention of Congress and ranks among the public works best entitled to its consideration and patronage.

My next association with him was in 1850, as a member of the reform constitutional convention of Virginia.

The people of Virginia for half a century after the close of the revolutionary war lived under a State constitution which would hardly be regarded as republican in these advanced days of democratic progress. Population as the basis of representative power in the Legislature was wholly ignored. The smallest counties, with a population of a few hundred inhabitants, had the same weight in the Legislature with the largest and most populous counties numbering from twenty to thirty thousand; suffrage was restricted to freeholders alone; not an office in the State was elective by the people except members of the Legislature. Election precincts were unknown, and if a voter lived twenty or thirty miles from the court-house, it was there, and there alone that he could declare his *viva voce* vote in the presence of the assembled voters of the county. These defects, with many others in the constitution of that State, were sought to be remedied by a convention which assembled in 1829, composed of a body of men as illus-

trious as ever met together in council upon this continent. Among the persons composing that body were James Madison, James Monroe, Chief-Justice Marshall, John Randolph, Littleton Waller Tazewell, Benjamin W. Leigh, and a host of others scarcely less distinguished for ability and statesmanship. Some of the most glaring defects in the then constitution were remedied; representation was somewhat more fairly apportioned and suffrage partially extended. But the instrument, though protected from severe criticism by the illustrious names which framed it, and which recommended its adoption, fell far short of meeting the popular demand for reform. Accordingly another convention was called in 1850, of which Mr. CAPERTON was a member. The results of that convention gave entire satisfaction to the popular mind of Virginia. Representation upon the basis of the free white population of the State was recognized, although, in a spirit of compromise, the period was suspended for a few years when the principle was to be carried into full operation. Suffrage was extended to all free white male citizens of twenty-one years of age and upward. All offices were made elective by the people, with many other changes of an important and interesting character. In all the proceedings of this convention Mr. CAPERTON bore a useful and prominent part as a friend of constitutional reform, earning the respect and confidence of his colleagues by his good sense, sound principles, and practical suggestions. The constitution was adopted by an overwhelming majority of the people, and an impulse given to the active energies of the State which soon became perceptible in its rapidly increasing prosperity.

Mr. CAPERTON was an ardent admirer of that great and accomplished statesman Henry Clay, who gave evidence in three of the most memorable acts of his life of a devotion almost passionate for the perpetuity of the Union. This sentiment was enthusiastically responded to by his supporters and disciples throughout the country, who, indeed, made it almost the shibboleth of party faith. But the Union which Mr. Clay so eloquently depicted was one of choice, of conciliation, and compromise; not of armed despotism and force. This opinion was largely shared by Mr. CAPERTON, and in all the movements preceding the breaking out of hostilities he was a firm and inflexible adviser of a policy that sought to preserve Virginia to the Union. But when the proclamation of President Lincoln was issued, calling upon that State, among others, to contribute her quota of troops and to become an active party to the war then about being inaugurated to crush the seceding States, and to imbrue her hands in the blood of her brethren of the South, a change came over him, as in one night it did over fifty thousand of the freemen and voters of Virginia. That proclamation boldly presented, on behalf of the Northern States, the stern ultimatum of war, and the alternative was then precipitated upon Virginia either to become a party to a war to conquer and subdue the seceding States or a party to a war to maintain and defend rights which she had held sacred from the foundation of the Government. Mr. CAPERTON and the great mass of the people of that State arrayed themselves on the side of the rights and sovereignty of the States. From that moment his heart and his services were freely given to the confederate cause.

I met with Mr. CAPERTON frequently after he took his seat in the Senate of the United States. I had occasional conferences with him upon measures pending before the two bodies, and it became my duty from time to time, as a member of the House of Representatives, to call his special attention to the personal claims of my constituents and to the local interests of my district. I found him a frank, courteous, intelligent, and attentive colaborer in the work of legislation, ready at all times to guard and protect the interests and to promote the just claims of the citizens of his State. In not a single instance did I observe any procrastination or inattention on his part to any of the several matters to which I invited his attention. His service in that elevated and dignified body was brief, too brief to enable him to exhibit to the country many of those sterling qualities of head and heart which would have reflected credit on his State. But he is now gone forever from among us; his place may be filled by successors of greater brilliancy and of more dazzling talents; but it never can be filled by any man of more virtuous and generous impulses, nor by one more loyal to the true interests and honor of his native State.

Mr. Speaker, I submit the resolutions which I send to the Clerk's desk to be read.

The Clerk read the resolutions, as follows:

Resolved, That the House of Representatives has received with deep sensibility and profound sorrow the intelligence of the death of Hon. ALLEN T. CAPERTON late a Senator from the State of West Virginia.

Resolved, That the proceedings of this House in relation to the death of Hon. ALLEN T. CAPERTON be communicated to the widow and family of the deceased by the Clerk of the House.

Resolved, That as a further mark of respect for the memory of the deceased this House do now adjourn.

The resolutions were adopted; and accordingly (at five o'clock and thirty minutes) the House adjourned.

PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. BANNING: The petition of John A. Lynch, acting quartermaster for the western department, under the command of Major-General John C. Frémont, for compensation while acting as said quartermaster, to the Committee on Military Affairs.

By Mr. FENN: The petition for a post-route from Kilton, Utah Territory, to Rock Creek, Idaho Territory, to the Committee on the Post-Office and Post-Roads.

By Mr. HOOKER: The memorial of Annetta Mary Vanclaim, for a pension, to the Committee on Invalid Pensions.

By Mr. SEELYE: The petition of Augustus Watson, to abolish the Presidency, to the Committee on the Judiciary.

By Mr. VAN VORHES: The petition and affidavits in relation to the claim of Oscar B. Nott, late a private of Company K, One hundred and sixty-first Regiment Ohio Volunteer Infantry, for a pension, to the Committee on Invalid Pensions.

IN SENATE.

FRIDAY, *December* 22, 1876.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

The Journal of yesterday's proceedings was read and approved.

PETITIONS AND MEMORIALS.

Mr. MITCHELL. I present the joint memorial of the Legislative Assembly of the State of Oregon, in which they represent in substance and effect that the Columbia River, forming the boundary in part between the State of Oregon and the Territory of Washington, and draining the Territories of Idaho and Montana, west of the Rocky Mountains, ranks, among the rivers of the United States, next in importance to the Mississippi River, and is the largest river flowing into the Pacific Ocean from the American continent, its tributaries watering about 220,000 square miles of territory; that the Columbia is the only river in the United States admitting deep sea-going vessels and ocean steamers one hundred miles into the interior from its mouth; that the channel of this river affords first-class facilities for the navigation of river steamers of large size, and for barge transportation for the distance of five hundred miles or more, obstructed only by two principal rapids and a few reefs and rocks removable by ordinary engineering. The rapids at the Cascades of the Columbia River have already been surveyed and favorably reported upon by the military engineers and an appropriation has been made of $90,000 for beginning the construction of a canal and locks to overcome the obstruction of the rapids at that point; surveys of the rapids called The Dalles have been made and favorably reported upon as feasible for improvement for a canal and locks at a limited expense, in comparison with the great commercial advantages which will result from such improvement. They further represent that the commerce already developed on that river is quite important and every year increasing at a rapid rate; that a very great extent of country bordering upon the Upper Columbia River is adapted for the growth of cereals in the highest perfection, and no undeveloped region of our country offers better advantages to agricultural settlers than this region. The great problem to be solved in opening this country to early settlement and great productiveness is cheap transportation to the sea of the great future agricultural exports which will follow the occupancy of the country. The Columbia River, when cleared of obstructions and opened to free navigation, will furnish the channel for this cheap transportation. They therefore pray, in the interest of the future development of this country, as well as in the interest of the general commerce of the United States, that Congress will grant liberal appropriations for the opening and free navigation of the great Columbia River. I move that this memorial be referred to the Select Committee on Transportation Routes to the Seaboard, and I desire to state that yesterday a bill was introduced having reference to this matter and referred to the Committee on Commerce. I desire if it be in order to move another reference of that bill. I move that the vote be reconsidered by which it was referred to the Committee on Commerce, in order that it may go to the Select Committee on Transportation Routes to the Seaboard.

The PRESIDENT *pro tempore*. The Senator from Oregon moves that the Committee on Commerce be discharged from the further consideration of the bill (S. No. 1100) making appropriations for the improvement of the Lower Williamette and Columbia Rivers from Portland, Oregon, to the sea, and that it be referred to the Select Committee on Transportation Routes to the Seaboard. Is there objection? The Chair hears none. It is so ordered.

HOUSE BILLS REFERRED.

The following bills from the House of Representatives were severally read twice by their titles and referred to the Committee on Military Affairs:

A bill (H. R. No. 1688) for the relief of Robert H. Flavell, sergeant Company F, Seventh Missouri; and

A bill (H. R. No. 4258) to provide for the payment for certain improvements on lands now embraced in the military reservation of Fort Cameron, in the Territory of Utah.

REPORTS OF COMMITTEES.

Mr. PRICE, from the Committee on Claims, to whom was referred the petition of Laban Heath, praying compensation for damages

arising to him as publisher by reason of certain defective printing of steel-plate illustrations of bank-notes and currency by the Treasury Department under a contract in 1868 and 1869, reported adversely thereon, and asked to be discharged from its further consideration.

Mr. WRIGHT. I suggest to my friend the Senator from West Virginia that he also ask that the claim be rejected.

Mr. PRICE. Yes, sir; I make that motion.

The PRESIDENT *pro tempore*. Will the Senate concur in the report that the claim be rejected?

The report was agreed to.

Mr. BRUCE, from the Committee on Pensions, to whom was referred the bill (S. No. 751) granting a pension to E. O. Nye, reported adversely thereon; and the bill was postponed indefinitely.

BILL INTRODUCED.

Mr. MITCHELL asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1101) making appropriations for the further improvement of the Willamette River in Oregon above the falls; which was read twice by its title, referred to the Select Committee on Transportation Routes to the Seaboard, and ordered to be printed.

CENTRAL BRANCH UNION PACIFIC RAILROAD.

Mr. WRIGHT. It will be remembered that on Tuesday I gave notice that I should this morning ask the Senate to proceed to the consideration of a bill reported from the Committee on the Judiciary declaring the true construction of the several acts of Congress giving aid to the Union Pacific and Central Pacific Railroads, known as the act touching the Central Branch. In view of the fact that there is barely a quorum of the Senate present this morning, if so many as that, and as I understand the Senator from Oregon [Mr. MITCHELL] is desirous of proceeding with the resolution reported from the Committee on Privileges and Elections at this time, I shall not press that bill this morning. I deem it proper to give this notice lest it should be considered that there has been some abandonment of the proposed action; and I say now that I shall as soon as the Senate convenes after the proposed recess ask the Senate to proceed to the consideration of that bill.

Mr. INGALLS. I hope the Senator from Iowa will at least hold his determination to press that bill in abeyance until he is further advised in regard to the present condition of that road and its operations. The bill that he proposes to press as the measure of the Judiciary Committee seems to me a measure of very doubtful expediency. It is an attempt to obtain from this body a judicial declaration as to the meaning of an act of Congress, which I think should properly be left to the courts, and, in my judgment, if it were to become a law by the concurrence of both Houses, could not in any way affect the rights of the corporation, if they have any, under the statute already passed. I have proposed on a previous occasion to substitute for the measure reported by the Judiciary Committee a bill referring the whole subject to the Court of Claims for its decision. The reason why that course cannot be taken now is because, under the constitution of the Court of Claims, it can only take jurisdiction of matters that are purely sounding in money damages, money claims as they are called. This is an equitable claim; and of course it would require a special act of Congress to confer jurisdiction on the court.

But since the bill was reported by the Judiciary Committee, the Central Branch of the Union Pacific Railroad Company have proceeded under their charter in the construction of an additional twenty miles. Twelve miles of it are already in operation. Before the Senator can reach the bill, at the period to which he has called the attention of the Senate, the twenty miles will be in active operation; and the whole question can then properly come before the Department for adjudication under the provisions of the law itself. I would suggest that if, upon examination of the facts in the case, the Senator is advised that this subject may be considered properly before the Department of Justice or Department of the Interior, any action by the Senate would be entirely unnecessary and superfluous. I trust he will at least withdraw his notice that he shall urge the consideration of the bill after the holiday recess, until there has been further examination as to the condition of the road at the present time.

Mr. WRIGHT. I only desire to add to what I have said, in view of the remarks of the Senator from Kansas, that all the matters or most of those suggested by him were fully considered in by the Judiciary Committee at the time this bill was reported and due weight given to them. In view of the condition of the state of the decisions in the Department it was regarded as absolutely necessary, or certainly very advisable, that legislation of the character proposed should be had here. I was aware of the proposition made by the Senator from Kansas. Whether that be the advisable course, or the one proposed by the committee, can be determined by the Senate when the matter shall be before it. It will be for the Senate to determine in its pleasure whether it will or will not proceed to the consideration of this bill.

I have given this notice at this time in part from the fact that I have assured the Senator that I would not call the bill up without previous notice to him. Of course if there be facts intervening between now and the time that I have suggested which shall render it advisable to postpone its further consideration, I shall not at that time press it; but I deemed it to be my duty to the committee and also to this measure to give the notice I have given. Of course intervening facts may change the course that I shall take.

Mr. MITCHELL. If there be no further morning business——

Mr. INGALLS. One moment. I desire to understand from the Senator from Iowa in regard to the matter now before the Senate whether his notice is to be understood as meaning that he will on the first day after the holiday recess move to proceed to the consideration of this bill?

Mr. WRIGHT. I shall esteem it to be my duty to move to proceed to the consideration of the bill at that time, unless something shall intervene in the mean while to lead me to think that it is not advisable to do so, and I will advise the Senator in time.

WITHDRAWAL OF PAPERS.

On motion of Mr. BRUCE, it was

Ordered, That William M. Compton and others, sureties on the bond of B. B. Emory, late collector of internal revenue for the third district of Mississippi, have leave to withdraw their petition and papers from the files of the Senate by leaving copies of the same.

ORDER OF BUSINESS.

Mr. MITCHELL. If there is no further morning business, I move that the Senate proceed to the consideration of the regular order of unfinished business.

The PRESIDENT *pro tempore*. Is there objection to considering the morning hour terminated?

Mr. NORWOOD. I would ask the Senator from Oregon to yield to me to call up a bill that I have wished several times to get up, but have always yielded to other Senators who desired to get up other measures. It is a private bill, for the relief of Robert Erwin.

Mr. MITCHELL. Is the bill likely to lead to discussion or take time?

Mr. NORWOOD. I cannot say. It is a bill the purpose of which is to allow a claimant to go before the Court of Claims on the ground that he lost his opportunity through the laches of his attorney at law. That, I believe, is the only point in the case.

Mr. MITCHELL. It being in the morning hour, I will give way.

Mr. WRIGHT. I want to suggest to my friend from Georgia that that bill comes from the Judiciary Committee and there is an adverse report.

Mr. NORWOOD. I am aware of that.

Mr. WRIGHT. And I can say to my friend from Oregon that while I have no disposition to captiously or otherwise interpose objections to the passage of this bill, it certainly cannot be passed without discussion, and I believe every member of the Committee on the Judiciary is absent except myself at this time. There is a majority of the committee against the bill. To take it up at this time when a majority of the members are absent, I hardly think would be fair to them.

Mr. NORWOOD. I have no wish to press the bill in the absence of the Judiciary Committee, but I am really anxious to get action upon it. The party interested has been here a long time, as the Senator from Iowa knows. I had not looked around the Senate to see who was present of the Judiciary Committee.

Mr. WRIGHT. Allow me to make one further remark. My friend will bear me witness that I have no disposition to interfere with action on this bill at any reasonable time; but I think it would be better for him to give notice that he will ask if he can get the floor to take this bill up at the very earliest day, and then the members of the Judiciary Committee will be aware of the fact and can be here. I think it would be hardly proper to take it up this morning under all the circumstances.

Mr. NORWOOD. Under that suggestion I will not press it this morning. I suppose there will be no legislative action after to-day until probably the 3d of January, and for that reason I will not give notice of a time so far in advance when I shall move to take up the bill.

ELECTORAL VOTE OF OREGON.

Mr. MITCHELL. I ask the Senate to proceed to the consideration of the unfinished business.

The PRESIDENT *pro tempore*. The morning hour will be considered as having terminated. The unfinished business is the resolution directing an inquiry as to the eligibility of J. W. Watts as elector for the State of Oregon, and the circumstances attending the appointment of electors in that State. The question is on the amendment of the Committee on Privileges and Elections to the resolution. The Secretary will report the amendment.

The CHIEF CLERK. The resolution as introduced by Mr. MITCHELL is in the following words:

Resolved, That the Committee on Privileges and Elections is hereby instructed to investigate the facts attending the appointment of said electors and pretended electors, their action as electors and pretended electors, and the action of the governor and secretary of state in respect to them, and report the same to the Senate; and for this purpose may employ a stenographer, send for persons and papers, administer oaths, and examine witnesses.

The amendment reported to that resolution is to strike out all after the word "resolved" and insert:

That the Committee on Privileges and Elections is hereby instructed to inquire into the eligibility of said J. W. Watts, and investigate the facts attending the appointment of said electors and pretended electors and report the same to the Senate; and for this purpose may employ a stenographer, send for persons and papers, administer oaths, and examine witnesses.

Mr. BOGY. The amendment upon which we are called to vote now is one offered by the Senator from Delaware, [Mr. BAYARD,] is it not?

The PRESIDENT *pro tempore*. No, sir; the amendment of the Committee on Privileges and Elections. The amendment of the Senator from Delaware touches the preamble, which will come last.

Mr. BOGY. Is the question on the adoption of the resolution?

The PRESIDENT *pro tempore*. On the amendment proposed by the committee to the resolution. It strikes out all after the word "resolved" and inserts a substitute.

Mr. BOGY. It is merely adopting the resolution.

The PRESIDENT *pro tempore*. The resolution substantially in the form reported.

Mr. BOGY. And not of the preamble?

The PRESIDENT *pro tempore*. Not the preamble.

Mr. BOGY. The preamble will be open to amendment?

The PRESIDENT *pro tempore*. It will be.

Mr. BOGY. I desire at the proper time to offer an amendment to the preamble.

The PRESIDENT *pro tempore*. The Senator will have the opportunity.

Mr. COCKRELL. I am decidedly in favor of the investigation of this electoral vote in Oregon; but this resolution is fully covered by the last clause in the resolution of the Senator from Vermont, [Mr. EDMUNDS,] which has already passed this House, and the Committee on Privileges and Elections have just as much authority to investigate this election under that resolution as they will have under this resolution, and this resolution is entirely unnecessary. I will read the last clause of the resolution offered by the Senator from Vermont and adopted by the Senate:

Resolved further, That the said committee be, and is hereby, instructed to inquire into the eligibility to office under the Constitution of the United States of any persons alleged to have been ineligible on the 7th day of November last, or to be ineligible as electors of President and Vice-President of the United States, to whom certificates of election have been or shall be issued by the executive authority of any State as such electors; and whether the appointment of electors or those claiming to be such in any of the States has been made, either by force, fraud, or other means, otherwise than in conformity with the Constitution and laws of the United States and the laws of the respective States; and whether any such appointment or action of any such elector has been in anywise unconstitutionally or unlawfully interfered with; and to inquire and report whether Congress has any constitutional power, and, if so, what, and the extent thereof, in respect of the appointment of or action of electors of President and Vice-President of the United States, or over returns or certificates of votes of such electors; and that said committee have power to send for persons and papers, and to employ a stenographer, and have leave to sit during the session of the Senate.

That fully provides for this case, and there is no necessity for the passage of this resolution. If it were not provided for in that resolution, I would vote for this amendment to the resolution without the preamble.

Mr. MITCHELL. That question was considered by the committee; in fact that was one reason why I myself moved that this resolution should go to the Committee on Privileges and Elections. I was aware of the fact that there had been a general resolution of inquiry adopted by the Senate, and while there was some difference of opinion in the committee it was considered a matter of very grave doubt with some and of positive opinion with others that the resolution referred to by the honorable Senator from Missouri did not cover this case. For my own part I feel very confident that it does not cover it, and the reason why is this: The Senator from Missouri will observe that there is a qualifying clause in that resolution. It first provides that the committee shall investigate as to the eligibility of certain electors; but there is this qualifying clause in that resolution, namely, "to whom certificates have been issued by the governor of the State." No certificate has ever been issued by the governor of the State to Mr. Watts, and therefore I do not think his case comes within the purview of the general resolution heretofore adopted by the Senate, and I think I may say that is the opinion of at least a number of the members of the committee, and it was thought I think generally by the committee that out of abundant caution it would be proper at least to adopt this resolution.

Mr. KERNAN. I cannot speak particularly as to whether one resolution or the other is broader in the view of the committee; but I am in favor of a full investigation into the whole subject. Is this deemed necessary by the committee with a view of enabling them to investigate further in relation to the Oregon case?

Mr. MITCHELL. I am not now a member of the committee, and of course am not able to speak as to what the committee has done.

Mr. KERNAN. I speak from the newspapers. They say witnesses are on their way.

Mr. MITCHELL. I think that is true.

Mr. KERNAN. If there be anything in this resolution that enables them to investigate more fully than they otherwise would, I am in favor of the resolution. I am desirous that there should be the fullest investigation.

Mr. MITCHELL. I was very anxious that there should be no loophole; that the authority of the committee should be ample so as to include this case in all its aspects.

The PRESIDENT *pro tempore*. The question is on agreeing to the amendment of the Committee on Privileges and Elections to the resolution.

The amendment was agreed to.

The PRESIDENT *pro tempore*. The question is on the resolution as amended.

The resolution, as amended, was agreed to.

The PRESIDENT *p o tempore*. The question recurs on the preamble, and the first question is on the amendment of the Senator from Delaware [Mr. BAYARD] to the amendment of the Committee on Privileges and Elections, which will be read.

The CHIEF CLERK. The amendment of the Committee on Privileges and Elections is to strike out all after the word "whereas," in the first line of the preamble, and insert the following in lieu thereof:

It is alleged that at the late election for electors of President and Vice-President for the State of Oregon the people of said State, by a majority of over one thousand votes, elected W. H. Odell, John C. Cartwright, and J. W. Watts;

And whereas it is also alleged that the governor of said State did subsequently, in violation of law and in defiance of the expressed will of the people, issue a certificate of election to one E. A. Cronin instead of to J. W. Watts;

And whereas it is also alleged that said E. A. Cronin did, in violation of law, upon some pretext, assume to select for his colleagues one J. N. T. Miller and John Parker in lieu of said W. H. Odell and John C. Cartwright;

And whereas it is further alleged that said Cronin, Miller, and Parker have assumed to cast the vote of Oregon for President and Vice-President, and to certify the same to the President of the Senate: Therefore,

The amendment proposed by Mr. BAYARD is to strike out all after the word "alleged" in the first line of the pending amendment and insert:

That the governor of the State of Oregon has issued a certificate of election to one E. A. Cronin as one of the electors of said State instead of issuing such certificate to one J. W. Watts, alleging that the said Watts was ineligible to the said office of elector on November 7, 1876, the time of said election.

Mr. BAYARD. The amendment just read I believe was offered by me.

The PRESIDENT *pro tempore*. So the Chair understands.

Mr. BAYARD. I trust sincerely that, as there appears to be no dissenting voice to the investigation being held, it will not be deemed necessary to preface the resolution by a condemnation in advance, in the shape of a preamble, of the action of the executive of this State. It is not necessary to determine the case, and it occurs to me, as the Senate proposes to act judicially on this subject and very properly by taking the inquiry into the hands of one of its committees, it will lessen the weight of its judgment to decide in advance the very thing to be inquired of. It is not only a mere abstract sense of justice, but it occurs to me that it is peculiarly fitting at this time, in the face of the grave events before us, in the face of the dignity of the questions we are to act upon, that our whole tone of addressing ourselves to these subjects should be worthy of the subjects and of the powers which are proposed to be exercised. We should come to our judgment in this matter with gravity and decorum, and both are due from us at all times and never more than on an occasion like this. Whatever may be the conclusions we may arrive at of the legality or illegality of the action of the governor of Oregon, I do submit we can reach them without reflecting upon him in advance.

The amendment which I have offered is strong enough to bring before the Senate the facts showing the origin of this inquiry, why the inquiry is sought and for what it is sought. I have not sought to amend in any way the language of the honorable Senator's inquiry. I only submit to him and the entire Senate that we can reach his end without any show of unjudicial bias or partisan feeling. These questions involve so much that I do not wish in any vote I may cast, I do not wish in any remarks I may make, that any one should be able to discover which way a party predilection would control me in my feelings. I believe, if that rule be followed, that we shall have gone far toward reaching that temper of mind which is essential for us in order to act properly in this grave case.

I cannot imagine that the resolution of inquiry is strengthened by its present preamble; on the contrary, I am sure that it is impeached by the present preamble; and that which I have offered as an amendment simply recites the fact that there is an allegation of error or questionable action on the part of an official clothed with power, and therefore we submit it to the Committee on the Judiciary to inform us whether he has or not acted in accordance with his legal right and power and sense of duty.

It is not wise to impeach motives. How can we tell each other's motives when our own are so often hidden from us? It is not wise; it is not just, and in the present case, I submit, it is not decorous. This question is a grave one, and it should have been, if it has not been, discussed only with gravity and with a total absence of partisan heat. Why, then, upon a resolution in regard to which I do not know that there is any dissent in the Senate, couple it with a preamble that does reflect, and reflect coarsely, as I think unjustly, upon the action of a man, a personal stranger to me, who I deem is not only entitled to an absence of judgment until we shall know all the facts, but is entitled from us to what is due to ourselves in the matter, so that we should not hastily in advance prejudge his case?

Mr. MITCHELL. Mr. President, the honorable Senator from Delaware places a wholly and entirely different construction on this preamble from that placed on it by myself. The Senator says that it reflects coarsely and harshly, if I understood him correctly, upon Governor Grover. I do not think so. Such was not my intention, I am sure, so far as I am concerned, and I am satisfied the committee had no such intention as to assert anything that would condemn him in advance of investigation. The preamble simply states that whereas so and so is alleged, referring, of course, to the public charge that has been made all over the country in regard to the action of Governor Grover.

But in order to show the honorable Senator from Delaware that I mean to be just as fair as he can be, I will not take up the time of

the Senate in regard to this preamble. I care nothing about it particularly. The resolution of inquiry has been adopted; the investigation will be made; the report of the committee will come before us, and then we can make up our judgments. If it is agreeable to the Senate, as it is pretty evident that we shall have no quorum if the yeas and nays are called, I will consent to take either the preamble suggested by the honorable Senator from Delaware, or to lay all the preambles on the table.

Mr. SHERMAN. Let both be read. I should like to hear them.

The PRESIDENT *pro tempore*. The Secretary will report the preamble of the committee and that of the Senator from Delaware.

The CHIEF CLERK. The preamble as reported by the Committee on Privileges and Elections is in the following words:

Whereas it is alleged that at the late election for election of President and Vice-President for the State of Oregon the people of said State, by a majority of over one thousand votes, elected W. H. Odell, John C. Cartwright, and J. W. Watts; and whereas it is also alleged that the governor of said State did subsequently, in violation of law and in defiance of the expressed will of the people, issue a certificate of election to one E. A. Cronin instead of to said J. W. Watts; and whereas it is also alleged that said E. A. Cronin did, in violation of law, upon some pretext, assume to select for his colleagues one J. N. T. Miller and John Parker in lieu of said W. H. Odell and John C. Cartwright; and whereas it is further alleged that said Cronin, Miller, and Parker have assumed to cast the vote of Oregon for President and Vice-President, and to certify the same to the President of the Senate: Therefore,

The preamble, if amended as proposed by Senator BAYARD, will read:

Whereas it is alleged that the governor of the State of Oregon has issued a certificate of election to one E. A. Cronin as one of the electors of said State instead of issuing such certificate to one J. W. Watts, alleging that the said Watts was ineligible to the said office of elector on November 7, 1876, the time of said election: Therefore

Mr. MITCHELL. If it is in order and will not affect the resolution as passed, I move to lay the preamble on the table.

Mr. SHERMAN. Let the resolution be read. I do not think it would read well without some preamble.

The Chief Clerk read the resolution, as follows:

Be it resolved, That the Committee on Privileges and Elections is hereby instructed to inquire into the eligibility of said J. W. Watts, and investigate the facts attending the appointment of said electors and pretended electors and report the same to the Senate; and for this purpose may employ a stenographer, send for persons and papers, administer oaths, and examine witnesses.

Mr. SHERMAN. The word "said" should be stricken out. My impression is that the preamble of the Senator from Delaware would probably avoid the necessity of changing the resolution; but by striking out two or three words in the resolution it would read as well without a preamble.

Mr. MITCHELL. I make no objection to the preamble of the Senator from Delaware and withdraw my motion to lay on the table.

The PRESIDENT *pro tempore*. The question is on the amendment proposed by the Senator from Delaware to the preamble.

The amendment was agreed to.

The PRESIDENT *pro tempore*. The question is on the preamble as amended.

The preamble, as amended, was agreed to.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. GEORGE M. ADAMS, its Clerk, announced that the House disagreed to the amendments of the Senate to the bill (H. R. No. 1984) to provide for the sale of certain lands in Kansas, asked a conference with the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. ALFRED M. SCALES of North Carolina, Mr. CHARLES H. MORGAN of Missouri, and Mr. JULIUS H. SEELYE of Massachusetts, managers at the conference on its part.

The message also announced that the House had passed the following bill and joint resolution; in which it requested the concurrence of the Senate:

A bill (H. R. No. 4272) authorizing the use of certain funds now in the Treasury belonging to the Osage Indians; and

A joint resolution (H. R. No. 169) authorizing the Secretary of War to supply blankets to the Reform School in the District of Columbia.

ENROLLED BILLS SIGNED.

The message further announced that the Speaker of the House had signed the following enrolled bills; and they were thereupon signed by the President *pro tempore*:

A bill (H. R. No. 97) directing the Commissioner of the General Land Office to issue certificate of relocation for six hundred and forty acres of land in the Territory of Missouri to legal representatives of Samuel Ware;

A bill (H. R. No. 1026) for the relief of Thomas Van Duzen and his assigns for lands;

A bill (H. R. No. 3504) for the relief of Thomas Day; and

A bill (H. R. No. 4124) to provide for the expenses of certain special committees of the House of Representatives and of the Committee on Privileges and Elections of the Senate.

LANDS IN CHEROKEE STRIP.

The PRESIDENT *pro tempore* laid before the Senate the action of the House of Representatives on the amendments of the Senate to the bill (H. R. No. 1984) to provide for the sale of certain lands in Kansas.

Mr. INGALLS. I move that the Senate insist upon its amendments disagreed to by the House of Representatives to that bill, and agree to the conference asked by the House.

Mr. CLAYTON. What lands are those?

Mr. INGALLS. The Cherokees' strip.

The PRESIDENT *pro tempore*. The question is on the motion of the Senator from Kansas.

The motion was agreed to.

The PRESIDENT *pro tempore* being by unanimous consent authorized to appoint the committee of conference on the part of the Senate, Mr. ALLISON, Mr. PADDOCK, and Mr. BOGY were appointed.

ADJOURNMENT.

Mr. EDMUNDS. I move that the Senate proceed to the consideration of executive business.

Mr. ALLISON. I ask to have taken from the Secretary's desk the bill (H. R. No. 4272) authorizing the use of certain funds now in the Treasury belonging to the Osage Indians.

Mr. EDMUNDS. Let the question be put on my motion.

The question being put, there were on a division—ayes 19, noes 8; no quorum vo ing.

Mr. CONKLING. Let us have the yeas and nays.

The yeas and nays were ordered.

Mr. ALLISON. I ask the Senator from Vermont to waive his motion for an executive session until the bill is read that I desire to have taken up.

The PRESIDENT *pro tempore*. Debate is not in order.

Mr. EDMUNDS. I know debate is not in order; but I ask unanimous consent to say a single word. I do not know anything about the bill, and have not the slightest objection to it that I know of, and probably should not have if I heard it read; but feeling that there was probably no quorum here from the apparent thinness of the Chamber—for as soon as the Oregon business was disposed of the Chamber seemed suddenly to grow thin—I have made the motion, in order to ascertain whether there is a quorum. If there is a quorum here, most certainly I will consent that the doors be opened or my motion be voted down. The Senator does not want to pass the bill without a quorum, I am sure, any more than I do.

The yeas and nays were taken, with the following result:

YEAS—Messrs. Bayard, Boutwell, Burnside, Chaffee, Cockrell, Cragin, Dawes, Dorsey, Eaton, Edmunds, Goldthwaite, Gordon, Hamilton, Johnston, Kernan, Key, Logan, McCreery, Maxey, Morrill, Norwood, Price, Spencer, Withers, and Wright—25.

NAYS—Messrs. Allison, Bogy, Booth, Clayton, Conkling, Conover, Ferry, Ingalls, Mitchell, Morton, Paddock, and Sherman—12.

ABSENT—Messrs. Alcorn, Anthony, Barnum, Blaine, Bruce, Cameron of Pennsylvania, Cameron of Wisconsin, Christiancy, Cooper, Davis, Dennis, Frelinghuysen, Hamlin, Harvey, Hitchcock, Howe, Jones of Florida, Jones of Nevada, Kelly, McDonald, McMillan, Merrimon, Oglesby, Patterson, Randolph, Ransom, Robertson, Sargent, Saulsbury, Sharon, Stevenson, Teller, Thurman, Wadleigh, Wallace, West, Whyte, and Windom—38.

The PRESIDENT *pro tempore*. On agreeing to the motion of the Senator from Vermont, the yeas are 25 and the nays 12; no quorum voting.

Mr. CONKLING. I think it is hardly worth while to attempt to get a quorum for this one day at this hour. Therefore I move that the Senate do now adjourn.

The motion was agreed to.

The PRESIDENT *pro tempore*. The Senate stands adjourned until Tuesday next at twelve o'clock.

HOUSE OF REPRESENTATIVES.

FRIDAY, *December* 22, 1876.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of yesterday was read and approved.

COMPENSATION OF UNITED STATES MARSHALS.

Mr. DURHAM, by unanimous consent, from the Committee on Expenditures in the Department of Justice, reported back, with amendments, the bill (H. R. No. 3775) fixing the compensation of United States marshals and deputies; and the bill, with accompanying amendments, was ordered to be printed and recommitted.

FEES OF CLERKS OF UNITED STATES COURTS.

Mr. DURHAM also, from the same committee, reported back, with amendments, the bill (H. R. No. 3776) fixing the fees of clerks of the United States district and circuit courts; and the bill, with accompanying amendments, was ordered to be printed and recommitted.

MORNING HOUR.

The SPEAKER. The morning hour will now begin at seventeen minutes past twelve o'clock. This being Friday, the first business during the morning hour is the call of committees for reports of a private nature. The call rests with the Committee on the Judiciary.

A. C. MYERS.

Mr. HUNTON, from the Committee on the Judiciary, reported back the bill (H. R. No. 4273) to remove the political disabilities of A. C. Myers, of Maryland; which was read a first and second time.

Mr. WILSON, of Iowa. Is there a petition accompanying the bill?

Mr. HUNTON. It is accompanied by the usual request.

The bill was ordered to be engrossed and read a third time; and it was accordingly read the third time, and passed, two-thirds voting in favor thereof.

Mr. HUNTON moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

GEORGE S. HAWKINS.

Mr. HUNTON, from the same committee, reported back, with a favorable recommendation, the bill (H. R. No. 1617) to remove the political disabilities of George S. Hawkins, of Florida.

Mr. WILSON, of Iowa. Is this bill also accompanied by a petition?

Mr. HUNTON. It is.

The bill was ordered to be engrossed and read a third time; and it was accordingly read the third time, and passed, two-thirds voting in favor thereof.

Mr. HUNTON moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

H. B. WHITEFIELD AND D. W. STEARNS.

Mr. LYNDE, from the Committee on the Judiciary, reported back, with sundry amendments, the bill (H. R. No. 3091) for the relief of Henry B. Whitefield and De Witt Stearns, for services rendered as acting district attorneys for the United States district court for the northern district of Mississippi; and the bill, with accompanying amendments, together with the report, was ordered to be printed, and referred to the Committee of the Whole on the Private Calendar.

NANNIE HALL.

Mr. McCRARY, from the Committee on the Judiciary, reported back, with a favorable recommendation, the bill (H. R. No. 3077) referring to the Court of Claims the claim of Nannie Hall, formerly widow of the late Lieutenant Denman, of the United States Army, for cotton seized and the proceeds paid into the United States Treasury; which was referred to the Committee of the Whole on the Private Calendar, and the accompanying report ordered to be printed.

LOCATION OF LAND SCRIP.

Mr. LEVY, by unanimous consent, from the Committee on Private Land Claims, reported back with amendments the bill (H. R. No. 829) defining the manner in which certain land scrip may be located; and the bill, with amendments, together with the accompanying report, was ordered to be referred to the Committee of the Whole on the state of the Union, and printed.

JULIUS S. BOHRER.

Mr. WHITTHORNE, from the Committee on Naval Affairs, reported back adversely the following; which were laid on the table, and the accompanying report ordered to be printed:

A bill (H. R. No. 1112) for the relief of Julius S. Bohrer, late master in the United States Navy;

A bill (H. R. No. 3778) for the relief of Julius S. Bohrer, United States Navy; and

The petition of Julius S. Bohrer, asking to be restored to the rank and privileges of master in the United States Navy.

FREDERICK G. MOORE.

Mr. FAULKNER, from the Committee on Foreign Affairs, reported adversely upon the following; which was laid on the table, and the accompanying report ordered to be printed:

The petition of Frederick George Moore of Boston, Massachusetts, for permission to receive a medal from the Italian government for services rendered during the siege of Capua during the war of 1860.

RIGHTS OF CITIZENS ABROAD.

Mr. FAULKNER. Among the special orders is a bill reported from the Committee on Foreign Affairs (H. R. No. 2245) to carry into execution the provisions of the fourteenth amendment to the Constitution concerning citizenship, and to define certain rights of citizens of the United States in foreign countries, and certain duties of diplomatic and consular officers, and for other purposes. I ask unanimous consent that that bill be recommitted to the Committee on Foreign Affairs.

Mr. HALE. Not to be brought back by a motion to reconsider.

The SPEAKER. That will be understood.

There was no objection, and it was ordered accordingly.

MARCUS RADICH.

Mr. WILLIAMS, of Wisconsin. During the last session of Congress a joint resolution was reported from the Committee on Foreign Affairs (H. R. No. 130) referring the claim of Marcus Radich to the Court of Claims. The bill was referred to the Committee of the Whole and placed on the Private Calendar, but inadvertently the report accompanying the bill has never been printed. I now ask that the report be ordered to be printed.

There was no objection, and it was so ordered.

MRS. EDITH F. ROSS.

Mr. STONE, from the Committee on Expenditures in the Post-Office Department, reported back the bill (H. R. No. 4215) for the relief of Mrs. Edith F. Ross, and moved that the same be referred to the Committee on the Post-Office and Post Roads.

The motion was agreed to; and the motion to reconsider the reference was laid on the table.

WILLIAM R. WILMER.

Mr. THOMAS, from the Committee of Ways and Means, reported back, with amendment, a bill (H. R. No. 3698) for the relief of William R. Wilmer, late collector of internal revenue for the fifth district of Maryland; which was referred to the Committee of the Whole on the Private Calender, and the accompanying report ordered to be printed.

JOHN N. REED.

Mr. PRATT, from the Committee of Claims, reported a bill (H. R. No. 4274) for the relief of John N. Reed; which was read a first and second time, referred to the Committee of the Whole on the Private Calender, and, with the accompanying report, ordered to be printed.

DANIEL STICKNEY.

Mr. PRATT also, from the same committee, reported back, with a recommendation that it pass, the bill (S. No. 446) for the relief of Daniel Stickney, of Presque Isle, Maine; which was referred to the Committee of the Whole on the Private Calendar.

WIDOW OF LATE SPEAKER KERR.

Mr. GARFIELD. I ask unanimous consent to offer the following resolution:

Resolved, That the Committee on Appropriations are hereby authorized and directed to report, as a part of the deficiency bill or some other appropriation bill, a provision to pay to the widow of Michael C. Kerr, late Speaker of this House, a sum equal to the pay and mileage of the Speaker from the date of the late Speaker's death to the end of the present Congress; and said provision shall be in order.

Mr. HOLMAN. I trust that this resolution will simply be referred to the committee.

Mr. GARFIELD. Mr. Speaker, I hope the gentleman will allow the House to adopt this resolution at once. Before any action is taken, I wish to say that as this is the first instance of a Speaker dying while in office, we have no precedent, I believe, for any action of this sort. But I understand that in the Senate in a case where the Vice-President has died, a similar provision has been made. I do not care, however, whether there be any precedent drawn from the action of the Senate or not; every gentleman on this side of the House and on the other (for this certainly cannot be a matter about which we shall raise any question other than the merit of the proposition) will, I hope, understand, without the necessity of saying a word, the very great propriety of adopting the measure here proposed; and I hope that this resolution, which makes the duty of the committee plain and makes the proposition in order, will be agreed to without dissent.

Mr. HOLMAN. My suggestion that the resolution be referred to the Committee on Appropriations was made simply with the view to the consideration of the subject and the precedents. The proposition is perhaps all right, though the suggestion has not been made before. Of course I have no objection.

The SPEAKER. The Chair hears no objection; the resolution is before the House.

The resolution was adopted unanimously.

ORDER OF BUSINESS.

Mr. BRIGHT. I move that the House resolve itself into Committee of the Whole on the Private Calendar, this being "objection day."

The motion was agreed to.

The House accordingly resolved itself into Committee of the Whole (Mr. WILSON, of Iowa, in the chair) and proceeded to the consideration of business on the Private Calendar.

MRS. AMELIA A. H. RICHARDS.

The first business on the Private Calendar was the bill (H. R. No. 3507) for the relief of Mrs. Amelia A. H. Richards, administratrix of Felix Richards, deceased, late of Fairfax County, Virginia.

Mr. HOLMAN. I think that this bill ought to be discussed. I object to it.

Mr. HOAR. Mr. Chairman, I desire to inquire whether the first bill in order is not the one at the beginning of the Calendar?

The CHAIRMAN. We begin where we left off on the last "objection day" last session.

Mr. WHITE. Should not the bills heretofore objected to be first taken up?

The CHAIRMAN. No, sir; they will not be considered till we get through the Calendar.

ANDREW JACKSON.

The next business on the Private Calendar was the bill (H. R. No. 3292) providing for a pension to be paid to Andrew Jackson, (colored,) of Pittsburgh, Pennsylvania.

The bill directs the Commissioner of Pensions to place upon the pension-rolls the name of Andrew Jackson, (colored,) of Pittsburgh, Pennsylvania, and to pay him, said Jackson, at the rate of —— dollars per month from and after the passage of the act, on account of faithful services performed with the First Pennsylvania Regiment during the Mexican war, and equally faithful and efficient services in

the late war, and in attendance upon and care of prisoners at Libby Prison while he also was a prisoner; and in consideration of the fact that Jackson is disabled by disease contracted in the Army.

There being no objection, the bill was laid aside, to be reported to the House with a recommendation that it pass.

MRS. JULIA H. TOTTEN.

The next business on the Private Calendar was the bill (H. R. No. 3415) for the relief of Mrs. Julia H. Totten, widow of James Totten, late lieutenant-colonel and assistant inspector-general United States Army.

The bill directs the Secretary of the Interior to place on the pension-roll, subject to the provisions and limitations of the pension laws, the name of Mrs. Julia H. Totten, widow of James Totten, late lieutenant-colonel and assistant inspector-general United States Army, and pay her a pension of $50 per month from and after the passage of the act.

An amendment reported by the Committee on Invalid Pensions to strike out "$50 per month" and to insert "$30 per month" was agreed to.

There being no objection, the bill, as amended, was ordered to be laid aside, to be reported to the House with a recommendation that it pass.

LEGAL REPRESENTATIVES OF R. H. MURRELL.

The next business on the Private Calendar was the bill (H. R. No. 3369) for the relief of the legal representatives of R. H. Murrell, deceased, late commissary of the Tenth Tennessee Cavalry.

The bill directs the Secretary of the Treasury to pay to the legal representatives of R. H. Murrell, deceased, late of the Tenth Tennessee Cavalry, (afterward consolidated with the Eighth Tennessee Cavalry,) out of any money in the Treasury not otherwise appropriated, the pay and allowances of first lieutenant and regimental commissary of subsistence from the 15th day of September, 1863, until the 26th day of December, 1863, the latter being date of the death of Murrell at Camp Nelson, Kentucky.

There being no objection, the bill was laid aside, to be reported to the House with a recommendation that it pass.

CYNTHIA H. ABBOTT.

The next business on the Private Calendar was the bill (H. R. No. 3540) granting a pension to Cynthia H. Abbott.

The bill directs the Secretary of the Interior to place on the pension-roll, subject to the provisions and limitations of the pension laws, the name of Cynthia H. Abbott, mother of Augustus P. Abbott, formerly a seaman in the United States service, to date from his death.

Mr. SMITH, of Pennsylvania. I call for the reading of the report.

The report was read.

Mr. RUSK. Is there an amendment to that bill?

The CHAIRMAN. There is not.

Mr. RUSK. Then I shall have to object to the bill.

THOMAS G. KINGSLEY.

The next business on the Private Calendar was the bill (H. R. No. 3511) granting a pension to Thomas G. Kingsley.

The bill directs the Secretary of the Interior to grant an increase of pension to Thomas G. Kingsley, formerly colonel of the Twenty-sixth Connecticut Volunteers, equal to the special rate provided for the loss of both eyes, or both feet or hands.

Mr. REAGAN. I call for the reading of the report.

The report was read, as follows:

It appears from the evidence that the petitioner was formerly colonel of the Twenty-sixth Regiment Connecticut Volunteers, and at the attack at Port Hudson, during the late war, he was shot in the head. The Commissioner of Pensions graded the petitioner at total disability, and allowed him $30 per month, the highest sum he could award him under existing laws.

The petitioner claims, however, that his pension is inadequate, and out of proportion to the injuries from which he is suffering, and when his condition is considered, there seems to be some show of justice in his claim; if this is conceded, then Congress alone must give relief, as the Commissioner of Pensions has done all in his power under the laws to give the petitioner an adequate rate of pension.

The condition of the petitioner may be briefly stated as follows, and the nature of his disability:

The bullet entered his head just below the left eye, and came out about one inch from the center of his right ear, shattering in its course a large portion of the upper jaw, and taking off the front part of the roof of the mouth; it also cracked the right cheek-bone to the right eye, tore a hole through the right nostril, and destroyed all of the teeth in the lower jaw. When he wants to drink he has to hold up his head and let the liquid run down his throat, otherwise it would go into the nostril. As may be imagined, he cannot chew nor masticate his food, and is compelled to eat only soft food, and is almost constantly under medical treatment as a result. The petitioner also alleges that, previous to entering the United States service, he was a teacher by profession, and that he is debarred from obtaining a livelihood by his profession because of his inability to articulate correctly.

By an act approved June 18, 1874, which was an amendment to the pension laws, a special grade of disability was established, whereby persons who require the personal attendance of another, being helpless by reason of losing the sight of both eyes, or the use of both hands or feet, were allowed the sum of $50 per month.

While the disability of the petitioner does not come strictly within the character of the grade specially mentioned and could not be construed so by the Commissioner of Pensions, they are nevertheless, in some respects, full as severe. He does not require the same amount of personal assistance, but he suffers more in consequence of not being able to partake of food and drink the same as they. Although they may have lost their limbs, having good food and digestive organs, they may maintain health; but this is denied the petitioner.

When the whole case of the petitioner is considered, the exceptional character of his injuries and the effect of the same as described above, your committee respectfully report the accompanying bill, and recommend its passage.

There being no objection, the bill was laid aside, to be reported to the House with a recommendation that it pass.

CATHARINE FERRY.

The next business on the Private Calendar was the bill (H. R. No. 703) granting a pension to Catharine Ferry.

The bill, which was read, authorizes and directs the Secretary of the Interior to place on the pension-roll, subject to the provisions and limitations of the pension laws, the name of Catharine Ferry, mother of Sylvester Ferry, late a corporal in Company I, One hundred and forty-sixth Regiment New York Volunteers.

The report was read, as follows:

That Catharine Ferry is the mother of Sylvester Ferry, deceased, formerly a corporal in Company H, Fifth New York Volunteers; that he was her only surviving son, and was unmarried at the time of his death, and had always remained single; she was also dependent upon him for support. On May 5, 1864, at the battle of the Wilderness, Ferry was captured and sent to Florence, South Carolina, a prisoner, where he remained until paroled, at Charleston, December 16, 1864. When paroled he was suffering from frozen feet, and was, in consequence, admitted to hospital at Annapolis, Maryland, to be treated for the same. He was discharged from service June 22, 1865, and was subsequently treated for gangrene of the feet, caused by their having been frozen. This is clearly proven. He subsequently died, November 3, 1867, of consumption, as proved by evidence of Dr. H. H. Gregory, who says the disease was undoubtedly caused by privations and exposure in southern prisons. The mother claims that death was caused by gangrene of the feet, caused by the exposure and privation. All the evidence goes to show that the primary cause of his death was the same, namely, exposure and privation while a prisoner, and in this opinion the Commissioner of Pensions concurs. The Commissioner, notwithstanding his opinion, called for further proof concerning Ferry's celibacy, his medical treatment from discharge to date of death, and the dependence of the mother upon the support of her son, which was not complied with to his full satisfaction within the limited time.

The evidence in the possession of your committee seems to fully establish the claim made, and there seems no doubt that the claim for pension is a just one. The committee therefore make a favorable report on the bill and recommend its passage.

There being no objection, the bill was laid aside, to be reported to the House with the recommendation that it pass.

MRS. AMANDA RAINS.

The next business on the Private Calendar was the bill (H. R. No. 2218) for the relief of Mrs. Amanda Rains.

The bill, which was read, authorizes and directs the Secretary of the Treasury to pay to Mrs. Amanda Rains, widow of Dr. Jonathan Rains, deceased, the sum of $120, in full compensation and satisfaction of the claim for the services of said Jonathan Rains as acting assistant surgeon of the Army at Marshall, Illinois.

The report was read, as follows:

That Company G, of the Forty-second Wisconsin Volunteer Soldiers, of the late civil war, were on detached duty at Marshall, in the State of Illinois, in the latter part of the year 1864. Considerable sickness prevailed among said soldiers, and on the 31st day of October, 1864, one F. Wallace, deputy provost-marshal, who had command of said post at Marshall, entered into a written contract with Dr. J. Rains, late husband of the claimant, by the terms of which said Dr. Rains was required to give his professional attention and services to the sick soldiers aforesaid, at the price of $40 per month, and to furnish all needful medicines at an additional sum of 50 per cent. of the price agreed upon for his professional services.

The testimony of five different witnesses clearly establishes the rendition of almost constant attention of Dr. Rains to said soldiers; that many of them were sick, and one had a broken leg; that they needed medical attention. The account, as made out under the contract, was duly certified to by the captain (A. I. Porter) who commanded the company, certifying the account to be just and correct.

The account, as itemized, shows daily visits to from two to eleven sick soldiers during the time charged for, to wit, two months.

The proper accounting officer for this character of claims refused to approve and certify the same for payment, simply because the contract was not made by a district provost-marshal, instead of a deputy. The necessity for the services rendered, and that they were rendered as charged, is nowhere denied. The objection resting alone upon technical grounds, your committee are unable to see the justice, while it may be quite conformable to military law, in refusing a just compensation for the services rendered and medicines furnished under the contract. Soldiers who have volunteered their services in the defense of their country, who are suffering from the maladies of camp life and broken limbs, should not be required to wait for relief until all superfluous formalities may be gone through with. Your committee therefore recommend the passage of the accompanying bill.

There being no objection, the bill was laid aside, to be reported to the House with the recommendation that it do pass.

ASSISTANT SURGEON THOMAS F. AZPELL, UNITED STATES ARMY.

The next business on the Private Calendar was the bill (S. No. 408) for the relief of Assistant Surgeon Thomas F. Azpell, United States Army.

The bill, which was read, provides that the payments made by the Department of the Interior to Assistant Surgeon Thomas F. Azpell, United States Army, for medical services rendered the Hoopa Valley Indians at the request of said Department in the absence of other medical aid, are hereby sanctioned; and the said Assistant Surgeon Azpell is authorized to retain the compensation already paid, anything in the statutes of the United States to the contrary notwithstanding.

There being no objection, the bill was laid aside, to be reported to the House with the recommendation that it do pass.

LIEUTENANT ALEXANDER ANDERSON.

The next business on the Private Calender was the bill (H. R. No. 3067) for the relief of Alexander Anderson, late first lieutenant Fourteenth New York Volunteer Cavalry.

The bill, which was read, authorizes the Secretary of War to direct the recognition of Alexander Anderson as a first lieutenant in the Fourteenth Regiment of New York Volunteer Cavalry, and his payment, out of any moneys in the Treasury not otherwise appropriated, of the full pay and allowances of a first lieutenant of cavalry, from

the 4th day of December, 1863, to the 3d day of March, 1864, deducting therefrom any sum received by him as an enlisted man of said regiment during the said period.

The report was read, as follows:

It appears, from the proofs in this case, that Lieutenant Alexander Anderson performed duty as first lieutenant Fourteenth New York Volunteer Cavalry, from December 4, 1863, to March 3, 1864, when he was mustered out of service for no cause, and without any knowledge on his part, he having faithfully performed his duties as such officer during the period named. The Adjutant-General's Office approve of the accompanying bill, and, as appears from the accompanying evidence, made the draught of the same.

In view of the facts the committee ask the passage of the accompanying bill.

There being no objection, the bill was laid aside, to be reported to the House with the recommendation that it do pass.

LIEUTENANT FREDERICK H. E. EBENSTEIN.

The next business on the Private Calendar was the bill (H. R. No. 3342) for the relief of First Lieutenant Frederick H. E. Ebenstein, Twenty-first Infantry, United States Army.

The bill, which was read, authorizes and directs the proper accounting officers of the Treasury to allow to Frederick H. E. Ebenstein, first lieutenant Twenty-first United States Infantry, a credit in his accounts of the sum of $400; the same being alleged to have been paid over to Major John S. Walker, then a paymaster United States Army, who was lost on board the steamer George S. Wright, off the coast of British Columbia, on or about January 27, 1873; provided that the proper proofs of loss are furnished said officers.

There being no objection, the bill was laid aside, to be reported to the House with the recommendation that it do pass.

SAMUEL B. STAUBER AND OTHERS.

The next business on the Private Calendar was the bill (H. R. No. 767) for the relief of Samuel B. Stauber and others.

The bill, which was read, provides for the release and discharge of the following persons from the following taxes assessed on the brandy distilled by them in the fall of 1868, to wit: Samuel B. Stauber, from the payment of $262.50; J. J. Petree, from the payment of $262.50; William Shouse, from the payment of $262.50; John G. Jones, from the payment of $262.50; and John H. Stipe, from the payment of $246.67; these sums having been paid respectively by them as a special tax in the months of August and September, 1868, over and above the amount of the special tax required of distillers of brandy under orders of the Commissioner of Internal Revenue, dated on or about October 12, 1868; and the collector of the fifth collection district of North Carolina, or other proper revenue officer, is hereby authorized and directed to credit their respective taxes assessed on the brandy distilled by them as aforesaid with said sums overpaid by them in their special tax as aforesaid.

The report was read, as follows:

The persons named in the bill for relief were engaged in the business of distilling brandy from fruits. By the act of July 20, 1868, a special license tax of $480 per annum was imposed upon distillers. In the month of August, 1868, these parties, respectively, paid this special tax to cover a period of nine months, except Stipe, whose payment was for eight months. The act also contained a provision authorizing the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to exempt this class of distillers from the payment of the special tax. Owing to some ambiguity in the statute in regard to this provision, the Commissioner neglected to act upon the authority to abate or remit the tax, until the opinion of the Attorney General was had upon the question. Meanwhile the payment of the tax was exacted from these parties by the revenue authorities. The Attorney General, by his opinion given October 10, 1868, sustained the construction of the act which empowered the Commissioner to abate the tax, and on the 12th of October, 1868, the Commissioner made his order to that effect, in terms as follows:

TREASURY DEPARTMENT, OFFICE OF INTERNAL REVENUE,
Washington, October 12, 1868.

In accordance with the opinion of the Attorney-General of the United States, rendered on the 10th instant, distillers of brandy from apples, peaches, or grapes, exclusively, are hereby, with the approval of the Secretary of the Treasury, exempt from so much of the provisions of section 59 of the act of July 20, 1868, as imposes a special tax of $400 upon distillers producing one hundred barrels, or less, of distilled spirits, and of $4 per barrel for every barrel in excess of one hundred barrels. This exemption is additional to the exemptions heretofore specified in series 4, No. 7, and assessors and collectors will govern themselves accordingly.

Approved:

HUGH McCULLOCH,
Secretary of the Treasury.

In the administration of this order no assessments of the special tax were made on this class of distillers subsequent to the date of the order, and the taxes assessed and not paid up to that time were remitted, or if paid subsequently were reimbursed; but where payments had been made prior to October 12, 1868, no authority was given to reimburse. The collection of the tax of these parties was strictly legal and the Government has a full legal right to retain it, but to do so would be invidious and unjust.

Subsequently, in 1868 or 1869, these parties became liable for certain deficiency taxes, and the then collector of internal revenue for the district of their residence consented that the special tax payments might be allowed in set-off to such deficiency taxes. This arrangement, however, the Department has since disapproved as beyond its authority, and proceedings are now pending in court at the suit of the United States to recover the full amount of the deficiency taxes. The relief asked for is that in the settlement of taxes due the United States the parties may have credit for the amounts severally paid by them for special tax as set forth.

In the opinion of the committee the relief should be granted, and they therefore recommend that the bill pass.

There being no objection, the bill was laid aside, to be reported to the House with the recommendation that it do pass.

DOCTOR P. F. REUSS.

The next business on the Private Calendar was the bill (H. R. No. 3513) granting a pension to Dr. P. F. Reuss.

The bill, which was read, authorizes and directs the Secretary of the Interior to place on the pension-roll, subject to the provisions and limitations of the pension laws, the name of Dr. P. F. Reuss, late surgeon of the Seventh Regiment New York Volunteers, and to date such pension from the date of his discharge from the United States service.

The report was read, as follows:

From the evidence on file and submitted to the committee it appears that Dr. Reuss became an assistant surgeon of the Fifty-second Regiment New York Volunteers in 1862, and because of the very unpleasant relations existing between him and the colonel of that regiment, Colonel Paul Frank, he tendered his resignation. He received an honorable discharge, but, in order to secure such discharge, a cause was assigned, which was that he was suffering from chronic rheumatism.

The petitioner afterward became surgeon of the Seventh Regiment New York Volunteers, and served as such until August 11, 1865, the close of the war.

The petitioner, in his affidavit, avers that he was perfectly healthy before he became attached to the Seventh Regiment; but while in that regiment, in the line of his duty, by reason of the forced marches, bivouacs, exposure to all kinds of weather and the fatigues incident to such service, he contracted the following disabilities: first, chronic rheumatism; second, total deafness of the left ear and partial of the right; third, nearly total loss of sight of the right eye and partial of the left; fourth, that during an engagement in the rifle-pits before Petersburgh he received a blow in the neck from the butt-end of a rifle, which resulted in *tumor adiposus*. He further avers that, by reason of the above disabilities, he is unable to practice his profession.

The claim has been before the Commissioner of Pensions, who rejected it on the ground that the record of his discharge from the Fifty-second Regiment finds him suffering from chronic rheumatism, when, in his application, he claims to have been free from disease until a later period, after becoming attached to the Seventh Regiment, and that there is no satisfactory evidence showing when or where the other disabilities were incurred.

The evidence is sufficient to prove that, while the record is correct as to the reason assigned for accepting his resignation, he is also correct in his statement why such reason was given; and, further, that he is really suffering from disabilities incurred while surgeon of the Seventh Regiment. It may be proper here to add, also, that, under the circumstances, as the resignation at that time would not be accepted of any medical officer of the Army, except upon certificate of disability, the action was excusable, especially when it is remembered he became attached to another regiment, and served faithfully until the end of the war. It was the only way he could escape from the annoyances of a superior officer, who, it appears, was embittered against him.

William Kragen, late captain in the Seventh Regiment New York Volunteers, testifies that he knew petitioner was very ill while surgeon of the regiment, and that his illness was caused by hardships and exposures endured between September, 1864, and April, 1865, and avers that, by reason of such exposures and hardships, Dr. Reuss contracted rheumatism, deafness, and loss of eyesight.

Dr. B. Weigert testifies that he has professionally treated the petitioner, ever since his discharge from the Seventh Regiment, for the various diseases complained of, and that he believes they originated in the service of the United States.

The board of examining surgeons at New York, on the 4th of February, 1874, composed of Drs. Hogan, Furguson, and Smith, certify that, after carefully examining Dr. Reuss, they find him suffering from rheumatism, affection of the eyes and of the ears, and give as their opinion that the disabilities originated in the service. This seems to establish the fact that he is suffering as he claims, and should have a pension.

The evidence of eight or ten of the former officers of the Fifty-second Regiment is to the effect that Dr. Reuss, while assistant surgeon of their regiment, was never known to them to have been sick a day or to have complained of sickness, and that "it was well known that his resignation was caused by reason of the ungentlemanly treatment he experienced at the hands of Colonel Frank," and that any record that he was sick during that period is erroneous.

Dr. Rappold, surgeon of the Fifty-second Regiment, testifies, in addition, that he discharged Dr. Reuss on the formal ground of chronic rheumatism, in accordance with orders from the medical director of the corps, on account of the troubles existing between Dr. Reuss and Colonel Frank.

Colonel H. M. Karples, the successor of Frank, testifies to about the same condition of things, and says there was no other escape for Dr. Reuss. Other evidence shows that Reuss was not affected with rheumatism while in the Fifty-second Regiment.

Drs. Krog, Boecker, and Muhr, of New York, testify that they were well acquainted with Dr. Reuss, the petitioner, before he became attached to the Seventh Regiment, and aver that, to their own knowledge, he was in sound and perfect health.

The only reasonable conclusion to be arrived at from the evidence is that to avoid harsh treatment from Colonel Frank, the petitioner was compelled to send in his resignation as assistant surgeon of the Fifty-second Regiment New York Volunteers, and as no resignation would be accepted unless based upon a medical certificate of disability, out of sympathy for the petitioner the surgeon of the regiment and the medical chief of the corps assigned rheumatism as a cause, or at least approved of it as a reason, and allowed him to retire from the service honorably. From other evidence, there seems to be no reason to doubt that he afterward became surgeon of the Seventh New York Volunteers, and while in that regiment contracted the diseases which have disabled him.

The committee therefore recommend the passage of the accompanying bill.

There being no objection, the bill was laid aside, to be reported to the House with the recommendation that it do pass.

CHARLES H. JOHNSON.

The next business on the Private Calendar was the bill (H. R. No. 969) for the relief of Charles H. Johnson, late first lieutenant of the Fifteenth Michigan Infantry.

The bill, which was read, authorizes and directs the Paymaster-General of the United States Army to pay, out of any money appropriated for the payment of the Army, to Charles H. Johnson, late first lieutenant in the Fifteenth Michigan Infantry, the pay of a first lieutenant of infantry from the 1st day of September, A. D. 1864, to the 1st day of January, 1865, the date of his muster, first deducting whatever sum may have been paid said Johnson for service during that time.

The report was read, as follows:

It appears from evidence submitted to your committee that said Charles H. Johnson was enrolled and mustered as quartermaster-sergeant Fifteenth Michigan Volunteers on the 8th of December, 1862; that he was commissioned first lieutenant of said regiment, to take effect November 1, 1864, and actually entered upon the duties of that rank, by order of his regimental commander, on the 9th of November, 1864. By reason of the movement of his command on the march of Sherman's army

from Atlanta to Savannah, Georgia, during which march no mails could be received, he did not get his commission until about the 1st of January, 1865 and was mustered as of that date. He had, however, commanded a company during this march, and but for the impossibility of receiving his commission would doubtless have been mustered as of the day of his entering upon duty as first lieutenant.

It appears, therefore, to the satisfaction of your committee, that he was duly commissioned; that there was a vacancy of his commissioned rank in a company of the legal number; that he entered upon and discharged the duties of his rank, and was not mustered by reason of an impossibility of his commission reaching him, and not through any fault or neglect of his own.

The committee therefore recommend the passage of the accompanying bill, with an amendment striking out the "1st day of September" and inserting the "9th day of November," the date of his actual entry upon the duties of first lieutenant.

The amendments of the committee were agreed to, as follows:

Strike out in line 8 the words "1st day of September," and insert in lieu thereof "9th day of November," and in line 9 strike out the words "date of his commission."

There being no objection, the bill was laid aside, to be reported to the House with the recommendation that it do pass as amended.

CHANCY J. POORE.

The next business on the Private Calendar was the bill (H. R. No. 2259) for the relief of Chancy J. Poore, late a private in Battery G, First New York Light Artillery.

The bill, which was read, directs the Secretary of War to correct the entry made as the cause of the discharge from the service of the United States of Chancy J. Poore, late a private in Battery G, First New York Light Artillery, so as to show the cause of such discharge to have been "phlebitis," instead of "diabetes" as erroneously entered in said record.

The report was read, as follows:

That said Poore enlisted in Battery G, First New York Artillery, in November, 1861, in apparent sound and vigorous health. Soon after the battle of Antietam he suffered a painful attack in his right leg and hip, which, in time, disabled him in both legs, and after several months' confinement to the hospital he was discharged March 3, 1863, for "diabetes of five months' standing."

It is alleged that this designation of the complaint was a mistake, (probably a clerical error,) as the development of the disease was accompanied by no symptoms that attend cases of diabetes. On the contrary several surgeons, some of them examining surgeons of the Pension Bureau, testify that it was an undoubted case of phlebitis.

The petitioner has been disabled from his discharge to the present time. He suffers from varicose veins and swollen and ulcerous condition of the legs.

Your committee are satisfied that there was an error in the designation of the nature of the disease for which he was discharged, and accordingly recommend the passage of the accompanying bill.

There being no objection, the bill was laid aside, to be reported to the House with the recommendation it do pass.

MARSHAL P. THATCHER.

The next business on the Private Calendar was the bill (H. R. No. 3374) for the relief of Marshal P. Thatcher.

The bill, which was read, authorizes and directs the Secretary of the Treasury to pay to Marshal P. Thatcher, late of the Second Michigan Cavalry, out of any money in the Treasury not otherwise appropriated, the sum of $150 in full satisfaction for the loss of a horse, April 15, 1862, while in the military service of the United States.

The report was read, as follows:

It appears from affidavits filed in this case that said Thatcher, on the 15th of April, 1862, then second lieutenant of said Second Michigan Cavalry, while on a Government transport with the regiment near Hamburgh Landing, on the Tennessee River, had his horse so severely wounded in the stifle-joint by breaking through the defective deck of the transport as to render the said horse unserviceable and valueless. The horse was pronounced incurable by the veterinary surgeon of the regiment, and abandoned on disembarkation from the transport.

It is in proof that the horse was purchased by Lieutenant Thatcher, one week before, of Captain A. P. Campbell, of same regiment, at a price of $150.

The committee are satisfied that the horse was private property of Lieutenant Thatcher, and was incurably wounded while in the service, and through no fault or negligence of its owner, Lieutenant Thatcher. The excellent character of this officer is certified to by Lieutenant-General P. H. Sheridan, who subsequently commanded the regiment and upon whose staff Lieutenant Thatcher for a time served.

Lieutenant Thatcher swears that this claim has been for years in the hands of agents, but was rejected in the War Department, on the ground that the horse had not been mustered after becoming the property of Lieutenant Thatcher. This is explained by the affidavit of Lieutenant Thatcher that during his less than one week's ownership of the horse he had had no opportunity on the march to muster it. The committee think the horse should be paid for by the United States, the case coming within the provisions of the law at that time and now in force in relation to horses lost in service.

The committee respectfully recommend the passage of the accompanying bill.

There being no objection, the bill was laid aside, to be reported to the House with the recommendation that it do pass.

GEORGE MARTZ.

The next business on the Private Calendar was the bill (H. R. No. 3436) granting a pension to George Martz.

The bill, which was read, authorizes and directs the Secretary of the Interior to place on the pension-roll, subject to the provisions and limitations of the pension laws, the name of George Martz, dependent father of Alfred Martz, late a private in Company A, Fifty-fifth Pennsylvania Volunteers.

The report was read, as follows:

Alfred Martz, the son of George Martz, enlisted in the Fifty-fifth Regiment Pennsylvania Volunteers, on the 28th of August, 1861, and was mustered in at Harrisburgh on the 30th of October, and was assigned to duty in Company A. He served in the Fifty-fifth until November 30, 1863, and was honorably discharged to allow him to re-enlist as a veteran. In this service he died in "the line of duty" at Marysville, Virginia, on the 10th of August, 1865, of congestive chills. Ample evidence is furnished to Commissioner of Pensions showing that previous to the soldier's enlistment, and also while in the service, he contributed to his parents' support. The claim was rejected by the Commissioner "because it appears that the soldier's mother is still living and entitled to pension, could she show her dependence upon and support by the son." This is not denied, but evidence is furnished, by the affidavits of two of the residents of the township in which George Martz lives, that the mother "deserted her husband some time in the month of June, 1869, and has never returned to him, nor lived with him since," that the said George Martz "was stricken with paralysis in 1872, and since that time has been helpless and unable to do anything for his support, and is now dependent on charity." This is confirmed by a letter from the postmaster at Hemlock, Pennsylvania, (the town in which Martz lives,) in reply to the Commissioner of Pensions, under date of May 29, 1875.

In view of these facts it is the unanimous opinion of the committee that this is a clear case where it is the province and duty of Congress to step in and direct the Commissioner of Pensions to award to the "dependent father" the pension the "dependent mother" would be entitled to under similar circumstances, and therefore report back said bill and recommend its passage.

There being no objection, the bill was laid aside, to be reported to the House with the recommendation that it do pass.

ANSON K. YOUNG.

The next business on the Private Calendar was the bill (H. R. No. 2237) granting a pension to Anson K. Young.

The bill, which was read, authorizes and directs the Secretary of the Interior to place upon the pension-roll, subject to the provisions and limitations of the pension laws, the name of Anson K. Young, of Grant County, Wisconsin, late a private in Company I, Forty-third Regiment of Wisconsin Volunteers, and pay him a pension from and after the passage of this act.

The report was read, as follows:

The evidence now on file shows that the soldier enlisted August 21, 1864, and was then a healthy, sound man. This is proved by Dr. George E. Robertson, his family physician, as well as by the evidence of several non-professional witnesses. He was first taken sick at or near Johnsonville, Tennessee, November 8, 1864, beginning with chills and fever, followed by chronic diarrhea and a complication of disorders which have finally resulted in paralysis of one side, totally disabling him. His sickness is shown connectedly by the several hospital records, by the evidence of his captain, George Jackson, and Surgeon George W. Eastman, from all of which it conclusively appears that the soldier was sound when he entered the service; that he contracted his diseases in the service and in the line of his duty. It is also conclusively shown by his physician and neighbors that from December, 1864, to May, 1865, he was at home on sick leave, and wholly unable to rejoin his regiment without endangering his life, and that he is now paralyzed on one side and wholly disabled from earning his living by manual labor.

The committee, believing that the evidence abundantly shows this to be a meritorious case, and that the evidence, fairly considered, ought long ago to have placed his name on the pension-rolls, report back said bill and recommend its passage.

There being no objection, the bill was laid aside, to be reported to the House with the recommendation that it do pass.

JAMES M. BAILEY.

The next business on the Private Calendar was the bill (H. R. No. 2519) granting a pension to James M. Bailey.

The bill was read. It authorizes and directs the Secretary of the Interior to place on the pension-roll, subject to the provisions and limitations of the pension laws, the name of James M. Bailey, late private Company E, One hundred and seventh Illinois Volunteer Infantry, at the rate of $8 per month from and after the passage of the act.

The report was read, as follows:

The committee find the evidence in this case conflicting, especially as to the manner in which the disability was occasioned. The soldier signs his name by mark, and may not have known just what was written for him to swear to, and had necessarily to depend upon the reading of it by the person swearing him; but if either of his statements is true, he is clearly entitled to be pensioned. He states that he was ordered on duty, and in taking his gun from the stack, another gun than his own, which had been left loaded, was discharged, wounding his hand, rendering it necessary to amputate one finger and disabling another. This statement is fully corroborated by J. M. Holmes, his orderly sergeant, who was present when it happened.

John Wright, surgeon of the regiment, swears that he amputated the middle finger and dressed the wound. Griffin M. Bruffett, first lieutenant at the time of the accident and subsequently captain, swears that he was in command at the time, and that it was done by drawing his gun from the stack of arms, thereby discharging a comrade's gun which had been negligently left in the stack loaded. All these witnesses agree as to the time, place, and cause of the disability. It is true, the lieutenant swears to a different statement, that the soldier, after coming in from picket duty, was by order drawing the load from his gun preparatory to cleaning it for immediate use against the enemy. It is true, the petitioner and his lieutenant make this conflicting statement, but their other statement is corroborated by the orderly as well as the surgeon, and if either statement is true he ought to be pensioned. If the first statement was a mistake, surely it was right to correct it, and the second or corrected statement is corroborated by the orderly and surgeon, and all agree that the disability was incurred in the service and in the line of duty.

The committee therefore report back said bill and recommend its passage.

There being no objection, the bill was laid aside, to be reported favorably to the House.

ELIZA A. BLAZE.

The next business on the Private Calendar was the bill (H. R. No. 3575) granting a pension to Eliza A. Blaze, widow of Abner T. Blaze, late a private in Company C, Thirteenth Indiana Cavalry Volunteers.

The bill was read. It authorizes and directs the Secretary of the Interior to place on the pension-roll, subject to the provisions and limitations of the pension laws, the name of Eliza A. Blaze, widow of Abner T. Blaze, late a private in Company C, Thirteenth Indiana Cavalry Volunteers.

The report was read, as follows:

The committee find that there is no dispute as to the military service and death of the soldier, but there is some conflict in the testimony as to whether the soldier was away on furlough or on detail under the command of the sergeant of the company. But the proof is very clear that he was, on or about the 7th day of April, 1864, on the train from Indianapolis to Madison, Indiana, and, on the way, fell from

the cars and was killed. The evidence of Sergeant Joseph G. Marshall, of said company, shows that the soldier had a furlough, and that he procured it himself. He also swears that he had been ordered to make the trip on the train with a detail to arrest deserters, and that he had under his command for that purpose the deceased and another soldier of the same company; that, by his order, the men went out on the platforms at the several stations on the way in order to identify deserters, if any happened to be in or around the stations; and that, in the discharge of that duty, the soldier, by a jar, was precipitated between the cars and was killed.

All this is corroborated by the affidavit of Thomas Johnson, sergeant of the same company, who was on the train at the time, and who swears positively that deceased not only had a furlough to go to Madison on private business, but was at the time of his death, on detail under Sergeant Marshall, and was then actually on the platform by command of the sergeant, Marshall, for the purpose as stated by Marshall; and the main facts are further corroborated by Captain McLain, as to deceased having a furlough, and other witnesses testify to the same facts; and while there is an apparent conflict in the testimony of Sergeant Marshall, yet his veracity and general good character are supported by the testimony of four credible witnesses, his neighbors in Jefferson County, Indiana, and his testimony is corroborated and supported by Sergeant Johnson, of said company. The committee find no sufficient reason for discrediting his testimony, especially as both statements may have been true; that the deceased not only had a furlough, but was, at the same time, doing duty on the detail, as stated by several witnesses. But admitting that some of the statements may not be fully reconciled, yet the soldier was killed while in the service and in the line of his duty; and if there be a doubt as to the latter point, his widow is justly entitled to the benefit of the doubt, as the testimony further shows that he was a sober, industrious man, and a good soldier.

The committee therefore report back said petition with the accompanying bill, and recommend its passage.

There being no objection, the bill was laid aside, to be reported favorably to the House.

MARY F. M'KEEVER.

The next business on the Private Calendar was the bill (H. R. No. 3576) granting a pension to Mary F. McKeever.

The bill was read. It authorizes and directs the Secretary of the Interior to place on the pension-roll, subject to the provisions and limitations of the pension laws, the name of Mary F. McKeever, widow of Commodore Isaac McKeever, late of the United States Navy, and pay her a pension of $50 per month from and after the passage of the act.

The report was read, as follows:

The committee find from the evidence that there is no dispute as to the naval service and death of the commodore in the service and in the line of duty, nor is there any question as to the right of his widow to pension; in fact she was admitted to the rolls at the rate of $50 per month and was paid according to that rate for about fifteen years, when, by the construction given to the acts granting pensions, passed on and since July 14, 1862, she was reduced to $30 per month. It will be admitted that she was properly admitted to pension at the rate of $50 per month, and that she was reduced to $30 per month in obedience to what was regarded as the intention of the Congress in passing section 4712 of the Revised Statutes. But it must be borne in mind that naval pensions are now paid from the naval-pension fund, which has accumulated from the energy and gallantry of our Navy, of which Commodore McKeever was a distinguished member; and following the precedents set in similar cases, the committee believe the widow should be restored to her pension of $50 per month.

They therefore report back said bill with a substitute, and recommend its passage.

Mr. FORT. The report seems to be against the claim. I object.

CATHARINE BARNES.

The next business on the Private Calendar was the bill (H. R. No. 3577) granting a pension to Catharine Barnes.

The bill was read. It authorizes and directs the Secretary of the Interior to place on the pension-roll, subject to the provisions and limitations of the pension laws, the name of Catharine Barnes, widow of Joseph Barnes, late a private of Company D, Seventy-seventh Regiment of Pennsylvania Volunteers.

The report was read, as follows:

The testimony shows that Joseph Barnes enlisted on the 9th day of September, 1861, as a private in Company D, Seventy-seventh Regiment of Pennsylvania Volunteers, and that he was honorably discharged May 2, 1865. The evidence shows that said Barnes was several times wounded during said service. The testimony of the adjutant of his regiment shows that in July, 1864, the said soldier was wounded, causing the loss of his left eye, and that subsequently, while in the line of his duty, he contracted disease of his bowels from exposure in active campaign duty; that said disease continued to increase, and finally rendered him unfit for duty and caused his discharge. The testimony of the examining surgeon, who examined said Barnes previous to his death, shows that at that time said soldier was suffering from loss of left eye, impairment of sight of right eye, and disease of prostate gland. The disease finally assumed the form of a cancerous tumor of the lower bowel and enlargement of the prostate gland, from which the soldier died. His marriage with petitioner is duly established by the evidence. The testimony of Dr. Zeigler, his family physician, shows that he was a sound and healthy man at the time of his enlistment. The testimony of Drs. Carpenter and King traces fatal disease directly to the disease contracted by him in the Army; in fact, shows that it was simply the development of the disease for which he was discharged.

The committee are of the opinion that the said Joseph Barnes died of disease contracted in the military service of the United States in the line of his duty, and that his said widow, Catharine Barnes, is entitled to a pension. They therefore report the accompanying bill (H. R. No. 3577) as a substitute for said House bill No. 1103, and recommend its passage.

There being no objection, the bill was laid aside, to be reported favorably to the House.

ELIZA M'CONNEL.

The next business on the Private Calendar was the bill (H. R. No. 3578) granting a pension to Eliza McConnel.

The bill was read. It authorizes and directs the Secretary of the Interior to place on the pension-roll, subject to the provisions and limitations of the pension laws, the name of Eliza McConnel, widow of William McConnel, late captain of Company E, Ninety-seventh Regiment of Pennsylvania Volunteers.

There being no objection, the bill was laid aside, to be reported favorably to the House.

EUGENE O'SULLIVAN.

The next business on the Private Calendar was the bill (H. R. No. 3579) granting an increase of pension to Eugene O'Sullivan, late sergeant Company K, Eighteenth Missouri Volunteer Infantry.

The bill was read. It authorizes and directs the Secretary of the Interior to place on the pension-roll, subject to the provisions and limitations of the pension laws, the name of Eugene O'Sullivan, late sergeant Company K, Eighteenth Missouri Infantry, at the rate of $18 per month.

There being no objection, the bill was laid aside, to be reported favorably to the House.

RACHEL A. CULLISON.

The next business on the Private Calendar was the bill (H. R. No. 3580) granting a pension to Rachel A. Cullison, widow of Richard W. Cullison, late a private in Company D, Forty-fifth Regiment Ohio Volunteers.

The bill was read. It authorizes and directs the Secretary of the Interior to place on the pension-roll, subject to the provisions and limitation of the pension laws, the name of Rachel A. Cullison, widow of Richard W. Cullison, late a private in Company D, Forty-fifth Regiment Ohio Volunteer Infantry.

There being no objection, the bill was laid aside, to be reported favorably to the House.

JOSEPH ODELL.

The next business on the Private Calendar was the bill (H. R. No. 838) granting a pension to Joseph Odell.

The bill was read. It authorizes the Secretary of the Interior to place on the pension-roll, subject to the provisions and limitations of the pension laws, the name of Joseph Odell, late of Company I, Sixty-fifth Regiment of the Indiana Volunteer Infantry.

Mr. HOLMAN. I call for the reading of the report.

The report was read, as follows:

Joseph Odell enlisted in Company I, Sixty-fifth Indiana Volunteers, August 1, 1863, as a veteran volunteer, he having previously served in Company F, Fourteenth Indiana Volunteers. He was discharged May 24, 1865.

Applicant alleges disability from injuries received while acting as mounted infantry in September, 1863, by fall of horse, in breast, left shoulder, side, and hip. Claim was rejected because medical examination failed to show that disability arose from cause alleged.

The testimony of Samuel H. Mulholland, who was first sergeant of claimant's company at the time injury was received and who was afterward captain of same company, and also the testimony of Dr. J. Scudder, who was at that time assistant surgeon of claimant's regiment, entirely corroborate the statement in claimant's application for pension. Further, the certificate of the examining surgeon at the Soldiers' Home at Dayton, Ohio, in July, 1874, shows that claimant was suffering from loss of hearing of left ear, dullness over upper and middle lobes of left lung, loss of power of left arm and leg, and considerable emaciation, which last they attribute to chills of long standing. Still, the medical referee does not think that any of his disabilities are traceable to the service.

Since this decision of the referee, claimant has been further examined by Dr. McDermot, surgeon of the National Home for Disabled Soldiers, at Dayton, Ohio, who certifies that claimant is suffering from hernia, deafness in both ears, loss of power amounting to partial paralysis of left shoulder and hip, a large swelling between the scapula and spine; and all, he thinks, traceable to the injury claimant sustained by the fall of the horse in September, 1863. He also suffers from a chronic bronchial cough and has much lameness in left leg. In short, he seems to be very badly used up; was a hearty man before entering the service; is now fifty-eight years old and a perfect wreck; is now and has been for two years an inmate of the Soldiers' Home at Dayton, Ohio.

The committee think his case a hard one, and feel that it can hardly err in making a favorable report and recommending the passage of the bill.

There being no objection, the bill was laid aside, to be reported favorably to the House.

MINERVA WILLIAMS ET AL.

The next business on the Private Calendar was the bill (H. R. No. 3581) granting a pension to Minerva Williams and her minor children.

The bill was read. It authorizes the Secretary of the Interior to place on the pension-roll, subject to the provisions and limitations of the pension laws, the names of Minerva Williams, Milton F. Williams, Amanda C. Williams, Milliann B. Williams, Minerva L. Williams, and Lorinda Williams, widow and minor children of Jesse Williams, late a private in Company H, Third Regiment Tennessee Mounted Volunteers.

There being no objection, the bill was laid aside, to be reported favorably to the House.

Mr. BLOUNT. I move that the committee rise and report the bills which have been favorably acted on.

CYNTHIA H. ABBOTT.

Mr. RUSK. Before the motion that the committee rise is put, I ask that by unanimous consent the committee go back to the bill (H. R. No. 3510) granting a pension to Cynthia H. Abbott.

There was no objection.

Mr. RUSK. I withdraw my objection and ask that the bill be reported favorably with the amendment which I send to the desk.

The Clerk read as follows:

Strike out all after the words "United States service" in line 7 with these words, "to date from the death of the said Augustus P. Abbott;" so that the bill will read:

That the Secretary of the Interior be, and he is hereby, authorized and directed to place on the pension-roll, subject to the provisions and limitations of the pension laws, the name of Cynthia H. Abbott, mother of Augustus P. Abbott, formerly a seaman in the United States service.

The amendment was agreed to; and the bill, as amended, was laid aside, to be reported favorably to the House.

JOHN J. ANDERSON.

Mr. CALDWELL, of Alabama. I ask that by unanimous consent the committee go back to the bill (S. No. 628) for the relief of John J. Anderson, surviving copartner of the firm of Anderson & White. This is a bill that was reported favorably by the Committee on War Claims. It was objected to by the gentleman from Missouri, [Mr. STONE,] but he has withdrawn his objection on the floor of the House.

Mr. HOLMAN. I ask that the bill may be read.

The bill was read. It authorizes the Secretary of the Treasury to pay, out of any money in the Treasury not otherwise appropriated, to John J. Anderson, surviving copartner of the firm of Anderson & White, the sum of $8,597.83, in full of all claims of said Anderson & White, or either of them, against the Government of the United States, for cotton belonging to said firm, impressed for and appropriated by the authority of the Government of the United States to the defenses of Nashville in August and September, 1862, and for all damages in connection therewith.

Mr. HOLMAN. I ask for the reading of the report; but as the report is quite voluminous, I hope the gentleman from Alabama will not press the bill at this time. Let us have an opportunity to examine the report. I hope the gentleman will allow the bill to stand over until the next day that the House is in Committee on the Private Calendar.

Mr. CALDWELL, of Alabama. This is a case which has received the favorable consideration of the Committee on War Claims of the Senate and also of the Committee on War Claims of the House. It is a meritorious case, and the bill should have been passed last session. It involves precisely the same principle as is involved in the case of Butler, Milber & Co., which passed the House without any objection.

The CHAIRMAN. Does the gentleman from Indiana insist upon his objection?

Mr. HOLMAN. This is one of a class of claims that ought to be carefully considered and looked into, therefore I must object.

Mr. KNOTT. This bill was objected to once before, and I believe now it requires the objection of more than one member to defeat its passage.

Mr. STONE. I objected to it last session, believing that it was the claim of another party. I know this to be a meritorious claim and I desire to withdraw my objection.

The CHAIRMAN. The Chair holds that to-day any member has a right to object, because it requires unanimous consent to consider any bill that has been passed upon the Private Calendar.

Mr. KNOTT. I was not aware that this bill had been passed.

Mr. LUTTRELL. I hope the gentleman from Indiana will withdraw his objection. I think that this is a meritorious case.

Mr. HOLMAN. I cannot withdraw my objection.

The question was then taken on Mr. BLOUNT's motion, and it was agreed to; there being on division—ayes 45, noes 29.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. WILSON, of Iowa, reported that the Committee of the Whole on the Private Calendar had had under consideration the Private Calendar, and had instructed him to report sundry bills to the House, some with and some without amendments, and with a recommendation that they do pass.

APPOINTMENT OF COMMITTEES.

The SPEAKER. Prior to proceeding with the business reported from the Committee of the Whole, the Chair desires to announce the appointment of committees, which the Clerk will now read.

The Clerk read as follows:

Committee to ascertain and report what are the privileges, powers, and duties of the House of Representatives in counting the votes for President and Vice-President of the United States: Mr. KNOTT of Kentucky, Mr. SPARKS of Illinois, Mr. TUCKER of Virginia, Mr. MAISH of Pennsylvania, Mr. BURCHARD of Illinois, Mr. SEELYE of Massachusetts, and Mr. MONROE of Ohio.

Committee to meet with the Senate committee as to the counting of the electoral votes for President and Vice-President: Mr. PAYNE of Ohio, Mr. HUNTON of Virginia, Mr. HEWITT of New York, Mr. SPRINGER of Illinois, Mr. MCCRARY of Iowa, Mr. HOAR of Massachusetts, and Mr. WILLARD of Michigan.

ANDREW JACKSON, (COLORED,) OF PITTSBURGH, PENNSYLVANIA.

The first bill reported from the Committee of the Whole on the Private Calendar was the bill (H. R. No. 3292) providing for a pension to be paid to Andrew Jackson, (colored,) of Pittsburgh, Pennsylvania.

The SPEAKER. If there be no objection, the titles of the bills will be read and the bills will be considered as passed.

Mr. STONE. I object. I ask for a vote upon each bill.

The question was put upon ordering the bill to be engrossed and read a third time; and being put, there were—ayes 58, noes 10.

Mr. STONE. That is no quorum.

The SPEAKER. The Chair will then order tellers.

Mr. DOUGLAS. I move that the House do now adjourn.

The question was put; and on a division there were—ayes 53, noes 47.

Mr. ROBBINS, of North Carolina. Let us have tellers.

The SPEAKER. The Chair will order tellers.

Mr. HOAR. I rise to a question of order. Is the gentleman entitled to tellers on a question of adjournment on which no quorum is necessary?

The SPEAKER. No quorum has voted, but the House can adjourn without a quorum. The Chair is willing, however, to entertain a call for tellers upon the question that the House adjourn.

Mr. DOUGLAS. On a motion to adjourn it does not require a quorum.

The SPEAKER. The Chair has so stated that less than a quorum of the House can adjourn, but as the gentleman from North Carolina [Mr. ROBBINS] asked a division, it implied that there were probably some gentlemen who had not voted or that the Chair had not been exactly accurate in counting the vote, and therefore the Chair was willing to entertain a call for tellers.

Mr. DOUGLAS. The point I make is that a majority of those present, when there is less than a quorum present, can adjourn.

The SPEAKER. Undoubtedly the gentleman is correct in that.

Mr. DOUGLAS. The House divided, and the Chair announced that a majority had voted in favor of adjournment.

The SPEAKER. The gentleman is correct in that also; but after that announcement was made the gentleman from North Carolina [Mr. ROBBINS] asked for tellers, and the Chair was quite ready to order them.

Mr. ROBBINS, of North Carolina. The House has the right to order tellers at any time.

The SPEAKER. The Speaker also has that right.

PROPERTY IN CHARGE OF THE CLERK.

The SPEAKER, by unanimous consent, laid before the House a letter from the Clerk of the House of Representatives, transmitting an inventory of property belonging to the United States in his possession December 4, 1876; which was laid on the table, and ordered to be printed.

CONTINGENT EXPENSES OF THE HOUSE OF REPRESENTATIVES.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Clerk of the House of Representatives, transmitting his report of the contingent expenses of the House; which was referred to the Committee on Appropriations, and ordered to be printed.

CLAIMS FOR INDIAN DEPREDATIONS.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of the Interior, transmitting, in compliance with the act of 1873, sundry claims for losses incurred by Indian depredations; which was referred to the Committee on Indian Affairs.

LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted as follows:

To Mr. CROUNSE, two weeks from January 3.

To Mr. STONE, for four days from the 26th instant.

To Mr. CABELL, for six days from the 27th instant on important business.

To Mr. BLISS, from the 23d instant to January 3.

To Mr. WILSON, of West Virginia, until January 23 on account of important business.

To Mr. WILSON, of Iowa, until January 23 on account of sickness in his family.

To Mr. TERRY, for the 27th and 28th of December.

ORDER OF BUSINESS.

The SPEAKER. The Chair now appoints as tellers upon the motion to adjourn Mr. ROBBINS of North Carolina and Mr. STONE.

Mr. DOUGLAS. I rise to a question of order. I submit that no business is in order while the House is dividing on a motion to adjourn.

The SPEAKER. The Chair laid before the House certain matters by unanimous consent.

Mr. DOUGLAS. I never gave my consent. I moved an adjournment of the House and the House divided upon that motion, and by the count of the Chair a majority voted in favor of the adjournment. At that stage a call was made for tellers and the Chair suspended proceedings on the motion to adjourn to transact other business while the House was actually dividing.

The SPEAKER. It has been the uniform practice of the House to clear the Speaker's table of executive documents and requests for leaves of absence pending a motion to adjourn. Of course, if the gentleman insists upon his objection, although the Chair desires to state that he did not hear the objection made, the Chair will order the vacation of all these references.

Mr. DOUGLAS. I will withdraw my objection rather than have that done; but I want the question taken upon my motion to adjourn.

The SPEAKER. Tellers have been ordered upon the motion to adjourn, and they will now take their places.

The House again divided; and the tellers reported that there were—ayes 52, noes 55.

So the motion to adjourn was not agreed to.

Mr. TOWNSEND, of New York. I make the point of order that no quorum has voted.

The SPEAKER. It does not require a quorum to decide a motion to adjourn.

Mr. TOWNSEND, of New York. I shall object to the transaction of any business until there is a quorum in attendance.

The SPEAKER. The Chair is of opinion that there is not a quorum present.

Mr. HOLMAN. It is certainly very desirable that these bills reported favorably from the Committee of the Whole shall be disposed of to-day.

The SPEAKER. The Chair will entertain a motion for a call of the House, which is the only business that can now be transacted.

Mr. STONE. I move that there be a call of the House.

Mr. ROBBINS, of North Carolina. I rise to a point of order.

The SPEAKER. The gentleman will state his point of order.

Mr. ROBBINS, of North Carolina. My point of order is this: It does not require a quorum to decide the motion to adjourn, and therefore it is not necessary to have a call of the House until the want of a quorum is developed upon some question which requires a quorum to determine it.

The SPEAKER. The want of a quorum has been developed upon the motion to adjourn.

Mr. ROBBINS, of North Carolina. My point is that it does not require a quorum to determine the motion to adjourn.

The SPEAKER. That is true; but the vote by tellers developed the fact that there was no quorum present.

Mr. BANNING. Is a motion to adjourn now in order?

The SPEAKER. Business having intervened, the motion for a call of the House having been made since a motion to adjourn was voted upon, it is now in order again to move that the House adjourn.

Mr. BANNING. I make the motion that the House now adjourn.

The SPEAKER. The Speaker desires to state that he will be absent to-morrow, and has designated the gentleman from Pennsylvania, Mr. CLYMER, to occupy his place.

Mr. HOLMAN. It is understood that no business will be transacted to-morrow.

The motion of Mr. BANNING was agreed to; and accordingly (at two o'clock and twenty minutes p. m.) the House adjourned.

PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. BLISS: The petition of Francis L. Dalton, to be re-imbursed for expenses incurred in defending his official acts, to the Committee of Ways and Means.

By Mr. CHAPIN: The petition of Jerry Lyons, for restoration of pension, to the Committee on Invalid Pensions.

By Mr. O'NEILL: The petition of James L. Reynolds, of Lancaster, Pennsylvania, and A. Wilhelm, of Cornwall, same State, administrator *de bonis non* of the estate of R. W. Coleman, deceased, sureties of Lieutenant-Colonel S. M. Reynolds, paymaster of the United States Army, for relief, to the Committee on Military Affairs.

By Mr. THORNBURGH: The memorial of William F. Frasier, for relief for injuries received during the late war, to the Committee on War Claims.

HOUSE OF REPRESENTATIVES.

SATURDAY, *December* 23, 1876.

The House met at twelve o'clock m., Mr. CLYMER in the chair as Speaker *pro tempore*. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

Mr. WOOD, of New York. I ask unanimous consent that the reading of the Journal be dispensed with.

There was no objection.

POLITICAL CONDITION OF THE COUNTRY.

Mr. MUTCHLER. I ask unanimous consent to have read and referred to the select committee of which the gentleman from Ohio [Mr. PAYNE] is chairman a memorial which I send to the Clerk's desk, and which is signed by prominent citizens of Philadelphia belonging to all political parties.

The memorial was read, as follows:

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The undersigned, members of all political parties, beg leave respectfully but earnestly to represent to your honorable bodies that in their belief the citizens of the United States are almost unanimous in the demand that the questions arising from the late presidential election shall be dealt with in a spirit predetermined to harmonize conflicting views, irrespective of the success or defeat of individual candidates.

The undersigned feel that any other course involves perils to the very structure of our Government which no thoughtful man can contemplate without dread. Even should such perils be averted, a partisan contest in Congress, resulting in a proclamation of a President without the acquiescence of both Houses, would destroy the confidence of the people in the justice of the decision adopted, would weaken their respect for the forms of law, and impair their faith in the adequacy of the Constitution to preserve substantial justice between contending parties.

The consequences of such action could not fail to be deplorable to the country and ruinous to the party which might achieve a temporary triumph. No administration placed in power in any manner that may offend the popular sense of right could conduct the affairs of the nation with credit to itself or advantage to the country. Under such an administration the opposition would enjoy an overwhelming advantage, and a short-lived party triumph would be followed by inevitable downfall. It may be emphatically asserted that the future will belong to those who now show themselves superior to the blind partisanship of the moment, and ready to promote harmony and to avert strife.

Even a prolongation of the existing uncertainty is greatly to be deprecated, entailing as it must do a paralysis of industry and a prostration of all material interests, which will work incalculable evil by destroying the demand for labor and depriving of support the poor and the unemployed.

The undersigned, therefore, confidently hope that your honorable bodies will earnestly seek some mode of reaching a decision of the pending questions that will satisfy the conscience of the country. They feel assured that when Senators and Representatives of the United States are called upon to exercise judicial powers fraught with consequences so momentous, they will bring to the discharge of their high functions a spirit of fairness and impartiality that will result in virtual unanimity of judgment. A result so reached, whatever it may be, will unquestionably command the willing acquiescence of the whole nation.

WILLIAM WELSH,
HENRY ARMITT BROWN,
JOHN WELSH,
And many others.

There being no objection, the memorial was referred to the select committee on counting the electoral vote.

Mr. MONROE. I ask to be excused from service on the committee to ascertain the powers and privileges of the House in regard to the electoral count.

There was no objection, and the request was granted.

IMPROVEMENT OF RIVERS AND HARBORS.

Mr. REAGAN, by unanimous consent, reported from the Committee on Commerce the following preamble and resolution; which were read, considered, and adopted:

Whereas the President of the United States in his annual message of December 5, 1876, states that, with his approval, the Secretary of War directed that the amount of $2,000,000, out of the $5,015,000 appropriated by the act of Congress of August 14, 1876, for river and harbor improvements, should be expended, and that no new work should be begun, and none prosecuted which were not of national importance;

And whereas the Chief of Engineers in his report of October 21, 1876, states that, in compliance with the instructions of the Secretary of War of September 4, 1876, certain allotments have been made limiting the expenditures under the above-named act to $2,000,000, and directing that no new work of improvement should be begun: Therefore,

Be it resolved by the House of Representatives, That the President of the United States be requested to communicate to this House copies of all orders made by him or under his direction, and of all orders and correspondence in the War Department, including all reports and communications from the Chief of Engineers, relating to said order and limitations on the expenditures authorized by said act of Congress; and that he be also requested to inform this House whether any orders or authority have been given by him or by the Secretary of War authorizing other expenditures under said act in addition to said $2,000,000; and if so, how much and for what particular works of improvement; and that he be requested to communicate to this House all orders and correspondence in relation thereto; and that the President be requested to state under what law or authority these orders and limitations upon said act of Congress were made.

Mr. REAGAN moved to reconsider the vote just taken; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

PENSIONS.

Mr. HEWITT, of Alabama. I ask unanimous consent to submit for adoption the following resolutions:

Resolved, That House bill No. 2283, granting pensions to certain soldiers and sailors of the Mexican, Florida, and Black Hawk wars, and certain widows of deceased soldiers and sailors of said wars, be made a special order for Thursday the 4th day of January next, after the morning hour, and from day to day thereafter until disposed of, not to interfere with the general appropriation bills.

Mr. HALE. I must object to the adoption of this resolution. I think that, with the small number here and in view of the general understanding that no business should be done to-day, we should not go on and set business for the future when the whole House shall be here. For that reason I must object.

COUNTING ELECTORAL VOTES.

Mr. SPRINGER. The committee appointed yesterday to confer with the similar committee on the part of the Senate in reference to counting the votes for President and Vice-President have instructed me to report the following resolution and ask its adoption at this time:

Resolved, That the special committee to confer with a similar committee on the part of the Senate in reference to counting the electoral votes for President and Vice-President be authorized to compile and print for the use of that committee and the House the proceedings and debates of Congress relating to the counting of the electoral votes from the first election of President and Vice-President to the present time; and that said committee shall have power to employ such clerical assistance as may be necessary in the preparation of said compilation.

There being no objection, the resolution was adopted.

REPAYMENT OF TONNAGE TAX.

Mr. FAULKNER. I ask unanimous consent that the bill (S. No. 994) to amend section 2931 of the Revised Statutes of the United States, so as to allow repayment by the Secretary of the Treasury of the tonnage tax where it has been exacted in contravention of treaty provisions, be taken from the Speaker's table and referred to the Committee on Foreign Affairs.

Mr. GARFIELD. Not to be brought back on a motion to reconsider.

Mr. FAULKNER. Certainly. We simply desire to have the bill considered and acted on by the committee.

There being no objection, the bill was taken from the Speaker's table, read a first and second time, and referred to the Committee on Foreign Affairs, not to be brought back on a motion to reconsider.

APPOINTMENT IN PAY DEPARTMENT OF THE ARMY.

Mr. A. S. WILLIAMS, by unanimous consent, introduced a bill (H. R. No. 4275) to correct an appointment in the Pay Department of the Army; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

COMPILATIONS OF QUESTIONS OF ORDER.

Mr. A. S. WILLIAMS also, by unanimous consent, submitted the following resolution; which was referred to the Committee of Accounts:

Resolved, That there be paid out of the contingent fund of the House such sum as may be necessary to complete the compilation of questions of order decided in the House of Representatives, ordered by the House on the 15th of August last, subject to the approval of the Committee of Accounts.

ORDER OF BUSINESS.

Mr. ATKINS. Mr. Speaker, was it not the understanding yesterday that no business should be transacted in the House to-day?

The SPEAKER *pro tempore*. All this business is proceeding by unanimous consent.

Mr. BUCKNER. I move that the House adjourn.

SETTLERS ON THE SAN JUAN AND OTHER ISLANDS.

Mr. BANNING. Before the question is put on the motion to adjourn, I desire to make a correction of the RECORD. It appears by the RECORD that House bill (H. R. No. 3878) for the relief of the settlers on San Juan, Orcas, and other islands, lately in dispute between the United States and Great Britain, was reported back from the Committee on Military Affairs and referred to the Committee on Public Lands. The bill was not in the possession of our committee, and the RECORD should have stated that Executive Document No. 308 in reference to the subject-matter of that bill was reported back and referred to the Committee on Public Lands.

SERGEANT IN SIGNAL CORPS.

Mr. BANNING, by unanimous consent, introduced a bill (H. R. No. 4276) to authorize the appointment of a sergeant in the Signal Corps as a second lieutenant in the Army; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

CAPTAIN JOHN A. LYNCH.

Mr. BANNING also introduced a bill (H. R. No. 4277) for the relief of Captain John A. Lynch; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

ADJOURNMENT OVER.

Mr. BLOUNT. I move that when the House adjourns to-day it be to meet on Wednesday next.

The SPEAKER *pro tempore*. An order of that kind has already been made.

Mr. BLOUNT. There was a resolution adopted, as I understand, expressive of the desire of the House on this subject; but my idea was that notwithstanding that resolution a motion of this kind was necessary now.

The SPEAKER *pro tempore*. In the judgment of the Chair, there is no necessity for submitting such a motion.

Mr. REAGAN. I presume that when the House adjourns to-day it will be announced that in conformity with previous resolution the adjournment is until Wednesday next.

LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted as follows:

To Mr. METCALFE, for ten days from January 2 on account of important business.

To Mr. STENGER, from the 26th to the 30th instant.

To Mr. MACKEY, for ten days from the 30th instant.

To Mr. MCCRARY, until January 3 on account of important business.

The motion of Mr. BUCKNER was then agreed to; and accordingly (at twelve o'clock and twenty minutes p. m.) the House, pursuant to the order heretofore made, adjourned until Wednesday next.

IN SENATE.

TUESDAY, *December* 26, 1876.

JAMES K. KELLY, from the State of Oregon, appeared in his seat to-day.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

The PRESIDENT *pro tempore*. The Journal of Friday last will be read.

COMMITTEE ON PRIVILEGES AND ELECTIONS.

Mr. MORTON. Before the Secretary proceeds to read the minutes I should like to suggest that it is important to have another member appointed upon the Committee on Privileges and Elections. The body of the committee has gone South, as you are aware, sir, and there is not now a quorum of the subcommittee here. I ask, therefore, to have one more member added to the committee during the investigation in reference to the presidential election, a subject already referred to the committee.

The PRESIDENT *pro tempore*. Is there objection to this being done before the reading of the Journal? The Chair hears no objection.

By unanimous consent, the President *pro tempore* was authorized to make the appointment, and Mr. MITCHELL was appointed.

The Journal of Friday's proceedings was read and approved.

HOUSE BILLS REFERRED.

The bill (H. R. No. 4272) authorizing the use of certain funds now in the Treasury belonging to the Osage Indians was read twice by its title, and referred to the Committee on Indian Affairs.

The joint resolution (H. R. No. 169) authorizing the Secretary of War to supply blankets to the Reform School in the District of Columbia was read twice by its title, and referred to the Committee on Military Affairs.

PRESIDENTIAL APPROVALS.

A message from the President of the United States, by Mr. U. S. GRANT, jr., his Secretary, announced that the President had on the 18th instant approved and signed the act (S. No. 620) to remove the political disabilities of James Argyle Smith, of Mississippi, and on the 22d instant the act (S. No. 745) to authorize the Secretary of the Treasury to issue a register and change the name of the brig A. S. Pennell to the City of Moule.

ADJOURNMENT TO FRIDAY.

Mr. WRIGHT. I move that when the Senate adjourns to-day it be to meet on Friday next.

The motion was agreed to.

SIOUX NEGOTIATIONS.

The PRESIDENT *pro tempore* laid before the Senate the following message from the President of the United States:

To the Senate and House of Representatives:

I have the honor to transmit herewith a letter, submitted by the Secretary of the Interior, from the Commissioner of Indian Affairs, accompanied by the report and journal of proceedings of the commission appointed on the 24th day of August last to obtain certain concessions from the Sioux Indians in accordance with the provisions contained in the Indian appropriation act for the current fiscal year.

I ask your special consideration of these articles of agreement, as among other advantages to be gained by them is the clear right of citizens to go into a country of which they have taken possession and from which they cannot be excluded.

U. S. GRANT.

EXECUTIVE MANSION, *December* 22, 1876.

The message was ordered to lie on the table and be printed.

PENNSYLVANIA AVENUE PAVING.

The PRESIDENT *pro tempore* laid before the Senate the following message from the President of the United States:

To the Senate and House of Representatives:

I have the honor to transmit herewith a report (and papers which accompanied it) of the progress of the work committed to their charge, addressed to me by the commissioners appointed under the act of Congress approved July 19, 1876, authorizing the repavement of Pennsylvania avenue.

U. S. GRANT.

EXECUTIVE MANSION, *December* 22, 1876.

The message was ordered to be printed, and referred to the Committee on the District of Columbia.

RULES OF THE SENATE.

Mr. FERRY. (Mr. WRIGHT in the chair.) I am directed by the Committee on Rules, to whom was recommitted on the 18th instant the report of the committee recommending a revision of the rules of the Senate, to submit the revised rules in an amended form. I ask that the report lie on the table, the printing having already been ordered.

The report was ordered to lie on the table.

EXECUTIVE SESSION.

Mr. SHERMAN. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After nine minutes spent in executive session the doors were re-opened, and (at twelve o'clock and fifteen minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

WEDNESDAY, *December* 27, 1876.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of Saturday was read and approved.

MESSAGE FROM THE PRESIDENT.

A message in writing from the President of the United States was received by his Private Secretary, Mr. U. S. GRANT, jr.

The message further announced that the President had approved and signed bills of the House of the following titles, viz:

An act (H. R. No. 1581) for the relief of John Gowers, late of Company C, One hundred and eleventh Regiment New York Volunteers;

An act (H. R. No. 1503) for the relief of Sarah F. Albertson, of Booneville, Missouri;

An act (H. R. No. 648) for the relief of Andrew J. Barrett;

An act (H. R. No. 1075) directing the Second Auditor to settle the pay and bounty account of John Ammahaie or Ammahe;

An act (H. R. No. 1592) to re-imburse Horace Glover for property unlawfully seized and sold by the United States Government;

An act (H. R. No. 4124) to provide for the expenses of certain special

committees of the House of Representatives and of the Committee on Privileges and Elections of the Senate; and

An act (H. R. No. 4197) to provide for the payment of electoral messengers.

DISTRICT GOVERNMENT.

Mr. HUNTON. Mr. Speaker, I am directed by the House portion of the joint committee to provide a government for the District of Columbia to report a bill (H. R. No. 4278) to provide a permanent form of government for the District of Columbia, and to ask that it be made a special order for Thursday the 4th of January next, and from day to day till disposed of, not to interfere with the appropriation bills.

The bill was read a first and second time, and the bill and report were ordered to be printed.

Mr. HEWITT, of Alabama. I wish to inquire if making this a special order will interfere with other special orders previously made?

The SPEAKER. The Chair is clearly of the opinion that this will not necessarily interfere with special orders previously made, but that it will come up in regular order after other special orders. When a special order is reached and another special order stands in the way, the question then becomes one of consideration, and it is within the power of a majority of the House to control the business of the House and to decide which shall take precedence. In the absence of any provision to the contrary all special orders take precedence according to the time for which they are fixed.

Mr. HUNTON. Suppose when the day designated arrives there are two special orders fixed for that day and the House should decide to take up either one or the other, what then?

The SPEAKER. In such an event the older special order will of course take precedence, but when the question of consideration is raised it is for the House to decide.

Mr. HUNTON. Then the other special order would come up the next day?

The SPEAKER. The second clause of the motion of the gentleman from Virginia is that it shall be made a special order from day to day until disposed of. If fixed for a preceding day and not reached, that would vacate any privilege it had.

Mr. HUNTON's motion was agreed to; and the bill was made a special order for Thursday the 4th of January, and from day to day until disposed of, not to interfere with appropriation bills.

REPAVEMENT OF PENNSYLVANIA AVENUE.

The SPEAKER, by unanimous consent, laid before the House the following message from the President.

The Clerk read as follows:

To the Senate and House of Representatives:

I have the honor to transmit a report (and papers which accompanied it) of the progress of the work committed to their charge, addressed to me by the commissioners appointed under the act of Congress approved July 19, 1876, authorizing the repavement of Pennsylvania avenue.

U. S. GRANT.

EXECUTIVE MANSION, *December 22, 1876.*

Mr. CLYMER. I move that the message and accompanying documents be referred to the Committee on Appropriations.

Mr. BUCKNER. I would suggest that the message and accompanying documents be printed and referred to the Committee for the District of Columbia.

Mr. CLYMER. I have no objection to adopting the motion of the gentleman as a substitute for my own. I will withdraw my motion in favor of the motion made by the gentleman from Missouri.

Mr. BUCKNER. Then I move that the message and accompanying documents be printed and referred to the Committee for the District of Columbia.

The motion was agreed to.

SIOUX INDIANS.

The SPEAKER also, by unanimous consent, laid before the House the following message from the President.

The Clerk read as follows:

To the Senate and House of Representatives:

I have the honor to transmit herewith a letter, submitted by the Secretary of the Interior, from the Commissioner of Indian Affairs, accompanied by the report and journal of proceedings of the commission appointed on the 24th day of August last to obtain certain concessions from the Sioux Indians, in accordance with the provisions contained in the Indian appropriation act for the current fiscal year.

I ask your special consideration of these articles of agreement, as among other advantages to be gained by them is the clear right of citizens to go into a country of which they have taken possession and from which they cannot be excluded.

U. S. GRANT.

EXECUTIVE MANSION, *December 22, 1876.*

The message was referred to the Committee on Indian Affairs, and ordered to be printed.

EXTRADITION TREATY WITH GREAT BRITAIN.

The SPEAKER also laid before the House a message from the President of the United States; which was read, as follows:

To the House of Representatives:

When Congress adjourned in August last the execution of the extradition article of the treaty of 1842 between the United States and Great Britain had been interrupted.

The United States had demanded of Her Majesty's government the surrender of certain fugitives from justice charged with crimes committed within the jurisdiction of the United States who had sought asylum and were found within the territories of Her British Majesty, and had, in due compliance with the requirements of the treaty, furnished the evidence of the criminality of the fugitives which had been found sufficient to justify their apprehension and commitment for trial, as required by the treaty, and the fugitives were held and committed for extradition.

Her Majesty's government, however, demanded from the United States certain assurances or stipulations as a condition for the surrender of these fugitives.

As the treaty contemplated no such conditions to the performance of the obligations which each Government had assumed, the demand for stipulations on the part of this Government was repelled.

Her Majesty's government thereupon, in June last, released two of the fugitives (Ezra D. Winslow and Charles J. Brent,) and subsequently released a third, (one William E. Gray,) and, refusing to surrender, set them at liberty.

In a message to the two Houses of Congress on the 20th day of June last, in view of the condition of facts as above referred to, I said: "The position thus taken by the British government, if adhered to, cannot but be regarded as the abrogation and annulment of the article of the treaty on extradition.

"Under these circumstances it will not, in my judgment, comport with the dignity or self-respect of this Government to make demands upon that government for the surrender of fugitive criminals, nor to entertain any requisition of that character from that government under the treaty."

Article XI of the treaty of 1842 provided that "the tenth article [that relating to extradition] should continue in force until one or the other of the parties should signify its wish to terminate it, and no longer."

In view, however, of the great importance of an extradition treaty, especially between two states as intimately connected in commercial and social relations as are the United States and Great Britain, and in the hope that Her Majesty's government might yet reach a different decision from that then attained, I abstained from recommending any action by Congress terminating the extradition article of the treaty. I have however declined to take any steps under the treaty toward extradition.

It is with great satisfaction that I am able now to announce to Congress and to the country that by the voluntary act of Her Majesty's government the obstacles which had been interposed to the execution of the extradition article of the treaty have been removed.

On the 27th of October last, Her Majesty's representative at this capital, under instructions from Lord Derby, informed this Government that Her Majesty's government would be prepared as a temporary measure, until a new extradition treaty can be concluded, to put in force all powers vested in it for the surrender of accused persons to the Government of the United States, under the treaty of 1842, without asking for any engagement as to such persons not being tried in the United States for other than the offenses for which extradition had been demanded.

I was happy to greet this announcement as the removal of the obstacles which had arrested the execution of the extradition treaty between the two countries.

In reply to the note of Her Majesty's representative, after referring to the applications heretofore made by the United States for the surrender of the fugitives referred to in the correspondence which was laid before Congress at its last session, it was stated that on an indication of readiness to surrender these persons an agent would be authorized to receive them, and I would be ready to respond to requisitions which may be made on the part of Her Majesty's government, under the tenth article of the treaty of 1842, which I would then regard as in full force, until such time as either government shall avail itself of the right to terminate it, provided by the eleventh article, or until a more comprehensive arrangement can be reached between the two governments in regard to the extradition of criminals, an object to which the attention of this Government would gladly be given with an earnest desire for a mutually satisfactory result.

A copy of the correspondence between Her Majesty's representative at this capital and the Secretary of State on the subject is transmitted herewith.

It is with great satisfaction that I have now to announce that Her Majesty's government, while expressing its desire not to be understood to recede from the interpretation which in its previous correspondence it has put upon the treaty, but having regard to the prospect of a new treaty and the power possessed by either party of spontaneously denouncing the old one, caused the re-arrest, on the 4th instant, of Brent, one of the fugitives who had been previously discharged, and, after waiting the requisite time within which the fugitive is entitled to appeal or to apply for his discharge, on the 21st instant surrendered him to the agent appointed on behalf of this Government to receive and to convey him to the United States.

Her Majesty's government has expressed an earnest desire to re-arrest and to deliver up Winslow and Gray, the other fugitives who had been arrested and committed on the requisition of the United States but were released because of the refusal of the United States to give the assurances and stipulations then required by Great Britain. These persons, however, are believed to have escaped from British jurisdiction; a diligent search has failed to discover them.

As the surrender of Brent, without condition or stipulation of any kind being asked, removes the obstacle which interrupted the execution of the treaty, I shall no longer abstain from making demands upon Her Majesty's government for the surrender of fugitive criminals, nor from entertaining requisitions of that character from that government under the treaty of 1842, but will again regard the treaty as operative, hoping to be able before long to conclude with Her Majesty's government a new treaty of a broader and more comprehensive nature.

U. S. GRANT.

WASHINGTON, *December 23, 1876.*

The message and accompanying documents were referred to the Committee on Foreign Affairs, and ordered to be printed.

ACCOUNTS OF THE STATE OF TEXAS.

The SPEAKER also laid before the House a letter from the Secretary of War concerning accounts of the State of Texas.

Mr. REAGAN. I move that the communication be referred to the Committee on Military Affairs, and that it be printed.

The motion was agreed to.

NATIONAL ARMORY AT HARPER'S FERRY.

The SPEAKER also laid before the House a letter from the Secretary of War, transmitting the report of the Chief of Ordnance on the purchase of water-power and land formerly occupied as a national armory at Harper's Ferry; which was referred to the Committee on Military Affairs.

EXPENDITURES FOR BUILDINGS OF TREASURY DEPARTMENT.

The SPEAKER also laid before the House a letter from the Secretary of the Treasury, transmitting copies of itemized accounts of expenditures for fuel, lights, &c., for buildings of that Department up to April 30, 1876; which was referred to the Committee on Expenditures in the Treasury Department, and ordered to be printed.

COUNT OF ELECTORAL VOTE.

The SPEAKER also laid before the House the proceedings of a citizens' meeting in Cincinnati, held December 20, 1876.

Mr. BANNING. I ask that this may be referred to the committee on counting the electoral vote, of which Mr. PAYNE is chairman, and that it be printed in the CONGRESSIONAL RECORD.

Mr. CONGER. What is that paper?

The SPEAKER. It is an account of a public meeting held in the city of Cincinnati touching the present presidential election.

Mr. CONGER. I object to its being printed.

The SPEAKER. The communication will be referred to the committee indicated by the gentleman from Ohio, [Mr. BANNING.] The gentleman from Michigan [Mr. CONGER] objects to printing in the RECORD.

Mr. BANNING. These are the proceedings of a meeting of citizens of all parties. The proceedings of similar meetings of this character have been printed in the RECORD for the information of the House. Copies of the proceedings of this meeting were forwarded to the Speaker of the House, the President of the Senate, and the President of the United States as information only. I hope the gentleman from Michigan will withdraw his objection.

Mr. GARFIELD. We cannot print the proceedings of all meetings held in the United States.

The SPEAKER. The paper will be printed in the usual form.

Mr. BANNING. I ask that it may be read.

Mr. GARFIELD. To whom is it addressed?

The SPEAKER. It is addressed to the Speaker of the House of Representatives.

Mr. GARFIELD. It is a memorial; is it not?

The SPEAKER. The Chair will cause the letter accompanying the paper to be read; and gentlemen will see from the reading of it what is its nature.

The Clerk read as follows:

CINCINNATI, *December* 23, 1876.

DEAR SIR: As instructed, I herewith inclose copies of resolutions adopted at a meeting of citizens held in this city on the 20th instant, at which Hon. Henry Stanbery was president.

Very respectfully, your obedient servant,

JOHN D. BANKS, *Secretary.*

HON. SAMUEL J. RANDALL,
Speaker House of Representatives, Washington, D. C.

Mr. GARFIELD. Let it all be referred.

Mr. BANNING. I think there is no objection to the paper being read.

The SPEAKER. Is there objection to the paper being read?

Mr. CONGER. If I objected to the paper going into the RECORD, I think the Chair would understand that I would naturally object to the reading of it so that it may go there.

The SPEAKER. The gentleman from Michigan [Mr. CONGER] objects to the paper being read.

Mr. BANNING. Then I move that it be referred to the committee on counting the electoral vote, of which Mr. PAYNE is chairman.

Mr. SOUTHARD. I ask for the reading of the paper that we may know what its contents are before voting on it.

Mr. RUSK. I call for the regular order.

The SPEAKER. This is the regular order.

Mr. RUSK. The regular order is that the reading of the paper has been objected to.

The SPEAKER. The printing in the RECORD is objected to.

Mr. RUSK. And the reading.

Mr. BANNING. You cannot object to its being read when a motion for its reference is pending.

The SPEAKER. The communication is before the House without objection. A motion has been made that it be referred. The gentleman from Ohio [Mr. SOUTHARD] demands the reading of the document, and the Chair does not know how he can prevent the reading of it.

Mr. GARFIELD. That is the very point which was objected to. It is before the House, but within the limitation of that objection.

The SPEAKER. The communication is before the House by unanimous consent. The Speaker, as in duty bound, presents it, to which there is no objection. Then, being before the House, the gentleman from Ohio [Mr. BANNING] asked that it be printed in the RECORD, which the Chair ruled required unanimous consent.

Mr. GARFIELD. Was not the unanimous consent for its reference and not for its being presented to the House to be read?

The SPEAKER. The Chair thinks not. However, that is a question of fact, easily susceptible of proof one way or the other. The reporters will be kind enough to write out their notes of what passed.

Mr. GARFIELD. I know nothing about the resolutions.

The SPEAKER. Neither does the Chair.

Mr. GARFIELD. But I suggest to the Speaker that it is a new ruling, which will greatly change the order of business of the House. If we adopt the principle that any meeting of citizens may have its proceedings spread upon our record merely by addressing a copy of them to the Speaker—if this rule should prevail, we should encumber our records with thousands of reports of them. The rules of the House require that when the House is addressed by unofficial persons the petitions or memorials shall be referred without debate to some committee of the House, and the Speaker has the same right as any other member to present memorials and petitions. But the mere fact that a paper is addressed to the Speaker of the House does not exempt it from the operation of that general rule.

This is the first instance when an unofficial communication of this sort has been sought to be spread upon our record, and gentlemen will see the probability of our having thousands of such communications from unofficial sources sent here, spread upon our record and ordered to go into the CONGRESSIONAL RECORD.

I think that every member will see that our record will then no longer represent the proceedings of the House, but will become the general receptacle of every description of unofficial communication.

The SPEAKER. The gentleman from Ohio will observe that this is a communication from citizens of the United States in the way of petition, and it is certainly not the duty of the Speaker to interfere with the sacred right of petition. Being communicated to him, it was his duty to present it to the House. Suppose he had retained the paper, what would have been the judgment of the House and the country on the detention of a paper of this character?

Mr. GARFIELD. The Chair quite misunderstands me. I said it was not only the right but the duty of the Speaker to present all petitions or memorials under the rules and have them referred without debate, except it be in the case of resolutions of State Legislatures, which are to be presented and spread upon the record. The Speaker has the same right to present petitions as any other member of the House and no other.

The SPEAKER. The Chair having presented the paper, it came in of course by unanimous consent. The gentleman from Ohio [Mr. BANNING] moved that the reading be dispensed with and that it be printed in the CONGRESSIONAL RECORD without reading, and then the gentleman from Michigan [Mr. CONGER] rose for the first time and objected, which objection was entertained by the Chair.

Mr. GARFIELD. The House has always extended to the Chair its courtesy in the matter of the presentation of papers; for he always has a large number of official communications to present. It is very rare indeed, though I noticed one example the other day from a gentleman on the other side of the House, that objection is made to the request of the Chair to present papers. When this courtesy was extended to the Chair this morning there was no indication that he would present anything but official communications. Now that this paper has been presented, without any intimation that it was an unofficial communication, I do not think the Chair will be willing to put us in the position where it will be necessary for us to abate any of the usual courtesy extended to him. I trust the Chair will only exercise the same right that other members exercise in the presentation of petitions.

The SPEAKER. The Chair does not desire to lull the gentleman from Ohio into any feeling of security that would lead him not to watch the proceedings. The Chair will read the rule upon the subject.

Where papers are laid before the House or referred to a committee, every member has a right to have them once read at the table before he can be compelled to vote on them; and this applies to the reading of papers on a motion to refer them.

Mr. GARFIELD. Would the Chair apply that rule to petitions such as are daily presented under the rules and referred to committees? Every morning the CONGRESSIONAL RECORD shows from one to a hundred petitions that have been presented by members of the House and referred to their appropriate committees. I do not think that anybody will hold that any member has the right to call for the reading of those petitions.

The SPEAKER. They are presented under a rule of the House.

Mr. GARFIELD. Certainly.

The SPEAKER. This is presented in open House.

Mr. GARFIELD. They are all presented in open House——

The SPEAKER. No; they are presented at the Clerk's desk.

Mr. GARFIELD. But is the Chair governed by any other rule in regard to the presentation of petitions than that which applies to each member of the House?

The SPEAKER. The Chair is bound, as he said before, to present to the House everything that comes to him in his official position.

Mr. GARFIELD. Certainly; under the same rule that applies to all the members of the House.

The SPEAKER. No, not under any rule——

Mr. GARFIELD. Then I ask, with all respect to the Chair, how he has any right to present this petition?

The SPEAKER. Only by unanimous consent, which the Chair obtained.

Mr. GARFIELD. Let me recall the facts. The Speaker had a bundle of official documents on his desk, and he asked unanimous consent to lay them before the House. There was a message from the President, a communication from the Secretary of War, another from the Secretary of the Treasury, and several others. While he was delivering his budget I presume that no member of the House understood that this paper was in the nature of a simple petition until after the call for its reading was made. I trust, therefore, that the Chair, in view of this apparent misunderstanding, will again put the question to the House in reference to the petition.

The SPEAKER. The Chair is entirely ready to submit the question to the House.

Mr. REAGAN. The rule in relation to printing—I do not know how much the distinction amounts to—but the rule in relation to printing and reference may be found on page 160 of the Manual, and is as follows:

Members having petitions and memorials to present may hand them to the Clerk, indorsing the same with their names and the reference or disposition to be made thereof.

But this is a communication that does not come to a member of the House in the ordinary way, but it comes to the Speaker, and it devolves upon him to dispose of it. I understand that the practice has uniformly been for the Speaker to lay such communications before the House and a motion is made to refer them. Now it seems to me that under the rule, upon that motion to refer, any member has a right to demand the reading of the paper.

The SPEAKER. That would seem to be the meaning of the rule. The Chair would like to read further from the rules:

> When the reading of a paper is called for and the same is objected to by any member, it shall be determined by a vote of the House.

The Chair is entirely ready to submit the question to the House.

Mr. SOUTHARD. I think there is a misapprehension on the part of the gentleman from Ohio [Mr. GARFIELD] in regard to the question now before the House. This paper is now before the House by unanimous consent. There was no objection made to its reference, but there was objection made to its being read or printed. Now when a paper is before the House for the purpose of reference, I as a member, as I claim, have the right to demand that the paper be read before I shall be called upon to vote upon the question of reference. It was under the rule to be found on page 194 that I demanded the reading of this paper. If the simple question were as to the reading of a paper unconnected with a motion to refer, then I think that the rule to be found on page 141 would apply, and it would be the duty of the Chair to submit the question to the House. But under the rule to be found on page 194, where papers are to be referred to a committee, the doctrine is that the paper shall be read if demanded by any member before he can be called upon to vote upon the question of reference. That is the point which I have made, the consent of the House for the presentation of the papers having been obtained.

Mr. HOSKINS. I desire to call the attention of the Chair to page 159 of Barclay's Digest in relation to the rule for the presentation of petitions:

> There is now no other mode of presenting petitions prescribed by the rules, the old rule for presentation in the House having been rescinded December 12, 1853; and when a member desires to have a petition printed, it can only be done by unanimous consent, by a suspension of the rules, or by submitting a resolution to that effect when resolutions are in order.

Under this rule, Mr. Speaker, there is no question that an objection by any member to the printing of a petition is sufficient to prevent its being printed. Now the point to be determined in this case is whether the reading of this petition at length does not carry it upon the Journal and into the RECORD. There is no doubt in my mind that when this petition is before the House it is perfectly proper to have it read for the information of the House; but if it is read for the purpose of having it spread upon the Journal or the RECORD, then, according to this rule, if there is one objection, that cannot be done.

The SPEAKER. The gentleman from New York [Mr. HOSKINS] will allow the Chair to suggest that the very fact of the paper being read makes it a part of the proceedings, and therefore it goes into the RECORD.

Mr. HOSKINS. But one objection to its being printed is sufficient. So far as regards its presentation and reference, of course there is no objection to that.

The SPEAKER. The effort was to have the paper printed in the RECORD without consuming time in reading it.

Mr. HOSKINS. But, under the rule, if there is one objection the paper cannot be printed. It must be done, if at all, by unanimous consent.

The SPEAKER. That relates to petitions presented at the desk.

Mr. HOSKINS. Not at all. The old rule for the presentation of petitions in the House has been rescinded; and a petition, whether it comes through the Speaker or any other member, must be presented under the rule which says that, when a member desires to have a petition printed, it can only be done by unanimous consent or by a suspension of the rules.

The SPEAKER. The Chair still thinks that that relates to petitions and memorials, which may be handed in to the Clerk.

Mr. HOSKINS. They may be handed to the Clerk or they may be handed to the Speaker; and whether they pass from the Speaker or through the box provided at the Clerk's desk, they cannot be printed under the rule if objection is made; and if the object of the reading is for the purpose of having them printed, then of course the rule applies.

The SPEAKER. That rule clearly relates exclusively to petitions and memorials presented by members at the Clerk's desk.

Mr. REAGAN. I apprehend that the practice of the House enters into the judgment of the Speaker in the disposition of this question; and probably there will not be found in the history of our proceedings any case in which the Speaker has had a petition or memorial referred in the same manner as the reference would be made by a member upon the floor. I apprehend that, according to the universal practice, such papers when presented by the Speaker are laid before the House in open session.

The SPEAKER. The Chair during his service as a member here has never known any other course to be pursued, where the Speaker has presented a paper for reference and there was no objection to it, than that it should be considered for reference. However, the Chair does not wish to arrogate to himself any special privilege in this regard.

Mr. GARFIELD. Nobody has objected to the reference of this paper. That is not the objection at all.

The SPEAKER. The Chair does not desire to pursue any course which may present even the semblance of his having brought a paper of this sort into the House for any other than a public purpose; because in fact the Chair has never read these resolutions. The Speaker will therefore submit to the House the question upon the reading of the paper.

Mr. HOSKINS. Will the Chair allow me to make one inquiry? Can the Chair in his individual right as a member of this House present a petition in any other way than any other member of the House? For instance, if I should have a petition and should desire the Speaker to present it for me, would not he have merely the same right with regard to its presentation that I would have myself?

The SPEAKER. The gentleman will remember that petitions have constantly been presented from chambers of commerce and other private associations upon public questions; and they have almost always been presented by a member rising in his place and asking unanimous consent to have the petition read and printed. The Chair will, however, submit to the House the question as to the reading of this paper.

Mr. BANNING. Mr. Speaker, I wish to say one word in answer to what my colleague [Mr. GARFIELD] has said against the printing of this communication in the RECORD. He said it would be establishing a bad rule to let it be done. I am surprised at such objection coming from him. A short time ago a committee of citizens proceeded to New Orleans to view the counting of the election returns. There was no authority for their going; there was no law for it. They came back and reported to the President, all of them belonging to one party, the republican party, and that report was sent to this House and printed in the RECORD. Now a convention of citizens meets in Ohio, in this dangerous time in the history of our country, and they present their views to Congress through the Speaker of this House. Then one of the gentlemen who presented his views through the President rises in his place and objects. The example was set by him and other citizens acting without authority of law, refusing to let men of the other party confer with them when they went to New Orleans to see the counting of the vote of that State and made their report which was presented to this House.

Mr. CONGER. I object to further debate.

Mr. GARFIELD. O, let him go on.

The SPEAKER. Under what rule does the gentleman from Michigan object to further debate?

Mr. CONGER. I thought the Chair himself said debate was not in order.

The SPEAKER. Point to the rule under which debate is not allowed on this question.

Mr. CONGER. The Chair has already said that the proposition is to submit the question to the House; and if it is not before the House it is not debatable.

The SPEAKER. This paper is before the House and debate is in order on the motion to refer. The Chair would like the gentleman to point out any rule which prohibits debate on the motion to refer.

Mr. CONGER. The Chair has already decided and had commenced to submit that question to the House. It is not debatable whether the Chair will submit a question to the House or not.

The SPEAKER. The Chair has heard gentlemen on various points by unanimous consent. He thinks that this paper is before the House by unanimous consent, and the pending question is on the motion to refer.

Mr. CONGER. I am of the opinion that it is not debatable.

Mr. BANNING. If I am entitled to the floor I will proceed.

The SPEAKER. The gentleman from Ohio is entitled to the floor and will proceed.

Mr. BANNING. Now, Mr. Speaker, I hold in my hand proceedings of this House at the very time that the message came here from the President of the United States presenting the report of these citizens. The gentleman from Ohio [Mr. GARFIELD] being one of them who went to New Orleans to be present at the counting of the election returns of Louisiana, I send the proceedings as reported in the CONGRESSIONAL RECORD to the Clerk, and ask him to read them. It will be seen that at that very time the Speaker of this House made the exact ruling which he makes now, with the difference that he made it then for the gentlemen who now object.

The Clerk read as follows:

> Mr. CONGER. I now renew my call for the reading of the documents accompanying the President's message.
>
> The SPEAKER. The Chair would like to make a statement to the House.
>
> Mr. WOOD, of New York. There was so much confusion while the message from the President was being read that I would like the Chair to state distinctly how the proposition stands before the House at this moment.
>
> The SPEAKER. The Chair will do so when the House comes to order. The Chair desires to state that the message proper was read, and a motion was made by the gentlemen from Illinois [Mr. SPRINGER] to refer it to a select committee; whereupon the gentleman from Michigan [Mr. CONGER] demanded the reading of the accompanying papers. The attention of the Chair has been directed to Rule 141, which is as follows:
>
> "141. When the reading of a paper is called for and the same is objected to by any member, it shall be determined by a vote of the House."
>
> That rule was adopted on the 13th of November, 1794, and the note to it states that—
>
> "As originally adopted, this rule contained, after the word 'for,' the words 'which had before been read to the House.' They were stricken out on the 14th December, 1795."

The Chair desires to read further on page 193 of the Manual:

"Where papers are laid before the House or referred to a committee, every member has a right to have them once read at the table before he can be compelled to vote on them—*Manual*, page 97—and this applies to the reading of papers on a motion to refer them.—*Journal*, I, 34, page 1146. And so in regard to any proposition submitted for a vote of the House; but it being a right derived from the rules, he may at any time, (when a motion to suspend the rules is in order) be deprived of it by a suspension of the rules."

A motion to suspend the rules is not now in order.

The Chair will read further:

"The rule above recited is not construed to apply to the single reading of a paper or proposition upon which the House may be called upon to give a vote, or to the several regular readings of a bill, but to cases where a paper has been once read or a bill has received its regular reading and another is called for, and also where a member desires the reading of a paper having relation to the subject before the House."

Mr. HUBBART. The Chair omitted one paragraph.

The SPEAKER. The Chair had previously read that rule. The Chair decides that this case comes within the latitude of that rule. And it is a necessary step toward correct legislation that all such papers shall be read; and so deciding, the paper will now be read.

Now, Mr. Speaker, it was not my intention to say anything upon this matter at this time; but I want to say in all earnestness to that side of the House that ever since we have met I think and I believe the country thinks they have placed themselves in a very strange position. They came here with a report sent through the President of an unauthorized investigation; and when this House attempted to send a committee to investigate the same election and get at all the facts lawfully, every one of the gentlemen upon the other side, with three honorable exceptions, voted against the resolution to investigate every one of them, and then, after the resolution had passed by a majority of one, called the attention of the House and the country to the fact that it had not been fairly passed, thus showing that they were afraid of the investigation and afraid to let the people know all that had been done in the three Southern States of Louisiana, South Carolina, and Florida.

And next, Mr. Speaker, we have these gentlemen who made their report sustaining the character of the returning board in Louisiana; and when we attempt in this House to get what General Sheridan said of the president of that board and what the Secretary of War, Mr. Stanton, said when he removed him from being governor of Louisiana, because, as General Sheridan said in his letter to Mr. Stanton, he was a dishonest man and a trickster, that report being approved by the then General of the Army, the present President of the United States, who laid this report before us, of the gentlemen who sustained this man Wells—when we attempt to get that record from the War Department we have every obstacle thrown in our way. When I went myself to get it—I had been in the habit of going to the Department and was always before given copies of the records—but when I asked for this record the Adjutant-General told me I could not get it without the order of the Secretary of War. I went to the Secretary of War. He was not in. I asked the Assistant Secretary. He said "this is a public document; go down and tell the Adjutant-General to give it to you." I went back to the Adjutant-General. The Adjutant-General told me that he had seen the Secretary of War and I could not have it without his order.

I then went back to the Secretary of War and he told me that I could not have that record unless I got the order of the President of the United States. I then came to this House and introduced a resolution to have the Secretary of War produce that report. This resolution required a two-thirds vote. And these gentlemen who now object, who have investigated without authority and reported without proof as the country believes, objected, and the country is not yet informed. I tried again to bring up the resolution and that side voted solid against it.

Now, Mr. Speaker, I hope the gentlemen upon that side of the House will permit us to get all the information that we can, and receive and hear the instructions of the people of the country, especially when they come from such men as sent this paper; such men as Henry Stanbery, lately a member of the Cabinet, Rufus King, Durbin Ward, and Judge Stallo, men, all of them, who did battle against slavery and for the right with the party represented by gentlemen on the other side of the House in the better days when the party fought for principle and right, and not to defeat the people in their right to elect a President as now.

Mr. Speaker, if there is one thing the people of this country love more than another, more than life, more than property, it is their liberty that is vouchsafed to them in an honest ballot-box. [Applause.] And let me tell gentlemen here that they will have it. The Army may, part of it, be ordered here with eighty rounds of ammunition. The Navy may be called upon. The eighty thousand office-holders may be asked to come to the rescue——

A MEMBER. They will not come.

Mr. BANNING. But let me tell you that an honest people will put them all down. [Applause on the floor and from the galleries.]

The SPEAKER rapped to order.

Mr. BANNING. I hope now that gentlemen upon that side of the House may stand for the right as in 1861; the men of the North without respect to party stood for the right, to put down the rebellion. I hope now that, in place of sustaining the partisan report of an unauthorized committee, you will go with us and help us to investigate and find out the condition of affairs in Louisiana, in Florida, and in South Carolina. And let me say that, when you attempt to say to the people, without better evidence than you have yet produced, that you will overturn the majority of more than eight thousand for the Tilden electors in Louisiana, you are attempting that which you never can do. [Applause on the floor and from the galleries.]

The SPEAKER. The Chair desires to state to persons in the gallery that they must cease applause; and unless that instruction is obeyed, the Chair will cause the galleries to be cleared.

Mr. BANNING. But, Mr. Speaker, the people will not permit that to be done. [Great laughter.] I do not mean that they will not permit the galleries to be cleared. [Laughter.] I mean they will not permit the ballot-boxes to be changed, nor will they permit an illegal and dishonest returning board to defeat their honest election.

I have now said, Mr. Speaker, all, and more than I intended to say; and I do hope that the gentlemen whose report has been received and printed in the RECORD will now permit the other side, the people, to be heard.

Mr. GARFIELD. Let us rejoice, Mr. Speaker, that at last we have in our midst a gentleman who is authorized to speak for the whole American people; who is able to tell us just what the people want, just what the people believe, and just what the great American people are going to do. I have been, in my feeble way, reading the public newspapers, getting what information I could by private correspondence, and trying in that way to get at a knowledge of public opinion on public questions. And I had hoped that the whole Congress, aided by the whole press, might by and by get a fair reflex of the public mind; but I had never indulged the dream that on this bright morning, between the two holidays, we should find a gentleman who has already learned all about it; who knows just how the people feel; knows exactly what the facts were in the late elections in Louisiana, South Carolina, Florida, and Oregon too; knows precisely the contents of all the sealed packages of returns now in possession of the President of the Senate; can tell us just how the papers will read when they shall be opened, and has learned exactly how much military force the people are going to raise to carry out his views of the result. To learn all this by listening to a fifteen or twenty minute speech is a crowning mercy, for which every citizen ought to be profoundly grateful!

Among other things my colleague knows that the people are going to have honest ballot-boxes, and therefore, if I understood him, they are not going to let any ballot-boxes be purged before the votes are counted.

Mr. BANNING. Will the gentleman understand me? I say that they are not going to let any ballot-boxes be perjured.

Mr. GARFIELD. Very well. Let it stand so. We know all good things will come from a quarter so replete with knowledge.

Now I want to call the attention of my colleague to the fact that in the State of Ohio there are about four thousand ballot-boxes, and on the 7th of November last there sat behind those ballot-boxes about four thousand returning boards of three members each. And after applying the law ministerially and judicially during the day, when the hour of six o'clock came the ballot-boxes were opened and each of those returning boards proceeded to do this. Having before them a list of all the voters who had voted on that day they proceed to count the ballots. When they drew out a ballot and found that there were two ballots folded together, though it may be that some honest citizen had by mistake picked up two ballots and put them in the box, still the board threw out both ballots and refused to count either of them, whether they were democratic or republican. Again, the board finds that some man has pasted a printed name over the name of one of the electors, and they refuse to count that name. They find the name of an elector erased and in its place the name of another person is written; but one of his initials is left out. They refuse to count the name of that man though the probable intention of the voter is thus defeated. They go on thus purging the ballot-box; and, when they get to the bottom, if they find that there were one hundred and twenty ballots, and that there were only one hundred names on the poll-list this returning board proceeds to put all the ballots back into the box, shake them up, and draw from the mass until they have drawn out twenty ballots; and the twenty thus drawn out they do not count at all, but count only the ballots which remain. It may be that all the fraudulent ballots were thrown by one party and that every one thrown out was a ballot of the other party. But the board follows the law; they purge the ballot-box; they certify to the result, and send it to Columbus there to be added up with the other purged returns. In other words, in the State of Ohio there are four thousand returning boards that proceed judicially as well as ministerially, under the laws of the State, to throw out ballots, to purge the polls, and they are to certify the result.

Now, does my colleague propose to say that this House has the right, by means of its committees, to go behind every returning board in Ohio, and in all the other States, and make a recount of the 7,000,000 ballots cast on the 7th of November, and thus determine who was elected President? It happens that in the State of Louisiana they have there, in what some gentlemen on the opposite side would call their sovereign capacity, made another kind of law. The men who sit behind the ballot-boxes in that State are not permitted to throw out ballots at all. All they can do when the polls are closed is to count the votes in the boxes and record what they find, however false, however fraudulent the ballot may have been. The commissioners who attend to the ballot-boxes in Louisiana must report just what they find. They do not purge the polls at all, as the four thousand

returning boards in Ohio do. But when they have counted and recorded the ballots, they replace them in the boxes, lock and seal the boxes, and send the returns to the capital of the State; and the State returning board is authorized and required, by the laws of Louisiana, to examine and compile the returns. They alone are authorized and required by law to purge the polls and declare the result.

This is precisely the difference between the returning board of that State and the returning boards of Ohio. Does the gentleman mean to tell us that, because unpurged polls sent to the city of New Orleans showed a given set of figures, those figures are the lawful result of the election? Does he hold that every vote found in the ballot-boxes, whether false or fraudulent, should be counted and declared lawful because it was found in the box? If his speech means anything it means that. How desperate must be the cause that can call such a doctrine to its support!

I say to the gentleman, after a careful study of the testimony in this case, that there were numbers of ballot-boxes in Louisiana from which, if he had drawn out the ballots to count and declare them, his hand would be leprous with fraud and red with blood.

If the gentleman desires to count in a President by means such as his speech implies, what becomes of his cry for an honest ballot-box?

Mr. SPENCER. I would like to ask the gentleman——

Mr. GARFIELD. It is rather early in the day——

The SPEAKER. Does the gentleman from Ohio yield to the gentleman from Louisiana?

Mr. GARFIELD. Not now. It is rather early in the day for the gentleman to set up the claim of ecstatic virtue, which, as he interprets it, means only that there shall be no virtue at all in our elections. It is for the sake of an honest ballot that the laws of the several States require the purgation of the polls before a result shall be declared. And when the returns of an election in a State have been made in accordance with its laws, will any law-abiding Representative seek to break down all the sanctions of State law and overturn the result? With what face can the Representative who seeks to do that appeal to his members not to be partisans, but statesmen?

I very, very deeply regretted that my colleague, [Mr. BANNING,] in a time like this, when the country needs all its wisdom, all its equipoise, all its fairness, all its calmness, saw fit to say that the people would defy the authorities of the United States in a certain contingency; to say that the Army might come here, that the Navy might come here with fixed ammunition, that the trappings of war might be rattled about the Capitol, but the people, in whose name he assumes to speak, would rise and overturn the lawful authorities.

I do not hold a commission to speak for all the people of the United States; but I venture the opinion that the man who is most likely to receive the rebuke of all good citizens of both political parties, just now, is the man who suggests violence as a mode of settling any national question. And it is of the very essence of violence for a representative to appeal to the people to resist the plain processes of law. In an hour like this, the man who shakes a brand of fire among the trains that lead to the magazine of public passion is the man that ought to be most severely censured by the fair-minded and just people of the United States.

I ask all members of the House who love the peace and honor of the nation to resist every effort of this sort. I have an abiding faith in the good sense and justice of the American people. It has led them safely through much greater perils than any which now surround us, and it will find an honorable and safe way through these.

All this debate has sprung from a very little matter. My colleague, with a strange obliviousness to plain matters of difference, thinks he discovers in the course of the gentleman from Michigan [Mr. CONGER] and myself some inconsistency between the position we have taken this morning and the position taken by us in regard to a certain message from the President of the United States. Let him listen to the plain language of the rule of this House. I read it:

> All messages from the President are in writing, and are sent to the House by his Private Secretary, or such other person as he may delegate, and, as in the case of messages from the Senate, are announced at the door by the Doorkeeper and handed to the Speaker, who places them upon his table, to be taken up whenever the House, under the fifty fourth rule, shall go to the business thereon. In the case of the annual message, however, it is usually taken up, by unanimous consent, as soon as received. Whenever taken up, messages from the President are always read *in extenso*, the House never, as in the case of other communications, dispensing with the reading of the same.

Now the President sent a message here at an early day of the session. It was his plain duty to send to the Congress whatever information was in his possession to inform Congress concerning the state of the Union. This is the language of the Constitution:

> The President shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient.

If the President hears that the cholera or the plague is approaching our shores on some vessel, even if his information be only a rumor, it may be his duty to send a message to Congress laying that information before them. He may send us even the faintest rumor that in his judgment it is important for Congress to know.

In plain pursuance of his constitutional duty the President sent a message to Congress communicating the alleged facts concerning the count of the electoral vote of Louisiana. It was here in this House that a gentleman on the other side, the gentleman from New York, [Mr. WOOD,] arose in his place and denounced the message; said it ought to be returned as an improper communication; and by order of the majority of the House it was laid upon the table—a thing I have never before known, a message of the President thus treated. Under the rule the Speaker could have done nothing else than to lay that message before the House, and under the rule it was the duty of the House to have it printed, and it was properly so decided.

But the case now before us is that of an ordinary memorial. I want it distinctly understood that no man on this side of the House objects at all to the Speaker's presenting it and having it referred; it ought to be presented and it ought to be referred. The only point made on this side of the House is whether the Speaker has any other or higher privilege in the presentation of petitions than every other member of the House. I hold that if the Speaker can lay any petition before the House and demand that it be printed then I can lay any petition before the House and demand its printing, and every other member of the House can do the same.

There is one plain rule that regulates the presentation of petitions and memorials, with only here and there an exception like this; when a Legislature memorializes Congress, the memorial is read to the House under its rules. But petitions and memorials from private citizens are provided for under the general rule.

Now if the House chooses to change the rule, if we wish to say that all petitions from all the public meetings that may be held by all organizations throughout the country shall be spread upon our record on the demand of any member, the House should consider the practical result.

The SPEAKER. The Chair desires to correct the gentleman from Ohio. The Chair has made no such decision.

Mr. GARFIELD. If the Chair has not, I am glad. I understood the Chair to decide that as Speaker he was bound to lay petitions before the House in a different manner from what I as a member am bound to lay a petition before the House.

The SPEAKER. The Chair has simply held that when a communication, respectful in its character, comes to him in an official form from a portion of the people it is his duty to present it to the House. In obedience to that belief, he has presented this paper; and if the gentleman from Ohio will allow, the Chair will have read the record as taken down by the official reporters, which sustains the Chair in the position that the paper came before the House by unanimous consent, that no objection was made to its reception; and being before the House the gentleman from Ohio [Mr. BANNING] was recognized on the question of reference.

The Clerk read as follows:

> The SPEAKER laid before the House the proceedings of a citizens' meeting in Cincinnati, held December 20, 1876.
>
> Mr. BANNING. I ask that this may be referred to the committee on counting the electoral vote, of which Mr. PAYNE is chairman, and that it be printed in the CONGRESSIONAL RECORD.
>
> Mr. CONGER. What is that paper?
>
> The SPEAKER. It is an account of a public meeting held in the city of Cincinnati touching the present presidential election.
>
> Mr. CONGER. I object to it being printed.
>
> The SPEAKER. The communication will be referred to the committee indicated by the gentleman from Ohio, [Mr. BANNING.] The gentleman from Michigan [Mr. CONGER] objects to printing in the RECORD.

Mr. CONGER. My objection was to printing in the RECORD. I wish that corection to be made.

The SPEAKER. The Chair so understood.

Mr. GARFIELD. As I said in some earlier remarks this morning, I have no doubt that the Speaker is correct in saying that unanimous consent was given for the presentation of the papers upon his table; but what I insist upon is that when this paper has been presented it must take the course prescribed by the rule. If the Speaker intended to present it for the action of the House and unanimous consent was granted for that purpose, then, of course, the paper is before the House.

The SPEAKER. Under what rule could the Speaker present this paper without being compelled to ask the action of the House upon it as to its proper reference?

Mr. GARFIELD. If the Chair will permit me to remark, he will see, by referring to any volume of the RECORD or Globe for years past, that the list of petitions and memorials printed at the close of our daily proceedings embraces often dozens of petitions presented by the Speaker.

The SPEAKER. The gentleman certainly does not wish to confuse this question. It is a very simple one.

Mr. GARFIELD. No, sir; but I say that, by consulting the volumes of the RECORD and the Globe, there will be found, along with the other petitions at the end of our daily proceedings, petitions presented by the Speaker.

The SPEAKER. The Chair will state to the gentleman from Ohio, who surely will agree with him, that when a paper comes before the House by unanimous consent it is then under the control of the House.

Mr. GARFIELD. Certainly I admit that.

The SPEAKER. And the Chair has no authority to control such a question; if he had it would be a very arbitrary power to be exercised by a single individual.

Mr. GARFIELD. I admit that freely; and I say in this connection that I presume there was not a gentleman on this floor who did not suppose the Chair was presenting the ordinary executive communications from the package before him.

The SPEAKER. The Chair reserved this paper until the end. The executive communications were all referred before this was laid before the House.

Mr. GARFIELD. The Chair was presenting by unanimous consent the usual executive communications; and if any gentleman on the floor noticed that this was a different paper from the others which the Chair had presented, I certainly did not, until a demand was made on the other side to have it printed in the RECORD. That of course showed that the paper was of a different character from the others.

I have said all that I wish to say on this subject, except this: as a mere matter of good order in the House, I shall regret if it be decided that all that citizens need in order to have their political speeches and resolutions or any proceedings of a partisan character on either side spread upon the pages of the CONGRESSIONAL RECORD is to address a communication to the Speaker.

The SPEAKER. All that is needed to prevent that is the watchfulness of the gentleman from Ohio.

Mr. GARFIELD. Of course if the Speaker desires us to expect that in the midst of a bundle of executive communications there will be a private document of a political character—that we shall not be advertised in advance that it is not an executive communication, but one for which the Speaker asks unanimous consent—if the Speaker desires to take that attitude I shall regret it, but we must conform our action to his decision.

The SPEAKER. The title of this paper which was read is "proceedings of a citizens' meeting in Cincinnati, held December 20, 1876." The Chair withheld nothing from the knowledge of members of the House; and he is at a loss to see how any gentleman could justify for a moment the retention of that paper by the Chair for any reason or purpose whatever.

Mr. GARFIELD. If the Chair will permit me, no one has proposed its retention.

The SPEAKER. Then what was the Chair to do with it?

Mr. GARFIELD. Refer it.

The SPEAKER. There were two ways open to the Chair: one to retain the paper and the other to present it. The gentleman has stated that the Chair would not be justified in retaining it, and therefore it necessarily followed that the Chair would be justified in presenting it.

Mr. GARFIELD. If the Chair will permit me further, I will state that there is a box provided at the Clerk's desk where petitions are filed under the rule. If the Speaker holds that all petitions presented by him are in an exceptional situation, it is important that we know it and govern ourselves accordingly.

The SPEAKER. This came to the House addressed to the Speaker in his official capacity, and did not come to him as a Representative of the State of Pennsylvania.

Mr. BANNING. Mr. Speaker, my colleague regrets that I should take occasion to make so excited a speech at this time.

We of this side have sat quietly in our places and had cause to regret that the conduct of my colleague and those who act with him should have been such during this session as to make it necessary for us to take the action we have.

He says the country is in a dangerous condition, and that we ought to proceed carefully and cautiously. I agree with him, and surely this side of the House has done that; and let me tell the other side we will continue to do it. We will go forward quietly, doing our duty; and in so doing will not be deterred by anything or any power.

I thought, Mr. Speaker, the time had come for us to say something. When my colleague made the report which was presented to the House, the Speaker made the same decision then that he has made this morning. That report came here signed by my colleague [Mr. GARFIELD] and others; and I ask the Clerk to read that part of the report which he signed which I have marked.

The Clerk read as follows:

The great national importance of the duties to be performed by the board invested each member with much interest, and as many reports had been circulated concerning them, we were led to make some inquiry as to their individual history. Two of them, Hon. James Madison Wells, president of the board, and General Thomas C. Anderson, next senior member, are southern-born, and of old and highly respectable families. The father of the former was Hon. Levi Wells, of the parish of Rapides, who in 1812 represented it in the convention called to frame the constitution of the State of Louisiana. The son received a liberal education and was early engaged in the care of the planting and other interests of his father. He was a Union man from the time the war broke out, and, although he suffered greatly by it in the loss of property, he never faltered in his devotion to the Union cause. Under the Banks reconstruction scheme he was chosen lieutenant-governor on the ticket with Hon. Michael Hahn, who was elected governor, and upon the election of the latter to the Senate, a year after, Mr. Wells became governor of the State, to which office he was almost unanimously re-elected under the reconstruction plan of President Johnson. His experience in public life has been great and varied, and his capacity to discharge the duties assumed cannot be questioned.

Mr. BANNING. Now, Mr. Speaker, a committee of this House, composed of a majority of republicans, had more than two years ago reported that the State of Louisiana was a democratic State. They reported that the officers elected by this returning board were not the officers elected by the people of that State. They turned out legislators who had been elected by this returning board and maintained in their places only by the Army. A year after this committee of this House reported that this returning board was illegal a distinguished lawyer on the other side had pronounced the board to be both illegal and unconstitutional. This returning board, composed entirely of republicans, counted the vote of Louisiana again this last fall. A committee was appointed by the President to go and be present at the count. All of them were republicans, and the returning board being all republicans, although the law required it should be composed of men of both parties, this committee, I say, was sent there by the President to view the counting of the vote. While there they found other gentlemen—Hon. Lyman Trumbull, General Palmer, George W. Julian, and other men of like high character who had stood for the right in its darkest days—and these gentlemen said to this committee appointed by the President, "Let us confer together and make a report." And how were they answered? My colleague from Ohio [Mr. GARFIELD] and his committee said no. Then the report of the committee on the part of the President comes to this House and was printed in the RECORD. When we attempt to find out whether that report is true or not the other side vote solid against the inquiry. Even when we come here and undertake to find out if what has been stated by this committee is correct or not, is true or not, when we seek to get to the record upon the subject, they object.

By good fortune I have here what I then tried to get under a resolution which was objected to on the other side, and I ask that gentlemen will listen to the reading of what I send up to the Clerk's desk. It is the order of General Sheridan in 1867; also his letter to the Secretary of War in reference to Governor J. Madison Wells, who was the president of the Louisiana returning board. I want the order and letter printed in the RECORD, so that the country may know the opinion of General Sheridan of the president of that returning board which has been so highly indorsed by the committee of which my colleague was a member. When the people of the country read this record they will not be surprised at the astonishment which I have expressed that any committee of gentlemen should indorse the chairman of the returning board who is here referred to.

The Clerk read as follows:

HEADQUARTERS FIFTH MILITARY DISTRICT,
New Orleans, June 5, 1867.

His excellency the governor of Louisiana, J. Madison Wells, having made himself an impediment to the faithful execution of the act of Congress of March 2, 1867, by directly impeding the general in command in the faithful execution of the law, is hereby removed from the office of governor of Louisiana, and Mr. Thomas H. Durant appointed thereto. Mr. Durant will be obeyed and respected accordingly.

By command of Major-General P. H. Sheridan.

GEORGE L. HARTSUFF,
Assistant Adjutant General.

Wells refused to obey this order; whereupon General Sheridan issued the following:

HEADQUARTERS FIFTH MILITARY DISTRICT,
New Orleans, La., June 7, 1867.

SIR: Governor Flanders has just informed me that he has made an official demand on you for the records of the office you have heretofore held as the governor of Louisiana, and that you have declined to turn them over to him, disputing the right to remove from office by me, which right you have acknowledged and urged on me up to the time of your own removal.

I therefore send Brevet Brigadier-General James W. Forsyth, of my staff, to notify you that he is sent by me to eject you from the governor's room forcibly, unless you consider this notification equivalent to ejection.

P. H. SHERIDAN,
Major-General U. S. A., Commanding Fifth Military District.

Mr. J. MADISON WELLS, *ex-governor of Louisiana, New Orleans, Louisiana.*

Wells's conduct as governor had been notoriously corrupt. He had illegally appointed a board of levee commissioners, who were authorized to hold over by an act of the Legislature, and a conflict of authority ensued, and in the mean time the Mississippi overflowed and great damage was done to property. There was an appropriation of $4,000,000 made by the Legislature for repairs of the levees, and Wells wanted to finger some of this money. General Sheridan, in a letter to Secretary Stanton, dated June 3, 1867, explaining the action in removing Wells, said:

"After the adjournment of the Legislature the governor of the State appointed a board of his own in violation of this act, and made the acknowledgment in person that his object was to disburse the money in the interest of his own party by securing for it the vote of the employés at the time of the election. The board continued in office, but the Legislature refused to turn over to the governor's board and each side appealed to me to sustain it, which I would not do. The question must then have gone to the courts, which, according to the governor's judgment when he was appealing to me to be sustained, would require one year for decision. Meantime the State was overflowed. The levee boards were tied up by political chicanery, and nothing was done to relieve the poor people, now fed by the charity of the Government and charitable associations of the North. I say now, unequivocally, that Governor Wells is a political trickster and a dishonest man. I have seen him myself, when I first came to this command, turn out all of the Union men who had supported the Government, and put in their stead rebel soldiers, some of whom had not yet dropped their gray uniform. I have seen him again, during the July riot of 1866, skulk away where I could not find him to give him a guard, instead of coming out as a manly representative of the State and joining those who were preserving the peace. I have watched him since, and his conduct has been as sinuous as the mark left in the dust by the movement of a snake. I say again that he is dishonest, and dishonesty is more than must be expected of me."

In communicating with General Grant on the removal of Wells, General Sheridan said:

"He has embarrassed me very much since I came into command by his subterfuge and political chicanery. This necessary act will be approved by every class and shade of political opinion here. He has not one friend who is an honest man."

[Laughter.]

Mr. SPRINGER. I ask that that part be again read.

The SPEAKER. There being no objection, it will again be read.

The Clerk again read the last paragraph.

Mr. BANNING. That was General Sheridan's opinion of J. Madison Wells in 1867.

Mr. GARFIELD. J. Madison Wells was then Andrew Johnson's democratic governor.

Mr. BANNING. And now the president of this returning board your committee indorsed.

The Clerk proceeded with the reading, as follows:

General Grant approved the action of General Sheridan in removing Wells. All the letters, telegrams, orders, and other communications from Sheridan on the subject of Wells's removal with Grant's indorsement thereon would be interesting reading now in connection with the high eulogium which Senator SHERMAN and Representatives GARFIELD, HALE, and KELLEY pronounced upon the political trickster and dishonest man who was removed by Sheridan in 1867, and who is now a trusted Federal office-holder and president of the returning board which counted in the Hayes electoral ticket of Louisiana.

Mr. BANNING. Now, Mr. Speaker, is this the man whom my colleague would *have thrust his honest hand into a dishonest ballot-box and cleanse it of the gore and fraud that is in it?* This man who is pronounced by Sheridan to be dishonest to his own personal knowledge and that he has not one honest friend in the State of Louisiana. Is this the man who is to change the 8,000 majority for Tilden to 4,000 majority for Hayes? And, Mr. Speaker, shall this House sit still when the President sends a report here which says that this man was a Union man during the war while General Sheridan says in 1867 that he was not? But, Mr. Speaker, it is no crime to have been a confederate provided you become a member of the republican party now. In 1867 Sheridan removed Wells from office and denounced him as a confederate sympathiser and said that he was dishonest; that he put into place men who had not ceased to wear the gray uniform. Now this committee reports to this House sustaining the action of the returning board and appeals to the country to sustain their report because Wells was a Union man. He was dishonest in 1867 when he did not do what the republican leaders wanted him to do. But, according to the republican committee's report, he is honest in 1876 when he makes the return of the Louisiana vote which will elect a republican President when the people of that State had by a vote of more than eight thousand chosen a democrat.

I ask my colleague from Ohio [Mr. GARFIELD] does he expect us to sit still here and believe this report of this committee when the members of the committee itself and all that side of the House refused us this public record that ought to be seen by every man, and the reading of which discloses the reason why you do not wish to let us have it printed? All that I want or hope for is for a fair and honorable way out of our difficulties. Every honest man hopes for that; every good citizen hopes for that; every member of this House, whether democrat or republican, should labor for that; and the way to reach that end, Mr. Speaker, is not by forcing us to believe a partisan report but by giving us all the facts, investigating everything, and finding out whether or not that returning board reflected the opinion of the people of Louisiana. The country does not believe it does. And let me say to gentlemen you must give Wells a better character than Grant and Sherman have given him, if you would have the country have confidence in his report.

Now, Mr. Speaker, I desire to say just one word more. The next clause of this report that we have says that General Anderson of the returning board is a cousin of the distinguished General Anderson of Fort Sumter. Well, they may have heard that in Louisiana; but if you go and tell that to Lozey Anderson and Governor Anderson, of Cincinnati, the brothers of the general, it will be news to them. I am advised that if he is a member of the family they have not heard of it until the appearance of this report.

[A member from his seat made a remark inaudible at the reporters' desk.]

Mr. BANNING. I will not say that of him. I do not know him. I am only stating what I am told.

Now, Mr. Speaker, why is this? Why is this appeal made to the people of the North, that Wells was a Union man, and Anderson a Union man? Did they expect to stir up the minds of the northern people with the notion that the confederacy was bearing down hard upon them? Why, sir, there are more men in the North who will take Sheridan's opinion as to the loyalty or disloyalty of Wells in 1867, especially when he removed him because he was a dishonest man and was sustained in that action, than there are who will believe the report of this committee, and who are afraid to have their report contradicted by the testimony in the War Department.

I have but one word more to say. Gentlemen say they regret that this comes on now. We have been told that vigilance is the price of liberty, and the people of the country believe it. These reports of proceedings at meetings of men of all parties are the best evidences to us that the people have lost confidence in the lead of gentlemen on the other side, and are afraid that their liberties are to be subverted; and they are evidence further that they will not permit it to be done.

Mr. FRYE. The fact that a great many men in this country now are talking much as the gentleman from Ohio [Mr. BANNING] talks about war, and yet that gold stands to-day at 108½ and 109, and not at 150——

Mr. WILLIS. That is because Tilden is to be inaugurated.

Mr. FRYE. Shows clearly to my mind that the people the gentleman is talking about do not take any stock in this democratic cry of war. They do not believe there is to be any war. They are not easily frightened by gentlemen like the gentleman from Ohio, who talk about the people coming here and stripping men from power; and they will not take much stock either in the gentleman's new admiration for General Sheridan. A short time ago General Sheridan sent a dispatch north from Louisiana, where he had been himself examining for some six months, indicating that in his judgment a portion of the people of Louisiana were banditti, and the gentleman from Ohio and his friends went crazy over this testimony of General Sheridan that these Louisianians who were committing murder and every other outrage were banditti. And they held public meetings, I presume in Cincinnati—they did in Boston, they did in New York—denouncing General Sheridan because he bore such testimony against murder and outrage in that State. And yet, now, the gentleman says the people will and ought to condemn Wells, because General Sheridan in heat and excitement declared that he (Wells) was a scoundrel. And why? Because Wells was the democratic or conservative governor of the State of Louisiana, and was administering the functions of that office in behalf, to a certain extent, of those who had been in rebellion against the United States Government, and Sheridan could see no good in a man who was granting favors, the favors of peace, to men who had only a year or two before been in arms against the Government. The motives of Governor Wells may have been the promotion of peace, the establishment of harmony; but the memories of war were too fresh for Union men of the North to justify his conduct.

That time to-day has passed. I do not stand here to say that I can see no good in a people who clothe with power men who were in arms against the country. I can say for myself that I would rather see men who were so in arms, who went through the perils of war for that which they honestly believed to be right—I would much rather see them in power than the men who, up in Ohio and up in the North, shouted encouragement to the South, then went back on them, only daring to show a mawkish sympathy when they were routed and a devilish joy when they were victorious. I have very much the opinion in relation to copperheads that the President of the United States expressed and of the purpose they had in the war, and what they accomplished in its prolongation; so no remark of mine should be taken as a reflection on any gentlemen who hold positions in the administration of State governments now, and who held positions in the Southern army. But, sir, when General Sheridan made his charges against Governor Wells it was just after the heat of battle was over, it was just at the time Johnson had become President of the United States, and there did seem to be danger in the course which was being pursued.

Again, why does not the gentleman take the testimony of General Sheridan in relation to the State of Louisiana, who himself declared to me, personally, when I was there on a committee, and showed me papers substantiating his declaration, that he had sent United States officers over that State for the special purpose of finding out how many political murders had been committed since the rebellion, and the circumstances of those political murders—declared to me, I say, producing papers to sustain it, that he found there had been nearly three thousand such murders? In the nineteenth century, in a State of the American Union, in time of peace, nearly three thousand colored men had been murdered because they were republicans! Why does not the gentleman take that testimony as well as this of General Sheridan in relation to Governor Wells, made in the excitement and heat of those times? The statement I have quoted was made deliberately and after careful examination, without heat, without excitement.

Now, as to Governor Wells: The first section of our committee which went down to Louisiana reported or said—I have forgotten which—that Governor Wells was afraid to appear before them and did not testify. When our section of the committee arrived at New Orleans and went to the court-house, we found Governor Wells there. He was not afraid to appear before the committee, and he testified that he had no knowledge whatever that any committee had been in New Orleans; that when it was there he was sick in his bed; that when he heard the committee was coming he at once, sick as he was, left his house and went to New Orleans and came to the court-house to bear testimony before that committee, which happened to be ours.

Now, Governor Wells was an old whig in Louisiana, and those old whigs there do not love the democracy any better than I have been brought up to love it. They see no good in it, as I never have seen any in it since I have been a voter. When they were put upon the witness-stand and we asked them if they were democrats they were angry in a moment, felt insulted, aggrieved, and declared that never were they democrats and never would they be; that they were conservatives.

Now, as I have said, Governor Wells was an old whig in the State of Louisiana and when secession was talked about he was a man worth two or three hundred thousand dollars; he owned two great plantations; he owned two hundred slaves. He had been well received in the best society in the State, and surely he could find it in the old whig party in that State. He had been on most intimate terms with leading men and had been received on equal terms into the best families of Louisiana. He was welcomed as the conservative governor of Louisiana and strove to bring healing into the affairs of the State by treating men who had been in the rebellion as he treated Union men.

Now, being a whig when secession was started, Governor Wells began at once to speak against it, and, being a man of courage, he did not hide his light under any bushel. He spoke openly, he spoke boldly, he spoke everywhere as freely as the distinguished vice-president of the southern confederacy spoke down in the State of Georgia. Then when secession grew riper and bolder they raised a company, or I believe two, of the democrats and secessionists and marched them up into the parish where Governor Wells lives to take him, hold him, and see to it that he should not speak for the Union and the flag longer.

Governor Wells then left his houses, his horses, his cattle, his negroes, his wife, and his children for love of the flag, and went into the swamps of Louisiana and for a year and a half never came out of them. He raised a company of seventy men who, like himself, were lovers of the flag and lovers of the Union, and they lived with him in the swamp. They taunted them as jay-hawkers; they hunted them with blood-hounds. They burned his houses; they took his cattle; they took his horses. His family was separated, and he got out of the swamp only when New Orleans was captured. What devotion to the Union! what love for the flag! what suffering, what peril, what sorrow endured for the country! Can such a man be a scoundrel?

When he was a witness before our committee, in the court-house, there were at least one hundred and fifty leading rebels present. Three or four of them were well-known murderers; everybody knew them to be murderers. One of them, a member of the conservative senate, I think, was engaged in the Grant Parish murders. He boarded at the Saint Charles Hotel with me, and I knew him well. Three or four others had been participants in the terrible outrages of 1868 and 1-72. Your candidate for governor, Mr. Nicholls, a gentleman whom I respect, and admire too, was sitting there all the while. I became well acquainted with him.

I asked Governor Wells in relation to his former life, in order to show by his testimony that the statement that he was a scoundrel was a new discovery, never known until secession became known and he showed himself to be a firm Union man. He told these men there that they called him a jay-hawker. Said he to them "I had rather be called a jay-hawker, I had rather my children would know me in memory as a jay-hawker, than be called a traitor, as you men are called," pointing to these men in the room. Did that show want of courage? Did that indicate that he was a man to run away?

Again, I asked him if he was afraid of assassination. They had attempted at least twice or three times to assassinate him. He said: "Yes, I do fear it, for these men here hate me with a vindictive hatred because I love the flag. They, hating the country and hating the flag, dare assassinate a man in the dark with a knife or the bludgeon or the pistol. Sir," said he, "I do not fear these men in the open day, or in the night if they will give me notice. No twenty of them dare attempt to assassinate me and let me know it."

When the governor was through I said to General Nicholls: "Was that boasting on the part of Governor Wells?" Said General Nicholls: "No, sir, it was not; it was every word of it true; that man does not know what the word 'fear' means." That, sir, was the testimony of a man whom I believe to be honest, the candidate of the democratic party for governor of Louisiana. Now as a committee we found, notwithstanding the assertions which have been made here——

Mr. WILLIS. By Sheridan.

Mr. FRYE. Not by Sheridan at all, but by gentlemen on this floor, in relation to the report of our committee. We found that, and I quote from our report:

> Governor Wells, the president, had been a large and wealthy planter before the war; had remained loyal through the rebellion; had been true to the flag of his country when driven to the swamps and hunted by dogs. Such a record entitles him to our warmest sympathy and respect.

I do not believe that he would knowingly do a dishonest or cowardly act for the advantage of his party. As for Mr. Anderson, he, too, was a man of wealth, but he was in the rebel army all through the war, holding a high position. In my judgment, he is a gentleman by birth, by education, and by habit.

The other two members of the returning board I do not know so well. They were colored men, and I plead guilty to that of which you southern men are not guilty. I have that northern colorphobia in me which you do not have. You have instead that phobia of servitude; you have that idea in you that a man who serves never should be permitted to rule. I have born in me that wicked color dislike, and it is hard work for me to get over it. I have tried to overcome, and have largely, this prejudice. I do not know, if I was down there in one of these Legislatures and saw colored men legislating for me—I do not know but that I would have the same purpose that was expressed to me in Louisiana again and again by conservatives: "We will treat the colored men well in their places, but they shall not vote." I do not say that I should not have precisely the same feeling; I fear that I might. But that I had it would not make it right, nor would it afford any justification for murder, outrage, or threats to prevent them from voting.

Now I say to the gentleman from Ohio, [Mr. BANNING,] and I say to the gentlemen from the South to-day, the right of suffrage having been given by the Constitution of the United States to the colored men of the South as well as to the white men, you will be compelled to give them the free exercise of that right in your southern country or you will have no peace in that country. God knows we long for peace there as you long for peace. God knows our prosperity depends upon your prosperity there, our happiness upon yours; we are one country.

When I was in New Orleans there were twenty ships lying in the harbor there from my own district in Maine. Four-fifths of the carrying trade of the city of New Orleans, and largely of the country of Louisiana, has been done by my own State. Large numbers of merchants in New Orleans to-day are from my own State. Packard, the present governor of Louisiana, was from my own city, and I dare bear witness, notwithstanding the talk which has been made in the public press, that not an honester man to-day walks the streets of New Orleans than that same Packard, so derided and hissed and hooted because, forsooth, he is a carpet-bagger.

And my own city furnished two mayors of the city of New Orleans long before you down there knew what the word "carpet-bagger" meant.

Crossman, from my city, was mayor of New Orleans for I think four years—a good mayor, an honest gentleman—not a "carpet-bagger," because there had been no war then.

Our destinies are with yours; our prosperity is tied up with yours. We want to see peace. We have no enmity toward you—not the slightest. We will do you no harm.

A MEMBER. Let us alone, then.

Mr. FRYE. And we will "let you alone" if you will let the colored men vote.

Mr. ATKINS. No prominent man in the South is opposed to that.

Mr. FRYE. I understand the gentleman to say that no prominent man in the South opposes it.

Mr. ATKINS. Nor any not prominent, so far as I know.

Mr. FRYE. Will the gentleman take the testimony of General Sheridan that 3,000 persons have been murdered in Louisiana because they desired to exercise the right of suffrage?

Mr. WILLIS. I will not.

A MEMBER. Nor I, without a good many grains of allowance.

Mr. REAGAN rose.

Mr. FRYE. Does the gentleman from Texas wish to ask a question?

Mr. REAGAN. Not to ask a question, but to make a statement.

Mr. FRYE. I do not yield for that. Mr. Speaker, gentlemen say they do not believe this statement of General Sheridan. I do not know what will convince the democratic party that outrages have been committed against voters in the South. For some time I despaired even of many republicans ever yielding credit to the terrible barbarism existing in some States South. But I say, from the day when a republican convention was assembled in Mechanics' Institute in 1866 and when three hundred democratic policemen marched up to that hall and, platoon by platoon, fired ball cartridges into that peaceful body, and then when men jumped out of the windows and fell upon the hard sidewalk with broken arms and broken legs, and prayed for life, more than four hundred of the same class of white men brained them with their muskets as they lay on the sidewalk, so that in less than one hour's time two hundred and sixty men were killed; and when two hundred were gathered together by the agents of the Freedmen's Bureau and carried to the marine hospital, these men formed a line on New Canal street and for half an hour fired ball cartridges into the hospital itself—from that hour down to the present time Louisiana has been a barbarism.

Mr. WILLIS. Under republican administration.

Mr. FRYE. Under republican administration, because the courts are utterly and entirely powerless.

Mr. WILLIS. And they are in the hands of republicans.

Mr. FRYE. When a man commits an outrage—murder, which the gentleman from New York [Mr. WILLIS] would not think of vindicating or tolerating for one moment if committed in New York—when a man is being tried for such a crime, when every respectable lawyer in that precinct volunteers to defend him, and while the lawyer is arguing the case to the jury (as a gentleman, a conservative told me) the butts of his pistols can be seen projecting from his pockets every time his coat-tail switches back—when no jury can be found who dare render a verdict of guilty under circumstances like these, I say it is no wonder that these crimes happen under a republican administration.

Mr. SPENCER. Will the gentleman allow me to ask him one question?

Mr. FRYE. Yes, sir; I yield for a question.

Mr. SPENCER. In what parish did what the gentleman has just related occur?

Mr. FRYE. About this trial?

Mr. SPENCER. Yes, sir.

Mr. FRYE. O, I do not know: I do not know anything about your parishes except this: I know that the history of the parishes of East Baton Rouge, of East Feliciana, of Grant, and others is written in letters of blood; and the gentleman from Louisiana and his children one of these days, when impartial history is written, will put their faces in their hands and their hands in the dust at the record of those murderous parishes.

Mr. Speaker, I merely rose to reply to the gentleman's attack under General Sheridan's signature upon Governor Wells. I did not, when I rose to speak, think of going further. I ask the pardon of the House and thank it for the indulgence it has extended to me.

Mr. SPENCER. Mr. Speaker, I feel that something ought to be said on this occasion by some Representative from the State of Louisiana in regard to the statements which have been made by gentlemen on the other side who have preceded me; and I hope that what I may say will be said in good temper and good humor.

I stand upon this floor as the representative of the largest colored district in Louisiana, having received the open, free votes of more than five thousand colored men in my district. I stand here as their chosen Representative. They voted for me openly, freely, knowing that I was a democrat, knowing that I was a nominee of the democratic party. Yet I come from the fifth district of Louisiana, which

happens to contain two of the champion "bull-dozed" parishes, as they are called, in that State—the parish of Ouachita and the parish of Morehouse.

Sir, a man living away up in the State of Maine cannot possibly have that intimate knowledge of affairs in the State of Louisiana that I have; because I was born upon that soil, I was educated there, I have lived there all my life. I have mixed and mingled with that people upon such terms that I know, if any man in the world knows, their hearts; and when General Sheridan or anybody else tells me that there have been three thousand political murders in the State of Louisiana, I simply brand the statement as false. It is impossible; it is absurd, and the only wonder is that such declarations will be made, much less credited.

Why, sir, the gentleman from Maine talks about the massacre in Grant Parish. He does not read the papers. Has he read the testimony of William Ward and of Flower, who were the head-men leading the negroes in that fight? Has the gentleman forgotten upon whom the responsibility of that affair rests? What does Ward say, what does Flower say? They say they were put up and instigated to do that by William Pitt Kellogg and S. B. Packard. Sir, the blood of the negroes at Colfax is upon the hands of S. B. Packard and William Pitt Kellogg. They are the heads of the republican party in the State of Louisiana, although I am almost disposed at times to acquiesce in the proposition made by Mr. Greeley after his extended tour through the South, who when he came back to New York said: "My friends, you are mistaken; there is no republican party in the South; there are but two parties there, democrats and thieves." [Laughter and applause.]

I say that the blood of the negroes at Colfax rests upon the hands and upon the head of Mr. Kellogg and the men who surround him and instigated him to all his mischievous conduct in that State. Such is the testimony of Ward and such the testimony of Flower, who were leaders in that contest.

What were the motives which actuated Mr. Kellogg in stirring up that strife? It was for the purpose of making political capital. He cared nothing about the lives of forty, fifty, or a hundred negroes. It was only fuel added to the flame with which he expected to fire the northern heart. That is the secret of the Colfax affair. Mr. Kellogg armed those people. He furnished them with Government guns. He furnished them with ammunition. He did all this to bring about this conflict. He went to work deliberately and installed and commissioned two sets of officers in that parish and then refused to interfere for the purpose of preserving the peace. Any gentleman can get up and in round numbers talk about three thousand political murders. I, who have lived there all my life, say that the statement is absurd and without foundation in truth.

It is useless for me at this time to follow up the gentleman in the remarks he has made aspersing the character of the people of Louisiana. But I will say this, and such I believe will be the verdict of the American people, that the people of the State of Louisiana have exhibited a degree of courage, a degree of forbearance, of magnanimity, that is sublime. If the people of the State of Maine had put upon them what the people of the State of Louisiana have had, the gentleman himself would have become a red-handed revolter against the despotism of such an infamous tyranny. Every executive office in the State is in the hands of Mr. Kellogg and his followers; every judge in the State is his appointee; and does he or his officers make any effort to arrest men who he says are guilty of these crimes? No, not at all. He never thinks of such a thing. Why? For the reason that nine out of every ten are men in buckram. Those brigands the gentleman from Maine talks about are the same kind of men that Falstaff met at Shrewsbury. [Laughter.] I will say further to the gentleman from Maine, that as a citizen it was his duty, when information came to him there of these high-handed murders or wrongs, to have gone before the court, made proper affidavit, and had warrants issued.

The gentleman has drawn a very graphic picture, a beautiful eulogy on J. Madison Wells. He has said that that distinguished man had access to the best families of Louisiana. I am afraid the gentleman does not know the best families in Louisiana if he thinks J. Madison Wells has now or ever did have any access to the best families there.

He has further described, in graphic terms, J. Madison Wells, in the swamps of Louisiana. Mr. Speaker, if I were to credit what I hear, he was once known as a "swamp angel." It is useless for the gentleman to try to galvanize and to brighten the character of J. Madison Wells. It admits of no extenuation. It admits of no defense. Every act that he has performed as an official from the close of the war to this day has resulted in his public condemnation. And now there is piled upon his head an amount and a volume of iniquity that is mountain high.

The gentleman from Ohio [Mr. GARFIELD] is at least entitled to the credit of perpetrating some very bold figures of speech. He says the ballot-boxes in Louisiana are reeking in fraud and red with blood.

Mr. GARFIELD. The gentleman will allow me—I did not say all the ballot-boxes, but that there were some.

Mr. SPENCER. Very well, "some of them;" I will take the correction. The gentleman says some of the ballot-boxes in Louisiana are reeking with fraud and red with blood. Well, all I have to say is, it is republican fraud and republican rascality if such is the fact; because, sir, no democrat in the State of Louisiana had the opportunity of touching an election-box. The chief register was appointed by Mr. Kellogg. All the supervisors of registration throughout the State were appointed by him. Every commissioner of election was appointed by Mr. Kellogg, or by his *alter ego*, the supervisors of election. Kellogg appoints the supervisor, the supervisor appoints the commissioner, and in nine cases out of ten in the State of Louisiana there was not a democrat on an election board. Now, sir, if those ballot-boxes were reeking with fraud, who put it in the box? The democrats could not have done it. We had only the poor privilege of going to that box and depositing our ballot. There, sir, our control ceased. From the time the ballot-box was made, until it was deposited in the proper office after the election, the democrats had no part or share in it. I say, sir, that if those ballot-boxes are reeking with fraud, it must necessarily have been fraud perpetrated by Kellogg and his pimps, because most of the men appointed by him as supervisors bore a tainted character. How could the democrats perpetrate fraud on the ballot-boxes when they were not permitted to touch them; when Kellogg's own officers brought them to the polling-places, stood around them to receive the tickets from the hands of the voters, and when the election was over took the ballot-boxes and deposited them with men of their own sort and kind? Where came in the opportunity for democratic frauds? Sir, it is preposterous and absurd. And as regards the charge that they were "red with blood," will the gentleman from Ohio be kind enough to point me out one of the boxes "red with blood?"

Mr. GARFIELD. With pleasure.

Mr. SPENCER. I will be obliged to the gentleman if he will do so.

Mr. GARFIELD. Does the gentleman want me to do it now?

The SPEAKER *pro tempore*, (Mr. CLYMER.) Does the gentleman from Louisiana yield to the gentleman from Ohio?

Mr. SPENCER. I want him to tell me where in the State of Louisiana on the day of election there was any killing.

Mr. GARFIELD. Will the gentleman allow me to read from the report?

Mr. SPENCER. I do not ask the gentleman to read, but to state the places where the ballot-boxes were "red with blood."

Mr. GARFIELD. I will refer the gentleman to pages 340 and 341 and the two following pages of the report, being the examination and cross-examination before the returning board of Benjamin James. The custodian of the ballot-box was seized, the ballot-box was taken from him, and he himself shot three times and left for dead. He was before the board with his wounds unhealed, and the testimony was undisputed and unshaken by any of the cross-interrogatories.

Mr. SPENCER. In what parish?

Mr. GARFIELD. In Ouachita Parish.

Mr. SPENCER. The gentleman is reading now from that sweet mess that was brought up here by Senator SHERMAN.

Mr. GARFIELD. If the gentleman pleases, I am reading from the testimony which was taken by both political parties before the board, there being a cross-examination by the democratic lawyers as well as an examination-in-chief.

Mr. SPENCER. I know how that testimony was taken. It is simply *ex parte*.

Mr. GARFIELD. *Ex parte!* The cross-examinations are all here.

The SPEAKER *pro tempore*. The gentleman from Louisiana has the floor.

Mr. SPENCER. According to the gentleman's own statement, this transpired after the election closed.

Mr. GARFIELD. No, sir. If the gentleman will allow me I will explain that.

Mr. SPENCER. I thought the gentleman stated the box was being brought by this man to the county-seat. Why, Mr. Speaker, the gentleman's memory cannot be so bad and so defective that he does not know how these affidavits are made up. Sir, I could go down to the New Orleans custom-house and have a bushel of affidavits manufactured that would, if they were to be believed, convict the gentleman himself of arson or any other crime known to the world. They manufactured them by the ream in 1874. A United States commissioner absolutely manufactured affidavits and sent them there ready to fill orders according as Wells, Anderson & Co. desired them.

Now, sir, we say all that kind of talk will do with those who do not understand it; but to us who were there mingling in that election, taking an active part in it every day and every night, the thing is simply ridiculous. The gentleman has specified but one instance where the election officer, he said, was assaulted and beaten on the night after the election. Does that account for eight thousand majority being rejected? They rejected all that parish except one poll which went republican. As the gentleman has specified one instance I now make the assertion here that on the day when that election closed in the State of Louisiana there had not been a riot, there had not been a tumult, not even a fisticuff encounter within the broad limits of the State. Bear that in mind, and then bear in mind that the number of votes cast on that day was larger by several thousand than was ever cast in the State before. Bear in mind that the ballot-boxes which contained the ballots were not in our custody; that we were never permitted to touch them; that we were not permitted to come within six feet of the polls, and then tell me if you will that the white people of that State were guilty of fraud and guilty of intimidation at that election. How does the gentleman account for

that state of things? Did not his own people hold the ballot-boxes? Did not his own men receive the ballots from the hands of the voters? Does not the election-law of Louisiana allow the commissioner to challenge and reject the vote of any man on proper showing? It does. The commissioners of elections in the State of Louisiana have got very ample powers, and in the very case which the gentleman cites of a double ballot the statute declares that it shall be thrown out; and the statute further declares that in the event of any one challenging a voter the commissioner shall have power to administer oaths and examine witnesses touching his qualifications. And in making their returns they shall state the number of ballots rejected and their reasons therefor.

I say, bearing in mind these facts—that this election was conducted by the republican party; that every officer, every constable, and almost every commissioner was a republican; that we, the democrats, were not permitted to touch the ballot-boxes, to touch the returns—how can the gentleman from Ohio [Mr. GARFIELD] say that these boxes were reeking with fraud? Yes, they were reeking with fraud as soon as Wells, Anderson & Co. got hold of them, because if the requisite returns were not there they had them manufactured and put in.

Mr. GARFIELD. Does the gentleman state that the returning board added any votes to any ballot-boxes?

Mr. SPENCER. What I say is that they allowed the returns to be tampered with after they came into their possession.

Mr. GARFIELD. Does the gentleman mean to say that the board added any votes which were not thrown in any parish? Does he mean to say that they increased the vote anywhere?

Mr. SPENCER. I do not say the returning board absolutely increased the vote in any parish, because I am not now informed——

Mr. GARFIELD. That is what I wanted to know.

Mr. SPENCER. But I do say they changed the returns, and what is the difference? The law of Louisiana says that the returning board shall not have jurisdiction to investigate any charges of intimidation or violence occurring on the day of election unless the return of the supervisor is accompanied by the sworn statement of the commissioners and that of three eligible citizens to the fact that there was such intimidation or violence.

Now I make the assertion that there was but one return that went down to the returning board of Louisiana in due legal form on the subject of intimidation, and that one was from my own parish, the parish of Concordia. There the supervisor made a return that on account of fraud and intimidation practiced by republican colored men on democratic colored men there was no freedom or fairness in the election, and that return was supplemented by the oath of the republican commissioners of the poll, and by one hundred citizens of both parties. That was a return made in due form of law and such as authorized the board under its legal power to have investigated the question of intimidation and violence. But what did the board do? Why, they did not notice it at all. O, no, because it would have rejected 1,500 republican votes. And yet that was the report of the republican supervisor and republican commissioners.

I repeat that under the election law of Louisiana, unless this protest is made at the time prescribed by law, which is contemporary with the making of the returns, the returning board has no authority to investigate the question of intimidation, and I make the assertion, and I predicate it on the report of Governor Palmer, Ex-Senator Trumbull, and others, that with none of these returns was that formality complied with. But what did the returning board do? After the returns came into their hands they allowed these fellows to open the envelopes and insert affidavits and protests weeks after the election had closed. And yet that is the board presided over by this immaculate man, J. Madison Wells, whom Senator SHERMAN says is the peer of any Senator. God save the Senate!

Now, Mr. Speaker, it does seem to me that, with all the facts of this case before the country, the idea that the democratic party could have perpetrated any frauds upon these ballot-boxes is simply ridiculous; and I feel that when I talk upon this subject to men who keep themselves informed upon public affairs I am carrying coals to Newcastle in telling them these things. Sir, I stand here to defend my people from such aspersions. I say that a more forbearing, more chivalrous, more peaceful people do not inhabit any portion of the American continent than those who inhabit the soil of Louisiana, and so long as I stand upon this floor I will not allow to go unchallenged such declarations as these. I confess that the time has already come when as a citizen of Louisiana, remembering the wrongs and outrages that have been perpetrated upon her, remembering the wrongs that have been done to her by the President of the United States, remembering the wrong that has been inflicted upon that people by holding them down in abject submission to a minority, and that minority possessing neither the brains nor the intelligence nor the property of the State, I confess that I am ready to put my hands to my eyes and say, God save my State of Louisiana. It is enough to bring the blush of shame to the cheek of every right-thinking man in America, and I thank God that the people of America are beginning to understand this thing. The day has passed when such men as Packard and Kellogg can issue their mandate to the custom-house to manufacture affidavits for the purpose of firing the northern heart. The northern heart does not fire so easily now.

And when the day does come that you can no longer create a thrill by putting up a Mrs. Pinkston, the occupation of a great many of my friends on the other side of the House will be gone. Why, sir, that Pinkston affair is the boldest, baldest, barest fraud that was ever attempted to be perpetrated upon any people on earth. The idea that Mrs. Pinkston and her husband were assaulted, that her husband was killed and her infant murdered by white men, is so preposterously absurd when the facts are known that it is simply astonishing that there should be found people to credit it. This colored man Pinkston was a known and recognized democrat in the parish of Ouachita in 1872. He voted the democratic ticket in 1872, and he voted for me in 1874, and he would have voted the democratic ticket in 1876, for almost the last act of his life was to attend the meeting of a democratic club. And yet that woman, half-witted, idiotic, weak and feeble, is taken in hand by certain designing parties I could name and dragged to New Orleans and stuffed with a big story about white men having killed her husband. Why should white men want to kill him? He was one of our own party. The people of Louisiana have been called very hard names, but I believe they have never yet been called fools.

This is just about on a par with the manner in which Mr. Kellogg and Mr. Packard have attempted to impose upon the people of this country a false and fraudulent election return.

I have said about all that I feel called upon to say this morning; but I shall take occasion at the proper time and with some degree of preparation, I trust, to put the case of the people of Louisiana before this House and before the country upon a footing that will show them to be and to have been a long-suffering, a patient, and a patriotic people.

Mr. CHITTENDEN. Mr. Speaker, if I understand the real question before the House it is not whether Mr. Madison Wells is a pure and upright man or whether General Sheridan is fit to be a judge of the Supreme Court of the United States. It is whether a petition, it matters not to me in this exigency whether it is exclusively signed by democrats or republicans, or whether it is signed professedly by non-partisan men—if I understand the question, it is whether a respectful petition referring to the present exigency of the country, for which the Constitution itself makes no adequate provision, shall go into the RECORD. For my part, I am unqualifiedly in favor of seeing it printed in the RECORD.

If I know the thoughts of the people, if I am at all fit to represent the sense of the business people of this country, who after all are the great jury, for lawyers are officers of the court and are never jurymen—if I interpret correctly the public opinion of the intelligent business men of this country, we are to have here many a petition asking that we will consider this great question free from party bias, that we the intelligent representatives of the people will find a way to settle it in accordance with law, without revolution, and without talk of violence.

The people of this country laugh at the men wherever found who talk of settling this controversy by violence. Such talk at the end of this centennial year is not fit to go into the RECORD. We believe and do violence to all the sacred thoughts and sentiments which have clustered about this year just in proportion as we permit or as we listen patiently to any such utterances. The people will have this matter settled according to law, so far as there is any law to fit it.

I say let this petition, which was sent here by reputable men, no matter if every one of them is a democrat, no matter if every one of them is a republican, I say let it go into the RECORD. If there be truth in it, (and very likely there is,) we had better find out the truth. If we do not, then the people we profess to represent will find it out and they will make us obey it.

In coming here last night from the district which I have the honor to represent in this House, I happened to bring with me evidence, incidentally obtained as I passed through the city of New York, that within two or three days another petition will come here signed by representative men from the metropolis of the country. And will anybody seriously object, even though it should contravene our immemorial custom, to the printing in the RECORD of the petition to be sent here a few days hence from New York? I trust not. With no more propriety in my judgment can any member of this House vote against printing the petition sent here from Cincinnati. I hope the gentlemen with whom I act on this side of the House will every one of them honor the spirit of fairness which has been uttered on all sides, that they will say: "Let the people send up their thoughts and their ideas of the truth;" for, let me repeat after all, the people are the jury, and they will make us obey their verdict.

Mr. BLOUNT. I call for the regular order.

The SPEAKER. The gentleman from Michigan [Mr. CONGER] objected to the printing of this communication, as the Chair understood, in the RECORD.

Mr. CONGER. I have never objected to the printing of this paper. I have once before called the attention of the Chair to the fact that I have made no objection to the printing of this petition or any other; but I objected to its being printed in the RECORD.

The SPEAKER. The Chair was going to state the gentleman's position properly. By the reading of the reporters' notes, as the gentleman will remember, he appeared to object to the printing alone. The Chair was going to state——

Mr. CONGER. I have already asked the Chair to have that corrected while it was fresh in the minds of all. The motion was that the paper be printed in the RECORD; and therefore my objection to the printing could not have had reference to anything else.

The SPEAKER. The Chair was going to set the gentleman right. He need not fear that the Chair will not do him ample justice. The Chair understands the position of the gentleman from Michigan to be that of objecting to the printing in the RECORD.

Mr. CONGER. That is the only objection I have made, and I desire the truth to appear.

The SPEAKER. Rule 141 relates directly to the question of reading papers. That rule declares—

When the reading of a paper is called and the same is objected to by any member, it shall be determined by a vote of the House.

In accordance with this rule the Chair will now submit to the House the question, Shall this communication be read?

The question was decided in the affirmative.

The Clerk read as follows:

CINCINNATI, *December* 23, 1876.

DEAR SIR: As instructed, I herewith inclose copy of resolutions adopted at a meeting of citizens held in this city, on the 20th instant, at which Hon. Henry Stanbery was president.

Very respectfully, your obedient servant,

JOHN D. BANKS, *Secretary.*

Hon. SAMUEL J. RANDALL,
Speaker House of Representatives, Washington, D. C.

Preamble and resolutions of citizens' meeting at Pike's Opera House, Cincinnati, December 20, 1876.

The public mind is filled with apprehension and alarm at the course of recent events in our political history. This course seems to tend to the dreadest of all issues which can be presented to a civilized and free people—to the alternative between violence on the one hand and conscious submission to a wrong subversive of the very foundation of civil liberty on the other.

We believe that this fatal course can be arrested, if all good citizens will at once come to an understanding as to a few simple principles without which that union of liberty and order which constitute the basis of our national life is a manifest impossibility.

To this end,

Be it resolved, That the Government of the United States is founded upon universal suffrage, the free and fair exercise of which under the Constitution and laws of the respective States is the most sacred right of the citizen.

Resolved, That all attempts arbitrarily to abridge or interfere with this right of necessity tend to anarchy and revolution; that the deprivation of this right upon the allegation of violence or fraud in its exercise is the severest penalty which can be visited upon American freemen; that such a penalty ought, therefore, never to be inflicted, except upon clear proof before a competent and impartial tribunal.

Resolved, That the proposition according to which sentence of disfranchisement can be finally and irreversibly passed upon members of one political party by a tribunal composed exclusively of members of the other party—by a tribunal which, in defiance of the express, clear, and mandatory terms under the law which it claims jurisdiction, refuses to constitute itself upon the basis even of a semblance of impartiality—is in its very statement a monstrous denial of the rules and maxims of honesty and right which lie at the root, not only of freedom, but of civilization.

Resolved, That this proposition, in its application to the present emergency in our national affairs, becomes still more monstrous in view of the fact that it is in effect nothing less than a claim that an irresponsible body of a few bad and ignorant men, whose determination to do wrong is evidenced by the very character of its organization, can arbitrarily defeat the will of the whole American people and annul their deliberate choice of a National Executive.

Resolved, That the Constitution of the United States does not, either in terms or by implication, confer upon the President of the Senate, or any single person, the right to canvass and count the electoral votes for President and Vice-President; that such a right has never been exercised, and until very recently has never been claimed; that the assertion of this right is directly at war with the practice uniformly adhered to by the party in whose behalf it is now made, as well as with the invetetate usages of our Government since the election and inauguration of its first illustrious President.

Resolved, That the temporary control of the civil and military powers of the Government by one of our political parties constitutes a sacred trust, which is flagrantly violated by any use of these powers by such party for the purpose of perpetuating its possession of them.

Resolved, That the most dangerous of all usurpations in a free country is that of the functions of civil authority by the military power, and that the use of this power, not in the service of the country, but in the furtherance of the interests of a party, and the employment of national troops in times of peace to control or influence elections in States or Territories which are not threatened either by invasion or by domestic violence, is an outrage upon the rights and liberties of the people.

Resolved, That according to our sincere belief the reckless attempt of unscrupulous politicians to subvert the rights and liberties of the people by unsettling the very foundations of justice and introducing the most dangerous innovations in the time-honored usages of our national Government is not countenanced by the great body of voters of either of the political parties; that, on the contrary, it is the inflexible purpose of the people of both parties to preserve their liberties by maintaining the supremacy of the law against either anarchy or despotism; and that the most urgent need of the hour is an earnest appeal to the conscience of the nation.

Resolved, That it is the duty of Congress to insist with unyielding firmness upon the integrity of its constitutional rights and prerogatives, and by their just and fair exercise to avert the perils which threaten the peace and safety of the Republic.

Resolved, That until the two Houses of Congress, either by concurrent or joint action, shall declare who is constitutionally elected President, it is the duty of republicans and democrats alike to frown down any declaration by the excited partisans of either party that their candidate is elected and shall be inaugurated; such declarations by the citizens or the press being calculated to rouse passions which may lead to civil war.

Resolved, That any decision made by the two Houses of Congress will be cheerfully acquiesced in by the whole people, and that any attempt to inaugurate a President simply upon the proclamation of the President of the Senate will be an act of usurpation that should be, and we believe will be, resisted by the people without distinction of party.

Resolved, That the secretary of this meeting be instructed to forward copies of these resolutions to the President of the United States, the President of the Senate, and the Speaker of the House of Representatives.

The SPEAKER. The question now is on referring this communication to the select committee on counting the electoral votes, of which the gentleman from Ohio [Mr. PAYNE] is chairman.

Mr. GARFIELD. There is no objection to that.

The motion was agreed to.

LEAVE TO PRINT.

Mr. BLAIR, by unanimous consent, obtained leave to have printed in the RECORD remarks upon the joint resolution introduced by him proposing a constitutional amendment in regard to the manufacture and sale of intoxicating liquors.

Mr. KNOTT. I move that the House now adjourn.

The motion was agreed to; and accordingly (at two o'clock and fifty-five minutes p. m.) the House adjourned.

PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. KIDDER: A paper relating to the establishment of a post-route from Marshall, Minnesota, to Fort Pierre, Dakota, by way of Lake Hendricks and Oakwood, to the Committee on the Post-Office and Post-Roads.

By Mr. WOOD, of New York: The petition of cigar-makers of New York, for the amendment of the revenue laws so that they can purchase stamps without giving bond, to the Committee of Ways and Means.

Also, the petition of Henrietta Stringham, widow of the late Rear-Admiral Stringham, for a pension, to the Committee on Naval Affairs.

HOUSE OF REPRESENTATIVES.

THURSDAY, *December* 28, 1876.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of yesterday was read and approved.

JAMES M. HUSTON.

Mr. HEWITT, of Alabama, by unanimous consent, introduced a bill (H. R. No. 4279) for the relief of James M. Huston, a citizen of Colbert County, Alabama; which was read a first and second time, referred, with accompanying papers, to the Committee of Claims, and ordered to be printed.

JOHN M. BLACK.

Mr. HEWITT, of Alabama, also, by unanimous consent, introduced a bill (H. R. No. 4280) for the relief of John M. Black, a citizen of Jefferson County, Alabama; which was read a first and second time, referred to the Committee on Public Lands, and ordered to be printed.

REPAVEMENT OF PENNSYLVANIA AVENUE.

Mr. CATE, by unanimous consent, introduced a bill (H. R. No. 4281) to amend an act entitled "An act authorizing the repavement of Pennsylvania avenue and the acts amendatory thereof;" which was read a first and second time, referred to the Committee for the District of Columbia, and ordered to be printed.

ESTATE OF SAMUEL P. FEARON.

Mr. MAISH introduced a joint resolution (H. R. No. 178) authorizing the Secretary of the Treasury to pay Mary Fearon and Jessie Crossin, executrices of Samuel P. Fearon, deceased, for certain registered United States bonds redeemed by the Government on forged assignments and power of attorney; which was read a first and second time, referred to the Committee of Claims, and ordered to be printed.

INTERNAL IMPROVEMENTS IN MISSISSIPPI.

Mr. HOOKER, by unanimous consent, introduced a bill (H. R. No. 4282) for the improvement of the Pearl River, in the State of Mississippi, and the removal of obstructions to navigation at the mouth of said river where it empties into the Mississippi Sound, and obstructions in said mouth; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

He also, by unanimous consent, introduced a bill (H. R. No. 4283) for the improvement of Pascagoula River and cleaning out obstructions at or near the mouth of said river where it empties into the Mississippi Sound, and deepening the same; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

FREEDMAN'S SAVINGS-BANK.

Mr. DOUGLAS, by unanimous consent, introduced a bill (H. R. No. 4284) authorizing the commissioners of the Freedman's Savings and Trust Company to buy in certain real and other property and to sell the same at public or private sale, and for other purposes; which was read a first and second time.

The SPEAKER. To what committee does the gentleman from Virginia [Mr. DOUGLAS] desire to have this bill referred?

Mr. DOUGLAS. To the Select Committee on the Freedman's Savings and Trust Company.

The SPEAKER. The Chair is of opinion that the committee named by the gentleman, being a select committee, expired with the session of Congress during which it was appointed.

Mr. DOUGLAS. The committee has held meetings during the present session. I did not know it was necessary that the committee should be re-appointed. If so, I ask that it be done.

The SPEAKER. The Chair hears no objection. The committee will be re-appointed, and this bill will be referred to that committee.

The bill was referred accordingly, and ordered to be printed.

Mr. DOUGLAS subsequently said: By reference to the Digest I find the Chair is correct in the ruling that a select committee expires with the session at which it is appointed. It is desirable that the Select Committee on the Freedman's Bank should be re-appointed.

The SPEAKER. The Chair already, upon the gentleman's suggestion, no objection being made, has re-appointed the committee.

Mr. DOUGLAS, by unanimous consent, also introduced a bill (H. R. No. 4285) authorizing the Secretary of the Treasury to buy certain property for the use of the United States; which was read a first and second time, referred to the Select Committee on the Freedman's Savings and Trust Company, and ordered to be printed.

RICHARD H. FOUTS.

Mr. WOODWORTH introduced a bill (H. R. No. 4286) for the relief of Richard H. Fouts; which was read a first and second time, referred to the Committee on War Claims, and ordered to be printed.

JAMES A. FITZGERALD.

Mr. FENN introduced a bill (H. R. No. 4287) for the relief of James A. Fitzgerald, assistant surgeon United States Army; which was read a first and second time, referred to the Committee of Claims, and ordered to be printed.

ASSAY OFFICE AT BOISÉ CITY.

Mr. FENN also, by unanimous consent, introduced a bill (H. R. No. 4288) authorizing the purchase of gold dust and bullion at the United States assay office at Boisé City and payment therefor in drafts or certificates of deposit; which was read a first and second time, referred to the Committee on Coinage, Weights, and Measures, and ordered to be printed.

IMPROVEMENT OF NAVIGATION OF RED RIVER, LOUISIANA.

Mr. LEVY, by unanimous consent, presented the memorial of the board of underwriters, chamber of commerce, cotton exchange, and other public bodies of New Orleans, in regard to the improvement of the navigation of Red River in Louisiana and Texas, and moved that it be printed in the RECORD and referred to the Committee on Commerce.

The motion was agreed to.

The memorial is as follows:

To the honorable the members of the Senate and House of Representatives of the United States in Congress assembled:

The undersigned memorialists respectfully ask that an appropriation may be made for the improvement of the navigation of Red River, from Jefferson, Texas, to its mouth, for the following reasons:

The concentre of the Red River is next in importance to that of the Mississippi and Ohio Rivers.

The people of a large portion of Louisiana, and a considerable portion of Texas, Arkansas, and the Indian nation are entirely dependent on it as their only means of access to the markets of the country.

The people of New Orleans and of the Red River Valley are not alone interested in the improvement of the navigation of this river, for the population of this valley are large consumers of the merchandise, manufactured goods, and products of the Eastern and Western States, and increased facilities for commerce, cheaper freights and insurance, will add largely to the volume of trade between the different sections of our country.

The navigation of this river is very dangerous, and extremely difficult and uncertain. From its mouth, where it empties into the Mississippi River, to Shreveport, Louisiana, and Jefferson, Texas, the channel is obstructed by logs, snags, wrecks, and leaning timber to such an extent that few insurance companies will take hull risks at all. Not more than three or four insurance companies out of the large number in New Orleans will underwrite for boats engaged in that trade. Besides, the hull risks are from 8 to 10 per cent. higher for steamboats engaged in the Red River trade than they are for the Ohio or Mississippi trade.

Although the very highest standard of strength for boats engaged in this trade is required by the underwriters, (and they will insure on none others,) yet the percentage of damage to them caused by the obstructions is fully ten times greater than to boats running either on the Ohio or the Mississippi; and of all the boats navigating this river during the past twelve months, (twenty or more,) not more than one or two have escaped serious damage and several have been sunk. Others have had to be docked and repaired at large expense; several of them as many as four or five times during the season.

During the low-water season, which ordinarily begins about the latter part of July and often lasts until the 1st of January, boats experience a great deal of trouble in "Old River," between the mouth of Red River and the Mississippi proper, (Old River being the former channel of the Mississippi.) All boats navigating the Red, Ouachita, and Atchafalaya Rivers have to pass this place.

At the present time (December, 1876) the navigation of these rivers is totally suspended, boats being unable to pass this piece of river. Three-fourths of all the boats employed in running these rivers are now detained there with full cargoes on board, and will have to wait till the rivers rise.

As a further evidence of the dangers attending the navigation of Red River, we may add that the insurance on cargoes from New Orleans to Shreveport, a distance of about six hundred and fifty miles, is the same as to Alton, Illinois, a distance of about twelve hundred and seventy-five miles, and to Cincinnati, on the Ohio, a distance of sixteen hundred miles.

We believe that the improvements in Old River can be easily made; that the obstructions in Old River can be readily removed, and its navigation rendered as safe as that of the Mississippi River. It will be necessary to do some work on the falls at Alexandria, Louisiana, in order to improve the channel and make the navigation at that point safe.

Your memorialists respectfully ask, therefore, the consideration of this important matter, and for such an appropriation as may be necessary to improve the navigation of the Red River from Jefferson, Texas, to the Mississippi River, and to free it from the great dangers and difficulties which now attend it.

And your memorialists will ever pray.

THOMAS A. ADAMS,
President Board of Underwriters of New Orleans.
CYRUS BUSSEY,
President Chamber of Commerce.
WM. C. BLACK,
President New Orleans Cotton Exchange.
R. S. HOWARD,
President Merchants' Exchange.
JNO. G. GAINES,
President New Orleans Clearing-House Association.
JOS. A. AIKEN,
President New Orleans and Red River Transportation Company.
W. T. BOARDMAN,
President Red River Pilots' Association.

CHEAP TELEGRAPHY.

Mr. FRANKLIN. I ask unanimous consent to present the petition of sundry citizens of Missouri for cheap telegraphy, and to move its reference to the Committee on the Post-Office and Post-Roads.

The SPEAKER. That can be done under the rules, and the petition will be so referred.

NATIONAL SOLDIERS' HOME.

The SPEAKER, by unanimous consent, laid before the House a letter from the Secretary of the Interior, transmitting the estimate of the treasurer of the National Soldiers' Home for the expenses for the fiscal year ending June 30, 1878; which was referred to the Committee on Appropriations and ordered to be printed.

LEAVE OF ABSENCE.

By unanimous consent leave of absence was granted in the following cases:

To Mr. STANTON, for five days on account of sickness in his family.

To JOHN REILLY, extension of leave until Friday next.

To Mr. WHITTHORNE, until January 3.

WITHDRAWAL OF PAPERS.

By unanimous consent, leave was granted for withdrawal from the files of the House of the papers in the case of William Watkins and their reference to the Committee on War Claims.

And then, on motion of Mr. CLYMER, (at twelve o'clock and eighteen minutes p. m.,) the House adjourned.

PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. BURCHARD, of Wisconsin: The petition of Robert V. Bogart, of Beaver Dam, Wisconsin, to be re-imbursed on account of money and postage-stamps stolen from the post-office at Beaver Dam, to the Committee of Claims.

By Mr. CATE: A paper relating to the establishment of a daily post-route from Rice Lake, via Barron, to Clayton, the present terminus of the North Wisconsin Railroad, Wisconsin, to the Committee on the Post-Office and Post-Roads.

By Mr. FRANKLIN: The petition of citizens of Missouri, for the passage of such a law as will enforce the provisions of the act of Congress of July 24, 1866, relative to the purchase of all telegraphic lines by the United States for postal, military, or other purposes, to the same committee.

By Mr. HAYMOND: The petition of Joseph C. Cowdin, that the war record of Robert W. Sill, late captain Forty-sixth Regiment Indiana Volunteers, be changed, to the Committee on Military Affairs.

IN SENATE.

FRIDAY, *December* 29, 1876.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

The Journal of Tuesday's proceedings was read and approved.

SIOUX NEGOTIATIONS.

Mr. ALLISON. I move that the message of the President of the United States, received on Tuesday last, containing the report of the Sioux commission, be taken from the table and referred to the Committee on Indian Affairs.

The motion was agreed to.

ADJOURNMENT TO TUESDAY.

Mr. ALLISON. I move that when the Senate adjourn to-day it be to meet on Tuesday next.

The motion was agreed to.

PETITIONS AND MEMORIALS.

Mr. BOGY presented the petition of Theophilus Fisk Mills, praying to be allowed to amend his former petition so as to ask for an appropriation to be paid to the American citizen who shall invent certain measures which will enable him to produce perpetual motion and ex-

plain the mechanism of heavenly bodies; which was referred to the Committee on the Library.

Mr. RANSOM presented additional papers pertaining to the claim of John D. Thorne for compensation for cotton alleged to have been seized by United States troops in 1863; which was referred to the Committee on the Judiciary.

Mr. MITCHELL. I present the memorial of the Legislative Assembly of the State of Oregon in which they represent that the Siletz reservation embraces an area of 175,000 acres of land, much of which is suitable for cultivation; that in the year 1855 there were located on said reservation twenty-eight hundred Indians and they have decreased in numbers since that time to less than six hundred; that only a small proportion of these six hundred Indians till or improve any part of said land; that recently, by order of the General Government, a new agency within the boundaries of the Siletz reservation and near the mouth of Salmon River, has been established, on which the Nestucka, Salmon River, and Alsea Indians are in part located. They further represent that this new agency is amply large enough to accommodate all the Indians on the Siletz reservation, and is well adapted to their wants, being near the coast, where an abundance of game and shell-fish supply an easy and certain living. In view of the fact that thousands of acres of good land for agricultural purposes are lying idle, while immigrants from the East are seeking homes in Oregon, they respectfully and earnestly ask that all the land, except so much as is necessary for the requirements of the new Salmon River agency and that which is at present occupied by Indians who have built dwelling-houses, barns, and improved their lands, and who express a desire to remain on said farms, be thrown open to settlement. They further urge that a law be passed at an early day for the extinguishment of the Indian title to the Siletz reservation and for preparing the same for settlement. I move that this memorial be referred to the Committee on Indian Affairs.

The motion was agreed to.

COMMITTEE ON COUNTING THE ELECTORAL VOTES.

The PRESIDENT *pro tempore* laid before the Senate the following communication; which was read:

CHICAGO, *December* 27, 1876.

Hon. T. W. FERRY,
President Senate, Washington, D. C.:

I cannot return to Washington in time to act on committee on presidential question. I must ask to be excused from serving, and ask that you appoint some one to act in my place.

J. A. LOGAN,

The PRESIDENT *pro tempore*. Will the Senate excuse the Senator from Illinois from further service upon this committee as per request?

The question being put, Mr. LOGAN was excused; and the President *pro tempore* being by unanimous consent authorized to fill the vacancy, Mr. CONKLING was appointed.

BILL INTRODUCED.

Mr. WITHERS (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1102) granting a pension to Michael Griffith; which was read twice by its title, referred to the Committee on Pensions, and ordered to be printed.

OSAGE CEDED LANDS.

Mr. INGALLS submitted the following resolution; which was considered by unanimous consent, and agreed to:

Resolved, That the Secretary of the Interior be directed to report to the Senate what portions or tracts of the Osage ceded lands in Kansas the Leavenworth, Lawrence and Galveston Railroad Company, or the Missouri, Kansas and Texas Railroad Company, claim to have sold prior to the 25th day of February, 1874; and that if such information be not in his office, he be directed to call upon said railroad companies for the same, specifying the description of the land sold, the date of the contract of sale, the name of the purchaser, the consideration named, and the amount actually paid, and the sums that remain due thereon.

GOVERNMENT OF SOUTH CAROLINA.

Mr. FRELINGHUYSEN. I move that the Senate do now adjourn.

Mr. GORDON. Will the Senator withdraw his motion for a moment, in order that I may have an opportunity to present a memorial?

Mr. FRELINGHUYSEN. Certainly.

Mr. GORDON. I wish to present a memorial signed by Wade Hampton as governor, W. D. Simpson as lieutenant-governor, W. H. Wallace as speaker of the house of representatives, and by 68 others as representatives and senators of the General Assembly of South Carolina. I ask that it be read.

The PRESIDENT *pro tempore*. Is there objection to the petition being read?

Mr. INGALLS. To whom is it addressed?

The CHIEF CLERK. "To the honorable the Senate and the House of Representatives of the Congress of the United States of America."

The PRESIDENT *pro tempore*. Is there objection? The Chair hears none. The paper will be read.

The Chief Clerk read as follows:

To the honorable the Senate and the House of Representatives of the Congress of the United States of America:

The memorial of Wade Hampton, governor, of William D. Simpson, lieutenant-governor of the State of South Carolina, of the house of representatives, and of the undersigned senators of the General Assembly of the said State, respectfully showeth to your honorable bodies. That at a general election held in the said State on 7th November ultimo, they were duly elected to the offices aforesaid, which they now respectively hold. That under the constitution and laws of this State, the votes are counted publicly immediately upon the closing of the polls by the precinct managers, who then and there make statements of the result, forward the same to the board of county canvassers, who, from these statements, make the proper county statements, and forward these last statements, along with the precinct managers' returns, the poll-lists, and all papers appertaining to the election to the board of State canvassers, who make the proper statements and determinations, declaring duly elected the persons who have received the greatest number of votes; whereupon copies of such statements and determination are furnished to such persons. This is applicable to all elections except those for governor and lieutenant-governor, in which the returns are sealed up in the respective counties and transmitted to the secretary of state, who is to deliver them to the speaker of the house of representatives at the next ensuing session of the General Assembly; and during the first week of the session, or as soon as the General Assembly shall have organized by the election of the presiding officers of the two houses, the speaker shall open and publish them in the presence of both houses; and the person having the highest number of votes shall be governor. The board of State canvassers has jurisdiction by statute to decide all cases under protest or contest that may arise, when the power to do so does not by the constitution reside in some other body. By the constitution this power as to elections for governor and lieutenant-governor resides in the General Assembly; and as to elections for members of the General Assembly resides in the respective branches thereof.

The members of the board of State canvassers who sat in the matter of the election held on 7th November ultimo, were H. E. Hayne, chairman of the board, secretary of state; F. L. Cardozo, state treasurer; T. C. Dunn, comptroller-general; H. W. Purvis, adjutant and inspector-general, and William Stone, attorney-general, of whom Hayne, Cardozo, and Dunn were candidates for re-election. Notwithstanding the provisions of the constitution, making each house the judge of the election, returns, and qualifications of its members, and the fact that three of the members of the board were candidates for re-election and voted for on one and the same general ticket, the board determined to consider the returns of the elections of members of the General Assembly in connection with protests and contests, and that the secretary of state, the state treasurer, and comptroller-general had the right to hear and determine all questions coming before them in regard to the election of these three officers, except that no one of said officers should vote upon his own election. Such being the determination of the board avowed and made of record, and the constitution inhibiting persons exercising the functions of the executive department (and all the members of the board were members of and exercising the functions of the executive department) from assuming or discharging the duties of the judicial department necessarily exercised and involved in deciding cases of protest and contest. R. M. Sims and certain other persons as candidates and citizens applied to the supreme court of the State in the exercise of its original jurisdiction on November 14, 1876, for a writ of prohibition to restrain the board from exercising any judicial functions in regard to protests and contests, and from doing anything else than ascertaining from the managers' returns and the statements forwarded by the boards of county canvassers the persons who had received the greatest number of votes, declaring and certifying the same to the secretary of state, and also for a writ of *mandamus* to compel said board to make such ascertainment, declaration, and certificate. Immediately upon notice being given that these writs would be prayed for, the board avowed, published, and made of record its determination to take no further action until the question of their powers and duties was determined by the supreme court. The court in each of these proceedings granted a rule to show cause why these writs should not issue, and continued in the presence of the board and their counsel the rule to show cause in the matter of the prohibition as an order restraining the board from doing anything sought by the proceedings to be prohibited until the determination of the proceedings. Under an order of the court in these proceedings, the board certified to the court what persons had received the greatest number of votes at said election for all of the offices, (except governor and lieutenant-governor,) including one senator and five representatives from the county of Edgefield; and one senator and three representatives from the county of Laurens; and subsequently, on the 22d November, an order was made by the court in the presence of one of the board and of its counsel, for writ of *mandamus* to issue to the board requiring them to perform in regard to the persons certified to the court by the board to have received the greatest number of votes for members of the General Assembly, the duties enjoined by statute naming them specially, and requiring return forthwith to said court of the execution of said writ. The writ was issued and served on the same day on all the members of the board except that one who had been present in court when the order was granted, and upon him it was served on the following day.

No return or attempt at return of the execution of the writ having been made by the said board or any of its members; and, after due notice and gracious delay on the part of the court, the board, notwithstanding the protestations and covenants of the court, continuing doggedly and perversely pertinacious in their disobedience of the mandate of the court, and canvassing the returns of election excluding the two counties of Edgefield and Laurens, where the ticket upon which the members of said board were running for office was largely defeated, when there is no line or letter of law, either constitutional or statute, which confers upon said board the shadow of authority to so exclude a county from the canvass of the return or the statement of the final result, each member of the board was adjudged guilty of contempt, fined, and ordered to confinement in the jail of Richland County until released by the order of the supreme court. On the following Monday, 27th November, Judge Bond, of the circuit court of the United States for the district of South Carolina, had the members of the board brought before him on writ of *habeas corpus*, taken from the custody of the sheriff of Richland County, and on —— December, 1876, filed his decision, setting them at liberty, and your memorialists submit that this action of Judge Bond was without jurisdiction, illegal, unwarranted, and subversive not only of all established principles of law on the subject, of every decision made by the Supreme Court of the United States in regard to such cases, of all the boundary lines as to the jurisdiction of the courts, State and Federal, of every legal or constitutional doctrine as to the partition of power between the governments, State and Federal, but was a gross, wanton outrage upon the State of South Carolina and its highest court of judicature, and upon the rights, interest, and feelings of all good men in the State or out of it, who respect the supremacy of order, and venerate the majesty of the law.

Your memorialists most respectfully submit that this is an offense of so high, grave, and serious a nature in itself, and so pernicious in its consequences, as to bring the law and courts into contempt. Your memorialists further say that the members elect of the General Assembly from the counties of Edgefield and Laurens being unable to obtain from the said board and secretary of state the evidence of election to the offices aforesaid, obtained certificates of the action of the said court declaring their election in due form; and the said representatives from Edgefield and Laurens, being entitled thereby to enter the hall of the house of representatives and to present their credentials, went with other members of the house, in all numbering sixty-five, on the day fixed by the constitution of the State for the convening of the Legislature, to the State-house for that purpose, and were, with horse and arms, excluded therefrom by the soldiers of the United States Army, commanded by Thomas H. Reger, colonel and brevet brigadier-general, commanding United States troops in the State, who was instigated thereto by Daniel H. Chamberlain, governor of the State; and, having been so excluded, retired to a building in the same city of Columbia, known as the Carolina Hall, and organized themselves as a house according to the constitution, having sixty-five members, a lawful and constitutional quorum, and elected a speaker, William H. Wallace, and the other usual and necessary officers. That they have since regularly held their sessions and performed their usual, normal, and constitutional duties. That subsequently,

in order to perform the constitutional duty of opening and publishing the returns for governor and lieutenant-governor, the said speaker, William H. Wallace, after the requisite preliminary demands and refusals, on —— December, 1876, applied to the said supreme court for a *mandamus* to compel the said secretary of state to deliver the same to said Wallace as said lawful speaker of said house. By their returns to which said Hayne and Mackey raised the question that said Mackey was lawful speaker of a lawful house of representatives, and the said supreme court, after taking full testimony and hearing full argument on both sides, on —— December, 1876, declared that the body over which Wallace presided was the lawful house of representatives and Wallace its lawful and lawfully elected speaker; and that Mackey was not speaker of the house of representatives, nor was the body which pretended to organize under him the house of representatives, having assumed to organize with only fifty-nine members, whereas the constitutional quorum was at least sixty-three.

Your memorialists further show that on the Thursday following with difficulty and danger the lawful house of representatives entered said hall of the house of representatives and there remained at the peril of their lives until the Monday following, when, in consequence of official information of the violent purposes of said Governor Chamberlain, to be supported by said troops of the United States, they left said hall and returned to the said Carolina Hall, and have ever since been excluded from said hall by said troops of the United States.

Your memorialists further say that after due notice given to the senate to be present for that purpose, the said Wallace, speaker as aforesaid, in the presence of the house of representatives and of such senators as chose to attend, acting on the best secondary evidence, to wit, a certificate from the secretary of state of the votes cast for governor and lieutenant-governor, and the duplicate returns filed with the clerks of the courts of said counties, independent of the original returns, which said Hayne refused to deliver, published the results, and declared your memorialists Wade Hampton elected governor and William D. Simpson lieutenant-governor of the said State. Wade Hampton having received 92,261 votes and D. H. Chamberlain 91,127 votes for governor, and William D. Simpson having received 91,807 votes, and R. H. Gleaves 91,550 votes for lieutenant-governor, and they were duly installed as such on the 14th day of December, 1876.

Your memorialists further show that Daniel H. Chamberlain and R. H. Gleaves, who had been respectively governor and lieutenant-governor, and whose terms expired by the constitution on the 14th December, 1876, upon the installation of Wade Hampton as governor, pretending to be governor and lieutenant-governor by virtue of a pretended publication of returns by said Mackey as pretended speaker of the illegal body claiming to be a house of representatives, made with closed doors and guarded by said troops of the United States Army, excluding, in violation of the constitution, the returns from the counties of Edgefield and Laurens, wherein Hampton received a majority of 4,272 votes for governor and Simpson a majority of 4,235 votes for lieutenant-governor, and a pretended installation based thereon, still claim to be governor and lieutenant-governor of the State.

Your memorialists further show that the said Wade Hampton is prevented from taking peaceable possession of the executive chamber, of the great seal, and all other things appertaining to the office of governor, by armed troops of the United States, under command of Brevet Brigadier-General Thomas H. Ruger, commanding in South Carolina, who have taken armed possession of the State-house and its approaches and excluded therefrom the said governor and lieutenant-governor and house of representatives.

Wherefore your petitioners, unable to assert their rights in the premises by peaceable means, and recognizing the supremacy of the Constitution and laws of the United States, and relying upon the right and duty of Congress to guarantee to this State a republican form of government, wherein the constituted civil authorities of the State shall not be suppressed by the military, respectfully apply to your honorable bodies to cause a cessation of the unwarranted interference of the military authorities and the United States troops in the affairs of this State, and for such action as will relieve them from the unwarranted conduct of the United States authorities hereinbefore set forth, and will enable the governor, lieutenant-governor, and house of representatives peacefully to exercise the rights and peform the duties of the offices to which they have been elected.

WADE HAMPTON,
Governor of South Carolina.
W. D. SIMPSON,
Lieutenant-Governor.
W. H. WALLACE,
Speaker House of Representatives.

Representatives—Robert Aldrich, E. S. Allen, W. S. Allen, D. W. Anderson, L. M. Asbile, J. T. Austin, Isaac S. Bamberg, H. E. Bissell, J. C. Blakeney, J. G. Blue, D. F. Bradley, W. K. Bradley, W. C. Brown, L. D. Byan, W. B. Byers, James Callison, James C. Coit, John N. Cummings, W. P. Compton, C. A. Connor, J. R. Cooper, J. P. Davis, J. A. Deal, J. F. Dormala, T. N. Edins, John B. Erwin, J. W. Gray, J. G. Guignard, P. W. Hamer, Robert R. Hemphill, Jno. W. H. O. Lewis, Wm. Hood, J. B. Humbert, A. E. Hutchison, W. Jefferies, T. E. Jennings, Robert Jones, G. Leaphart, Wm. Maree, B. H. Massey, James McRae, Thomas L. Moore, Gerhard Muller, N. B. Myers, Jas. L. Orr, L. E. Parler, Glenn L. Peake, Charles Petty, D. T. Redfearn, W. H. Reedish, R. H. Rogers, M. A. Rountree, Claude E. Sawyer, H. A. Shaw, J. E. Sheppard, R. W. Simpson, B. Frank Sloan, H. R. Vandiver, J. S. Vernon, James W. Watts, J. W. Wesberrey, J. L. Westmoreland, John W. Wofford, J. P. Woodward, Laurens W. Youmans.

Senators—Henry A. Meetze, J. D. Witherspoon, R. E. Bower, R. G. Howard, Thos. B. Jeter, J. W. Livingston, R. P. Todd, S. S. Crittenden, Jones M. Williams, Wm. L. Buck, A. T. Butler, G. Cannon, W. A. Evans.

Mr. GORDON. I move that the memorial be referred to the Committee on the Judiciary and printed.

Mr. FRELINGHUYSEN. I move to amend by providing that it be referred to the Committee on Privileges and Elections.

The PRESIDENT *pro tempore*. The Senator from New Jersey moves to substitute the Committee on Privileges and Elections for the Committee on the Judiciary. The question is on the amendment.

The question being put, there were on a division—ayes 12, noes 13; no quorum voting.

Mr. MORRILL. As there is no quorum, I move that the Senate adjourn.

The question being put, the Chair declared that the noes appeared to prevail.

Mr. MORTON, Mr. MORRILL, and others called for the yeas and nays.

Mr. GORDON. I ask unanimous consent to offer a resolution that it may be printed: I do not ask any action on it now.

The PRESIDENT *pro tempore*. Is there objection?

Mr. MORTON. The yeas and nays have been called for.

The PRESIDENT *pro tempore*. The yeas and nays are called for.

The yeas and nays were ordered.

Mr. GORDON. Does the Senator from Indiana object to the introduction of the resolution?

Mr. MORTON. As soon as this matter is disposed of, I shall have no objection.

Mr. SHERMAN. I hope my friend from Indiana will not insist upon the yeas and nays, because that will compel us to come back here to-morrow and then on Monday and again on Tuesday.

Mr. MORRILL. No; we have already agreed to adjourn over.

Mr. SHERMAN. I was not aware of that.

The PRESIDENT *pro tempore*. An adjournment from to-day till Tuesday has already been ordered.

Mr. SHERMAN. I did not know it.

Mr. GORDON. The Senator from Indiana will allow me to suggest that I think there will be no objection to an adjournment as soon as I can offer the resolution.

Mr. MORTON. I make no objection.

The PRESIDENT *pro tempore*. The resolution will be received if there be no objection.

Mr. MORRILL. Let it be read for information.

Mr. GORDON. I send it to the desk.

The PRESIDENT *pro tempore*. The resolution will be read.

The Chief Clerk read as follows:

Resolved by the Senate, That the State government now existing in the State of South Carolina and represented by Wade Hampton as governor is the lawful government of said State; that it is republican in form, and that every assistance necessary to sustain its proper and lawful authority in said State should be given by the United States when properly called upon for that purpose, to the end that the laws may be faithfully and promptly executed, life and property protected and defended, and all violators of law, State or national, brought to speedy punishment for their crimes.

Mr. MORTON. Let that lie over.

Mr. GORDON. I ask that the resolution be printed and lie over.

The PRESIDENT *pro tempore*. The resolution goes over.

Mr. MORRILL. I renew the motion that the Senate adjourn.

The PRESIDENT *pro tempore*. The yeas and nays have been ordered on that.

Mr. THURMAN. I think the call for the yeas and nays may be withdrawn. There is no objection to adjourning now.

The PRESIDENT *pro tempore*. Does the Senator from Indiana withdraw the call?

Mr. MORTON. The call for the yeas and nays was on the motion for reference, I thought.

Mr. THURMAN. No; the vote disclosed that there was no quorum, and then the Senator from Vermont moved an adjournment.

The PRESIDENT *pro tempore*. And on that motion the yeas and nays were demanded.

Mr. THURMAN. Let that call be withdrawn. There is no objection to adjourning now.

Mr. MORTON. I did not ask for the yeas and nays on that question. It was on the other.

The PRESIDENT *pro tempore*. The Chair understood the yeas and nays were called for on the motion to adjourn, that being the last question. The Chair understands the call for the yeas and nays is now withdrawn, no one insisting on the call. The motion is that the Senate adjourn.

The motion was agreed to, at twelve o'clock and thirty-one minutes p. m.

The PRESIDENT *pro tempore*. The Senate stands adjourned until Tuesday next, at twelve o'clock noon.

HOUSE OF REPRESENTATIVES.

FRIDAY, *December 29*, 1876.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of yesterday was read and approved.

GRANTS OF LANDS IN OREGON.

Mr. LANE, by unanimous consent, presented a memorial of the Legislature of the State of Oregon, praying that the grantees of certain lands in the State of Oregon to aid in the construction of certain military wagon-roads therein be required to make selections of all lieu lands to which they may be entitled, and that the balance of the alternate sections within the limits of said grants be restored to market, subject to entry under the public-land laws of the United States; which was referred to the Committee on Public Lands, and ordered to be printed.

SALE OF DESERT LANDS IN EASTERN OREGON.

Mr. LANE also, by unanimous consent, presented a memorial of the Legislature of the State of Oregon, praying that a law be passed providing for the sale of desert lands in Eastern Oregon in quantities greater than one hundred and sixty acres upon reclamation thereof by irrigation; which was referred to the Committee on Public Lands, and ordered to be printed.

RAILROAD LAND GRANTS IN OREGON.

Mr. LANE also, by unanimous consent, presented a memorial of the Legislature of the State of Oregon, praying that Congress so amend

and modify certain acts granting lands to aid in the construction of certain railroads in the State of Oregon as to authorize the sale of public lands within the limits of said grants at the usual minimum rate, and in quantities of a quarter section to any settler, and that the State may be allowed to select lands granted to her by certain acts of Congress at the minimum price of $1.25 per acre; which was referred to the Committee on Public Lands, and ordered to be printed.

SURVEY AND IMPROVEMENT OF ALSEA RIVER.

Mr. LANE also, by unanimous consent, presented a memorial of the Legislature of the State of Oregon, praying that an appropriation be made for the survey and improvement of Alsea River, in Benton County, Oregon; which was referred to the Committee on Commerce, and ordered to be printed.

SURVEY OF CAPE FOULWEATHER.

Mr. LANE also, by unanimous consent, presented a memorial of the Legislature of the State of Oregon, praying that an appropriation be made to secure a survey of Cape Foulweather, with the view of making the same a port of refuge; which was referred to the Committee on Commerce, and ordered to be printed.

IMPROVEMENT OF COQUILLE RIVER.

Mr. LANE also, by unanimous consent, presented a memorial of the Legislature of the State of Oregon, praying that $100,000 be appropriated for improving the channel and harbor of Coquille River; which was referred to the Committee on Commerce, and ordered to be printed.

IMPROVEMENT OF WILLAMETTE RIVER.

Mr. LANE also, by unanimous consent, presented a memorial of the Legislature of the State of Oregon, praying that an appropriation be made sufficient to complete the improvement of the Willamette River in the State of Oregon; which was referred to the Committee on Commerce, and ordered to be printed.

IMPROVEMENT OF COLUMBIA RIVER.

Mr. LANE also, by unanimous consent, presented a memorial of the Legislature of the State of Oregon, praying that Congress grant liberal appropriations for the opening and free navigation of the great Columbia River; which was referred to the Committee on Commerce, and ordered to be printed.

SILETZ RESERVATION.

Mr. LANE also, by unanimous consent, presented a memorial of the Legislature of the State of Oregon, praying that a law may be passed for the extinguishment of the Indian title to the Siletz reservation, and for preparing the same for settlement; which was referred to the Committee on Indian Affairs, and ordered to be printed.

BOUNDARIES OF OREGON.

Mr. LANE also, by unanimous consent, presented a memorial of the Legislature of the State of Oregon, praying that the act admitting the State of Oregon into the Union be so amended as to make the boundary lines of said State conform to the boundary lines set forth in her constitution; which was referred to the Committee on the Territories, and ordered to be printed.

SCIENTIFIC AND GEOLOGICAL SURVEY OF OREGON.

Mr. LANE also, by unanimous consent, presented a memorial of the Legislature of the State of Oregon, praying that an appropriation be made to defray the expenses of a scientific and geological survey of the State of Oregon; which was referred to the Committee on Appropriations, and ordered to be printed.

MEXICAN WAR PENSIONS.

Mr. LANE also, by unanimous consent, presented a joint resolution of the Legislature of the State of Oregon, favoring the passage of a law by Congress granting pensions to the surviving soldiers of the Mexican war; which was referred to the Committee on Invalid Pensions, and ordered to be printed.

PRIVATE BILLS PASSED.

Mr. BRIGHT. I call for the regular order, being the consideration of the unfinished business coming over from Friday last.

The SPEAKER. The unfinished business at the adjournment on Friday last was the consideration of certain bills reported by the Committee of the Whole House on the Private Calendar. If there be no objection, the bills reported by the Committee of the Whole without amendment will be considered as read the third time and passed.

There was no objection, and the following bills were accordingly passed:

A bill (H. R. No. 3292) providing for a pension to be paid to Andrew Jackson, (colored,) of Pittsburgh, Pennsylvania;

A bill (H. R. No. 3509) for the relief of the legal representatives of R. H. Munnell, deceased, late commissary Tenth Tennessee Cavalry;

A bill (H. R. No. 3511) granting a pension to Thomas G. Kingsley;

A bill (H. R. No. 703) granting a pension to Catharine Ferry;

A bill (H. R. No. 2218) for the relief of Mrs. Amanda Rains;

An act (S. No. 408) for the relief of Assistant Surgeon Thomas F. Azpell;

A bill (H. R. No. 3067) for the relief of Alexander Anderson, late first lieutenant Fourteenth New York Volunteer Cavalry;

A bill (H. R. No. 3512) for the relief of First Lieutenant Frederick H. E. Ebenstein, Twenty-first Infantry, United States Army;

A bill (H. R. No. 767) for the relief of Samuel B. Stanber and others;

A bill (H. R. No. 3513) granting a pension to Dr. P. F. Reuss;

A bill (H. R. No. 2229) for the relief of Chancy J. Poore, late a private in Battery G, First New York Light Artillery;

A bill (H. R. No. 3574) for the relief of Marshal P. Thatcher;

A bill (H. R. No. 3436) granting a pension to George Martz;

A bill (H. R. No. 2237) granting a pension to Anson K. Young;

A bill (H. R. No. 2519) granting a pension to James M. Bailey;

A bill (H. R. No. 3575) granting a pension to Eliza A. Blaze, widow of Abner T. Blaze, late a private in Company C, Thirteenth Indiana Cavalry Volunteers;

A bill (H. R. No. 3577) granting a pension to Catharine Barnes;

A bill (H. R. No. 3578) granting a pension to Eliza McConnell;

A bill (H. R. No. 3579) granting increase of pension to Eugene O'Sullivan, late sergeant of Company K, Eighteenth Missouri Volunteer Infanty;

A bill (H. R. No. 3580) granting a pension to Rachel A. Cullison;

A bill (H. R. No. 838) granting a pension to Joseph Odell; and

A bill (H. R. No. 3581) granting a pension to Minerva Williams.

The bill (H. R. No. 3415) for the relief of Mrs. Julia H. Totten, widow of James Totten, late lieutenant-colonel and assistant inspector-general United States Army, was reported from the Committee of the Whole on the Private Calendar with an amendment in line 8 to strike out "fifty" and insert in lieu thereof "thirty," so as to reduce the pension to $30 a month.

The amendment was agreed to.

The bill, as amended, was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. BRIGHT moved to reconsider the vote by which the bill, as amended, was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

The bill (H. R. No. 969) for the relief of Charles H. Johnson was reported from the Committee of the Whole on the Private Calendar with an amendment in the eighth line to strike out the words "1st day of September" and insert in lieu thereof "9th day of November," and in the ninth strike out the words "date of his commission."

The amendment was agreed to.

The bill, as amended, was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. BRIGHT moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

The bill (H. R. No. 3510) granting a pension to Cynthia H. Abbott was reported from the Committee of the Whole on the Private Calendar with an amendment in lines 7 and 8 to strike out the words "to date from the death of said Augustus B. Abbott."

The amendment was agreed to.

The bill, as amended, was ordered to be engrossed and read a third time; and it was accordingly read the third time, and passed.

Mr. BRIGHT moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

ORDER OF BUSINESS.

The SPEAKER. The morning hour begins at twenty minutes past twelve o'clock, and this being Friday the committees will be called for reports of a private nature.

Mr. MILLS. I move that the House resolve itself into Committee of the Whole on the Private Calendar.

The SPEAKER. That motion will be in order after the morning hour; it can only be entertained now by unanimous consent.

Mr. MILLS. We are away behind on the Calendar, and I ask unanimous consent to submit the motion now.

Mr. CONGER. Is this objection day?

The SPEAKER. It is not; but the gentleman from Texas asks unanimous consent to submit a motion that the House resolve itself into the Committee of the Whole on the Private Calendar, which will dispense with the morning hour.

Mr. SMITH, of Pennsylvania. I object.

The SPEAKER proceeded to call the committees for reports of a private nature, but no reports were made.

Mr. CLYMER. I move that the House do now adjourn.

The question was put; and on a division there were—ayes 27, noes 34.

So the House refused to adjourn.

Mr. BRIGHT. I again ask unanimous consent that the House resolve itself into Committee of the Whole on the Private Calendar, this to be regarded as objection day.

Mr. SMITH, of Pennsylvania. I must object.

Mr. WHITE. I ask unanimous consent to offer the resolution which I send to the Clerk's desk, and to which I am sure there will be no objection.

Mr. BRIGHT. I am willing to hear it read, but I reserve the question of objection to my motion.

The SPEAKER. The Chair will first settle that question. The gentleman from Tennessee asks unanimous consent that the House now

resolve itself into Committee of the Whole on the Private Calendar, this to be considered as objection day. Is there objection?

Mr. SMITH, of Pennsylvania. I think the objection ought to be renewed, and I therefore renew it. I object to any business being done in the absence of a quorum.

Mr. ATKINS. I move that the House do now adjourn.

Mr. WHITE. I make the point of order that the gentleman from Tennessee cannot take me off in that way.

The SPEAKER. The gentleman was not "on his feet" until the House gave him unanimous consent to offer his resolution. It was not in order except by unanimous consent.

Mr. WHITE. I have been recognized by the Chair.

The SPEAKER. The gentleman will remember that the Chair recognized the gentleman from Tennessee [Mr. BRIGHT] with a view to proceed to the public business, as provided for under the rules, and the motion of the gentleman from Tennessee cuts of the resolution of the gentleman from Kentucky for the present.

Mr. WHITE. If I remember correctly the gentleman from Tennessee had taken his seat when I offered my resolution.

Mr. COOK. I object to the reading of the resolution of the gentleman from Kentucky, and that settles it.

The SPEAKER. The gentleman from Kentucky will see that the Chair has no power to grant unanimous consent.

The question was put upon Mr. ATKINS's motion; and on a division there were—ayes 43, noes 14.

Mr. WHITE. I call for tellers. No quorum has voted.

The SPEAKER. Less than a quorum can adjourn from day to day, under the Constitution.

Mr. WHITE. I rise to a parliamentary inquiry; do I understand that the gentleman objects to my resolution.

The SPEAKER. That is not a parliamentary inquiry at all.

The question was put upon ordering tellers and tellers were not ordered, only three members voting in favor thereof.

So the motion of Mr. ATKINS was agreed to; and accordingly (at twelve o'clock and thirty-two minutes p. m.) the House adjourned.

PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. LAMAR: The petition of James Conner, of South Carolina, for the removal of the political disabilities imposed upon him by the fourteenth amendment to the Constitution of the United States, to the Committee on the Judiciary.

By the SPEAKER: The petition of William Welsh, Henry Armitt Brown, A. J. Drexel, Henry C. Lea, R. Rundle Smith, Edwin M. Lewis, John Wanmemaker, W. C. Harward, and other citizens of Philadelphia, of all political parties, declaring that the questions arising from the late presidential election should be dealt with in a spirit prededetermined to harmonize conflicting views, irrespective of success or defeat of individual candidates, that a partisan contest in Congress resulting in the proclamation of a President without the acquiesence of both Houses, would destroy the confidence of the people in the justice of the decision adopted, and urging that both houses will earnestly seek some mode of reaching a decision of the pending questions that will satisfy the conscience of the country, to the Committee on Counting the Electoral Vote.

WITHDRAWAL OF PAPERS.

By unanimous consent, leave was granted for withdrawal from the files of the House of the papers, among which is a United States bond for $1,000 issued the 12th day of June, 1780, to John Galbraith, relating to the petition of William Watkins, of Logan County, Kentucky, that said bond be paid, and their reference to the Committee on War Claims.

HOUSE OF REPRESENTATIVES.

SATURDAY, *December* 30, 1876.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

Mr. WOOD, of New York. I ask unanimous consent that the reading of the Journal of yesterday's proceedings be dispensed with.

The SPEAKER. The Chair understands that the object of the gentleman is to demonstrate the fact that there is not a quorum present.

Mr. CLYMER. There is evidently no quorum present. In the absence of a quorum, I must object to reading the Journal.

The SPEAKER. It is manifest to the Chair that there is not a quorum of members present.

Mr. WOOD, of New York. I move that the House now adjourn.

The SPEAKER. Before the reading of the Journal, it is competent for the House to determine whether or not a quorum is present. That can be ascertained upon the motion of the gentleman from New York [Mr. WOOD] that the House now adjourn.

The motion was agreed to; and accordingly (at twelve o'clock and six minutes p. m.) the House, in accordance with previous order, adjourned until twelve o'clock m. on Wednesday next, January 3, 1877.

IN SENATE.

TUESDAY, *January* 2, 1877.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

The Journal of the proceedings of Friday, December 29, 1876, was read and approved.

CHANGE OF NAME OF VESSEL.

Mr. CONKLING. Mr. President, I want to make a request of the Senate, to be permitted to pass a bill in a mode not quite in order; and therefore I venture to make the request now before petitions are called for. I have in my hand a House bill permitting a citizen of Massachusetts to change the name of a vessel. It has been referred to the Committee on Commerce and I have no formal authority from the committee to report it; but the member of the House having it in charge has taken pains to comply with the utmost requirement which the committee exacts in such cases. There, is and there can be, no objection to the bill. Time is quite important, and at the request of gentlemen from Massachusetts, members of Congress and others, I ask the Senate to discharge the committee, take up the bill, and put it on its passage.

The PRESIDENT *pro tempore*. Is there objection to the committee being discharged? The Chair hears none.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill (H. R. No. 4116) to change the name of the steamship Whirlwind to that of Arcadia.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

PETITIONS AND MEMORIALS.

Mr. KELLY presented a memorial of the Legislature of Oregon, in favor of the passage of a law requiring the grantees of lands to aid in the construction of certain wagon-roads to make selections of the lieu lands to which they may be entitled; which was referred to the Committee on Public Lands.

He also presented a memorial of the Legislature of Oregon, in favor of the reduction of the price of public lands within the limits of certain railroad grants to $1.25 per acre; which was referred to the Committee on Public Lands.

He also presented a memorial of the Legislature of Oregon, in favor of granting the public lands to settlers in tracts larger than one hundred and sixty acres and for less than $1.25 per acre where such lands require irrigation to render them productive; which was referred to the Committee on Public Lands.

He also presented a memorial of the Legislature of Oregon, in favor of making Snake River the common boundary between the State of Oregon and the Territory of Washington; which was referred to the Committee on Territories.

He also presented a memorial of the Legislature of Oregon, in favor of granting pensions to the surviving soldiers and sailors who were engaged in the Mexican war; which was referred to the Committee on Pensions.

He also presented a memorial of the Legislature of Oregon, in favor of appropriating $100,000 to improve the channel and harbor of the Coquille River in Oregon; which was referred to the Committee on Commerce.

He also presented a memorial of the Legislature of Oregon, in favor of an appropriation by Congress to survey the entrance to Alsea Bay and to buoy out the channel from the ocean to the bay; which was referred to the Committee on Commerce.

He also presented a memorial of the Legislature of Oregon, in favor of an appropriation to improve the Upper Willamette River; which was referred to the Select Committee on Transportation Routes to the Seaboard.

He also presented a memorial of the Legislature of Oregon, in favor of an appropriation to remove the obstructions in the Columbia River and open it to free navigation; which was referred to the Select Committee on Transportation Routes to the Seaboard.

He also presented a memorial of the Legislature of Oregon, in favor of making an appropriation for a geological survey of that State; which was referred to the Committee on Appropriations.

Mr. BOUTWELL presented the petition of George W. Jackson, sr., and 17 others, praying for the passage of House bill No. 2685, to provide for the payment of claims under the Geneva award; which was referred to the Committee on the Judiciary.

Mr. WITHERS presented the petition of Dr. H. W. M. Washington, a citizen of the State of Virginia, praying the removal of his political disabilities; which was referred to the Committee on the Judiciary.

He also presented the petition of Henry B. Woodhouse, a soldier of the war of 1812, praying his restoration to the pension-rolls; which was referred to the Committee on Pensions.

Mr. CAMERON, of Pennsylvania, presented a memorial of shipmasters, merchants, and others, citizens of Philadelphia, remonstrating against the passage by the Senate of House bill No. 3187, being an amendment to the shipping act; which was referred to the Committee on Commerce.

Mr. FRELINGHUYSEN. The papers pertaining to the claim of John D. Thorne for compensation for cotton alleged to have been seized by United States forces in May, 1863, presented by the Senator from North Carolina [Mr. RANSOM] on the 29th ultimo, were by mis-

take referred to the Committee on the Judiciary. I move that that committee be discharged and that the petition and papers be referred to the Committee on Claims.

The motion was agreed to.

Mr. WRIGHT presented additional papers in the case of John E. Woodward, of Kentucky, praying compensation for certain losses sustained by him; which, together with the papers now on file relating to this claim, were referred to the Committee on the Judiciary.

PROPOSED COURT FOR CONTESTED ELECTIONS.

Mr. WRIGHT. While I have the floor I wish to make a statement. It will be remembered that on the 18th of December last I introduced a bill known as Senate bill No. 1082, with reference to a court for the trial of contested elections. I then gave notice that I should immediately after the recess, if I could get the floor, the bill being upon the table, ask to take it from the table and submit some remarks in support of the bill to the Senate. If it shall be the pleasure of the Senate to hear me, I propose on Thursday next after the expiration of the morning hour, or when the morning business shall be through, to ask their attention while I submit some remarks in support of the bill.

Mr. SHERMAN. What is the bill?

Mr. WRIGHT. A bill to establish a court for the trial of contested elections in the offices of President and Vice-President of the United States.

BILLS INTRODUCED.

Mr. PATTERSON asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1103) for the relief of the heirs or legal representatives of François Cazeau; which was read twice by its title, and referred to the Committee on Revolutionary Claims.

Mr. MITCHELL asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1104) establishing a mail-route in Oregon; which was read twice by its title, referred to the Committee on Post-Offices and Post-Roads, and ordered to be printed.

He also asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1105) to amend the act entitled "An act granting a portion of the United States military reservation at Salt Lake City for cemetery purposes;" which was read twice by its title, and, with the accompanying papers, referred to the Committee on Military Affairs.

Mr. INGALLS asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1106) granting a pension to Sylvester Wilcox; which was read twice by its title, referred to the Committee on Pensions, and ordered to be printed.

Mr. CHAFFEE asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1107) extending the act of July 2, 1862, to the State of Colorado, and for other purposes; which was read twice by its title, referred to the Committee on Public Lands, and ordered to be printed.

CENTRAL BRANCH UNION PACIFIC RAILROAD.

Mr. WRIGHT. If there be no further morning business, in pursuance of notice given some days since I ask that the Senate now proceed to the consideration of the bill (S. No. 60) declaring the true intent and meaning of the Union Pacific Railroad acts approved July 1, 1862, July 2, 1864, and July 3, 1846, and for other purposes.

The PRESIDENT *pro tempore*. The bill will be read for information subject to objection.

Mr. INGALLS. When this bill was previously sought to be brought before the Senate I understood the Senator from Iowa to say that if he wished to press it after the recess he would give me notice to that effect. Not having received any intimation from him on the subject I presumed that he had concluded to withhold his action; and I am not prepared at this time to present the views that I wish to submit to the Senate on the subject.

Mr. WRIGHT. On the contrary, I think my friend will remember that my language was that I should press it, and if I concluded not to do so I would advise him. I certainly used that language at the time that we had a conversation with reference to the bill. If my friend, however, states that he is not prepared to proceed with the consideration of the bill this morning, and that he has been misled, of course I shall not insist upon the consideration of the bill, and will not press it now.

Mr. INGALLS. It was my understanding that the bill was not to be called up without previous notice having been given to me. That was the inference which I drew from the language used by the Senator when he called the attention of the Senate to the bill before the recess.

Mr. WRIGHT. I feel very well assured that my friend quite misunderstood me; but he stating now that he had a different understanding of this matter from mine I shall not press the bill. I give notice, however, that I shall do so to-morrow if I can get the floor.

ORDER OF BUSINESS.

Mr. BOUTWELL. If the Senator from Iowa waives his request, I will ask the Senate to take up the bill (H. R. No. 3156) to perfect the revision of the Statutes of the United States.

The PRESIDENT *pro tempore*. The bill will be read for information, subject to objection.

Mr. BOUTWELL. It may perhaps suit the convenience of the Senate better that the bill should be read by paragraphs and each proposition disposed of as reached, as they are separate propositions, not in any way connected with each other. I therefore ask, if there be no objection, that the bill, when taken up, be read and considered by topics.

Mr. SHERMAN. As this is a very important bill, so important as to involve the revision of the Revised Statutes of the United States, I suggest to the Senator whether it ought to be taken up when the Senate is so thin. I doubt if there is a quorum present; and questions of importance, of doubtful construction, may arise in the progress of the bill. I see around me scarce any members of the Judiciary Committee, and I think not a quorum of the Senate. I will ask a call of the Senate to see how many Senators are present.

Mr. BOUTWELL. Very well.

Mr. BOGY. There is a good deal of other business that might be transacted.

Mr. SHERMAN. If the Senator from Massachusetts chooses to waive this matter until some morning business can be disposed of, I will not insist upon the call.

Mr. BOUTWELL. Very well, if it can be done without the bill losing its place.

Mr. SHERMAN. Certainly.

Mr. BOUTWELL. With that understanding I will not press it now.

The PRESIDENT *pro tempore*. Does the Senator from Ohio insist on a call of the Senate?

Mr. SHERMAN. I waive it for the present in order to let other business be presented.

OSAGE INDIAN FUND.

Mr. ALLISON. I am instructed by the Committee on Indian Affairs, to whom was referred the bill (H. R. No. 4272) authorizing the use of certain funds now in the Treasury belonging to the Osage Indians, to report it without amendment, and I ask that it may be put on its passage this morning. It is rather important that it should pass immediately.

The Chief Clerk read the bill.

Mr. CONKLING. May I inquire from what committee this bill comes?

Mr ALLISON. From the Committee on Indian Affairs.

Mr. CONKLING. Did the Senator from Iowa examine it himself?

Mr. ALLISON. Yes, sir. I ask that a letter of the Commissioner of Indian Affairs may be read. Do I understand the Senator from New York to object?

Mr. CONKLING. No, I abstain from objecting for one, because the Senator from Iowa, in whom I have so much confidence, says that he understands the bill and that it is all right.

Mr. ALLISON. I am obliged to the Senator.

Mr. CONKLING. As I have asked a question, however, I will add one remark. It has recently occurred in the Senate, as is better known to some other Senators than to me, that in a case somewhat like this great injustice has been inadvertently done. I am very glad that in this case the Senator from Iowa does know personally the merits of the measure.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill. It authorizes the Secretary of the Interior to issue a sum not exceeding $50,000 from funds now in the Treasury belonging to the Osage Indians, under an act of July 15, 1870, to be expended for their benefit, to aid them in agriculture, for their care and support, and in extending improvements already begun on their reservation, and in any other manner to promote their civilization and improvement.

Mr. ALLISON. I ask that the letter of the Commissioner of Indian Affairs may be read, which fully explains the circumstances requiring the passage of this bill.

The PRESIDENT *pro tempore*. The letter will be reported.

The Chief Clerk read as follows:

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
December 14, 1876.

SIR: I have the honor to present herewith, for your consideration, a copy of a letter dated the 1st instant, addressed to William Nicholson, superintendent of Indian affairs, by Cyrus Bude, agent for the Osages, calling his attention to the destitute condition of said Indians, and asking on behalf and at the request of said Indians what steps, if any, have been taken to obtain from Congress an appropriation from their own funds to relieve their present necessities and to aid them to plant crops in the coming spring.

These Indians, numbering three thousand, prior to 1874, lived mainly upon buffalo meat and the proceeds of the sales of robes. On the breaking out of hostilities in that year, between the Cheyennes and other plains Indians and the Government, the Osages were obliged to forego their hunt, and this threw them upon the Government for their entire support. This support was supplied, however, from their own funds, Congress having authorized the expenditure, during the fiscal year ending June 30, 1875, and June 30, 1876, of funds then in the Treasury, belonging to them. The same aid was asked at the last session of Congress for the present fiscal year, but this was denied. The failure to make the necessary appropriation prevented the Department from giving the needed assistance in seeds, plowing, and planting, while an unprecedented flood destroyed the largest portion of such limited crops as were raised.

For these reasons the Osages are now in a destitute condition, and although one of the richest nations of Indians on the continent, are on the verge of starvation.

The Department has been enabled to support them thus far during the present fiscal year from the limited amount of funds at its disposal arising from the interest of funds belonging to them and held by the Government.

These funds are now nearly exhausted and it becomes a question of grave importance as to their maintenance during the balance of the current fiscal year.

The following is a statement of the funds held by the Government belonging to the Osages:

Stocks	$40,230 03
Money in the Treasury	1,340,567 66

all arising from the sales of lands, and every dollar of which has been paid into the Treasury, still remains there, and belongs to them.

The aid asked for is not the aid accorded the Sioux, for whom large gratuitous appropriations are annually made. The Osages do not need, neither do they ask, the bounty of the Government; but they do need assistance and ask that the Government allow the use of a small portion of what is their own to save them from utter destitution and, in some cases, starvation.

It seems to me that the request of these people deserves the highest consideration, and for this reason I recommend that Congress be asked to at once afford the necessary relief, and to this end I forward herewith a *projet* of a bill authorizing the use of $50,000 of their funds now in the Treasury under the act of July 15, 1870, (statutes 16, page 362,) and respectfully request that it be transmitted to Congress and immediate action thereon urged.

Very respectfully, &c.,

J. Q. SMITH, *Commissioner.*

The Honorable SECRETARY OF THE INTERIOR.

Mr. KERNAN. Will the chairman of the committee state whether these Indians have an agent resident here?

Mr. ALLISON. No, sir, they have no agent here?

Mr. KERNAN. Is the Senator satisfied that they are in need, and ask this aid themselves?

Mr. ALLISON. I am very well satisfied from the statement made by the superintendent of Indian Affairs, Dr. Nicholson, a very worthy man, and also from the statement of their agent and the letter of the Commissioner of Indian Affairs, that these Indians are in such a condition as to require this sum for their immediate support, and to enable them to produce crops next year. They have a very large fund of their own.

Mr. KERNAN. This is for subsistence?

Mr. ALLISON. This is for their present support, and to supply them with seeds, &c., for their crops next year.

The bill was reported to the Senate without amendment, and ordered to a third reading.

Mr. COCKRELL. I ask for a division on the passage of the bill.

Mr. EDMUNDS. Let us hear the bill read at length on its third reading.

Mr. INGALLS. Before the bill is read I venture to express the hope the Senator from Missouri [Mr. COCKRELL] will allow this bill to pass without calling for a division.

Mr. COCKRELL. I think it an exceedingly bad rule to pass a bill of this importance without a quorum of the Senate here. This bill has only been reported this morning. From the letter which has just been read, I have no doubt that it is all right; but I think it is an exceedingly bad rule that we should pass a bill of this importance without any quorum of the Senate being present, and for that reason I called for a division. I do not think there is a quorum present. I have counted the Senate, and according to my count there has not been a quorum present this morning. If we can do business without a quorum, it is all right.

The PRESIDENT *pro tempore.* The Secretary will read the bill.

Mr. EDMUNDS. I do not ask that it be read at length now. I am told what it is.

The bill was read the third time by its title, and passed.

CENTRAL BRANCH UNION PACIFIC RAILROAD.

Mr. INGALLS. I ask leave to introduce, without notice and out of order, a bill (S. No. 1108) to enable the Central Branch Union Pacific Railroad Company to submit its claims against the United States under existing laws to the decision of the Supreme Court, and I give notice that I shall move to substitute this for the bill which the Senator from Iowa [Mr. WRIGHT] has given notice of his intention to press upon the Senate.

Leave was granted to introduce the bill, and it was read the first time by its title.

Mr. EDMUNDS. I want a vote on the second reading of that bill.

The PRESIDENT *pro tempore.* It will go over.

Mr. EDMUNDS. No; I do not object to the second reading being made now. I want to find out whether there is a quorum here or not. It is said there is not.

The PRESIDENT *pro tempore.* Shall the bill be read a second time?

The question being put, there were on a division—ayes 11, noes 0; no quorum voting.

Mr. SHERMAN. Call the roll. There are several present who did not vote. I should like to know how many Senators are present.

The PRESIDENT *pro tempore.* The Secretary will call the roll on the second reading of the bill.

The question being taken by yeas and nays, resulted—yeas 26, nays 3; as follows:

YEAS—Messrs. Allison, Bayard, Bogy, Booth, Boutwell, Bruce, Chaffee, Conkling, Cragin, Davis, Eaton, Ferry, Frelinghuysen, Ingalls, Jones of Florida, Kernan, Maxey, Mitchell, Morrill, Morton, Norwood, Paddock, Patterson, Sherman, Withers, and Wright—26.

NAYS—Messrs. Cockrell, Edmunds, and McCreery—3.

ABSENT—Messrs. Alcorn, Anthony, Barnum, Blaine, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Christiancy, Clayton, Conover, Cooper, Dawes, Dennis, Dorsey, Goldthwaite, Gordon, Hamilton, Hamlin, Harvey, Hitchcock, Howe, Johnston, Jones of Nevada, Kelly, Key, Logan, McDonald, McMillan, Merrimon, Oglesby, Price, Randolph, Ransom, Robertson, Sargent, Saulsbury, Sharon, Spencer, Stevenson, Teller, Thurman, Wadleigh, Wallace, West, Whyte, and Windom—46.

The PRESIDENT *pro tempore.* Unanimous consent not having been given, the bill goes over. There is no quorum present.

Mr. MORRILL. As I cannot now get up the bill I proposed to call up, I move that the Senate adjourn.

The motion was agreed to; and (at twelve o'clock and thirty-two minutes p. m.) the Senate adjourned.

IN SENATE.

WEDNESDAY, *January 3*, 1877.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

The Journal of yesterday's proceedings was read and approved.

THOMAS J. ROBERTSON, from the State of South Carolina, appeared in his seat to-day.

EXECUTIVE COMMUNICATION.

The PRESIDENT *pro tempore* laid before the Senate a letter of the Secretary of the Treasury, in relation to the exhaustion of the appropriation for the transportation of United States notes and securities and recommending an additional appropriation of $40,000 for that service for the remainder of the present fiscal year; which was referred to the Committee on Appropriations.

PETITIONS AND MEMORIALS.

Mr. DORSEY presented a memorial of the mayor and city council of the town of Hot Springs, Arkansas; which was read and referred to the Committee on Public Lands, as follows:

A memorial to the Congress of the United States for the disposal of the Hot Springs reservation in the State of Arkansas.

To the Senate and House of Representatives of the United States in Congress assembled:

Your memorialists would respectfully represent that they are now, and have been from one to twenty-five years, settlers and residents upon the four sections of land known and designated as the Hot Springs reservation in the State of Arkansas. That during said term of years the title has been in dispute, which by the decision of the Supreme Court of the United States delivered April 24, 1876, is now wholly vested in the United States. That prior to said decision substantial improvements had been erected, numbering not less than one thousand, and consisting of hotels, store-houses, bath-houses, out-buildings, fencing, street and steam railroads, gas-works, churches, and public buildings, aggregating in value $300,000 or more. Said buildings and improvements, with a few exceptions, represent all the means your memorialists had at the date of said decision, which fact may not be questioned when it is further represented that nine-tenths of the settlers came here as invalids, with exhausted means and impaired health, and remain here for the use of the hot water.

We would further represent that by virtue of law and instructions of the United States Court of Claims, a receiver has charge of all the land and buildings, collecting a yearly rental for the occupation of the buildings and the use of the waters. That has necessarily depressed business, and in a brief time will impoverish the whole people. The annual rental, as fixed and collected by the receiver, will exceed $75,000. In view of the fact that the material value of this property is the result of individual capital and labor, we respectfully ask that your honorable body will, at an early day of the present session, make such disposition of the same as in your wisdom and discretion may be deemed equitable to the settlers and just to the Government and the whole people of the United States.

The Senators and members of Congress from the State of Arkansas are urged and requested to use their best endeavors to secure the speedy consideration of the subject presented in the foregoing memorial; and we will, as in duty bound, ever pray.

Mr. SPENCER presented a memorial of ship-masters, ship-owners, merchants, and others, of Mobile, Alabama, remonstrating against the passage of House bill No. 3187, to amend the shipping act; which was referred to the Committee on Commerce.

REPORTS OF COMMITTEES.

Mr. WRIGHT, from the Committee on Claims, to whom was referred the memorial of Mrs. Clementine J. Lake, praying compensation for property destroyed by the United States forces, submitted an adverse report thereon; which was ordered to be printed; and he moved that the claim be rejected; which motion was agreed to.

He also, from the same committee, to whom was referred the petition of Macondray & Co., and other merchants of San Francisco, California, praying compensation for losses sustained by them in April, 1854, by the falling of the bonded warehouse where their goods were then stored, submitted an adverse report thereon; which was ordered to be printed; and he moved that the claim be rejected; which motion was agreed to.

He also, from the same committee, to whom was referred the petition of Cole, Sizer & Brink, praying to be compensated for damages alleged to have arisen to them by the failure of the War Department to carry out the terms of a purchase by them from the Government through General O. O. Howard of certain lands, materials, &c., at Augusta, Georgia, known as the Augusta Powder Mills property, submitted an adverse report thereon; which was ordered to be printed; and he moved that the claim be rejected; which motion was agreed to.

He also, from the same committee, to whom were referred the papers relating to the claim of Martha A. Ashburn, widow of George W. Ashburn, deceased, praying compensation for certain property taken by United States troops during the late war, submitted an adverse report thereon; which was ordered to be printed; and he moved that the claim be rejected; which motion was agreed to.

He also, from the same committee, to whom was referred the bill (S. No. 531) for the relief of Captain James M. Beeber, asked to be discharged from its further consideration and that it be referred to the Committee on Military Affairs; which was agreed to.

BILLS INTRODUCED.

Mr. SHERMAN asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1109) relating to public accounts and claims; which was read twice by its title, referred to the Committee on Finance, and ordered to be printed.

CENTRAL PACIFIC RAILROAD REPORT.

Mr. BOOTH submitted the following resolution; which was considered by unanimous consent and agreed to:

Resolved, That the Secretary of the Interior be requested to communicate to the Senate the last annual report of the Central Pacific Railroad Company.

ORDER OF BUSINESS.

Mr. WRIGHT. I now move, pursuant to notice given yesterday, that the Senate proceed to the consideration of the bill (S. No. 60) declaring the true intent and meaning of the Union Pacific Railroad acts approved July 1, 1862, July 2, 1864, and July 3, 1866, and for other purposes.

The Chief Clerk read the bill.

Mr. BOUTWELL. I asked the Senate yesterday to consider the bill reported from the Committee on the Revision of the Laws to perfect the revision of the statutes of the United States. I believe it was not taken up. I had the impression at the time that the Senate had agreed to take it up, but the RECORD shows otherwise. The Senate is not very full to-day, and I hope that I may be allowed to present this bill and have it disposed of. It is a matter of public importance. The House has passed this bill correcting omissions in the revision of the laws, and I am very anxious in the public interest, not on personal grounds, that it should be disposed of at this session of Congress. As we go on the difficulties of disposing of a purely business and legal matter will increase. I hope the Senator from Iowa will allow his bill to go over to-day and indulge me in asking the consideration of the Senate to the bill I have named.

Mr. WRIGHT. I feel exceedingly anxious to accommodate my friend from Massachusetts, but this bill was reported at the last Congress from the Judiciary Committee, and it fell of course with that Congress. At the last session it was reported again. It has been upon the Calendar from that time to this, and is among the first bills upon this Calendar. If it is a matter of any importance to be acted upon it is meet and proper that it should be acted upon at once or at as early a day as possible. I do not think myself that it ought to take much, if any, time. My impression is that the bill itself is so plain upon its merits, and will be accepted by the Senate as so just and proper that but little, if any, discussion will be necessary. I shall, therefore, with every disposition to accommodate my friend from Massachusetts, feel it to be my duty to ask a vote of the Senate at least upon taking up this bill. I have nothing to say with reference to the merits of the bill at this time. The question has been pending before the Departments for some years. There have been different constructions of the statutes, and the Judiciary Committee has esteemed it important to have a construction of the law by Congress at as early a day as possible to avoid the granting of further lands and subsidies in aid of this road. If the Senate, when they come to consider the bill, think that the door ought to be still left open and the bars down, they can so determine. We have deemed it necessary and proper, absolutely advisable, to pass some such bill as this. In view of the length of time that the bill has been pending, twice reported from the committee, the fact that I have on several occasions made an effort to get it before the Senate constrains me to insist at this time upon having a vote of the Senate at least upon taking it up.

Mr. MORRILL. Will the Senator from Iowa and the Senator from Massachusetts allow me to call up a bill that will only take the time necessary to read it in order to have it passed? It has been reported unanimously from the Committee on Finance, and ought to have been passed at the last session. It is merely for the relief of a collector in Georgia, a case of a great deal of hardship, and the bill ought to be passed.

Mr. WRIGHT. I prefer that my friend would at least allow this bill to be taken up; and I will yield to him, when it is taken up, with very great pleasure.

Mr. INGALLS. I trust the Senate will concur with the request made by the Senator from Massachusetts, to proceed to the consideration of the bill reported by him in regard to the revision of the statutes. That certainly is a matter of very great and very urgent and very immediate importance. I suppose there is no subject before the Senate which the attention of the Senate is more frequently called to than this. There can be no question that it should be acted upon promptly and without any further delay. The bill that the Senator from Iowa asks the Senate now to consider is one, as he himself says, that asks the Senate and Congress to put a construction upon a statute that has been for some twelve or fifteen years in force as a law. It has always seemed to me that the construction of statutes is a matter for the courts to determine and not for Congress; that when Congress has once passed a law and rights have vested or accrued under it, the question as to the existence of those rights or the construction of that statute is for the courts and not for Congress.

So far as the immediate question involved in this bill is concerned, if the necessity for it ever existed it has long since passed away. There has been no action by the corporation before the Departments or before any of the branches of the Government for the last four years. They pursued what they thought to be their legal rights in the tribunals that were established by the statutes under which they claimed those rights, to their final determination, and there the matter rests. They are not here; they are not before any Department of the Government, asking any further relief. There is no measure here asking for bonds, or for a grant of land, or for any further interpretation of the statutes. Therefore, the necessity for the action that is now invoked by the Senator from Iowa has long since passed away. It is no longer a matter of the slightest concern to Congress or to any branch of this Government. The corporation themselves have proceeded under what they conceived to be their rights to construct twenty miles more of road beyond the one hundredth mile which they reached in 1868. That twenty miles will soon be in active operation. When it is in operation, then under existing statutes the corporation will have the right to apply to the Departments for an adjudication as to their rights to claim further grant or aid in bonds or in lands. It, therefore, seems to me that it is superfluous and unnecessary to take up the time of the Senate upon a matter of this kind. Beyond that, it is unjust because the statute having been passed twelve or fourteen years ago and this corporation having proceeded under it, it is now certainly grossly in violation of principles of law and equity to ask Congress to pass an act that shall forbid any Department of the Government from putting any other construction upon that statute than that which is now urged to be the proper one by the Judiciary Committee.

Mr. WRIGHT. I rise to a question of order.

The PRESIDENT *pro tempore*. The Senator from Iowa will state his point of order.

Mr. WRIGHT. The point I make is this: If the merits of this bill are to be discussed on a motion to take up, I want to understand it so that I may discuss the matter also.

The PRESIDENT *pro tempore*. The Senator from Kansas will confine himself to the question of taking up the bill, and not enter upon the merits.

Mr. INGALLS. That is what I was doing closely. I was endeavoring to show the Senate why it was desirable and reasonable and proper that they should proceed to the consideration of the bill asked by the Senator from Massachusetts rather than to that asked by the Senator from Iowa.

Mr. WRIGHT. I have only one word to say about this matter. All the suggestions made by the Senator that the Departments have suspended any action are well answered by the fact that the action already taken by the Senate in the resolution under which the Committee on the Judiciary made its report has tied up the Departments, for they were expressly told not to take any action until this report came in. If this Congress shall adjourn without taking action upon this bill, then their hands will be untied again and they will be at perfect liberty to go on and dispose of these lands and grant these subsidies under the decision that has been made there.

As a reason for taking up the bill, I have only to say in conclusion that it is among the oldest bills on the Calendar. It is a matter involving about $8,000,000 in lands and bonds. It is for the Senate to say whether they will take it up at this time or whether they will vote it down, for a vote refusing to take up the bill I shall regard as settling the bill upon its merits and I shall not seek further to make an effort to take it up.

Mr. INGALLS. The Senator from Iowa bases his reason for asking the immediate consideration of this bill by the Senate upon the fact that unless the action he invokes is now taken the Departments may proceed to act and thereby involve the Government perhaps in the appropriation of $8,000,000 in bonds and in lands. I beg simply to say, in answer to that one suggestion alone, that that action of the Department was suspended on the 12th day of March, 1873, upon a resolution offered at a special session of the Senate by the Senator from New York [Mr. CONKLING] calling the attention of the committee to this subject, and asking that until the report was made no Department of the Government should issue any land patent or bonds to the corporations named in the resolution. In pursuance of that resolution action was suspended. There has never been any action asked for or any action attempted by any Department of the Government at the instance of any one of the corporations named. There is none invoked. I am authorized to say that the corporation itself at which this resolution was particularly aimed has no intention of pressing this matter at the present time before the Departments. Therefore, as I say, the suggestion of the Senator from Iowa is without force.

The PRESIDENT *pro tempore*. The question is on the motion of the Senator from Iowa that the Senate proceed to the consideration of Senate bill No. 60.

Mr. INGALLS. I ask for the yeas and nays.

The yeas and nays were ordered; and being taken, resulted—yeas 35, nays 3; as follows:

YEAS—Messrs. Allison, Anthony, Bayard, Bogy, Booth, Burnside, Cameron of Pennsylvania, Chaffee, Clayton, Cockrell, Conkling, Davis, Dennis, Dorsey, Eaton, Edmunds, Ferry, Frelinghuysen, Gordon, Hamilton, Jones of Florida, Kelly, Kernan, McCreery, Maxey, Mitchell, Morrill, Morton, Price, Randolph, Sherman, Spencer, Wallace, Withers, and Wright—35.

NAYS—Messrs. Boutwell, Cragin, and Patterson—3.

ABSENT—Messrs. Alcorn, Barnum, Blaine, Bruce, Cameron of Wisconsin, Christiancy, Conover, Cooper, Dawes, Goldthwaite, Hamlin, Harvey, Hitchcock, Howe, Ingalls, Johnston, Jones of Nevada, Key, Logan, McDonald, McMillan, Merrimon, Norwood, Oglesby, Paddock, Ransom, Robertson, Sargent, Saulsbury, Sharon, Stevenson, Teller, Thurman, Wadleigh, West, Whyte, and Windom—37.

So the motion was agreed to.

JAMES ATKINS.

Mr. MORRILL. The Senator from Iowa was kind enough to say that if this bill were taken up he would give way informally for the Senate to act upon Senate bill No. 1040.

Mr. WRIGHT. I give way informally, of course.

By unanimous consent, the Senate, as in Committee of the Whole, proceeded to consider the bill (S. No. 1040) to allow the late collector of internal revenue for the fourth district of Georgia his salary hitherto withheld.

The bill was reported from the Committee on Finance with an amendment to strike out the preamble and all after the enacting clause, and to insert in lieu thereof the following:

That James Atkins, late collector of internal revenue for the fourth district of the State of Georgia, be, and he is hereby, allowed, in the settlement of his accounts, the sum of $7,550.03 on account of items of assessments and abatements, and the further sum of $1,415.08 on account of expenses incurred by him in the performance of the duties of his office.

Mr. MORRILL. There is a report. If any one desires further information in relation to the bill I am ready to give it, or the report may be read. I will simply say that this man collected over $3,000,000 at the South immediately after the war; that some of his deputies were defaulters; that he lost all of his property, $25,000; and that his accounts still remain unsettled, no allowance having been made for his salary. The Committee on Finance were unanimous in believing that it was a case of great merit, and the Department of Internal Revenue have sent a letter with full details in relation to the matter, saying that the party is entitled to the sum reported in the bill.

Mr. CONKLING. I wish to say in corroboration of what has been said by the Senator from Vermont, that it once became, perhaps twice became, the duty of the Committee on Commerce in another regard to investigate this matter. They were satisfied, as the Senator from Vermont says the Committee on Finance were satisfied, of the merit of the case, of its equity and propriety. I would inquire of the Senator from Vermont whether a slight addition which was proposed to the bill as reported at the last session has been made, an addition necessary in consequence of the fact to which the Department called attention in a letter which was mislaid but which perhaps has been found since.

Mr. MORRILL. We have reported it according to the letter of August 14, 1876.

Mr. CONKLING. So I understand the change to which I have called the Senator's attention has been made, and I make no objection to the bill.

Mr. MORRILL. I will say that this is not as much as the party himself thinks he is entitled to, but he would rather receive this sum than to have no action at all on the subject.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in. The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: "A bill to authorize sundry allowances to James Atkins, late collector of internal revenue for the fourth district of Georgia, in the settlement of his accounts."

CENTRAL BRANCH UNION PACIFIC RAILROAD.

Mr. WRIGHT rose.

The PRESIDENT *pro tempore*. The Senator from Iowa now asks for the consideration of the bill temporarily laid aside.

Mr. WRIGHT. Yes, sir.

The Senate, as in Committee of the Whole, proceeded to consider the bill (S. No. 60) declaring the true intent and meaning of the Union Pacific Railroad acts approved July 1, 1862, July 2, 1864, and July 3, 1866, and for other purposes. It declares that neither the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862; nor the act approved July 2, 1864, entitled "An act to amend an act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes,' approved July 1, 1862;" nor the act approved July 3, 1866, entitled "An act to amend an act entitled 'An act to amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862,' approved July 2, 1864;" nor all of these acts, nor any section or sections, portion or portions, of all or any thereof, shall be so construed by any officer or department of the Government as to authorize the issuance to the Hannibal and Saint Joseph Railroad Company, or its successors or assigns, or the Central Branch Union Pacific Railroad Company, or its successors or assigns, of any bonds of the United States, or of any patents for lands, as subsidies for the construction of any extension of the road provided for in the thirteenth section of the act approved July 1, 1862, in excess of one hundred miles next to the Missouri River; nor shall any action of any officer or department of the Government of the United States heretofore, or that may be hereafter, taken, or of any railroad company, be so construed as to authorize the issuance of bonds or patents for lands for any such extension, it being declared to be the true intent and meaning of the acts named that, for the construction of the road contemplated by section 13, lands and bonds were granted for one hundred miles next to the Missouri River, and no more.

Mr. WRIGHT. Mr. President, I have no desire or purpose to discuss this bill upon its merits unless some inquiry shall be made by Senators or unless some explanation shall be asked.

The bill has been twice reported by the Judiciary Committee. There was when it was first reported a somewhat lengthy report setting forth all the facts and the grounds upon which the committee based its conclusion. That report has been upon the files of the Senate for some two years and more. Standing at present upon this report and what I believe to be the clear merits of the bill itself, unless it is desired on the part of some Senator that there shall be some explanation, I shall not take up the time of the Senate with discussion. If there shall be such request I shall take pleasure in making a statement of the bill, its objects and purposes. Perhaps I had as well do so briefly, inasmuch as though the facts are not very complicated, a short statement may aid very much to the solution of the question.

Under the legislation giving aid to the railroads in the West in 1862 and 1864 and subsequently, provision was made for the aid of three roads, as I will now term them, to connect with the Union Pacific at the one hundredth meridian. It is well that this be understood to start with. Three roads were provided for, one starting from Sioux City, another starting from the Missouri River at Omaha and Council Bluffs, and the other from the mouth of the Kansas. Thus it will be seen that there were three roads starting from the east of the Missouri River to connect with the main line at or near the one hundredth meridian. Each of these lines of road was to have subsidies in the form of lands and bonds. Then a provision was made for the aid of an intermediate road or branch between the mouth of the Kansas and Omaha, the road known as a connection or continuance of the Hannibal and Saint Jo, and it was to pass through Atchison. It was contemplated at that time that this fourth branch or arm would connect with the road starting from the mouth of the Kansas, at about a distance of one hundred miles from the Missouri River. It was expected that the road from the mouth of the Kansas running to the one hundredth meridian, so as to connect with the main line at or near that point, would so run in a northwest direction as that the road from Saint Jo through Atchison would connect at about the distance of one hundred miles. The law provided that this road, now known as the Union Pacific Central Branch, should have aid for the distance of one hundred miles and no more. Whether it took one hundred and fifty miles or one hundred and twenty-five or any number of miles to reach the point contemplated on the road from the mouth of the Kansas, it was to have aid for the one hundred miles and no more.

Subsequently Congress provided that the road from the mouth of the Kansas, instead of striking the main line at the one hundredth meridian, might strike it at any point west of that, thereby, you will see at once, contemplating or allowing a divergence to the west farther west than was originally contemplated; and subsequently still Congress provided that this same road might be so constructed as to strike the Union Pacific road at any point not farther west than fifty miles west of Denver, and the road was so constructed as that it went to Denver and thence north to the Union Pacific road at Cheyenne.

It will be seen at once that under this last legislation the route of this road from the mouth of the Kansas was so changed as that the intermediate road, or what I term the Union Pacific Central Branch, could not reach this line within one hundred miles. Thereupon this company that was entitled to a subsidy for one hundred miles in lands and bonds claimed the right to occupy the ground from the point they would have struck the road as originally expected from the mouth of the Kansas to the one hundredth meridian, making a distance of about two hundred and twenty-five miles, and to get bonds and lands for the whole two hundred and twenty-five miles. In other words, they claimed that, as the company running a line from the mouth of the Kansas were allowed to change its route by the subsequent legislation of Congress, this route, which was originally expected to be occupied by the road from the mouth of the Kansas River, was left unoccupied and that they themselves had a right to build to the one hundredth meridian, or near there, and take lands and bonds in place of the other road. This question was submitted to the Departments. It was decided against the company by the Secretary of the Interior, Mr. Browning. It was again brought to the attention of the Department while Governor Cox was the Secretary of the Interior and decided again against the company. It was referred to the Attorney-General, Mr. Akerman, who examined it very fully and delivered to the Secretary of the Interior a very elaborate opinion, very full upon all the facts and all the law, against the right of the company to those lands. The company by their counsel insisted that that opinion should be reviewed. The Secretary of the Interoir suggested a review of the opinion. The Attorney-General said he was prepared to review it, if they could present any new facts or suggest any ground to satisfy him that he was probably in error. While the matter was thus pending the company withdrew their claim; no longer insisted upon having it decided by the Attorney-General. The Attorney-General returned the papers and said that he in no manner changed his opinion, but adhered to what he had said touching the rights of the company and the obligations of the Government. Again it was referred to the Department, the company going before the Department and insisting on these lands. Mr. Williams being the Attorney-General declined to take it up for the reason that he had been of counsel in some way connected with this question before he was Attorney-General. It was then referred to the Solicitor-General, Mr. Bristow. He stated that he felt that it would not be proper on his part to examine the question, as it had been decided by the prior Attorney-General and as the then Attorney-General declined to take cognizance of it. They still persisted, and it was presented to Mr. Phillips, Solicitor-General, and he decided that they had a right to build the road and take the lands and bonds

While the question was in this condition the resolution which led to the present bill being reported was introduced, and the matter has been tied up from that time to this.

The committee, after examining the whole question in all its facts as we think with exceeding great care, in view of the departmental history, in view of what had been decided by the Attorney-General of the United States, in view of what is unquestionably correct under the statute, reported this bill, by which it will be seen that the Departments are prevented from issuing any other bonds or lands in aid of this road. The grounds upon which we base this conclusion and this recommendation are set forth in the report. The law is clear, explicit, that they are entitled to subsidy for the one hundred miles, and no more. We hold by this report, and believe it to be the law, that it was entirely competent for Congress to change the route of the road starting from the mouth of the Kansas; that when these persons took under this law allowing them a subsidy for one hundred miles, they took with perfect knowledge that Congress would have a right to change the route of that road, and that there was no failure on the part of the company starting from the mouth of the Kansas to build as contemplated by these laws to fulfill their contract, and that they acted in accordance with the law of Congress authorizing them to change their route, and when they changed the route this company having the right to build this road could go on and build it to the one hundredth meridian if they wanted to do so. There is no question about that. But they took their grant with the knowledge that under the law they could get subsidy but for the one hundred miles. They can build, but they can get no subsidy beyond that distance. The object of this bill is to prevent any increase of that subsidy or their getting an acre of land or a dollar in bonds for any mile beyond the one hundred miles.

Mr. INGALLS. Mr. President, I believe there is a written report accompanying this bill. I ask that it may be read.

The PRESIDENT *pro tempore*. The papers do not show a report.

Mr. INGALLS. There is a report made at the Forty-third Congress, first session, Report No. 169.

The Chief Clerk proceeded to read the report submitted by Mr. WRIGHT, from the Committee on the Judiciary, on the 10th of March, 1874.

The PRESIDENT *pro tempore*, (at one o'clock p. m.) The morning hour has expired.

Mr. WRIGHT. I trust we shall proceed with the consideration of this bill.

The PRESIDENT *pro tempore*. Is there objection to continuing the consideration of the bill pending at the close of the morning hour?

Mr. BOUTWELL. I do not like to object, but enough has been disclosed by the discussion and by the reading of the report as far as it has progressed to show that the object is now merely to declare by congressional enactment what is the true interpretation of a law passed ten or fifteen years ago. I submit to the Senate that there are other matters much more pressing and in their results much more important to the country than the declaration by a legislative assembly of the true interpretation of a statute. If it is to be interpreted, it should be interpreted by the courts; and I think I may add that anything we may do will not affect the decision of a court in any particular if any case growing out of this controversy should be before any judicial tribunal of the country. I think we had better take the vote of the Senate on the question of proceeding, and I object for that purpose.

Mr. WRIGHT. I supposed the bill being before the Senate there would be no objection to continuing its consideration after the conclusion of the morning hour.

The PRESIDENT *pro tempore*. If there is not unanimous consent given, it becomes the duty of the Chair to call up the unfinished business. The Chair will do so if the Senator from Massachusetts persists in his objection.

Mr. BOUTWELL. Yes, sir. I think it my duty to object to the consumption of time.

Mr. WRIGHT. I move then to postpone——

The PRESIDENT *pro tempore*. The Chair will entertain the motion after calling up the unfinished business, which is Senate bill No. 1108. The question is on ordering the bill to be read a second time. The Senator from Iowa moves the postponement of the present and all prior orders for the purpose of continuing the consideration of Senate bill No. 60.

Mr. INGALLS. I should like to have the Clerk report the title of Senate bill No. 1108.

The PRESIDENT *pro tempore*. It will be read.

The CHIEF CLERK. A bill (S. No. 1108) to enable the Central Branch Union Pacific Railroad Company to submit its claims against the United States under existing laws to the decision of the Supreme Court.

The PRESIDENT *pro tempore*. That is the unfinished business. The question is on postponing it and continuing the consideration of Senate bill No. 60.

Mr. INGALLS. I desire to say a single word, and that is that this bill was arrested on its second reading yesterday by the objection of the Senator from Vermont, [Mr. EDMUNDS,] who desired in that way to ascertain whether a quorum of the Senate was present or not. In the present condition of that bill I suppose it cannot be offered as a substitute for the bill that is now before the Senate, and I presume that no Senator desires to interpose any objection to the second reading of that bill, the necessity for which the objection was first made having passed away. I ask that the bill may be read a second time, as of course, and lie on the table.

The PRESIDENT *pro tempore*. Is there objection to the bill being read the second time? The Chair hears none.

The bill was read the second time by its title.

Mr. INGALLS. Let it lie on the table.

The PRESIDENT *pro tempore*. If there be no objection the bill will lie on the table.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. GEORGE M. ADAMS, its Clerk, announced that the House had appointed Mr. HENRY B. PAYNE of Ohio, Mr. EPPA HUNTON of Virginia, Mr. ABRAM S. HEWITT of New York, Mr. WILLIAM M. SPRINGER of Illinois, Mr. GEORGE W. MCCRARY of Iowa, Mr. GEORGE F. HOAR of Massachusetts, and Mr. GEORGE WILLARD of Michigan a committee on the part of the House to act in conjunction with a similar committee on the part of the Senate, to prepare such measure as may be best calculated to accomplish a satisfactory count of the electoral vote for President and Vice-President.

The message also announced that the House had passed the bill (S. No. 408) for the relief of Surgeon Thomas F. Azpell, United States Army.

The message further announced that the House had agreed to the amendments of the Senate to the following bills:

A bill (H. R. No. 732) for the relief of Mrs. Catharine Thrush and William B. Stone, owners of the schooner Flight; and

A bill (H. R. No. 735) for the relief of Philip Pendleton.

The message also announced that the House had passed the following bills; in which it requested the concurrence of the Senate:

A bill (H. R. No. 703) granting a pension to Catharine Ferry;

A bill (H. R. No. 767) for the relief of Samuel B. Stauber and others;

A bill (H. R. No 838) granting a pension to Joseph Odell;

A bill (H. R. No. 969) for the relief of Charles H. Johnson, late first lieutenant of the Fifteenth Michigan Infantry;

A bill (H. R. No. 1617) to remove the political disabilities of George S. Hawkins, of Florida;

A bill (H. R. No. 2218) for the relief of Mrs. Amanda Rains;

A bill (H. R. No. 2229) for the relief of Chaney J. Poore, late a private in Battery G, First New York Light Artillery;

A bill (H. R. No. 2237) granting a pension to Anson K. Young;

A bill (H. R. No. 2519) granting a pension to James M. Bailey;

A bill (H. R. No. 3067) for the relief of Alexander Anderson, late first lieutenant Fourteenth New York Volunteer Cavalry;

A bill (H. R. No. 3292) providing for a pension to be paid to Andrew Jackson, (colored,) of Pittsburgh, Pennsylvania;

A bill (H. R. No. 3415) for the relief of Mrs. Julia H. Totten, widow of James Totten, late lieutenant-colonel and assistant inspector-general United States Army;

A bill (H. R. No. 3436) granting a pension to George Martz;

A bill (H. R. No. 3509) for the relief of the legal representatives of R. H. Murrell, deceased, late commissary of the Tenth Tennessee Cavalry;

A bill (H. R. No. 3510) granting a pension to Cynthia Abbott;

A bill (H. R. No. 3511) granting increased pension to Thomas G. Kingsley;

A bill (H. R. No. 3512) for the relief of First Lieutenant Frederick H. E. Ebenstein, Twenty-first Infantry United States Army;

A bill (H. R. No. 3513) granting a pension to Dr. P. F. Reuss;

A bill (H. R. No. 3574) for the relief of Marshal P. Thatcher;

A bill (H. R. No. 3575) granting a pension to Eliza A. Blaze, widow of Abner T. Blaze, late a private in Company C, Thirteenth Indiana Cavalry Volunteers;

A bill (H. R. No. 3577) granting a pension to Catharine Barnes;

A bill (H. R. No. 3578) granting a pension to Eliza McConnel;

A bill (H. R. No. 3579) granting an increase of pension to Eugene O'Sullivan, late sergeant Company K, Eighteenth Missouri Volunteer Infantry;

A bill (H. R. No. 3580) granting a pension to Rachael A. Cullison, widow of Richard W. Cullison, late a private in Company D, Forty-fifth Regiment Ohio Volunteers;

A bill (H. R. No. 3581) granting a pension to Minerva Williams and her minor children; and

A bill (H. R. No. 4273) to remove the political disabilities of A. C. Myers, of Maryland.

PRODUCTION OF TELEGRAPHIC DISPATCHES.

Mr. WRIGHT. I move now that the Senate proceed with the consideration of Senate bill No. 60.

The question being put, the ayes were 20.

Mr. WRIGHT. Let us have the yeas and nays. There is certainly a quorum here.

The yeas and nays were ordered.

Mr. MORTON. Before that is done I ask leave to make a report, accompanied by a resolution, which I ask to have laid on the table and printed.

The PRESIDENT *pro tempore*. Is there objection? The Chair hears none.

Mr. WRIGHT. Not to displace this matter?

Mr. MORTON. Not at all. It will take but a moment.

The PRESIDENT *pro tempore*. The Chair hears no objection. The Secretary will read the report.

The Chief Clerk read as follows:

The Committee on Privileges and Elections, who were instructed by resolution of the Senate to inquire into the facts attending the late presidential election in the State of Oregon and concerning the casting of the electoral vote of that State, beg leave to report to the Senate:

That one William M. Turner was called as a witness by the said committee, and, after having been duly sworn, had the following questions propounded to him and made the following answers thereto:

Question (by the chairman.) Do you know whether Mr. Patrick had asked to have that canvass withheld until he could get there?

Answer. I cannot answer that question.

Q. Have you any knowledge on that subject?

A. No, sir; nothing that could be made public.

Q. Explain what you mean by that.

A. Our knowledge on political subjects and all others, of course, has to be very sacred. It would be a violation of the law of the State to divulge anything that passes over the telegraphic wires and also a violation of the rules of the company.

Q. I propose to ask the witness the question if he knows of any dispatch passing through that office, on the part of Mr. Patrick or any one else, asking that that canvass be deferred until he could get there.

A. I ask to be excused from answering that question.

Q. You decline to answer?

A. I must decline.

Q. Upon the ground before stated?

A. Yes, sir.

Q. That you cannot divulge anything passing on the wires?

A. I cannot do it.

Q. What do you know, if anything, in regard to $8,000 being transferred from New York to Salem or to Portland at any time after the election in November and up to the time that the electors cast their votes?

The WITNESS. Transferred in what manner?

The CHAIRMAN. What do you know about money being sent from New York or persons there being authorized to draw for $8,000?

A. I do not know anything with regard to the transfer of any money that would be a public matter. We have a great deal of business of that kind going through the offices, and as a matter of course it only concerns those who are interested.

Q. Do you know of any dispatch being sent to Salem or to Portland from New York authorizing any person there to draw for $8,000?

A. I must decline to answer that.

Q. Do you know of any dispatch having been sent by Charles Dimond, or a man named Dimond, in New York, to Ladd & Bush, in Salem, in regard to $8,000 or any sum of money?

A. I cannot answer.

Q. Do you mean to say that you cannot answer or that you decline to answer?

A. I decline.

Q. You decline to answer?

A. I decline to answer any question touching anything that passes over the telegraph wires.

Q. Did you simply say that you decline to answer or do you mean to say that there was no such dispatch?

A. I decline to answer questions of that character.

* * * * * * *

Q. Now I propose to ask this witness the question directly, if there was not a dispatch passing through that office from Charles Dimond to Ladd and Tilton, in Portland, authorizing them to draw for $8,000.

A. I must be excused from answering any questions of that character.

Q. I put this as occurring subsequent to the 25th of November, and before the first Wednesday in December.

A. I decline answering any questions, as I remarked, touching the business over the wires.

Q. I ask if you know anything in regard to another sum of $17,000 that was authorized in New York to be drawn by Ladd and Tilton, in Portland, subsequent to the presidential election?

A. No, sir; I do not know anything about it.

Q. You do not then decline to answer that on this ground?

A. I decline on the same ground.

The committee have been informed that it is important to have the witness answer these questions, as the answers may be material in the investigation of the matter intrusted to the committee, and submit to the Senate the following resolution:

Resolved, That William M. Turner is in duty bound under his oath to answer the questions that have been propounded to him as above stated, and that he cannot excuse himself from answering the same by reason of his official connection with the Western Union Telegraph Company as the manager of their office at Jacksonville, Oregon.

The PRESIDENT *pro tempore*. The report and resolution will be ordered to be printed.

Mr. MORTON. I give notice that I will ask to have the resolution taken up for action to-morrow morning.

BILL RECOMMITTED.

Mr. EDMUNDS. I move to recommit to the Committee on the Judiciary the bill (S. No. 611) relating to the equitable and legal right of parties in possession of certain lands and improvements thereon in California, and to provide jurisdiction to determine those rights. One of the members of the committee who had it in charge is informed that the proofs were not presented as they were intended to have been, and it is desirable to have the case re-examined. I move that the bill be recommitted.

The motion was agreed to.

CENTRAL BRANCH UNION PACIFIC RAILROAD.

The PRESIDENT *pro tempore*. The Senator from Iowa has moved the present consideration of the bill S. No. 60, on which the yeas and nays have been ordered.

The yeas and nays were taken.

Before the result of the vote was announced,

Mr. PADDOCK. I move that the Senate proceed to the consideration of executive business.

The PRESIDENT *pro tempore*. No quorum has yet appeared on this vote. The Chair thinks there is a quorum in the Senate and has been this morning. The motion of the Senator from Nebraska is not in order unless there is a quorum disclosed on the vote.

Mr. WRIGHT. Would it be in order to move a call of the Senate at this time?

The PRESIDENT *pro tempore*. It would be.

Mr. INGALLS, Mr. PATTERSON, Mr. NORWOOD, Mr. MAXEY, and Mr. CAMERON of Pennsylvania, entered the Chamber and voted.

The result was then announced—yeas 32, nays 6; as follows:

YEAS—Messrs. Allison, Bayard, Bogy, Booth, Burnside, Cameron of Pennsylvania, Chaffee, Cockrell, Conkling, Davis, Dennis, Dorsey, Eaton, Ferry, Frelinghuysen, Gordon, Hamilton, Jones of Florida, Kelly, Kernan, McCreery, Maxey, Morrill, Morton, Norwood, Patterson, Price, Randolph, Spencer, Wallace, Withers, and Wright—32.

NAYS—Messrs. Boutwell, Bruce, Cragin, Ingalls, Mitchell, and Sherman—6.

ABSENT—Messrs. Alcorn, Anthony, Barnum, Blaine, Cameron of Wisconsin, Christiancy, Clayton, Conover, Cooper, Dawes, Edmunds, Goldthwaite, Hamlin, Harvey, Hitchcock, Howe, Johnston, Jones of Nevada, Key, Logan, McDonald, McMillan, Merrimon, Oglesby, Paddock, Ransom, Robertson, Sargent, Saulsbury, Sharon, Stevenson, Teller, Thurman, Wadleigh, West, Whyte, and Windom—37.

The PRESIDENT *pro tempore*. The bill (S. No. 60) declaring the true intent and meaning of the Union Pacific Railroad acts approved July 1, 1862, July 2, 1864, and July 3, 1866, and for other purposes, is before the Senate as in Committee of the Whole.

Mr. SHERMAN. Mr. President, this bill now being before the Senate, I desire to state that some years ago I had occasion to examine the legal rights or the claims made by the Central Branch Pacific Railroad, and I came to the conclusion after a careful examination that they had no claim and no right against the Government of the United States. They had received the money to which they were entitled for building one hundred miles of railroad and all the land grant, and if they chose to extend their road beyond that they could not claim more than the land grant and certainly had no right to claim bonds. I have so voted three or four times. The Senator from Iowa knows the position I occupy on that subject. But I submit to his good judgment whether it is wise to take up a bill that is controverted by private parties as well as by local interests, and endeavor to pass it through the Senate with barely a quorum in the city. I shall vote with him on the final passage of the bill if the bill reaches that stage; but it must be manifest to him and to the Senate that this bill cannot be acted upon in the present condition of things here because a claim is made in behalf of this railroad company and in behalf of local interests that will be benefited by the completion of this road; and we cannot preclude them at least from the right to a suit at law, and we cannot by our legislation cut off any remedy they may have. Therefore it is unwise, it seems to me, to press this bill at this time.

The Senator from Massachusetts [Mr. BOUTWELL] has a bill that is rather a matter of detail but will take considerable time; and therefore it seems to me that by common consent this bill ought to be laid aside, and that taken up which may be considered without any question in regard to a quorum. Otherwise the sooner we adjourn the better it seems to me. Hence I voted to-day on the second vote against taking up this bill, on the ground that it would be simply time wasted and that the members of the committees who are engaged now in the performance of important duties would be simply called away from the performance of those duties without making any possible progress in the matter pending before the Senate.

Mr. CONKLING. Will the Senator from Ohio, although he has taken his seat, allow me to make an inquiry of him? Are we to understand that, according to his impression of this subject, in spite of this act which may be passed these parties can go into court and litigate with the Government?

Mr. SHERMAN. On the contrary, I understand that they have no power to get into the courts unless a law is passed for that purpose, and therefore an affirmative act must be passed to give them even the right to sue, and I say that strengthens the argument that we ought not now to hold the Senate here in its present condition by attempting to pass a bill against which there is local opposition not only from private parties but from localities. It had better be postponed to a more convenient time, when I have no doubt I shall vote for it. I can say that the Senator from New York and I years ago, not less than eight or ten years ago, I think, acted together in opposing a measure in the interest of this Central Branch Pacific road. I took then the same view of the law that he did, and I presume I do now; but I do not think it worth while for us to waste time on it to-day.

Mr. CONKLING. I misapprehended the remark of the Senator from Ohio, as I find. This subject is what a distinguished member of this body now gone used to like sometimes to call "an old customer." It has been here a good many times. It has been the misfortune of the Senate to listen to me a good many hours, first and last, on this subject. I wish to assure all Senators who are present and those who are absent if they shall read the RECORD, that I do not intend to inflict myself upon the Senate at length on this subject again. I wish, however, to say this: The claim, if it be a claim, the argument, if it be an argument, of these parties involves a very large sum of money. It involves a large quantity of land. It involves lands which, in the mean time, under grant by Congress, have passed to other persons. It involves, therefore, not only the rendition of a large sum in bonds, the grant of a vast area in lands, but the opening and resettlement, if resettlement there could be, of legislative transactions with other grantees under which in the mean time they have taken undoubted vested rights, so that recompense and indemnity would be necessary over to parties on the other side if allowance were made to parties here.

I say so much to indicate not only the importance but the somewhat complicated nature of this transaction. For ten years, as the Senator from Ohio has remarked, and for more than that, the persons concerned with an assiduity and an enterprise seldom equaled have waged in the two Houses of Congress in the Interior Department, in the Department of Justice, and before the President of the United States personally, I ought not to say a war, but an endeavor consisting of a great variety of arguments and of allegations for the purpose of obtaining these bonds, the moneys, the lands. At times, as the Senator from Iowa has indicated, before some officer of the Government they have succeeded once or twice. At times they have succeeded in procuring in the one House or the other, the passage of a bill, the effect of which would have been to give them what they allege are their rights. And now for more than ten years this important, disturbing, open controversy has gone on, sometimes happening in the Senate, sometimes in the House, sometimes suddenly transplanted to the Interior Department, and followed by a resolution of the Senate requesting or directing the head of that Department not to act until he had authority from the legislative branch of the Government, and sometimes appearing elsewhere. It seems to me it is a matter which ought to be settled,—settled by those who, as the Senator from Ohio, began ten or twelve years ago to understand it, who are certainly much more likely to understand it and able with less effort to understand it, than those who come after us will be.

Now if at this moment it stands in the way of something urgent and important, I see the full force of the suggestion made by the Senator from Ohio; but I should like to know what the measure is in whose way this bill stands to-day.

Mr. SHERMAN. It was the bill about the revision of the laws that I referred to and had in my mind.

Mr. CONKLING. I have a great respect for the bill for the revision of the laws; I have a profound respect for the Committee on the Revision of the Laws; and I bow with submission to every judgment and yield to every wish of the chairman of that committee; but I really think that the committee and the Revised Statutes, and the country, and "whom it may concern," in the language of Mr. Lincoln, will all survive if that bill should not be acted on until to-morrow or next day. If I were going to have a conjecture about it, I would suppose that the country could survive until next week; and now the Senator from Massachusetts [Mr. BOUTWELL] corroborates it. He says he believes the country could survive until next week if the bill for the revision of the laws were not acted on. Therefore I cannot believe that it is worth while to take up this subject, hear the Senator from Iowa, listen to a long report yet not completed, and then lay it down and take it up on some other day, and then postpone it again. On the contrary unless there is something very important in the way, we ought to go on with it. If there were an appropriation bill here, if there were some other bill of leading consequence here ready for action, I would say "yes, let this give way;" but if it is only that the Senate may adjourn until to-morrow, if it is only that the Senator from Massachusetts may be allowed to proceed with his bill, the merits of which I do not doubt, which in a general sense is important, but which can just as well be taken up next week, then I suggest that economy of time and trouble to the Senate should move us to proceed and end the pending measure; and I say that some time and somewhere, and I think that time is now and that place is this, there should be an end put to the question whether the assignees of the Hannibal and Saint Jo road have this enormous claim upon the Government or not. What is it? These assignees were given permission and subsidies to build a road one hundred miles, which they projected, profiled, mapped, published, gazetted to the country as a road to run from Atchison to Junction City or to Fort Riley, and there to connect with the Leavenworth, Pawnee, and Western road, which would have given them a communication all the way around to the Grand Trunk Pacific Road. They changed that intention and built one hundred miles of road, not running toward Pike's Peak southwest, but projecting due west across Clifton and other townships and ending nowhere; and they did that because another road was expected to go up one fork rather than the other fork of the Kaw River, as it had a right under the law to do. Now, these original parties come to the Government and say "We have put our track on the ground pointing west and northwest in place of running down to a communication and fixed junction," which passing around by Cheyenne, Wells, and Denver would have given them a communication with the Grand Trunk Pacific Railroad as they were entitled, but having failed to do that, having built in another direction a road ending nowhere and requiring some fifty miles—for I have passed over the ground myself and have observed it very carefully—of additional road in the direction that they took, making one hundred and fifty in all, to give them their communication. The Senator from Iowa [Mr. WRIGHT] is more fresh in this matter than I am, and doubtless he knows the fact of which I am speaking. Having taken a direction, I say, which would have required the building of a road of one hundred and forty-eight or one hundred and fifty miles to make connection in that direction, turning away from the connection which they intended, which they projected; which they mapped, which they profiled, which they filed in the Department of the Interior, which they had Colton and others publish in railroad maps, and which was the design, the question is whether they are now entitled to come here and require from Congress lands, bonds, moneys to make them good for this venture of their own; and that although these lands have been granted in the mean time, a large body of them, in alternate sections to a parallel road—I mean the Platte County road, and I am speaking upon a recollection now some years old; I have not gone over this case recently, and I may possibly misplace a name, but the Senator from Iowa knows the road to which I refer, the parallel road, which began at Saint Jo, the Platte County road, and went west. The grantees of that road have taken under that grant a large part of the lands which were pursued by this claimant and have been pursued to this day. Now, I say it is time that the truth or the groundlessness of that claim should be affirmed, and that it should not be allowed to drift until some day unexpectedly, by the action of some executive or even ministerial officer, or somebody else, we may find the Government cast or entangled in the meshes of this very large and very complicated claim. So that, I shall vote to support the Senator from Iowa in pressing this bill, in the hope that after such a statement as may be made on either side, and as I may have occasion to make myself in addition to what statment I have made, we may get a vote.

Mr. INGALLS. Mr. President, the Senator from New York alludes to the fact that this claim is what he calls an old customer, and has been here many times during the last ten or twelve years. In justice to the corporation, and in order that no odium may be cast upon it from the fact of its antiquity, I want to call the attention of the Senator from New York to the fact that the corporation is now before the Senate upon his own motion. The corporation which the Senator has attacked is not here of its own volition. Its claim may be very antique; it may be, as he terms it, an old customer; but he brought it here on the 12th of March, 1873, by his own resolution. It has since that time been pending here before the Senate, one year and two days I believe having elapsed between the passage of his resolution and the report of the Committee on the Judiciary, and the bill having since reposed upon the Calendar in peace. Therefore, as the corporation is not here of its own motion, as it is not here of its own volition, the Senator from New York certainly ought not to attempt to cast odium upon it because the claim is ancient.

Mr. CONKLING. The Senator will allow me a moment. I have neither cast nor sought to cast odium on the corporation he refers to or anybody else. I rose, however, to make a little more exact his statement. He says I brought this matter here. O! no, Mr. President, I did not. I offered a resolution, the effect of which was to bring this corporation away from the Interior Department, where, I was informed by a reputable person, it was about, without the knowledge of the Senate or the House, to become party to a proceeding which might estop and entangle the Government and cost it much money, which in the judgment of a large body of the two Houses of Congress was never due. It was to arrest that proceeding, to call a halt until this should be looked into, that I offered the resolution to which the honorable Senator has referred. I did not bring this matter here in any other sense. Upon a review of the case by the Judiciary Committee, that committee reported this bill, and did so for the reason that, in the judgment of the committee, unless the legislative arm was interposed this corporation or its representatives were about to possess themselves of a large amount of money and a great quantity of lands which in the judgment, as I say, of a large number of the members of this body and of the House who had investigated the matter were not due. That is all.

Mr. INGALLS. I do not understand, Mr. President, that I am at all corrected by the interruption of the Senator from New York. If I understood his statement in commencing his remarks, it was that this was an old customer and that this corporation had been, with considerable assiduity and with a great deal of pertinacity, pressing what he believed was an unjust claim before the Interior Department and other branches of the Government. I stated that the corporation was not before Congress of its own motion, that it was not here by its own volition, that it did not desire to come here, that it was at the present time and had for nearly four years last past been here by the direct action of the Senator from New York. If his statement has convinced anybody that I am wrong I shall be very glad to be corrected.

The Senator from New York states that this is a matter, in his opinion, of very great importance, as it affects the Treasury of this Government; that if this claim is allowed to be enforced it will result in securing to this corporation a great amount of bonds and a vast amount of lands to which he and a considerable number of members of both Houses believed the corporation not to be entitled. He states that in his judgment an end should be put to this question. In that I fully agree with him. I agree with him that an end should be put to the question; but the statutes under which these claims have been enforced provide the tribunals for the adjudication of these claims, and it is for the Senate to determine whether or not an end can be put to the question by a declaration of both Houses of Congress as to what was the true intent and meaning of a statute that was passed in 1862. I believe that it has been repeatedly held that an act of Congress is not "due process of law." I am not disputing whether this corporation is entitled to these lands or not. I do not care whether it is or not. It is immaterial to me whether it is or not. I am willing to concede that it is not entitled to them, and so far as I am concerned——

Mr. CONKLING. Does the Senator say that an act of Congress is not "due process of law?"

Mr. INGALLS. I do mean to say that an act of Congress is not

"due process of law" as understood by the language of the Constitution, which declares that no man shall be deprived of his life, liberty, and property without due process of law.

Mr. CONKLING. May I interrupt the Senator?

Mr. INGALLS. Certainly.

Mr. CONKLING. I am somewhat surprised to hear him say that, as the Supreme Court has said the reverse; and I will refer the Senator from recollection to the case of the Government against Swartwout in one of the volumes of Howard, where the court held expressly that a statute under which an executive officer proceeded to sell property and take it away absolutely was "due process of law" and equivalent to the phrase of the common law "the law of the land," and satisfies the phrase in our Constitution "due process of law;" and the Senator has referred to the very provision of the Constitution under which the Supreme Court made that decision.

Mr. INGALLS. Mr. President, it is of course presumptuous in me to differ with authority so eminent as that of the Senator from New York, but, notwithstanding the quotation that he has made, I repeat the assertion that by repeated declarations of the Supreme Court vested rights cannot be removed by subsequent legislation; that it is not under the Constitution "due process of law."

Mr. CONKLING. That, if the Senator will pardon me, is a wholly different proposition.

Mr. INGALLS. That is precisely the proposition I am contending for.

Mr. CONKLING. The Senator's first statement was that a statute was not due process of law—and that property could not be taken under a statute because that was not due process of law. Now, the honorable Senator says that the Supreme Court has held that vested rights cannot be retroactively affected by a statute. That is a very different proposition.

Mr. INGALLS. That is precisely the proposition that I first advanced, and it is not within the power of the Senator from New York by any twisting or tortuous construction of language to evade that issue. The question that is now before the Senate is whether or not, under the statutes of 1862, 1864, and 1866, the Central Branch of the Union Pacific Railroad Company obtained any rights to an additional grant of bonds and of lands beyond the one hundred miles they constructed. That is precisely the point. I contend that, if they have any rights under those statutes, they have already accrued. It is a question for the courts to determine; it is not a question for Congress to determine, because an act of Congress cannot deprive a party of his vested rights without making due compensation for them. In other words, in the case I have named, if this corporation have any rights at all under those statutes, it is for the courts to determine them, and not for Congress. Therefore I say that, as the Senator from New York has said, it is desirable that an end should be put to this question. An end cannot be put to the question by passing this act. It is a question that ultimately the courts will be compelled to determine under the statutes themselves. I believe that the Supreme Court, therefore, will sustain the view that I first announced, that if these are vested rights an act of Congress is not "due process of law."

Mr. EDMUNDS. Mr. President, I think the Senator from Kansas is correct in saying that whatever property belongs to this railway company Congress has no power to take from it by a simple and direct act of legislation, appropriating it to itself instead of to some public use; and that is not this proposition at all. But the Committee on the Judiciary, to whom this bill was referred, after a very careful examination of the subject, believed that this company had no right to obtain from the United States any more lands or any more bonds than it had already obtained; and the object of the committee was to prevent the United States from being deprived of property without due process of law. That is what the committee were after, and we intended, if we could get the Senate to agree with us, to provide that no Secretary of the Interior and no Attorney-General and no anybody else of the Executive Departments of this Government should part with the property of the people of the United States or with their money upon any judgment that might be squeezed out of them, as they are not judicial bodies and are confessedly under the control of Congress. So this bill provides merely that the acts referred to shall not be construed by any of the Executive Departments of the Government to authorize them to give to this company money or property now in the possession of the people of the United States. That is all there is to the bill. It does not undertake to foreclose any legal right that this company may have as a matter of law in the Court of Claims or elsewhere against the United States; but it does undertake to prevent the Department of the Interior and the Attorney-General, if there is now any danger of such a thing, from parting with the property that belongs to the people and to the Government, as we believe, on their own mere motion or on any amount of pressure that may be brought to bear upon them or their subordinates by interested parties. That is all. And so I do not perceive why my friend from Kansas should lay so much stress in his opposition to this bill as he does, because, if I correctly understand him, he says that he does not wish this company to get anything that it is not lawfully entitled to, and that he in what he says does not pronounce any opinion upon what it is lawfully entitled to. If that be so, if he and other Senators will just look at the bill, they will see that the whole scope of it is to stop this constant resort to contrivances, (they may be perfectly just contrivances,) this constant resort to devices, (they may be perfectly just devices; I do not say: I do not know,) but to means of getting the Secretary of the Interior or the Commissioner of the General Land Office or the Solicitor-General or somebody or other to find out all at once that the United States ought to push out a few hundred thousand more acres of land or a few hundred thousand more bonds of the United States. We want to put a stop to that; and that is exactly, as I understand, what this bill does, and nothing else.

Mr. BAYARD. May I ask the Senator from Vermont this question: Is this act intended or does it propose to control judicial interpretation of statutes already passed by Congress?

Mr. EDMUNDS. Not in the slightest degree. It says, if the Senator will look at page 2, that none of these various acts "shall be so construed, by any officer or Department of the Government, as to authorize the issuance to the Hannibal and Saint Joseph Railroad Company, or its successors or assigns, or the Central Branch Union Pacific Railroad Company, or its successors or assigns, of any bonds of the United States, or of any patents for lands."

Mr. BAYARD. The Senator will see the reason of my question. Declaratory acts are not a very safe species of legislation. Where the legislative branch has seen fit to declare its will in known words, those words must speak for themselves, and I hold that it is not a wise or perhaps justified character of legislation by declaratory acts to invade the province of what I may call the interpreting branch of the Government. The legislative has it in its power in the first place to express its will in its own way, but having used language it must be held to have meant what it said. My disposition to object to the present bill was that it seemed to authorize an invasion of the judicial province in the interpretation of acts of Congress made heretofore on these subjects. But with the understanding that this is simply to control the action of ministerial officers or officers of the executive department, that they shall not make law or construe law against the meaning of the act, I do not know but that my objection is in a great measure removed.

Mr. EDMUNDS. Mr. President, as the law now stands, the judicial department of the Government, in my humble opinion—and I have heard nobody assert the contrary—has no more to do with this question than the government of Her Most Gracious Majesty the Queen of Great Britain and Ireland has, because the only tribunal competent to decide this case, as the law now stands, is Congress itself. The Court of Claims has no jurisdiction of it, and the judicial courts under the Constitution as distinguished from the Court of Claims—which may still be a judicial court; I do not say how that is—cannot, except by a mandamus to compel this person to issue a particular thing, have any possible jurisdiction; and on the decisions they have made on applications for that sort of writ it is perfectly plain that this company has no status in any judicial court whatever. It claims that it has a right to certain lands and bonds of the United States, or one or both of them, I do not remember at this moment whether they claim lands or not, and it is no matter whether they do or not.

Mr. WRIGHT. Both.

Mr. EDMUNDS. They claim both. That is perfectly natural. Most of these companies if they claim lands claim bonds also, because they believe that "one good turn deserves another."

Now I wish to say one single word in reference to what the Senator from Delaware has said about what our competence is. I wish to state as positively as I can, that the Congress of the United States, on a question of any claim of right between a citizen of the United States or anybody else and the Government, is just as much a tribunal, impartial and independent, as the Supreme Court is. If the claim is of such a nature that it belongs to our jurisdiction and it requires an application to Congress to decide it, then I, for one, and I believe every Senator will agree with me, do not hold myself in the attitude, when I consider that claim, of being an opposing party, but in the attitude of being a sworn, just, and impartial judge, as much so as if I sat on the bench, and I will give that claimant justice and the law and nothing else, neither more nor less. If I give him more it falls under another branch of jurisdiction, that of granting gratuities and favors, if we have any such authority, to people that we think stand in special need of that sort of thing.

Therefore, inasmuch as it is perfectly plain and has never been otherwise contended, that this subject as it now stands belongs entirely to Congress and not to the Departments, it appears to me perfectly obvious that instead of allowing this company, by intrigue or by persuasion or by just means, to induce the Departments of this Government to part with the property of the United States on a disputed and doubtful question of law, we ought to provide that if this company has any claim it shall bring it here for fair and impartial consideration, as it often has done, but never so far with success. It is one of the good fortunes of claimants in such cases in this tribunal, as distinguished from the judicial tribunals, that when a case is once decided against, even by a unanimous opinion of the tribunal, it may still come again the next year; it may begin again over and over again, so that while with the judicial tribunals a matter once fairly heard and decided is determined forever, as it ought to be, with us—judges in just as high a degree and having just as little personal interest in the questions we decide as the judges of the Supreme Court and the other courts have—with us, I say, if the Senate of last year decides that this is no case, the Senate of next year is called upon to review it and try it over

again and decide that it is a case, and so on, and so on, and so on, through the whole history of the Republic, because there are still, I believe, some claimants that come up here once every year or two that go back almost to the very foundation of things, and we cannot help it.

But now coming back to this bill, I do beg Senators to just look at it, and see that it being a subject of executive and congressional action, all that there is of this bill is not to prevent this party, as he has the right, from petitioning to-morrow to have this grant made good to him as he claims, but simply to say that none of the Executive Departments of the Government shall be authorized to give it to him until Congress has passed upon the claim. Really this is without any good ground of objection to it at all. It does not foreclose their rights although they have been often considered and generally voted against, but they stand to-morrow with the right of petition just where they did before. But it will prevent the Secretary of the Interior and the Commissioner of the General Land Office, and whoever the proper people may be who have to deal with that sort of thing, from setting up their judgment in parting with public property in what at least is a very doubtful case, against the will of Congress. That is all. It has been found, whenever Congress has turned its back for the last few years to go home to get a little breathing spell, that some Assistant Attorney-General or some Assistant Secretary of the Interior or somebody has seen his way suddenly clear upon some new brief to get just ready to push out more bonds and more money to this company, and it is not, in my opinion, the right way to do things, and I do not believe in allowing these Departments to have the possible authority in this case or any other like it or anywhere near like it, to trifle with the rights of the people of the United States to their possessions, which in some way or other at last come out of the people by taxation as all public property and all appropriations do. If the gentlemen interested in this company wish to try now to have the matter investigated by Congress, an impartial and just tribunal and the only one having jurisdiction over it, then let them try, and for one, although I have examined it two or three times and I have now forgotten all about what the point was, only I know they wanted lands and bonds, notwithstanding what I may have said or thought before, it may be that I should see it in an entirely different light. At any rate, for one I should be perfectly willing to give them a respectful and, as far as I am capable of it, impartial hearing. But here is the proposition to put an end to this everlasting tinkering of Departments with claims that are doubtful and disputed when Congress is away, in order to get what in the judgment of Congress it has not appeared clear the claimants ought to get.

Mr. INGALLS. Mr. President, the Senator from Vermont is singularly inaccurate when he states that Congress is the only tribunal that has jurisdiction of these questions. If he would take the trouble to refresh his recollection, that is usually so very specific and minute, and examine the statutes under which this company was incorporated, he would find that the Secretary of the Interior, the Commissioner of the General Land Office, and the Department of Justice are specially authorized to take jurisdiction and make determination of these very identical questions. The statute under which this corporation was incorporated, under which they are now claiming their rights, provided a tribunal in which these questions should be determined.

Mr. EDMUNDS. Will the Senator kindly read that statute that we may see what it is?

Mr. INGALLS. I will not, because I have it not here before me.

Mr. EDMUNDS. I have not any knowledge of any such statute, and should be glad to have the Senator produce it.

Mr. INGALLS. I state in general terms that when the company had constructed twenty miles of their road the statute authorized them to apply to the Secretary of the Interior for the determination of the question whether they had complied with the statute and were entitled to the lands and the bonds, and it authorized them still further to apply to the Department of Justice for the determination of these questions in case the Department of the Interior refused to act. Now, sir, the corporation has done exactly what the statute required it to do. It has enforced its rights, insisted upon their recognition in the tribunals created by the statute. Now the Senator from Vermont comes and says that Congress is the only tribunal having jurisdiction to determine this question. It seems to me that is a most extraordinary proposition. Even if it were true, here is a case involving, as he says, the appropriation of a great many millions of dollars in bonds and a great many millions of acres of land, to be determined as a judicial question by the Senate, the highest tribunal of the country! Looking about me I suppose there are perhaps twenty-five or thirty Senators present out of seventy-five or seventy-six comprising the body. Out of those who are present I venture to say that ten are not familiar with the two measures pending before this body, the bill reported from the Committee on the Judiciary, Senate bill No. 60, and the bill introduced by me yesterday and twice read, Senate bill No. 1108; and probably not five of those present are at all acquainted with the report of the Judiciary Committee. Yet the Senator says here is confessedly a great judicial question, a question involving the rights of this corporation under these statutes to millions of dollars in bonds and millions of acres of land, to be determined by the decision of seventy-five men, of whom thirty are present, and probably one-third of those have not read or heard the report of the committee!

Mr. EDMUNDS. I hope the Senator will pardon me for suggesting to him that I have not said anything of that kind, to the best of my knowledge; that here was a great judicial question. I did not know that I had said anything of that kind, and if I had said it it would have been a great mistake.

Mr. INGALLS. The Senator from Vermont said that the Senate of the United States or the Congress of the United States was the only tribunal that had jurisdiction. Jurisdiction to do what? What does "jurisdiction" mean? If I understand the significance of legal terms, jurisdiction means the power to hear, to try and determine. Thereby the use of the term "jurisdiction" he means that Congress has the power to hear, try, and determine what? The rights of this corporation under those statutes passed by Congress. The Judiciary Committee appears to have resolved itself into a grand returning board for the purpose of enforcing its own particular views not only upon the Senate but upon Congress; not only upon Congress, but upon all the Departments, and not only upon all the Departments of the executive branches of the Government, but upon the courts, for I pretend to say, if there is any meaning to be attached to language, that the words of this bill are an absolute inhibition upon any officer of this Government, whether he is executive or judicial, from entertaining any opinion that is not in conformity with that of the Judiciary Committee of this body. Let me read it:

That neither the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862—

Fifteen years ago—

nor the act approved July 2, 1864, entitled "An act to amend an act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes,' approved July 1, 1862;" nor the act approved July 3, 1866, entitled 'An act to amend an act entitled "An act to amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862," approved July 2, 1864;" nor all said acts, nor any section or sections, portion or portions, of all or any thereof, shall be so construed, by any officer or department of the Government as to authorize the issuance to the Hannibal and Saint Joseph Railroad Company, or its successors or assigns, or the Central Branch Union Pacific Railroad Company, or its successors or assigns, of any bonds of the United States, or of any patents for lands, &c.

The Senator from Vermont says that is no exercise of authority on the part of Congress except upon the executive officers of the Government; that it is merely directory upon the Secretary of the Interior as to what he shall do, the Commissioner of the General Land Office as to what he shall do; but it goes further and declares what the Attorney-General, who is a legal officer of the Government, shall do, because it is intended to prevent the accomplishment of a decision already rendered by the Department of Justice.

Mr. EDMUNDS rose.

Mr. INGALLS. Does the Senator desire to speak?

Mr. EDMUNDS. I do not wish to interrupt my friend unless it is entirely agreeable to him.

Mr. INGALLS. Entirely so.

Mr. EDMUNDS. I merely wish to call his attention to the language of the Constitution, as he has criticised the word "department" as seeming to imply, although he has not said so, that that covers judicial power. Speaking of the powers of the President for the appointment of officers, &c., in section 2 of article 2, familiar to my friend, the Constitution says:

But the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of Departments.

The word "department," therefore, when used in a law refers to those executive branches of the Government falling under the executive power, and does not refer to the courts of law which try causes and dispose of them not as departments of the Government, but as exercising judicial functions, as a part of the judicial power, in the very language of the Constitution, which distinguishes between the departments and the courts of law. If there be any possible doubt in my friend's mind really that this word "department" would prevent the supreme court of the District of Columbia or the Supreme Court of the United States on appeal or originally, if it had jurisdiction, from passing upon any legal right presented, I, for one, although I do not know what my friend in charge of the bill would think, should be quite willing to insert "executive department" so as to leave out of all possible question the application of the word "department" to the judicial courts of the United States. But the committee thought, in view of this language of the Constitution and of the universal practice ever since the Government began as to what is meant by "department," that it was not open to any possible question. If my friend thinks it is, I, certainly, for one, should be quite willing to put in the qualifying clause.

Mr. INGALLS. The Senator from Vermont can split judicial hairs better than any member of this body; and in his reference to the technical language of the Constitution he may endeavor to lead the Senate to suppose that there is no inhibition either attempted or intended upon the judicial department of the Government. My understanding is that the power of this Government is divided into three departments, so expressly named and nominated and considered by

all courts—the executive department, the legislative department, and the judicial department, and they are independent of each other, and neither has any control over the other. But if the language of line 24 is not open to the objection which I have urged in relation to its being an attempt to impose an inhibition upon the judicial department, let me ask the Senator what the latter part of the section means:

Nor shall any action of any officer or department of the Government of the United States heretofore, or that may be hereafter taken, or of any railroad company, be so construed as to authorize the issuance of bonds or patents for lands for any such extension, it being hereby declared to be the true intent and meaning of the acts aforesaid that, for the construction of the road contemplated by said section 11, lands and bonds were granted for one hundred miles next to the Missouri River, and no more.

If the bill attempts simply to say that the Executive Departments shall not use any other construction than that entertained by the Judiciary Committee, what does it mean further by saying that no order taken by such officers shall be construed by any other tribunal to mean anything but that?

Mr. EDMUNDS. It does not say "shall be construed by any other tribunal" at all.

Mr. INGALLS. It says "construed." That must mean something.

Mr. EDMUNDS. It does mean something, but it does not mean "any other tribunal." That is in the imagination of my honorable friend. What it means is perfectly apparent to every Senator who in committee or otherwise is acquainted with the history of the most extraordinary performances that have gone on in reference to this claim for lands and bonds in these various Departments.

Mr. INGALLS. May I interrupt the Senator a moment?

Mr. EDMUNDS. Certainly, with pleasure. I am taking my friend's time.

Mr. INGALLS. No, I merely want to ask one question. Inasmuch as the Senator from Vermont and the Senator from New York have alluded to what, in general terms, they have been pleased to denominate the extraordinary methods that have been adopted and pursued by this corporation in the enforcement of what they considered their claim before the Departments, may I ask either of the Senators to state to the Senate what they have done that was outside of the law? What action have they taken that was not contemplated by the statute under which they received their rights? To what officer have they appealed that the statute under which they were organized did not authorize them to appeal?

Mr. EDMUNDS. As the detail of this matter is considerably out of my mind, I do not think I can give a very full answer, but I can give a part of an answer. There is one principle of law that has been pretty generally settled in the course of this Government; and that is, when the head of a Department has once decided adversely upon the claim of anybody that that Department should do something for his interests, it is not competent for his successor to turn around on fresh pressure and more solid reasons and re-open that decision and begin again. In this case, if I correctly recollect, one or more Secretaries of the Interior to whom the Senator has alluded as being persons who were to issue lands and bonds from time to time as certain events should transpire, being applied to to give lands and bonds, or lands alone, beyond the one hundred miles which the language of the law in explicit terms says shall be the limit, refused, and decided against the claim. A change in the course of affairs arises and there is a fresh Secretary of the Interior, or a fresh Assistant Attorney-General assigned to the Interior Department, or a fresh Commissioner of the Land Office, or a new somebody; and presently Monsieur Tonson comes again, and with better reasons, more or less solid, persuades that person to believe that after all the whole thing had better be re-opened and the lands and bonds had better be given. Now, I do say that I think that is an extraordinary performance. There is some other performance that I have a more personal knowledge of, (and from sheer mortification I should be greatly disinclined to say anything about it, but it did once happen to me, and as these are times when everybody ought to confess probably, as everybody has to be conscientious,) when somebody who professed that he was connected with this company, if I am capable of taking a hint, rather suggested that a few sections of land would be a good thing for me to take for the company down in that region, and so on. Of course it is rather unpleasant for a modest young Senator like me to even hint to the Senate that somebody has been trying to bribe him; but I have a very vivid recollection of a very disagreeable circumstance of that character. I do not speak of it as against this company, because I cannot help hoping and believing that the officers of the company knew nothing about it, and that it was only a bummer who came around to me to see whether some landed interest might not influence my views in relation to the law of this case. But that was not the extraordinary performance to which I have alluded as connected with the Executive Departments. Those extraordinary performances are found among the facts that after the thing has once been decided in the regular way under the statute that these people were not entitled to this land beyond the one hundred miles and to this money, yet because there is a change in the *personnel* of the Departments, the thing must needs be re-opened and tried over again, and some new inducement, not like that which was offered to me or hinted to me perhaps, but some new inducement of some good kind brought to bear. I do think that is an extraordinary performance and one which the Senate of the United States ought to put the seal of its condemnation upon. If these people have any rights, let us review again and again for a hundred years, if you like, their claim here, but do not let us find some day when we have gone home that some Assistant Attorney-General or some Commissioner of the Land Office or somebody has issued patents and bonds of the United States upon a case of this sort. That is my proposition, and that is all that this bill is.

Mr. INGALLS. The railroad bummers and the lobbyists of corporations generally know whom to approach. I never was approached by this corporation or any other with any intimation that it would be a good thing for me to get lands or any other valuable consideration in connection with the passage of a bill.

Mr. EDMUNDS. They knew the virtuous man and did not know the other.

Mr. INGALLS. I do not know that it is true that this corporation has ever had any agents here who were authorized to make such propositions to the Senator from Vermont or not. If they did it, I presume they had good reasons for doing so; but so far as my knowledge of the corporation is concerned, and its agents, it is sufficient for me to say that I never have known of their attempting to enforce anything but what they believed to be their legal rights, in what they also believed was a perfectly legitimate manner. The Senator from Vermont continues in his allegation that the object and purposes of this bill are only to impose an inhibition upon the Executive Departments of the Government, and he professes that he is willing, so far as one member of the Committee on the Judiciary is concerned, to have the term "Department" qualified by the use of the word "executive." Am I correct?

Mr. EDMUNDS. That is, I am perfectly willing to agree to that if there is any necessity for it. I do not see how it could be made any stronger.

Mr. INGALLS. But the Senator from Vermont has omitted to state what is the intention of the final clause of the bill. If there is simply a design or purpose to prevent the Secretary of the Interior, or the Commissioner of the General Land Office, or the Attorney-General of the United States, from taking but one view of the meaning of these acts, what is the necessity of further putting in a clause that no other officers than these shall put any other construction upon the acts?

Mr. EDMUNDS. My object, if the Senator is waiting for a reply from me, is just as his object would be if he were drawing a bond which he thought his satanic majesty was going to have the handling of, to make it as strong as he possibly could, so that he could not get around it, to double the dose if necessary, and to have the beginning and the end of the bill to be a prohibition upon everybody who acts under the authority of Congress from doing this thing; and I think that is a sufficient answer. This is merely a *résumé*, a conclusion which flows from what has preceded, and perhaps it is not indispensably necessary. I do not think it is indispensably necessary myself; but when we know the ingenious resorts that skillful men make in these Executive Departments to the language of statutes and the want of language to get what they desire, and how unhappily often they are successful in getting what Congress never had in its mind they should get, then it behooves us in legislation upon such a subject to make very sweeping declarations indeed, so as to leave no loophole for the clerks and for the Asisstant Attorneys-General and everybody else (I believe none of them are now in office who have had these things to do with) from getting around the intent of Congress that these people shall not get this land and this money which is now in the possession of the United States until Congress says so, or until by some regular and judicial suit at law it turns out that they have a right to it.

Mr. INGALLS. I believe this debate has been to a certain extent what might be termed interlocutory, and that it commenced upon a suspension of the reading of the report. I ask that the reading of the report of the committee may now be resumed.

The PRESIDING OFFICER, (Mr. ALLISON in the chair.) The Clerk will proceed with the reading of the report.

The Chief Clerk resumed and concluded the reading of the report submitted by Mr. WRIGHT on the 10th of March, 1874, as follows:

The Committee on the Judiciary, to whom was referred the resolution of the Senate of the 12th of March last, have made the inquiry therein directed and submit the following report:

The resolution is in the following words:

"*Resolved*, That the Committee on the Judiciary be instructed to inquire and report at the December session of the Senate whether the Union Pacific Railroad Company, or any company authorized to build a branch road to connect therewith, or any assignee of such company, will be entitled to lands or bonds for any road which such company may hereafter construct; and that, until said committee shall report, the executive officers of the Government are requested to issue no bonds or patent certificates that may be claimed for roads constructed and reported after this date."

By its terms the resolution directed us to inquire "whether the Union Pacific Railroad Company, or any company authorized to build a branch road to connect therewith, or any assignees of such company, will be entitled to lands or bonds for any road they may hereafter construct." The investigation, however, discloses that the Central Branch Union Pacific Railroad Company is the only one making such claim; and we have hence, as we suppose, properly and necessarily confined ourselves to this claim. The history of this claim runs through many years, is found in the action of the company, the rulings of the Departments, the legislation of Congress, and is not a little difficult to understand. As an answer to the inquiry, however, is found largely in several acts of Congress, it will be our first duty to present, as briefly as may be, this legislation.

On the 1st day of July, 1862, an act was passed "to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to

secure to the Government the use of the same for postal, military, and other purposes," which, as far as material, contained the following provisions:

"That persons named in the first section were created a body corporate by the style of 'The Union Pacific Railroad Company;' and the said corporation was authorized "to lay out, locate, construct, furnish, maintain, and enjoy a continuous railroad and telegraph line, with the appurtenances, from a point on the one hundredth meridian of longitude west from Greenwich, between the south margin of the valley of the Republican River and the north valley of the margin of the Platte River, in the territory of Nebraska, to the western boundary of Nevada Territory, upon the route and terms hereinafter provided."

By the *third* section it was provided "that there be, and is hereby, granted to the said company, for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores thereon, every alternate section of public land, designated by odd numbers, to the amount of five alternate sections per mile, on each side of said railroad, on the line thereof, and within the limits of ten miles on each side of said road, not sold, reserved, or otherwise disposed of by the United States, and to which a pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed."

The fourth section provides that where the company shall have completed forty consecutive miles of said road, ready for service, &c., three commissioners shall be appointed by the President to examine the same, and if it shall appear that such forty miles have been completed, &c., patents shall issue for the lands aforesaid, and so on, for each forty miles, as the same may be completed. Then follows the proviso: "That no such commissioners shall be appointed by the President of the United States unless there shall be presented to him a statement, verified on oath by the president of said company, that such forty miles have been completed in the manner required by this act, and setting forth with certainty the points where such forty miles begin and where the same end; which said oath shall be taken before a judge of a court of record."

The fifth section declares: "That for the purposes herein mentioned, the Secretary of the Treasury shall, upon the certificate in writing of said commissioners of the completion and equipment of forty consecutive miles of said railroad and telegraph, in accordance with the provisions of this act, issue to said company bonds of the United States of $1,000 each, payable in thirty years after date * * * * * * to the amount of sixteen of said bonds per mile for such section of forty miles."

Other portions of the act, material, are as follows:

"SEC. 7. *And be it further enacted*, That said company shall file their assent to this act, under the seal of the company, in the Department of the Interior, within one year after the passage of this act, and shall complete said railroad and telegraph from the point of beginning, as herein provided, to the western boundary of Nevada Territory, before the 1st day of July, 1874: *Provided*, That within two years after the passage of this act said company shall designate the general route of said road as near as may be, and shall file a map of the same in the Department of the Interior, whereupon the Secretary of the Interior shall cause the lands within fifteen miles of said designated route or routes to be withdrawn from pre-emption, private entry, and sale; and when any portion of said route shall be finally located, the Secretary of the Interior shall cause the said lands hereinbefore granted to be surveyed and set off as fast as may be necessary for the purposes herein named: *Provided*, That in fixing the point of connection of the main trunk with the eastern connections, it shall be fixed at the most practicable point for the construction of the Iowa and Missouri branches, as hereinafter provided.

"That the line of said railroad and telegraph shall commence at a point on the one hundredth meridian of longitude, west from Greenwich, between the south margin of the valley of the Republican River and the north margin of the valley of the Platte River, in the Territory of Nebraska, at a point to be fixed by the President of the United States after actual surveys; thence running westerly upon the most direct, central, and practicable route through the territories of the United States, to the western boundary of the Territory of Nevada, there to meet and connect with the line of the Central Pacific Railroad Company of California.

"That the Leavenworth, Pawnee and Western Railroad Company of Kansas are hereby authorized to construct a railroad and telegraph line from the Missouri River, at the mouth of the Kansas River, on the south side thereof, so as to connect with the Pacific Railroad of Missouri, to the aforesaid point, on the one hundredth meridian of longitude west from Greenwich, as herein provided, upon the same terms and conditions in all respects as are provided in this act for the construction of the railroad and telegraph line first mentioned, and to meet and connect with the same at the meridian of longitude aforesaid; and in case the general route or line of road from the Missouri River to the Rocky Mountains should be so located as to require a departure northwardly from the proposed line of said Kansas Railroad before it reaches the meridian of longitude aforesaid, the location of said Kansas road shall be made so as to conform thereto; and said railroad through Kansas shall be so located between the mouth of the Kansas River as aforesaid, and the aforesaid point on the one hundredth meridian of longitude, that the several railroads from Missouri and Iowa herein authorized to connect with the same can make connection within the limits prescribed in this act, provided the same can be done without deviating from the general direction of the whole line to the Pacific coast. The route in Kansas west of the meridian of Fort Riley to the aforesaid point on the one hundredth meridian of longitude to be subject to the approval of the President of the United States, and to be determined by him on actual survey.

"That the said company chartered by the State of Kansas shall complete one hundred miles of their said road, commencing at the mouth of the Kansas River, as aforesaid, within two years after filing their assent to the conditions of this act, as herein provided, and one hundred miles per year thereafter until the whole is completed. * * * And the Hannibal and Saint Joseph Railroad, the Pacific Railroad Company of Missouri, and the first-named company, or either of them, on filing their assent to this act, as aforesaid, may unite, upon equal terms, under this act, with the said Kansas company in constructing said railroad and telegraph to said meridian of longitude, with the consent of the said State of Kansas.

"The track upon the entire line of railroad and branches shall be of uniform width, to be determined by the President of the United States, so that, when completed, cars can be run from the Missouri River to the Pacific coast; the grades and curves shall not exceed the maximum grades and curves of the Baltimore and Ohio Railroad; the whole line of said railroad and branches and telegraph shall be operated and used for all purposes of communication, travel, and transportation, so far as the public and Government are concerned, as one connected, continuous line.

"That the Hannibal and Saint Joseph Railroad Company of Missouri may extend its roads from Saint Joseph, via Atchison, to connect and unite with the road through Kansas, upon filing its assent to the provisions of this act, upon the same terms and conditions in all respects, for one hundred miles in length next to the Missouri River, as are provided in this act for the construction of the railroad and telegraph lines first mentioned, and may for this purpose use any railroad charter which has been or may be granted by the Legislature of Kansas: *Provided*, That if actual survey shall render it desirable the said company may construct their road, with the consent of the Kansas Legislature, on the most direct and practicable route west from Saint Joseph, Missouri, so as to connect and unite with the road leading from the western boundary of Iowa at any point east of the one hundredth meridian of west longitude, or with the main trunk-road at such point; but in no event shall lands or bonds be given to said company, as herein directed, to aid in the construction of their said road for a greater distance than one hundred miles. And the Leavenworth, Pawnee and Western Railroad Company of Kansas may construct their road from Leavenworth to unite with the road through Kansas."

The fourteenth section authorizes the Union Pacific Railroad Company to construct a road from the western boundary of Iowa to connect with the line of said company at some point on the one hundredth meridian of longitude, and also, in a certain event, a road from Sioux City to a point so as to connect with the road to be constructed from the western boundary of Iowa, or with the Union Pacific road, said point of junction to be fixed by the President, but not farther west than the one hundredth meridian.

The fifteenth section gives to any other company the right to connect with the "road and branches" provided by this act.

Then, by the seventeenth and eighteenth sections it is declared "That if said roads are not completed, so as to form a continuous line of railroad, ready for use, from the Missouri River to the navigable waters of the Sacramento River, in California, by the 1st day of July, 1876, the whole of all said railroads before mentioned, and to be constructed under the provisions of this act, together with all their furniture, fixtures, rolling-stock, machine-shops, lands, tenements, and hereditaments and property of every kind and character, shall be forfeited to and be taken possession of by the United States. And the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the Government at all times (but particularly in time of war) the use and benefits of the same for postal, military, and other purposes, Congress may at any time—having due regard for the rights of said companies named herein—add to, alter, amend, or repeal this act."

By the act of the 3d of March, 1863, the gauge of the Pacific Railroad and its branches, *throughout its whole extent*, was established at 4 feet 8½ inches.

On the 2d of July, 1864, an act amendatory to the act of July 1, 1862, was passed, which contains among others the following provisions:

Section 5 extended the time for designating the general route of said Union Pacific Railroad, and filing the map of the same, and for the completion of that part of the railroads required by the terms of said act of each company "one year from the time in the original act designated.

Section 9 has this provision: "That any company authorized by this act to construct its road and telegraph line from the Missouri River to the initial point aforesaid may construct its road and telegraph line so as to connect with the Union Pacific Railroad at any point westwardly of such initial point, in case such company shall deem such westward connection more practicable or desirable; and in aid of the construction of so much of its road and telegraph line as shall be a departure from the route hereinbefore provided for its road, such company shall be entitled to all the benefits and be subject to all the conditions and restrictions of this act: *Provided further, however*, That the bonds of the United States shall not be issued to such company for a greater amount than is hereinbefore provided if the same had united with the Union Pacific Railroad on the one hundredth degree of longitude; nor shall such company be entitled to receive any greater amount of alternate sections of public lands than are also herein provided."

The twelfth and sixteenth sections, having, as is urged, an important bearing upon the questions involved, are here quoted in full:

"*And be it further enacted*, That the Leavenworth, Pawnee and Western Railroad Company, eastern division, shall build the railroad from the mouth of Kansas River by the way of Leavenworth, or, if that be not deemed the best route, then the said company shall, within two years, build a railroad from the city of Leavenworth to unite with the main stem at or near the city of Lawrence; but to aid in the construction of said branch the said company shall not be entitled to any bonds. And if the Union Pacific Railroad Company shall not be proceeding in good faith to build the said railroad through the Territories when the Leavenworth, Pawnee and Western Railroad Company, now known as the Union Pacific Railroad Company, eastern division, shall have completed their road to the hundredth degree of longitude, then the last-named company may proceed to make said road westward until it meets and connects with the Central Pacific Railroad Company on the same line. And the said railroad from the mouth of Kansas River to the one hundredth meridian of longitude shall be made by the way of Lawrence or Topeka, or on the bank of the Kansas River opposite said town: *Provided*, That no bonds shall be issued or land certified by the United States to any person or company for the construction of any part of the main trunk line of said railroad west of the one hundredth meridian of longitude and east of the Rocky Mountains, until said road shall be completed from or near Omaha, on the Missouri River, to the said one hundredth meridian of longitude."

"*And be it further enacted*, That any two or more of the companies authorized to participate in the benefits of this act, are hereby authorized at any time to unite and consolidate their organizations, as the same may or shall be, upon such terms and conditions and in such manner as they may agree upon, and as shall not be incompatible with this act or the laws of the State or States in which the roads of such companies may be, and to assume and adopt such corporate name and style as they may agree upon; with a capital stock not to exceed the actual cost of the roads so to be consolidated, and shall file a copy of such consolidation in the Department of the Interior; and thereupon such organization so formed and consolidated shall succeed to, possess, and be entitled to receive from the Government of the United States, all and singular, the grants, benefits, and immunities, guarantees, acts and things to be done and performed, and be subject to the same terms, conditions, restrictions, and requirements, which said companies respectively, at the time of such consolidation, are or may be entitled or subject to under this act, in place and substitution of said companies so consolidated respectively. And all other provisions of this act, so far as applicable, relating to in any manner appertaining to the companies so consolidated, or either thereof, shall apply and be of force, as to such consolidated organization. And in case upon the completion by such consolidated organization of the roads, or either of them, of the companies so consolidated, any other of the road or roads of either of the other companies, authorized as aforesaid, (and forming, or intended or necessary to form, a portion of a continuous line from each of the several points on the Missouri River, hereinbefore designated, to the Pacific coast,) shall not have constructed the number of miles of its said road within the time herein required, each consolidated organization is hereby authorized to continue the construction of its road and telegraph in the general direction and route upon which such incomplete or unconstructed road is hereinbefore authorized to be built, until such continuation of the road of such consolidated organization shall reach the constructed road and telegraph of said other company, and at such point to connect and unite therewith; and for and in aid thereof the said consolidated organization may do and perform, in reference to such portion of road and telegraph as shall so be in continuation of its constructed road and telegraph, and to the construction and equipment thereof, all and singular, the several acts and things hereinbefore provided, authorized, or granted to be done by the company hereinbefore authorized to construct and equip the same, and shall be entitled to similar and like grants, benefits, immunities, guarantees, acts, and things to be done and performed by the Government of the United States, by the President of the United States, by the Secretaries of the Treasury and Interior, and by commissioners, in reference to such company, and to such portion of the road hereinbefore authorized to be constructed by it, and upon the like and similar terms and conditions so far as the same are applicable thereto. And said consolidated company shall pay to said defaulting company the value, to be estimated by competent engineers, of all the work done and material furnished by said defaulting company which may be adopted and used by said consolidated company in the progress of the work under the provisions of this section: *Provided, nevertheless*, That said defaulting company may at any time before receiving pay for its said work and material, as hereinbefore provided, on its own election, pay said consolidated company the value of the work done and material fur-

tached by said consolidated company, to be estimated by competent engineers, necessary for and used in the construction of the road of said defaulting company, and resume the control of its said road; and all the rights, benefits, and privileges which shall be acquired, possessed, or exercised pursuant to this section shall be to that extent an abatement of the rights, benefits, and privileges hereinbefore granted to such other company. And in case any company authorized thereto shall not enter into such consolidated organization, such company, upon the completion of its road, as hereinbefore provided, shall be entitled to, and is hereby authorized to, continue and extend the same, under the circumstances, and in accordance with the provisions of this section; and to have all the benefits thereof, as fully and completely as are herein provided, touching such consolidated organization. And in case more than one such consolidated organization shall be made pursuant to this act, the terms and conditions of this act, hereinbefore recited as to one, shall apply in like manner and force and effect to the other: *Provided, however*, That rights and interests at any time acquired by one such consolidated organization shall not be impaired by another thereof. It is further provided, that should the Central Pacific Railroad Company of California complete their line to the eastern line of the State of California before the line of the Union Pacific Railroad Company shall have been extended westward so as to meet the line of said first-named company, said first-named company may extend their line or road eastward one hundred and fifty miles, on the established route, so as to meet and connect with the line of the Union Pacific road, complying in all respects with the provisions and restrictions of this act as to the Union Pacific road, and upon doing so shall enjoy all the rights, privileges, and benefits conferred by this act on said Union Pacific Railroad Company."

The fifteenth section, it is necessary to here state, provides that the several companies are required to operate and use said roads for all purposes of commerce, travel, and transportation, so far as the Government and the public are concerned, as one continuous line.

It is provided in the eighteenth section that the Burlington and Missouri Railroad Company may extend its road from the point where it strikes the Missouri River, south of the mouth of the Platte, to a point not farther west than the one hundredth meridian. To enable it to do this it is given the right of way through the public lands, the right to take stone, timber, earth, and all materials, and, to further aid, alternate sections of land are granted to the amount of ten sections on each side.

The next act in order in any way bearing upon this inquiry is that of July 3, 1866; the first and only section, material, being as follows:

"That the Union Pacific Railroad Company, eastern division, is hereby authorized to designate the general route of their said road, and to file a map thereof, as now required by law, at any time before the 1st day of December, 1866, and upon the filing of the said map, showing the general route of said road, the lands along the entire line thereof so far as the same may be designated shall be reserved from sale by order of the Secretary of the Interior: *Provided*, That said company shall be entitled to only the same amount of the bonds of the United States to aid in the construction of their line of railroad and telegraph as they would have been entitled to if they had connected their said line with the Union Pacific Railroad on the one hundredth degree of longitude, as now required by law: *And provided further*, That said company shall connect their line of railroad and telegraph with the Union Pacific Railroad, but not at a point more than fifty miles westwardly from the meridian of Denver, in Colorado."

From this legislation it will be seen that the main trunk of the road was to commence on the one hundredth meridian, and that there were to be four branches—one from Sioux City; one known as the extension of the Hannibal and Saint Joseph Road from Atchison; one styled "the road through Kansas," and the fourth from Omaha. This omits the Burlington and Missouri branch from the Missouri River, as provided by the act of 1864, which need not be now included, but which is of some importance in the argument, as we shall hereafter show.

In this inquiry it is only necessary to advert to the road from Atchison and the road "through Kansas."

The road "through Kansas" was to be constructed by the Leavenworth, Pawnee and Western Railroad Company, from the mouth of the Kansas River to the one hundredth meridian. The Hannibal and Saint Joseph road was to extend from Saint Joseph, Missouri, via Atchison, to connect (conditionally) with the road through Kansas.

The "Central Branch," the only company now claiming additional lands and bonds, it is not denied, for the purposes of this report, has succeeded by regular assignment to all the rights of the Hannibal and Saint Joseph Company.

The "road through Kansas" designated its general route and filed a map in the Department of the Interior on the 12th of July, 1862, and also filed a new map of general location on the 1st day of July, 1865, both setting forth the design to connect with the main trunk at the one hundredth meridian. The Central Branch filed its map June 27, 1863, and completed its one hundred miles from the Missouri, via Atchison, within the time required by law, to wit, on the 30th day of December, 1869. The commissioners reported on the 13th of January, 1868, and it was accepted by the President on the 20th of the same month, and the company received its bonds and a portion of its lands.

The "road through Kansas" has not completed its road within the time required by the acts of 1862 and 1864, but had complied with all statutes in force bearing upon it up to the passage of the act of July 3, 1866.

By reference to the map it is found that the initial points of these two roads on the Missouri River are about thirty miles apart; and that the Atchison road is one hundred miles or more below where the Burlington and Missouri road crosses, the latter being about twenty-five miles below Omaha.

And thus having all the legislation bearing directly or indirectly, as is believed, upon the question before us, we turn to its departmental history; for it has such history, having been before the Departments in various forms at various times; has been considered apparently with great care, after the most elaborate argument by the most eminent counsel, and the rulings made assist not a little in the solution of the vexed problem.

We will endeavor to state this history as nearly in its chronological order as possible.

December 5, 1866, this company (then the Atchison and Pike's Peak Company) first made claim to extend its road to connect with the Union Pacific road, and to receive subsidy, &c.

There is nothing on the files to show when the "eastern division" commenced work under the act of July 3, 1866, but they filed a map of general route July 11, 1866, and of definite location May 8, 1869.

On the 10th of March, 1866, the Secretary of the Interior made an order restoring to market the lands theretofore withdrawn upon the application of the Union Pacific Railroad Company, "eastern division."

The Atchison and Pike's Peak Company (or, as we shall hereafter call it, the Central Branch) having requested him to reconsider this order, he, on the 10th of February, 1869, addressed a letter to the Commissioner of the General Land Office, reviewing the application, the claim being that under the law the said company was entitled to extend its road from its intersection with such vacated line, and on the latter to the one hundredth meridian, and to receive aid in the way of lands and bonds. This letter (from the then Secretary, Mr. Browning) fully reviews the entire claim, declines to withdraw the lands, and very clearly and unequivocally denies the right of the company to build the road over the vacated line and claim subsidy and lands therefor. And this opinion was reiterated in the annual report of the Secretary, of 1868, wherein he refers to the completion of the one hundred miles of their road.

In this connection it further appears that a petition, similar to that afterward presented to the present Secretary of the Interior, (of April 12, 1871,) was presented to Secretary Browning, of date February 8, 1869, and that Mr. Browning indorsed thereon as follows:

"There are intricate and difficult questions involved in this case, as it is now presented, affecting very large and important interests, and requiring more time for their examination, consideration, and decision than it is in my power now to bestow, and I deem it my duty, therefore, to let the whole subject go over for my successor.

"O. H. B.

"MARCH 3, 1869."

It also appears that Secretary Cox, on the 28th of March, 1870, made an order withdrawing certain lands for the benefit of the Saint Joseph and Denver City Railroad Company; and upon being interrogated whether such reservation was intended for the benefit of the claimant, answered, on the 27th of May following, as follows:

DEPARTMENT OF THE INTERIOR,
Washington, D. C., May 27, 1870.

SIR: In reply to your inquiry, I would state that the reservation of any existing adverse rights, whether individual or corporate, &c., in the order of March 28, last, directing a withdrawal of lands on account of the Saint Joseph and Denver City Railroad Company, was intended for the benefit of the Central Branch Union Pacific Railroad Company in case their right to construct their road to a connection with the Union Pacific Railroad should be recognized by proper authority or by Congress, and the representatives of the former company were so informed when the order was issued.

Very respectfully, your obedient servant,

J. D. COX, *Secretary.*

E. H. NICHOLS, ESQ.,
Treasurer Central Branch Union Pacific Railroad Company, Washington, D.C.

The Central Branch (for the hundred miles west of the Missouri River) filed a map of the general route on the 8th of July, 1863, and of definite location March 4, 1866.

On the 27th of January, 1870, Secretary Cox, in a letter to the President, refers to the decision of Secretary Browning, to the fact that counsel for the company had asked that the question should be re-examined; says "that he has determined not to disturb the decision" before made; and states, not, however, at very great length, the considerations influencing his conclusions.

On the next day, January 28, 1870, the Secretary made known to the Commissioner of the General Land Office, by written communication, that he should not disturb the rulings of his predecessor; and concurs in the opinion "that the asserted right of the company to subsidies in Lands and Bonds in aid of the construction of a road on such vacated line cannot be recognized under existing legislation."

Prior to the 8th of May, 1871, the company filed its petition to the Secretary of the Interior, (Mr. Delano,) asking to file its map showing the extension and continuation of its road to a connection with the one hundredth meridian, to withdraw lands, &c. The President, on the 20th of April, 1871, refers the petition, requesting the Secretary to hear the parties and decide the claims on its merits. The Secretary accordingly, on the said 8th of May, 1871, addressed a communication to the Attorney-General, in which he recites quite fully the legislation, what had been done by the several companies thereunder, and asking his opinion upon the questions involved, and especially upon this: "Is the Central Branch authorized to file its map of the route of such extended road, and entitled upon the completion of the same to the lands originally granted to the 'road through Kansas?'" To this the Attorney-General responded on the 3d of June, 1871, reviewing at great length all of the legislation, as also the acts of the company, and concluding with the opinion that the claim of the company should be rejected. The opinion is very full, discussing all the points raised, and to it we may refer more at length hereafter.

June 19, 1871, the Attorney-General being absent, Mr. Bristow, Acting Attorney-General, telegraphed him that the attorneys for the company had addressed a letter to the Secretary of the Interior asking a rehearing, and that the Secretary concurred in the opinion that such hearing should be had. To this the Attorney-General replied on the next day, "No objection to rehearing on new facts."

August 11, 1871, the Attorney-General wrote to Hon. S. C. Pomeroy that he could have no further connection with question unless requested thereto by the Secretary of the Interior; that he presumed that the Secretary would not make such request unless apprised of new facts, and that if such facts exist he should not object to a reconsideration of the subject.

August 25, 1871, Mr. Nichols, one of the attorneys for the company, presented to the Secretary a quite lengthy and detailed statement as a ground for a review of his decision by the Attorney-General, showing or tending to show surprise, want of full opportunity on the part of the company to be heard, &c. This was transmitted to the Attorney-General on the 9th of September, 1871, and on the same day Mr. Nichols was advised by Mr. Akerman that he was willing to hear the parties further, by a time named by him; after that, in view of engagements, he would not promise to hear them; that he would, however, review his opinion, and if led to believe that any material consideration had been overlooked he would invite further argument, and give notice accordingly; but if he had no cause to suspect error or oversight, the opinion before rendered would be considered as final upon the question involved.

August 28, 1871, the Acting Secretary, (Cowan,) referring to this opinion, as also to a letter from the Attorney-General to Hon. S. C. Pomeroy, (without date,) and also to the fact that the company had submitted a statement embodying new facts, as they claimed, (meaning this statement of Nichols and others, doubtless,) returned to the Attorney-General his opinion "in order that the same might be reconsidered."

October 23, 1871, the Secretary, referring to the opinion and the letter of the 28th of August, proceeded to state that on that date the company had withdrawn their application to file map and have lands withdrawn; that the same has been granted, and that nothing being before the Department there was no necessity for giving the subject further consideration.

On the 30th of the same month the Secretary advised the President, by letter, that he had received from the company a map showing the general direction and route of their road from its terminus to the one hundredth meridian, as also a resolution of the company adopting said route as a continuation of their road, if approved by the President. The map and resolution were transmitted with the letter, showing the request of the company of the 28th of the month, that the map and route might be approved by the President.

On the next day E. C. Ingersoll, attorney for the Saint Joseph and Denver City Railroad Company, addressed a letter to the Attorney-General, asking him to transmit to the Department of the Interior his opinion of the 3d of June, 1871, to the end that it might be promulgated without unnecessary delay. To this the Attorney-General, on the 19th of November following, replied that he had informed the Secretary of the Interior that his opinion upon the subjects involved was unchanged, and, further, that the opinion referred to would be transmitted to the Secretary if he wished it.

August 29, the Attorney-General asked of the Acting Secretary a copy of the statement of the company asking a re-examination of their claim, and this was transmitted to him on the next day.

September 5, 1871, the Attorney-General addressed a letter to the Secretary of the Interior, setting forth that Mr. Nichols, of counsel for the company, was entirely mistaken as to the attention which the question had received at his hands when

giving his opinion on the 31 of June. He proceeds to state that counsel were heard for several hours, and to set out in detail the papers, laws, opinions, speeches, letters, and other facts and documents examined by him. He further states that he will still hear counsel during that week, either at his office or in New York.

November 17, referring to the letter of the Secretary of the 23d ultimo, advising him that the company had withdrawn its application &c., he takes occasion to refer to the application of the company for rehearing, to his expressed willingness to hear them; that while matters were in this position the opinion had been returned to him; that no cause to change his opinion had been shown; that the parties had declined to avail themselves of the opportunity to present the case when offered; that the opinion was subject to be transmitted to him if desired; that it was duly rendered; that it was never intended in consenting to a rehearing to recall it, nor as a suspension of his opinion; and that the views expressed remain unchanged.

On the 15th of March, 1873, the Secretary of the Interior advised the Attorney-General that the company had asked that the lands along the contemplated extension, (from Fort Kiley to the one hundredth meridian,) might be withdrawn; and the inquiry was submitted whether it would be proper for the President to approve the map for said extension with the distinct understanding that it was done solely for the purpose of causing a withdrawal of the lands, and without committal upon the question of the right of the company to the lands. To this there was a response on the 17th of the same month, by Solicitor General Phillips, that the lands might be conditionally withheld, and that a provisional approval of such map, "made expressly for such purpose alone, and without prejudice to the right of the President of disapproving it in the end," would be proper, and would not commit him in regard to his final action.

There is no question as to the assent of the company to the provisions of the act of 1862. This was formally resolved on the 16th of June, 1863, and the Government duly notified.

The files and records in the Interior Department contain nothing to show that the President ever "approved of the route in Kansas west of the meridian of Fort Riley to the point on the hundredth meridian," under the ninth section of the act of July, 1862.

The map of the Central Branch from Fort Riley to the one hundredth meridian, with the letter accompanying of the treasurer of the company, of the 26th of October, 1871, was transmitted to the President on the 30th of the same month, with the letter of the Secretary above referred to of that date.

On the 25th of February, 1872, by direction of the President, his secretary referred all said letters to the Attorney-General, with the request that he would inform the President whether his approval of the map would be sufficient authority for the company to make the proposed extension under existing laws. The Attorney-General (Williams) indorsed on the paper that, having been of counsel for a claimant adverse to the Central Branch prior to his appointment, he referred the whole matter to the Solicitor-General. Following this, upon the papers was an indorsement by the then Solicitor-General (Bristow) to the effect that for reasons personal to himself, as stated to counsel when the papers were submitted, he was unwilling to express any opinion in the case.

Thus the matter stood until January 10, 1873, when Solicitor-General Phillips gave to the President an opinion that the Central Branch, under the act of 1862, had the right to file a map with a view of constructing that part of the Pacific Railroad between the meridian of Fort Riley and the one hundredth meridian; that this right is confirmed by the said act, in connection with the act of July 2, 1864, and the events which subsequently happened, and that this was not divested by the amendatory act of July 3, 1866.

Soon after this the resolution upon which we are now reporting was passed, and no further step has been taken by any of the Departments.

And now, in the light of this legislation and the action of the Executive Departments, we are to determine, under the resolution of the Senate, whether the Central Branch Union Pacific Railroad Company is entitled to build a road from its present western terminus to connect with the main branch of said road at the one hundredth parallel and receive subsidy in lands and bonds therefor. The distance is from two hundred and twenty-five to two hundred and fifty miles; and if the right exists, then follows the obligation of the Government to give lands and bonds to the amount or value of seven or eight millions of dollars. We thus refer to the large amount involved, not because it should by any means influence the conclusion to be reached, but to show the necessity of greater care and deliberation in appreciating and determining the questions involved. The fact, too, that the rulings of the Departments have not been uniform, as also the further one that several most eminent counsel have in argument controverted the opinion of the late Attorney-General, should, and of course would, counsel yet more careful thought in reviewing this record.

Appreciating, as we trust, fully, all these things, let us see, before we proceed, what it is we are to decide; and first, what it is we are *not* to decide. We submit not whether this company made a hard (as they term it) contract; nor yet whether good faith demands that Congress should legislate to relieve them from the position in which they are now placed. It is no part of our duty to inquire whether the company acted wisely or unwisely, upon proper or improper views of the legislation of Congress; whether the Kansas company exercised good or bad faith; whether it would be just or otherwise to now aid the company to make the proposed connection. And hence we dismiss all that is said in the several arguments, and all appeals touching the good faith of the Government, and the hardship to this company if they do not get this subsidy; esteeming them of no possible moment in this inquiry, as questions with which we have nothing to do, except as they may be legitimately considered as tending to throw light upon the intention of Congress.

And in this connection we remark, further, that we give but little heed to the suggestion of counsel that neither the committee nor the Senate should undertake to decide upon their rights, but rather provide for leaving the whole matter to the courts. As the question stands, and under the inquiry submitted, we can conceive of no sufficient reason why, if in our opinion the company is entitled to this subsidy, we should not say so; and if not so entitled, why we should not as explicitly so declare. It has remained, in all reason, long enough a subject for examination and re-examination, for discussion and rediscussion before the Departments, and a theme for comment in the press and forum, to be set at rest by the earliest and most authoritative action. It is not the least of the just complaints against our legislation and system of disposing of the rights of individuals and adjudicating claims that few things are ever conclusively and definitely settled. And while we would be most reluctant to countenance the least invasion by the legislative of the judicial department of the Government, we can conceive of no possible objection to declaring the true intent of an existing statute. This is of almost every-day occurrence. Indeed, we know of no higher duty devolving upon the law-making power—and especially when the rights of the Government are involved—than to prevent, by the speediest action, as far as possible, wrong to the Government or an infringement of the rights of individuals. Congress is supposed to stand indifferent between the individual and the Government; as ready to relieve the one from actual injury or to prevent threatened wrong as to protect the other against a claim not founded in justice or law. And, therefore, without pretending to exercise judicial functions, it, in virtue of its sovereign and unquestioned power, may most appropriately declare what, in its opinion, are the rights of the Government; what has been granted and what not; and what the rights of those claiming adversely. And this the more readily since, if such adverse claimant has vested rights, the declaration of the law-maker could not, by possibility, interfere therewith, nor affect in the least his standing before the judicial tribunals.

We repeat, therefore, that, dismissing all question of what ought to have been the legislation thus far on this subject—as also of what would be right hereafter, and not in the least doubting our right and duty even to prevent action by any department of the Government which we believe to be in conflict with the law—we are remitted to the inquiry, singly and properly, whether this company, under the law, is entitled to locate and build this two hundred and twenty-five or more miles of road and claim subsidy therefor.

For reasons which we will proceed as briefly as possible to state, we feel constrained to answer, most decidedly not. And we are the more justified in consulting brevity in view of the decided current of departmental action, and especially the opinion of the law-officer of the Government, of the 31 June, 1871, which is exceedingly clear in its statements, and to which, in all the arguments, we have found no sufficient answer.

Let us consider some of the difficulties in the way of any other construction. And, first, by the ninth section of the act of July 1, 1862, it is expressly declared that "the route in Kansas, west of the meridian of Fort Riley, to the aforesaid point on the one hundredth meridian of longitude, (is) to be subject to the approval of the President of the United States, and to be determined by him on actual survey." Without this actual survey and approval there was no right to build. True, the company might proceed to survey and build, but without the approval contemplated there would be no right to the lands and bonds. For this provision there were beyond doubt good and sufficient reasons, upon which we need not enter. Indeed if we should even conclude that the provision was quite unnecessary, the fact would remain that the law so speaks, and we have no right to disregard it. And now when it is remembered that there never was an actual survey of this route by any one, (unless by the company setting up the claim which we are now considering, which we shall notice hereafter,) and also that there is no evidence that the President ever approved any such route or survey—we say, when these things are remembered, we can hardly conceive upon what ground the claim for lands and bonds can be predicated.

Until it was thus located and approved, the Central Branch could not complete its road, even to the contemplated junction with the road through Kansas; for nothing can be clearer than that claimant was bound to build, not just one hundred miles west from the Missouri River, but more or less as it might be necessary to make such connection. The one hundred miles was the limit of the subsidy, but not of the length of its line.

Looking for the present, therefore, at the act of 1862, it seems very obvious that until there was such actual survey and approval there could be no point of junction, for, in the language of the thirteenth section of said act, it could not otherwise "connect and unite with the road through Kansas." It might build ever so many miles of road, whether for the purpose of going directly to the one hundredth meridian on the Union Pacific road or to a point east thereof, "to connect and unite with the road leading from the western boundary of Iowa," (section 13, act of 1862,) or to connect with the road through Kansas, (it being conceded that it was contemplated primarily that it should connect with the latter,) and yet, by the very terms of the act, the bonds and lands are to be given for one hundred miles, and no more. And recurring here for a moment to the sixteenth section of the act of 1864, (and upon which claimant, as we shall see hereafter, mainly relies,) we find that not until it had "completed its road" would it have the right, or be entitled or authorized, to extend and continue the same in the general direction and route. If it be said that it was contemplated and expected that the route of the road through Kansas would be so located as that it could be struck within one hundred miles west of the Missouri River, the answer is that this, conceded, would not much, if any, advance the argument. It may be admitted as true, and that claimant had good reason to so expect, and yet the fact would remain that it might be so located in strict compliance with the law as to make the point of junction much more than that, and in that event the building of one hundred miles would no more give the right to proceed by reason of the so-called default of the Kansas Company than would the building of ten. So, too, if there never was a line actually surveyed and afterward approved, so as to present a point of junction, the building of one hundred miles would not be a completion of its road by this company any more than the building of one hundred miles in the direction of the road from the western boundary of Iowa would be such completion. Is it said that it never could have been intended that this road was to be so completely at the mercy or subject to the action or non-action of another company? The sufficient answer is that it accepted the grant upon the terms so nominated, and, if unfortunate "in having a privilege so beset with difficulties and contingencies, it was, nevertheless, the will of Congress to thus qualify it, as it was of the company to accept it so qualified and restricted." The eastern terminus was therefore definite and well understood. The western was not fixed or named. It depended upon a contingency. It was to be somewhere upon a line to be run or surveyed by another party, which was to be approved by the President. That line never was located, never was approved; there was hence no point of junction, hence no completion, and as a consequence no right to continue in the general direction or route of the defaulting line. For, to here leave this part of the argument, suppose the actual survey had been made, and the President had refused to approve the route, where would the point be to which claimant might build and say its road was completed? Why one point more than another? And why say such point has been reached at just one hundred miles from the Missouri River, any more than this or the other side of such one-hundred-mile stake? In any view, it seems to us clear that it never has, in contemplation of law, completed its road, and hence cannot be entitled to further subsidy in bonds or lands.

Second. But it is insisted that, though the road through Kansas never made such actual survey and never had such executive approval, the Central Branch, upon the default of the Kansas company, did make such actual survey from the meridian of Fort Riley to the one hundredth meridian, and that it is now before the President for his approval. And it is also claimed that it should be approved, the lands withdrawn from market, and the Central Branch permitted to proceed with the construction of the road and take bonds and lands to the same extent in every respect as the Kansas road might or could if it had complied with the law. This presents the substantial and all-important question in this case, and we approach it with the most abiding conviction that it has even less to support it than the one (somewhat more technical) above discussed. Many are the considerations bearing upon it, and we must necessarily dispose of them briefly.

It will be borne in mind that by the ninth section of the act of 1864 the right was given to any company authorized to construct a road from the Missouri River to the initial point (one hundredth meridian) to so construct it as to connect with the main line at any point westwardly of such initial point, in case said company deemed such westwardly action more practicable or desirable. This it will be seen, included the road through Kansas, and clearly authorized it to make connection at any point east of the junction of the Union Pacific with the Central Pacific. An important proviso was added, however, that no greater amount of bonds and lands was to be given than if the union had taken place at the one hundredth meridian, as contemplated by the original act. Instead of leaving the matter thus indefinite, the act of 1866 provided that the "road through Kansas" (known as the Union Pacific Railway Company, eastern division) should make this connection at a point not more than fifty miles west of Denver, Colorado.

That it was entirely competent to authorize this change, either as contemplated by the act of 1864 or 1866, of course no one can doubt. And especially so in view of the express power given in the act of 1862 (section 18) to "add to, alter, amend, or repeal" said act. We may add, in this connection, the significance of this provision in the act of 1866, when we recur to the right there given to designate the final route at any time before December, 1866, and the renewed provision that it

was to leave no greater amount in bonds than if it had united with the main line at the one hundredth meridian.

Now, let us see when the only map of survey was filed under which it is or can be claimed the right to build the road to the one hundredth meridian exists. We find it was on the 26th of October, 1871, or more than seven years after the authority was given to change the line to any point westwardly of such initial point, and more than five years after the point of junction was substantially fixed hundreds of miles west of that originally contemplated. Not only so, but the Central Branch finished its own hundred miles in 1869, (December,) more than five years after the first, and three years after the second, act authorizing the change. Then, too long prior to this, to wit, in July, 1866, the road through Kansas filed a map of general route on the new line. (The map of definite location was filed in February, 1869.) In addition to this, the Secretary of the Interior, as early as March, 1866, made an order restoring the lands to market theretofore withdrawn, from the meridian of Fort Riley to the originally proposed initial point. This remained undisturbed until the claimant asked that the order should be rescinded, when the Secretary, in February, 1869, re-affirmed the previous direction and denied the application.

Now, in view of this plain legislation and undisputed facts, what shadow of foundation can there be for this claim? What was it the Government wanted? Legislating for the people and for their interests, what was primarily contemplated? The answer is, that the road through Kansas should connect with the Union Pacific road. In other words, that the road starting from the mouth of the Kansas River should at some point unite with the main line; and in aid thereof there was a clearly defined purpose to aid in bonds and lands, but in no event to a greater amount than if the road had been constructed to the point first designated. Did Congress ever intend to aid the changed line to this amount wherever it might unite at a point westwardly of the initial point, (say ten, twenty, or fifty miles, more or less,) and duplicate the bounty to another line running parallel therewith to the original point? Was it ever contemplated in authorizing this change that it was keeping alive or transferring this bounty to another company, which was especially limited in aid to one hundred miles, and which, if by possibility entitled to any additional right, must rest it alone upon the claimed default of the very company which was relieved from its obligation to build on the original line by the very power to which those companies, if they did not owe their lines, at least owed their right to claim such bounty? And especially can this be believed, when we find that Congress, in the very act which authorized a change of line, provided for aid (in lands) to another company (the Burlington and Missouri) crossing the Missouri River between the road from Atchison and that from the western boundary of Iowa, and connecting with the main line at a point not farther west than said one hundredth meridian? The subsidy to this new line would seem not unreasonably to have been based upon the prospective change of the Kansas road, and the design to still give aid to some road south of Omaha and running to the main line. We say prospective change, because it will scarcely be denied that a change was not only possible but beyond all doubt intended by the new legislation. If not, it was a most idle and useless grant of power.

It is said, however, that by the sixteenth section of the act of 1866 any two or more of the companies engaged in or authorized to build their several roads were empowered to unite or consolidate their organizations, with certain consequent rights and privileges, and that if any one of the companies should not enter into such consolidation it was entitled, upon the completion of its road, "to continue and extend the same under the circumstances and in accordance with the provisions" of said section, and to have all the benefits thereof as fully and completely as if it had entered into such consolidated organization." As to the companies so consolidating, the right to continue, upon the part of any company, after completing its own, was dependent upon the failure of the company whose duty it was to build to construct its road as contemplated by the law, and the company so failing was styled a "defaulting company."

It is a question of fair doubt whether the Central Branch was contemplated by this action, or any other than the Union Pacific and Central Pacific lines. Waiving this, however, we shall assume that the Central Branch was included, as well as others, and thus meet the questions presented.

The Central Branch never entered into such consolidation. Nor did it (or the Hannibal and Saint Joseph company) ever unite with the road through Kansas, as provided by the tenth section of the act of 1862, by filing their assent or otherwise.

The argument, however, is, that being one of the *non*-consolidating companies, and having completed its road, it now has the right, by reason of the default of the road through Kansas, to continue the construction to the one hundredth meridian on the same terms, and under like circumstances, as said Kansas road might or should have done.

One, if not the pivotal element of this proposition is that the Kansas road was *in default*. This we referred to, somewhat incidentally, above, but the importance given to it by claimant demands more extended remark.

The default evidently contemplated was in not constructing the number of miles in the time required by the statute, (act of 1862, section 10, and 1864, section 5,) to wit, one hundred miles in three years after July 17, 1862, (the time of assent to the act,) and a like number annually thereafter. And as claimant, in this view, could only take benefit from the failure to construct the line between the point of expected or contemplated junction and the one hundredth meridian, and as there is no pretense that there was failure on the part of the Kansas road to build east of that point, we are remitted to the inquiry whether, beyond said point of junction, there was the default meant by the statute upon which the right would ensue to claimant to continue and extend its road. In other words, was there such failure on the part of the Kansas road as that the Central Branch, on the completion of its road, might extend it to the one hundredth meridian.

If default or failure, it must have resulted from non-compliance with or non-fulfillment of some duty or obligation imposed by the statutes. And it would seem also to logically follow that the default must have been such as that the Government could either insist upon some forfeiture or base thereon the right to enforce some claim or remedy against the defaulting company. This must be so, unless this claimant, by reason of some vested, perfected, or executed right, stands in such an attitude that the Government could not, by a release from the consequences of the supposed default, interfere with the rights so acquired. For, if such rights existed or were acquired, then the action of Congress at this time could not divest them, as in such a case the right would be beyond legislative control. And we may remark in this connection (as pertinent to what has been before said) that, if there was such vested right, the company has for many months had a plain, speedy, and adequate remedy in the courts (by mandamus) to enforce the same, and not all the legislation of Congress, at this or any subsequent session, could, of itself, impair such right. For, beyond doubt, the rule is that if Congress shall, by statute, *ex mero motu*, give to a citizen property which shall be accepted, it thereby becomes a gift executed, and can no more be reclaimed than if given by an individual under like circumstances. A repeal or change of the statute after the acceptance would not, we need scarcely add, divest the property. It is otherwise, however, where the right is merely executory, not vested, or does not become executed before the repeal, for then it falls with the repeal and cannot be enforced.

Now, what are the facts in this case? Claimant's right to connect so as to get to the main line, in the first instance, depended upon the compliance with the law on the part of the Kansas road. The grant was accepted upon this condition. In this the Government took no other part than to announce the conditions, claimant being entirely free to accept or refuse the same. Coupled with this proposition, and a part of the terms of acceptance, as much so as if written therein at length, was the one that Congress might "add to, alter, amend, or repeal the act" under which the right was claimed. True, this right was reserved "the better to accomplish the object of the act," which was expressed to be "to promote the public interest and welfare," and to secure "to the Government at all times the use and benefits" of said road for postal, military, and other purposes, ("having due regard for the rights of said companies.") But no one will certainly pretend that Congress was not to be the exclusive judge of what would best "accomplish the object of the act." (We thus state the propositions, leaving out of view for the present all question of vested rights.) So, too, it was for Congress to determine whether any proposed action did or did not have due regard to the rights of these companies. This company and all others consented to this as clearly and unquestionably as if the very words of the section from which we have above quoted (act of 1862, section 18) had been written in each of their resolves of acceptance. It was a part and a most important part of the contract. It will not do to say that so long as such subsequent congressional action had, in the estimation of the companies and other persons, "due regard for their right" it was valid, and when in their opinion it did not it was invalid. The companies consented that Congress should judge of this, and however unwisely or harshly it might judge, while such judgment might be criticised or complained of as ever so unjust, it could not therefore be held or treated as of no force. In the exercise of this right, Congress, in 1864, authorized the Kansas road to change its line. This the Central Branch knew, and consented by its act of acceptance it might do. This right was again recognized, if possible, more definitely, by the act of 1866. And this the claimant knew and agreed might be done. It will not do to say that the company never expected or anticipated that Congress would thus disregard what appears to be so clearly against their interests. It will not do to say, because this change of line leaves the Central Branch, at the end of one hundred miles, "suspended in mid air, ending nowhere, connecting with nothing," that, therefore, Congress has acted so unjust and inequitable that this company should be allowed to travel on until it joins the main line. Such suggestions, if entitled to any weight, address themselves rather to the law-making power for relief than to your committee, who are called upon to construe the law as they find it, and not to determine what it should have been. If such failure attended claimant's enterprise, (of which we know nothing, and, indeed, with which we have nothing to do,) it resulted not from an unwarranted exercise of power on the part of the Government, but rather from a mistaken confidence in the act of the Kansas company, connecting therewith, possibly, a faith that Congress could only seek to "promote the public interest and welfare" by leaving intact the lines of road as contemplated by the original act. If in all this they were mistaken, the reflection is that the power to determine otherwise was "nominated in the bond," to which they were doubtless willing and hopeful parties.

But let us here recur to some facts before we state the conclusion of the argument in this part of the case. The Central Branch on the 1st of July, 1866, had, as is claimed, twenty miles of road built, forty graded, and contracts outstanding for the other forty. Two years before this, Congress had authorized the Kansas road to change its line. The Central Branch completed its one hundred miles the 30th of December, 1869—three years after the passage of the act of 1866. The Kansas road filed, in due time, its assent to the provisions of the act of 1864, and also claimed the right under the ninth section to so construct its road as to form a connection with the Union Pacific at a point westwardly of the one hundredth meridian. On the 21st of February, 1866, it presented a map showing a new route west from Fort Riley, known as the Smoky Hill route. The Attorney-General decided that, as three years had elapsed since the taking effect of the act of 1862, the company could not file a map delineating a new line of road, and the request for a withdrawal of lands was refused. The act of 1866 authorized the company to designate the general route, which was filed within the time required, (to wit, July 11, 1866, that of definite location May 8, 1869,) both showing an almost entire departure from the original line west from Fort Riley.

By what authority were these changes made? By that of Congress. The Central Branch had the right to unite with the Kansas road, not a franchise therein, upon the failure to build the road. As Secretary Browning says, this implies, it is true, the prosecution by the Kansas company of its work upon the line which was originally contemplated, and perhaps we might add, adopted by the company. Congress, however, sanctioned a departure with the express saving of the right to bonds and lands upon filing its intended new line. If there was default, it was by consent of the power which could claim and insist upon the consequences of such default, and that, too, at a time when the Central Branch had a mere or simple right to unite, which might be taken away, and when, in no just sense, could it be said that there was a vested or executed right. It is, to our minds, a misapprehension of facts and law alike to speak of the failure of the Kansas company to build the road west from Fort Riley as a default within the meaning of the statute, when it was released therefrom by the clearly expressed will and consent of the very power which had imposed the obligations. "A breach of condition or requirement imposed by law is contemplated, involving a forfeiture of some pre-existing right. Such a breach cannot be predicated of an authorized abandonment of a portion of the old line. * * * The original route from Fort Riley has been vacated by authority of law," and we are utterly unable to see how any company can be entitled to bonds and lands to aid in the construction of a road upon it. If claimant can so construct this road, and is entitled to the subsidy, then, as it seems to us most clearly, in the face of the legislative will, it would occur that there were two distinct and independent grants of subsidies, both of which would be available; one on the vacated and one on the new line. The act of 1866 did not make a new grant, but simply recognized a continuing right. In the language of the Attorney-General, (Akerman,) the acts of 1864–'66 (and the act of March 3, 1869, in no way conflicts with this view) "authorized this (the Kansas) company to deviate from the route originally contemplated; * * * the identity of the road in the relation of the Government to it was still preserved." The departure authorized worked no forfeiture of the benefits granted. No duplication or other increase of subsidies was intended. There was nothing for the Central Branch to take, except what the Kansas company lost. The latter company lost nothing, and there was hence nothing for the former company to take. But one subsidy was ever granted for building the road, and as there can be no question that the Kansas company is entitled to one, we cannot recognize the right of substitution on the part of the Central Branch.

But this report is already too long, and we must omit further comment. In its support we invoke the unquestioned weight of the decisions of the departmental officers. This is clearly seen by what we have quoted, and it is equally true of others to which we might refer, but which we have not deemed necessary.

The attempt found in some of the papers and arguments to show that the question was not understood; that the decisions were based upon a partial presentation of the facts; that the whole matter was regarded as still open; and the claim not finally adjudicated, is without the least support. We doubt whether any question was ever more elaborately argued, or more thoroughly understood, by the Departments. No claimant could possibly be more persistent; none more diligent in effort to obtain favorable action. This very suggestion or argument is itself but further proof thereof, and is attempted to be maintained on part of claimant by taking detached sentences from this order or that opinion, and basing thereon the conclusion above indicated. We need not say that this would be unjust to the Departments, and is without warrant in any fair investigation. We need not discuss how far the opinion of the Attorney-General becomes binding upon the Department asking it. We deem it but proper to say, however, that all suggestions that the opinion of Attorney-General Akerman was not final, or so regarded by him, are unwarranted. It is but too clear that, while he manifested every disposition to give claimant a further hearing, the failure to have it was no fault of his, and that his last act in connection with it abundantly indicated, to use his own language, that "the views ex-

pressed remained unchanged." But this we need not discuss, for in our opinion the law is clearly against the right claimed.

To talk about the act of 1866 not repealing the former acts, so far as they relate to this right, is, in our minds, to discuss an immaterial issue, if not to ignore the clear purpose of the statute and well-settled rules of construction. We know that repeals by implication are not favored. This is but the statement of a general proposition. A repeal by implication however, is just as effectual and complete as if ever so express. This undeniably takes place where the latter statute is repugnant and contrary to the former, though there be no words of express repeal. And it is equally true that the real inquiry in all such cases is, Did the legislation intend to repeal or take away the former law, or was the new statute intended to be merely cumulative? In construing the subsequent act, if it makes a different provision on the same subject and is incompatible with the former, it is not to be taken as merely explanatory or cumulative, but as an implied repeal of the former act.

These are but brief statements of rules invoked by claimant, readily found in the books, and to support which authorities are not necessary. What have they to do with the question before us? We submit, little, if anything. If the Kansas company was asking the subsidy on the old line, (abandoning the new,) the rules applicable to implied repeals might be invoked. It might then be claimed (with what plausibility we do not stop to inquire) that the act of 1866 provided for a new, other, and different line, with new, other, and different subsidies, and the old grant could stand consistently with the new. But claimant never had a grant for the old road. It merely had the (so to speak) inchoate or possible right to unite with the Kansas road, or upon its failure, under certain circumstances, to take its place, and acquire thereby or thereupon certain rights. When Congress said to the Kansas road, "Change your line; you shall have the former subsidy, but change your line," who will say that the old law remained in force so as to give to another company, having a contingent right, the old subsidy in all its original scope and extent?

But admit there was no repeal, which is true to a certain extent, nothing is gained. The right or power to build the Kansas road was continued. The right to change its terminal point west, however, was given. The right to do this was expressly reserved by the original act. After the act of 1866 it might build to the one hundredth meridian or to a point west. It could not build to both, however. And having elected to build, and having actually built to a point hundreds of miles west of that meridian, it cannot on the original line. Nor do we see how the Central Branch can do more, or, if it can, how it could get subsidy for more than the first hundred miles from the Missouri River.

And especially so, as it must not be forgotten that claimant takes it, if at all, under a grant from the Government. Shall this be construed most strongly against the Government, so that claimant shall take this entire subsidy, not under an express but an implied grant? The rule certainly is that such a grant is not to inure upon mere implication. The construction is to be in favor of, and not most strongly against, the Government. And hence, for any purpose, any enterprise, any work, be it the most meritorious possible, a subsidy or bounty is not to be implied, nor yet to be presumed, in the absence of an express and unequivocal direction or expression of the legislative will. Any other doctrine would violate all canons of interpretation, all well settled rules of construction, and the property of the Government would be subject to disposition, not according to the clearly-expressed will of the law-making power, but the implications of courts and the presumptions of officials, whether judicial or otherwise. If *repeals* by implication are not favored, much more, and, if possible, in a more important sense is it true that *grants and subsidies* by implication are not only not favored, but are and should be disfavored.

And we conclude, therefore, upon any and every possible view of this subject which can fairly be taken, that the Central Branch Pacific Railroad Company is not entitled to the claimed aid of bonds and lands for any road it may hereafter construct from its present terminus to the main line; and your committee accordingly report the accompanying bill and recommend its passage.

Mr. INGALLS. Mr. President——

Mr. PADDOCK. The Senator from Kansas yielding the floor I move that the Senate now proceed to the consideration of executive business. I understand that there are some matters which are important, that require attention in executive session.

Mr. INGALLS. I have no objection to yielding to a motion for that purpose with the understanding that I may resume the floor when the bill is next before the Senate.

Mr. WRIGHT. I only desire to say that if the Senate were not, as now, without a quorum and so situated that there is great difficulty in getting a quorum at this time, I should object to this motion and insist on proceeding with the consideration and disposition of this bill; but under the circumstances I shall not object to the motion with the understanding that this bill shall be the unfinished business for to-morrow.

The PRESIDENT *pro tempore*. The Senator from Nebraska moves that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After eight minutes spent in executive session the doors were re-opened, and (at three o'clock and thirty-five minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

WEDNESDAY, *January* 3, 1877.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The SPEAKER. On the last day of the session of the House a quorum did not appear, and that point having been raised the Journal of the preceding day's session was not read. The Chair will now direct the Clerk to read the Journal of Friday last and afterward the Journal of Saturday last.

The Journals of Friday and Saturday last were then read and approved.

COUNTING BALLOTS FOR PRESIDENT AND VICE-PRESIDENT.

Mr. WOOD, of New York. I ask unanimous consent to present the memorial of bankers, capitalists, and merchants of the city of New York, asking an amicable adjustment of the pending political difficulties. I ask that the memorial be read, printed in the RECORD, and referred to the select committee of seven upon that subject.

The SPEAKER. If the memorial is read it will necessarily be printed in the RECORD. The first question is upon granting unanimous consent for the presentation of the memorial.

Mr. HALE. What is the title of the memorial?

The SPEAKER. The gentleman from New York [Mr. WOOD] stated that it was a memorial from bankers, merchants, and others in the city of New York, asking for an amicable adjustment of the pending presidential controversy.

Mr. HALE. There is no objection to that memorial being read.

Mr. WOOD, of New York. I am sure no one will object to it.

No objection being made, the memorial was received and read, as follows:

To the honorable the Senate and House of Representatives of the United States of America in Congress assembled:

Your memorialists, representing a large proportion of the financial and commercial interests of the city of New York, beg leave most respectfully to express their great satisfaction at the action of your honorable bodies in appointing committees of conference to consider the proper mode of counting the ballots for President and Vice-President of the United States.

They hail this action as an indication that the two Houses of Congress are desirous of settling this complicated question in a spirit of moderation and conciliation; and they beg leave to represent that, in acting thus, your honorable bodies have the cordial sympathy of the great mass of the American people, irrespective of party.

Your memorialists most respectfully, but most earnestly, pray that all mere party considerations may be thrown aside, and that in this crisis in the history of the United States the pure and unselfish patriotism which inspired the founders of the Republic may guide your legislative action, and that you may thus relieve the country from its present uncertainty and apprehensions by a prompt determination of the mode in which the pending momentous issue shall be decided.

And your memorialists will ever pray, &c.,

Brown Brothers & Co., John J. Cisco & Son, John D. Jones, Phelps Dodge & Co., Roosevelt & Son, Robert B. Minturn, John A. Stewart, Wm. E. Dodge, James Low, Cyrus W. Field, Henry G. Marquand, George W. Lane & Co., Morris K. Jesup, William H. Fogg, M. Morgan's Sons, A. Iselin & Co., Maitland, Phelps & Co., J. & W. Seligman & Co., Lesher, Whitman & Co., H. C. Bennett & Co., F. D. Tappen, J. M. Morrison, William Dowd, Kelly & Alexander, Amos F. Eno, J. M. Cooper, Geo. M. Hard, B. G. Arnold, James D. Fish, A. Oatman, David Dows & Co., Woodward, Baldwin & Co., A. S. Hatch, Theodore Roosevelt, Peter Cooper, Wilson G. Hunt, William Orton, W. C. Bryant, J. Q. Jones, Vermilye & Co., J. D. Vermilye, A. A. Low & Brothers, Charles H. Marshall, Howland & Aspinwall, Josiah Macy's Sons, Fabbri & Chauncey, Schultz, Southwick & Co., R. L. & A. Stuart, F. H. Cossitt, James W. Alexander, George D. Morgan, O. Zollikoffer, Eugene Kelly & Co., R. T. Wilson & Co., D. C. Hays, Johnson & Higgins, Drexel, Morgan & Co., Babcock Bros & Co., J. J. Astor, E. S. Jaffray & Co., Josiah M. Fiske & Co., Havemeyers, Eastwick & Co., August Belmont & Co., Robert Lenox Kennedy, J. & J. Stuart & Co., Henry F. Spaulding, Moses Taylor, F. S. Winston, David M. Turnure, L. Von Hoffman & Co., Blake Brothers & Co., Grinnell, Minturn & Co., Richard Irvin & Co., W. H. Hays, Benj. B. Sherman, H. & G. B. Talmage & Co., N. F. Palmer, Wm. L. Jenkins, C. De P. Field, F. S. Lathrop, William P. Brintnall, D. R. Mangam, J. L. Worth, Geo. T. Hope, L. J. N. Stark, John T. Agnew, Charles Bard, Wm. H. Macy, Winslow, Lanier & Co., Wetmore & Co., Pomeroy & Plummer, Woodward, Lawrence & Co., Wm. A. Wheelock, N. Sullivan & Co., H. B. Claflin & Co., Hunt, Catlin & Valentine, Halsted, Haines & Co., E. S. Higgins & Co., Arnold, Constable & Co., Howard, Sanger & Co., D. Appleton & Co., W. & J. Sloane, Whittemore, Peet, Post & Co., Dike Brothers, Morris Franklin, Jno. K. Myers, John H. Lyell, George S. Coe, J. S. Kennedy & Co., Isaac H. Reed & Co., John P. Paulison.

Mr. WOOD, of New York. I move that the memorial be referred to the select committee of seven upon the subject of counting the electoral vote.

The motion was agreed to.

Mr. O'BRIEN. I ask unanimous consent to take from the Speaker's table——

Mr. HALE. One moment, if the gentleman pleases. I move to reconsider the vote by which the memorial just read was referred; and also move that the motion to reconsider be laid on the table.

The latter motion was agreed to.

OWNERS OF SCHOONER FLIGHT.

Mr. O'BRIEN. I ask unanimous consent to take from the Speaker's table House bill No. 732, which has been returned from the Senate with an amendment, for the purpose of moving that the House concur in the amendment of the Senate. With the permission of the House I will make a brief statement. As the bill passed the House it appropriated $3,000 to Mrs. Catherine Thrush, and others, owners of the schooner Flight, for the loss of their vessel. The Senate refused to concur in the appropriation and amended the bill so as to refer the claim to the Court of Claims. I presume there can be no possible objection to the reference of the claim to the Court of Claims.

Mr. HOLMAN. I ask that the bill and amendments be read.

The bill was read. It directs the Secretary of the Treasury to pay to Catherine Thrush, widow, and William B. Stone, owners of the schooner Flight of the city of Baltimore, Maryland, the sum of $3,000 in full compensation for the loss of their schooner Flight in Chesapeake Bay October 8, 1873, by a collision with the United States steamer Tallapoosa.

The amendment of the Senate was to strike out all after the enacting clause, and to insert in lieu thereof the following:

That the claim of the legal owner or owners of the schooner Flight, her cargo, freight, and personal effects, alleged to have been sunk by collision with the United States steamer Tallapoosa October 8, 1873, be referred to the Court of Claims to hear and determine the same for judgment, with right of appeal as in other cases: *Provided*, That no suit shall be brought under the provisions of this act after six months from the date of the passage thereof.

Amend the title so as to read as follows:

An act referring the claim of the owners of the schooner Flight to the Court of Claims.

Mr. O'BRIEN. I move that the amendments of the Senate be concurred in.

Mr. MONROE. I would inquire of the gentleman from Maryland [Mr. O'BRIEN] if this bill was regularly reported from a committee?

Mr. O'BRIEN. It was, and was passed unanimously by the House.

The amendments of the Senate were concurred in.

Mr. O'BRIEN moved to reconsider the vote by which the amendments of the Senate were concurred in; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

ORDER OF BUSINESS.

Mr. PAGE. I call for the regular order.

Mr. DOUGLAS. Will the gentleman yield to me to introduce a bill for reference merely?

Mr. WILSON, of Iowa. I would like to offer a resolution, to which I think there will be no objection.

The SPEAKER. The Chair would state to the gentleman from California [Mr. PAGE] that there are one or two matters which members desire to present to the House, and to which the Chair thinks there will be no objection.

Mr. PAGE. I will withdraw the call for the regular order.

FREEDMAN'S SAVINGS AND TRUST COMPANY.

Mr. DOUGLAS, by unanimous consent, introduced a bill (H. R. No. 4289) to amend an act entitled "An act amending the charter of the Freedman's Savings and Trust Company and for other purposes," approved June 20, 1874; which was read a first and second time, referred to the Select Committee on the Freedman's Savings and Trust Company, and ordered to be printed.

LEONARD L. LANCASTER.

Mr. RUSK, by unanimous consent, introduced a bill (H. R. No. 4290) for the relief of Leonard L. Lancaster, late sergeant Second Regiment Cavalry, Wisconsin Volunteers; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

PHILIP PENDLETON.

Mr. MILLIKEN. I ask unanimous consent that the bill (H. R. No. 735) for the relief of Philip Pendleton be taken from the Speaker's table, in order that the amendments of the Senate may be concurred in.

The SPEAKER. The amendments will be read, the right being reserved to any member to object afterward to their consideration.

The Clerk read as follows:

In line 5 strike out the word "or."
In lines 6 and 7 strike out the word "equitable" and insert the word "true."
In line 7 strike out the words "errors and losses of."
In line 7 after the word "money" insert "charged as."
In line 8 after the word "paymaster" insert "and not in fact received."
In lines 8 and 9 strike out the words "growing out of shorts in package of money received by him."

Mr. HOLMAN. I ask that the bill, as it will stand with these amendments, be read.

The Clerk read as follows:

Be it enacted, &c., That the proper accounting officers of the Treasury be, and they are hereby, authorized and directed to re-open and re-adjust the accounts of Philip Pendleton, late a paymaster in the United States Army, and allow him such additional credits in the settlement of his accounts as under the circumstances or in the opinion of said accounting officers may be just and true, for money charged as received by him as such paymaster, and not in fact received, which shall be established before them by satisfactory evidence.

There being no objection, the amendments of the Senate were concurred in.

Mr. MILLIKEN moved to reconsider the vote by which the amendments were concurred in; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

INTERSTATE RAILROADS.

Mr. WILSON, of Iowa, by unanimous consent, submitted the following resolution; which was referred to the Committee on Railways and Canals:

Resolved, That the Committee on Railways and Canals be requested to take into consideration and report to the House whether it is wise and expedient to provide by law for the appointment of a national board of engineers to supervise the condition of interstate railroads as far as their safety to citizens traveling upon them is concerned.

STANDARD SILVER DOLLAR.

Mr. BRIGHT. I ask unanimous consent to introduce a bill for reference to the Committee on Mines and Mining.

The title of the bill was read, as follows:

A bill providing for the free coining of the standard silver dollar and restoring its legal-tender character.

Mr. HEWITT, of New York. I make the point of order that this bill does not belong properly to the Committee on Mines and Mining.

Mr. KASSON. It should go to the Committee on Coinage, Weights, and Measures.

The SPEAKER. The bill will be read, after which any member may object to its introduction.

The Clerk read as follows:

A bill providing for the free coining of the standard silver dollar and restoring its legal-tender character.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be, from time to time, coined, at the mints of the United States, silver dollars, of the weight of 412½ grains standard silver to the dollar, as provided for in the act of January 18, 1837; and that said dollar shall be a legal tender for all debts, public and private, except where payment of gold coin is required by law.

SEC. 2. That hereafter no charge shall be made for converting standard silver bullion into coin dollars herein provided for.

SEC. 3. That the Secretary of the Treasury is directed to receive from miners and owners standard silver bullion for conversion into silver dollars herein provided for, and he shall proceed to have the same coined with reasonable dispatch; and he is hereby authorized and directed to establish such additional depositories and refineries of standard silver bullion as may be necessary to facilitate its coinage.

SEC. 4. That all laws and parts of laws in conflict with this act are hereby repealed.

Mr. O'BRIEN. I ask that this bill be referred to the Committee on Coinage, Weights, and Measures.

The SPEAKER. The gentleman from Tennessee [Mr. BRIGHT] asked unanimous consent to introduce the bill, and the Chair reserved to any member the right of objecting to its introduction after it had been read.

Mr. HEWITT, of New York. I object to the introduction of the bill with the reference proposed.

The SPEAKER. The Chair cannot entertain a conditional objection.

Mr. HEWITT, of New York. Then I object unconditionally.

Mr. FORT. A member ought to be allowed to have his bill referred to whatever committee he may desire.

The SPEAKER. The Chair will say, in reply to the gentleman from Illinois, [Mr. FORT,] that the gentleman from Tennessee [Mr. BRIGHT] has no right except by unanimous consent to introduce any bill at this time.

Mr. FORT. I presume there is no objection to the introduction of the bill.

Mr. BRIGHT. I understood that unanimous consent had been given for the introduction of the bill and that objection was afterward made.

The SPEAKER. The Chair would rule now as he always has done that full opportunity should be given to the House, after the reading of a bill has been asked for, to determine whether the bill should be introduced or not, and therefore he has always reserved to members the right to object to the introduction of any bill until after it has been read for the information of the House. There can be no doubt as to the propriety of such action on the part of the Chair.

Mr. O'BRIEN. There is no objection to the bill if it be allowed to be referred to the Committee on Coinage, Weights, and Measures.

The SPEAKER. The gentleman from New York [Mr. HEWITT] has objected unconditionally to the introduction of the bill, and therefore it is not now before the House.

PRE-EMPTORS.

Mr. PHILLIPS, of Kansas, by unanimous consent, introduced a bill (H. R. No. 4291) to extend the time of pre-emptors on the public lands; which was read a first and second time, referred to the Committee on Public Lands, and ordered to be printed.

APPRAISEMENT OF LANDS.

Mr. PHILLIPS, of Kansas, also, by unanimous consent, introduced a bill (H. R. No. 4292) to provide for the appraisement of certain lands; which was read a first and second time, referred to the Committee on Indian Affairs, and ordered to be printed.

RAILROAD ACCIDENTS.

Mr. YOUNG. I ask unanimous consent to present the following preamble and resolution for action at this time.

The Clerk read as follows:

Whereas the alarming frequency and increase of accidents upon railroads in different parts of the country, by which hundreds of persons are annually maimed and killed in the most horrible manner, requires some uniform system of legislation by either State or Federal authority to prevent the occurrence of such accidents and to protect the safety and lives of persons traveling by railway communication: Therefore,

Be it resolved by the House of Representatives of the United States of America, That the committee of said House upon the judiciary be, and is hereby, directed to inquire how far and to what extent the Congress of the United States has the constitutional right and authority to regulate and control by appropriate legislation railway travel and transportation in and between the different States of this Union; and if the members of said committee should be of the opinion that Congress possesses such constitutional power, then they are hereby instructed to frame and report such bill as will in their judgment most certainly provide for the safety and protection from injury and death of persons traveling over and upon such railways.

Mr. REAGAN. I have no objection to the introduction of that resolution, provided it be so modified as to go to the Committee on Commerce instead of the Committee on the Judiciary. It properly belongs to the Committee on Commerce, which has, under the rules of this House, the consideration of all such questions. With that change I do not object.

Mr. YOUNG. If the gentleman will look at the resolution carefully he will, I have no doubt, agree to withdraw his objection. A bill was introduced a moment ago looking partially to the accomplishment of the same object which I have in view. The reason why I prefer to have the resolution go to the Committee on the Judiciary is because it involves a question of constitutional law as to whether or not Congress has the right to legislate on this subject. The Committee on the Judiciary is instructed to look into the precedents and report to the House as to the jurisdiction of Congress over the subject.

The SPEAKER. The Chair understood the gentleman from Tennessee to introduce the resolution for adoption at this time.

Mr. YOUNG. Certainly; and the resolution itself provides for the reference of the subject to the Committee on the Judiciary. The gentleman from Texas, however, objects unless the resolution goes to the Committee on Commerce. I have suggested the reference of the subject to the Committee on the Judiciary, as I have already stated, because there is involved a grave question of constitutional law.

The SPEAKER. The Chair will hear the gentleman from Texas, if there be no objection.

Mr. REAGAN. Mr. Speaker, if there is any use for the Committee on Commerce in this House, it is to determine the very class of questions involved in this resolution. Indeed, no question comes before the Committee on Commerce which does not involve more or less the power of Congress, and yet that committee under the rules of this House is continually considering just this very class of questions. It is made the duty of that committee to consider this class of questions, and therefore the resolution should properly be referred to that committee instead of to the Committee on the Judiciary.

Mr. YOUNG. I have no objection to letting the resolution be modified as suggested by the gentleman from Texas, and take reference to the Committee on Commerce instead of the Judiciary Committee.

Mr. TOWNSEND, of New York. I object unless it be referred to the Committee on the Judiciary.

The SPEAKER. The gentleman cannot make a qualified objection.

Mr. TOWNSEND, of New York. Then I object unconditionally.

The SPEAKER. The resolution then is not before the House.

JAMES B. BELFORD.

Mr. KNOTT, from the Committee on the Judiciary, submitted a report on the credentials of James B. Belford, and moved that it be printed and recommitted.

The motion was agreed to.

Mr. HURD, by unanimous consent, presented the views of the minority of the Committee on the Judiciary, on the same question, and also moved that they be printed to accompany the majority report and recommitted.

The motion was agreed to.

DISTRICT OF COLUMBIA.

Mr. BUCKNER, by unanimous consent, (at the request of the commissioners of the District of Columbia,) introduced a bill (H. R. No. 4293) to provide for the support of the government of the District of Columbia for the fiscal year ending June 30, 1878, and for other purposes; which was read a first and second time, referred to the Committee for the District of Columbia, and ordered to be printed.

PREVENTION OF ELECTION FRAUDS.

Mr. HUNTER, by unanimous consent, introduced a bill (H. R. No. 4294) to provide for the election of Federal officers and to prevent frauds in such elections; which was read a first and second time, referred to the Committee on the Judiciary, and ordered to be printed.

ALSEA BAY.

Mr. LANE, by unanimous consent, introduced a bill (H. R. No. 4195) to provide for the survey and improvement of Alsea Bay, in Benton County, Oregon; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

MARGARET HUNTER HARDIE.

Mr. GARFIELD, by unanimous consent, introduced a bill (H. R. No. 4295) granting a pension to Margaret Hunter Hardie, widow of James A. Hardie, Inspector-General of the United States Army; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

IMPROVEMENT OF GREAT KANAWHA RIVER.

Mr. HEREFORD, by unanimous consent, introduced a bill (H. R. No. 4297) to authorize a further appropriation to continue the improvement of the Great Kanawha River, in West Virginia; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

E. W. BARNES—A RECUSANT WITNESS.

The SPEAKER. On the 21st day of December the House directed the Sergeant-at-Arms to take into custody the person of E. W. Barnes, and produce him at the bar of this House. The Sergeant-at-Arms having informed the Chair that the said person is in his custody, the Chair now directs that the said Barnes be brought to the bar of the House.

The SERGEANT-AT-ARMS (Mr. JOHN G. THOMPSON) appeared at the bar, having in his custody E. W. Barnes, and said: In obedience to the order of the House, I have now here the witness E. W. Barnes, whom I was directed to bring to its bar.

The SPEAKER. The Sergeant-at-Arms has now at the bar of the House E. W. Barnes, alleged to be in contempt of the privileges of this House, in that he refused to bring before a committee of this House, sitting in New Orleans, certain telegrams which said committee made demand of him for, and which said committee was authorized by this House to call for. The Chair desires in connection with this subject to submit to the House a communication which the Clerk will read.

The Clerk read as follows:

WASHINGTON, *January 3, 1877.*

SIR: Referring to our conversation last evening relative to our wish that the appearance of Mr. Barnes may be delayed until two o'clock on Friday next, we have the honor to ask that you will give your favorable consideration to this request, and oblige us by allowing us till the time mentioned to confer with Mr. Barnes relative to the answer to be presented on his behalf to the House of Representatives.

We have the honor to be, very respectfully, your obedient servants,

GROSVENOR P. LOWREY,
J. HUBLEY ASHTON,
Of counsel for E. W. Barnes.

Hon. SAMUEL J. RANDALL,
Speaker of the House of Representatives.

Mr. KNOTT. I offer the following resolution, and on it demand the previous question:

Resolved, That E. W. Barnes be allowed until Friday the 5th day of January, 1877, at two o'clock p. m., to make his answer at the bar of this House to the charge of contempt of its authority and breach of its privileges pending against him; and that said Barnes be remanded to the custody of the Sergeant-at-Arms and by him safely held until the judgment of the House be had on said charge.

The previous question was seconded and the main question ordered; and under the operation thereof the resolution was adopted.

Mr. KNOTT moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

The witness then withdrew in custody of the Sergeant-at-Arms.

IMPROVEMENT OF YOUGHIOGHENY RIVER.

Mr. BANNING, by unanimous consent, introduced a bill (H. R. No. 4298) for the improvement of the Youghiogheny River in Pennsylvania; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

RECONSIDERATION OF REFERENCES.

Mr. KASSON. I call for the regular order; and, pending that, I move to reconsider the various references of matters this morning by unanimous consent, and to lay the motion to reconsider on the table.

The SPEAKER. That motion is unnecessary. The fact that those matters came in under unanimous consent prevents their being brought back on a motion to reconsider.

Mr. KASSON. Then I call for the regular order.

ORDER OF BUSINESS.

The SPEAKER. The regular order being called for, the morning hour commences at fifteen minutes to one o'clock, the business of the morning hour being the call of committees for reports. The call rests with the Committee on Military Affairs.

There were no reports from the Committee on Military Affairs.

EFFICIENCY OF SEAMEN IN THE NAVY.

Mr. ROBBINS, of Pennsylvania, from the Committee on Naval Affairs, reported a bill (H. R. No. 4299) to promote the efficiency of seamen in the United States Navy; which was read a first and second time, recommitted to the Committee on Naval Affairs, and, with the accompanying report, ordered to be printed.

Mr. HALE moved to reconsider the vote by which the bill was recommitted; and also moved to lay the motion to reconsider on the table.

The latter motion was agreed to.

SAILMAKERS IN THE NAVY.

Mr. ROBBINS, of Pennsylvania, also, from the same committee, reported a bill (H. R. No. 4300) to regulate the appointment of sailmakers in the United States Navy; which was read a first and second time, referred to the Committee of the Whole on the state of the Union, and, with the accompanying report, ordered to be printed.

FEES OF CLERKS OF UNITED STATES COURTS.

Mr. DURHAM, from the Committee on Expenditures in the Department of Justice, reported back, with an amendment, the bill (H. R. No. 3776) fixing the fees of clerks of United States district and circuit courts.

The bill was read. It provides that thereafter the clerks of the several circuit and district courts shall charge twenty-five cents for every search for any particular mortgage, judgment, or other lien; and he shall charge for searching the records of the courts for judgments, decrees, or other instruments constituting a general lien on real estate, and certifying the records of such search, fifteen cents for each person against whom such search is required to be made; and said clerks shall account for the same as other fees are accounted for by him. It provides further that any person certifying said search except the clerk shall, upon indictment and conviction thereof, be fined in a sum not exceeding $100 for each offense.

The amendment reported by the committee was to strike out the words:

Any person certifying said search except the clerk shall, upon indictment and conviction thereof, be fined in a sum not exceeding $100 for each offense.

Mr. DURHAM. I can explain the object of this bill in a moment, if I can have the attention of the House.

Those gentlemen living in cities are more especially interested in this matter than those who live in the rural districts, and especially those living in the city of New York.

Clerks have been in the habit of making what they call searches for judgment records, and things of that sort, by deputy, and never accounting for the sums they receive. I believe it was ascertained by the committee that a very large sum in the city of New York, where these investigations are especially made, amounting to twelve or fifteen thousand dollars a year, is received, and yet the clerks have never rendered accounts for the services rendered.

Under the law as it stands the clerks of these courts are entitled to a fixed salary of $3,500 a year. Now if that is a fair compensation for them, after they have been paid the salary allowed by law and all their clerk hire and office rent and their incidental expenses are paid, then it certainly is not right that they should put in their pockets from twelve to fifteen thousand dollars a year, as they do in some instances, without accounting for it. And the Committee on the Expenditures in the Department of Justice, having considered the matter, have come to the conclusion that they ought to account for these fees as other clerks account for the fees they receive, and that is the sum and substance of the change as proposed in the existing law.

Mr. FORT. I desire to ask the chairman of the committee a question.

Mr. DURHAM. Not as the chairman of the committee, but as the member reporting the bill, I will answer all questions.

Mr. FORT. I understand that all money that is collected through and by a United States court passes through the hands of the clerk and he charges a commission on that money of 1 per cent. Is that so?

Mr. DURHAM. No, it is not. The marshal collects the money.

Mr. FORT. I am told by a member of this House that although the marshals collect the money they are required to pay it over to the clerks, and after the marshal has taken out his commission the clerk also takes out another commission, and I am told of a particular instance where he had bid off property; he not only paid the marshal's fee of several hundred dollars, but also was compelled to pay the clerk's fee of $400, when there was no money passed at all in the transaction, the property having been bid off for the plaintiff and then the plaintiff was compelled to pay the clerk's fee of over $400 for simply passing a check through his hands, and when no money passed at all. I am told that by a member of the House.

Mr. CAULFIELD. There was such a case.

Mr. DURHAM. That is true.

Mr. FORT. If that is true it seems to me that now is the best time to correct that evil by amending this bill.

Mr. CAULFIELD. A separate bill has been introduced for that purpose.

Mr. FORT. I am told by my colleague in front of me [Mr. CAULFIELD] that a bill has been introduced for that purpose, and I trust the gentleman from Kentucky [Mr. DURHAM] will allow this bill to be recommitted, so that it may be amended so as to include that provision.

Mr. DURHAM. That is altogether disconnected with this subject. The proposition stated by my friend is really correct, but his original question was not correct. All the money does not pass through the hands of the clerk, but certain moneys do, and they collect the percentage upon that. We propose to rectify that matter in another bill. I will now yield to the chairman of the committee [Mr. CAULFIELD] if he desires to make any further explanation in regard to the bill.

Mr. CAULFIELD. I hardly think it necessary to go into any extended argument in regard to this bill. It has been reported by the Committee on Expenditures in the Department of Justice after having made an investigation which satisfied that committee of the absolute necessity for such a bill. Unless such a bill as this should be passed by both Houses of Congress a great deal of the money that goes through the hands of these clerks will go into improper channels, fees will be charged to which they are not properly entitled, and the public, the litigants before the courts, will consequently suffer.

It was for the purpose of correcting these evils that the committee has thought proper to report this bill, and I hope that no objection will be made to it, but that it will be allowed to pass at once in order that it may go through the Senate and become a law before this Congress adjourns.

The amendment was agreed to.

The bill, as amended, was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. DURHAM moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

COMPENSATION OF UNITED STATES MARSHALS.

Mr. DURHAM also, from the Committee on Expenditures in the Department of Justice, reported with an amendment the bill (H. R. No. 3775) fixing the compensation of United States marshals and deputies.

The bill was read. It provides that from and after the 1st day of July, 1876, the compensation allowed the marshals of the United States shall not exceed $5,000 per annum, or exceeding that rate for any time less than a year; and the compensation of deputy marshals shall not exceed $5 per day while actually engaged in their duties, nor shall their whole compensation exceed $1,200 per annum. Any marshal who shall procure from his deputy a receipt for a larger amount than he pays said deputy, and files said receipt, and procures a credit for the same in the settlement of his accounts with the proper authorities of the United States, shall be liable to indictment therefor; and upon conviction thereof shall be fined $500 and confined at hard labor for a period of not less than one year nor more than five years.

All acts and parts of acts in conflict with the bill are repealed.

The amendment reported by the committee was to strike out from line 10 down to line 19 of the bill, as follows:

Any marshal who shall procure from his deputy a receipt for a larger amount than he pays said deputy, and files said receipt, and procures a credit for the same in the settlement of his accounts with the proper authorities of the United States, shall be liable to indictment therefor; and upon conviction thereof shall be fined $500 and confined at hard labor for a period of not less than one year nor more than five years.

All acts and parts of acts in conflict herewith are repealed.

And insert in lieu thereof the following:

And every such marshal shall procure from such deputy a receipt for the actual amount which he may pay such deputy on an account, and shall file such receipt and have credit for the same in the settlement of his accounts with the proper department.

Mr. DURHAM. I notice from the reading of the bill that the time for it to go into effect is stated to be the 1st day of July, 1876. It was intended to be 1877, and I will ask that that correction be made.

The SPEAKER. If there be no objection, the change will be made. There was no objection.

Mr. DURHAM. I can state the object of this bill in a moment or two, if I can have the attention of the House. The law as it now stands fixes the compensation of United States marshals at $6,000 a year, provided the fees of the office amount to that much. In addition to that amount, each marshal gets his clerk hire, office rent, fuel, &c., and is permitted to retain as much as three-fourths of the amount of the fees earned by his deputies. By the bill under consideration it is proposed to reduce his compensation from $6,000 a year to $5,000 a year, or the same as the pay of a member of Congress, which we suppose to be enough for a United States marshal.

In the second place, we propose to limit him to $5 a day in paying the deputy marshals. The reason of that is this: Some instances have come to the attention of the committee——

Mr. HUBBELL. Will the gentleman allow me to ask him a question?

Mr. DURHAM. Certainly.

Mr. HUBBELL. Does the $5 a day to deputies include traveling expenses?

Mr. DURHAM. The traveling expenses are paid in addition to the $5 a day. There is now a provision in the law allowing not only marshals but deputy marshals their traveling expenses.

Mr. HUBBELL. The reason I ask the question is this: There are portions of the country where $5 a day would not pay even the traveling expenses of a deputy marshal.

Mr. DURHAM. I am aware of that; but this bill does not interfere with the payment of traveling expenses. It merely fixes the amount which the principal marshal shall pay his deputies. The reason for limiting the amount to $5 a day is this: some instances have come to the attention of the committee where marshals have gone before the proper officers of the Government and asked and received a credit to the extent of three-fourths of the amount of fees earned by their deputies, and at the same time they did not pay their deputies more than one-half of the amount received from them. I remember one case where a marshal took from his deputy and received credit for over $2,000 in the settlement of his accounts, and yet he did not pay his deputy more than $750 of that amount. Our object is to put a stop to all that kind of dishonest practice by United States marshals.

The committee consequently propose to limit the pay given by marshals to their deputies to $5 a day each, and then to require the marshal to file a receipt for the actual amount only which he has paid to his deputies. The whole object of the bill is to remedy the defects which now seem to exist in the present law. We deem $5,000 a year, the pay of a member of Congress, to be ample compensation for a United States marshal. And when in addition to that amount their traveling expenses are paid, we believe that $5 a day is sufficient pay for any deputy whom the marshal may employ.

Mr. CONGER. I had thought that there was an amendment agreed to by the committee which I do not find here, and which I think should be incorporated in this bill. This bill proposes to limit the pay of deputy marshals to $5 per day during their actual employment. It then goes on to limit the whole compensation to an amount which would be less than $5 a day if they are continuously employed during the year, as to my knowledge marshals having certain duties to perform connected with the customs laws are employed and must necessarily be employed. This bill limits the whole compensation of a deputy marshal to $1,200 per annum, which would be less than $5 a day for even the working days of a year. With the consent of the gentleman from Kentucky [Mr. DURHAM] having charge of this bill, I would like to try the sense of the House upon a motion to strike out that limitation of $1,200.

Mr. DURHAM. I consented that my colleague on the committee [Mr. CONGER] should have the opportunity to move the amendment he has indicated.

Mr. CONGER. As the bill now reads it contains this provision:

And the compensation of deputy marshals shall not exceed $5 per day while actually engaged in their duties, nor shall their whole compensation exceed $1,200 per annum.

I move to amend by striking out the words "nor shall their whole compensation exceed $1,200 per annum," leaving the bill to provide

that the compensation of deputy marshals shall not exceed $5 per day while actually engaged in their duties. It is known that there are certain marshals connected with the customs whose duties continue day and night during the year, or for so much of that time at least as they have power and ability to perform their duties; that I know of my own knowledge. With the limitation already provided in the bill I think that the clause I have indicated should be stricken out, or the bill will work injustice to all that class of marshals whose duties are connected with watching the frontiers under the customs laws.

The SPEAKER. The Chair will state to the gentleman from Michigan [Mr. CONGER] that the question will first be taken on the amendments reported from the committee; then the amendment of the gentleman from Michigan will be in order.

Mr. CONGER. Very well; I only desire that my amendment shall be submitted to a vote of the House.

Mr. DURHAM. Unless some gentleman desires to discuss this subject further, I ask a vote on the amendments of the committee. After that vote is taken the gentleman from Michigan [Mr. CONGER] can submit his amendment and have it passed upon by the House.

The amendments reported by the committee were adopted.

Mr. CONGER. I now move to amend by striking out in lines 8, 9, and 10 of the bill these words: "or shall their whole compensation exceed $1,200 per annum."

Mr. CAULFIELD. Mr. Speaker, I desire to state the objection to this amendment. The Committee on Expenditures in the Department of Justice found in the course of their investigations that where there was no limited sum fixed as salary for these deputy marshals they adopted certain means which were considered very oppressive to litigants for the purpose of making more than their ordinary per diem. For instance, we found that if a *capias* were issued in the morning for the arrest of a person, it would be held by the deputy until late in the evening, when the man would probably be arrested on his way to his home, and, rather than suffer confinement during the night, would pay to the deputy $20, $30, $40, or $50 for staying with him that night and relieving him from the necessity of going to prison. This method of obtaining from possibly innocent parties fees which the deputy would not otherwise be allowed appeared to us oppressive; and we therefore thought it advisable to allow to these officers a salary which should not exceed $1,250 a year. As one member of the committee, I found, upon consultation with many of these deputies in the city of New York, that they preferred to receive a fixed salary rather than be subjected to these temptations. I believe that this measure will not only meet the approval of the marshals and deputies themselves, but will prove a benefit to every community in which the practices of which I speak have heretofore prevailed. For this reason I oppose the amendment of my colleague upon the committee, and hope it will not be adopted unless he puts it in some shape which will give to the deputy marshals a fixed salary beyond which they cannot receive the benefit of fees.

Mr. CONGER. Mr. Speaker, the bill as it has been read provides that deputy marshals shall receive $5 a day while actually engaged. Certain deputies—the most useful perhaps of all, those connected with the customs service—perform duties which are continuous night and day throughout the year. If they receive $5 a day during the year, their annual compensation would be $1,825. This bill limits the salary to $1,250. If these officers receive $5 a day for all the working days of the year, excluding Sundays, they would receive $1,565. There is no reason why this class of men, whose duties are the most laborious in the whole service, and necessary to be performed during the entire year, should not receive for their services $5 a day. On the frontier, from Maine to the Pacific, wherever customs officers are required, they are on watch night and day.

The object of Congress will have been attained when we prevent the improper collection of fees by these officers. We have limited the amount of their compensation to $5 a day while actually engaged; and while so engaged they should receive that compensation. I think there can be no possible objection to this amendment. It does not interfere with any of the desirable objects of the bill, while it prevents results which would be injurious to the customs service.

Mr. GARFIELD. I desire to ask whether this bill includes marshals in the Territories?

Mr. CONGER. It includes all marshals of the United States courts.

Mr. GARFIELD. I wish to say in this connection that heretofore marshals of the Territories have been in many cases so inadequately paid, especially where their services required them to travel long distances, that there has been almost a denial of justice. Hence the question is whether these officers should be included in the bill.

Mr. CONGER. It reaches all marshals of the United States.

Mr. GARFIELD. I observed some years ago when visiting one of the Territories that in the latter part of the year, when the allowance for these services had run out, a marshal could not serve a subpœna or make an arrest unless he did it at his own expense, which no officer can be expected to do. Therefore the administration of justice lags. I do not know whether this bill meets such a case. Does it do away with mileage or does it allow the mileage to continue? I think that some special provision ought to be made in regard to marshals of the Territories.

Mr. DURHAM. I will state to the gentleman from Ohio [Mr. GARFIELD] that this bill does not interfere at all with the mileage; it leaves that as it has been.

In response to my colleague upon the committee, [Mr. CONGER,] I will say that, personally, I do not know anything about the duties performed by these customs officers, as there is none in my section of the country. If their duties are so onerous as my friend from Michigan states, I do not suppose that the present compensation is too high; but I am satisfied that, so far as regards deputies everywhere else, $5 a day for the time actually employed, or $1,200 annually, with mileage in addition, is ample compensation.

Mr. CONGER. This cannot alter the rule at all. It does protect the rights of a certain class of officers who, within my own knowledge, are most faithful watchmen of the interests and revenues of the United States. If I could make any change at all I would make the compensation of that class of marshals who are connected with watching smuggling on our frontier, very laborious and hard, requiring day and night service continually—I would make that greater than the compensation of those who perform duties in day-time whenever they choose. I would give them their compensation of year's pay at $5 a day. I think the amendment a proper one and ought to pass.

Mr. DURHAM. Let us have a vote.

The question recurred on Mr. CONGER'S amendment.

The House divided; and there were—ayes 46, noes 80; no quorum voting.

Mr. CONGER. I demand a further count. I thought the bill was to be reported in this way, and think I cannot be mistaken, and therefore I move to go through all the forms.

Mr. CAULFIELD. I ask unanimous consent to make a proposition, which I think the gentleman will acquiesce in.

The SPEAKER. There being no objection, the Chair will hear what the gentleman has to say.

Mr. CAULFIELD. My proposition is, if the gentleman will prepare an amendment, and it will take only a moment, which will except the particular officers he has mentioned, I think the House will accept it. As a member of the committee, I will say I will be in favor of an amendment which will except that particular class of deputies, but I am not in favor of an amendment which will let in these hordes of deputies all over the country, many of whom have nothing on earth to do, and to my knowledge the courts of this country are sometimes opened when there is no business before them, and only in order that the deputies of the courts may get their per diem.

Mr. CONGER. If the objection be of the least possible weight, the gentleman has provided in his bill that men shall at least have an opportunity of getting $1,250 who may not have served necessarily more than a week.

Mr. CAULFIELD. No; that is when actually engaged.

Mr. CONGER. The "actually engaged" clause is the same in the amendment I have proposed.

Mr. HOLMAN. I demand the regular order of business.

The SPEAKER. The regular order of business being demanded, the Chair will appoint as tellers Mr. DURHAM and Mr. CONGER, no quorum having appeared on the last vote.

The House again divided; and the tellers reported—ayes 44, noes 83; no quorum voting.

Mr. HOLMAN. I move the House do now adjourn.

Mr. DURHAM. I think I can obviate the present difficulty.

Mr. CLYMER. I demand the regular order of business.

The SPEAKER. The regular order of business is the motion to adjourn.

Mr. CAULFIELD. I understand this comes up as the first business in order to-morrow after the reading of the Journal.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of its clerks, announced the passage, without amendment, of a bill (H. R. No. 4246) to change the name of the steamship Whirlwind to that of Arcadia; and

A bill (H. R. No. 4272) authorizing the use of certain funds now in the Treasury belonging to the Osage Indians.

It further announced the passage of a bill (S. No. 1049) to authorize sundry allowances to James Atkins, late collector of internal revenue for the fourth district of Georgia, in the settlement of his accounts.

NATURALIZATION OF REGISTERED SEAMEN.

The SPEAKER, by unanimous consent, laid before the House a letter from the Secretary of State, transmitting, in conformity to law, a statement of registered seamen receiving citizenship; which was referred to the Committee on Commerce, and ordered to be printed.

TRANSPORTATION OF UNITED STATES NOTES, ETC.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of the Treasury, reporting a deficiency in the appropriation for the transportation of United States notes and securities for the present fiscal year; which was referred to the Committee on Appropriations.

MILITARY CLAIMS.

The SPEAKER also, by unanimous consent, laid before the House the following communications; which were referred to the Committee on Military Affairs:

A letter from the Secretary of War, transmitting a report in the case of Richard H. Birmingham, late sergeant of the Sixty-ninth New York Volunteers.

A letter from the Secretary of War, transmitting information in the case of Alvah W. Hicks.

A letter from the Secretary of War, transmitting a report of the

Adjutant-General on the bill (H. R. No. 4170) for the relief of Matthew W. Haltzer, late private in Company H, Twenty-eighth Wisconsin Volunteers.

A letter from the Secretary of War, transmitting a communication from the Quartermaster-General in regard to the condition of clothing, camp, and garrison equipage accounts of Lieutenant V. M. Jones of the Fourth Michigan Cavalry.

A letter from the Secretary of War, transmitting a report of the Adjutant-General on the bill (H. R. No. 4133) for the relief of James P. Carroll, late of Company F, Fiftieth Kentucky Volunteers.

A letter from the Secretary of War, transmitting a report from the Adjutant-General on House bill 2721, for the relief of John Hoffman, private Company K, One hundred and fifth Pennsylvania Volunteers;

A letter from the Secretary of War, transmitting a report from the Adjutant-General, on the applications of Benjamin Penny, private Company G, Forty-fourth Ohio Volunteers, and Eldridge Weaver, Company C, Seventeenth Illinois Volunteers, for honorable discharge; and

A letter from the Secretary of War, transmitting the report of the Adjutant-General, on House bill No. 4171 for the relief of Alonzo W. Baker, private Company A, Twenty-fourth Wisconsin Volunteers.

COMMITTEE ON COUNTING ELECTORAL VOTE.

The SPEAKER. The Chair appoints Mr. McDILL, of Iowa, to fill the vacancy on the committee on the privileges, powers, and duties of the House of Representatives in counting the electoral vote for President and Vice-President of the United States, caused by the resignation of Mr. MONROE, of Ohio.

LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted as follows:

To Mr. LORD, for five days on account of sickness in his family.

To Mr. WALSH, for one week.

To Mr. JONES, of New Hampshire, for one week from the 8th instant.

To Mr. COLLINS, until Tuesday the 9th instant.

To Mr. ROBINSON, until the 10th instant on account of sickness.

B. T. ZIMMERMAN.

On motion of Mr. WHITE, by unanimous consent, leave was given to withdraw from the Committee on Military Affairs the papers in the case of B. T. Zimmerman, a veteran soldier in the late war.

The motion of Mr. HOLMAN was then agreed to; and the House accordingly (at one o'clock and thirty-five minutes p. m.) adjourned.

PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. BLAND: The petition of the county court of Laclede County, Missouri, against granting subsidies to the Atlantic and Pacific Railroad Company until said company conform to the State laws of Missouri, by paying taxes on their property, to the Committee on the Pacific Railroad.

By Mr. BUCKNER: A paper relating to the establishment of a post, route from Troy, via Brussels, to New Hope, Lincoln County, Missouri to the Committee on the Post-Office and Post-Roads.

By Mr. GARFIELD: The petition of Andrew J. Herroon, late a private in Company F, Twenty-ninth Regiment Ohio Volunteer Infantry, for a pension, to the Committee on Invalid Pensions.

By Mr. KIDDER: A paper relating to the establishment of a post-route from Firesteel, via Chanka and Wessington, to Fort Thompson, Dakota Territory, to the Committee on the Post-Office and Post-Roads.

By Mr. LUTTRELL: The petition of J. J. Astor, Brown Brothers & Co., Drexel, Morgan & Co., Phelps, Dodge & Co., Peter Cooper, W. C. Bryant, D. Appleton & Co., Arnold, Constable & Co., Benjamin B. Sherman, August Belmont & Co., and other business firms and citizens of New York City, representing a large proportion of the financial and commercial interests of the city of New York, expressing satisfaction at the action of Congress in appointing conference committees to consider a proper mode of counting the ballots for President and Vice-President of the United States, and earnestly asking that all party considerations may be thrown aside and that unselfish patriotism may guide the members of the two Houses of Congress in their legislative action, to the joint committee on counting the electoral vote.

By Mr. RUSK: The petition of L. P. Wetherby and others, bondsmen of J. D. Reymert, late receiver at Hudson, Wisconsin, to be relieved from a judgment recovered against them by the United States, to the Committee on Public Lands.

Also, the petition of citizens of Pierce, Saint Croix, and Dunn Counties, Wisconsin, for the establishment of a post-route from Rock Elm Centre, Pierce County, easterly and northerly, crossing Eangalle River, near the mouth of Kady Creek Valley, thence up said valley, by Oak Ridge, to Wilson, on the West Wisconsin Railroad, to the Committee on the Post-Office and Post-Roads.

By Mr. STENGER: The petition of Mrs. Mary Bowman, mother of Calvin Bowman, deceased, late a private in Company E, One hundred and forty-ninth Regiment Pennsylvania Infantry Volunteers, for a pension, to the Committee on Invalid Pensions.

IN SENATE.

THURSDAY, *January* 4, 1877.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

The Journal of yesterday's proceedings was read and approved.

HOUSE BILLS REFERRED.

The following bills from the House of Representatives were severally read twice by their titles and referred to the Committee on the Judiciary:

A bill (H. R. No. 1617) to remove the political disabilities of George S. Hawkins, of Florida; and

A bill (H. R. No. 4273) to remove the political disabilities of A. C. Myers, of Maryland.

The bill (H. R. No. 767) for the relief of Samuel B. Stauber and others was read twice by its title and referred to the Committee on Finance.

The following bills were severally read twice by their titles and referred to the Committee on Military Affairs:

A bill (H. R. No. 969) for the relief of Charles H. Johnson, late first lieutenant of the Fifteenth Michigan Infantry;

A bill (H. R. No. 2218) for the relief of Mrs. Amanda Rains;

A bill (H. R. No. 2229) for the relief of Chancy J. Poore, late a private in Battery G, First New York Light Artillery;

A bill (H. R. No. 3067) for the relief of Alexander Anderson, late first lieutenant Fourteenth New York Volunteer Cavalry;

A bill (H. R. No. 3509) for the relief of the legal representatives of R. H. Murrell, deceased, late commissary of the Tenth Tennessee Cavalry;

A bill (H. R. No. 3512) for the relief of First Lieutenant Frederick H. E. Ebenstein, Twenty-first Infantry United States Army; and

A bill (H. R. No. 3574) for the relief of Marshal P. Thatcher.

The following bills were severally read twice by their titles and referred to the Committee on Pensions:

A bill (H. R. No. 703) granting a pension to Catherine Ferry;

A bill (H. R. No. 838) granting a pension to Joseph Odell;

A bill (H. R. No. 2237) granting a pension to Anson K. Young;

A bill (H. R. No. 2519) granting a pension to James M. Bailey;

A bill (H. R. No. 3292) providing for a pension to be paid to Andrew Jackson, (colored,) of Pittsburgh, Pennsylvania;

A bill (H. R. No. 3415) for the relief of Mrs. Julia H. Totten, widow of James Totten, late lieutenant-colonel and assistant inspector-general United States Army;

A bill (H. R. No. 3436) granting a pension to George Martz;

A bill (H. R. No. 3510) granting a pension to Cynthia Abbott;

A bill (H. R. No. 3511) granting increased pension to Thomas G. Kingsley;

A bill (H. R. No. 3513) granting a pension to Dr. P. F. Reuss;

A bill (H. R. No. 3575) granting a pension to Eliza A. Blaze, widow of Abner T. Blaze, late a private in Company C, Thirteenth Indiana Cavalry Volunteers;

A bill (H. R. No. 3577) granting a pension to Catharine Barnes;

A bill (H. R. No. 3578) granting a pension to Eliza McConnel;

A bill (H. R. No. 3579) granting an increase of pension to Eugene O'Sullivan, late sergeant Company K, Eighteenth Missouri Volunteer Infantry;

A bill (H. R. No. 3580) granting a pension to Rachael A. Cullison, widow of Richard W. Cullison, late a private in Company D, Forty-fifth Regiment Ohio Volunteers; and

A bill (H. R. No. 3581) granting a pension to Minerva Williams and her minor children.

EXECUTIVE COMMUNICATION.

The PRESIDENT *pro tempore* laid before the Senate a letter from the Secretary of the Interior, transmitting, in compliance with a resolution of the Senate adopted yesterday, a copy of the annual report of the Central Pacific Railroad Company of California for the year ending the 30th of June last; which was ordered to lie on the table, and be printed.

Mr. CONKLING. I have been requested to present a petition weighty by reason of the subject to which it relates, and by reason also of the number and character of those who sign it.

The petitioners are citizens of New York, distinguished not only for their prominence as members of society, but for the large and varied interests they represent. They are men prominent in each of the great political parties of the country.

I observe among the signatures names of eminent bankers, merchants, manufacturers, ship-owners, scholars, professional men, and other names, long and honorably associated with leading enterprises and industries. It would be difficult to select in any State of the Union one hundred and fifty individuals and firms who represent a greater sum of property, intelligence, and character, or who as petitioners deserve more consideration.

The petition is brief, and I will read it:

To the honorable the Senate and House of Representatives of the United States of America in Congress assembled:

Your memorialists, representing a large proportion of the financial and commercial interests of the city of New York, beg leave most respectfully to express their great satisfaction at the action of your honorable bodies in appointing committees of conference to consider the proper mode of counting the ballots for President and Vice-President of the United States.

They find this action as an indication that the two Houses of Congress are desirous of settling this complicated question in a spirit of moderation and conciliation; and they beg leave to represent that, in acting thus your honorable bodies have the cordial sympathy of the great mass of the American people, irrespective of party.

Your memorialists most respectfully but most earnestly, pray that all mere party considerations may be thrown aside, and that in this crisis in the history of the United States the pure and unselfish patriotism which inspired the founders of the Republic may guide your legislative action, and that you may thus relieve the country from its present uncertainty and apprehensions by a prompt determination of the mode in which the pending momentous issue shall be decided.

And your memorialists will ever pray, &c.

The signatures are too many to read. In laying this petition before the Senate, it may not be amiss to add an avowal of my sympathy with its appeal for orderly, lawful, and patriotic action.

In executing the Constitution in any instance, and especially in an instance so grave as the one referred to, partisan feeling as a guide and rule of action can rightfully have no place. Obedience to law, the observance of the Constitution, and the maintenance of truth, is not a party question or proceeding; it is beyond party, and above party.

Parties may contend, and I believe it wholesome in a free government that parties should contend over measures and candidates. But when the contest has been submitted to the ballot-box, the final arbitrament of popular contests known in our system, the only duty, the only lawful proceeding connected with it which remains is to find the honest, true result, to declare it, bow to it, and stand by it. That is the duty of the hour. It rests on the two Houses of Congress, it rests on the nation, it rests on every citizen of the Republic.

That it will be done, and done peacefully, decently and in order, these petitioners do not I think disbelieve. They in common with all men may derive confidence from the fact that interest and expediency not less than patriotism and honor point in one direction, and teach one lesson.

Whoever stands on right and truth will not fall—whoever attempts to stand on wrong and falsehood will be overthrown.

I move the reference of the petition to the select committee to which it appropriately belongs.

The PRESIDENT *pro tempore*. The petition will be referred to the select committee relative to counting the electoral votes for President and Vice-President.

Mr. CONKLING. I present also fourteen memorials signed by a large number o ship-owners and shipmasters remonstrating against the passage of the bill (H. R. No. 3187) to amend title 53 of the Revised Statutes relating to merchant seamen, recently passed by the House. I move the reference of these memorials to the Committee on Commerce.

The motion was agreed to.

Mr. DAVIS. I present a similar petition to the one which the Senator from New York [Mr. CONKLING] so well described a moment ago, from citizens, bankers, &c., of New York, and I move that it be referred to the select committee to report a mode of counting the electoral votes for President and Vice-President.

The motion was agreed to.

Mr. WALLACE. I present a similar petition from citizens, without distinction of party, of Columbia, Lancaster County, Pennsylvania; and I move that it be referred to the select committee to report a mode of counting the electoral votes for President and Vice-President.

The motion was agreed to.

Mr. CRAGIN presented a petition of sundry citizens of New Hampshire, praying the passage of House bill No. 2685 for the distribution of the unappropriated moneys of the Geneva award; which was referred to the Committee on the Judiciary.

REPORTS OF COMMITTEES.

Mr. HAMILTON, from the Committee on Pensions, to whom was referred the bill (H. R. No. 1859) granting a pension to Harvey B. Kilbourn, private in Company C, Thirtieth Regiment Pennsylvania Militia, reported it without amendment.

He also, from the same committee, to whom was referred the bill (S. No. 965) granting a pension to Bridget Collins, widow of John Collins, reported adversely thereon; and the bill was postponed indefinitely.

Mr. WITHERS. The Committee on Pensions, to whom was referred the petition of A. B. Meacham, praying compensation for injuries received in the Modoc Indian massacre while acting as chairman of a peace commission in treating with the Modocs under a flag of truce, ask to be discharged from its further consideration, and that it be referred to the Committee on Claims. I will state that this petition has been before the Committee on Claims and by them it was referred to the Committee on Pensions. The petitioner asks that $30,000 be allowed him for injuries received in the Modoc war, he at the time not being in either the military or naval service of the United States, and the Committee on Pensions deem that they cannot properly take cognizance of such a claim.

Mr. MITCHELL. I desire to state that I think the petition went to the Committee on Pensions through a misapprehension. I am very glad that it has been reported back and is to be referred to the Committee on Claims.

The report was agreed to.

Mr. WITHERS, from the Committee on Pensions, to whom was referred the petition of Mary M. Berry, mother of Lieutenant James W. Berry, late of Company H, One hundred and sixth Regiment Illinois Volunteers, praying to be allowed a pension on account of services rendered by her son during the late war, submitted an adverse report thereon; which was ordered to be printed, and the committee was discharged from the further consideration of the petition.

Mr. BRUCE, from the Committee on Pensions, to whom was referred the bill (H. R. No. 3035) granting a pension to Smith Bell, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

Mr. WRIGHT, from the Committee on Claims, to whom was referred the bill (S. No. 922) for the relief of Crary & Carter, reported adversely thereon; and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (S. No. 327) for the relief of Dr. J. J. Gibson, of Corinth, Mississippi, reported adversely thereon; and the bill was postponed indefinitely.

Mr. WRIGHT. The same committee, to whom was referred the petition of John G. Miller, praying compensation for thirty-two bales of cotton taken from him in February, 1865, by the United States, have had it under consideration and find that this petition was presented in January, 1875, was represented in January, 1875, and that there is no testimony of any kind whatever accompanying it, nor has any been filed since. We, therefore, ask that the committee be discharged from its further consideration, and that the claim be rejected.

The report was agreed to.

Mr. WRIGHT. The same committee, to whom was referred the memorial of Mrs. Catherine M. Pritchard, of New Orleans, praying to be paid certain rentals, costs of repairs, &c., upon her property in New Orleans, occupied by the United States during the rebellion, or that her claim for the same be referred to the commission of claims, or to the United States Court of Claims for adjudication, find that this petition was presented in February, 1875, represented in December, 1876, that no testimony of any kind whatever accompanied the petition, nor has any been presented since; and they recommend that the committee be discharged and that the claim be rejected.

The report was agreed to.

ORDER OF BUSINESS.

Mr. WRIGHT. Before I take my seat I wish to call the attention of the Senate to the fact that before the recess I gave notice that I should immediately thereafter, or as soon as I could get the floor, ask the attention of the Senate to a bill that I had presented providing for a court of contest touching presidential elections. I gave notice on Tuesday that I should seek to obtain the floor this morning for that purpose as soon as the morning business should be through. It is my purpose, if the Senate will give me their attention and I can obtain the floor, to discharge that duty after the morning hour, or as soon as the morning business shall be through.

Mr. MORTON. The Committee on Privileges and Elections yesterday reported a resolution relative to the production of telegraphic dispatches. It is a matter of a good deal of importance to have that question decided and decided promptly. If decided in one way it may become necessary to send a distance for witnesses. If the morning business is over, I will ask the Senate to proceed to the consideration of that resolution.

The PRESIDENT *pro tempore*. If there are no further reports of committees, the introduction of bills is next in order.

BILLS INTRODUCED.

Mr. BOUTWELL asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1110) for the relief of Captain Edwin R. Clarke; which was read twice by its title, and, with accompanying papers, referred to the Committee on Military Affairs.

Mr. WRIGHT (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1111) for the relief of Thomas E. Maley; which was read twice by its title, referred to the Committee on Military Affairs, and ordered to be printed.

Mr. CHAFFEE asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1112) to divide the State of Colorado into two judicial districts; which was read twice by its title, referred to the Committee on the Judiciary, and ordered to be printed.

CONTESTED PRESIDENTIAL ELECTIONS.

Mr. WRIGHT. Mr. President, I trust that my friend from Indiana [Mr. MORTON] will allow me to call up the bill that I referred to with a view of proceeding to present some considerations in its support at this time. I appreciate the importance of the matter to which he refers, and if it is not to involve discussion and can be disposed of without discussion of course I shall not object.

Mr. EDMUNDS. It will involve discussion, of course.

Mr. WRIGHT. I conclude that there is no doubt but that it will involve discussion, and my friend can take up that proposition after I shall conclude.

Mr. MORTON. If I understand the character of the bill referred to by the Senator from Iowa, it involves a very grave question which is now perhaps under consideration by two committees of this body, and perhaps of the other House also. We cannot arrive at any conclusion on that bill to-day, and I think there is some necessity for a decision of the Senate upon this other question. I hope my friend will not object therefore if I move to take up the resolution this morn-

ing, and I now make the motion that the Senate proceed to the consideration of the resolution reported yesterday by the Committee on Privileges and Elections.

Mr. WRIGHT. I understood that I had the floor and made a motion to take up the other bill.

Mr. MORTON. I hope my friend will not press it now.

The PRESIDENT *pro tempore*. The Senator from Iowa rose first and yielded to the Senator from Indiana.

Mr. WRIGHT. I only yielded to him for a suggestion, and I now renew my motion.

The PRESIDENT *pro tempore*. The Senator from Iowa states that he yielded to a suggestion and now asks to take from the table the bill he has named,

Mr. WRIGHT. My object is alone to have a reference of it after I shall have concluded what I have to say on the subject.

Mr. EDMUNDS. I certainly hope there will not be any objection to this being done, because it is the usual courtesy of the Senate, when something of very great importance is not pressing, to allow any Senator to submit observations on pending measures at any time that suits his convenience. The Senator from Iowa gave notice some days since that this morning he would like to submit some remarks on the subject of the bill which he has introduced and then to have it referred to a committee. I should be very sorry if anything except the extreme urgency of some other pressing measure should interrupt the courtesy that always exists here.

Mr. MORTON. Is it for the mere purpose of enabling the Senator to submit some remarks with a view of having his bill referred then?

Mr. EDMUNDS. That is what he says.

Mr. MORTON. Of course I cannot stand in the way of a personal courtesy of that kind to my friend from Iowa, but I shall ask the Senate to proceed, after he concludes his remarks, to the consideration of the resolution.

Mr. EDMUNDS. That he assents to, I believe.

The PRESIDENT *pro tempore*. The Senator from Iowa moves the present consideration of the bill which he has named.

Mr. WRIGHT. I move to take from the table Senate bill No. 1082.

The PRESIDENT *pro tempore*. The title of the bill will be read.

The CHIEF CLERK. A bill (S. No. 1082) to establish a court for the trial of contested elections in the offices of President and Vice-President of the United States.

Mr. MORTON. I beg to suggest to the Senator from Iowa that he allow the resolution to be taken up and laid aside informally and then call up his bill, and when he concludes the resolution will be before the Senate without further action.

Mr. WRIGHT. I think I would prefer proceeding with this matter just as it is at present.

The PRESIDENT *pro tempore*. The Senator from Iowa moves to take from the table the bill the title of which has been read.

The motion was agreed to.

The PRESIDENT *pro tempore*. The bill is before the Senate.

Mr. WRIGHT. Mr. President, I concurred in the report of the Judiciary Committee recommending the passage of the joint resolution proposing an amendment to the Constitution for a different method of counting the electoral vote, and gave it my support in the Senate. This I was induced to do, both because it seemed to be fairly just and equitable, and if the method proposed was no better than the present, I yet thought it more likely to reach results which would command the approval and support of the people. I favored it also because I was ready to do anything legitimately within my power which might tend to allay popular excitement, in so far as it obtains, and solve in a manner as nearly satisfactory to all as possible the questions confronting the Senate and the people of the nation. In a like spirit I have brought forward the bill to which I now invite the attention of the Senate. In doing so I shall aim to avoid for the most part any reference to what are known as the disputed returns from certain States, questions which have already not a little engaged the attention of the two Houses and the country.

The provisions of this bill are easily understood and may be briefly stated.

To the end that the evidence of such a contest, from its beginning to its close, may be carefully preserved and in a department in keeping with the dignity and importance of the office involved, the contestant is in writing to notify the Secretary of State of his intention to contest and the grounds thereof. This he is to do within ten days after the declaration of the result as contemplated by the Constitution and the statute. The Secretary of State is at once to notify the Chief-Justice of the Supreme Court, who is to fix a day, not more than ten days thereafter, for the commencement of the trial. He is also to notify the incumbent or contestee, and selects and gives notice to his associates on the proposed board. These associates are to consist of six district or circuit judges, to be selected by the Chief-Justice from those of different political parties, and they are to hold their sessions in the city of Washington. The Chief-Justice is to preside, and together they have power to adopt rules as to pleadings, amendments, witnesses, and the like, and to make and promulgate all those necessary for executing the jurisdiction conferred; but there is to be no unnecessary delay, since all rules, orders, and proceedings shall be such as to lead to a speedy determination of the matters in contest, so far as consistent with their proper and just adjudication. This board is invested with all the usual powers belonging to a court of original and general jurisdiction, as to administering oaths, subpœnaing witnesses, compelling their attendance, sending for persons and papers, and, in a word, all matters necessary or incident to the jurisdiction conferred. All questions may be decided by a majority vote; a quorum consists of a majority of the whole number, and the ninth section points out specifically how or in what manner they are to govern themselves on the hearing and determination of the matters submitted. The last section gives the right of appeal to the Supreme Court, but the judgment of the board is not to be suspended pending such appeal unless so ordered of record by them. The Supreme Court is to give such appeal precedence over all other cases, and proceed at once to its determination and decision.

These are the substantial features of the bill. I think it ought to be amended by providing that no member of the tribunal should be eligible to any office of profit or trust for four years after their service. To avoid any doubt it should be made clear, also, that the Chief-Justice is to select six associates for each case of contest, and not that those selected are to serve in all or subsequent cases. Neither am I by any means prepared to say that it is not advisable to greatly simplify the language used in the ninth section as to how or in what manner this board shall proceed in determining the questions involved. But all these matters can be settled by the greater experience and better knowledge of the committee and of the Senate, and to every effort in this direction I am prepared to give my most cordial co-operation. It may be asked, why not make the judges of the Supreme Court this tribunal? I answer, because I deemed it best to steer clear of the point made by some, that this court, as one of original jurisdiction, should not be called upon to decide, if it can be avoided, political questions; that whatever the result arrived at by them, their motives would be impugned, and thus the influence of this great and high tribunal impaired. And for the further reason, too, that however great my confidence that these judges would decide the case according to the very law and facts, uninfluenced by any possible political bias, I did not know but there might be those who, by reason of the accepted political complexion of the court, would feel otherwise. I am alone solicitous to have a tribunal which shall be as nearly acceptable to all as practicable, one, if to be found, against which no possible charge of political bias shall obtain. This may not be attainable absolutely, but I would have it approximated if it is in the power of legislation to do so.

I have selected a tribunal with judicial powers and given the right to a final hearing before the highest court in the land. And this because I believe the people of this country have a more profound respect for this great co-ordinate department of the Government than any other. If they and we cannot feel assured that in these tribunals we may find integrity and honesty and purity, that in the courts the citizen can find protection in his rights and against wrongs, then we had as well abandon the idea of self-government and become revolutionists and disorganizers. The man who is unwilling to leave any great question affecting his rights or the rights of many, public or private, if it shall become necessary, to these tribunals, admits either a want of confidence in their integrity, or that he seeks some unfair and unconscionable advantage. I have believed and do believe that to none other than a judicial tribunal could we so safely intrust such an inquiry; that in none other would the people have such confidence and that from no other would we be so likely to obtain a decision which would be accepted with such unquestioning and general acquiescence. If in this I am mistaken, then I confess I greatly misjudge the temper of the public mind. Believing that I am not, however, I have proposed this board of contest, with the powers indicated.

But I believe this bill to be right in principle, whatever might be our surroundings. I believe the present condition of things renders it peculiarly appropriate, if not a possible necessity. But however this may be, I repeat that I believe it is right in principle. Not that it is as perfect in all its details, by any means, as it should and may be made, nor that its proposed machinery is necessarily the best. I am not wedded to its methods. I care more, much more, for the principle involved than any details. For I believe it to be consistent with our popular form of government, in harmony with the hereditary love of our people for peaceful, legal methods, consistent with the rights of those seeking the presidential or other office in this nation, abundantly supported by the legislation of every State of the Union, and not in conflict either with the letter or spirit of the Constitution.

There are some, I know, for whose opinions I entertain the most profound respect, who maintain that the presidential office should not be made the football, as they term it, of motions, demurrers, pleadings, and orders in the courts, even the highest of the land; who reason that the fathers intended that this high officer should, when inaugurated, be immovably secure in his tenure, in no manner subject to writs of *quo warranto* or other like process or inquiry; and that it is better for the peace and quiet of the country and the integrity and harmony of the public service that one as to whose election or right to the office even fair doubts may obtain should fill out the term than that the public mind should be kept in a fever of unrest and the policies and administration of the incumbent crippled or held in check by the fear of possible or pending litigation; that, in a word, it is better to have stability of tenure than to struggle through the mazes of the courts to see whether, possibly, there has not been some mistake, or whether some aspirant for the coveted place has not by possibility been unjustly denied his rights.

In this reasoning, conceding its plausibility, I cannot concur. I believe in the cardinal theory of this Government, that, having regard at all times of course to legal forms and requirements, the popular will should be carried out. Within the rule as stated, nothing should be allowed to stand in the way of this. The man elected by the people, under the provisions and forms of the Constitution, should be the President. This is just as vital, if not more so, in the case of the very highest officer, as it is in the lowest. The legislation or failure to legislate which ignores this principle strikes a blow which may be treated as trivial and of but little moment, but it will as certainly leave scars and wounds which will open in time to deplete the life-blood of the Republic, as that every wrong and every departure from right, by laws the most inexorable, bring their certain and deserved penalties and punishments. There can never be a departure from principle without sooner or later bringing with it consequent injury. All legislation which aids or tends to aid in finding and carrying out this popular will within settled rules is more likely to be in the line of safety than that which hedges in the tribunals of the country, legislative or judicial, by mere unnecessary technicalities. The people have a right to the President of their choice. No man can afford to take the high office who is otherwise chosen. No man at all fitted to assume trusts so high and duties so great will or can dare take the place in opposition to this will. It is more important that this will should be executed than that any man or party should have or lose power; than that any man or party should be voted up or voted down. No party can dare do wrong to gain power. Power thus gained must necessarily be short lived and the party cheated will be assuredly vindicated by the next overwhelming verdict of the people. Power obtained by force, by violence, by intimidation, by trampling down the most sacred rights of the citizen, defying the grandest safeguards and guarantees of the Constitution, all such power is obtained in fraud of the people's will and must and will soon meet their righteous and deserved judgment of condemnation. There can neither in morals nor law be any justification of wrong-doing that power may follow.

By the laws of many of the States and now by an almost unbroken series of decisions, all tribunals exercising judicial powers in matters of contested elections, drive through technicalities and forms, save as they are safe or effectual aids to ascertain the will of those casting their ballots. These forms and rules, of course, are to be upheld in all their integrity in so far as they are aids to legitimate methods in reaching this will. But consonant with the very corner-stone of our institutions, that this is a government of the people, this will is the cardinal thing to be sought for; and so, as I have said, the courts without dissent almost now hold. And as in the States touching the most inferior as well as the most important offices, so it should be in our popular national elections. In national as in State elections the masses of the people are honest. Unlike mere political gamblers—a class who if followed would lead the Republic to Mexicanized anarchy, the terrorism of the sword or the bludgeon, or the equally-to-be-deprecated schemes of the corruptionists—unlike these, I say, the people have no wish to nor should nor must they be driven to resort to artifice or mere forms to support either the intrigues of factions or the plans and purposes of dissatisfied, hungry, and aspiring office-seekers and demagogues.

Again, I know as you do, Mr. President, that grave and radical differences of opinion obtain as to the powers of the two Houses, touching the counting the electoral vote. That these differences, when honestly entertained—in the present condition of the public mind and remembering the strength of political or party bias or convictions—will be difficult if not impossible to reconcile, it needs no argument to demonstrate. If by possibility not thus honestly entertained, the hope of agreement is even more remote or improbable. It is sufficient that these differences obtain. They confront us at the close of a most exciting quadrennial struggle, the prize being the Presidency and the administration of this great nation for four years. The very close vote now between the two leading candidates adds in an unusual manner to the public anxiety and intensifies the apparent set purpose of the two great parties. In any view it is admitted that, referring to the Constitution alone as our guide, as the sole rule for ascertaining what the electoral colleges in the several States have done, we have but few words, and those words susceptible, as is insisted, of different constructions. Under no construction, as it seems to me, can it be claimed that Congress in any capacity (certainly not in the absence of legislation) has judicial powers or any other power than to inquire and declare what the people, through their electors, on the face of the returns have said as to their choice for President. In saying this I do not lose sight of the different theories as to how this result is to be reached and who is to declare it. I am sufficiently understood for my present purpose, I hope, when I repeat that, in the absence of some law, there is no power to investigate and determine whether there was fraud in this State or that; whether the State law was wise or unwise in providing for the organization of its returning boards; whether a hundred men here or a thousand there would have voted differently but for intimidation, corruption, violence, or fraud; whether the returning or canvassing board or tribunal in a State reached the true result from all the facts before them, or the like; for, whatever any one may think as to any of the other powers of the presiding officer or of the two Houses acting separately or together, the law, as gathered from the almost, if not quite, unbroken precedents from the very foundation of the Government, would clearly seem to teach that our powers are purely ministerial, not at all judicial. In the exercise of these powers, however, allow me to say that I do not suggest by any means that either the presiding officer or the tribunal or forum having the right to decide would be concluded by the mere declaration of a result upon the face of a return, if the same paper, return, record, or that which by well-settled rules and fair logic and law is a part of it, shows that the declaration is itself false or untrue. I am clear that neither the presiding officer nor Congress are required to stultify themselves by being ignorant of what the legitimate record before them shows; that we are not required to find and declare that a falsehood in fact, apparent upon the record, which it is ours to scrutinize, is true as matter of law. But at the same time we must be confined alone to such record, and cannot go outside of it.

And this leads me, Mr. President, to depart somewhat from my original and declared purpose, so far at least as to say in this very connection a word, in passing, of the Oregon imbroglio.

I have always been led to think of Oregon as a State in soil rich, climate almost unequaled, advantages beyond computation, and citizens among the most active, enterprising, and shrewd. Since the 13th of December last my opinion of her citizens has culminated into absolute admiration. I always admired, though I might often condemn, a bold, audacious act, and never could resist a friendly side for the comedy in life. And if I did not reflect upon or think of its consequences, involving, it may be, no less than the quiet, the peace, the highest welfare of the country—I say if I did not think of these things I should be inclined to place the actors in that otherwise rich Oregon farce in the very front rank of huge jokers and audacious comedians. If Cronin himself concocted this plan of organizing himself into a full electoral college—if it was the outgrowth of his own gigantic intellect—I greatly admire his inimitable genius, and no less his boldness in executing it. If not, and he was acting as impelled by wires pulled by others, my respect is greatly lessened and indeed quite wanting; for I have no admiration for the man who conceives a mean or cunningly devised scheme and is wanting in courage to execute it, nor any more for the cat's-paw who becomes the dupe and tool of dishonest and cowardly men behind the scenes.

But I repeat if Cronin was his own counselor and was executing his own plans, commend me to him as a genuis, as one worthy the occasion and the object in view. Could anything be more inimitable? Cronin organizing an electoral college! Alone and unaided doing this great feat! True it is that the college in Oregon was required by the law to consist of three persons, and a majority of this number would be two, and no less, under any rule ever known to parliamentary or other law, could constitute a quorum. But that made no difference. Cronin was equal to the occasion, for he was a full quorum and college of electors in himself. The scene was so inviting, and I declare I wish not a little that I could have witnessed it, but it was so inviting that my esteemed friend the senior Senator from that far distant State though he had left his home *en route* for those duties here which he ever performs so well, and though he had, as I understand, made many hundred miles of his weary journey, yet it was so inviting that, persuaded by glowing lightning accounts from the East and from the West, of the rich comedy in store for his keen optics, he retraced his steps that he might witness what Cronin could do. And Cronin, in his new and comic rôle, did not disappoint him. I can see this quorum Cronin now, in that room with door on noiseless hinges and velvety fastenings, stripped as the athlete or dressed as the sedate thimble-rigger, having long abstained from strong food and like drinks that his brain might be equal to his honest task—in that room, modestly and hesitatingly and with much embarrassment, receiving from the premier of the great governor of all Oregon his credentials, slipped to him noiselessly, for it was befitting the occasion that there should be nothing to disturb the mind of the great actor. It was needful that he should have full possession of all his great faculties. "Grand" (not gloomy) but "peculiar he sat" upon his chair, (not a "sceptered hermit,") but an organized electoral college; presidential aspirants were his "subjects" and the people his "footstool." Overcome thousand majority of their votes against him was to him the merest bauble, for he was the man of destiny, and neither the popular will nor the senseless croaking of those who talked about honesty and fair dealing were to stand in the way of the work assigned him, whether evolved from his own great brain or the *pure consciences* of his employers and backers!

Unfolding his parchment, he finds to his great surprise, of course, that he was an elector, indeed a whole college; that the *people*, reposing *special confidence* in his *worth*, *integrity*, and *ability*, had elected him by giving him 1,000 votes *less* than his competitor! True his memory, like a faithful monitor, reminded him of this and said, You know this parchment tells an untruth when it says you were elected. But this was of no consequence now, for he found that the *governor* reposed confidence in him, if the people did not, and it was not for him to inquire how nor by what necromancy this was brought about. And now the hour and moment for action had arrived. He could not and did not want to look back. But where were his associates? This again was of no moment to him. He was there, and if they did not come and join him he was a quorum in himself, and was bound to organize! He had respect unto the oath he had taken to do his duty, was bound to cast the vote, bound to have an electoral college, for this was his mission! He wanted to be fair, however! He had a

holy horror and dread of cheating and treachery! Above all things else he worshiped fairness and honest dealing in elections! So, as he could not find his fellows, he called the board together, made himself chairman, secretary, teller, voter, and did all things else necessary and requisite for a full and *satisfactory* organization, and then elected two others to aid him in the fulfillment of his mission. True they had never been voted for by the people, and though they agreed with him politically he so impressed them with the honesty of his motives and movements, and of the necessity that there should be no cheating, and they had such a profound respect for the popular will, that, *without any concert* of action and without any *prior consultation*, the two patriotic associates voted for Hayes, while the *quorum*, Cronin, voted for Tilden! Could anything be more sublime? He could not do a mean or untruthful thing! He could not go back on the people! He would not defy the popular will! He knew too well his mission to do this! The vote was cast. Cronin made himself messenger to deliver the vote. He voted himself thanks for the very able, impartial, and dignified manner in which he had presided. The college was resolved into its original elements, and we shall probably, and I hope never will, "look upon its like again!"

That magnificent feat of parliamentary tactics and of this transcendent political genius, sir, will live in history and in the records of politics long after you and I shall have passed from this Chamber and all those hearing me shall be gathered to their fathers. Cronin shall live forever, for he is the prince of "organizers." He "organized" and flourished in Salem, Oregon. His field of operations was there. He "organized" himself. There was none to aid or assist. As has been said or suggested by some one, he finds a parallel alone in that king of old Salem, Melchisedec, who was without father, without mother, without descent, having neither beginning of days nor ending of years. Cronin was alike blessed—alike fortunate. For as the old king must have "organized" himself, so did Cronin. I say again commend me to Cronin and to the politicians, too, who *openly* aided him in his thimble-rigging scheme, which was as audaciously bold as it was ridiculously foolish and laughable. You can well imagine, Mr. President, that scene of joy, the firing of guns, shoutings and thanksgiving among the faithful, which followed the announcement that Cronin had found a way to gain the coveted one vote. He alone of all the wise men of the East or the West of the party was equal to the great emergency. In far off Oregon, among a people not supposed to be versed in political legerdemain, in the quiet of their aspiring young capital, in the seclusion of a closed room, was found unexpectedly the man of splendid ability as an "organizer," the man controlling *three* votes, not *one* alone; and why should not the State and the politicians backing him clap their hands for joy and be glad. Hereafter Oregon, Grover, Cronin, (but the greatest of these is Cronin,) shall have the highest seats in the political synagogue. Without doubt, Cronin should be called to organize the new cabinet under the New York governor, the new administration, having at all times due regard of course to the "usufruct of incumbents" "and the members of the Oregon electoral college!"

But it is perhaps not all comedy. There is another side to the scene, and to the thoughtful, patriotic, honest people of the country a most serious one. What are the undisputed and indisputable facts? Watts received over 1,100 votes more than Cronin for the office of elector. Watts held a little post-office, more fruitful in labor and trouble than money, which he resigned as soon as elected, and before the result was declared. Not 200 voters knew that he held this high office, not a tithe of those thought of this when voting, not a tithe of this tithe knew that the holding of this office rendered him ineligible when they voted for him. The votes were returned by the proper officers of the several counties, they were canvassed by the State board. Watts had the majority as above stated, clear, undenied, unquestioned, undisputed. The people said they wanted him to act for them and that they did not want Cronin. There was no pretense of fraud, of unfairness, that there had not been a fair and honest election. But the governor in the exercise of powers for which there is no warrant in the constitution, in the law, in history, in morals, in any rule human or divine, said, Watts is postmaster, therefore Cronin is elected. How did he know Watts was postmaster? He could not know it, he did not know it, for there was no way in which he could legally find it out. How did he know that if he held the office this rendered him ineligible? He did not, he could not know it, for he had no legal means to ascertain it, nor power to decide it. How did he know that if ineligible the minority candidate was thereby elected? He did not, he could not know it, for he had neither right nor authority to make the inquiry, and if he had both, the assumption was as bald in morals as it was wanting in legal support. He did not, he could not find or decide that upon him devolved the duty of supplying a vacancy occasioned by the claimed failure of the people to elect. He did not, he could not know this because he was incompetent to take the first, the least step in this direction; he had nothing more to do with it than the most squalid inmate of the State prison. He did not, he could not know that though Watts held the office at the time of election, the resignation immediately following did not remove the difficulty. He could not, he did not know whether this would be true or not, nor anything upon this subject, for he had nothing to do with it and usurped powers which never belonged to him, powers the most dangerous, when he undertook to make any the least order in the premises. He had no power to do anything else than voice the result of the canvass and deliver to the persons having the majority, according to the canvassed vote, the proper certificates of election. When he went beyond this and undertook to inquire whether some one whom the people had elected could or could not hold the office, he was guilty of the most glaring act of usurpation and wrong. His act was *ultra vires*, nugatory, void, and void things are no things.

Mr. President, Watts, in my judgment, was not appointed an elector within the meaning of the Constitution by the mere casting of the ballots by the people and their canvass in the several counties. In this I know I run counter to the views of other and better lawyers than myself, but this I give as my opinion, and I simply propose in passing to enter my protest against the opposite view without entering into its discussion, for I have not time. But if in this I am mistaken, then I maintain that his ineligibility did not and could not elect Cronin; that at most, if Watts could not serve or qualify, there was but a vacancy, (arising under the "otherwise" of the Oregon statute,) and it was then clearly the duty and within the power of the legal quorum of the board to fill it. This they could do by electing Watts, now having resigned his post-office, or any other eligible voter of the State. And to this I add, for I must pass hurriedly over these matters, that if he had not resigned, yet if he appeared when the electors assembled, was recognized by them as of their legal number, and cast his vote, such vote would not be void, only possibly voidable, for he would have been an officer *de facto*, if not *de jure*, and his vote, until set aside by proper proceeding, was just as valid, just as much entitled to be counted here, as that of either of his associates upon the ticket or of any man elected by the 60,000 majority of my own most noble and loyal State.

Is it possible that this trick is to succeed in the American Senate, in the American Congress, with the American people? I will not believe it. It seems to me that I know it cannot. I think I know how it can be defeated in entire consistency with principle and precedents. But the simple fact that it is even possible, possible because of the limited powers of the counting tribunal here, presents a most cogent argument for the organization of a tribunal where the truth can be vindicated and inquiry had, as I have proposed by this bill, according to judicial forms. And yet, in advance of all this, why cannot all unite in condemnation of this gross attempt to cheat the people of the State, this act which adds to and intensifies the unrest and disquiet of the public mind, contributes to the derangement of the business of the country, and leaves still another vile blot upon our political escutcheon. Does not every honest and fair-minded man know that if Watts had agreed with the governor of Oregon politically Cronin would have been left in the quiet of his Portland home, and that as an "organizer" he never would have been known to Tilden or to fame? Does not any one know that, if the contest stood as it does now and no questions were made as to the true returns from any other State, no honest man ever could or ever would take the high office of President conferred by a vote gained and given as this was? And why cannot we all say so and thus discountenance this wicked, mendacious act?

Mr. President, it is a great political sin to drive electors from the polls; it is the basest and vilest political wickedness to deter them by terrorism and intimidation from casting a free ballot; to stuff ballot-boxes or abstract their contents; to fraudulently alter pollbooks or returns; to dishonestly count or canvass returns when made; to do anything which tends to interfere with or prevent freedom of choice in this matter so vitally sacred to the very integrity of our Government, or defeat by these or like means the popular will. But for these acts may perhaps frequently be urged in extenuation, certainly not in excuse or defense, the excitements of the hour and surroundings, and the want of responsibility or intelligence of a turbulent body of men, blinded by party zeal or goaded on by the present resistance of political opponents. But when the executive of a sovereign State, in the quiet of his office, with full time to deliberate, impressed as he should be with the gravity of the situation, remembering his oath, remembering that he is the trustee or agent of the people, not of a party, that his is a limited trust in a matter of this character, remembering his duty to carry out, not defeat, the expressed will of the people; when any man thus situated shall deliberately and purposely do an act which is outside of law, in defiance of all well-settled precedents, apparently for the sole purpose of accomplishing a political result, to achieve a party triumph, that man is guilty of a wrong, a political crime, in the presence of which all the others to which I have referred sink into utter insignificance, and he should be shunned and scorned by honest men, irrespective of party. I am glad for the integrity of our politics, for the sacredness of the American ballot, for the purity of our elections, for our common humanity, that no one on this floor has volunteered to *defend* the act, though, as duty doubtless prompted, they may have apologized for or extenuated it. I earnestly trust and believe, if the facts shall be as I understand them, that in the early future there will be none to either extenuate, apologize, or defend.

But leaving Oregon, Mr. President, I at this point, as it is pertinent to the argument I make as to the advisability and necessity of the bill I am now considering, may not inappropriately advert to what to my mind is the proper and true construction of the Constitution on this subject.

I do not much doubt that it is competent for Congress to declare by law how this vote may and shall be counted. By this, of course, I am

not to be understood as holding that the returns can be directed or intrusted to any other than the President of the Senate nor that any other than such President can open the certificates, nor that they can be opened in the presence of any other tribunal as witnesses than the Senate and House of Representatives. But what I mean is that, while all these matters are clearly pointed out and concluded by the most express language of the Constitution, it would nevertheless be competent for Congress, in the execution of the language "and the votes shall then be counted," and other powers too, to provide by law that the count should be made, for instance, by a committee of the two Houses, by the joint action of the presiding officers of each, by their action in connection with the Chief-Justice of the Supreme Court or other person or persons, by the judges of the Supreme Court as a board, (not as a court,) or in any other manner in its discretion. The language "and the votes shall then be counted" does not, in my judgment, conclude the Congress to any special or exclusive method of counting the vote, and yet I agree that it was undoubtedly primarily in the minds of the framers of the Constitution that this duty, ministerial merely, was to be and would be performed by the presiding officer in the presence of the two Houses as witnesses, and that it might be safely intrusted to him.

It is meet that we reflect upon the surroundings of our fathers, that we may know what the Constitution meant when it was made. And this is what we should do in all cases when we come to its construction. What it meant then is what it means now. And we may be aided in ascertaining what it meant then, I repeat, by looking at what they were doing and what they had before them. They unquestionably regarded the selection of electors as an act of the State, for each State was to appoint, "*in such manner as the Legislature thereof may direct*, a number of electors equal," &c. Hence, according to the will of its framers, under this Constitution the power to appoint could be lodged in the people, in the governor, in the Legislature, in the executive council, in the selectmen of the towns, in the judges of the highest court, in any tribunal according to the State legislative will or direction.

The whole matter of selection, I repeat therefore, was intended to be left with the States. The framers of the Constitution, just from the scenes of the Revolution, with their inherited and blood-impressed hatred and dread of a strong central government, looking also to that mediate form of government which avoided a pure democracy as well as the semblance of a monarchy, and, desiring to give to the States, through the anomalous system of an electoral college, the right to select the President, had, I doubt not, more fear of the centripetal than the centrifugal forces of our political system. The theory and expectation, beyond any fair doubt, were that electors, selected in the manner directed by the Legislature, would, without any previous committals, select from the fit and representative citizens of the nation some one for President and another for Vice-President. They had no dream that, as now practiced, the people would virtually vote directly for the candidates for these high offices. But they contemplated that these electors, duly impressed with their high trust and appreciating that upon them devolved the duty, without the trammels and the complications which have since grown up, would carefully and thoughtfully cast their votes and certify the result. For what purpose were they to be thus certified? Simply that they might be counted and the result ascertained. As the old moderator in the town meeting in the New England States, according to the experience and practice of those who had so large a share in framing the Government and the Constitution—as these moderators, I say, had, after the electors of the town deposited their ballots, simply performed the ministerial duty of counting the same in the presence of the people and putting down the result, so the makers of the Constitution contemplated and intended that the will or votes of the States, as certified to the President of the Senate, should be ascertained by looking at these certificates and declaring the result. It probably never entered their minds that anybody should or could, at the Federal Capitol, aside from possibly some after-inquiry, by a proper judicial tribunal, question the right of the State to select any persons it might see fit, if not constitutionally ineligible, and in its own manner to cast its vote for the first and second officers in the nation.

It was deemed more convenient to send these returns or certificates to the Federal capital than to have all the electors assemble at a given place, or to adopt any other method, and yet it was intended that the authorities here were simply to look at these returns and record the result. The list of the votes cast by the electors was to be signed and certified, transmitted sealed, directed to the President of the Senate; these certificates were to be opened by him, the votes then counted, and the person having the greatest number of votes for President, if a majority of all the electors appointed, was to be ("shall be") the President. In all this there is no semblance of judicial power, or of power in Congress, to inquire into how these electors were chosen, or whether they should have voted for one person rather than another. To have recognized such power as existing in the President of the Senate who was to open the certificates, or in the two Houses who were to be present to witness such opening and counting, would have been at war with all their theories of the electoral system and the powers of the States and Federal Governments; for this would have transferred, contrary to their intention, the right to direct the manner of appointing electors from the States to the Federal Congress or some officer there. They intended that the two Houses should be present as witnesses, not actors, to the end that the counting should be public, not in the seclusion of the room of the President of the Senate, or other private place. A mere *count* of a vote or number of votes, *ex vi termini*, excludes necessarily the idea of anything like judicial discretion. Of course, however, some one must determine that it is the vote of the *State*. What that vote is the return shows for itself; and that, for the purposes of the count, is the end of it. There the whole inquiry ceases. In determining whether it is the vote of the State some person must decide from what he finds certified, but not from nor aided by some matter *in pais* or *dehors* the record. Who is to determine this in the first instance, if not finally? This is the important and pivotal question. It seems to me by every law governing parliamentary bodies, as well as by the clear meaning and spirit of the Constitution, and in harmony with the contemporaneous history of this clause of the Constitution, as shown by the practice and teachings of the actors therein, that the officer presiding at the count must do this. Some one must, and, if not this officer, then who? There must necessarily be some one to preside in this as in all deliberative bodies. This officer is an actor, not a mere spectator. He is not simply an observator. If any question by possibility should thus arise, there must be, at least in the first instance, an umpire, an arbiter, a determining power. His powers may be ever so limited, and yet they must necessarily be such, if the Constitution is to be executed through human agencies, or is not self-executing or operative, as are adequate, primarily, to reach the result, to wit, the counting of the vote. It is both illogical and practically impossible to conceive that the two bodies, with practically equal powers and prerogatives, should constitute themselves or become, in any sense, umpires or arbiters upon possibly controverted questions.

This view has certainly been recognized as right from the foundation of the Government, and there is neither safety nor warrant for departing from it in times of political excitement or because it may in practice possibly work adversely to our wishes or plans. What is right in a constitutional view in times of the profoundest quiet is equally so amid the greatest turbulence of parties and factions. The Constitution is not an instrument to be made longer or shorter to meet the whims or caprices of political managers. As good citizens, looking to the peace and integrity of the Union, counting that as of more value than the triumph of any man or party, we should, in this Government of law and order—and if not this, then there is an end to all subordination to constituted power—I say, as such citizens, we ought not, upon an emergency, seek to overthrow well-established precedents or usages and drift into a sea as shoreless as it is dangerous.

But we need perhaps to go one step further. And that is: Suppose a decision made by this officer; is it final? From it is there no appeal? Upon this subject I confess I entertain the gravest doubt. And yet, in favor of the prerogatives of the two Houses, acting separately and in entire harmony, with the idea that the President of the Senate is but a presiding officer, leaving out of view for the present the bed-rock idea that the States by this vote are speaking, and the duty is simply to chronicle their will, (a most pivotal and not-to-be-overlooked element I grant,) yet I say I incline to the opinion that an appeal may be taken and that the two Houses acting separately may, by their concurrent action, overrule him. That is to say, if the President of the Senate shall determine that a particular paper or certificate entitles the vote to be counted, the two Houses, upon an appeal taken, may, acting separately and by concurrent action, determine otherwise. So if he determines that it should not, that for certain reasons the certificate is not sufficiently authentic, then again, upon appeal in like manner, he may be overruled. He decides, in other words, whether *prima facie* the vote shall or shall not be counted. The two Houses, acting upon this decision, which, like all decisions by a competent authority, must be accepted as at least *prima facie* correct, may overrule it. But as in the case of the presiding officer, so as to the two Houses, they must have regard to and pass alone upon what is certified, must see if the State has voted and what it is. This, to my mind, preserves sufficiently the harmony of the system and upholds the powers and prerogatives of the two Houses. It certainly does the latter quite as much as can with any fair reason be claimed, and I am not certain that it does not go to the very verge if not beyond the constitutional limits of congressional right in the premises.

I have thus stated more at length then I intended my views of this part of the Constitution and have preferred to do so without quoting from or citing authorities in its support. The history of this clause, the earlier and later practice under it, the opinions of the ablest and best statesmen and jurists as to the powers of the President of the Senate, all these are familiar to this body and the country, and I need not here quote or refer to them. When the Senate, in February, 1801, voted to receive the House on a day and hour named "for the purpose of being present at the opening and counting the vote for President of the United States as they shall be delivered to the President of the Senate;" and also further resolved that the President of the Senate "should announce the result, which should be entered on the journals," and that such entry should be "deemed a sufficient declaration of the result," and when the House accordingly attended and Mr. Jefferson, as presiding officer of the Senate, "*counted the vote*," I say when I find that this was done by the very men who made the Constitution and so very recently after its adoption, I do not feel that I or any of us

can be far wrong if we follow in their footsteps. And I might supplement this with many other equally strong and pertinent instances showing the practice and rules of procedure in counting this vote, but they are familiar to all and I should but unnecessarily consume time to quote them.

But, as I have before suggested, all are not agreed as to the true construction of the Constitution or what is the proper practice under it. For myself, I never read this great instrument without being impressed more and more with the wonderful wisdom of the almost divinely inspired men who framed it. Terse, clear, succinct in its provisions, its authors seem to have had almost prophetic views of the future and the clearest appreciation of the great and momentous work in which they were engaged; and yet, in the provision under consideration, if there is not an exceptional *casus omissus*, there is that which so nearly approaches it as to bring possible fear to the stoutest heart when he reflects how these mooted questions are to be settled in the face of the not infrequent violence and turbulence of party faction and passion.

Now sir, if I know myself, I would not be driven or impelled by threats, or in times of party turbulence, to do anything not sanctioned by convictions of right or the soundest principles of justice. In the unrest as in the rest of the public mind and conscience, there is but one criterion of safety and that is to keep close at all times to what is inherently right and what the honest and enlightened judgment dictates as expedient because it is right. I have no sympathy for patched-up and temporizing compromises. There can be no compromise with wrong and error. It is a fatal and most fallacious misuse of language to talk of a compromise between truth and falsehood, vice and virtue, and the task is as fruitless as the talk is idle. The nation, no more than an individual, can afford to give up principle or surrender the right in answer to appeals or in dread of possible danger. It is bad enough to have fraud and corruption, and violence and intimidation, but it is worse to supplement these by the usurpation of powers not warranted by the Constitution. There is enough of danger in the bare attempt to carry a great election by artifice and a resort to means the most questionable, without incurring the hazard of striking a blow at the very vitals of the Government, by abandoning the safeguards of the Constitution at the demand of incendiary demagogues who would threaten internecine war, with all the ruin and desolation to the country which would follow. It would be a great wrong and misfortune to declare any one elected President who was not so, but better this even than that Congress and the country should be diverted from the line of duty by a ravenous crowd of place-hunters and sensationalists, who care more for their own personal gain, by means the most violent and lawless, than for the welfare, quiet, and perpetuity of this great country. One day's resort to violence or of anarchy would be worse for the people and bring greater reproach to our civilization and our blood-sanctified institutions, in the esteem of all good men, irrespective of party, than four years of administration headed by either Hayes or Tilden. We can stand and the country can live, and, as I hope, prosper under either. It cannot and must not be driven to the ordeal which all law-abiding citizens would deprecate, and to arrest which they must, and I know will, stand together.

The bill which I present, then, Mr. President, is not to be treated as simply a compromise measure or offered as a part of a plan to avoid threatened danger. It is right, for all times and under all circumstances or contingencies. It is right, because it must occur to any one that, in view of the little found in the Constitution on this subject and the differences of opinion obtaining, all good men would care less about the result to be declared in the count named in the Constitution, if an ultimate tribunal shall be provided to which the parties in interest can go with as fair an assurance as is attainable under human institutions, that all the facts and the case on its real and naked merits could be fully, fairly, speedily, and judicially investigated and determined. The judgment and best thought and mind of the country would be thus appealed to and satisfied; or, if not satisfied, we would make as near an approach to it as is possible amid opinions so widely conflicting and differing and in the presence of results so great. Is this not a consummation worthy the most patient effort, and especially when it can be done without the violation of any principle?

I remark, in the next place, that, aside from the effect of the proposed legislation as just intimated, it is intrinsically right and well demanded, in view of the importance of the office and the rights of the people. Whoever shall be recognized as having the right to count the vote, as they cannot be regarded as clothed with other than mere ministerial functions, without the right to go back of the mere paper writings before them, it would seem to be at war with the very genius and spirit of our institutions to say that here all further inquiry should be precluded, and that wrong or injustice should go unremedied. We provide remedies in the judicial forums for the redress of every legal wrong, the least as well as the greatest; and this, too, whether to the individual as such or to him in his official or representative relations or rights. We undertake to protect society against those violating our criminal code, as we do against those in the States or the nation who without right intrude themselves into places of public trust. Why not afford a remedy to one who claims that he was constitutionally elected to this high office, and which, it may be, would have been awarded him but for the limited and circumscribed powers of the tribunal declaring the result? Why not let the people, through the courts, have an opportunity to vindicate their will and wish? For if the contestant is right and is deprived of his place for want of a remedy, the people and our institutions, to that extent, suffer. Why not open the doors of our courts to a proceeding which I propose shall be as nearly summary as possible, to the end that, by an inquiry conducted in a strictly legal manner, the very truth and right of the matter may be ascertained and declared? Who can be injured by such a proceeding? What violence is done to the constitutional or legal rights of any one?

As I have before suggested, it will not do for any man or party to imitate the morals of the highwayman and say, whatever the means employed to secure it, We have this office or place in our power or grasp and we intend to keep it whatever the consequences. That is the morality of the banditti in politics and the bravado in legislative action; it ignores right, represses conscience, sets at defiance the will of the people, underestimates the true and real power and office of the ballot, and brings reproach the most enduring to all who either sanction by inaction the delusive and demoralizing cry or take a portion of the ill-gotten gain following. No, sir; I repeat that only by adhering to what is right and just and true can any political party expect or deserve the continued confidence and support of the people. And whether the departure from the true path consists in a continued disregard of the rights of any, the humblest citizen, in setting at naught the sacred landmarks of the Constitution, in a violent attempt to set aside a result reached by methods adopted by the constituted authorities, in appeals to the baser and meaner passions of the human heart, in denying to any man a remedy for any legal wrong, in holding by force or numbers any ill-gotten gain, whether as to place or means, in whatever it consists the offender must atone to the offended law and sooner or later the punishment will be plenary, and, it is believed, as corrective as full.

Then, too, this measure would tend to repress frauds and violence in our national political struggles. It needs no argument to show that bad, corrupt, and designing men—men who seek power without regard to the means employed—would be likely to engage and succeed in their trade, in proportion as the chances for investigation and their exposure are rendered or made improbable. As success is to such men the goal of their ambition, they become reckless of the means used to bring it about, as the tribunals for investigation are shorn of or are limited in their powers. You open good, honest, thorough methods of inquiry, and such men would be less likely to concoct their infamous schemes or use corrupt, illegal, violent, or fraudulent means to carry elections. Their favorites among the candidates, too, would be less inclined to countenance or actively co-operate in such schemes if they knew that there was an ultimate tribunal having full power to investigate and uncover frauds, rascality, or illegal and reprehensible efforts to cheat and defeat the will of the people. Give an opportunity for judicial inquiry, and I doubt whether either party would attempt to elect a President by a stolen vote; all would be the more induced to labor for the supremacy of a free ballot; there would be less confidence in and reliance upon mobs; greater faith in fair, honest, and peaceful methods, and a more general disposition to leave canvassing boards, returning boards, electoral colleges, and all in any manner connected with the election free from terrorism, bribes, frauds, or aught else to betray or make afraid.

Add the further consideration that one in this high office would less distrust his right in case of doubt or possible controversy, would feel more secure and impregnable as well as satisfactory his relations to the people did he know that an antagonist had a fair, easy, and speedy remedy by an appeal to the judicial department of the Government to assert his claim to the office. If at all fitted to the high trust, he would needs be embarrassed and his relations to his constituency and the States could not be so cordial as the best interest of the public service would demand when he is reminded—if the fact is so—that he holds his office by the slenderest technicality; that he has been declared elected, not because he had an honest majority of the electoral vote, but because there was no tribunal with power to investigate and declare the truth.

Thus, Mr. President, I have given as briefly as possible, and yet I know imperfectly some of the considerations which seem to show the advisability and practicability of this measure. And here I leave it in the hands of the committee and shall abide their action and that of the Senate. I repeat that I do not bring it forward because of any fear that to avoid trouble and violence we must necessarily have now new or different legislation. Those there are, I know, who entertain and express such fears. I do not share them. I deprecate contentions; I deprecate predictions of trouble; I deprecate all utterances which tend to keep alive sectional hates, extreme party differences, or those jealousies and criminations which every political contest engenders, but which should be buried, for a time at least, if not forever, with the close of the ballot-box, or after the people have spoken. There must not be, there will not be, there cannot be, violence and trouble. Peaceful methods are the methods of the people. Other methods will be those of the dissatisfied politician, the hungry and gaunt office-seeker; the indiscreet and unsafe wild ravings of the sensationalist; but such men cannot and will not, in my judgment, have a following to disturb the quiet of a town meeting in any part of this great nation. The choice of the people, as ascertained and declared by the authorities deputed thereto by the Constitution and the law,

must and will be the next Chief Magistrate, unless declared otherwise in some legal mode by the civil tribunals of the land. And to this conclusion or complexion we must and will, I doubt not, all come. The people will accept the final decision with loyal acquiescence. This nation can live in peace; it must not, it cannot live amid scenes of violence and revolution. The man who talks of or contemplates such scenes as probable or possible contemplates an end of organized government—the blotting out of the great Republic. The memories are so great and sacred, our mission for humanity and the world so broad, as to lead every patriotic and Christian heart to cling to the Union and its integrity by peaceful means with all the confidence of a friend, the devotion of a worshiper, the unquestioning faith of a child. Tell me not that party differences are to now disrupt and rend this nation. Tell me not that the disappointment of one side or the other, as to their choice for the Presidency, will bring violence and anarchy. I feel as hopeful and confident of a result in accordance with my political views as, perhaps, any one here.

I think I feel as great a pride in the history and record of the great party to which I belong and am as strongly impressed with the advantages to come to the country by its continuance in power as any one in the land. And this because I find that during its continuance in power, amid the ravages of war and all the retarding work of reconstruction, the nation has prospered as never before in its history. I know, too, that twenty years since, springing into life as the creature of new and vital issues, then first evolved in our politics, it came thereafter into power, without experience in administration, in policies untried, without practice in official life, and that it found the Treasury bankrupt and replenished it. It found a worthless paper currency and replaced it with the best the country has ever known. It felt upon its inauguration the tread of armed men and heard the crashing and echoing sound of shot and shell almost within the sound of this great Capitol building. It found those resisting the national authority organized in almost half the States, that authority defied in others, and the stoutest hearts quailing before the impending danger. It found a reduced Army, a scattered Navy, and plundered arsenals. It found a great party, then for the first time in at least twenty years driven from power, smarting under all the mortification, wrongs, disappointments, real or imaginary, ever consequent upon failure in a great and earnest struggle. It found devolving upon it the Herculean task of organizing an army of many hundred thousand, raising money for their pay, their equipment, their subsistence, and all the vast expenses of the most gigantic struggle of the centuries. It passed through all this; has paid rapidly the national debt; reduced greatly taxation and annual expenditures; made treason odious; dispelled, as I hope, forever the dream of secession; delivered the people from those twin relics of evil, caste and slavery; secured the equality of all men before the law; has given us a nation of freemen, the flag inviolate, and, above all and crowning all, a *nation saved*. Is it any wonder therefore, may I not ask, that this great party, whatever its mistakes, should feel in its just pride that no other ever performed such a mission for humanity, that it contributed more than any other to the saving of that flag, and that now it should be inclined to say, "by the gods, we ought to control it at least for a while?" Is it any wonder, I repeat, that we thus feel, though we may have made mistakes? What party has not? What party will not? And yet, with all this record, all these grand traditions, all these claims, we only ask, expect, or will receive power (I feel that I voice the wish of every thoughtful member of the party) by the choice of the people and under the constituted methods; desiring alone, as I believe also, the best interests of the country, not a mere party triumph.

To those so lately antagonizing the nation in the tented field we appeal with confidence that our policies have for the most part been humane, liberal, and, if accepted in good faith, unifying and calculated to advance, as we have believed, the interest of the whole and our common country. They must remember that no party ever had in our history such grave responsibilities to meet. None other, in my judgment, ever met more bravely, unselfishly, loyally, the great work confronting and devolving upon it. Why should not all now meet upon a common ground and look and labor for a peaceful solution of the complications around us? I know we will. I know it cannot be otherwise. Speaking for the noble and patriotic people of the State I here in part represent, I know I can say that, while they will submit to no compromise with wrong, they will sacrifice feeling, hopes, treasures, all, for the right. They love the country and the whole country, and will surrender all but honor and principle for its maintenance and unity. They have no hostility to sections or localities, and are ready to receive in good faith and award all rights to all those who do sincerely stand by the Constitution as it now speaks and accept the flag as the emblem of freedom and assured protection to all without reference to former or existing conditions in their political and legal rights. They have no registered oath to wrong or do injustice to any party, any citizen, any section; but recognize their individual and common obligation to do justice to all, the humblest as well as the highest, and all in their power to promote the interest of the South and the North alike, and make stronger the bonds which should unite us in a common grand destiny. Living in a State boundless in its resources, infinite in its possibilities, extending to all the largest freedom of choice, developing almost beyond any of the great family, "with charity toward all and malice toward none," confident in the correctness of their political views and of their devotion to the best interest of the nation, they will yield nothing to threats, nothing to that spirit which would break down the sacred landmarks which the fathers have set; but give all things for the supremacy and triumph of the Constitution and the law, the peace, quiet, welfare, of that now happily united country which the best blood of their best sons contributed so largely to save.

Mr. President, I move that the bill be referred to the select committee appointed to consider a mode of counting the electoral votes.

Mr. KERNAN. I ask the Senator to withdraw the motion a moment.

Mr. CONKLING. The motion is debatable.

The PRESIDENT *pro tempore*. The motion is debatable.

Mr. KERNAN. Mr. President, I do not rise to debate at length——

Mr. BOGY. Will the Senator from New York excuse me a moment? I have on my table a portion of the testimony which was taken in New Orleans by the five gentlemen who were sent there on the part of the democratic national committee, and which was not in my possession when I presented to the Senate the report of those same parties. I desire now to present this testimony to the Senate that it may be printed, and that the report of the committee made sometime ago, and which was ordered to be printed, shall be printed as a part of this document. It is the testimony alluded to by the Senator from Ohio [Mr. SHERMAN] a short time ago. I wish that it be printed, and the same number of copies as of that submitted by him.

Mr. SHERMAN. Is that the testimony taken before the returning board?

Mr. BOGY. It is the testimony taken before the returning board, as I am informed.

Mr. SHERMAN. All right.

Mr. ALLISON. Is it all to be printed, so that this document with that presented by the Senator from Ohio will cover all that occurred before the board?

Mr. BOGY. I understand so.

Mr. SHERMAN. I have no objection.

The PRESIDENT *pro tempore*. Is there objection to printing this testimony?

Mr. PATTERSON. What is it? We could not hear a word over here of what has been said on the other side of the Hall.

The PRESIDENT *pro tempore*. The Senator from South Carolina says he did not hear the Senator from Missouri. The Chair did not hear the Senator entirely. The Chair did not understand exactly what he desired should be printed.

Mr. BOGY. The Senator from South Carolina was not here some time ago when I presented to the Senate the report of the five gentlemen who were sent to Louisiana by the national democratic committee. At the time I presented that report I had not in my possession the testimony which was taken down there, and was received by the returning board. It is that testimony now, as I am informed, that I present and ask to have printed. I desire that it be printed, and, with the testimony submitted by the Senator from Ohio, already printed, will cover the whole testimony before the returning board and the report of the gentlemen sent there, made at the time.

The PRESIDENT *pro tempore*. Is there objection to printing this testimony? The Chair hears none, and it is so ordered.

Mr. BOGY. I presume it is understood that there will be printed the same number of copies of this as of the other. I do not remember the number of the other, but let it be the same number, whatever it was.

The PRESIDENT *pro tempore*. If there be no objection, that order will be made.

Mr. SHERMAN. I have no objection to that order, but the law requires that order to be sent to the Committee on Printing. I have no doubt it can be reported back promptly, but the law must be conformed to. The order for printing may be made, but as to extra numbers that should go to the Committee on Printing. It can be reported back readily.

Mr. BOGY. I move that the ordinary number be printed.

The PRESIDENT *pro tempore*. That is the order already made.

Mr. BOGY. Then I move that an extra number be printed.

The PRESIDENT *pro tempore*. That will be referred to the Committee on Printing.

Mr. KERNAN. Mr. President, the duty of counting the votes of the electors for President and Vice-President of the United States under the Constitution, who shall do it, and what they can do in ascertaining what are the votes, are doubtless important questions, unless there shall be some action providing something else for our guide than the Constitution as it stands. I do not expect that Congress will be able now, by statute or by constitutional amendment, to relieve any difficulties which may arise in counting the vote at an early day under the constitutional provision; and as I differ very earnestly and sincerely from some of the positions taken or opinions expressed by the Senator from Iowa, [Mr. WRIGHT,] I wish to express my dissent now.

I understand him to be rather of the opinion, though he does not express it positively, that under the Constitution as it is the right and the duty are imposed upon the President of the Senate of counting the votes, and, of course, doing whatever that phrase means. I do not agree to that construction of the Constitution. I do not think it is the fair meaning of the language of the Constitution; I do not

think it was the intent of the makers of the Constitution, by the language they used, to give to the President of the Senate the right to count the vote and to do whatever that in law means. On the contrary, in my judgment, the two Houses of Congress, the Senate and the House of Representatives, have the right and have imposed upon them the duty of counting the vote, and I submit very respectfully that that is the fair and reasonable construction of the Constitution. The language is very familiar to all. It is that the electors shall transmit sealed their certificates directed to the President of the Senate at the seat of Government, and then "the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted."

In express language, the Constitution directs that he "shall open all the certificates;" but it does not use language importing that he shall count them. He "shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted." By whom? If it had been intended by the President of the Senate, the language of the Constitution naturally would have been "he shall, in the presence of the Senate and House of Representatives, open all the certificates, and then count the votes." That is not the language. The language is he "shall, in the presence of the two Houses, open all the certificates, and the votes shall then be counted." By whom, according to any rule that is applied to the construction of a constitution or statute? It seems to me clearly by the two Houses of Congress. It would be absurd to say that the two Houses must be assembled merely to sit as silent witnesses and without the slightest authority to in any way interfere to prevent what they believe a wrong count or prevent what they knew to be a false and fraudulent certificate from being counted. It seems to me that his function, his authority or duty, is to open all the certificates which are transmitted to him that they may be brought before the two Houses, and that the solemn duty and the grave responsibility of ascertaining and counting the votes devolve upon the two Houses, representing the States and the people. They are to count the votes, to see that nothing but real votes are counted, and to see that they are counted properly and correctly. I am not willing to believe that the body of men who would not intrust many things touching the Presidency to the Senate at all, intended really that its President should be the sole judge of what were votes, and that he, uncontrolled by those in whose presence he was to open the certificates, was to decide upon and count them.

I do not desire to-day at length to argue this construction of the Constitution from its terms; but I do submit that the position that the two Houses are brought together in the presence of the President of the Senate for the sole purpose of sitting like statues and, in the language of one of the Senators now in this body speaking on this subject in a prior debate, without power to prevent wrong which they saw being done from being done, without any authority in the world except to sit dumb and see the performance whatever it might be, is utterly untenable.

I do not agree with the Senator from Iowa, either, that the practice of the Government has been in accordance with any such claim or construction. On the contrary, my reading of the precedents is that the President of the Senate has never decided a question, as of his own right, touching the counting of the votes. On every occasion after the Government was organized the two Houses, acting by their committees, have had reported to them and they have adopted a mode of examining the votes. On every occasion each House has appointed tellers, one on the part of the Senate and two on the part of the House of Representatives, to count the votes or to make a list of the votes. The practice has been, as I read the precedents, for the President of the Senate oftentimes to say that in obedience to the Constitution he now opens and lays before the two Houses the certificates, and then the two Houses have, by tellers previously appointed, ascertained and counted the votes.

If the Constitution had vested the power to ascertain and count the votes in the President of the Senate, the two Houses had no right to give any direction about it which should control him in the slightest degree. As I read the precedents, on every occasion when a question has arisen in reference to counting or not counting any certificate, the two Houses have separated and they have debated and considered it in separate sessions. Whatever order was made about it was made by the two Houses acting separately, and on no occasion, unless I have overlooked it, has the President of the Senate ever claimed or assumed to decide one of these questions. On no occasion has there ever been any assumption by him or any acquiescence by the members of either House that he had any such constitutional duty or right. Ever since the election of Washington the second time down to the last count, if I read the precedents and the practice of the two Houses correctly, they have directed how the count should be made; they have had their tellers making the count, and when any objection was raised there was immediately a motion that one House or the other withdraw, and they did separate, and they considered and they decided, if anything was decided.

In the light of this almost ninety years of uniform practical construction of the Constitution I cannot assent to the suggestion that the President of the Senate, no matter who he may be, has any power in the premises beyond that of opening the certificates. When the question arose—and I believe that was the first time, for I speak from memory; I was not aware that a debate would come up on on this subject now—in 1817, an objection was made. There was no decision of that question certainly by the President of the Senate. Immediately on its being raised each House retired to its Chamber. If gentlemen will turn to the debates they will find that there it was claimed by those who were among the ablest and most experienced of our public men in each House that the two Houses acting separately, as was their practice, were to decide any question which was to be decided. Come down to 1821, when it was anticipated there would be a question raised as to the electoral vote of Missouri, and you will find that each House appointed a committee, in the language usual and quite uniform, to report a mode of examining the votes. It was understood, it would seem from their proceedings—and we know that from history—that there might be a question raised as to the vote of Missouri; and hence the committee reported what? An express direction as to what should be done in reference to the disputed vote; that there should be tellers appointed, and that if the vote of Missouri should be objected to and the counting or omitting to count it would not essentially change the result of the election the result should be announced including the vote of Missouri and also excluding it. It was in the debate on that occasion that Mr. Clay said in substance, that the two Houses were assembled under the Constitution to count the votes, and I think you will find his language was, "and of course they are to decide what are votes." There was no suggestion by any one then that the President of the Senate had the constitutional right to decide the question; if the Constitution conferred the authority upon him to decide whether the vote of Missouri should be counted or not, the members of the two Houses were bound to allow him to do so, and to submit to his decision.

Again, in 1837, if I am right as to the year, when there was a question anticipated about the vote of Michigan, there was the same appointing of committees by the respective Houses, and report made by the committee on the part of each House to their respective Houses; and again they disposed of the question as it had been disposed of in the case of Missouri: the two Houses, not the President of the Senate, decided the question.

Again, going back in the chronology, in 1800 there was a bill introduced to regulate the counting of the electoral votes, and discussed. It was amended by the respective Houses; each House passed it in different form; they disagreed about details. Would those men, many of whom aided in framing the Constitution, have passed such a bill if there was any foundation for the idea that by the Constitution the right was given to and the duty imposed upon the President of the Senate to decide upon and count the votes?

If that was the true construction, what had they to do with devising means to count the votes and means to take proof as to and decide upon the votes? Because, Mr. President, the question is, is the duty by the Constitution, is the right by the Constitution given to and imposed upon the President of the Senate or given to and imposed upon the two Houses of Congress?

When you come down to 1857, the action on that occasion by the two Houses has been very fully presented to this body by the Senator from New Jersey, [Mr. RANDOLPH.] I only allude to it. There was the first occasion when I can find that any one suggested that the President of the Senate had in the slightest degree assumed to do anything except as he was directed by the two Houses. He in the joint convention disclaimed that he had assumed to decide the question which arose as to the vote of Wisconsin. When the two Houses separated to act upon the question which had been made as to the vote of this State, which had been given by the electors upon the wrong day for the reason given in the certificate, there was immediately very warm dissent in the Senate from the idea that the President of the Senate, Mr. Mason, had any right to decide the question, and he as earnestly disclaimed the assumption of any such right by him or that he had passed upon the question; one or two Senators said he had not done any such thing; that he had simply announced to the two Houses, in obedience to the joint resolution under which they were acting, the result which had been handed to him by the tellers.

And yet in the face of this, first the language of the Constitution, second the practice which existed down to 1857, to go no further, will it be said now, and will it be wisely said, permit me with the utmost earnestness to inquire, that at this time, when there are disputed questions which do affect the result, when there may be feeling and heat very naturally, a new construction shall be given to this language of the Constitution, which would greatly add to that which we all deprecate, heat, excitement, party feeling; or rather should we not say, if we are to discharge this duty under the Constitution as it stands, as I think we must, that the two Houses should be appealed to by every sentiment of patriotism, by every feeling of solicitude, for the welfare of our people, to meet their duty in the way our predecessors have met it from the beginning and according to the precedents they have given us? Thus every member of each House will, I trust, according to his conscience and his judgment, endeavor, without passion, without prejudice, without partiality, to decide these questions, acting as our predecessors have acted, and acting with a sole desire to have the right and the truth prevail in reference to them.

I agree with all that has been said by the Senator from Iowa as to this being a time when every man who has any duty to discharge in either House in regard to these votes should remember that the question rises above all party questions; it rises high above all mere ques-

tions of which party or which candidate should triumph. They should act in accordance with the Constitution and laws; and they should decide in accordance with their conviction as to what is the truth. All men who are honest and patriotic, as the great mass of the people are, will acquiesce in a decision made in this spirit, and they will acquiesce the more readily and the more cheerfully, whoever may be disappointed, because the two Houses have followed the precedents set them by the men who went before us. Let us satisfy the country by our action that we endeavored according to the Constitution and laws to decide these questions as to the election of a President and Vice-President according to the very right of the case, and by "right of the case" I mean giving effect to the honest votes of the people of the States on the presidential question wherever and so far as that can be done in view of all the light that we can legitimately have.

Since 1857, on every occasion when questions have arisen in reference to the votes of States, how have they been decided, by whom have they been decided? By a decision of the person who was President of the Senate? No, but by the action of the two Houses of Congress acting separately; and in the debates in reference to the rule or resolution under which the two Houses have acted in counting the votes you will find that the great body of Representatives and Senators, while differing about how questions should be decided, assumed that the action should be by the two Houses; that they were to decide whether a vote should be counted or not. If the President of the Senate has this duty devolved upon him and if the right by the Constitution is vested in him, all this practice and all these joint resolutions were usurpations, in violation of the Constitution. These were not hastily passed. The debates show how many Senators discussed this subject; and with very few exceptions they were uniformly of the opinion that the right and the duty were with the two Houses under and by virtue of the Constitution.

Therefore I submit, Mr. President, that whether you take the language of the Constitution, whether you look to the intent of the men who made it, or whether you look to the uniform practice under it, the evidence is that the two Houses have this duty imposed upon them and that they must discharge it. It seems to me that we should hardly concur in that sentiment which prevails so widely that the men who made this Constitution were wise, far-seeing men, if we should admit that this great and grave duty and so important at times was imposed upon and intrusted to one man, and that the members of the two Houses of Congress were to sit as mere silent witnesses. I think the debate showing the intent of the framers of the Constitution proves conclusively the contrary.

Now, one other suggestion I wish to make at this time. The Senator from Iowa stated that whoever counted the votes, if I understood him aright, was a mere ministerial officer, to enumerate the votes as they were contained in the certificates; that neither the President of the Senate, if he was the person charged with the duty of deciding upon and counting the votes, nor the two Houses, if it was confided to them, could look behind the certificate of the governor or other State authority to ascertain whether the vote certified should be counted. I cannot believe that any such view will be sustained. If the people of a State have cast a majority that is unquestioned, if the vote has been canvassed by the officers charged by law with that duty, if that vote has been returned according to law to the secretary of state, and as in some of the States the secretary of state in the presence of another officer is charged with the duty of tabulating the returns and making a certificate of the result, is it true that if he arbitrarily and fraudulently makes a false certificate, and the governor unites in giving the evidence of election to electors who were clearly defeated by the vote as it is on the records of the State—is it true that then the two Houses or the President of the Senate or whoever is charged with the duty of counting the votes must, although our committees have evidence showing that this certificate is false, that it is fraudulent, that it certifies the converse of the popular vote, not as gathered in a loose way but as returned to officers at the seat of the State government, that we must sit here and count it although that may change the result? Can that be so? While I would not entertain any latitudinarian doctrine about going behind the certificates, yet when we are satisfied by competent evidence obtained in any legal way that the certificate sent here that certain persons were elected is false and a fraud, that on the contrary others were elected, and that a dishonest governor or other State officer, or board of officers, has sent here a false and fraudulent certificate, I think the language of the Constitution as to counting the votes authorizes and requires us to decide that that is not the vote of that State, whatever other right we may have in the premises.

Any other construction than this would indeed endanger, in my judgment, the institutions of the country. It would be a temptation to a corrupt man, where the result might depend upon the vote of a single State, to certify the wrong men to be elected; and then, although all the world might know that the result of the vote of the State was different, there would be no remedy. I believe the duty to be imposed upon the two Houses to count the vote and decide what the vote is, and if by proof of fraud or force or other evil practices it is shown that the certificate which comes here is a falsehood, the two Houses at least can refuse to count the votes so certified. The appointment of the electors is made by the votes of a majority of the qualified voters. The certificate is merely the evidence of the result, and, like any other evidence, upon proof that it is false and fraudulent, it may be rejected. The judgment record of a court of competent jurisdiction is evidence of a very conclusive character, and yet you may impeach the judgment record of a court of competent jurisdiction by showing that it is fraudulent and false. I am not discussing now what case may come, but if a case comes before us where by fraud the certificate as to the election of the electors is made to speak a lie, in my judgment the two Houses, whose duty it is to count the votes of the electors, may, on the falsity of the certificate being established, refuse to count the votes. On its being established that the certificate is fraudulent and false, there is no vote to be counted.

The case of Oregon I shall not now discuss at all. I shall make up no opinion about it until the evidence and the law shall be laid before us in proper form to make a decision upon. I put the question to the Senator from Iowa if he will not agree with me that if where a governor or other officer fraudulently gives a certificate of election to a man who was not elected according to law and excludes from the certificate the man who was legally elected, he would not go behind the certificate? Take any of our States at the last election. To test the rule by an extreme case, take a State that went by a large and unquestioned majority one way. Take the State of Iowa. Suppose that the officer whose duty it was to give certificates to those elected electors certified that the minority candidates were elected, must we sit here and count that vote? Cannot we go behind the returns of officers whose duty it is to certify to the result of an election where it is established that they made a false certificate?

Mr. President, such a doctrine as that contended for by the Senator from Iowa might cause a people, a law-abiding and patriotic people, to be greatly excited and exasperated, and it would be a rule of action that would tempt evil men to procure false returns and get them made and sent here, so that one man might be counted in against the will of the majority of the electors who had legally cast their votes for another. I believe and I unite with all men of all parties in hoping that every question that will arise or which has arisen touching the recent election will be decided according to the Constitution and the law by these two bodies, each man of them laying aside partiality and prejudice and striving in deciding upon counting the votes to come at the real truth of the case. Let the truth and the right prevail, because if by trick or fraud we permit the election of men of either party, then remember that a precedent has been made which is dangerous to the perpetuity of this Government. Our people are educated in law-abiding habits. Their interests and their instincts are in favor of peace and order and justice. They will be sure to preserve their equanimity; they will be sure to abide by the laws of the country when they feel that the public officers charged with deciding questions which may touch party politics or party candidates will make their decisions as judges should make theirs, examining all things they have a right to look at carefully and fairly, examining to see whether there be any fraud that overthrows the rights of the people and endangers the Government, and reaching a decision upon which we can look every man in the face, political friend or foe, and say "Right or wrong, I decided according to my best intelligence and conscientious conviction, governed and controlled by an earnest desire to do what was right."

Mr. President, I wished to make these suggestions now, first, because I cannot assent to some of the views which have been expressed by the Senator from Iowa, and, secondly, because I believe it would tend more than anything else to create uneasiness, excitement, and irritation in the country if it were believed that there could be counted a fraudulent and false certificate of votes in favor of either of the candidates for President or Vice-President; that there is no remedy against such a certificate, if it is fair and formal on its face. I insist that by the language of the Constitution, by the clear implication from its language, the two Houses are charged with the duty of counting the votes, and that they are to decide what are votes. They are to endeavor to get at the exact truth, taking the certificates as evidence for what they are worth, not questioning them lightly, but where they find that a man or a set of men transmit votes here who were not elected by the people and whose certificate of election is false and fraudulent, these votes they should refuse to count. The members of the two Houses must decide, in my judgment, what are votes, not on the certificates alone, but on all the legal evidence which comes before them. They should do this in a fair and just spirit, acting for all the people. When this is done, as I trust and believe it will be done in the spirit in which Senators and members should meet these questions, no one then need be uneasy, but that all good men will acquiesce in the result; and we shall set a precedent for those who come after us which will tend to preserve our Government from the dangers of partisan excitement and passion.

Mr. SHERMAN. I have listened to the Senator with pleasure, and before he takes his seat I should like to ask him whether, if either House should object to the vote of a State, the result would be the exclusion of that vote? Does he think the vote could be rejected upon the determination of either House, or does he care to give his judgment on that question at the present time?

Mr. KERNAN. I would be glad to hear that question debated. I have an opinion about it. My own view is in accordance with the joint rule which was adopted in 1865. It being a duty that the two Houses have to perform, they must affirmatively decide that the vote objected to is a vote before it can be counted.

Mr. SHERMAN. That is not the rule.

Mr. KERNAN. That was the rule. The impression upon my mind is that as the two Houses are to count the vote and to decide what is a vote; that where a certificate is objected to it requires that both shall agree, else it is not decided that it is a vote. This is the impression I have from the examination of the question I have made.

Mr. SHERMAN. Mr. President, I do not intend to express any opinion upon any of these questions which are likely to arise, but pledge myself beforehand to examine them dispassionately and honestly, and decide them according to my convictions of right and justice, above all considerations of party politics or party tactics. As I have been here during five or six counts of the votes of presidential electors, I might state some results in my own experience, but I will not do so, because all these matters will be subject of debate. I do not think there is much difference of opinion upon the general question, that where the two Houses concur in holding that the vote of a particular State is illegal or fraudulent or wrong, whether that power be given to Congress by the Constitution or not, the vote naturally will be excluded. In the case, though, that I submitted to the Senator from New York, where the two Houses disagree, then I beg leave to say to him it would appear to me to be revolutionary and monstrous that either House by its simple *obiter dictum*, by its own decision, should have the power of excluding a State from voting and thus change the result of a presidential election. That was the result of the twenty-second joint rule, and for that very reason that rule was denounced in this body by members of all political parties and, I believe, was condemned by the common judgment of the whole country.

Mr. BOGY. Under that rule the votes at three presidential elections have been counted.

The PRESIDING OFFICER (Mr. MITCHELL in the chair.) Does the Senator from Ohio yield to the Senator from Missouri?

Mr. SHERMAN. No; because I do not want to go into a discussion. I say, the result of such a rule as that is worse than any rule ever established in the Mexican Republic, because, if either House can make a conclusive objection to a vote, either House may, with reason or without reason, defeat a presidential election.

There are many points in this field of dispute where honest men may differ, and where argument, consideration, and discussion may lead them to come together. I have an abiding faith in the American people and in Congress. I have a hope, not yet clouded with the slightest doubt, that, before the time comes for the performance of this great constitutional duty, the two Houses, through their committees, will agree on some plan by which the process of counting the vote for President may be peaceful, lawful, and honorable. I rest in that hope, and I would not have risen at this moment to say one word except for the fact that, I regret deeply to say, a particular party in my own State have, in advance of any efforts made to decide this question by the only body that can decide it, appealed to popular prejudices and called party meetings all over the State that I have the honor to represent. Yes, sir, a single party have called meetings on a day sacred to the democratic party, for the purpose of what? Passing resolutions and considering these questions, at the very time when committees of both Houses are at the seat of dispute taking testimony; at the very time when committees of both Houses are here in the capital of the country considering all these difficult questions; at a time when an irritating word, or a threat, or a menace creates more trouble than anything else. I regret to see it, although I see of late that the spirit of the people—which is far better than the spirit of party leaders—is giving direction to these popular meetings, and that the tone of the meetings is now much more moderate than it was when they were excited and aroused by party feeling and party fervor.

I am glad to say too that the great party to which I belong, which at least represents the majority of the people of Ohio and the great majority of the people of the Northern States, is quiet, calm, and serene. No public meetings of indignation or to instruct us in the performance of our duty have been called by any republican or the republican party, and I hope there will be none. The people have performed their duty.

By law and by the Constitution their vote is made final upon us, and it must be counted. The mode and manner in which it shall be counted will no doubt be determined by the two Houses, or at least I hope so, and I will not say one word to prevent that count from being orderly in the way it has always been done heretofore.

And I now express my profound hope that Senators especially, and members of the House, and that the people themselves in their sovereign capacity at home will show, by their moderation and good sense and good temper in the intervening time between now and the day when this vote is to be counted, that they are worthy repositories of political power, that they can calmly await the development of events, relying upon public officers to do their duty as they believe according to the dictates of their conscience, and that they will not add to these fires by making any threat, any remark, or any expression that will tend to create excitement or feeling in this country. And, sir, if I could appeal to that other power which in this country ought to be recognized as one of the great powers of the Government, the power of the public press, if I could appeal to those men who in the silence of their chambers wield the pen which creates and molds public opinion in this country, I would beg them, in the name of God, in the name of our country, by every principle and motive that can actuate mankind, to be moderate in the expressions of their opinion, to be calm and courteous, and, above all, to make no threats and utter no menaces, because with the people of our race nothing disturbs men or parties or nations from the even temper of their judgment so quickly as a threat or a menace. We all know when boys at school the result of such a course; we all know its effect upon us here even in the Senate Chamber: and this is the time when above all things no word of reproach, no word of menace, no word of threat involving civil war or resistance to constituted authorities should be uttered, but all of us should so act as to show our firm faith and hope that our Government in this one hundredth year of our national existence, just after the Centennial, will perform the plain duty enjoined by the Constitution of the United States, and that a President of the United States will in peace and quiet, with the acquiesence of the people, be inaugurated on the 4th day of March next. I for one will not disturb that hope until the time comes when the moment will determine the duty that may then devolve on us.

The PRESIDING OFFICER. The question is on the motion to refer the bill to the select committee to report a mode of counting the electoral vote.

The motion was agreed to.

CENTRAL BRANCH UNION PACIFIC RAILROAD.

The PRESIDING OFFICER. The morning hour having expired, the Chair will lay before the Senate the unfinished business of yesterday, which is the bill (S. No. 60) declaring the true intent and meaning of the Union Pacific Railroad acts approved July 1, 1862, June 2, 1864, and July 3, 1866, and for other purposes, which is now before the Senate in Committee of the Whole, and on which the Senator from Kansas is entitled to the floor.

Mr. INGALLS. I am unwilling to proceed in the absence of a quorum.

Mr. CAMERON, of Pennsylvania. I think we had better adjourn. I move that the Senate adjourn.

The motion was agreed to; and (at two o'clock and forty minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

THURSDAY, *January* 4, 1877.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of yesterday was read and approved.

A. W. PLYMALL.

Mr. HEREFORD, by unanimous consent, introduced a bill (H. R. No. 4301) for the relief of A. W. Plymall, of West Virginia; which was read a first and second time, referred to the Committee on the Judiciary, and ordered to be printed.

SURVIVING SOLDIERS OF THE WAR WITH MEXICO.

Mr. FORT. I desire to present the memorial of some of the few surviving soldiers of the war with Mexico, and ask that it may be read.

The Clerk read as follows:

BEAVERVILLE, IROQUOIS COUNTY, ILLINOIS,
December 28, 1876.

To the Congress of the United States:

The undersigned, officers and soldiers who served in the Army of the United States in the war with Mexico, in view of the vast and valuable territory acquired as the result of that war and considering the unusual sickness and suffering endured in those campaigns and the low wages received, do hereby pray and petition your honorable bodies to grant us, and all who served honorably in the land or naval forces of the American Army and Navy in said war, such additional pay, bounty, or a pension as shall seem to you most wise and just. And your petitioners would further urge, as additional reasons to stimulate your pity and clemency in their favor, that few of them are alive, and those few aged, feeble, and many of them still suffering in poverty from the effects of those hardships and the unaccustomed climate of tropical Mexico.

WM. W. MARTIN,
Private Company B, Third United States Artillery, 1847.
CAPTAIN SHOVER.
F. H. COALLEY.
WM. H. CHASTAIN.
E. L. BRADLEY.
CALVIN J. McLELLAN.
SYLVANUS ROGERS.
JOHN VENATTA.
ERWIN LYNN.
ANDREW J. HENDERSON.
JAMES ANDERSON.
PHILLIP RHOA.
RICHARD ROBERTS.

Mr. FORT. I move that the memorial be referred to the Committee on Invalid Pensions.

The motion was agreed to.

THE PRESIDENTIAL VOTE.

Mr. WILLIS. I ask unanimous consent to present the memorial of merchants, bankers, and others of the city of New York, praying for a peaceful and harmonious solution of the presidential question, this being the original, with the autograph signatures.

There was no objection, and the memorial was received, and referred to the select committee upon the subject of counting the electoral vote.

TAXES ON BANKS.

Mr. WILLIS also, by unanimous consent, introduced a bill (H. R. No. 4302) to provide for the repeal of all taxes upon capital and deposits of State and national banking institutions, corporations, companies, associations, or persons engaged in the business of banking; which was read a first and second time, referred to the Committee of Ways and Means, and ordered to be printed.

SECTION 5219 OF THE REVISED STATUTES.

Mr. WILLIS also, by unanimous consent, introduced a bill (H. R. No. 4303) to further declare the meaning of section 5219 of the Revised Statutes of the United States and its correct interpretation; which was read a first and second time, referred to the Committee on Banking and Currency, and ordered to be printed.

MESSENGER FOR DIPLOMATIC GALLERY.

Mr. BRIGHT, by request, submitted the following resolution; which was read, considered, and agreed to:

Resolved, That one messenger be added to the list of messengers under the Doorkeeper of the House, to be assigned to duty to the diplomatic gallery, which is not now provided for.

SOLDIERS' ROLL OF THE HOUSE.

Mr. WALLACE, of Pennsylvania, by unanimous consent, submitted the following resolution; which was read, and referred to the Committee on the Judiciary:

Resolved, That the Committee on the Judiciary be instructed to inquire whether by the act of August 15, 1876, which declares that the fourteen messengers on the soldiers' roll shall be employed during the current year at a compensation not exceeding $1,200 each, "and the sum of money necessary to pay the messengers on that roll is hereby appropriated," the Doorkeeper of the House had the legal right to discharge Charles H. Reisenger, one of the messengers on that soldiers' roll.

FORT UNION RESERVATION.

Mr. CAULFIELD, by unanimous consent, introduced a bill (H. R. No. 4304) to authorize the United States to secure a title to the Fort Union military timber reservation in New Mexico; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

UNION PACIFIC RAILROAD.

Mr. McCRARY, by unanimous consent, submitted the following resolution; which was read, considered, and agreed to:

Resolved, That the Secretary of the Interior be requested to transmit to the House a copy of the latest report of the Government directors of the Union Pacific Railroad Company.

Mr. McCRARY moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

CHANGE OF THE NAME OF A STEAMBOAT.

Mr. TUFTS, by unanimous consent, introduced a bill (H. R. No. 4305) to change the name of the steamboat Blue Lodge to that of A. P. Hosford; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

SALE OF SALINE LANDS.

Mr. BROWN, of Kansas, I ask unanimous consent that the bill (H. R. No. 2260) for the sale of saline lands, returned from the Senate with an amendment, be taken up, and that the amendment of the Senate be concurred in.

Mr. HOLMAN. I think the bill had better be read, and also the amendment, before any consent is given.

The SPEAKER. The Clerk will read the amendment and then the Chair will ask for objection.

The Clerk read the amendment, as follows:

At the end of the bill add the following:

Provided, That the beforegoing enactments shall not apply to any State or Territory which has not had a grant of saline lands by act of Congress, nor to any State which may have had such a grant until either the grant has been fully satisfied, or the right of selection thereunder has expired by efflux of time; but nothing in this act shall authorize the sale or conveyance of any title other than such as the United States has, and the patents issued shall be in the form of a release and quitclaim of all titles of the United States in such lands.

SEC. 2. That all executive proclamations relating to the sale of public lands shall be published in only one newspaper, the same to be printed and published in the State or Territory where the lands are situated, and to be designated by the Secretary of the Interior.

Mr. HOLMAN. Is it the purpose to put this bill upon its passage? It seems to me that it should go to the Committee on Public Lands.

Mr. BROWN, of Kansas. I have already shown the amendment of the Senate to several members of the Committee on Public Lands, and as its provisions are only restrictive of the original bill as passed by the House and go to make it more perfect, they think it correct.

The SPEAKER. Does the gentleman from Indiana [Mr. HOLMAN] object to the consideration of the amendment at this time?

Mr. HOLMAN. I do not wish to object to a bill of this character, but still I think it ought to have consideration in the Committee on Public Lands.

The SPEAKER. The Chair would remind the gentleman from Indiana that debate under these circumstances is in the nature of objection.

Mr. HOLMAN. Is it not in order at this time to move to go to business on the Speaker's table, so that we may dispose of all these bills of the Senate which came over from last session?

The SPEAKER. It can be done by unanimous consent.

Mr. HOLMAN. Then I ask unanimous consent that the House now proceed to business on the Speaker's table for the purpose of disposing of all matters thereon for reference only.

The SPEAKER. That is in the nature of an objection.

Mr. HOLMAN. I do not wish to object to this bill, but I should much prefer that it should be referred to a committee.

Mr. BROWN, of Kansas. It is only an amendment to the original bill which passed the House.

Mr. HOLMAN. I am aware of that, but there are a great many gentlemen around me who are not aware that the original bill passed the House at all.

The SPEAKER. The Chair rules that the bill is before the House without objection, and the question is upon agreeing to the amendment of the Senate.

The amendment of the Senate was agreed to.

Mr. BROWN, of Kansas, moved to reconsider the vote by which the amendment of the Senate was agreed to; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

BUSINESS ON THE SPEAKER'S TABLE.

Mr. HOLMAN. I now ask unanimous consent that the bills and other matters which have accumulated on the Speaker's table be taken up and referred to appropriate committees.

No objection was made, and the House proceeded to the consideration of the business on the Speaker's table.

The first business on the Speaker's table was the following resolution from the Senate:

Resolved, That the Committee on Enrolled Bills shall have power to act concurrently with a similar committee of the House of Representatives in the examination of enrolled bills, and shall carefully compare the enrollment with the engrossed bills as passed in the two Houses and correct any errors that may be discovered in the enrolled bills, make their report to the respective Houses, and shall be as follows: Mr. CONOVER, (chairman,) Mr. ROBERTSON, and Mr. KELLY.

Mr. CONGER. I presume that the proposition was that these matters should be taken up for reference only.

The SPEAKER. Yes; but this is a resolution which has no title, and it is therefore necessary that it should be read.

Mr. CONGER. I should have objected to going to business on the Speaker's table if it was proper to take up and pass bills or hold them for consideration now.

The SPEAKER. This is a resolution from the Senate, and if the gentleman from Michigan wishes it, the Chair will recognize him to move its reference.

Mr. HOLMAN. That resolution, I presume, should go to the Committee on Rules, and I make that motion.

The motion was agreed to; and the resolution was accordingly referred to the Committee on Rules.

The following resolutions from the Senate were severally read and referred to the Committee on Rules:

Resolved, That the Committe on the Library shall have power, in conjunction with three members appointed by the House of Representatives, to superintend and direct the expenditure of all the moneys appropriated for the Library, and to perform such other duties as are or may be directed by law, and shall be as follows: Mr HOWE, (chairman,) Mr. EDMUNDS, and Mr. RANSOM.

Resolved, That the Committee on Printing shall have power, in conjunction with the committee on the part of the House of Representatives, to discharge all the duties now or hereafter devolved upon them by law, and shall be as follows: Mr. ANTHONY, (chairman,) Mr. SHERMAN, and Mr. SAULSBURY.

Resolved, That the Committee on Public Buildings and Grounds shall have power to act concurrently with the same committee of the House of Representatives, and shall be as follows: Mr. MORRILL, (chairman,) Mr. CAMERON of Pennsylvania, Mr. PADDOCK, Mr. COOPER, and Mr. WHYTE.

The next business on the Speaker's table was the bill (S. No. 611) to authorize the Secretary of the Interior to deposit certain funds in the United States Treasury in lieu of investment, with House amendments returned from the Senate not concurred in.

Mr. HOLMAN. I suppose it is understood that where there is no objection a bill may be acted on in the House at this time.

The SPEAKER. That was not the order of the House made by unanimous consent. That order was to proceed to the consideration of business upon the Speaker's table for the purpose of reference only. Whether as a bill is reached under this order made by unanimous consent the House may agree to consider it is another question; the Chair is of opinion that the House may consider a bill under such circumstances.

Mr. HOLMAN. It would facilitate business to act upon a bill at once where there is no objection to it.

Mr. DURHAM. I think all these bills should share the same fate.

The SPEAKER. Objection being made to the consideration of the bill, it will be referred to the Committee of Ways and Means.

The following bills of the House returned from the Senate with amendments were severally taken from the Speaker's table and referred as indicated:

A bill (H. R. No. 2300) granting a pension to Margaret C. Bell—to the Committee on Invalid Pensions.

A bill (H. R. No. 2473) to authorize claimants upon even-numbered sections of land within the twenty-mile limits of the Northern Pacific Railroad to make proof and payment for their claims at the ordinary minimum rate of $1.25 per acre—to the Committee on Public Lands.

A bill (H. R. No. 1558) to remove the legal and political disabilities of Robert Ransom, of Virginia—to the Committee on the Judiciary.

A bill (H. R. No. 2133) to amend section 10 of the act making appropriations for the current and contingent expenses of the Indian Department for the fiscal year ending June 30, 1877, and for other purposes—to the Committee on Appropriations.

A bill (H. R. No. 1915) to change the name of the steamboat Robert Ross—to the Committee on Commerce.

The following bill returned from the Senate with an amendment was then taken up:

A bill (H. R. No. 2041) to amend section 2291 of the Revised Statutes of the United States.

Mr. OLIVER. I ask unanimous consent that the bill, with the Senate amendments, may now be considered.

The SPEAKER. The Chair understood the gentleman from Kentucky [Mr. DURHAM] to make objection to the consideration of any bill taken from the Speaker's table at this time under the present order. This bill will therefore be referred, if there be no objection, to the Committee on the Revision of the Laws.

Mr. OLIVER. This bill, if referred, would properly go to the Committee on Public Lands. That committee has already informally considered the Senate amendments to the bill, and I hope it may now be considered.

The SPEAKER. The Chair understands the gentleman from Kentucky [Mr. DURHAM] to have made his objection general, and not as to any particular bill. This bill, with the Senate amendment, will therefore be referred to the Committee on Public Lands.

The following House bills, returned from the Senate with amendments, were also taken from the Speaker's table and referred as indicated:

A bill (H. R. No. 262) for the relief of the legal representatives of John W. Gall, deceased, late of Company A, One hundred and thirtieth Illinois Volunteers—to the Committee on Military Affairs.

A bill (H. R. No. 1237) for the relief of Benjamin F. Reynolds—to the Committee on Military Affairs.

A bill (H. R. No. 2043) to improve the law in relation to dower in the District of Columbia—to the Committee on the Judiciary.

A bill (H. R. No. 4120) making appropriations for the payment of invalid and other pensions of the United States for the year ending June 30, 1878—to the Committee on Appropriations.

A bill (H. R. No. 2736) to remove the political disabilities of A. H. Van Zandt, of Virginia—to the Committee on the Judiciary.

Senate bills and joint resolutions of the following titles were respectively taken from the Speaker's table, read a first and second time, and referred as indicated:

A joint resolution (S. R. No. 16) to authorize the President to appoint commissioners to attend an international conference upon the subject of the relative value of gold and silver—to the Committee on Coinage, Weights, and Measures.

An act (S. No. 823) for the relief of John G. Taylor, of Annapolis, Maryland—to the Committee of Claims.

An act (S. No. 686) supplementary to the present statutes in aid and defense of the constitutional rights of citizens—to the Committee on Foreign Affairs.

An act (S. No. 547) for the relief of settlers upon certain lands in the State of Minnesota—to the Committee on Public Lands.

An act (S. No. 735) granting a pension to Martha Irwin, widow of John Irwin—to the Committee on Invalid Pensions.

An act (S. No. 739) to amend section 5457 of the Revised Statutes of the United States relating to counterfeiting—to the Committee on Revision of the Laws of the United States.

An act (S. No. 783) providing for the extension of the time for completing the survey and location of the Portland, Dalles and Salt Lake Railroad—to the Committee on Public Lands.

An act (S. No. 813) granting an increase of pension to Lawrence P. N. Landrum—to the Committee on Invalid Pensions.

An act (S. No. 845) for the relief of W. H. Woodward, of Indianola, Texas—to the Committee on Military Affairs.

An act (S. No. 882) granting a pension to Stillman E. Dix, of Hampton, Virginia—to the Committee on Invalid Pensions.

An act (S. No. 883) granting a pension to William H. Oliver, of Sweetwater, Tennessee—to the Committee on Invalid Pensions.

An act (S. No. 934) to provide for furnishing certified transcripts of territorial records—to the Committee on the Territories.

An act (S. No. 535) granting a pension to Armstead Goodlow—to the Committee on Invalid Pensions.

An act (S. No. 655) to confirm to the city of San José, in the State of California, the title of certain lands—to the Committee on Public Lands.

An act (S. No. 973) for the relief of Elizabeth Carson—to the Committee on Military Affairs.

An act (S. No. 884) to authorize the change of name of the steamboat Peter Crary to that of Joseph L. Chapman—to the Committee on Commerce.

An act (S. No. 978) extending and continuing the act entitled "An act to provide temporarily for the expenditures of the Government"—to the Committee on Appropriations.

An act (S. No. 781) for the relief of Amos Ireland, deceased—to the Committee of Claims.

An act (S. No. 999) to continue the provisions of an act entitled "An act to provide temporarily for the expenditures of the Government," &c.—to the Committee on Appropriations.

An act (S. No. 992) to authorize the Secretary of the Treasury to issue a register and change the name of the schooner Captain Charles Robbins to Minnie—to the Committee on Commerce.

An act (S. No. 904) for the relief of William C. Nichols, late assistant treasurer of the United States at Chicago, Illinois—to the Committee of Claims.

An act (S. No. 1008) to increase the efficiency of the cavalry force in the suppression of the Sioux Indian hostilities—to the Committee on Military Affairs.

An act (S. No. 731) to limit and fix the Signal Service—to the Committee on Appropriations.

An act (S. No. 917) to enable O. T. Bussell, of Indianapolis, Indiana, to make application to the Commissioner of Patents for extension of letters-patent for a combined rubber and spiral steel spring—to the Committee on Patents.

An act (S. No. 234) to allow a pension of $37 per month to soldiers who have lost both an arm and a leg—to the Committee on Invalid Pensions.

An act (S. No. 307) concerning security and writs of error and appeals, and for other purposes—to the Committee on the Judiciary.

An act (S. No. 526) to amend section 1036 of the Revised Statutes relating to the District of Columbia—to the Committee for the District of Columbia.

An act (S. No. 453) to authorize the Vancouver Water Company to lay water-pipes through the Fort Vancouver military reservation—to the Committee on Military Affairs.

An act (S. No. 795) to enable Moses Marshall to make application to the Commissioner of Patents for the extension of letters-patent for improvement in knitting-machines—to the Committee on Patents.

An act (S. No. 795) for the relief of the heirs of Sheldon S. Hartshorn—to the Committee on Patents.

An act (S. No. 832) to increase the pension of Helen M. Stansbury—to the Committee on Invalid Pensions.

An act (S. No. 210) granting a pension to Austin R. Mills—to the Committee on Invalid Pensions.

An act (S. No. 750) granting a pension to T. B. Murdock—to the Committee on Invalid Pensions.

An act (S. No. 792) granting a pension to Peter Harder—to the Committee on Invalid Pensions.

An act (S. No. 691) for the relief of Edward A. Leland—to the Committee on Patents.

An act (S. No. 705) for the relief of Albert Towle, postmaster at Beatrice, Nebraska—to the Committee of Claims.

An act (S. No. 752) authorizing the recorder of the District of Columbia to appoint an assistant with certain powers—to the Committee for the District of Columbia.

An act (S. No. 828) for the relief of Peter Phillips—to the Committee on Military Affairs.

An act (S. No. 1044) making appropriations to pay judgments of the Court of Claims—to the Committee on Appropriations.

A joint resolution (S. R. No. 29) extending the time for the making of a report by the Army commission created by the act of July 24, 1876—to the Committee on Military Affairs.

An act (S. No. 683) for the relief of the officers and privates of the Fourth Arkansas Cavalry Volunteers—to the Committee on Military Affairs.

An act (S. No. 946) for the relief of Gibbes & Co., of Charleston, South Carolina—to the Committee of Claims.

An act (S. No. 991) for the relief of Edwin Rogers—to the Committee of Claims.

An act (S. No. 606) to establish the Territory of Huron, and to provide a temporary government therefor—to the Committee on the Territories.

INFRINGEMENT OF PATENTS.

The next business on the Speaker's table was the bill (H. R. No. 3370) to amend the statutes in relation to damages for infringement of patents, and for other purposes.

The SPEAKER. The Chair desires to state that a motion has been entered for the reconsideration of the vote upon the engrossment and third reading of this bill. The Chair understands that the gentleman who has charge of the bill is not now present; and the Chair would suggest that the bill be allowed to remain on the Speaker's table.

Mr. HOLMAN. I presume there is no objection to that course.

Mr. SAMPSON. I entered a motion to reconsider the action of the House on this bill.

The SPEAKER. The Chair has already stated that fact, and suggested that the bill be allowed to remain undisturbed on the Speaker's table.

Mr. SAMPSON. That will be satisfactory.

There being no objection, the bill was returned to the Speaker's table.

Mr. HOLMAN. I move to reconsider the various votes by which bills and resolutions have been referred; and also move that the motion to reconsider be laid on the table.

The latter motion was agreed to.

HEAD-STONES.

The SPEAKER, by unanimous consent, laid before the House a letter from the Secretary of War respecting the appropriation for head-

stones for graves of citizens and rebel soldiers in the cemeteries at Rock Island and Elmira; which was referred to the Committee on Military Affairs.

SURVEY OF LANDS IN NORTH CAROLINA.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of the Interior, inclosing an estimate for an appropriation for the survey of certain lands in North Carolina; which was referred to the Committee on Appropriations.

ENROLLED BILL.

Mr. HARRIS, of Georgia, from the Committee on Enrolled Bills, reported that they had examined and found truly enrolled a bill (S. No. 408) for the relief of Assistant Surgeon Thomas F. Azpell, United States Army; when the Speaker signed the same.

MILITARY ACADEMY BILL.

Mr. CLYMER, from the Committee on Appropriations, reported a bill (H. R. No. 4306) making appropriations for the support of the Military Academy for the fiscal year ending June 30, 1878, and for other purposes; which was read a first and second time, referred to the Committee of the Whole on the state of the Union, and ordered to be printed.

Mr. CLYMER. I move that that bill be made the special order for Saturday morning after the morning hour, and from day to day until disposed of.

Mr. CONGER. I reserve all points of order.

Mr. BUCKNER. I must remark to the gentleman from Pennsylvania that Saturday at two o'clock has already been set apart by order of the House for the consideration of the business of the District of Columbia.

Mr. CLYMER. The question of consideration will be raised when that time arrives.

The SPEAKER. The Chair is of the opinion that the agreement by which the business of the District of Columbia was set apart for consideration on Saturday next at two o'clock was made by unanimous consent, and therefore would prevent the appropriation bill being taken up at that time. Objection being made, the Chair therefore would suggest to the gentleman from Pennsylvania to name some other day.

Mr. CLYMER. I move then that the bill be made the special order for Monday next after the morning hour, and from day to day until disposed of.

There was no objection, and it was ordered accordingly.

COMPENSATION OF UNITED STATES MARSHALS.

The SPEAKER. The morning hour begins at one minute to one o'clock, and the unfinished business of yesterday is the bill (H. R. No. 3775) fixing the compensation of United States marshals and deputies. The pending question is the amendment of the gentleman from Michigan [Mr. CONGER] to strike out the words "nor shall their whole compensation exceed $1,200 per annum," so the bill will read "and the compensation of deputy marshals shall not exceed $5 per day while actually engaged in their duties." The gentleman from Kentucky [Mr. DURHAM] and the gentleman from Michigan [Mr. CONGER] will resume their places as tellers, the House having found itself without a quorum on the previous division.

The House again divided; and the tellers reported—ayes 48, noes 100.

So the amendment was rejected.

Mr. DURHAM demanded the previous question on the third reading and passage of the bill.

The previous question was seconded and the main question ordered; and under the operation thereof the bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. DURHAM moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

COMPENSATION OF UNITED STATES ATTORNEYS.

Mr. DURHAM, from the Committee on Expenditures in the Department of Justice, reported back a bill (H. R. No. 3792) fixing the compensation, &c., of United States attorneys, with the recommendation that it do pass.

The bill, which was read, provides in its first section that from and after July 1, 1876, the district attorneys of the United States shall receive for their services as such a yearly salary, to be paid quarterly, in lieu of the salary and fees now allowed by law, namely: The district attorney for the southern district of New York, $10,000 per annum; the attorneys for northern district of Illinois, district of Louisiana, Massachusetts, Maryland, eastern district of Missouri, southern district of Ohio, eastern district of Pennsylvania, western district of North Carolina, district of California, each $5,000 per annum; the attorneys for northern and middle district of Alabama, western district of Arkansas, northern and southern district of Georgia, southern district of Illinois, Indiana, Iowa, Kentucky, eastern district of Michigan, western district of Missouri, northern district of Ohio, western district of Pennsylvania, district of South Carolina, eastern district and western district of Tennessee, western district of Texas, eastern and western district of Virginia, each $4,500 per annum; the attorneys in each of the other districts not above mentioned, each $3,000 per annum. The above to be the amount of compensation for all services rendered by said attorneys to and for the United States, or for any of the officers of the United States, where, by existing law, said attorneys are required to attend to said matters; provided that said attorneys shall be allowed five cents per mile in going to and returning from any place to which he may be called from his residence in attending to any examination before a commissioner of a person charged with crime, or performing any service for the United States except attending regular terms of court.

The second section provides that it shall be the duty of said attorneys to attend to all cases in the district or circuit courts of the United States, in the districts where they are appointed, in which the United States is a party, and to attend to all other legal business in which the same may be interested, and also to defend any officer of the United States whenever the same may be sued about any matter connected with his said office.

The third section provides that all the fees and percentages to which said attorneys may be entitled shall, when collected, be paid into the Treasury of the United States.

Mr. HALE. I make the point of order that this bill must have its first consideration in Committee of the Whole on the state of the Union, because it confessedly increases the salaries of the United States attorneys. At any rate it does not diminish the salaries of the United States attorneys.

Mr. DURHAM. It is a question whether it does not diminish them in the whole, although in some cases it may increase the salaries of district attorneys.

Mr. HALE. It is clear to my mind that the bill does not diminish them.

Mr. DURHAM. The bill provides for fixing the compensation of United States attorneys instead of allowing them to be paid by fees.

The SPEAKER. The Chair sustains the point of order, and the bill therefore goes to the Committee of the Whole on the state of the Union.

Mr. DURHAM. Before the bill is referred I wish to make some amendments from the committee so that the amendments may go with the bill.

Mr. HALE. I do not object to the amendments indicated by the gentleman from Kentucky, so they may be referred with the bill.

Mr. DURHAM. By inadvertence the District of Columbia was omitted, and it should come in line 12, immediately after the word "California." The eastern district of Michigan should be stricken out in line 16 and inserted after the words "District of Columbia." These are the amendments which were recommended by the committee.

Mr. KASSON. I notice the bill speaks of the southern district of Iowa instead of the district of Iowa, and that inaccuracy should also be corrected. I presume, however, it can be done in committee.

Mr. DURHAM. It can be amended in the committee.

Mr. CONGER. As I understand it, these amendments are reported from the Committee on Expenditures in the Department of Justice.

The SPEAKER. The Chair so understands.

Mr. CAULFIELD. The amendment should also be reported in line 3, striking out "1876" and inserting "1877."

Mr. DURHAM. That is a clerical error, and should be corrected accordingly.

Now, Mr. Speaker, I should like to appeal to the House to have this important bill acted upon at this time.

Mr. CAULFIELD. Does the Speaker rule that this bill increases salaries, and therefore must have its first consideration, under the rule, in Committee of the Whole on the state of the Union? In my judgment, the bill does not increase salaries.

The SPEAKER. The Chair understood the gentleman from Kentucky to say that it might in some cases increase salaries.

Mr. HOLMAN. It unquestionably does in some cases.

Mr. DURHAM. But it does not in the aggregate. On the contrary, it diminishes the salaries.

Mr. CAULFIELD. It will be a saving of money to the Government.

The SPEAKER. The Chair rules that if the salary be increased in a single instance, the bill must under the operation of the rule go to the Committee of the Whole on the state of the Union.

Mr. DURHAM. I am frank to say that in some instances the bill does increase salaries, but on the whole there is a saving to the Government.

Mr. CAULFIELD. Undoubtedly money is saved by this bill.

The SPEAKER. The Chair noticed the remark of the gentleman from Kentucky, that in some cases the bill might increase salaries, and therefore is clearly of the opinion that the bill must have its first consideration in Committee of the Whole; and the bill therefore is referred to the Committee of the Whole on the state of the Union, and, with the accompanying amendments, ordered to be printed.

Mr. DURHAM. This is a matter in which the whole House is interested, and I ask that the bill may be made a special order for Wednesday next, after the morning hour.

Mr. CONGER. To be considered in the House as in Committee of the Whole.

The SPEAKER. The gentleman from Kentucky [Mr. DURHAM] asks unanimous consent that this bill may be made the special order

for Wednesday next, after the morning hour, to be considered in the House as in Committee of the Whole. Is there objection?

Mr. HOLMAN. I hope the bill will go to the Committee of the Whole.

The SPEAKER. The Chair understands the gentleman from Indiana to object.

Mr. DURHAM. I have no objection to the bill going to the Committee of the Whole.

Mr. CAULFIELD. All we want is to have a day fixed for its consideration.

The SPEAKER. To reach this bill, being in Committee of the Whole, a motion would be required to be made that the House should resolve itself into Committee of the Whole House on the state of the Union, and the bills in Committee of the Whole would then come up for consideration in their order.

Mr. WILSON, of Iowa. I understand the gentleman from Kentucky to ask that the bill may be made a special order in Committee of the Whole.

The SPEAKER. The Chair understands the gentleman from Indiana [Mr. HOLMAN] to object to that.

Mr. HOLMAN. I have no objection to the bill being made a special order in Committee of the Whole. I only object to its being considered in the House as in Committee of the Whole.

The SPEAKER. The gentleman from Kentucky will again state his request.

Mr. DURHAM. I desire to have the bill made the special order in Committee of the Whole for Wednesday next, after the morning hour, not to interfere with appropriation bills.

Mr. HALE. To be considered in Committee of the Whole?

Mr. DURHAM. Yes, sir.

The SPEAKER. Is there objection to the request made by the gentleman from Kentucky?

There was no objection, and it was so ordered.

Mr. DURHAM moved to reconsider the vote by which the order was made; and also moved to lay the motion to reconsider on the table.

The latter motion was agreed to.

ENOCH TOTTEN.

Mr. BRIGHT, from the Committee of Claims, reported back the bill (S. No. 784) for the relief of Enoch Totten, administrator of the estate of William A. Ladd, deceased, and moved that the same be referred to the Committee on War Claims.

The motion was agreed to.

Mr. BRIGHT moved to reconsider the vote by which the bill was referred to the Committee on War Claims; and also moved to lay the motion to reconsider on the table.

The latter motion was agreed to.

PORTS OF GALVESTON AND BROWNSVILLE.

Mr. REAGAN, from the Committee on Commerce, reported back the bill (H. R. No. 3567) to make the port of Brownsville, Texas, one of the ports to which unappraised merchandise may be transported, with an amendment in the nature of a substitute.

The SPEAKER. If there be no objection the substitute alone will be reported.

The substitute was read, as follows:

A bill to extend to the ports of Galveston and Brownsville in the State of Texas the privileges of sections 2990 to 2997, inclusive, of the Revised Statutes of the United States.

Be it enacted, &c., That the provisions of sections 2990 to 2997, inclusive, of the Revised Statutes of the United States be, and they are hereby, extended to the ports of Galveston and Brownsville in the State of Texas.

Mr. CONGER. I ask that the last section of the Revised Statutes referred to in the substitute be read; or perhaps the gentleman will state if that is the section referring to ports from which or ports to which goods may be transshipped.

Mr. REAGAN. Ports to which.

Mr. CONGER. That is sufficient.

Mr. FORT. I rise to a point of order. I understand that this bill will increase expenses; that it creates a new salaried officer, and I make the point of order that it ought to receive its first consideration in Committee of the Whole.

Mr. REAGAN. It has nothing to do with what the gentleman supposes.

Mr. FORT. I do not see how you can make Brownsville a port of entry without having an officer there.

Mr. REAGAN. I think I can satisfy the gentleman on that point by making a brief explanation.

The SPEAKER. The gentleman from Texas is recognized. The Chair will reserve the point of order.

Mr. REAGAN. The object of this bill is to extend the provisions of sections 2990 to 2997 of the Revised Statutes to the ports of Galveston and Brownsville. I will read section 2990 and then section 2997. Section 2990 provides that—

When any merchandise, except wine, distilled spirits, and perishable or explosive articles, or articles in bulk, imported at the ports of New York, Philadelphia, Boston, Baltimore, Portland in Maine, Port Huron, Detroit, New Orleans, Toledo, and San Francisco, shall appear by the invoice or bill of lading and by the manifest to be consigned to and destined for either of the ports specified in section 2997, the collector at the port of arrival shall permit the owner, agent, or consignee to make entry thereof for warehouse or immediate transportation, in triplicate, setting forth the particulars in such entry and the route by which such merchandise is to be forwarded, whether by land or water. The entry having been compared with the invoice and duly sworn to, and such an examination of the merchandise having been made as will satisfy the customs officers that the same corresponds with the manifest and invoice, and the duties estimated on the value and quantity of the invoice, and on the execution of a bond as hereinafter provided, the collector shall deliver the same to be immediately transported to such port of destination, at the sole cost and risk of such owner, agent, or consignee.

Not at the cost of the Government. Now the ports to which the merchandise may be shipped are mentioned in section 2997, which is as follows:

The privilege of transportation in bond shall extend to the ports of New York and Buffalo, in New York; Boston, in Massachusetts; Providence, in Rhode Island; Philadelphia and Pittsburgh, in Pennsylvania; Baltimore, in Maryland; Norfolk, in Virginia; Charleston, in South Carolina; Savannah, in Georgia; New Orleans, in Louisiana; Portland, in Maine; Chicago, in Illinois; Cincinnati and Toledo, in Ohio; Saint Louis, in Missouri; Evansville, in Indiana; Milwaukee, in Wisconsin; Louisville, in Kentucky; Cleveland, in Ohio; San Francisco, in California; Portland, in Oregon; Memphis, in Tennessee; and Mobile, in Alabama; and to importations from or to Europe, and from or to Asia, or the islands adjacent thereto, via the United States.

On the 24th of February last this House passed a bill extending the provisions of this law to Genesee in the State of New York.

Mr. CONGER. I desire to ask the gentleman if Brownsville is a port of entry.

Mr. REAGAN. It is.

Mr. CONGER. Has it an appraiser?

Mr. REAGAN. It is a port of entry with a collector, appraiser, and all the other officers.

Mr. CONGER. Not an appraiser, I think.

Mr. REAGAN. I think the gentleman will find that it has; but it is not necessary perhaps for the object of this bill that it should have an appraiser.

Mr. CONGER. If it is a port to which goods may be taken in the interior it does not need an appraiser.

Mr. REAGAN. The provisions of this section are simply intended to cover that difficulty.

Mr. CONGER. I can very well see why the port at Galveston might very well be made a port of entry under the law, but I cannot see any necessity for making the port at Brownsville a port of entry.

Mr. REAGAN. I will state the matter so that the gentleman from Michigan will understand. This bill as reported grew out of a correspondence between officers of the New Orleans and Texas Steamship Company and General GIBSON, a Representative in this House from the city of New Orleans. It was shown in this correspondence that goods of this kind go into New Orleans, and unless we extend the provisions of these two sections, they are required to be delayed a considerable length of time before reshipment and transportation to the port for which they are destined. The object is to enable the party shipping the goods to get the necessary bonds and make a reshipment on the arrival of the goods, either in New Orleans or in New York, destined for these two ports.

Mr. CONGER. If the gentleman will allow me a moment I will say that I think this whole system is not the best that could be devised and I was opposed to it when it was passed by the House; but it has been adopted and is to some extent perhaps useful to the country. The law provides that this transfer of goods under the interior-port-entry law shall be under regulations prescribed by the Secretary of the Treasury. The Secretary has provided those regulations and they are so careful and guarded so well that I have not yet heard of any of the dangers that I anticipated from the passage of the bill. With the remark of the gentleman from Texas in regard to Brownsville being made a port of entry, I have no further objection to the passage of the bill.

Mr. REAGAN. The Government loses nothing by it and commerce will be greatly benefited by extending the provisions of these two sections to these two ports in Texas. As the gentleman from Michigan, who has extensive acquaintance with this subject, is satisfied, I propose to ask the previous question.

Mr. KASSON. Before the gentleman does that I wish to ask if it is intended to put both ports, Galveston and Brownsville, in section 2990? If the object is to put them into section 2997, which provides for transportation made under bond for the ports mentioned, there is no objection. But, as the bill reads, it differs from the original bill in this respect, that it puts the ports of Galveston and Brownsville into section 2990 and section 2997. I do not think they should be put into section 2990, because they do not belong to the class of ports included in that section, nor does the same necessity exist for placing them there. But I am willing that they shall be put into section 2997, which was apparently the object of the original bill, and I see no impropriety in inserting the names in that section.

Mr. REAGAN. The object is to give them the benefit of section 2997; but it was necessary, we thought, to refer to the other section in order that the benefits of all the sections might be extended to these two ports. It was intended by the original bill to make that arrangement, and I communicated with the Secretary of the Treasury on the subject. I asked the Secretary whether the original bill or the substitute would be the best, and if the gentleman will allow me I will in a moment read what he says in reply.

Mr. KASSON. While the gentleman is examining that I will call the attention of the House to the language of the substitute, which is that the privileges of sections 2990 and 2997, inclusive, of the Re-

vised Statutes are extended to the ports of Galveston and Brownsville. Section 2980 provides that when any merchandise of a particular character is imported to certain ports limiting the numbers, it may be transshipped in bond, &c. Section 2997 enumerates a good many ports to which the privilege of transportation in bond is extended. My fear is that in the manner in which the substitute is worded it may put Galveston and Brownsville in both sections, and I think the whole object of the bill will be effected by simply adding the ports of Galveston and Brownsville to section 2997, because the language of the first section is that when any merchandise, &c., is imported at New York, &c., consigned to and destined to other ports specified, then certain things shall be done, so that if these two ports are inserted in both sections they will necessarily have all the benefits of the proceedings under them.

Mr. REAGAN. On the 8th of January a communication was addressed to me, in answer to one from me, by the Assistant Secretary of the Treasury, in which he says:

> Your note of the 7th instant has been received, transmitting a form of bill "to make the port of Brownsville, Texas, one of the ports to and from which unappraised merchandise may be transported;" as also a copy of House bill No. 22-2, providing that similar privileges be extended to the port of Genesee, in the State of New York.
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> You inquire which form of bill is preferable.
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> For reply I have to state that, while perhaps either form might accomplish the object desired, that submitted by you in writing seems to be more specific, and perhaps for that reason would be preferable.

Mr. KASSON. The difficulty is that it was not the intention of the original bill to put both these ports in section 2997. If the gentleman will make the bill satisfactory in that regard I presume there will be no objection.

Mr. CONGER. The objection to placing these two ports in the first class is not of great importance, because unless goods are entered at these ports consigned to other ports it will be inoperative in any event.

Mr. KASSON. I should object to Brownsville being put in the first class for reasons apparent to me from some observations I had while serving as a member of another committee.

Mr. REAGAN. As the gentleman from Iowa objects, I will withdraw the substitute and will call the previous question on the original bill; but before doing so I will yield for a moment to my colleague, [Mr. SCHLEICHER.]

Mr. SCHLEICHER. I merely wish to state that I introduced the original bill to meet the request of some merchants in Brownsville, who stated the necessities of their commerce, and also from communications of Charles Morgan and Whitney & Co. That communication explains why it is necessary to include Brownsville. They run a regular line of steamships between New Orleans and Galveston, and also one between New Orleans and Brownsville, which has no connection with Galveston.

By conferring this privilege upon Galveston, and not upon Brownsville, you would oblige these steamers in many instances to touch at Galveston when otherwise they would not do so. The owners of these steamship lines have stated that this privilege is necessary for the facilities of their trade. There is a great deal of trade between Brownsville and Mexico, Brownsville being upon the line. Those who are better posted upon the subject than I am, these steamboat men and also merchants of Brownsville, have represented that this privilege is necessary. I introduced the original bill; the committee have proposed a substitute. It is immaterial to me which one is passed; I believe either would meet the case.

Mr. REAGAN. I will withdraw the substitute.

The SPEAKER. Does the gentleman from Texas [Mr. REAGAN] withdraw the substitute by direction of the committee? As the Chair understands, the committee directed the substitute to be reported.

Mr. REAGAN. I cannot say that I am authorized by the committee to withdraw it.

The SPEAKER. Then the gentleman had better permit the substitute to be voted down.

Mr. REAGAN. Very well; but, before the question is taken on the substitute, I will move to insert the words "and Galveston" after the word "Brownsville."

The SPEAKER. The question will first be taken upon the amendment to the original bill, and then upon the substitute.

The amendment moved by Mr. REAGAN was then adopted.

The question was taken upon the substitute; and it was not agreed to.

The bill, as amended, was then ordered to be engrossed and read a third time; and it was accordingly read the third time, and passed.

Mr. REAGAN moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

HOMESTEAD ENTRIES.

Mr. GOODIN, from the Committee on Public Lands, reported back House bill No. 2041, to amend section 2291 of the Revised Statutes of the United States, and sundry Senate amendments thereto, with a recommendation that the Senate amendments be concurred in.

Mr. KASSON. Let the bill as amended by the Senate be read.

The bill, as amended, was read, as follows:

> *Be it enacted, &c.*, That the proof of residence, occupation, or cultivation, the affidavit of non-alienation, and the oath of allegiance required to be made by section 2291 of the Revised Statutes may be made before the judge, or, in his absence, before the clerk, of any court of record of the county and State, or district and Territory, in which the lands are situated; and if said lands are situated in any unorganized county, such proof may be made in a similar manner in any adjacent county in said State or Territory; and the proof, affidavit, and oath, which so made and duly subscribed, shall have the same force and effect as if made before the register or receiver of the proper land district; and the same shall be transmitted by such judge, or the clerk of his court, to the register and the receiver, with the fees and charges allowed by law to him. And the register and receiver shall be entitled to the same fees for examining and approving said testimony as are now allowed by law for the same service.
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> SEC. 2. That said proof, affidavits, and oaths shall be properly filed in the land office by the register; and copies thereof certified to by the register shall be evidence of their contents in the courts of any State or of the United States.
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> SEC. 3. That if any witness making such proof, or the said applicant making such affidavit or oath, swears falsely as to any material matter contained in said proof, affidavits, or oaths, the said false swearing being willful and corrupt, shall be deemed guilty of perjury, and shall be liable to the same pains and penalties as if he had sworn falsely before the register.

Mr. GOODIN. I suppose this bill is understood by every member of the House, and if no one desires to ask any questions concerning it I will call the previous question upon concurring in the Senate amendments.

The previous question was seconded and the main question ordered; and under the operation thereof the amendments of the Senate were concurred in.

The amendment to the title was to make it read as follows:

> An act to amend section 2291 of the Revised Statutes of the United States, in relation to proof required in homestead entries.

The amendment to the title was agreed to.

Mr. GOODIN moved to reconsider the vote by which the amendments of the Senate were concurred in; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

CONTESTED LAND TITLES.

Mr. KIDDER, from the Committee on Public Lands, reported back the bill (H. R. No. 2114) to give parties contestant time to file on or enter lands under the pre-emption, homestead, or timber-culture acts after the contests shall have been finally decided, with an amendment striking out section 2 of the bill and inserting in lieu thereof a substitute.

The bill was read, as follows:

> *Be it enacted, &c.*, That when a party shall contest successfully the validity of the title to any claim under the pre-emption, homestead, or timber-culture acts of the United States, he shall have priority of right for fifteen days to file his declaratory statement on or enter the land over which the contest was had from the time the said party shall have notice of the final decision thereon.
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> SEC. 2. That it shall be the duty of the register of the land office before whom such contest was had, on the filing of said decision in his office, to give notice thereof to each of the parties interested therein, either personal or by addressing letters to them, respectively, at their last and usual place of abode.

The amendment was to strike out section 2 and insert in lieu thereof the following:

> SEC. 2. That it shall be the duty of the register of the land office before whom such contest was had, on the filing of said decision in his office, to give notice thereof to each of the contesting parties, by written or printed notice, of said decision, to be sent by mail to their respective post-office addresses, which shall be furnished by the contestants at the time such contest is made. And the register is required to keep a record of such mailing of notices, which shall be conclusive proof of its recitals.

Mr. KIDDER. I call the previous question upon the bill and amendment.

Mr. BLAND. I would like to ask the gentleman a question. If I understand the provisions of the bill, when a contest is made over a pre-emption or homestead claim, and both parties have made improvements on the land, and the contest is decided against one of them, there is no provision made in regard to the improvements of the unsuccessful party.

Mr. KIDDER. In the West and especially in our Territories, we understand that parties may contest the title of a pre-emptor or a homesteader. If he is unsuccessful, then this bill provides that he may have fifteen days within which to enter the land, and of course the entry of the pre-emptor or homesteader is canceled.

Mr. BLAND. I hope this bill will not pass until it is further considered. I myself have known many instances where parties have settled upon public lands and where conflicting titles have been set up to those lands. For instance, a railroad company sometimes claims title to these pre-emptions and homestead claims, and some of them are claimed as swamp lands. The parties living upon these lands may have titles from railroad companies or may have swamp-land titles. Persons who desire to establish a homestead or pre-emption title file their objection, and the Departments may hold that the land is subject to homestead or pre-emption. In many cases these parties have lived on the land for five or ten years and have made improvements and erected homes there. There ought to be an amendment to this bill providing that where parties have made improvements upon these lands they should have the first right to pre-empt or homestead the land.

The SPEAKER. The gentleman from Dakota demands the previous question.

Mr. KASSON. Before the previous question is ordered, I wish to ask the gentleman from Dakota whether he intended to make the certificate of the register, as the bill reads, "conclusive evidence." In land matters I am always opposed to putting the law in such a form as to preclude the power of correcting any mistake or misstatement

of anybody. I think that, if the gentleman would substitute "legal evidence" for "conclusive evidence," the bill would be much more satisfactory in that particular. By using the words "conclusive evidence" we would shut out any possibility of an adverse party or any party interested showing error in the register's certificate. I think that this certificate should merely be "legal evidence," not "conclusive evidence."

Mr. KIDDER. If I recollect aright, the bill does not say "conclusive evidence," but merely "evidence."

Mr. KASSON. The clerk read it "conclusive evidence."

Mr. KIDDER. I have no objection to the verbal amendment which the gentleman suggests.

Mr. KASSON. The last clause of the bill (I have it in my hand) provides that—

The register is required to keep a record of such mailing of notices, which shall be conclusive proof of its recitals.

I move to strike out the words "conclusive proof" and insert "legal evidence."

Mr. CONGER. Or *prima facie* evidence.

Mr. KIDDER. I have no objection to the amendment suggested by the gentleman from Iowa, [Mr. KASSON.]

Mr. KASSON. This amendment will allow opportunity for rebuttal; that is the only point.

The SPEAKER. Does the gentleman from Dakota accept the amendment suggested?

Mr. KIDDER. I do.

The amendment of Mr. KIDDER, as modified by striking out "conclusive proof" and inserting "legal evidence," was adopted.

The bill, as amended, was ordered to be engrossed and read a third time; and it was accordingly read the third time, and passed.

Mr. GOODIN moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

EPHRAIM P. ABBOTT.

Mr. GOODIN, from the Committee on Public Lands, reported back, with a recommendation that it pass, the bill (S. No. 678) for the relief of Ephraim P. Abbott.

The bill was read. It provides that upon the payment of $2.50 per acre by Ephraim P. Abbott, of the county of Wayne, in the State of Michigan, his heirs or assigns, into the Treasury of the United States, or to the receiver of the land office of the district in which the following lands are situated, within six months from the passage of the act, the Commissioner of the General Land Office shall cause a patent to be issued to Abbott, his heirs or assigns, releasing to him or them all the right, title, and interest of the United States in and to the following described tract of land, situate in the township of Ecorce, county of Wayne, and State of Michigan, lying in rear of and adjoining private claim numbered 667, fronting on the River Rouge, and patented to Gabriel Godfrey, said tract so lying in the rear of said front claim and extending back, of equal width of said front claim, to the line of lands patented to James May, and being bounded on the north by the rear of said front claim, eastwardly by the line of private claim numbered 37, confirmed to Charles Chovin, continued to the land so patented to James May, and westwardly by lands authorized by act of Congress of July 1, 1870, to be pre-empted by Thomas Henderson. But such patent is in no manner to interfere with any valid adverse right to the land, nor preclude a judicial investigation in any court of law or equity between the patentee, his heirs or assigns, and any adverse claimant of the lands. Any incumbrance or conveyance of the land by Robert Abbott, now deceased, the father of Ephraim P., or any of the heirs of Robert Abbott, is to have the same effect as if the land had been patented to Robert Abbott during his life.

Mr. OLIVER. I ask whether the morning hour has not expired.

The SPEAKER. The morning hour has expired.

Mr. HOLMAN. I wish to reserve all points of order on this bill when it shall come up again.

The SPEAKER. All points of order will be reserved.

ORDER OF BUSINESS.

Mr. HEWITT, of Alabama. I move that the House now resolve itself into Committee of the Whole on the state of the Union. I will state that my object is to reach the bill (H. R. No. 2283) granting pensions to certain soldiers and sailors of the Mexican, Florida, and Black Hawk wars, and certain widows of deceased soldiers and sailors of the same.

The SPEAKER. In the Committee of the Whole on the state of the Union there is but one bill prior to the bill which the gentleman desires to reach; and when the House is in Committee of the Whole the prior bill can, if the committee should so determine, be laid aside so that the bill indicated by the gentleman from Alabama may be reached.

Mr. HUNTON. There is a special order for to-day—certainly one, if not two special orders. I suppose that a special order has the right to come up in preference to a motion to go into Committee of the Whole on the state of the Union.

Mr. SINGLETON rose.

Mr. HEWITT, of Alabama. I believe, Mr. Speaker, that I have the floor.

The SPEAKER. The Chair recognized the gentleman from Alabama as entitled to the floor.

Mr. HEWITT, of Alabama. I move that the House go into the Committee of the Whole on the state of the Union.

The House divided; and there were—ayes 89, noes 4.

Mr. SINGLETON. I believe, Mr. Speaker, that the bill making appropriations for the consular and diplomatic service for the year ending June 30, 1878, and for other purposes, has been made the special order, and comes up as a matter of course, taking precedence over all other bills.

The SPEAKER. If the gentleman from Mississippi had risen in time the Chair would have been compelled to recognize that fact, but the House is now dividing on the motion of the gentleman from Alabama.

So the motion was agreed to.

The SPEAKER. The House accordingly resolves itself into the Committee of the Whole on the state of the Union, and Mr. THROCKMORTON will take the chair.

HOUSE DEFICIENCY BILL.

Mr. FOSTER. Before the House goes into the Committee of the Whole on the state of the Union I desire to make a report from the Committee on Appropriations and hope there will be no objection to it.

The SPEAKER. The House has resolved itself into the Committee of the Whole on the state of the Union, but the Chair will submit the question to the House whether by unanimous consent the report from the Committee on Appropriations will be received?

There was no objection, and it was ordered accordingly.

Mr. FOSTER, from the Committee on Appropriations, reported a bill making appropriations to supply certain deficiencies in the contingent fund of the House of Representatives and for other purposes; which was read a first and second time, referred to the Committee of the Whole on the state of the Union, and ordered to be printed.

Mr. FOSTER. I move that the bill be made the special order for to-morrow after the morning hour and from day to day until disposed of.

Mr. CONGER. I give notice that I reserve all points of order.

Mr. MILLS. I object to its being made the special order for to-morrow, as that is private-bill day.

Mr. HOLMAN. Is it not within the control of the majority of the House to make a special order? The bill will take but a few minutes.

The SPEAKER. The gentleman will recollect that this proceeding is by unanimous consent, and that unanimous consent only extends to the introduction and reference of the bill. To go further than that would be in violation of the understanding of the House.

Mr. HOLMAN. This bill will not occupy ten minutes.

The SPEAKER. The Chair will ask again whether there is any objection to the assignment of this bill as a special order for to-morrow after the morning hour, in the Committee of the Whole on the state of the Union.

Mr. BRIGHT. Yes; I object, as to-morrow is private-bill day.

Mr. HOLMAN. Then I hope my colleague on the Committee on Appropriations will withdraw the bill.

Mr. WILSON, of Iowa. Under the rules is it not in the power of the House to make a special order?

The SPEAKER. But this proceeding is by unanimous consent, the House having resolved itself into the Committee of the Whole on the state of the Union.

Mr. FOSTER. Then objection being made, I withdraw the bill altogether and will report it at another time.

MEXICAN, FLORIDA, AND BLACK HAWK WARS.

The SPEAKER. The House is now in Committee of the Whole on the state of the Union, and

Mr. HARRIS, of Virginia, will take the chair.

The CHAIRMAN. The first bill in order in the Committee of the Whole on the state of the Union is the bill (H. R. No. 748) to apply the proceeds of sales of the public lands to the education of the people.

Mr. HEWITT, of Alabama. Is that the special order for this day in committee?

The CHAIRMAN. The Chair so understands.

Mr. HEWITT, of Alabama. Then I move that the consideration of that bill be postponed for the present, in order to proceed to the consideration of the bill (H. R. No. 2283) granting pensions to certain soldiers and sailors of the Mexican, Florida, and Black Hawk wars, and certain widows of deceased soldiers and sailors of the same, which was made the special order from day to day until disposed of.

Mr. SINGLETON. I move to lay that bill aside in order to proceed to the consideration of the consular and diplomatic bill.

Mr. WILSON, of Iowa. Is it not a fact, Mr. Chairman, that appropriation bills take precedence of all other bills?

The CHAIRMAN. The consideration of the appropriation bill would have been regularly in order, but the gentleman from Alabama moves to postpone prior bills for the purpose of taking up the one to which he has referred.

Mr. HEWITT, of Alabama. The House, as I understand, went into the Committee of the Whole on the state of the Union expressly for the purpose of taking up the bill to which I have referred.

Mr. HOAR. I wish to inquire whether the education bill was not made the special order for this day by unanimous consent, and if that be so, whether anything can take it out of its place?

The CHAIRMAN. The Chair is not so advised, although he is informed it was made the special order in the House. The Chair will submit the question to the committee as to whether it will proceed to the consideration of the consular and diplomatic bill, as that seems to be the desire of the committee.

The motion was disagreed to.

Mr. HEWITT, of Alabama. I move now to lay aside all other propositions for the purpose of proceeding to the consideration of the bill (H. R. No. 2283) granting a pension to certain soldiers and sailors of the Mexican, Florida, and Black Hawk wars, and certain widows of deceased soldiers and sailors of the same.

Mr. HOLMAN. When the House resolves itself into Committee of the Whole on the state of the Union the regular order of business is the consideration of the appropriation bill, which comes up as a matter of course, and no question of consideration can be raised.

The CHAIRMAN. The question was submitted to the committee whether it would take up the appropriation bill, and it was disagreed to.

Mr. HOLMAN. I rise to a further point of order, that the question of consideration cannot be raised in Committee of the Whole. When the bill making appropriations for the consular and diplomatic service was called up a motion to postpone might have been entertained. The question of consideration, however, could not be raised.

The CHAIRMAN. The Chair has already decided that the point of order comes too late, even were it a good one, as the committee has already proceeded to the consideration of other business.

Mr. KASSON. I wish to submit a point of order about which I think there can be no doubt, and that is, that this committee has no right to set aside an order of the House. Therefore, when the House has made a special order in the Committee of the Whole on the state of the Union, it cannot be set aside without the committee rising and obtaining a further order from the House to that effect. This committee has not the slightest power to overrule an order of the House.

The CHAIRMAN. That may all be true, but the point of order comes too late, as other business has intervened. The question now is on the motion of the gentleman from Alabama.

Mr. KASSON. My point of order is right on that question, and it is that when a special order has been made in the House, that order of the House controls the Committee of the Whole. There is no way to avoid it in Committee of the Whole except by rising and going back into the House and asking for a change of the order.

The CHAIRMAN. These special orders in committee will be taken up in their order. The consular and diplomatic bill has been laid aside, and the question now recurs on the motion of the gentleman from Alabama to take up the special order which he has indicated.

Mr. HOLMAN. If the appropriation bills do not take precedence, we will otherwise never reach an appropriation bill.

Mr. SINGLETON. I have raised the question that the consular and diplomatic bill comes up as a matter of course first in order in Committee of the Whole on the state of the Union.

Mr. HOLMAN. The appropriation bill came up first, and that order cannot be changed by this committee. It is an order of the House. The bill is the special order in committee; it is the first business to be reached, and cannot be postponed by the committee. Otherwise appropriation bills never would be reached.

The CHAIRMAN. The Chair re-affirms its previous ruling that standing orders must be taken up in the order in which they stand upon the Calendar. The consular and diplomatic appropriation bill has been laid aside, and the question now recurs on the motion of the gentleman from Alabama.

The motion of Mr. HEWITT, of Alabama, was agreed to.

The CHAIRMAN. The committee now has before it for consideration the bill (H. R. No. 2283) granting pensions to certain soldiers and sailors of the Mexican, Florida, and Black Hawk wars, and certain widows of deceased soldiers and sailors of the same.

The bill was read *in extenso* for information.

Mr. HEWITT, of Alabama, rose.

Mr. SINGLETON. I rise to a question of order. I think it will be found that this bill was made a special order on the condition that it should not interfere with the consideration of any general appropriation bill. I think that by reference to the Calendar such will be found to be the case. I therefore contend that this bill should be laid aside.

Mr. HEWITT, of Alabama. The gentleman's point of order is made too late.

The CHAIRMAN. The gentleman from Alabama [Mr. HEWITT] has the floor.

Mr. HEWITT, of Alabama. Mr. Chairman, it has been made my duty to present to the committee some of the reasons why the bill now under consideration should be passed, and while I would have preferred that this duty should have been assigned to some other member more familiar with the rules of debate and more competent than myself to present the claims of our Mexican veterans, yet I shall most cheerfully proceed to the performance of that duty with none other than an honest, sincere, and patriotic purpose of promoting the interest of our common country. In the investigation of any question it is important to know precisely and clearly what the subject is, and when ascertained to confine our remarks to it. The subject for consideration is a substitute for certain House bills granting pensions to the soldiers of the Black Hawk, Florida, and Mexican wars.

The first section of the substitute directs and requires the Secretary of the Interior to place on the pension-roll the names of the surviving officers, enlisted men, and sailors, including militia and volunteers, of the military and naval services of the United States who served sixty days in the war with Mexico, or thirty days in the Black Hawk or Florida war, and who were honorably discharged, and such other officers and soldiers and sailors as may have been personally named in any resolution of Congress for any specific service in said wars, upon taking an oath to support the Constitution of the United States, and the surviving widows of such officers and enlisted men as were married before the discharge of such officers or enlisted men, and who have not since remarried.

The second section provides that the act shall not apply to such persons as are now drawing pensions at the rate of $8 per month or more, nor to persons drawing pensions for less than $8 per month, except for the difference between the pension received and $8 per month, and it fixes pensions under this act to officers and enlisted men alike at $8 per month. This section provides against the drawing of two pensions by any one person.

The third section prescribes the mode by which persons are to be placed upon the pension-roll under this act. They are to be placed upon the roll by proof under such rules and regulations as may be prescribed by the Secretary of the Interior. And it also fixes a severe penalty for false swearing under this act, and also authorizes the Secretary of the Interior to strike from the roll any name whenever it may appear that such person is not entitled to a pension. This section further provides that the loss of a certificate of discharge shall not deprive any applicant of the benefits of this act, but that other proof of services performed and an honorable discharge shall be sufficient.

The fourth section throws around the pensioner under this act all the safeguards against fraud and exorbitant charges of attorneys as are secured to pensioners under the provisions of the Revised Statutes.

The fifth section excludes from the benefits of the act all persons under political disabilities.

Such are the provisions of the substitute. They are so simple that there is no difficulty in understanding them. If the House committee is ready to grant pensions to the surviving soldiers of the wars named, then there is no good reason why this bill should not pass. It is copied from the act of 1841 granting pensions to the surviving soldiers of the war of 1812, and will fully meet the objects sought. Our pension system assumes two forms, invalid and gratuitous pensions. Of the first I need have nothing to say, as this bill is of the latter form. Gratuitous pensions are defined to be "a reward for military services rendered, and is an evidence of the nation's gratitude to its defenders."

Now and then we meet a person who is opposed to all pensions, civil or military, but, Mr. Chairman, the policy of pensioning our brave volunteer soldiers who left home, wife, children, mother, in the hour of danger at their country's call to endure all the toils and horrors of the march, camp, and hospital, and face the perils of the battle-field, not for pay, but for love of country and their country's flag, is too firmly rooted in the minds of our people to be now eradicated. Before our fathers had finally established our Government, while the revolutionary war was still in progress, and in the darkest hours of that war, the first pension act was passed—in May, 1778—less than two years after the Declaration of Independence. This act gave to all the military officers commissioned by Congress who were or thereafter might be in the service of the United States and continue therein during the war, after the conclusion of the war, annually, for the term of seven years, one-half pay.

In 1780 half pay for life was promised to officers who would remain in the service during the war. These acts were rather in the nature of a bounty, but quasi gratuitous pensions. It is strange to me that both of these acts confined the gratuity of the Government to the officers to the exclusion of the more meritorious and needy, the private soldier. But in the early part of 1818 Congress enacted a measure which destroyed this unwarrantable distinction which had been made up to that time between officers and the private soldier in the bestowal of the national bounty. This act granted a pension for life to the officers and enlisted men who served in the war of the Revolution to the close thereof, or for a term of nine months or longer at any time during said war, and who were resident citizens of the United States, and who were then or might thereafter by reason of reduced circumstances in life be in need of assistance from their country for support. This act was passed just thirty-five years after the close of the Revolution. There were two other acts—May 15, 1828, and June 7, 1832—more extensive and more liberal toward the soldiers of the Revolution than the act of 1818.

In 1871 an act was passed granting pensions to the survivors of the war of 1812 who had served for a period of sixty days.

Thus I have given a brief history of our legislation upon the subject of gratuitous pensions to the soldiers of our different wars. This legislation, from the very beginning of our Government to this time, demonstrates that the pension system is a part of the general military policy of our country, and it is now too late to question the justness or propriety of the same. "To pay our soldiers for having fought, rather than they should fight for pay," it seems to me is a sound and good policy. When the soldiers of 1846 and 1847 volunteered and went out to bear our flag against a foreign enemy and upon a foreign soil,

they expected, and had a right to expect, that, as the soldiers of the revolutionary war when old and poor were taken care of by the Government, so the Government in like manner would take care of them in their old age and poverty, and now they come to us, as the representatives of the American people for whom they fought, and demand of us to redeem the implied pledges of the Government. They tell us in their memorials, in their conventions, and in their public gatherings everywhere, and history corroborates their statement, that they bravely and gloriously bore our flag in triumph at Palo Alto, Resaca de la Palma, Monterey, Buena Vista, Vera Cruz, Cerro Gordo, Chapultepec, Molino del Rey, and on to the City of Mexico, and won for our country, not only an imperishable glory and renown, but secured California, New Mexico, Nevada, and parts of Colorado, Wyoming, and Arizona, and established the boundaries of Texas, embracing in territory 937,875 square miles, an area greater than all the organized States in the Union at the date of its acquisition, with all its vast and incalculable wealth. In turn for all this they only ask the little pittance of $8 per month to feed and clothe them in their old age and poverty. For one, Mr. Chairman, I intend to heed their cry and vote to grant their request. I feel that the people who sent me here under a pledge to retrench and to guard well the door of the Treasury will gladly ratify and confirm my action in the premises. The people of this country would not have us deny these old soldiers this pittance under the plea of reform. Let us find some other place for retrenchment. Let us go on in the good work so well begun at the last session in the Military Academy, diplomatic and consular, fortifications, and other bills.

I said, Mr. Chairman, that the Government by its past legislation impliedly contracted with these veterans when it called upon them to go and fight against an enemy upon a foreign soil that in their old age it would give them the pension now proposed by this bill, and to refuse would be to dishonor the Government and to do these old soldiers a great wrong, if not a crime. It would be a refusal to perform a very high moral obligation.

Mr. Chairman, there are other reasons why this bill should be passed. The monarchical governments of Europe are compelled at immense cost to their subjects to support and maintain large and imposing standing armies for the protection of the divine right of kings. The Emperor of Germany is reported as having said, upon the presentation of the congratulations of the German army to him by the Crown Prince a few days since, that the army was the base of the German Empire, and he might very truly have added and of all monarchical governments. But, Mr. Chairman, our Government is based upon the will of the people, who are sovereigns; and any political party which ignores this fundamental principle in its administration of the Government and substitutes force therefor destroys the Republic and establishes a despotism.

A large standing army was considered by Jefferson, Madison, and all the earlier statesmen of this country as inimical to our republican form of government. It is a constant menace to the liberties of the people and should not be sustained by their Representatives. The Government has heretofore in all its wars relied almost exclusively upon a volunteer army. The revolutionary war, the war of 1812, the Florida war, and the late civil war for the preservation of the Federal Union were all fought and won by a gallant citizen soldiery. And as our Government relies, or should rely, upon a volunteer army for its defense against a foreign as well as a domestic enemy, it is the part of wisdom and statesmanship to legislate so as to encourage our people to be ever ready to defend our flag and uphold the honor of our country whenever and by whomsoever they may be assailed.

We should show them by wise and judicious legislation that the Government will not only take care of the wounded and such as contract disease in the service, but will liberally aid and help the veteran soldier as he advances down the declivity of life. Let it be known as an established fact that this Government will ever cherish and aid its soldiers when old, and when involved in war volunteers will rush to our standard at the tap of the drum, ready to face death in defense of our flag.

Mr. Chairman, if this committee was composed of men who had borne their country's flag in a foreign land, beneath a scorching, tropical sun and in a malarious climate, and who had witnessed the almost intolerable sufferings of the living, and seen the pale, sick, and dying soldiers far away from home and friends in an inhospitable land, with no mother, sister, or wife to nurse and care for them, there would be no dissenting voice here. It has been said that rich men make wars but poor men fight them. Whether the first part of the sentence is true or not, the latter has certainly been demonstrated in all our wars. While the poor soldiers are bravely and heroically bearing their country's flag amid grape and canister, blood and death, the rich are at home growing richer by the very misfortunes of war. Let us pass this bill and show to our people thereby that the Government will and shall take care of all our veterans who have borne our flag, and thus encourage others to do as these brave men have done, if an occasion shall require.

"In time of peace prepare for war" is a wise maxim. But how prepare? By sustaining large standing armies to overawe State Legislatures, to intimidate voters, and control elections? No. I would reduce our regular Army to a force just sufficient to garrison our forts and protect our frontier. By large appropriations for fortifications? No. By a grand and magnificent navy? No. But legislate so as to mete exact justice to all, oppress none, lighten the burdens of the Government from the shoulders of the people; cease appealing to the bad passions of men, let the old sores heal, let every man in every section of our common country feel that he is a freeman entitled to all the privileges of any other American citizen; cease denouncing one section as rebels and murderers, restore our prostrated commerce, give to our suffering country a currency equal to gold, without contraction; start again the iron furnaces and workshops of Pennsylvania and New England, and thereby give employment, with remunerative wages, to the starving thousands of artisans and mechanics there out of employment; restore confidence and revive business; and then pension the old men who bore our flag, which we all love and revere, bravely and heroically upon so many bloody fields in Mexico, and when we return home to our constituents we will receive the welcome plaudit, "Well done, thou good and faithful servant."

I say pass this bill, pensioning alike the brave men of the North and of the South, who fought shoulder to shoulder and hand in hand under Taylor and Scott, and we will have done more to prepare in time of peace for war than we could do by appropriating millions upon millions of dollars for fortifications; more than building an indefinite number of iron monitors, and more than arming and equipping a regular army of one hundred thousand men. To prepare for war in time of peace is to teach our whole people to love and respect our Government, and to prove to them that the soldiers who uphold the flag, when old, will be pensioned by the Government.

It is not safe to rely upon the draft or conscription to fill the ranks of our Army in times of danger and war. No drafted soldier goes to the field satisfied and content. He is ever grumbling, and his example breeds discontent among the volunteer soldiers and encourages desertions. Hence I repeat it is the part of wisdom to legislate so as to encourage our people to volunteer when their services are needed. I do not anticipate any war soon, and I would to God that our country may never be involved in another, either foreign or domestic. But we cannot tell what a year or a month may bring forth. Hence it is necessary to be ready for any and all emergencies. We have had wars in the past, and we may have them in the future.

The Government should pension these brave men, because it has and is still reaping a golden harvest, the fruits of their sufferings and heroic deeds. What did we gain by the war with Mexico? As I have already shown, by it we acquired California, Nevada, Nebraska, New Mexico, and parts of Arizona, Wyoming, and Colorado, and established the boundary of Texas, covering an area of over 937,875 square miles. What is the value of all this public domain? It embraces over 600,000,000 of acres, and at Government prices would be of the value of nearly $1,000,000,000. This country has produced since its acquisition, *in gold*, over $2,000,000,000, which has diversified the industries of the country and given an impetus to the commerce of the world. The value to this country of the territory acquired by the Mexican war cannot be estimated in dollars and cents. For what would our Government part with this magnificent and golden country, with its 2,000,000 inhabitants, its vast resources and commanding position in the continent, "holding in its arms the great gate-way to the East!" There is no consideration which could induce this Government to cede this territory to any other nation.

But it may be said that all this splendid and rich territory was acquired by virtue of the Hidalgo and Gadsden treaties, and that the United States Government gave $25,000,000 and paid about $5,000,000 to the citizens of Mexico in consideration of Mexico ceding the same to the United States. It is conceded that by the two treaties mentioned Mexico agreed to, and did, cede all this territory to the United States Government upon the payment by the United States of $25,000,000 and a debt Mexico owed its citizens growing out of the war of about five millions more. But, sir, what was the cause of the treaty of Hidalgo? It was the unparalleled heroism of our gallant Army at Palo Alto, Resaca de la Palma, Buena Vista, Cerro Gordo, Chapultepec, and Malino del Rey. It was the toils, sufferings, and blood of our soldiers. It was the little army which marched through blood to the very capital of Mexico, and there captured or dispersed the Mexican army of five times its numbers, and dictated the terms of the treaty of Hidalgo. Who would dare assert in this national Hall that all this territory was acquired by money paid out of the Treasury of the United States? Why, sir, Clay, Yell, Butler, McKee, Hardin, Ringgold, Page, McIntosh, Graham, Ritchie, Ayres, Armstrong, Merrill, Gillespie, Baxter, Gantt, Drum, Allen, Benjamin, Walker, Smith, and Morange lost their lives in its acquisition.

The blood of these and of thousands of others as brave and as good, whose names do not appear upon the pages of history, but whose glorious deeds are enshrined in the hearts of the American people, together with the indescribable sufferings of the living soldiers of that war, were the incalculable price paid for this territory.

Sir, does any man suppose that Mexico would have parted with this magnificent territory for $30,000,000 had not an American army overrun her soil, dispersed her armies, and occupied her capital city?

We have read, Mr. Chairman, of a stern old Englishman who when the treaty was concluded between France and England at the peace at Amiens disapproved of the terms of the peace as ignominious to England, and in the House of Commons said that if King William could know the terms of the treaty he would turn over in his coffin. Sir, if there be one here who should propose to rob the Mexican soldiers of the honor and glory of having added by their prowess and

valor this territory to our country, to him I would say with emphasis that if it should be known to Scott and Taylor they too would turn over in their coffins.

To the soldiers who bore yonder flag through toil and blood to the capital of the Montezumas belongs all the credit of its acquisition. It may be asked what amount of money will be required to carry out the provisions of this bill. It appears to me, however, that that is not the question which we should discuss. If the soldiers are entitled to a pension they should have it regardless of the cost. While I favor retrenchment and reform, I am not willing to begin with our veteran soldiers. There are other places where the pruning-knife may be used freely without any detriment to the people or the Government. There is scarcely a Department of the Government which is not sadly in need of it. But I would keep it off of those who have borne our country's flag in the perils of war. This Congress has donated one million and a half dollars to a private corporation to celebrate the Centennial of our Independence. Why not give something to those who have fought to sustain the honor and glory of our country? The Government has given what is equivalent to over a hundred million dollars to build a railroad across the country won by our soldiers. Why not recompense them for having given the country to us? The Government has donated millions of dollars in the way of subsidies. Why not give a pittance to feed and clothe our aged soldiers?

The committee are satisfied that one million and a half dollars per annum will be more than sufficient to meet all the requirements of this bill. There were enrolled in the volunteer army for the Mexican war, in round numbers, seventy-three thousand men. Some of these were counted twice. It will be remembered that the first troops called out were mustered for three months, and afterward other troops were called for and mustered for twelve months, and then others for the war. The war lasted about two years. Many of the three-months troops, and a few of the twelve-months, at the expiration of the term of service re-enlisted and were re-enrolled and mustered. And it will also be remembered that General Gaines, without authority, raised several thousand volunteers in Louisiana, enlisting them for three months, and when they reached Gen ral Taylor upon the Rio Grande he ordered them mustered out of the service, and my recollection is that the number was over three thousand. There were also two regiments from Ohio and Missouri, and one company from Iowa, amounting in the aggregate to twenty-seven hundred and seventy-eight men, which were not required to proceed to the seat of war, and were discharged a few days after being mustered into the service; also one regiment from Alabama, commanded by Colonel Jones M. Withers, of nine hundred and thirty-one men, which did not serve sixty days. These, aggregating sixty-seven hundred and nine, will not be entitled to a pension under this bill, not having served sixty days. The number of re-enlistments cannot be correctly ascertained, but I am satisfied that it could not have been less than three thousand.

The report of the Adjutant-General, December 3, 1849, shows that there were of the volunteer army killed and died of wounds received in battle in the Mexican war, 1,549, and that 10,885 died of disease during that war; but the number who actually died of wounds and diseases will far exceed the number given in this report, owing to a number of missing rolls, as shown by the report itself. There were a number of regiments which lost from one-fourth to one-third of their number. The Palmetto regiment, under Butler, out of 900 men, lost over 400. Colonel Collins's Illinois regiment, out of 1,000, lost over 300. Colonel B. F. Cheatham's Tennessee regiment, out of 1,000, lost 247. Lieutenant-Colonel J. G. Seymour's Georgia battalion of 400 lost 184.

When we take into consideration the number of battles fought, the malarious climate, and the fact that our troops were not acclimated, the loss could not have fallen short of 15,000 men. The above report of the Adjutant-General shows that there were 6,725 desertions. There have been pensioned of the survivors over 11,000 as invalids. All these must be deducted from the 73,000 enlisted in said war in order to arrive at the probable number who would receive pensions under this bill: First, 6,709 men serving less than sixty days; second, 3,000 re-enlistments; third, 15,000 killed, died of wounds and disease: fourth, 6,725 desertions, and, fifth, 11,000 already pensioned as invalids, making in all 42,434, which, deducted from 73,000, the whole number enrolled, leaves 30,566. That was the number thirty years ago. If we take the ordinary life table and apply it, we would find that there could not be surviving of the whole number of soldiers in the Mexican war covered by this bill exceeding twelve or fifteen thousand. But when we take into consideration the fact that all these men were exposed to hardships incident to all wars and were in a malarious climate, and that this exposure and climate must necessarily have impaired their constitutions more or less, and the further fact that we have had an unfortunate and bloody civil war in which these men were nearly all engaged—I say when we take all these facts into consideration, I may safely assert there are not now probably surviving exceeding six or seven thousand of these veterans.

In support of this calculation I quote from a letter written by General George W. Morgan and read to the State convention of veterans at Dayton, Ohio, December 15, 1873, over three years ago, in which he says:

> After the maturest reflection it is my conviction, comrades, that of the men who served with us on the fields of Mexico less than six thousand are alive to-day. There were battles, such as Buena Vista, Cherebusco, Molino del Rey, (the bloodiest of them all) of the actual force engaged of some of the regiments more than one-third were stretched dead or wounded upon the ground. Thousands perished with arms in their hands. Many more thousands were buried from hospitals, and a still greater number lingered and died after reaching their homes from diseases contracted in a far-off land.

The number of widows covered by the bill will be but small. I base a calculation upon the history of an Alabama company in order to ascertain the probable number of widows who will receive pensions under this bill. This company had ninety-three men, and out of the ninety-three only six were married prior to their discharge. Five of the six are dead. Three of the five widows are also dead; one has remarried, and only one would receive a pension. I have taken this company simply because I am familiar with its history, and I do not know any good reason why it is not a fair criterion by which to estimate surviving widows of the war who would receive a pension under this bill. The number of widows who would receive the benefits of this bill would approximate about one thousand. The survivors of the Black Hawk war I estimate at not exceeding two hundred, including surviving widows. This war was in 1832, forty-five years ago, and continued for only about six months. There were not exceeding fifteen hundred troops engaged, consisting mostly of volunteers from Illinois. The Florida war began in 1835, and closed in 1842. There were enrolled about twenty thousand men. Many of these are counted as often as four or five times. The war lasted for seven years; the troops were mustered for three, and six, and twelve months, and as in the case of the Mexican war, there were many re-enlistments, some continuing through the entire war. I estimate the survivors, including widows, at not exceeding two thousand.

I have not included in the foregoing estimates the soldiers in the regular Army in the Mexican war. There were during said war enlisted in the regular Army, including 7,244 men, the number belonging to the Army at the beginning of the war, 35,009 men, and of this number about 27,000 were actually engaged in said war. The total number of enlistments above given includes all enlistments in the regular Army between May 1, 1846, and July 5, 1849, 2,512 of whom were rejected and discharged, and 2,474 deserted before being assigned to regiments. The loss in killed and wounded in battle, from diseases and desertions, were greater among the regular troops than the citizen soldiers. Then it will be safe to make the same calculation as to the survivors of the regular Army as I have made with respect to the volunteer soldiers. The calculation shows that the probable survivors of the volunteer Army amounts to about 10 per cent. of the whole number mustered. The same calculation would show 2,700 survivors of the regular Army. I would estimate the surviving widows, covered by this bill, of the deceased soldiers of the regular Army in the Mexican war at not exceeding one hundred, for it is a well-known fact that but few, if any, except the officers of our regular Army at that time were married men.

That the foregoing estimates approximate the numbers covered by this bill I have not the least doubt. Let us recapitulate:

Surviving citizen soldiers of the war of 1846	7,000
Surviving widows	1,000
Surviving soldiers of the regular Army of the said war	2,700
Surviving widows	100
Surviving soldiers and widows of the Black Hawk war	200
Surviving soldiers and widows of the Florida war	2,000
Making a total of	13,000

These will receive a pension at the rate of $8 per month, or $96 per annum, aggregating $1,248,000 per annum, which sum would be constantly decreasing. The surviving soldiers of the Mexican war will average about fifty-five years of age, with an expectancy of life of about fourteen years. The whole cost to the Government will not exceed sixteen or seventeen million dollars, covering a period of twenty-five or thirty years in the disbursement of the same.

After a careful examination of the subject with the official records before me I feel satisfied that the foregoing estimates will cover the entire amount of money required by the bill.

The surviving soldiers of the Mexican war certainly have strong claims upon the country, which should be recognized by the passage of this bill. I have, Mr. Chairman, entered on no encomium upon these brave defenders of their country. They need no eulogy from me. There is the imperishable history of their privations and achievements upon the soil of Mexico. Go read it for yourself and judge of the duty it inculcates. It speaks far more eloquently for their cause than any language I can command.

I will detain the committee but for a few moments longer. I have shown that in the light of past legislation this bill ought to pass. I have shown that the soldiers who fought the Mexican war, when called on to volunteer, had the right to expect that when old and infirm the Government would give them the pension proposed by this bill, and that to refuse would be a repudiation of high moral obligation of the Government. I have shown that as a matter of sound policy the bill ought to pass. I have shown that the Government acquired 937,875 square miles of territory of incalculable wealth, which opened up a highway to the Pacific Ocean and which holds in its arms the gateway to the eastern continent, by the courage and valor of the soldiers of the Mexican war.

I have shown that as a matter of right and justice, as well as of national gratitude to the men who upheld the honor and the glory of the country this bill ought to pass. I have shown that such an act

would strengthen the Government far more than costly and formidable fortifications, grand and magnificent navies, or a large and imposing regular army. I have said, and I repeat it, that such an act is in the interest of economy and that the people of the whole country would rejoice at the news of its passage. Several of the States, including Indiana, Missouri, and Kentucky, have requested their Representatives upon this floor to support the bill. It is no party measure. I have not stopped to inquire what effect it might have upon political parties. I implore the committee, in the name of the fallen heroes, as well as by the toils and sufferings of the survivors of the Mexican war, to pass this bill.

Sir, there are six thousand brave veterans far advanced down the declivity of life, now in penury and want, anxiously waiting to hear the glad news from Washington, the national capital, of the passage of this bill. Shall we cheer and gladden their hearts by a message over the wires that the nation remembers fondly their glorious deeds upon the bloody fields of Mexico and tenders its gratitude to them by the passage of this bill; or shall we blast and dissipate their fond expectations with the sad news that the nation has millions for subsidies to great and powerful corporations but nothing for her brave soldiers who

> Bore their country's honors high,
> Resolved to conquer or to die,

and whose gallant deeds from Palo Alto to the final surrender of the city of Mexico "reflected a blaze of imperishable glory upon the American name?"

I do not know, Mr. Chairman, what course others may take, but I shall give my heart and vote to this measure, feeling confident that the honest and patriotic men whom I have the honor to represent upon this floor will approve of my actions.

If no other gentleman desires to speak at length upon the bill, I move that the committee proceed to consider the bill by sections.

The motion was agreed to.

The Clerk proceeded to read the bill by sections, and read the first section as follows:

That the Secretary of the Interior be, and he is hereby, authorized and directed to place on the pension roll the names of the surviving officers and enlisted men, including militia and volunteers of the military and naval service of the United States, who served sixty days in the war of 1846 with Mexico, or in the Florida war or in the Black Hawk war thirty days, and were honorably discharged, and to such other officers and soldiers and sailors as may have been personally named in any resolution of Congress for any specific service in said war, although their term of service may have been less than sixty days, and who shall subscribe an oath to support the Constitution of the United States, and the surviving widows of such officers and enlisted men as were married prior to the discharge of such officers and enlisted men. *Provided*, That such widows shall not have remarried.

Mr. DURHAM. I would like to inquire of the gentleman who has charge of the bill why a difference is made between sixty days in the case of soldiers of the Mexican war and thirty days in the case of soldiers who served in the Florida war or the Black Hawk war.

Mr. HEWITT, of Alabama. The difference is made simply because it is forty years since the Black Hawk war and only thirty years since the Mexican war; and the soldiers of the Black Hawk war are much older than those of the Mexican war.

Mr. DURHAM. I move to amend by striking out the word "sixty" where it occurs in the seventh line, and to insert in lieu thereof the word "thirty."

Mr. HEWITT, of Alabama. I will state that if that amendment is adopted, it will add about one thousand more to the list of pensioners.

The question being taken on Mr. DURHAM's amendment, it was not agreed to, ayes 15, noes not counted.

The Clerk continued the reading of the bill, as follows:

SEC. 2. That this act shall not apply to any person who is receiving a pension at the rate of $8 or more per month, nor to any person receiving a pension less than $8 per month, except for the difference between the pension now received and $8 per month. Pensions under this act shall be at the rate of $8 per month, except as herein provided when a person is receiving a pension of less than $8 per month, and shall be paid to the persons entitled thereto from and after the passage of this act, for and during the term of their natural lives.

SEC. 3. That before the name of any person shall be placed on the pension-roll under this act, proof shall be made, under such rules and regulations as the Secretary of the Interior may prescribe, that the applicant is entitled to a pension under the provisions of this act; and any person who shall falsely take any oath required to be taken under the provisions of this act shall be guilty of perjury; and the Secretary of the Interior shall cause to be stricken from the pension roll the name of any person whenever it shall appear, by proof satisfactory to him, that such name was put upon such roll through false and fraudulent representations as to the right of such person to a pension under the provisions of this act. The loss of certificate shall not deprive the applicant of the benefits of this act, but other proof of services performed and of an honorable discharge shall be deemed sufficient.

Mr. KASSON. I move to amend the third section by striking out the word "shall" in the last line of the section, and inserting in lieu thereof the word "may;" so that it will read "may be deemed sufficient."

Mr. HEWITT, of Alabama. I have no objection to that amendment.

The amendment was agreed to.

The Clerk resumed the reading of the bill, and read as follows:

SEC. 4. That the provisions of sections 12 and 13 of the act entitled "An act supplementary to 'An act to grant pensions,'" passed July 4, 1864, and of sections 2, 3, and 4 of the act entitled "An act supplementary to several acts relating to pensions," approved June 6, 1866, shall be applicable to the pensions granted by this act; but no law now in existence which in any way conflicts with the provisions of this act shall be applicable to the survivors of the wars above mentioned, or be so construed as to deprive them of the benefits of this act.

Mr. KASSON. I ask the gentleman from Alabama if he has not made an error in referring to those pension acts, which are general laws, as I understand, of the dates of 1864 and 1866? If I recollect rightly, they are in the Revised Statutes; and the reference should be to the Revised Statutes. If I am not misinformed, that is a necessity arising from the revision of the statutes. The Revised Statutes repeal all laws which are revised in them.

Mr. HEWITT, of Alabama. If the gentleman from Iowa will state the sections of the Revised Statutes to which he refers, I have no objection to making that amendment.

Mr. KASSON. I think in order to make the amendment it will be necessary that the sections of the Revised Statutes be examined by the committee or some one familiar with them. I know it is necessary that the reference should be to the Revised Statutes.

Mr. HEWITT, of Alabama. I will ask that by unanimous consent that change may be made.

Mr. KASSON. It is so important, I think, as to justify the passing over of the bill for the present.

Mr. HEWITT, of Alabama. I do not know, however, that the Revised Statutes repeal the old laws at all.

The CHAIRMAN. If there be no amendment proposed to the pending section the Clerk will report the succeeding one.

The Clerk read the next section, as follows:

SEC. 5. That this act shall not apply to persons under political disabilities.

Mr. REAGAN. I ask the gentleman from Alabama why this fifth section is put in the bill?

Mr. HEWITT, of Alabama. Because it was considered that a man laboring under political disabilities is not a citizen of the United States.

Mr. REAGAN. I rose to an inquiry why this section was inserted in the bill. I am answered that it was because persons laboring under political disabilities were supposed not to be citizens. I am not satisfied with that answer. There are persons who for cause deemed sufficient by Congress are declared not entitled to certain of the privileges of citizens. But the number of those who have not been relieved from political disabilities is now very small; and the proportion of that small number who might be entitled to pensions under the provisions of this bill would certainly be very small indeed. It seems to me that this is an improper and unjust provision of the bill. I do not think that the gentleman's answer is correct that these persons are not citizens. I do believe they are citizens. They are merely deprived of certain privileges. But they pay their taxes. They help to support the Government. They rendered the services which are intended to be rewarded by this bill. This, it seems to me, is an unjust, unnatural, and odious discrimination, when twelve years have elapsed since the close of the war. And, believing so, I move to strike out that fifth section, and ask the sense of the committee upon it.

Mr. HEWITT, of Alabama. I am not informed as to the number of men who are now laboring under political disabilities. I do not suppose that those who would thereby be excluded from the provisions of this bill would exceed a dozen; and as soon as their disabilities are removed they will be entitled to pensions under this bill. We were careful to word that section so as whenever the disability is removed the persons who had labored under that disability would be entitled to a pension.

I assented, sir, to the insertion of that section, not because I approve of it, but because I believe that we could not pass the bill without it, and because I want the bill passed so as to give this pension to as many as we can, even though we do have to exclude some dozen men, who, I think, would themselves consent to their own exclusion rather than that the bill should fail.

Mr. REAGAN. I cannot think, Mr. Chairman, that the supposition that the striking out of this section will defeat the bill can be true. It is assumed that there cannot be more than half a dozen or at most a dozen men who are entitled to this pension, who would be excluded by that section. It seems to me, sir, that we have gone far enough with proscriptive legislation for the punishment of those persons who were engaged in the war, which has closed now nearly twelve years. It seems to me, sir, that the time has come when a feeling of conciliation and mutual respect, of mutual kindness, and, above all, a feeling of mutual justice should enter into our legislation. These persons have not been relieved of their political disabilities, probably simply because they have not asked to be relieved, or perhaps they were not persons of sufficient importance to be relieved. Yet, sir, these persons are to-day performing all the duties of citizenship; they are under the protection of the laws; they are restored to all their normal relations to the Government except alone that they cannot hold office. Now, sir, it seems to me that the time has come when we ought to be willing to let our legislation of this kind stand upon the broad principles of justice, and not carry into it those vindictive feelings which immediately followed the bitter and terrible war in which we were engaged. Sir, it is time to get out of it. And surely there can be nothing to render it necessary to exclude the few persons who might be excluded under this section.

It seems to me that a common feeling of fraternity and justice requires us to abolish all such discrimination and to avoid all vindictive and punitive legislation, which by this time ought to cease. I trust therefore that the section may be stricken out.

Mr. RUSK. I would like to say, for the benefit of the gentleman

from Texas, that this section only reserves the rights of the invalid pensioners where their political disabilities have existed and have not been removed and they are not on the rolls. If this section be stricken out, it will put Jefferson Davis upon the rolls, and I desire to ask the gentleman if he wishes to put him on.

Mr. REAGAN. I will answer the question of the gentleman with pleasure. Jefferson Davis was a brave soldier. He participated in the battles of the war with Mexico, and he received one wound I know of. He shed his blood with the common cause and pays his taxes to support the Government; he behaves himself as a peaceable citizen, and I know of my own knowledge, that there is not a man in this broad land who is more earnestly anxious for complete reconciliation and for the cessation of all ill-feeling between the sections of the Union, or a man who would shed his blood more readily, if need be, to protect the Government, the laws, and the honor and rights of the country than Jefferson Davis; and I do not see why he should be excluded.

Mr. RUSK. He would be entitled to go on the pension-roll for the wounds he received, if it were not for his disability, and if this section is stricken out it removes that obstacle and would place him on the rolls. I am glad to hear the gentleman from Texas say that he desires to put him on the pension-roll. For one, I do not.

The question was upon agreeing to Mr. REAGAN'S amendment; and upon a division there were ayes 39, noes not counted.

So the amendment was not agreed to.

Mr. REAGAN. I desire to reserve the right to a vote on that amendment in the House.

The CHAIRMAN. The gentleman cannot do that, as the amendment was defeated.

Mr. HEWITT, of Alabama. I move that the committee rise and report the bill, with the amendment, to the House.

The motion was agreed to.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. HARRIS, of Virginia, reported that pursuant to the order of the House the Committee of the Whole on the state of the Union had had under consideration the Union generally, and particularly the bill granting pensions to certain soldiers and sailors of the Mexican, Florida, and the Black Hawk wars, and certain widows of deceased soldiers and sailors of the same, and had directed him to report the same to the House with an amendment and with a recommendation that it do pass.

The amendment reported from the Committee of the Whole on the state of the Union was in line 15, section 3, to strike out the word "shall," and to insert in lieu thereof the word "may."

The amendment was agreed to.

Mr. HEWITT, of Alabama. I now move the previous question on the bill.

The previous question was seconded and the main question ordered; and under the operation thereof the bill, as amended, was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. HEWITT, of Alabama, moved to reconsider the vote by which the bill was passed; and also moved to lay the motion to reconsider on the table.

The latter motion was agreed to.

PORTS OF BROWNSVILLE AND GALVESTON.

Mr. REAGAN. The bill 3567 passed this morning was entitled a bill "to make the port of Brownsville, Texas, one of the ports to which appraised merchandise may be imported." I ask unanimous consent to amend the title so that it shall read: "to make the ports of Galveston and Brownsville, Texas, ports," &c.

There was no objection, and the amendment to the title was agreed to.

CONSULAR AND DIPLOMATIC APPROPRIATION BILL.

Mr. SINGLETON. I move that the House resolve itself into Committee of the Whole on the state of the Union, for the purpose of considering the special order, the consular and diplomatic appropriation bill.

The motion was agreed to.

The House accordingly resolved itself into Committee of the Whole on the state of the Union, (Mr. WILLIS in the chair,) and proceeded to the consideration of the special order, being the bill (H. R. No. 4251) making appropriations for the consular and diplomatic service of the Government for the fiscal year ending June 30, 1878, and for other purposes.

Mr. SINGLETON. If there is no desire on the part of the committee to hear the bill read in full, I move that the first reading be dispensed with.

No objection was made, and the first reading of the bill was dispensed with.

The CHAIRMAN. The Clerk will now proceed to read the bill by paragraphs for amendment.

Mr. KASSON. In view of the fact that we have dispensed with the first reading of the bill, I would be glad if the gentleman from Mississippi [Mr. SINGLETON] would state to the House what difference there is between this bill and the one which passed the House at its last session.

Mr. SINGLETON. Mr. Chairman, I do not take the floor to make a speech. I do not think the occasion demands it, and the state of my health would not admit of it. I only wish to claim the attention of the House for a few moments while I state the action of the Committee on Appropriations, the reasons for that action, and then make an explanation of some new provisions of the bill, which may be necessary for their proper understanding.

It will be remembered that at the last session of Congress we had this subject very fully discussed, and the views of members of the Committee on Appropriations and of members upon both sides of this House were fully made known. The bill as reported by the Committee on Appropriations made large reductions in the items of expenditure for this branch of the service, and it was finally passed through this House with very little change.

When the bill reached the Senate that body made more than a hundred amendments to it, restoring it very much to what the corresponding bill was the year before. That action of the Senate, as members will recollect, brought about not only one but four committees of conference. Although the bill was reported at an early day in the session, it did not pass the two Houses and become a law until about the close of the session.

When the fourth committee of conference met it was agreed, in order that we might not stop the wheels of government, according to the familiar phrase, that we would divide the difference between the sums proposed by the two Houses. We did so, at the same time giving to the President of the United States large discretionary powers as to the disposition of the total amount appropriated. The chief grounds of objection on the part of the Senate to the bill as passed by this House was that it made changes in the general law on this subject, and they did not concede the power of this House, without the consent of the Senate, to change general laws by amendments to appropriation bills.

The bill now under consideration is to all intents and purposes the same as the bill that passed Congress at its last session. We have taken the text of that bill, and, after considering the recommendations of the Secretary of State, have made some few changes not affecting materially its general character. While the majority of the Committee on Appropriations are of opinion that considerable reductions might be made in the expenses of this branch of the service, it was not deemed prudent at this session to go into that question, as it was supposed the minds of members had not undergone any change, and that we would have the same contest to go through again as last year without reaching any important practical results. We shall have a new Congress after the 4th of March next, and as we have not time now to remodel and reconstruct this bill to meet the views of a majority of this House and insist upon these changes, it was deemed best to postpone this work until the new Congress came into power.

Mr. KASSON. Then I understand the gentleman to say that in this bill there are no changes of the law.

Mr. SINGLETON. There are none.

Mr. KASSON. Are there any additional consulates discontinued?

Mr. SINGLETON. I believe not. I will state, however, the few changes which have been made from the bill of last year and the reasons for them. The Secretary of State recommended that the chargé d'affaires for Denmark, Greece, Switzerland, Portugal, Paraguay, and Uraguay, now receiving salaries of $5,000 a year each, should be restored to their former status of ministers resident at a salary of $7,500 each. The bill which passed at the last session has worked very well, and the Committee on Appropriations, differing with the Secretary of State on that point, have not thought proper to make any change in that respect from the bill of last year.

If gentlemen will turn to line 54 of this bill they will find the following item:

> For contingent expenses of foreign intercourse proper, and of all the missions abroad, $85,000.

The amount appropriated for that purpose last year was $75,000. Upon consultation with the Secretary of State he thought that amount might not be sufficient, and recommended that it be increased to $100,000. After full consideration of the subject the committee thought proper to increase the amount to $85,000, or $10,000 more than the appropriation of last year.

Again, the Secretary of State recommended that the salaries of the consuls-general at Berlin, Vienna, Frankfort, and Montreal, and the consuls at Hamburg, Bremen, Leipsic, Lyons, Manchester, Beirut, Belfast, Birmingham, Bradford, Chemnitz, Sheffield, Sonneberg, Dresden, Havre, Marseilles, Fayal, Nuremberg, Leith, Naples, Stuttgart, Mannheim, and Tunstall be increased from $1,250 to $1,500 a year. Last year there was appropriated for that purpose the sum of $42,500, and the salaries of these officials were limited to $1,250 each.

After fuller consultation with the Secretary of State the committee did not deem it necessary to increase the salaries of all these officials. Indeed they came to the conclusion that the salaries of some of them might be reduced below that which they now receive. By way of meeting the views of the State Department it was agreed that the same amount should be appropriated for this purpose that was appropriated last year, $42,000, and that discretionary power should be given to the Secretary of State to regulate the pay of these different officials as he might deem best, none of them to receive more than $1,500 a year. The amount for this purpose, therefore, has not been increased. Some of them will have their salaries increased to $1,500, while the salaries of others will be reduced to less than $1,250.

On page 12 of the bill will be found this item:

For contingent expenses of United States consulates, such as stationery, bookcases, arms of the United States, seals, presses, and flags, rent, freight, postage, and other necessary miscellaneous matters, including loss by exchange, $115,000.

The Secretary of State asked that this appropriation be increased to $125,000. As all the accounts for last year have not yet come in, and the Secretary of State was unable to say what was the exact amount necessary for the past year, the committee deemed it proper to make the same appropriation for this purpose, $115,000, which it is believed will be ample.

Again, under the item for the salaries and expenses of the United States and Spanish claims commission, we appropriated last year $4,500 respectively for the pay of commissioner and of counsel. The Secretary of State recommended that the appropriation be reduced to $3,000 for each. After investigation the committee found that the gentlemen who were engaged in the work of this commission, both the commissioner and the attorney to the commission, are engaged in active practice, attending all the courts. Hence we considered $3,000 as ample pay for them; and this is the amount we have fixed in the bill. Some little change is made as to the messenger, and also in regard to contingent expenses of this commission, saving thereby on this item $3,512.

For the relief and protection of American seamen in foreign countries we propose in this bill an appropriation of $80,000. Last year we appropriated for this purpose only $70,000. But there has been an unusual number of disasters to our shipping in different portions of the world; and it is believed that more than $70,000 will be needed for this relief and protection of our seamen. The Secretary of State thought that $100,000 would not be too large a sum. But the accounts in this case, as in the other I have mentioned, have not yet come in, and hence the necessary expenditures for the present year are not definitely known. We think the amount appropriated will be sufficient.

Another provision of the present bill is the following:

To meet the necessary expenses attendant upon the execution of the neutrality act, to be expended under the direction of the President, pursuant to requirement of section 291 of the Revised Statutes, $10,000.

The appropriation for this purpose last year was $20,000. The committee, however, believed upon investigation that $10,000 would be amply sufficient for this purpose, as only $1,800 was expended for the purpose last year.

I should have mentioned at a previous point in my remarks that the Secretary of State recommended a change in the appropriation for salaries of consuls, vice-consuls, commercial agents, and thirteen consular clerks, for which purpose we propose to appropriate in this bill $300,000. Last year we appropriated for this object $333,300, but the Secretary thought that we might dispense with the sum of $33,000. A corresponding reduction of that amount has been made in this item.

I believe I have now explained all the provisions that require explanation. We have not changed the grade of any of the United States officers abroad; and there is very little change indeed in the amounts proposed to be expended. In some few instances we have increased the amount, and in one instance, upon the recommendation of the Secretary of State, we have, as just stated, made a reduction of $33,000. Upon the whole, the reduction made by this bill on the amount appropriated last year is $28,000; and this reduction is made almost entirely upon the recommendation of the Secretary of State. There should be no controversy about this bill, and I hope there will be none, as it was reported by the unanimous consent of the committee, and to meet the well-known and determined purposes of the Senate not to allow a general law to be changed by amendments to an appropriation bill.

Mr. MONROE. I beg to ask the gentleman from Mississippi [Mr. SINGLETON] whether any change has been made in the consulate at Goderich?

Mr. SINGLETON. No, sir; we have made no change as to the grade or pay of any consul throughout the whole bill.

I yield the remainder of my time to the gentleman from Kansas, [Mr. PHILLIPS.]

Mr. PHILLIPS, of Kansas. Mr. Chairman, ever since this session began there has been a disposition to effervesce the moment a question touching in the most remote degree the late presidential election came up. We are admonished by the belligerent spirit manifested by many on this floor that the political mind is in an unhealthy condition. Crude ideas of the powers of this House over the subject are entertained; theories hastily jumped at are wildly expressed; theories generally utterly at variance with our history and fundamental law. One of the political parties in the country, long out of power, but which has succeeded in gaining possession of one branch of Congress, makes haste to arrogate to it all the powers of Government, legislative, executive, and judicial. Even men whose whole lives have been devoted to rigid constructions of the Constitution startle us by seeming to keep in countenance schemes which do not find a particle of color in that document, theories obnoxious to its framers and diametrically opposed to our earlier, better history.

I do not hesitate to pronounce these mischievous and revolutionary sentiments. And so are all the plans for compromise, bargain, or adjustment, other than the plain and simple methods pointed out by the Constitution. Nor do I hold in much higher estimation the numerous propositions to remodel the Constitution or add to it an amendment to be hurriedly adopted as a temporary expedient or used to bridge a real or imaginary emergency. It is not necessary to assume that the Constitution is faultless. Our experience has demonstrated that there are several desirable modifications and a necessity for clearer definition of details, whether these can be adopted or not. Yet every man of sagacity must feel that to take such steps for a special purpose, to meet a special case, above all to intervene between the verdict of the people, expressed under the forms of Constitution and law, and the mere declaration of the result according to the mode prescribed under the existing Constitution, is obnoxious on principle and dangerous as a precedent. As a mere practical question, every man knows that it cannot be done in time, even if it were a proper thing to do. All such propositions, therefore, so far as they are designed to affect this case, are simply disturbing elements. They affect to admit that which it is not necessary to admit, and only add flames to that political excitement which it should be the aim of every partriotic citizen to discourage. Neither can amendments to the Constitution be wisely undertaken under circumstances and at a time when partisan interests and partisan bitterness must deny them that impartial consideration which alone can confer on them utility and crowning glory.

It is, therefore, an unhappy circumstance that makes it appear as if many of our public men had lost their balance or were endeavoring to feed themselves with ideas impregnated with anarchy and revolution. It has been the pride of our Government and the hope of the lovers of republicanism everywhere that we are not as the South American republics. Indeed, I cannot for one moment admit that there is even in this House a majority who will sustain any proposition to elect a President by any other means than the constitutional forms. These latter may not go into all the details we could wish, but their purpose is sufficiently clear to answer the necessity. A departure from them at such a time is simply revolution, and I will not believe that this House will present itself to the country in an attitude so humiliating until partisan folly leaves us no alternative.

If there is any tendency toward political disease of this sort among Representatives, how is it with the people? It is undoubtedly true that a profound interest is manifested on the subject in the press and throughout the country. It is not fair or true to assume that the thousand and one schemes and theories announced make any serious impression on the public mind. In fact, it may be safely believed that the stability of character and purpose which has been the great pride of our Government and our people rests, like a deep and mighty sea, beneath the light and frothy foam that fickle winds drive across its surface. The *doctrinaire* and the enthusiast are always on the skirmish line, and, whether their propositions be wise or otherwise, it is not safe to judge society by them. When we hear that a few of the lawyers of one city meet and speak and resolve that the times are "parlous" and that it is necessary for them to put their spoke in the wheel of Government, or that a few dozen of men calling themselves the business men of the country, and who are probably better politicians than business men, meet and resolve that "it is a crisis" and that they have a panacea for it, we are reminded of the convocation of nine tailors who began their resolutions, "We, the people of England;" and they also remind every thinking man that their studies in political science have not taught them the dangers of revolutionary innovation. Nor can it be admitted that the public mind is so diseased that it could tolerate the mere victory of party, no matter how illustrious the party might be, at the sacrifice of the stability of the Government or the public tranquillity. I do not deny that I should look upon the election of Mr. Tilden and the triumph of a reactionary party as a great calamity, but not half so great as the election of a President by fraud or revolutionary proceedings.

The facts of the case are plain and simple. While more than two candidates were in the field no third or fourth candidate received a single State or electoral vote. Hayes or Tilden received them all, and as the electoral vote cannot be evenly divided one of them was of course elected. If the electoral vote could have been, and had been, equally divided there would have been no election, and the election of President would have gone to the House. But one of them was elected under the forms of the Constitution.

It might have been desirable that the majority should be larger, but it was not at all necessary. If a close result is to invite and justify revolutionary proceedings there is an end of republican government. Does any one for an instant think that, if there had not been a democratic majority in this House, there would have been an attempt or even a thought of trying to create confusion and throw the election into the House of Representatives? Is there one man of intelligence who reveres the Constitution who believes that the House has the slightest authority for pretending to select a President when it is an indisputable and positive fact that one man was certainly elected?

We may dislike the machinery by which the result was determined in some States. We may have no faith in some of the State governments. We may even have a poor opinion of the people of some States. We did not make the latter, and it is doubtful if they would have been any better if we had. The State governments are supposed to have at least some powers reserved to them, and I am amazed at any one on the other side of the House for calling them in question. The world witnesses the extraordinary spectacle of a party, fresh from a great war and rebellion, into which they entered under an extreme view of State rights, clutching at the ghost of a coveted victory by

sacrificing the last remnant of State rights, which no party has ever before dared to call in question. Do they object to reconstruction? Do they hold with Mr. O'Conor that when the Union Army marched on Richmond the Constitution was forever broken, or do they hold that all that has happened since has been a chapter of war and violence and intrigue expedient to gain time and power? I think not. I believe patriotic gentlemen on the other side of this Chamber who took the oath on this floor to support the Constitution meant honestly and honorably all they said. It behooves them to remember that, whatever faults reconstruction may have had or with whatever errors they may be inclined to charge it, but for reconstruction many of them would never have been here. Is it for them to break the pedestal on which they stand? Is it for them to benefit by just so much of it as may serve their party purposes? I believe they are wiser and shrewder men than to do that.

There are many now in our party who believed that when a State failed to maintain a government loyal to the Union, and went to war against it, there was of necessity an end of its powers as a State in the Union, and as it was an integral portion of the territory of the United States that it should be treated as territory, and, when it could safely be done, that a territorial government of limited powers be given it until there was sufficient evidence that it could come in as a peaceful, loyal Union State. That plan was not adopted. There was in the minds of a number a horror of losing sight of the idea of an existing autonomy of all the States. To get rid of the war, which was a hard, incontrovertible fact, a fiction was resorted to, and on this plan of reconstruction, the most generous and liberal to those States, they were admitted to full fellowship and power. For the wisdom of that plan posterity will judge us. They will judge us when passion and sentiment and partisan bitterness have all passed away. We look to you gentlemen of the reconstructed States for a vindication of the magnanimous policy that gave you your power. It is for you to show to your country and the world that our course was not a rash experiment, and that your acceptance of the situation was honest and made with an honorable intention to carry out all it involved, and not a treacherous temporary expedient to gain power the better to defeat the necessities and purposes of reconstruction.

There was a great question settled in the war, and a great plan for the future outlined in the generous scheme of reconstruction. It was not only that the "Union shall be preserved," and that the heresy that a State has a right to secede was forever trodden out by the iron heel of war. It was not only that slavery forever perished in the war that had been precipitated for its benefit. There was something even better than these, and made up partially of both—something, without which we could not have union or freedom, and without which there can be no peace, now or hereafter. The noblest, most useful, grandest gift of the republican party to the country it governed was a united civilization, for between the old and new systems there is an irrepressible and eternal conflict. We had two warring systems in the colonies and the States. It was not only freedom and slavery, but the attempt to plant the fangs of aristocracy deep in our social and political systems was sedulously made. The genius of John Locke furnished the scheme of aristocracy for the southern colonies. There were to be barons for the baronies, palatines for the palatinates. The names perished, but the thing remained. Aristocratic Europe was aghast at the calamities that befel the barons, and the flight of the unhappy palatines. Aristocracy on this continent then allied itself with slavery, for aristocracy has always drawn its luxury and pomp from the toil of unrequited labor.

There is a tenacity of grasp, I might almost say an immortality, in ideas. Look at the parallel case of religious dogma. Where Catholicism first touched the soil in East Canada, Maryland, the West India Islands, Mexico, and South America, it is there the dominant faith still. Where Episcopacy planted its foot, as in Virginia, it is still dominant. Where Presbyterianism or the various forms of Protestantism were planted they kept the first place, and where the Puritans with their hostility to the divine right of kings touched the coast of New England they took root and sent forth proselyting seeds to the ends of the earth.

And so it is with the aristocratic forms of society, where aristocracy was first established in this country even its vices seem enduring. It has undergone many vicissitudes, suffered many calamities, but still tries to struggle above them all. Even in the last session of the present Congress we heard of the "best blood" of the Carolinas and the "best blood" of Georgia, and it is a wonder we did not hear of the "best blood" of Virginia. Is it possible that there is noble and ignoble blood in these regions? Do they have blood aristocratic, and blood plebeian, and as many upper and lower sections of society as there are strata in a geological map? What a country for a genealogist. We could form some conception of such a class in the days when there were tories. We can even carry them down to the days of the federalists; yea, even in the vicissitudes of an uncertain generation, we can imagine them in the period of the fossil whig; but when they come to label themselves democracy, we are dumbfounded.

In the settlements of the war, and in the solemn compromises of reconstruction, in which immunity was granted and power restored, the following items constituted the letter and essence of the agreement: First, the perpetuity of the Union; second, the abolition of slavery; third, the perfect equality of the colored race before the law. That this should be faithfully carried out in every particular necessary to give it complete success were the terms on which those who had forfeited every right came back. How has the compact been observed? I need not tell you that there has been a constant effort to organize and build up a reactionary party in those States. The systems of education wisely devised by the republican party for the elevation of a race long enslaved have in nearly all of these States become a mere mockery and shadow of what they were. Bitter prejudice drew to its aid secret military organizations to threaten and overawe a poor and ignorant race. Elections, too, became a mockery. Whenever the machinery for controlling them passed into the hands of those who had not been the authors of the amendments to the Constitution, and who had merely accepted them as the price of restoration, States were carried by a process unknown to better regulated and more peaceable communities. In many cases these "elections" should not be called elections. They were mere armed revolutions. They indicate a spirit the existence of which is a constant menace to the rights of the people, the public safety, and the perpetuity of the Union.

It naturally occurs to every thoughtful American how far can we leave to States in such a semi-revolutionary condition the settlement of the gravest question on which the peace and existence of the Government depend. The larger number of States are in a happier condition. In these elections mean something. In a few instances, especially in *one* great city, the people have lost all confidence in the purity of the ballot-box; but these are rare and exceptional. In the great mass elections are rigidly canvassed, and the ballot is not an unfaithful exponent of the public will. Ballot-box stuffing and false returns would not be tolerated; while secret armed organizations to control and intimidate are unknown, and if attempted would bring on the offenders condign punishment. In these States elections are what they should be and *must* be to retain popular confidence.

What shall we say of many of the reconstructed States? They have scarcely thrown aside all the garments of war. The ideas of the reconstructed Republic are little understood and less liked. No new political issues have impressed them sufficiently to destroy all the heresies in regard to the right of States to secede or blot out the prejudices in which they were reared. In most of those States there are two evils of great magnitude which have tended to confusion and which are incident to the peculiar circumstances of society in the Southern States. On the one hand are nearly four millions of people fresh from a bondage compared with which the bondage of Israel in Egypt was tender mercy. They are guaranteed freedom, civil rights, and political power equal with the proudest in all these States. The republican party in the moment of victory might have confiscated the large landed estates of those who had aided the rebellion and divided them into small tracts for the liberated bondsmen, first as an act of stern justice, second as an act of policy, on the theory that the freedman to maintain his rights must be the owner of the soil on which he places his feet. A more generous policy was pursued to you, gentlemen on the other side of the Chamber. The wealth of your position had bestowed on you all the learning and ability of a privileged aristocratic class. Its refinements and luxuries gave you the influence and address which are the potent weapons of accomplished gentlemen. You had the pride of family, prized even by colored people in their esteem for late masters. These poor people were your tenants at will. Of the houses that sheltered them you could deprive them. The soil they tilled was yours. Their labor was worthless without your patronage. These were your eminent advantages and their unhappy misfortune.

The other chronic evil of the South is an idle white class; sometimes the poorer relatives of the great, always their *attachés* or hangers-on. In old slaveholding days they were ever ready to follow a panting fugitive slave with bloodhounds or back up the men they admired in all difficulties, warlike or political. When they worked it was in the supervising tasks incident to slavery. The overthrow of slavery left them without an occupation. Hard honest labor they were disinclined to perform. They clung to the skirts of the more intelligent, patriotic gentlemen of the Southern States. They were like the evil spirits invoked by the wizard, Michael Scott, whom he had to keep in work or they would drag him to the infernal regions.

Gentlemen of the reconstructed States, I do not underestimate your great difficulties. You were permitted to retain all your privileges on an implied pledge of the most sacred character. It was that you should, in accepting the situation, honestly maintain freedom, civil rights, and a perfect equality of political power with that colored race and join hands with us to build the new civilization from the lakes to the Gulf.

How have you kept these pledges? Have you seen to it that every facility to educate and raise them was afforded? Have you seen that there was no oppressive injustice or dictation from yourselves as landlords? Have you seen that no secret political or military organizations were formed hostile to their interests? Have you seen to it that the ballot-box was never outraged? Have you seen to it that no armed band threatened poor and helpless voters?

If you have done all this, you have done a noble work under great embarrassments. If you have not done it, if your acceptance has been evasion and your kind regard for these colored people the mercy of the "vulture to the leveret, the tiger to the fawn," for all these things you will be called into judgment. Your country will judge you. The world will judge you. "He who sitteth in the heavens" will

judge you, and in the moment of temporary victory pause and recall the language of the most eminent statesman of Virginia. "I tremble for my country when I remember that God is just."

How many men in the country at large believe in the fairness and purity of the elections in Mississippi and Alabama, or rather how few have the slightest confidence in them. Louisiana, Florida, and both the Carolinas may be considered in an unsettled condition. Georgia under a fair, impartial system would probably be democratic; but I doubt if an unprejudiced man, at all competent to pass upon the question, or familiar with the character of the population or the statistics of the elections for the past ten years in all the others mentioned, believes that one of them, of its own free will, would have gone other than republican. I would quote from the report of the committee of last year, of which the Senator from Massachusetts [Mr. BOUTWELL] was chairman; but I do not wish at this time to aggravate the sensibilities of my hearers or excite fresh feeling by repeating its horrors. It is enough to quote from the report that the democracy of Mississippi "at last have gained supremacy in the State by acts of violence, fraud, and murder, fraught with more than all the horrors of open war, without its honor, dignity, generosity, or justice. The measures suggested as remedies are given, one of which is to deny a State in anarchy or controlled by bodies of armed men representation in Congress. Another is to remand States where such disorders exist to a territorial condition.

Of the election in that State last November I will give but one specimen. Our friend from the sixth district of Mississippi was elected to this Congress by 18,000 majority, as I have been informed. Last November he was defeated or, as he says, "counted out" by 5,000 majority. Is there not something astounding in such a change? Can it be accounted for on any reasonable hypothesis? Has not the thing been so much overdone as to startle us as to the meaning of what they call an election there? Is it not a revolution, varying only in its mode of operation from the revolution that sought to overthrow the Union? It has been stated on this floor on the evidence of General Sheridan that there were three thousand political murders in Louisiana, and that nearly that number of colored voters were slain.

Are we then to consider the region we tried to reconstruct in a state of anarchy? Shall we throw out the votes and reject the representation from Mississippi, Alabama, Florida, South Carolina, and shall we examine the vote of North Carolina?

And this brings us directly to the main question, what are the powers of Congress on the subject? Has either House or both the right to say that any portion of the vote of a State shall be accepted or rejected? Has Congress the right to act as a returning board to purge the vote of any or all States? Was this power conferred on it by the Constitution? Would it have been wise to so confer it?

In article 2 of the Constitution it is simply provided that "each State may appoint, in such manner as the Legislature thereof may direct," such electors as it is entitled to. In the same article Congress is given the power to determine the *time* when the electors shall be chosen and the day on which they shall cast their votes, and these for an obvious reason, and that time and that place are elements in the legality of such electoral vote. Both Houses are to be present when the President of the Senate, who is the custodian of the votes, shall open the votes and count them, as witnesses, and no other powers are given them over the electoral vote or over the question, unless there is a tie or no one has a majority.

The language of the Constitution is therefore plain. As the Constitution originally stood the electors made a list of the votes and sent it with a certificate to the President of the Senate who was the custodian of the returns.

The President of the Senate shall in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted.

As it now stands in article 12, the electors meet in their respective States and ballot for President and Vice-President. They make distinct lists of persons voted for by the electors, but are not required to show the State vote. They certify these distinct lists and signing them send them to the President of the Senate, who is the custodian; and in the same manner as it originally stood the President of the Senate, in the presence of the Senate and House of Representatives, opens all the certificates and the votes are then counted. Does the President of the Senate open and does some one else count? Certainly not. There may be tellers, but they have certainly no judicial functions, whether he has or not. If there is any doubt on that point the early practice ought to determine it.

In September, 1787, the Constitution was submitted to the Legislatures of the several States for adoption, and among others the following resolution was adopted by the convention:

Resolved, That it is the opinion of this convention that, as soon as the conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix a day on which electors should be appointed by the States which shall have ratified the same, and a day on which the electors should assemble to vote for the President, and the time and place for commencing proceeding under the Constitution. That after such publication the electors should be appointed and the Senators and Representatives elected; that the electors should meet on the day fixed for the election of the President, and should transmit their votes—certified, signed, sealed, and directed as the Constitution requires—to the Secretary of the United States in Congress assembled; that the Senators and Representatives should convene at the time and place assigned; that the Senators should appoint a President of the Senate *for the sole purpose* of receiving, opening, *and counting* the votes for President; and that after he shall be chosen the Congress, together with the President, should without delay proceed to execute this Constitution.

The above is no carelessly worded resolution, but attests the precision and skill of Franklin, Hamilton, and Madison.

On the 6th of April, 1789, Congress having assembled under the Constitution, ordered "That Mr. Ellsworth inform the House of Representatives that a quorum of the Senate is formed; that a President is elected for the *sole* purpose of opening the certificates and *counting the votes* of the electors of the several States in the choice of a President and Vice-President of the United States, and that the Senate is now ready in the Senate Chamber to proceed, in the presence of the House, to discharge that duty, and that the Senate have appointed one of their members to sit at the Clerk's table to make a list of the votes *as they shall be declared*, submitting it to the wisdom of the House to appoint one or more of their number for the like purpose," who reported that he "had delivered the message." A message was received from the House, as follows:

Mr. President, I am directed by the House of Representatives to inform the Senate that the House is ready forthwith to meet the Senate, *to attend* the opening and counting of the votes of the electors of the President and Vice-President of the United States.

John Langdon was duly elected by the Senate as President of the Senate, and the record declares:

MONDAY, *April* 6, 1789.

The President of the Senate, *elected for the purpose of counting the votes*, declared to the Senate that the Senate and House of Representatives had met, and that he, *in their presence*, had opened *and counted* the votes for the electors for President and Vice-President of the United States; whereby it appears that George Washington was unanimously elected President.

The record shows that of the thirteen Colonies ten had voted, namely, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, and Georgia. Sixty-nine electoral votes were cast. It will be noticed that New York had ratified the Constitution on the 26th of July, 1788, nine months before, but had no electoral vote there. North Carolina did not ratify the Constitution until seven months after this election, on the 21st of November, 1789, and Rhode Island not until May 29, 1790.

It will thus be seen that these men, who were the framers of the Constitution, conferred all power of opening, counting, and declaring the vote on the President of the Senate. The two Houses were merely the witnesses to give force and dignity to the event. The tellers were only the recording witnesses for that purpose, as the President of the Senate declared the vote.

At the second election of Washington a joint resolution of both Houses was adopted, as follows:

That the two Houses shall assemble in the Senate Chamber on Wednesday next at twelve o'clock; that one teller shall be appointed on the part of the Senate *to make a list of the votes as they shall be declared*; that the result shall be delivered to the President of the Senate, who shall announce the state of the vote, and the persons elected, to the two Houses assembled as aforesaid, which shall be deemed a declaration of the persons elected President and Vice-President, and, together with a list of the votes, be entered on the Journals of the two Houses.

Resolutions nearly the same, word for word, were adopted from the first elections until a very recent period. At the first election of Jefferson, when he and Aaron Burr had seventy-three votes each, the following words were interpolated in the resolutions: "And if it shall appear that a choice hath been made agreeably to the Constitution." That election forced the amendment of the Constitution by which the President and Vice-President should be voted for separately, instead of taking the second on the list for Vice-President. Jefferson and Burr had the same vote, not that the people intended to elect Burr, but because the design was to elect Jefferson President and Burr Vice-President. The elder Adams at that election had sixty-five votes, and Mr. Pinckney sixty-four, which shows that the federalists managed it better by keeping Mr. Pinckney one vote behind Mr. Adams. At the opening of the electoral votes on that occasion, the Vice-President, who was President of the Senate, was Thomas Jefferson, himself the candidate for the Presidency. With a feeling of delicacy he opened the sealed envelopes and handed them to the tellers to count, although the resolution under which he acted, and the Constitution, made it simply his work. The tellers in that matter were his assistants.

On that occasion, and the only other occasion when the election went to the House, the dangers of the system presented themselves. No one doubted for a moment that the people intended to elect Thomas Jefferson President; and yet, as the Constitution then stood, the election was thrown into the House, the House showed what kind of an electoral college it was capable of making. On the 11th of February, 1801, it voted nineteen times, and Jefferson, who had carried 73 out of 138 electoral votes, got but eight States; nine were necessary to a choice. One whole week was spent in balloting before Jefferson was elected. It is not for us to listen to or believe all the current stories rife at that time in the public mind of intrigue, bargain, or sale. I would only refer to a speech of Mr. Bayard, of Delaware, made in February, 1802, to be found on page 417 of Debates on the Judiciary. It exposed the system of electing by the House and the House itself to severe criticism. And here let us admire the good features of the electoral system. There is no national electoral college; no body to assemble in Washington to vote for President; no body possessed of a discretionary power to reverse the decree of the people; no body to be tempted by the eminent places of the Government, where a few votes or one vote might change the result.

The electoral college is purely in and for the State. The law of Congress designates when they shall be elected and when they shall

meet. The Constitution fixes the representation. It provides that one copy of the returns shall be sent to the President of the Senate. So much importance is attached to these returns that by the act of 1792 it was provided that other two copies should be made. One goes to the nearest judge, to be held by him as security for their preservation, and besides the copy sent by mail one is sent by special messenger, both to the President of the Senate. The messenger has no authority save to bring the returns, which are sealed, in his possession. The President of the Senate receives the certificate of the State electoral college. He is the custodian. In case both the copy from the messenger and by mail are lost or not received by the first Wednesday of January, the Secretary of State sends a messenger for the copy in the hands of the judge.

I have said that there was no perceptible change in form of the joint resolution adopted by both Houses for counting the electoral vote until a very recent period. That period was the second election of Mr. Lincoln. At that time, in the Senate, February 6, 1865, Hon. Lyman Trumbull, then a Senator of the United States, reported the joint rule the first part of which reads as follows:

Resolved by the Senate, (the House of Representatives concurring therein,) That the following be added to the joint rules of the two Houses, namely: "The two Houses shall assemble in the Hall of the House of Representatives at the hour of one o'clock, p. m., on the second Wednesday in February next succeeding the meeting of the electors of President and Vice-President of the United States, and the President of the Senate shall be their presiding officer; one teller shall be appointed on the part of the Senate and two on the part of the House of Representatives, *to whom shall be handed, as they are opened by the President of the Senate, the certificates* of the electoral votes, *and said tellers having* read the same in the presence of the two Houses then assembled, shall make a list of the votes as they shall appear from the said certificates, and the votes having been counted the result of the same shall be delivered to the President of the Senate, who shall thereupon announce the state of the vote, and the names of the persons, if any, elected, which announcement shall be deemed a sufficient declaration of the persons elected President and Vice-President of the United States, and, together with a list of the votes, be entered on the Journals of the two Houses."

It will be at once seen that there is a very remarkable change of form, and one interfering with the functions of the President of the Senate. Formerly tellers had been appointed, and on many occasions the President of the Senate handed them the certificates to count. This resolution conferred on them the power from Congress. When the portion I have quoted was read, Mr. Trumbull said, (page 608, volume 54, Congressional Globe:)

That is the usual form, as far as I have read, of the resolutions heretofore adopted. The committee have proceeded further to provide for a contingency.

Let us see whether it was the usual form. It is singular that Mr. Trumbull was also chairman of the committee that reported the resolution at the first election of Mr. Lincoln. That resolution was in the usual form adopted since the second election, and reads:

Resolved, That the two Houses will assemble in the Chamber of the House of Representatives on Wednesday, the 13th day of February, 1861, at twelve o'clock, and the President of the Senate shall be the presiding officer; that one teller shall be appointed on the part of the Senate and two on the part of the House of Representatives, to make a list of votes as they shall be declared; that the result shall be delivered to the President of the Senate, who shall announce the state of the vote, and the persons elected, to the two Houses assembled as aforesaid, which shall be deemed a declaration of the persons elected President and Vice-President of the United States, and, together with a list of the votes, shall be entered on the Journals of the two Houses.

As a matter of fact, the precise mode of counting the vote has varied. At first, under resolutions very carefully framed by the authors of the Constitution, the President of the Senate was the sole actor in counting the vote. Afterward a number of the Vice-Presidents were either candidates for re-election or candidates for the Presidency, and as a question of delicacy they handed the returns, when they opened the certificates in their possession, to the tellers. The functions of the tellers, however, have always been purely those of assistants to the President of the Senate. The function of counting may be said to have been always purely ministerial. If any function of a judicial character was vested anywhere, it was, of course, in the President of the Senate. There is a natural repugnance to putting into the hands of one man the power to settle a great question, and yet it is clearly certain, by the language of the Constitution and of the first resolution, and, above all, by the debates in the old constitutional convention, as recorded in the Madison Papers, that there was a fixed purpose that Congress should have no control over the presidential election until the President of the Senate declared that there was no election under the terms of the Constitution.

The mode of electing a President was one of the vexed questions of that old constitutional convention. None of the colonies when they became States wished its influence weakened or destroyed. There were two parties then as now, a national party and a State-rights party. The former wished a National Government, entirely distinct from and independent of the States and the President elected either by Congress or the people directly; the latter party wished the Chief Magistrate selected by the States, as such. So intense was the feeling on this subject that at one time it threatened to destroy all hope of uniting on a form of government. Neither side succeeded, or, rather, the result was a compromise. The electors for the districts represented the people, the senatorial electors the States, and yet the electors might be voted for by the people, elected by the Legislature, or appointed by the governor under authority of law. The electoral colleges were State colleges. All supposed corrupting influences were avoided. The steps taken to have the electoral vote polled and sent were supposed to be taken with great care. The President of the Senate received, opened, and counted the vote, and his declaration of the result was held as final and sufficient. Counting or rejecting the votes of States was a contingency never contemplated and for which of course there was no provision. It was never intended that Congress should make itself a returning board to canvass a State election, and determine which States should or should not be counted, because it was foreseen that, if they did it would not be long before the congressional machinery would elect all Presidents. Some little discretion was undoubtedly understood to vest in the President of the Senate. As a matter of course he would not receive returns from everybody. He must be satisfied they were the genuine returns. If he was assisted by tellers he never asked them and they never asked him whether the package he handed them as the vote of a certain State was such a vote or not. Their acts were plain and simple.

Neither is there a word to countenance the idea of a joint convention with legislative and judicial powers "in presence of the Senate and House of Representatives." Both bodies together and yet both bodies distinct. The disposition to convert the witness into a judge was to be expected. The tendency in that direction is very strong. If the Constitution conferred the necessary power on the President of the Senate, it did not confer it on the House. Shall the witness called in first raise a question and then decide upon it? Is it safe to give Congress the power of receiving or rejecting the votes of States? Is it necessary that it should furnish a law or machinery to this end? Is doing this so inevitable that the power to "make all laws which shall be necessary and proper for carrying into execution the foregoing powers" confers it on Congress. If we accept that claim in its broadest sense there is nothing which Congress may not do.

I am not insensible to a necessity which may arise calling for congressional interference. I am equally impressed with the danger of innovations which may lead the way to a complete overthrow of the old system. I do not know that precedents are worth much in the face of constitutional provision, yet let us beware of the precedents we make.

What are the precedents made? In 1821 Mr. Livermore, of New Hampshire, objected to the vote of Missouri because Missouri was not a State in the Union. The Houses separated and a vote to count the vote of the State of Missouri was laid on the table. A resolution had been adopted that if the counting or omitting to count the vote of the State of Missouri would not change the result it should be announced: "With the vote of the State of Missouri, so much, without the vote of the State of Missouri, so much," in either event —— is elected President.

In February, 1813, when Mr. Monroe was elected President, Mr. Taylor, a member from New York, objected because "the votes of the electors of the State of Indiana for President and Vice-President had been given *previous* to the admission of the State into the Union." When the Houses separated they promptly voted to count Indiana, and the vote is registered like the other States.

In February, 1837, objection was made to the State of Michigan, and a resolution to announce the vote as in the case of Missouri was agreed to in joint resolution before the two Houses met. The President of the Senate declared the result: "With the vote of Michigan Martin Van Buren has 170 votes; without it, 167;" and as 148 was a majority he was elected President.

At the election February, 1837, the question of the ineligibility of electors came up. From the resolution of Mr. Grundy and the other records of the transactions it appears that the second section of the second article was supposed not to have been very rigidly observed. From the report made by Mr. Grundy to the Senate it appears that there were five cases at that election of electors who were deputy postmasters or other Federal officers. We quote from it:

What ought to be done with them, and whether any and what provision ought to be made for securing the faithful observance *in future* of that section of the Constitution.

Also:

The committee cannot adopt the opinion entertained by some that a single illegal vote would vitiate the whole electoral vote of the college of electors in which it was given, particularly in cases when the vote of the whole college has been given for the same person.

And the following:

Should a case occur in which it became necessary to ascertain and determine the qualifications of electors of President and Vice-President of the United States, the important question would be presented, what tribunal would, under the Constitution, be competent to decide? Whether the respective colleges of electors in the different States should decide upon the qualifications of their own members, or Congress should exercise the power, is a question which the committee are of opinion ought to be settled by a permanent provision on the subject.

It was not permanently settled, however. Constitutional amendments relating to the election of President have been found difficult to obtain. The same difficulties that existed during the first convention exist still. In both cases when the election went to the House it was followed by popular clamor for amendments to the Constitution. In the first instance, when it was merely on voting on President and Vice-President separately, it was easily obtained, but when it touched the essential points the amendment was lost.

At the election of Mr. Buchanan, February, 1857, after the President *pro tempore* had declared the result, Mr. Humphrey Marshall, a member of the House, raised the question "as to the right of the President of the Senate *pro tempore* to determine whether or not the State of Wis-

consin had cast a vote that could be counted." He had counted it on his own volition, and having declared the result, adjourned the meeting of the two Houses.

The Houses separated. The tellers reported to them that the electors, instead of meeting on the 3d of December, the day fixed by law under provision of the Constitution, they met and cast their vote on the 4th, the day after. On this report of the tellers no action was taken, the Senate evidently being disinclined to take action as to the powers of the President of the Senate. This, too, was in a case of violation of act of Congress on one of the two only points on which Congress expressly has power under the Constitution: the one to fix the day for the election of electors, the other that they fix the day on which they shall meet and cast their vote.

It was not until the second election of Mr. Lincoln occurred that graver questions arose. War was still raging. Should States at war be permitted to vote, or should the States under control of the Federal armies, or Government, in process of reconstruction, be permitted to vote. Under these circumstances legislation to prevent the counting of such votes, or of rejecting the vote of any State, was for the first time undertaken, and the twenty-second joint rule was also adopted.

I cannot conceive that any statesman should take any other view of many of the provisions of the twenty-second joint rule save as necessary war measures. Of the necessity and absolute force of such action under such circumstances no question can be had, yet it was not done under any constitutional provision. When the imperative causes for such action are removed, are we to determine that they shall enter into future presidential elections? Was this the design or expectation, or are we warranted in adding this to the powers of Congress? The most objectionable feature of the twenty-second joint rule, as it stood, was that it permitted one House of Congress to disfranchise a State. If we are to adopt legislation to meet difficulties, real or imaginary, no State should be deprived of the power of voting but by the concurrent action of both Houses. On this very point the ablest democratic Senators were eloquent last session.

It will be observed that the presidential elector is one of the few officers whose eligibility there is no tribunal to inquire into. The right of every other person to the position he claims may be judicially determined. It is clearly a State office. "Each State shall appoint, in such manner as the Legislature thereof may direct." The Legislature may elect them. They may authorize the governor to appoint them. The law of the State has entire control of their mode of appointment. Their vote is sealed, but that merely refers to being put in a sealed package. No appendage of State seals is required. If present they are surplusage, merely for better identification.

I think there is but one course to pursue in this presidential matter, to go straight ahead under the forms of the Constitution. The two Houses are to be present when the officer who has the authority under the Constitution opens the certificates, counts the votes, and declares the result. They do not meet to make motions, offer resolutions, or vote. They do not meet to determine that the President of the Senate shall not do that which the Constitution has said he shall do. Does the withdrawal of each body to its own chamber to vote give either House any more power than both have jointly to enact a law? Is there a single matter in legislation which they can determine separately? Has the House judicial powers on any subject, or has the Senate on counting the electoral vote? These are questions for us to ponder and answer.

I think it must be admitted that to give Congress the power to fill up by legislation the supposed gaps in the Constitution, and in doing so to add to its own powers in electing a President, is a matter of questionable expediency. Where is it to end? The ancient landmarks may not be all we could wish them, but where is to be our safe anchorage when we have swept them away? In the interests of a quiet and peaceable adjustment of this question we might consent to yield anything not fundamental. I have no desire to be captious or hang on mere technicalities. If, under the Constitution, we have the power to determine anything, let us do it in a spirit rising above all party or its interests and above the claims of all candidates; yet, before we embark on such a course let us think of the difficulty of harmonizing legislation at such a time. Compromise, always of questionable utility, never had such a difficult task before it.

Are the supposed difficulties really entitled to the great interest they have aroused? I must confess I cannot dismiss the idea from my mind that a large portion of excitement and disturbance is caused by those who expect to divert attention from the only legitimate and constitutional modes of settling the question. They wish to drive Congress to some new and unauthorized mode for the sake of peace. Such proposals are the only things that can disturb the public tranquillity. Those who resort to them ought to receive the condemnation of all good citizens. Nor is there anything necessarily startling in the situation. One majority is, to all intents and purposes, as good as fifty. Nor can there be any serious doubt as to which are the State returns. It is in some respects new in the aspects it presents, and yet the crowning test to our institutions. Must close elections be followed by intrigue and violence to change the result? Does any man for a moment suppose that a scheme so monstrous as the attempt to defeat the fair and unmistakable election in Oregon on a mere technicality could be for one moment tolerated by the American people, even if the technicality had, what it *has not*, the slightest color of law?

The question as to whether we should allow such of the reconstructed States, recently in war, and who do not furnish us the evidence that they are able as yet to conduct fair and peaceable elections, to vote, is one pregnant with the most important issues. Must we forever be kept in this condition of half war, half peace? Shall we permit wholesale fraud and murder to elect a President? or, having admitted them, shall we accept such machinery as these States present to us, and count the vote of Vermont side by side with the vote of Mississippi?

What are we to think of a great party like the democratic party resorting to turbulent means from a fear that they are beaten? How questionable and unpatriotic to call popular assemblages to pass on the situation. What shall the democratic convention of Indiana do? Are they not satisfied with the constitutional machinery that has elected our Presidents since the days of Washington? Is the design to browbeat or threaten? The will of the people is law, but in our American system its only force lies through forms; for nothing is law, or can have the sanctity thereof, save the will of the people legitimately expressed. The only turbulent element is in such movements. Will the shrewd democratic leaders countenance such a scheme in the vain hope of a temporary success?

I do not wish to hear any of the insane talk of fixed ammunition and thousands of muskets in the hands of mobs to intimidate or assail our constitutional authorities. All such rodomontade only exposes those who use it to ridicule. Nor do I for a moment fear that armies will be lawlessly organized to march on Washington, prepared and preparing for disturbances. If such talk for a moment disturbs the public mind, it is at once tranquilized by the reflection that we have a *man at the helm*. No weak, vacillating old man is declaring he has no power to crush conspiracy and rebellion, and weeping himself out of the Presidency. I do not rise here as the special eulogist of the President, but I do not hesitate to declare him among the best of our Presidents. Vainly shall conspirators seek to weaken his influence. Cruelly assailed, he has modestly withheld just, but possibly undignified vindication. For long months remorselessly pursued by men, many of whom were recently in arms against him, and who had shared his unparalleled magnanimity when, at the head of a great army, flushed with victory, his only thought was—

> To soothe and save
> The feelings of the conquered brave.

Misrepresented and hounded by partisan committees, his character comes out of the ordeal unspotted. He is charged with Cæsarism, and events prove the charge false. He is charged with conspiring to name his successor so that his dynasty might be continued, and as events prove that to be false he is charged with selfish indifference as to the candidates of his own party. He is charged with sending troops into the reconstructed States, and yet he never sent them save under the strict forms of the Constitution and law. Were they asked for needlessly? Let Hamburgh and kindred horrors answer. Something was due the sanctity of law, something to the blood of our slaughtered countrymen.

Yes, we will have peace. The President the people have elected under the prescribed forms will be quietly inaugurated. We have proven to the world that rebellion could not destroy this Republic, and we will now prove that intrigue cannot accomplish what war failed to do. The forms by which we have maintained our Government are sacred, and rest under the ægis of the Constitution. Behind it stands the American people, and as they have never permitted an armed enemy to crush, so will they never permit bargain to compromise or treason to tarnish.

Mr. SINGLETON. I move that the committee rise, with a view of limiting general discussion hereafter to five minutes.

The motion was agreed to.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. WILLIS reported that the Committee of the Whole on the state of the Union had, according to order, had under consideration the bill (H. R. No. 4251) making appropriations for the consular and diplomatic service of the Government for the year ending June 30, 1878, and for other purposes, and had come to no resolution thereon.

Mr. SINGLETON. I move that when the House shall again resolve itself into the Committee of the Whole on the diplomatic appropriation bill all general debate terminate in five minutes.

The motion was agreed to.

Mr. HOLMAN and Mr. REAGAN, by unanimous consent, obtained leave to have printed in bill form certain propositions intended to be offered by them as amendments to the diplomatic appropriation bill.

Mr. SPRINGER. I move that the House now adjourn.

HOUSE CONTINGENT FUND.

Mr. FOSTER, by unanimous consent, reported from the Committee on Appropriations a bill (H. R. No. 4307) making appropriation to supply certain deficiencies in the contingent fund of the House of Representatives, and for other purposes; which was read a first and second time, referred to the Committee of the Whole on the state of the Union, and made a special order for to-morrow after the morning hour.

Mr. WILSON, of Iowa. I desire to reserve all points of order on this bill.

The SPEAKER. All points of order will be reserved.

PRINTING OF A BILL.

Mr. LYNDE. I ask unanimous consent that a bill now on the Speaker's table (H. R. No. 3370) to amend the statutes in relation to damages for infringement of patents, and for other purposes, be printed, with the amendments of the Senate.

There was no objection, and it was ordered accordingly.

TREASURY DEPARTMENT APPOINTEES.

Mr. MILLS. I ask unanimous consent to introduce for adoption at this time the following resolution, calling for information:

The Clerk read as follows:

Resolved, That the Secretary of the Treasury be directed to inform the House if the appointments made in his Department since the 1st day of January, 1876, have been so arranged as to be equally distributed between the several States of the United States, Territories, and the District of Columbia, according to population, as directed by act of Congress approved March 3, 1875.

Mr. TOWNSEND, of New York. I object.

Mr. MILLS. I ask, then, that it be introduced for reference to the Committee on Civil Service Reform. There will be no objection to that.

Mr. TOWNSEND, of New York. Yes; I object; I want to adjourn. [Laughter.]

LOCATION OF UNITED STATES TROOPS, ETC.

Mr. THROCKMORTON. I ask unanimous consent to introduce for adoption at this time the following resolution:

Resolved, That the Committee on Military Affairs be, and is hereby, directed to inquire and report to this House the present strength, location, and occupation of the troops of the United States Army; how many are being used upon the frontier, how many in the Southern States, and how many in and around Washington; when the troops were ordered to Washington, the nature of their orders, by whom made, and the purpose for which they are or have been ordered here. Said committee be, and are hereby, authorized to send for persons and papers.

Mr. GARFIELD. I object.

LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted in the following cases:

To Mr. WARREN, for one week on account of important business.

To Mr. CHAPIN, for one week on account of indisposition.

To Mr. SPENCER, for ten days on account of important business.

WITHDRAWAL OF PAPERS.

On motion of Mr. WHITE, by unanimous consent, leave was granted for the withdrawal from the files of the House of the papers in the case of Dillard Hazelrigge, no adverse report having been made thereon.

And then, on motion of Mr. SPRINGER, (at four o'clock and twenty-five minutes p. m.,) the House adjourned.

PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By the SPEAKER: Memorial of 62 voters of the town of Londonderry, Vermont, of all political parties, condemning the action of the returning boards in Louisiana, Florida, and South Carolina, and approving the action of the House of Representatives in sending investigating committees to the said States, to the committee on counting the electoral vote.

By Mr. J. H. BAGLEY: The petition of citizens of Kingston City, New York, that Congress enforce the provisions of the act of Congress of July 24, 1866, relating to the purchase of all telegraph lines in the United States for postal, military, or other purposes, to the Committee on the Post-Office and Post-Roads.

Also, the petition of citizens of Adams, New York, of similar import, to the same committee.

By Mr. BUCKNER: A paper relating to the establishment of a post-route from Florida to Vandalia, Missouri, to the same committee.

By Mr. CABELL: The petition of citizens of Franklin, Bedford, and Roanoke Counties, Virginia, for the establishment of a post-route from Gates's Mill, Roanoke County, via Neighbor's Store, Bedford County, Hardy's Ford, William Hopkins's residence, Franklin County, Taylor's Store, to Edwardsville, to the same committee.

By Mr. GAUSE: Memorial of the city council of Hot Springs, Arkansas, praying for a disposition by the Government of the Government reservation at Hot Springs, Arkansas, to the Committee on Public Lands.

By Mr. GIBSON: The petition of Laura J. Bemiss, for compensation for property taken by the United States Army in Louisiana, to the Committee on War Claims.

By Mr. HARALSON: The petition of citizens of Clarke County, Alabama, for the establishment of a post-route from Bay Minette to Suggsville, Alabama, to the Committee on the Post-Office and Post-Roads.

By Mr. HENDEE: The petition of Edgar A. Beach, late second lieutenant Second Regiment United States Sharpshooters, for pay for services rendered as second lieutenant of said regiment during the late war, to the Committee on War Claims.

By Mr. HENKLE: Memorial of John H. Semmes and others, asking pay for rent of the Seaton House, leased by the United States, until the legal termination of the lease thereof, and for compensation for repairs necessarily made upon said building, to the Committee on Appropriations.

By Mr. LAPHAM: The petition of J. J. Astor, Brown Brothers & Co., Drexel, Morgan & Co., Phelps, Dodge & Co., Peter Cooper, W. C. Bryant, D. Appleton & Co., Arnold, Constable & Co., Benjamin B. Sherman, August Belmont & Co., and other business firms and citizens of New York City, representing a large proportion of the financial and commercial interests of the city of New York, expressing satisfaction at the action of Congress in appointing conference committees to consider a proper mode of counting the ballots for President and Vice-President of the United States, and earnestly asking that all party considerations may be thrown aside and that unselfish patriotism may guide the members of the two Houses of Congress in their legislative action, to the committee on counting the electoral votes for President and Vice-President.

By Mr. MAISH: The petition of Jacob Hahn, late a private in Company A, Eleventh Regiment Pennsylvania Volunteers, for arrears of pensions, to the Committee on Invalid Pensions.

By Mr. O'NEILL: The petition of citizens of Philadelphia, that Congress settle in harmony the question of who may be inaugurated as President of the United States, to the committee on counting the electoral vote.

Also, the petition of Samuel B. Hutchinson, for the restoration of the pension of his late ward, Mary A. Shurlock, to the Committee on Invalid Pensions.

By Mr. PAYNE: The petition of Rosetta L. McKay, mother of Frederick A. McKay, deceased, late second lieutenant Company E, Forty-first Regiment Ohio Volunteer Infantry, to the same committee.

By Mr. VANCE, of North Carolina: A paper relating to the petition of S. D. Plemmons, of North Carolina, to be relieved from the penalty imposed for an alleged violation of the United States revenue laws, to the Committee of Ways and Means.

By Mr. SMITH, of Pennsylvania: The petition of 56 citizens of Lancaster County, Pennsylvania, that Congress enforce the provisions of an act of Congress of July 24, 1866, relating to the purchase of all telegraph lines in the United States for postal, military, or other purposes, to the Committee on the Post-Office and Post-Roads.

Also, papers relating to the petition of Abraham Alstead, late second lieutenant of Company A, Fifty-fifth Regiment Pennsylvania Volunteers, for a pension, to the Committee on Invalid Pensions.

By Mr. TERRY: A paper relating to the establishment of post-routes from Rocky Station to Thomas Morris's residence in Lee County, and from Martin's Station to Allisonia in Pulaski County, Virginia, to the Committee on the Post-Office and Post-Roads.

By Mr. VAN VORHES: The petition of Oscar B. Nott, late a private in Company B, One hundred and sixty-first Regiment Ohio Volunteer Infantry, for a pension, to the Committee on Invalid Pensions.

Also, the petition of W. H. Dye and 45 other citizens of Meigs County, Ohio, for the enforcement of the act of 1866 authorizing the purchase of the telegraph lines of the United States and declaring that the telegraph belongs properly to the Post-Office Department, and that the Government can alone secure the freedom of the press and the security of private correspondence, to the Committee on the Post-Office and Post-Roads.

By Mr. WELLS, of Missouri: The petition of Thomas R. Cross, late a private in the First Missouri Light Artillery, for a pension, to the Committee on Invalid Pensions.

By Mr. WIGGINTON: The petition of 1,472 citizens of Los Angeles County, California, protesting against the confirmation by Congress of illegal indemnity school land selections in said State, to the Committee on Public Lands.

By Mr. WILLIS: The petition of Charles Perley, for compensation for the use by the United States of certain inventions patented by him and applied without his consent in the construction of certain naval engines of war, to the Committee on Naval Affairs.

IN SENATE.

FRIDAY, *January* 5, 1877.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

The Journal of yesterday's proceedings was read and approved.

PETITIONS AND MEMORIALS.

The PRESIDENT *pro tempore* presented a memorial of the National Board of Trade of the United States, praying for a revision and amendment of the bankrupt law; which was referred to the Committee on the Judiciary.

He also presented a memorial of the National Board of Trade of the United States, praying for a revision and amendment of the tariff and internal-revenue laws; which was referred to the Committee on Finance.

Mr. BOGY presented a petition of citizens of the United States, praying the payment of their claims against the republic of Mexico; which was referred to the Committee on Foreign Relations.

Mr. WRIGHT presented the petition of J. H. Russell, praying the passage of a bill confirming to him the title to certain lands in the Hot Springs reservation in the State of Arkansas; which was referred to the Committee on Public Lands.

REPORTS OF COMMITTEES.

Mr. WRIGHT, from the Committee on Claims, to whom was referred the petition of Mrs. Gottlieb Neidhardt, of Louisiana, praying payment of damages sustained by the occupation of her property and destruction by United States forces during the late civil war, submitted an adverse report thereon; which was ordered to be printed; and he moved that the claim be rejected; which motion was agreed to.

He also, from the same committee, to whom was referred the petition of W. W. Norris, of Iowa, late lieutenant-colonel Forty-third Regiment Indiana Volunteers, praying compensation for services rendered as physician and surgeon in the rebel military prison at Tyler, Texas, during the late war, submitted an adverse report thereon; which was ordered to be printed; and he moved that the claim be rejected; which motion was agreed to.

Mr. INGALLS, from the Committee on Pensions, to whom was referred the bill (H. R. No. 1814) granting a pension to Samuel Sheaffer, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (H. R. No. 2120) granting a pension to Thomas W. Hewitt, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

Mr. HAMILTON, from the Committee on Pensions, to whom was referred the bill (H. R. No. 2587) granting a pension to Malvina Ingle, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (H. R. No. 1235) granting a pension to Rose Miller, widow of Reason F. Miller, deceased, late private in Company E, One hundred and twenty-third Illinois Infantry, reported adversely thereon; and the bill was postponed indefinitely.

Mr. BRUCE, from the Committee on Pensions, to whom was referred the petition of Carter Wilkey, of Hamilton County, Illinois, praying a pension for services rendered as a private in the war of 1812, submitted an adverse report thereon; which was ordered to be printed, and the committee was discharged from the further consideration of the petition.

Mr. MORRILL, from the Committee on Public Buildings and Grounds, reported a bill (S. No. 1113) to authorize the taking of certain parcels of lands for the public use at the intersections of Pennsylvania and Maryland avenues on the west front of the Capitol grounds; which was read and passed to the second reading, and ordered to be printed.

BILLS INTRODUCED.

Mr. BURNSIDE (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1114) to authorize the President to restore John Jackson to his former rank in the Army; which was read twice by its title, referred to the Committee on Military Affairs, and ordered to be printed.

Mr. BOOTH asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1115) to accept property devised and bequeathed to the United States by the late Charles Fox; which was read twice by its title, referred to the Committee on the Judiciary, and ordered to be printed.

Mr. INGALLS (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1116) granting a pension to Sarah A. Chamberlain, guardian of the minor heirs of James Eagle, Company F, Second Regiment Kansas State Militia; which was read twice by its title, referred to the Committee on Pensions, and ordered to be printed.

Mr. MORRILL asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1117) to transfer the title of the United States to square 109 to the District of Columbia for the benefit of the public schools thereof; which was read twice by its title, and, with the accompanying papers, referred to the Committee on the District of Columbia.

ADJOURNMENT TO MONDAY.

On motion of Mr. EDMUNDS, it was

Ordered, That when the Senate adjourns to-day it adjourn to meet on Monday next.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. GEORGE M. ADAMS, its Clerk, announced that the House had agreed to the amendments of the Senate to the following bills:

A bill (H. R. No. 2260) providing for the sale of saline lands; and

A bill (H. R. No. 2041) to amend section 2291 of the Revised Statutes of the United States.

The message also announced that the House had passed the following bills; in which it requested the concurrence of the Senate:

A bill (H. R. No. 2114) to give parties contestant time to file on or enter lands under the pre-emption, homestead, or timber-culture acts after the contests shall have been finally decided;

A bill (H. R. No. 2283) granting pensions to certain soldiers and sailors of the Mexican, Florida, and Black Hawk wars, and certain widows of deceased soldiers and sailors of the same;

A bill (H. R. No. 3567) to make the ports of Brownsville and Galveston, Texas, ports to which unappraised merchandise may be transported; and

A bill (H. R. No. 3775) fixing the compensation of United States marshals and deputies.

ENROLLED BILL SIGNED.

The message further announced that the Speaker of the House had signed the enrolled bill (S. No. 408) for the relief of Assistant Surgeon Thomas F. Azpell, United States Army; and it was thereupon signed by the President *pro tempore*.

BILLS BECOME LAWS.

A message from the President of the United States, by Mr. U. S. GRANT, jr., his Secretary, announced that the following bills, having been received by the President on December 16, 1876, and not having been returned by him to the Senate (the House in which they originated) within the ten days prescribed by the Constitution, had become laws without his signature:

A bill (S. No. 105) for the relief of Dickson Shinault, late assistant keeper of the light-vessel at Wolf Trap light-station, in the State of Virginia; and

A bill (S. No. 1057) to provide for engraving and printing the portrait of the late Hon. Henry H. Starkweather, of Connecticut.

PRODUCTION OF TELEGRAPHIC DISPATCHES.

Mr. MORTON. I move that the Senate proceed to the consideration of the resolution reported from the Committee on Privileges and Elections relating to the production of telegraphic dispatches.

The motion was agreed to; and the Senate proceeded to consider the following resolution, reported from the Committee on Privileges and Elections January 3:

Resolved, That William M. Turner is in duty bound under his oath to answer the questions that have been propounded to him as above stated, and that he cannot excuse himself from answering the same by reason of his official connection with the Western Union Telegraph Company as the manager of their office at Jacksonville, Oregon.

Mr. SHERMAN. I think the testimony had better be read.

Mr. MORTON. I ask to have the whole report read.

The PRESIDENT *pro tempore*. The whole report will be read.

The Chief Clerk read as follows:

The Committee on Privileges and Elections, who were instructed by resolution of the Senate to inquire into the facts attending the casting of the electoral vote of the State of Oregon, beg leave to report to the Senate:

That one William M. Turner was called as a witness by the said committee and, after having been duly sworn, had the following questions propounded to him, and made the following answers thereto:

Question. (by the chairman.) Do you know whether Mr. Patrick had asked to have that canvass withheld until he could get there?

Answer. I cannot answer that question.

Q. Have you any knowledge on that subject?

A. No, sir; nothing that could be made public.

Q. Explain what you mean by that.

A. Our knowledge on political subjects and all others, of course, has to be very sacred. It would be a violation of the law of the State to divulge anything that passes over the telegraphic wires and also a violation of the rules of the company.

Q. I propose to ask the witness the question if he knows of any dispatch passing through that office, on the part of Mr. Patrick or any one else, asking that that canvass be deferred until he could get there.

A. I ask to be excused from answering that question.

Q. You decline to answer?

A. I must decline.

Q. Upon the ground before stated?

A. Yes, sir.

Q. That you cannot divulge anything passing on the wires?

A. I cannot do it.

Q. What do you know, if anything, in regard to $8,000 being transferred from New York to Salem or to Portland at any time after the election in November and up to the time that the electors cast their votes?

The WITNESS. Transferred in what manner?

The CHAIRMAN. What do you know about money being sent from New York or persons there being authorized to draw for $8,000?

A. I do not know anything with regard to the transfer of any money that would be a public matter. We have a great deal of business of that kind going through the office, and as a matter of course it only concerns those who are interested.

Q. Do you know of any dispatch being sent to Salem or to Portland from New York authorizing any person there to draw for $8,000?

A. I must decline to answer that.

Q. Do you know of any dispatch having been sent by Charles Dimond, or a man named Dimond, in New York, to Ladd & Bush, in Salem, in regard to $8,000 or any sum of money?

A. I cannot answer.

Q. Do you mean to say that you cannot answer or that you decline to answer?

A. I decline.

Q. You decline to answer?

A. I decline to answer any question touching anything that passes over the telegraph wires.

Q. Did you simply say that you decline to answer or do you mean to say that there was no such dispatch?

A. I decline to answer questions of that character.

* * * * * *

Q. Now I propose to ask this witness the question directly, if there was not a dispatch passing through that office from Charles Dimond to Ladd & Tilton, in Portland, authorizing them to draw for $8,000?

A. I must be excused from answering any questions of that character.

Q. I put this as occurring subsequent to the 25th of November and before the first Wednesday in December.

A. I decline answering any questions, as I remarked, touching the business over the wires.

Q. I ask if you know anything in regard to another sum of $17,000 that was authorized in New York to be drawn by Ladd & Tilton in Portland subsequent to the presidential election?

A. No, sir; I do not know anything about it.

Q. You do not then decline to answer that on this ground?

A. I decline on the same ground.

The committee have been informed that it is important to have the witness answer these questions, as the answers may be material in the investigation of the matter intrusted to the committee, and submit to the Senate the following resolution.

Mr. KELLY. Mr. President, I hope this resolution will be adopted. I think that there is no reason why telegraphic communications should not be made public when justice demands that it should be done. I see nothing of privacy about them which should prevent their disclosure. It is a well-known principle of law that written communications, however confidential they may be, can be required to be produced in a judicial tribunal when it is necessary for the purposes of justice that they should be disclosed. Certainly, there is nothing more sacred in a telegraphic communication than there is in a confidential letter written by one person to another.

There is another reason why the telegraphic communications referred to in the resolution should be made public. I do not propose to discuss it however at this time, nor do I care about discussing the question at length; I do desire, however, that this witness shall be compelled to answer the questions that have been put to him. He certainly has disclosed something. He has certainly been leaky, although a telegraphic operator. He has communicated unquestionably something about dispatches that have passed over the wires, and I desire that he shall be compelled to disclose the whole of that communication, for he tells about a telegraphic dispatch which has passed from one person to another and then shrugs his shoulders as much as to say "I know a great deal, but I cannot and will not disclose it because it is sacred." I want that witness to be brought before the committee and compelled to testify all he knows about it, for I am very confident that no communication that passed over the wires in relation to political events that were transpiring at Salem at that time will show that anything wrongful or anything improper was done. I am very confident in what I say now because I was at Salem at the time and I know most of the events that transpired there in connection with the counting of the electoral vote of Oregon. I speak not, it is true, as one having knowledge of the matter, but I think if any improper telegram had been sent from one of these individuals who is mentioned to another, I should have known something about it. Be that as it may, I am confident that nothing improper will be disclosed when these telegrams are produced if this witness is compelled to testify as he ought to be compelled to do.

Not only am I satisfied that no telegrams that passed over the wires to Oregon or passed from Oregon to New York will declare anything improper or unlawful, but I am also well satisfied that upon the examination which is now taking place, and which no doubt will be prosecuted to the fullest extent, nothing improper will be shown by any witness if he testifies to the truth, as I have no doubt he will. Not a dollar of money was expended improperly or in any other way than was right and lawful. So much for that.

I said I was present at Salem at the time that most of the transaction took place in relation to the canvass of the vote for presidential electors in Oregon. I do not propose to discuss these matters now, but I will say here that I was very much astonished at the vituperative assault made by the Senator from Iowa [Mr. WRIGHT] yesterday upon the governor of Oregon, which was unexpected to me, and, from the character of that gentleman, I confess that I was not a little surprised at it. Why he took the occasion to assault the governor on the floor of the Senate, when he knew that that gentleman was present and could not reply, I am at a loss to understand. If he had read the reasons the governor gave for his decision, I am sure he would have found the case altogether different from what he supposed and he would not have abused and vilified him in the way he did.

It is sufficient for me to say that I do not intend to argue this question now, but when the committee shall have made their report I trust I shall be able to give reasons to show that the Senator from Iowa is mistaken in many of his facts, that he is greatly mistaken in the law, that he is very much mistaken in the duties of an executive of a State. I know he is. I admit his intelligence and his ability, and yet I have heard arguments on this question by gentlemen quite as intelligent and quite as gifted as he, and I am sure that he is in error in his law. But, as I have said, I am not going to discuss the question now; I simply rose to say that I regret that he made that vituperative assault upon the governor when he knew that he could not make a reply. I know that many of the most learned and gifted lawyers in the United States have expressed opinions diametrically opposed to that of the Senator. Why, when there may be a difference of opinion as to the law, the Senator from Iowa should have taken occasion to abuse one who cannot reply, I leave to himself to say. I conceive that it is simply my duty to say this in defense of one who cannot now speak for himself on this floor. I will say, however, this much: the governor who was so abused, so vilified yesterday, has been twice elected by the people of Oregon the governor of that State; he was once elected a member of the national House of Representatives; he has been many times elected to the Legislative Assembly of Oregon; and he has been chosen as the representative of that State to occupy the seat that I now hold when I shall go hence. I say this much of the governor of Oregon, and I further say that in everything that becomes a man of honor, a man of principle, he is the peer of the Senator from Iowa, and I admit that that is exalted praise indeed. I have said this much as a duty to that State which I in part represent on this floor and to repel assaults against its governor.

Mr. WRIGHT. Mr. President, I wish to say one word. I am sure my good friend the Senator from Oregon quite misunderstood me and quite misrepresents me, of course not intentionally. It was the farthest from my point to either abuse or vilify any person. I am not in the habit of doing that. I, accepting the facts as I understood them, stated my conclusion of the law bearing upon them. If the facts shall be otherwise than I have understood them, of course my conclusions may be wrong; but accepting it as true that this vote had been returned as I stated, accepting it as true that the powers of the executive of that State were ministerial purely, accepting it as true that he had none, the least, judicial power to investigate or determine the thing, that he had nothing to do except to see that the vote was as returned by the several counties and that then his simple duty was to give the certificate to the person who seemed to have the highest number of votes—that being my view and that being my understanding of the facts, and it being my opinion also that he had no more power to give the certificate to a man who got less than a majority there than he had to give it to the man who was not a candidate at all, I took the occasion to express my opinion of an executive that would do it, and that opinion is unchanged if the facts are as I stated.

I say that there is too much due to the quiet and the rest and the peace and the good order of this Government to have all made unrest and disquiet by a disregard of law, the facts being as I have supposed, I said so of a public official. I said so of a person who had a public trust to execute. I said so of a person who had it in his hands either to assist to lead the people of this country into quiet ways and peaceful methods, or to increase the unrest and disquiet and the derangement of the public and business interests. I felt I was justified in doing so, and I take no word back.

Mr. KELLY. Mr. President, I said that the Senator from Iowa was mistaken in his law, and he certainly is. If he had, before denouncing the governor, but read his executive decision, he would have seen that he is fortified by decisions of the supreme court of Indiana, of the supreme court of Maryland, and other States, and by the decision of the supreme court of Oregon in analogous cases, that it is the duty of the governor, as the conservator of the constitution, to decide questions of that kind when they are brought before him. I say that the governor is fortified by the decision of the supreme court of Oregon upon that question. I do not propose, as I said a while ago, to discuss the question now; I shall do so at the proper time; but I simply say that where there is a difference of opinion between gentlemen, when one gives his reasons for a decision and another dissents, the case does not call for vituperation and abuse. That is all that I care about saying now. Vilification convinces no one; vituperative language does not make converts; and when gentlemen honestly differ upon a grave construction of law, I say again that such language as was used here yesterday is not proper, whether the Senator takes it back or not.

Mr. WRIGHT. I wish to say one thing more. I am familiar with the Indiana cases. Those cases have all been cited here. I am familiar also with the opinion that was given from Cincinnati to this governor on this question. I am familiar with the differences that have obtained between the supreme courts of the different States as to what is the effect of a vote where the party receiving a majority is ineligible; but the difficulty is this, and my friend seems to overlook it: I undertake to say that you cannot find a decision in all this broad land or the world over that holds that an executive officer has any right to determine that question.

Mr. KELLY. Will the Senator allow me to interrupt him?

Mr. WRIGHT. I undertake to say that the decisions as made refer to the action of judicial tribunals when they come to a contest brought before them according to legal methods, and that no decision can be found either in Oregon or any place else that says that a mere ministerial officer has any right to do anything with that question. It was that view of it which I was discussing. If Governor Grover had had judicial powers, if he had had any right to investigate or determine this question, then I can see that men might differ in opinion by possibility, and yet how I can hardly conceive—might differ as to the law of the case; but how there could be any difference on the question that a mere ministerial officer has power to decide a judicial question is something I cannot understand.

Mr. KELLY. I desired to ask the Senator from Iowa a question, but he did not yield. I will say now that the decision I referred to will be found in the fourteenth volume of Indiana Reports, and it declares that the governor has a right to decide that very question. I am not referring now to the question whether the person next highest to an ineligible candidate is considered elected, but I refer to the case in Indiana to show that the governor has a right to withhold a certificate from an ineligible candidate, and it is there held to be, not a judicial, but a political question. Here I may refer in passing to the action of the governor of Vermont. The governor of Vermont, as I understand, undertook to decide, and very properly as I view it, that one of the candidates for elector of that State had not been elected.

Mr. EDMUNDS. I beg to correct the Senator. The governor of Vermont never undertook to hold any such thing, or do anything about it except follow the statute, count the vote and issue the certificate.

Mr. KELLY. I understand that the governor of Vermont certainly did call the Legislature together.

Mr. EDMUNDS. The Senator is entirely mistaken; he did not do anything of the kind.

Mr. KELLY. Was not the Legislature convened?

Mr. EDMUNDS. The Legislature convened according to the constitution of Vermont, which provides for its convening once in a while.

Mr. KELLY. The Legislature was called together in Rhode Island by the governor. I refer to this to show that the governors of other States have made this decision and it is an executive decision that is made everywhere by every governor who understands his duty. It is expressly decided in the fourteenth volume of Indiana Reports that it is a political question which the governor is bound to decide when it is presented to him, and that he can withhold a commission from a man who is ineligible although the statute may declare that a commission shall be given to the one elected.

I do not propose to discuss that question now. I have been drawn into a more lengthy discussion than I at first intended. At the proper time, when the report of the committee shall be made, I think I can present the case so as to make it clear that the decision of the governor of Oregon was correctly made, and that he had ample authority to take cognizance of the case.

Mr. WRIGHT. I desire to ask my friend the Senator from Oregon a question. I know he is a good lawyer. I do not propose now to discuss the Indiana case, though I think he is quite mistaken as to its bearing; but I ask whether he as a lawyer, whatever may be the decision in Indiana, remembering the Oregon statute, regards that the governor of Oregon has judicial powers and the right to determine that question as a matter of law?

Mr. KELLY. I think it is not judicial power. There is the very point where the Senator from Iowa and myself differ. Now I will state a case.

Mr. WRIGHT. We do not differ if you say it is not judicial power.

Mr. KELLY. I say it is not. Suppose an individual had been voted for who died the day before the election, and that fact was brought to the governor's attention, then I say he is not bound to issue a commission to a dead man, and he can take evidence as to that fact. It is simply the proof that the man is dead. This was only the proof that Watts was ineligible.

Another case: suppose a man had been convicted of a crime which under the statutes of Oregon rendered him ineligible. Suppose such a man should receive the highest number of votes and the record of conviction was placed before the governor when he was asked to commission an individual who had served out his time in the penitentiary and who was therefore ineligible; would he be bound under his oath to stultify himself and issue a commission to a convict in the penitentiary? He has no right to commission anybody who is ineligible; and it is his duty to take evidence of that fact. I admit that he cannot go into the trial of a contested question, as to show that an individual had committed a robbery, theft, or any other felony. He cannot do that because no man can be convicted except by judicial process.

Mr. MITCHELL. I wish to ask one question.

Mr. KELLY. Do not interrupt me just now. But the conviction once being had and the record of it being placed before the governor and proof being made that he is the identical person who wore the stripes of the prison, is the governor to stultify himself and issue a commission to that man? I say there is authority for saying no. Not only that, but I say that the decisions of Oregon govern the executive of that State in this matter, and I will refer to one now, a case unreported but a case nevertheless decided by the supreme court.

Ex-Governor Gibbs was elected prosecuting attorney for the fourth judicial district. He served some time in that capacity. Afterward he was appointed by President Grant United States district attorney for the district of Oregon. He was exercising the duties of both offices for some time. The constitution of Oregon declares that no man holding a Federal office shall exercise the duties of any office under that State. The governor, knowing this fact, or having evidence of it, appointed another person to supersede Governor Gibbs as prosecuting attorney. He declined to give up the office. Application was made to the court of the fourth judicial district to exclude him and to admit the governor's appointee, Mr. Bellinger. The judge, who by the way has been giving one of these fugitive opinions that this is a judicial question, Judge Upton, held that the governor could not take judicial notice of the fact, that the governor had no right to judge of the matter. A writ of *quo warranto* or a writ in the nature of a *quo warranto* was sued out by Mr. Bellinger against Ex-Governor Gibbs. It was decided by Judge Upton, as he had expressed it before, that the governor had no right to make an appointment of this kind, that it required a judicial decision to determine whether Governor Gibbs could hold the State office or not. He decided that that was not an executive question but a judicial question. Appeal was taken to the supreme court of Oregon, and by a unanimous decision of that court, all the judges concurring, it was held that it was a political question, and that the governor had a right to decide it, and not only that, but they held that it was his duty, as conservator of the constitution of the State of Oregon, to see that no infraction of it took place. That is a decision made by the supreme court of Oregon.

Mr. MITCHELL. Is it reported?

Mr. KELLY. No, it is not reported. The case was referred, as all cases are, to the judges to write the opinions of the court. This case was referred to Judge Thayer, but he died before the opinion or decision of the court was written out. The papers remained in the possession of his family for some time afterward, and were then sent back to the court; the opinion has been written by another member of the supreme court since the papers were sent back, and it will be reported in the next volume of Oregon Reports.

Mr. MITCHELL. I inquire of my colleague if that case was not this, as to whether those two officers were incompatible. Was not that the question?

Mr. KELLY. I will tell you. The main point that Judge Upton decided was that the matter was of a judicial nature, and that the fact whether there was a vacancy in the office or not could only be inquired into by the courts. That was the very ground upon which Judge Upton based his decision. That decision was reversed on the ground I have stated, and I will have the opinion in two or three days.

Mr. MITCHELL. Allow me to ask my colleague a question. My colleague says that this is a political matter, not a judicial one. I want to ask my colleague whether, in his opinion as a lawyer, the power of the executive of our State to pass upon the eligibility of a person elected to office applies as well to a person elected to a State office as to those elected as electors of President and Vice-President? Does it apply to all State officers?

Mr. KELLY. I understand so.

Mr. MITCHELL. There is a provision in the constitution of the State of Oregon something like this: that no person shall be eligible to office under the constitution of that State who has been a holder of public moneys and who has failed to pay over all moneys in his possession or under his control. Now, suppose that kind of person was elected by the people, and a suggestion of that sort was made to the executive, would he, in the judgment of my colleague, have the power to investigate that question and pass upon it? He comes in and denies, and an issue is made. Has the governor of the State of Oregon the power, in the judgment of my colleague, to investigate that question, determine it, adjudicate upon it, or not?

Mr. KELLY. He has not.

Mr. MITCHELL. Why?

Mr. KELLY. I will state the reason. It is this: No person can be deprived of any right, as the right of suffrage, or the right to hold office where he has committed a crime, except upon conviction by a proper court of the offense with which he has been charged. I referred a moment ago to the case where the record of conviction was laid before the governor of one who had been sent to the penitentiary. That is sufficient evidence; but in the case suggested by my colleague there is not.

Mr. MITCHELL. It is not necessarily a crime; the constitution does not make a crime.

Mr. KELLY. Certainly withholding public moneys is an offense.

Mr. MITCHELL. Not necessarily a crime.

Mr. KELLY. I say it is necessarily an offense. The man who holds them when he is commanded to make a return of the public moneys, or misappropriates or misapplies them, commits a crime or an offense; and no man can be deprived of a right to hold office or the right of suffrage except upon the presentation of a grand jury and the conviction by a petit jury. That is altogether a different case from simply proving that a man is a postmaster. It is like proving the conviction by the production of the record. The cases to me are very marked and very distinct. I take the broad ground here that the governor of Oregon is to certify who has been duly elected to an office according to the law, according to the letter of the law; and, if he certifies that one has been elected who has not been and who cannot by law be elected, he violates his oath of office. He falsifies before the public when he gives a certificate of election to a man who the Constitution says shall not be elected. That is the sum and substance of it. All these questions I expect to argue at a proper time.

Mr. BURNSIDE. Mr. President, as the Senator from Oregon has referred to the Rhode Island case, I will state, for his information, that the governor of Rhode Island did not assume to make any decision in the case. As soon as it was discovered in the community that Mr. Corliss was a Government officer, the governor of Rhode Island called upon the supreme court for a decision as to whether he was eligible to the office to which he had been elected by the people; that is, the office of elector. The supreme court by a majority vote, not a unanimous vote, decided that he was ineligible. Then the governor of the State called the Legislature together, and the Legislature filled the vacancy. The governor of Rhode Island did not assume to make any decision in the case at all, until he had the opinion of the supreme court; nor did he give the certificates of all the electors to one of the minority, but he, like a fair, honorable man, as he is, gave to each man who was elected his own electoral certificate, and inquired from the supreme court as to what was his duty in reference to the fourth elector; in other words, as to whether Mr. Corliss was elected or not. The court decided unanimously that if Mr. Corliss, the republican candidate, was not elected, his opponent on the democratic ticket who received the greatest number of votes was not elected.

Mr. CONKLING. Will the Senator allow me to ask him a question?

Mr. BURNSIDE. Yes, sir.

Mr. CONKLING. He says the Legislature when convened filled the vacancy which existed.

Mr. BURNSIDE. Yes, sir.

Mr. CONKLING. Why was it that the electors themselves did not fill the vacancy?

Mr. BURNSIDE. They did. It was done both by the Legislature and the electoral college.

Mr. ANTHONY. Our law is peculiar.

Mr. CONKLING. That is what I wanted to find out.

Mr. BURNSIDE. The vacancy was filled by the electors as well as by the General Assembly.

Mr. CONKLING. If there is a peculiarity in the law of Rhode Island, I wish the Senator would state it.

Mr. BURNSIDE. The law requires the General Assembly to fill vacancies where there is a failure to elect, and the electoral college to fill vacancies where electors fail to appear and act. The governor called the Legislature together for that purpose; but the governor took no action in the matter except to issue the certificates to the three men who he knew were elected and withhold the other until the decision of the supreme court was made.

Mr. SHERMAN. Mr. President, Senators have not discussed the question before the Senate; but as the vote is about to be taken on that, I trust they will remember the importance of the question about to be submitted to the Senate as to the extent to which the Senate of the United States may go in calling for private telegrams between citizens in the transaction of their ordinary business. I have no doubt that, in accordance with the general rules that have been established in the courts, there is a way of procuring even private confidential letters between citizens or obtaining other papers, but the rules of courts have generally been very strict in requiring a foundation to be laid for such proof, and as a rule the courts have not invaded the sanctity of private intercourse, either in letters or any other way, without strong proof and the proper foundation being laid. I am not prepared to say whether this case presents one that would justify the Senate of the United States in calling for telegrams in a general way. Certainly, no telegrams ought to be called for unless they relate distinctly to a matter under inquiry before the Senate of the United States.

Any telegrams bearing upon the conduct of the officials charged with official duty in the Oregon election case probably could be called out; but I trust the Senate of the United States will not be the first to break down the ordinary barriers which respect the privacy and rights of private individuals. I certainly would not vote to invade either private correspondence or the telegraph except in cases that would justify a court in the hearing of a cause, after a sufficient foundation had been laid, to call for specific telegrams or letters that bore distinctly on the matter in issue. Then I think the Senate of the United States would be justified in making the call. Therefore if this power is now conferred on this committee, if this resolution is passed, I trust that the call for telegrams will be confined strictly to those telegrams which bear directly upon the conduct of public officials in the discharge of a public duty, and that any attempt to make a wholesale investigation into private affairs or into private telegrams that do not bear directly upon an official act will not be indulged in by the Senate of the United States.

We know, sir, without referring to particular cases, that this power is a dangerous one, most likely to be abused; it is a power which ought not to be exercised by any tribunal except upon a clear showing; and I trust that by some law, hereafter framed carefully after full consideration of the subject, the mode and manner of getting at telegrams and letters in investigations before committees of Congress will be pointed out. At present it seems to me a great deal of latitude, a great deal of abuse may occur in the investigation of private dispatches; whole classes of dispatches, without being described or identified or pointed out, have been seized upon and subjected to public gaze and printed in the public papers in violation of that principle which men born under English institutions have always regarded as among the most sacred, that a man's private property, private papers, a man's household, a man's private affairs should be sacred from the inspection of mankind except in a few cases where the law authorizes them to be made public for public purposes and to advance public justice.

Mr. CONKLING. Where is that distinction? The Senator says that he thinks this power should be kept within the limits to which a court should go. If it will not inconvenience the Senator I wish he would let me know what he means by that, in general at least.

Mr. SHERMAN. In the first place, the particular paper must be pointed out or described in some way. Then the materiality of the testimony which it is alleged this paper would exhibit must be shown to the satisfaction of the court. That is, the court, before it will make an order, must be satisfied, first, that the testimony alleged to be contained in the paper is material to the issue in the case and, second, that the proper foundation has been laid; but the rules upon that subject have varied in different courts, as the Senator knows very well. As we are acting, having the full powers of a court in the investigation of matters brought before our committees, I think the Senate of the United States ought to set an example of exceeding care in laying down the rules which authorize the seizing, examining, and publishing of private papers and private communications between citizens.

In this case I suppose that almost any one would concede that these telegrams are proper subjects of information, because, if I understand the report, it shows that they relate to alleged improper means, perhaps alleged corruption, in the performance of a public duty. As a matter of course, if that is the foundation, and that is sufficiently laid, the telegrams should be exposed, because our public duty is higher than our duty to private individuals; but I trust the subject will not pass without its importance being called to the attention of the Senate and without its attracting the attention of the proper committee, so that hereafter proper guards may be provided.

The PRESIDENT *pro tempore*. The question is on agreeing to the resolution.

Mr. EATON. I call for the yeas and nays.

The yeas and nays were ordered.

Mr. COCKRELL. I desire to ask the chairman of the Committee on Privileges and Elections a question in regard to this report for my own information and guidance; and that is, whether there is any dispute about the authority of Congress to compel witnesses to make answer to such questions as are here propounded to this witness?

Mr. MORTON. I suppose that is precisely the question that is involved. I am not proposing to argue the question of the right and power of the Senate, which has been much discussed in the newspapers, and perhaps in the other end of the Capitol. I have only this to say, that if it is proper in any case to compel the production of private telegrams, I believe this is a proper case.

Mr. COCKRELL. The Senator doubtless is very familiar with this matter, having been investigating it and making this report, and I will ask him if there is any precedent in the Senate for such action. Has the Senate ever heretofore acted on a case of this kind?

Mr. MORTON. If there is such a case I do not know it. I do not know that this question has ever been presented to this body before. I think it is important to have it decided and to have it decided correctly. It is a question that has been much discussed in the newspapers for several years and I believe has arisen two or three times in the House of Representatives.

Mr. CONKLING. I should like to ask the Senator from Indiana, if I may be allowed, a question. I see that this witness in one of his answers refers to some statute of the State in which he lives, which from his statement seems to be a penal statute visiting punishment upon one who shall disclose telegraphic dispatches. Does the Senator from Indiana know or does either of the Senators from Oregon know what that statute is and what it declares?

Mr. MORTON. I know nothing of it except from the reference made by the witness.

Mr. INGALLS. Mr. President, it may not be inappropriate in that connection to state that there was in Pennsylvania, as early as 1851, a penal statute forbidding employés of telegraph companies to disclose anything that passed over the wires or that came to them in connection with their relations with the companies. Objections were urged in a criminal cause then pending to the production of testimony or the introduction of evidence under that statute, and the court, if I recollect aright, held that it did not apply to criminal prosecution or proceedings that affected the public administration of justice.

Mr. MAXEY. The Senator from Kansas has already answered the Senator from New York, and I desire to ask the chairman of the committee whether he has investigated this question sufficiently to say to the Senate whether the doctrine of privileged communications applies? In other words, if there is no penal statute (as I understand the Senator does not know whether there is or not) forbidding him from making this communication, can he refuse to deliver the communication on the ground that it is a privileged communication?

Mr. MORTON. I know nothing in regard to the Oregon statute.

Mr. MITCHELL. I will state that my impression is that there is an Oregon statute on that subject.

Mr. MORTON. To what extent?

Mr. MITCHELL. I have sent for the book.

Mr. CONKLING. A statute which imposes punishment by way of imprisonment on a telegraphic employé who does produce a dispatch?

Mr. MITCHELL. It is my impression that there is some statute to that effect.

Mr. MORTON. Without having seen the statute, I presume it goes to this extent, that the voluntary disclosure of a telegraphic dispatch by an operator or any other person officially connected with the company shall be criminal. That would not necessarily extend to a case where a court requires the production of it. But whatever might be the responsibility under the statute for a disclosure made in Oregon, that statute cannot affect a disclosure made in Washington.

Mr. BAYARD. Mr. President——

The PRESIDENT *pro tempore*. The morning hour has expired.

Mr. MORTON. I hope we shall go on with this resolution and take a vote. I presume it can be taken in a few minutes.

Mr. CONKLING. I hope we shall not take this vote until we see what the statute of Oregon is. That will take but a moment. The book has been sent for. I should like for one to read the statute before I vote that this man is in contempt.

The PRESIDENT *pro tempore*. The morning hour having expired it is the duty of the Chair to lay before the Senate the unfinished business.

Mr. MORTON. I hope the Senator from Iowa will consent to let it be passed over informally.

Mr. WRIGHT. Not to be displaced.

The PRESIDENT *pro tempore*. The Chair hears no objection to that suggestion. The resolution will be continued before the Senate.

Mr. BAYARD. Mr. President, I am so heartily in favor of any and all disclosures of matters such as are suggested by this report, that I am disposed to go very far, as far as I feel I am justified under the

laws of this land, in compelling the production of testimony. At the same time I believe there is no safety for any man or any party in this land except under the laws of the land. I do not believe in liberty divorced from law, and I confess myself exceedingly opposed to laws made for the occasion by the two Houses of Congress. The doctrine that they are a law unto themselves is very repugnant to me and one to which I have never yet assented.

There is no question that inquisitions by either House of Congress must be accompanied by power to compel the production of testimony; otherwise the attempt would be idly made. In the present case the matter I believe to be within the just and peculiar cognizance of this body, and that they have the right and that it is their duty to prosecute this inquiry fully. Nevertheless, we must not forget that this is making a precedent, and it is proper that we should confine it within those principles of limitation upon our power which it is our constant duty to impose. The Senator from Indiana, when the very pertinent inquiry was made of him by the Senator from Texas whether he knew of any precedent controlling the action and limiting the power of the Senate over the production of telegraphic dispatches, was understood by me to answer that he knew of none. Therefore it is, I think, that we should hasten slowly before we undertake to claim a power as broad as that implied in some of these questions. The questions do not, in my opinion, all stand on the same footing. Some of them are addressed to the witness asking as to the action of particular persons connected, I suppose, with the subject-matter inquired of, namely, the canvass of this electoral vote of Oregon. I find the name of a Mr. Patrick, and I suppose he was in some way connected with the count of that vote. One inquiry is in regard to the action of Mr. Patrick in phrase like this: "Do you know whether Mr. Patrick had asked to have that canvass withheld until he could get there?" I believe if he knew that fact he was entitled to state it, and that the committee had a right to compel that answer, and that whether the knowledge comes to him from written papers in his hand, or comes to him otherwise, it is a question of his knowledge. The doctrine has been laid down by very eminent authority, and I do not know that it is contradicted, that where a man has paper writings in his possession containing facts which if within his knowledge he would be compelled to answer, he may be compelled to produce under *subpœna duces tecum* and put the writings in evidence.

Let me read the proposition, for it is best to be accurate:

Chief Justice Shaw in the case of Bull *vs.* Loveland, 10 Pickering, 14, laid down this doctrine:

There seems to be no difference in principle between compelling a witness to produce a document in his possession, under a *subpœna duces tecum*, in a case where the party calling the witness has a right to the use of such document, and compelling him to give testimony, when the facts lie in his own knowledge. It has been decided, though it was formerly doubted, that a *subpœna duces tecum* is a writ of compulsory obligation, which the court has power to issue, and which the witness is bound to obey, and which will be enforced by proper process to compel the production of the paper when the witness has no lawful or reasonable excuse for withholding it. Amey *vs.* Long, 9 East. 473; Corsen *vs.* Dubois, 1 Holt's N. P. R., 239. But of such lawful or reasonable excuse, the court at *nisi prius*, and not the witness, is to judge. And when the witness has the paper ready to produce, in obedience to the summons, but claims to retain it on the ground of legal or equitable interests of his own, it is a question to the discretion of the court, under the circumstances of the case, whether the witness ought to produce or is entitled to withhold the paper.

I take it, therefore, if this man has possession of papers which we have the right to inspect and he has knowledge of the contents of these papers, he may be compelled as a witness to disclose the fact orally, just as we would compel him to produce the papers if in his possession, and we have the right to order their production.

It would seem that another question is asked of this man, which I will read with his answer:

Question. Do you know whether Mr. Patrick had asked to have that canvass withheld until he could get there?
Answer. I cannot answer that question.
Q. Have you any knowledge on that subject?
A. No, sir; nothing that could be made public.
Q. Explain what you mean by that.
A. Our knowledge on political subjects and all others, of course, has to be very sacred. It would be a violation of the law of the State to divulge anything that passes over the telegraphic wires and also a violation of the rules of the company.

If this be so, it seems to me that the laws of the State should have been here produced. I think they are very well worthy of inspection, and should have due authority. Ordinarily the rules of evidence in courts of the United States are those which prevail in the courts of the State where the cause may be tried, excepting those cases where Congress has otherwise directed. Thus, for instance, in some of the States parties to a cause are allowed to be witnesses; in others they are not. In the courts of the United States, notwithstanding their interest, they may be witnesses; but if it were not for the statute of Congress so directing, the control of the testimony in this regard would be by the law of the State where the case is tried. Now, if there be a law of Oregon forbidding this production, we should see it, because that raises a new question.

Mr. MITCHELL. If the Senator from Delaware will allow me, I have just my hand on the book and will read the law.

Mr. BAYARD. I will ask the Senator to do that directly, and I shall be very glad to hear it. I merely say, this question having been brought to us here and it being proposed to be passed upon in a very hasty manner, that I, before I place myself upon record admitting a principle, choose to know where it will take me. Let us know, therefore, whether there has been a violation of the law, and let us know, also, something in regard to the rules of this company, and then consider whether the laws of the State or the rules of the company are in violation of the Constitution of the United States or the laws passed in pursuance thereof, because much of our action will depend on the answer to that question.

The next question is:

Question. I propose to ask the witness the question if he knows of any dispatch passing through that office, on the part of Mr. Patrick or any one else, asking that that canvass be deferred until he could get there?

If these facts are within the witness's knowledge we certainly have a right to compel him to answer, because this is a question pointing directly to the subject-matter to be inquired of, admittedly within the jurisdiction and duty of the Senate to inquire of; and if he has that knowledge, it seems to me that we have a right to compel an answer to the question.

Then come other questions that he declines to answer upon the ground before stated that he would not divulge anything that passed over the wires. The next is a question of a different character:

Question. What do you know, if anything, in regard to $8,000 being transferred from New York to Salem or to Portland at any time after the election in November and up to the time that the electors cast their votes?

And there is a cross-interrogation following twice upon that point. That involves other things. There is what I may call a drag-net. Not the action of Congress, not the action of any one connected with this inquiry, not the action of any canvasser, but the private affairs it may be of the honorable Senator from Indiana, it may be of the presiding officer of this body, or some member of it, are to be opened by this question; the affairs of every individual in the country may thus be exposed in a manner that might be highly detrimental to his interest. I say that this question should be narrowed. I believe if this question were before a court of justice, before any man here sitting as a judge, that he would require the interrogatories to be narrowed, to be brought down to the person sending the dispatch, to something that is to connect him with the object which the committee are pursuing.

The next question asks

Q. Do you know of any dispatch having been sent by Charles Dimond, or a man named Dimond, in New York, to Ladd & Bush, in Salem?

A subsequent question asks in regard to a similar sum to Ladd & Tilton and again another sum, and a larger one, $17,000, to Ladd & Tilton. If that question were asked in court and the counsel propounding it were to say that he intended to couple it hereafter with testimony bringing it home to some of the parties whose acts were being inquired of, I have no doubt the court would permit it, simply because in the arrangement of the order of evidence great discretion must be given as to which foot you shall put foremost and you are not to be disturbed in the line of connected proof by an objection to the order in which you place the items of that proof. That is a very common and familiar course. Therefore, if it shall be stated that those questions were intended to be followed up and connected with others bearing directly on this case, I am free to say that the production of that testimony, if in writing in the hands of a party, would be ordered by a court of justice, and the party having the documents and the knowledge from them could be inquired of in relation to those facts. This is a matter of public inquiry, necessarily less restricted than a case between A and B, individual parties; and I should be disposed to believe it proper that the question should be put and the answer compelled.

But, sir, telegraphing is a matter of modern invention, and we are here told by the honorable Senator from Indiana that he knows not of one precedent in the history of this body where the question of the compulsory production of telegrams has been made or insisted upon. Last summer I was sent by the Senate as a member of a committee of investigation to Mississippi, and a *subpœna duces tecum* had been there ordered by the majority.

Mr. MORTON. I will say to the Senator that I have made no investigation on that point, and I do not know that any case has occurred or not.

Mr. BAYARD. What the Senator does not know on this subject I am sure is not worth knowing in the body, because he has generally had charge of these matters. I am sure no man is more qualified than he to speak.

This is to be found on the fourth page of the journal of the committee contained in the report of the select committee to inquire into the Mississippi election of 1875.

At Jackson, Mississippi, June 12, John Galbraith was called. His summons contained these words:

"Bring with you all telegraphic dispatches signed by or addressed to General J. Z. George, and dated in the months of September, October, and November, 1875."

When Mr. Galbraith appeared this debate took place in committee, and it was ordered to be entered in the journal:

Senator BAYARD. Mr. Chairman, this morning just before the committee met, you stated to Mr. McDONALD and myself something concerning this subject. Until that time we had no information of the intention of the committee to call for the telegraphic correspondence of General George or anybody else, and all that we desire to do now is to have it appear on the record of the proceedings of this committee that we disapprove of the seizure of the correspondence of any private citizen by this committee, unless it be to contradict a witness who has been summoned before the committee by his own telegrams in a matter within the jurisdiction of the committee to impeach him. I care nothing for this correspondence, but simply

want an objection to appear of record. Mr. George is a private citizen of this State, who has not been summoned before this committee, and we consider that he has rights, and those with whom he corresponds have rights, which should be guarded. This is a sweeping order to bring all the dispatches sent by or addressed to General J. Z. George, and I desire to appear on record as opposed to such arbitrary action.

My colleague on the committee, Senator MCDONALD, said:

I agree with all that Mr. BAYARD has said. I understand the regulations adopted by the telegraph company in reference to correspondence prohibit their agents from exhibiting correspondence to any person except those who send the dispatches or those to whom they are sent, unless by order of a court of competent jurisdiction—a court or tribunal where the ends of justice require the production of the correspondence as instruments of evidence. I do not understand that the custodian of those papers is subject to a *subpœna duces tecum* in the present case. There is a violation of the regulations made for the benefit of those who patronize the telegraph companies by intrusting their correspondence to it, and at present I see nothing to warrant me, as a member of this committee, even if I thought such power was vested in it, (and I am not clear about that,) to issue such an order as a court might issue in a proper case. I see nothing that would justify me in voting for such an order in this case.

Senator CAMERON, of Wisconsin. If this was an original question, possibly I might agree with you; but since 1866 congressional committees have in numerous cases required the superintendents of telegraphs to produce telegrams; and, so far as I know, they have always been produced. Every congressional committee, I think, of the present House of Representatives has required the production of telegraphic dispatches before it, and they have been produced. It is now too late to raise the question.

I merely refer to this to show that in one of these committees a majority of the committee in accord with the present political majority of the Senate ordered this wholesale production of private correspondence by telegraph, no matter from whom received, no matter to what relating, and I confess that I felt that it was a very arbitrary violation of the secrets of individuals. I was unwilling to let it go without a protest.

Mr. ALLISON. Were they produced?

Mr. BAYARD. They were all produced and they were read, and the result was that every telegram received by Mr. George of Mississippi from the 4th of September until the 3d of November, 1875, was produced and read and published, and here they are in this report from page 380 to page 419. Everything that was sent to him, everything that was sent by him by telegraph, was there produced. It is not worth while to speak of what the dispatches contain, because that is not what we are considering. They contain nothing but the most usual and ordinary correspondence about the election. If it was supposed they would disclose anything injurious to Mr. George or those with whom he was acting, it was certainly a very great mistake. But that was not the question. It was what might have been the rights of any individual whose private interests, whose private feelings could thus have been disturbed in a manner that no court of justice would have permitted. There we have always a safeguard. Where there is a question in regard to the pertinency of testimony, whether, in other words, it is evidence in the cause, it is oftentimes submitted to the judge who decides the matter by an inspection which is private and confidential; and in that way the private rights and interests and feelings of parties are protected, not only of parties extra to the suit but of parties connected with the suit. It is a part of the decorum that belongs to a court of justice.

But, Mr. President, this matter of telegraphing might as well practically be understood. My present impression is that the postal cards furnished us by the Government are not much more public than our telegrams are. Whatever may be the cause of this the result is about the same. I have heard that skillful telegraphic operators who stand near an instrument can by their ear detect a message just as perfectly as though they were sitting at the table and saw it transcribed. I am disposed to believe there is no question as to the fact that a man within sound of a telegraphic battery can tell the messages that are passing over it merely by his ear. I have heard of things of that kind done in this Capitol. I have heard of persons in this Capitol walking to the recipient of a message and laying it on his table in the other House and announcing its contents. It was thought to be a very mysterious power, and a very discreditable exercise of that power. I asked an intelligent gentleman connected with the telegraph, and he said that that was the explanation of it, that they could by ear detect the message and so take it off. Then I have heard that communication may be made with a wire at any point, and that all messages passing over that wire can be conducted to any battery that may be placed in any private house, or anywhere upon the line of the telegraph. I am not familiar enough with the practical operations of telegraphing to know how far wires may be tapped and communications taken without the knowledge of those to whom they are properly directed, nor do I mean at all to say that there has been an improper and dishonorable communication of the contents of telegrams by officers of the company. I have no reason to say that; I have no such knowledge as to warrant it; but if the fact shall be that you may all throughout the country listen to the click of the telegraph, and by educating your ear, or those of your agents, learn what is said, palpably it becomes no longer the vehicle for any confidential communication. Still these are practical facts, not yet understood perhaps, and in regard to which there has been no formulation of law.

We are asked now to make a step in practice which I think is very important and may lead us to very serious results. Before the Senate adopts this resolution, I should like to know the extent of power claimed by it. I will admit that where a subject is fairly within the jurisdiction of the Senate to inquire of, we have all the rights that a court of justice would have, or that a court of law and equity would have, to compel the production of testimony pertinent to the issues raised; and those rights, it is reasonable and just that we should be armed with power to carry into execution. It is a matter of public interest that such a claim should be sustained. It is likewise a matter of grave public interest that we should not, under color of seeking information in regard to isolated facts or the conduct of impeached individuals, make the entire private correspondence of our citizens public. I can see in that vast causes of distress, of injury, which cannot be remedied. Therefore, in this proceeding I would desire to know for my own part that whatever vote I cast was warranted by a strict regard to the legal rights of those who are strangers to me and yet who are entitled to the same protection that I would ask for myself. I shall aid this committee in the uttermost disclosure of anything that is dishonest and unlawful in connection with the late election or any other. I am very ready to enter into a contest with my friends of another party or my own as to which shall be most swift in disclosing and punishing any violation of the purity and legality of elections. Nay, sir, I should feel if I spoke simply as a party man, that I was best advancing the interests of those with whom I acted if I assisted the sword of justice in falling upon some rogue within my party even more quickly than upon one without it. Therefore it is that while I am anxious as is the Senator from Oregon that there should be the fullest answer which the law permits to all of these questions, yet at the same time I should like the question to be considered whether in this matter we are not compelling the answer of this witness to some questions which I have endeavored to discriminate between and others which, were he in a court of justice, he would be protected against answering. Anything that the law would compel him to answer elsewhere I would compel him to answer here.

Mr. CONKLING. Mr. President, having inquired of the Senators from Oregon touching the statute, one of them has sent for it. It is here, although not before me, and it has I think nothing immediately to do with this question. Unlike the statutes of several of the States it punishes a "willful" disclosure and it punishes a "willful" alteration of a dispatch to the injury of another. Waiving the question whether under the statute of Oregon an offense would be committed by disclosing a dispatch here because it contained as an ingredient of the offense what I take it must be not only a voluntary but a willful act in the legal sense, I should not feel bound to rest my vote upon that statute. The Senator from Oregon [Mr. MITCHELL] has it and no doubt will read it at the proper time, and he is more familiar with it than I am.

I take it then that this question stands before us upon the general grounds on which it ought to be decided. The Senator from Ohio has referred, and very properly as I think, to the administration of the law by courts as a rule for our action. The difficulty there, as in so many other cases, is not in understanding the principle or the doctrine, but in applying it. How it can be applied here I know not. That it can be applied under such a resolution as this I have no idea. Under *subpœna duces tecum* books are produced in court. It is familiar practice to all lawyers that before they are produced at all, they are sealed up so as to include under the seal so many of the leaves or pages as do not concern the particular matter which the court is to inquire into. Private letters are produced. They are handed quietly to the judge. He reads them not only privately, but he reads them as to the rights of the parties upon his honor. He does not disclose them to the other side of the cause, he does not disclose them to the jury, he does not disclose them to the public, unless they be of that nature falling within the restrictions of the law which commits them to the record as evidence in the case. Everything except that is protected. How, under a resolution of this sort, dealing with letters or dealing with telegrams, it would be possible except by dint of the diligence and care of some member of the committee who might, because he thought he should, not because he was enjoined to do it, undertake to make himself acquainted with the dispatches in advance and to see that those immaterial to the matter never came to the knowledge of the public or to the knowledge of that portion of the public which consists of the members of a House or even of a committee—how it could be done unless in that way, I do not see; and this resolution on its face presents no such restriction and makes no such provision.

The question which presents itself to me is how far the sanctity which has been so long imputed to postal correspondence and to everything carried by the post-office is applicable to this species of correspondence. We all know that the British Parliament more than once, once in a very memorable instance, sifted with great care the philosophy and right of the question of dealing with the contents of the mails. We know how much consideration has been given in this country now and formerly in that regard. In 1825 the crimes act, as it is called, drafted I believe chiefly by Mr. Webster, was enacted. It has stood to this day, observed, respected, unchallenged, as a wise statute. One of the provisions of that act, I remember, after punishing the violation of letters containing values, punishing various more aggravating offenses, directed against the mails, punishes absolutely and at large in respect of all letters any person whatever who shall open a letter not addressed to himself. So stringent is this statute that lawyers have found great difficulty in defending men charged even in cases where there was some color of authority for opening a letter not addressed to the man himself who opened it. It was intended to be a rigorous statute; it is so; and for aught I know it embodies the public judgment, the public sentiment, on that question.

How far does a telegram resemble in the sanctity which ought to be ascribed to it, a letter? In one aspect a telegram written by me is like a verbal communication made to my friend from Massachusetts which I request him to go and make to somebody else. If it be that it is a mere voluntary act of mine; it is a communication orally made, because I choose to make it to somebody else, and I choose to request him to make it to the third person; and, dealing with it in that way, we should have very little difficulty in seeing that when you come to the investigation of offenses no very great distinction is to be made between that and any other conversation or declaration which might under the rules of evidence be material or the contrary. But I have in my hand a familiar book, Cooley's Constitutional Limitations. I sent to the Senator from Connecticut [Mr. EATON] to borrow it as I found it was out of the Library; and it is barely possible I am anticipating some purpose of his in referring to it.

Mr. EATON. I was very glad to furnish it the Senator from New York, and shall be glad to have him use it.

Mr. CONKLING. Then, Mr. President, I will venture to read a succinct and rather vigorous note, I think, appended by this commentator to the text on this subject. He says:

In Maine it has been decided that a telegraph operator may be compelled to disclose the contents of a message sent by him for another party, and that no rule of public policy would forbid.—

Citing a case:

The case is treated as if no other considerations were involved than those which arise in the ordinary case of a voluntary disclosure by one private person to another without necessity. Such, however, is not the nature of the communication made to the operator of the telegraph. That instrument is used as a means of correspondence, and as a valuable and, in many cases, an indispensable substitute for the postal facilities; and the communication is made, not because the party desires to put the operator in possession of facts, but because transmission without it is impossible. It is not voluntary in any other sense than this, that the party makes it rather than deprive himself of the benefits of this great invention and improvement. The reasons of a public nature for maintaining the secrecy of telegraphic communications are the same with those which protect correspondence by mail; and, though the operator is not a public officer, that circumstance appears to us immaterial. He fulfills an important public function, and the propriety of his preserving inviolable secrecy in regard to communications is so obvious that it is common to provide statutory penalties for disclosures.

I may say, in passing, that several of the States have adopted penal statutes unlike that of Oregon, not employing the word "willful" but punishing any disclosure whatever by a telegraph operator or employé of a dispatch or its contents committed to him. This author proceeds:

If on grounds of public policy the operator should not voluntarily disclose, why do not the same considerations forbid the courts compelling him to do so? Or, if it be proper to make him testify to the correspondence by telegraph, what good reason can be given why the postmaster should not be made subject to the process of subpœna for a like purpose, and compelled to bring the correspondence which passes through his hands into court and open it for the purpose of evidence?—*Cooley's Constitutional Limitations*, pages 306, 307.

There is a statement at least of the question, if not of the answer which should be given to that question; and it suggests to me that it is unfortunate that in rather a casual manner (I say that in part because I look around upon so many empty seats which commonly are filled by Senators,) in a way that elicits so little attention, we should be called upon to proceed, for the first time I think in this body, to run the boundaries, if boundaries there be, between those communications passing between citizen and citizen which of right belong to them, and those communications which one House of Congress may stretch out its arm from one side of the continent to the other, if need be, and bring here into the presence of the nation, and have read in the blaze of broad publicity. This question is under consideration in another forum to which by the rules of this body I am not permitted specially to refer. I have been told, however, that this particular witness has as yet received no advice from those in whose authority he acts. A gentleman connected with the telegraph company mentioned to me yesterday that up to that time the company had had no opportunity to understand his case or to advise him to what extent he might assume, if to any, to answer or to refuse to answer, representing them. The same informant mentioned that this question being pending elsewhere and there having been a postponement there until to-day, the understanding of the company was that some action would be taken which would give light to them as to what they should do.

I mention this because it appears to me that perhaps rather than press this resolution to a vote now, with the Senate so thin, and to consideration so very slight, it might be allowed to stand until the party himself has an opportunity to determine upon advice, if he needs it, what he will do, and until those who may be called upon to vote in regard to it shall have further opportunity to see what they should do.

One thing further occurs to me, Mr. President, suggested by a remark made by the Senator from Delaware. One of two results will follow these proceedings to reach telegraphic correspondence; either the telegraph will cease to be, as it is, a great and familiar convenience, or those who manage telegraphs will adopt some measure, (I do not think that would be difficult; I think my honorable friend from Pennsylvania, [Mr. CAMERON,] if they would ask him, would be able to tell them what,) some expedient which will make it impossible legally and impossible actually for anybody to rummage their files of dispatches. As was said of some great military commander, they will burn their bridges. When they have sent a dispatch they will burn it, they will obliterate everything by which it could be tracked, if they are driven to it, as they will be provided Congress shall assert the right to handle, and fumble, and expose all the messages touching a person's domestic, private, financial, and other affairs which pass between man and man. Those who patronize the telegraph will drive every company by some device to indemnify its patrons against the risks of exposure.

I suppose it is hardly necessary for me to say, Mr. President, that I shall be as ready to vote, and am now as ready to vote, as any other Senator for any resolution, within the law and within propriety which looks to the unmasking or ungowning of fraud. In so far as this resolution looks in that direction, I shall be very glad to vote for it. I do not mean at all to intimate that I shall not vote for it, but my purpose was to state that it seems to me that on rather short notice, in rather a hasty way, with a very thin Senate, we are proceeding in the first instance upon somewhat slippery ground. There are metes and bounds; we should know what they are and keep within them, and not do a thing which on reflection we may regret; which not only may be, but is certain to be drawn into a precedent hereafter, possibly for harm.

Mr. MORTON. Mr. President, I do not intend to discuss this question of power any further than to say that I believe this whole subject in regard to telegraphic communications is within the power of Congress and may be regulated by Congress. It is a subject of congressional legislation, and there should be congressional legislation. It came to my knowledge, from a little examination I made last winter about another matter, that there was no law of Congress in this District punishing the disclosure of a telegraphic communication. The Government officers may have the most important secret to send by telegraph, and yet there is no act of Congress punishing the willful disclosure of such a dispatch in this District or in any Territory of the United States.

The statute of Oregon which has been referred to would not interfere with the adoption of this resolution, even if we were in Oregon. It provides for punishing a willful disclosure where it is done willfully. That is the extent of it.

Mr. BAYARD. Has the Senator the statute?

Mr. MORTON. Yes, sir, or I had it a moment ago. It would not apply to a case where a witness in court was called upon to testify to the contents of a dispatch; but if he should out of court willfully, of his own will and motion and unnecessarily, disclose the character of a dispatch, he would be liable to a penalty. That is the extent of the Oregon statute.

The authority read by the Senator from New York is simply a note in Cooley on Constitutional Limitations, and is rather a dissent from the only authority referred to, which is in Maine, in which the operator was compelled to produce the dispatch. That it is in the power of Congress to make a telegraphic dispatch a privileged communication, there is no doubt. That Congress can put a telegraphic dispatch upon the footing of a letter in the mail, there is no doubt. But, I presume, the simple fact is that it has not done so and there is no law on the subject. As I understand it, there is no law on the subject to protect a telegraphic dispatch any more than any other private paper which is not a sealed letter in the mails. That it might be proper for Congress to make such a law, I will not argue now. I believe that there ought to be legislation on the subject and there ought to be some protection for the secrecy of the telegraph; but the simple fact is that there is none. It stands now simply at the common law.

I am aware of the importance of the question, and I myself have had great reluctance in compelling the disclosure of telegraphic dispatches; but as the law stands now they are not protected; and if they are to be produced, I suppose this is as fair a case as can be presented.

Mr. INGALLS. Mr. President, since the subject of the Oregon statute was first alluded to I have verified the impression which I then had that the question arising under a similar statute had received early adjudication in the State of Pennsylvania. I have obtained the second volume of Parsons' Select Cases heard before the court of common pleas in the city of Philadelphia, from which it appears that in the case of Henisler *vs.* Freedman this same question was raised and was determined in that tribunal. The Legislature of the State of Pennsylvania on the 17th of April, 1851, as the court state, passed an act declaring—

"That it should not be lawful for any person concerned with any line of telegraph within this Commonwealth, whether as superintendent, operator, or in any other capacity whatever, to use or make known, or cause to be used or made known, the contents of any dispatch, of whatever nature, which might be sent or received over any line of telegraph within the Commonwealth, without the consent or direction of either the party sending or receiving the same, and that all dispatches which might be filed at any office in this Commonwealth for transmission to any point, should be transmitted without being made public, or their purport in any manner divulged at any intermediate point whatever; and in all respects the same inviolable secrecy should be maintained by the officers and agents employed upon the several telegraph lines in relation to all dispatches which might be sent or received as may be enjoined by the laws of the United States in relation to the ordinary mail service of the United States." An exception is made in reference to dispatches of a public nature intended for publication. It was further provided that if any person in any capacity connected with any such telegraph "should use or cause to be used, or make known or cause to be made known, the contents of any dispatch sent from or received at any office in the Commonwealth, or in any other way *unlawfully expose* another's business or acts, or in any way impair the value of any correspondence so sent or received, such person being duly convicted thereof," should be punishable with fine and imprisonment.

In a case pending before the court it became necessary to ascertain the contents of a telegraphic dispatch. The operator of the Ohio and Atlantic Telegraph Company was summoned as a witness. He endeavored to protect himself under this statute. It was contended by counsel for the plaintiff that this prohibition related solely to voluntary communications, and was not intended to prohibit the introduction of testimony material in a court of justice. The counsel for defendant argued that the language of the act was broad enough to embrace all cases, and that the communication to the witness as a telegraph operator could no more be revealed than the contents of a letter could be divulged that was deposited in the post-office for transmission by the mail. The court held that the result of the principle contended for by the plaintiff would be to impose the seal of secrecy on all telegraphic communications, and render all correspondence by telegraph privileged under the law so that it would be protected like communications between husband and wife, or attorney and client, or the judges and arbitrators sitting in the decision of a cause, or official secrets of state which from considerations of public policy are not permitted to be revealed. The court said that—

> The claim that society has on the testimony of all its members, in courts appointed to administer public justice, is made to give way in such cases to the maintenance of other great relations, in which the public are even more interested.

The court proceeded further:

> The real intent and object of this law, was to prevent the betrayal of private affairs, communicated through the telegraph by those connected with it, for the promotion of private gain, or the gratification of idle gossip. This new and wonderful mode of communication, and the impossibility of maintaining otherwise the confidence necessary to the existence of private correspondence, required such a law as that before us. But in using the phrase "*unlawfully* expose another's business or acts," the Legislature certainly show, that they did not consider all exposures of another's business or acts "communicated through telegraph by a party connected with it," to be "unlawful;" otherwise, they would not have rendered punishable only "unlawful exposures."

And they conclude that the act is no protection to a witness who is required in the course of the administration of justice to disclose what may have been committed to him as a telegraph operator. As this decision has stood unreversed for twenty-five years it seems too late to contend that communications by telegraph are in any nature whatever privileged or protected from disclosure by the fact that a statute has been passed in any State making it unlawful for them to be revealed.

But in the course of this debate there has been another argument used to which I will briefly allude that appears not to be well supported by any facts in the case before us. It has been maintained by several Senators who have spoken that the disclosure by a telegraph operator of the contents of a dispatch is in some way similar to breaking open a letter; that to reveal the import of a telegraphic message is equivalent to tampering with the mails of the United States. Now, sir, I cannot see that there is any resemblance or comparison whatever between the two cases. If the laws of the United States required every letter that was sent by post to be first deposited with the Postmaster-General, and copied in his Department by clerks for transmission, and another copy to be made at the end of the route and retained by the Post-Office Department before the communication should be delivered to the recipient, the cases would be somewhat similar. In the transmission of intelligence by wire the original communication is delivered to the operator and is kept by the company for their own protection. The message is communicated to distant points by the electric impulse, like sensations passing along a gigantic nerve, in the same manner as intelligence goes to and from the brain in the human system, and from individual to individual by conversation, or by the delivery of a writing from hand to hand. There is no seal and no secrecy. There is no special sanctity about the operation. The process is mysterious and marvelous, but no more so than any other exhibition of the vital and mental powers. It is no more wonderful that we can talk to our correspondent a thousand miles away than that we can talk to him face to face. Both are inexplicable.

Letters by mail are only protected while in transit. The Government says to its citizens if you place your correspondence in our pouches for transmission, its security and protection is assured, and the depredators who break the wax or the gum shall be punished. But when they are delivered the guarantee ceases. The production of the letter can then be compelled whether the seal is broken or not.

The position, therefore, that the disclosure of the contents of a telegraphic message is in any way whatever equivalent to tampering with the mails is not well taken. There is no similarity, because the process and the objects are entirely different. The telegraph company is a private corporation. It is the common carrier of intelligence for hire. It is an express messenger carrying thoughts by electricity, and in my judgment the law should require all such corporations either to immediately destroy the original messages or to return them to the senders. There is no reason, so far as I am able to understand it, why they should be retained. The difficulty which has grown to such portentous proportions all originates with the companies themselves. They retain both originals and copies for their own protection, and it is because of this retention that all this difficulty has arisen. There is no more reason why the original and a copy of a message should be retained by the telegraph company than there is why the original of a letter should be kept by the Post-Office Department, and a copy sent to the person to whom it is addressed, of which another copy should be kept by the local postmaster before it is delivered. Therefore the law should be so changed as to require all originals and copies of messages to be promptly destroyed, and then there could be no difficulty by these drag-net investigations, because telegraphic messages would occupy the same position as letters transmitted by mail. If courts of justice or committees of investigation in Congress desired to obtain evidence of telegraphic correspondence, they would be compelled to apply to the parties who had sent it, and not those who had been merely the custodians of it. When the Senator from New York anticipates that these proceedings may compel the telegraph companies to burn their bridges behind them, as he says, or compel parties to resort to measures for protection by requiring the destruction of those copies that are now retained, I believe that this is precisely what ought to be done. They never ought to be kept by the telegraph company; they should promptly be destroyed; and then when it was necessary to obtain information as to what had been sent by telegraph, courts of justice or committees could apply to the parties by whom or to whom they had been sent, lay the foundation by proving that they had been sent and what their contents were or might be assumed to be, and require them to produce them, and, if they did not, then introduce other testimony that would be secondary and in that event competent, such as the recollection of the operator, if nothing else could be found.

But, certainly, so far as the mails are concerned, I understand that the secrecy of their contents extends only to letters that are in transmission. Take the case of a postal card that is sent from one person to another, which is an open communication transmitted through the mails. Suppose that a communication written upon a postal card was illegal or improper in its character, that related to some object that was unlawful or in violation of a statute, and that in the course of its progress through the mails a route-agent or a postmaster saw what was written on the back of the postal card, can it be supposed that the sanctity of the mails would prevent a court of justice or a committee of Congress from calling the man who had seen the card as a witness and requiring him to say what the contents of it were? Certainly not. There is nothing in the law regarding the transmission of the mails relating to secrecy except where it refers to the tampering with private correspondence by breaking open the seals of it while in transit. Anything that is transmitted by mail that is open can certainly be reached just exactly the same as any communication between parties that is not sent through the mails.

So it seems to me that this whole argument is based on a misapprehension, that there is no more secrecy about the mails than there is about any other method of communication except in this: that courts of justice and committees of investigation are prevented from ascertaining the facts in any given matter by breaking open the seals of private correspondence, because a vastly greater amount of mischief may result from allowing that to be done than could result in any case from refusing that it should be done in order to promote either any public or any private interest. So that if the matter is properly considered it is devoid of special difficulty, and there is no reason why telegraphic communications are not subject to precisely the same rules of evidence as all other private writings. There is nothing in the method of transmission that makes them particularly sacred or surrounds them with any special protection or privilege. Any other theory would make the telegraph one of the most dangerous and malign ministers of evil, instead of one of the most beneficent agencies of modern society.

Mr. WALLACE. Mr. President, the Senator from Kansas well states the law as it was held in our State under the act of 1851. After the passage of that statute and in consequence of the decisions I presume, another statute was enacted in our State which controls and governs us now, the act of 1855. That provides that it shall be the duty of the telegraph superintendents and officers to keep custody of the original messages for three years and to produce them in court on demand of the parties in a cause, or at the request of the court, or before any committee of any public body, when the court or committee shall make an order in the usual form with the regular notice; and under this statute it is our every-day practice to require the production of telegrams in court. The only exception is the one made in the statute; and that is a communication between client and counsel. It by express terms of the statute is held to be a privileged communication. This is our practice there, and in accord with it I can see no reason why we should not here require just what is there done in court, full and complete divulgence of everything that occurs over the wires.

There is a great distinction between the case of a man intrusting to the United States mails a communication under his own seal, which cannot in the nature of things be known by any one else than himself and his correspondent, and the case in which he sends to a telegraph operator a dispatch which from the very nature of things must go through the minds of fifty different and distinct individuals, and where, as was well said by the Senator from Delaware, a man who can read by sound gets it. In the one case you have the absolute closing of the communication by the correspondent himself; it is between him and the man who receives the correspondence. The other case is the case of intrusting a private communication to a public vehicle. Now, why shall the latter have a different rule applied to his case from that which applies to all other instrumentalities of evidence wherever we may find them in courts of justice? When a man takes the risk of going to a telegraph operator and putting on the wire that which he

thinks ought to be private, he takes the risk of having that instrumentality brought into court and of having it divulged, for from the nature of things it is necessary in obtaining testimony for use in courts that these kinds of communication should be brought to light. Here, it seems to me, is a manifest and plain distinction. The one from the very inception of it to its close is a private communication; the other from its inception to its close is a public communication, and it ought to be brought into court when the interests of justice so demand. Hence it seems to me that it is our duty in this case, as in every other case in which these communications are quasi-public, to require them to be brought to the light when they bear upon questions of fact that arise in the administration of justice either in public bodies like this or in courts.

Mr. CONKLING. Will the Senator indulge me in stating what it is that makes a communication by telegraph any more a public communication than one intrusted to the mail?

Mr. WALLACE. If a man places a communication under seal and puts in the mail, it cannot become public to any other mind than that of his correspondent until it reaches him. From the nature of the thing, when he puts in the hands of a telegraph operator a communication, the mind of the telegraph operator and of every other man connected with the line and of every man who can read by sound gets a knowledge of that, and he is an instrument of evidence, made so by our courts. Why should he not be required to produce it?

Mr. CONKLING. The difficulty with the Senator's statement, if he will allow me, is this: The one seal to which he refers is a seal of wax; the other seal to which he refers is a seal of conscience. If I go to the Senator and make a communication to him, unless he is my counsel or my physician or my confessor, I make a communication to him which he may reveal in court on being called upon to do it. If however he is a postmaster and I deliver a letter to him sealed, he is the custodian to whom is committed that letter under double seal, not merely the seal of the wax or the mucilage but the other seal of confidence and trust.

Judge Cooley suggests in language some of which I have read that when I go to a telegraphic operator and commit to him certain words, I do so not voluntarily, not because I choose to make that communication to him for his acquaintance, but because, in the language of that authority, I am compelled to disclose it to him or to lose the privilege of transmitting it. In other words, I reveal it to him for one purpose and for one only; and when the statutes of States declare, as auxiliary to the understanding, not only that that is the only purpose, but that it shall be penal to reveal it for any other purpose, really I must say I do not see how the Senator satisfies himself by the mere distinction between a paper sealed with gum arabic or wax and a paper which in its nature cannot be sealed in that way but is delivered under the seal, I will not say technically of official confidence, but under the seal of confidence sanctioned by law which prohibits the breaking of that seal for any purpose except one, to wit: the transmission over the wires which it is the special dexterity of the person informed to manipulate and which the other person cannot manipulate for himself.

Now, I beg the Senator's pardon for one further moment. I do not mean in my remarks to him, nor did I intend in my remarks before, to commit myself against voting for the broadest resolution on this subject. I simply make this suggestion to him, as I make other suggestions, in the hope of showing that it will be a wise thing for us to know before we act a little something of what we are about.

Mr. WALLACE. The distinction made by the Senator from New York may be a valid and sound distinction when it is enacted by statute; but I am looking at the nature of things as they exist. The seal of wax is an absolute foreclosing of knowledge on the part of any one but the correspondent and him who receives the correspondence, and there is no instrumentality between the writer and receiver of the communication; but the delivery of a telegraphic dispatch is the giving to an instrumentality of evidence the knowledge of what that dispatch is, and every man connected with the wire acquires that knowledge, and not merely the parties, as in the case of a letter sealed. Here is the distinction I have taken.

Mr. SHERMAN. I would ask my friend whether the protection given by law to letters sealed is not a protection given to the letter while in the custody of the Government or its agents? There is no such protection to a letter sealed in the hands of a private party. If my friend intrusts me with a letter to deliver to another friend and I should violate that trust so far to open the letter, I would not be subject to the penalty imposed by the law. Therefore it is a protection on the part of the Government that while the letter is in its possion it shall not be opened. That is all there is of it.

Mr. WALLACE. I should grant the Senator's position to be correct if there were a statute of the United States as there is in regard to the opening of letters. It is an argument for the enactment of a statute; but then comes the broad question of public policy as to whether we are to close up this means of evidence, as to whether we are to shut up, as we do in regard to the transmission of letters, all the avenues of communication in regard to this information. The argument may be a good one for the enactment of a statute by Congress; but until it is enacted they stand upon an entirely different footing, it seems to me. Dispatches stand upon the footing of the ordinary instrumentalities of evidence, and where a man receives that information and has it in his possession, it seems to me, as in other cases, he should be required to go into court and produce the knowledge he has. Until the sanctity of the telegraph is declared by statute it seems to me that there is no argument whatever that would protect this individual from divulging that which he has in his possession.

Mr. EATON. Mr. President, it seems to me that my friend the Senator from Pennsylvania makes a distinction that really does not exist. I will read again from the same authority which was read by the Senator from New York, Cooley on Constitutional Limitations:

> In Maine it has been decided that a telegraph operator may be compelled to disclose the contents of a message sent by him for another party, and that no rule of public policy would forbid. (State *vs.* Litchfield, 58 Me., 267.) The case is treated as if no other considerations were involved than those which arise in the ordinary case of a voluntary disclosure by one private person to another without necessity. Such, however, is not the nature of the communication made to the operator of the telegraph. That instrument is used as a means of correspondence, and as a valuable and, in many cases, an indispensable substitute for the postal facilities; and the communication is made, not because the party desires to put the operator in possession of facts, but because transmission without it is impossible.

There is the great point and there is the great necessity why this should be secret. The nature of business is such, the change in the mode of doing business within the last few years is such that this invention of the telegraph has become absolutely necessary, and, therefore, it ought to be protected.

Now, sir, the same information may be contained in letters. I am, say, in the reception of a letter in reference to a lawsuit, in which my friend the Senator from Maryland [Mr. WHYTE] is my antagonist. He is aware that I have received a letter of that character, and, therefore, he asks that that letter be produced in court, and notifies me that if it be not produced then secondary evidence will be given in regard to the contents of that letter although it is a private letter to me and does not belong to the public at all. In this Maine case notice had been given the day before that the person receiving the telegraphic dispatch should introduce that dispatch in evidence. He failed to produce it, and, therefore, the attorneys for the State, for it was a criminal case, claimed that the operator should be compelled to disclose the fact, and the court held, without in my judgment giving the matter a sufficient consideration, that it being a criminal case the testimony should be brought before the court. I think the court erred in that particular. I do not think, on reading of the case, that the law is good law here; it is good law in Maine, of course.

I rose simply to say that in my judgment this whole matter (and I ask the attention of what few Senators there may be here) should go to the Judiciary Committee. Let the Judiciary Committee pass upon this subject, and let us have the authority of that committee before we pass into any new line of evidence. Therefore, if it is in order—I do not know that it is now—I move that this matter before the Senate be referred to the Judiciary Committee for an opinion upon this subject. Perhaps I ought to frame a resolution in connection with the motion; but if the chairman of the committee were here he would understand me. I would have an opinion from the Judiciary Committee how far in the judgment of that committee the Senate of the United States has control over private correspondence by telegraph.

The PRESIDENT *pro tempore*. The Senator from Connecticut moves the reference of the resolution to the Committee on the Judiciary.

Mr. SHERMAN. I am afraid that would practically defeat the resolution. I will state to the Senator from Connecticut that two or three of the committees of this body are practically very much affected by the absence of members on duty remotely away from the city, and also on duty of a pressing character here in the city. I doubt very much whether, if this duty were imposed upon the Judiciary Committee now, it could be performed. I know that the Committee on Finance, and I may as well state it publicly, is now so broken by the detachments that have been either sent abroad or are engaged in the business of establishing some mode of counting the electoral votes here, that we find it difficult and almost impossible to transact public business. I think, for this reason if for no other reason, this reference should not be made to the Judiciary Committee now. I need not go into the composition of that committee to show that it is also interrupted in the same way in the ordinary discharge of its duties by other duties which are considered more pressing.

In this case I agree very much with the Senator from Connecticut that in a general view telegrams ought to be protected except in special cases which ought to be defined by law; but as this case does not seem to be a case of much doubt, as the telegrams here referred to are telegrams connected with the operations and the discharge of the duty of a public officer, I do not know that there is any objection to calling out these telegrams; but there ought to be a law passed which shall define the nature of the testimony which may be brought out, the limits within which it can be called out, and the circumstances or foundation which should be laid before any telegrams could be called for. That is a matter of legislation. I think, therefore, it would be wiser for us, especially as any reference of this kind would only divide us and probably leave us without a quorum, to let the resolution pass, because this case is one in which I suppose no Senator would object to disclosing all the testimony, all the information that can be given upon it. Let this resolution be passed, and let the subject-matter be considered hereafter by the Judiciary Committee as a matter for a law. If we delay it now by referring this particular case to the Judiciary Committee it would probably defeat the object of

this inquiry or keep this witness here an unreasonable length of time; and, in the present condition of affairs, the Judiciary Committee probably would not be able to act upon it promptly.

Mr. EATON. I think the reasoning of the Senator from Ohio is conclusive. I had not thought of the condition in which our committees are at this time. Therefore I will withdraw the proposition I made; while I am very clear that I will not vote to make telegrams public at all until after there has been a very thorough examination of this matter by the Judiciary Committee of the Senate.

The PRESIDENT *pro tempore*. The motion to refer to the Committee on the Judiciary is withdrawn.

Mr. WHYTE. Mr. President, the English cases, I am frank to confess, somewhat misled me in regard to the privileges which a telegraph operator may have to relieve him from disclosing a communication which comes to him in the discharge of his duty; but when we reflect that there has been no legislation whatever making communications to telegraph operators confidential and relieving them from the operation of the general rule of the law of evidence, I cannot for the life of me see why a party who has knowledge of a communication made through a telegraph office cannot be compelled to testify as to the character of that communication. The fact that in the State where his office is there may be a law punishing him for disclosing what passes through the telegraph office where he is located, in no way affects the case, because Congress has by a law given him a protection where it extorts from him the evidence which he has in his possession. The act of Congress, the old act of 1862, re-enacted in the Revised Statutes, protects him entirely from any criminal procedure which may be taken by reason of the divulgence upon his part of any information extracted from him under the pressure of an examination by either House of Congress or a committee of either House. As regards the law of Oregon, it has no application to the case at all. That is intended to protect the senders and receivers of messages from the willful divulgence on the part of the operator of their private business. It has no reference whatever to a case where he is compelled to testify either in a court of law or in a tribunal erected by either House of Congress, such as a committee of the House.

Therefore I cannot for the life of me see why that testimony cannot be reached; but, like all other testimony, it ought to be limited, and no information should be allowed to be extracted from the telegraph operator which is not relevant to the issue inquired of; but wherever it is made to appear that the inquiry is a relevant one, is pertinent to the issue involved in the matter, then a telegraphic operator has no privileged communication whatever which he can hesitate to give up to the inquiring committee. No law can be found justifying any such refusal on his part. Where is the distinction between a telegraphic operator and an expressman? Does anybody for a moment suppose that we cannot send to the express office, as we did in the recent impeachment trial in this Senate Chamber, and require the custodian of receipts, the custodian of packages delivered, to produce the record of them at the bar of the Senate or produce it before a committee? Where is the difference? They are merely agencies for transmitting information in the one case and agencies for transmitting valuable property in the other case. They are mere private corporations connected in no way with the public service, enabled in no way to shield themselves behind that protection of public policy which enables the President or heads of Departments to refuse to give information upon the ground that it is incompatible with the public interests. Do you tell me that simply the agent or guardian of a corporation can shield himself from giving information upon a subject of inquiry by either House of Congress, because he happens to be a telegraph operator and receives money for transmitting over the wires messages from one party to another? In the absence of some law erecting a bulwark around the telegraph operator he is no privileged person who can refuse to obey the order of a committee or the order of either House of Congress when they tell him to deliver information that is material to the public interests.

For this reason, and as this inquiry is limited in its character, I propose to vote for this resolution.

Mr. WRIGHT. I only desire to say now that I shall vote for this resolution for the reason that I understand it to be directed to specific inquiries which the committee have determined are material, and upon a matter that is pending in the Senate; that it is not in the form or shape, nor can it be claimed by possibility to be in the form or shape, of a drag-net inquiry, but that they narrow the inquiry down to specific matters, and that being done, the ground laid, I think, is sufficient. I think in all these matters the material and the only question is whether a sufficient ground has been laid. If that is laid, then I think we have a right to compel the information.

Mr. CAMERON, of Pennsylvania. Before the vote is taken I desire to say that I shall vote for the resolution on many grounds; principally because I think there is no reason why the telegraph system should be dignified with the secrecy which is given to the post-office. When it was first originated it was considered as merely an auxiliary to the Post-Office Department under private auspices and in the hands of private individuals. Nobody ever believed at that day that the dispatches to be sent by that system were to be kept secret. It is only recently that this new doctrine is got up in regard to their secrecy and inviolability. It is right to look at the beginning of everything. Every day, upon great constitutional questions we find the lawyers here referring to the fathers of the Revolution and the great men who sat in the constitutional convention and who made the Constitution under which we now live. They give us their speeches and their opinions, and while they have really no legal effect, yet looking upon them as the originators of the Constitution we pay deference to their views as men who are worthy of belief, and who really did give us the government we have. Everybody knows all about the telegraphic system, when it began in the country. In Pennsylvania I recollect, for I remember more about that State than most other places, when the first few individuals asked for an act of incorporation to make a telegraph from Harrisburgh to Reading, I think—it was about fifty miles—we had an excellent man who was our governor, one of the old Dutchmen of that day. He was a sensible man, and he was a prudent and a wise man. In the first place he said that he was opposed to the chartering of any company which should interfere with the mails of the United States, because the United States Government wanted all the revenues of the Post-Office Department for its support. Then he said besides that he did not believe in these blabbing fellows; that the telegraph offices would be in charge of a parcel of fellows—I think he called them—who would not be responsible to anybody at all, and who would tell all the secrets that passed over the wires. He was a sensible man. I do not believe that any man of sense will send any secret over the wires which he is not willing that the whole country should hear. Besides that, if any man is dishonest enough to get up a conspiracy to destroy this Government and trust that secret to the wires, why should he not be exposed? Suppose Governor Hayes had taken it into his head to bribe the people of Oregon and to get those three electoral votes, and he had sent out money for that purpose, and we had the proof in our minds and believed that we could bring the proof to satisfy anybody by discovering the telegrams which had been sent, would that not be doing a good service to the country? If any man who is dishonest would thus become the President of this great country, he is not worthy of the place and he ought to be exposed.

There are hundreds of reasons to my mind why we ought to pass this resolution, at least to throw it into the hands of the ablest lawyers of this body, so that they may make up such a case as will convince the country of the right in the matter. A great deal of this inviolability of the telegraph has come out of a speculation which began some years ago to make the Government the purchaser of the system at a very high price. I am in favor of these companies having all the rights which their charters give to them and no more. If they do wrong, if they carry incendiary messages over their wires, let them be exposed. If they do other wrongs or if they become participators in wrong to the country or to individuals, I would expose them, and I would want their agents as witnesses against them, as I would if a banking-house entered into a combination to cheat its depositors. I would take its clerks and its books and I would expose them to the courts and get out of them such testimony as they produced.

There are many other reasons why I shall vote for this resolution, and I shall vote for everything which will expose anything that has been done wrong in connection with the election for President of the United States.

Mr. COCKRELL. I was very anxious to hear the chairman of the Committee on Privileges and Elections, who is not here now, give some explanation of this resolution. We have heard a great deal said about the inviolability of telegrams throughout the length and breadth of the land. I supposed when the chairman of the Committee on Privileges and Elections reported the resolution to the Senate he would be able to give some information in regard to whether the Senate had ever exercised this power heretofore or not. When I propounded the question, no such information was given. On an examination of the impeachment trial of Andrew Johnson, I find that this distinguished body, the Senate of the United States, with the Chief-Justice of the United States presiding over it, brought before it one telegraph operator, a Mr. Charles A. Tinker, I believe it was, and caused him to produce and exhibit before the Senate certain telegrams which had passed between President Johnson and Mr. Parsons, of Alabama. It seems to me certainly that some of the distinguished Senators ought to have been able to refer to that matter as a precedent in the Senate; but still it has not been referred to.

I am decidedly in favor of making both the great political parties, who pretend to be acting in the interest and for the benefit of the people, let the people know what they have been doing in their interest and for their benefit, and I shall vote for the resolution.

The PRESIDENT *pro tempore*. The question is on agreeing to the resolution reported from the Committee on Privileges and Elections, on which the yeas and nays have been ordered.

The Secretary proceeded to call the roll.

Mr. PRICE, (when Mr. DAVIS's name was called.) I am requested by my colleague to say that he is absent and is paired with the Senator from Minnesota, [Mr. WINDOM.]

Mr. GORDON, (when Mr. NORWOOD's name was called.) I wish to state that my colleague, on all political questions, is paired with the Senator from Nebraska, [Mr. PADDOCK.] This is not a political question, however, and I do not know how he would vote if here.

Mr. McCREERY, (when Mr. STEVENSON's name was called.) I am sorry to announce that my colleague, who is usually so prompt in his attention to business, is confined to his home by indisposition. I believe, however, that he is paired with the Senator from Kansas, [Mr. HARVEY.]

The roll-call having been concluded, the result was announced—yeas 32, nays 3; as follows:

YEAS—Messrs. Allison, Bogy, Booth, Boutwell, Bruce, Cameron of Pennsylvania, Chaffee, Clayton, Cockrell, Cragin, Ferry, Gordon, Ingalls, Johnston, Jones of Florida, Kelly, Kernan, McCreery, Maxey, Mitchell, Morrill, Morton, Patterson, Price, Randolph, Robertson, Sherman, Spencer, Wallace, Whyte, Withers, and Wright—32.

NAYS—Messrs. Barnum, Burnside, and Eaton—3.

ABSENT—Messrs. Alcorn, Anthony, Bayard, Blaine, Cameron of Wisconsin, Christiancy, Conkling, Conover, Cooper, Davis, Dawes, Dennis, Dorsey, Edmunds, Frelinghuysen, Goldthwaite, Hamilton, Hamlin, Harvey, Hitchcock, Howe, Jones of Nevada, Key, Logan, McDonald, McMillan, Merrimon, Norwood, Oglesby, Paddock, Ransom, Sargent, Saulsbury, Sharon, Stevenson, Teller, Thurman, Wadleigh, West, and Windom—40.

The PRESIDENT *pro tempore*. No quorum has voted.

Mr. WHYTE. I move that the Senate adjourn.

Mr. CAMERON, of Pennsylvania. Before the Senate adjourns I wish to make a motion.

Mr. EDMUNDS. We have no quorum.

The PRESIDENT *pro tempore*. There is not a quorum present. The Senator from Maryland moves that the Senate adjourn.

The motion was agreed to; and (at two o'clock and forty-five minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

FRIDAY, *January* 5, 1877.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of yesterday was read and approved.

BENJAMIN HOLLINGSWORTH.

Mr. SAMPSON, by unanimous consent, introduced a bill (H. R. No. 4308) restoring the name of Benjamin Hollingsworth to the pension-roll; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

ABRAHAM ALSTEAD.

Mr. SMITH, of Pennsylvania, by unanimous consent, introduced a bill (H. R. No. 4309) increasing the pension of Abraham Alstead, late a second lieutenant of Company A of the Fifty-fifth Regiment Pennsylvania Volunteers; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

IMPROVEMENT OF SNAKE RIVER.

Mr. JACOBS, by unanimous consent, introduced a bill (H. R. No. 4310) for the improvement of the navigation of Snake River, Washington Territory; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

ANNA BLAIR LANCASTER.

Mr. KNOTT, by unanimous consent, introduced a bill (H. R. No. 4311) granting a pension to Anna Blair Lancaster, widow of Joseph R. Lancaster, late captain in Dudley's Battalion Kentucky Mounted Volunteers of General McArthur's command in the war of 1812, and also captain of militia in the Florida Seminole war; which was read a first and second time, referred to the Committee on Revolutionary Pensions, and ordered to be printed.

OVERCHARGE ON TONNAGE AND IMPORTS.

Mr. WOOD, of New York, by unanimous consent, from the Committee of Ways and Means, reported back a bill (H. R. No. 4250) to provide remedies for overcharge of duties on tonnage and imports, with amendments; which, with the accompanying report, were ordered to be printed and recommitted.

INDIAN TRUST FUNDS.

Mr. WOOD, of New York, also, from the same committee, reported back a bill (S. No. 614) to authorize the Secretary of the Interior to deposit certain funds in the United States Treasury in lieu of investment, and moved that the House insist on its amendment disagreed to by the Senate, and agree to the conference asked on the disagreeing votes of the two Houses.

Mr. HOLMAN. I ask for the reading of the bill and amendment.

The bill, which was read, provides that the Secretary of the Interior be, and he is thereby, authorized to deposit in the Treasury of the United States any and all sums now held by him, or which may thereafter be received by him, as Secretary of the Interior and trustee of various Indian tribes, on account of the redemption of United States bonds, or other stocks and securities belonging to the Indian trust fund, whenever he is of the opinion that the best interest of the Indians will be promoted by such deposits, in lieu of investments, and the United States shall pay interest semi-annually, at the rate of 5 per cent. per annum from the date of deposit of any and all such sums in the United States Treasury.

The House amended by striking out the word "five" in line 11, and inserting the words "four and a half;" which amendment was disagreed to by the Senate, and a committee of conference asked on the disagreeing votes of the two Houses.

Mr. WOOD, of New York. I will explain to the House that this is simply a proposition to authorize the Secretary of the Interior to use certain funds belonging to the Indian trust fund by a deposit to the credit of that fund in the Treasury of the United States, and to receive a certain amount of interest. The Senate, as it originally passed the bill, put the rate of interest at 5 per cent. per annum. The House, on the recommendation of its Committee of Ways and Means, reduced the rate of interest to 4½ per cent. per annum. We sent the bill thus amended back to the Senate last summer. The Senate non-concurred in our amendment, and have appointed a committee of conference. The Committee of Ways and Means recommend the appointment of a committee of conference on the part of the House. I move that the House insist upon its amendment to the bill and agree to the committee of conference asked for by the Senate.

The motion was agreed to.

Mr. WOOD, of New York, moved to reconsider the vote by which the motion was agreed to; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

KENDRICK AND AVIS ET AL.

Mr. TUCKER. I ask unanimous consent to report back from the Committee of Ways and Means, with the recommendation that it do pass, the bill (H. R. No. 4155) amending the act of July 28, 1876, entitled "An act for the relief of Kendrick & Avis, Kuner, Zisemann & Zott, Kuner & Zott, all of Saint Louis, Missouri, and Nachtrieb & Co., of Galion, Ohio."

The SPEAKER. Is there objection?

Mr. WILSON, of Iowa. I do not object to the report being made, if the bill goes to the Committee of the Whole.

The SPEAKER. The gentleman cannot make a conditional objection.

Mr. TUCKER. I think, if I am allowed to give a single word of explanation, I will be able to satisfy the gentleman that there is no necessity for this bill going to the Committee of the Whole. The act of July 28, 1876, of which this is to be an amendment, authorized the Secretary of the Treasury to remit——

Mr. CONGER. Before this is considered debate, I desire to reserve the right to object.

The SPEAKER. The gentleman from Virginia [Mr. TUCKER] is proceeding by unanimous consent, the right of objection being reserved.

Mr. TUCKER. The act to which this bill is an amendment authorized the Secretary of the Treasury to remit certain taxes to the parties therein named. The bill passed both Houses on the unanimous recommendation of the Committee of Ways and Means of this House, and of the Finance Committee of the Senate, and was approved by the President. It appears now that the Comptroller of the Treasury construes the word "remit" as not authorizing him to pay back where the taxes proposed to be remitted have been paid; and this amendment to the former act is simply to authorize him to "pay back" where the former act would have permitted him to "remit." That is all.

Mr. CONGER. I think the bill had better go to the Committee of the Whole.

The SPEAKER. The gentleman from Michigan objects, and the bill is not before the House.

ORDER OF BUSINESS.

The SPEAKER. The morning hour begins at thirty-four minutes after twelve o'clock, the business of the morning hour being the call of committees for reports of a private nature. The call rests with the Committee on the Judiciary.

There were no reports from the Committee on the Judiciary.

REUBEN J. CHERONING.

Mr. RAINEY, from the Committee on Invalid Pensions, reported back, with a favorable recommendation, the bill (H. R. No. 3423) granting a pension to Reuben J. Cheroning; which was referred to the Committee of the Whole on the Private Calendar, and, with the accompanying report, ordered to printed.

TIMOTHY J. HURLBURT.

Mr. RAINEY also, from the same committee, reported back, with an adverse recommendation, the bill (H. R. No. 938) for the relief of Timothy J. Hurlburt; and the same was laid on the table, and the accompanying report ordered to be printed.

ORDER OF BUSINESS.

Mr. MILLS. I move that the House resolve itself into the Committee of the Whole for the consideration of the Private Calendar.

The SPEAKER. The gentleman will please postpone his motion for a few moments until the call of committees has gone through. The Chair will then recognize the gentleman to make the motion he has stated.

KENDRICK & AVIS ET AL.

Mr. TUCKER, from the Committee of Ways and Means, reported back, with a favorable recommendation, the bill (H. R. No. 4155) amending the act of July 28, 1876, entitled "An act for the relief of Kendrick & Avis, Kuner, Zisemann & Zott, Kuner & Zott, all of Saint Louis, Missouri, and Nachtrieb & Co., of Galion, Ohio.

The question was on ordering the bill to be engrossed and read a third time.

The bill, which was read, is as follows:

Be it enacted, &c., That the act of July 28, 1876, entitled "An act for the relief of Kendrick & Avis, Kuner, Zisemann & Zott, Kuner & Zott, all of Saint Louis, Missouri, and Nachtrieb & Co., of Galion, Ohio," be, and the same is hereby, amended by inserting in the third line thereof, after the words "to remit" and before the words "so much," the words "refund and pay back."

Mr. HOLMAN. I trust the gentleman from Virginia will have the original act read, so that it may be seen what is the effect of this proposed amendment. The terms are so entirely different that it is impossible, without seeing the context, to tell the effect of the amendment. I hope at least that the gentleman from Virginia will explain the effect of the change of language.

Mr. TUCKER. I have already done so. The original act, passed upon the report of the Committee of Ways and Means, authorized the Secretary of the Treasury to remit certain taxes improperly assessed against these parties. It turns out after the passage of the act that the parties had paid the taxes which the report of the committee and the act of Congress indicated had been improperly assessed. Now the question is whether the parties to whom we agreed these taxes might be remitted may not be paid back when it is shown that the tax has already been paid.

Mr. HOLMAN. What is the date of the act?

Mr. TUCKER. The 28th of July, 1876.

Mr. HOLMAN. The proposition is to substitute the words "refund and pay back" for the word "remit?"

Mr. TUCKER. Yes, sir.

Mr. HOLMAN. I understand that this amendment was suggested by the Treasury Department. Am I correct in that understanding?

Mr. TUCKER. O, yes; I suppose so.

Mr. HOLMAN. Very well; that being the case, I have no objection.

Mr. TUCKER. I call for the previous question.

The previous question was seconded and the main question ordered; and under the operation thereof the bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time.

Mr. CONGER. How did that bill come before the House?

The SPEAKER. It comes before the House under the regular call of committees. It is reported by the Committee of Ways and Means, and being of a private nature it is in order. The question is on the passage of the bill.

The bill was passed.

Mr. TUCKER moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

BARBARA MILLER, JOHN S. MILLER, AND WILLIAM H. MILLER.

Mr. HANCOCK, from the Committee of Ways and Means, reported back, with a favorable recommendation, the bill (H. R. No. 4119) for the relief of Barbara Miller, John S. Miller, and William H. Miller.

The bill was read.

Mr. CONGER. I make the point of order that that bill involves an appropriation of money and must have its first consideration in Committee of the Whole.

Mr. HANCOCK. I will state to my friend from Michigan [Mr. CONGER] that, if he will hear the report, I think he will withdraw his objection.

The SPEAKER. The Chair will sustain the point of order.

Mr. WILSON, of Iowa. I wish to say a word upon the point of order.

The SPEAKER. The Chair then will withhold his decision until the gentleman has been heard.

Mr. WILSON, of Iowa. It may seem harsh and captious for a member to object to a bill of this kind being considered in the House, but the point is this: If we permit every bill which on its face appears to be fair and right to be passed in the House without a reference, while we send every bill from the Committee of Claims and the Committee on War Claims to the Committee of the Whole on the Private Calendar, it would be almost impossible to get the House to go into Committee of the Whole on the Private Calendar at all, and the favor that would now be extended to the gentleman from Texas would be a denial of justice to other claimants whose cases are referred to the Committee on the state of the Union. That is the reason why we object to the passage of these bills in the House.

Mr. HANCOCK. I do not ask that any favor be extended to me; but, if the gentleman will hear the report read, I think he will see that this is a mere matter connected with the adjustment of accounts with the Treasury Department, and it ought to be passed at an early day.

Mr. WILSON, of Iowa. I must insist on the point of order made by the gentleman from Michigan.

Mr. CONGER. There are a large number of claims which ought to be passed, but which are referred to the Committee of the Whole.

The SPEAKER. The Chair sustains the point of order, and the bill is referred to the Committee of the Whole on the Private Calendar.

LEMUEL D. EVANS.

Mr. HANCOCK, from the Committee of Ways and Means, reported back the bill (H. R. No. 3141) for the relief of Lemuel D. Evans, with a recommendation that it do pass.

Mr. WILSON, of Iowa. I make the point of order upon that bill.

The SPEAKER. The Chair sustains the point of order, and the bill is referred to the Committee of the Whole on the Private Calendar.

Mr. HANCOCK. The point of order is well taken; but I did not propose to ask the House to pass the bill without reference.

ORDER OF BUSINESS.

Mr. BRIGHT. I move that the House resolve itself into Committee of the Whole on the Private Calendar; this being objection day.

Mr. FOSTER. The House has made the deficiency bill the special order for to-day after the morning hour.

The SPEAKER. The morning hour has not yet expired, and the motion of the gentleman from Tennessee is manifestly in order.

JAMES ATKINS.

On motion of Mr. GARFIELD, by unanimous consent, the bill (S. No. 1040) to authorize sundry allowances to James Atkins, late collector of internal revenue for the fourth district of Georgia, in the settlement of his accounts was taken from the Speaker's table, read a first and second time, and referred to the Committee of Ways and Means, with the accompanying papers, not to be brought back on a motion to reconsider.

PENSION APPROPRIATION BILL.

Mr. ATKINS, by unanimous consent, from the Committee on Appropriations, reported back the bill (H. R. No. 4120) making appropriations for the payment of invalid and other pensions of the United States for the year ending June 30, 1878, with the amendment of the Senate thereto, with a recommendation that the amendment of the Senate be concurred in.

The amendment of the Senate was read and agreed to, as follows:

Page 1, line 10, after the words "Secretary of the Interior," insert the following:

"Which shall be stated in the annual report of the Commissioner of Pensions hereafter, and he shall report the total of annual amounts paid for additions, and also the reductions in the annual pension-rolls."

Mr. ATKINS moved to reconsider the vote by which the amendment of the Senate was agreed to; and also moved that the motion to reconsider be laid on the table.

The latter motion was concurred in.

ORDER OF BUSINESS.

Mr. BRIGHT. I now insist on my motion that the House resolve itself into Committee of the Whole on the Private Calendar.

Mr. FOSTER. The morning hour having not expired, the gentleman from Tennessee has no right to make that motion.

The SPEAKER. The gentleman from Ohio [Mr. FOSTER] will be recognized after the morning hour expires. The Chair is of the opinion that it is competent for the House, the call of committees having been gone over without occupying the entire hour, to entertain and adopt the motion of the gentleman from Tennessee to go into Committee of the Whole on the Private Calendar.

Mr. FOSTER. And when the hour is reached the committee will have to rise?

The SPEAKER. If the committee so determine.

Mr. FOSTER. Then I will move an amendment to the motion of the gentleman from Tennessee.

The SPEAKER. The Chair would suggest to the gentleman from Ohio that he rely upon the good faith of the House to see that the special order is not interrupted.

HOT SPRINGS RESERVATION.

Mr. GAUSE, by unanimous consent, from the Committee on Public Lands, reported, as a substitute for House bill No. 3494, a bill (H. R. No. 4312) authorizing the sale and disposition of the Hot Springs reservation in the State of Arkansas, and for other purposes; which was recommitted to the committee, and ordered to be printed.

PRIVATE CALENDAR.

Mr. BRIGHT. I now insist upon my motion.

The question was taken on Mr. BRIGHT's motion, and it was agreed to; and the House accordingly resolved itself into Committee of the Whole on the Private Calendar, (Mr. HOOKER in the chair.)

The CHAIRMAN. The House is now in Committee of the Whole for the purpose of considering business on the Private Calendar. This being objection day, the Clerk will report the bills on the Calendar, commencing at the point reached on last objection day.

THOMAS HUNTER.

The first business in order on the Private Calendar was the bill (H. R. No. 2601) authorizing the Commissioner of Pensions to issue a land-warrant to Thomas Hunter, a soldier of the war of 1812, in lieu of one lost.

The bill directs the Commissioner of Pensions to issue a land-warrant for one hundred and sixty acres of land to Thomas Hunter, of Allegheny County, Pennsylvania, a soldier of the war of 1812; a warrant having issued to said Thomas Hunter, and, after being located, a patent was issued on March 24, 1824, and was lost in the mails, and pending the search therefor the land was sold for taxes.

There being no objection, the bill was laid aside, to be reported favorably to the House.

JAMES B. GILLESPIE.

The next business on the Private Calendar was the bill (H. R. No. 3406) granting a pension to James B. Gillespie, late captain of Company I, One hundred and twentieth Regiment Illinois Infantry Volunteers.

The bill directs the Secretary of the Interior to place on the pension-roll, subject to the provisions and limitations of the pension laws, the name of James B. Gillespie, late captain of Company I, in the One hundred and twentieth Regiment of Illinois Infantry Volunteers, to take effect from and after the passage of the act.

There being no objection, the bill was laid aside, to be reported favorably to the House.

CHARLES L. RUGG.

The next business on the Private Calendar was the bill (H. R. No. 3582) granting a pension to Charles L. Rugg, late first lieutenant of Company D, Sixth Indiana Cavalry.

The bill directs the Secretary of the Interior to place on the pension-roll, subject to the provisions and limitations of the pension laws, the name of Charles L. Rugg, late first lieutenant of Company D, Sixth Indiana Cavalry.

Mr. SMITH, of Pennsylvania. I ask that the report be read.

The report was read, as follows:

The Committee on Invalid Pensions, to whom was referred the bill (H. R. No. 2362) granting pension to Charles L. Rugg, have had the same under consideration, and submit the following report:

The evidence shows that the said Rugg was mustered into the service of the United States as first lieutenant Company D, Sixth Indiana Cavalry, March 16, 1864, and was honorably discharged September 15, 1865. It further appears from the evidence that he was captured some time in August, 1864, in Georgia, and was imprisoned in Columbia, South Carolina, and was paroled in April, 1865. He alleges that while a prisoner as aforesaid, from exposure, he contracted nervous fever, which finally resulted in spinal paralysis, which has rendered him totally unfit for manual labor. The evidence submitted, if it is to be believed, and the committee see no reason why it should not be believed, clearly establishes the facts as alleged by the said Rugg. He has been examined on three different occasions by the medical board of examiners at Cincinnati, Ohio, and upon each examination the board expresses the opinion that his disability did originate in the service, and that disability is total and permanent.

The committee, therefore, are of opinion that said Rugg is entitled to a pension, and they report a substitute for said House bill 2362, and recommend that said substitute do pass.

There being no objection, the bill was laid aside, to be reported favorably to the House.

FREDERICK W. SMITH.

The next business on the Private Calendar was the bill (H. R. No. 3583) granting a pension to Frederick W. Smith.

The bill directs the Secretary of the Interior to place on the pension-roll, subject to the provisions and limitations of the pension laws, the name of Frederick W. Smith, late a private in Company G, Fourth Ohio Cavalry.

Mr. HOLMAN. Let the report be read.

The report was read, as follows:

The Committee on Invalid Pensions, to whom was referred the bill (H. R. No. 30) granting a pension to Frederick W. Smith, have had the same under consideration and submit the following report:

There is but one question involved in this case, which, if answered in the affirmative, will entitle the soldier to his pension.

Is a soldier entitled who absents himself temporarily for a few hours, by permission of his company's commanding officer, for the purpose of foraging for provisions for himself and comrades, and who is captured by the enemy, without fault or neglect upon his part, and who is imprisoned, and while so imprisoned contracts disease from exposure incident to such imprisonment, which renders him totally incapable of performing manual labor, and which is permanent and incurable?

The committee are of opinion that this question should be answered in the affirmative.

They therefore report a substitute for said House bill and recommend that said substitute do pass.

There being no objection, the bill was laid aside, to be reported favorably to the House.

WILLIAM ABENDROTH.

The next business on the Private Calendar was the bill (H. R. No. 3584) granting a pension to William Abendroth.

The bill directs the Secretary of the Interior to place on the pension-roll, subject to the provisions and limitations of the pension laws, the name of William Abendroth, as a dependent father upon his minor son, Louis A. Abendroth, late a private soldier in Company L, Third New York Cavalry.

There being no objection, the bill was laid aside, to be reported favorably to the House.

NICHOLAS WHITEHALL.

The next business on the Private Calendar was the bill (H. R. No. 3181) for the relief of Nicholas Whitehall, of Fountain County, Indiana.

The bill being objected to by Mr. SAMPSON, it was passed over.

W. P. BURWELL.

The next business on the Private Calendar was the bill (H. R. No. 3588) for the relief of W. P. Burwell.

The bill being objected to by Mr. WILSON, of Iowa, it was passed over.

GEORGE A. ARMES.

The next business on the Private Calendar was the bill (H. R. No. 3634) for the restoration of George A. Armes, with the rank of captain, to the cavalry arm of the service, in the army of the United States.

Mr. CONGER called for the reading of the report, and it was read.

Objection being made to the bill by Mr. WILSON, of Iowa, it was passed over.

OLD DOMINION STEAMSHIP COMPANY.

The next business on the Private Calendar was the bill (H. R. No. 3198) for the relief of the Old Dominion Steamship Company.

The bill being objected to by Mr. CONGER, it was passed over.

REMOVAL OF OBSTRUCTIONS IN OHIO RIVER.

The next business on the Private Calendar was the bill (H. R. No. 1636) to re-imburse certain citizens of Allegheny County, Pennsylvania, for moneys paid to remove obstructions in the Ohio River.

The bill being objected to by Mr. EDEN, it was passed over.

BRIDGE ACROSS THE MISSISSIPPI AT MEMPHIS.

The next business on the Private Calendar was the bill (H. R No. 1741) to authorize the construction of a bridge across the Mississippi at Memphis, Tennessee.

The bill being objected to by Mr. CONGER, it was passed over.

ORDER OF BUSINESS.

Mr. FOSTER. The time which the morning hour would have run is now expired. I move that the committee rise and report to the House, in order that I may be able to submit a motion to go into Committee of the Whole on the state of the Union for the consideration of the deficiency appropriation bill reported on yesterday from the Committee on Appropriations.

The motion of Mr. FOSTER was not agreed to; upon a division there were—ayes 55, noes 69.

Mr. FOSTER. That is not a quorum.

Mr. WILSON, of Iowa. We are not compelled to have a quorum to determine a motion that the committee rise; but if the point is insisted upon the roll must be called.

The CHAIRMAN. If the point is insisted upon the Chair will appoint tellers.

Mr. FOSTER. I do not insist upon the point.

CHARLES W. BUTTON.

The next business on the Private Calendar was the bill (H. R. No. 433) to pay to Charles W. Button the costs of advertising property levied on by the collector of United States internal revenue in the fifth district of the State of Virginia.

The bill being objected to by Mr. CONGER, it was passed over.

CHARLES B. ROBERTS.

The next business on the Private Calendar was the bill (H. R. No. 1434) for the relief of Charles B. Roberts.

The bill being objected to by Mr. CONGER, it was passed over.

LOUISVILLE BAPTIST ORPHANS' HOME.

The next business on the Private Calendar was the bill (S. No. 259) for the benefit of the Louisville Baptist Orphans' Home.

Mr. CONGER. I object to that bill.

Mr. WATTERSON. I hope the gentleman will withdraw the objection.

The CHAIRMAN. Discussion is not in order.

Mr. WATTERSON. This is a matter involving simply——

The CHAIRMAN. Debate is not in order. Objection being made, the bill will be passed over.

HEIRS OF DANIEL CARROLL.

The next business on the Private Calendar was the bill (H. R. No. 3679) to ascertain the interest of the heirs of Daniel Carroll, of Duddington, in certain real estate in the city of Washington, and to secure the conveyance of the same to the United States.

The bill was read.

Mr. STONE. I object to this bill.

Mr. HOLMAN. I ask that the report be read.

The CHAIRMAN. There is no report.

Mr. HUNTON. If the gentleman from Missouri [Mr. STONE] will allow a short explanation——

Mr. STONE. I object to debate.

The bill was accordingly passed over.

G. W. SAMPSON AND BENJAMIN HENRICKS.

The next business on the Private Calendar was the bill (H. R. No. 3609) for the relief of George W. Sampson and Benjamin Henricks, of Austin, Texas.

(Objected to by Mr. SMITH, of Pennsylvania.)

WILLIAM C. O'BRIEN.

The next business on the Private Calendar was the bill (H. R. No. 3680) for the relief of William C. O'Brien.

The bill and report were read.

(Objection was made by Mr. WILSON, of Iowa, who subsequently withdrew the objection; when Mr. STONE renewed it.)

B. B. CONNOR & BROTHER.

The next business on the Private Calendar was the bill (H. R. No. 3681) for the relief of B. B. Connor & Brother.

The bill was read. It directs the Secretary of the Treasury to refund and pay to B. B. Connor & Brother, now of Louisville, Kentucky, surviving partners of the late firm of B. B. Connor, Brother & Swan, of Nashville, Tennessee, $4,420.32, net proceeds paid into the Treasury from sale of one hundred and seventy tierces and one hundred and twenty barrels of lard, shipped by them March 24, 1862, from Nashville to Louisville without a permit, in ignorant violation of law and

trade regulations, and seized, libeled, and sold by the United States, the same having been so shipped after due inquiry without willful negligence or intent to violate any law or trade regulations; and for that purpose the sum of $4,420.32 is appropriated.

There being no objection, the bill was laid aside, to be reported to the House with a recommendation that it pass.

MRS. LUCIE A. JAMESON.

The next business on the Private Calendar was the bill (H. R. No. 1705) for the relief of Mrs. Lucie A. Jameson, of Memphis, Tennessee.

(Objected to by Mr. LAWRENCE.)

Mr. BRIGHT. As the hour of two o'clock to-day was set by the House for special business, I move that the committee rise.

The motion was agreed to.

The committee accordingly rose; and the Speaker having resumed the Chair, Mr. HOOKER reported that the Committee of the Whole on the Private Calendar had directed him to report certain bills with a recommendation that they be passed.

RECUSANT WITNESS—E. W. BARNES.

The SPEAKER. The hour of two o'clock to-day, which has now arrived, was fixed by order of the House for the presentation at the bar of the House by the Sergeant-at-Arms of the witness E. W. Barnes. The Sergeant-at-Arms will now present the witness.

The Sergeant-at-Arms appeared at the bar of the House having in his custody Mr. E. W. Barnes, who was accompanied by his counsel.

The SPEAKER. Mr. Barnes, it is the duty of the Chair to ask you what excuse you have to offer for your failure to produce before the committee of this House sitting at New Orleans, on the 18th of December, 1876, or thereabouts, certain telegrams called for by subpœna duly served upon you. The Chair desires to suggest to the House that in his opinion any reply which the witness may make should be in writing and under oath. But the Chair will, if necessary, submit that question to the House.

Mr. BARNES, (the witness.) Being inexperienced in such matters I should have asked to be heard by counsel except that I am informed that the precedent in the case of Kilbourn would prevent the granting of that request. I therefore ask that, in accordance with the precedent in that case, my written answer, which has been prepared by my counsel, Messrs. Hubley Ashton and Grosvenor P. Lowrey, may be read by the Clerk.

The SPEAKER. The witness desires that his answer may be read by the Clerk. Is there objection? The Chair hears none.

Mr. BUCKNER. I wish to ask whether this answer is under oath. I agree with the Speaker that it should be under oath.

Mr. BARNES, (the witness.) The answer is under oath, duly attested.

The SPEAKER. The witness states that his reply is in writing and under oath.

Mr. CONGER. Lest the remark of the Chair and the answer to the question put by the gentleman from Missouri [Mr. BUCKNER] should be taken as a precedent requiring that witnesses brought before the bar of this House to answer for contempt shall make answer under oath, I object to this being taken as a precedent of the House.

The SPEAKER. The Chair merely made a suggestion (which, however, was in accordance with examples found in congressional proceedings) that the answer be in writing and under oath. The fact of there being such precedents was the reason the Chair made his suggestion.

Mr. KASSON. I believe the precedents are not uniform.

Mr. CONGER. I protest against such a rule being established in this case as a precedent.

The SPEAKER. The Chair only made a suggestion, subject of course to the action of the House; but, as the Chair will state again, the suggestion was made because he found that such had been the practice, and there seemed to be good reason for conforming to it.

Mr. KASSON. The Chair does not understand that the precedents are uniform.

The SPEAKER. The Chair did not state they were all the same, but from those he has had the opportunity of reviewing, the Chair does state that in his judgment the better and most valuable practice is shown in those cases which indicate the reply was in writing and under oath, and such practice he thinks should be followed.

Mr. KASSON. I understand it may vary according to the peculiar character of the case, and that where it relates to the fact upon which the contempt is based and the fact is denied, it should then properly be under oath; but not as a uniform rule, as there is no uniform precedent of the House. I only wish to say that much.

The SPEAKER. The Chair has not stated there was. He again states it was only a suggestion of his to the House. It seems the witness has complied with that view of the case and submitted his reply in writing and under oath.

Mr. GARFIELD. I wish to say that I agree entirely with the Chair's view, that the answer should be under oath so far as it relates to the facts. All facts answered by the witness should be under oath, but the witness may wish to plead his constitutional rights, and to that end may make an argument before the House, and I think all would admit that it would be a little rough for any of us to be compelled to swear to all of our arguments. [Laughter.] Therefore we ought not to require the witness to do any such thing.

The SPEAKER. The Chair can sympathize with the gentleman from Ohio. [Renewed laughter.] The Clerk will now read the answer of the witness, which he submits in writing and under oath.

The Clerk read as follows:

To the honorable the House of Representatives:

I have been brought from my home in New Orleans against my will and am held in custody by the Sergeant-at-Arms under the terms of a resolution of this honorable House, as follows:

"*Resolved*, That the Speaker of this House issue a warrant under his hand and the seal of the House of Representatives, directing the Sergeant-at-Arms of this House, either by himself or his special deputy, to arrest and bring to the bar of the House without delay E. W. Barnes, to answer for a contempt of the authority of this House and a breach of its privileges in refusing to produce to the special committee of which Hon. WILLIAM R. MORRISON is chairman, now sitting in the city of New Orleans, certain telegraphic dispatches, in obedience to a *subpœna duces tecum*, served on him on the 13th day of December, 1876, and to be dealt with as the law under the facts may require."

I respectfully protest, under the advice of my counsel, that the terms employed by the honorable Speaker of the House at the time of my arraignment, to wit, that I am "alleged to be in contempt of the privileges of this House, in that he (meaning me) refused to bring before a committee of this House, sitting in New Orleans, certain telegrams which said committee made demand for him for," were erroneous, and that I am under no charge or allegation of contempt except the allegation contained in the resolution of this House above quoted, and which charges me with contempt only as having disobeyed a subpœna served on me on December 13, 1876.

I have never received or been notified of any order or direction of this House or any committee thereof, or any subpœna or other process relating to the investigation referred to in the above-quoted resolution, or the production of the telegraphic messages described below, except a paper handed to me on the 13th of December, and referred to in said resolution. I have had no communication with or direction from said committee, except such as is set forth in the report of the said committee to the House under date of New Orleans, December 20, 1876, which report, except as to some matters not material to my personal defense, as I am advised, correctly gives all that has occurred between me and said committee and which I deem it important to incorporate in my answer for the better recollection of the House and for a perfect understanding of the corrections which I desire to make in the statement of my evidence.

NEW ORLEANS, *December* 20, 1876.

Hon. SAMUEL J. RANDALL,
Speaker of the House of Representatives, Washington, D. C.:

I have the honor to communicate the inclosed record of proceedings in the case of E. W. Barnes, manager of the Western Union Telegraph Company in this city, a recusant witness.

WM. R. MORRISON,
Chairman of Louisiana Affairs Special Committee.

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The committee caused a *subpœna duces tecum* to be issued and duly served on one E. W. Barnes, manager of the Western Union Telegraph Company at New Orleans, Louisiana. Said subpœna is in the words and figures following, to wit:

By authority of the House of Representatives of the United States of America.

To JOHN G. THOMPSON, esq.,
Sergeant-at-Arms, or his special messenger:

You are hereby commanded to summon E. W. Barnes, manager of the Western Union Telegraph Company at New Orleans, Louisiana, to be and appear before the Louisiana affairs special committee of the House of Representatives of the United States, of which Hon. WILLIAM R. MORRISON is chairman, and with you bring all telegrams sent or received by William Pitt Kellogg, S. B. Packard, John F. Casey, J. R. G. Pittkin, Henry C. Dibble, H. C. Warmoth, George W. Carter, and General Augur at the office of the Western Union Telegraph Company, New Orleans, from and after the 15th day of August, 1876, in their chamber in the city of New Orleans, Saint Charles Hotel, forthwith, then and there to testify touching matters of inquiry committed to said committee. Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 13th day of December, 1876.

[SEAL] SAMUEL J. RANDALL, *Speaker.*
Attest:

GEORGE M. ADAMS, *Clerk.*

The return indorsed on the foregoing is in words and figures as follows, to wit:

Served personally with a copy of the within at one and one-half o'clock p. m. December 13, 1876.

JOHN G. THOMPSON,
Sergeant-at-Arms.
By J. W. POLK,
Special Messenger.

NEW ORLEANS, *December* 18, 1876.

Committee met at eleven o'clock a. m., pursuant to adjournment. Present: the chairman, Mr. MORRISON, Messrs. JENKS, MCMAHON, BLACKBURN, MEADE, FIELDS, NEW, ROSS, BEEBE, TOWNSEND, DANFORD, HURLBUT, CRAPO, and JOYCE.

Said E. W. BARNES appeared as a witness before the committee on the 18th day of December, 1876, and, after being duly sworn according to law, was interrogated as follows:

By Mr. MORRISON:

Question. Where do you reside?
Answer. In New Orleans.
Q. How long have you resided there?
A. Two years at the present time, but I have lived here before about ten or twelve years.
Q. What is your occupation?
A. Manager of the Western Union Telegraph office in this city.
Q. Have you been subpœnaed to appear here before the committee?
A. I have.
Q. Have you a copy of the subpœna with you?
A. I have. [Witness produced copy of subpœna.]
Q. Have you in your possession any dispatches sent by or received by the persons named in this subpœna?
A. I presume I have some.
Q. In relation to the late election or the counting of the votes?
A. I am not in the habit of reading all of them, but there have been dispatches sent during the canvass to these persons.
Q. In relation to the election and counting of votes for presidential electors?
A. I cannot speak as to the contents of the telegrams. It is very seldom that I read them.
Q. As a matter of fact, have you not looked over them since you were subpœnaed?
A. No, sir; I have not looked over them.

Q. You say you have knowledge that telegrams have passed, and from some of these parties, concerning the election?

A. I assume that there is; but I have no personal knowledge.

Q. You may state to the committee whether it is true, after you were subpœnaed, that you made any arrangement about producing these dispatches; and, if so, with whom, and what it was.

A. I had an interview with you after being subpœnaed. A sergeant-at-arms called on me and asked me to see the chairman at seven o'clock and speak to him in regard to it, which I did. I introduced myself and asked what he wished. He told me he wished copies of the dispatches mentioned in the subpœna. I think I told him it was great labor to get them and our employés were very busy and we could not well take them off for this purpose, but that I could engage others. He asked me what it would cost. I said probably it would cost $30. He said he had no money appropriated for that purpose, but that it was an object to get them quickly, and he thought the committee would agree to expend the $30, and asked me what time I thought I could get them, and told him by Monday next. That is to-day. I mentioned that in these cases we always resisted an order to produce telegrams as far as we could. I had had no communication from the company at that time in regard to the matter.

Q. State whether, as a matter of fact, you did not promise me upon my agreeing to pay the expenses that you would furnish the dispatches to-day?

A. No, sir; I did not understand it so.

Q. Was not the agreement made that I was to pay expenses; that you would put on clerks, and furnish them to-day?

A. I did not understand it so. So far as I understand the matter I had telegraphed our company that such demand had been made, and at seven o'clock I had not received an answer, and I did not know whether I would be prevented from producing these dispatches or not; but I was careful in my mind not to say anything only what I could do and not what I would do.

Q. Did not you agree that I was to pay the expenses?

A. If you would pay the expenses that I could furnish them, not that I would. I had no power, without instructions, to furnish them, and we always try to evade these demands upon the telegraph office.

Q. You did not tell me that you would not furnish them to-day?

A. No, sir; I could not have told you, for I had to get the power myself from the company.

Q. You did not say anything about that to me?

A. No, sir; I had telegraphed to the company, but not received an answer up to seven o'clock that evening.

Q. Have you any of these dispatches with you?

A. No. With me? No, sir.

Q. Have you been instructed by the president of the company not to deliver them?

A. Yes, sir; not directly by the president, but by our general superintendent.

Q. Are your instructions similar to this? [Letter shown witness from President Orton, of Western Union Telegraph Company, to the chairman.]

A. I should have acted on these instructions, without any others, on this letter to you.

Q. Have you any?

A. I have only instructions from Mr. Orton to do nothing in the matter; that Mr. Orton would relieve me from all responsibility.

Q. Your instructions from Mr. Orton are not to produce the messages?

A. I understand that is my instructions from Mr. Van Horne, the division superintendent. I consider these instructions confirmed by this message to you.

Q. Then you refuse to produce these telegrams?

A. Yes, sir; I must do so according to my instructions.

Q. What did you say was the name of the division superintendent?

A. Mr. Van Horne.

Q. Where does he reside?

A. In New York.

Q. You say this is the notice you received to appear, the subpœna?

A. Yes, sir; this is the one.

Q. You answer that you were subpœnaed to appear and produce telegrams sent by and received by parties named in this subpœna?

A. Yes, sir.

Q. Do you recollect whether William Pitt Kellogg is named in this subpœna?

A. Yes, sir.

Q. S. B. Packard?

A. Yes, sir.

Q. J. R. G. Pittkin?

A. Yes, sir.

Q. Henry C. Dibble?

A. Yes, sir.

Q. H. C. Warmoth and others?

A. Yes, sir.

Q. You now still refuse to produce the telegrams?

A. Yes, sir.

Q. (By Mr. HUBBELL.) I understand you were served with a subpœna. At what time?

A. At about two o'clock on the 15th.

Q. Did you report the fact of such service to your superior?

A. I did.

Q. Have you instructions from your superior officers in the telegraph company not to furnish the messages?

A. Yes, sir.

Q. Have you any written instructions, any formal instructions?

A. I have no other instructions than what I have mentioned.

Q. Telegraphic instructions?

A. Yes, sir.

Q. Have you a copy of that instruction?

A. No, sir; but that is the purport of it, a dispatch from Mr. Orton saying he would assume the responsibility.

The subpœna referred to in the resolution of the House, and which was in the hands of the committee at the time of my examination and interrogation thereon, is correctly set out in said report.

I respectfully protest, under the advice of counsel, that the said paper is not in form or substance a subpœna to me or to any one, except it be to John G. Thompson, named therein; and that said paper is not in any sense an order or direction of this House which could be the subject of obedience or disobedience by me, the same not being directed to me, and I respectfully submit to this honorable House whether said paper or anything contained in or done under it can rightfully be made the ground for inflicting upon me a penalty for contempt of the authority of this honorable House, or a breach of its privileges, in refusing, as charged by said above-quoted resolution, to produce any telegraphic message in obedience to such subpœna.

If this honorable House should deem it just to require me to show any further cause why I should not be adjudged in contempt of its authority, I desire to present a statement of the facts and matters of law upon which I am advised I am legally entitled to be discharged from my present arrest.

Before stating the facts, I respectfully request this honorable House, before involving me in the consequences of a conviction for willful contempt of its authority, and while considering the facts which I shall state, to weigh well the recent judgment of one of the most eminent of the living judges and jurists of America against the right or power even of the judicial tribunals of the country to compel the production of telegraphic messages under the writ of subpœna.

Judge Cooley, in the last edition of his work on Constitutional Limitations, under the head of the constitutional protection of the citizen against unreasonable searches and seizures, declares his solemn judgment that the agents of the telegraph cannot lawfully be compelled to produce the messages confided to them for transmission over their wires under a *subpœna duces tecum*, and clearly and emphatically expresses his opinion that certain decisions of some of the State courts, affirming their power to require the production of such messages, are founded upon erroneous doctrines and unsound reasoning.

Speaking of one of those decisions, in the supreme court of Maine, in which it is said that no rules of public policy forbid the courts from exercising this power, Judge Cooley says:

"The case is treated as if no other considerations were involved than those which arise in the ordinary case of a voluntary disclosure by one private person to another without necessity. Such, however, is not the nature of the communication made to the operator of the telegraph. That instrument is used as a means of correspondence and as a valuable and, in many cases, an indispensable substitute for the postal facilities, and the communication is made, not because the party desires to put the operator in possession of facts, but because transmission without it is impossible. It is not voluntary in any other sense than this, that the party makes it rather than deprive himself of the benefit of this great invention and improvement. The reasons of a public nature for maintaining the secrecy of telegraphic communication are the same with those which protect correspondence by mail; and, though the operator is not a public officer, that circumstance appears to us immaterial. *He fulfills an important public function*, and the propriety of his preserving inviolable secrecy in regard to communications is so obvious *that it is common to provide statutory penalties for disclosures.* If on grounds of public policy the operator should not voluntarily disclose, why do not the same considerations forbid the courts compelling him to do so? Or, if it be proper to make him testify to the correspondence by telegraph, what good reason can be given why the postmaster should not be made subject to the process of subpœna for a like purpose, and compelled to bring the correspondence which passes through *his* hands into court, and open it for the purposes of evidence? We must maintain the opinion, notwithstanding the decision of so eminent a tribunal, that the public are not entitled to a man's private correspondence, whether obtainable by seizing it in the mails, or by compelling the operator of the telegraph to testify to it, or by requiring his servants to take from his desks his private letters and journals and bring them into court on *subpœna duces tecum.* Any such compulsory process to obtain it would be nothing short of a most arbitrary and unjustifiable seizure of private papers, such an *'unreasonable seizure'* as is directly condemned by the Constitution."—*Cooley's Constitutional Limitations*, third edition, 1874, pages 306, 307.

The general rules of the Western Union Telegraph Company, by whom I was employed for the preservation of the confidence reposed in them by the public using their facilities for telegraphic intercourse, are based, as I have always understood, upon the spirit of the doctrine, founded on public policy, declared in the foregoing citation from Judge Cooley's work.

The rules and instructions promulgated for the information and guidance of the employés of the company provided as follows:

"92. All managers and other employés are *strictly prohibited from furnishing copies of original messages or from certifying to the correctness of any message, or copy thereof, whether sent or received.*

"93. When the *sender* or *receiver* of a message applies *in person* he will, if known or properly identified, be permitted to see or make a copy of his dispatch for himself. When the application is in writing the signature must be indentified as the genuine signature of the person or firm who sent it, precisely as if it were the signature of a bank check or draft. In no other case will such permission be allowed without the order of the executive officer.

"94. No original message or duplicate of a received message will be permitted to leave the possession of the company except by authority of an executive officer. Whenever a manager or other employé is subpœnaed to produce messages in court or before commissioners, he will notify the secretary of the company at once by telegraph for *instructions.*"

The ninety-fourth rule, above mentioned, was modified in 1873, as follows:

EXECUTIVE OFFICE WESTERN UNION TELEGRAPH COMPANY.
New York, May 2, 1873.

Executive Order No. 147.

Rule 94 is hereby modified as follows:

No original sent message or duplicate of a received message will be allowed to pass out of the possession of the company except by authority of an executive officer.

Whenever a manager or other employé is subpœnaed on the part of the sender or receiver of a message to produce it before a court or other legal tribunal, he will comply with the subpœna and afterward return the message to the files. When subpœnaed by any other party than the sender or receiver, he will take the message into court and submit to the judge that he ought not to produce it, the communication being privileged, and that he cannot do so unless a rule of the court is entered requiring it. If such rule is entered the manager must obey it, asking the clerk to give him a copy of the rule and message.

The subpœna and other papers in connection therewith should be retained on file with the message to which they relate.

WILLIAM ORTON, *President.*

I deemed it my duty, under the foregoing rules and instructions of the company, as soon as I received the paper served on me on the 13th of December, which I supposed, without careful examination, to be a subpœna with a clause of *duces tecum* requiring me to produce before Mr. MORRISON'S committee all telegraphic dispatches which might have been sent from or received at the New Orleans office by the eight persons named therein, to apprise my superintendent of the fact of such service and to ask for instructions.

It did not appear to me that the executive order No. 147, above mentioned, applied to the case presented by the supposed *subpœna duces tecum* in question. I had never received a subpœna for the production of a message before an investigating committee of either House of Congress; and, besides, the terms and scope of the paper served on me seemed to be very different from those of any subpœna I had ever been served with for the production of messages before a court, inasmuch as it called for the production of all messages received or sent by a considerable number of persons during a period of nearly four months. I had never been served by any court with a subpœna so broad and general in its terms and effect.

There was another reason why I deemed it conformable to my duty to notify the company of the service of this paper upon me. Some time previous I had received instructions from my superintendent to ship to him all my business for November and December, 1876, and I had in conformity with those instructions sent to him all business in my office from the 1st of November to the 6th of December, 1876, inclusive.

No messages, therefore, sent from or received at the New Orleans office after the 31st of October, 1876, were in the files of that office on the 13th of December, 1876, when I was served with the paper purporting to be a *subpœna duces tecum* of the House.

Under these circumstances and for these reasons, as I have stated, I telegraphed on the 13th of December to my superintendent, Mr. Merriwether, as follows:

NEW ORLEANS, 13 *December*, 1876.

To C. G. M., *Superintendent, Mobile:*

I am subpœnaed to produce all messages sent and received by W. P. Kellogg and others, from and after 15th August, by congressional committee. Had I better

produce as far as in my possession, leaving those not, for further inquiry, if it has to be done *i*

E. W. BARNES.

On the 14th of December, 1876, I received a dispatch from Mr. Merriwether as follows:

MOBILE, 14, 1876.
(Received at 9.16 a. m., December 14.)

To E. W. BARNES,
Manager, New Orleans:

The following received last night. "New York, 13. To C. G. Merriwether, superintendent: Tell Barnes to do nothing until further orders, which will probably be sent him to-morrow. Ask him to give the other names mentioned in the subpœna besides Governor Kellogg's. Jno. Van Horne, general superintendent."

Give me other names mentioned in subpœna besides Governor Kellogg. Answer.

C. G. MERRIWETHER,
Superintendent.

On the 15th of December, 1876, I received from Mr. Merriwether the following dispatch:

MOBILE, 15, 1876.
(Received at 9.55 a. m., December 15.)

To E. W. BARNES, *Manager:*

The following received: "New York, 14. Superintendent Merriwether, Mobile: The company has decided to decline to surrender the political messages of either party to investigating committees. Mr Barnes will be relieved of all responsibility in the matter by a message from Mr. Orton to Mr. MORRISON to-morrow. Jno. Van Horne, general superintendent."

C. G. MERRIWETHER,
Superintendent.

On the same day, the 15th of December, 1876, I received, by telegraph from New York, a communication signed William Orton, and addressed to Hon. WILLIAM R. MORRISON, which I delivered personally. This communication appears to be copied in the report of Mr. MORRISON to the House upon my case.

On the 13th of December, 1876, I was informed by the person handing me the subpœna that Hon. WILLIAM R. MORRISON, chairman of the committee, desired to see me, and I accordingly waited upon him.

Mr. MORRISON asked me when I could furnish those messages.

I informed him that the search would take some time and would require finding all the messages of the parties named.

Mr. MORRISON said, "*We only need the campaign messages.*"

I informed him that I had no clerks whom I could employ for the examination of this great mass of business, and that I must employ strangers, if it was done at all, and that I could not take the responsibility of determining what were or what were not political or campaign messages.

Mr. MORRISON offered to send clerks for the purpose of searching the files, which proposal I declined, or to pay the expense of searching.

I did not promise him that I would make or direct any search, for I was then awaiting instructions from my employers.

The instructions I afterward received are presented above.

On the 18th of December I was requested by a messenger to go before the committee. I complied, and was sworn for the first time.

I testified before the committee substantially as stated in the extract from the report of the committee to the House, presented at the beginning of this answer, except that I did not say that I had received instructions from Mr. Orton, and except that I did not intend to be understood, as an uninstructed layman, to express any opinion as to the character or effect of the paper served upon me, and which was at that moment in the hands of the gentleman who interrogated me.

I have already stated that before the 13th of December, the day on which I was served with the subpœna, all messages sent from or received at New Orleans from the 1st of November to the 6th of December, inclusive, had been sent by direction of my superintendent, Mr. Merriwether, to Mobile; and such messages have never since that time been in my possession, or under my control.

It is proper for me to state to this honorable House that I have no knowledge whatever that any messages were sent or received at any time at the New Orleans office by William Pitt Kellogg, S. B. Packard, John F. Casey, J. R. G. Pittkin, Henry C. Dibble, H. C. Warmoth, George W. Carter, or General Augur, never having to my recollection seen any such messages; but I believe that such messages were so sent or so received by said Kellogg, Packard, Pittkin, and Augur, because each of those persons had monthly accounts at my office and I had occasion as manager to settle such accounts and receive money thereon during more or less, of the period between August and December, 1876, and I know no reason to doubt that whatever messages were thus paid for during the months of August, September, and October were in my office on the 13th of December, but filed away with a mass of other messages so great that much labor, time, and expense would have been required to find them.

Under the rules and instructions received from my employers I did not believe that the legal possession and control of the messages described in the subpœna, if any of them remained in the files of the New Orleans office, resided in me as a subordinate employé, and I sincerely and honestly believed that under those rules and instructions I should be guilty of a palpable breach of duty and an actual trespass if I should undertake to rummage for them among the files and carry them away from the place where they were deposited without the permission of the competent authority of the company.

I am advised and most respectfully submit to the House that this was a correct view of my duty and liability in the premises of the situation as it was presented to me upon the service of the subpœna, under the settled law of England and this country applicable to the case.

(See the decisions of Lord Kenyon in Miles *vs.* Dawson, 1 Espinasse, 405, and Baleson *vs.* Hartsunk, 4 Espinasse, 43; Austin *vs.* Evans, 2 Manning and Granger, 430; Attorney-General *vs.* Wilson, 9 Simons, 529, and many other cases, including the matter of opening letters in the London post-office reported in the Law Journal, volume 33, old series, 1845, page 248.)

I have already submitted to the House that no *subpœna duces tecum* was ever served upon me requiring me to produce telegraphic dispatches to the committee of which Hon. WILLIAM R. MORRISON is chairman, and that I cannot therefore be adjudged guilty of a contempt of the authority of this honorable House and of a breach of its privileges for a disobedience of its process in refusing to produce such messages.

I am further advised that this honorable House could not justly or lawfully adjudge me in contempt of its authority for refusing to comply with the requirement of a *subpœna duces tecum* purporting to command me to produce before a committee all messages, or all campaign or political messages, sent or received by one or more individuals during a period of four months.

I am instructed that a judicial or other *subpœna* couched in such general and sweeping terms would be in legal effect a *general warrant*, within the prohibition of the fourth amendment of the Constitution of the United States, and subject to the condemnation of the great principles of personal liberty and private right established for all freemen of the Anglo-Saxon race by the celebrated judgments of Lord Camden in Wilkes's case, and the case of Entick *vs.* Carrington, (2 Wilson's Reports, 151, 275.)

I am further advised by my counsel that no judicial tribunal proceeding in due course of law would compel a witness to obey a *subpœna duces tecum* in such general form as I have mentioned; and that such attempts have often been condemned in the highest courts as efforts to abuse and prostitute the administration of justice by turning such subpœnas into bills of discovery. (Attorney-General *vs.* Wilson, 9 Simons, 528, 529; Lee *vs.* Angas, Law Reports, 2 Equity, page 63.)

In further defense, and assuming that in the judgment of the House I am not fully excused and justified by the considerations foregoing, I respectfully submit: That I am in the employment of the Western Union Telegraph Company, and reside in the State of Louisiana, in which State said company has an office, and within which State said subpœna, if it is binding upon me at all, required me to reveal or make public the certain dispatches therein mentioned, if such exist. That by the revised statutes of Louisiana, (1870,) page 731, section 3763, it is provided as follows:

"Any operator, clerk, director, messenger, or other person in the employ of any telegraph company having an office or station in this State * * * who shall reveal, make use of, or make public any dispatch or message, shall, on conviction, be fined not less than $50, nor more than $1,000, * * * and for the second offense shall be imprisoned." * * * *

I am advised by my counsel, and respectfully submit, that the production of one message and the revealing or making public the same to the committee of which Hon. WILLIAM R. MORRISON is chairman would have constituted the first offense contemplated by the statute, and would have subjected me to the payment of a fine as by such statute prescribed, and that the similar revelation or publishing of any other message to said committee would have subjected me to the penalty of imprisonment, as for a second offense, unless there exists in this House some power which has been properly exercised to nullify or suspend for the time being statutes of Louisiana, or to clothe me with some secure immunity from their general operation. I am advised and respectfully submit, that no such power exists in the Congress of the United States, even directly by a formal enactment, duly passed by both Houses and signed by the President, and much less in either House acting alone and indirectly, to abrogate, suspend, or qualify the operation of said statutes; or to compel any citizen to violate the same; or to give any dispensation or indulgence for such violation; or to restrain any court from entertaining, or any private person or public official of the State from promoting prosecutions for such violation; or in the slightest degree to shield or indemnify any person convicted from the fullest infliction of the penalties prescribed.

I am advised and respectfully submit, that there is no analogy between the enforced production of such messages under the subpœna of a court of law and such enforced production under the subpœna of this House. That this House, though a part of the supreme law-making power of the land when acting as a branch of Congress upon subjects confided to it by the Constitution, is alien to the administration of justice in the States touching such matters as crimes and misdemeanors under State statutes, and is as powerless to intervene therein as would be the State government of another State. That while it may be competent for a State court of Louisiana to interpret the statute in question so as to require and justify a telegraph manager to reveal a dispatch, thus establishing an interpretation of that law binding upon all courts and persons, this is because the people of Louisiana have delegated to their State courts that power of interpretation; but that the people of that State have not confided to this House of Representatives such or any similar power. That if it is within the power of Congress, or a branch thereof, directly or indirectly, to abrogate or authorize the violation of one law of one State by one citizen, it has like power in respect to all the laws of all the States and all the citizens thereof. That the successful assertion of this power would effectually break down all limits between Federal and State jurisdiction, and in cases not now possible to be foreseen might come to be used so as to entirely destroy the powers of the States over matters of purely domestic concern.

So far as I am advised there has been no interpretation of this statute by the courts of Louisiana, and I submit that it is not in the power of this House to foresee or make sure that said statute will not be strictly enforced according to its terms, without allowing it as any excuse for such violation that it was done under authority of this House.

Whatever may be the opinion of this House of its right to the production of such messages by me, it certainly cannot be considered as a punishable contempt that I am unwilling to subject myself helplessly to these chances under what must be allowed to be at least reasonable doubt of that right, and of the power of the House to protect me from such consequences as may in fact ensue.

It is a universal principle of justice that a witness even under a *subpœna ad testificandum*, is not compellable to answer when it reasonably appears that the answer will have a tendency to expose him to a penal liability, or to any kind of punishment, or to a criminal charge, and *a fortiori* will be held excused from responding to a *subpœna duces tecum* under such circumstances.

I have not contemplated or intended any contempt of the authority or privileges of this House, and have only sought to do my duty as I understood it. I respectfully protest that I cannot justly be condemned for disobeying the commands of a *subpœna duces tecum* to produce papers, for no such writ has been served upon me; that I am not in this proceeding amenable for contempt in disobeying a command of the committee, for the resolution under which the warrant for my arrest has issued is limited to the charge of disobedience to a subpœna, besides which no such command was ever addressed to me; that the telegraphic messages in the New Orleans office are in the possession of the Western Union Telegraph Company, and not at all in my possession except as a clerk, and to the same extent that every clerk may have possession of his employer's books and papers; that my right and power over such papers are limited to the regular transaction of business and that other handling or interference with them by me would be without warrant, the papers being the property of the senders, not legally in my custody but in the custody of my employer; that demand of them should be made to the governing officers of said company, and not to me. That any general order in the form of the so-called subpœna in this case offends against fundamental principles of personal liberty, as well as the fourth amendment to the Constitution, as being in the nature of a general warrant commanding me to make general and inquisitorial search for papers which are only by the accident of business within my reach; that such paper offends fundamental principles which are necessarily applicable to every lawfully conducted inquiry of this nature, inasmuch as by requiring me to make search for papers which are not known to exist, it turns a *subpœna duces tecum* from its true function, under circumstances of great oppression to me, into a bill of discovery. That the act which I am now questioned for not performing is forbidden as a crime by the laws of Louisiana; that this House has no power to change or modify that law in itself or in its operation upon me; that it can never be considered a contempt of this House to refuse to break the law of the land.

And now humbly submitting myself to the House, I respectfully ask to be discharged from custody and permitted to return to my home.

EDMUND W. BARNES.

Sworn and subscribed to before me this 5th day of January, A. D. 1877.
[SEAL.] HENRY R. ELLIOTT,
United States Commissioner for the District of Columbia.

J. HUBLEY ASHTON,
GROSVENOR P. LOWREY,
Of Counsel for E. W. Barnes.

Mr. KNOTT. I offer the following resolution, upon which I demand the previous question.

The Clerk read as follows:

Resolved, That the report of the committee, the answer just read to the House, and all other papers relating to the breach of the privilege of this House and contempt of its authority alleged to have been committed by E. W. Barnes, now in custody and at the bar of the House, be referred to the Committee on the Judiciary, with instructions to report as early as practicable what action in their judgment should be taken by the House in relation thereto.

Mr. KASSON. That, of course, includes the paper just read?

Mr. KNOTT. It does.

Mr. GARFIELD. I ask the gentleman to allow me to ask whether the committee has authority to hear the party now before the House?

Mr. KASSON. By counsel or otherwise.

Mr. GARFIELD. If not, the committee ought to have such authority.

Mr. KNOTT. As a matter of course if the committee desire to hear counsel they can do so.

Mr. GARFIELD. If that be so I have nothing further to say.

The previous question was seconded and the main question ordered; and under the operation thereof the resolution was adopted.

Mr. KNOTT moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

Mr. GARFIELD. I ask that the paper just read, together with the report of the committee, be printed.

The SPEAKER. It will be printed, of course, in the report of the proceedings in the CONGRESSIONAL RECORD.

Mr. GARFIELD. But I ask that it be printed separately.

Mr. HOLMAN. It goes into the CONGRESSIONAL RECORD, and I think that is sufficient.

Mr. HOAR. I think the gentleman from Indiana will find it convenient to have the two papers, the report of the committee arraigning this witness and his response, printed together.

Objection was made.

The SPEAKER. The witness is in the custody of the Sergeant-at-Arms.

The witness then left the bar of the House in the custody of the Sergeant-at-Arms.

ENROLLED BILLS.

Mr. HARRIS, of Georgia, from the Committee on Enrolled Bills, reported that they had examined and found truly enrolled bills of the following titles; when the Speaker signed the same:

An act (H. R. No. 732) referring the claim of the owners of the schooner Flight to the Court of Claims;

An act (H. R. No. 735) for the relief of Philip Pendleton;

An act (H. R. No. 2041) to amend section 2291 of the Revised Statutes of the United States in relation to proof required in homestead entries;

An act (H. R. No. 2260) providing for the sale of saline lands;

An act (H. R. No. 4116) to change the name of the steamship Whirlwind to that of Arcadia; and

An act (H. R. No. 4272) authorizing the use of certain funds now in the Treasury belonging to the Osage Indians.

PROTECTION OF QUARTERMASTER STORES.

The SPEAKER, by unanimous consent, laid before the House a letter from the Secretary of War, recommending the enactment of a law to provide for the better care and protection of quartermaster stores; which was referred to the Committee on Military Affairs.

EXPENSES OF THE SPRINGFIELD ARMORY.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of War, transmitting a statement of the expenses of the Springfield armory for the year ending June 30, 1876; which was referred to the Committee on Military Affairs.

COMMISSIONER OF PENSIONS.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of the Interior, relative to an additional appropriation for the office of Commissioner of Pensions for the present fiscal year; which was referred to the Committee on Appropriations.

ESTIMATES FOR OFFICES OF INTERIOR DEPARTMENT.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of the Interior, calling attention to a clerical error in the printed estimate (Executive Document No. 5) for offices of the Department; which was referred to the Committee on Appropriations.

UNION PACIFIC RAILROAD COMPANY.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of the Interior, in answer to House resolution, transmitting copy of the latest report of the Government directors of the Union Pacific Railroad Company; which was referred to the Committee on the Pacific Railroad.

TEMPORARY CLERKS IN TREASURY DEPARTMENT.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of the Treasury, asking for an additional appropriation for the employment of temporary clerks in that Department; which was referred to the Committee on Appropriations.

CIVIL EMPLOYÉS IN NAVY DEPARTMENT.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of the Navy, transmitting a statement of civil employés in that Department, together with time of service and sum paid each for the year ended December 31, 1876; which was referred to the Committee on Appropriations.

NATIONAL BANKRUPT LAW.

The SPEAKER also, by unanimous consent, laid before the House a memorial of the National Board of Trade, on the revision of the national bankrupt law; which was referred to the Committee on the Judiciary.

INDIAN TRUST FUND.

The SPEAKER. The Chair announces as the conferees on the part of the House on the bill (S. No. 614) to authorize the Secretary of the Interior to deposit certain funds in the United States Treasury in lieu of investment, Mr. WOOD of New York, Mr. THOMAS of Maryland, and Mr. BURCHARD of Illinois.

APPOINTMENTS TO COMMITTEES.

The SPEAKER. The Chair also announces the following appointments to committees to fill vacancies, as indicated:

Committee on Freedmen's Bank—Mr. SAMPSON of Iowa, vice Mr. Farwell, and Mr. BLAIR of New Hampshire, vice Mr. Frost.

Committee on Private Land Claims—Mr. PACKER of Pennsylvania, vice Mr. Ketcham.

ORDER OF BUSINESS.

Mr. FOSTER. I rise for the purpose of moving that the House resolve itself into Committee of the Whole for the purpose of considering the deficiency bill.

Mr. HOLMAN. I suggest to the gentleman from Ohio that it would facilitate business if, before going into Committee of the Whole on the appropriation bill, we dispose of the bills which have been reported from the Committee of the Whole on the Private Calendar.

The SPEAKER. The Chair feels bound to recognize the gentleman from Ohio to make his motion; but if he consents to withdraw it for the present, the Chair, of course, will interpose no objection.

Mr. FOSTER. What is the suggestion of the gentleman from Indiana?

Mr. HOLMAN. That the bills reported from the Committee of the Whole on the Private Calendar be first disposed of.

Mr. FOSTER. Does the gentleman from Indiana desire that?

Mr. HOLMAN. There are only six of them, I believe. It will take but a moment.

Mr. FOSTER. Very well. I withdraw my motion for the present.

PRIVATE BILLS PASSED.

The following bills, reported with favorable recommendations from the Committee of the Whole on the Private Calendar, were severally ordered to be engrossed and read a third time; and being engrossed, they were accordingly read the third time, and passed:

A bill (H. R. No. 2601) authorizing the Commissioner of Pensions to issue a land-warrant to Thomas Hunter, a soldier of the war of 1812, in lieu of one lost;

A bill (H. R. No. 3406) granting a pension to James B. Gillespie;

A bill (H. R. No. 3582) granting a pension to Charles L. Rugg, late first lieutenant of Sixth Indiana Cavalry;

A bill (H. R. No. 3583) granting a pension to Frederick W. W. Smith;

A bill (H. R. No. 3584) granting a pension to William Abendroth; and

A bill (H. R. No. 3681) for the relief of B. B. Conner & Brother.

Mr. HOLMAN. I move to reconsider the votes by which the bills reported from the Committee of the Whole on the Private Calendar have been passed, and also move to lay the motion to reconsider on the table.

Mr. WILSON, of Iowa. I object to that. It has always been the practice to leave the bills acted upon in this way when reported from the Committee of the Whole on the Private Calendar open for reconsideration.

Mr. HOLMAN. I withdraw the motion.

HOUSE DEFICIENCY BILL.

Mr. FOSTER. I move that the House resolve itself into Committee of the Whole House on the state of the Union for the consideration of the deficiency appropriation bill.

The motion was agreed to; and the House accordingly resolved itself into Committee of the Whole on the state of the Union, (Mr. HOSKINS in the chair,) and proceeded to consider the special order, being the bill (H. R. No. 4307) making appropriations to supply certain deficiencies in the contingent fund of the House of Representatives, and for other purposes.

Mr. FOSTER. I move that the first reading of the bill be dispensed with.

The motion was agreed to.

Mr. FOSTER. This bill appropriates about $41,000 for deficiencies in the clerical and contingent expenses of the House, mainly in accordance with the orders of the House. That is the sum and substance and a full explanation of it.

The CHAIRMAN. The Clerk will now read the bill by paragraphs for amendment.

The Clerk read as follows:

Be it enacted, &c., That the following sums be, and the same are hereby, appropriated out of any money in the Treasury not otherwise appropriated, to be paid into the contingent fund of the House, to enable the Clerk of the House to pay the sums as provided under the following resolutions of the House, and as otherwise herein expressed, namely:

Under resolution of August 14, 1876, to pay to the members of the Capitol police and employés of the House discharged by reason of the reduction of force provided for in the act of August 15, 1876, being only those employés who were discharged on and subsequently to the 14th of August, 1876, $3,476.06.

Under joint resolution of August 15, 1876, to pay clerks to committees of the House to August 31, 1876, $2,260.

Under joint resolution of August 14, 1876, to pay William H. Smith, from December 1, 1876, to March 4, 1877, at $3.60 per day, $538.40.

Under resolution of August 15, 1876, to pay Hugh J. Mohun, messenger, from August 15, 1876, to August 31, 1876, $61.20.

Mr. VANCE, of North Carolina. I offer the following amendment:

After line 31 add the following:

For the payment of C. L. Freeman for services rendered in the folding-room in the House of Representatives from August 14 to September 1, 1876, seventeen days, at $60 per month, $33.35.

This matter was referred to the Committee of Accounts, but they have not been able to report. The work was done and the man ought to be paid for his services.

Mr. FOSTER. I suggest to the gentleman from North Carolina that that case is covered in the first paragraph of the bill.

Mr. VANCE, of North Carolina. I think not.

Mr. HOLMAN. I ask that the amendment may again be reported.

The amendment was again read.

Mr. FOSTER. I must repeat that I think that was covered in the first paragraph.

Mr. VANCE, of North Carolina. I do not so understand it.

Mr. FOSTER. The first paragraph covers all cases after the 14th of August.

The amendment was not agreed to.

The Clerk read the following paragraph:

Under resolution of August 9, 1876, to pay W. N. Merrick, W. H. Trescott, and Henry W. Garnett, counsel for defense in the case of Hallet Kilbourn *vs.* Michael C. Kerr and others, $2,250; one-half of which only may be paid to them by the Clerk of the House during the progress of the suit.

Mr. HOLMAN. I wish to state that this appropriation is made in pursuance of the resolution of the House which conferred upon the Judiciary Committee, acting in concert with the officers of the House who were made defendants to the suit, the power to employ counsel at a competent compensation. The Judiciary Committee, in pursuance of that power, employed these gentlemen as counsel and determined the fees, and all the Committee on Appropriations has done has been simply to carry out that engagement.

Mr. WOOD, of New York. I offer the following amendment to come in after line 48:

Under the resolution of December 19, 1876, to pay Frank C. Hopkins the sum of $600 for services rendered as clerk to the Committee of Ways and Means, in the absence of the regular clerk of that committee during the Forty-fourth Congress.

I hope the gentleman from Ohio will accept the amendment, which is in accordance with a resolution already passed by the House.

Mr. FOSTER. I have no objection to the amendment at all, as it has been authorized by a vote of the House.

Mr. HOLMAN. The payment of this clerk may have been authorized, but the House certainly has not authorized the payment of two clerks for the service of an absent clerk.

Mr. WOOD, of New York. The resolution merely proposes to carry out a resolution of the House.

Mr. HOLMAN. Does the gentleman expect that two clerks will be paid for performing the duties during this time?

Mr. WOOD, of New York. The clerk of the committee was absent a portion of last session and also during the present session, and another person has been required to discharge his duties. The committee were unanimous in recommending the adoption of this amendment, and I hope the chairman of the Committee on Appropriations [Mr. HOLMAN] will not object to its adoption.

Mr HOLMAN. I hope the Committee of Ways and Means, which should guide and conduct the House in the path of economy, will not ask the House to pay two clerks for performing the same service.

Mr. WOOD, of New York. The committee will endeavor to follow the Committee on Appropriations in every proper effort at economy, but in this case the service was performed, and the House has already adopted a resolution providing for the payment of this gentleman.

Mr. FORT. I see no further need for a Committee of Accounts. This is a case where the Committee of Ways and Means desire to have two clerks paid. I may be mistaken about that, however, for this case has never been referred to the Committee of Accounts. But if we are to have a committee to pass upon these matters, it appears to me that this is a case where they should investigate the question.

Mr. WOOD, of New York. The gentleman is mistaken; this is a case that has been already before the House and on which the House has already passed.

Mr. FORT. If all the committees are to be allowed to employ as many clerks as they want to, why it is all right. If there is any reason for the Committee of Ways and Means, who report on an average once a month, not oftener, to have three or four clerks, why then it may be very well; but there are some committees of this House who seem to have as much work to do as the Committee of Ways and Means, and those committees are satisfied with one clerk. I do not see why the Committee on Ways and Means should not be satisfied with one clerk. I am not aware that that committee more than any other committee should employ two clerks. I think it is high time that this House knew that there is no further need for a Committee of Accounts if this practice is to be the rule of the House.

Mr. WOOD, of New York. The committee were unanimous in recommending that this young man should have some compensation for the work he performed in the absence of the regular clerk to the committee, and I think the objection of my friend from Illinois [Mr. FORT] comes too late, inasmuch as the House has passed a resolution directing such payment.

Mr. CONGER. Does the salary of the regular clerk go on during the time that this man is paid? If not, that money may be paid to his successor in office.

Mr. WOOD, of New York. I am not advised of that.

Mr. CONGER. If the regular salary did not run on then I am willing that his deputy shall be paid. I speak of it because I am reminded by this deficiency bill of the very eloquent appeals of the gentleman from New York [Mr. WOOD] and other gentlemen on that side of the House for excessive economy and retrenchment at the commencement of the last session of Congress, and of the great parade that was made before the country by the gentleman and others of the design of the House, not only to diminish the salaries of clerks of committees, but as far as possible to reduce the number, and it was heralded through the country with a great blare of trumpets that the democratic party were going to reduce the expenditures of the House. I recall that now that, after the election is over, we may compare the two processes by which appropriations are now made for a deficiency which was created then for political effect.

Mr. WOOD, of New York. My friend from Michigan [Mr. CONGER] is always very suggestive; but, so far as the compensation of this person is concerned, I will say that he has faithfully and laboriously performed the entire clerical service of that committee on the important questions which that committee brings before the House. I will say further that the committee unanimously recommend the adoption of this amendment, and I hope my friend from Michigan will withdraw his objection.

Mr. CONGER. The gentleman from New York has so often before objected to paying two salaries for performing one service for the Government, or to paying two salaries to two persons for performing the same duties, that I thought it sufficient that I should call his attention to his former remarks upon this question to see if he remembered them.

Mr. WILSON, of Iowa. I am very much astonished at the course taken by my friend from Michigian. Does he not remember that during the last Congress we reduced salaries everywhere, and we never touched the salaries of members of this House or of any employé connected with it? The gentleman from Michigan has been a long time a member of this House. He must remember that has always been the practice of the House. It is not pleasant for any of us to see the gentleman from Michigan lose the faculty of memory. He must remember that at the last session we were economical in every other direction but this. And I cannot bear to see my friend from Michigan lose his memory. He knows as well as I do at the last session of Congress we were in favor of economy and reform in everything except ourselves and our employés.

Mr. DURHAM. I wish to vote intelligently upon this question. And I am still standing by my record of economy, retrenchment, and reform. I desire to ask my friend from New York whether or not the regular clerk of this committee does not get his salary for the time this temporary clerk was employed? And I ask him this question in all candor. If such is the case I shall vote against the proposition. I ask the question for information.

Mr. WOOD, of New York. I hope the gentleman from Kentucky [Mr. DURHAM] will not be disturbed. I assure him that there is no disposition on the part of the Committee of Ways and Means to change front on the ground of rigid economy, not only with reference to the general expenditures of the Government but to the expenses of the House. The Committee of Ways and Means was given a clerk; that clerk from physical disability was unable to discharge his duties at the last Congress; he has been absent from Washington nearly this whole session of Congress and one of his subordinates has discharged the whole duty; and it is supposed by the committee, although we did not discuss the question at all, that this allowance was made in lieu of that which would have been paid to the clerk under the law, and therefore there is no additional expenditure of money involved in devoting $600 to this individual.

Mr. DURHAM. If the gentleman will only say positively that this amount is to be paid out of the regular salary of the regular clerk, I will vote for his amendment; but if not, I shall vote against it.

Mr. WOOD, of New York. I cannot state it positively, because it may become a legal proposition which I am incapable of deciding.

Mr. HOLMAN. I move to amend the amendment by adding that which I send to the Clerk's desk to be read.

The Clerk read as follows:

Provided, That no other person shall receive compensation as clerk of said committee for the period during which the said Hopkins has performed duties as clerk of said committee.

Mr. FORT. I suggest to my friend from Indiana [Mr. HOLMAN] that he ought to say "Provided, That no other person has received the pay of clerk of said committee." I understand that the regular clerk of the committee has already received pay for this time.

Mr. REAGAN. I desire to offer a substitute for the amendment of the gentleman from Indiana, [Mr. HOLMAN.]

Mr. WOOD, of New York. I rise to a point of order.

The CHAIRMAN. The gentleman will state his point of order.

Mr. WOOD, of New York. My point of order is this: the amendment I have offered proposes to carry out a resolution of the House which substantially ordered this appropriation to be made, and it is not now in order for any one to throw difficulties or obstructions in the way of carrying out that order. [Laughter.]

The CHAIRMAN. That is a question for the committee to determine.

Mr. REAGAN. I desire to offer a substitute for the amendment of the gentleman from Indiana [Mr. HOLMAN] which I think will meet the point.

The CHAIRMAN. There are two amendments already pending, and no further amendment is now in order.

Mr. HOLMAN. Let the proposed substitute be read.

Mr. REAGAN. I think if my amendment is read the gentleman from Indiana will accept it.

The CHAIRMAN. The proposed amendment will be read for information.

The amendment was read, as follows:

Provided, That this act shall not authorize the payment of two clerks for said committee for the same time.

Mr. HOLMAN. I will withdraw my amendment and let the vote be taken on that of the gentleman from Texas, [Mr. REAGAN.]

Mr. GARFIELD. I have listened, as I always do, with interest to the just, not to say generous, opinions of the gentleman from Indiana [Mr. HOLMAN] in regard to these appropriations. I desire to say, however, that this appropriation is simply one in relation to an officer of this House who has been too ill to perform his duties, thus rendering it necessary to get some other person to serve in his place a portion of the time. Now, if gentlemen want to take away the salary of a sick man, of a regular officer of this House, or if they want on the other hand to refuse to pay the person who acted in his place a portion of the time while he was ill, then let them say so plainly. That is what the amendment to the amendment really means. If we mean to allow an officer of this House who has had the misfortune to be ill to receive his pay, as we ought to do, and if we are also willing to pay the gentleman who performed the services during the time the regular officer was sick, as the House has already ordered, then let us do it. That is all this amendment means.

Mr. HOLMAN. Allow me to make a brief statement. I have no actual knowledge of all the facts, as the gentleman from Ohio [Mr. GARFIELD] may have, he being a member of the Committee of Ways and Means. My information is that the clerk of that committee went to Louisiana and has been there for some time past, and perhaps engaged in some other employment. I did not hear that statement, but I inferred that such might be the case. It would seem, then, that the employment of the person named in the amendment offered by the gentleman from New York [Mr. WOOD] covers the period of absence of the clerk who has gone to Louisiana.

Mr. GARFIELD. The illness of the clerk is not a recent matter, but it covers a considerable time past, before the committee went to Louisiana of which the gentleman speaks. For a number of months he was unable to perform all the duties required of him, and that lack was supplied by the employment of the gentleman named in this amendment. It is true that at the present time the clerk of the Committee of Ways and Means has gone to Louisiana in the hope that his health may be restored; and it may be that he is now assisting the chairman of our committee, who is also the chairman of the committee in Louisiana.

Mr. REAGAN. Is he paid for the services he is rendering there?

Mr. GARFIELD. He is not receiving two payments. The simple question is this: our clerk has drawn pay for considerable of the time during which he was unable to do the work, and he should not be asked to refund the amount he has so received. We should also pay Mr. Hopkins for the work he has performed. He has not yet been paid and cannot be paid unless we appropriate the money for the purpose. I hope the amendment will be adopted without the amendment proposed to it.

The amendment to the amendment was not agreed to, and the amendment was then adopted.

The Clerk read the following:

Under resolution of August 14, 1876, to provide for the expense of the ventilation of the Hall of the House, to be expended under the direction of the Architect of the Capitol, $3,500.

Mr. VANCE, of North Carolina. I desire to renew the amendment which I offered a few minutes since, and to explain it very briefly.

The Clerk read the amendment, as follows:

For the payment of C. L. Freeman for services rendered in the folding-room of the House of Representatives from August 14 to September 1, 1876, seventeen days, at $60 per month, $33.35.

Mr. VANCE, of North Carolina. Mr. Freeman was not discharged on the 14th of August, but continued to do his work until the 1st of September, for which he has not yet been paid. I have explained the matter to the gentleman from Ohio [Mr. FOSTER] in charge of this bill, and he has no objection to this amendment.

Mr. FORT. I understand that this amendment was voted down a few minutes ago.

Mr. VANCE, of North Carolina. It was voted down under the belief that it was included in the first clause of the bill. That, however, is not correct; for this man was not discharged on the 14th of August.

Mr. FOSTER. And has not received his pay for the time he has been at work?

Mr. VANCE, of North Carolina. He has not.

Mr. FORT. Why has not this case been presented to the Committee of Accounts?

Mr. VANCE, of North Carolina. This matter is before the Committee of Accounts, and that committee has not yet been able to report upon it. I have no doubt that they will report favorably.

Mr. FORT. The Committee of Accounts is of no account. [Laughter.]

Mr. VANCE, of North Carolina. That is the speech of the gentleman from Illinois, [Mr. FORT,] not mine.

Mr. HOLMAN. I wish to ascertain from the gentleman from North Carolina how it happened that this gentleman was not paid if he was properly employed in the folding-room.

Mr. VANCE, of North Carolina. Because the funds were exhausted, I suppose.

Mr. HOLMAN. The law fixed the number of employés and made the necessary appropriation to pay them. I suppose this is a case where somebody was employed to perform the duties and was not able to perform them. Is not that the case? Was not somebody else employed and was not this gentleman his substitute?

Mr. VANCE, of North Carolina. I think not. He was regularly employed and was not dismissed until the 1st of September. This is a very simple matter, and I hope the amendment will be adopted.

Mr. ROBERTS. I desire to say that in my opinion this is a meritorious case; but at the same time it is one of a class; there are many more like it; and if the justice of this claim is acceded to, I sincerely trust that the same action may be taken in all similar cases. This case does not in any material aspect differ from many others now before the Committee of Accounts. I shall at the proper time offer an amendment by which the difficulty in all these cases may be cured, by increasing the miscellaneous fund to such an extent as will justify the Committee of Accounts in making proper allowance in cases of this class which may come before them.

Mr. HOLMAN. Do I understand the gentleman to say that this claim is before his committee?

Mr. ROBERTS. I say that this case is before our committee at the present time, and I believe it to be the opinion of the committee that this party should be paid. But his case does not differ in any essential respect from the cases of many others who should also be paid, and who, but for a particular species of economy, which I do not propose at this time to characterize, would have been paid.

Mr. HOLMAN. In view of the statement which has been made, I trust the gentleman from North Carolina will not press this claim, but will let it stand on the same footing with others of the same class. I admonish the Committee of the Whole that, at the rate at which we are now increasing appropriations in this bill, there will be no use for this House to talk about retrenchment. If claims of this class are as numerous as the gentleman from Maryland [Mr. ROBERTS] intimates, and if they are all to be adjusted, as I infer is the intention, then I think that the attempts at retrenchment made at the last session of Congress will prove very delusive.

Mr. FOSTER. That is what we always thought.

Mr. HOLMAN. I trust that this claim will be permitted to stand on the same footing as others of like character, and that the gentleman from North Carolina will withdraw his amendment.

Mr. ROBERTS. I heartily agree with the gentleman from Indiana in all his efforts for retrenchment whenever retrenchment is proper; but I confess I do not support retrenchment when it trenches upon justice and right, and so far as these employés are concerned I regard the effort to withhold their pay as inconsistent with justice.

Mr. HOLMAN. Every employé of this House is employed under the authority of law, and every dollar authorized by law to be appropriated for the payment of employés has been appropriated.

Mr. VANCE, of North Carolina. I do not propose to withdraw the amendment. The case has been made out, and it is a just one. The money is due to this man; he did the work and ought to be paid. The Chairman of the Committee of Accounts [Mr. ROBERTS] has indorsed the propriety of this amendment, and I think the House should adopt it.

Mr. ROBERTS. I desire to state in defense of the officers of this House that so far as my knowledge extends they have carefully sought to attend to the business of their respective offices. But these difficulties have arisen in various cases; they will continue to arise; and I do not see any reason why the employés should be made to suffer. The House has had the benefit of their labors; and there is no conceivable reason why they should not be paid for their services. I sincerely trust that the sense of justice on this side of the House and on the other will see that they are all paid.

Mr. CONGER. I agree with the gentleman who has just spoken as

to the propriety and justice of paying for services actually rendered to committees or to the House, but I had hoped that these questions would come up at some time when it would be proper for me to inquire why persons who have been employed by this House and whose entire livelihood at this inclement season of the year depends upon the continuance of such employment—why maimed and wounded soldiers who have been serving as officers of this House have within the last two or three days been discharged from employment and their places given to others. This may not be the proper time to raise that question, but the suggestion of justice and equity by the gentleman on the other side recalls to my mind the fact that a one-armed soldier from my own State, who has been long a doorkeeper of this House and a faithful officer, has been discharged from employment within the last three days for no assigned reason except that his place was wanted for another.

The question being taken on the amendment of Mr. VANCE, of North Carolina, it was not agreed to, there being ayes 29, noes not counted.

The Clerk read as follows:

For amount necessary to pay the foreman of the folding-room from August 14, 1876, to June 30, 1877, $1,203.75.

Mr. FORT. I desire to ask from the gentleman who has charge of this bill an explanation of this item. I hope he will let us know why it has appeared necessary to make this appropriation in a deficiency bill. It seems to me there is but one officer in that place, and therefore how it becomes necessary to appropriate money sufficient to pay two I should like to have the gentleman explain.

Mr. HOLMAN. My friend from Ohio will excuse me, as I wish to explain to my friend from Illinois that on the last day of the last session my attention was called to the fact by the Doorkeeper that we had not provided for the office of foreman of the folding-room, a place always filled heretofore by an eighteen-hundred-dollar messenger, and a resolution was introduced at once providing that a foreman might be employed, not at $1,800 a year, but at $3.75 a day. I am assured by the Doorkeeper of the House that he has remained in that employment ever since and that it is necessary hereafter as heretofore that employé should be retained in that employment. That is the ground upon which this stands.

Mr. GARFIELD. I understand that a large number of persons were employed in the folding-room at the adjournment of Congress, and what was done with the rest?

Mr. HOLMAN. They were employed by the piece. We only provided for a reduced number of messengers.

Mr. GARFIELD. Was it not the understanding that the employés of the folding-room should be continued on piece-work after the adjournment of Congress?

Mr. HOLMAN. We employed none to do the folding except laborers at $750 a year. A certain number of laborers were employed to do the folding by the piece. We have always had a foreman of the folding-room at $1,800 a year. Instead of the foreman at $1,800 a year we provided, by resolution, for a messenger at $3.75 a day.

Mr. CONGER. Is that provided for by any law?

Mr. HOLMAN. No; it was provided for simply by resolution of the House last December.

The CHAIRMAN. This discussion is entirely irregular. Does the gentleman from Illinois make any motion?

Mr. FORT. Yes, I move to strike out this section *pro forma*.

Mr. CONGER. I wish to ask the gentleman from Indiana why his remarks in regard to the other employés should not apply to this one.

The CHAIRMAN. The gentleman from Illinois is entitled to the floor.

Mr. CONGER. But the gentleman from Illinois yielded to me for a question or else I should not have trenched upon his time.

The CHAIRMAN. Does the gentleman from Illinois yield to the gentleman from Michigan?

Mr. FORT. For a question.

Mr. CONGER. I suggest that if the remark of the gentleman from Indiana in regard to the other account which was defeated, that it was not authorized by law and should go to the Committee of Accounts and be reported to the House, was a proper one, then the same remark should apply to this case.

Mr. HOLMAN. I have already tried to explain this matter to the gentleman from Michigan.

The CHAIRMAN. Does the gentleman from Illinois yield to the gentleman from Indiana?

Mr. FORT. Certainly.

Mr. HOLMAN. I have already stated upon it being discovered that there was no foreman provided for the folding-room, as we did not have enough messengers to detail a messenger at $1,800 a year to do the duties of that particular office—for that reason on the last day, or on the day before the last of the last session, a resolution was offered and adopted by this House providing for a foreman at $3.75 per day. From that time to December, and from then up to the present time, I am informed by the Doorkeeper, this foreman has been retained in the office.

I wish to say further, that if in the judgment of the gentleman from Illinois, who understands this matter perhaps much better than I do, a superintendent of the folding-room is not required—although we always had one heretofore—if not actually required at any salary, then this may be amended by appropriating only sufficient to pay this foreman up to the time of his discharge, and he can be discharged on the passage of this bill.

Mr. FORT. I now yield the balance of my time to the gentleman from Tennessee, [Mr. RIDDLE.]

Mr. CONGER. Was not this employé from the adjournment of Congress to the commencement of the session away from the House and in Indiana?

Mr. HOLMAN. I know that he was absent from the Capitol, but how long I do not know.

Mr. RIDDLE. I trust that the motion of the gentleman from Illinois will be adopted. Opposition was made to the amendment moved by the gentleman from North Carolina, [Mr. VANCE,] although that case is identical with this one. In fact Mr. Freeman was employed by the gentleman who is intended to be favored by the provision of the bill to be stricken out. Now, the gentleman from Indiana proposes all these cases shall be thrown before the Committee of Accounts, to let them stand upon an equal footing. I favor his proposition. I am opposed to any sort of legislation which will make fish of one and fowl of another. If an employé of the State of Indiana is to be paid, I insist that the employé from Tennessee shall also be paid; and I trust the House will sustain the motion of the gentleman from Illinois.

Mr. HOLMAN obtained the floor.

Mr. FORT. I ask the gentleman to yield to me for a moment.

Mr. HOLMAN. Certainly.

Mr. FORT. I wish to say, Mr. Chairman, that, if the Doorkeeper of this House thinks the services of this gentleman are required, I shall of course feel disposed to come to the same conclusion; for, in my judgment, he is doing all he can to economize; and I do not believe he would keep one employé on the pay-roll that was not absolutely necessary. But it seems to me that this is a case that ought to go along with those that have been refused; and if the gentleman from Indiana comes in and puts one individual in the deficiency bill, he ought to put the whole list in, as has been well said by the chairman of the Committee of Accounts. Now, there are quite a number of other worthy gentlemen who were relieved from duty who might be considered officers of this House; and they were turned out. Why is it—I ask the gentleman to explain while he is on the floor—that this gentleman must be put in the deficiency bill and no others of the same class?

Mr. HOLMAN rose.

Mr. GARFIELD. I desire to ask the gentleman from Indiana if the point of order does not lie against this, that it is not provided by law?

Mr. HOLMAN. Oh, no; the point of order does not lie against this. I have already stated, with all the distinctness I am capable of, that on the last day of the session this was authorized by resolution of the House.

Mr. GARFIELD. But not by law.

Mr. HOLMAN. Not by law.

Mr. GARFIELD. Then I make the point of order.

The CHAIRMAN. If the point of order had been raised in time, the Chair would have sustained it; but, debate having been proceeded with, it is too late.

Mr. HOLMAN. The gentleman from Ohio would not have raised the point of order, for this reason——

Mr. GARFIELD. O, I do not raise it.

Mr. HOLMAN. He would not have raised it for this reason: We have been compelled to provide for that particular employé. We have also been compelled to provide for the gentleman who raises the flag over this part of the Capitol, and who has been here for a great many years, Mr. Chauncey. The item is as follows:

For amount necessary to pay John T. Chauncey from June 30, 1876, to March 4, 1877, as per resolution of the House, at $3.60 per day, $389.20.

There are several items of that kind. The gentleman from Illinois [Mr. FORT] does me injustice about this. These cases were provided for by resolution of the House, the places being necessary to be filled.

Mr. FORT. Not this one. I understand this superintendent had no one to superintend. All the folders had been discharged.

Mr. HOLMAN. This foreman was provided for by resolution on the last day of the session. I am exceedingly anxious to be understood about it. I have before me the last volume of the CONGRESSIONAL RECORD containing the proceedings at the close of the session, and if the gentleman will have patience and give me time I will find the resolution. This foreman was employed under a resolution of the House.

Mr. CONGER. I would like to hear the resolution and to learn by whom it was offered.

Mr. HOLMAN. I have the book here, and will hand it to the gentleman if he will hunt it up.

Mr. CONGER. By whom was the resolution offered?

Mr. HOLMAN. I offered it myself. [Laughter.]

Mr. CONGER. Where does this employé live?

Mr. HOLMAN. Since my friend from Michigan is so curious about it, I will state that this gentleman, a very competent man for the position, is from my own State, and that he has been in the employ of the House from the time he was authorized to be employed by the resolution of the House last August to the present time. The proposition I make to the gentleman from Illinois [Mr. FORT] is this: if in

his judgment the office is not required, let it be abolished by the provisions of this bill.

Mr. FORT. I think it is required. I do not mean to say that it is not. I think it is necessary. But I also think it was necessary to retain some other gentlemen that were discharged and who are now without pay; and if the gentleman from Indiana does not propose to pay them I do not see why it is he wants to pay this gentleman who happened to have a home in his State.

Mr. HOLMAN. My friend mistakes me entirely. I have never intimated that these men were not to be paid. I have simply said that all cases of that character, where persons have been employed without any authority at all on the part of the House by the Doorkeeper and other subordinate officers of the House, if they were so employed, should go to the Committee of Accounts.

Mr. FORT. Has this case ever been there?

Mr. HOLMAN. It has not been and it was not necessary that it should go there.

Mr. FORT. Why was it not necessary?

Mr. HOLMAN. Does my friend consider when the House directs the employment of an employé and fixes his compensation at $3.75 a day, as foreman of a given branch of the service of the House, that that has to go to the Committee of Accounts?

Mr. FORT. Yes; when his occupation is gone; when all have been discharged; when there is nobody but the superintendent.

Mr. HOLMAN. That may be true. But is it true that in the vacation he had no duty to perform?

Mr. FORT. I take the gentleman's word for it. He said the others were discharged because there was nothing to do.

Mr. HOLMAN. O, no; if the gentleman from Illinois so understood me, he has done himself and me great injustice.

Mr. FORT. I do not wish to do the gentleman any injustice.

Mr. HOLMAN. We provide for a given number of messengers and laborers and then we provide for the folding done by piece from the time of adjournment until the meeting of Congress.

Mr. FORT. Is it necessary to have a superintendent to superintend persons who work by the piece?

Mr. HOLMAN. I think it is necessary, and my friend himself admits that it is proper.

Mr. FORT. I think so. I think the Doorkeeper will employ only those who are necessary; if we let him alone, he will manage his work with as few employés as possible.

Mr. HOLMAN. Now I wish to say a word to the gentleman from Tennessee, Mr. [RIDDLE,] but I see he has left the Hall. If he were present, I should wish to say a word to him.

Mr. RIDDLE. Here I am.

Mr. HOLMAN. I have been told very recently by the Doorkeeper that he thought this was a proper appropriation, and that in a case where a man performed services on account of somebody else properly employed, himself not being able to discharge his duties, he ought to be paid.

Mr. RIDDLE. My man was put in by Mr. Brown.

Mr. SOUTHARD. I desire to ask the gentleman a question. What was the necessity to employ him?

Mr. HOLMAN. I have answered that question five times already. [Laughter.] My motion is made at the instance of the Doorkeeper of the House.

Mr. LAWRENCE. From what district is this man?

Mr. HOLMAN. From my own. [Laughter.]

Mr. FORT. By request, I would ask whether this superintendent of the document-room could not perform his duties by correspondence?

Mr. HOLMAN. O, I do not know; I am not familiar with that branch of the service. [Laughter.]

Mr. ROBERTS. The gentleman from Indiana states that these various propositions should properly go to the Committee of Accounts. I desire to ask him this question: Under this bill the amount generously placed by the Committee on Appropriations to the miscellaneous fund amounts to $500; does he know how we are to pay a claim of $1,200 out of that sum?

Mr. HOLMAN. There are specific appropriations for these cases.

Mr. FORT. I will not insist upon my motion to strike out the paragraph, but will yield to the gentleman from Tennessee [Mr. RIDDLE] to offer an amendment to it.

Mr. RIDDLE. I move to amend the amendment by adding thereto the following:

For the payment of C. L. Freeman, for services rendered in the folding-room, House of Representatives, from August 14 to September 1, 1876, seventeen days, at $60 per month, $33.35.

Mr. HOLMAN. I trust the gentleman from Tennessee will explain how it happened that these services were rendered.

Mr. RIDDLE. I will state that this man was employed by Mr. Brown, who went to the State of Indiana in the manner already stated. He came here and performed all the services. I understand from the Doorkeeper that while this man Brown was away in the State of Indiana the Doorkeeper appointed this man, and, the appointment being contrary to law, that is the reason why he has not been paid.

Mr. HOLMAN. Then, if I understand it, the citizen of Indiana was absent and this gentleman was substituted in his place?

Mr. RIDDLE. Not in his place, but was appointed under his order. I do not object to the payment of the man from Indiana, but I do insist on the payment of the man from Tennessee. [Laughter.]

Mr. CONGER. This man Brown seems to have been employed by some kind of arrangement in the folding-room of the House, but he wandered away; he wandered to Indiana. Now I do not know what service he may have performed there, but I think it safe to say, from the result of his labors, that he ought to be paid for the services he performed there, for they were more profitable and successful than his services would have been here. I think all these cases should go to the Committee of Accounts.

Mr. HOLMAN. Why, Mr. Chairman, my friend must remember that not merely a few doorkeepers and subordinates about this Capitol, but the great army of employés in all the Departments of the Government, flocked home last fall to cast their votes in the October and November elections.

Mr. CONGER. I do not yield the floor. I simply wished to say that I never heard of one of them about the Capitol leaving his place and employment here until he had learned that Mr. Brown had gone. [Laughter.]

Mr. HOLMAN. They acted very prudently, very cautiously.

Mr. CONGER. Knowing that he was the particular and proper representative of my economical friend from Indiana, they thought it right to go if he did. That may not have been an excuse, but it is at least a paliation.

Mr. HOLMAN. And it would have been a very good excuse indeed if the thing had only occurred this year; but I believe it has happened every year.

The question was then taken upon the amendment offered by Mr. RIDDLE, and it was agreed it.

The Clerk read the following:

For amount necessary to pay John T. Chauncey from June 30, 1876, to March 4, 1877, as per resolution of the House, at $3.60 per pay, $889.20.

Mr. VANCE, of Ohio. I move to insert after the paragraph just read that which I send to the Clerk's desk.

The Clerk read as follows:

To pay Henry Lewis for labor in the Doorkeeper's department performed during the months of September, October, November, and December, 1876, at the rate of $720 per year, $240.

Mr. KASSON. I desire to perfect the text of the clause of the bill just read, before any amendment is offered, if the gentleman from Ohio [Mr. VANCE] will yield to me for that purpose.

Mr. HOLMAN. Will the gentleman from Iowa [Mr. KASSON] yield to me a moment? I desire to go back and correct the text of a paragraph which we have passed. I find that by the bill as printed the compensation for the foreman of the folding-room is provided for up to the 30th of June next. I ask consent to strike out "30th of June" and insert "4th of March," for there is no necessity for continuing this office beyond the 4th of Marth next.

Mr. FOSTER. There is no objection to that.

No objection being made, the amendment of Mr. HOLMAN was agreed to.

Mr. KASSON. I offer as a substitute for the paragraph just read that which I send to the Clerk's desk.

The Clerk read as follows:

To pay John T. Chauncey from June 30, 1876, pursuant to resolution of the House of the 13th of December, 1876, at the rate of $3.60 per day during the time of his employment, the amount necessary therefor.

Mr. KASSON. A single word of explanation. I state it in the absence of the gentleman from Georgia [Mr. STEPHENS] who introduced the resolution which was adopted by the House. The resolution does not limit the time of the employment of Mr. Chauncey, but provides for his employment for whatever time may be necessary, which may be one month and may be three months. The pending paragraph in the bill terminates his employment on the 4th of March next.

He is a gentleman well known to members here, who has charge of very important matters connected with their convenience and with the safety of their desks, &c. I have consulted gentlemen on both sides of the House, and it seems to them better not to limit his employment to the 4th of March, but to allow the Doorkeeper to continue him as long as necessary. My amendment does not change the rate of pay.

Mr. HOLMAN. I have no objection at all to the employment of the gentleman named in this proposition; for one I am very willing he should be employed after the 4th of March next. But it may be found that the number of employés of the House authorized by law is sufficient, and this gentleman can be continued in employment very well without adding to the number of employés of the House. Inasmuch as the House has adopted the resolution providing for the employment of Mr. Chauncey, we have thought proper to make an appropriation in this deficiency bill to pay him up to the close of this session of Congress from the time when he was dismissed, on account of the reduction of force, which seems to have been the 1st day of July last.

This is not a question merely of the employment of Mr. Chauncey; I think that is very proper. He is one of the old employés of the House and well informed as to all the duties required of him. But what I object to is this mode of increasing the number of our employés. Let Mr. Chauncey be paid up to the 4th of March, and then when we come to make up the regular appropriation bill for the deficiencies of this

year as well as of the next, if it is necessary and proper that he should be retained after the 4th of March, and I think it is, he could be retained without adding one more to the list of our employés. That is all I have to say upon that point.

Mr. KASSON. I only wish to say that my proposition makes no change in any respect in the proposition contained in the bill, except the one which I have indicated. If it is necessary to employ Mr. Chauncey to take care of the desks of members after the 4th of March next, then his pay will be provided for by my amendment. I yield to the gentleman from Pennsylvania [Mr. CLYMER] who understands fully this proposition.

Mr. CLYMER. I think the change proposed by the gentleman from Iowa [Mr. KASSON] is eminently proper. It is not supposed that the Doorkeeper will retain Mr. Chauncey here longer than the 4th of March next if his services are not required. By the text of the bill his employment will cease peremptorily at that time. Now, I have sufficient confidence in the Doorkeeper to trust him in this matter.

The CHAIRMAN. Debate upon the pending amendment has been exhausted.

Mr. HOLMAN. I move to strike out the last word for the purpose of saying that if the House desires in this mode to increase the number of its employés, well and good. We have fixed by law the number of employés of this House, as far as this present Congress is concerned, up to its close. If it is found necessary that a particular person should be employed, then let him be employed. This was an exceptional case; it does not apply beyond the present session of the House. There is an army of employés who might be continued in the service of the House during the recess; and if that is to be done, I should have no objection at all to Mr. Chauncey being one of them.

Mr. KASSON. This does not increase the number of employés at all. It simply follows the resolution, whatever may be its force. If the resolution by its terms does not extend beyond the 4th of March, this will not extend it.

Mr. HOLMAN. The gentleman from Iowa certainly knows that this is adding one to the number of employés.

Mr. KASSON. On the contrary it makes no addition to the number. A resolution was adopted specifically employing Mr. Chauncey. I do not vary to the extent of a hair the language of that resolution. But I do not wish to debate this question further; it is too trifling a matter to occupy so much time.

Mr. HOLMAN. As I understand, the gentleman from Iowa is now referring to that resolution; but not half a dozen members of this House knew that such a resolution was adopted. If in that mode you are to increase the employés of the House, there is simply no end to this matter.

Mr. KASSON. I think the gentleman from Indiana adopted this mode (did he not?) in respect to the foreman of the folding-room.

Mr. HOLMAN. O, yes, sir; and it was done at a time when it had to be done.

Mr. KASSON. So was this.

Mr. HOLMAN. And it was done on the recommendation of the Doorkeeper. I am not aware that any person has recommended this.

Mr. KASSON. This also has the approval of the Doorkeeper, as I am informed. But I will not take up further time on this matter.

The amendment of Mr. KASSON was agreed to.

Mr. VANCE, of Ohio. I move to amend by inserting after the amendment just adopted the following:

To pay Henry Lewis for labor in the Doorkeeper's department performed during the months of September, October, November, and December, 1876, at the rate of $720 per year, $240.

I will merely say that this man was not discharged; he has faithfully and honestly performed the labors in his department during all this time, and he should properly be paid. The Doorkeeper has recommended his payment.

Mr. HOLMAN. I trust that the gentleman will explain why this man was not paid if he was regularly employed.

Mr. VANCE, of Ohio. His name was not placed upon the roll made out by the Doorkeeper.

The amendment of Mr. VANCE, of Ohio, was adopted.

The Clerk read as follows:

To pay fees of witnesses summoned for examination before committees of the House, and other expenses incident to investigations, $13,000.

Mr. ROBERTS. I move to amend by striking out the clause just read and also the following clause: "for purchase of miscellaneous items for the use of the House, $500;" and inserting in lieu of both these paragraphs the following:

For miscellaneous items, $21,000.

I propose by this amendment to cover not only the item of $13,000 just read by the Clerk, but also to increase the miscellaneous fund of this House so that the Committee of Accounts may be enabled to continue to perform its ordinary functions by paying the small accounts passed from time to time with the assent of this House. This bill if passed in its present shape would, in my opinion, pass with an improper title. It would be, practically speaking, a bill to abolish the Committee of Accounts. If the House desires to pass the bill with that object, I, as chairman of the committee, am prepared to assent rather than to see this continual fight in regard to small matters.

If $21,000 be appropriated as the miscellaneous fund, it will be $7,000 less than the amount appropriated for this purpose in previous Congresses for years and years. To that extent my proposition is a reduction and a retrenchment, in the proper sense of the term. The sum of $21,000 I believe to be amply sufficient to meet all demands, so far as I have any knowledge. There are many reasons why this fund should be increased. The numerous accounts constantly presented to the Committee of Accounts for examination and approval are in themselves an argument in favor of increasing this fund, so that various necessary expense smay be settled without requiring the passage of a separate bill in each case. As an illustration, I will name one case that might arise. In the event of the death of any member, it would be utterly impossible under the present system to pay the funeral expenses except by a separate bill. Heretofore there has always been a fund from which such expenses could be paid. If the death of a member should occur at any time when a bill could not be passed, it would be necessary for those who might furnish various articles or incur expenses to wait perhaps twelve months before receiving their money. I do not think it is becoming on the part of this House to assent to any such system; and I sincerely trust that both sides of the House will see the justice of increasing this fund so as to cover such allowances and also the claims already mentioned of employés, who should promptly receive their per diem. I hope that if the Committee of Accounts is to continue to discharge its duties, it may have the respect and support of the House in so doing.

Mr. GARFIELD. That is right.

Mr. FORT. I wish to indorse what the chairman of our committee [Mr. ROBERTS] has said on this subject.

Mr. HOLMAN. I desire to offer an amendment to the original text, to strike out $13,000 and insert $10,000 as the appropriation to pay fees of witnesses or other expenses incident to investigations. I wish to say a word to the gentleman from Maryland, [Mr. ROBERTS,] and to call his attention to the remark just now of the gentleman from Ohio, "That is right." The gentleman from Ohio never gave his approval in this direction when his side of the House was responsible for the expenditure of a contingent fund. My friend from Maryland must have seen that while the passage of a simple resolution in regard to the expenditure of the contingent fund of the House was all that was necessary to take money from the Treasury anything like economy was absolutely impossible; and no one has shown more anxiety than have the gentleman from Ohio [Mr. GARFIELD] and his predecessor in the chairmanship of the Committee on Appropriations that the contingent fund should not be in such a position that we might reach out at any moment and expend it upon a mere House resolution. No other mode of expenditure could offer greater facilities for extravagance.

Mr. HOAR. I would like to ask the gentleman from Indiana (for I suppose he knows) whether it is true, as the gentleman from Maryland has just said, that there is now no fund from which the funeral expenses of a member of this House can be paid.

Mr. HOLMAN. And there has not been, so far as I am aware, for years. Those expenditures were made either by specific appropriations or a fund was added to the contingent fund of the House with a view to such expenditure.

Mr. GARFIELD. If the gentleman will allow me, I will say that I appreciate the compliment he has paid me for my action when I was chairman of the Committee on Appropriations in regard to the contingent fund of the House. I admit it is the most reckless and wasteful thing that can be done to allow a large contingent fund to be at the disposal of any one who can get a resolution through the House. For years we have sought to put the contingent fund within so narrow a limit that it could not be abused. For instance, we made it the law that the contingent fund should not be used to pay a salary. I would not disturb that; but the gentleman who is in charge of the Committee of Accounts, and who has spoken for it to-day, asks us to give seven thousand, or perhaps eight thousand dollars in addition to the $13,000 provided here. The $13,000, as I understand it, is for the specific purpose of paying the expenses of the investigating committees now out.

Mr. HOLMAN. No; he proposes to strike that out. He proposes to make the whole a contingent fund, every dollar of it.

Mr. GARFIELD. The $13,000, as I understand, is for that purpose, and he asks that it should be increased to $21,000. He says that will give $8,000 to meet little unnamable expenses, such as may be necessary on the sudden death of a member or to put wooden steps in this icy weather to enable us to go down in front of the Capitol without slipping on our icy —— [Great laughter.] That is the contingent fund of the House, and it ought to be large enough to meet expenses which are not salaries. I think the gentleman from Maryland is perfectly right in asking us to do that to meet these little expenses, but we should not provide a grab-bag into which every member shall thrust his hand to get a folder here or a folder there, just as he happens to have the temper of the House to help him or his personal popularity to get one through. I think it better to trust the Committee of Accounts of the House with the small fund of $8,000, as suggested by the gentleman from Maryland, and in doing that I do not break over all the old limits which I have been so careful to prevent and for which my friend from Indiana has complimented me.

Mr. ROBERTS. The illustration which the gentleman from Indiana himself has given this morning in regard to the passage of these resolutions of the House is the best evidence why they should go to the committee to be paid out of a fund under the control of the com-

mittee. There have been two or three resolutions passed just in the manner which the gentleman has indicated, and he has criticised the action of the House to the extent of saying that not more than a half dozen members knew of the passage of such resolutions. If that be true, then certainly it is an argument why the Committee of Accounts should have the superintendence of these accounts, to assent to them when they are proper and dissent when they are improper.

Mr. SOUTHARD. Let me say one word.

Mr. HOLMAN. I believe I have the floor. My friend from Maryland should see that we do not put ourselves to the trouble as individual members in trying to reach a given object by referring the subject to the Committee of Accounts. On the contrary, we ask the House to adopt a resolution, and it is paid, and that is an end of it. It never goes to the committee at all.

Mr. ROBERTS. I am only condemning the practice; saying the proper practice would be to send these resolutions to the Committee of Accounts with authority to act in the premises.

Mr. HOLMAN. All experience demonstrates that when we have a contingent fund it will be used up day after day by just such resolutions.

Mr. SOUTHARD. I understand there are employés of this House who though duly employed have not yet been paid. I have one particular case in my mind at the present time where the account has been properly certified and yet the man has not been paid since the 1st of December. His account has been certified to by the Doorkeeper of the House as payable, but, as the gentleman from Maryland has informed us, these employés have been left without their money since December 1 because of this deficiency in the contingent fund of the House. For that reason I am in favor of committing this question to the charge of the Committee of Accounts, perfectly satisfied that it will exercise a just discretion in the expenditure of the contingent fund of this House.

Mr. HOLMAN. I rise to amend the text by striking out "13" where it occurs in line 68, and inserting "10,000," so as to make it $10,000 instead of $13,000. I think the amount is sufficient.

The CHAIRMAN. The Chair will remind the gentleman from Indiana that the amendment of the gentleman from Maryland is to amend the text by striking out and inserting.

Mr. HOLMAN. I thought his amendment was to strike out the whole of it. I ask that the amendment be again read.

Mr. ROBERTS'S amendment was again read.

Mr. HOLMAN. Mr. Chairman, I do not wish any misunderstanding as to this matter. We wish a small fund to be set apart to meet the current expenses of the investigating committees of this House. We had proposed $13,000. I am led to believe that $10,000 is sufficient for that purpose. I trust the gentleman from Maryland [Mr. ROBERTS] will withdraw his substitute. He does not wish that money to be appropriated to any other object.

Mr. ROBERTS. I can only answer that I am willing to do what the gentleman suggests provided he will further amend by adding "for miscellaneous purposes, $11,000."

Mr. HOLMAN. I hope the gentleman will not say "$11,000."

Mr. ROBERTS. That is exactly what I do say.

Mr. HOLMAN. I move to amend by striking out "$13,000" and inserting "$10,000" in the original text.

The CHAIRMAN. The question is first on the motion of the gentleman from Indiana to amend the text of the paragraph proposed to be stricken out. If his amendment is lost, then the question will recur on the motion of the gentleman from Maryland, [Mr. ROBERTS.]

The question being taken on Mr. HOLMAN'S amendment, there were—ayes 22, noes 56.

Mr. HOLMAN. A quorum has not voted. I call for tellers. I say to the House that $10,000 is all that is required for this purpose of paying fees of witnesses.

Tellers were ordered; and Mr. ROBERTS and Mr. HOLMAN were appointed.

The committee again divided; and the tellers reported—ayes 35, noes 48.

Mr. HOLMAN. A quorum has not voted. I do not ask for further count.

So the amendment was not agreed to.

The CHAIRMAN. The question recurs on the amendment of the gentleman from Maryland, [Mr. ROBERTS.]

Mr. HOLMAN. I move to amend the substitute of the gentleman from Maryland by adding these words:

Thirteen thousand dollars of which shall be to pay fees of witnesses summoned for examination before committees of the House, and other expenses incident to investigations not otherwise provided for.

Mr. FORT. I desire to make an inquiry. What has become of the amendment offered by the chairman of the Committee of Accounts?

Mr. HOLMAN. It is still pending, and this is an amendment to that.

Mr. FORT. Does that leave anything for contingencies?

Mr. HOLMAN. O, yes, it leaves a large amount.

The question being taken on Mr. HOLMAN'S amendment to the substitute offered by Mr. ROBERTS, it was agreed to.

Mr. CONGER. I move further to amend the substitute as now amended by inserting after the word "dollars" the words "or so much thereof as may be necessary."

The amendment was agreed to.

The question being taken on the substitute as amended, it was adopted.

The Clerk resumed the reading of the bill and read the following paragraph:

To provide for a deficiency in the contingent expenses of the Department of Justice, $5,000, to be disbursed under the Attorney-General.

Mr. CAULFIELD. I offer the following amendment:

Strike out the paragraph just read and insert in lieu thereof the following:

"To remedy error in enrolling act of last session making appropriations for the legislative, executive, and judicial expenses of the Government for the year ending June 30, 1877, and for other purposes, $11,000, to be disbursed under the Attorney-General."

The language of the bill is entirely erroneous. At the last session there was in the bill making appropriations for the legislative, executive, and judicial expenses of the Government a fund provided for the Department of Justice amounting to $11,000. That appropriation was omitted by a mistake of the enrolling clerk. The purposes for which those $11,000 were appropriated are as follows:

For contingent expenses of the department, namely: for furniture and repairs, $1,000; for law and miscellaneous books for the library of the Department, $1,000; for the same for the office of the Solicitor of the Treasury, $500; for stationery, $2,500; for miscellaneous expenditures, such as telegrams, fuel, lights, labor, and other necessaries, $6,000; in all, $11,000.

That is the law as it stands to-day; but by a mistake of the enrolling clerk that was omitted in the enrollment; and therefore I say that the provision now to be made ought to be in the language of the amendment I have offered.

Mr. KASSON. I would suggest to the gentleman that, instead of saying "to remedy error in enrolling act," the amendment should rather read "to supply omission."

Mr. CAULFIELD. Very good; I will modify the language so as to make it "to remedy error and supply omission."

The amendment, as modified, was agreed to.

Mr. HOLMAN. I offer the following amendment:

For purchase of coal, labels, &c., for the Botanical Garden, $500.

Mr. GARFIELD. That is right.

Mr. HOLMAN. The Superintendent of the Botanical Garden insists that he cannot get along without this.

The amendment was agreed to.

Mr. HOLMAN. In line 59 of the bill the amount "$1,203.75" should be stricken out and "$761.25" substituted to make it correspond with the amendment.

Mr. FOSTER. That is right.

Mr. HOLMAN. I offer that amendment.

The amendment was agreed to.

Mr. FOSTER. I move that the committee rise and report the bill as amended.

The motion was agreed to.

So the committee rose; and the Speaker having resumed the chair, Mr. HOSKINS reported that the Committee of the Whole on the state of the Union had had under consideration the special order, being the bill (H. R. No. 4307) making appropriations to supply certain deficiencies in the contingent fund in the House of Representatives, and for other purposes, and had directed him to report the same with sundry amendments.

The amendments reported by the Committee of the Whole on the state of the Union were agreed to; and the bill as amended was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. FOSTER moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to

Mr. CONGER. I move that the House do now adjourn.

LEAVE OF ABSENCE.

Pending the motion to adjourn, leave of absence was granted as follows:

To the Chaplain, Mr. Townsend, for January 6th.

To Mr. LEVY, for two days on account of illness.

ADJOURNMENT OVER.

Mr. KNOTT. Pending the motion to adjourn, I move that when the House adjourns it adjourn to meet on Monday next.

Mr. HOLMAN. I trust the House will not adjourn over to-morrow; the public business is getting greatly behindhand.

The SPEAKER. The motion to adjourn over is not debatable.

The question was taken on Mr. KNOTT'S motion; and on a division there were—ayes 64, noes 50.

Mr. HOLMAN. I call for tellers.

Tellers were ordered; and Mr. HOLMAN and Mr. KNOTT were appointed.

The House divided; and the tellers reported—ayes 70, noes 47.

Mr. BUCKNER. I make the point of order that no quorum has voted.

The SPEAKER. The Chair sustains the point of order; less than a quorum cannot adjourn over. The only motion now in order is a motion for a call of the House or to adjourn, and a motion to adjourn is already pending.

The question was taken on Mr. CONGER'S motion, and it was agreed to; and the House accordingly (at four o'clock and forty-five minutes p. m.) adjourned.

PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. G. A. BAGLEY: The petition of citizens of various States, that the United States assume the award made in favor of American citizens and against Mexico, under the last joint commission, to the Committee on Foreign Affairs.

By Mr. FAULKNER: The petition of John S. Gallagher, formerly of West Virginia, now of Washington City, a soldier of the war of 1812, for a pension, to the Committee on Revolutionary Pensions.

Also, the petition of P. Lipscomb and other citizens of Tucker County, West Virginia, for the establishment of a post-route from Saint George to Aurora, in said State, to the Committee on the Post-Office and Post-Roads.

By Mr. FRANKLIN: The petition of James A. Price, for compensation for services rendered while second lieutenant and recruiting officer for the Sixteenth Kansas Cavalry Volunteers, to the Committee on Military Affairs.

By Mr. FREEMAN: The petition of citizens of Philadelphia, that Congress may amicably adjust the question of who is to be inaugurated President of the United States, to the committee on counting the electoral votes.

By Mr. HARDENBERGH: A paper relating to the establishment in New York City of an institution for providing temporary shelter to respectable destitute men, to the Committee on Naval Affairs.

By Mr. KIDDER: A paper relating to the establishment of a post-route from Bismarck, Dakota Territory, via the military post at the mouth of Tongue River and mouth of Big Horn River, to Fort Ellis, Montana Territory, to the Committee on the Post-Office and Post-Roads.

By Mr. O'NEILL: Memorial of citizens of Philadelphia, expressing a desire for a harmonious settlement of the presidential question, to the committee on counting the electoral vote.

By Mr. RIDDLE: A paper from Dr. L. R. McClain, relative to the recommendation of the Postmaster-General as to the compensation of postmasters of the fourth class, to the Committee on the Post-Office and Post-Roads.

By Mr. ROBBINS, of Pennsylvania: The petition of William Welsh, Henry Armitt Brown, B. P. Hunt, Thomas Cathcart, Francis McGhee, Stinson Brothers, John Moffet, Gillender & Sons, Richard Irwin, and other citizens of Pennsylvania, that a conscientious and honorable adjustment be had of the present national election complication, to the committee on counting the electoral vote.

By Mr. SMITH, of Pennsylvania: The petition of merchants and bankers of New York, that in counting the votes for President and Vice-President Congress may be influenced only by considerations of unselfish patriotism, to the same committee.

Also, the petition of 136 citizens of Columbia, Pennsylvania, setting forth the danger that threatens the Government from partisan spirit, and appealing to the House of Representatives to endeavor to insure a full, fair, and satisfactory count of the votes given in the late presidential election, to the same committee.

By Mr. THORNBURGH: The petition of Thomas H. Reeves, of Tennessee, for compensation as a member of the Forty-second Congress from the State at large, to the Committee on the Judiciary.

By Mr. TOWNSEND, of New York: The petition of citizens of White Creek, county of Washington, New York, that the United States purchase telegraph franchises, to the Committee on the Post-Office and Post-Roads.

HOUSE OF REPRESENTATIVES.

SATURDAY, *January* 6, 1877.

The House met at twelve o'clock m. Prayer by Rev. A. F. STEELE, of St. Mark's church, Washington.

The Journal of yesterday was read and approved.

FREEDMAN'S SAVINGS AND TRUST COMPANY.

Mr. DOUGLAS. I rise to a privileged report. I am instructed by the Select Committee on the Freedman's Bank to report to the House the bill (H. R. No. 4284) authorizing the commissioners of the Freedman's Savings and Trust Company to buy in certain real and other property, and to sell the same at public or private sale, and for other purposes.

The bill was read. It gives the commissioners of the Freedman's Savings and Trust Company, their survivors or survivor, and their or his successors, the right and authority to buy in, for the benefit of said company, any real or other property which may be offered for sale at public auction to pay debts or liabilities due said company, if, in their or his judgment, said property will otherwise be sacrificed, and to dispose of the same at public or private sale, as in their or his judgment may be deemed most advantageous to the creditors of said company, furnishing to the purchaser or purchasers of any property thus sold by them or him good and sufficient deeds of conveyance for their respective purchases.

The second section provides that the action of the said commissioners, in buying in each and every of the pieces of real and other property heretofore purchased by them to prevent their sacrifice, and in selling and conveying sundry parcels thereof, is approved and ratified; and that said commissioners, their survivors or survivor, and their or his successors, are fully authorized and empowered to sell and convey any of said property not heretofore sold to any purchaser or purchasers upon the most favorable terms for the creditors of said company.

Mr. DOUGLAS. I desire to make a single remark in explanation of one or two points in connection with this bill. It has been drawn after full conference with the commissioners of the Freedman's Bank, and is designed to remove a difficulty which they have encountered in closing up the affairs of that institution. When the bank went into liquidation under the act of 1874, there was a large amount of real estate conveyed to the institution to secure loans made by it. The commissioners, in proceeding to wind up the affairs of the bank, conceived that they had the right to buy out that property and also to resell it, and in my opinion they were invested with full powers to do so; but nevertheless there is a doubt as to the validity of the title they conveyed, which threatens not only to impede them in the winding up the affairs of the bank, but also to involve them in the expense of litigation. It has therefore been suggested by Mr. Creswell, an able lawyer, that a bill of this character be passed to relieve them of this embarrassment. I hope, therefore, there will be no objection to the bill, and I call the previous question on its passage.

Mr. HOAR. I trust that before the gentleman insists on the previous question he will allow the bill to be read again.

Mr. DOUGLAS. Certainly.

The bill was again read.

The previous question was seconded and the main question ordered; and under the operation thereof the bill was ordered to be engrossed and read a third time, and it was accordingly read the third time, and passed.

Mr. DOUGLAS moved to reconsider the vote by which the bill was passed; and also moved to lay the motion to reconsider on the table.

The latter motion was agreed to.

EPHRAIM P. ABBOTT.

Mr. HOLMAN. I call for the regular order.

The SPEAKER. The regular order being called for, the morning hour will now begin at twelve o'clock and twenty-five minutes p. m. The first business in order is the consideration of reports from committees of a public character, and the pending business is the unfinished business of the last morning hour for reports of this nature, being Senate bill No. 678, for the relief of Ephraim P. Abbott, reported from the Committee on Public Lands.

Mr. CONGER. I ask that the bill be again read.

The bill was read, as follows:

Be it enacted, &c., That upon the payment of $2.50 per acre by Ephraim P. Abbott, of the county of Wayne, in the State of Michigan, his heirs or assigns, into the Treasury of the United States, or to the receiver of the land office of the district in which the following lands are situated, within six months from the passage of this act, the Commissioner of the General Land Office shall cause a patent to be issued to said Ephraim P. Abbott, his heirs or assigns, releasing to him or them all the right, title, and interest of the United States in and to the following described tract of land, situate in the township of Ecorse, county of Wayne, and State of Michigan, lying in rear of and adjoining private claim numbered 667, fronting on the river Rouge, and patented to Gabriel Godfrey, said tract so lying in the rear of said front claim and extending back, of equal width of said front claim, to the line of lands patented to James May, and being bounded on the north by the rear of said front claim, eastwardly by the line of private claim numbered 37, confirmed to Charles Chovin, continued to the land so patented to James May, and westwardly by lands authorized by act of Congress of July 1, 1870, to be pre-empted by Thomas Henderson; but such patent shall, in no manner, interfere with any valid adverse right to said land, nor preclude a judicial investigation, in any court of law or equity, between the patentee, his heirs or assigns, and any adverse claimant of the said lands: *Provided also*, That any incumbrance or conveyance of said land by Robert Abbott, now deceased, the father of said Ephraim P., or any of the heirs of said Robert Abbott, shall have the same effect as if said land had been patented to said Robert Abbott during his life.

Mr. CONGER. I ask that the report be read.

The SPEAKER. The Clerk informs the Chair that there is no report; this is a Senate bill.

Mr. GOODIN. In order to give a better understanding of the provisions of this bill I send to the Clerk's desk to be read the report of the Senate Committee on Private Land Claims, upon this bill.

The report was read, as follows:

The Committee on Private Land Claims, to whom was referred the petition of Ephraim P. Abbott, to be allowed to purchase a tract of about eighty acres of land in the county of Wayne, Michigan, in the rear of private land claim No. 667, report:

That the front claim No. 667, on the south side of the river Rouge, in front of the land asked to be purchased, was patented to Gabriel Godfroy July 3, 1812, under "An act regulating the grants of land in the Territory of Michigan," approved March 3, 1807, (Statutes at Large, volume 2, pages 437 to 439,) having been confirmed to said Godfroy by the land board December 29, 1809, (State Papers, "Public Lands," volume 1, page 482,) under a previous act of Congress; that under the first above-named act the several claimants were entitled to a quantity not exceeding 640 acres, and their right was based upon occupancy and improvements made by the claimants, or those under whom they claimed, prior to 1796, and continued occupancy from that date; that this act was general, applying to all lands thus occupied in the district of Detroit, in which these lands were situated; that very few of the claimants made their claims for the whole amount allowed by the act, the rear lands being then of comparatively little value, and the claimants being bound to pay for the survey; that the settlements being confined to the margin of the Detroit and other rivers and along Lake Erie, in the eastern border of the territory, and the settlers generally within short distances of each other for mutual protection from Indians, the result was that each claim was comparatively narrow, and to

give any considerable quantity must extend back to considerable depth, the width of such claims varying from one arpent to six or seven arpents, and the depth from forty to ninety arpents, but along the Detroit River and the river Rouge the length of the claims was generally either forty or eighty arpents, and some of intermediate length; that in 1812, when the rear lands began to be thought of greater value, Congress, by the act of April 23, 1812, (Statutes at Large, volume 2, page 711, section 2,) gave to all who had claims confirmed along the Detroit River, whose claims did not extend to eighty arpents in depth, the right to a tract in the rear of such front and original claim of equal width and extending far enough to make, with the front grant, eighty arpents in depth, and the claimants along the Detroit River availed themselves of the benefit of this second or back concession. But this act did not extend to any other claims than those bordering on the Detroit River, though the reasons would seem to have been the same in the cases of other claims generally, and especially those along the river Rouge near its mouth into the Detroit River, where this land was situated. But, whether from the public expectation that such second concessions would be allowed in all cases where the front tract confirmed was less than eighty arpents in depth, or because the surveyor who subsequently surveyed the public lands in the rear of the claims in some cases failed to discover the true lines in the rear of the shorter claims situate between longer ones, and supposed such short claims to be of equal length with the longer, it is very clear that in many cases the respective pieces of land lying in the rear of the shorter claims (where long claims adjoined them) were not surveyed by the government surveyor; and though still in fact government land, these portions not surveyed have generally been claimed and occupied and improved by the respective owners of the front grants as a part of the latter, and in some cases other persons have taken possession of such lands, occupied, claimed, and improved them; and in both classes of cases the parties in possession and claiming the land have sold, mortgaged, or leased the lands, and such lands have passed from the original down through many subsequent occupants, by a regular chain of conveyances, and taxes have been paid and valuable improvements made, and great injustice would now be done, and a fertile field of litigation opened, by treating these as public lands subject to entry by any but the occupant or holder of the record-title. They have, therefore, uniformly, and very properly, been treated in the General Land Office as not liable to sale, and only to be disposed of by congressional legislation.

In the present case, the front grant No. 667, and that adjoining on the east, No. 259, were short claims of only forty arpents in depth, situate between longer claims on each side, and the land in the rear (forty arpents in depth) was not surveyed as public lands. The portion of such land in rear of the adjoining claim 259 was by act of Congress of July 1, 1870, (Statutes at Large, volume 16, page 647,) treated as a pre-emption claim, and allowed to be purchased by Thomas Henderson at $2.50 per acre, he paying for the survey.

In the present case, the grantee of the front claim 667, Gabriel Godroy, after the proof of his claim, and prior to the issuing of the patent to him, conveyed the same to Robert Abbott, since deceased, the father of the petitioner, who not long after took possession as well of the land in rear as of the front grant, and continued to claim and hold the land until his death, in 1850, and his heirs have since claimed and held possession, treating the same as their own. That they have for many years regularly paid taxes on the land. All the other heirs of said Robert Abbott, deceased, have conveyed all their right and interest to the petitioner.

Your committee therefore report a bill allowing the petitioner to purchase the right and title of the United States to said land at $2.50 per acre, and providing for a patent which shall operate only as a release, and saving any rights of adverse claimants as well as the rights of any purchaser or incumbrancer from said Robert Abbott or any of his heirs, and recommend its passage.

Mr. GOODIN. I now call the previous question on the third reading and passage of the bill.

Mr. CONGER. I desire to say——

The SPEAKER. Does the gentleman from Kansas [Mr. GOODIN] yield to the gentleman from Michigan, [Mr. CONGER?]

Mr. GOODIN. Certainly I will, if the gentleman desires to be heard.

Mr. CONGER. I do not know that I am acquainted with this particular land, although it is within five or six miles of the city of Detroit, in the State of Michigan, connected with the old French claims along the rivers of Michigan. It seems to me that the proper place to settle such questions as this is in the courts, where heretofore such claims have been settled. I cannot see any special reason for this legislation; but if there is to be such legislation I think the last clause of the bill should be modified. That clause as it now stands makes any deed of Abbott or his son, any conveyance from either of them, as binding as though the patent had been granted to said Robert Abbott. That takes this land out of the control of the courts and overcomes all rights of adverse parties. I call the attention of the gentleman from Kansas to that last clause.

Mr. GOODIN. If the gentleman will examine particularly the latter portion of the bill, he will find that the rights of all adverse parties, if there be any, are entirely saved.

Mr. CONGER. Allow me a moment. The clause to which I refer is the following proviso:

Provided also, That any incumbrance or conveyance of said land by Robert Abbott, now deceased, the father of said Ephraim P., or any of the heirs of said Robert Abbott, shall have the same effect as if said land had been patented to said Robert Abbott during his life.

Now it seems to me that that proviso, notwithstanding the reservation of the rights of adverse claimants contained in another portion of the bill, conveys absolutely to the grantors of Robert Abbott this land by congressional legislation, against all other claimants. I think the bill should not be so sweeping.

Mr. GOODIN. I ask the gentleman to read the last few lines of the bill.

Mr. CONGER. I read the last proviso. It is true that in a previous portion of the bill it is provided—

But such patent shall in no manner interfere with any valid adverse right to said land, nor preclude a judicial investigation, in any court of law or equity, between the patentee, his heirs or assigns, and any adverse claimant of the said lands.

That is a very proper reservation; but the proviso which I send, and which follows in the bill, seems to do away with that reservation. There is in the body of the bill a clause protecting adverse claimants, and then comes a proviso which cuts off all adverse claims against the title given by Robert Abbott or his heirs. I think that portion of the bill should be modified.

Mr. A. S. WILLIAMS. This is an application to obtain a patent for a piece of land that has been in the possession of the Abbott family since 1814, and in the possession of the grantors probably fifty years anterior to that time. By the act of 1805 commissioners were appointed to examine these claims and to grant concessions to all those who had been occupying the lands previous to 1796. In 1809 a concession was make by these commissioners to Gabriel Godroy, who was the grantor of the Abbotts who claim this land.

This land is situated on the river Rouge; the front of it is more than eight miles from the city of Detroit and the rear of it three miles farther off, the land having been laid out in long narrow strips. When Mr. Abbott received this land from the grantor in 1814, he held a patent for simply the front concession. He could have obtained a patent under the act of 1812 for a sufficient additional amount to make a total of six hundred and forty acres. But the land in the rear of his patent seemed to be so far from settlements, there being but few French settlers along the river, that he did not comply with the conditions of the law requiring him to pay the expenses of the survey before he could have a patent for the additional land. It is within my own recollection that that land was deemed hardly worth surveying; it was considered a very inferior quality of land.

This state of affairs continued until three or four years ago, when it was ascertained that no patent had ever been obtained for this land. It has been in possession of Robert Abbott and his heirs ever since 1814, and there can be no question but what a patent ought to issue to Robert Abbott, or if there is any doubt there are sufficient conditions in the bill to save everybody that may have any claim. A similar patent was issued under the law of the Forty-first Congress for land adjoining this same tract, in which case there had been the same neglect to obtain a patent.

Mr. CONGER. Allow me to make this suggestion to the gentleman from Kansas, [Mr. GOODIN,] that he modify the proviso to read, "shall be as binding upon the said Abbott and his heirs," instead of saying "shall have the same effect as if said land had been patented."

Mr. A. S. WILLIAMS. That would create a necessity for sending the bill back to the Senate.

Mr. GOODIN. I hardly deem that change necessary; I think the bill is perfect as it has been reported. If we should make any amendment to it it must be sent back to the Senate, and at this late day of the session that may endanger the passage of the bill. I call the previous question.

The previous question was seconded and the main question ordered; and under the operation thereof the bill was ordered to a third reading, read the third time, and passed.

Mr. GOODIN moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

LAND-GRANT RAILROAD IN IOWA.

Mr. GOODIN, from the Committee on Public Lands, reported back, with a recommendation that it pass, the bill (H. R. No. 4168) to amend section 1 of the act of May 12, 1864, for a grant of lands to the State of Iowa to aid in the construction of a railroad in said State.

The bill was read, as follows:

Whereas by the first section of the act entitled "An act for a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State," approved May 12, 1864, it is provided that the railroad therein named, known as the McGregor Western Railroad, should be constructed in a westerly direction, by the most practicable route, on or near the forty-third parallel of north latitude, until it shall intersect the road therein named running from Sioux City to the Minnesota State line, in the county of O'Brien, in said State of Iowa;

And whereas it has become expedient, with the consent of the United States, that said western terminus of said McGregor Western Railroad should be changed: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That said McGregor Western Railroad, or any company to which the State of Iowa has made, or may hereafter make, the grant of the lands applicable to the completion of said road, as provided by the said act of Congress and the laws of Iowa, may, with the consent of the State of Iowa, intersect said road leading from Sioux City to the Minnesota State line, at a point outside and west of the said county of O'Brien in said State of Iowa, but not south of the said forty-third parallel of north latitude; and the consent of the United States is hereby given to said change: *Provided*, That nothing herein contained shall be construed to in any manner change the grant of land made to either of said roads by said act of May 12, 1864, or any other act, or to increase or change the lands taken under said grant: *And provided further*, That this act shall not be so construed as to change or affect the rights of any homestead or pre-emption settler, nor to extend the time for the completion of said McGregor Western Railroad; it being the sole and true intent and meaning of this act to give consent to the change of the western terminus of said road as herein declared.

Mr. HOLMAN. I wish to reserve any question of order to which this bill may be liable.

The SPEAKER. Does the gentleman make a point of order on the bill?

Mr. HOLMAN. I am not certain that it is subject to a point of order; but it seems to me that the change of the terminus of this road must necessarily involve a change in the lands granted to the road.

Mr. GOODIN. I think not.

Mr. HOLMAN. I wish to reserve that point of order.

The SPEAKER. The point of order will be reserved until the gentleman from Kansas [Mr. GOODIN] has an opportunity to be heard.

Mr. GOODIN. As the point of order has been reserved and as this bill was introduced by the gentleman from Iowa, [Mr. OLIVER,] I now yield to him to explain the provisions and objects of the bill.

Mr. OLIVER. Mr. Speaker, I think the point of order is not well taken. The bill does not propose to change the grant of land in any manner, either by increasing or diminishing it; it does not affect the grant in any way.

Mr. HOLMAN. It takes different lands, does it not?

Mr. OLIVER. No, sir; it does not. In 1864 a grant was made to the State of Iowa for the construction of two roads: one running from Sioux City to the Minnesota State line in a northeasterly direction and another from McGregor, on the forty-third parallel, to an intersection with the other road in O'Brien County. At that time it was contemplated that the road from Sioux City to the Minnesota State line should run through the whole length of O'Brien County from north to south, thus enabling the McGregor road to make the connection on the forty-third parallel, which the law provided it should do. Afterward the Sioux City road was constructed so as to touch only the northwest corner of O'Brien County, thus compelling the McGregor road to change its point of connection to a point some miles north of the forty-third parallel, in order to make the connection in O'Brien County. This bill simply proposes to allow the company to go back to the old line where its lands were selected and build the road on that line to a connection west of O'Brien County.

Mr. HOLMAN. Do I understand the gentleman from Iowa to say that this road has been actually constructed or is being constructed upon a different line from that originally provided for by the act of 1864?

Mr. OLIVER. No, sir. The road from Sioux City to the Minnesota State line, which has been actually constructed, was not constructed on the exact line that was contemplated at the time of the grant. It has been built so as to run through a corner of O'Brien County. The object of this bill is to permit the other road to connect on the forty-third parallel, as originally contemplated.

Mr. HOLMAN. But does not this bill authorize a change of the line of the road as defined in the act of 1864?

Mr. OLIVER. The law of 1864 did not provide that the road from Sioux City to the Minnesota State line should be constructed through O'Brien County. When the road came to be located, it was not located on the line that had been contemplated at the time the act of 1864 was passed. This bill does not affect the Sioux City road at all; it affects only the other road which connects with it.

Mr. HOLMAN. This is not the Sioux City branch of the Union Pacific Railroad?

Mr. OLIVER. No, sir.

Mr. HOLMAN. Then the gentleman states, as I understand, that this bill will not increase any appropriation of land heretofore made. Does it change in any degree the lands to be selected?

Mr. OLIVER. Not at all. It merely allows this road from McGregor to make its connection at the point originally contemplated where its lands were selected.

Mr. HOLMAN. Is the road last mentioned by the gentleman—the McGregor road—a road having also a Government subsidy?

Mr. OLIVER. Yes, sir. That is the road to which this bill refers.

Mr. HOLMAN. Is not the effect of the bill to give this road different lands from those it would take under existing law?

Mr. OLIVER. Not at all. The bill expressly provides that the grant shall not be affected in any way.

Mr. HOLMAN. Then this does not affect the grant in any way?

Mr. OLIVER. In no way. It merely allows the company to extend its road so as to connect west of O'Brien County, thus enabling it to build the road where the law says it must be built: on the forty-third parallel or near it. The gentleman will understand that, owing to the fact that the Sioux City and Minnesota road was constructed farther west than originally contemplated, so as to just touch the corner of O'Brien County, it becomes impossible to connect in O'Brien County on the forty-third parallel. Therefore the McGregor road, if it makes this connection with the Sioux City and Saint Paul road in O'Brien County, will have to move several miles north. This bill allows it to go off the forty-third parallel, where the law provides it shall make this connection, and make it west of O'Brien County.

Mr. HOLMAN. If I understand the gentleman the provisions of this bill simply confirm existing law.

Mr. OLIVER. Yes, sir; the bill simply confirms the existing law by enabling the McGregor road to carry out the intention of the act of 1864 and make its connection west of O'Brien County.

Mr. HOLMAN. The gentleman speaks of the intention. Is that clearly expressed in the law itself?

Mr. OLIVER. I believe the law of 1864 says that the McGregor road must be built on or near the forty-third parallel and make connection with the road from Sioux City to the Minnesota State line in O'Brien County. The road from Sioux City to the Minnesota State line has been changed from what appears to have been contemplated so that connection cannot be made in O'Brien County on or near the forty-third parallel.

Mr. HOLMAN. By what authority was that change made?

Mr. OLIVER. There was no authority for the change; there was no provision in the law requiring the road to be built on any particular line from Sioux City to the Minnesota State line. In the mean time the McGregor road had located its grant on the forty-third parallel or near it, to the center of O'Brien County. It is now either compelled to change its road to make connection west of O'Brien County near the forty-third parallel or else it cannot make connection with the Sioux City and Saint Paul road. It must go west of that county and north of the forty-third parallel. It is proposed to let it drop back to the original line where its lands were selected and to build the road off the forty-third parallel and to make the connection west of O'Brien County.

Mr. HOLMAN. I ask that the last provision of the bill be read.

The Clerk read as follows:

Provided, That nothing herein contained shall be construed to in any manner change the grant of land made to either of said roads by said act of May 12, 1864, or any other act, or to increase or change the lands taken under said grant: *And provided further*, That this act shall not be so construed as to change or affect the rights of any homestead or pre-emption settler, nor to extend the time for the completion of said McGregor Western Railroad; it being the sole and true intent and meaning of this act to give consent to the change of the western terminus of said road as herein declared.

Mr. GOODIN. I now demand the previous question on the passage of the bill.

The SPEAKER. But the gentleman from Indiana has raised the point of order that the bill must have its first consideration in Committee of the Whole on the state of the Union.

Mr. HOLMAN. With the explanation which has just been made by the gentleman from Iowa, [Mr. OLIVER,] in connection with the provision which has just been read by the Clerk, and which seems to be very clear, I will withdraw my point of order.

The previous question was seconded and the main question ordered; and under the operation thereof the bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. GOODIN moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

SALE OF DESERT LANDS.

Mr. LANE, from the Committee on Public Lands, reported back the bill (H. R. No. 4261) to provide for the sale of desert lands in certain States and Territories, with the recommendation that it do pass.

The bill, which was read, in the first section provides that it shall be lawful for any citizen of the United States, or any person of requisite age, "who may be entitled to become a citizen, and who has filed his declaration to become such," to file a declaration with the register and the receiver of the land district in which any desert land is situated, that he intends to reclaim a tract of desert land not exceeding one section, by conducting water upon the same, within the period of three years thereafter. Said declaration shall describe particularly said section of land if surveyed, and, if unsurveyed, shall describe the same as nearly as possible without a survey. At any time within the period of three years after filing said declaration, upon making satisfactory proof of the reclamation of said tract of land in the manner aforesaid, and upon the payment to the receiver of the sum of $1.25 per acre for a tract of land not exceeding six hundred and forty acres to any one person, a patent for the same shall be issued to him.

The bill in the second section provides that all lands, exclusive of timber lands and mineral lands, which will not, without irrigation, produce some agricultural crop, shall be deemed desert lands within the meaning of the act.

The bill in the third section provides that the act shall only apply to and take effect in the States of California, Oregon, and Nevada, and the Territories of Washington, Idaho, Montana, Utah, Wyoming, Arizona, New Mexico, and Dakota.

Mr. LANE. I demand the previous question.

The previous question was seconded and the main question ordered; and under the operation thereof the bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. LANE moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

CHEYENNE WATER-WORKS.

Mr. GOODIN, from the same committee, reported back a bill (H. R. No. 3566) to authorize the board of trustees of the city of Cheyenne, Wyoming Territory, to enter and purchase for the use of said city certain public lands, with the recommendation that it do pass.

The bill, which was read, in the first section provides that the board of trustees of the city of Cheyenne, in the Territory of Wyoming, are hereby authorized and empowered to enter and purchase, for the use of said city in maintaining a reservoir of water, and for other purposes, the north half and the southeast quarter of section No. 30, in township No. 14 north, of range No. 66 west of the sixth principal meridian, of lands in the district of Wyoming Territory; said lands being now withdrawn from entry or sale and reserved for the use of said city.

The bill in the second section provides that upon the entry of said lands by said board of trustees of the city of Cheyenne, and the payment therefor to the United States of the sum of $2.50 per acre, patent shall issue to the said board of trustees of the city of Cheyenne, conveying to said board of trustees, for the use and benefit of the said city of Cheyenne, in the Territory of Wyoming, the title of the United States in and to the said lands.

Mr. GOODIN demanded the previous question.

The previous question was seconded, and the main question ordered; and under the operation thereof the bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. GOODIN moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

DONATION OF LANDS TO COLORADO.

Mr. REA, from the Committee on Agriculture, reported back with amendments the bill (H. R. No. 3007) donating public lands to the State of Colorado for the establishment and endowment of a college for the benefit of agriculture and the mechanic arts.

The bill was read.

Mr. FORT. I rise to a question of order. The point of order I make is that the State of Colorado has not been recognized by this House, and therefore this bill cannot properly be considered.

Mr. WILSON, of Iowa. It ought to go to the Committee of the Whole anyhow.

Mr. HURD. I make the point of order that the bill should have its first consideration in Committee of the Whole, because it donates public lands.

The SPEAKER. The gentleman from Illinois [Mr. FORT] makes the point of order that this bill is not in order, because it recognizes Colorado as a State of the Union when in fact this House has not recognized Colorado as a State in the Union.

Mr. FORT. My point of order is that the State of Colorado has not been recognized by this House.

Mr. HOLMAN. Colorado is certainly a State.

The SPEAKER. That is a question of fact, and not a parlimentary question at all. The point of order made by the gentleman from Ohio, [Mr. HURD,] that the bill should have its first consideration in Committee of the Whole, holds good.

Mr. REA. I had not called for the present consideration of the bill.

The SPEAKER. The Chair did not understand the gentleman from Missouri to demand the present consideration of the bill. It will be referred to the Committee of the Whole House on the state of the Union.

Mr. HALE. Let me suggest to the gentleman from Missouri that perhaps the point of order will be obviated if he will consent to amend the bill by striking out those portions of it which seem to indicate that Colorado is not yet admitted as a State, and then it can be considered now.

The SPEAKER. The point of order which the gentleman from Ohio [Mr. HURD] raises, is under Rule 112, which provides that bills of this character shall be first considered in Committee of the Whole House.

Mr. HALE. I understand that.

The SPEAKER. The Chair has ruled that the point of order is well taken; and the Chair also recognizes the fact that it was not the purpose of the gentleman from Missouri to press the bill in the House at this time. The gentleman was himself aware of the point of order which rested against it.

Mr. REA. I ask that the bill may be made a special order in Committee of the Whole House on the 15th instant, after the morning hour.

Mr. SPRINGER. I object to that.

The SPEAKER. The request of the gentleman from Missouri requires unanimous consent, and the gentleman from Illinois objects.

The bill was referred to the Committee of the Whole House on the state of the Union, and the accompanying report was ordered to be printed.

CHARLES METCALF.

Mr. BANNING, from the Committee on Military Affairs, reported back, with a favorable recommendation, the bill (H. R. No. 3283) for the relief of Charles Metcalf.

The bill was read.

Mr. CLYMER. I make the point of order on the bill that it appropriates money, and should have its first consideration in Committee of the Whole.

The SPEAKER. The Chair sustains the point of order, and the bill will be referred to the Committee of the Whole on the Private Calendar.

Mr. BANNING. I ask that the report be printed.

Mr. CLYMER. Let the report be read.

The Clerk proceeded to read the report, and had not concluded the reading when the morning hour expired.

ORDER OF BUSINESS.

Mr. SINGLETON. I rise to move that the House resolve itself into Committee of the Whole on the consular and diplomatic appropriation bill.

Mr. FORNEY. Will the gentleman yield to me to allow me to introduce a bill for the removal of political disabilities.

Mr. SINGLETON. I will yield to the gentleman for that purpose if it will not take any time.

CHARLES L. SCOTT.

Mr. FORNEY, by unanimous consent, introduced a bill (H. R. No. 4313) to remove the political disabilities of Charles L. Scott, of Alabama.

The bill was read three times and passed, two-thirds voting in favor thereof.

JAMES A. PRICE.

Mr. FRANKLIN, by unanimous consent, introduced a bill (H. R. No. 4314) for the relief of James A. Price, late second lieutenant and recruiting officer Sixteenth Kansas Volunteers; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

CONSULAR AND DIPLOMATIC APPROPRIATION BILL.

Mr. SINGLETON. I now move that the House resolve itself into Committee of the Whole for the consideration of the consular and diplomatic bill.

The motion was agreed to.

The House accordingly resolved itself into Committee of the Whole on the state of the Union, (Mr. HOOKER in the chair,) and resumed the consideration of the special order, being the bill (H. R. No. 4251) making appropriations for the consular and diplomatic service of the Government for the year ending June 30, 1878, and for other purposes.

The Clerk proceeded to read the bill by paragraphs for amendment, and read as follows:

Be it enacted, &c., That the following sums be, and the same are hereby, appropriated for the service of the fiscal year ending June 30, 1878, out of any money in the Treasury not otherwise appropriated, for the objects herein expressed, namely:

For salaries of envoys extraordinary and ministers plenipotentiary to Great Britain, France, Germany, and Russia, at $17,500 each, $70,000.

Mr. HOLMAN. I offer as a substitute for the paragraph which has been read what I send to the desk.

The Clerk read as follows:

That from and after the 30th day of June, 1877, embassadors, envoys extraordinary, ministers plenipotentiary, and ministers resident shall be entitled to the salaries following, namely:

Envoys extraordinary and ministers plenipotentiary to Great Britain, France, Germany, and Russia $15,000 each; to Spain, Austria, Italy, Brazil, Mexico, Japan, and China, $10,000 each; to Chili and Peru, $10,000 each.

Ministers resident accredited to Belgium, Netherlands, Sweden and Norway, Turkey, Venezuela, Hawaiian Islands, and the Argentine Republic, $6,000 each.

Minister resident accredited to Guatemala, Costa Rica, Honduras, Salvador, and Nicaragua, to reside at such place in either of said states as the President may select, $8,000.

Minister resident and consul-general to Hayti and Liberia, $4,000 each.

Mr. CONGER. I make the point of order that that changes existing law.

Mr. HOLMAN. It does change existing law, but in the interest of retrenchment. It reduces the appropriation for salaries.

Mr. CONGER. It increases the number of ministers and the aggregate amount of the bill.

Mr. HOLMAN. No, sir; it decreases all of these salaries; if it increased any one of them the point of order would be good.

The CHAIRMAN. It seems to the Chair that the point of order is well taken.

Mr. HOLMAN. I ask that the rule touching this subject be reported to the House—I mean the rule as to changing existing law. The rule of the House is that a change of existing law shall not be in order unless it is germane to the bill and also tends to decrease the expenditures of the Government.

Mr. CONGER. I object to discussion after the Chair has decided the point of order.

The CHAIRMAN. The Chair thinks the gentleman from Indiana is entitled to be heard on the point of order. The Chair may not fully understand the point.

Mr. HOLMAN. The amendment is in order because it is germane to the bill, because it applies to the very ministers for whom these appropriations are made, and because it proposes to retrench expenditures on each item—not simply in the aggregate, but upon each item of expenditure. The old rule was that no change of existing law could be made on an appropriation bill, but the rule as amended last session is that where an amendment is germane to the bill and is in the line of retrenching expenditures, it is in order.

This amendment is clearly germane and is also in the line of retrenchment, and therefore it answers both the requirements of the rule. It has uniformly been so held since the rule was adopted. This reduces each item for the ministers, envoys, and ministers resident, and retrenches each item of the clause.

Mr. MILLS. Does it reduce each one?

Mr. HOLMAN. It does each one.

The CHAIRMAN. The Chair will state that if the effect of the amendment of the gentleman from Indiana is to reduce each item, then it is clearly not subject to the objection made by the gentleman from Michigan, [Mr. CONGER,] and may be considered in order under the rules.

Mr. CONGER. But it is not apparent on the face of the amendment that it proposes any decrease in the expenditures. There is an increase in one branch and a decrease in other branches, and it does not clearly show upon its face that it decreases expenditures.

Mr. HOLMAN. Will the gentleman indicate what item is increased?

If there is one item where there is an increase, the amendment will be subject to the point of order.

The CHAIRMAN. The Chair is of the opinion that if the effect of the amendment of the gentleman from Indiana [Mr. HOLMAN] is an aggregate reduction, it is not subject to the point of order made by the gentleman from Michigan, [Mr. CONGER.]

Mr. HOLMAN. It reduces each item, and I understand the Chair to rule that the amendment is in order.

The CHAIRMAN. The Chair so rules.

Mr. MONROE. I rise to oppose the amendment of the gentleman from Indiana. I have no question that the effect of the amendment of the gentleman in particular and in the aggregate is to reduce expenditures, and I am not without sympathy with the policy of the gentleman from Indiana in that respect. I often vote with him in this House upon questions of economy and retrenchment, and I have no doubt that he has often been very useful in his place here in the attention he has given to subjects of this kind.

Mr. TOWNSEND, of New York. I want to ask my friend from Ohio a question. Will he hear me.

Mr. MONROE. Certainly.

Mr. TOWNSEND, of New York. Did my friend vote yesterday with the gentleman from Indiana to increase the salary of the superintendent of the folding-room? [Laughter.]

Mr. MONROE. I do not recollect whether I voted for that or not, nor do I suppose that it is very important to the consideration of the question now before the House.

Now, Mr. Chairman, I would be very glad to vote with the gentleman from Indiana upon this question if I could really understand the grounds upon which his proposition is based. The gentleman from Indiana has, both at the last session of Congress and this, proposed amendments of this kind in connection with the diplomatic service without, so far as I know, presenting to the House the grounds upon which his proposals are made. Now, I do not wish to vote in the dark upon a matter of this sort. I am in favor of a reduction of expenses, wherever it can be properly and reasonably made, as sincerely as the gentleman from Indiana. I desire to support every effort for honest, reasonable economy; but I think it a mistake on the part of the Committee on Appropriations at the last session, and of some of its members at this session, to advocate a reduction of salaries in the diplomatic service without giving reasons for these reductions. I think they ought to explain to us what investigations they have had, what facts they have ascertained, what inquiries they have made, what knowledge they have as to the cost of living at foreign courts.

Mr. FOSTER. My colleague will allow me to correct him? This is not a report of the committee, but a volunteer amendment offered by the gentleman from Indiana; it does not come from the Committee on Appropriations.

Mr. HOLMAN. I hope my colleague on the committee will understand that I did not offer it as coming from the committee; I offered it on my own motion.

Mr. FOSTER. But my colleague [Mr. MONROE] has treated it as though it came from the Committee on Appropriations.

Mr. MONROE. I believe I have the floor, and I hope, if other gentleman are allowed to consume my five minutes, my time will be extended a little, because I wish to say a word or two upon this question. My colleague, Mr. FOSTER, misunderstood my statement in reference to the Committee on Appropriations. One branch of it had reference to the action of the committee and the other had reference to the proposition of the gentleman from Indiana. It seems to me that the mistake made by the majority of the committee at the last session, and by the gentleman from Indiana and those who sympathize with him at this, is that they have never given us the grounds for these reductions, and I am called upon to vote utterly in the dark. I do not know why we should be called upon to reduce the salaries of ministers from $17,500 to $15,000, or from $12,000 to $10,000; and I could not give to an intelligent constituent, who might ask me, one word of explanation why the reduction was made.

[Here the hammer fell.]

Mr. SAMPSON obtained the floor, and yielded his time to the gentleman from Ohio, [Mr. MONROE.]

Mr. MONROE. I thank my friend from Iowa for yielding me the floor. I think more than half of my time has been occupied by others.

I sincerely desire to do right in regard to propositions of this kind. I am a friend of honest economy; but I do not know any reason why the gentleman from Indiana did not propose to make these salaries $12,000 instead of $15,000, or $8,000,000 instead of $10,000,000. Why not reduce the salaries that are now at $12,000 to $6,000? We seem to be in the dark, and the effort is made to chop off so much without our knowing why. Let us know why it is that the salary of the minister to Great Britain should be cut down from $17,500 to $15,000 or why it should not be cut down more. Why should the salary of the minister to Brazil be reduced from $12,000 to $10,000? How happens it that that is just the amount of reduction that should be made? Has the gentleman examined the subject so as to be able to say that the line should be run just there, or is it a blow struck in the dark? Is it merely a well-meant but blind proposition to reduce expenditures, without knowing the effect of the reduction or why the reduction should be made?

I suppose we shall all agree in this, that we should pay our ministers abroad enough to enable them to live decently and becomingly among their peers there. We certainly do not wish them to live extravagantly or magnificently, or to make any great or senseless show or parade, but we wish them to appear like gentlemen representing a great nation, and serving along with their peers, the representatives of other great nations at foreign courts. We should pay them enough for that, and no more.

Now is this the place to run the line? What facts have we in regard to this matter? What investigations have been made on this subject? This question as to how much a representative abroad should receive in order that he may be able to live reputably there is a question of fact, a question to be settled by testimony, by the evidence of intelligent men. It so happens that in this country we have a large number of distinguished gentlemen of the very highest character who have heretofore served their country abroad, and who have certainly no interest in misrepresenting this matter. They are gentlemen who are accessible to members of the Committee on Appropriations and to members of this House, gentlemen whose judgment as regards how much ought really to be appropriated to this branch of the service certainly should have very great weight.

I would like to know whether my friend from Indiana [Mr. HOLMAN] has ever taken any measures to obtain information from these gentlemen. We have in this very city one of the most distinguished names in the country, a gentleman who lately served his government as its representative at the court of Berlin. We also have in our country a very distinguished gentleman, a gentleman of the very highest character, certainly one above all suspicion of self-interest in the decision of a question like this, who for many years served as our representative at the court of St. James. And there are other sources of information from which we could learn something of what we really should expend for purposes of this kind.

Has the gentleman from Indiana taken any pains to consult these gentlemen and to get at the facts in order to ascertain what is really demanded so that a representative of the United States may live creditably at these courts? I certainly wish to pay these gentlemen enough for that purpose; I do not want to pay them any more; I do not want them to make money out of the position. But it does seem to me that when we have so many opportunities for acquiring information of real value we ought to obtain that information, and not work in the dark; not indulge in any mere guess-work as regards the course we ought to pursue.

[Here the hammer fell.]

The CHAIRMAN. The time of the gentleman from Ohio [Mr. MONROE] has expired.

Mr. HOLMAN. I have always observed that a residence abroad has a very peculiar effect on the American citizen. Even so fair-minded and good a gentleman as my friend from Ohio [Mr. MONROE] is not an exception to that general rule, as to the effect of a residence abroad. The smallest matter of diplomacy must be dignified by the appropriation of vast sums of money; and the honor and dignity of the position, as also the honor and dignity of the nation, seem to be involved in the amount of money appropriated in connection with the office.

Now, will my friend from Ohio tell me how it happens that the distinguished gentleman to whom he has just referred, residing, I believe, at this time in this city, continued for many years in Berlin as our minister to that court, and made no complaint, although his salary was $12,000 a year? The salary of that position is now $17,500 a year. The distinguished citizen to which reference has been made held the position during a period when the expense of living was as great in Germany as it is at the present time. Will my friend, who now talks about cutting down and splitting hairs upon a question of salary, tell us how it happens that a few years ago that very distinguished scholar esteemed the salary of $12,000 for the minister in Berlin as a very ample salary, and was willing to hold the post for that compensation, and now even $15,000 is not deemed sufficient, but my friend wishes the salary to remain at $17,500?

Will he also tell us how it was that a few years ago our ministers to the court of Russia, one of whom is now in the body sitting at the other end of this Capitol, deemed this salary of $12,500 sufficient, and at that salary the Government was enabled to command the best talent which this or any other country could furnish, and yet at this time a salary of $15,000 a year is deemed insufficient?

Sir, the truth is that this whole diplomatic system ought to be abolished. I admit the weakness of the argument to fix these salaries. The whole system should be abolished, and in the enlightened progress of the ages it will soon disappear in every one of the important powers of the world. Whatever pertains to the diplomacy of this country is transacted from our capital with the capitals of other nations. Treaties are so made; even the most unimportant treaties comparatively speaking are so made. The different nations of the world have been brought close together by the developments of science during the last few years. The reasons for retaining this relic of the feudal ages have become entirely obsolete. I admit the argument of my friend; you weaken the proposition when you talk about continuing these positions at all. They are the merest sinecures, as my friend very well knows.

This proposition does not come from the Committee on Appropriations. I have offered it as a member upon this floor. If I have not already so stated, I state it now. The salaries I think are higher now than they ought to be. During the past year many of our distin-

guished diplomatic representatives spent almost the entire season, summer and fall, in our own country, leaving their ministerial duties in the hands of subordinates receiving comparatively small salaries, such as secretaries of legation; yet I have not learned that the public interests suffered at all. Did the public interest suffer when our minister to Spain came home and remained for months?

[Here the hammer fell.]

Mr. HALE. In replying to the gentleman from Indiana, [Mr. HOLMAN,] I wish to direct the attention of the committee to a practical point in connection with this matter; that is the question whether we are now prepared, against the voice of the Committee on Appropriations, to enter into a new combat with the Senate. Last year, upon this very bill, the House took its stand and sent to the Senate a measure making many reductions. All of us remember how, during the hot summer days, the fight was waged upon that bill in conference committee after conference committee until at last an agreement was reached in a spirit of compromise, by which the House abandoned certain things and the Senate certain other things. The main object of the House was reached in this, that the appropriation as formerly made by this bill was reduced something more than $200,000, a good work to be done; and upon that both Houses came into accord and passed the bill.

Now this year the Committee on Appropriations has seen fit, with small reductions amounting to $30,000, to take that settlement agreed upon by the two Houses, and has so reported the bill now before the committee. The gentleman from Indiana is not content with that, but seeks to go further and to renew in this short session that old fight with the Senate, in which democratic as well as republican Senators took ground against this House. The gentleman proposes to embark us again in that controversy. I do not believe that anything will be gained by a re-opening of that question. Even if the House should in this bill reduce the salaries of these first-class ministers and others comprehended in this amendment, I do not believe that in the end anything practical will be accomplished. It is my conviction (in this I may be mistaken) that the House is not prepared to enter again into that contest.

The gentleman from Indiana and his party reduced the appropriation bills last year something like $25,000,000; and they received the credit of it. I do not believe that there is now any call to disturb that adjustment. We are asked by this amendment to reduce the salaries of these ministers when every particle of testimony shows that they do not receive too much, when all examinations show that the salaries are small compared with those paid at the same places by other nations. In these positions some state and style must be kept up; not extravagantly, but in accord with our own standing as a nation; and no man, I venture to say, can be found who will claim that any one of these ministers has been able to save a dollar from his salary.

The cases referred to by the gentleman from Indiana, where it is stated our ministers abroad were able to live upon less than the sums now given, were, I believe, without exception cases of gentlemen who spent large sums in this service aside from their salaries. The result of paring and cutting down the salaries of these high and dignified stations must finally be that none but wealthy men can take these places, men who have accumulated property and desire to be sent abroad, without reference to the question whether the salary of the position will support them. I do not believe the House is desirous to bring about such a state of things.

Mr. BLOUNT. Mr. Chairman, the argument with which my colleague on the committee [Mr. HALE] started out, that the Senate will not consent to such reductions as we may propose, seems to me directly in conflict with the rules of this House. In ascertaining what it is proper for us to do, it is not fitting for us to consider what attitude the Senate may take in the matter. I think the House will not entertain such a consideration for a single moment, if the public interest justifies the adoption of a different course.

With the view of weakening somewhat the force of this proposition, it has been said that it comes from my friend from Indiana personally, not from the Committee on Appropriations. But, sir, we all remember well that this proposition in respect to every one of these missions was sanctioned with energy by this side of the House during the last session of Congress; and hence, so far as the principle goes, it has been sanctioned not alone by the Committee on Appropriations, but by a large majority of the members of this House.

The honorable gentleman from Ohio [Mr. MONROE] asks—and he repeats and presses the inquiry—how does the gentleman get at this particular sum? Why, sir, that might be asked in reference to any question of this kind. How was the sum of $8 a day reached as the former pay of members of Congress; and how was a higher rate afterward reached? Who can tell why the salary of the President of the United States should have been enhanced from $25,000 to exactly $50,000? Can any one say how this precise figure was reached? This very same difficulty arises in regard to any question of salary.

As to these ministers, there are some reasons which make it necessary that they and others holding positions in this service should have their pay reduced. We have a debt of over $2,000,000,000. We have a pension-roll of $29,000,000. Our ordinary expenses are threefold what they were before the war, when these salaries were fixed. There is a large indebtedness all over this land—State, county, corporate, and individual. It has been stated that the interest on our public debt exceeds the net profits of the labor of the country. These are reasons which make it necessary that there should be greater economy in the administration of every department of this Government than in 1855.

Gentlemen say that in 1855 the salary of our minister to Great Britain was fixed at $17,500, and they ask why we now propose to reduce it. But, sir, can the same thing be said of these other missions? Is it true of the mission to Russia, or the mission to France? Why, sir, in 1872 the salary of the Russian mission was increased to $17,500. Up to that period it had been what we propose in this amendment to make it. Our minister at Berlin received prior to that time the very same salary we now propose to allow him in this amendment.

In view of these facts I think there are reasons why these reductions shall be made.

Gentlemen speak about our having made reductions in reference to the diplomatic service. What reductions have we made?

[Here the hammer fell.]

Mr. BUCKNER. I rise to what I believe to be a privileged question, and that is to move that the committee rise, in order that the House may proceed to the consideration of the business of the District of Columbia, which was set for two o'clock to-day.

The CHAIRMAN. The gentleman can move that the committee rise, but he cannot move to proceed to any particular business.

The motion was agreed to; and the Speaker having resumed the chair, Mr. HOOKER reported that the Committee of the Whole on the state of the Union had, according to order, had under consideration the special order, which was the bill (H. R. No. 4251) making appropriation for the consular and diplomatic service of the Government for the year ending June 30, 1878, and for other purposes, and had come to no resolution thereon.

DISTRICT BUSINESS.

The SPEAKER. The hour of two o'clock having arrived, the House, under previous order, proceeds to the consideration of the business of the Committee for the District of Columbia, and reports are now in order from that committee.

TAX-LIEN CERTIFICATES.

Mr. BUCKNER, from the Committee for the District of Columbia, reported back a bill (H. R. No. 3558) to provide for the settlement of tax-lien certificates erroneously issued by the late authorities of the District of Columbia, with the recommendation that it do pass.

The bill, which was read, provides that in order to settle and pay to the holders of those tax-lien certificates purporting to have been issued pursuant to an act of the Legislative Assembly of the District of Columbia, approved June 24, 1873, which in fact were erroneously issued by the late authorities of said District against property exempt from taxation, or upon which the taxes purporting to be represented by said certificates had been paid, the commissioners of the District be, and they are thereby, authorized to pay to the holders of such certificates, upon surrender of the same, the amount of the original debts of the District for which such certificates were respectively issued, with interest thereon at the rate of 6 per cent. per annum from the dates on which payment of such debts was attempted to be made with such erroneous certificates; and where moneys were paid into the District treasury by way of purchase from the late District authorities of such erroneously issued tax-lien certificates, said commissioners are hereby authorized to pay to the present holders of the same, upon surrendering the same, the amount so paid, with interest thereon at the rate of 6 per cent. per annum from the date of such payment into the treasury. And immediately upon the redemption of such erroneously issued certificates the same shall be canceled, and a proper record of such payment and cancellation be made.

Mr. WILSON, of Iowa. I raise the point of order that under Rule 112 this bill must have its first consideration in the Committee of the Whole on the state of the Union.

Mr. BUCKNER. I do not think that rule applies to this bill.

The SPEAKER. The Chair will hear the gentleman from Missouri on the point of order.

Mr. BUCKNER. The rule does not apply to money which is to come out of the District of Columbia treasury, but only to that which comes out of the Treasury of the Government of the United States.

Mr. WILSON, of Iowa. We are proceeding under the theory that this is money under the control of the Congress of the United States. We are responsible, as I understand, for the interest on the bonds of this District. All money coming out of the treasury of this District affects the Treasury of the United States necessarily.

The SPEAKER. The gentleman will state his point of order again.

Mr. WILSON, of Iowa. We are proceeding on the theory that the treasury of the District of Columbia, that the money of this District, is as much under the control of Congress as any other money in the Treasury of the United States. It is generally believed that we are responsible for the interest on the bonds of the District. That is the theory, and if we grant authority to pay money out of the District treasury to-day, we may be called upon hereafter to re-imburse the District treasury for any amount which may be lacking. In other words, it is almost impossible to separate the District treasury from the Treasury of the United States. To be sure, certain taxes are levied upon the property of people in this District to pay certain expenses, but all which may be needed to make the required amount will have to be made up by Congress. To authorize the payment of money out

of the District treasury is tantamount, according to the theory upon which we have been acting, to authorize any payment out of the Treasury of the United States.

The SPEAKER. The Chair holds that it must appear plainly on the face of the bill itself that the money is to be paid out of the Treasury of the United States. The Chair might agree in opinion with the gentleman from Iowa, that ultimately the United States may have to re-imburse this money; but he does not see on the face of the bill that it takes any money out of the Treasury of the United States. The point of order is therefore overruled.

Mr. BANKS. This bill merely grants legislative authority for the expenditure of this money out of the District treasury, and is not what may be called an appropriation bill of money out of the Treasury of the United States. Therefore I think the Chair is right.

Mr. BUCKNER. In order that the House may understand the object of this legislation, I will state that, during the existence of the District territorial government, for the purpose of anticipating the revenues a District law was passed authorizing the issue of certain tax-lien certificates for a certain time therein mentioned, to be deposited in the treasury of the District, and upon which money was be to raised. They were authorized to be taken in lieu of any debts due the District. It turned out that to the amount of $55,000 they were transferred for other evidences of debt, and got into the possession of parties who paid their money for them. The simple object of the proposition is to enable the parties who advanced the money to this District to get it back with 6 per cent. of interest. If gentlemen do not desire to be heard on the question, I will demand the previous question.

The previous question was seconded and the main question ordered; and under the operation thereof the bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. BUCKNER moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

DEPREDATIONS UPON DISTRICT PROPERTY.

Mr. BUCKNER, from the Committee for the District of Columbia, reported back a bill (H. R. No. 4041) to prevent depredations upon property in the District of Columbia, with the recommendation that it do pass.

The bill, which was read, provides that every person who, in the District of Columbia, shall willfully and without color of right enter into any occupied or unoccupied dwelling-house or other building, the property of another, and shall cut, break, or tear from its place any gas-pipe, water-pipe, door-bell, or other fixture therein; or who shall in such dwelling-house or other building cut, break, or tear down any wall, or part of a wall, or door, with intent to cut, break, or tear from its place any pipe or fixture therein, shall for the first offense be fined not more than $200 and be imprisoned in the District jail not less than two months or more than one year, and for any subsequent offense shall be imprisoned in the penitentiary for not less than one year or more than three years.

Mr. BUCKNER demanded the previous question.

The previous question was seconded and the main question ordered; and under the operation thereof the bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. BUCKNER moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

CONSTABLES' BONDS IN THE DISTRICT OF COLUMBIA.

Mr. NEAL, from the same committee, reported back, with the recommendation that it do pass, the bill (S. No. 526) to amend section 1036 of the Revised Statutes, relating to the District of Columbia.

The bill was read, as follows:

Be it enacted, &c., That section 1036 of the Revised Statutes, relating to the District of Columbia, be amended to read as follows:

"Each constable shall, before performing any of the duties of his office, take the oath prescribed for civil officers in the District, and shall enter into a bond to the United States in the sum of $5,000, with security, to be approved by the clerk of the supreme court of the District, conditioned for the faithful performance of the duties of his office, and for the punctual payment of all moneys coming into his hands to the persons entitled to receive the same. And the clerk of said supreme court shall approve of no bond of any constable until at least three bondsmen shall sign said constable's bond, and each of said bondsmen shall file with said constable's bond an affidavit that he is the owner in fee-simple of unincumbered real estate, situated in the District of Columbia, of the cash value of at least $5,000."

Mr. NEAL. The only change which this bill makes in the law as it now is, is to require bonds of constables to be signed by three bondsmen, and each one of the bondsmen to file an affidavit that he is the owner in fee-simple of unincumbered real estate in this District of the value in cash of at least $5,000 before his bond is approved by the clerk of the supreme court of the District.

The bill was ordered to be read a third time; and it was accordingly read the third time, and passed.

Mr. NEAL moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

REPAVEMENT OF PENNSYLVANIA AVENUE.

Mr. CATE, from the Committee for the District of Columbia, reported back, with amendments, the bill (H. R. No. 4281) to amend an act entitled "An act authorizing the repavement of Pennsylvania avenue" and the act amendatory thereof.

The bill was read, as follows:

Be it enacted, &c., That so much of said act, and the act amendatory thereof, approved August 15, 1876, as provides that the said pavement shall be fully completed and ready for use January 15, 1877, is hereby amended so as to extend the time for the completion of said work to the —— day of ——, 1877: *Provided*, That before this act shall take effect and be in force the sureties in the contract for doing said work shall file with the commissioners of the District of Columbia their consent, in writing, to the extension of time provided for in this act.

SEC. 2. That section 6 of the said act approved July 19, 1876, is hereby so amended as to read as follows:

That if the Washington and Georgetown Railroad Company, or any private citizen, or other corporation or person, shall neglect or refuse to pay the amount assessed for the paving herein authorized in front of or adjoining their property when the work so fronting or adjoining their property shall have been completed to the satisfaction of the commission provided for in this act, and assessed by the commissioners of the District of Columbia, within —— days after the notification of such assessment shall have been published in one or more of the daily newspapers printed and published within said District of Columbia, the said commissioners of the District of Columbia shall issue certificates of indebtedness against the property subject to assessment according to the provisions of this act; which certificates shall contain a description of the property, the amount and purpose for which the property is assessed, and the time when the holder will be entitled to a deed thereon, according to the provisions of this act. The said certificates are hereby declared negotiable and transferable by delivery, and shall bear interest at the rate of 10 per cent. per annum, and be and remain a lien, until paid, upon the property on or against which they are issued. And if the said certificates are not paid within one year from the date thereof, the commissioners of the District of Columbia shall, on the application of any holder of any such certificate, sell so much of the property described therein as may be necessary to pay the sum due, together with costs of sale; such sale or sales to be advertised daily for one week next prior to the sale, in some daily newspaper printed and published in the city of Washington, and be made at public auction to the highest bidder; and it shall be the duty of the commissioners of the District of Columbia to make and deliver to the purchaser at any such sale a deed of the premises sold, which deed, properly executed, shall be deemed and held to be a good and perfect title to the property therein described and sold under the provisions of this act: *Provided*, That the owner, or any person having an interest in the property so sold as mortgagee, judgment creditor, or otherwise, may redeem the same by paying the amount for which the said property was sold, together with costs of sale and fees for recording the said deed, and interest thereon at the rate of 10 per cent. per annum, at any time within one year from the time of sale.

SEC. 3. That the commissioners of the District of Columbia shall enter in a book, to be by them kept for that purpose, a duplicate of all certificates of indebtedness issued by them under the provisions of this act, and redemptions therefrom shall be made, whether before or after sale, by paying to the said commissioners of the District of Columbia the sum due upon any assessment certificate or sale, with interest and cost at the time of any such redemption, and the fact of such payment shall be entered of record on the margin opposite the duplicate of the certificate redeemed; and the said commissioners shall give to the person making such payment a receipt or certificate of such fact, and such payment shall be held effectual to discharge the lien created by the assessment provided for in this act. The money so paid shall be covered into the Treasury of the United States, and paid out upon the orders of the said commissioners to the holders of the certificates or purchasers at any such sale in redemption of which said money was paid.

SEC. 4. That the said commissioners shall retain 10 per cent. of the aggregate amount of the face value of the said certificates of indebtedness as a part of the guarantee-fund mentioned in the second section of the said act approved July 19, 1876; and the balance of the said certificates shall be delivered, to the contractor or contractors performing said work, at their face value, in part payment therefor, as contemplated in said act of July 19, giving to the several contractors the certificates of assessments on the property opposite to or adjoining that portion of the work done by him or them respectively.

Mr. CATE. I ask that the report of the committee showing the amendments which are recommended, be read.

The Clerk read as follows:

The Committee for the District of Columbia, to whom was referred the bill (H. R. No. 4281) to amend an act entitled "An act authorizing the repavement of Pennsylvania avenue," and the act amendatory thereof, report the same back to the House with the following recommendations:

First, That the whole bill after the first section be stricken out.

Second. That the blank in the eighth line of section 1 be filled with the word "first" and the blank in the ninth line with the word "June," so as to extend the time for the completion of said work to the 1st day of June, 1877.

Third. That the proviso in section 1 be amended so as to read as follows:

"*Provided*, That the sureties in the contract for doing said work shall file with the said paving commissioners their consent in writing to the extension of time provided for in this act, and in default thereof that the contractors shall file a new bond to the satisfaction of the said paving commissioners before said contractors shall be entitled to any benefits under the provisions of this act."

Mr. CATE. It will be remembered that the law which authorized the doing of this work contemplated but one contract. The contract, however, was divided into two. The work has been prosecuted with reasonable diligence, in the opinion of the committee; and the part of the contract at this end of the Avenue could be completed in about one day; the other end of the Avenue would require about twenty-two days to complete it. It would have been completed long ere this if the weather had been favorable.

The committee are satisfied that the fault of the non-completion does not lie with the contractors and that they have prosecuted the work with reasonable diligence; but that it is wholly in consequence of the inclemency of the weather. A shorter time than that required by this act of course would complete the work if the weather was favorable; but the committee conceive that it is important that the completion of the work and the time of the acceptance of it should be when the Avenue is not covered with snow, and the ground frozen, as it is of course desirable that the work should be completed in as good order as possible. We believe that it would be unjust to the contractors and probably to the public if it were required that this

work should be completed and accepted during the winter season and are satisfied it is better to wait until the ground shall settle and the frost shall be entirely out of it. I call for the previous question.

The previous question was seconded and the main question ordered; and under the operation thereof the amendments of the committee were adopted.

The bill, as amended, was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. CATE moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

MUTUAL FIRE-INSURANCE COMPANY OF THE DISTRICT.

Mr. CATE also, from the Committee for the District of Columbia, reported back, with a favorable recommendation, the bill (H. R. No. 4202) to amend the charter of the Mutual Fire-Insurance Company of the District of Columbia.

The bill was read, as follows:

Be it enacted, &c., That the act to incorporate the Mutual Fire-Insurance Company of the District of Columbia, approved January 10, 1855, be so amended as to authorize the interest on the premium notes held by said company to accumulate to the extent of $250 000; and also to authorize said company to acquire and hold real estate, not exceeding $100,000 cash value at any one time.

Mr. CATE. I call for the previous question.

The previous question was seconded and the main question ordered; and under the operation thereof the bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. CATE moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

DISTRICT RECORDER'S OFFICE.

Mr. HARTRIDGE, from the Committee for the District of Columbia, reported back, with a favorable recommendation, the bill (S. No. 752) authorizing the recorder of the District of Columbia to appoint an assistant with certain powers.

The bill was read, as follows:

Be it enacted, &c., That the recorder of deeds for the District of Columbia is authorized to appoint a deputy recorder; and all deeds of conveyance, leases, powers of attorney, and other written instruments required to be filed and recorded, and all copies of instruments and records, and certificates authorized by law, filed, recorded, made, and certified by the deputy recorder, shall have the same legality, force, and effect as if performed by the recorder. In case of a vacancy in the office of recorder by death, resignation, or other cause, the deputy recorder shall act until a recorder shall be duly appointed and qualified.

The recorder shall be allowed by the District for all record books, dockets, and furniture necessary for his office.

Mr. HARTRIDGE. I call for the previous question.

The previous question was seconded and the main question ordered; and under the operation thereof the bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. HARTRIDGE moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

WASHINGTON CITY AND ATLANTIC RAILROAD COMPANY.

Mr. HENKLE, from the Committee for the District of Columbia, reported back, with an amendment, the bill (H. R. No. 1860) to incorporate the Washington City and Atlantic Coast Railroad Company.

The bill was read, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That C. C. Cox, A. M. Gangewer, M. Meigs, Allan Rutherford, J. A. Lynch, W. F. Sliney, C. D. Sloan, G. W. C. Waite, ——, ——, together with such persons as may become associated with them for that purpose, together with their successors, are hereby created and erected into a body corporate and politic, in deed and in law, by the name and title of the Washington City and Atlantic Coast Railroad Company, and by that name have perpetual succession, and may sue and be sued, plead and be impleaded, and be defended, in the courts of law and equity within the District of Columbia, and may use a common seal, and adopt by-laws for the regulation of its government.

SEC. 2. That the said corporation is hereby fully authorized and empowered to survey, locate, lay out, construct, collect tolls upon, maintain, and enjoy a railroad line, with the appurtenances and machinery necessary for one or more tracks, within the District of Columbia, commencing on the southern bank of the Eastern Branch of the Potomac River, at or near the village of Uniontown, and from thence to the line dividing the District of Columbia from Prince George's County, in the State of Maryland, and from said line to Upper Marlborough in said county or adjacent thereto, and from thence to the Chesapeake Bay in Anne Arundel County, in said State of Maryland, and there, as also at its terminus on the Eastern Branch aforesaid, to construct one or more depots and a wharf or wharves for the purpose of landing and transferring goods and passengers, and to own and hire steamboats for that purpose.

SEC. 3. That the capital stock of said railroad company shall consist of 25,000 shares of $50 each; which stock shall in all respects be deemed personal property, and shall be transferable in such manner as by the by-laws of said company shall be provided.

SEC. 4. That it shall be lawful for the said railroad company to borrow from time to time sums of money not exceeding in the entire $500,000, and to issue bonds therefor bearing interest not exceeding 7 per cent., payable semi-annually, and to mortgage as security therefor all the corporate rights, franchises, property, real and personal, of what kind soever, belonging to said company.

SEC. 5. That the persons herein named as corporators, or a majority of them, shall, within ninety days after the passage and approval of this act, meet in the city of Washington for the purpose of prescribing regulations for opening books of subscription to said capital stock, at such times and places as they may designate by public notice of at least ten days in two daily papers in the city of Washington; and said books shall be kept open until $100,000 of said stock shall be subscribed; and 5 per cent. on all subscriptions shall be paid in lawful money at the time of subscribing to the person or persons authorized by the corporators to receive the same; and whenever that amount shall have been subscribed, and 20 per cent. of the same paid as above described, it shall be the duty of the above-named corporators (a majority of whom shall constitute a quorum for the transaction of business) to call a meeting of the stockholders, at the city of Washington, for the purpose of electing directors of the said corporation; and each share of said stock on which the said 20 per cent. has been paid as hereinbefore provided shall entitle the owner to one vote. The corporators herein named shall designate a majority of their number to act as inspectors of elections, which majority of inspectors so designated shall certify under their names the directors thus duly elected, and shall notify them of their election and the time and place of the first meeting of the said board of directors. At such meeting the above corporators shall deliver to the said directors the books of subscription to the said Washington City and Atlantic Coast Railroad Company, together with the amount paid thereon, with a full report of their proceedings under this act; and thereupon the duties of the corporators hereinbefore named shall cease and determine forever; and thereafter the said directors, with their successors or assigns, shall constitute the said body politic and corporate. The directors thus chosen shall hold their office for one year, and until others are elected and qualified to fill their places. A majority of said directors shall constitute a quorum for the transaction of business.

SEC. 6. That the said directors shall, at their first meeting, elect, from their own number, a president and a vice-president. They may also from time to time elect a treasurer, a secretary, a chief engineer, and a general superintendent, together with such other officers, agents, and employés as they may deem necessary, each of whom shall hold office or position during the pleasure of said board of directors. The directors shall have power to fill all vacancies in the board which may be caused by death or resignation, except as is hereinbefore provided for. The treasurer shall give bonds with security, as the board shall from time to time require. Meetings of the stockholders of the said corporation for the election of directors and for the transaction of business shall be holden annually, and at such other times and upon such notice as may be prescribed by the by-laws. The directors of the said corporation may require the subscribers to the capital stock to pay the amount by them subscribed respectively at such times and in such manner and in such installments as they may deem proper; and, if any stockholder shall refuse or neglect to pay any installment as required by a resolution of the board of directors, the said board may forfeit said stock for non-payment, and all previous payments shall revert in law and in equity to the said corporation under such regulations, or may sue for and collect the unpaid installments in any court of competent jurisdiction.

SEC. 7. That the said corporation is hereby empowered to purchase, lease, receive, improve, and hold such real estate or other property as may be necessary for accomplishing the objects of this act, and may, by their agents, engineers, contractors, or workmen, immediately enter upon, take possession of, and use all such real estate and property as may be necessary for the construction, maintenance, and operation of said railroad and the accommodations appertaining thereto. But all real estate or property thus entered upon and appropriated by said railway, and the accommodations appertaining thereto, which are not donations, shall be purchased by said corporation from the owner or owners of the same at a price to be mutually agreed upon between them; and in case of a disagreement as to price of any real estate or property situate in the District of Columbia, the said corporation, or the owner or owners of such real estate or property, shall apply by petition to a justice of the supreme court of the District of Columbia, particularly describing the property; and the said justice shall direct the manner of ascertaining the true value of said real estate or other property, together with the damages which the owner or owners thereof have sustained or may sustain by reason of the appropriation, occupation, and use thereof by the said corporation; and the said justice shall appoint not less than three nor more than seven competent and disinterested commissioners, who shall be freeholders of the District of Columbia, and who shall, under the direction of said justice, view said premises or property, take such testimony as they may deem proper, make appraisement, and determine said damages, and report the same under oath and in writing to said justice. The report shall contain a minute and accurate description of the real estate and other property appraised, together with all the evidence taken by the commissioners in the case. It shall be the duty of said justice to examine the report of said commissioners, and, upon application of either party, he shall give the parties a hearing in relation thereto; and he shall have power to increase or diminish said appraisal or damages, if he shall become satisfied upon such hearing that injustice has been done. Upon proof to the said justice, to be made within sixty days after his determination, of payment to the owner or owners, or depositing to the credit of the owner or owners, or their legal representatives, in such banking institution as said justice shall direct, the amount of said award, and the payment of all expenses attending the same, including an allowance of $3 per diem to each of the aforesaid commissioners, the said justice shall order or decree, particularly describing said real estate or other property, and reciting the appraisement of damages, and the mode of making it, together with such facts as he may deem pertinent; and when the said order or decree shall be recorded in the recorder's office of said court, the said corporation, or its successors or assigns, shall be legally and equitably seized and possessed of such real estate or other property, for the use and for the purposes hereinbefore described. In case any married woman, infant, idiot, insane person, or non-resident of the District of Columbia, in which said real estate or other property may be situated, shall be interested in such real estate or other property, the said justice shall appoint some competent disinterested person to appear before said commissioners, and act for and on behalf of such married woman, infant, idiot, insane person, or non-resident. And as to the appropriation of any real estate or property in the State of Maryland, necessary for the purposes of said railway, and the accommodations appertaining thereto, which are not donations, shall be purchased by said corporation from the owner or owners of the same, at a price to be mutually agreed upon; and in case of a disagreement as to the price of any such real estate or property the said corporation or owners of such real estate or property shall take such proceedings before court of competent jurisdiction, or before such other tribunal or public officer as is now or may be hereafter provided by the laws of the State of Maryland in such cases.

SEC. 8. That if any person shall willfully do, or cause to be done, any act or acts whatever whereby any building, structure, or other work, or any engine, car, or machine, or other property appertaining to said railway, shall be injured, impaired, or destroyed, or stopped, the person or persons so offending shall be guilty of a misdemeanor, and upon conviction thereof by any court of competent jurisdiction, shall be punished by a fine at the discretion of the court of not more than $5,000 and the assessed value of the property destroyed or injured, or by imprisonment of not more than two years, or both, at the discretion of the court, and also forfeit and pay to the said company, its successors and assigns, the amount of damages sustained by means of such offense, to be recovered by said company, with costs of suit, by an action of debt or case, or in such manner as provided by law.

SEC. 9. That said railway company shall not grant to any railway company or other corporation the exclusive right to transfer passengers or freights over said railway; but any privileges granted to one corporation shall be extended to all who may make application for such privilege on the same terms, conditions, and rates, and shall not sell, transfer, or lease their corporate rights to any company that shall not check baggage or commute fares with all connecting railways upon the terms specified in this section.

SEC. 10. That the said corporation shall, as soon as practicable after the election of directors as hereinbefore provided, so commence and prosecute the work of constructing and equipping said railway that it shall be fully completed and equipped in five years from and after the first board of directors have been elected.

SEC. 11. That said railway shall be a post-route and a military road; and Congress may at any time fix rates of tariff for troops, marines, materials of war, and mails, and may add to, alter, or amend this act.

The amendment reported by the committee was to amend the seventh section by striking out all after the word "shall," in the sixteenth line, to the end of the sixtieth line, and insert in lieu thereof the following:

Take such proceedings as are for that purpose provided by the act of Congress of May 5, 1870, entitled "An act to provide for the creation of corporations in the District of Columbia by general law."

The amendment was agreed to.

Mr. HOLMAN. I wish to inquire of the gentleman from Maryland [Mr. HENKLE] whether this railroad proposed to be incorporated by this bill is confined within the limits of the District of Columbia?

Mr. HENKLE. I will state that this is an ordinary act of incorporation, to enable this company to build a railroad from the south side of the Eastern Branch to the Chesapeake Bay. It does not confer any rights outside of the portion of the District of Columbia through which it passes inconsistent with the laws of Maryland.

Mr. WILSON, of Iowa. I desire to reserve points of order upon this bill, as I cannot hear a word the gentleman from Maryland says.

Mr. HOLMAN. The question I wish to ask is, whether this bill confers upon the company proposed to be incorporated by its provisions the power to construct a railroad through a portion of the State of Maryland: and, if so, does the gentleman from Maryland think that it is within the power of Congress to incorporate a company to construct a railroad beyond the limits of the District of Columbia?

Mr. HENKLE. I will answer the gentleman by saying that there is an express provision in the bill in regard to the proceeding of the company on the territory of Maryland, that it shall be constructed under the general incorporation laws of the State of Maryland.

This is an ordinary act of incorporation, as I have already said, for the construction of a railroad from the south side of the Eastern Branch to the Chesapeake Bay, and probably about four miles of the proposed road are in the District of Columbia. I do not think there are any extraordinary provisions in the bill.

Mr. HOLMAN. Are the corporators required to become incorporated under the laws of Maryland before they construct the road?

Mr. HENKLE. The bill is very carefully guarded or I would not have offered it.

The SPEAKER. The gentleman from Iowa [Mr. WILSON] reserved points of order on this bill.

Mr. WILSON, of Iowa. I would like to have read the last section of the bill, relating to the power of Congress in this matter.

The Clerk again read the eleventh section.

Mr. WILSON, of Iowa. The usual clause of that kind is "that Congress shall have power to alter, amend, or repeal." I do not insist upon the point of order against the bill.

The SPEAKER. The gentleman from Iowa suggests an amendment, to add to the eleventh section the words "or repeal."

Mr. HENKLE. I have no objection to that whatever.

The amendment was agreed to.

Mr. HOLMAN. I should be glad to have that portion of the bill read which authorizes the corporators to operate beyond the limits of the District of Columbia.

Mr. HENKLE. I will then ask the Clerk to read the last clause of the seventh section of the bill.

The Clerk again read the last clause of the seventh section of the bill.

Mr. HOLMAN. That provision does not reach the question. It only relates to the way in which condemned property shall be paid for. I submit that if we charter a company to construct a railroad in the State of Maryland we should be taking a step further than we have ever yet gone.

Mr. HENKLE. I have no objection to any amendment that the gentleman from Indiana may offer to obviate his objection.

Mr. REAGAN. This is the incorporation of a railroad company by act of Congress, and the clause read merely recognizes the authority of the State of Maryland in regard to the condemnation of property, but it charters the company to operate a road in the District of Columbia and in the State of Maryland, and I agree with the gentleman from Indiana in regard to that. I know of no precedent or authority for it.

Mr. HOLMAN. There have been a great many such bills before Congress, but we have never passed them. I ask for the reading of the first and second sections of the bill.

The Clerk again read the first and second sections of the bill.

Mr. HENKLE. I suggest to the gentleman the following amendment, to be added to the second section of the bill:

Provided, That this act of incorporation shall have no effect or operation outside of the District of Columbia.

Mr. HOLMAN. That covers the ground.

The amendment was agreed to.

Mr. LAWRENCE. I ask the gentleman to yield to me to offer an amendment.

Mr. HENKLE. I will hear the amendment.

Mr. LAWRENCE. I would call attention to section 11 of this bill, which provides that "Congress may at any time fix rates of tariff for troops, marines, materials of war, and mails." It leaves to the company the power to fix their own tariff for all other property. Now, while I suppose that the power reserved in this bill to Congress to alter or amend this act would give the power to prescribe the rates of freight on other property, it seems to me that it would be well to incorporate a distinct provision to that effect. I therefore move to amend section 11, line 3, by inserting after the words "materials of war" the words "and all other freight and passengers."

Mr. HENKLE. I have no objection to that amendment.

The amendment was agreed to.

Mr. WILSON, of Iowa. I ask the gentleman from Maryland [Mr. HENKLE] to yield to me to offer an amendment.

Mr. HENKLE. I will hear it read.

Mr. WILSON, of Iowa. I move to amend by adding that which I send to the Clerk's desk.

The Clerk read as follows:

That the company receiving the benefits of this grant shall not charge for transporting persons or merchandise more for a less than for a greater distance, nor discriminate against shippers from the same point on their line to any other point on their line, or to points on other lines of railroad.

Mr. HENKLE. I am decidedly opposed to that amendment.

Mr. WILSON, of Iowa. Why is the gentleman opposed to it?

Mr. HENKLE. I am a granger, but I would not vote for that amendment under existing circumstances.

Mr. WILSON, of Iowa. Then I give notice that I shall oppose this bill at every point.

Mr. HOAR. There have been two instances within a few years past of railroads chartered by Congress, one a street railway and the other a steam railway, under general charters like this, and they undertook to lay out their roads across Government land. They took the ground that they had received from Congress authority to go from point to point, and as they could not do so without crossing the property of the Government, they were entitled to go over the Government land. In one case the railroad laid its track right along the river-front of the Insane Hospital grounds of this District, very materially injuring the value of those grounds for the purposes of the asylum. Now, I suggest to the gentleman whether there should not be some provision in this bill to prohibit the crossing of any land belonging to the United States without express authority from some tribunal, either Congress or some designated public authority. Otherwise we will have the same trouble over again with this bill that we had with regard to the other two bills.

Mr. HENKLE. I do not believe that this projected road will run through any Government property; but I have no objection to an amendment incorporating the idea suggested by the gentleman from Massachusetts, [Mr. HOAR.]

Mr. HOAR. I then move to add to section 7 that which I send to the Clerk's desk.

The Clerk read as follows:

Provided, That no property belonging to the United States or the District of Columbia, or any property heretofore appropriated by the United States to public use, shall be entered upon or used under the authority granted by this act, excepting such highways as it shall be necessary to cross.

The amendment was agreed to.

Mr. HENKLE. I now call the previous question upon the bill as amended.

Mr. WILSON, of Iowa. And I move to lay the bill and amendments upon the table.

The question was taken; and upon a division there were—ayes 18, noes 35.

Mr. WILSON, of Iowa. I make the point that no quorum has voted.

Mr. HOLMAN. Should the House now adjourn when will this bill again come up?

The SPEAKER. On the next day assigned to District of Columbia business.

Mr. HOLMAN. Then I move that the House now adjourn.

Pending the motion to adjourn,

ADVERTISING FOR INTERIOR DEPARTMENT.

The SPEAKER, by unanimous consent, laid before the House a letter from the Secretary of the Interior, in regard to the compensation authorized by law to be paid for advertising for that Department in newspapers; which was referred to the Committee on Appropriations, and ordered to be printed.

SOCORRO, NEW MEXICO.

The SPEAKER also laid before the House a letter from the Secretary of the Interior, transmitting the report of the surveyor-general of New Mexico on the private land grant to the town of Socorro; which was referred to the Committee on Private Land Claims, and ordered to be printed.

POSTAL SERVICE OF QUARTERMASTER-GENERAL'S DEPARTMENT.

The SPEAKER also laid before the House a letter from the Secretary of War, transmitting a communication from the Quartermaster-General, asking early action upon a bill appropriating money for postal service; which was referred to the Committee on Appropriations, and ordered to be printed.

ESTIMATES OF APPROPRIATIONS.

The SPEAKER also laid before the House a letter from the Secretary of the Treasury, transmitting estimates of appropriations for vari-

ous departments for service for the fiscal year ending June 30, 1877; and also a letter from the Secretary of the Treasury, transmitting a statement of balances of appropriations required by law to be re-appropriated for the fiscal year ending June 30, 1874, and prior years; which were referred to the Committee on Appropriations, and ordered to be printed.

LEAVE OF ABSENCE.

Leave of absence was granted as follows:

To Mr. ROBBINS, of North Carolina, for ten days on account of illness;

To Mr. HURD and Mr. VANCE, of Ohio, for Monday and Tuesday next; and

To Mr. FAULKNER, for ten days from and including the 8th instant.

DEFECTIVE ENTRIES OF LAND.

Mr. LAWRENCE, by unanimous consent, introduced a bill (H. R. No. 4315) for the relief of the holders of defective entries of land; which was read a first and second time, ordered to be printed, referred to the Committee on the Judiciary, and also ordered to be published in the RECORD, as follows:

A bill for the relief of the holders of defective entries of land.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases where an entry has been, or may be, made by any person, other than corporations, in good faith, at the proper local land office, of any tract of land lawfully subject to entry, which may be informal, irregular, defective, or void, and whenever such entry shall be canceled, the person or persons having made such entry, their heirs, devisees, or assigns, shall have the first and preferable right to make a lawful entry of, and procure a patent for, such lands, within one year after notice of such cancellation as herein required; but nothing herein shall divest any right heretofore acquired.

Whenever any entry or patent shall be canceled, the Commissioner of the General Land Office shall give notice thereof by mail, if practicable, to the person claiming the land under such entry, or if it be impracticable to ascertain the name and post-office address of such person, then notice shall be given by publication in such manner as said Commissioner may deem proper.

The Commissioner of the General Land Office shall have power to prescribe all proper rules and regulations to carry this act into effect.

Mr. LAWRENCE. This is a measure of very great importance and should receive prompt action.

The motion of Mr. HOLMAN that the House adjourn was then agreed to; and accordingly (at three o'clock and ten minutes p. m.) the House adjourned.

PETITIONS.

The following petitions were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. ELLIS: The petition of Charles H. Levy, of Louisiana, for the removal of his political disabilities, to the Committee on the Judiciary.

By Mr. MILLER: The petition of citizens of Harpersfield, Delaware County, New York, that the General Government purchase and operate the telegraph lines of the country, to the Committee on the Post-Office and Post-Roads.

By Mr. MORGAN: The petition of W. K. Edwards, of Newton County, Missouri, for compensation for property destroyed by the United States Army, to the Committee on War Claims.

By Mr. ROBERTS: The petition of Samuel Swope, of Carroll County, Maryland, for compensation for supplies furnished the United States Army, to the same committee.

By Mr. SEELYE: The petition of citizens of Westhampton, Massachusetts, that the provision of the act of Congress of July 24, 1866, relative to the purchase and operation by the Government of all telegraph lines in the United States, be enforced, to the Committee on the Post-Office and Post-Roads.

By Mr. THORNBURGH: The petition of Wesley McNew and citizens of Union County, Tennessee, that he be restored to the pension-roll, to the Committee on Invalid Pensions.

By Mr. VANCE, of North Carolina: The petition of F. N. Goddard and others, against the extension of a patent on buckles to the West Haven Buckle Company, to the Committee on Patents.

By Mr. W. B. WILLIAMS: The petition of Emily E. Wheelock, widow of Edward C. Wheelock, deceased, late a bugler in the Third Michigan Cavalry, for a pension, to the Committee on Invalid Pensions.

IN SENATE.

MONDAY, *January* 8, 1877.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

The Journal of the proceedings of Friday last was read and approved.

HOUSE BILLS REFERRED.

The following bills from the House of Representatives were severally read twice by their titles and referred as indicated below:

The bill (H. R. No. 2114) to give parties contestant time to file on or enter lands under the pre-emption, homestead, or timber-culture acts after the contests shall have been finally decided—to the Committee on Public Lands.

The bill (H. R. No. 2283) granting pensions to certain soldiers and sailors of the Mexican, Florida, and Black Hawk wars, and certain widows of deceased soldiers and sailors of the same—to the Committee on Pensions.

The bill (H. R. No. 3567) to make the ports of Brownsville and Galveston, Texas, ports to which unappraised merchandise may be transported—to the Committee on Commerce.

The bill (H. R. No. 3775) fixing the compensation of United States marshals and deputies—to the Committee on the Judiciary.

EXECUTIVE COMMUNICATIONS.

The PRESIDENT *pro tempore* laid before the Senate a letter from the Secretary of War, transmitting, in compliance with section 1665 of the Revised Statutes, a statement exhibiting the expenditures at the Springfield armory, and the arms, components of arms, and appendages fabricated, altered, and repaired thereat during the fiscal year ending June 30, 1876; which was ordered to lie on the table and be printed.

He also laid before the Senate a letter from the Secretary of War, recommending to the Senate and House of Representatives the enactment of a law to provide for the better care and protection of quartermaster stores, similar to that approved March 3, 1873, providing for the better care and protection of subsistence supplies; which was referred to the Committee on Military Affairs, and ordered to be printed.

He also laid before the Senate a letter from the Secretary of the Treasury, inviting the attention of Congress to the present condition of the appropriation for temporary clerks for his Department, and to the necessity of providing an additional appropriation therefor to complete the service for the current fiscal year; which was referred to the Committee on Appropriations, and ordered to be printed.

He also laid before the Senate the annual report of the Public Printer, showing the condition of the public printing, binding, &c., December, 1876; which was ordered to lie on the table and be printed.

PETITIONS AND MEMORIALS.

Mr. SPENCER presented the remonstrance of W. W. Corcoran and 50 other property and lease holders on Pennsylvania avenue; which was read and referred to the Committee on the District of Columbia, as follows:

To the Senate and House of Representatives:

We, the undersigned property and lease holders on Pennsylvania avenue between First and Fifteenth streets northwest, respectfully protest against having certificates issued which will be a lien upon our property, until Congress shall be satisfied that the pavement now being laid on Pennsylvania avenue is not a failure, as present appearances indicate.

We respectfully submit that the property-holders have already paid for a perishable pavement of wood, laid under a former act of Congress on this thoroughfare, and that inasmuch as the commissioners admit in their report to the President of the United States (using the following language in reference thereto) that the kind of pavements they have selected are still experimental, and that they "depend for their quality upon the proportions of the ingredients used, the amount of heat employed in the preparation, and thorough work in laying. If too great heat be applied, the mixture loses its cementing properties and the pavement becomes a mass of loose powder. This cannot generally be determined during either process of mixing or laying, but is soon developed by use. When this happens, the defective portion is removed, and new material substituted therefor. A large percentage under each contract has been condemned by the commission, and has been, or will be, relaid."

This being the case, and the fact that "a large percentage" of the pavement which was laid during the fine weather of last fall and under the most favorable circumstances, after about two months' wear "lost its cementing qualities and became a mass of loose powder;" and as this process of disintegration is being gradually "developed by use," we respectfully request that no certificates shall be issued against our property for this pavement until these gentlemen shall have finished experimenting and the pavement shall have been sufficiently "developed by use" to satisfy your honorable bodies that it is the "best kind of pavement" that could have been selected for Pennsylvania avenue, as contemplated by the act of Congress approved July 19, 1876, under which the work is being done.

Mr. EATON presented a petition of Yale & Bryan and other leading business men of New Haven, Connecticut, praying the repeal of the bankrupt law; which was referred to the Committee on the Judiciary.

Mr. INGALLS presented the petition of Barnett, Morrill & Co., of Hiawatha, Kansas, representing that the taxes now imposed on State, national, and private banks are onerous, unjust, and inequitable, and praying the repeal of the law imposing taxes upon banks; which was referred to the Committee on Finance.

Mr. BOOTH presented a memorial of ship-masters commanding deep-water vessels sailing out of the port of San Francisco, California, remonstrating against the passage of House bill No. 3187, amending the shipping act of 1872; which was referred to the Committee on Commerce.

He also presented a memorial of 1,068 officers and seamen serving on deep-water vessels sailing out of the port of San Francisco, California, remonstrating against the amendments proposed in House bill No. 3187 to the shipping act of 1872; which was referred to the Committee on Commerce.

Mr. DORSEY presented the memorial of a large number of citizens of Hot Springs, Arkansas, relating to the disposal of the Hot Springs reservation; which was read and referred to the Committee on Public Lands, as follows:

Your memorialists, citizens and property-owners of Hot Springs, Arkansas, beg to represent that they are now and have been for a long period of years settlers and residents upon the four sections of land known as the Hot Springs reservation; that during all this time the title has been in dispute, which was finally settled by

the decision of the Supreme Court April 24, 1876, vesting the same in the United States; that prior to said decision many substantial improvements had been erected, numbering over one thousand and consisting of residences, hotels, store-houses, bath-houses, private residences, gas-works, churches and public buildings, steam and horse railroads, the aggregate value of which reaches a large sum of money.

The capital represented by these improvements with few exceptions includes all the means your memorialists had at the date of said decision, which fact will not be questioned when it is further represented that nine-tenths of the settlers came here with exhausted means and impaired health and are compelled to remain here for the use of the hot water and baths. We would further represent that by virtue of law and a decree of the Court of Claims a receiver has taken possession of all the land and improvements, and collects a large rental, not only for the use of the land, but for the buildings and the water flowing from said springs.

We beg to further represent that said receiver collects a monthly rental which amounts in the aggregate to a large sum of money for the use of the private residences, store-houses, and all buildings which were erected by and belong to the occupants of the same, that is to say that the United States is collecting from your memorialists a heavy rental for property the undersigned have accumulated by their individual labor and industry and which belongs exclusively to them.

We believe your honorable body will agree with your memorialists that such collections of rent are unjust, inequitable, and without precedent, and that all money so collected should be returned to those who paid it.

We would further represent that more than nine-tenths of the residents upon this reservation are very poor, and owing to the large sums of money which the receiver has collected, and which has been consequently withdrawn from local circulation, business has become paralyzed, building and all improvements stopped, and labor without employment. It is therefore impossible for the greater part of the residents here to pay their monthly installments of rent. In view of the fact that the material value of this property is the result of individual capital and labor, we respectfully ask that your honorable body will, at an early day of the present session, make such disposition of the same as in your wisdom and discretion may be deemed equitable to the settlers and just to the Government and the whole people of the United States.

The Senators and Members of Congress from the State of Arkansas are urged and requested to use their best endeavors to secure the speedy consideration of the subject presented in the foregoing memorial; and we will, in duty bound, ever pray.

Mr. DORSEY presented the petition of Julia Scroggin, widow of Humphrey Scroggin, late private in Captain Worthey's company of Georgia militia in the war of 1812, praying an amendment to the act granting her a pension; which was referred to the Committee on Pensions.

Mr. SHERMAN. I am requested to present the petition of a number of citizens of Cincinnati upon the importance of a peaceful and legal count of the recent presidential election. I notice among the names attached to this petition many of the leading business men of Cincinnati, persons in high social and official positions in the State of Ohio, who are well known throughout the country and of both political parties. Their opinions are entitled to great respect and consideration. Perhaps no number of names from that portion of the United States would be entitled to more consideration and respect from their weight, character, and influence than these gentlemen. The general tone of the petition, also, I think will meet with the almost universal sense of the Senate. There may be differences of opinion as to the particular mode of accomplishing the object they pray for, but the object they seek, the peaceful, quiet, orderly count of the electoral vote, is one that every member of the Senate will heartily concur in. There will be differences of opinion as to the mode that may be devised hereafter for counting the vote, but the importance of the subject and the character of the petitioners entitle this petition to be read in full and to be referred to the select committee having charge of this subject.

The PRESIDENT *pro tempore*. Is there objection to the petition being read? The Chair hears none.

Mr. THURMAN. Before the petition is read I wish to say in one sentence that I entirely concur in what my colleague has said in respect to the character and standing of the gentlemen who have signed it. That the petition is in the most respectful language, and that it is in the proper spirit the Senate will see when they hear it read. As to any of the questions that arise on this subject, I do not now feel it necessary to say a word, but I do commend, as my colleague has done, the petition to the consideration of the Senate.

The PRESIDENT *pro tempore*. The Secretary will read the petition.

The Secretary read as follows:

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The undersigned, members of all political parties, beg leave respectfully but earnestly to represent to your honorable bodies that in their belief the citizens of the United States are almost unanimous in the demand that the questions arising from the late presidential election shall be dealt with in a spirit predetermined to harmonize conflicting views, irrespective of the success or defeat of individual candidates.

The undersigned feel that any other course involves perils to the very structure of our Government, which no thoughtful man can contemplate without dread. Even should such perils be averted, a partisan contest in Congress, resulting in the proclamation of a President without the acquiescence of both Houses, would destroy the confidence of the people in the justice of the decision adopted, would weaken their respect for the forms of law, and impair their faith in the adequacy of the Constitution to preserve substantial justice between contending parties.

The consequences of such action could not fail to be deplorable to the country and ruinous to the party which might achieve a temporary triumph. No administration placed in power in any manner that may offend the popular sense of right could conduct the affairs of the nation with credit to itself or advantage to the country. Under such an administration the opposition would enjoy an overwhelming advantage, and a short-lived party triumph would be followed by inevitable downfall. It may be emphatically asserted that the future will belong to those who now show themselves superior to the blind partisanship of the moment, and ready to promote harmony and to avert strife.

Even a prolongation of the existing uncertainty is greatly to be deprecated, entailing, as it must do, a paralysis of industry and a prostration of all material interests, which will work incalculable evil by destroying the demand for labor and depriving of support the poor and unemployed.

The undersigned therefore confidently hope that your honorable bodies will earnestly seek some mode of reaching a decision of the pending questions that will satisfy the conscience of the country. They feel assured that when Senators and Representatives of the United States are called upon to exercise judicial powers fraught with consequences so momentous they will bring to the discharge of their high functions a spirit of fairness and impartiality that will result in virtual unanimity of judgment. A result so reached, whatever it may be, will unquestionably command the willing acquiescence of the whole nation.

Mr. SHERMAN. I move that the petition be referred to the select committee to devise a mode for counting the electoral vote for President and Vice-President.

The motion was agreed to.

Mr. SHERMAN presented a petition of citizens of Ohio, praying for the enforcement of the provisions of the act of July 24, 1866, to aid in the construction of telegraph lines and to secure to the Government the use of the same for postal, military, and other purposes, and for cheaper telegraphic facilities, so as to secure cheap telegraphic communication; which was referred to the Committee on Post-Offices and Post-Roads.

Mr. CONKLING. I present the petition of B. T. Thurlow of New York, praying that additional interest may be paid to those whose claims have been allowed under the Geneva award; a similar petition from Richard B. Buck & Co., of New York; and a similar petition of S. W. Casey, executor of the estate of Thomas Dunham, deceased. I move the reference of these three petitions to the Committee on the Judiciary.

The motion was agreed to.

Mr. CONKLING presented additional papers relating to the petition of Daniel Houlihan, late sergeant of Company F, Eighty-second New York Volunteers, praying to be allowed a pension; which were referred to the Committee on Pensions.

Mr. HAMLIN. I have received and been requested to present to this body the memorial of Charles H. McLellan, and sundry other commercial men and merchants of the city of Bath, Maine, who represent that during the late war they retained their own navigation, under their own flag, at great expense, being compelled to pay extra war premiums. They ask the attention of the Senate to the consideration of the bill of the House distributing the balance of the Geneva award. I desire to express the hope that the Judiciary Committee, in some form at least, will give us that bill, and that we may consider it and act upon it as the judgment of the Senate shall deem best. I move that the petition be referred to the Committee on the Judiciary.

Mr. EDMUNDS. I wish to say to my friend that certainly the Judiciary Committee has been endeavoring to give that bill the very earliest attention.

The PRESIDENT *pro tempore*. The petition will be referred to the Committee on the Judiciary.

Mr. WALLACE presented a petition of citizens of Chickies and Marietta, Pennsylvania, praying an amendment of the Constitution so as to provide for the election of President and Vice-President by the direct vote of the people; which was referred to the select committee to devise a mode for counting the electoral votes for President and Vice-President.

He also presented a memorial of citizens and business men of Philadelphia, Pennsylvania, without distinction of party, praying for a speedy and amicable adjustment of the pending political difficulties arising out of the late presidential election; which was referred to the select committee to devise a mode of counting the electoral votes for President and Vice-President.

Mr. BOGY. I presented a few days ago a memorial of Mexican claimants, praying the payment of their claims against the republic of Mexico, and accompanied it with a motion that it be printed. My motion was not heard, and therefore I move now that the memorial be printed.

The motion was agreed to.

REPORTS OF COMMITTEES.

Mr. INGALLS, from the Committee on Pensions, to whom was referred the bill (S. No. 874) to amend section 4721 of the Revised Statutes of the United States, reported it with an amendment.

He also, from the same committee, to whom was referred the bill (S. No. 754) granting a pension to John H. Glidden, reported adversely thereon; and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (H. R. No. 1521) granting a pension to Louis A. McLaughlin, reported it without amendment, and submitted a report thereon; which was ordered to be printed.

He also, from the same committee, to whom was referred the bill (H. R. No. 2842) granting a pension to Robert S. Toland, of Bay City, Michigan, reported it without amendment, and submitted a report thereon; which was ordered to be printed.

He also, from the same committee, to whom was referred the petition of Marsilvia F. Woodard, of Cambridge, Massachusetts, praying to be allowed a pension, submitted a report thereon, accompanied by a bill (S. No. 1123) granting a pension to Marsilvia F. Woodard, mother of George Woodard.

The bill was read and passed to the second reading, and the report was ordered to be printed.

Mr. INGALLS. I am also directed by the same committee, to whom was referred the bill (H. R. No. 3964) granting a pension to Annie Gibson Yates, to report it adversely and move that the bill be postponed indefinitely as the parties have not made application to the Pension Office, where there is provision for their relief.

The motion was agreed to.

Mr. WITHERS, from the Committee on Pensions, to whom was referred the bill (H. R. No. 3500) granting a pension to Nelson Ainslie, reported it without amendment, and submitted a report thereon; which was ordered to be printed.

He also, from the same committee, to whom was referred the bill (H. R. No. 2242) granting a pension to George McColly, reported it without amendment, and submitted a report thereon; which was ordered to be printed.

He also, from the same committee, to whom was referred the petition of Amy King, widow of James King, a soldier of the war of 1812, submitted a report thereon accompanied by a bill (S. No. 1118) granting a pension to Amy King.

The bill was read and passed to the second reading, and the report was ordered to be printed.

BILLS INTRODUCED.

Mr. EDMUNDS asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1119) to extend the operation of the act of February 27, 1875, entitled "An act to provide for settlements with certain railway companies" for one year; which was read twice by its title.

Mr. EDMUNDS. I wish to say that I present this bill by request and have no knowledge, information, or belief as to whether it is right or not, but to give gentlemen interested an opportunity to be heard. I move that the bill be referred to the Committee on the Judiciary and printed.

The motion was agreed to.

Mr. FADDOCK (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1120) to modify the mode of appeals from the Patent Office; which was read twice by its title, referred to the Committee on Patents, and ordered to be printed.

Mr. MORRILL asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1121) to abolish the board of commissioners of "the Metropolitan police district of the District of Columbia," and for other purposes; which was read twice by its title, referred to the Committee on the District of Columbia, and ordered to be printed.

Mr. INGALLS (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1122) to secure the rights of settlers upon certain railroad lands, and to repeal the first five sections of an act entitled "An act granting lands to the State of Kansas to aid in the construction of the Kansas and Neosho Valley Railroad, and its extension to Red River," approved July 25, 1866; which was read twice by its title, referred to the Committee on Public Lands, and ordered to be printed.

ELECTORAL VOTE OF OREGON—RECUSANT WITNESS.

Mr. MORTON. Mr. President, I am instructed by the Committee on Privileges and Elections to submit a report; which I ask to have read.

The PRESIDENT *pro tempore*. The report will be read.

The Chief Clerk read as follows:

The Committee on Privileges and Elections, who were instructed by resolution of the Senate to inquire into the facts attending the casting of the electoral vote of the State of Oregon, beg leave to report to the Senate:

That Enos Runyon was duly summoned as a witness and appeared before said committee on Saturday, the 6th instant; and, being duly sworn, the following questions were asked him, to which he made the following replies:

By Mr. MITCHELL:

Question. Where do you reside?
Answer. At Newark, New Jersey.
Q. Where do you do business?
A. My office is on Wall street, New York.
Q. What is your business?
A. Banker and broker.
Q. What is the name of your firm?
A. Martin & Runyon.
Q. Who is your partner?
A. Augustus F. R. Martin.
Q. With what bank in New York City do you do your business?
A. The Bank of North America.
Q. Have you any business correspondents in Oregon?
A. We have correspondents all over the country, in every part of the country.
Q. You understand what I mean, you have no regular business correspondents in Oregon, have you?
A. We have a business correspondence, as far as that goes, in collections or anything of that kind, that we do with parties in Oregon and all over the country.
Q. Have you any business transactions of your own with any person in Oregon?
A. I have not.
Q. Have you ever had?
A. I have not.
Q. State what you know about a draft having been drawn by your firm or any of its members, or under their direction, for the sum of $8,000, in favor of Ladd & Bush, of Salem, Oregon, on or about the 6th day of December last.
A. In reference to a check, do you mean?
Q. Check or draft.
A. I know there was such a check drawn.
Q. State what it was.
A. A certified check.
Q. State what that check was; in whose favor was it drawn; by whom was it drawn; on whom it was drawn, and for what amount.
A. The check was drawn by Martin & Runyon on the Bank of North America.
Q. In favor of whom?
A. In favor of Ladd & Bush, of Salem, Oregon.
Q. For what amount?
A. Eight thousand dollars.
Q. What was the date of it?
A. I think it was December 6.
Q. For what purpose was that draft drawn?
A. I know not.
Q. Who drew the check?
A. My book-keeper always draws the checks.
Q. Who is your book-keeper?
A. Mr. Hughes.
Q. What is his full name?
A. George H. Hughes.
Q. Who directed him to draw it?
A. I did.
Q. For what purpose?
A. To draw a check for that amount to that order, and I told him——

By the CHAIRMAN:

Q. Who procured the check to be drawn?
A. I do not understand you.
Q. Who came and got the check to be drawn? At whose instance was it done?
A. At mine.
Q. Was there no person who got you to do it?
A. I do business for my customers all the time.
Q. Who was the customer that got this done?
A. That is a thing that in our business we never divulge—the name of a customer. I shall have to decline to answer, because our business is the same as a lawyer in that respect; we cannot divulge the name of a customer. If we did we should not have many customers. When I first went into business as a boy, when a clerk, I was told the first thing was never to take a check of any party and cash it without I knew the parties; and the next thing was never to divulge any business connected with any of the customers of the office.

By Mr. MITCHELL:

Q. This check then was not for your own use?
A. No, sir.
Q. For the use of some other person, was it?
A. It was.
Q. Who was that person?
A. Do you mean the person that wanted me to draw it?
Q. Who wanted you to draw that check for $8,000 in favor of Ladd & Bush, of Salem, Oregon, on the Bank of North America?
A. That I shall have to decline to answer.
Mr. MITCHELL. Mr. Chairman, I insist on an answer.
The CHAIRMAN. I will state as my view of the law that it is not a privileged communication, but a matter that the witness is required to answer.
Mr. KERNAN. That is my judgment. I would advise him to answer, both as a lawyer and a member of the committee. I think he should answer as he would if he were before a court in a pending proceeding.
The CHAIRMAN, (to the witness.) It is your duty under your oath, Mr. Runyon, to answer the question.
The WITNESS. I shall have to decline answering the question.
Mr. KERNAN. Let me make a suggestion. If you were brought into a court of justice to show who the man was that came and got the check you would be compelled to answer. I hope you will do so here.
The WITNESS. I do not see how I can. In the first place, that check was returned.
Mr. MITCHELL. I object to any voluntary statement until this question is answered.
The CHAIRMAN. The committee ask the question, who procured you to draw the check?
Mr. KERNAN. Which means who came and asked you to do it?
The CHAIRMAN. Yes, sir. You are advised by all the members of the committee that it is your duty to answer that question. Once more we ask you who it was procured you to draw that check?
The WITNESS. As I said before, I shall have to decline answering under the circumstances.

By the CHAIRMAN:

Q. Was there money deposited or paid to you as a consideration for that check?
A. That check was returned.
Q. But at the time you gave it?
A. I was told to do that for a regular customer; that was all. Afterward the check was returned.
Q. I am not asking about the check being returned; you need not state that; but when you state who procured you to draw the check we will go into the circumstances of the returning of the check if it was returned. Are you in the habit of giving checks for money without your being paid for the check or the check being secured by the deposit of collaterals or in some way?
A. Through the day do you mean?
Q. Yes.
A. Yes, sir.
Q. I ask you what was the consideration given to you for drawing that check?
A. At that time?
Q. Yes, sir.
A. No consideration.
Q. Was there any security given to you in any way?
A. Yes, sir.
Q. Do you mean to say that you drew that check by which you would pay $8,000 to Ladd & Bush, without any consideration given to you for it?
A. I mean to say at the time there was none. We do business between ten and three, and a check is drawn and very often I do not have the collaterals or anything else or the money returned until three o'clock; sometimes after three.
Q. You drew the check and handed it over to some person, did you?
A. No, sir. I did not hand over the check. The check was not handed over.
Q. Did any person take it away from the house?
A. I was the one who took it away.
Q. Where did you take it?
A. I took it to Liberty street, to Mr. Dimon.
Q. What is his first name?
A. Charles, I think, is his name.
Q. Did you hand it to him?
A. No, sir; he was not in.
Q. Did you bring the check away with you?
A. I did.
Q. Did you afterward hand it to anybody else?
A. I think not.
Q. Did the check remain in your possession all the time?
A. It did until I brought it back to the office and put it into the drawer.
Q. What became of it?
A. It was redeposited in our bank.
Q. To whose credit was it deposited in your bank?
A. Martin & Runyan's.
Q. Is the check there yet?
A. I suppose it is charged up to our account and returned with the checks; it is in our bank there.
Q. You say you brought it back yourself?
A. Yes, sir.
Mr. KERNAN. To the office, and then it was deposited to their own credit in the

bank, as I understand; and then he says the bank returns the vouchers. Am I right about that?

The WITNESS. It is returned with the returned vouchers of the bank.

Mr. KERNAN. It was not a check, however, for anybody's benefit but their own, as he states it now.

Q. (By the CHAIRMAN.) Was the check taken to the Bank of North America?

A. It was taken and deposited with the rest of our checks.

Q. In the Bank of North America?

A. Yes, sir.

Q. Was it taken there and deposited for the purpose of being sent to Oregon?

A. No, sir; it was not.

Q. For what purpose was it deposited in the Bank of North America?

A. Instead of destroying it we redeposited it in our bank.

Q. If the check was not to be used by anybody why was it not destroyed or canceled?

A. If we should do that we could never keep any record of our checks in drawing our deposits. Sometimes we make a mistake in a check. If we make a mistake in drawing a check, it may be one letter wrong, instead of using that check and having it go out in the streets or paying it to anybody, we take that check and draw another one and deposit that check in our bank.

Q. But the point is this: If you draw a check which is not used by the person for whom it is intended, why should you not cancel the check instead of keeping it alive and depositing it in a bank, it being your own check?

A. Am I allowed to explain this?

Q. I am asking you the particular reason for that.

A. In our business—and I suppose it is the same with every other broker in the street—we have our checks all numbered, stamped, and everything. Then, of course, a check we draw is a voucher; and in case that check is not used that check is put back into our bank deposit the same as if it were John Jones's check or John Smith's check. I generally indorse on the back, "For deposit for account Martin & Runyon," because there is nobody else to indorse it.

Q. Why is not the check canceled?

A. I was explaining to you. The reason why it is not is that we could not keep our checks straight if we did that. Our checks are numbered, and when they are returned to us the banks cut them, and there would be trouble if there was a wrong number. We never destroy a check that has been drawn in regular order.

Q. What was the object of depositing this check in the Bank of North America if it was not to be used?

A. It was because the check was not used and there had to be some disposition made of it, and as there was a charge there had to be a credit of it.

Q. There was no charge of the check on any books but your own?

A. That was all, on the check book.

Q. If the check was not used it would have been sufficient simply to have destroyed the check and made an entry on your book which would have shown that the check was not used but destroyed?

A. No, sir, we cannot do that; we never do that.

Q. Is this check that you deposited in the Bank of North America to be used hereafter by anybody?

A. No sir, it is not to be used again, because the check is cut and canceled and charged up on our books.

The CHAIRMAN. I suppose, gentlemen, there is nothing to do but present this witness to the Senate.

Mr. KERNAN. Of course I quite concur in that. But let me ask one question. (To the witness.) Was this check disposed of as you in your regular course of business dispose of any other that is never issued to any one?

A. Yes, sir, precisely.

Q. (By Mr. KERNAN.) If for instance, I should go there and you should draw your check in my favor and for any reason you never give it to me, you send that to your bank to be deposited?

A. We put it in with our checks.

Q. And it goes through and is both charged and credited to you?

A. Yes, sir.

Q. This check then never did go out of your possession?

A. No, sir, never.

Q. Nobody ever drew any money on this check?

A. No, sir.

Q. It went back into your own account again. Instead of your doing what so bad a banker as Mr. KERNAN does when drawing a check and writing on the margin "not used," as he does not keep regular books, and tearing it up, you send it to the bank so that all your numbers appear?

A. Yes, sir.

Q. They being numbered on the stubs and on the checks from one through?

A. Yes. I can probably make it plainer by just stating the habit of drawing our checks.

By the CHAIRMAN:

Q. I do not care about that. You went up to the house where Mr. Dimon was. By the way, what house is that?

A. It is A. E. & C. E. Tilton, I think.

Q. You say Mr. Dimon was not in?

A. He was not in.

Q. Did you see any other member of the firm?

A. I saw Mr. Tilton, I think it was. That was said to be his name.

Q. Did you have any talk with him about this check?

A. I asked him about it.

Q. What did he say about it?

A. He said he could not reply, for Mr. Dimon was not there.

Q. Have you seen Mr. Dimon since that time?

A. Yes, sir.

Q. Did you have a talk with him about it?

A. Yes, sir.

Q. Did you see him during the course of that day?

A. Yes; he came over in the afternoon.

Q. To your establishment?

A. Yes, sir.

Q. What passed between you in regard to the check?

A. In what way?

Q. What was said by you or by him in regard to that check?

A. He said that the check was not a check that could be used by Ladd & Bush; that he was not of the firm of Ladd & Bush.

Q. Why could it not be used by Ladd & Bush; it was made payable to them, was it not?

A. Yes, sir.

Q. Why could it not be used by them?

A. Because it was not indorsed, I suppose; the check would have to go out there. That is as near as I could come at it.

Q. Did he want it put in a different form?

A. Yes, sir.

Q. Was it put in a different form?

A. Yes, sir.

Q. What was the other form?

A. I simply gave a check to him.

Q. You gave a check to Charles Dimon for the amount?

A. Yes, sir.

Q. Did he take that away with him?

A. Yes, sir.

Q. Was the firm of Ladd & Bush mentioned in that check?

A. No, sir.

Q. Was this second check that you gave for the benefit of Ladd & Bush?

A. I presume it must have been. I do not recollect exactly what it was.

Q. Do you not know that it was? Was not that the understanding and talk between you, that it was for their benefit?

A. That Mr. Dimon was their agent here; that was all; and the check was for him.

Q. Has that check been paid?

A. Yes, sir.

Q. When was it paid?

A. The check that he gave?

Q. Yes; the second one.

A. The next day, I presume.

Q. What was the amount of that check?

A. Eight thousand dollars.

Q. Was there anything said between you and Mr. Dimon as to what that check was for; what that $8,000 was for?

A. He asked me what it was for, yes.

Q. What did you tell him?

A. I told him I did not know.

Q. I ask you the question again, if it was not said there between you and him, or so understood, that that check was given for the benefit of Ladd & Bush; that you were just changing the form of it and making it payable to him instead of to that firm?

A. I presume it was; he was their agent.

Q. Did you see the person who procured you to draw the first check again that day?

A. Yes, sir.

Q. Did you state ever to him what had taken place between you and Mr. Dimon?

A. I believe that I did.

Q. That check, you say, was paid the next day. Have you been paid for that check?

A. Yes, sir.

Q. When were you paid for it?

A. On the 11th of December, I think it was.

Q. By whom were you paid?

A. By Mr. Dimon.

Q. When you saw the person who procured you to draw that check and stated to him what had taken place, was that satisfactory to him?

A. Yes, sir.

Q. Do you know of any other moneys or any other checks or drafts in favor of Ladd & Bush, in Oregon?

A. I do not.

By Mr. MITCHELL:

Q. When this first check was drawn was there any person charged with the amount in your banking-house?

A. No, sir.

Q. There was no charge made against any person?

A. Because it was returned.

Q. But at the time it was issued you did not know whether it would be returned or not?

A. Nobody was charged with it.

Q. There was nothing said in this check about Mr. Dimon, was there? His name was not mentioned in it all?

A. No, sir.

Q. How did you come to go to Mr. Dimon?

A. That was my customer's instructions.

Q. He wanted you to take that check and go and see Mr. Dimon, did he?

A. Yes, sir.

Q. Did he go with you?

A. No, sir.

Q. Did you go alone?

A. Yes, sir.

By the CHAIRMAN:

Q. Is your clerk, Mr. Hughes, present here?

A. No, sir.

Q. Will he be here to-day?

A. I cannot say that he will be to-day. He has a sick child, so that he cannot come on. In fact we cannot all leave.

By Mr. MITCHELL:

Q. Who was finally charged with that money?

A. For the few days it was advanced?

Q. Yes.

A. I was charged with it. That is, I charged myself with it.

Q. It was not your transaction?

A. I did not want to make a charge because it was settled so soon.

Q. You had the promise of it, had you, in three or four days?

A. Yes, sir.

Q. By this same person that ordered the original check to be drawn?

A. Yes, sir; that I would have the money back.

Q. In what way were these $8,000 returned to you; by draft or deposit?

A. By a check of Mr. Dimon to me.

Q. A check by Mr. Dimon in your favor on what?

A. On the Saint Nicholas National Bank.

By Mr. KERNAN:

Q. As I understand, you gave the check to Dimon the 6th or about that time?

A. About then, I think.

Q. Payable to his order, as I understand?

A. Yes, sir.

Q. And he gave you the same amount back again on the 11th?

A. Yes, sir; that is, less telegraphic charges, which were $2.75.

Q. He gave you back the same amount less $2.75 on the 11th?

A. Yes, sir.

Q. Telegraphic charges to where?

A. I do not know. "Charges" was all; I do not know where. It was the same amount, with the exception of $2.75.

Q. And that, you say, was taken out on account of telegraphic charges?

A. That is what I understood.

Q. Have you any receipts or memoranda or documents here about these checks?

A. Yes, sir.

Q. Let me see them?

Mr. MITCHELL. Before he produces the papers let me ask a question. (To the witness.) What is your politics, Mr. Runyon?

A. I am a democrat.

Q. (By Mr. KERNAN.) Is the other member of your firm a democrat too?

A. No; a strong republican. [Producing papers.] Here are the papers.
Q. Is this [exhibiting] the paper you took from Dimon when you gave him the check?
A. Yes, sir.
Q. I will read this:
"Received New York, 6th December, 1876, of Messrs Martin & Runyon $8,000, for account of Messrs. Ladd & Bush, Salem, Oregon; which is advised this day by telegram. "CHAS. DIMON."

That you took from him as a voucher?
A. Yes, sir.
Q. Is this [exhibiting] what he brought you when he gave you back the check?
A. Yes, sir.
Q. I will read this:

CHARLES DIMON,
P. O. Box 4094. *No.* 115 *Liberty street.*
NEW YORK, *December* 11, 1876.

MESSRS. MARTIN & RUNYON,
New York City:

GENTLEMEN: I received this morning Messrs. Ladd & Bush's telegraphic message from Salem, Oregon, dated December 9, advising receipt of my telegram of the 6th instant, and to return the $8,000 to parties who deposited it.
Accordingly I herewith hand you my check, 11878, for $7,997.25, together with cost of telegram, $2.75, makes the $8,000, which I inclose a receipt for, which please sign and return to
Yours, respectfully,
CHAS. DIMON.

So you received the $7,997.25, did you?
A. Yes, sir.
Q. So that money came back to you in that way with this letter of his?
A. Yes, sir.
Q. That is the transaction you gave Dimon your check to his order on the 6th?
A. Yes, sir.
Q. And he gave you that receipt?
A. Yes, sir.
Q. And on the 11th he paid you back inclosed in that letter the amount therein named less the expenses as therein stated?
A. Yes, sir.

By the CHAIRMAN:

Q. You gave Mr. Dimon a check for $8,000 which was paid. According to this he paid you back $7,797.25; that was what you got back?
A. Yes, sir.
Q. That left you to pay the cost of the telegrams?
A. Yes, sir.
Q. Did that close up the transaction?
A. Yes, sir.
Q. What interest had you in paying the cost of the telegrams?
A. No interest; no more than the transaction was through with.
Q. I know, but that did not make you whole by $2.75. Why should you lose $2.75?
A. That was paid to me.
Q. Did you get $8,000 back?
A. Yes, sir.
Q. Was part of it paid in money?
A. Two dollars and seventy-five cents was.
Q. This is December 11. Did you get any interest on that $8,000?
A. No, sir.
Q. Why did you get no interest on it?
A. It was so short a time that it did not make only a day or two's difference.
Q. Is that the ordinary method of doing business, to charge no interest?
A. It is not the ordinary method; but when we have a little transaction like this with our customers we never charge them interest.
Q. Did you have any commission?
A. No commission on this transaction.
Q. And no interest?
A. No interest on it. Excuse me; I did receive interest in money. I overlooked that.
Q. How much interest did you receive?
A. That I do not remember; a few dollars; that was all.
Q. Why would not that be stated in this paper if you got interest? He specifies the exact amount he paid you here?
A. The interest was not from Mr. Dimon; I did not receive it from him.
Q. From whom did you receive the interest?
A. I received it from my customer.
Q. Do you know how much the interest was?
A. I cannot say exactly; but only a few dollars. I could figure it up for you very quickly.
Q. When did you get the interest?
A. At the time the check was returned me, giving the amount in money.
Q. Did the customer return the check to you himself?
A. No, sir.
Q. Who did return it?
A. Mr. Dimon.
Q. Was your customer Mr. Dimon?
A. No, sir.
Q. When did you see your customer?
A. In the afternoon.
Q. In the afternoon of the same day?
A. I am not certain, but I think it was.
Q. Was that interest entered on the books of your bank?
A. It was entered in a little blotter, just as we enter receipts.
Q. Was the interest paid to you in your bank?
A. No, sir.
Q. Where was the interest paid to you?
A. It was paid at my customer's office to me.
Q. I am speaking about the interest to you for the use of your money?
A. That was paid at my customer's office.
Q. When did your customer pay it to you?
Mr. KERNAN. He went to his customer's office and got the interest there.
The WITNESS. Yes.
The CHAIRMAN. You went there and it was paid to you there?
A. Yes, sir.
Q. (By the chairman.) You do not remember how much it was?
A. I do not.
Q. Do you know what that money was for?
A. No, sir.
Q. You do not?
A. I do not.
Q. Have you any opinion of what it was for?
A. I have not. I know nothing about the transaction at all, in no way, shape, or manner.
Q. What is your objection now to telling who your customer was who procured you to send that money?
A. For the reason, as I have stated, that I cannot divulge my customer's business.
Q. Do you undertake to say that there is such a rule generally prevailing among bankers that they refuse in courts to testify?
A. I think it is so.
Q. Do you think that is a rule among bankers?
A. I think so.
Q. That they refuse to testify as to who has procured checks or drafts of them?
A. I am not conversant enough with law to know whether it is so or not; but I know bankers and brokers never give up their principals on things.
Q. Did you ever know an instance of a banker or broker in court refusing to testify in such a matter? Were you ever in court when a refusal of that kind took place?
A. I have never been in court but once in my life; so I cannot state as to that.

By Mr. KERNAN:

Q. You got from Dimon only a check for $7,997.25?
A. Yes, sir.
Q. The customer, I suppose, paid you the expense of the telegram and the interest
A. Yes, sir.

By the CHAIRMAN:

Q. Do you mean to say the customer paid for the telegram?
A. Yes, sir.
Q. Who paid you for the telegram?
A. My customer.

By Mr. KERNAN:

Q. Dimon inclosed you nothing but his check?
A. That was all.
Q. Dimon paid you nothing but the check?
A. No, sir.
Q. Then you went to the customer and he paid you what you were out and the interest?
A. Yes.

By the CHAIRMAN:

Q. If you gave Mr. Dimon a check for $8,000 what had you to do with his telegram? Why should he not pay you back the whole $8,000? What right had he to deduct the cost of the telegram from the $8,000 of you?
A. It is customary always to take out charges for anything of that kind.
Q. But you had nothing to do with his telegram, had you? Whether he telegraphed or not was not your business?
A. No.
Q. Why then should he deduct the cost of that telegram when he came to pay you back the amount of your check?
A. It was taken on the same principle that exchange would be. A man might take out so much for exchange and have a right to do it. He probably had a right to take off for exchange.

By Mr. MITCHELL:

Q. At the time of issuing this first check or draft, whatever it was, had you issued any draft or check to this same customer on any parties in Oregon, or in favor of any parties in Oregon?
A. No, sir.
Q. Had you any business connection or arrangement with him at all in regard to matters in Oregon?
A. Not at all.
Q. State the number and street of this customer.
A. I cannot state it. I decline to do so.

By the CHAIRMAN:

Q. When were you first subpœnaed to come here?
A. I forget the date of the telegram.
Q. Do you know when Mr. Martin was subpœnaed?
A. I was expected to come on myself, and I telegraphed the next day that I would; but on account of the expected confinement of my wife I did not, however. I could not go away until I was forced to go last night.
Q. Did you suggest to Mr. Martin the day before yesterday, or a day or two since, that he should consult with anybody in regard to what course he should take about his testimony here?
A. I did not.
Q. Did you advise him to consult with Mr. Harrison?
A. I do not remember that I did.
Q. Did you introduce him to Mr. Harrison?
A. Yes, sir.
Q. Where did that take place?
A. I think it was at Mr. Harrison's office.
Q. Where is Mr. Harrison's office?
A. Where I went was in the Security Life and Trust Company's building; I think 33 Pine street.
Q. How far is that from your office?
A. Right back of my office.
Q. How did you and Mr. Martin come to be in Mr. Harrison's office together?
A. I did not know what to do about coming on here so I suggested the aid of Mr. Harrison for consultation to know what I could do about it, and as I showed him the telegram he said, "One of you must go right on out of respect to the committee of the Senate." I suggested the way I was fixed and he suggested Mr. Martin's coming on.
Q. Did you invite Mr. Martin to go with you into Mr. Harrison's office?
A. Yes, sir; and I went around with him.
Q. Is Mr. Harrison a lawyer.
A. Yes, sir.
Q. Did you suggest the propriety to Mr. Martin of bringing Mr. Harrison here with him?
A. No, sir.
Q. Did you know that Mr. Harrison was coming here?
A. I did not until I had gone back to the office.
Q. How did you find it out then?
A. Mr. Martin told me he was going on on some business and would accompany him on.
Q. Did you advise Mr. Martin that he should consult with Mr. Harrison as to his testimony here, or the course he should take here?
A. No, sir.
Q. Is your memory clear on that point?
A. I think it is. I stated that anything he wanted to find out he could, as Mr. Harrison was a lawyer. That was all I said. As far as advising, I did not.

By Mr. KERNAN:

Q. Why did not you want to come on? What was the matter with your wife?
A. Confinement was expected.
Q. And that is the reason you did not want to come on?
A. Yes, sir. I expected it every day.

By Mr. MITCHELL:

Q. Did I understand you to say that you charged on your blotter to your customer this interest?

A. No, sir; we enter there little things that come in and go out.

Q. Is your customer named in that entry?

A. No, sir.

Q. Is it customary to do business in that way without naming parties?

A. We do it on the blotter. We keep a regular blotter instead of charging these things on a ledger.

Q. Have you seen that customer since you have been subpœnaed?

A. Yes, sir.

Q. Where?

A. At his office.

Q. When?

A. I saw him yesterday.

Q. Have you seen him since?

A. No, sir.

Q. Where is he now?

A. I suppose he is in his office.

Q. Why did you go to see him yesterday?

A. I went to see him to tell him I was coming on last night.

Q. What had he to do with that?

A. He had nothing to do with it here.

Q. Why was it necessary that you should see him to tell him you were coming on?

A. Nothing more than to say I was going.

Q. Did you have any conversation with him as to your testimony here?

A. No, sir.

Q. Did he make a request that you should not disclose the name of your customer?

A. No, sir.

Q. Who did make that suggestion?

A. That is my own.

By the CHAIRMAN:

Q. Had you a conversation with anybody in regard to the subpœna to attend here before this committee before you went into the office of Mr. Harrison?

A. I consulted with my principal or customer.

Q. Did your customer or principal advise you to consult with Mr. Harrison?

A. Well, he did indirectly. I did not know what to do in reference to the matter, and he told me that I might go and see Mr. Harrison; he might be better posted than anybody else, and tell me how to proceed. The only hesitancy I had to come was because of my wife's condition.

Q. Do you mean by "customer or principal" the man who bought the check of you?

A. I mean the man who told me to give this check.

And the said Runyon, being subsequently recalled on the same day, was further interrogated and made answer as follows, viz:

By Mr. KERNAN:

Q. Do you know Colonel William T. Pelton personally?

A. I do not.

Q. Did he know anything about this matter before or after?

A. I do not know.

Q. You do not know him at all?

A. I do not know him. I think I know the man by sight.

Q. Did anything ever pass between him and you about this check or anything connected with this matter, or your coming here?

A. Nothing of the kind.

The committee are of the opinion that in the investigation of the facts attending the casting of the electoral votes of the State of Oregon on the 6th of December last it is important for the witness to answer the question who it was that procured the firm of Martin & Runyon to give their check to Charles Dimon for the sum of $8,000, and to answer all questions touching that transaction. The committee therefore submit to the Senate for adoption the following resolution:

Resolved, That the President of the Senate issue his warrant, directed to the Sergeant-at-Arms of the Senate, commanding him forthwith to arrest and to bring to the bar of the Senate the body of Enos Runyon, to show cause why he should not be punished for contempt, and in the mean time to keep the said Runyon in his custody to await the further order of the Senate.

Mr. MORTON. Mr. President, I ask to have the report printed, and give notice that I will call up the resolution to-morrow morning for action; and while I am on the floor I ask an order to print the testimony taken by the several subcommittees of the Committee on Privileges and Elections as fast as it may be received, the usual number of copies.

The PRESIDENT *pro tempore*. Is there objection to the proposed order to print testimony? The Chair hears none, and it is so ordered.

PRODUCTION OF TELEGRAPHIC DISPATCHES.

Mr. MORTON. There was a vote taken on a resolution last Friday which was lost for the want of a quorum. If there is no objection, as there is a quorum present, I should like to have that vote taken now.

The PRESIDENT *pro tempore*. The morning hour has expired and the Chair will call up the unfinished business, which is the resolution referred to by the Senator from Indiana, which will be read.

The Chief Clerk read the resolution, as follows:

Resolved, That William M. Turner is in duty bound under his oath to answer the questions that have been propounded to him as above stated, and that he cannot excuse himself from answering the same by reason of his official connection with the Western Union Telegraph Company as the manager of their office at Jacksonville, Oregon.

The PRESIDENT *pro tempore*. The question is on the adoption of the resolution. The call of the yeas and nays revealed the lack of a quorum. The question will now be put again.

Mr. HAMLIN. I have not heard the previous part of that paper read, and I rise for the purpose of propounding a question to the honorable Senator from Indiana, so as to give me light on the subject that I may vote in accordance with my judgment. It is proposed, I believe, to issue a subpœna to compel the telegraph company to come here with certain papers.

Mr. MORTON. No, sir.

Mr. HAMLIN. What is it?

Mr. MORTON. I will state to the honorable Senator that it is to declare the duty of a witness, a telegraphic operator and manager, to testify as to the character of a message that passed through his office, the message itself having been refused.

Mr. HAMLIN. There is, then, a specification of the precise message about which the witness is to testify?

Mr. MORTON. The general character of the dispatch, as near as we can come at it.

Mr. HAMLIN. It is not a drag-net to bring in all transactions over the whole world relating to every subject?

Mr. MORTON. No, sir. We describe the message, and as nearly as we can the subject referred to, the transmission of money.

Mr. HAMLIN. I do not believe in, and I will not vote for any proposition that seeks to bring the telegraphic company here with all their telegrams, no allegation being made of any knowledge in relation to them, for the purpose of hunting up evidence. I would, in the action of this body, as near as may be, follow the rules of the courts of law. I will vote for anything that will come within those rules, and I will vote against everything that goes without them.

Mr. DAWES. Mr. President, I was not able to be here on the last day's session of the Senate, and am therefore lamentably ignorant of the precise question which the resolution asserts that it is the duty of this witness to answer, and I should like to inquire, either through the Clerk or the Senator from Indiana, the precise question that the resolution says it is his duty to answer.

Mr. MORTON. I think it will be more satisfactory to Senators to have the report read.

Mr. DAWES. I do not want to consume much time.

Mr. MORTON. It is a short matter. The reading of the report will show what the question is.

The PRESIDENT *pro tempore*. The report will be read.

The Chief Clerk read the report, as follows:

The Committee on Privileges and Elections, who were instructed by resolution of the Senate to inquire into the facts attending the late presidential election in the State of Oregon and concerning the casting of the electoral vote of that State, beg leave to report to the Senate:

That one William M. Turner was called as a witness by the said committee, and, after having been duly sworn, had the following questions propounded to him and made the following answers thereto:

Question, (by the chairman.) Do you know whether Mr. Patrick had asked to have that canvass withheld until he could get there?

Answer. I cannot answer that question.

Q. Have you any knowledge on that subject?

A. No, sir; nothing that could be made public.

Q. Explain what you mean by that.

A. Our knowledge on political subjects and all others, of course, has to be very sacred. It would be a violation of the law of the State to divulge anything that passes over the telegraphic wires, and also a violation of the rules of the company.

Q. I propose to ask the witness the question if he knows of any dispatch passing through that office, on the part of Mr. Patrick or any one else, asking that that canvass be deferred until he could get there.

A. I ask to be excused from answering that question.

Q. You decline to answer?

A. I must decline.

Q. Upon the ground before stated?

A. Yes, sir.

Q. That you cannot divulge anything passing on the wires?

A. I cannot do it.

Q. What do you know, if anything, in regard to $8,000 being transferred from New York to Salem or to Portland at any time after the election in November and up to the time that the electors cast their votes?

The WITNESS. Transferred in what manner?

The CHAIRMAN. What do you know about money being sent from New York or persons there being authorized to draw for $8,000?

A. I do not know anything with regard to the transfer of any money that would be a public matter. We have a great deal of business of that kind going through the offices, and as a matter of course it only concerns those who are interested.

Q. Do you know of any dispatch being sent to Salem or to Portland from New York authorizing any person there to draw for $8,000?

A. I must decline to answer that.

Q. Do you know of any dispatch having been sent by Charles Dimon, or a man named Dimon, in New York, to Ladd & Bush, in Salem, in regard to $8,000 or any sum of money?

A. I cannot answer.

Q. Do you mean to say that you cannot answer or that you decline to answer?

A. I decline.

Q. You decline to answer?

A. I decline to answer any question touching anything that passes over the telegraph wires.

Q. Did you simply say that you decline to answer or do you mean to say that there was no such dispatch?

A. I decline to answer questions of that character.

* * * * * * *

Q. Now I propose to ask this witness the question directly, if there was not a dispatch passing through that office from Charles Dimon to Ladd & Tilton, in Portland, authorizing them to draw for $8,000.

A. I must be excused from answering any question of that character.

Q. I put this as occurring subsequent to the 25th of November, and before the first Wednesday in December.

A. I decline answering any questions, as I remarked, touching the business over the wires.

Q. I ask if you know anything in regard to another sum of $17,000 that was authorized in New York to be drawn by Ladd & Tilton, in Portland, subsequent to the presidential election?

A. No, sir; I do not know anything about it.

Q. You do not then decline to answer that on this ground?

A. I decline on the same ground.

The committee have been informed that it is important to have the witness answer these questions, as the answers may be material in the investigation of the matter intrusted to the committee, and submit to the Senate the following resolution:

Resolved, That William M. Turner is in duty bound under his oath to answer the questions that have been propounded to him as above stated, and that he cannot excuse himself from answering the same by reason of his official connection with the Western Union Telegraph Company as the manager of their office at Jacksonville, Oregon."

Mr. DAWES. It is hardly worth while, but I desire to put myself on record very much as the Senator from Maine [Mr. HAMLIN] has; and to the extent that the Senator from Maine has put himself on the record I am willing to go. When a committee of this body is of opinion that there is reason to believe that a particular telegram has passed over the wires and that it contains information material to the investigation with which the Senate has charged that committee, I think that the telegraph company is bound to give it the information precisely as the Post-Office Department would be bound under the same circumstances and with the same precaution to permit the investigation of a letter in the Post-Office Department, but anything beyond that, as at present advised, I should not feel willing to sanction.

The idea of a general divulging of what has passed over the telegraph wires is a thing which I would not by the vote I give to-day, even by any implication whatever, sanction. What the newspapers have informed us has transpired of late, a telegraph company selling the messages that have been received in confidence by them from their customers to the paper-makers, and paper-makers reselling them and they being distributed around among favorite newspapers, is such an outrage that, if it is in the power of this Congress by legislation to take away the franchise of any such telegraph company, I think it is their duty to do it at once. But the telegraph being no more than the mail, no more than any private individual who has possession of a written communication which contains evidence bearing upon the guilt or innocence of an accused person or the materiality of any investigation over which a committee of this Senate has jurisdiction or a court has jurisdiction to try, I think it is the duty of any person having that information, whether it be in a letter or in a telegraphic message or in any other form, to disclose it with those limitations. Beyond that I do not desire by the vote which I shall give for this resolution to be construed as sanctioning the practice which has been instituted and which has prevailed, I am sorry to say as much in my own party as in any other, of invading the secrets of the private business and confidential communications of the whole community. That practice should cease if there is any power in Congress to prohibit it.

Mr. MITCHELL. Mr. President, I neither desire nor intend to argue this question; but inasmuch as the witness gives as one reason why he should not answer this question the fact that to answer it would be in contravention of a statute of Oregon, I desire to call attention to that statute for the purpose of showing that it has no application whatever to the case. That statute only applies to a case of willful divulgence on the part of the agents of the company. I ask the Secretary to read the statute which I send to the desk.

The Chief Clerk read as follows:

SEC. 8. If any officer, agent, operator, clerk, or employé of any telegraph company, or any other person, shall willfully divulge to any other person than the party from whom the same was received, or to whom the same is addressed, or his agent or attorney, any message received or sent, or intended to be sent, over any telegraph line, or the contents, substance, purport, effect, or meaning of such message, or any part thereof, or shall willfully alter any such message by adding thereto or omitting therefrom, any word or words, figure or figures, so as to materially change the sense, purport, or meaning of such message, to the injury of the person sending or desiring to send the same, or to whom the same was directed, the person so offending shall be deemed guilty of a misdemeanor, and shall be punished by a fine not to exceed $1,000, or imprisonment not to exceed one year, or by both such fine and imprisonment, in the discretion of the court: *Provided*, That when numerals or words of number occur in any message, the operator or clerk sending or receiving may express the same in words or figures, or in both words and figures, and such fact shall not be deemed an alteration of the message, nor in any manner affect its genuineness, force, or validity.

Mr. BOGY. Mr. President, as this question is of very great importance and is becoming more so every day, I desire to state that I concur entirely with the views expressed by the Senator from Massachusetts [Mr. DAWES] as to the law, and with that understanding I am willing to vote for this resolution. I propose to vote against resolutions making a general drag-net. At the same time I am willing to compel these companies to divulge telegrams on the principles that apply in courts of justice.

Mr. EDMUNDS. Mr. President, if there is any one subject on which there is more delusion and nonsense and humbug going than upon this, I do not know it. The security of society, the security of private rights, liberty, property, peace, reputation, depends, first, upon good laws, and, second, upon their being put in execution; for a law is nothing at all that is not carried into effect. You cannot put laws into execution through the courts of justice or any other tribunal that is trying to get at the truth in a constitutional way without getting at the truth through witnesses who are to testify; and the idea that because something between two men or fifty men is confidential when the necessity for that truth bears upon the rights of somebody else it cannot be disclosed, is utterly absurd. You cannot carry on a government of law and of peace and of private right on any such notion at all, as it seems to me. I do not wish to force my notions upon anybody else.

Now the statute of 1825, it is said, declares that it shall be penal to open any letter. Grant it, if you please. Whether it is a wise law or not a wise law, grant that it is the law. Then do not open that letter. But when Congress sees fit to pass a law, or the States see fit to pass laws as far as their operations go, that every communication that two burglars or two thieves or two murderers, as they frequently do, choose to send by telegraph shall also be regarded as sacred—and why because it is sent over a wire instead of by a man it should be any more sacred I am not able to see—it will be time enough for us to obey such a law; but when you pass such a law you will not have the administration of justice or security any more. If we go on in the way certain people desire us to start, a little while longer, everything will be sacred and confidential, and you cannot ask anybody to say anything that he knows if it is going to be an injury to his particular case or his particular friends. We must remember that it is the right of everybody and the security of everybody that depends upon getting at the truth if the truth bears upon public or private interests, and no man has a right to set up his private confidence or his private honor or his private anything when it stands in the way of the countervailing considerations of security to the whole body of community or justice or security to other people, when they are drawn into question. That is the principle upon which all civilized law has heretofore proceeded.

So then, without wishing to offend anybody, I cannot help characterizing this sort of talk that has been prevalent for a few years as not only absurd but as fatal, if it were carried into effect, to the rights that these very persons who talk so loudly of private rights would find it most necessary to protect if it was brought home to their own doors.

Now, as to the law of Oregon which has been cited, it has not a thing to do with the case. If the statutes of Oregon absolutely forbade the production of any telegram or the testimony of any telegraph operator under any circumstances whatever, it would have nothing whatever to do with the constitutional exercise by this Senate or by the courts of the United States, or the House of Representatives or any other national authority of their own functions which are not derived from the constitutions of the States. The citizen of Oregon, the telegraph operator, is a citizen of the United States, and the supreme law of the land to him is the Constitution and the laws of the United States. If this proceeding, therefore, is constitutional at all, as nobody questions, then any prohibition of a particular State as to what shall operate upon it is absolutely inefficacious.

The question being taken by yeas and nays, resulted—yeas 35, nays 3; as follows:

YEAS—Messrs. Allison, Anthony, Bogy, Booth, Boutwell, Bruce, Cameron of Pennsylvania, Chaffee, Cockrell, Cragin, Davis, Dawes, Dennis, Dorsey, Edmunds, Ferry, Frelinghuysen, Gordon, Hamlin, Ingalls, Johnston, Kelly, Kernan, McCreery, Maxey, Mitchell, Morrill, Morton, Price, Randolph, Robertson, Sherman, Wallace, Whyte, and Withers—35.

NAYS—Messrs. Barnum, Burnside, and Eaton—3.

ABSENT—Messrs. Alcorn, Bayard, Blaine, Cameron of Wisconsin, Christiancy, Clayton, Conkling, Conover, Cooper, Goldthwaite, Hamilton, Harvey, Hitchcock, Howe, Jones of Florida, Jones of Nevada, Key, Logan, McDonald, McMillan, Merrimon, Norwood, Oglesby, Paddock, Patterson, Ransom, Sargent, Saulsbury, Sharon, Spencer, Stevenson, Teller, Thurman, Wadleigh, West, Windom, and Wright—37.

So the resolution was agreed to.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. GEORGE M. ADAMS, its Clerk, announced that the House had passed the following bills:

A bill (S. No. 526) to amend section 1036 of the Revised Statutes relating to the District of Columbia;

A bill (S. 678) for the relief of Ephraim P. Abbott; and

A bill (S. No. 752) to authorize the recorder of the District of Columbia to appoint an assistant with certain powers.

The message also announced that the House had agreed to the amendment of the Senate to the bill (H. R. No. 4120) making appropriations for the payment of invalid and other pensions of the United States for the year ending June 30, 1878.

The message further announced that the House insisted upon its amendment to the bill (S. No. 614) to authorize the Secretary of the Interior to deposit certain funds in the United States Treasury in lieu of investment, agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. FERNANDO WOOD of New York, Mr. PHILIP F. THOMAS of Maryland, and Mr. HORATIO C. BURCHARD of Illinois managers at the conference on its part.

The message further announced that the House had passed the following bills; in which it requested the concurrence of the Senate:

A bill (H. R. No. 2601) authorizing the Commissioner of Pensions to issue a land warrant to Thomas Hunter, a soldier of the war of 1812, in lieu of one lost;

A bill (H. R. No. 3406) granting a pension to James B. Gillespie, late captain of Company I, One hundred and twentieth Regiment Illinois Infantry Volunteers;

A bill (H. R. No. 3558) to provide for the settlement of tax-lien certificates erroneously issued by the late authorities of the District of Columbia;

A bill (H. R. No. 3566) to authorize the board of trustees of the city of Cheyenne, Wyoming Territory, to enter and purchase for the use of said city certain public lands;

A bill (H. R. No. 3582) granting a pension to Charles L. Rugg, late first lieutenant of Company D, Sixth Indiana Cavalry;

A bill (H. R. No. 3583) granting a pension to Frederick W. Smith;

A bill (H. R. No. 3584) granting a pension to William Abendroth;

A bill (H. R. No. 3681) for the relief of B. B. Connor & Brother;

A bill (H. R. No. 3776) fixing the fees of clerks of United States district and circuit courts;

A bill (H. R. No. 4041) to prevent depredations upon property in the District of Columbia;

A bill (H. R. No. 4155) amending the act of July 28, 1876, entitled "An act for the relief of Kendrick & Avis, Kuner, Zisemann and Zott, all of Saint Louis, Missouri, and Nachtrieb & Co., of Galion, Ohio;"

A bill (H. R. No. 4168) to amend section 1 of the act of May 12, 1864, for a grant of lands to the State of Iowa, to aid in the construction of a railroad in said State;

A bill (H. R. No. 4202) to amend the charter of the Mutual Fire Insurance Company of the District of Columbia;

A bill (H. R. No. 4261) to provide for the sale of desert lands in certain States and Territories;

A bill (H. R. No. 4281) to amend an act entitled "An act authorizing the repavement of Pennsylvania avenue" and the act amendatory thereof;

A bill (H. R. No. 4284) authorizing the commissioners of the Freedman's Savings and Trust Company to buy in certain real and other property, and to sell the same at public or private sale, and for other purposes;

A bill (H. R. No. 4307) making appropriations to supply certain deficiencies in the contingent fund of the House of Representatives, and for other purposes; and

A bill (H. R. No. 4313) to remove the political disabilities of Charles L. Scott, of Alabama.

ENROLLED BILLS SIGNED.

The message also announced that the Speaker of the House had signed the following enrolled bills; and they were thereupon signed by the President *pro tempore*:

A bill (H. R. No. 732) referring the claim of the owners of the schooner Flight to the Court of Claims;

A bill (H. R. No. 735) for the relief of Philip Pendleton;

A bill (H. R. No. 2041) to amend section 2291 of the Revised Statutes of the United States in relation to proof required in homestead entries;

A bill (H. R. No. 2260) providing for the sale of saline lands;

A bill (H. R. No. 4116) to change the name of the steamship Whirlwind to that of Arcadia; and

A bill (H. R. No. 4272) authorizing the use of certain funds now in the Treasury belonging to the Osage Indians.

MODE OF COUNTING ELECTORAL VOTES.

Mr. BOOTH. I ask permission to offer a resolution.

The PRESIDENT *pro tempore*. The resolution will be read.

The Chief Clerk read as follows:

Resolved, That in counting the votes for President and Vice-President of the United States, whose terms are to begin on the 4th of March, 1877, the following rules be observed:

I. The President of the Senate *pro tempore* shall report the certificate of each State before handing it to the tellers. It shall then be the right of any Senator and of any member of the House of Representatives to object to the counting of the votes of said State, which objection shall be reduced to writing. Upon objection being made, the President of the Senate *pro tempore* shall rule whether or not the votes of said State shall be counted and for whom. Any Senator or member of the House of Representatives may appeal from said ruling, which appeal shall be reduced to writing. Upon appeal being taken the two Houses shall immediately separate and each shall convene in its own Chamber without delay.

Immediately on the convening of each House its presiding officer shall submit the following propositions in the order herein named, which shall be decided without debate:

First. Shall the ruling of the President of the Senate *pro tempore* upon the counting of the vote of the State of —— be affirmed?

Second. How many votes of the State of —— shall be counted?

Third. For whom shall the votes of the State of —— be counted?

Upon each proposition, each Senator and each member of the House of Representatives shall announce his vote *viva voce*, and it shall be entered upon the Journal.

The Journal of each House of the proceedings of that meeting shall then be read and approved, and no other business shall be in order.

The two Houses shall then assemble in the Chamber of —— for the purpose of continuing the count.

II. When the President of the Senate *pro tempore* shall have received two or more packages purporting to contain the certificate of the votes of the same State, he shall open and report all of said purported certificates, and then rule for whom the votes of said State shall be counted. Any Senator or member of the House of Representatives may appeal from said ruling, which appeal shall be reduced to writing. Upon appeal being taken the two Houses shall separate, convene in their respective chambers and the same proceedings shall be had as prescribed in Rule I.

III. A complete record of the proceedings when the two Houses are assembled together, and of the proceedings of each House, together with all the certificates and purported certificates of the votes to the counting of which objection has been made, shall be submitted to the justices of the Supreme Court of the United States for their decision.

The Senate and House of Representatives may each appoint a committee of three to present the cases to the justices, subject to such rules as the justices may prescribe. If the justices deem it essential to a final determination, they may in their discretion receive as evidence the official acts and proceedings of any State officer or board of State officers, and the reports of any committee appointed by either House of Congress.

The Chief Justice shall transmit to the President of the Senate the decision of the majority of the justices upon each case of contested votes, when all the cases have been decided; whereupon the two Houses shall assemble in the Chamber of —— and the contested votes shall be counted in accordance with such decision.

Mr BOOTH. I move that the resolution be printed and lie upon the table. I give notice that on Friday morning next, if I can succeed in obtaining the floor, I shall speak briefly to the resolution.

The resolution was ordered to lie on the table and be printed.

ORDER OF BUSINESS.

Mr. GORDON. I move that the Senate now proceed to the consideration of the bill (H. R. No. 231) for the relief of Robert Erwin.

Mr. INGALLS. The Senator from Iowa who is not in his seat this morning [Mr. WRIGHT] is detained, as I understand, from the Chamber by ill-health. The Senate will remember that last week he called up the report from the Judiciary Committee in relation to the Central Branch of the Union Pacific Railroad, which has been continued from time to time as unfinished business; and while I am opposed to the bill and shall be glad to have it defeated, yet I feel that courtesy to him requires me to object to the consideration of this bill except with the understanding that that bill shall remain as the unfinished business of the Senate.

Mr. BOUTWELL. Under the circumstances I think I am justified in asking the attention of the Senate to the bill (H. R. No. 3156) to perfect the revision of the statutes of the United States.

The PRESIDENT *pro tempore*. The Senator from Georgia has moved the present consideration of a bill. That motion takes precedence.

Mr. INGALLS. It is the understanding that the bill of the Senator from Iowa will remain as the unfinished business?

The PRESIDENT *pro tempore*. There is no unfinished business. The unfinished business of the last session of the Senate has been disposed of. The resolution of the Senator from Indiana from the Committee on Privileges and Elections was the unfinished business, and that has been disposed of.

Mr. INGALLS. What is the condition of Senate bill No. 60?

The PRESIDENT *pro tempore*. It has gone to the Calendar. The Senator from Georgia moves the present consideration of the bill stated by him.

Mr. SHERMAN. My impression is that that bill came from the Committee on Claims.

Mr. MITCHELL. The Judiciary Committee.

Mr. SHERMAN. I ask what committee that came from?

The PRESIDENT *pro tempore*. From the Committee on the Judiciary.

Mr. SHERMAN. I understand the Senator who reported it is not in his seat. The Committee on the Judiciary being engaged by the leave of the Senate on other business, or a majority of them, I do not think we ought to take this bill up.

Mr. GORDON. I was not aware that the chairman of the committee was absent when I called up the bill. I recoguize the propriety of the objection, and therefore withdraw the motion.

Mr. WALLACE and Mr. BOUTWELL addressed the Chair.

The PRESIDENT *pro tempore*. The Senator from Massachusetts.

Mr. BOUTWELL. I move that the Senate proceed to the consideration of the bill (H. R. No. 3156) to perfect the revision of the statutes of the United States.

Mr. WALLACE. I thought I rose to address the Chair first. I ask the courtesy of the Senator to permit me to offer a resolution.

Mr. BOUTWELL. I will hear what the Senator from Pennsylvania has to say.

Mr. WALLACE. I desire to offer a series of resolutions to be referred to the committee on counting the electoral votes and to submit brief remarks on the proposition, as I expect to have to go home to-night.

Mr. BOUTWELL. I think it is rather a public duty to try to secure the early passage of this bill; but I feel constrained to assent to the request of the Senator from Pennsylvania under the circumstances he has indicated.

HOUSE BILLS REFERRED.

The following bills from the House of Representatives were severally read twice by their titles and referred to the Committee on Finance:

A bill (H. R. No. 4284) authorizing the commissioners of the Freedman's Savings and Trust Company to buy in certain real and other property, and to sell the same at public or private sale, and for other purposes; and

A bill (H. R. No. 4145) amending the act of July 28, 1876, entitled "An act for the relief of Kendrick & Avis, Kuner, Zisemann & Zott, all of Saint Louis, Missouri, and Nachtrieb & Co., Galion, Ohio."

The following bills were severally read twice by their titles and referred to the Committee on the Judiciary:

A bill (H. R. No. 4313) to remove the political disabilities of Charles L. Scott, of Alabama; and

A bill (H. R. No. 3776) fixing the fees of clerks of United States district and circuit courts.

The following bills were severally read twice by their titles and referred to the Committee on Public Lands:

A bill (H. R. No. 4261) to provide for the sale of desert lands in certain States and Territories;

A bill (H. R. No. 4168) to amend section 1 of the act of May 12, 1864, for a grant of lands to the State of Iowa to aid in the construction of a railroad in said State;

A bill (H. R. No. 3566) to authorize the board of trustees of the city of Cheyenne, Wyoming Territory, to enter and purchase for the use of said city certain public lands; and

A bill (H. R. No. 2601) authorizing the Commissioner of Pensions to issue a land-warrant to Thomas Hunter, a soldier of the war of 1812, in lieu of one lost.

The following bills were severally read twice by their titles and referred to the Committee on the District of Columbia:

A bill (H. R. No. 4281) to amend an act entitled "An act author-

izing the repavement of Pennsylvania avenue," and the act amendatory thereof;

A bill (H. R. No. 4202) to amend the charter of the Mutual Fire Insurance Company of the District of Columbia;

A bill (H. R. No. 4041) to prevent depredations upon property in the District of Columbia; and

A bill (H. R. No. 3558) to provide for the settlement of tax-lien certificates erroneously issued by the late authorities of the District of Columbia.

The following bills were severally read twice by their titles and referred to the Committee on Pensions:

A bill (H. R. No. 3582) granting a pension to Charles L. Rugg, late first lieutenant of Company D, Sixth Indiana Cavalry;

A bill (H. R. No. 3583) granting a pension to Frederick W. Smith; and

A bill (H. R. No. 3584) granting a pension to William Abendroth;

A bill (H. R. No. 3406) granting a pension to James B. Gillespie, late captain of Company I, One hundred and twentieth Regiment Illinois Infantry Volunteers;

The bill (H. R. No. 4307) making appropriations to supply certain deficiencies in the contingent fund of the House of Representatives, and for other purposes, was read twice by its title, and referred to the Committee on Appropriations; and

The bill (H. R. No. 3681) for the relief of B. B. Connor & Brother was read twice by its title, and referred to the Committee on Claims.

COUNTING OF ELECTORAL VOTE.

Mr. WALLACE. I offer a resolution, which I ask to have read.

The PRESIDENT *pro tempore*. The resolution will be read.

The Chief Clerk read as follows:

Resolved, That the special committee on counting the electoral vote be instructed to inquire and report to the Senate upon the following propositions:

I. Electors of President of the United States are a part of the machinery of the Federal Government.

II. The power to appoint them is in the States, to be exercised under the restrictions and guarantees of the Federal Constitution.

III. The power to ascertain who has been elected President and Vice-President of the United States by counting the electoral vote is a quasi judicial one, and carries with it the right to inquire and decide what are votes.

IV. This power is in the two Houses acting concurrently as independent bodies.

V. Each House may examine both facts and law to enable it to determine these questions:

1. Are the returns of the electoral colleges before them the true returns?

2. Were the votes therein shown to be cast given by those appointed by the State to the office of elector of President of the United States?

3. Was the appointment of electors made and were the votes cast in accordance with the provisions and guarantees of the Federal Constitution?

VI. The certificate and seal of the executive authority of the State made under the act of Congress is *prima facie* proof of the appointment of an elector by the State. This mode of proof may be overthrown by the decision of the highest judicial tribunal of the proper State or of the United States, or it may be contradicted by evidence of plain mistake or palpable fraud.

VII. When two returns come from a State the two Houses acting concurrently must determine which is the true return.

VIII. No electoral vote can be counted without the concurrence of both Houses.

Mr. WALLACE. Mr. President, these resolutions embody what I believe to be the law controlling the counting of the electoral vote. To ascertain what the Constitution, laws, and precedents establish upon this subject is my sole object in presenting them and in endeavoring to elicit discussion thereon. When we shall have settled this, our path of duty is a plain one. Law and justice must control and direct our votes. That a safe path may be found in accordance with these, I do not doubt. When it is found, partisan bias and personal ambition must give way before the high duty of obedience to law.

I shall not attempt now to elaborate all of the propositions I have made. My desire is to get the thoughts in concise form and to group around them the arguments in their favor.

That electors for President of the United States are a part of the machinery of the Federal Government needs no proof. They came into existence with it and their functions relate solely to its perpetuation.

The power to appoint them is given to the States by the Constitution, and the manner of their appointment is left to the control of the Legislatures of the States. That this power and control can be exercised so as to conflict with the provisions of the Federal Constitution will scarcely be contended. That instrument is the supreme law, and in this matter as in all else in which it may conflict with State authority it is the weightier. Of the restrictions imposed by the Constitution upon the States and the electoral colleges the familiar one that they cannot vote for an alien for President is sufficient here. Of the guarantees it is sufficient to name that which gives to each State electors equal to the whole number of Senators and Representatives to which she may be entitled, so that while in the House of Representatives and upon the popular vote Rhode Island and Delaware each stand to Pennsylvania in the proportion of 1 to 27, in the electoral colleges they stand in the proportion of 3 to 29. That the number of votes in the colleges shall be as fixed by article 2, section 1, clause 2, is guaranteed by this provision, and the States can lawfully appoint no more.

In the third proposition, which is that "the power to ascertain the popular will by counting the electoral vote is a quasi-judicial one and carries with it by necessary implication the right to inquire and decide what are votes," I come in conflict with the views expressed by the Senator from Iowa [Mr. WRIGHT] in his speech of the 4th instant. He said:

> Under no construction, as it seems to me, can it be claimed that Congress in any capacity (certainly not in the absence of legislation) has judicial powers or any other power than to inquire and declare what the people, through their electors, on the face of the returns have said as to their choice for President. In saying this I do not lose sight of the different theories as to how this result is to be reached and who is to declare it. I am sufficiently understood for my present purpose, I hope, when I repeat that, in the absence of some law, there is no power to investigate and determine whether there was fraud in this State or that; whether the State law was wise or unwise in providing for the organization of its returning boards; whether a hundred men here or a thousand there would have voted differently but for intimidation, corruption, violence, or fraud; whether the returning or canvassing board or tribunal in a State reached the true result from all the facts before them, or the like; for, whatever any one may think as to any of the other powers of the presiding officer or of the two Houses acting separately or together, the law, as gathered from the almost, if not quite, unbroken precedents from the very foundation of the Government, would clearly seem to teach that our powers are purely ministerial, not at all judicial.

If I correctly understand the doctrines here asserted, they are, first, that no power exists in Congress to determine "in counting the vote" whether the State in its action has violated the Constitution of the United States; second, that Congress in executing its power to count the vote has no judicial or quasi-judicial power, but that this is a power purely ministerial, and that by reason thereof Congress can neither act upon any authority necessarily implied from the principal power expressly given, nor reject any return for palpable fraud or plain mistake. Are these doctrines sound? The tribunal (whatever it may be) which counts the electoral vote must, from the very character of its duties, inquire and judge of alleged infractions of the Federal Constitution. Suppose that in the joint meeting a Senator objects that the vote of a State cannot be counted for a candidate for President either because he was not a "natural-born citizen" or because he was not thirty-five years of age, or because he had not been a resident within the United States for fourteen years, must the vote still be counted or must the question be met and settled? How met? By debate or by judicial inquiry? Are we not compelled to inquire, deliberate, and judge? Or suppose that it is alleged that electors appointed by the State were at the time of their appointment members of Congress, persons holding offices of trust or profit under the United States, or who had been in rebellion and were not relieved, or that the electoral college did not meet in its proper State, or that it did not vote by ballot, or on the day fixed by law, or that it voted for citizens of its own State for both President and Vice-President? In each of these cases questions of fact are involved and must be decided. Take the case of the Oregon elector now undergoing investigation. What is this? Is it a mere ministerial duty or is it not the essential preliminary to the application of constitutional law to a given state of facts? Such a proceeding is the highest exercise of judicial inquiry.

In all of the cases cited, indeed in every case of alleged violation of the restraints imposed by the Constitution, either as to choice of electors or as to qualifications of officials voted for, there is a case for judicial and not ministerial action. The guarantees of the Constitution, if violated, may be inquired of in the same manner. If, for instance, a State by its statutes or through its returning boards refuses by reason of his color to certify that a colored elector who had a majority was chosen, could not the tribunal to count the vote make the proper inquiry and correct the wrong? Or if a State has by its laws undertaken so to constitute its electon tribunals as to nullify the provisions of the Constitution guaranteeing privileges and immunities to citizens of the United States, is there to be no remedy? Must the vote still be counted? Or if the State sends one return and in its transmission to the President of the Senate another and a different one is substituted, must the latter be counted? Or if between the act of the people in voting and the opening of the return by the President of the Senate there is interposed under State law a tribunal without responsibility to any power and above judicial control, which, violating the guarantees of the Constitution, deprives the man chosen of his place as elector and substitutes another in his room; or, if plain mistake or palpable fraud be shown to exist in the paper upon which the tribunal is called to act; is there still no power to inquire and decide? Such an organization would be constituted to nullify the popular will, and not to ascertain and declare it.

The power to count the vote is given in express terms. If Congress has this power it is to judge of the means proper to reach the end sought. Those means are to be legitimate and necessary to that end, and must be necessarily implied from the character of the power conferred. All of these instances in my view imply the necessity for other and higher power than mere ministerial action. The enactment of an act of Congress might be, and probably is, a just means to simplify the manner of reaching the end sought; but there is no act of Congress that can be drawn that will cover every case that may arise, and relieve the tribunal vested with power to count the vote from a necessity for the exercise of its judgment and discretion in such a contingency as is now upon us. Our safety now consists in the patriotism, sense of justice, and obedience to law of the two Houses and of the people.

The two Houses of Congress are vested by the Constitution with the power of judging of the necessity and means to be used in several instances. They may admit new States. Congress alone can judge of the fitness of the State or of the character of its constitution. It

may deliberate and judge, reject or admit. The writ of *habeas corpus* may be suspended. Congress must judge when "in cases of rebellion or invasion the public safety demands it." It may deliberate and judge, suspend or refuse to suspend.

Upon this subject I cannot do better than to quote *in extenso* the language of Hon. John Sergeant, one of Pennsylvania's most gifted jurists, in the Missouri case in 1820.

I have said that it is derogatory to the authority of Congress and wholly inconsistent with the tenor of its ideas and capacities to suppose that it is merely to perform the humble ministerial office of opening the door, upon demand, for the admission of a State, without any discretion whatever. No instance can be found where the Constitution has assigned to the legislative power the performance of such a duty. Thus construed it is not a power at all. The cases that have been put are in no respect analogous. The power of Congress, upon the death of the President and Vice-President, to declare what officer shall act as President of the United States is a very high power, involving in its exercise much discretion, a discretion commensurate with the various and important trusts confided to the Chief Magistrate.

It can with no propriety be said to be ministerial, and its being deposited with Congress is the strongest proof of the confidence reposed in that body. The office of counting the ballots upon the election of President and Vice-President, simple as it may seem, and easy as in ordinary cases it is, is nevertheless an office of important trust, and including some judicial discretion, as well as a most serious responsibility. It is a fit office to be executed by the highest body in the nation. The power of impeachment is not ministerial but a judicial power, and it belongs not to Congress, but to a single branch. The same remark applies, with equal force, to the right which each branch possesses of judging of the election and returns of its members; a judicial power, incident to every body composed of elective delegates, and one of its inherent privileges. In all these cases, however, it may not be amiss to observe that the Constitution gives only the principal power. The incidental powers, such as sending for persons and papers, enforcing the attendance of witnesses, and the like, are implied from the principal grant.

The fourth proposition, which is: "The power to count the electoral vote is in the two Houses of Congress acting concurrently as independent bodies," may be sustained by three classes of arguments: those drawn from the structure of the Government, those drawn from the words of the Constitution, and those drawn from the precedents. The two Houses are best fitted to perform this duty, for they have local knowledge which becomes valuable for protection of the returns from wrong and fraud. The duty to be performed is a high and important one. It is the recording of the popular will. Without its performance the government would stop and anarchy ensue. To the Congress are given all of the great powers of the Government. It can make laws, declare war, tax the people, and raise armies and navies. To the Vice-President, as President of the Senate, the Constitution denies a vote in the body over which he presides. Which is the more likely depositary of such a power? The votes to be counted are those for President and Vice President. In the event of a failure to elect the former the House is given exclusive power to choose. On a failure to elect the latter the Senate elects a Vice-President. Such extraordinary powers given in a contingency which may arise demonstrates that the two bodies were together to ascertain the popular result, then to act separately if the necessity arose.

The two Houses are equal in power. (Article 1, section 1.)

Congress determines the time of choosing the electors and the day on which they give their votes. (Article 2, section 1, clause 3.)

The Senate and House are present when the votes are counted. (Twelfth amendment.) Why are they present? In order that the House may, by its own supervision and count, determine the necessity, if one exists, to elect the President; in order that the Senate may in like manner determine the necessity, if one exists, to elect the Vice-President.

Senators and members are there to protect the interests of their States and people and prevent false counting or fraudulent action. Are they present for no purpose? Are they idle spectators, powerless to prevent a fraud on the people they represent? A power to count the votes, which is the power to direct and control the count, is given to some agency of the Federal Government. If it is given to the President of the Senate, why is not the language "shall open all the certificates and count the votes?" This would be simple and direct as well as conclusive. But the language used gives him power to open certificates and goes no further. The power expressed excludes the granting of the other. He is not even made the presiding officer of the two Houses when they meet. The Senate is there with its presiding officer as a Senate. The House is there with its presiding officer as a House. These officials are there under this clause of the Constitution with equal power, except that the President of the Senate has the custody of and is to open the certificates. A presiding officer for the joint meeting can only be provided by the agreement of the two Houses in advance.

If a President *pro tempore* of the Senate can "count the vote," does he then exercise his own power or that of the Senate? If the former, an official whom the Senate can at any time displace is in this matter greater than the body that creates him. It follows that if a President *pro tempore* who will not obey the Senate be in the chair the Senate can remove him and give his place to one who will obey its commands. He thus exercises his own power under the threat of the Senate. Such an independent official would be an absurdity. If it be the power of the Senate which the President *pro tempore* exercises in counting the vote then it is the Senate that counts the vote and its co-equal body is excluded from participation. No words give such power to the Senate nor can it be implied from the language used. Both Houses are present and both or neither direct the count. It is a strange result too, if the Vice-President, *ex officio* President of the Senate, shall have independent power in counting the vote while the temporary official has a different hold upon the power. The former might be a safe depositary of this power and a consistent interpretation might be made, but when we find that the language used also clothes an official who is not independent with such power, the argument against its existence is almost conclusive.

The words "all" and "then" in this clause of the Constitution are full of meaning. "Shall open *all* the certificates and the votes shall *then* be counted." Quantity of certificates and time of counting are here placed in order. After all are opened counting begins. It is not to open the certificate from one State and dispose of it, the rest remaining meanwhile in the custody of the President. It is not to open one return from a State and withhold another, but it is plain, direct, unambiguous. Open *all* the certificates, lay them before the two Houses, *then* the work of counting begins. This plain reading of the language makes the President of the Senate the avenue of communication between the electoral colleges and the tribunal that counts the vote. When his work is completed, the counting, ascertaining, and adjudicating which by the Constitution are devolved upon the two Houses, begins.

The precedents establish the fact that from the foundation of the Government the Senate has recognized the equality of the House and its right and power to aid in counting the vote. With but one exception, from 1789 to 1865, when the joint rule was adopted, the Senate has originated a resolution inviting the House to join in the appointment of a joint committee to propose and report a mode of counting the vote and declaring the result.

In every case but one they have acted concurrently in the appointment of such committee, and acted under the report of such committee in counting the votes. In no instance since 1793 has the President of the Senate counted the vote. This work has invariably been performed by the tellers appointed by the two Houses and under their direction.

The theory that they must both act is fully settled by practice. In every instance the Houses have separated to decide any questions arising in the joint meeting, and thus they fully recognize the equality and independence of the two Houses.

The remaining propositions will be discussed incidentally in what I propose to say in regard to the finality of the action of the returning board of Louisiana and the power to go behind its action either for violation of constitutional law or for fraud and falsehood in its returns.

The Senator from Ohio [Mr. SHERMAN] in his speech of 7th December says:

The members of the returning board are just as much officers in the performance of a limited judicial duty as your Supreme Court is in a broader one, just as much as a justice of the peace is. The judicial powers and duties of that tribunal must be respected by the tribunals of the United States. The Constitution of the United States declares that the electors shall be elected according to the laws of the States. It is Louisiana that says how her electors shall be elected; it is Texas that says how hers shall be elected; it is Ohio that says how hers shall be elected. The United States have no power to interfere with their laws. Their laws and their tribunals, their mode of returning and contesting have to be regarded. It is by their laws that this case must be decided, and by the laws of Louisiana this returning board is required to pass upon these returns. It has done so, and I feel bound as a man who saw them do it, who witnessed their proceedings, to say that they did it in a manner to demand and require of you the same respect for their decision as would be given to the decisions of the Supreme Court of the United States. Their decision is final, made so by the law of Louisiana and by the supreme law of the land.

And again upon the 8th:

Their judgment is final, and made so by the laws of Louisiana and by the Constitution of the United States.

There can be no mistaking this language; the broad doctrine is asserted that the returning board of Louisiana is a judicial body, that its powers and duties as such must be respected by us, and that its decrees are final and conclusive. To clothe it in other words, it is that the returning board of Louisiana is a court, that within the sphere of its jurisdiction it is to be respected as a court, and that its judgments and decrees are binding upon all the world. Before we admit the truth of this doctrine and accept the consequences that flow therefrom, it will be wise to learn whence comes the power to transform a board of election officers into a tribunal that is superior as well to the judicial, legislative, and executive officials of its own State as to the universal theory of American election law.

What then is this tribunal, so potent, so sacred, so conclusive? It is created by the Louisiana statute of 1872, in these words:

That five persons, to be elected by the senate from all political parties, shall be the returning officers for all elections in the State, a majority of whom shall constitute a quorum, and have power to make the returns of all elections. In case of any vacancy by death, resignation, or otherwise, by either of the board, then the vacancy shall be filled by the residue of the board of returning officers.

A board gifted with eternal life, and each of its members an official during the term of his natural existence! There is neither limit to their official terms nor responsibility to the people.

The powers of this board are found in sections 2 and 3 of the same statute, as follows:

SEC. 2. Within ten days after the closing of the election, said returning officers shall meet in New Orleans to canvass and compile the statements of votes made by the commissioners of election, and make returns of the election to the secretary of state. They shall continue in session until such returns have been compiled. The presiding officer shall at such meeting open, in the presence of the said returning officers, the statements of the commissioners of election, and the said return-

ing officers shall, from said statements, canvass and compile the returns of the election in duplicate; one copy of such returns they shall file in the office of the secretary of state, and of one copy they shall make public proclamation by printing in the official journal and such other newspapers as they may deem proper, declaring the names of all persons and officers voted for, the number of votes for each person, and the names of the persons who have been duly and lawfully elected. The returns of the elections thus made and promulgated shall be *prima facie* evidence in all courts of justice and before all civil officers, until set aside after a contest according to law, of the right of any person named therein to hold and exercise the office to which he shall by such return be declared elected.

SEC. 3. That in such canvass and compilation the returning officers shall observe the following order: They shall compile first the statements from all polls or voting places at which there shall have been a fair, free, and peaceable registration and election. Whenever, from any poll or voting-place, there shall be received the *statement of any supervisor of registration or commissioner of election* in form as required by section 26 of this act, on affidavit of three or more citizens, of any riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences, which prevented, or tended to prevent, a fair, free, and peaceable vote of all qualified electors entitled to vote at such poll or voting-place, such returning officers shall not canvass, count, or compile the statements of votes from such poll or voting place until the statements from all other polls or voting-places shall have been canvassed and compiled. The returning officers shall then *proceed to investigate* the statements of riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences at any such poll or voting-place; and *if from the evidence of such statement* they shall be convinced that such riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences did not materially interfere with the purity and freedom of the election at such poll or voting place, or did not prevent a sufficient number of qualified voters thereat from registering or voting *to materially change the result of the election*, then, and not otherwise, said returning officers shall canvass and compile the vote of such poll or voting place with those previously canvassed and compiled; but if said returning officers shall not be fully satisfied thereof, it shall be their duty *to examine further testimony in regard thereto, and to this end they shall have power to send for persons and papers*. If, after such examination, the said *returning officers shall be convinced* that said riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences did materially interfere with the purity and freedom of the election at such poll or voting place, or did prevent a sufficient number of the qualified electors thereat from registering and voting to materially change the result of the election, then the said returning officers *shall not canvass or compile the statement of the votes of such poll or voting-place, but shall exclude it from their returns: Provided*, That any person interested in said election by reason of being a candidate for office shall *be allowed a hearing* before said returning officers upon making application within the time allowed for the forwarding of the returns of said election.

The first branch of the power given by these sections, that in section 2, is simply to *canvass and compile*, a purely ministerial duty, similar to that vested in similar officials in nearly all the States. Section 3, it will be seen, adds to these functions, other and graver duties. By it the board is vested with authority to receive sworn statements of intimidation, &c., to proceed to investigate, to hear testimony, to send for persons and papers, to be convinced, to refuse to canvass and compile, and to exclude returns. Under the ministerial provisions in section 2 the returns made by the board are stated to be what is universally true, but *prima facie* proof of the right to hold the office until set aside after *a contest according to law*. Here are all the duties, powers, and sanctions of authority ordinarily given to such officials, and here too is expressed and reserved the right of the law to adjudicate upon their finding.

But when we take up section 3 to learn what powers are given there, we find them to be anomalous, new in character, and foreign to our system. A sworn statement is to be filed. By whom? By the voter to be disfranchised? By the candidate whose rights are to be passed upon? By neither, but by the election officials. The returning board are to proceed to investigate the statements of intimidation, &c., and if *from the evidence of such statement they shall be convinced* that there was not such intimidation, &c., as to materially change the result of the election, then, and not otherwise, they shall canvass and compile the votes named in the statement. Riot, bloodshed, and murder may surround the election polls, peaceful citizens may be driven from them and the will of the majority be defeated by violence, if the statement of the election officials fails to disclose it, or the board are not convinced by what it contains that such was the fact, the votes are to be counted. True, the proviso to the section with great show of fairness, but in order more effectually to foreclose investigation, provides that a candidate may have a hearing before the board. In that hearing the only instruments of evidence are the statements of the election officers. Such a hearing is a mockery of justice.

These provisions, as I read them, give to the board the power to conclude every one that the election was pure and free and that nothing occurred to materially change the result. If, however, the board is not satisfied that this was the case, then they shall examine further testimony and may send for persons and papers. If they shall then be convinced that intimidation, &c., did occur and did materially interfere with the freedom of the election or prevent sufficient electors from registering and voting to materially change the result, then the vote shall not be canvassed, but shall be excluded from the returns. The statements of the election officers, it will be seen, are still the substantial accusations against the poll, but other testimony may be examined. The board are thus vested with the right to hear the charge, (the statements of the election officers,) to examine witnesses, to send for persons and papers, *to be convinced* that there was intimidation, to *judge* of its materiality both as to interfering with the freedom and as to changing the result, and upon such judging to exclude the poll. It must be admitted that these are judicial powers. They vest the tribunal with power to hear something, to judge after hearing, and to execute their judgment. Is it a court or is it a returning board? What do those who sustain its authority claim it to be? On page 175 of Document No. 2, sent to the Senate by the President, I find Judge H. J. Campbell, of the fourth district court, New Orleans, in his letter to Mr. GARFIELD, speaks of it thus:

It will be seen that these five returning officers are neither a canvassing board nor a returning board; and therefore there is no analogy between their powers and functions and those of canvassing boards of other States. These five officers are the returning officers of the State for all elections. There are no returns, and can be none, of any election but the returns which these officers make. In the eye of the law they are present at each poll. * * * It is the returns of these five officers, and these alone, which, under the law, constitute the *prima facie* evidence of the result of the election. Their power to inquire into and determine the results of violence and intimidation where alleged is not the power of counting out or counting in votes, but the power to decide whether alleged votes are votes or not; it is the power to examine into cases where an election has already been nullified by acts of violence, and so forth, and if the nullity is proved according to law, to ascertain and declare that nullity.

The Senator from Ohio [Mr. SHERMAN] and those who unite with him, in their report in the same document, page 5, speak of it in this language:

Not only is the action of this board independent of the State or national laws, other than those of Louisiana, but its determination of the votes cast and candidates elected is final and substantially conclusive, as appears from a decision of the supreme court of that State, reported in the twenty-fifth volume of the Louisiana Annual Reports, where the court, at page 268, say: "No statute conferring upon the courts the power to try cases of contested elections or title to office authorizes them to revise the action of the returning board. If we were to assume that prerogative, we should have to go still further, and revise the returns of the supervisors of elections, examine the right of voters to vote, and, in short, the courts would become in regard to such cases mere officers for counting, compiling, and reporting election returns. The Legislature has seen proper to lodge the power to decide who has or has not been elected in the returning board.

"It might have conferred that power on the courts, but it did not. Whether the law be good or bad, it is our duty to obey its provisions, and not to legislate."

Great reliance is placed upon this decision of the supreme court. I do not regard it as adding to the value of the powers granted nor giving moral strength to the power assumed. It was delivered by a divided court. The judges assenting to the doctrine were Chief-Justice Ludeling, Justice Taliaferro, and others.

Of the character of at least the head of this court, we may judge by what Mr. Justice Strong, of the Supreme Court of the United States, says, in the opinion of that court in the case of Jackson *vs.* Ludeling, in 21 Wallace's Reports. At page 621, after describing a combination of which Mr. Ludeling was an active member, he says:

Were there nothing more in this case than is narrated by the brief history thus given, which is uncontradicted, it would be difficult to characterize the transaction as anything less than a great wrong perpetrated *by the agency of legal forms.*

Again, at pages 628 and 629, after discussing the agreement entered into between "Ludeling, for himself and friends," and J. N. Horne, Judge Strong says:

It is impossible to characterize this agreement as anything else than fraudulent. Its obvious purpose was to remove competition at the sale. It was a flagrant breach of trust on the part of Horne, and it was *a fraud in Ludeling* with knowledge of the trust. Horne had undertaken to persuade him to violate his instructions and sacrifice the interests of his constituents.

And again, at page 631, after stating the combination to defeat a sale for $550,000 in order that they might buy the property for $50,000, Judge Strong says:

It is impossible to sustain such a transaction. Throughout it was grossly inequitable. Ludeling, it is true, was not a director, but he was a leading member of the combination and its chief agent to carry out its plans. He knew its purposes. He knew its illegality. He had negotiated the surrender of Horne with full knowledge of Horne's breach of trust.

And at page 632—

The defendants can take nothing from such a sale thus made. Were we to sustain it we should sanction a great moral and legal wrong, give encouragement to faithlessness to trusts and confidence reposed, and countenance *combinations to wrest by the forms of law* from the uninformed and confiding their just rights.

Such is the picture drawn by a just judge of the personal conduct of the head of the court whose decision is relied upon as estopping the people of the United States from an inquiry into the conduct of a returning board in whose action they are all interested. Is it strange that the forms of law are now sought to be used to cover wrong when we regard the mighty interests at stake and the past records of those who wield power in Louisiana?

We are thus brought face to face with the fact that there exists in Louisiana a tribunal which its courts and its laws say has absolute power over the returns of elections, from whose decrees there can be no appeal, over which no court, either of Louisiana or of the United States, has supervisory control, and which can, and in the present issue has, assumed to adjudicate the results of the presidential election. If it be true as asserted by the supreme court of Louisiana that the whole power of the highest legal tribunals in the land is superseded and subordinated by this board, within the spere of its jurisdiction; if it be true that ten thousand citizens can be disfranchised by its decrees without a hearing and without a remedy; if it be true that it is gifted with power not only to try, convict, and punish in their absence those who have been guilty of riot and intimidation, but also those who have neither participated in nor known of its perpetration; if it be true that those whom the people have chosen to fill the offices of the State are concluded without a judicial hearing, and that a candidate for elector of President chosen by an apparent majority can be returned defeated and there is neither a contested election nor a review by judicial authority for his relief, then it is time to inquire as to the grounds of our reliance upon a government of law and to learn whether the guarantees of the Federal Constitution mean what they import.

I cannot agree either that the Louisiana returning board is a court, that its decrees are conclusive, or its judgments final, but I do believe and affirm that its assumed jurisdiction and authority are contrary to the theory of our institutions, anti-American in principle, and that they violate the plain letter of the Federal Constitution. In no other State in the Union are the acts and doings of a returning board held to be of absolute verity and conclusive of their correctness. In every other organization of the kind in the country their duties are held to be ministerial, or, if quasi-judicial functions are vested in them, the right to a review of their adjudications is reserved to the courts of law through a contest, or to some other body vested by law with the power and the means to pass judicially upon the questions involved. Returning officers are mere registers of the popular will expressed under the forms and sanctions of law. If they be constituted also a tribunal of the last resort both as to facts and law, they are vested with power to nullify that will at their pleasure. From being its mere conduits they become its judges and its tyrants. From being the means of its faithful expression they may become the irresponsible agents of falsehood and wrong.

Dare we trust the ballot to the tender mercies of a returning board utterly uncontrolled by the judiciary? Is there safety anywhere if it be not found in this supervisory power? What will become of the sense of security that all feel when our bloodless revolutions have passed that the return is the truth, or the law, wielded by faithful judges, will be invoked by those interested to make it truth? Is this not the very anchor of the election system? Can we dispense with it? Will not the result which the action of this returning board fastens on the country be the entering wedge to our destruction—the leprosy that will infect and taint the whole body? Such an innovation as this, with such results as hinge upon its action, will speedily demonstrate that returning boards, with absolute powers over both law and fact, and the ballot, cannot exist together in a free state.

Upon the faith of the people, upon their implicit and unhesitating confidence in the popular vote as the truthful representative of the popular will, depends the life of our institutions. The theory of our government and the noiseless working of its complex machinery both depend upon the faith we have in this great leading thought. Take from the forms of expression of the popular vote the safeguard and protection of judicial scrutiny, and faith will have departed with them. Political and judicial duties fit but ill upon the same person. The return and the certificate flow from the rapid and superficial count of the returning officer. The tests of their truth and of their effect belong to the slower, cooler, and more cautious methods of the law. The former is *prima facie;* the latter, when completed, is conclusive. The former accepts for truth that which seems to be truth; the latter receives complaints, hears testimony, deliberates, and judges. The doctrine of the conclusive effect of the judgment of a court finds its reason and its origin in the fact that the party must be heard before he is condemned. This protection has been the property of our race since Magna Charta. To condemn without hearing is tyranny. Nor can it be argued that under this statute those who are judged are given a hearing. Here are none of the vital essentials to such a tribunal as those enumerated by Chief-Justice Waite in the most recent case. Does it anywhere appear "that ample provision has been made for the trial of the contestation before a court of competent jurisdiction; for bringing the party against whom the proceeding is had before the court and notifying him of the case he is required to meet; for giving him an opportunity to be heard in his defence; for the deliberation and judgment of the court; for an appeal from this judgment to the highest court of the State, and for hearing and judgment there? Where are these guarantees of judicial fairness in this case?

The board itself is unfitted by the very character of its composition to give an impartial hearing or a just judgment. The end the law seeks to attain may be a just and proper one, but in seeking it great fundamental rights are destroyed.

No freeman shall be taken or imprisoned, or dissezed of his freehold or liberties or free customs, or be outlawed or exiled, or any otherwise destroyed; nor will we pass upon him or condemn him but by lawful judgment of his peers or by the law of the land.

These rights are as broad as our country. They go with our race into every clime. Their infringement in Louisiana is no more possible than in New York. Freemen cannot be dissezed of their liberties, nor condemned but by "the law of the land." "The law of the land" is not a statute of Louisiana repugnant to the theory of law everywhere. Citizens of the United States in every locality are affected by this statute now. Its execution affects us all. Vested by law with conclusive power, this returning board—"this court of the last resort"—sweeps out of existence ten thousand ballots and decides the presidential election. Neither the statute nor the board gives to an elector of the United States chosen by a majority the right to contest for his place. The laws of Louisiana utterly deny this right. No formal petition or complaint, with a specific detail of the wrongs committed; no plaintiff, complainant, or accuser is permitted to tread the portals of this court; no answer under oath or in writing by defendant or accused is demanded; no notice to those chosen by the majority to appear and answer; no compulsory process for the attendance of witnesses; no power to punish for contempt; no right of appeal as to matter of fact; no exception for review of errors in law is given to this "court," whose decrees and edicts are fraught with consequences so momentous to the American people. Such a tribunal is no court. It is a judicial monstrosity. It can give no lawful hearing. Its decrees are not binding. Its judgments are not final. Its construction and powers violate every conception of a court as a place where justice is judicially administered which we entertain as a people. It grasps our rights and destroys them without a hearing.

This law and its creature, the returning board, so far from being in accord with the Constitution of the United States, so far from requiring "from us the same respect for their decisions as would be given to the decisions of the Supreme Court of the United States," are at flagrant war with the Constitution, and they only demand from us the seal of our condemnation. They are not only destructive of the theory, but they violate the plain letter of the Federal Constitution. Whatever may have been the rule before the adoption of the fourteenth amendment as to the security and guarantee by the Federal Government in the States of those great rights and privileges which belong to the individual—those which are fundamental in character and accompany a citizen of the United States wherever he may go—there can be no doubt that since its adoption the States are prohibited from either destroying, abridging, or depriving the citizens thereof. The words are:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law.

Passing by the question arising under the first clause as to what are "privileges and immunities of citizens of the United States," we come to the consideration of the second clause. What is property, within the meaning of this clause? Let us take up the authorities and examine them:

The truth, however, is, that all incorporeal hereditaments, whether they be immunities, dignities, *offices, or franchises,* or other rights, are deemed valuable in law. The owners have a legal estate and property in them and legal remedies to support and recover them.—*Dartmouth College vs. Woodward,* 4 *Wheaton.*

The theory upon which our political institutions rest is that all men have certain inalienable rights; that among these are life, liberty, and the pursuit of happiness; and that in the pursuits of happiness *all avocations, all honors, all positions* are alike open to every one, and that in the protection of these rights all are equal before the law.—*Cummings vs. Missouri,* 4 *Wallace.*

That this clause of the Constitution guarantees protection to this form of property is conceded by the Chief-Justice in Kennard *vs.* Louisiana, 2 Otto, 481:

"Due process of law," as herein used, imports the same meaning as "the law of the land" in Magna Charta. It means "the law of the particular case in a fair and open trial." "This provision and those as to the administration of justice require that all claims for justice between man and man shall be tried, decided, and enforced by the judicial authority of the State and by due course of law. The design of the Constitution is to exclude arbitrary power from every branch of the Government, and there would be no exclusion of it if the rescripts or decrees of the Legislature were allowed to take the form of a statute. It does not mean merely an act of the Legislature, for that would abrogate all restriction on legislative power." It is "not the arbitrary edict of any body of men; not an act of Assembly though it may have all the outward form of a law, but that process by which what one alleges to be his is adjudged not to be his. If this be not so every restriction upon legislative authority would be a vain formula of words, without life or force." It ordinarily implies and includes a complainant, a defendant, and a judge, regular allegations, opportunity to answer, and a trial according to some settled course of judicial proceeding. I cannot persuade myself that a judge of elections or a board of election officers constituted under State laws is such a tribunal. (per Strong, J., in 53 Pennsylvania Reports, 117.) By "the law of the land" is most clearly intended the general law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial. "Due process of law" as defined by the Chief-Justice in Kennard *vs.* Louisiana is "the due course of legal proceedings according to those rules and forms which have been established for the protection of private rights."

We search in vain through the statute that gives life and power to the returning board of Louisiana for the qualities that all of these authorities as well as common right make vital to its validity. It is not a judicial tribunal nor a place where justice can be judicially administered. Its decrees affecting the right of property, of liberty, or of life are void. Its assumed authority to pass judicially upon the right of any candidate for office is baseless. Much more is it impotent when its void decrees are hurled at an official whose place affects the machinery of the Federal Government. A candidate for elector of the United States is by the plain terms of the Constitution entitled to be judicially heard, to have his day in court, to have process for his witnesses, to be judged according to "due process of law," before his office is given to another. Here is none of these. The State of Louisiana through her statutes and by her courts seeks to deprive a citizen of the United States of his property without due process of law. In this she comes in conflict not only with the universal law controlling returning boards and with the right of every citizen of the Republic, but also with the supreme law of the land. It results that her statutes give no vigor to the action of the board they create, that their decrees are not binding nor their judgments final.

The argument resolves itself into this proposition: If a citizen of Pennsylvania and of the United States removes to Louisiana, on compliance with its laws he becomes a voter and a citizen thereof and may be chosen an elector of the United States. As such, if, under the provisions of this statute, he were deprived of enough votes to reduce his majority to a minority, it would be an abridgment of his privileges as a citizen of the United States, for his right to the office unless deprived thereof by due process of law—which this statute is not—would be clear; or it may be stated thus: honors and offices are property. The right to own and hold property is an inalienable one. It belongs to every citizen of the United States. He cannot be

deprived of his property save by "due process of law." A citizen of Pennsylvania going to Louisiana takes with him this right. Upon compliance with the laws of Louisiana he may become a voter and a candidate for elector. If he obtains a majority of votes he is entitled to the office unless deprived of it by due process of law. A contested election is that process. This statute denies this right, refuses a contest, and judges without hearing. It is therefore in conflict with the Constitution and void. The citizen of Louisiana who is a citizen of the United States is in the same attitude and has the same rights.

If the office of elector for President of the United States finds its origin in the Federal Constitution, and did not exist without it, then the right to be chosen in accordance with its provisions is a "privilege and immunity" of a citizen of the United States, and this, too, although we concede that the States have exclusive power in their appointment. They could not appoint an alien, yet no prohibition thereof appears in the text. If we concede, too, that "privileges and immunities" within the meaning of the fourteenth amendment are "only those rights which arise out of the nature and essential character of the National Government, the provisions of its Constitution, its laws, and its treaties," still the right of a candidate for elector to be protected within the States by the guarantees of the Constitution must exist in regard to such a case or they are valueless. If in those things which pertain to the very existence of the Federal Government those privileges and immunities may be disregarded by the States, then they mean nothing. One of these guarantees is "due process of law." The State of Louisiana has made and now attempts to enforce a law which abridges this right and thus violates the plain terms of the clause "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

It is said that fraud and wrong, riot, murder, and intimidation, exist in Louisiana and her law-making power must be permitted to use extraordinary remedies to suppress these. We need not inquire how the machinery created by these laws is used, nor whence proceed the ills complained of. Arbitrary power is no corrective for these evils. The remedy is worse than the disease. There is force and vigor enough in the legal remedies which are sanctioned by the organic law when they are administered and enforced by authority that moves with the dignity and power of the majority of the people to suppress every wrong and sustain every right.

Fraudulent voting, false returns, violence, intimidation, and all the other evils that afflict Louisiana in her elections come to us frequently in the North, but the remedy for these is not found in the disfranchisement of masses of men without a hearing, nor in the arbitrary exercise of judicial power by an irresponsible tribunal. The polls are purged, fraudulent votes rejected, returns coerced to speak the truth, the merits found, mere irregularities overlooked, and precincts thrown out when utter and willful violation of law is shown, but these results are reached through legal processes, sanctioned by constitutional authority and sustained and approved by the popular will. In these processes and in the forms of judicial inquiry alone, of which complaint and answer, a day of hearing and an actual hearing are always a part, is found the basis of our faith that the popular vote is the truthful exponent of the popular will. Take these away from popular institutions and you will have substituted arbitrary power for a government of law.

Standing upon the threshold of the second century of the Republic with the retrospect in our possession by which to gauge the future, with the plain proof that the power exists to successfully base popular institutions upon a free ballot if popular faith and legal scrutiny be its accompaniment, we should be faithless to our highest duty if we did not, by every means given us to use, compel the returns from every State to speak the truth; if we did not, in the exercise of our undoubted right "to count the vote," apply the tests of judicial scrutiny and of honest methods to the tortuous ways of partisan returning boards; if we did not, in all that pertains to Federal organism and Federal machinery, produce strict conformity to the Federal Constitution and purge and winnow the material returned until the people in every section recognized and admitted the legitimate results that had been produced by a pure and free ballot.

It is said that this action of the returning board is the action of a State vested by the Constitution with exclusive power over the subject-matter, and that we are bound by it. It is to be remembered that it is not the Constitution that gives force to the certificate of the executive authority, but an act of Congress; that the Government of the United States, under its own power, makes this a mode of proof of due appointment of electors by the State, and that a careful examination of that statute will show that its provisions are mainly directory in this regard. If it were a part of the requirements of the Constitution and made imperative on the Legislature of the States in creating their mode of appointment, a different question might arise; as it is, it is our own requirement, and is to be held, like all other directory statutes, to effectuate justice and right, and not to shield fraud and wrong. At the count of votes in 1873 the two Houses went behind this certificate in the Louisiana case, examined other testimony, and rejected the votes, and in the same year the certificate of the secretary of state of Texas (and not that of the governor) was adjudged sufficient, and the votes of the State received and counted.

If it be intended by this declaration, that we are bound by this action of a State, to recognize and count a false and fraudulent return simply because it comes covered with the insignia thereof, I cannot assent. This matter concerns all sections of the Republic. It is our right and our duty to protect our people from fraud and wrong, let it come from whence it may. We can and may and ought to administer the Federal Government in all matters affecting it, with purity. Falsehood and fraud affecting it ought to find neither protection nor tolerance in any of its departments.

In the adjudication of the weighty questions that now confront us fraud spoils everything it touches. The broad seal of the State is crumbled into dust as against the great interests designed to be defrauded. Every transaction in which it mingles, every return based upon it, is defiled by its contagious touch. Why should it find shelter in the highest representative tribunal of the Republic. This is the last place on earth where it ought to find refuge. No rescripts of a State Legislature, no decree of a returning board, no judgment of a State court can or ought to protect it here. Whenever and wherever it is detected, whenever and wherever the test of truth judicially applied drags it into light, its disguises vanish, its repulsive form stands exposed, and its condemnation follows.

That "the king can do no wrong" is a maxim of the English law. Pym and Hampden, in bold assertion of the rights of their countrymen, held that this king was he who ruled according to law. The ideal king—the majesty of law—the crystallized thought of ages, based upon common right, common justice, and common sense, they declared, was the real king, and the talent, intrepidity, and courage of these tribunes of the people riveted their thought upon the minds of Englishmen. The denial of this idea has cost one English king his head, another his crown, and a third the fairest colonies he possessed. For more than two centuries it has been the vital essence of English and American liberty. The state—the successor to the king—is not its organism, its seal, its territory, its legislature, or its constitution; but it is its people, their rights, their privileges, their immunities, and their happiness. The will of that people expressed through lawful and constitutional forms is the voice of the state, and forms and seals and papers fade away before the right, the power, and the duty that exist here to learn what it is, to judicially determine it, to obey its commands, and to register it as final.

Mr. SHERMAN. Mr. President, I have been prepared for some time to discuss the Louisiana case referred to now by my friend from Pennsylvania, [Mr. WALLACE,] in which discussion I shall be able to show by testimony of the clearest character, from officers of the Army, officers of the State, white men and black men, and by conceded, plain, and historical facts, that the case of intimidation in Louisiana not only demanded but made it the imperative duty of the returning officers to reject the votes of certain parishes. I have deferred entering into that discussion until the committees sent to Louisiana should return. I have, however, the published proceedings before the committees both of the House and of the Senate; I have kept my eye upon them and kept up with them, and I am prepared to show by the accumulated testimony before those committees that the evidence before the returning board is substantially sustained. Still I have been disposed to let the matter go over until that testimony was reported to us. Now the Senator from Pennsylvania comes here and assumes as a conceded or proven fact that this returning board was guilty of fraud and he calls upon both Houses of Congress to do what the law does not give them the power to do. The Constitution does not give them the power to sit in judgment and review the action of the returning board.

I rose simply to give notice that on the pending question upon the reference of the resolution offered by the Senator from Pennsylvania to the committee having charge of this subject, on to-morrow (because I take it the Senate is not in a condition to care to hear me to-day) I will take up the case of Louisiana and show the Senator from Pennsylvania by actual proven testimony, taken according to the law of Louisiana, what the condition of affairs down there is which he is called upon to defend and maintain, and to show upon what ground he now charges officers sworn under the law to do a particular duty with violating their office, being guilty of fraud, &c. I will do that to-morrow if it is the pleasure of the Senate to hear me. In the mean time I ask that the resolution go over until to-morrow.

Mr. WALLACE. If the Senator from Ohio will permit me, I will state that I answered the argument of the Senator from Ohio and the Senator from Iowa [Mr. WRIGHT] in which the distinct assertion was made that fraud cannot be inquired into. I have not investigated the question of fact in the slightest degree, but simply considered the position taken by the Senator from Iowa in his speech one day last week, that we cannot go behind the returns and investigate fraud. I have discussed no facts in the case.

Mr. SHERMAN. I had not the pleasure of hearing all the Senator from Pennsylvania said. I came in toward the latter part of his speech, but I will look over it to-morrow. It does seem to me that Senators must see that while we are not endeavoring to press this matter forward, the question of fraud, force, and violence in Louisiana cannot be discussed on one side alone. I have, with a good deal of impatience, read in the newspapers, especially in some of the New York papers, allegation made in regard to facts in Louisiana which are perfectly false and wrong, and I am prepared upon my oath and honor as a Senator, upon the proven testimony which I will read to you and which I think will be believed by the Senate and the coun-

try, that in Louisiana there were fraud, violence, murder, and wrong sufficient to justify this returning board in rejecting, and to make it their imperative duty to reject, the vote of that State. I do believe that if the whole body of that testimony taken on both sides could be read to an intelligent jury, North or South, there is not a jury but what would decide that an election thus tainted with force and violence should be rejected entirely; and, if the law of Louisiana was silent about it, it would defeat the vote of Louisiana from playing any part in this election. But for the action of the returning board and but for the action of the people of Louisiana and the State of Louisiana in providing a remedy for these wrongs, the whole vote of the State of Louisiana ought to be rejected as a body on account of wrongs and fraud. If it were not for the law which they themselves made which provides a means of expurgating the fraud and the violence, the State of Louisiana ought not to be counted on either side. Under that law, which has been observed in all its details by these returning officers, upon evidence sworn to before them and now before us and printed by us, they have acted as they considered it to be their duty to act in expurgating from the body of the returns certain election polls where this fraud and violence prevailed so as to change the result of the election; and, when the question comes up as to the truth or right of their finding, it seems to me that this can be made plain to the Senate. I will let the matter go over until to-morrow, and I will look over the Senator's speech. I do not want to rush into this debate prematurely; but I do not wish facts to be assumed and inferences drawn unfounded, as I think, upon testimony known to me personally.

Mr. BOGY. I will suggest that the argument which the Senator from Ohio proposes to make to-morrow be postponed until the testimony which I had the honor to present to the Senate a few days ago be printed. I think I shall be prepared to show, when the time comes, that the testimony which was presented here coming from the President was a partial statement, and that a majority of that testimony has since that time been flatly contradicted by testimony taken before the congressional committees in Louisiana. I think I shall be prepared to show, when the time comes, that the most important testimony of the commanding officers there does not appear in the report made by the Senator from Ohio. Major Bascom was commanding officer in the parish of East Feliciana and he gave his testimony at length, yet his testimony does not appear in that report. The testimony taken by the persons who were sent there by the President of the United States is a report of one side only. I presented a few days ago the testimony taken by the gentlemen who were sent there on the other side of this political question, and that testimony I think will be printed in a few days. When it is printed I think I shall be prepared to show that, although the election in Louisana was not as peaceful and as orderly as it might have been, yet most of the disorders were forced upon that people, not by the democratic party, but by the republican party, at the head of whom stood the governor of the State himself; that he was the instigator of more than one-half of all the troubles that took place in Louisiana; and I think I shall be prepared to show that most of the testimony which has been taken and presented here by the Senator from Ohio was taken without the sanction of law at all, in violation of law nine-tenths of it; affidavits made in the custom-house at New Orleans by parties who since that time have come before the committees there and have stated under oath that the affidavits purporting to be made by them were not made by them and that they are false. If you will wait until both sides of this question can be presented to the Senate and the country, I shall with my feeble ability try to present the other side of that question, and I hope that any discussion will be postponed until that time comes. I shall feel it my duty when that testimony is printed and placed before the country also to give my views upon the subject; but I hope that all these discussions will be postponed until we have both sides of the case and the entire testimony; and I think this will not be long. It was some days ago that I presented the testimony, and it must soon be printed.

Mr. SHERMAN. I wish to make a correction of one statement of the Senator in justice not only to the democratic committee but in justice to the republicans who were there as witnesses in Louisiana. They took no testimony; the democratic committee took no testimony. They disavowed that. They took none whatever. They heard statements, as we did, of the witnesses on both sides; but I feel bound for them to say that they took no testimony at all. My friend from Missouri left before, I think, the taking of testimony commenced. I am not sure about that, however. It is but due to them, as well as to myself and others, to state that we took no testimony whatever. The parties were represented, the electors on one side and the other were represented by counsel, and they took testimony; we took none. That ought to be kept in mind all the time. We were both there as spectators. I respected their opinions, respected their judgment. I have never said anything discourteous to them.

The allegation that we have presented an *ex-parte* statement in one sense is true. We tried, however, to get all sides and bring them here. We tried every means we could to get the other side here, but could not do it. They had the same means of furnishing copies of their depositions that we had, and they would have been printed long ago; but, strange to say, although we returned here, I think, about the 6th day of December and presented the testimony that we had, the whole of it, here to the Senate, yet the testimony on the other side was not presented here until the day before yesterday, if I remember—one month after ours was in print. Yet I did not hurry the matter and did not complain about it. My friend from Missouri the other day brought in a little package of papers and set it out on his desk, which I supposed was the body of the testimony; but it seems there was a great mass of it. There was no objection to the printing of all that was introduced.

In regard to the testimony of Major Bascom, that was taken on the other side, and I tried very hard to get it, although I know something of it. The testimony of Lieutenant Brooke, of Hayes, and of nearly all the officers in command in the disputed districts is furnished by us. The testimony of Major Bascom is not. I should be very glad to have it, and when it is printed I may have occasion to refer to it. There is no contradiction in the testimony.

As to the allegation now made by the Senator that these depositions of ours were disproved by testimony taken before the committee of our friend and colleague the Senator from Wisconsin, [Mr. HOWE,] he is mistaken. That testimony is being printed now pretty fully in the Saint Louis Republican and I suppose in the democratic papers as well. I have read it as it comes out. It substantially sustains the testimony before the returning board. Indeed a letter could be produced here which contains the statement of the chairman of the committee that in the main, with some reasonable differences arising from the mode of examination, &c., the testimony is the same on these leading points.

Now, sir, you will not see any substantial difference from the case made before the returning board on which they acted and the testimony produced before our committee. Whether there is or is not, the main question is whether upon the testimony before that returning board they were justified in doing what they did. It is not whether new testimony has been gotten up since, manufactured, or created, although I am willing to take it either on the testimony now taken by both committees or the testimony before the returning board. The question is whether, on the testimony before the returning board, there is reasonable ground for the charge that they were guilty of corruption and fraud in making their return. That is the charge. Was there any reasonable ground in the testimony of intimidation, violence, &c., to justify their action under the law, as proven before that board? That is the question; and upon that question I am willing to meet the Senator from Missouri; but until that question is debated, until we can have a right to present it to the Senate, I must insist that no man's judgment shall be precluded, that no man's opinion shall be settled by *ex parte* statements made by those who are probably not so familiar with the testimony as I am. Take the whole when it comes presented by whoever will present it, and you will find the simple fact that in a large portion of the State of Louisiana there was a degree of terror, violence, fraud, and intimidation most painful to hear of, most terrible to have enacted in the presence of a presidential election, and fatal will it be. I might quote the language of the petition which was read to you this morning, signed by Mr. Pendleton and other distinguished citizens of Cincinnati; fatal will it be to any administration to come into power and to take the presidential chair with their garments stained with the blood of their fellow-citizens; and yet that will be precisely the case if it is by Louisiana. If Louisiana elects a democratic President his garments will be stained with the blood of innocent victims, and there can be no doubt about that.

Mr. BOGY. Mr. President, this discussion was forced prematurely by the speech made by the Senator from Ohio when he presented the testimony taken by one side in that State. He now states that those persons who acted with him took no testimony, and that the persons who were sent there by the democratic party took no testimony. That may in some sense be correct, but it is not substantially so. Testimony was taken by one side and by the other. Whether the Senator from Ohio is on one side or not, there were two sides to the question, and he himself only reported here one side. Which side did he report? He reported the testimony taken by the persons who were trying to sustain the action of the returning board, and he made a speech at the time which I suppose forced the discussion before this body prematurely; forced me, before the testimony was presented to us, to reply to his speech sustaining the action of the board from beginning to end, giving it a character which I and others believe it was not entitled to, claiming for that board jurisdiction to try a question which in accordance with law it is not entitled to try, and fortifying it in every way. Thus he has made it necessary for us to reply to the speech made by him. He has forced that discussion on us before we are ready. He has attempted to place before the country as a fact that the election in Louisiana was one scene of blood and murder and intimidation. I shall be able to show that, although there was much intimidation and a good deal of improper conduct in that election, nevertheless nine-tenths of it has been manufactured since the election. I shall be prepared to show that which he has never yet denied, that all the testimony taken by the returning board was taken without authority of law. Persons found in the gutters and purlieus and infamous places of New Orleans were brought there as witnesses to attack the votes of persons in distant parishes. I shall be prepared to show that Mr. Kellogg and Mr. Packard themselves filed affidavits there which can be proven to the whole world to be false from one end to the other. They state that as a fact in those affidavits which the world knows were never facts within their knowledge, and my friend from Ohio must know that to be so. We attempted to co-ope-

rate with him in New Orleans. I was there myself. We wrote to those gentlemen a kind, courteous letter, asking that both delegations should come together and see that there was a fair, honest count by the returning board; but our approaches were repelled. We returned a second time, and were thrown off again.

Now we are told by the gentleman that he made an effort to obtain the testimony taken on our side, denying at the same time that there are two sides to the question; and yet there was testimony taken on our side, or taken on the side of the people, in opposition to the perjured villains who were there before the returning board as witnesses. We did not produce copies of the testimony then. Why? While the testimony on our side was being copied for the gentleman and his associates, as I understand at the public expense, and ready from day to day to be handed to them, ours was refused, and at our own expense, exceeding a thousand dollars, we were compelled to have that testimony copied, and were subjected all the time to delays and many hinderances, while they met with nothing of the kind; and the day that he left New Orleans he was ready to carry with him his side of the testimony, when ours could not be copied, and it took a month to copy it, and some portions of it cannot be copied even to this day. We had to do it at private expense.

Now, sir, this debate is rather irregular. I repeat what I said a while ago, it has been forced upon the country and forced upon the Senate by the course pursued by the Senator from Ohio. The time has not yet come; we are not yet ready to do justice to the subject. Let us have the testimony on both sides; and if it be true that the election in Louisiana was carried in the way stated by the Senator from Ohio, it was not a fair election and it should not be considered. An election held in that way certainly should not make a President for the people of the United States; there I agree with him. We shall be prepared to show that the intimidation, the violence, the wrong-doings there were in most cases the acts of the men to whose benefit this investigation has resulted.

But, sir, let this question be postponed until we are prepared to meet it. I am not here to make assertions contradicting the assertions made by the Senator from Ohio. I desire no such position. When I speak upon the subject I want to speak with the facts before me. I pretend to know nothing of my own knowledge of the condition of Louisiana. What knowledge I have I shall gather from these reports and the little information which I obtained when I was there. When all the evidence is laid before the Senate, I shall be prepared to give my views upon that subject, and till that time comes, in my opinion, the discussion ought to be postponed.

Mr. SHERMAN. I have only one remark to make in reply to the observations made by the Senator that the copying done on the part of the republican electors was at the public expense. I am quite sure the Senator must be mistaken about that. He cannot know about it, and I am quite sure it was not so.

Mr. BOGY. I will state this fact: I am assured by a private letter—of course I am not authorized to mention the gentleman's name—and also by a gentleman who was in the city of Washington a short time ago, that as the testimony was given on the side represented by the Senator it was copied, copied by the clerks of the returning board, while our side was not at all copied, and hence the reason for the delay. Of course I do not state that as of my own knowledge; but I am so assured by gentlemen of standing, some of whom were in the city of Washington, and others have written to me that such is the fact. I will not state it as a matter within my own knowledge; yet I have no doubt it is so.

Mr. SHERMAN. I do not know about what the returning board did. When the Senator says "public expense," if he means the expense of the United States, I know it was not at the expense of the United States. I have no doubt that the clerks of the returning board did copy more or less of this testimony; how much I do not know. As I understood, it was copied at the expense of the electors and at the expense of Packard, the candidate for governor. No Government officer, so far as I know, contributed to it, and no public expense was incurred in copying this testimony; but, on the contrary, we tried to get it all, on both sides; but the testimony taken on the part of the democratic electors was within their control and within their power until the very day we adjourned.

Mr. President, I might here refer to another thing Some of the New York papers have said that we were there at the public expense. My friend from Missouri would not make any such statement as that. The gentlemen on neither side were there at the public expense. We paid our own expenses, and paid them honestly out of our own pockets. But some of the newspapers charge that we were paid out of the public crib; that the Secretary of the Treasury paid us our expenses, and all that absurd sort of stuff. As a matter of course, I would not deem it necessary to contradict it here, but that the honorable Senator himself says this copying was done at the public expense. So far as I know, there was no advantage shown by the returning officers to either side of the controversy. I saw nothing of the kind, or that would indicate anything of that kind; certainly nothing of that kind came to my knowledge, and it would not receive my assent.

Mr. BOGY. "The public expense" means this: I am informed that the testimony taken by the republican electors, as the Senator calls them, was regularly and duly copied, while the testimony taken by the other side, the democratic electors, was not. I am furthermore informed that the testimony was not within their control. When given to the returning board it was a part of the archives of the returning board and they could not get it, and they have not been able to get some of it to this day, as I am informed. Therefore, whether done at public expense or not, the republican side of the question met with all the facilities, and by some hocus-pocus their testimony was found to be transcribed, which hocus-pocus did not apply to our side of the question. That is all. Where the money came from, whether my friend paid part of it or not I do not know, but I state the fact to be as I have because I am informed that such is the fact; we could not get our testimony, while they got theirs.

Mr. SHERMAN. One more remark. There was no pretense of this kind made by the gentlemen of whom we asked copies of the testimony. They did not say anything of the kind; did not pretend that they could not get copies of that testimony. They could have got them. The testimony was in their possession, under their control. When we asked for copies they did not say "We could not get copies of the testimony; you have had advantages which we have not had." No such remark as that was made in reply. They simply said, "We prefer to communicate that testimony to the public at large in a different way." Therefore the pretense that there was any advantage in copying testimony given to one side or the other is an entire mistake. Both parties could copy the testimony, and we secured our copy through the interested parties, the governor-elect of the State of Louisiana on the republican ticket and the counsel and agents of the republican electors.

Mr. BOGY. There seems to be no end to this thing. The Senator from Ohio states that the gentlemen on my side declined to publish testimony and gave no such reason as I have stated. That is so. The democratic gentlemen who were in New Orleans had made an application at the outset to co-operate with the republican gentlemen who were there, and they had been repelled. That was the end of any co-operation between them by the action of the republicans themselves.

Mr. INGALLS. Mr. President——

Mr. SHERMAN. I ask that the matter lie over until to-morrow.

Mr. BOGY. Why not let it lie over until the testimony is printed?

Mr. SHERMAN. I will see.

Mr. INGALLS. I move that the Senate do now adjourn.

Mr. SHERMAN. I should like to have a short executive session.

Mr. INGALLS. I withdraw my motion for that purpose.

DISTRICT POLICE COMMISSIONERS.

A message from the House of Representatives, by Mr. GEORGE M. ADAMS, its Clerk, announced that the House had passed a bill (H. R. No. 4350) to abolish the board of commissioners of the Metropolitan police of the District of Columbia and to transfer its duties to the commissioners of the District of Columbia; in which it requested the concurrence of the Senate.

The bill was read twice by its title by unanimous consent, and

On motion of Mr. RANDOLPH, its further consideration was postponed until to-morrow.

EXECUTIVE SESSION.

Mr. SHERMAN. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After ten minutes spent in executive session the doors were re-opened, and (at three o'clock and thirty-five minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

MONDAY, *January* 8, 1877.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of Saturday was read and approved.

ORDER OF BUSINESS.

The SPEAKER. The morning hour commences at fifteen minutes past twelve o'clock, and this being Monday, the first business in order is the call of States and Territories, beginning with the State of Maine, for the introduction of bills and joint resolutions for reference to their appropriate committees, not to be brought back on motions to reconsider. Under this call memorials and resolutions of State and territorial Legislatures may be presented for reference and printing.

DONATION OF CONDEMNED ORDNANCE.

Mr. DENISON introduced a bill (H. R. No. 4316) donating condemned ordnance to Post 8, Grand Army of the Republic, Brattleborough, Vermont; which was read a first and second time, referred, with accompanying papers, to the Committee on Military Affairs, and ordered to be printed.

LYDIA A. CARRICK.

Mr. DENISON also introduced a bill (H. R. No. 4317) granting a pension to Lydia A. Carrick; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

JOHN JACKSON.

Mr. TARBOX introduced a bill (H. R. No. 4318) to authorize the President to restore John Jackson to his former rank in the Army; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

CONNECTICUT INTERNAL IMPROVEMENTS.

Mr. WARNER introduced a bill (H. R. No. 4319) making appropriations for continuing the improvements of the harbor of Norwalk, Connecticut; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

Mr. WARNER also introduced a bill (H. R. No. 4320) making appropriations for continuing the improvements in the harbor of Bridgeport, Connecticut; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

GEORGE QUARREL.

Mr. J. H. BAGLEY introduced a bill (H. R. No. 4321) granting a pension to George Quarrel; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

SURVEY AND MAPPING OF THE DISTRICT OF COLUMBIA.

Mr. LEAVENWORTH introduced a bill (H. R. No. 4322) to provide for the surveying, laying out, and mapping of all that part of the District of Columbia lying north of the cities of Washington and Georgetown; which was read a first and second time, referred to the Committee for the District of Columbia, and ordered to be printed.

PAYMENT OF LEGAL-TENDER DEBT.

Mr. CHITTENDEN introduced a bill (H. R. No. 4323) for paying the legal-tender debt, in harmony with justice and the repeatedly pledged faith of the Government of the United States; which was read a first and second time, referred to the Committee of Ways and Means, and ordered to be printed.

INSTITUTIONS FOR THE BLIND.

Mr. STENGER introduced a bill (H. R. No. 4324) to aid the Columbian Institution for the Blind, the American Printing House for the Blind, and the American University for the Blind; which was read a first and second time, referred to the Committee on Education and Labor, and ordered to be printed.

JERRY ROBINSON.

Mr. YEATES introduced a bill (H. R. No. 4325) granting a pension to Jerry Robinson; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

REMOVAL OF OBSTRUCTIONS IN RED RIVER.

Mr. LEVY introduced a bill (H. R. No. 4326) for the removal of obstructions in the Red River, in the States of Louisiana, Texas, and Arkansas; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

FALLS OF THE RED RIVER.

Mr. LEVY also introduced a bill (H. R. No. 4327) for the improvement of the falls of Red River, at or near the city of Alexandria, in the State of Louisiana; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

CHARLES H. LEVY.

Mr. ELLIS introduced a bill (H. R. No. 4328) to remove the political disabilities of Charles H. Levy, of Louisiana; which was read a first and second time, referred to the Committee on the Judiciary, and ordered to be printed.

AMENDMENT TO THE RULES.

Mr. SOUTHARD introduced a resolution to amend House rule No. 22; which was referred to the Committee on Rules.

Mr. CONGER. Does that resolution properly come in under this call?

The SPEAKER. It does; such has been the practice of the House.

Mr. CONGER. A simple resolution?

The SPEAKER. Resolutions proposing amendments to the rules of the House according to the practice have been recognized during the call for bills and joint resolutions in the morning hour on Monday. Amendments to the rules require one day's notice.

As the question has been raised the Chair begs to call to the attention of the gentleman from Michigan a decision made on this very point, February 1, 1875. It was then decided that resolutions to amend the rules might be introduced and referred on the first call for bills and joint resolutions on Monday during the morning hour, thus constituting notice according to the usage of the House.

SOLDIERS AND SAILORS' REUNION, MARIETTA, OHIO.

Mr. VAN VORHES introduced a joint resolution (H. R. No. 179) granting the use of artillery, blankets, &c., for the use of the national soldiers and sailors' reunion to be held at Marietta, Ohio; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

COMMISSIONERS OF CLAIMS.

Mr. MILLIKEN (by request) introduced a bill (H. R. No. 4329) to extend for two years the act establishing the board of Commissioners of Claims and all acts relating thereto; which was read a first and second time, referred to the Committee on War Claims, and ordered to be printed.

FREE COINAGE OF SILVER DOLLARS.

Mr. BRIGHT introduced a bill (H. R. No. 4330) providing for the free coinage of silver dollars, and for making the same a legal tender; which was read a first and second time.

Mr. BRIGHT. I move that bill be referred to the Committee on Mines and Mining, and ordered to be printed.

Mr. O'BRIEN. I make the point of order on that reference of this bill, and I wish to call the attention of the Speaker to Rule 148, which I ask the Clerk to read. The point I make is that under the rules the bill, instead of being referred to the Committee on Mines and Mining, should be referred to the Committee on Coinage, Weights, and Measures.

The Clerk read as follows:

148. An additional standing committee shall be appointed at the commencement of each Congress whose duties shall continue until the first session of the ensuing Congress, to consist of seven members, to be entitled a "Committee on Coinage, Weights, and Measures;" and to this committee shall be referred all bills, resolutions, and communications to the House upon that subject.—*January* 21, 1864; *March* 2, 1867.

Mr. O'BRIEN. The point I make is that under the rules the bill must be referred to the Committee on Coinage, Weights, and Measures; and, further, that it requires a suspension of the rules to refer it to the Committee on Mines and Mining.

The SPEAKER. It is competent for the majority of the House to refer a bill wherever they wish.

Mr. O'BRIEN. Then I move the bill be referred to the Committee on Coinage, Weights, and Measures.

The SPEAKER. The Chair will recognize the gentleman from Maryland for that purpose.

Mr. BRIGHT. I desire to make an inquiry——

The SPEAKER. Debate is not in order.

Mr. CONGER. Let us know the subject-matter of the bill.

The SPEAKER. The bill will be read.

The Clerk read the bill *in extenso*.

Mr. O'BRIEN. I ask now that Rule 153 be read, as it relates to the Committee on Mines and Mining.

The Clerk read as follows:

153. It shall be the duty of the Committee on Mines and Mining to consider all subjects relating to mines and mining that may be referred to them, and to report their opinion thereon, together with such propositions relative thereto as may seem to them expedient.—*December* 19, 1865.

The SPEAKER. The Chair overrules the point of order, which seems to be made by the gentleman from Maryland that this bill should be referred to the Committee on Coinage, Weights, and Measures, believing that it is competent for a majority of the House to give whatever reference they may deem necessary.

Mr. KASSON. Let me have a single word on this subject.

Mr. O'BRIEN. Certainly.

Mr. KASSON. The language of Rule 148 is so imperative I wish to to call the attention of the Speaker to it——

Mr. BRIGHT. I do not understand that this subject is open to debate.

The SPEAKER. The Chair has ruled that debate upon the question of reference is not in order.

Mr. KASSON. I desire to speak to the point of order.

The SPEAKER. The Chair will hear the gentleman on the point of order.

Mr. KASSON. The resolution originally appointing the Committee on Coinage, Weights, and Measures is one which I had the honor to introduce several Congresses ago, with the express object of securing a committee that should keep up the traditions of the House upon the subject of coinage; not at all with so much reference to legal tender-quality, &c., as to the shape of the coin, the quantity of metal, the quantity of alloy, its relations to the coins of other countries, and all those various subjects that are connected with any order of Congress relating to the coined money of the United States. The language in which the resolution is drawn is imperative. Rule 148, providing for the appointment of the Committee on Coinage, Weights, and Measures, says:

And to this committee shall be referred all bills, resolutions, and communications to the House upon that subject.

This bill expressly relates to the subject of the coinage of the silver dollar. If it related to mines and mining, by opposing any regulation or provision covering that subject, there would be presented to the House the alternative of two committees that might have jurisdiction. No such alternative is presented here as between the Committe on Mines and Mining and the Committee on Coinage, Weights, and Measures. The alternative presented is the Committee of Ways and Means; for the bill provides that the silver dollar shall be a legal tender in payment of debts, &c., to be received by the United States. I admit that the House of Representatives might, by a simple majority, refer to either of the committees which had jurisdiction either of the subjects embraced in the bill. But when the language of the rule to which I refer is imperative, the bill in one respect at least should be referred to the Committee on Coinage, Weights, and Measures. There is nothing in it relating to Mines and Mining.

My point is, therefore, that without suspending the rules by a two-thirds vote we cannot get rid of Rule 148 so as to refer the bill to the Committee on Mines and Mining, although we might if the question were as to a reference to the Committee of Ways and Means. I desire to preserve the jurisdiction of the Committee on Coinage, Weights, and Measures. It is a very important committee, and ought to take charge of all matters relating to coinage, or else be relieved of all jurisdiction.

The SPEAKER. The Chair, without expressing any opinion as to the propriety of reference to one committee or another, recognizes that to the House in the past has always been left the control of the reference of a bill when such reference has been a matter of dispute.

Mr. FORT. I desire to inquire if it has not been the universal custom of this House to allow a gentleman to send his bill to whatever appropriate committee he desires?

The SPEAKER. Not that the Chair knows of.

Mr. FORT. I call the attention of the Chair to the fact that the Committee on Mines and Mining did consider a bill similar to this, did report it to the House, and that the House did act upon it. It occurs to me that the gentleman from Tennessee [Mr. BRIGHT] ought not be compelled to send his bill to a committee which he has reason to know is not kindly disposed toward it.

The SPEAKER. Perhaps the reference of the bill to which the gentleman from Illinois alludes was not disputed.

Mr. BRIGHT rose.

The SPEAKER. The Chair has ruled that debate is not in order.

Mr. BRIGHT. I do not propose to debate the question. I desire, however, that I may have the ear of the Chair for a moment in relation to the construction of the two rules which are involved in the controversy as to the reference of this bill.

The SPEAKER. Does the gentleman desire to make a point of order?

Mr. BRIGHT. Yes, sir.

The SPEAKER. The Chair will recognize the gentleman if he desires to make a point of order. He has not the power to recognize him otherwise.

Mr. BRIGHT. I wish to make a point of order as to the construction of these rules. I apprehend that the gentleman from Iowa [Mr. KASSON] has mistaken the contents of the bill. I maintain that it is competent to refer it to either one of these committees; that either committee would have jurisdiction; that it is a case of concurrent jurisdiction; and that, being a case of concurrent jurisdiction, it would be entirely proper that it should be referred to either committee. That being so I suppose that it would be at the election of the member introducing a bill, or if not at his election, at the election of the House, to give it such direction to such committee as would be most friendly to the measure introduced. I have no idea, Mr. Speaker, of introducing the bill and sending it to a slaughter-house where it has already been decided unfavorably upon.

The SPEAKER. That is in the nature of debate, and debate is not in order.

Mr. BRIGHT. I have said all I wish to say.

The SPEAKER. The question is on the amendment of the gentleman from Maryland, [Mr. O'BRIEN,] which is that this bill be referred to the Committee on Coinage, Weights, and Measures, instead of to the Committee on Mines and Mining, as indicated by the gentleman who introduced the bill.

The question being taken on the amendment, there were ayes—69, noes 90.

Mr. O'BRIEN. I call for the yeas and nays.

The yeas and nays were ordered.

The question being taken; there were—yeas 74, nays 123, not voting 92; as follows:

YEAS—Messrs. Adams, George A. Bagley, Ballou, Horatio C. Burchard, Burleigh, Carr, Caswell, Chittenden, Cochrane, Cutler, Davy, Dobbins, Dunnell, Durand, Eames, Flye, Foster, Frye, Garfield, Hale, Haralson, Hardenbergh, Benjamin W. Harris, Hendee, Abram S. Hewitt, Hoar, Hoge, Hoskins, Hubbell, Hyman, Kasson, Kelr, Kimball, George M. Landers, Lapham, Levy, Magoon, Maish, MacDougall, Miller, Mutchler, Norton, O'Brien, Odell, O'Neill, Packer, Page, Pierce, Piper, Plaisted, Platt, Potter, Powell, Sobieski Ross, Schleicher, Seelye, Sinnickson, Smalls, A. Herr Smith, Stenger, Stone, Tarbox, Thompson, Martin I. Townsend, Wait, Warner, Erastus Wells, Wike, Willard, Andrew Williams, Alpheus S. Williams, Charles G. Williams, Willis, and Alan Wood, jr—74.

NAYS—Messrs. Ainsworth, Ashe, Atkins, Bagby, John H. Bagley, jr., John H. Baker, Banning, Bell, Bland, Boone, Bradford, Bradley, Bright, John Young Brown, William R. Brown, Buckner, Cabell, John H. Caldwell, William P. Caldwell, Campbell, Candler, Cannon, Cason, Cate, Caulfield, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Conger, Cook, Cowan, Culberson, Davis, Dibrell, Durham, Eden, Ellis, Evans, Felton, Finley, Forney, Fort, Franklin, Fuller, Gause, Goodin, Gunter, Robert Hamilton, Hancock, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Haymond, Henderson, Hereford, Goldsmith W. Hewitt, Holman, Hooker, Humphreys, Hunter, Hunton, Franklin Landers, Lawrence, Leavenworth, Lynch, Lynde, McDill, Milliken, Mills, Monroe, Morgan, Neal, Oliver, John F. Philips, William A. Phillips, Poppleton, Rainey, Rea, Reagan, John Reilly, James B. Reilly, Riddle, John Robbins, Roberts, Sampson, Savage, Scales, Sheakley, Singleton, William E. Smith, Southard, Sparks, Springer, Stanton, Stevenson, Teese, Terry, Thomas, Throckmorton, Tufts, Turney, Van Vorhes, Robert B. Vance, Waldron, Gilbert C. Walker, Alexander S. Wallace, John W. Wallace, White, Whiting, Whitthorne, Wigginton, James Williams, Jeremiah N. Williams, William B. Williams, Wilshire, Benjamin Wilson, James Wilson, Woodworth, Yeates, and Young—123.

NOT VOTING—Messrs. Abbott, Anderson, William H. Baker, Banks, Bass, Beebe, Blackburn, Blair, Bliss, Blount, Samuel D. Burchard, Chapin, Collins, Cox, Crapo, Cronse, Danford, Darrall, De Bolt, Denison, Douglas, Egbert, Faulkner, Freeman, Gibson, Glover, Goode, Andrew H. Hamilton, Hathorn, Hays, Henkle, Hill, Hopkins, House, Hurd, Hurlbut, Jenks, Frank Jones, Thomas L. Jones, Joyce, Kelley, King, Knott, Lamar, Lane, Le Moyne, Lewis, Lord, Luttrell, Mackey, McCrary, McFarland, McMahon, Meade, Metcalfe, Money, Morrison, Nash, New, Payne, Phelps, Pratt, Purman, Rice, William M. Robbins, Robinson, Miles Ross, Rusk, Sayler, Schumaker, Siemons, Spencer, Strait, Stephens, Stowell, Swann, Thornburgh, Washington Townsend, Tucker, John L. Vance, Waddell, Charles C. B. Walker, Walling, Walsh, Ward, Warren, Watterson, G. Wiley Wells, Wheeler, Whitehouse, Fernando Wood, and Woodburn—92.

So the amendment was not agreed to.

During the roll call Mr. SCALES said: I desire to state that my colleague, Mr. ROBBINS, is detained at his home in North Carolina by serious illness.

The bill was then referred to the Committee on Mines and Mining, and ordered to be printed.

NANCY BENSON.

Mr. RIDDLE introduced a bill (H. R. No. 4331) for the relief of Nancy Benson, of Sumner County, Tennessee; which was read a first and second time, referred to the Committee on War Claims, and ordered to be printed.

IMPROVEMENT OF THE CUMBERLAND RIVER.

Mr. RIDDLE also introduced a bill (H. R. No. 4332) to appropriate $50,000 for the improvement of the Cumberland River from Nashville to the Kentucky line; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

NATIONAL-BANKING ASSOCIATIONS.

Mr. RIDDLE also introduced a bill (H. R. No. 4333) providing that from and after March 4, 1877, no national-banking association shall be organized under the title of the sixty-second section of the Revised Statutes of the United States, or under section 3 of the act of January 14, 1875, which provides for the resumption of specie payments on and after January 1, 1879; which was read a first and second time.

Mr. HALE. I call for the reading of the bill.

The bill was read in full, referred to the Committee on Banking and Currency, and ordered to be printed.

A. F. BONNER.

Mr. YOUNG introduced a bill (H. R. No. 4334) for the relief of A. F. Bonner, administrator of the estate of M. A. Bonner, (deceased,) of Shelby County, Tennessee; which was read a first and second time, referred to the Committee on War Claims, and ordered to be printed.

BARATORIE SHIP-CANAL COMPANY.

Mr. YOUNG also introduced a bill (H. R. No. 4335) providing for the incorporation of the Baratorie Ship-Canal Company; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

F. R. SMITH.

Mr. YOUNG also introduced a bill (H. R. No. 4336) for the relief of F. R. Smith; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

J. M. PROVINE.

Mr. YOUNG also introduced a bill (H. R. No. 4337) for the relief of J. M. Provine (deceased) and John J. Amonett, (executor,) of Memphis, Tennessee; which was read a first and second time, referred to the Committee on War Claims, and ordered to be printed.

ABNER D. LEWIS.

Mr. YOUNG also introduced a bill (H. R. No. 4338) for the relief of Abner D. Lewis, of Fayette County, Tennessee; which was read a first and second time, referred to the Committee on War Claims, and ordered to be printed.

EXPEDITION TO THE ARCTIC SEAS.

Mr. HUNTER (by request) introduced a bill (H. R. No. 4339) to authorize and equip an expedition to the Arctic Seas; which was read a first and second time, referred to the Committee on Naval Affairs, and ordered to be printed.

ISABELLA CASSIDY.

Mr. BAGBY introduced a bill (H. R. No. 4340) granting a pension to Isabella Cassidy; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

GEORGE W. WRIGHT.

Mr. WIKE introduced a bill (H. R. No. 4341) granting a pension to George W. Wright, of Brown County, Illinois, a soldier of the war of 1812; which was read a first and second time, referred to the Committee on Revolutionary Pensions, and ordered to be printed.

BRIDGE ACROSS THE MISSOURI RIVER.

Mr. CLARK, of Missouri, introduced a bill (H. R. No. 4342) to authorize the construction of a bridge across the Missouri River at or near Glasgow, Missouri; which was read a first and second time.

Mr. HALE. I call for the reading of the bill.

The bill was read in full, referred to the Committee on Commerce, and ordered to be printed.

AMENDMENT OF REVISED STATUTES.

Mr. KEHR introduced a bill (H. R. No. 4343) to amend section 699 of the Revised Statutes; which was read a first and second time, referred to the Committee on the Judiciary, and ordered to be printed.

Mr. KEHR also introduced a bill (H. R. No. 4344) to amend section 744 of the Revised Statutes; which was read a first and second time, referred to the Committee on the Judiciary, and ordered to be printed.

REDEMPTION OF LEGAL-TENDER NOTES.

Mr. KEHR also introduced a bill (H. R. No. 4345) to further provide for the redemption of legal-tender United States notes, and for other purposes; which was read a first and second time, referred to the Committee on Banking and Currency, and ordered to be printed.

WESTERN JUDICIAL DISTRICT OF MISSOURI.

Mr. BUCKNER introduced a bill (H. R. No. 4346) to amend section 540 of the Revised Statutes, and to attach the county of Audrain to the western district of Missouri; which was read a first and second time, referred to the Committee on the Judiciary, and ordered to be printed.

IMPROVEMENT OF MISSOURI RIVER.

Mr. BUCKNER also introduced a bill (H. R. No. 4347) to appropriate money to improve the Missouri River between the city of Saint Charles and its mouth, and for other purposes; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

REDEEMABLE PAPER CIRCULATION.

Mr. BUCKNER also introduced a bill (H. R. No. 4348) to utilize the products of gold and silver, and to authorize a paper circulation at all times convertible into gold or silver; which was read a first and second time, referred to the Committee on Mines and Mining, and ordered to be printed.

COUNTING THE ELECTORAL VOTE.

Mr. BUCKNER also introduced a bill (H. R. No. 4349) to provide for counting the electoral votes for President and Vice-President; which was read a first and second time, referred to the special committee on counting the electoral vote, and ordered to be printed.

ORDER OF BUSINESS.

Mr. WILLIS. Has the morning hour expired?

The SPEAKER. It has.

ELECTORAL VOTE.

Mr. WILLIS submitted the following resolution; which was read, considered, and adopted:

Be it resolved by the House of Representatives in Congress assembled, That the Committee on the privileges, powers, and duties of the House of Representatives in counting the vote for President and Vice President of the United States be, and said committee hereby are, instructed to ascertain whether any votes were given at the recent election contrary to the prohibition contained in the first section of the second article of the Constitution, and what ought to be done with them; and whether any, and what, provision ought to be made for securing the faithful observance in the future of said section of the Constitution; and also to inquire into any facts affecting the fairness or legality of any electoral vote certified to have been cast in said election; and that the committee, for the purpose of such ascertainment and inquiry, have power to send for persons and papers, and examine witnesses.

DISTRICT POLICE COMMISSIONERS.

Mr. LE MOYNE submitted the following resolution; which was read, considered, and adopted:

Resolved, That a special committee of five be appointed to inquire immediately, first, whether the members of the present or the late board of police commissioners for the District of Columbia, or either of them, have been guilty of any improper conduct in their official positions pending any investigation before the said board; second, whether any member of the said board has used or attempted to use the superintendent of police of the said District, or any member of the said police force, for corrupt or improper purposes connected with any investigation by Congress or of either House thereof, or with the view of injuring or disgracing any member of any congressional committee or any citizen of the United States; third, whether any member of the said board has interfered with or attempted to interfere with the administration of the law in the courts of the District of Columbia, and whether said police organization has been used for any improper or corrupt purpose; and that said committee have full power to send for persons and papers and to employ such clerks as may be necessary, and that said committee shall report thereon.

DEFAULTING COLLECTORS OF INTERNAL REVENUE.

Mr. SOUTHARD. I move to so suspend the rules as that the House shall adopt the preamble and resolution which I send to the Clerk's desk.

The Clerk read as follows:

Whereas on the 13th day of March, 1876, the following resolution was passed by this House, to wit:

"*Resolved*, That the Secretary of the Treasury be, and he is hereby, requested to state to this House the actual balance due from collectors of internal revenue who are not now in office since the organization of that bureau; that the names of such defaulting collectors be given with the amount due from each, and the total amount due from all of those who are in default; that he also inform this House of the names of the defaulting collectors who have been sued, with the date of the suit, together with the date of resignation of the defaulting collectors, and the name of the President by whom and the time when appointed;"

And whereas the said Secretary of the Treasury has failed to answer said resolution: Therefore,

Be it resolved, That the said Secretary of the Treasury be directed by this House to make answer to said resolution.

Mr. HOAR. Let that resolution be referred to a committee to ascertain the correctness of the allegations therein set forth.

The SPEAKER. The motion is to suspend the rules and pass the resolution.

Mr. KASSON. I understand that the information called for by the resolution referred to came in answer to another resolution.

Mr. SOUTHARD. I was assured that the resolution would be answered before the close of the last session of Congress; but the session closed without any answer being received to the resolution.

Mr. KASSON. It was answered in another form.

Mr. SOUTHARD. There was some information given in answer to a resolution of the Senate; which information was never printed, and therefore has never come into the possession of the House.

Mr. KASSON. I know that I received the information called for in another form. The Secretary to whom the resolution refers is not now in office.

Mr. HOAR. It is an attack on Secretary Bristow, without any opportunity for him to reply.

The SPEAKER. The question is on suspending the rules and passing the resolution.

Mr. KASSON. On that I call for the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 127, nays 68, not voting 94; as follows:

YEAS—Messrs. Abbott, Ainsworth, Atkins, Bagby, John H. Bagley, jr., Banning, Bland, Blount, Boone, Bradford, Bright, Buckner, Cabell, John H. Caldwell, William P. Caldwell, Campbell, Candler, Cason, Cate, Caulfield, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Cochrane, Cook, Cowan, Culberson, Cutler, Davis, De Bolt, Dibrell, Douglas, Durham, Eden, Ellis, Felton, Finley, Forney, Fort, Franklin, Fuller, Gause, Goodin, Gunter, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, Harrison, Hartridge, Hartzell, Hatcher, Haymond, Hereford, Abram S. Hewitt, Goldsmith W. Hewitt, Holman, Hooker, Humphreys, Hunton, Knott, Lamar, Franklin Landers, George M. Landers, Le Moyne, Levy, Lord, Luttrell, Lynde, Maish, Milliken, Mills, Morgan, Mutchler, Neal, Odell, Payne, John F. Philips, Piper, Poppleton, Potter, Powell, Rea, Reagan, John Reilly, James B. Reilly, Riddle, John Robbins, Roberts, Savage, Scales, Schleicher, Sheakley, Singleton, Slemons, A. Herr Smith, William E. Smith, Southard, Sparks, Springer, Stanton, Stenger, Stevenson, Stone, Tarbox, Teese, Terry, Thompson, Thomas, Throckmorton, Tucker, Turney, Robert B. Vance, Gilbert C. Walker, Warner, Erastus Wells, Whitthorne, Wike, Alpheus S. Williams, James Williams, Jeremiah N. Williams, Willis, Benjamin Wilson, Fernando Wood, Woodworth, Yeates, and Young—127.

NAYS—Messrs. Adams, George A. Bagley, John H. Baker, Ballou, Banks, Bradley, William R. Brown, Horatio C. Burchard, Burleigh, Cannon, Conger, Davy, Denison, Dobbins, Dunnell, Eames, Flye, Foster, Freeman, Frye, Garfield, Hale, Haralson, Benjamin W. Harris, Hendee, Henderson, Hoar, Hoge, Hubbell, Hunter, Hyman, Kasson, Kimball, Lapham, Lawrence, Lynch, Magoon, MacDougall, McCrary, McDill, Miller, Monroe, Norton, Oliver, O'Neill, Page, William A. Phillips, Plaisted, Platt, Rainey, Sobieski Ross, Rusk, Sampson, Sinnickson, Smalls, Marvin I. Townsend, Tufts, Van Vorhes, Wait, Alexander S. Wallace, John W. Wallace, White, Whiting, Willard, Andrew Williams, Charles G. Williams, James Wilson, and Alan Wood, jr.—68.

NOT VOTING—Messrs. Anderson, Ashe, William H. Baker, Bass, Beebe, Bell, Blackburn, Blair, Bliss, John Young Brown, Samuel D. Burchard, Carr, Caswell, Chapin, Chittenden, Collins, Cox, Crapo, Cronse, Danford, Darrall, Durand, Egbert, Evans, Faulkner, Gibson, Glover, Goode, Andrew H. Hamilton, John T. Harris, Hathorn, Hays, Henkle, Hill, Hopkins, Hoskins, House, Hurd, Hurlbut, Jenks, Frank Jones, Thomas L. Jones, Joyce, Kehr, Kelley, King, Lane, Leavenworth, Lewis, Mackey, McFarland, McMahon, Meade, Metcalfe, Money, Morrison, Nash, New, O'Brien, Packer, Phelps, Pierce, Pratt, Purman, Rice, William M. Robbins, Robinson, Miles Ross, Sayler, Schumaker, Seelye, Spencer, Strait, Stephens, Stowell, Swann, Thornburgh, Washington Townsend, John L. Vance, Waddell, Waldron, Charles C. B. Walker, Walling, Walsh, Ward, Warren, Watterson, G. Wiley Wells, Wheeler, Whitehouse, Wigginton, William B. Williams, Wilshire, and Woodburn—94.

So (two-thirds not voting in favor thereof) the rules were not suspended.

COMMON-SCHOOL EDUCATION.

Mr. LAWRENCE. I ask consent to offer a resolution to which I think there will be no objection. It merely directs a committee to make an inquiry, which I think is perfectly proper.

The Clerk read as follows:

Resolved, That the Committee on Education and Labor be and are instructed to ascertain whether in any one or more States an equal opportunity for common-school education, including school privileges for equal time, is secured to colored and white children; and, if not, that said committee report such bill as may be proper to enforce the Constitution in this respect.

Mr. KNOTT. I object.

Mr. LAWRENCE. I move, then, to suspend the rules and adopt the resolution.

The question being taken on the motion to suspend the rules,

The SPEAKER said: In the opinion of the Chair two-thirds have not voted in the affirmative.

Mr. LAWRENCE. I call for the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 119, nays 79, not voting 91; as follows:

YEAS—Messrs. Adams, Ainsworth, Bagby, George A. Bagley, John H. Bagley, jr., John H. Baker, Ballou, Banks, Bradley, William R. Brown, Buckner, Horatio C. Burchard, Burleigh, Campbell, Cannon, Cason, Caswell, Cate, Chittenden, Clymer, Cochrane, Conger, Cowan, Cutler, Davy, De Bolt, Denison, Dobbins, Dunnell, Eames, Evans, Flye, Fort, Foster, Freeman, Frye, Garfield, Goodin, Hale, Haralson, Benjamin W. Harris, Hatcher, Hendee, Henderson, Abram S. Hewitt, Hoar, Hoge, Holman, Hoskins, Hubbell, Hunter, Hyman, Kasson, Kehr, Kimball, Franklin Landers, Lapham, Lawrence, Leavenworth, Le Moyne, Luttrell, Lynch, Magoon, MacDougall, McCrary, McDill, Miller, Monroe, Morgan, Norton, Oliver, O'Neill, Packer, Page, Payne, William A. Phillips, Pierce, Plaisted, Platt, Poppleton, Potter, Powell, Pratt, Rainey, Rea, John Reilly, James B. Reilly, Sobieski Ross, Rusk, Sampson, Seelye, Sinnickson, Smalls, A. Herr Smith, Springer, Stanton, Stevenson, Stowell, Thompson, Thornburgh, Martin I. Townsend, Tufts, Van Vorhes, Robert B. Vance, Wait, Alexander S. Wallace, John W. Wallace, Erastus Wells, White, Whiting, Willard, Andrew Williams, Alpheus S. Williams, Charles G. Williams, William B. Williams, Wilshire, James Wilson, Alan Wood, jr., and Woodworth—119.

NAYS—Messrs. Ashe, Atkins, Bland, Blount, Boone, Bradford, Bright, John Young Brown, Cabell, John H. Caldwell, William P. Caldwell, Candler, Caulfield, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Cook, Culberson, Davis, Dibrell, Douglas, Durham, Eden, Felton, Finley, Forney, Franklin, Fuller, Gause, Gunter, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hereford, Goldsmith W. Hewitt, Humphreys, Hunton, Knott, Lamar, George M. Landers, Levy, Maish, Milliken, Mills, Mutchler, Neal, O'Brien, Odell, Piper, Reagan, Riddle, John Robbins, Roberts, Savage, Scales, Schleicher, Singleton, Slemons, William E. Smith, Southard, Sparks,

Stenger, Terry, Throckmorton, Tucker, Turney, Warner, Wike, James Williams, Jeremiah N. Williams, Willis, Benjamin Wilson, Fernando Wood, Yeates, and Young—79.

NOT VOTING—Messrs. Abbott, Anderson, William H. Baker, Banning, Bass, Beebe, Bell, Blackburn, Blair, Bliss, Samuel D. Burchard, Carr, Chapin, Collins, Cox, Crapo, Crounse, Danford, Darrall, Durand, Egbert, Ellis, Faulkner, Gibson, Glover, Goode, Andrew H. Hamilton, Hathorn, Haymond, Hays, Henkle, Hill, Hooker, Hopkins, House, Hurd, Hurlbut, Jenks, Frank Jones, Thomas L. Jones, Joyce, Kelley, King, Lane, Lewis, Lord, Lynde, Mackey, McFarland, McMahon, Meade, Metcalfe, Money, Morrison, Nash, New, Phelps, John F. Philips, Purman, Rice, William M. Robbins, Robinson, Miles Ross, Sayler, Schumaker, Sheakley, Spencer, Strait, Stephens, Stone, Swann, Tarbox, Teese, Thomas, Washington Townsend, John L. Vance, Waddell, Waldron, Charles C. B. Walker, Gilbert C. Walker, Walling, Walsh, Ward, Warren, Watterson, G. Wiley Wells, Wheeler, Whitehouse, Whitthorne, Wigginton, and Woodburn—91.

So (two-thirds not voting in favor thereof) the resolution was not adopted.

DISTRICT POLICE BOARD.

Mr. BUCKNER. I move to suspend the rules to pass a bill, which I send to the Clerk, to abolish the board of commissioners of the Metropolitan police of the District of Columbia and to transfer its powers to the commissioners of the District of Columbia.

The bill was read. It abolishes the board of commissioners of the Metropolitan police of the District of Columbia, and provides that all the powers and duties now exercised by the board and the members thereof be transferred to the commissioners of the District of Columbia and their successors, who shall have authority to employ such officers and agents and to adopt such rules and regulations as may be necessary to carry into execution the powers and duties imposed upon said police board by existing laws.

Mr. MONROE. Mr. Speaker——

The SPEAKER. Debate is not in order.

Mr. MONROE. I do not propose to engage in debate, but merely to ask whether this bill is offered under a suspension of the rules?

The SPEAKER. It is.

Mr. MONROE. I would ask the gentleman from Missouri [Mr. BUCKNER] whether he has any objection to having the bill come up for consideration?

The SPEAKER. The gentleman from Ohio suggests that the motion be modified so as to suspend the rules for the purpose of considering the bill.

Mr. BUCKNER. I prefer to have it put on its passage at once.

Mr. GARFIELD. I do not observe that the bill contains any limitation as to the number of officers and agents that may be appointed.

Mr. BUCKNER. That will be regulated by exising laws.

Mr. HOLMAN. I ask that the last clause of the bill be read again.

Mr. MONROE. I merely wish to say to my friend from Missouri that this is a new subject to me, and I wanted to hear him explain briefly why the measure was offered, as I am altogether in the dark in regard to it.

The SPEAKER. No debate is in order except by unanimous consent. The bill will be again read.

The Clerk again read the bill.

The question being taken on the motion to suspend the rules and pass the bill it was agreed to, two-thirds voting in favor thereof.

So the bill (H. R. No. 4350) was passed.

POLITICAL DISABILITY OF ELECTORS.

Mr. KASSON submitted the following resolution:

Resolved, That the select committee on the powers and privileges of the House of Representatives in respect to the counting of the electoral votes be instructed to inquire into and report whether any electoral vote or votes were cast by persons under the disability imposed by section 3 of article 14 of the amendments of the Federal Constitution; and, if so, what action shall be taken thereon; and that they have power to send for persons and papers and take testimony.

Mr. HEWITT, of New York. I thought that had been referred to the committee.

Mr. KASSON. It is because it is not covered by previous resolutions I now submit it for adoption.

There was no objection, and the resolution was adopted.

LOCATION OF TROOPS.

Mr. THROCKMORTON. I ask unanimous consent to submit the following resolution.

The Clerk read as follows:

Resolved, That the Committee on Military Affairs be, and is hereby, directed to inquire and report to this House the present strength, location, and occupation of the troops of the United States Army; how many are being used upon the frontier, how many in the Southern States, and how many in and around Washington; when the troops were ordered to Washington, the nature of their orders, by whom made, and the purpose for which they are or have been ordered here. Said committee be, and are hereby, authorized to send for persons and papers.

Mr. CONGER. I object.

Mr. THROCKMORTON. Then I move to suspend the rules and adopt the resolution.

Mr. CONGER. I demand a division.

The House divided; and there were—yeas 123, noes 67.

Mr. BANNING demanded the yeas and nays.

The yeas and nays were ordered.

The question was taken; and it was decided in the negative—yeas 130, nays 84, not voting 75; as follows:

YEAS—Messrs. Abbott, Ainsworth, Ashe, Atkins, Bagby, John H. Bagley, jr., Banning, Bland, Blount, Boone, Bradford, Bright, John Young Brown, Buckner, Cabell, John H. Caldwell, William P. Caldwell, Campbell, Candler, Cate, Caulfield, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Cochrane, Cook, Cowan, Culberson, Cutler, Davis, De Bolt, Dibrell, Douglas, Durand, Durham, Eden, Ellis, Felton, Finley, Forney, Franklin, Fuller, Ganse, Gibson, Glover, Goodin, Gunter, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Haymond, Hereford, Abram S. Hewitt, Goldsmith W. Hewitt, Hill, Holman, Hopkins, Humphreys, Hunton, Kehr, Knott, Lamar, Franklin Landers, George M. Landers, Le Moyne, Levy, Luttrell, Lynde, Maish, Milliken, Mills, Morgan, Mutchler, Neal, O'Brien, Odell, Payne, John F. Philips, Piper, Poppleton, Powell, Rea, Reagan, John Reilly, James B. Reilly, Riddle, John Robbins, Roberts, Savage, Scales, Schleicher, Singleton, Slemons, William E. Smith, Southard, Sparks, Springer, Stanton, Stenger, Stevenson, Stone, Teese, Terry, Thomas, Thompson, Throckmorton, Tucker, Turney, Robert B. Vance, Gilbert C. Walker, Walling, Warner, Erastus Wells, Whitthorne, Wigginton, Wike, Alpheus S. Williams, James Williams, Jeremiah N. Williams, Willis, Benjamin Wilson, Fernando Wood, Yeates, and Young—130.

NAYS—Messrs. Adams, George A. Bagley, John H. Baker, Ballou, Banks, Bradley, William R. Brown, Horatio C. Burchard, Burleigh, Cannon, Cason, Caswell, Chittenden, Conger, Davy, Denison, Dobbins, Dunnell, Eames, Evans, Flye, Fort, Foster, Freeman, Frye, Garfield, Hale, Haralson, Benjamin W. Harris, Hendee, Henderson, Hoar, Hoge, Hoskins, Hubbell, Hunter, Hyman, Kasson, Kimball, Lapham, Lawrence, Leavenworth, Lynch, Magoon, MacDougall, McCrary, McDill, Miller, Monroe, Norton, Oliver, O'Neill, Packer, Page, William A. Phillips, Pierce, Plaisted, Platt, Pratt, Purman, Rainey, Sobieski Ross, Rusk, Sampson, Seelye, Sinnickson, Smalls, A. Herr Smith, Stowell, Thornburgh, Martin I. Townsend, Tufts, Van Vorhes, Wait, Alexander S. Wallace, John W. Wallace, White, Whiting, Andrew Williams, Charles G. Williams, William B. Williams, James Wilson, Alan Wood, jr., and Woodworth—84.

NOT VOTING—Messrs. Anderson, William H. Baker, Bass, Beebe, Bell, Blackburn, Blair, Bliss, Samuel D. Burchard, Carr, Chapin, Collins, Cox, Crapo, Crounse, Danford, Darrall, Egbert, Faulkner, Goode, Andrew H. Hamilton, Hathorn, Hays, Henkle, Hooker, House, Hurd, Hurlbut, Jenks, Frank Jones, Thomas L. Jones, Joyce, Kelley, King, Lane, Lewis, Lord, Mackey, McFarland, McMahon, Meade, Metcalfe, Money, Morrison, Nash, New, Phelps, Potter, Rice, William M. Robbins, Robinson, Miles Ross, Sayler, Schumaker, Sheakley, Spencer, Strait, Stephens, Swann, Tarbox, Washington Townsend, John L. Vance, Waddell, Waldron, Charles C. B. Walker, Walsh, Ward, Warren, Watterson, G. Wiley Wells, Wheeler, Whitehouse, Willard, Wilshire, and Woodburn—75.

So the House refused to suspend the rules and adopt the resolution.

WASHINGTON MONUMENT.

Mr. DURHAM, by unanimous consent, submitted the following resolution; which was read, considered, and agreed to:

Resolved, That the joint commission appointed to direct and supervise the continuation of the construction of the Washington National Monument be requested to inform this House how far they have progressed in the examination of the foundation of the monument, what has been or will be the cost of said examination, and when they expect to complete the same, so as to resume the work in the construction of the monument.

CLAIMS FOR WAR LOSSES.

Mr. HUNTER. I ask unanimous consent to submit the following resolution:

Whereas, on the 18th day of December, 1876, the following preamble and resolution passed this House by a vote of 152 yeas to 61 nays, to wit:

"Whereas fears have been and still are entertained by the people of the United States that Congress may at some time in the future pass laws by which the Government of the United States may be compelled to pay a large amount for damages that were incurred during the late war by persons residing within the States that were then in rebellion against the United States: Therefore, in order to allay such fears and prevent the payment of such claims,

"*Be it resolved*, That the Committee on the Judiciary be instructed to report to this House within twenty days, and permission is hereby given for that purpose, an amendment of the Constitution of the United States in substance as follows, to wit:

"ARTICLE XVI.

"No claim shall ever hereafter be allowed or paid by the United States, in the shape of damages or otherwise, for any kind of property, real or personal, used, consumed, injured, or destroyed by United States troops, or by or through any officers, civil or military, acting under or by authority of the United States, or from any other cause whatever, during the suppression of the late rebellion in any of the States that were in rebellion against the Government of the United States; or, for any property used, consumed, injured, or destroyed during such rebellion outside of said States that were in rebellion, and which belonged to persons residing within such States that were in rebellion, unless the persons owning the property so used, consumed, injured, or destroyed were during all the time of such rebellion loyal to the Government of the United States and gave neither aid nor encouragement to the enemy."

And whereas said twenty days mentioned in said resolution expired on the 7th day of the present month, and said Committee on the Judiciary has failed to report an amendment to the Constitution, as instructed by this House in said resolution so to do within said twenty days: Therefore,

Be it resolved, That said Committee on the Judiciary be required to report within two days from this date an amendment to the Constitution as above provided for in said resolution, and permission to report the same is hereby given.

Mr. REAGAN. I object. I would inquire whether the main purpose of this is not covered by the latter clause, and whether it is not meant by that to decide existing lawsuits and confiscate property not otherwise confiscated under the law?

Mr. HUNTER. I object to debate, and move that the rules be suspended and the resolution adopted.

Mr. PAGE demanded the yeas and nays.

The yeas and nays were ordered.

The question was taken; and it was decided in the negative—yeas 123, nays 72, not voting 91; as follows:

YEAS—Messrs. Abbott, Adams, George A. Bagley, John H. Bagley, jr., John H. Baker, Ballou, Banks, Bell, Bradley, William R. Brown, Horatio C. Burchard, Burleigh, Campbell, Cannon, Cason, Caswell, Chittenden, Clymer, Cochrane, Conger, Cutler, Davy, De Bolt, Denison, Dobbins, Dunnell, Eames, Evans, Flye, Fort, Foster, Freeman, Frye, Fuller, Garfield, Goodin, Hale, Haralson, Hardenbergh, Benjamin W. Harris, Harrison, Hartzell, Hendee, Henderson, Holman, Hopkins, Hoskins, Hubbell, Humphreys, Hunter, Hyman, Kasson, Kehr, Kimball, Franklin Landers, Lapham, Lawrence, Leavenworth, Le Moyne, Luttrell, Lynch, Magoon, Maish, MacDougall, McCrary, McDill, Miller, Monroe, Morgan, Neal, Norton, Odell, Oliver, O'Neill, Packer, Page, William A. Phillips, Pierce, Piper, Plaisted, Platt, Poppleton, Potter, Powell, Pratt, Rea, John Reilly, James B. Reilly, John Robbins, Roberts, Sobieski Ross, Rusk, Sampson, Savage, Seelye, Sinnickson, A. Herr Smith, Sparks, Springer, Stenger, Stevenson, Teese, Thompson, Thornburgh, Martin I. Townsend, Tufts, Turney, Van Vorhes, Wait, Waldron, Alexander S. Wallace, John W. Wallace, Warner, White, Whiting, Wike, Willard, Andrew Williams, Alpheus S. Will-

iams, Charles G. Williams, James Williams, William B. Williams, Willis, James Wilson, Alan Wood, jr., and Woodworth—126.

NAYS—Messrs. Ainsworth, Ashe, Atkins, Bagby, Bland, Blount, Boone, Bradford, Bright, John Young Brown, Cabell, John H. Caldwell, William P. Caldwell, Candler, Cate, Caulfield, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Cook, Cowan, Culberson, Davis, Dibrell, Durham, Eden, Ellis, Felton, Finley, Forney, Franklin, Gause, Robert Hamilton, John T. Harris, Henry R. Harris, Hartridge, Hatcher, Hereford, Goldsmith W. Hewitt, Hill, Hunton, Knott, George M. Landers, Milliken, Mills, Mutchler, O'Brien, John F. Philips, Furman, Rainey, Reagan, Riddle, Scales, Schleicher, Singleton, Slemons, Smalls, William E. Smith, Southard, Stone, Terry, Throckmorton, Tucker, Robert B. Vance, Gilbert C. Walker, Watterson, Erastus Wells, Whitthorne, Wigginton, Jeremiah N. Williams, Benjamin Wilson, Fernando Wood, and Yeates—72.

NOT VOTING—Messrs. Anderson, William H. Baker, Banning, Bass, Beebe, Blackburn, Blair, Bliss, Buckner, Samuel D. Burchard, Carr, Chapin, Collins, Cox, Crapo, Crounse, Danford, Darrall, Douglas, Durand, Egbert, Faulkner, Gibson, Glover, Goode, Gunter, Andrew H. Hamilton, Hancock, Hathorn, Haymond, Hays, Henkle, Abram S. Hewitt, Hoar, Hoge, Hooker, House, Hurd, Hurlbut, Jenks, Frank Jones, Thomas L. Jones, Joyce, Kelley, King, Lamar, Lane, Levy, Lewis, Lord, Lynde, Mackey, McFarland, McMahon, Meade, Metcalfe, Money, Morrison, Nash, New, Payne, Phelps, Rice, William M. Robbins, Robinson, Miles Ross, Sayler, Schumaker, Sheakley, Spencer, Stanton, Strait, Stephens, Stowell, Swann, Tarbox, Thomas, Washington Townsend, John L. Vance, Waddell, Charles C. B. Walker, Walling, Walsh, Ward, Warren, G. Wiley Wells, Wheeler, Whitehouse, Wilshire, Woodburn, and Young—91.

So (two-thirds not having voted in favor thereof) the rules were not suspended.

During the roll-call,

Mr. PAGE stated that Mr. WOODBURN was absent by leave of the House, and if present would have voted "ay."

The result of the vote was then announced as above recorded.

RIGHTS OF STATES AND TERRITORIES.

Mr. MILLS. I move that the rules be suspended and that the resolution which I send to the desk be adopted.

The Clerk read as follows:

"*Resolved*, That the maintenance inviolate of the rights of the States, and especially the right of each State to order and control its own domestic institutions according to its own judgment exclusively, is essential to the balance of power on which the operation and endurance of our political fabric depend, and we denounce the lawless invasion by armed force of the soil of any State or Territory, no matter under what pretext, as among the gravest of crimes."

Mr. HOAR. That is an absolute denial of all the recent amendments to the Constitution.

Mr. MILLS. I call for the yeas and nays.

The yeas and nays were ordered.

Mr. DURHAM. I ask that the resolution may be again read.

The resolution was again read.

Mr. KASSON. I desire to make an inquiry. Does the resolution contain the words "subject to the Federal Constitution?"

The SPEAKER. Debate is not in order.

Mr. KASSON. I merely desire to make an inquiry in regard to the language of the resolution.

The SPEAKER. What is the gentleman's inquiry?

Mr. KASSON. Did the Clerk read the words "subject to the Federal Constitution?"

The SPEAKER. Those words are not in the resolution.

Mr. HOLMAN. To enable us to commemorate the 8th of January, a historical day, I move that the House do now adjourn.

Mr. MILLS. I hope the gentleman from Indiana will not insist on that motion. Let us vote on this resolution.

Mr. HOLMAN. I think we should adjourn at an early hour on this historical day.

The question being taken on the motion to adjourn, there were—ayes 73, noes 102.

Mr. HOLMAN. I call for tellers.

On the question of ordering tellers there were—ayes 33; more than one-fifth of a quorum.

So tellers were ordered; and Mr. HOLMAN and Mr. MILLS were appointed.

The House again divided; and the tellers reported—ayes 67, noes 95.

So the motion to adjourn was not agreed to.

The SPEAKER. The question is on suspending the rules and adopting the resolution offered by the gentleman from Texas, [Mr. MILLS,] on which the yeas and nays have been ordered.

Mr. HUNTON. I ask that the resolution may be again read.

The resolution was again read.

The question was taken; and there were—yeas 105, nays 83, not voting 101; as follows:

YEAS—Messrs. Ainsworth, Ashe, Atkins, Bagby, John H. Bagley, jr., Bland, Blount, Boone, Bradford, Bright, John Young Brown, Buckner, Cabell, John H. Caldwell, William P. Caldwell, Candler, Cate, Caulfield, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Cook, Cowan, Culberson, Davis, De Bolt, Dibrell, Douglas, Eden, Ellis, Felton, Finley, Forney, Franklin, Fuller, Gause, Gibson, Goodin, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, John T. Harris, Hartridge, Hatcher, Haymond, Hereford, Goldsmith W. Hewitt, Humphreys, Hunter, Hunton, Knott, Lamar, Franklin Landers, George M. Landers, Levy, Lynde, Maish, Milliken, Mills, Mutchler, Neal, O'Brien, Odell, Payne, John F. Philips, Piper, Powell, Rea, Reagan, John Reilly, James B. Reilly, Riddle, John Robbins, Savage, Scales, Schleicher, Singleton, Slemons, William E. Smith, Southard, Springer, Stanton, Stenger, Stone, Terry, Thomas, Throckmorton, Tucker, Robert B. Vance, Gilbert C. Walker, Walling, Warner, Watterson, Whitthorne, Wike, Alpheus S. Williams, Jeremiah N. Williams, Willis, Wilshire, Benjamin Wilson, Fernando Wood, Yeates, and Young—105.

NAYS—Messrs. Adams, George A. Bagley, John H. Baker, Ballou, Banks, Bradley, William R. Brown, Horatio C. Burchard, Campbell, Cannon, Cason, Caswell, Chittenden, Conger, Cutler, Davy, Denison, Dobbins, Duncell, Eames, Evans, Flye, Fort, Foster, Freeman, Frye, Garfield, Hale, Haralson, Benjamin W. Harris, Hendee, Henderson, Hoar, Hoskins, Hubbell, Hyman, Kasson, Kimball, Lapham, Lawrence, Lynch, Magoon, McCrary, McDill, Miller, Monroe, Morgan, Norton, Oliver, O'Neill, Packer, Page, William A. Phillips, Pierce, Plaisted, Platt, Potter, Pratt, Rainey, Sobieski Ross, Rusk, Sampson, Seelye, Sinnickson, Smalls, A. Herr Smith, Thompson, Thornburgh, Martin I. Townsend, Tufts, Van Vorhes, Wait, Waldron, Alexander S. Wallace, John W. Wallace, White, Whiting, Andrew Williams, Charles G. Williams, William B. Williams, James Wilson, Alan Wood, jr., and Woodworth—83.

NOT VOTING—Messrs. Abbott, Anderson, William H. Baker, Banning, Bass, Beebe, Bell, Blackburn, Blair, Bliss, Samuel D. Burchard, Burleigh, Carr, Chapin, Cochrane, Collins, Cox, Crapo, Crounse, Danford, Darrall, Durand, Durham, Egbert, Faulkner, Glover, Goode, Gunter, Andrew H. Hamilton, Harrison, Hartzell, Hathorn, Hays, Henkle, Abram S. Hewitt, Hill, Hoge, Holman, Hooker, Hopkins, House, Hurd, Hurlbut, Jenks, Frank Jones, Thomas L. Jones, Joyce, Kehr, Kelley, King, Lane, Leavenworth, Le Moyne, Lewis, Lord, Luttrell, Mackey, MacDougall, McFarland, McMahon, Meade, Metcalfe, Money, Morrison, Nash, New, Phelps, Poppleton, Furman, Rice, William M. Robbins, Roberts, Robinson, Miles Ross, Sayler, Schumaker, Sheakley, Sparks, Spencer, Strait, Stephens, Stevenson, Stowell, Swann, Tarbox, Washington Townsend, Turney, John L. Vance, Waddell, Charles C. B. Walker, Walsh, Ward, Warren, Erastus Wells, G. Wiley Wells, Wheeler, Whitehouse, Wigginton, Willard, James Williams, and Woodburn—101.

So (two-thirds not having voted in favor thereof) the rules were not suspended.

During the roll-call,

Mr. GAUSE stated that his colleague from Arkansas [Mr. GUNTER] was absent on account of the illness of a friend, having been just called to his bedside. If present he would have voted "ay."

The result of the vote was then announced as above recorded.

WAITING-ORDERS PAY.

Mr. HARRIS, of Massachusetts, by unanimous consent, from the Committee on Naval Affairs, reported back, with an amendment, the bill (H. R. No. 4125) to appropriate waiting-orders pay to those officers of the United States Navy whose pay was affected by the general order of the Secretary of the Navy No. 216 and to repeal section 1442 of the Revised Statutes; and moved that the bill and amendment and the report of the committee thereon be printed and recommitted.

The motion was agreed to.

Mr. HARRIS, of Massachusetts. I am also instructed by the Committee on Naval Affairs to move that the rules be so suspended that the bill (H. R. No. 4125) may be in order as an amendment to the naval appropriation bill when that bill shall be under consideration in Committee of the Whole. I make that motion.

Mr. HOLMAN. I move that the House do now adjourn.

Pending the motion to adjourn,

APPOINTMENT OF A COMMITTEE.

The SPEAKER announced that he had appointed the following as the committee called for under the resolution of the House to-day with reference to the police commissioners of the District of Columbia:

Mr. LE MOYNE of Illinois, Mr. MILLIKEN of Kentucky, Mr. CANDLER of Georgia, Mr. BANKS of Massachusetts, and Mr. WILLIAM B. WILLIAMS of Michigan.

MISSOURIA INDIANS OF CALIFORNIA.

The SPEAKER, by unanimous consent, laid before the House a letter from the Secretary of the Interior, asking an appropriation of $5,000 for the Missouria Indians of California; which was referred to the Committee on Appropriations, and ordered to be printed.

MINT AT NEW ORLEANS.

The SPEAKER also, by unanimous consent, laid before the House a memorial from the mayor and common council of New Orleans; which was referred to the Committee on Appropriations, and ordered to be printed.

LEAVE OF ABSENCE.

By unanimous consent, the following leaves of absence were granted:

To Mr. BLAIR, until Friday next.

To Mr. PLATT, for one week on account of important business.

To Mr. CROUNSE, an extension of his leave for ten days.

WITHDRAWAL OF PAPERS.

On motion of Mr. GIBSON, by unanimous consent, leave was granted for the withdrawal from the files of the House, under the rules of the House, of the papers accompanying the bill for the relief of William W. Handlin.

The question was then taken on Mr. HOLMAN'S motion; and there were—ayes 108, noes 41.

So the motion was agreed to; and accordingly (at three o'clock and fifty minutes p. m.) the House adjourned.

PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. J. H. BAGLEY: The petition of George Quarrel, late a private in Company H, Fourth Regiment New York Volunteers, for a pension, to the Committee on Invalid Pensions.

By Mr. BAKER, of Indiana: The petition of the bankers and business men of La Grange, Indiana, for the repeal of the law imposing a tax on the deposits and capital of all banks and banking institutions, to the Committee of Ways and Means.

By Mr. CANDLER: The petition of John South, for a rehearing of his claim for property taken by the United States Army on Sherman's march to the sea, heretofore rejected by the southern claims commission, to the Committee on War Claims.

Also, the petition of L. H. Davis, of similar import, to the same committee.

By Mr. DUNNELL: The petition of H. A. Munger and 30 other citizens of Fairmont, Minnesota, for the purchase by the Government of the telegraph lines in the United States, to the Committee on the Post-Office and Post-Roads.

By Mr. FULLER: A paper relating to the establishment of a post-route from Cannelton, Perry County, to Rockport, Spencer County, Indiana, to the same committee.

By Mr. HOLMAN: The petition of William Williams, L. D. Lambert, and Isaac P. Gray, of Randolph County, Indiana, that soldiers, entitled to pensions, receive arrearages from the date of their discharge from the service, to the Committee on Invalid Pensions.

Also, the petition of John J. Ashford, Philip Hawley, and other citizens of Des Moines Valley, Iowa, for justice in relation to the Des Moines River land grant, to the Committee on Public Lands.

By Mr. LUTTRELL: Memorial of Captain W. J. Woodley, for compensation for loss of time and for damages sustained by reason of his ejection from a valuable gold-placer mining claim, in Klamath County, California, by officers of the United States Government without authority of law, to the Committee of Claims.

Also, the petition of William Hoskins and other citizens of California, for the purchase by the Government of the telegraph lines of the United States, to the Committee on the Post-Office and Post-Roads.

By Mr. MONROE: The petition of E. S. Goodrich and 56 other citizens of Oberlin, Ohio, for the uniting of the telegraph system of the United States with the Post-Office Department, to the same committee.

By Mr. NEAL: The petition of the members of the board of education of Ripley, Ohio, for the enactment of a law forbidding the issuing of copy-rights for school-books of all kinds, to the Committee on Patents.

By Mr. PACKER: The petition of Thomas T. Wierman, George McFarland, F. Jordan, M. S. Quay, J. F. Temple, C. Comfort, J. J. Pearson, J. P. Wickersham, D. D. Boas, S. Oppenheimer, and other citizens of Harrisburgh, Pennsylvania, asking aid for the American Printing House for the Blind and the American University for the Blind, to the Committee on Education and Labor.

By Mr. ROBERTS: The petition of Perry & Brother, John T. Mitchell, and other citizens of the District of Columbia, for an appropriation for the relief of the poor of the District, to the Committee for the District of Columbia.

Also, the petition of A. H. Herr, F. L. Moore, and other citizens of the District of Columbia, of similar import, to the same committee.

Also, the petition of Richard Hamilton, Henry Wilkes, and others, captors of the ram Albemarle, for the payment of the prize money awarded them under the decrees of the district court of the District of Columbia, to the Committee on Naval Affairs.

Also, the petition of Franklin D. Pearson, to have refunded to him $300, the amount paid by him to obtain exemption from military service in the United States Army, to the Committee on War Claims.

By Mr. STONE: Memorial of the National Academy of Sciences, advising that the experiments upon American coal, made under the direction of Congress by the Navy Department, be resumed and continued so as to include all the coals now used in the United States, to the Committee on Appropriations.

By Mr. TURNER: The petition of citizens of Westmoreland and Fayette Counties, Pennsylvania, for the purchase by the Government of the telegraph lines in the United States and the adoption of a cheap uniform rate of charges for telegraphic messages, to the Committee on the Post-Office and Post-Roads.

By Mr. A. S. WILLIAMS: The petition of the heirs of James Corbet, late a private in Company H, Sixteenth Regiment Michigan Infantry, for a pension, to the Committee on Invalid Pensions.

By Mr. WILLIAMS, of Alabama: A paper relating to the establishment of post-routes from Fort Deposit, via Kirkville and Sandy Ridge, in Lowndes County, Panola, Crenshaw County, Steimer's Store, Butler County, back to Fort Deposit, to the Committee on the Post-Office and Post-Roads.

IN SENATE.

TUESDAY, *January* 9, 1877.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

The Journal of yesterday's proceedings was read and approved.

PERSONAL EXPLANATION.

Mr. KERNAN. I desire to make a correction in the proceedings of the Committee on Privileges and Elections of Saturday as reported in the New York Times of Sunday. In speaking of the witness Runyon the report states:

> He also declined to tell who came to his office and ordered him to draw the check.

I am represented as then having made this statement:

> Senator KERNAN stated that he, as counsel for the witness, and as a member of the committee before which witness was testifying, would advise the witness to answer the question.

That statement is erroneous. I certainly was not counsel for the witness in any sense, and never saw him before he came before the committee and never had a word of conversation with him there except as a witness upon the stand. What did occur before the committee and what I did say is shown by the report of the stenographer of the committee, as follows:

> Mr. MITCHELL. Mr. Chairman, I insist on an answer.
>
> The CHAIRMAN. I will state, as my view of the law, that it is not a privileged communication, but a matter that the witness is required to answer.
>
> Mr. KERNAN. That is my judgment. I would advise him to answer, both as a lawyer and a member of the committee. I think he should answer as he would if he were before a court in a pending proceeding.

That was the statement which I made. In no sense of the word could I state, nor did I in any sense state, that I was counsel for or of the witness. I desire to correct this inadvertent misstatement, as I assume it to be, which I notice also is in the New York Tribune.

EXECUTIVE COMMUNICATION.

The PRESIDENT *pro tempore* laid before the Senate the annual report of the Attorney-General, showing the operations of the Department of Justice for the fiscal year ended June 30, 1876; which was ordered to lie on the table, and be printed.

CHARLES C. CAMPBELL.

Mr. WRIGHT. At the last session of Congress the Committee on Claims reported favorably the bill (H. R. No. 429) for the relief of Charles C. Campbell, of Washington County, Virginia. That bill is now on the Calendar. I have some additional papers in connection with the bill which I now present and ask that these papers may be referred to the Committee on Claims and that the bill now upon the Calendar may be recommitted to the committee.

The PRESIDENT *pro tempore*. The papers will be referred to the Committee on Claims and the bill will be recommitted to the committee, if there be no objection.

PETITIONS AND MEMORIALS.

Mr. DAWES. I desire to present to the Senate a petition from citizens of Massachusetts, very numerously signed by those who have received 4 per cent. interest on the amounts settled by the Geneva award by the judgment of the court of commissioners of Alabama claims under the law passed by Congress. They pray that they may be allowed an additional 2 per cent. and suggest very cogent reasons therefor. I ask that their petition be referred to the Committee on the Judiciary. If the chairman of that committee was here, I should hope he would pardon me for invoking their early attention to the bill from the House contemplating a further distribution of that money. Recognizing as I do the important matters pending before that committee, still the committee can hardly understand the suffering that is experienced every day by those who have sustained losses from the British cruisers, if I may call them so, and the propriety as well as necessity of early action upon that bill. I invoke the consideration of the committee to it, and entreat them to bring it before the Senate at as early a period as possible.

Mr. WRIGHT. In the absence of the chairman of the committee I deem it proper to say to the Senator from Massachusetts, if I can have his attention, that I know the matter to which he refers has received the attention of the committee. We have had no session of the committee scarcely since the matter was brought up, but we are making all the progress possible toward an early disposition of the question to which the Senator refers.

Mr. DAWES. I think the assurance of the Senator from Iowa will very much gratify the petitioners. I trust that his expectations will be early realized and that the bill will be brought before the Senate for consideration at an early day.

The PRESIDENT *pro tempore*. The petition will be referred to the Committee on the Judiciary.

Mr. ALLISON. I present a petition of a large number of settlers, upon what are known as the Des Moines River lands in Iowa, asking Congress to give them relief. This petition sets forth at great length their grievances, showing that by a series of acts of Congress, of the State Legislature of Iowa, and the decision of the Supreme Court, &c., they have been deprived of their homesteads. I move that the petition be referred to the Committee on Public Lands.

The motion was agreed to.

Mr. MITCHELL. I present a joint memorial of the Legislative Assembly of the State of Oregon, in which they represent that "by acts of Congress granting lands to the State of Oregon to aid in the construction of a military wagon road from Dallas City, on the Columbia River, to Fort Boisé, on the Snake River, approved February 25, 1876, and to the Willamette Valley and Cascade Mountain Wagon Road Company, to aid in the construction of a military wagon road from Albany, Oregon, by way of Canyon City, to the eastern boundary of the State, approved October 24, 1866; also to the Oregon Central Military Road Company, to aid in the construction of a wagon road from Eugene City to the eastern boundary of Oregon, in sections, designated by odd numbers, to the extent of three sections in width on each side of the road; that alternate sections, not exceeding ten miles in distance from said road, were by said acts granted to said State of Oregon, and to said companies, from which to select lands in lieu of lands occupied adversely or reserved to the United States." These memorialists further represent that "all the alternate sections within the said region of ten miles distant from said roads, on either side, throughout the entire

distance of the same, have been withdrawn, by order of the General Land Office, from settlement and sale, and still continue to be withheld from lawful disposal, to the great injury of the State of Oregon;" and they represent that "said lands are now in the ownership of private companies of capitalists who are not using diligence to secure the selections of the lieu lands to which they are entitled under the provisions of said acts of Congress;" and they pray that "the owners of said lieu lands to which they are entitled and the balance of said alternate sections within said region of ten miles wide from said road be restored to the public land and opened for pre-emption, settlement, and sale by the United States in order to promote the occupancy of the same and the development and prosperity of the State." I move that the memorial be referred to the Committee on Public Lands.

The motion was agreed to.

Mr. MITCHELL. I also present a joint resolution adopted by the Legislative Assembly of the State of Oregon, at their recent session, in which they represent in brief that "the American nation is under lasting obligation to those brave defenders of our country who periled their lives in the war with Mexico;" and after making certain other statements on that subject they respectfully request "the passage of a law which shall suitably pension all surviving soldiers of the Mexican war, not heretofore pensioners under previous acts." I move that the resolution be referred to the Committee on Pensions.

The motion was agreed to.

Mr. MITCHELL. I also present a joint memorial of the Legislative Assembly of the State of Oregon, in which they represent that "there is no harbor or place of refuge for ocean vessels on the Oregon coast, south of Astoria, on the Columbia River." They say, furthermore, that "during the winter months no part of the ocean is more perilous or dangerous to our commerce than this part of the Pacific coast; that vessels caught in the terrible gales and storms which prevail here for a portion of the year are driven about, cast ashore, capsized, or torn to pieces, thereby endangering the lives of many persons and causing great destruction to property." They represent that "these vessels, this property, and these valuable lives could have been saved had there been a port of refuge in which the vessels could have ridden out the storm in safety; that the great loss of life and property caused by the destructive gales, for years past, tells us plainly that we should have protection for our commerce from the General Government." They represent that "our trade and commerce are rapidly increasing, and that this highway upon the ocean is now one of the great highways of the world." They state that "Cape Foulweather, in Oregon, is a suitable point at which to build a breakwater for the protection of ocean vessels; that the favorable location, having a fine, first-class light-house to the north and a third-class light-house to the south, defining its position clearly in the stormiest weather, the superior natural advantages, the abundance of rock and all kinds of material near at hand, required for the work, make Cape Foulweather one of the most economical and available points on the North Pacific coast, embraced within the latitude mentioned, for a place of refuge for shipping during the storms that prevail for so many months on this coast." They make a great many further statements on the subject, and ask an appropriation for a breakwater at that point. I move that the memorial be referred to the Committee on Commerce.

The motion was agreed to.

Mr. MITCHELL. I also present a joint memorial of the Legislative Assembly of the State of Oregon, in which they represent that "by the several acts of Congress in aid of the construction of the Northern Pacific Railway, the Oregon and California Railway, and the Oregon Central Railway, the minimum price of the alternate sections of the public lands by the General Government within the limits of the railroad grants has been increased from $1.25 per acre to $2.50 per acre, while, at the same time, the amount which can be taken by any one has been reduced from one hundred and sixty acres to eighty acres, and by this increase of price and reduction of quantity a great injustice is done to the citizens who desire to become pre-emptors and homestead settlers upon said public lands; that a large proportion of the unsettled lands within said railroad belt is of the character known as grazing lands, which cannot be profitably purchased at $2.50 per acre, nor profitably occupied in quantities limited to eighty acres, and that therefore the sales of said public lands are retarded and the country remains unsettled, to the injury of both the United States and the State of Oregon." They state that "for these reasons the State is embarrassed by the several acts of Congress," &c., and they pray "that the several acts referred to may be amended so as to authorize the sale of said lands at the usual minimum rate, and in quantities of a quarter section to any settler, and that the State may be allowed to select the lands granted her by the several acts of Congress at the minimum price of $1.25 per acre." I move that the memorial be referred to the Committee on Railroads.

The motion was agreed to.

Mr. MITCHELL. I also present a joint memorial of the Legislative Assembly of the State of Oregon, in which they represent that the Coquille River, in Coos County, Oregon, is greatly in need of improvements, which can only be made by the General Government, and they ask an appropriation for that purpose. I move that the memorial be referred to the Committee on Commerce.

The motion was agreed to.

Mr. MITCHELL. I also present a joint memorial of the Legislative Assembly of the State of Oregon, in which they pray that Congress may so amend the boundary-line act of February 14, 1859, admitting the State of Oregon into the Union, as to conform to the boundary-lines as set forth in the constitution of the State of Oregon. I move that it be referred to the Committee on Territories.

The motion was agreed to.

REPORTS OF COMMITTEES.

Mr. WRIGHT, from the Committee on Claims, to whom was referred the petition of Charles C. Harris, late of Company A, First Regiment Rhode Island Volunteers, praying compensation for services rendered the United States Government during the late war, submitted an adverse report thereon; which was ordered to be printed; and he moved that the claim be rejected; which motion was agreed to.

He also, from the same committee, to whom was referred the bill (S. No. 565) for the relief of the heirs of Matthew Allison, deceased, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

Mr. WRIGHT. At the last session of Congress this committee had before it the petition and papers of John Y. Worthington, praying for compensation for wood furnished the United States troops during the late war, and made an adverse report and recommended that the claim be rejected, and that report was sent to the table. Those papers, together with additional testimony, have been sent to the committee at the present session; we have again examined the case and now report it back, and again recommend that the committee be discharged and that the claim be rejected.

Mr. DAVIS. Where is the applicant from?

Mr. WRIGHT. Virginia. I think the Senator from Virginia had the matter in charge.

Mr. WITHERS. I ask that that report lie on the table for the present. I was under the impression, from what I learned, that the additional papers filed in the case completely established it. I should like to look into the matter further and see what the defect was and whether it cannot be remedied. If it can be, I should like to have the claimant get his money.

Mr. WRIGHT. I suggest to my friend that on examination of the case, when he comes to look at the report, he will find that the testimony is quite wanting on one very material point; that is to say, the new testimony did not supply the want on that point, however it may be as to other points. We do not discuss it except as to one point alone.

The PRESIDENT *pro tempore*. The report will lie on the table.

BLANKETS FOR THE DISTRICT REFORM SCHOOL.

Mr. BURNSIDE. I am directed by the Committee on Military Affairs, to whom was referred the joint resolution (H. R. No. 169) authorizing the Secretary of War to supply blankets to the Reform School in the District of Columbia, to report it without amendment, and I ask for its immediate consideration. It is a short resolution.

By unanimous consent, the Senate, as in Committee of the Whole, proceeded to consider the joint resolution. It authorizes the Secretary of War to deliver for use of the Reform School of the District of Columbia two hundred Army blankets from any in his custody belonging to the United States.

Mr. DAVIS. I should be glad to hear an explanation of the necessity of this measure.

Mr. BURNSIDE. The necessity for the issue of these blankets is caused by the present cold spell of weather and the lack of bed-clothing, which the officers of the institution have been unable to provide for the inmates. The District of Columbia is taxed to the extent of $2 per head per week for all the inmates of the Reform School; that is the extent of the tax levied upon the District of Columbia, and that is paid out of the treasury of the District. The building and the land upon which the building stands belong to the Government and should be kept in repair by the Government; but sometimes the repairs have been done by the trustees. Now, however, they find themselves without sufficient funds to increase the amount of bed-clothing on hand. They simply ask that Congress shall authorize the Secretary of War to issue two hundred blankets to the trustees for the use of the inmates of the Reform School. The joint resolution passed the House and was referred to the Committee on Military Affairs of the Senate. That committee has authorized me to make a favorable report upon it. In interviews with the president of the trustees of the Reform School he convinced me and a majority of the members of the committee that there was a necessity for this issue of blankets.

Mr. DAVIS. I should like to ask the Senator by whom the managers of the institution are appointed.

Mr. BURNSIDE. They are appointed by the President of the United States, with the exception of two trustees, one of whom is appointed by the Senate and the other by the House. The Senator from Nebraska [Mr. HITCHCOCK] is the trustee on the part of the Senate, and Mr. STEVENSON, of Illinois, is the trustee on the part of the House. The other trustees are citizens of the District, most of whom are known to me to be very highly respectable men, and they are appointed by the President of the United States. Congress annually appropriates $10,000 for the salaries of the officers; and then by the $2 *per capita* per week for each inmate paid by the District out of the District treasury, and the earnings of the boys, this institution has been able to be carried along and to make all its own repairs without calling

on the Government, at any rate for quite a period, for any appropriation for repairs.

Mr. DAVIS. Do I understand the Senator to say that the inmates are now in need of the blankets, and that the officers of the school have made application for them?

Mr. BURNSIDE. Yes, sir; the inmates are now in need of the blankets, and the necessity for them arises from the extraordinarily cold weather.

The joint resolution was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

PRINTING OF LOUISIANA TESTIMONY.

Mr. ANTHONY. The Senate passed a resolution directing that the report of the committee consisting of the Senator from Ohio [Mr. SHERMAN] and others, on Louisiana affairs, should be printed and that eighteen hundred and fifty extra copies of the same should be printed, and that the publication should be held back until the report of the Senator from Missouri [Mr. BOGY] and others on the same subject should be presented. But the report presented by the Senator from Missouri doubles the volume of the document; and as the number we can order to be printed is restricted by the sum of $500, it will be impossible to execute the order of the Senate. I am therefore instructed by the Committee on Printing to offer a resolution that of the papers presented by the Senator from Missouri the same number be printed also, so that they will both be printed, but will not both be printed together. If both be printed together, only half the number desired can be printed. This document of a thousand pages, I may say, was set up in the Government Printing Office in three days without at all interfering with the current business of the office, which is very large.

I am instructed by the Committee on Printing to offer the following resolution:

Resolved, That 1,850 copies of the report of Hon L. V. BOGY and others, on the condition of affairs in Louisiana, be printed for the use of the Senate.

The resolution was considered by unanimous consent and agreed to.

BILLS INTRODUCED.

Mr. INGALLS (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1124) to authorize and enable the eastern band of the Cherokee Indians to institute and prosecute a suit in the Court of Claims against the Cherokee Nation; which was read twice by its title, referred to the Committee on Indian Affairs, and ordered to be printed.

He also (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1125) for the relief of the Pottawatomie Indians; which was read twice by its title, referred to the Committee on Indian Affairs, and ordered to be printed.

WATER LINE IN FLORIDA.

Mr. JONES, of Florida, submitted the following resolution; which was considered by unanimous consent, and agreed to:

Resolved, That the Secretary of War be directed to communicate to the Senate all information in his possession concerning a water line for transportation from the mouth of Saint Mary's River, between the States of Georgia and Florida through the Okefinokee swamp and through the State of Florida to some suitable point on the Gulf of Mexico, embracing the probable nature and character of such water line, the extent of country and population to be benefited by its construction, and an estimate of the cost of the necessary surveys or examinations thereof.

DISTRICT POLICE COMMISSIONERS.

The PRESIDENT *pro tempore*. The Chair lays before the Senate the bill (H. R. No. 4350) to abolish the board of commissioners of the Metropolitan police of the District of Columbia, and to transfer its duties to the commissioners of the District of Columbia.

The bill was ordered to a third reading, read the third time, and passed.

ELECTORAL VOTE OF OREGON—RECUSANT WITNESS.

Mr. MORTON. There is a resolution on the table submitted yesterday by the Committee on Privileges and Elections, which ought to be passed to-day. I therefore move to proceed to the consideration of it.

The motion was agreed to; and the Senate proceeded to consider the following resolution, reported yesterday from the Committee on Privileges and Elections:

Resolved, That the President of the Senate issue his warrant, directed to the Sergeant-at-Arms of the Senate, commanding him forthwith to arrest and to bring to the bar of the Senate the body of Enos Runyon, to show cause why he should not be punished for contempt, and in the mean time to keep the said Runyon in his custody to await the further order of the Senate.

Mr. WHYTE. Mr. President, I shall certainly vote for any resolution calculated to enforce an answer to a legitimate inquiry; but as I understand the testimony given before the Committee on Privileges and Elections as read here yesterday, it was manifest that the sum of money sent or proposed to be sent from New York to Oregon had been returned unused and that the transaction there ceased. Now, unless some Senator will state, as we should do in a court of justice, on his reputation as a Senator, that there was good reason to believe that that money was corruptly used, I hardly think we are entitled to inquire into the private business of New York bankers. There is not the slightest allegation anywhere, as far as I have seen, that the money lodged with Martin & Runyon in New York, delivered by them to Dimon, sent by Dimon to Ladd & Bush in Oregon, was ever obtained even for an improper purpose; and certainly there is none that it was used for any improper purpose.

The money was deposited in New York with an agent of Ladd & Bush, of Oregon; Ladd & Bush were notified that that money had been deposited to their credit with Mr. Dimon, and three days afterward the money was restored to Martin & Runyon. Now a witness is asked to tell who deposited that money with him. Is that an inquiry pertinent to this issue which has been submitted to the Committee on Privileges and Elections in regard to the casting of the vote of the electors in Oregon? How is it pertinent? Is there any charge that that $8,000 was improperly used? If there is it ought to be made, and I shall vote to ferret it out and to hold up before the country any man who has been guilty of impropriety in attempting to tamper with the electoral votes of the States. But why should we give authority to this committee in a matter not yet alleged to be pertinent to this issue to investigate the private affairs of this banker in New York? Why should the privacy of business be invaded without some charge of corruption on the part of those into whose doors we enter with this penetrating process? Why cover up with a cloud of suspicion a transaction that may be perfectly legitimate and which the parties may have a perfect right to keep from the public gaze? If the inquiry is a pertinent one, if there is an allegation of the fraudulent use of money in Oregon in connection with the inquiry sent to this committee, I shall vote to give any committee power to penetrate the darkest recesses and fathom any such conspiracy against the purity of election. But, Mr. President, until some Senator arises in his place and announces to the Senate that he is on the track of a conspiracy to degrade the election of President of the United States, I must withhold my vote from a resolution of this character.

The PRESIDENT *pro tempore*. The question is on agreeing to the resolution.

Mr. MITCHELL. Mr. President, I did not intend to say anything on this resolution, and I must confess that I am surprised that the honorable Senator from Maryland should take the position he does in reference to this matter and oppose the adoption of this resolution. He insists that there is nothing in the testimony of Mr. Runyon, as presented to the Senate by the Committee on Privileges and Elections, which would justify the inference that any money had been improperly used in Oregon, or rather that this money had been improperly used. There are a great many ways of doing a thing besides the way of doing it directly. It has already appeared, and has been published in all the newspapers of the country, and therefore I feel at liberty to speak of it, that a large amount of money was paid to Mr. Cronin in Oregon at or about the time that he was appointed messenger to carry the alleged electoral vote to the President of the Senate. There is no denial of that fact. He admits it himself, testifies to it under oath, that he received in the palm of his hand, in gold coin or its equivalent, checks for gold coin, the sum of $3,000. It does appear from the testimony of Mr. Runyon that the sum of $8,000 in money was at his instance telegraphed by Charles Dimon, of New York, to Ladd & Bush, bankers, at Salem, Oregon, on the day that the votes for President and Vice-President were cast in Salem, Oregon. Mr. Runyon tells the Committee of the Senate that that was not his own business transaction. Although his firm drew the check in favor of Charles Dimon, of Liberty street, for the sum of $8,000, payable to his order, with the understanding, as he testifies, that that money was to be transferred that day by telegraph to Ladd & Bush, in Salem, Oregon, he at the same time testifies that it was not their own transaction, that they had no business transactions with Ladd & Bush. And yet will it be said by the honorable Senator from Maryland that there is no suspicion in that circumstance? Will it be said that this transaction as stated by Mr. Runyon is an ordinary business transaction, one that can look the world in the face, in the open light of day, without any fear or trembling, especially when it appears from that same testimony that the money was to be refunded in a few days, because the Senator will find that he states in substance that he only wanted this money for a few days? Evidently the man who asked to have the $8,000 sent to Ladd & Bush was familiar with the doctrine referred to by Bret Harte when speaking of a certain class he talks about "deeds that were dark and tricks that were vain," or something of that kind; I am not able to quote precisely.

It is evident, Mr. President, from this whole transaction that there was a species of juggling in regard to the transfer of this money, and if this witness is compelled to answer who his customer was, there can be no kind of doubt but that the whole transaction will be presented clearly to the mind of the Senator from Maryland and will satisfy him, as it must satisfy every honest and candid man, that this $8,000, whatever telegram may have come back afterward to replace the money, was telegraphed to Oregon on the 6th of December last for the purpose of being used in some way in connection with the controversy then pending before the governor of that State; and as to who received the money, how it was used, that is another branch of the case to be investigated; but certainly my friend from Maryland, under the circumstances presented by the testimony, will not object that this witness shall be compelled to answer as to the person that authorized the transfer of that money.

Mr. MAXEY. Mr. President, when a tribunal is invested by law with jurisdiction to hear and determine a matter, it is by operation

of law invested with all the power necessary to make that jurisdiction effective. Any process necessary to develop the truth is within the power of the tribunal. The general rule of law on the subject is that all witnesses, all testimony that may tend to prove or may be conducive to prove the case in point can be brought by proper process before the tribunal investigating and hearing or determining. Out of this general rule are excepted what are called "privileged communications." Those communications are very few, such as between client and counsel, and husband and wife, and this is based upon a great principle, that the injury to society resulting from laying before the world these confidential communications would be greater than the good resulting from their development. Now, the communications between a banker and his customer, whether they be confidential or otherwise, are not privileged communications; and on another branch of the case which has been much discussed here lately, the communications between a telegraph company and its customers are not privileged communications. If in the investigation of truth it is necessary to bring out what has occurred between a banker and his customer, or between a telegraph operator and his customer, if this tribunal has the jurisdiction to investigate, to hear and determine, it has the power, beyond all question, in law to issue any process necessary to make that jurisdiction effective, and if the party refuses to obey it has the power of arresting and punishing for contempt, the same as a court of justice.

Now, Mr. President, whether the testimony of this witness Runyon proves or conduces to prove the issue is a question for this tribunal to determine; and I, for one, believe that fraud should be ferreted out to the very bottom that if there be any fraud in Oregon or elsewhere in this presidential canvass, the truth, the whole truth, and nothing but the truth should be brought before us for us to determine the amount of fraud, or whether fraud has been committed or not. For these reasons I want this thing probed to the bottom. If this man Runyon has concealed anything that is necessary to come before the Senate in order that we may thoroughly understand the issue which is made in regard to the Oregon matter, let it come, and after the witness shall have been brought before the Committee on Privileges and Elections and his testimony is fully brought out, then the Senate can better determine whether he is concealing anything of importance or not.

For these reasons and for the reason that in every one of these cases, telegraphic and every other kind, I want the whole truth to come out, I shall vote for the resolution.

Mr. WHYTE. Mr. President, the Senator from Texas is quite right, and I entirely agree with him in his disposition and desire to investigate and ferret out fraud. I hope that there is no Senator on this floor who is not anxious to run in the same direction; but I propose, as far as my individual action is concerned, to ferret out fraud decently and in order, and having been educated at the bar I think it is my duty to interpose here when I see a latitude of inquiry which would in my judgment be justified in no court of a respectable character in this country.

One of the most important rules which govern courts in the investigation by evidence of questions brought before them is that the evidence sought to be put in shall be relevant to the issue on trial. That is a cardinal principle, and when you abandon that you get at sea, and you take a roving commission of inquiry and can investigate any subject and to any extent that the mind of the inquirer may carry him.

I do not put my objection to this inquiry upon the ground of any privileged communication. That is entirely a different question and one which in no way affects the issue here. I put my objection upon the ground that this inquiry is not pertinent to the issue involved, that this inquiry is an inquiry probing the private transactions of a banker in New York who in no way has been connected in the testimony with Cronin, the messenger who brought the electoral vote from Oregon; and according to my recollection of his testimony as I read it in the morning papers, Cronin testified that he was paid his expenses, $3,000, he a lawyer in some practice in Oregon, and he was paid by money raised by subscription by gentlemen in Oregon.

Mr. MORTON. The Senator is mistaken entirely about that.

Mr. MITCHELL. He did not say that.

Mr. WHYTE. I give his statement from what I gather from the papers.

Mr. MORTON. Cronin was paid $2,000 out of the $3,000 by a draft on Charles Dimon, in the city of New York. That Charles Dimon was the recipient of this eight-thousand-dollar check. I do not care about going into this, but if the Senator wants me to show that this is pertinent to the issue, I think I shall do it from the testimony already here; but I do not care about that; I do not want to go into it now.

Mr. WHYTE. If the Senator from Indiana will state what I have never seen stated before in regard to Cronin's testimony, that a part of this money was obtained from Dimon, I withdraw all objection.

Mr. MORTON. He swore expressly to a draft on Dimon; and Mr. Dimon yesterday himself swore that he paid Cronin a draft for the amount of $2,000.

Mr. WHYTE. Then I withdraw all objection. This is the first time I ever heard it.

Mr. KERNAN. Mr. President, I do not oppose the passage of this resolution. I want that to be understood. Cronin's statement was that he ought to be paid $3,000 for coming here, which was the substance of his testimony. I ask the chairman's attention to see that I state the facts aright. Cronin stated that after he was appointed there was a talk about his expenses; that it was talked that they would raise the money there by subscription. He heard mentioned one or two who it was thought would subscribe. He was to leave on a Saturday. He states that on Friday the chairman of the State committee stated to him that they had raised $2,800, and he said, "I will pay my own expenses unless you pay the $3,000." Bellinger called him into the banker's and stated they had $2,800, and then he signed with Bellinger a note for $200, which Bellinger said they would pay, which was discounted, and made up the $3,000. That is the substance of what he did say. That was all he knew about it. He said he took drafts for $2,100 or $2,200 on New York from the bankers Ladd & Tilton. Mr. Dimon was examined yesterday. That is where the Senator from Indiana gets what he states about the draft for $2,000, and I will state the substance of that to the Senate.

Mr. Dimon yesterday testifies as this witness Runyon does, as you will find on page 7 of the report, that he telegraphed to Ladd & Bush, December 6, about the deposit of the $8,000. He got back a telegram from them, dated December 9, telling him to return the money deposited to the parties who deposited it, and that he did return, all but $2.75 paid for the telegram, to Martin & Runyon on the 11th of December. So that the $8,000, on the testimony of both Runyon and Dimon, so far as that is concerned, seems never to have been used in Oregon or anywhere else. It was returned to Martin & Runyon.

He did further testify, as the chairman states, that there is a house of A. E. and C. E. Tilton in New York and he, Dimon, attends to their money matters in some way; he is the acting man, and the correspondent of two banking houses in Oregon, Ladd & Bush of Salem and Ladd & Tilton of Portland. They draw on him from time to time and the drafts are paid, they keeping the account good by remitting funds or furnishing funds. Mr. Dimon was asked if he had not paid since the 6th of December a draft to the order of Mr. Cronin drawn by one of these houses in Oregon. He said he had. They asked him first if he knew Mr. Cronin or had ever seen him. He said he had not, but he had paid a draft drawn by one of these houses payable to his order for $2,000 and paid it to a firm in New York who presented it to him. I believe that was the statement of Mr. Dimon about that draft in substance. You have the evidence of both Mr. Cronin and the other gentleman that this $8,000 was not used. If you look on page 7 of the report you will see how Mr. Runyon gives it, that Dimon did telegraph out and got a telegraph back to return the $8,000, and he then wrote to Martin & Runyon and paid back the money, the $8,000. It is quite obvious that this money, on this evidence, was not used in any way, because it was paid back to the firm of Martin & Runyon by Dimon on the 11th of December.

When this question came up in committee (as will be seen on page 2) the other members of the committee expressed themselves, and I did so also, that Runyon should answer. It will be borne in mind that all this evidence as to the return of the $8,000 has come out since. As I said in committee, if the chairman who is conducting this investigation believes it material to the question under investigation that this witness should state who his customer was, I thought he ought to do it. I say so still.

I only rose to state the facts as I understand them, what the evidence shows this transaction about this two-thousand-dollar draft was. I have intended to state it accurately, and I trust I have done so.

Mr. MORTON. I did not intend to say a word about this matter at this time; but in reply to my colleague on the committee, I must state that while Cronin said there was a talk about getting up a subscription to pay him what according to one expression would be his price for bringing on that vote, yet there was no evidence that any subscription was taken or that a dollar was contributed in Oregon for the purpose, so far as I remember, and I do not believe there was. But the evidence of Cronin showed that the chairman of the democratic committee of Oregon took him to the bank and there he was paid the $3,000. He got one draft for $2,000 on this Charles Dimon in the city of New York; he got another draft I think on San Francisco; and then there was $200 lacking. It is not necessary now to argue inferences, but the inference was that $2,800 exhausted the fund and then they made up the $200 by giving a joint note with a promise on the part of the chairman of the committee that he would pay the note for $200. That draft of $2,000 was paid by Charles Dimon in New York. Charles Dimon was the recipient of the check given by Martin & Runyon for $8,000. It is true that he stated that he was telegraphed from Oregon to return that money on the 11th of December; but that is only evidence (although we have not perhaps got to that point yet) that some other arrangement was made for the $8,000 because the $2,000 was undoubtedly paid out of it, I think so far as we have gone.

Now, Mr. President, the purpose in getting at the name of the person who procured this check of Martin & Runyon will be very apparent by stating another fact. Mr. Runyon refused to give his name. A person came to him and procured him to draw a check payable to Charles Dimon for $8,000. He first made the check payable to Ladd & Bush, Salem, Oregon, at the Bank of North America. Dimon came to see him and told him the check in that form would not do. Mr. Dimon told him he must make the check payable to him in the city of New York, and the check was made payable in that form. We asked Mr. Runyon to give the name of the person who procured

this check to be drawn. He declined to do it, putting it upon the ground that he was a customer, and that bankers did not divulge the names of customers. He was advised by the committee, including the Senator from New York, [Mr. KERNAN,] that it was his duty to answer, but he persisted in refusing to do it. The testimony showed that Mr. Runyon took his partner, Mr. Martin, to a lawyer by the name of Harrison on Thursday afternoon and consulted Mr. Harrison about this matter of appearing before the committee. It turned out that Mr. Harrison either came over with Mr. Martin here or was coming anyhow. I think he said he was coming anyhow; but at any rate he came over with Mr. Martin and was with him during the day. Mr. Harrison was called, and he testified that he was a stranger to Martin and Runyon, but they came there on Thursday to consult him, and he testified that a person had called upon him in an earlier part of the day and had informed him, if I remember the testimony correctly, that Martin and Runyon would consult him about this business.

Mr. MITCHELL. That a person would call.

Mr. MORTON. Perhaps he did not mention the name of Martin & Runyon, but a person had called to advise him that other persons would call to consult him about this business before this committee. Mr. Harrison was asked who this person was, and he at first declined to give the name, but after some parley, saying he did not want to get into an issue with the committee, he would give the name, and he gave the name of William T. Pelton, the secretary of the democratic national committee. Mr. Runyon was subsequently recalled and he was asked if Mr. Pelton was the person who procured him to advance the check, and he said he was not. So it seems that there was another person still in the transaction.

Now, Mr. President, without undertaking to state here other reasons that the committee have for believing this testimony important, it seems to me that what is already elicited shows very clearly its importance.

The PRESIDENT *pro tempore*. The morning hour has expired.

Mr. MORTON. I ask to have this question taken.

The PRESIDENT *pro tempore*. Is there objection to continuing the consideration of this resolution? The Chair hears none.

Mr. WHYTE. There is evidently a discrepancy between the members of the committee as to the actual testimony that has been given. When I was on my feet before I understood that Cronin had said that he had drawn a draft upon this man Dimon and that Dimon had paid it.

Mr. MORTON. No, he did not draw it himself.

Mr. WHYTE. That was the way I understood it when it was stated while I was on my feet before, and that induced me to waver in my objection to this proposition; because that seemed to me a direct draft from Cronin upon Dimon. It now turns out that it was a draft drawn by Ladd & Bush, the bankers in Oregon, upon their correspondent, Dimon, in the city of New York.

Mr. MORTON. My friend does not state the point at all. Mr. Bellinger, chairman of the democratic committee in Oregon, went with Cronin to the bank and procured the bank to give its draft to Cronin for $2,000 payable by Dimon to Cronin, Cronin indorsed that and forwarded it, and it was paid by Dimon.

Mr. WHYTE. That is it exactly. Dimon is the agent of Ladd & Bush in the city of New York. Ladd & Bush are the bankers in Salem, Oregon. For Mr. Cronin's convenience they give him a draft upon Dimon, their agent in the city of New York, for $2,800. What has that got to do with the $8,000 that was returned upon the 11th day of December? What has that to do with this other transaction with which Martin & Runyon had no connection whatever? The transaction of Cronin with Ladd & Bush and Ladd & Bush's transaction with Dimon, what had they to do with Martin & Runyon and the $8,000 transaction in New York?

Mr. MORTON. If my friend will let us have the testimony we shall probably show him. But he requires us to show in advance what the testimony would be. It is the very thing we are trying to get at. There is a connection there, and a very delicate one. That is obvious. We are trying to show what it is; but my friend wants to withhold the testimony and require us to state in advance what it is.

Mr. WHYTE. Mr. President, that is the rule in courts of justice, that when you want to make an inquiry not palpably pertinent to the issue, the honor of the counsel is asked by the court, whether, upon his personal honor, he will follow it up and connect the parties with the is sucon trial. That is the rule of courts of justice. No man's private affairs are dragged into the court unless counsel conducting the cause will state to the court that that which is not clear will be made clear by connecting links of testimony they have in their possession.

I merely wished to state these facts before the Senate and before the country, and I have done them with any objection I have offered.

The PRESIDENT *pro tempore*. The question is on agreeing to the resolution.

The resolution was agreed to.

COUNTING OF ELECTORAL VOTE.

The PRESIDENT *pro tempore*. The Chair will call up the unfinished business, which is the resolution submitted by the Senator from Pennsylvania [Mr. WALLACE] yesterday to instruct the special committee on counting the electoral vote for President and Vice-President to inquire and report upon certain propositions in connection therewith, and on which the Senator from Ohio [Mr. SHERMAN] has the floor.

Mr. SHERMAN. Mr. President, the constant reference to the case of Louisiana whenever debate in any form arises on the presidential election shows the controlling importance of the electoral vote of that State. The Senator from Pennsylvania [Mr. WALLACE] in discussing the pending resolution says:

> The remaining propositions will be discussed incidentally in what I propose to say in regard to the finality of the action of the returning board of Louisiana and the power to go behind its action either for violation of constitutional law or for fraud and falsehood in its returns.

He then proceeds to state his view of the action of that returning board to sustain these dogmas:

> III. The power to ascertain who has been elected President and Vice-President of the United States by counting the electoral vote is a quasi judicial one, and carries with it the right to inquire and decide what are votes.
>
> IV. This power is in the two Houses acting concurrently as independent bodies.
>
> V. Each House may examine both facts and law to enable it to determine these questions:
>
> * * * * * * *
>
> VIII. No electoral vote can be counted without the concurrence of both Houses.

He contends not only that the two Houses of Congress without a previous law on the subject in a quasi-judicial way may revise, change, reject, or manipulate the returns of the electoral vote of a State, but that either House may do so; that either House may determine the law and the facts, and that without the concurrence of both Houses no electoral vote shall be counted. And the case of Louisiana is cited and commented upon as one that will justify the exercise of this extraordinary power. This strange doctrine of the power of a single House of Congress to defeat or supervise the vote of a State comes from a party that claims to be the custodian of the rights of the States. No provision of the Constitution of the United States is quoted as granting such a power, except that the formal count of the vote of the States must be in the presence of both Houses. There is no pretense of an affirmative power given to either House, but it is inferred from their mere presence. I have read a great deal about express and implied powers derived from the Constitution, or rather from that clause of the Constitution giving to Congress the power to make all laws necessary to carry into execution express powers; but to infer a power for a single House of Congress to revise, reject, or change the vote of a State for President from the clause making its presence necessary in the count carries the doctrine of implied powers far beyond what the most extreme Federalist ever dreamed.

But, sir, waiving this question, I am tired of hearing the action of the returning board of Louisiana arraigned as false or fraudulent, and therefore I propose now to discuss the general question whether the evidence before the board of returning officers of Louisiana was sufficient to convince honest men that at the recent election in that State for presidential electors there was intimidation of the kind and to the extent contemplated by the law of that State to justify the returning board in the forum of conscience and honesty in excluding from their returns the votes of a large number of polling-places where the intimidation materially changed the result of the election. I have already sufficiently discussed the legal aspects of this election. In the letter to the President signed by me with others, and in the debate that followed its presentation to the Senate, the laws of Louisiana were fully set out, and the authority of this board was shown to be full and its finding conclusive until set aside after a contest according to law. The electors certified as elected have met and recorded their votes for Governor Hayes as President of the United States, and Mr. Wheeler as Vice-President, and their votes are duly authenticated by the governor and the secretary of state of Louisiana under the great seal of that State, and have been delivered to your presiding officer. By the law of the case the action of that returning board is entitled to the same faith and credit that you give to the return of any officer of any State, or to the judgment of any court of the United States, and upon it Governor Hayes and Mr. Wheeler are legally entitled to the vote of Louisiana for President and Vice-President.

But, sir, while insisting upon the legality of this vote and its binding operation upon us, I do admit that at the bar of public opinion something more is needed than to show that an act was legally done. It must be rightly done; and especially must this be so where it involves the election of a President of the United States. It must rest upon the broadest principles of honesty and justice. Other titles may be doubted, but this title like the virtue of Cæsar's wife should be free from suspicion. If Governor Hayes is returned elected wrongfully he can gain no honor from even so high an office. If Governor Hayes is not only legally but rightly elected by the vote of Louisiana cast according to the laws of Louisiana, he can no more refuse or avoid the performance of the duties of President of the United States than he could shrink from the protection of his wife, his children, and his house. And, mark it, gentlemen, though you know he has not unduly struggled for this office nor purchased it, yet if it has been rightly conferred upon him in the mode provided by the Constitution he will exercise its powers. He is not to be tricked out of it nor bullied by menaces or threats. If there is any way in which

an honest dispute about this matter can be settled it is the duty of Congress to point it out; and I, for one, in the effort to find a legal, just, and peaceful solution will listen to every proposition and yield to any one that I consider fair and right. In the mean time I wish to present you the case of Louisiana before the returning officers of that State, as it appeared to me, a deeply interested spectator who was convinced that Governor Hayes is not only entitled to that vote by legal forms but also in honor and conscience.

The whole case turns upon this clause of the act of 1872:

If, after such examination, the said returning officers shall be convinced that said riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences did materially interfere with the purity and freedom of the election at such poll or voting-place, or did prevent a sufficient number of the qualified electors thereat from registering and voting to materially change the result of the election, then the said returning officers shall not canvass or compile the statement of the votes of such poll or voting-place, but shall exclude it from their returns.

The returning officers *did* find that intimidation materially interfered with the purity and freedom of the elections at certain polls or voting-places and *did* exclude them from their returns. The only question we have to deal with in this appeal to public opinion is, was the evidence sufficient to convince fair, honest-minded men of the existence of such intimidation, or, rather, was the evidence of intimidation so weak as to raise the presumption that they acted corruptly or dishonestly? The law presumes that an officer will discharge his duty, and upon this presumption all official acts, whether ministerial or judicial, rest. If I was debating this matter solely on legal presumptions I could rest here; for there is not in the whole case a single scrap of evidence that the members of the returning board acted either corruptly or in willful disregard of the rights of others. The temptation was all the other way. The local returns, including the intimidated districts, showed a majority for the Tilden electors. Every motive that could influence a corrupt or a weak man would lead the board to decide in favor of those returns. Wealth, social influence, their personal safety and convenience, all tempted them in that direction. They were all property-holders, and all but one natives of Louisiana, and he was a native of Virginia, but a planter in Louisiana for forty years. There was nothing to lead them to decide in favor of the republican electors except the plain mandate of the law, that if they were convinced of the truth of alleged facts they must do so. They were republicans, it is true, elected by a republican senate, but when selected were of differing parties; but the returning officers of all the States are open to the same objection. It is generally true that the political opinions of returning officers are in harmony with the prevailing party in the State.

The testimony before them must be examined in the light of all the historical facts in the history of Louisiana, and the well-known facts of intimidation in adjoining States. The only question before them was intimidation, the nature and extent of it. Upon this question they had the fullest information, not only from testimony, but from their personal knowledge of what occurred at this election and previous elections in the State. This was not the first case of intimidation or of unlawful voting, violence, and wholesale election frauds in Louisiana. They were selected by the senate of the State after these frauds and wrongs had become historical, and to act under the law carefully framed, with ample powers to enable them to prevent the success of such crimes. The law itself plainly recognized a state of society where such frauds have been practiced. The democratic party in 1872 had acted upon this law. Subsequently this board had been organized, and in 1874 the present returning officers had acted upon this same law. It is said they then exceeded their powers and abused their trusts, and had been reproached for this by a congressional committee. Now the precise extent to which reproof went was that they had exceeded their powers in throwing out the returns of polling-places in cases where they were not accompanied by the certificate of the supervisor that tumult, violence, or intimidation had prevailed at the election. They admitted proof of the intimidation without the formal allegation of it required by the law. Even as to this error it was conceded that the returning officers had followed the precedent set by the democratic returning board of 1872; and Mr. HOAR in his report says:

We have no doubt that they (the returning officers) believed they were defending the people of Louisiana against a fraud on their constitutional rights.

This reduces the offense of the returning officers to an honest error in the construction of a law, upon which they followed a previous democratic construction. That these returning officers had good ground for their finding on the facts in 1874 is shown by the actual result of the election this year as compared with the result in the parishes terrorized and bull-dozed in 1874.

I have here the vote of that year as claimed by the democratic State committee, contrasted with the vote of 1876, as admitted by the same committee. I find that in ten parishes that were disputed in 1874 and charged to have been controlled by fraud, the republican vote in 1874 was 10,813, and the democratic vote 14,491. In those same parishes this year there was on all hands conceded to be a fair and honest election, and this year with a fair election there were 17,001 republican votes cast and 14,315 democratic votes cast. The democratic majority in 1874 in those ten parishes was 3,678, and this year in those same parishes, by a fair vote, the republican majority was 2,686, making a net republican gain of 6,364. This is the vote in detail:

Comparative vote, by parishes, for the years 1874 and 1876.

Parishes.	Vote of 1874.		Vote of 1876.	
	Republican.	Democratic.	Republican.	Democratic.
Avoyelles	1,153	1,239	1,504	1,470
Bossier	1,077	1,020	1,724	880
Caddo	1,570	2,155	2,630	1,716
De Soto	216	1,259	904	1,304
Iberia	1,077	1,247	1,453	1,240
La Fourche	1,846	1,905	1,882	1,825
Nachitoches	1,577	1,554	2,099	1,703
Rapides	1,232	1,584	1,729	1,639
Saint Martin	704	921	1,110	1,034
Terre Bonne	361	1,607	1,969	1,384
Ten parishes	10,813	14,491	17,001	14,315
Democratic majority in 1874				3,678
Republican majority in 1876				2,686
Net republican gain				6,364

This comparison shows that while the returning officers may in 1874–75 have mistaken the law in acting without a formal protest, they did not mistake the facts; and the truth is that these men knowing the facts in 1874 decided rightly, though perhaps not legally, and that is clearly proven by the subsequent election in 1876, when in every one of these parishes their decision was shown to have been correct by the actual result of a peaceful and fair election.

These same officers, familiar with the law and all the prior historical facts, entered upon the discharge of a public duty. Now, what are those historic facts that throw light upon their action? Louisiana has been the scene of greater crimes against the elective franchise than any other State in the Union. The Plaquemine frauds in 1844 are notorious. Hundreds if not thousands of men were gathered up from the boats and wharves at New Orleans, and on the day of election were taken and landed at different points in the parish of Plaquemines, lying along the river, and there voted and counted in open violation of law. The leaders in this fraud lost neither social position nor political influence, but were advanced to the highest honors of the State. One of them having been subsequently a Senator of the United States.

If the presidential election in 1844 had depended upon the vote of Louisiana, we would have had the precise case now before us. The frauds this year are as plain and palpable, with added violence and crime, as were the Plaquemine frauds in 1844, now universally admitted and spoken of in New Orleans and everywhere as part of the undisputed history of those times.

Again, during the existence of the know-nothing party, from 1854 to 1860, there were many cases of riot, intimidation, murder, and violence of a kindred character to these we are now to deal with. Then they were aimed at persons of foreign birth and Catholics; now they are aimed at negroes. The same spirit of violence prevailed then against a large class of the people of Louisiana on account of their religion as now prevails against a great class and a large majority of the people of Louisiana on account of their color.

And so again in 1866, 1870, 1872, and 1874 the elections were preceded by crimes and riots, tumults and intimidation of the most frightful character, during which it is officially stated that two thousand people were murdered. The general statement of these historical facts is contained in many reports to each House, and notably in the report of Mr. HOAR already referred to, and in speeches by the Senator from Indiana, [Mr. MORTON.] In 1872 the confusion and uncertainty about the election were so great that a committee of this body recommended that the whole election be set aside, and that a fair election be conducted under the authority of the National Government. I voted for that proposition, and now deeply regret that the policy recommended by that committee was not acquiesced in by both parties, so that we could have tested once for all whether it was possible to hold a fair and honest election in Louisiana. It may be said that for thirty years election frauds have been the rule and not the exception in some places in Louisiana. Nowhere were the Ku-Klux outrages more violent. The events with which we are about to deal are but a part of the same general intimidation known as the Ku-Klux outrages, and more recently the "Mississippi plan." It was this state of facts known to everyone that caused the Legislature of Louisiana to invest in their returning board extraordinary powers; and it was in the light of these historical facts that they were authorized to reject the vote at every polling-precinct where intimidation changed the result of the election.

And here it is material for us to know what are the nature and extent of the intimidation that would justify the throwing out a poll. It is not what would intimidate you; it is not what would intimidate an equal number of Anglo-Saxons, accustomed to vote and to maintain their right to vote. We know very well the effect of force and violence; of lawless marching in armed array by bands of men without color of authority, invading our homes and firesides, insulting our wives and children. Such lawless forays would arouse a fierce resistence even if aimed against a small minority of white people of

our race. Every impulse of our nature, every dictate of our manhood, and the express authority of written law, as well as of common law of self-defense, would cause us to seize the gun, the knife, and the faggot, and with hue and cry to pursue and punish such an invasion of our rights, and, if persisted in, would stain the infected region with the blood of both parties. Instead of forays you would have civil war. And, sir, such a scene as is depicted by a single one of these witnesses, in one of the Northern States, could not occur without creating not bloodshed on one side alone but wholesale war and strife.

But this intimidation was aimed at a race lately held as slaves; and the question is what effect such intimidation would have upon them. It was no less a crime to intimidate the humblest and feeblest of these freedmen in the exercise of their legal rights. It was a worse crime, for it was committed without fear of punishment or retaliation. It is a crime not only of violence but of cowardice. And, sir, my honored friend Reverdy Johnson, now no more, never uttered a more truthful word than he did in an expression made by him in one of the trials of the Ku Klux in South Carolina. It was no less a crime because it was committed without fear of punishment. Nor is it necessary to show that this intimidation extended to murder and whipping, but only that it was sufficient to deter legal voters from exercising their right to vote; because the law is clear that if these returning officers felt that the evidence was sufficient to prove intimidation, sufficient to change the result or to deter men from voting, they were bound to exclude the vote of that polling-precinct.

EAST BATON ROUGE.

We come now directly to the testimony taken as to this election. And let me at the outset correct the impression that this is a mass of *ex parte* affidavits. This is not true, for a majority of it was taken upon interrogatories in strict accordance with the law of Louisiana, and as if to be used in the highest courts of that State. The most of it is of facts of public notoriety, not controverted. Much of it is by officers of the Army whose statements import absolute verity. The affidavits generally were filed in aid of supervisors' statements to give jurisdiction, and, though no doubt true, are not material, or are so corroborated as to be conclusive proof. Upon minor points of detail there may be disputes, but the main facts I will state are historically true.

The first deposition I refer to is that of Lieutenant-Colonel Brooks, of the United States Army, who was in command of the military district of Baton Rouge, including the parishes of East and West Feliciana, East Baton Rouge, and several other parishes. His deposition was formally taken. I read the fourth interrogatory and the reply:

Interrogatory 4. Are you acquainted with the condition of the territory within your command as to peace and order during the political campaign just ended? If so state fully all about it.

To fourth interrogatory. I am. In the parishes of Louisiana there was a complete system or organization of the white or democratic party, which had the effect of terrorizing the blacks. This was especially the case in the parishes of East Feliciana and East Baton Rouge, the blacks of which came to me in large numbers, telling me of threats made and acts committed which caused them to fear the consequences of any free political action on their part. The threats were as follows: Discharge, bodily injury, and in some cases extending to death, in case they (the blacks) did not joint democratic clubs and vote the democratic ticket. I have been told by many black men of both of these parishes that, during the winter and spring last past, many of these people had been killed and beaten by parties to them unknown, who came in the night, disguised and armed, in squads numbering from ten to fifty, who would surround a cabin, take the man out, and either beat or kill him. This occurred so frequently that they (the blacks) often for weeks at a time slept in the woods away from their houses. I became satisfied, from the frequency and similarity of these reports, that this was the fact.

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About the 1st of September, a man named Paul Johnson was taken from his home at night by a body of armed and disguised men. He has, I understand, never been seen since. This was told me by his father, who said he saw the disguised party at the house, and traced them to a point on the Comite, where he averred many other men had been taken in a like manner, and never heard of alive afterward. The old man was very much frightened, and feared that he would be visited in a like manner soon. Shortly after the 1st of September a man named Monroe Beacham, or Measham, disappeared under similar circumstances. Johnson lived near Atkinson's Store, near the East Feliciana line. Beacham, or Measham, lived near a place called Redwood. I have seen men with what appeared to me to be marks of a rope around their necks and on their wrists, and which they told me were such—made by men placing a rope around their necks or wrists, and tying the other end to a pommel of a saddle, starting off at too brisk a pace for them to keep up, which caused the rope to mark them very decidedly. There were two or three of these cases. The names of the men I do not now recollect. I sent them, in most cases, to the sheriff of the parish of East Baton Rouge, with their complaints. As to peace and order, and obedience to law, I do not think there was much in the back part of the parish of East Baton Rouge, or anywhere in the parish of East Feliciana. This is based, of course, on what information I could get of the people of those parishes, and the officers of my command away from my own station at Baton Rouge. Many democrats in the town of Baton Rouge, I do not now recall their names, admitted on more than one occasion to me that many violent acts were being done in the "back country" which they did not approve of. The organization of the democratic clubs partook of—as far as I could judge and observe—a military character.

Interrogatory 5. In your opinion, could all those qualified to vote in the parishes of Louisiana within the bounds of your command cast, in the last election, their ballots according to their choice, without fear of violence or injury in so doing? If so, state fully in what parishes or parts of parishes this condition existed.

To fifth interrogatory. In East Baton Rouge Parish, in the town of Baton Rouge, and the two wards next below the town on the river, I do not think there was any reason why a voter could not vote as he chose. In what is called the back country, which includes the balance of the parish, I believe, I think the system of threats, whippings, and killing, which has existed for the past ten months, has so completely terrified the timid blacks that but few of them would vote as they pleased. As to the fact of many black men having been killed by unknown persons, I would say that I know such to be the case from an examination of the reports of the inquests held by the coroner of the parish, which inquests did not cover all the cases of men found dead, for the reason—given by the coroner to me in person—that he had been notified to hold no more inquests in the country, by threats of violence to himself if he did so.

In East Feliciana Parish the record of the vote cast for the republican ticket would seem to indicate a complete terrorism on the part of the republicans of that parish. My own judgment, based upon the information received from a large number of black voters of that parish, is that the threats made and the acts committed by the whites against the blacks, or in other words, by the democrats against the black republicans, were of such a nature and of such form as to deter the republicans from voting as they chose, or at all.

Mr. President, I will only add that this is the testimony of an officer of high rank in the Army, and he was cross-examined; his testimony is given at page 542 at length, much longer than I have read. He refers also to what is told him by the coroner of the parish, and I will now read the testimony of Benjamin Morgan, coroner of the parish of East Baton Rouge, in connection with the testimony of Colonel Brooks, found on page 271:

Benjamin Morgan, being sworn, says: I am the coroner of the parish of East Baton Rouge, and am also a duly qualified elector of said parish, and was, on the 13th of April, 1876, occupying the same position. I was informed on the morning of the 13th of April, 1876, that two men had been killed in the tenth ward, and that I was wanted to hold an inquest. I took a man by the name of Garrett Smith with me, and went out there; when about twelve miles from Baton Rouge, on Joor's roads, I found the body of Jerry Myers hanging by the neck, dead; I collected a jury and cut him down. I hereby attach a report of the finding of the jury. The evidence showed the deed had been committed by a party of armed bull-dozers, who hung him, in my opinion, because he was a republican. I then started toward the house of the deceased, and when within a little more than a hundred yards of the house I found the body of Samuel Myers, the son of the elder Myers, who was hung. He had been shot in the back with six balls, in the back of the head with two balls, and was dead. From the evidence I found he had been killed by the same band of bull-dozers who had hung his father, and, in my opinion, for the reason that he was an outspoken republican. Both the deceased were honest, hard-working farmers; neither of them held any office, and had for the last five years past the first bale of cotton on the market in the parish. I attach also the finding of the jury in the case of the younger Myers. On the 17th of the same month I received a letter through the post office from the captain of the regulators, which I attach hereto; it speaks for itself. After the letter I was afraid to hold any more inquests for fear my life would would be taken, although many others were killed in the parish in the same way and for the same reason—because they were republicans. There was a continued reign of terror from that time up to the present, and no republican in the entire parish but what feared his life would be taken if he was known to be a republican.

* * * * * * * *

I herewith attach many other findings of the coroner's jury of persons who came to a violent death, and on whose bodies I held an inquest prior to the time I was notified by the bull-dozers that I would be killed if I held any more, or made any more reports in my official capacity.

I will now read the notice that was served on the coroner, which put a stop to these inquests.

Mr. BOGY. What date?

Mr. SHERMAN. They do not date their papers; you will find it on the next page, however:

Mr. BEN. MORGAN, *Coroner:*

You will please bear in mind that your absence is required in the country, and I further inform you that if you are caught therein any more, your fate shall be as those you came to hold your inquests over.

Yours truly, CAPTAIN OF REGULATORS.

Thereupon the coroner stopped holding inquests. September was the time he testifies that he stopped holding inquests. Here is the grim record in this printed document of eleven inquests held prior to the time the inquests were put a stop to by this notice in that year. Here follow in the document the official inquests of Jerry Myers, Samuel Myers, Taylor Hackings, George Washington, Johnson Stewart, Hugh Tuqua, Major Selve, Charley Robertson, Lizzie Richmond, Bristow Harrison, and Henderson Pointer. After that, according to the testimony of Mr. Morgan, there were six or seven homicides in that parish, and he did not hold any inquests because he had had that notice that he must not.

Now, Mr. President, I will read the affidavit of Charles Coleman, a negro man and the father-in-law of Major Selve, who was one of the men over whom Morgan held an inquest, and, although he is a negro, you will find, I think, on hearing his testimony, that you would believe it in any court of justice over which you ever presided, [Mr. WRIGHT in the chair.] This testimony is on page 277.

Personally appeared before me, the undersigned authority, Charles Coleman, who, being duly sworn, deposes and says he lived in the parish of East Baton Rouge for the last ten years, and still lives there, and that he is a qualified elector of said parish. Resides in the fourth ward. That on or about the 4th day of January, 1876, a body of armed white democrats came in the night-time, about 12 o'clock, and took Major Selve, my son-in-law, out of my house and hung him on a gum-tree inside of Mr. Alexander's gate, about seventy-five yards from my door. They left him hanging and came back and told me that he was dead. I asked them what he (Selve) had done. They said it was none of my business. When they came in the house for Selve they asked me for him. I did not tell them where he was. They struck me over the head with a pistol three times, and had a shot-gun leveled at the side of my head while two of them held me by the collar.

Just then one of them, who had a rope, called out, "Here he is," and the men seized Selve and putting the rope around Selve's neck they dragged him out. I followed them out in the road and begged for his life. They said, "We have got him, and we are going to execute our law."

When they had come back to the house and told me Selve was dead, I told I would leave; then they said if I did I had better leave the country: that if I would go to work and clear up my ground and make a good crop like I always did, I could stay there. I am certain that my son-in-law was hung because he meddled in politics and was a republican.

That on or about the 26th day of August I went into town and got tickets and held a meeting to elect delegates to the parish convention, which was called for the 2d September. William Wood went and helped me hold the meeting. After the democrats found out that I had held meeting and attended the parish convention, they accused me of having been a delegate to the republican convention, and I denied

having had anything to do with it, because from the threats which were made I was afraid of being killed; and they said, "If it is so, old fellow, you had better look out." They told me that the only way to prove to them that it was not so was for me to join the democratic club and vote the democratic ticket. They also said that every man who voted the republican ticket must leave or six feet of rope would stretch him. I then joined the democratic club of the fourth ward, and other colored men did the same thing, and we all voted the democratic ticket against our will and through fear, and about two weeks after the election they called a meeting in the fourth ward and wanted the colored men to swear that they voted the democratic ticket of their own free will and accord. I went off in the woods to keep from taking this oath; that in the fourth ward of said parish there was a general reign of terror, and I do not know of more than two colored men who voted the democratic ticket from choice and of their own free will.

The name of the man who saw his son-in-law barbarously murdered when he begged for his life is recorded for Mr. Tilden, and his vote is counted for Mr. Tilden, forced, I suppose, by a kind of bull-dozing that we can scarcely have any conception of, and I believe there is no man who will call in question the testimony of this witness.

Mr. BOGY. I will.

Mr. SHERMAN. There is the trouble. Although here was the dead body of his son-in-law, here was the fact that he had been actually forced to vote the democratic ticket. Yet when called upon to commit perjury before God, he fled to the woods rather than commit this additional offense; and they say he is not to be believed! Mr. President, there is the trouble. You cannot make the people of the United States believe these things, because they cannot believe that such atrocities can be committed; and yet the testimony of this witness is true before God.

Mr. WITHERS. In your opinion.

Mr. SHERMAN. There is no opinion about it.

Mr. WITHERS. You know it yourself, do you?

Mr. SHERMAN. I know it by witnesses, as I should in rendering a verdict on testimony that was uncontradicted.

Mr. BOGY. It is positively contradicted by other testimony.

Mr. SHERMAN. I will go on. I will now give you the testimony of F. A. Culver, an intelligent witnesss who was examined and cross-examined as supervisor of registration in the parish of East Baton Rouge. He says:

To the third interrogatory: There was violence and intimidation at polls Nos. 5, 6, 7, 8, 9, 12, 13, and 14. Intimidation and violence had to be resorted to in order to reduce the republican vote so that the regulators or bull-dozers who were organized in the interest of the democratic party could carry the election in favor of the nominees of said party. These bands of regulators, or bull-dozers, rode through the parish nightly, visiting the houses of colored republicans, hanging, shooting, and whipping them, striking terror into their hearts, with a view of inducing them to vote the democratic ticket or to flee their homes.

Answer to cross-interrogatory 2. I became possessed of the knowledge given in my answer to third direct interrogatory by personal observation and by reports coming to me in my official capacity, from facts of public notoriety, and from information received from individuals. I cannot state any further specific acts of violence and intimidation, names, polls, or dates than I have already given in my direct examination. I knew that there was bull-dozing from general notoriety, from information derived from individuals, from seeing some of these sufferers by bull-dozing and hearing their statements. It was my duty officially to make myself acquainted with the general condition of the parish, so as to guide myself in the location of polls, the appointment of commissioners, and in the general conduct of the election, so as to bring as full and free a vote of all the people as was possible under the circumstances.

I now read you part of the deposition of L. C. Le Sage, a native-born citizen of Baton Rouge, whose intelligence and activity are shown by his testimony. He is a white man, and until the recent election a democrat:

Answer to the second interrogatory. I was in the parish of East Baton Rouge during the election and I know the manner and conduct of the election, and I did know the state of the parish as to peace and order prior to and during the election. That in the late political canvass I was employed as a clerk of supervisor of election during the day of election. I acted as United States supervisor of election, and was on duty all day from five a. m. to ten p. m. That the total registered vote of that parish is 5,267, of which only 1,867 are white. That during the last six months an organized system of intimidation has prevailed throughout the parish, and that acts of violence, riot, and disturbances have been resorted to by armed bodies of men styling themselves bull-dozers and regulators, which has tended to prevent, and has prevented, a fair, free, and peaceable election and a full vote of all the qualified electors of said parish. Such violence, riots, and disturbances, of such a nature as to materially change the result of the election, did occur. The following are the facts: A large number of colored voters personally known to me, who have heretofore voted the republican ticket, were compelled to join democratic clubs and pledge themselves to vote the democratic ticket in order to save their lives. A large number of colored voters were compelled to give their registration certificates to the democrats. These persons had heretofore always voted the republican ticket, but surrendered their certificates in order to save their lives or escape bodily harm. Among the number of men killed for being republicans was William Y. Payne, who was hung by the regulators or bull-dozers for having participated in a republican nominating convention; he was secretary of the third ward republican club and had been a republican leader for several years. Mr. Jackson, who was president of the third ward republican club, was forced to leave the ward to save his life. Mr. Simms was forced to vote the democratic ticket to save his life. Mr. Beecher was hung for attending a republican meeting. Mr. Robinson left his employer and his ward to vote the republican ticket for fear that he would be hung, as his brother was a few months before, if he refused to vote the democratic ticket.

On the 4th day of November, 1876, I attended an appointed meeting of republicans in the tenth ward in said parish. Soon after my arrival a body of armed democrats came to the meeting and frightened and intimidated the republicans and entirely broke up the meeting, and then followed the said speakers to the twelfth ward, where another meeting had been appointed, and by threats and intimidation broke up the meeting at that ward. By these demonstrations of armed men, and by other like bodies of armed men, republican meetings were broken up and republicans were prevented from attending the public meetings of their party throughout the parish from time to time during the whole campaign. Armed bodies of men visited the houses of colored republicans, telling them that if they (the republicans) did not vote the democratic ticket they would be killed or subjected to great bodily harm. From time to time, throughout the past year, nearly all the parish or ward officers have been compelled to flee the parish or submit to have their legal authority overridden. In the case of George P. Davis, the parish judge, who was obliged to leave the parish to save his life, I believe that he would have been killed if he had staid in the parish five minutes longer. The order to him to leave was from a meeting of white-leaguers of the parish of East Baton Rouge, of which the president was John S. Dougherty. The committee appointed by said meeting to wait on Davis was J. W. Dupré, John Lamon, Andrew Jackson. They stated that it was an impossibility to keep the crowd back any longer, and advised him to leave town immediately. In the eleventh ward Joseph Johnson, the constable of that ward, was shot and his house burned over his body. Isidore Herron, justice of the peace of the third ward, was terribly whipped and beaten by the regulators, composed of a body of armed democrats.

Answer to the third interrogatory. They have uniformly voted the republican ticket; that I have never known ten colored men to vote democratic ticket, unless they were compelled to do so. I know this from the fact that I have belonged to the democratic party, electioneered for them, and found it an impossibility to vote over one man in the parish, and then it cost more than the man was worth.

Answer to the fourth interrogatory. On the day of election at the poll located at Murphy's school-house, in the first ward of said parish, the two republican commissioners of election assigned to that poll, and duly qualified to perform their duties in that capacity, presented themselves at that poll in due time, and before the hour of six o'clock a. m., were then and there turned out of the poll by a body of white democrats, who took possession of the poll, and caused two democratic commissioners to be sworn in their place, and, when they were remonstrated with by me, ordered me to leave the polls. I believe that from the action of the democrats at that poll there were prevented from voting about two hundred republicans. At the third ward poll the deputy United States marshal, Jacob Shields, reported to me in the city of Baton Rouge, driven from the poll by one A. L. Duncan and others, who used violence against him. While I was canvassing the parish, during the two weeks before the election, many colored men complained to me that it would be impossible to vote on election day, because they had been threatened with death if they voted the republican ticket, although they were republicans, and wanted to vote the republican ticket.

The cross-examination of this witness makes his testimony more specific:

Answer to third cross-interrogatory. In my answer to that question my statements are from information received, except where I have stated otherwise, except ing in the case of George P. Davis, who was driven away, as the democrats have admitted to me, for being the brains of the republican party. I know no other cause alleged for this violence.

Answer to fourth cross-interrogatory. In my answer to this interrogatory, my statements are from information received, except where otherwise stated. Never heard any other reasons except that they were republicans. I do know that it was on account of their politics and color, from the fact that I never heard of any white or colored democrats being molested in their rights, and that it is always a republican that is killed.

Answer to fifth cross-interrogatory. I know it from the fact that while I was canvassing the parish an armed body of men came to the meetings and followed me and the speakers; that the colored men ran to the woods and hid for fear of their lives, knowing that if these men found them at the meetings, if they did not kill them there, they would hereafter. It is impossible for me to enumerate the names of the persons whom I have known thus to be frightened.

Answer to sixth cross-interrogatory. The process of reasoning is this fact. In the third ward there have been numerous murders and outrages committed on colored voters because they were republicans. In the fourth ward, the same organization of bull-dozers as in the third ward ran the machine. In the fifth ward there were as many murders as in the third or fourth. In the tenth ward there were even more, because it is settled up by a set of hyenas any way. In the seventh, the machine has been run by the Haralson boys, and that state of terror and fear prevailing among the colored people that none of them dare come up and vote the republican ticket. In the sixth ward there is a crowd of young bloods, who have been running through that ward in the night-time, going to colored men's houses and calling them out, shooting them, and abusing them to that extent that most of them have taken to the woods and failed to gather their crops, for fear of being killed.

I have thus given you as to the parish of East Baton Rouge the formal testimony of an officer of the Army, the official action of the coroner of the parish, and the testimony of two general officers of the election. I could supplement this by other testimony of the painful details of these and other outrages that establish beyond question the proof of organized intimidation by the democratic party so complete, successful, and revolting that no wonder quiet men hesitate to believe by reason of the atrocity of these crimes.

Turn now to the adjoining parishes of East and West Feliciana.

In East Feliciana Parish at the recent election not one republican vote was cast, though the parish contains over 3,000 voters, of whom over two-thirds were colored. At the last election in 1874 the republican vote was 1,688 and the democratic was 847. The causes of this remarkable result are proven as clearly as human testimony can prove anything, in the evidence printed from pages 223 to 258.

I will first read you the testimony of Thomas H. Jenks, a white resident in that parish since 1869, formerly a tax-collector and apparently an intelligent and credible man. He says in reply to a general interrogatory as to witnessing acts of extreme violence to colored people in that parish since August, 1875:

Answer. In August, 1875, a colored man named Jerry Norman was shot while at church by a band of regulators. In September, 1875, Joseph Johnson, colored, was shot and killed by the regulators in the town of Jackson. In same month a colored man, name unknown, was shot and killed by the regulators on Chaney plantation, northeast of Clinton. In same month York Nelson, young colored boy, was shot and killed in the town of Jackson by said regulators. In October, 1875, a colored man, name unknown, was shot and killed on Mrs. Perkins's plantation, fifteen miles north of Clinton, by a band of regulators. In October, (13th day,) 1875, John Gair, a colored man, was taken from the sheriff's posse by a band of regulators and shot to death, his body being riddled by bullets in the presence of the posse; on the same day a colored girl named Kate Mathews, (commonly called Babe,) a sister-in-law of John Gair's, was taken out of the sheriff's office by a band of regulators, and hung to a tree in the court-house yard. In November, 1875, P. Branch, colored, was shot and killed by a band of regulators. In same month two colored men, names unknown, were shot and killed near Clinton by Lowson Blunt, a well-known white-leaguer. In March, 1876, a colored man, name unknown, was shot and killed in his own house on the Redmond plantation by a band of regulators. Marshall Myer and Webster Dyer was shot in the town of Clinton by the regulators, who dispered the sheriff's posse who attempted to arrest them. Dr. J. D. Wood passed sentence of death upon two young colored girls on the plantation of Mrs. Woodmon, seven miles from Clinton; they were hung by said Wood and about one hundred armed and masked men, which produced miscarriage and death to one of them.

As to acts of lesser violence and the object and motive of them he says:

Answer. I have heard of many instances of colored people being whipped by armed horsemen, who generally rode about at night with masks on their faces, calling themselves regulators or bull-dozers, which became generally known to the colored people, and by which a general state of terror was produced. I have knowledge, from information received, of about fifteen or twenty; the reputed and avowed motives therefor was to intimidate the colored voters and prevent them from voting the republican ticket, and to force them to vote the democratic.

As to the result of this intimidation he says:

Answer. On the 7th day of November, instant, I visited the fifth, seventh, and eighth polls in said parish, heard the democrats tell the colored people that there were no republican tickets, and that they must vote the democratic ticket or not vote at all. This was openly said, and notorious.

* * * * * *

Answer. I have heard it said by many, and often repeated by the leading democrats, that if any colored man should vote the republican ticket, or attempt to organize the republican party, they should be made to leave the parish, or be whipped severely, and suffer other punishment of an extreme nature; which became generally known, and was notorious.

* * * * * *

Answer. Generally, the facts before alluded to, with others of a like nature, such as the most brutal and inhuman whipping, and murders inflicted upon the defenseless colored people by the bull-dozers, have caused a fearful state of terrorism, to the extent that they dared not assert their rights as suffragans, and which has, to use their expressions and experiences, reduced them to a condition of slavery more absolute and galling than that from which the late war relieved them.

The proof in detail of many of the outrages sworn to by Mr. Jenks as of general notoriety is here given. The reason why they were not punished he here gives:

Interrogatory 7. When was the last court held in the parish of East Feliciana? Have you any knowledge, or is it notorious, why none have been held? State why not.

Answer. Last court was held October 7, 1875; an armed band of regulators invaded the court-room, interrupted the proceedings, threatened the judge, shot the sheriff, Henry Smith, a colored man, and broke up the session, swearing that no nigger should hold office in the parish; and required and compelled the sheriff aforesaid and T. M. J. Clark, the recorder, a colored man, to flee from the parish, by reason whereof no sessions of the court have been since held—all of which are matters of public notoriety.

I now read you a brief extract from the testimony of Lieutenant Davis, United States Army, stationed at Clinton, the county seat of the parish:

Answer to interrogatory 3. I mean that the conduct of affairs in the parish is very bad; that there was no chance for any one in the parish, unless he happened to be a democrat, whether he wore the blue or not; that the people of the parish were rabid, bitter democrats, and would allow to none to hold opinions contrary to their own; that I have been time after time importuned by colored republicans as regards the affairs of the parish; that I was unable myself to give them the proper protection; that I believe firmly that were they left to themselves to exercise their own free will, the parish would have gone overwhelmingly republican. As to the condition of affairs in the parish, as regards peace and order, everything was quiet, but it is naturally to be supposed that everything would be quiet when every democrat could vote his own ticket, and every republican in the parish (I speak now from my own knowledge) was afraid to vote the way he wished, not only white republicans, but colored.

James E. Anderson, supervisor of registration, makes a "statement," November 10, 1876, at New Orleans, according to the act, saying that it was not affixed to the return when mailed, because he would have been in danger of his life to have done so at that time.

He proves certain facts, as:

A. That in October, 1876, an attempt was made to take his life in the night by parties unknown, as he has reason to believe for the purpose of intimidating and preventing him from the free discharge of his duties as supervisor. He fled the parish, returning November 1, under assurances of safety to himself and the governor.

B. That on Sunday night before the election Lieutenant Davis, of the Thirteenth United States Infantry, was shot at.

C. That it was reported to him that bands of armed men traversed the parish during the period of registration, beating, shooting, and maltreating colored voters unless they promised to vote the democratic ticket.

Thus a belief became general that to vote for any but democratic candidates would jeopardize their lives and safety.

The result was that in the whole parish not one vote was given for the electoral ticket of Hayes and Wheeler; only one vote for *them* and one for the lieutenant-governor. All the other votes were democratic.

About eighteen hundred were deterred from voting at all; about four hundred led to vote the democratic ticket.

I have now given you the statements of a "carpet-bagger," so called, of an officer of the United States Army, and also of the chief officer of the election. I now give you the evidence of Jared W. Harrell, a planter, born and raised on the place where he lives, now employing fifty men, and who owned before the war as slaves many of the men employed by him:

JARED W. HARRELL. I am a planter in the parish of East Feliciana, seventh ward, and employ fifty colored men. I have often been notified that I must attend democratic meetings and vote the democratic ticket, or I must leave the parish. Many of my hands and those of my neighbors have been cruelly whipped, and others run away from their work because they refused to attend democratic meetings and vote the democratic ticket. *My hands were taken from their work and compelled to vote the democratic ticket;* many of them I saw deposit democratic ballots, and they told me it was not from choice, but because they had been told that unless they did so they must leave the country.

The democrats would appoint a night for a meeting, and then ride through the country and notify all the colored men and many white men that they must come. My hands would come to me to ask my protection, saying they did not want to attend their meetings or to vote their ticket. I told them on these occasions that I was unable to protect them. This was the case with many of my neighbors, also white planters, but the armed mob were too strong for us, and for us to live in peace and quiet I was compelled to endure whatever they saw fit to do. For the purpose of intimidating me the bull-dozers took one of the women in my house out and whipped her nearly to death. The parties who did it arrested me on the road, armed with shot-guns and pistols, and surrounded and told me they were going to hang me; but I told them I was only one man against a dozen, but if they would let me get my arms I would give them as much satisfaction as they wanted. Their leader told his men to take hold of me and hang me, but I told them to touch me at their peril. They cursed me for a damned nigger-loving radical, but I think they feared to lay hands on me. When they broke into my house, took my servant-woman and stripped her, and beat her most to death, I armed myself and would have resisted, but a band of forty or more surrounded me, and threatened that if I had any of them exposed or attempt to arrest any one for the outrage, they would hang me. I being only one against so many dared not resist, or I would have been killed. They termed me a damned radical scalawag, and said I loved the nigger better than the white man or I would not be a republican. I was born and raised on the place where I now live, and owned many of the hands I now employ before the war. These acts of violence were perpetrated upon all or nearly all the white republican planters in my parish, and it was by this system of intimidation that the democrats carried my parish. Upon a free and fair election my parish would have been republican by at least 1,200, there being upward of 3,000 voters, of whom, without any intimidation, more than 2,100 are republican and less than 900 are democratic.

It is not safe for either a white or a colored man to be a republican in my parish since it has fallen into the control of the bull-dozers; nearly all the democrats are regulators, and as they comprise the majority of the whites of the parish, and are well armed, they keep the colored people in a constant state of terror, and their orders, being issued secretly and enforced in the night, work so strongly upon the superstition of the colored men, that they are worse slaves than if they had masters, being mastered by assassins and ruffians.

After reading the testimony of this witness what necessity is there to pursue the matter further? What a picture of civil society is this. The court overawed by lawless ruffians, the sheriff wounded and a refugee, regulators patrolling at night murdering men and whipping women, threatening alike the owner of the land and the cotton-picker, driving them to the swamp at night while the humble cabin with wife and children are unprotected; and all this to compel them to vote the democratic ticket and elect Samuel J. Tilden President of the United States. Gentlemen, a single case of this kind ought to arouse the fierce resentment of every democrat in the land. Yet this whole parish or county was so overawed or "bull-dozed" that not one republican vote was cast in it, and 1,740 votes were cast for Tilden. Nor were the scenes here depicted confined to this parish nor to a few parishes in Louisiana, but extended to States like Mississippi, whose votes were won by such violence and are now in your keeping, preserved in the sacred urn of the electoral college, to be opened and counted by you for Samuel J. Tilden, when the conviction forced by historical facts rests upon a large portion of our people that it is a result criminally won by processes described by Mr. Harrell which if successful stain republican institutions and enter with their dishonor into the administration that is created by them.

I might go further into the testimony as to East Feliciana, for that already given is corroborated by Glover, Hansbury, Rigby, Brooks, Law Smith, the sheriff of the county, and others, with details unfit to read in this presence. There is one crime already referred to and more fully stated by Sheriff Smith and other witnesses, that, in its atrocity and influence to create terror, demands notice. A Dr. Saunders, of Clinton, who had taken a prominent part in breaking up the district court in October, 1875, a few days afterward, falsely, as is alleged, accused Kate Matthews, a servant in his family, of attempting to poison him. By the most extreme violence, by agencies that surpass the Spanish inquisition, it is said that she made some kind of a confession that implicated John Gair, her brother-in-law, and others. She was hurried to the jail. John Gair was a prominent and active republican living in the adjoining parish of Baton Rouge, an ex-representative, and a man of intelligence, character, and influence. He was arrested, and while being conducted from Baton Rouge to the jail in Clinton he was seized by the regulators and shot dead, and Dr. Saunders participated in this atrocious murder. The same band went to the jail where the girl was imprisoned and hung her in the jail yard. This double murderer is alive and well, practicing his profession of healing the sick, a living libel on the profession he dishonors. My friend from Kentucky [Mr. STEVENSON] says that politics did not enter into this murder. The colored people think it did; and this terrible crime not only intimidated them, but illustrates a state of society which explains how the wholesale intimidation that followed could be successful.

WEST FELICIANA.

Let us now turn to the adjoining parish of West Feliciana. A condensed statement of the testimony as to this parish is contained in pages 10 to 17 of this document to which I refer, but I prefer to read to you extracts of the testimony in the language of the witnesses. The organization, officers, and mode of proceeding of armed bodies of regulators are stated by a large number of witnesses.

I read the testimony of Amy Mitchell:

Answer to interrogatory 2. On the night of the 28th of September last a squad of eight white armed men came to the house owned and occupied by my husband and myself, situated in the third ward, in the parish of West Feliciana, about eight miles from Bayou Sara. They called for my husband, Ike Mitchell by name, who at the time was sick in bed. Before I could open the door sufficiently to see or admit them they pushed it so violently against me as to nearly knock me down. They ordered me to make a light, and upon my telling them that my husband was not in there (he was in an adjoining room) they said, "Hush, you damned liar; he is in here." They said, "We have come here to break up this damned radical hole," and "We have come here to break up this damned Weber hole." They found my husband in the adjoining room, where, after hearing them, he had tried to conceal himself under some loose seed-cotton. They commenced beating him with their pistols, and in the scuffle which ensued got him outside the house, when he was shot three times by one of them whom I recognized as Mr. Charley Barrow. After shooting him, they called to me to come and take the damned son-of-a-bitch in the house, when they rode off, and my husband's sister and myself carried him into the house. We placed him on the bed, where he died about daylight the next morning. They were armed with pistols and guns; either rifles or shot-guns. I recognized Charley Barrow, Robert Wilson, and Jim Dunning as being a part of

the squad of eight. Charley Barrow had a handkerchief or towel tied over his face, but it fell off and I saw his features distinctly. I am well acquainted with him, having known him for about seven years. One of the men had a white sheet spread over his horse.

I now read you the testimony of Isaac Vessel:

Answer to interrogatory 2. In the latter part of June last, Gilbert Carter and about a dozen other colored men in our neighborhood, together with myself, proposed to organize a republican club, and met for that purpose one evening at what is called the Flower place. We did not effect an organization that night, but separated to meet again for the same purpose in about two weeks later. The democrats, on hearing of our intentions, congregated, and on the night of July 11 came to the plantation of Charles M. Barrow, about the hour of midnight, and came to my house when I was sleeping and broke open the doors, and awoke me by poking me with their guns. They also went to the house of Gilbert Carter and made him their prisoner. Without giving me an opportunity to dress, they carried me about two hundred yards to where some more of their company were waiting, and where Gilbert Carter was brought; they were about fifty or sixty yards of them; they said that we had got to die that night, and were standing around us in every direction, bellowing that we would certainly be killed. We both made an attempt to escape, when Gilbert Carter was shot to death, pierced by bullets in several places. I ran to a bayou, but being soon almost surrounded, I pulled off my shirt, the only garment I had on, in order to avoid being seen in the darkness, and ran to another bayou, and finally escaped. I went to the house of a friend and obtained some clothing and remained until the next day, when I returned home by a circuitous route, being seen by Charles Barrow. He rode over to where I was. I asked him why they had killed Gilbert and tried to kill me, as I had done nothing. He replied they were after us because of that club we had over at the Flower place. I told him that we had not formed any club, but had only met to take steps to form one, when he said I must acknowledge that we had met and had formed a plan to murder him and his family and other families or I would be killed. I denied any such intention, saying that such a thing was never thought of; but he said that I must acknowledge it if I wanted to live. I consented to anything he might propose in order to save my life.

I now read you the testimony of Riley Norphilas:

To interrogatory 2. The 11th of July last past, about midnight, a body of armed men came to my house, about sixty, as near as I could count. They called out to me some three or four times to come out; then, getting impatient, called again. "Ain't you coming out?" I answered, yes, as soon as I could find my pants. They then said, "If you don't come out we will smoke you out." I went out and there I saw Cody Smith, Mr. Domings, Robert Wilson, Tom West, Charley Barrow, Robert Philips, Hugh Connor, George Townes, Will. Gilmore, Matt. Gilmore, Joe D. Smith, Lewis Smith, Page Barrow, Herman Barrow, and a great many whose names I do not now remember, and some I did not know. All were on horseback and were armed with guns and pistols. They had dismounted. I was accosted at once by Cody Smith, who said, "I want to know all about that club, republican, you have out here that is going to kill the democrats." I told him that was a club I didn't know anything about. He says, "You are a damned liar. You follow us all. We'll get it out of you to-night or we'll kill you." They then got on their horses and made me go with them on foot in their midst, about two hundred and fifty yards from my house, where they came across a big tree. There they made me get upon a horse. Then Tom West said to me, "Now, by G—d, I want you to tell me all you know." I told them I didn't know anything. West said, "Yes, you do, by G—d. Ain't some of you got a rope?" Then Robert Philips spoke up, saying, "Yes, I've got one." He then passed to West a new grass rope that he had tied to his saddle. West immediately put it around my neck, after making the slip-noose, saying, "Now, by G—d, I want you to up and tell us the whole thing. If you don't we'll break your neck to-night." I told them I knew of no club of republicans to kill people. The boys had spoke of having a club meeting, as had always been the case in all election times. Robert Wilson spoke, saying, "O, by G—d, boys, he is trying to dodge us. Break his neck at once and be done with it." Robert Philips then climbed the tree, taking up the end of the rope and fastened it to a limb. Lewis Smith then caught hold of the bridle-rein of the horse I had been placed on and started to lead him from under me. I caught hold of the rein and pulled him back. I begged for a chance to talk. They waited. I told them I did not know of such a club as they spoke of, but if they would turn me loose I would join a democratic club. One of them then said, "Turn him loose. Let him go on home and behave himself and be a good democrat now." They turned me loose.

I have given you the testimony of these negroes as to specific acts of murder and violence. I now give you a part of the affidavit of James H. Morgan, more general in its character, and showing the organization of the regulators and their mode of regulating:

I am a resident voter of ward No. 4, of the parish of West Feliciana. Some time in September or October, 1875, a band of bull-dozers came into Saint Francisville, and by their yelling and hallooing through the streets, and their threats and bad language, put the entire inhabitants in a mortal terror. They had hung John Gair, and were going to hang and shoot other damn radicals and niggers. They came to the house of Senator Webber, and hallooed to him to come out; that they wanted to fix him. They staid all night in town, and by their drunken carousals, firing off their pistols, and abusive threats, they put all the people in a state of excitement. This caused the formation of committees of safety, formed by the planters and their hands. One was formed in my ward, and Mr. Barrow was the president. All the colored men in the ward were asked to sign the rolls, and it was stated that any man who signed could vote as he liked, as it was a non-political organization, whereby all the colored men joined it; and all went well until some time in June, 1876, when some member offered a resolution binding the club to support the democratic ticket. Many of the colored men objected, stating that they were republicans and could not support the democratic party. Mr. Barrow said they must do so, as the people of that parish were tired of the damn radical nigger rule, and that the State must go democratic, if they had to kill all the damn radicals. He thereupon declared the resolution passed, and the colored men, I among the rest, were afraid to make any objection, but at the next meeting few colored men attended. The bull-dozers at once appeared, and among them were many of the white men of the parish. They killed Jack Russell, a colored man; this, accompanied with the threats of the bull dozers, who warned the colored men that unless they attended the democratic meetings, struck terror to my breast, and that of all others. I at once began to sleep in the woods at night, as did many others, for fear of being killed in my house. This murder was quickly followed by that of Gilbert Carter, Isaac Michell, and Ed. Armstrong, all living in my part of the parish, besides Primus Picket, Juber Johns, and many others, who were shot at Brent Sawa. Marsch Gray and others were whipped nearly to death during the same period, from June to the day of election. These acts confirmed my terror and that of other colored men. These acts and raids of the bull dozers were all in the night-time, and when day returned there would be no traces of them. Many of their men were recognized by me and others as the white residents of our neighborhood; among others, Cortney Smith and Charles Barrows. By these acts of violence, and after repeated warnings, I joined the club and attended the meetings and the democratic speakings. These acts of intimidation caused many colored men to stay away from the polls, and many others were compelled to vote the democratic ticket against their wishes. We had been told that on the day of election there would be a man present at each poll with a spot-book to take down the names of all colored men who voted the republican ticket, and that on the night following, or in a few nights, they would be visited by the bull-dozers, but that those who voted the democratic ticket would be let alone. Sure enough, on the day of election there was a man at our poll with his spot-book, and he called out the name of each man who voted the republican ticket, and said, "Spotted." I saw many colored men who came up with republican tickets drop them when they heard this man calling the names. Some left the polls without voting, others were accosted by democrats and compelled to vote the democratic ticket. Many of these last came to me and said they were afraid to vote as they wanted to—the republican ticket—as the bull-dozers would kill them, but if I could insure them protection they would vote as they wished, but I told them I could not give them any security. There were many voted at this poll who voted the democratic ticket who had no registration papers. I counted twelve or fifteen myself. These men claim they had lost their papers, and made affidavit. If there had been a free, fair, and unintimidated election the republicans would have had a majority of about 250 at my poll, whereas the democrats, by the foregoing intimidation, carried that poll about 70 votes.

I could supplement this testimony by that of a score of witnesses giving specific acts of violence by the regulators. I now read the affidavit of John S. Dula, the parish judge of this parish:

I am parish judge of my parish, (parish of West Feliciana.) For the last year there has been an organized band of white democrats, styling themselves bull-dozers and regulators, who patrolled the entire, and, by threats, acts of violence, and burning houses, have intimidated the colored people to such an extent that few have the hardihood to openly declare themselves republicans. These parties I have seen, and speak of what I know. About a year ago, about the 25th of October, 1875, about 300 regulators, all armed with shot-guns, rifles, and pistols, who I was notified came to demand my resignation as parish judge. About eight o'clock I shut my store and went to the residence of a friend, and shortly afterward they broke into my store, gutted it, and left with a colored man, an acquaintance of mine, a resignation to the governor of my office of judge, and left word that unless I resigned it by the next day at four o'clock they would take my life. I sent them a refusal, and took boat for the city of New Orleans, where I remained for three months. I then returned, and after heard it remarked that the damned radical officials must leave the parish if they value their lives. For the three months just before the election the parish has been patrolled by the bull-dozers. About the 1st of May last, 1876, about fifty or sixty armed democrats rushed into the court-house where I was holding court, and the republican members of the police jury were summoned and commanded to resign at once on pain of death, which they did. There has been several murders within the last three months, one of whom, Isaac Mitchell, a prominent republican, but who was an inoffensive man, and who held no official position, who owned his own farm and worked it, and who attended to his own business, but who refused openly to join the democratic clubs and rebuked colored men who did so. He was taken out of his bed about four o'clock in the night and beat over the head with clubs in the presence of his wife and children, and when nearly dead and stunned was shot and left lying dead in his door-yard. John Russell, another colored republican, who held no official position, worked his own farm, had an excellent reputation, but was too staunch in his political opinions to be induced to join a democratic club—the bull-dozers came to his cabin about the middle of the night and broke open his door. When he heard them coming he jumped in to an empty pork-barrel to hide, where he was riddled with bullets and left to his wife and children. A colored boy, Hurd, who refused to join a democratic club was whipped nearly to death, then turned off and run out of the parish. Hunt Anoth and various others have been whipped and run away. These and similar acts of intimidation have struck terror to the hearts of the colored men of Feliciana, and because they valued the lives of their wives, children, and their own, that they have voted the democratic ticket—not, as many of them said to me, because they wished to do so, but because they had no other alternative.

I now read the deposition of George A. J. Swayze:

Answer to interrogatory 1. My name is George A. J. Swayze; I am 31 years old; I live in the parish of West Feliciana, where I was born and have always lived; I am a deputy sheriff of said parish.

Answer to interrogatory 2. I know that during the year preceding the election the general condition of public affairs was very unsettled throughout the parish in consequence of individuals banding themselves together, and organizing squads or companies, and perpetrating acts of violence and intimidation against the colored people.

Answer to interrogatory 3. For more than a year preceding the election, bands of armed men, styled regulators and bull-dozers, patrolled the parish at intervals, and committed acts of intimidation and violence, ranging from threatenings of punishments, graduating to whippings and hangings, and culminating in the most atrocious and horrid murders. These movements were inaugurated in September, 1875, and were followed at irregular though frequent intervals until the night of the day preceding the election.

Answer to interrogatory 4. The effect of the foregoing was to inaugurate a reign of terror among the colored voters throughout the parish against whom these demonstrations were made, and to whom they were principally confined.

Answer to interrogatory 5. I know that threats conveying the idea of the severest punishment were made against the colored voters to prevent them voting the republican ticket.

Answer to interrogatory 6. The republican party was not permitted to effect an organization throughout the parish. The causes preventing this were the whippings, hangings, and murders inflicted upon the colored men by the bull-dozers and regulators, whose fiat was pronounced with especial reference to the prevention of this object on the part of the republican party in the parish.

Answer to interrogatory 7. If the republican party had been permitted to effect an organization in said parish, and if the election had been fair, free, and peaceable, the result would have given a clear majority of over one thousand in favor of the republican party.

I now give you a portion of the testimony of Washington Spooner, a commissioner of the election:

Answer to interrogatory 1. My name is Washington Spooner. I am twenty-seven years old, and I live in the tenth ward, parish of West Feliciana. I was born and raised in said parish, and have lived there all my life, excepting from August, 1863, to January, 1866, during which time I was a soldier in the Federal Army. I am a laboring farmer by occupation.

Answer to interrogatory 2. I know of several acts of intimidation and violence in my neighborhood preceding the election, calculated to prevent a free and fair election.

Answer to interrogatory 3. I know from information received, and as a matter of notoriety, that Jubal Hunt, March Grey, and Ben. Baker were severely whipped at different times in my neighborhood preceding the election. I have no personal knowledge as to the cause therefor, but from general belief can state that in the case of Jubal Hunt, the causes which led to his being whipped were his repeated public avowal of his fidelity to the principles of the republican party, and his determination not to join a democratic club or vote the democratic ticket. The effect of these whippings was to frighten the colored voters of the tenth ward and deter them from organizing republican clubs or voting the republican ticket.

Answer to interrogatory 4. On Sunday night, November 5, instant, a band of about ten armed men rode through the Bush Hill plantation, where I reside. They were armed with pistols, shot-guns, and Winchester rifles. I saw them again the next morning at the store of H. C. Lopez; among them I recognized one Jake Rowe, who was addressed by the others as "Captain." I also recognized John Black, Ben. Cursey, and one Dickerson or Dickam, and Alf. Riley. The effect of this raid was to thoroughly frighten and intimidate the colored voters of the neighborhood.

Answer to interrogatory 5. The colored voters of this neighborhood were repeatedly threatened with violence if they voted the republican ticket. I was warned and threatened by John J. Barrow, democratic candidate for sheriff, that if I voted the republican ticket I should not be permitted to live on the Bush Hill plantation, where I was born, and now reside. H. C. Lopez threatened me that if I voted or any other republican voted the republican ticket, we should be made to leave the parish or be killed.

Answer to interrogatory 6. I was a commissioner of election at the Brick Church poll in the tenth ward.

Answer to interrogatory 7. I saw several white men, all democrats, near and around the polling-places, and inside the church where the polls were held, and the effect of this was to frighten the republican voters, and prevented them from voting the republican ticket.

Answer to interrogatory 8. I am well acquainted in the tenth ward, and know nearly all of the colored voters, and, from intimate relations and conversations with them, I know them nearly all to be republicans, sincerely, conscientiously. I do not know of more than six colored democrats who ever profess to be such among their own rate and color.

Answer to interrogatory 9. The result of the vote at the poll in the tenth ward was 3 democratic votes, and 1 republican vote. In 1874 the result was 99 democratic votes and 167 republican votes.

I will close these extracts from the testimony as to this parish by giving you the sworn statement of E. L. Weber, the supervisor of the election:

E. L. WEBER, being duly sworn, deposes and says that he was the duly appointed and qualified United States supervisor of elections for the parish of West Feliciana, at the general election held 7th November, 1876, and that as such he performed the duties prescribed by law. That from reports made to him and from his personal knowledge he can state the general terrorism which prevailed throughout the parish produced by lawless and defiant acts of armed bodies of men acting avowedly in the interests of the democratic party, and styling themselves regulators and bull-dozers, prevented a fair expression of the popular will excepting at the poll in the first ward, where, by congregating the officials, superinduced by his (affiant's) personal presence, and as an authorized official of the United States, the general condition of terror was so measurably overcome that a tolerable expression of popular sentiment was obtained, and also in the seventh ward, which, by reason of its remote locality and inaccessibility thereto, was relieved from the immediate effects of intimidation of terrorrism above alluded to.

At all the other polling-places a price was virtually set upon the heads of republican voters who, in vindication of their principles, voted the ticket of their choice, and every means of cruelty and vindictiveness that suggested themselves to the fiendish iniquity of the bull-dozing democracy were resorted to to prevent and did prevent even a semblance of a fair and a free election.

Affiant knows that the relative strength of the two parties in said parish is at the rate of 4 to 1 in favor of the republican party; that a fair election would and will demonstrate a republican majority of 1,200 in said parish.

I may add that not a single specific statement of fact sworn to by these witnesses was contradicted by any testimony before the returning board.

The result was that at the election on November 6, 1876, there were cast for the republican electors 780 votes; for the democratic electors, 1,246 votes. At the last election before, held in November, 1875, there were cast for the republican ticket 1,358 votes, and for the democratic ticket 501 votes. The registration for 1876 shows a voting population of whites 406; of colored, 2,218.

What honest man can doubt upon the face of these facts that in West Feliciana intimidation, superinduced by violence and most atrocious murders, did so change the result as to make it the plain duty of the returning officers to reject the votes in the polling-places where this intimidation prevailed? And yet they are arraigned as criminals for doing this thing. These night-hawks of crime whose ridings and outrages are here depicted are to be extolled as lawful agencies of a peaceful and fair election, and the chief instruments in the election of a President of the United States.

It should be remembered that the three parishes I have referred to are adjacent to or near the boundary of Mississippi, and that the plan of intimidation or bull-dozing is frequently spoken of as the "Mississippi plan." What that is known from the evidence and report of the Senate Committee on the election a year ago in that State; and its terrible success is now known at the recent elections. We heard in New Orleans the statements of white men of the highest character and credibility living in Mississippi to facts within their personal knowledge showing the same organized violence and intimidation in Mississippi that I have shown in these border parishes. The Mississippi plan was extended to Louisiana; and that it might be successful in spite of the lawful powers of the returning officers, it was confined to republican parishes where the republicans had a conceded majority. If there the intimidation was practiced, it would at least nullify and destroy the republican majority. That was the Mississippi plan modified so as to nullify the laws of Louisiana. Therefore it was that in forty of the parishes of Louisiana there was a fair and free election, with a full vote and an increased republican majority, thus indicating the current of opinion in that State; but in these three bull-dozed parishes a conceded republican majority of 2,688 at the election in 1874 was changed to an alleged democratic majority of 2,819, a change of over 5,500 in three thinly populated parishes. Can any man doubt but this was caused by intimidation? What other cause can be suggested to produce such a political revolution? Is it that the colored people were persuaded by peaceful argument to change their party? Why did not that argument prevail in the body of the State where the election was peaceable and orderly? Why not in New Orleans where the conceded democratic majority and the weight of wealth and social influence is on the side of the democratic party? No, sir, no! It is an idle pretense that deceives no man in Louisiana. The persuasion the regulators mean is thus described by a colored man: "Ise 'suaded to vote the democratic ticket. Massio 'suaded me. He put a six-shooter at my head and told me to vote the ticket and I did." It is when by such agencies a President is sought to be elected that the whole people should appeal both to the forms and spirit of the law to prevent such a catastrophe.

MOREHOUSE.

We will now turn to Morehouse Parish, in another part of the State, and on the southern border of Arkansas. It is purely an agricultural parish, the parish seat being Bastrop, a small town, the parish containing, in 1875, 12,280 inhabitants, of whom 3,504 were white and 8,775 black. By the registration of 1876 there were 938 white voters and 1,830 black voters.

The testimony as to this parish, on pages from 422 to 459 of this document, shows the same general organization of regulators and bull-dozers and their night-marching, as has already been depicted in the other parishes, but with a less degree of violence and some mitigating features. There was a white lining to the cloud.

It appears that a month or two before the election an armed band of these white democrats, styling themselves bull-dozers, surrounded the house of Dow Hundely at night, and, after some colloquy, they rushed at him, pointing their pistols and knives at him, seized him by the heels and dragged him to the door. They then placed a pistol to his right side and another to his left and a knife to his throat and asked him if he would not rather join the democratic club and vote the democratic ticket than be mobbed, and threatened if he did not do so they would mob him; that they would spare his life then, but if they ever caught him at a radical meeting they would mob him. The same band on the same night visited the house of Dow Hundely's brother-in-law, called him out, and assaulted him and his wife and threatened to mob them if they ever attended republican meetings or took part in politics. Several other colored people, his neighbors, were visited on the same night and abused in order to prevent their attending republican meetings to be held the next day, and threatened if they did so they would be mobbed.

The most hopeful sign that followed this outrage was that within the week after this visit the planters of the tenth ward of that parish signed a protest against the action of the bull-dozers, and agreed to combine among themselves to protect the colored men from the bull-dozers and see that the colored men should have the privilege of voting as they pleased. That in consequence of the action of these planters there was a fair election in that ward, and the colored men were permitted to vote as they desired, and there was an increased republican majority. The testimony of several witnesses corroborates this general statement and especially as to the result of the organized action of the white planters against the bull-dozers. But this noble example was not followed in any other ward. If it had been throughout the State, there would be no question as to the vote of Louisiana, simply because the white people had not yet come to the condition to which they must come before they can have peace and order, before property will be worth anything in Louisiana, when the planters and property-holders shall say to these lawless ruffians, "We will shoot you if you invade our homes and our plantations." In this ward I give credit to the brave men, some of whom are democrats, who did combine and sign a paper that if these bull-dozing operations were carried on in that tenth ward they would be met by arms, and thus it was stopped.

In the town of Bastrop the intimidation seemed to be less violent than in other wards. The general purpose of the intimidation in other wards of the parish seemed to be to prevent republican meetings and the organization of republican clubs; but such meetings were held at Bastrop, though, in every case, the republican speakers were grossly insulted, and among them Hon. William H. Hunt, the republican candidate for attorney-general, and Mr. Leonard, the republican candidate for Congress. The speakers were treated with insults and menaces by the democrats, who finally became so riotous and threatening that Lieutenant Mahon, commanding a detachment of United States troops, was forced to interfere to keep the peace. In other wards in this parish the intimidation was entirely successful, but was accompanied with less bloody atrocities than in the Mississippi parishes. The testimony of Henry C. Wright, deputy-sheriff, J. J. Schordt, and William L. Richmond, all of whom were cross-examined, and who were manifestly intelligent and reputable men, give in their testimony an apparently truthful and clear statement of the degree and extent of intimidation in the parish. I will read brief quotations from each of them.

HENRY C. WRIGHT. I am well acquainted with the political sentiments of the voters of my parish; have resided there all my life. The colored voters are in a majority of nearly two to one over the white voters; there are about fifty or sixty white republicans in the parish, and about the number of one hundred colored men who would vote the democratic ticket under a full, fair, and free election. I never saw with my own eyes any armed men patrolling the parish of Morehouse, because my residence is in the town of Bastrop, where I remained nearly all the time pending the late general election; but no fact is better known or more universally conceded than that there were armed bands of white men patrolling the said parish pending the late election, and they were known and designated as bull-dozers. They were universally admitted to be working in the interests of the democratic party.

My name is J. J. Schordt. I am fifty-two years of age. I reside in the parish of Morehouse. I am the postmaster of the town of Bastrop, in said parish. I do know of such armed bands; they were known by the name of bull-dozers.

I would state that on or about the 1st day of October, 1876, at night-time, a large body of men assembled before my dwelling, and by howling and riotous conduct did so terrify the members of my family that my daughter was thrown into a faint, which lasted for about two hours. These men were armed with guns. This was done because I was a republican; and, in my opinion, these men were democrats. On the 13th of October, 1876, the republicans of the parish held their nominating convention, and nominated me for the house of representatives on the parish republican ticket. A few days after receiving the nomination above referred to, a *black coffin* was placed at my gate, with the following inscription thereon: "Schordt, Murchison, and Ross, this is your box if you do not quit politics!!" On the same day that I received the coffin I was in the town of Bastrop at my office, when several democrats of the parish of Morehouse came into my office, and by hints with hidden meaning and by other means, endeavored to intimidate me, and asked me if I intended to "come down," the meaning of which was, did I intend to accept the nomination on the republican ticket as candidate for the house of representatives; and upon my replying in the affirmative, these democrats, and A. S. Keller in particular, told me that I had better come down. I left the parish on the same day, as I feared I would be killed if I remained any longer.

R. Randall also testifies that—

I know of armed bodies of men who patrolled my parish and who threatened the lives of republicans who attempted to organize republican clubs. I was president of the republican club of the seventh ward, but I was prevented by threats and through fear of bodily harm from calling my club together.

The story of Gus Winfield, to whom no actual violence was done, shows the terror and anxiety caused by the threats of violence:

GUS WINFIELD. I am a resident elector of the first ward, parish of Morehouse; have resided in the parish more than twenty years. About the middle of June, 1876, I heard that a body of regulators were coming to my house to bull-doze me. I told my two brothers and my two cousins who live with me on the same place; we were making a crop together. After a consultation we determined to set up and watch for the bull-dozers. About eleven o'clock p. m., I heard some one riding up the road and we hid ourselves; when, in a few minutes, Mr. Law, a prominent republican, rode up and asked me permission to lay on my gallery until morning, as he was on his way to Shreveport. I told him that I expected the bull-dozers; but he said that they had been after him and that he had given them the slip, and that they would hardly look for him at my house that night. This allayed my fears, partially at least; and when Mr. Law had laid down, I and my party, not being able to sleep, we walked to the church on our place where the colored people were holding church, all of us attending that church usually. Still feeling uneasy in spite of Mr. Law's assurance, we carried our guns with us. We had just arrived at the church and were talking to some of the brethren at the door, when up rode a party of armed democrats, among whom were Mr. Ross and Mr. Griffin. They hailed me and my party and asked us what we were doing with our guns at church. I then told them what I had heard about the regulators. The one who had spoken before told me that they were not after me but after another man. About this time church broke up and many of the congregation went down the road-side by the band of bull-dozers, who rode a little in advance. I and my party came along behind; when the regulators came up to my gate, nine of their number then dismounted in my yard and appeared to be watching for some one. One of the party then fired off his pistol. When I saw this I feared to return to my house, but went through the canes and approached to within fifty yards of my house, when I sat down and watched the party. Within half an hour my brother came down the road and within the gate. One of the band asked him where I was.

He told them he thought I had come down before him. He, being afraid, passed on and into his house. The regulators waited around in my yard until just before day, and then left. The next day about four p. m. a party of four gentlemen drove up to my house in a carriage and stated that they had been told that a party of regulators had called at my house; they stated further that they had come to tell me that the regulators would not disturb me if I did not attempt to organize republican clubs or hold any republican meetings; and we did not dare to hold any meetings in that ward or part of the parish during the entire canvass. We feared that if we attempted to do so we would be ill-used—either killed, or whipped, or driven from our homes. I know of the murder of only one man who was a prominent republican, and that was Mr. Law. But in the adjoining parishes many murders were committed, and every few days we would hear of some being whipped or killed, and for fear the same would be done to colored men in my ward we did not organize clubs to attend meetings. I myself voted the republican ticket, but not until I got permission to do so, and that permission was given to me personally. The bull-dozers patrolled my parish constantly before the election, and by the dread of their presence and of their deeds of blood, the republicans in my ward either refrained from voting at all or voted the democratic ticket, to avoid being cruelly treated.

William L. Richmond testifies:

My name is William L. Richmond; age, thirty-nine years; residence, Morehouse Parish; occupation, planting.

In the ward where I was present during the election of the 7th of November, 1876, the election was measurably free, fair, and full, because the prominent white planters in that ward had resolved, after the outrages on Hundly and Archer, to resist any further visits of the bull-dozers. This was ward 10.

Answer to direct interrogatory 6. I have abundant information, from conversation with the colored people in Morehouse, and from observing the effects, that there were for two months preceding the said election acts of intimidation and violence committed in said parish such as prevented and tended to prevent a free and fair vote of the qualified electors in said parish. I instance the patrolling of the parish by armed men, visiting colored men at their houses at night, beating them, and acts of similar character. I instance, again, the following, on the occasion of a barbecue and political meeting at Oak Ridge, fifth ward, in said parish: About the 1st November preceding the election, I was present canvassing for the office of sheriff on the republican ticket. I was waited upon by friends and told to go away, because democrats had previously notified that I could not electioneer with the colored people, and if I were seen talking with them that I would do it at my own risk. The democrat who told me that said he had been told to do so, (I suppose by the controlling men at the meeting.) I felt that it was not safe for me to remain there, and I went away. Acts like the above caused the republicans to be afraid to organize and canvass the party in Morehouse Parish, and tended to prevent, and did prevent, a free and fair expression of the popular will at the election of the 7th November, 1876.

Answer to cross-interrogatory 1. I have lived in Morehouse for seventeen years. I have been a police juror in said parish, and sheriff, which positions brought me in contact with almost every man of influence in the parish.

Answer to cross-interrogatory 5. If you mean by my own knowledge—my own eyesight—I will answer, the threats made to me at Oak Ridge, as recited in my answer to direct interrogatory 6. If you mean by my personal knowledge, the conviction which results from common report uncontradicted, I will mention the violence done to Dow Hundly and William Archer, and John Kennedy, who were visited at night by armed men known as bull-dozers, and acting in the interest of the democratic party, and who beat and otherwise maltreated the said Hundly, Archer, and Kennedy, who had committed no other known offense than to be republicans. This was done during the late canvass, and, as the bull-dozers said, to prevent them, the said Hundly, Archer, and Kennedy, from attending a political meeting called by me, I being then a candidate for the republican nomination for sheriff. It is but just to say that after the outrage to Hundly, Archer, and Kennedy, the prominent white planters in the tenth ward, the locality where the outrage occurred, took action to prevent the further visits of the bull-dozers, and the consequence was that, at the election on the 7th November, there was some feeling of security in said ward to those who desired to vote the republican ticket. *This action was not taken in any other ward in Morehouse*, that I know of. There were some other acts of violence and intimidation committed under my own observation, notably, the conduct of the democrats at the republican mass-meeting held at Bastrop in September, when Mr. Packard, Harris, Wharton, and others spoke. Many democrats present acted in such an insulting and menacing manner toward the speakers that there was general apprehension of tumults and riot; this done, too, in presence of many hundreds of colored men. Again, on the 23d of October, when Mr. William H. Hunt, candidate for attorney-general, and others spoke, the conduct of the democrats was insulting, menacing, and finally became so threatening that Lieutenant Mahon, commanding a detachment of United States troops, was compelled to interpose his military authority to prevent a riot and general disturbance of the peace.

This witness is corroborated by many colored people who give specific acts of intimidation in different wards. I will close the extracts of testimony as to this parish by the sworn statement of W. G. Shelton, who was the republican candidate for the Legislature:

W. G. SHELTON, being duly sworn, says that for the six months previous to the general election, held on the 7th of November, 1876, there has been a general reign of terror among the republicans of the parish of Morehouse, and especially those who are colored, caused by armed bodies of democrats, who called themselves bull-dozers, and who threatened, beat, killed, and whipped republicans.

My parish was patrolled by armed bodies of democrats, who made it their business to call on all republicans, and to threaten them with violence unless they joined the democratic clubs and voted the democratic ticket. Their object and aim was to so intimidate the republicans that they would either not vote at all or vote the democratic ticket. The republican majority of this parish, under a free, fair, and peaceable election, is about 600 or 700, but the intimidation and threats used by the armed bodies of democrats or bull-dozers compelled hundreds of colored men to vote the democratic ticket against their will. I was a candidate for the Legislature. I did not make a thorough canvass of the parish, as there was such vindictive feeling among the democrats against republicans that it was unsafe to canvass outside of the large towns. In the first ward there was so much intimidation that colored men who wanted to vote the republican ticket in many instances were either compelled to vote the democratic ticket or not vote at all. In the second ward there were those same unlawful influences and intimidation used, and with the same results.

The third, fourth, fifth, sixth, seventh, eighth, and ninth wards were carried by the democrats in the same way. In the tenth ward the better class of citizens, after the bull-dozers for some time had overrun the ward, met together and passed resolutions, in which they declared that if the bull-dozers came back there they would meet them with shot-guns and disperse them in this ward. From that time out there were very little, if any, intimidation used, and the result was a large republican majority in that ward for all the republican nominees.

The effect of the bull-dozing in my parish was such that all republicans felt unsafe in speaking their opinions for fear of bodily harm. Many acts of violence occurred and all of this was perpetrated against republicans, and thus inspired all with a feeling that it was only safe to be a democrat, and especially the colored population, who are naturally timid, easily alarmed, were terrorized and compelled to vote a democratic ticket, when their feelings prompted them to vote the republican ticket if there.

One of our school-teachers, who was an outspoken republican, was given twenty-four hours to leave the parish. He knew the feeling among the democrats against any republicans who had the temerity to speak their opinion openly, and he left without any delay. Another school-teacher, a colored man, but a very talented and peaceable citizen, had a coffin left in his school, with a note in it stating that if he staid in the parish he would need it soon. Several other prominent republicans had coffins left at their gates, with notices that they would need a larger one before long unless they changed their principles or residence.

Mr. W. L. Law was shot. He was an open and bold-spoken republican, and such men inspired the colored men of the parish with confidence and courage when alive, while their tragic death struck terror to the colored man's heart; and while such republicans lived he would walk boldly to the front and speak his views; after their sudden and violent death these same colored men would not be heard to express any opinion about politics.

It is manifest this general intimidation was greatly promoted by a fierce and rabid democratic local paper, extracts from which are published in this document, which have all the extravagant fury and exaggeration of Dickens's Mr. Pott of the Eatanswill Gazette. These extracts are contained in the deposition of C. B. Wheeler, for years parish judge of the parish, and the republican candidate for the senate in that district, and who was elected by a majority of about 3,000.

It is manifest in the whole of this testimony that a degree of intimidation, carefully organized, did control the election, and changed a natural and uniform previous republican majority of about 700 at all the elections that had been held in that parish since the negro had a vote to a democratic majority of about 600.

OUACHITA.

I come now to the parish of Ouachita, which, in public estimation, has been considered an extreme example of what is called "bull-dozing." It adjoins Morehouse and is the center of a number of parishes which were largely affected by the violence we are about to consider. Its registered vote for the year 1876 was: white, 992; colored, 2,392. At the election in 1874 the republican vote was 1,694 and the democratic vote 766; and this had been about the proportion of votes since the passage of the fifteenth amendment. According to the returns this year the vote is: republican, 793; democratic; 1,807; making a change of over two thousand votes in the result in a vote cast of about 2,660. The officers of the election, supported by the oaths of witnesses, protest that this result was brought about by intimidation; and that was the only question before the board of returning officers.

It appears that in this parish there was comparative peace and quiet until about the 1st of July, when eight democratic clubs were organized, supported by armed rifle clubs, which were a part of the organized democratic clubs. Soon after they were formed they began

to traverse the parish, and confusion, violence, whipping, bloodshed, murder, and shameless brutality commenced and continued until the election and in some instances since. These rifle companies were made up from the different wards and voting-places, and frequently went beyond the limit of their wards. They were armed with guns and pistols, mounted and commanded by regular officers, had all the appointments of military organizations, and frequent meetings. They had no semblance of legal authority, but were simply aids and instruments of the democratic clubs. Democrats alone were members of these clubs. Armed they rode over the parish in the day and night time, more frequently at night. They would fire off their arms, guns and pistols, to create terror and alarm among the negroes. They would halt before and enter at unseasonable hours of the night the houses of the negroes, often committing violence upon the men and women by shooting, whipping, with the accompaniment of profane and abusive language. They demanded that the men should vote the democratic ticket and join the clubs; if they agreed to this demand they were promised protection; if not, they were either threatened with violence or actual violence was inflicted upon them. The testimony to support these statements is so abundant that it is difficult to select from, but may be found printed in this document from pages 330 to 420. This violence was extended not only to the negroes, but to white voters also. J. R. Hall, a planter and justice of the peace for the fourth ward, a republican, but who had taken no active part in politics this year, was waited upon by a committee of democrats about the middle of July, 1876. The purport of their mission was to request him to attend a democratic meeting to be held at Masonic Hall, and to join their rifle company known as the Colony Guards, and in case he refused to do so he would not be considered worthy of their protection, and would be left to protect himself as best he could. He gives the names of the members of the organization, and among them that of Captain Theobalds, who appears frequently as an actor in the terrible scenes which took place in this parish. Mr. Hall, who was examined at considerable length, says the rifle companies were composed of democrats from boys of twelve years old to men of advanced age. Their conduct was of a most shocking character in many instances, especially among the colored people.

They rode frequently all night, visiting plantations, riding through their quarters, demanding admittance into their cabins, riding through their cotton-fields, murdering some, whipping others, and maliciously shooting at and wounding many, commanding them at once to renounce republicans and join the democrats; offering them protection and peace if they did join the democratic party; and if they did not, the assassin's knife, the murderer's pistol, the whipping-post were presented, from which they were told they had no means of escape.

This riding about and other demonstrations caused the colored people to fear that if they did not comply with their demands, they would be murdered, whipped, driven from their homes, have to leave their families and their crops, and could see no escape; concluded at last to join their clubs—their democratic clubs—and if protected at the polls would vote the republican ticket; and if not protected, they would vote with them, through fear of being violently treated after as well as before the election.

Mr. Hall gives also the names of many who were murdered in the parish, and some who were whipped and shot. He was a commissioner of election, and, after it was over, as justice of the peace took upwards of one hundred and seventy-five affidavits, white and colored included, setting forth how these votes were cast, and that he knew many of these affidavits were not taken voluntarily; that some of them he refused to sign knowing the truth was not contained in them; and for this he felt unsafe and left his home.

The assassination of Dr. Dinkgrave, a son-in-law of the chief-justice of the State and among the chief republican leaders, on the 30th of August produced a wide-spread feeling of alarm. N. Blanchard, an intelligent republican justice of the peace of ward 7, after describing the marching and countermarching of hundreds of armed men who rode over the parish in a warlike and threatening manner, says:

This large body of armed horsemen (democrats) rode over the parish in a warlike and threatening manner, swearing that they would carry the parish of Ouachita for the democracy if they had to do it with shot-guns. This conduct greatly intimidated the colored and white republicans, especially occurring immediately after the assassination of Dr. Dinkgrave, which event chilled the hearts of the boldest. When these armed bodies were parading many colored people came to me extremely frightened, thinking they would be killed, and asked me what to do. I advised them to remain quiet and perhaps harm would not befall them. From that time on armed horsemen rode around at night firing off their guns and shooting into the houses of colored republicans, and threatening them in the day-time, saying all the time that they (the democrats) would carry the parish and those who would not join them would not be safe. They promised the republicans that all who joined the democratic clubs would be protected against the bull-dozers, who were all democrats. The threats were so severe that we dared not organize a republican club in ward 7.

He was warned to wind up his business by the 1st of January and leave or "you will go up as many other damned rascals have."

I gave this letter to my merchant, who lives in Trenton, who read and said, "You have been fooling with politics." I then told Tom McGuire, who said that the letter meant trouble. I thanked him for his opinion and left the letter with him. I then told Mr. McGuire that I had never harmed any one, and I thought it very hard that I could not do as I pleased with my own place, and to be treated in this manner for my political opinion. I then promised to vote the democratic ticket, although I could not join their party, and he agreed to see me protected. I accordingly voted the democratic ticket, although against my will, to save my life, being told that I was safe to do so. I own three hundred and thirty acres of land, a good wagon and two yoke of steers, two milk-cows, two horses, ten head of sheep, eleven head of hogs, and plenty of corn and fodder to do me.

Now, I am comfortably fixed in Ouachita Parish, and the democrats are trying to drive me away from my property, and still they seem surprised that colored people do not like their party. I have been living eight years in ward 7, near Trenton, poll 12, and am well acquainted with all the colored voters of that ward, who are largely in the majority, and all republicans. I know that had there been no intimidation the democracy would not have voted twenty colored voters at the poll; that, by the intimidation that resulted from the threats, violence, and bloodshed, the republican party lost 200 votes at that poll.

The assassination of Dr. B. H. Dinkgrave, of Primus Johnson, of James Jackson, of Henry Pinkston, and others. The attempted assassination and shooting of Eaton Logwood, H. W. Burrell, Spencer Dickenson, William Lewis, and Hawkins Jones, the cruel beating of many others, leading republicans, all occurring in a couple of months previous to the election, had the effect of terrifying the republican voters. George Shelton was shot at night by some unknown person in ward 7, it being generally understood that he was shot because of his political opinion, he being a prominent republican. In making this statement, I have only told such truths as are elicited from me by questions. I prefer to leave all untold that I can consistently do, and telling the truth, for I am satisfied that the statements already made by me will endanger my life, should I return to my home at any time. I am satisfied that had there been a free, fair, and peaceable election at poll 1 of ward 1; polls 2 and 3 of ward 2; poll 8 of ward 4; poll 9 of ward 5; polls 10 and 11 of ward 6, and poll 12 of ward 7, that the republicans would have carried the parish of Ouachita by at least 1,000 majority. I close with these few remarks: I have been a citizen of the State of Louisiana twenty-five years. During my slavery or freedom, if any person can bring any blemish on my character, be he white or black, I am willing it should be published to the world.

The witness had, in 1868, been attacked in his own house by disguised men during the night-time. They shot into his house, killed two of his dogs, took a gun away from him, and beat him severely. In consequence of this violence he left that parish and settled in Ouachita. Here is the story of a man once a slave, freed, I believe, before the war, or at least in the process of the war, if I remember his testimony, who gradually accumulated a considerable property. He was driven from once place in Louisiana some years ago, in 1868. In the terrible tragedies of those years he removed to this parish of Ouachita, and there was not a word of reproach against him. He was kindly thought of by the people. Industrious, frugal, and honest, he accumulated a considerable property. This is the simple story of his treatment. He was made to vote the democratic ticket and his vote was recorded for Samuel J. Tilden, but he was made so to vote by means and agencies which are disgraceful to civilization and which I cannot characterize too strongly. Indeed, the story of this poor man, badgered about, driven around, against whom no man could utter a word of reproach, although it had none of the tragic horror of some of these other tales, seemed to me one of the most impressive and pathetic that I heard of in this whole testimony.

I forbear to give the horrible details of the killing of Primus Johnson, Merrimon Rhodes, James Jackson, Ferdinand Binnum, Henry Pinkston, and others, for the details of these atrocities would lead me from the main purpose of the inquiry, as to intimidation in the parish, into disputed details about particular cases. That these men were killed on account of their politics, there can be no doubt whatever. Pinkston owes his death to his cheers and approval of a republican speech at a republican meeting but a few days before his death. He had previously voted a democratic ticket, but had refused to attend the democratic meeting and was a republican. The pretense that he was killed by negroes in consequence of a quarrel with Brooks is entirely rebutted by the circumstances of the case and by the testimony of Cora Williams and others.

No wonder that many men, among them Senators on this floor, repel the idea that this atrocity was committed by white men; but we cannot shield ourselves behind our pride of race. If in any community North or South you allow the worst boys and men to organize into rifle clubs licensed to ride at night disguized in organized, armed bands, free to enter the cabins of either negroes, Indians, or Chinamen, and whip and scourge and terrorize at pleasure without fear of punishment or danger to life or limb, there will be enough to do it, especially if you back them by a party organization like the democratic party. It was done more fearfully in New York City in 1863. It is not the people of the locality that commit the wrong. Theobalds and Saunders can be found anywhere; and when they are instructed to raid to intimidate voters some among them will ravish and kill. Their self-defense will compel all to shield such atrocious criminals, for in the eye of the law all are guilty of rape and murder. The fault lies in those who organized or advised such instruments of intimidation. General Patton and the democratic State committee in Louisiana knew full well in July, 1876, when they issued the confidential circular to the parishes of that State to organize clubs to ride on horseback "for amusement and interesting ceremonies" what would follow such advice. Truly, they said, "Proceedings of this character would impress the negroes with a sense of your united strength." They knew from the acts of the Ku Klux and the White Camelia what organized clubs riding on horseback for amusement meant. They knew that impressing the negroes meant terror, whipping, burglary, violence, murder, and rape. In a few suggestive words they converted the ordinary peaceful meetings and parades of freemen discussing and exercising their rights as freemen into armed and organized rifle clubs of marauders, night-hawks of murder and rape who have committed the offenses of which I in the brief compass of a speech can only give you examples. General Patton and the men who concurred with him are severally guilty of these offenses; and the democratic party and Mr. Tilden himself, if he or it by these crimes secures the vote of Louisiana, are guilty also.

I must return to the actual details in this parish.

W. H. Burwell, an active republican, was shot and captured by one of these bull-dozing companies while on a trip distributing republican tickets and compelled to burn them. Eaton Logwood, a pronounced

republican and intelligent man, was shot at his own gate by two masked men, one of whom he recognized as belonging to the bull-dozing companies. Jesse Briggs, an active republican, had to hide up his chimney, and when found had pistols presented to his head and was reminded of the danger of continuing his political operations. Scores of men avoided sleeping in their houses at night to escape the persecutions and violent electioneering practices of these armed bull-dozers.

Upon the general questions I prefer to cite the testimony of Captain Clayton Hale, stationed at Monroe, in command of his company and the post, and who remained there from the 24th of September until after the election. His testimony is quite voluminous and I give brief extracts from it. Numerous cases reported by him are more directly proven by the testimony of other witnesses. He says:

Answer to interrogatory 8. The condition of affairs in Ouachita Parish at the dates referred to in my answer to the seventh interrogatory was very much unsettled. A strong feeling of political bitterness and intolerance was apparent among a large class of white persons, residents of it. Complaints were made to me daily by negroes of being driven from their homes, of being threatened, whipped, and treated with other acts of violence; of their houses invaded at night by masked and armed white men; of visits by committees from democratic clubs, and of notifications from such committees to join democratic clubs within stated periods, under penalty of death. So intense was the manifestation of intolerance and so determined was the threatening attitude of this lawless class of white men that the colored population of the parish seemed to have been reduced to the most abject condition of terror and helplessness. Mounted and armed organizations of white men were formed in different parts of the parish, and the acts and influence of these armed and mounted organizations seemed to have effectually repressed whatever law-abiding sentiment may have heretofore existed in the parish. In consideration of this state of affairs, I deemed it a measure of prudence to send detachments of troops to every republican meeting appointed to be held in remote parts of the parish to preserve the peace and prevent rioting and bloodshed.

Answer to interrogatory 9. I did send a detachment of eight men and a non-commissioned officer, under command of Lieutenant McCawley, to accompany Mr. Hardy, the district attorney *pro tempore* of Ouachita Parish, to the residence of Eaton Logwood on the night of October 10, ultimo. A murder had been committed on the morning of that day at that place. Primus Johnson (colored) had been shot and killed, and Eaton Logwood, another colored man, had been shot and dangerously wounded. Information of the murder of Johnson, the wounding of Logwood, and that the roads leading to the place were picketed and patrolled by armed men was communicated to me, and, on District-Attorney Hardy announcing his intention to proceed to the place to obtain the declarations of Logwood and other evidence concerning the murder of Johnson and the wounding of Logwood, I considered it my duty to send a detachment with him in order that he might do so in safety.

Answer to interrogatory 11. A number of colored persons residing near the place where Primus Johnson was killed and Eaton Logwood wounded did call upon me after the shooting and sought my advice and protection. They seemed almost paralyzed with terror, and announced, many of them, their intention to leave the country and find some place where they could live with some assurance of not being shot down at any moment.

Answer to interrogatory 12. Very many applications were made to me by colored people for protection. I cannot enumerate the number of such applications, nor by whom nor when made. They were made almost daily. They asked protection by reason of threats of violence having been made, by reason of many murders of colored people having been committed, and by reason of the general feeling of insecurity which seemed to prevail in every part of the parish.

Answer to interrogatory 13. No applications have been made to me for protection against white or colored republicans. It has been stated by white citizens of Ouachita Parish in my presence, in a general way, that republicans have been guilty of many acts of intimidation and violence, but no specific acts were mentioned and no complaints have been made to me by persons suffering by acts of violence at the hands of republicans, white or colored. In my opinion, the republicans of Ouchita Parish, white and colored, were too much impressed with the uncertainty of their tenure of life to bring themselves prominently to the notice of democratic rifle companies, which would result from the commission of acts of violence on their part. To the best of my knowledge and belief, none have been committed by them.

Answer to interrogatory 14. I do know of my own knowledge that an attempt was made by persons styling themselves democrats to disturb a republican meeting at Saint James Chapel, in the parish of Ouachita, on the 3d day of November, the particulars of which will be more fully stated in my answers to interrogatories Nos. 18 and 19. Many other acts by persons known as democrats of actual rioting and of attempts to create disturbances have been reported to me at different times.

Answer to interrogatory 15. I do know that an armed body of mounted men, marching as cavalry, was on the roads on the island on the 3d day of November. I was informed at the time that it was a democratic rifle company, commanded by one William T. Theobald, (pronounced Tibbles.) This armed body of men was in attendance at a republican meeting at Saint James Chapel on that date, as will be more fully shown in answers to be given to interrogatories Nos. 18 and 19. Lieutenant Henry M. McCawley, Thirteenth United States Infantry, reported officially to me that the same body of armed men was on the road and in attendance at a republican meeting held at Grody's school-house on the island on the 1st of November. It has also been reported to me by many colored people residing on the island that the same body of mounted and armed men has frequently, during the month of October and in the first days of November, been on different roads in the various portions of the island, and has attacked the houses of many colored people at different times and places, committing acts of murder, violence, and intimidation upon their occupants. * * *

Answer to interrogatory 16. I do most certainly believe that the organization of these armed bodies of men, the patrolling by them of the roads in the different sections of the parish of Ouachita, did have a very decided influence in preventing a fair and free election in that parish on the 7th day of November, 1876.

Answer to interrogatory 18. I was present at a republican meeting held at Saint James Chapel on the island, in Ouachita Parish, on the 3d day of November, 1876; that attempt was made on that occasion by armed white man belonging to Theobald's democratic rifle company to disturb and break up that meeting and intimidate the persons attending it. That the attitude of these men was menacing toward the speakers and toward the colored people in attendance. That I was present, accompanied by an orderly, and had a detachment of United States troops with their arms in stack about one hundred yards distant from the place of meeting. That I was standing on the outskirts of the crowd in attendance, composed largely of colored people, men and women. That Mr. Astwood, the first speaker, had just commenced his address when these persons made a rush for the wagon from which he was speaking, several of them attempting to draw their revolvers while doing so, and all or most of them denouncing his statements as "damned lies," and calling him a "damned liar." That the colored people, men and women, were much alarmed at these hostile demonstrations, the most of them turning to flee from the ground.

Answer to interrogatory 19. I did interfere to preserve order on the occasion referred to in my answer to interrogatory 18. When I saw the crowd of colored people swaying back from the stand of the speaker and heard the angry denunciation by these men of the speaker's statements as "damned lies" and he as a "damned liar," I rushed through the flying crowd of negroes. Springing in front of these men, I pushed them back with my sword from the wagon in which the speaker was standing, admonishing them to discontinue their unlawful attempt at violence; that their language and acts were calculated to produce a breach of the peace, and that I would, if necessary, use the detachment of troops to preserve order and prevent acts of violence on their part. The aspect of affairs was for a few moments very threatening, but quiet was fully restored—these men assuring me that they would refrain from further acts of violence, and that they would not again attempt to interrupt the speaker. After this the meeting was reasonably quiet, these men contenting themselves with denouncing in undertones the statements of the speakers as "damned lies," and conversing with each other. That after the close of the meeting these men mounted their horses, marching in military formation as cavalry from the ground. That from frequent observations of columns of cavalry, I should judge that there were of these men present on that occasion about sixty in number, all of them armed with revolvers belted around their waists, underneath their coats.

The story of Benjamin James, who was examined orally, shows the manner in which the ballot-box was seized, he shot, and the election entirely defeated:

That he is constable of the said ward, and was appointed deputy marshal for poll No. 2 of ward 2, and constable for the supervisor of the election, and as such had charge of the ballot-box; that he lives twelve miles from the poll; that he started for the poll at Filhiol's store with the ballot-box at one o'clock the morning of the 7th of November, 1876, on horseback; that he got about two miles of the way when he was halted at the end of the line by two men, white men. It was a bright moonlight night. They asked me which way I was going. I told them that I was going to Logtown with the box. They said they had better see Mr. Head. They called him, and he answered them. Two others came up who had guns. One was named Cook; I did not know the others. They were all white men. Head then came up and asked me which way I was going. I told him I was going to Logtown with the ballot-box. He told me I could not go yet; wait a while." He asked me what I had in the ballot-box. I said papers; that he knew what was generally put in. He said "Well, you must go down to headquarters to have the ballot-box examined." Head ordered the two young men who came up last to get on their horses and go with affiant to headquarters. They got on their horses with their guns. One had a shot-gun and the other a breech-loader, or something after that pattern. They said "Let us go and all ride off." Some one, after myself and my guard rode off a little ways, said "Hold on." A man named Rills came up and run his hand round my body and said, "Ben., it ain't worth while to take your pistol down there with you," and took it off, and said he would give it back to me when I came back. I said "Yes, I would like to have it, for I am special constable for that day." He said "Go ahead; all right." We went on about fifty yards and were again halted by the challenge, "Halt! who comes there?" One of the guards replied "Scott." Then one of the guards went forward and whispered. The challenger said, "Right, pass through." The one who challenged was armed with a gun. We went on and were halted about same distance by two armed men, in same way as before. One of my guards rode ahead and whispered, when the reply was "Right; pass through." We went on about the same distance when we were again halted, and the reply "Scott" made to challenge. One of my guards advanced as before and whispered, and was told "All right; pass on." I was then brought in front of headquarters, being Joe Mitchell's house. We then stopped and got off at the fire. Some men were standing round and some were lying round. All that were up were armed, and arms lying round for those lying down. It was a regular camp. There were to my mind at least seventy-five or eighty armed men there. They whispered some for a while, when one of the company rode off toward Joe Mitchell's house, and left Bucks Mines standing there with me. Joe Mitchell and Bob Endon rode up near where I was. They talked some time. I heard Mitchell say, "All right." Endon then rode off. Mitchell then said, "Boys, get your horses," and came riding up toward me and said to me, "March on down the road." I asked him "Shall I ride or walk?" He said I could do either, and if I did not ride, I could let my pony be there. I whirled off and got about ten steps, and broke off and run. I knew from the conversation among them that they were going to kill me. I ran into the woods, and as soon as I ran they began shooting at me. Job Mitchell rode right after me on his horse, shooting at me with his pistol. I got within forty or fifty feet of Colonel Pargoud's farm when Mitchell fired his gun at me and shot me in the right arm and broke it. Mitchell was then between the company and me, riding after me, hallooing back to the others not to shoot him, (Mitchell.) This stopped the others firing at me, and it was a shot from Mitchell's gun that hit me. I fell in a ditch and crawled up the bank, then, finding that I could not get on any farther, I gave up. Mitchell rode up and said, "Damn him, I'll fix him." Mitchell got off his horse and came to me on the ditch, run round me and ran the pistol under my head, that is, between my head and the ground, for I was lying helpless, stretched out. When he got it along my temple he fired, aiming to blow my brains out. I then became speechless; after some time I came to. The ball had passed alongside of my temple, and went upward along my head, cutting the temple. He had missed shooting me through the temple from the position of his pistol being alongside of my temple instead of the muzzle being square against it. The shot was aimed to kill me. When I came to, I looked around and found they were all gone. I got up as soon as I could, supporting my wounded arm with my other hand, and walked on toward home. From loss of blood, I fainted. I was bleeding from the temple and the arm, and found that I was also shot through the leg, and one shot taking effect in the back of my head, partially breaking the skull bone, also a shot grazing my side. I fainted after I had traveled about three-quarters of a mile. This was about two o'clock in the morning of the 7th November, 1876.

As a prelude to these atrocities the sheriff of the parish, G. B. Hamlet, who was elected sheriff in 1874 by a majority of over 900, testifies that he had difficulty in discharging the duties of his office after the organization of the rifle companies. Having occasion to apply for a posse to execute process, he was referred to Dr. Aby, who acted as commander-in-chief of the rifle companies:

I went to Dr. Aby, and asked for a posse. He spoke to me in a very harsh manner, saying, "The damned radicals have got in this trouble, and we do not want any of your protection." I informed Dr. Aby that I did not propose to protect any one, knowing from their appearance that they did not need any protection. I made this demand on Dr. Aby for a posse of men to preserve the peace. I was then refused the assistance. I then went to my office and prepared written summons for those men whom I saw armed and mounted to act as my posse. I attempted to serve said summons on the parties to whom they were directed. The parties refused to accept them, saying they were members of the rifle company and not deputy sheriffs. One of these men was T. S. Richmond. Captain William R. Hardy, district attorney *pro tempore* for the parish of Ouachita, informed me that Mr. A. L. Slack, a prominent lawyer of Ouachita, informed me officially that he was lieutenant of the rifle company, and they would not obey any summons that Hamlet might serve on them. This is the first time that the whites ever refused to act for me as a posse.

Various efforts made by him to enforce process were resisted, and shortly after the murder of Dr. Dinkgrave armed men came into Monroe.

The arrival of the armed men in Monroe did create quite an excitement among the colored republicans. They stacked arms back of the grave-yard where Dr. B. H. Dinkgrave was buried. They came in town in large numbers, walking through the streets. I was informed by some colored people that these men were making threats against the republicans. This is some of their actions that alarmed the republicans.

I was advised to leave the parish by prominent democrats, and was asked not to mention their names. I was also advised by republicans, and I believe that if I had remained in the parish on the night of the 2d of September, and previous to the arrival of the United States troops, I would have been killed. Other republicans left the parish for the same reason.

He closes his testimony with the details of a number of murders, outrages, and wrongs upon republican voters, and says that from his intimate knowledge the election was carried by these acts of intimidation, when, by a free and fair election, the republican majority would have been as large as usual. From the organization of the rifle clubs until the day of election there was no color of authority in this parish of Ouachita except what was exercised by them. No process could be served, no courts could be held, and no crimes could be punished. Of the numberless crimes committed by the members of rifle clubs no one has been, and no one could be, called to account; and the people of Ouachita, both white and black, were as completely overawed during this time as the people of Paris were during the worst days of the French revolution. Strange as it may seem, although these crimes are admitted, no one has been punished for them. The courts were broken up, the juries dispersed, and this overriding force was the only law in these parishes. The worst elements of society were the leading actors in these tragedies, and sober citizens and planters, though ever so much opposed, dared not utter a word of expostulation. To call an election free and peaceable under these circumstances is a libel upon the name, and to count the votes then cast for any man for any office would be a shameless burlesque upon republican institutions.

Perhaps the best illustration of the extent to which this intimidation was carried was the manner in which these rifle companies, these regulators, treated William H. Hunt, who was the candidate of the republican party for the office of attorney-general of the State. He is a prominent citizen of New Orleans, a native of the South, with all his interests and associations there. He canvassed this part of the State and attended two meetings in this parish. I give extracts from his testimony:

To the twelfth interrogatory. I left New Orleans on the evening of the 19th October in company with J. Duvigneaud, esq., for Monroe, Ouachita. The Hon. John Ray met us at the train and accompanied us, and the next morning I was introduced to Mr. O. H. Brewster, who was also on the train. We were all to address a republican meeting at Monroe on the 21st October. On reaching Monroe at dusk, Mr. Duvigneaud and myself went to a hotel. We were called upon in the evening by some eight or ten white republicans, and also by quite a number of colored republicans. They all appeared alarmed for their personal safety, and represented that their lives were in danger on account of their political principles. They stated that Dr. Dinkgrave had been assassinated in the day-time in the public streets of the village several weeks before; that he was an active republican, and had commenced to organize the party when he was killed; that soon after his death bodies of armed men from the neighborhood had ridden through the parish and through the streets of the towns, spreading consternation and alarm among colored and white republicans; that a short time afterward a school-house for colored children had been set on fire and burned, and that this outrage had been followed by the assassination by disguised persons in open day of Primus Johnson and Longwood, two colored men who had entered the school-house near their home, when they were shot; that this act and other deeds of violence and bloodshed had increased the consternation and terror already prevailing among the colored people; that two of Dinkgrave's brothers had fled from Monroe to save their lives; that Hamlet, the sheriff, and several other prominent republicans, had also been obliged to flee; that threatening letters had been written to other republicans who were absent, warning them not to return to the parish; that night-riders were in the habit of visiting the houses of colored republicans, and of committing unprovoked acts of violence upon colored men and their families. It was represented to us that a reign of terror prevailed among the republicans, and especially among the colored people in the town and throughout the entire parish. My intercourse with a large number of persons, both white and colored, satisfied me that the condition of things was as they represented it. On the morning after our arrival grave doubts were expressed by the republicans of the town as to whether the colored people would venture to attend our meeting, although it had been generally announced throughout the parish for some time previous. In spite of these apprehensions, however, a considerable number of people came into the town from the neighborhood. Some difficulty was found in obtaining the proper person to act as president, several persons declining to do so because they feared the consequences of such prominence. At length, Mr. Hardy, the district attorney, consented to preside. The first speaker introduced to the meeting was Judge Leonard, the republican candidate for Congress. He had uttered only a few sentences when he was interrupted by a red-headed ruffian, who stood immediately in front of and below him, as he was speaking from a platform, and calling him a liar. The interruption was not noticed, and Judge Leonard proceeded to deliver another sentence, when the same individual exclaimed, "It's a damned lie," or, "You are a damned liar." Judge L. paused and appealed to the audience, to know whether he was to be insulted in so gross and unprovoked a manner. At this moment, Colonel Frank Stubbs, a democratic gentleman, of Monroe, who was present and whom I knew, came up to the man and took him away.

A short time before the meeting, in riding through the streets of Monroe, I had encountered this same person coming into town on horseback, in company with another, and followed at a little distance by two other horsemen, whom I supposed to be of the same party. Their ruffianly appearance and insolent demeanor in passing me had attracted my observation. I recognized these persons, as I thought, at the time of this interruption, standing with others scattered about the audience, and some one remarked to me upon the stand that there was a company of them there, evidently for the purpose of disturbing the meeting, and so breaking it up. As I saw them from the stand, I believed that such was their purpose. Before I rose to speak Mr. Duvigneaud came to where I was seated, and expressed the same belief, and urged me to be cautious in what I might say, as there were men there armed, apparently ready for violence. Judge Leonard was repeatedly interrupted afterward during his speech, not, however, in the same rude manner. When I rose and had commenced to speak, I saw indications, as I thought, of a purpose to interrupt and intimidate me. I endeavored by a few words to check such demonstrations, however, and was permitted to proceed with my speech, without further molestation. Afterward, Mr. Brewster was interrupted and insulted during the course of his speech by the same person who had insulted Judge Leonard. This person was prevented from pursuing his insults by Lieutenant McCawley, of the United States Army, who induced him to desist and to go away to a distance. The meeting thus terminated without any act of violence. The next morning, I learned that two colored men had been shot on their way home from the meeting an hour or so after it adjourned. One was reported killed, the other wounded. Their offense was that they had attended the meeting. The same man who had insulted Judge Leonard and Mr. Brewster was arrested subsequently, charged with the crime.

The next day we left Monroe to go to Bastrop, in Morehouse Parish, about thirty miles distant. Our road lay through a large tract of country in Ouachita, known as the "island." It is a strongly republican section. Our party consisted of myself, Mr. Duvigneaud, and Mr. Brewster, in one wagon, and Judge Leonard, Mr. Gorham, and a Mr. Taylor, in another. The day was Sunday; the weather was fine, and we drove slowly, stopping very frequently to speak to the colored people, who were generally at home or conversing together on the road-side. Mr. Brewster seemed to know or to be known to nearly every colored man, woman, and child whom we met, and to be received by them with kindness and consideration wherever we went. We must have stopped forty or fifty times on the island; and in every instance we gave notice that a republican meeting was to be held at the Grady school-house on Tuesday morning, at ten o'clock. Wherever we stopped colored people expressed their delight at seeing us; said that they were republicans, and were anxious to attend republican meetings and to be allowed to vote. They seemed depressed by terror; complained of violence committed upon themselves or their neighbors, and that their lives even had been threatened if they attended republican meetings. Some of them wore democratic badges, and said that they had been forced to join democratic clubs for the sake of peace. Many were re-assured by our presence, and upon being promised protection said they would attend the meeting; others, however, still said they were afraid to do so. Numbers declared that they had been afraid to sleep at home for weeks, and others complained of acts of violence inflicted upon them because they had refused to join the clubs and renounce their republicanism.

There were but two or three instances where the men declared themselves to be really democrats.

At Bastrop we addressed a republican meeting the next day, Monday. The meeting was several times interrupted by democrats. In the course of my speech I was insulted publicly by a young man in the audience. After a few words of reproof I was permitted to conclude my speech without further interruption. Mr. Gorham, who followed me, was also interrupted, and weapons were drawn and men jumped upon the speakers' platform, when, by the timely interference of Lieutenant Mahon, United States Army, violence was checked and order restored. This last scene I did not witness myself. I was absent for a short time, and returned just after it occurred. On Tuesday we left Bastrop to return to the Grady school-house, where our meeting had been announced to take place on the island. We were soon stopped on our way by colored people, who came out of their houses and informed us that they were afraid to attend our meeting, because the night before armed men had ridden to their houses and threatened them if they did so; soon we met others returning from the school-house, saying that they had been there and had been driven away by armed white men whom they found there. Many of these Mr. Brewster induced to return or promise to return, assuring them that their fears were groundless, and that we would protect them against harm. It soon became apparent from the alarm prevailing among others whom we continued to meet that such efforts to rally them would be unavailing, and I advised Mr. Brewster to desist from making them. As we turned into a lane leading to the school-house we met four mounted men riding abreast toward us. They were respectably clad, and two of them were recognized by Mr. Brewster as residents in the neighborhood. As they filed past us Mr. Brewster saluted them. They returned his salutation with angry looks only, and rode on in the direction from which we had just come. On our arrival at the school-house we found several white men, six or eight, seated on a log, evidently awaiting us. They received us with lowering looks, and when we alighted from our wagon we became the evident subject of their insulting conversation.

Quite a number of colored persons were in the neighborhood of the school-house, most of them a short distance away. Mr. Brewster spoke with many of them, and so did Mr. Gorham, who had occupied a seat in our wagon from Bastrop. They stated that they had been told before we arrived that there would be no meeting there, but that, on seeing us in the distance, they had awaited our coming. Other colored people continued coming toward the school-house. In the mean time there had been a number of accessions to the party of white men. Many of these appeared to be under great excitement. Mr. Brewster knew two of them, and one of these told him that they were living, as it were, over a keg of gunpowder, which might at any moment explode, and injure God knows who. Another man, named Collins, was introduced to me by Mr. Brewster. He seemed in an extraordinary condition of mental and physical agitation. While I was conversing with him another of the party rudely joined in the conversation. He had a revolver in his belt, which he showed openly. I remarked to Collins that I was sorry to hear reports of disquietude in parts of the State. The man behind me inquired "What parts?" I replied, "In various parts, and I had heard, in Ouachita." His answer was, "It is a damned lie." I told him I had not been conversing with him, but with Mr. Collins, and that I did not desire to be interrupted, and in such language; that I was unused to such interruptions. He answered me rudely, and about this time a colored woman, who had learned my name, called to me and beckoned me aside, with a countenance full of excitement and concern. She begged me to come away from that man, saying that he might take my life, and that he had already threatened to take hers after we left; and she begged me when we should leave to carry her with us, because she considered she would be in danger if left behind. I endeavored to quiet her fears, and while doing so Lieutenant McCawley, of the United States Army, followed by an orderly, was seen approaching us. By the advice of Mr. Duvigneaud and myself, the colored people had been told by Mr. Brewster and Mr. Gorham that they had better go home, because it had been determined to have no meeting. So many people had been sent home before our arrival at the school-house, so many had been prevented from coming by threats, that neighbors and those who were there were so fearful of the consequences to themselves after we left, that we deemed it unsafe to endeavor to hold our meeting with the few remaining about there. Mr. Brewster stating this determination to Collins, the latter expressed himself as greatly relieved at the intelligence. Lieutenant McCawley stated that he was there to preserve the peace, and if we desired to have our meeting, that we should be protected; but we adhered to our determination not to hold it. It appears that some one had applied to the commandant of the troops at Monroe for a guard to be sent to the school-house at 12 o'clock. Not knowing this we had appointed our meeting for 10 o'clock. The guard arrived at ten minutes before noon, and was thus too late to prevent the failure of our meeting. We returned to Ouachita that night, and left the next morning.

This testimony of Mr. Hunt, corroborated as it is by several witnesses and illustrated by proof of the actual crimes and violence committed in that parish, shows that there can be no pretense of a free and fair election. Even the efforts of moderate men to prevent an undue display of violence were controlled by the reckless and desper-

ate ruffians who were enlisted in this work. A community where nearly three to one were blacks; where more than two to one were republicans, was thus overawed and intimidated so that the result of the vote was changed from a republican majority of 700 to a democratic majority of 800. The influence of this intimidation extended in widening circles through the adjoining parishes and affected thousands of votes outside. The story of the murder of Dr. Dinkgrave, Primus Johnson, and others, was carried by rumor and with exaggeration to every cabin in that region, and hundreds who were not in danger fled to the swamps or surrendered their convictions and voted the democratic ticket. It is difficult to define the extent of country to which intimidation would go under such circumstances; for these negroes knew they were unarmed, that any attempt to gather arms would only invite assassination. They were accustomed to obey the authority of the whites, who had intelligence, discipline, and means, while they had nothing but numbers and brute force. It is probable that the lesson taught to the negroes of Ouachita in the recent election will be so ground into them that hereafter such wholesale crime cannot be committed with impunity. The law of self-defense taught to them by the inquiry that they know has been made into these events, will induce such a discipline and organization that it would be very unsafe to repeat these crimes at the same place. It is shown that parishes bull-dozed two years ago this year were allowed to have a free, fair, and peaceable election; and it is probable that these five parishes I have selected as examples will hereafter be free from such intimidation. If they submit a second time to it they do not deserve to be free.

I could extend this inquiry into all the parishes where protests were made and where intimidation was alleged. In some of them it extended only to a single polling place or precinct; in others it affected the regularity of the election. It varied in degree and nature in each parish. I have already given sufficient to show that the intimidation in Louisiana of which the evidence was before the returning board, upon which alone they could act, was of so overwhelming and criminal a character that honest men sworn to act upon this testimony could not do otherwise than as the members of this board have done. As to the particular polls that were excluded or admitted, as to the details which entered into their final decision, I have no means of knowing; but before God and man, with this testimony before me, with the knowledge acquired of the history of Louisiana in my place here in the Senate and from my visit to New Orleans, I would consider any man forsworn who could say that in these parishes there was a free and honest election. In this country, where our institutions rest entirely upon popular suffrage; where the freedom of election is the corner-stone of every part of our system, a crime which strikes at these foundations ought to be resisted by every man of every party. It cannot be denied that of late years an election fraud is not regarded in the same light that it was years ago, and that many men thoughtlessly ridicule and smile at all complaints against election frauds. This is no doubt caused by the success of such frauds in Louisiana, notably in the case of New York in 1868, and especially throughout the Southern States, where this intimidation now has been organized and has been successful for a number of years. But the very moment this system extends to other parts of this country, and poisons the elections in the Northern and Western States, then our Government is at an end. No system like ours can survive the general feeling that the elections are controlled by fraud or force. More or less influence of a doubtful or improper character will enter into every election. This is unavoidable from the imperfections of human nature; but when this fraud assumes the form of wholesale ballot-box stuffing, or palpable, open frauds, sufficiently great to control an election; or worse, when it assumes the form of murder, whipping, violence, and outrage, then the sooner the system is abandoned the better. Law-abiding men and property-holders would rather submit to a regular, orderly, despotic government than to a government where the worst and lowest elements of human society control all the powers of the government. It is not a question that we can evade or avoid; but we ought, without distinction of party, with a firm hand and determined purpose, resist every organized effort of fraud, or violence, or intimidation at elections. It is for this reason that I would regard the election of Mr. Tilden by the direct operation of these terrible crimes as the greatest misfortune that could befall our country. Ten thousand times better for all of us, and for future ages, would it be had he been elected by an undisputed majority and an overwhelming vote. I do not fear him or his four years' influence as President; but I do fear the means by which he has been elected, if elected at all. His election by such agencies will be the beginning of the end; for if he may be elected by such means, then any man hereafter, by the use of great sums of money, or by appeals to the prejudices of race, or by the jealousies of religious sects, or by the natural division between nationalities, may hope by similar crimes to destroy our country by a war of factions.

Our only safety is in a fair election and in honest and prompt acquiescence in the result of such an election. There is nowhere among the American people a general disposition to resist the election of either Governor Tilden or Governor Hayes, if fairly elected. I know, for the people of Ohio, among whom Governor Hayes was born, that they would resent any advantage obtained by him through means that are dishonest, dishonorable, through violence, fraud, or corruption. We only appeal to the democratic party to act upon the same general principle. If you need the vote of Louisiana to elect Samuel J. Tilden, he is not elected President of the United States. His term of office would be dishonored from the beginning. The blood of hundreds of men would rest upon his skirt and enter into the title of his office. His chief accessories before the fact would be such men as Captain Theobald and Dr. Saunders, organized by such men as Patton and the democratic committee of Louisiana. His instruments will have been rifle-clubs and raiders, fighting and frightening poor negroes out of their votes. No republican need fear that by standing by the legal judgment of the board of returning officers he wrongs any one, for no honest man can read the facts and evidence without feeling convinced that, if there had been a free and fair election in Louisiana in the fifty-seven parishes of that State, as there was in forty parishes, Governor Hayes would have had a majority of 10,000 votes. We know also that in Mississippi and Alabama and to some extent in Georgia there were influences entering into the election which prevented tens of thousands of republican votes being cast; that from the moral convictions drawn from an examination of election returns the State of Mississippi is now recorded for Governor Tilden, when it should be recorded for Governor Hayes. Governor Hayes has received 4,044,895 votes, and a majority in twenty-two States. He has carried all the States formerly classified as free States, except four. If the apportionment of representation had been based upon the white vote alone, he would have been elected by a large majority of the electoral colleges. That it is also based upon the black vote was only upon the condition and for the reason that the blacks should have the free right to the elective franchise. The Southern States now enjoy political power derived from this condition; they have not complied with it. They are enjoying political power by the fifteenth amendment wrongly and without complying with the conditions upon which it was given. They have the benefit of all this in the electoral colleges. The popular majority claimed for them is made up almost exclusively by the unnatural majorities given in States where they have denied to a greater or less degree to legal voters the elective franchise. They have no just right, according to the forms of law or its spirit, to the votes of Louisiana, South Carolina, and Florida. These votes have been legally cast, by electors duly returned and duly chosen, for Governor Hayes. You cannot reverse this without giving effect to lawless violence and intimidation. You cannot deprive the republican candidates of these electoral votes without defeating the honest choice of the majority of the people of these States.

And now, sir, in conclusion I may be justified in saying a few words partly personal and partly as to the general situation in Louisiana.

Upon our return from New Orleans the gentlemen who were with me and I were charged by partisan papers with all manner of offenses. It was said that our expenses were paid by the Secretary of the Treasury. This is utterly false, but scarcely needs correction in this presence. It was said that I went there for Governor Hayes, to take all advantage in his favor. This is not true. I went at the request of the President, at great personal inconvenience, and from a sense of duty, as if to witness a deed or will or to obey the informal summons of a court. Governor Hayes did not know I was going until I was on the way. It was said we were there as partisans. It is true we are republicans, and I am proud of it; but I did not do an act or utter a word or suggest an idea in aid of the result arrived at by the returning board or of a partisan character. I always favored the utmost publicity consistent with the performance of the duty by the day fixed by law; and considered that my duty was best performed by quiet observance of the proceedings and a candid reading of the testimony and the papers as they became accessible to me. My intercourse with the democratic committee was courteous and friendly.

As to the people of Louisiana, they have my heart-felt sympathy. Gladly would I do anything or vote for any measure that would relieve them from their painful and dangerous condition, with their heavy debt, high taxes, and warring factions. Especially do I sympathize with the owners of the land and the actual tillers of the soil. Every motive of interest and safety demands an alliance between these two elements of society and a war offensive and defensive against all who live by politics alone or who support or encourage fraud or violence. I assure you from what I heard there is a yearning among the poor blacks in Louisiana for order and protection; but it is the yearning almost of despair which when reached will in retaliation overthrow all law. And so with the planters; they have but little care whether it is Tilden or Hayes. They are becoming prosperous. Their crops are good and bear a good price. In the parishes not disturbed by rifle clubs they are getting on good terms with their hands, with mutual profit to both. With the instinct of locality, the love of home, the freedman in a great number of cases clings to the plantation where he was a slave or returns to it after a temporary absence. He either buys or rents a piece of land and cultivates it in severalty. Mutual interests will soon blend these people into harmonious action. And so in New Orleans there was manifestly growing prosperity. The sight of their long wharves and immense piles of cotton bags, and of sugar, molasses, corn, &c., was one of the most cheering possible. The success of the jetty system will enormously increase their commerce. They need nothing but order, protection, and close economy in their local governments to encourage capital, to increase their production, and to place them among the wealthiest communities of the world. From their people I received nothing but courtesy and kind-

ness. They are good-humored and polite, open-hearted and hospitable. To exorcise the demon of discord that has made portions of this State a hell on earth is the noblest object of statesmanship, but the primal principle of this policy must be to make every man secure in his house, his home, his property, and his vote. The success of these crimes would be a fatal step to such a policy. The negro can remember if he cannot read. You must win him by kindness under some other name than that of the democratic party. It so happens that the two candidates for governor were men of mark, ability, and honor. General Nicholls, the democratic candidate, was spoken of as a just, moderate, sensible man, respected by all parties. And so with Mr. Packard. He is an able, strong man, reared in Maine, but a resident of Louisiana for twelve years; married there; and now, with his growing family, he and all he has or hopes for is planted in that soil as firmly as if to the manner born. It would be a calamity and a shame if a contest between such men for such an office should disturb the now growing hopes and industry of the people of Louisiana.

I have expressed my conviction that according to the form and spirit of the law of Louisiana, rightly applied by the returning officers, Governor Hayes and the republican State ticket rightfully received the vote of that State; but while this fact is honestly disputed I will hear and consider any argument, and will so vote as to secure an orderly, peaceful, and legal count of the vote, not only of Louisiana, but of all the disputed States. If in the process of the count preliminary questions arise, I will hope that a fair and summary process will be devised to determine them; and if wrong is done, that a legal process may be devised to try that question before the judicial tribunals. At this time, when our institutions are on trial before mankind, I am proud to recognize the general forbearance of our people and their readiness to acquiesce in any legal result. Let that feeling animate both Houses of Congress and this singularly close presidential election, so often pointed out as the greatest danger to our form of government, will be settled in the quiet acquiescence of the American people.

Mr. BOGY. Mr. President——

Mr. BOUTWELL. Does the Senator from Missouri desire to proceed to-night?

Mr. BOGY. No, sir; not at length.

Mr. BOUTWELL. I will move then that the Senate proceed to the consideration of executive business.

Mr. BOGY. I would prefer to say a few words first.

Mr. BOUTWELL. Very well; I withdraw the motion.

Mr. BOGY. Mr. President, I have heard, and indeed I may well say that we have all heard, to-day the most painful and humiliating speech ever made on the floor of the Senate of the United States. I have been amazed for the last two hours at the most singular speech made by the Senator from Ohio, [Mr. SHERMAN.] A speech of that kind to me is utterly incomprehensible; and if the facts related by him are true, if the social condition of Louisiana is what it has been represented to-day to be, why, sir, we have retrograded back to the darkest ages of barbarism. If the people of Louisiana are the murderers, the villains, and the assassins, and the law-breakers represented here to-day, it is not only a disgrace to that people but to the nation, and a blot upon our history.

But are these things true? That the testimony spoken of by the Senator from Ohio has been taken in New Orleans is beyond all doubt; but that testimony in not one single instance has been taken under the law or sanctioned by the law of Louisiana, and the gentleman, although often asked to reply to that fact, has never yet given a reply to the charge made that there was no law for taking this testimony and which consists of affidavits taken in the city of New Orleans, long after the election, and made by unknown vagabonds and perjured villains, such as you will find in all communities and particularly in large cities, and perhaps more as you approach the hot clime of the tropics than in northern countries—men gathered into the large city of New Orleans from all the different parishes of the State of Louisiana to sign affidavits written for them by men as guilty as the party hired to do the swearing. Nine times out of ten they are not signed by the men who swore to them. You have only their mark.

I do not rise to-day, Mr. President, to reply to the speech of the Senator from Ohio. I rise merely to give expression to the feelings which move me at this time after having heard this most singular and remarkable speech. The testimony taken by the democratic side of this question has just been laid upon our tables. I have not yet had time to examine it. It is my intention to do so, and it is my intention and desire to ask permission of the Senate at a future time to express my views upon this subject. I think it can be shown from what I have read in the testimony taken on the side represented by the Senator from Ohio that in all the parishes of which he has spoken this story of crime and murder can be explained, and that the majority of cases is the result of the peculiar condition of society brought on that State by the fact that a large number of colored people, but recently emancipated from bondage, are not yet in a condition to enjoy in a proper and regulated way the rights which have been secured to them by the amendment to the Constitution.

The condition of Louisiana is bad, and we understand why it is so; the main and great reason is that men have been sent there, like Kellogg and Packard and others, who have no interest there, and had none when they went there, and have none now, and whose only object is to retain office, that they may thereby amass fortunes by a system of recognized robbery. While this State is in the possession of these men, who have appointed all the registrars of registration, all the commissioners of election, all the supervisors of election, and the entire frame-work of government is in their hands, without any limit whatsoever, they should be held responsible to the world for the bad condition of things existing in Louisiana to-day.

The assassinations of Pinkston, of Dinkgrave, and of Gair were not committed for political purposes, but it is well known were committed for other purposes, and by blacks themselves in their quarrels among themselves; and yet we heard to-day from the Senator from Ohio that these assassinations and murders were perpetrated for political purposes. This I deny, and he cannot sustain the correctness of his assertion. Mr. President, it is due to the people of Louisiana and to the people of the United States that these things shall be further and faithfully investigated. I am somewhat acquainted with the people of Louisiana, and I say here, what I know to be true, that they are as law-abiding, as peaceable, as quiet, as virtuous, and as good as any other people in any other State of the Union. The white people of Louisiana are the peers in point of morality and intelligence of the white people of any other State, and yet if what we heard to-day related by the Senator from Ohio be true they are the most abandoned of mankind and are a disgrace to the age and to the nation.

I am perfectly satisfied, and if I were not, no party feeling could induce me to say it, that the democratic party in Louisiana did not commit these outrages. The very circular alluded to by the Senator from Ohio, which has been perverted by him and others, is a document that no party or people should be ashamed of. It is proper. It does not contain any word but what is perfectly proper and could be issued in any State of the Union. Yet efforts have been made to make it appear that that circular was the foundation of the bull-dozing which has taken place in that State. It is a part of the document on our table. I have read it with care, and I stand by every word of it and would put my name to it at any time.

These affidavits were made in the city of New Orleans without authority of law, nine times out of ten by colored people—not that I wish to say on this occasion that the colored people are more given to perjury than the white people; nine times out of ten these affidavits are of colored men brought away from their parishes to the city of New Orleans. There in the custom-house they made their mark to these affidavits, not one of whom could read a word of what had been written for them. And are we to receive that kind of testimony to throw a blot upon the fair fame of the people of the State of Louisiana? Are we to receive that kind of testimony so as to prevent Mr. Tilden from getting the vote of that State? If it be true that the democratic party obtained a majority in Louisiana by the means related by the Senator from Ohio, he ought not to be inaugurated as President; but if that be not true, and by fraud and perjury of all kinds he is robbed of the votes fairly given to him and not given to Hayes, could he, to quote the language of the Senator, afford to accept the position? Yet the effort made there, the effort made here, the effort we have heard to-day, is to wrench from the free voters of the people of Louisiana the free vote which they gave for Tilden, and by this system of fraud, unheard of in the history of the world, transfer it to Hayes. Can Governor Hayes assume the possession of the office of President of the United States by the vote of Louisiana secured to him in this way? Can it be possible that he would consent to this? I have never seen him, and do not know him, but I have heard that he was a gentleman of character and of probity, and I cannot believe that he would be willing to place himself before the world in so disgraceful a position. To obtain power by daring deeds is somewhat respectable, but by fraud it is contemptible.

Mr. President, I now give notice that at a future day, not far ahead, I shall feel it to be my duty, as well as I may be able, to reply to the speech made by the Senator from Ohio. I will examine this testimony with care and all the labor in my power to bestow, and at a proper time, not far ahead, I will ask the permission of the Senate to hear me for a few moments.

Mr. BOUTWELL. Before the Senator from Missouri takes his seat I should like to understand better than I am able to from the remarks he has submitted, whether he denies the fact of the crimes as set forth by the Senator from Ohio, or whether, admitting the fact, he explains the commission of those crimes upon other than political grounds?

Mr. BOGY. I shall be able to give to the Senator from Massachusetts a much more intelligent answer when I have carefully examined the testimony; but in the mean time I will say this: Although it may be true that many of these crimes have been perpetrated in Louisiana, in a majority of cases they were perpetrated among and by the colored men themselves. In very few instances, if any, were they brought about by political motives or objects. These men called "regulators" in the State of Louisiana were not political organizations; they were organizations made for self-protection. It can be shown, and will be shown here, that this man Theobald, of whom you have heard to-day, is a gentleman of high standing, and as unwilling to commit murder as the Senator from Massachusetts; and, although it is true that murders have been perpetrated in Louisiana, I say in a majority of cases they arose from the enmities existing between colored men themselves, and owing to the peculiar conditions surrounding them, and not instigated by political motives.

Mr. BOUTWELL. Mr. President, I have only to say that, aggravated as the condition of things is in a criminal aspect in Louisiana and other States, it is some relief, looking to the civilization of those sections, to be told that these crimes proceed from political causes. If they exist there as the normal condition of society, then indeed we have very little to hope from the future; and it is no mitigation of the circumstances connected with these criminal acts to be assured that they do not proceed from political causes. I have no doubt whatever that for the main part they proceed from political causes, and instead of being surprised at the enormity of the array of criminal facts as set forth by the honorable Senator from Ohio, I was in some degree relieved, because my experience in the neighboring State of Mississippi, as set forth in the report made to the Senate at the last session, contains a much more fearful array of crimes attributable to political causes than have been set forth by the honorable Senator from Ohio this morning; and there is hope either that there has been reformation in that section of the country, or that the State of Louisiana is less afflicted with criminal tendencies than the neighboring State of Mississippi.

Mr. BOGY. I will say this with regard to Mississippi, that I have not read the report entirely; I have looked over it more than once; but I believe with regard to Mississippi as I believe with regard to Louisiana that nine-tenths of the testimony taken by the gentleman who went there as a member of the committee (not that I connect him with any fraud or anything of that kind) is greatly exaggerated, and resting generally, only on a bare color of truth. The worst men in the community and in the different counties, and in the different localities, were brought in as witnesses and were instigated to tell the most horrid stories by the villains who surrounded and controlled them. Nineteen times in twenty they are founded in falsehood, and in every case they are exaggerated.

Mr. BOUTWELL. Well, now, Mr. President, the honorable Senator from Missouri speaks from what he calls a repeated examination of this testimony from the State of Mississippi, and I venture to submit to the Senate in qualification of his remark (for I do not wish to hold him to the statement or to the impression which he would have the Senate receive, that he has examined and comprehends the character of this testimony) that if he will read the testimony of Captain William A. Montgomery, of Hinds County, in the State of Mississippi, he will see that he is entirely in error as to the character of the witnesses, the nature of the testimony, and the inferences which we are bound to draw from it. Captain William A. Montgomery is a democrat; he was a captain in the rebel army during the war; he is a planter. He admitted before this committee on cross-examination, he having been brought before the committee upon the suggestion of the honorable Senator from Delaware, [Mr. BAYARD,] that he was commander of five companies of riflemen organized in different precincts in the county of Hinds and that those men were under his command without authority of law; that they were equipped with the best possible arms which modern science had been able to produce, and he said when questioned whether a like organization extended through the whole State, "I don't know about that; I think we are better organized in Hinds and Warren Counties;" indeed, to use his own language, said he, "in some places they are not organized at all; they did not try to carry the election."

What is to be inferred from his admission except that these organizations were for political purposes? And the record in detail of crime is too horrid to be believed of civilized people. If the Indians upon the western frontier, uncivilized as they are, had perpetrated upon the settlers of the borders such crimes as were perpetrated by these armed bands in the State of Mississippi, the whole country would have rallied for the suppression of such warfare and the punishment of those engaged in it; and it will be one of the marvels of history, when it shall carry down to future ages the record of these crimes, that the people of the North, who sacrificed hundreds of thousands of lives and thousands of millions of treasure for the suppression of the rebellion and the emancipation of the slaves, have looked quietly on, in the middle of this nineteenth century, and at the close of the first century of our national existence, upon these crimes. And I have to say of Mississippi that none except democrats were proved to have been engaged in the commission of these crimes, and no party except the democratic party received any advantage from their perpetration.

Mr. BOGY. Mr. President, it will be one of the marvels of history, to use an expression of the Senator from Massachusetts, that in after ages, when the page of history we are now making is read, for the reader to understand and realize fully the effort now being made by a party in this country and for party purposes to blacken and disgrace one-half of the people of the Confederacy. Sir, these crimes said to have been committed in Mississippi by democrats were not committed by them. The democrats in Mississippi, as elsewhere, are the peers of the republicans all over the United States for morality, for honesty, and for integrity, and they yield nothing to the gentleman from Massachusetts in that respect.

Mr. BOUTWELL. I ask nothing on that score.

Mr. BOGY. They have been compelled to resort to these measures as means of protection against the horrid and infamous governments that were sent there by the gentleman and his friends to rule over them and also to rob them. The government of Governor Ames was a disgrace to the age, not only to the State of Mississippi but a disgrace to the nation, and those men in the spirit of right and in the majesty of their manhood as Americans combined together to vindicate their rights and to protect their property and their lives against this infamous government which had been forced upon them, and today, men may say what they please on the floor of the Senate, there is peace and prosperity, nay more there is freedom in the State of Mississippi, and the black man in that State who is worthy of being respected—and there are many such—is as well respected there and I think more so than he would be in Massachusetts. [Applause in the galleries.]

The PRESIDENT *pro tempore*. Order! Order!

Mr. BOGY. With all the pretenses northern men make of their love for the colored race, the colored man will find his true friends among the southern men and the former slaveholders. With all the appearances of friendship that the Senator from Massachusetts and men like him may profess for the colored men, at heart they hold them at arm's length. They are mighty good voters, and that is all!

Sir, the people of the Southern States are in a peculiar condition and they have been compelled to resort to these peculiar measures for self-protection, as I would without any hesitation, if I lived there, as the men of San Francisco did a few years ago when that great and flourishing city was in the power of a set of ruffians and gamblers and assassins; the American race on the coast of the Pacific rose in their might and drove the assassins from the place. Was that lawful? No; it was not law according to the code; but it was the great American common law that was brought over from England when the old English colonists came to this country, the right of self-protection, the individual right of self-defense. Sir, those people have been driven to it; and it will not do to try to make it appear that they are all murderers and assassins and villains. It will not do, and the people of the United States will not be made to believe it.

Sir, I have felt it to be my duty to examine into these things as well as I could, and I say now that I believe two-thirds of this testimony can be explained, and I furthermore believe the testimony from the State of Mississippi had as little foundation as the testimony taken in the State of Louisiana.

Mr. BOUTWELL. Mr. President, if I understand the Senator from Missouri, he now admits the facts and justifies it.

Mr. SHERMAN. My friend's speech now is not necessary. Having admitted the facts, having admitted that one portion of the community, a minority, may rise in arms and put down the rule of the majority in this Government of ours, he need not look to the testimony to manufacture or make up a defense. He has admitted a principle which destroys this Government, which if asserted in every State of this Union would destroy the Government in a day. If you admit that a minority of the people, on a pretense of political oppression or the like, can rise in arms in lawless forays, in rifle companies, in organizations such as described by the Senator from Massachusetts, and put down the government of the majority, that is the end of this Government, as a matter of course.

Suppose that were to be applied in New York. Suppose the property-holders of New York should make up their minds that they would not be longer plundered and robbed as they were by Tweed by the hundreds of millions; suppose they should say that they would put down the men without property who had nothing and who did nothing except oppress the property-holders; suppose they should rise in their might, with arms in their hands, organize with money plenty to put down these lawless villains, how soon would the streets of New York be drenched in blood?

Sir, if the Senator from Missouri changes his ground and defends these atrocities, that is one thing. Then we shall know where he stands. If he denies them, we can produce proof piled mountain upon mountain that will make the American people believe that these things exist. If you defend them on the ground that the minority may rise and by organized violence put down the rule of the majority, it is quite different, a different class of arguments come in entirely. It will not do, Mr. President.

By your democratic platform, without quoting the Constitution of the United States, without quoting the law, you promised that these people should have the free right of the franchise. It is written in the very foreground of your claim to popular support this last fall; and, sir, thousands of people in the Northern States, believing that the democratic party would secure to the southern negroes the right to vote, voted the democratic ticket. Tell them now in the language of my honorable friend that these atrocities can be defended, and that these people can be deprived of their right to rule, if they are in the majority, by the shot-gun and the bowie-knife, by the halter and the rifle, and a different state of affairs will reign. You cannot carry a single northern precinct on such a doctrine. They are accustomed to obey the laws, and when the majority pronounces its potent voice, to submit. It will not do.

If you deny the facts that I have given you, we shall listen by the day and try to find additional testimony to satisfy you that what we say is true. If you admit the facts and justify a minority to rise and by such means of violence and wrong to deprive legal voters of the right to vote in violation of the Constitution of the United States, and also of the democratic platforms, then you place yourselves on a different ground, and we may as well understand it.

I did not suppose any one would justify these things; and the issue that I supposed I had with my friend from Missouri was a question of fact, as to whether such enormities existed, whether they were committed by the democratic party to aid in their election. That is a question of fact. I therefore gave you the testimony not of negroes purely, not of these ignorant men. I selected a few negroes only where I thought from the nature of their testimony, corroborated as it was by other witnesses, it would be believed by anybody. I read you the evidence of officers of the Army, white men, men of character, property-holders. If you deny that proof, I have no doubt in a few days we shall furnish you more. When you change the issue and defend these atrocities, it is a much more serious question. Then I tell you there will be no divided North, if a united South should arise, as I know they will not. My honorable friend does not represent them in that particular. I believe that the southern people, especially in the Middle States, from North Carolina clear across, desire peace, quiet, and order, and they have the same interest in it that we have. Therefore they ought to be the last to sit by in silence and hear a partial justification of the atrocities which have been stated.

Mr. BOGY. Mr. President, I am not willing that the Senator from Ohio should place me in a false position. I do not stand here to vindicate crimes said to have been perpetrated in Louisiana. I stand here to deny that those crimes took place. I stand here to say that this testimony was fabricated by villains and bad men in the city of New Orleans and at the custom-house, and that the persons making the affidavits, nineteen times in twenty, could not read one word of what was written and had to make their mark for their names; and that, in many cases, these persons have since denied that they ever made these affidavits. I am not here, either, to say that the minority should govern the majority by force or intimidation or by combination. No such thing. But I do say that, as in Louisiana and Mississippi, where the whites have the majority, with a few black men acting with them, (good men as many of them are,) they have the right to rebel against the government forced upon them by the Federal Government and sustained by the bayonet, as it has been in Louisiana and as it was in Mississippi. The government existing to-day in Louisiana never met the approbation of the Senate of the United States. It was born in fraud and maintained in power by the bayonets of the Army of the United States. The same government, inaugurated years ago in violation of law, is the government yet in force there. I therefore say that when a community of white men of the old Anglo-Saxon race are thus situated they have the right, and it is their duty, to defend themselves in the best way they can; not that the minority should govern the majority, but, when a minority governs a majority and is kept in power by a foreign government and at the point of the bayonet, resistance is a right and a duty.

Our forefathers were rebels against the Crown of England. Why? Because they were oppressed and the army of England was sent to tyrannize over them. They rose in their might and their majesty and threw off the shackles. The same law that applied to them applies to the people of the South to-day. The people of that section are held up here as murderers, as men who are lost to all shame, as if society there had gone back to its primitive disorganized condition. It is no such thing.

The disorders in the Southern States are forced upon them by a foreign government, and it is their right to rise and repel the government if they can. I do not justify the murders in Louisiana; but I do say that they have not been committed by democrats and for political purposes. That I deny. The testimony read by the Senator from Ohio of the officers of the Army of which he speaks does not sustain him at all. He read the testimony of Colonel Brooks. Let every Senator read it for himself, and I assure him he will not find one word of testimony in this affidavit made by Colonel Brooks based on his own knowledge. It is all hearsay; he knows nothing of himself; but the men who did know, General Augur, who knew all about it, Colonel Bascom, who knew also all about it, and the leading military men in Louisiana, were not brought forward to testify, because their testimony would not have suited the purposes of the men who were sent on the republican side; and hence they were not examined. Yes, Major Bascom was examined; but did the Senator from Ohio allude to his testimony? It is in the book lying before me, as I am informed, and I will read it at the proper time. It contradicts, as I am informed, every statement made in regard to the bad condition of East and West Feliciana.

Mr. President, I do not desire to discuss this subject any further. I rose to prevent the Senator from Ohio from placing me in a false position. The illustration which he made of New York was a very unfortunate one for him. The people of New York combined together by mutual agreement outside of the law to protect themselves. They went to work and did combine outside of the law to bring those men to punishment who were robbing them. It was a combination of individuals, of good and true men, who were determined to drive from power the bad men who had taken possession of the treasury of that city and were robbing it of its last dollar. If the Government of the United States had attempted to sustain Tweed as they are sustaining these bad men of the South, the people of New York would have been justified before the whole world in taking the law in their hands and vindicating their rights.

In conclusion, I do not wish to be misunderstood; I am not here to vindicate the violation of law in any way. I am a law-abiding man. I want law enforced and respected always. I am not in favor of regulators; I am not in favor of secret combinations and organizations to vindicate society; but I can well imagine that a condition of things may exist where it would become the duty of good men to combine so as to vindicate their rights and maintain society. That is all I desire to say at this time.

Mr. WHYTE. I desire, for the purpose of preparing the minds of those who want to read the testimony without any partiality or prejudice, to have read the testimony of Jesse Harrison, on page 440, to show the manner in which these affidavits were manufactured, and the influences brought to bear upon the witnesses, and also to exhibit that if it be true what a public calamity it would be if Mr. Packard should leave Louisiana.

The Chief Clerk read as follows:

THE STATE OF LOUISIANA, *parish of Orleans:*

Personally came and appeared before me, the undersigned authority, Jesse Harrison, a citizen of East Feliciana and State aforesaid, who deposes and says that on the 21st day of November, 1876, in the city of New Orleans, said State, Henry Smith and E. L. Weber, the latter a senator of Louisiana, came to him, deponent, to prevail upon deponent to go before a republican committee and testify that intimidation of the colored voter was practiced by the democratic party in East Feliciana before and on the day of the election held there on the 7th November, 1876; that the republican party was on its last legs and needed such testimony as that of deponent; that the evidence of deponent was worth more to the republican party than that of one hundred white men. Further deposes and says that at the earnest solicitation of said Weber and Smith, that the deponent went to the custom-house on the 12th day of November, 1876, and was introduced to S. B. Packard, and that T. H. Hutton remarked to him, deponent, that it was not becoming for Packard to offer him, deponent, anything in the shape of a bribe to procure evidence to prove intimidation had been resorted to in East Feliciana by the democratic party to influence the colored vote, but that any arrangement made by him, Hutton, would be binding on Packard. Further deposes and says that the said Hutton did then and there tell him, deponent, that if he, deponent, would testify before the republican committee that intimidation had been resorted to by the democratic party to influence the colored vote, that he, the said Hutton, would secure me, deponent, a position worth from seventy-five to one hundred dollars per month; or that if he, deponent, would refrain from giving any testimony detrimental to the republican party before a committee of democrats, that the same position would be secured him; that said conversation occurred in the custom-house, in an office on the left of the main entrance on Canal street, on the second floor; that said conversation was in full hearing of S. B. Packard, republican candidate for governor, in so far as the offer to give deponent the position if he would testify as requested, but toward the latter part of the conversation said Packard turned away and walked off. Further deposes and says that he, deponent, joined the democratic party of his own free will and accord, and that he, deponent, canvassed the parish as a public speaker in the interest of the democratic party, and that in no instance did he, deponent, witness any intimidation of the colored voters by the democrats, but to the contrary saw efforts made by the republicans to prevent the colored voters from voting the democratic ticket. Further deposes and says that he, deponent, and his democratic white friends assured them, the colored voters, that they could vote as they pleased. Further deposes and says that a more peaceable election never took place in the parish of East Feliciana as the one held on the 7th of November, 1876.

his
JESSE + HARRISON.
mark.

Witnesses:
J. M. DOYLE.
O. P. LANGWORTHY.

Sworn to and subscribed before me on the 24th day of November, 1876.

WM. H. COLMERS,
Justice of Peace, Parish Orleans, Louisiana.

Mr. SHERMAN. I suppose my friend from Maryland will believe that affidavit to the discredit of a public officer, containing a charge of bribery, but he would not believe the testimony of other negroes in regard to matters of public notoriety.

Mr. WHYTE. I have not said that I disbelieve anybody. I find that this man is a prominent Methodist preacher in the church North, and I take it for granted that he is a truth-telling man.

The PRESIDENT *pro tempore*. The question is on agreeing to the resolution.

Mr. BOUTWELL. I understand that the Senator from Missouri desires to speak further to this resolution.

Mr. BOGY. Yes, sir.

Mr. BOUTWELL. I ask that the resolution be laid aside with the understanding that it be taken up whenever the Senator desires to speak upon it.

The PRESIDENT *pro tempore*. The resolution will be temporarily laid aside, if there be no objection.

REVISION OF THE STATUTES.

Mr. BOUTWELL. I move that the Senate proceed to the consideration of the bill (H. R. No. 3156) to perfect the revision of the statutes of the United States.

The motion was agreed to.

The PRESIDENT *pro tempore*. The bill is before the Senate as in Committee of the Whole.

Mr. BOUTWELL. I will now move that the Senate adjourn, unless it is desired to have an executive session.

Mr. PADDOCK. Let us have a short executive session.

Mr. BOUTWELL. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After ten minutes spent in executive session, the doors were re-opened, and (at four o'clock and fifteen minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

TUESDAY, *January* 9, 1877.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

CORRECTION OF THE JOURNAL.

Mr. HARRIS, of Georgia. I am recorded as not voting upon the motion yesterday made by Mr. HUNTER. I voted "no," and ask that the correction be made.

The correction was ordered to be made; and the Journal, as corrected, was approved.

ORDER OF BUSINESS.

Mr. WILSON, of Iowa. I ask unanimous consent to offer the following resolution:

Resolved, That the call of States be taken up where it was stopped by suspensions of the rules on yesterday, and that the call proceed under the limitations of the morning hour on Monday.

No objection was made.

The SPEAKER. The call rests with the State of Missouri, and after the call shall have been proceeded with to its close the Chair will then recognize gentlemen who may not have been in their seats when their States were called, and who desire to offer bills.

SURVEY OF PUBLIC LANDS.

Mr. WILLARD introduced a bill (H. R. No. 4351) to regulate the final survey of the public lands of the United States; which was read a first and second time, referred to the Committee on Public Lands, and ordered to be printed.

JOHN STEWART.

Mr. A. S. WILLIAMS introduced a bill (H. R. No. 4352) for the relief of John Stewart, late captain of the Fifteenth Regiment Michigan Volunteer Infantry; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

PETER D. RANKE.

Mr. A. S. WILLIAMS also introduced a bill (H. R. No. 4353) for the relief of Peter D. Ranke, late captain Company C, Fourteenth Pennsylvania Volunteers; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

AMENDMENT OF THE RULES.

Mr. WILSON, of Iowa, submitted the following amendment to the rules; which was read, and referred to the Committee on Rules:

Add to Rule 5 the following:

That all reports so made and committed to the Committee of the Whole on the state of the Union or to the Committee of the Whole, or recommitted to a standing or select committee, and all reports that may be at any time by unanimous consent reported for commitment shall not be brought back into the House on a motion to reconsider.

JUDICIAL DISTRICTS IN COLORADO.

Mr. McCRARY introduced a bill (H. R. No. 4354) to divide the State of Colorado into two judicial districts; which was read a first and second time, referred to the Committee on the Judiciary, and ordered to be printed.

LAND TITLES IN CALIFORNIA.

Mr. PIPER introduced a bill (H. R. No. 4355) to continue in force section 7 of the act of July 23, 1866, to quiet land titles in California; which was read a first and second time, referred to the Committee on the Judiciary, and ordered to be printed.

Mr. PAGE introduced a bill (H. R. No. 4356) to permit homestead settlers within railroad limits to enter in certain cases additional lands; which was read a first and second time, referred to the Committee on Public Lands, and ordered to be printed.

KANSAS AND NEOSHO RAILROAD.

Mr. GOODIN introduced a bill (H. R. No. 4357) to secure the rights of settlers upon railroads and to repeal the first section of an act granting lands to the State of Kansas to aid in the construction of the Kansas and Neosho Valley Railroad and its extension to the Red River, approved July 25, 1866; which was read a first and second time, referred to the Committee on Public Lands, and ordered to be printed.

EDUCATION OF THE BLIND.

Mr. GOODIN also introduced a bill (H. R. No. 4358) to promote the education of the blind; which was read a first and second time, referred to the Committee on Education and Labor, and ordered to be printed.

AN ARMY OFFICER'S RECORD.

Mr. GOODIN also introduced a bill (H. R. No. 4359) to amend an Army officer's record; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

JOHN S. FRIEND.

Mr. BROWN, of Kansas, introduced a bill (H. R. No. 4360) for the relief of John S. Friend; which was read a first and second time, referred to the Committee on Indian Affairs, and ordered to be printed.

IMPROVEMENT OF THE LITTLE KANAWHA.

Mr. WILSON, of West Virginia, introduced a bill (H. R. No. 4361) to authorize a further appropriation to continue the improvement of the Little Kanawha River, in West Virginia; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

SALT LAKE CITY CEMETERY.

Mr. CANNON, of Utah, introduced a bill (H. R. No. 4362) to amend an act entitled "An act granting a portion of the United States military reservation at Salt Lake City for cemetery purposes," approved May 16, 1874; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

SAMUEL HENDERSON.

Mr. KIDDER introduced a bill (H. R. No. 4363) for the relief of Samuel Henderson; which was read a first and second time, referred to the Committee on Indian Affairs, and ordered to be printed.

ORDER OF BUSINESS.

The SPEAKER. The call for States and Territories having been concluded, the Chair will now recognize gentlemen to introduce bills and joint resolutions under this call who were not in their seats when their States were called.

FREE IMPORTATION OF BOOKS.

Mr. SEELYE introduced a bill (H. R. No. 4364) for the free importation of books; which was read a first and second time, referred to the Committee of Ways and Means, and ordered to be printed.

EDGAR A. BEACH.

Mr. HENDEE introduced a bill (H. R. No. 4365) for the relief of Edgar A. Beach, of Essex, Vermont; which was read a first and second time, referred to the Committee on War Claims, and ordered to be printed.

GENEVA-AWARD FUND

Mr. FREEMAN introduced a joint resolution (H. R. No. 180) for the appointment of a commissioner for the equitable distribution of the unexpended balances of the Geneva-award fund; which was read a first and second time.

Mr. FREEMAN. I move that the joint resolution be printed and referred to the Committee on Commerce.

Mr. FRYE. This subject for two Congresses has been before the Committee on the Judiciary.

Mr. FREEMAN. I do not object to its reference to that committee.

The joint resolution was accordingly referred to the Committee on the Judiciary, and ordered to be printed.

AMENDMENT OF REVISED STATUTES.

Mr. LAPHAM introduced a bill (H. R. No. 4366) to amend section 4818 of the Revised Statutes of the United States; which was read a first and second time, referred to the Committee on the Judiciary, any ordered to be printed.

ANNA M. KNIGHT.

Mr. STEVENSON introduced a bill (H. R. No. 4367) granting a pension to Anna M. Knight, widow of Joseph Knight, late a private in Company A, Eleventh Illinois Infantry Volunteers; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

IMPROVEMENT OF CONNECTICUT RIVER.

Mr. LANDERS, of Connecticut, introduced a bill (H. R. No. 4368) for continuing the improvement of the navigation of Connecticut River below Hartford, Connecticut; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

WILLIAM GLOVER.

Mr. HENKLE introduced a bill (H. R. No. 4369) granting a pension to William Glover, of Annapolis, Maryland, a soldier of the war of 1812; which was read a first and second time, referred to the Committee on Revolutionary Pensions, and ordered to be printed.

CAPTORS OF RAM ALBEMARLE.

Mr. ROBERTS introduced a bill (H. R. No. 4370) for the relief of the captors of the ram Albermarle; which was read a first and second time, referred to the Committee on Naval Affairs, and ordered to be printed.

FRANKLIN D. PEARSON.

Mr. ROBERTS also introduced a bill (H. R. No. 4371) for the relief of Franklin D. Pearson; which was read a first and second time, referred to the Committee on War Claims, and ordered to be printed.

WILLIAM BARNESCHER.

Mr. HOLMAN introduced a bill (H. R. No. 4372) for the relief of William Barnescher, of Ripley County, Indiana; which was read a first and second time, referred to the Committee on War Claims, and ordered to be printed.

HEIRS OF WILLIAM WARD.

Mr. GOODE introduced a bill (H. R. No. 4373) for the relief of the heirs of William Ward, of Virginia; which was read a first and second time, referred to the Committee of Claims, and ordered to be printed.

MICHIGAN INTERNAL IMPROVEMENTS.

Mr. HUBBELL introduced a bill (H. R. No. 4374) to appropriate money for continuing the improvement of the harbor of Ontonagon, Lake Superior; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

Mr. HUBBELL also introduced a bill (H. R. No. 4375) to appropriate money for continuing the improvement of the Saint Mary's River and Saint Mary's Falls Canal; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

EAGLE HARBOR, LAKE SUPERIOR.

Mr. HUBBELL also introduced a bill (H. R. No. 4376) to appropriate money for continuing the improvement of Eagle Harbor, Lake Superior; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

HARBOR OF CHARLEVOIX, MICHIGAN.

Mr. HUBBELL also introduced a bill (H. R. No. 4377) to appropriate money for continuing the improvement of the harbor of Charlevoix, Michigan; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

HARBOR OF PENTWATER, MICHIGAN.

Mr. HUBBELL also introduced a bill (H. R. No. 4378) to appropriate money for continuing the improvement of the harbor of Pentwater, Michigan; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

HARBOR OF MANISTEE, MICHIGAN.

Mr. HUBBELL also introduced a bill (H. R. No. 4379) to appropriate money for continuing the improvement of the harbor of Manistee, Michigan; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

HARBOR OF LUDINGTON, MICHIGAN.

Mr. HUBBELL also introduced a bill (H. R. No. 4380) to appropriate money for continuing the improvement of the harbor of Ludington, Michigan; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

MARGARET RAGAN.

Mr. DAVY introduced a bill (H. R. No. 4381) for the relief of Margaret Ragan, of Rochester, New York; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

WILLIAM BLACK.

Mr. LANDERS, of Indiana, introduced a bill (H. R. No. 4382) granting a pension to William Black, late a private in Company K, First Indiana Heavy Artillery; which was read a first and second time, referred, with accompanying papers, to the Committee on Invalid Pensions, and ordered to be printed.

JOEL R. CARTER.

Mr. CARR introduced a bill (H. R. No. 4383) granting a pension to Joel R. Carter, late a private in Company D, Eighty-second Regiment Indiana Volunteer Infantry; which was read a first and second time, referred with accompanying papers, to the Committe on Invalid Pensions, and ordered to be printed.

COUNTING ELECTORAL VOTE.

Mr. CARR also introduced a bill (H. R. No. 4384) providing a method for counting the electoral vote for President and Vice-President of the United States and declaring the result; which was read a first and second time, referred to the Committee of the Whole House on the stae of the Union, and ordered to be printed.

COMMERCE AMONG THE STATES.

Mr. WATTERSON introduced a bill (H. R. No. 4385) to regulate commerce among the States; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

ENROLLED BILLS SIGNED.

Mr. HARRIS, of Georgia, from the Committee on Enrolled Bills, reported that the committee had examined and found truly enrolled bills of the following titles; when the Speaker signed the same:

An act (S. No. 526) to amend section 1036 of the Revised Statutes relating to the District of Columbia;

An act (S. No. 678) for the relief of Ephraim P. Abbott;

An act (S. No. 752) authorizing the recorder of the District of Columbia to appoint an assistant recorder with certain powers; and

An act (H. R. No. 4120) making appropriations for the payment of invalid and other pensions of the United States for the year ending June 30, 1878.

ANNUAL REPORT OF THE ATTORNEY-GENERAL.

The SPEAKER, by unanimous consent, laid before the House a letter from the Attorney-General, transmitting his annual report; which was laid on the table, and ordered to be printed.

CLAIMS FOR INDIAN DEPREDATIONS.

The SPEAKER also laid before the House a letter from the Secretary of the Interior, transmitting claims of James Whitehead, William Madden, W. H. Wiggins, and William Redus, for indemnity on account of Indian depredations; which was referred to the Committee on Indian Affairs, and ordered to be printed.

HEAD-MONEY TAX ON IMMIGRANTS.

The SPEAKER also laid before the House a report of the Boston Board of Trade, protesting against the passage of the bill (H. R. No. 3853) to impose a national head-money tax on immigrants; which was referred to the Committee on Commerce, and ordered to be printed.

SETTLERS ON THE NEZ PERCÉ RESERVATION.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of the Interior, in relation to the proposed relief of certain settlers on the Nez Percé reservation; which was referred to the Committee on Indian Affairs.

RENT OF BUILDING USED BY INTERIOR DEPARTMENT.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of the Interior, submitting a deficiency estimate for the rent of building in use by that Department; which was referred to the Committee on Appropriations.

HEIRS OF RICHARD WINDSOR.

Mr. HUNTON, by unanimous consent, introduced a bill (H. R. No. 4386) for the relief of the heirs of Richard Windsor; which was read a first and second time, referred to the Committee on the Judiciary, and ordered to be printed.

WILLIAM DE MOCHER.

Mr. LAPHAM, by unanimous consent, introduced a bill (H. R. No. 4387) granting a pension to William De Mocher and to relieve him from the charge of desertion; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

DISTRIBUTION OF FEDERAL APPOINTMENTS.

Mr. MILLS. I ask unanimous consent to submit the following resolution.

The Clerk read as follows:

Resolved, That the Secretary of the Treasury be directed to inform this House if the appointments of his Department "have been so arranged as to be equally distributed between the several States of the United States, Territories, and the District of Columbia according to population" since the 1st day of January, 1876, as directed by act of Congress approved March 3, 1875.

Mr. KASSON. I must object to that, as I do not agree to the construction of the existing law.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of its clerks, announced the passage, without amendment, of the following bill and joint resolution, namely:

A bill (H. R. No. 4350) to abolish the board of commissioners of the Metropolitan police, and to transfer its duties to the commissioners of the District of Columbia; and

A joint resolution (H. R. No. 169) authorizing the Secretary of War to supply blankets to the Reform School in the District of Columbia.

PRESIDENTIAL ELECTION.

Mr. WHITE. I ask unanimous consent to submit the following resolution:

Whereas fears are entertained by a large number of American citizens lest there shall not be a peaceful settlement of the questions arising from the late election for President of the United States;

And whereas it pleased the founders of the Republic in ordaining and establishing the Constitution of the United States to make provision for the election of a President of the United States of America;

And whereas the Constitution provides for the counting of the electoral votes and the determining of who is elected President of the United States: Therefore,

Resolved, That any attempt, come from whatever source it may, to prejudice or excite the public mind in advance of the decision of the authority known to and provided for in the Constitution of the United States is unwise, unpatriotic, and full of danger to our free institutions, and that we deprecate all efforts to excite public passions as tending to increase the embarrassment and depression of the business interests of the country, and declare it to be the duty of all good citizens to peaceably and faithfully abide by the results reached in accordance with the Constitution of the United States.

Mr. O'BRIEN. I object.

IRWIN B. LINTON.

Mr. CLYMER, by unanimous consent, submitted the following resolution; which was referred to the Committee of Accounts:

Resolved, That the Clerk of the House be, and he is hereby, authorized to pay to Irwin B. Linton, out of the contingent fund, the sum of $90 for services rendered by said Linton as clerk to the Committee on Expenditures in the War Department, from the 29th day of July to the 15th of August, 1876.

REPEAL OF CHECK-STAMP.

Mr. MILLER, by unanimous consent, submitted the following resolution; which was referred to the Committee of Ways and Means:

Resolved, That the Committee of Ways and Means be, and they are hereby, instructed to inquire into the expediency of repealing the two-cent stamp-tax on checks, drafts, and orders for the payment of money, and report by bill or otherwise at as early a day as possible.

JUSTIS M'KINSTRY.

Mr. A. S. WILLIAMS, by unanimous consent, submitted the following resolution; which was read, considered, and agreed to:

Resolved, That the Secretary of War be, and he is hereby, directed to furnish this House with a copy of all the proceedings of the court-martial in the case of Major Justis McKinstry, quartermaster of the United States Army, convened at Saint Louis, Missouri, September 24, 1862.

Mr. A. S. WILLIAMS moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

MEXICAN OUTRAGES.

Mr. SCHLEICHER, by unanimous consent, submitted the following resolution; which was read, considered, and agreed to:

Resolved, That the President be requested to transmit to this House, if in his judgment not incompatible with the good of the public service, copies of such papers in the possession of the State Department and War Department as may refer to the imprisonment and detention by the Mexican authorities at Matamoras of John Jay Smith, an American citizen; and also of the wounding and robbing by Mexican soldiers at New Laredo of Dr. Samuel Huggins, an American citizen.

HENRY A. OLCOTT.

Mr. LANDERS, of Connecticut. I ask unanimous consent to submit the following resolution for adoption at this time:

Resolved, That Henry A. Olcott be paid out of the contingent fund of the House the sum of $3 60 per day for services as messenger in the office of the Clerk of the House from and including the 1st day of January ultimo, and until otherwise ordered by the House.

Mr. CONGER. I want to know what January the gentleman refers to.

Mr. LANDERS, of Connecticut. Last January. Let the resolution be referred to the Committee of Accounts.

The resolution was referred to the Committee of Accounts.

REPORT ON IMMIGRATION.

Mr. WILSON, of Iowa, by unanimous consent, submitted a resolution to reprint the report on immigration by Edward Young, chief of the Bureau of Statistics; which was referred to the Committee on Printing.

WILLIAM ORTON—PRODUCTION OF TELEGRAPHIC DISPATCHES.

The SPEAKER. The Chair lays before the House a communication from the special Louisiana committee.

The Clerk read as follows:

NEW ORLEANS, LOUISIANA, *December* 29, 1876.

DEAR SIR: I have the honor to inclose herewith the proceedings of the special Louisiana election committee in the matter of the failure and refusal of William Orton to appear before said committee in obedience to process served upon him.

Respectfully,

W. MORRISON, *Chairman.*

HON. SAMUEL J. RANDALL,
Speaker United States House of Representatives, Washington City, D. C.

FORTY-FOURTH CONGRESS, SECOND SESSION,
CONGRESS OF THE UNITED STATES.
In the House of Representatives, December 5, 1876.

On motion of Mr. A. S. HEWITT,

Resolved, That three special committees, one of fifteen members to proceed to Louisiana, one of six members to proceed to Florida, and one of nine members to proceed to South Carolina shall be appointed by the Speaker of the House to investigate the recent election therein and the action of the returning canvassing boards in the said States in reference thereto, and to report all the facts essential to an honest return of the votes received by the electors of the said States for President and Vice-President of the United States, and to a fair understanding thereof by the people; and that for the purpose of speedily executing this resolution the said committee shall have power to send for persons and papers, to administer oaths, to take testimony, and at their discretion to detail subcommittees with like authority to send for persons and papers, to administer oaths, and to take testimony, and that the said committees and their subcommittees may employ stenographers, clerks, and messengers, and be attended each by a deputy sergeant-at-arms; and said committees shall have leave to report at any time, by bill or otherwise.

The Speaker appointed Mr. MORRISON of Illinois, Mr. JENKS of Pennsylvania, Mr. MCMAHON of Ohio, Mr. LYNDE of Wisconsin, Mr. BLACKBURN of Kentucky, Mr. MEADE of New York, Mr. HOUSE of Tennessee, Mr. PHELPS of Connecticut, Mr. NEW of Indiana, Mr. ROSS of New Jersey, Mr. TOWNSEND of Pennsylvania, Mr. DANFORD of Ohio, Mr. HURLBUT of Illinois, Mr. CRAPO of Massachusetts, and Mr. JOYCE of Vermont the said committee to proceed to Louisiana.

Attest:

GEO. M. ADAMS, *Clerk.*

IN THE HOUSE OF REPRESENTATIVES,
December 7, 1876.

The Speaker appointed Mr. BEEBE, of New York, in the place of Mr. LYNDE of Wisconsin, on the said committee to proceed to Louisiana.

Attest:

GEO. M. ADAMS, *Clerk.*
By GREEN ADAMS, *Chief Clerk.*

Under said resolution the committee, in conformity with the power therein contained, have sent for persons and papers. The committee caused a *subpœna duces tecum* to be issued and duly served on one William Orton, president of the Western Union Telegraph Company.

Said subpœna is in words and figures following, to wit:

By authority of the House of Representatives of the Congress of the United States of America.

To JOHN G. THOMPSON, Esq.,
Sergeant-at-Arms, or his special messenger:

You are hereby commanded to summon William Orton, president of the Western Union Telegraph Company, to be and appear before the select committee of the House of Representatives of the United States, of which Hon. WILLIAM R. MORRISON is chairman, to investigate the recent election in Louisiana, and to bring with you all telegrams in your possession or under your control received or sent by William E. Chandler, Zach. Chandler, J. Don Cameron, J. M. Edmunds, James Casey, William Pitt Kellogg, S. B. Packard, John F. Casey, J. R. G. Pitkin, Henry C. Dibbell, H. C. Warmoth, George W. Carter, and General Augur, from and at New Orleans, Louisiana, Washington City, D. C., New York City, New York, since the 1st day of September last, at their chamber, in the city of New Orleans, Louisiana, on 26th day of December, 1876, at the hour of twelve o'clock m., then and there to testify touching matters of inquiry committed to said committee; and he is not to depart without leave of said committee. Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 18th day of December, 1876.

[SEAL.] SAM. J. RANDALL, *Speaker.*

Attest:

GEO. M. ADAMS, *Clerk.*

NEW ORLEANS, *Tuesday, December* 26, 1876.

The committee met at eleven a. m., pursuant to call of the chairman. Present the chairman, [Mr. MORRISON,] Messrs. JENKS, BLACKBURN, PHELPS, BEEBE, TOWNSEND, HURLBUT, and JOYCE.

William Orton was three times called by the Sergeant-at-Arms, but did not answer.

The following communications were then read:

NEW YORK, *December* 23.

SIR: Accompanying this I send you a communication made by me this day to the Speaker of the House of Representatives in respect to a paper served upon me and which requires the Sergeant-at-Arms of the House of Representatives to summon me to appear before your committee at New Orleans on the 26th of December. I do not suppose it is thought that I possess any personal knowledge concerning any of the matters to be investigated by that committee. I am but now recovering from a long and serious illness and my health is in such a state that I could not, without great inconvenience and risk, as well as unnecessary expense to the Government, make so long a journey as that to New Orleans. I trust, therefore, that I may be relieved from personal attendance, and that such report as you may think proper to make to the Speaker of the House may not involve me in a contempt for a failure to appear personally. I possess no knowledge in respect to any matter confided to you for investigation or in respect to the papers which you seek which would be of any value to you if I were there.

I am, very respectfully,

WILLIAM ORTON.

Hon. WILLIAM R. MORRISON,
Chairman, New Orleans, Louisiana.

NEW YORK, *December* 23, 1876.

SIR: On the 19th day of December a paper (a copy of which is hereto annexed) was handed to me at Washington, addressed to John G. Thompson, esq., Sergeant-at-Arms, or his special messenger, and signed by you as Speaker, by which paper the said Thompson or his special messenger is commanded to produce at New Orleans before the special committee of the House of Representatives, of which Hon. WILLIAM R. MORRISON is chairman, all telegrams in his possession or under his control received or sent by William E. Chandler, Zach. Chandler, J. Don. Cameron, J. M. Edmunds, James Casey, William Pitt Kellogg, S. B. Packard, John F. Casey, J. R. G. Pitkins, Henry C. Dibbell, H. C. Warmoth, George W. Carter, and General Augur, from and at New Orleans, Louisiana, Washington City, D. C., New York since the 1st day of September last. Said paper also appears to require said Thompson to summon me to appear before said select committee at the same time and place, then and there to testify touching matters of inquiry committed to said committee. Assuming that said paper is erroneously supposed to contain some command addressed to me requiring me to produce before said committee telegrams of a like description in my possession or under my control, I beg leave respectfully to inform you that if any such messages have ever existed—of which I have no knowledge—I have had neither personally or officially any possession of them, that I have never had any control over them except as an agent of the Western Union Telegraph Company, through and by the co-operation of subordinate agents that the Western Union Telegraph Company has, without any knowledge or anticipation on my part, taken from me all power and control over all messages now in the possession of the company. I beg leave, therefore, respectfully to be excused from compliance with the above-mentioned requirement, it never having been at any time since the service of the subpœna, and being not now, in my power to comply with the same.

Very respectfully, &c.

WILLIAM ORTON.

Hon. SAMUEL J. RANDALL,
Speaker of the House of Representatives, Washington, D. C.

CITY AND COUNTY OF NEW YORK:

Personally appeared before me, the 23d day of December, 1876, William Orton to me personally known, who, being duly sworn, deposed that the annexed statement addressed to Hon. SAMUEL J. RANDALL, Speaker of the House of Representatives, is true, and that the same is made as and for his return to the certain paper purporting to be a subpœna referred to therein.

W. ARNOUX,
Notary Public, City and County of New York.

(The paper referred to is the subpœna as given above.)

On motion of Mr. JENKS,

Resolved, That the chairman communicate to the House the failure and refusal of William Orton, president of the Western Union Telegraph Company, to appear and testify and to bring with him all the telegrams in his possession or control, sent or received by the persons named in the subpœna served upon him the said Orton, also as part of said communication the letter of said Orton to the chairman, dated December 15, 1876, and such testimony of E. W. Barnes before the committee as relates to instructions given him, said Barnes, by the said Orton, in relation to the production before the committee of telegrams required to be produced before the committee by said Barnes; the said default, refusal, and instructions to said Barnes, in the opinion of the committee, being in contempt of the process of the House.

Testimony of E. W. Barnes.

E. W. BARNES, manager of the Western Union Telegraph Company, at New Orleans, appeared as a witness before the committee on the 17th day of December, 1876, and, after being duly sworn according to law, was interrogated as follows:

* * * * * * *

By the CHAIRMAN, (Mr. MORRISON:)

Question. What is your occupation?

Answer. Manager of the Western Union Telegraph in this city.

Q. Have you been subpœnaed to appear before this committee?

A. I have. (Witness produced copy of subpœna.)

Q. Have you in your possession any dispatches sent by or received by the persons named in this subpœna?

A. I presume I have some.

* * * * * * *

Q. Have you any of those dispatches with you?

A. No. With me; no, sir.

Q. Have you been instructed by the president of the company not to deliver them?

A. Yes, sir. Not directly by the president, but by our general superintendent.

Q. Are your instructions similar to this?

[Letter read to witness from President Orton, of the Western Union Telegraph Company to the chairman, as follows:]

Letter from President Orton, to Hon. W. R. Morrison.

NEW YORK, *December* 15, 1876.

SIR: Subpœnas have been served upon several employés of this company, directing them to produce before the congressional committee of which you are chairman all messages in possession of the company sent and received by the persons named in the subpœna, during several months of the present year. I have delayed

a reply to these demands in the expectation that similar applications would be made by a committee of the Senate also charged with the investigation of matters connected with the presidential election and canvass in several States, so that the action of the company being the same in respect to the messages of both political parties, could not be attributed to a desire to prejudice or promote the interests of either. No subpœnas have yet been served upon us by order of the Senate committee, and as further delay might appear to be a discourtesy to yourself and your committee, it does not seem proper to further postpone the answer. The subpœnas were served before the investigation which the committee had been directed to make was begun, and before evidence had been presented to the committee either that the persons named in the subpœnas had sent any messages whatever, or that any messages sent by them related to the subject-matter of the investigation. It appears to have been assumed that persons holding high official positions under the Federal and State Governments and others prominent in public affairs were in the habit of sending messages by telegraph, and without attempting to ascertain if any of these messages were material to the investigation, the officers and agents of this company have been commanded to lay aside the business in which they are engaged to become spies and detectives upon and informers against the customers who have reposed in us the gravest confidences concerning both their official and their private affairs. I have never believed that the Congress of the United States with this subject fairly before them would permit committees to violate the secrecy of the telegraph in this matter; and it seems to me that the present is an opportunity which it would be unwise to forego for obtaining a decision directly from the Representatives of the people. If the messages of persons connected with one political party are spread before the public, a like course will be taken in respect to those of the other party; both parties, therefore, have the same interests in publishing to the world the secrets of the telegraph offices or of preventing such publicity. It has therefore been decided to decline, very respectfully, to permit the employés of this company to produce before any committee of either House of Congress messages sent or received by the representatives of either the democratic or the republican party—at least until after Congress shall have approved the subpœnas of the committees and directed that their demands be enforced.

I am, with great respect, &c.,

WILLIAM ORTON, *President.*

Hon. WILLIAM R. MORRISON,
Chairman, &c., New Orleans, Louisiana.

A. I should have acted on these instructions without any others on this letter to you.

Q. Have you any?

A. I have only instructions from Mr. Orton to do nothing in the matter; that Mr. Orton would relieve me from all responsibility.

* * * * * * *

Q. Then you refuse to produce the telegrams?

A. Yes, sir; I must do so according to my instructions.

* * * * * * *

Q. You answer that you were subpœnaed to appear and produce telegrams sent by and received by parties named in this subpœna?

A. Yes, sir.

Q. Do you recollect whether William Pitt Kellogg is named in the subpœna?

A. Yes, sir.

Q. S. B. Packard?

A. Yes, sir.

Q. J. R. G. Pitkin?

A. Yes, sir.

Q. Henry C. Dibble?

A. Yes, sir.

Q. H. C. Warmoth and others?

A. Yes, sir.

By Mr. HURLBUT:

Q. I understand you were served with a subpœna; at what time?

A. At about two o'clock on the 13th.

Q. Did you report the fact of such service to your superiors?

A. I did.

Q. Have you instructions from your superior officers in the telegraph company not to furnish the messages?

A. Yes, sir.

Q. In obedience to these orders you decline?

A. Yes, sir.

Q. Have you any written instructions—any formal instructions?

A. I have no other instructions than what I have mentioned.

Q. Telegraphic instructions?

A. Yes, sir.

Q. Have you a copy of that instruction?

A. No, sir; but that is the purport of it, a dispatch from Mr. Orton saying he would assume the responsibility.

The foregoing is a correct transcript of the proceedings of the committee in the matter of the failure and refusal of William Orton, president of the Western Union Telegraph Company, to appear and testify and to bring with him the telegrams in obedience to the *subpœna duces tecum* served upon him, together with letter of William Orton and such testimony of E. W. Barnes as by resolution and order of the committee I am directed to communicate to the House of Representatives.

WM. R. MORRISON, *Chairman.*

Attest:

R. W. HUNTER,
Clerk Special Committee.

NEW ORLEANS, LOUISIANA, *December* 27, 1876.

Mr. HUNTON. I offer the resolution which I send to the desk, and on it demand the previous question.

The Clerk read as follows:

Resolved, That the Speaker of this House issue a writ under his hand and seal, attested by the Clerk, commanding the Sergeant-at-Arms, either by himself or his special deputy or a messenger, to arrest William Orton and bring him without delay to the bar of the House of Representatives, to answer for a breach of its privilege and a contempt of its authority in failing to appear and testify as a witness before the select committee, of which Hon. WILLIAM R. MORRISON is chairman in obedience to a subpœna commanding him so to do, served upon him the 9th day of December, 1876, and also in refusing to bring before said committee certain papers as by said subpœna he was commanded, and to be dealt with as the law under the facts may require.

Mr. GARFIELD. I should be glad to hear again read the subpœna on which this proceeding is based. I should like also the gentleman from Virginia [Mr. HUNTON] to state precisely what it is that Mr. Orton has refused to produce, so that we may see the scope of the demand made upon him.

Mr. HUNTON. He has refused, as reported by the committee at New Orleans, to obey the orders of the House.

Mr. GARFIELD. I wish the gentleman to tell the House whether any specific telegrams have been pointed out which Mr. Orton is required to bring; or is he required in general to bring all telegrams that may have been addressed to or sent by certain persons?

Mr. HUNTON. If the gentleman from Ohio had attended to the reading of the report from the committee, he would have discovered that the report discloses the fact that Mr. Orton is commanded to bring certain telegrams.

Mr. GARFIELD. Not certain telegrams, as I understand, but telegrams addressed to or sent by certain individuals.

Mr. HUNTON. Certain telegrams embracing all sent to or received by certain persons in New Orleans.

Mr. GARFIELD. I wish to ask the gentleman from Virginia precisely this: whether he has in this demand restricted the application of the power to compel an answer, or production of the documents, as it is restricted everywhere by the courts, to papers the existence of which has been established and the character of which he has sufficiently pointed out, so that the specific papers may be identified? Or in this proceeding has Mr. Orton been commanded to produce generally papers the existence of which has not been proved? Is this in the form of a general drag-net, that he shall bring with him any paper that may turn out to exist? I desire in this connection also to ask the gentleman who reports the resolution——

Mr. HAMILTON, of New Jersey. Will the gentleman from Ohio allow me a word?

Mr. GARFIELD. Not at present. I have asked the gentleman from Virginia whether the subpœna on which this proceeding has been had is in the same, or similar terms, as the subpœna in the case of Mr. Barnes. That subpœna was a subpœna directing our Sergeant-at-Arms by name to produce the telegrams. If this subpœna is the same, I take it, it will be hardly possible that we should proceed and punish Mr. Orton, or arraign him at our bar for not bringing some documents that another person ought to bring. I wish the gentleman who has offered the resolution to give an explanation as to this.

Mr. BRIGHT. I rise to a question of order. I insist that the gentleman from Ohio, rising to ask a parliamentary inquiry——

Mr. GARFIELD. I did not rise to ask a parliamentary inquiry.

Mr. BRIGHT. Shall not be permitted to enter upon an argument and to indulge in assumptions that are not warranted.

Mr. GARFIELD. I did not rise to make a parliamentary inquiry. I addressed my question to the gentleman from Virginia, [Mr. HUNTON.]

Mr. HUNTON. I have no objection to answering the questions of the gentleman from Ohio. In the first place, the main contempt of this witness reported by the committee at New Orleans is his failure to appear. Now, it does not matter whether the telegrams are described in what the gentleman from Ohio calls a "drag-net" or no. The point is that the witness reported by the committee in New Orleans has refused to appear before that committee in obedience to the mandate of this House. That is quite a sufficient basis on which to found the order contained in the resolution, to arrest the party and bring him to the bar of the House.

In regard to the telegrams and the description contained in the subpœna, if the gentleman from Ohio [Mr. GARFIELD] will read the case of General Babcock, tried in Saint Louis, he will find that the identical question he raises here was raised in that case, and that a decision was given in favor of the validity of the subpœna; so that this is not only proper in parliamentary proceedings, but has been decided to be proper in a court of justice. But I do not understand that an investigating committee of this House, or of any parliamentary body, is tied down to the rules of a court of justice in conducting an investigation; their powers, I conceive, are much larger and more extended.

Mr. KASSON. Will the gentleman allow the resolution to be again read? for I think there is a question which I wish to put to him in connection with it.

The Clerk again read the resolution.

Mr. KASSON. Now, it is in reference to the wording of that resolution that I beg the gentleman from Virginia to give me his attention for a moment. I observe that the contempt is alleged, not alone for the non-appearance of this gentleman as a witness, but the non-production of certain papers. The question, therefore, arises upon the affidavit made by the recusant witness, whether the House ought to adjudge him in contempt. In courts everywhere, if it appears according to the statement of the witness under oath, to the satisfaction of the court, that he was called upon to do something which he had not the power to do, the court did not attach him for contempt for that unless they disbelieved his statement. The affidavit of this recusant witness, which appears in these papers, states that he could not go to New Orleans without danger to his health, and the further statement that he had no such papers as were called for in his possession, and no knowledge of their existence.

I submit to the gentleman from Virginia, [Mr. HUNTON,] therefore, that, when the resolution charges him with contempt in the non-production of papers which he denies the possession of or any knowledge of, he is asking the House practically to adjudge him in contempt for something of the existence of which the House has no evidence.

I agree that his non-appearance before the committee as a witness is sufficient to put him in the position of contempt, and the only question is whether we ought to assume by our resolutions that he is in

contempt upon another ground of which we have no other evidence. I am clear that we ought not to adjudge him in contempt for non-production of papers upon the evidence before the House, because he swears expressly that it is beyond his power to produce them.

We may put questions to him when he comes before the committee for the further ascertainment of the facts, but we ought not to say he is in contempt of the House for the non-production of papers when we have no evidence of their existence. I hope, therefore, that the gentleman will limit the charge of contempt to the non-appearance of the witness.

If there is a little doubt about the severity of the illness which he claims prevented him from appearing before the committee, I think he should be brought before the House for his non-appearance; but upon the other point, I should dislike very much to vote for resolutions adjudging him in contempt for the non-production of papers which he asserts he has no control of.

Mr. HUNTON. I do not think there is anything in what has fallen from the gentleman just up to justify a change in the resolution. He admits that the party is in contempt, but he says only on one point, and he makes two excuses for the witness: one is that the witness says to the House and to the committee that he is not in possession of the papers which they want.

Now, if that practice is allowed either in an investigation before this House or in a court of justice, it breaks down both bodies; because if a witness when summoned to produce a paper is allowed himself to write to that committee or to that court that he has not such a paper as they want, then it makes the witness the judge of what papers are material instead of the prosecuting body, the court or the committee.

Mr. KASSON. Allow me right there to say that the committee asked him for certain papers and he denies that he has such papers. Now, in that case, how can we adjudge him in contempt for the non-production of papers not in his possession?

Mr. HUNTON. It was his duty to go before the committee and submit to an examination on that very point, so that the committee might determine that he did not have the papers they wanted, and which he swears are not under his control.

Mr. KASSON. I think the gentleman fails to see my point; it is that we ought not now to judge him in contempt for the non-production of papers of the existence of which we have no evidence.

Mr. HUNTON. Until he appears with the papers or appears and gives a satisfactory excuse for the non-production of the papers, he is in contempt.

Now, sir, upon the question of the health of this witness, I happen to know, Mr. Speaker, that two weeks ago Mr. Orton was in the city of Washington, and while he said he was recovering from a spell of severe illness he was well enough to come from the city of New York here and attend to business here two weeks ago, and he is surely by this time able to appear before the committee at New Orleans. I therefore insist upon the previous question.

Mr. WILSON, of Iowa. Before the previous question is seconded, I should like to hear the subpœna again read.

The Clerk again read the subpœna.

The previous question was seconded and the main question ordered; being upon the adoption of the resolution offered by Mr. HUNTON.

Mr. WILSON, of Iowa. We may as well have the yeas and nays at once upon the resolution.

Mr. GARFIELD. Let us have a division first.

Mr. WILSON, of Iowa. O, no. We may just as well have the yeas and nays first as last.

The yeas and nays were ordered.

The question was taken; and there were—yeas 160, nays 31, not voting 98; as follows:

YEAS—Messrs. Ainsworth, Ashe, Atkins, Bagby, John H. Bagley, jr., John H. Baker, Banks, Banning, Bland, Bliss, Blount, Boone, Bradford, Bright, John Young Brown, Buckner, Horatio C. Burchard, Samuel D. Burchard, Burleigh, Cabell, John H. Caldwell, William P. Caldwell, Campbell, Candler, Cannon, Carr, Cate, Caulfield, Chittenden, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Cochrane, Cook, Cowan, Culberson, Cutler, Davis, De Bolt, Dibrell, Durand, Durham, Eden, Ellis, Felton, Finley, Forney, Fort, Franklin, Frye, Fuller, Ganse, Gibson, Goode, Goodin, Gunter, Robert Hamilton, Hancock, Hardenbergh, Benjamin W. Harris, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Haymond, Hendee, Henderson, Henkle, Hereford, Abram S. Hewitt, Goldsmith W. Hewitt, Hill, Hoar, Holman, Hooker, Hopkins, Humphreys, Hunter, Hunton, Hyman, Kehr, Lamar, Franklin Landers, George M. Landers, Lawrence, Levy, Lord, Luttrell, Lynde, Milliken, Mills, Monroe, Morgan, Mutchler, Neal, O'Brien, Odell, Page, Payne, John F. Philips, Pierce, Piper, Poppleton, Potter, Powell, Rea, Reagan, John Reilly, James B. Reilly, Riddle, John Robbins, Roberts, Sobieski Ross, Savage, Scales, Schleicher, Scelye, Singleton, Slemons, A. Herr Smith, William E. Smith, Southard, Sparks, Springer, Stanton, Stenger, Stevenson, Stone, Swann, Tarbox, Teese, Terry, Thomas, Thornburgh, Throckmorton, Tucker, Turney, Robert B. Vance, Wait, Waldron, Gilbert C. Walker, Alexander S. Wallace, Walling, Warner, Watterson, Erastus Wells, Whitthorne, Wike, Willard, Alpheus S. Williams, James Williams, Jeremiah N. Williams, Willis, Wilshire, Benjamin Wilson, Fernando Wood, Woodworth, and Yeates—160.

NAYS—Messrs. Ballou, Conger, Dobbins, Dunnell, Eames, Evans, Freeman, Garfield, Haralson, Hoge, Hubbell, Lapham, Leavenworth, Le Moyne, Magoon, McCrary, Miller, Oliver, O'Neill, Packer, William A. Phillips, Plaisted, Pratt, Rainey, Rusk, Tufts, John W. Wallace, White, Whiting, James Wilson, and Alan Wood, jr.—31.

NOT VOTING—Messrs. Abbott, Adams, Anderson, George A. Bagley, William H. Baker, Bass, Beebe, Bell, Blackburn, Blair, Bradley, William R. Brown, Cason, Caswell, Chapin, Collins, Cox, Crapo, Crounse, Danford, Darrall, Davy, Denison, Douglas, Egbert, Faulkner, Flye, Foster, Glover, Hale, Andrew H. Hamilton, Hathorn, Hays, Hoskins, House, Hurd, Hurlbut, Jenks, Frank Jones, Thomas L. Jones, Joyce, Kasson, Kelley, Kimball, King, Knott, Lane, Lewis, Lynch, Mackey, Maish, MacDougall, McDill, McFarland, McMahon, Meade, Metcalfe, Money, Morrison, Nash, New, Norton, Phelps, Platt Purman, Rice, William M. Robbins, Robinson, Miles Ross, Sampson, Sayler, Schumaker, Sheakley, Sinnickson, Smalls, Spencer, Strait, Stephens, Stowell, Thompson, Martin I. Townsend, Washington Townsend, Van Vorhes, John L. Vance, Waddell, Charles C. B. Walker, Walsh, Ward, Warren, G. Wiley Wells, Wheeler, Whitehouse, Wigginton, Andrew Williams, Charles G. Williams, William B. Williams, Woodburn, and Young—98.

So the resolution was adopted.

During the call of the roll the following announcements were made:

Mr. ATKINS. My colleague, Mr. YOUNG, is absent in attendance upon Mr. MONEY, who is sick.

Mr. SCALES. My colleague, Mr. WILLIAM M. ROBBINS, is absent on account of illness.

Mr. COCHRANE. My colleague, Mr. MAISH, is absent on important business; if present he would vote "ay."

Mr. HUNTON moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

MESSAGE FROM THE PRESIDENT.

A message in writing from the President of the United States was communicated to the House by Mr. GRANT, his Private Secretary.

RECUSANT WITNESSES—RETURNING BOARD OF LOUISIANA.

The SPEAKER laid before the House certain papers in relation to the investigation in Lonisiana; which were read in part.

Mr. KASSON, [interrupting the reading.] I think if the gentleman from Virginia [Mr. HUNTON] has examined these papers carefully, as I have, he has found that the only difference is that each of these gentlemen gave testimony which was necessarily different in some respects but substantially the same. I therefore would suggest to him that, in order to save the time of the House which would be taken up in reading, he ask that all the papers be printed in the RECORD without further reading.

Mr. HUNTON. I have no objection to that, and will ask consent that the order be made.

There being no objection, it was so ordered.

The papers were as follows:

NEW ORLEANS, LOUISIANA, *December* 30, 1876.

SIR: I have the honor transmit herewith the statements of so much of the proceedings of the committee as relate to the refusal of J. Madison Wells and Thomas C. Anderson, two of the members of the Louisiana board of returning officers, to produce before the committee certain records and papers which by *subpœna duces tecum* they were commanded to produce.

These proceedings I am directed to lay before the House of Representatives for its consideration, such refusal being deemed in contempt of its authority.

Respectfully, yours,

W. R. MORRISON, *Chairman.*

Hon. SAMUEL J. RANDALL,
Speaker of House of Representatives.

FORTY-FOURTH CONGRESS, SECOND SESSION.
CONGRESS OF THE UNITED STATES.
In the House of Representatives, December 5, 1876.

On motion of Mr. A. S. HEWITT,

Resolved, That three special committees, one of fifteen members to proceed to Louisiana, one of six members to proceed to Florida, and one of nine members to proceed to South Carolina, shall be appointed by the Speaker of the House to investigate the recent election therein, and the action of the returning or canvassing boards in the said States in reference thereto, and to report all the facts essential to an honest return of the votes received by the electors of the said States for President and Vice-President of the United States and to a fair understanding thereof by the people; and that for the purpose of speedily executing this resolution the said committees shall have power to send for persons and papers, to administer oaths, to take testimony, and at their discretion to detail subcommittees, with like authority to send for persons and papers, to administer oaths, and to take testimony; and that the said committees and their subcommittees may employ stenographers, clerks, and messengers, and be attended each by a deputy sergeant-at-arms; and said committee shall have leave to report at any time, by bill or otherwise.

The Speaker appointed Mr. MORRISON of Illinois, Mr. JENKS of Pennsylvania, Mr. MCMAHON of Ohio, Mr. LYNDE of Wisconsin, Mr. BLACKBURN of Kentucky, Mr. MEADE of New York, Mr. HOUSE of Tennessee, Mr. PHELPS of Connecticut, Mr. NEW of Indiana, Mr. ROSS of New Jersey, Mr. TOWNSEND of Pennsylvania, Mr. DANFORD of Ohio, Mr. HURLBUT of Illinois, Mr. CRAPO of Massachusetts, Mr. JOYCE of Vermont the said committee to proceed to Louisiana.

Attest:

GEO. M. ADAMS, *Clerk.*

IN THE HOUSE OF REPRESENTATIVES,
December 7, 1876.

The Speaker appointed Mr. BEEBE, of New York, in the place of Mr. LYNDE, of Wisconsin, on the said committee to proceed to Louisiana.

Attest:

GEO. M. ADAMS, *Clerk.*
By GREEN ADAMS, *Chief Clerk.*

Under said resolution the committee, in conformity with the power therein conferred, have sent for persons and papers. The committee caused a *subpœna duces tecum* to be issued and duly served on one J. Madison Wells, a member of the board of returning officers of election for the State of Louisiana. Said subpœna is in the words and figures following, to wit:

By authority of the House of Representatives of the Congress of the United States of America.

To JOHN G. THOMPSON, Esq.,
Sergeant-at-Arms, or his special messenger:

You are hereby commanded to summon J. Madison Wells to be and appear before the Louisiana affairs special committee of the House of Representatives of the United States, of which Hon. WILLIAM R. MORRISON is chairman, and with you to bring all returns of elections, all consolidated statements of supervisors of election, all statements of votes and tally-sheets for each polling-place in the late election for electors of President and Vice-President, together with all affidavits, depositions, protests, and other written proofs in your possession or under your control, touching the said election in the following parishes: East Baton Rouge, West

Baton Rouge, Bossier, Calcasieu, Caldwell, Carroll, Catahoula, Claiborne, Concordia, De Soto, East Feliciana, West Feliciana, Franklin, Grant, Iberville, Jefferson, (right and left bank,) Lafayette, Lafourche, Lincoln, Livingston, Madison, Morehouse, Ouachita, Plaquemines, Red River, Richland, Sabine, Saint Charles, Saint Martin, Tangipahoa, Vermillion, Vernon, Washington, Webster, Winn, in their chamber in the city of New Orleans, at Saint Charles Hotel, on Tuesday, December 12, at the hour of one p. m., then and there to testify touching matters of inquiry committed to said committee; and he is not to depart without leave of said committee.

Herein fail not, and make return of this summons. Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 11th day of December, 1876.

[SEAL] SAM. J. RANDALL, *Speaker.*

Attest:

GEO. M. ADAMS, *Clerk.*

Said J. Madison Wells was called as a witness before the committee on the 12th day of December, 1876, at one o'clock p. m., but did not appear.

One C. S. Abell, secretary of the returning board, presented the following communication:

OFFICE BOARD OF RETURNING OFFICERS,
STATE OF LOUISIANA, SENATE CHAMBER, STATE-HOUSE.
New Orleans, December 12, 1876.

To the honorable chairman and members of the special committee, House of Representatives, United States of America, on Louisiana affairs:

GENTLEMEN: The undersigned returning officers of election for the State of Louisiana, on each of whom *subpœnæ duces tecum* have been served of the same purport as the one annexed, respectfully make the following joint return to these several subpœnas.

A careful examination of these writs discloses that all the papers and documents required to be produced are parts of the records of the office of the returning officers of election for the State of Louisiana, and have reference to the election held in this State on the 7th day of November, 1876, for electors for President and Vice-President of the United States and for other officers, State and national.

These papers, being part of the records of the office of the returning officers of elections for the State of Louisiana, are in possession of the returning officers in their official capacities, a board created by law, and not in their individual capacity. As individuals they have no legal control over them; consequently in their separate individual capacity they have no legal control over them; but answering these writs in their legal capacity as returning officers, they respectfully submit, that the board of returning officers of elections for Louisiana is a body created by the laws of Louisiana, with specific and well-defined duties, *partly ministerial* and *partly quasi judicial*; that their action under the law of their creation is final to the extent provided by the law, and is not subject to review by any State or national tribunal.

The papers and documents called for by the subpœna are parts of the records of the office of the returning officers, and are necessary for the use of the returning officers of elections for Louisiana until they shall close their labor of canvassing and compiling the votes of the election for State and parish officers, held on the 7th November, 1876, which has not yet been completed, and that the returning officers of the election deem it their duty under the law to submit to the General Assembly of the State, upon its assembling on the first Monday of January next, a full and accurate report of their canvass and compilation of the votes, with the reasons for their findings and the evidence upon which such were predicated in order to enable the General Assembly to count the vote for governor and lieutenant-governor in accordance to the requirements of *article* 48 of the constitution of the State; that for this purpose the original archives of the office of the returning officers of elections must be preserved and cannot be allowed to be removed from the office without authority of the General Assembly. We may remark here that the danger of loss of said papers and documents is illustrated by the fact that the congressional commitee sent to Louisiana in 1875 obtained possession of important papers of this office, took them away, and never returned them.

We, in our capacity as returning officers, therefore, respectfully decline producing the original papers called for by the subpœnas for the twofold reason that we deny the authority of the House of Representatives of the United States, or a committee thereof, to inquire into or in any legal manner to review the decision of the returning officers of election of the State of Louisiana, and the public interest of the State requires that these papers and documents should be carefully preserved, and no authority is vested in the returning officers to part with the custody thereof until they shall be delivered to the General Assembly for the purpose above stated.

The undersigned returning officers deem it our duty to enter this our earnest protest against this attempt of a committee of the House of Representatives of the United States to invade the rights of the State by demanding possession of their archives, with a view to review the action of her tribunals without any legal or constitutional right.

It is a fact of public notoriety that during the time the returning officers of elections were canvassing and compiling the votes of the late election for electors for President and Vice-President of the United States committees of both political parties, composed of chosen partisans from other States, were present during the whole time of opening the election returns from the several parishes and taking the evidence on the charges of intimidation and fraud, and were invited by the returning officers to examine the same, and to take copies of any paper or deposition received, of which they liberally availed themselves. This course was recommended in order that the people of the country should have an opportunity of knowing the facts in reference to the election, as a matter of public history.

The returning officers, in order that no fact connected with the late election in this State or the action of the returning officers shall be concealed, but that all the facts shall be placed before the people of the United States as matters of public history, "propose to have copies made and to certify such when made of the entire body of the official papers and evidence, affidavits, depositions, and all else in their possession or control in relation to the recent election, the whole of such papers to be copied and delivered to the committee as soon as the same can be completed."

But as no appropriation has been made by the Legislature, that would enable the returning officers to defray the expenses of making such copies, and as the same are very voluminous and would have to be copied under the supervision of the secretary of the returning officers as a condition precedent, the congressional committee will be required to provide for the necessary expense of taking such copies.

The returning officers of election for Louisiana respectfully submit the foregoing as their answer to the writs of *subpœna duces tecum* both in their individual and legal capacities.

All of which is respectfully submitted.

J. MADISON WELLS.
THO. C. ANDERSON.
G. CASANAVE.
LOUIS M. KENNER.

J. MADISON WELLS appeared as a witness before the committee on the 21st day of December, 1876, and, having been duly sworn, was interrogated as follows:

By the CHAIRMAN, (Mr. MORRISON:)

* * * * * * * *

Question. Have you brought with you this morning the returns and original papers for inspection by the committee which we asked for in our subpœna?

Answer. I have not, sir.

Q. I believe you said to us the other day that you would refuse to produce them?

A. Yes, sir; I said that in my letter. I have since gone on and furnished the necessary evidence that the committee required.

Q. You mean you have furnished some copies not certified?

A. Yes, sir.

Q. You refuse to bring the originals here for our inspection?

A. I have no control over them; they belong to the State.

Q. You are a member of the returning board—the president of the board?

A. I am, sir.

Q. Where are those papers?

A. In the State-house.

Q. With your board?

A. They are there, sir. Yes, sir, portions of them are in the vault and some in the room there. Those that are necessary to be copied are being copied in the room there.

Q. They are yet under your control?

A. They are, sir.

* * * * * * * *

On motion of Mr. JENKS,

Resolved, That the chairman of this committee communicate to the House for its consideration the refusal of J. Madison Wells, Thomas C. Anderson, Gadane Casanave, and Louis M. Kenner, respectively, to produce before the committee for their inspection all returns of elections, all consolidated statements of supervisors of election, all statements of votes and tally-sheets for each polling-place at the late election for electors for President and Vice-President of the United States, together with all affidavits, depositions, protests, and other written proof in their possession or under their control, touching the said election in the following parishes: East Baton Rouge, West Baton Rouge, Bossier, Calcasieu, Caldwell, Carroll, Catahoula, Claiborne, Concordia, De Soto, East Feliciana, West Feliciana, Franklin, Grant, Iberville, Jefferson, (right and left bank,) La Fayette, La Fourche, Lincoln, Livingston, Madison, Morehouse, Ouachita, Plaquemines, Red River, Richland, Sabine, Saint Charles, Saint Martins, Tangipahoa, Vermillion, Vernon, Washington, Webster, Winn; which said several refusals are in contempt of the House.

The foregoing is hereby certified to be a correct statement of the proceedings in the matter of the refusal of J. Madison Wells to produce before the special committee on the Louisiana election the records and papers required by the committee to be produced by him.

W. R. MORRISON, *Chairman.*

NEW ORLEANS, LOUISIANA, *December* 30, 1876.

Attest:

R. W. HUNTER,
Clerk Special Committee.

FORTY-FOURTH CONGRESS, SECOND SESSION,
CONGRESS OF THE UNITED STATES,
In the House of Representatives, December 5, 1876.

On motion of Mr. A. S. HEWITT,

Resolved, That three special committees, one of fifteen members to proceed to Louisiana; one of six members to proceed to Florida; and one of nine members to proceed to South Carolina, shall be appointed by the Speaker of the House to investigate the recent election therein, and the action of the returning or canvassing boards in the said States in reference thereto; and to report all the facts essential to an honest return of the votes received by the electors of the said States for President and Vice-President of the United States, and to a fair understanding thereof, by the people, and that for the purpose of speedily executing this resolution the said committees shall have power to send for persons and papers; to administer oaths, to take testimony, and at their discretion to detail subcommittees with like authority to send for persons and papers, to administer oaths, and to take testimony; and that the said committees and their subcommittees may employ stenographers, clerks, and messengers, and be attended each by a deputy sergeant-at-arms, and said committees shall have leave to report at any time by bill or otherwise.

The Speaker appointed Mr. MORRISON of Illinois, Mr. JENKS of Pennsylvania, Mr. MCMAHON of Ohio, Mr. LYNDE of Wisconsin, Mr BLACKBURN of Kentucky, Mr. MEADE of New York, Mr. HOUSE of Tennessee, Mr. PHELPS of Connecticut, Mr. NEW of Indiana, Mr. ROSS of New Jersey, Mr. TOWNSEND of Pennsylvania, Mr. DANFORD of Ohio, Mr. HURLBUT of Illinois, Mr. CRAPO of Massachusetts, and Mr. JOYCE of Vermont, the said committee to proceed to Louisiana.

Attest:

GEO. M. ADAMS, *Clerk.*

IN THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES,
December, 7, 1876.

The Speaker appointed Mr. BEEBE, of New York, in the place of Mr. LYNDE, of Wisconsin, on the said committee to proceed to Louisiana.

Attest:

GEO. M. ADAMS, *Clerk.*
By GREEN ADAMS, *Chief Clerk.*

Under said resolution the committee, in conformity with the power therein conferred, have sent for persons and papers. The committee caused a *subpœna duces tecum* to be issued and duly served on one Thomas C. Anderson, a member of the board of returning officers of election for the State of Louisiana.

Said subpœna is in the words and figures following, to wit:

By authority of the House of Representatives of the Congress of the United States of America.

To JOHN G. THOMPSON, Esq.
Sergeant-at-Arms, or his special messenger:

You are hereby commanded to summon Thomas C. Anderson to be and appear before the Louisiana affairs special committee of the House of Representatives of the United States, of which Hon. WILLIAM R. MORRISON is chairman and with you to bring all returns of elections, all consolidated statements of supervisors of elections, all statements of votes, and tally-sheets for each polling-place, at the late election for electors for President and Vice-President of the United States, together with all affidavits, depositions, protests, and other written proofs in your possession or under your control touching the said election in the following parishes: East Baton Rouge, West Baton Rouge, Bossier, Calcasieu, Caldwell, Carroll, Catahoula, Claiborne, Concordia, De Soto, East Feliciana, West Feliciana, Franklin, Grant, Iberville, Jefferson, (right and left bank,) La Fayette, La Fourche, Lincoln, Livingston, Madison, Morehouse, Ouachita, Plaquemines, Red River, Richland, Sabine, Saint Charles, Saint Martin's, Tangipahoa, Vermillion, Vernon, Washington, Webster, Winn, in their chamber, in the city of New Orleans, at Saint Charles Hotel, on Tuesday, December 12, at the hour of one p. m., then and there to testify touching matters of inquiry committed to said committee; and he is not to depart without leave of said committee.

Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 11th day of December, 1876.

[SEAL.] SAML. J. RANDALL, *Speaker.*

Attest:

GEO. M. ADAMS, *Clerk.*

Said Thomas C. Anderson was called as a witness before the committee on the 12th day of December, 1876, at one o'clock p. m., but did not appear.

C. S. Abell, secretary of the returning board, presented the following communication:

OFFICE BOARD OF RETURNING OFFICERS,
STATE OF LOUISIANA, SENATE CHAMBER, STATE HOUSE,
New Orleans, December 12, 1876.

To the honorable chairman and members of the special committee, House of Representatives, United States of America, on Louisiana affairs:

GENTLEMEN: The undersigned returning officers of election for the State of Louisiana, on each of whom *subpœnæ duces tecum* have been served of the same import as the one annexed, respectfully make the following joint return to these several subpœnas:

A careful examination of these writs discloses that all the papers and documents required to be produced are parts of the records of the office of the returning officers of election for the State of Louisiana, and have reference to the election held in this State on the 7th day of November, 1876, for electors for President and Vice-President of the United States, and for other offices, State and national.

These papers, being part of the records of the office of the returning officers of elections for the State of Louisiana, are in possession of the returning officers in their official capacity, a board created by law, and not in their individual capacity. As individuals they have no legal control over them; consequently in their separate individual capacity they have no legal control over them; but answering these writs in their legal capacity as returning officers they respectfully submit that the board of returning officers of elections for Louisiana is a body created by the laws of Louisiana, with specific and well defined duties, *partly ministerial* and *partly quasi-judicial*; that their action under the law of their creation is final to the extent provided by the law, and is not subject to review by any State or national tribunal.

The papers and documents called for by the subpœnas are parts of the records of the office of the returning officers of elections for Louisiana until they shall close their labor of canvassing and compiling the votes of the electors for state and parish officers held on the 7th November, 1876, which has not yet been completed; and that the returning officers of the election deem it their duty under the law to submit to the General Assembly of the State, upon its assembling on the first Monday of January next, a full and accurate report of their canvass and compilation of the votes, with the reasons of their findings and the evidence upon which such were predicated, in order to enable the General Assembly to count the vote for governor and lieutenant-governor in accordance to the requirements of article 48 of the constitution of the State that for this purpose the original archives of the office of the returning officers of elections must be preserved and cannot be allowed to be removed from the office without authority of the General Assembly. We may remark here that the danger of loss of such papers and documents is illustrated by the fact that the congressional committee sent to Louisiana in 1875 obtained possession of important papers of this office, took them away, and never returned them.

We, in our capacity as returning officers, therefore respectfully decline producing the original papers called for by the subpœnas, for the twofold reason that we deny the authority of the House of Representatives of the United States, or a committee thereof, to inquire into or in any legal manner to review the decision of the returning officers of election of the State of Louisiana, and the public interest of the State requires that these papers and documents should be carefully preserved; and no authority is vested in the returning officers to part with the custody thereof until they shall be delivered to the General Assembly for the purpose above stated.

The undersigned returning officers deem it our duty to enter this our earnest protest against this attempt of a committee of the House of Representatives of the United States to invade the rights of the State by demanding possession of her archives with a view to review the action of her tribunals without any legal or constitutional right.

It is a fact of public notoriety that during the time the returning officers of elections were canvassing and compiling the votes of the late election for electors for President and Vice-President of the United States committees of both political parties, composed of chosen partisans from other States, were present during the whole time of opening the election returns from the several parishes and taking the evidence on the charges of intimidation and fraud, and were invited by the returning officers to examine the same and to take copies of any paper or deposition received, of which they liberally availed themselves. This course was recommended in order that the people of the country should have an opportunity of knowing the facts in reference to the election, as a matter of public history.

The returning officers, in order that no fact connected with the late election in this State or the action of the returning officers shall be concealed, but that all the facts shall be placed before the people of the United States, as matters of public history, "propose to have copies made, and to certify such when made, of the entire body of the official papers and evidence, affidavits, depositions, and all else in their possession or control, in relation to the recent election; the whole of such papers to be copied and delivered to the committee as soon as the same can be completed."

But as no appropriation has been made by the Legislature that would enable the returning officers to defray the expenses of making such copies, and as the same are very voluminous and would have to be copied under the supervision of the secretary of the returning officers as a condition-precedent, the congressional committee will be required to provide for the necessary expense of taking such copies.

The returning officers of elections for Louisiana respectfully submit the foregoing as their answer to the writs of *subpœnæ duces tecum*, both in their individual and legal capacities.

All of which is respectfully submitted.

J. MADISON WELLS.
THOS. C. ANDERSON.
G. CASANAVE.
LOUIS M. KENNER.

THOMAS C. ANDERSON appeared as a witness before the committee on the 19th day of December, 1876, and having been duly sworn, was interrogated as follows:

By the CHAIRMAN, (Mr. MORRISON:)

* * * * * * * *

Question. Have you in your possession statements relative to the election commissioners' statements?

Answer. Yes, sir.

Q. Have you them with you?

A. No, sir. They are in the State-house.

Q. You were subpœnaed to bring with you the papers?

A. I was, sir.

Q. You have not brought them?

A. No, sir. In order that you may know my reasons I would ask permission to give you my answer.

Q. You refuse to bring them?

A. The board objects to my bringing them.

Q. Have you made any attempt to bring them here?

A. I said that the members of the board offered objection, and they said they thought it was not advisable to do so; they might be mislaid, and the board are responsible for them. But copies of everything that we had in our possession can be had for this committee, and the clerks are now at work making these copies as rapidly as they possibly can. Eight furnished by this committee and eight furnished by the board.

Q. Did you keep a copy of all protests attached to consolidated returns?

A. In some instances we have had nothing but the consolidated returns. In some places no tally-lists were returned, in some places no polling-lists were returned; hence the necessity for us to inspect the registration.

Q. I would like to know, sir, whether it is your purpose to bring these papers before the committee, or whether it is your purpose to refuse to bring them?

A. The board declines to furnish the registry lists or papers.

Q. Did you take a vote?

A. No, sir, we did not take any formal vote.

Q. You do not intend to bring them?

A. I will furnish you the copies as I promised.

Mr. MORRISON. We have been promised for eight days. We won't get them in time to be of any use to this committee.

A. I presume they will be ready in the course of seven or eight days. It is no small undertaking to copy all these papers. In the five contested parish returns the papers are very voluminous; about one-third or one-half of the whole. I furnished some to Mr. MEADE, who was leaving or going to leave for Shreveport. I gave him a list of the polls rejected.

* * * * * * *

On motion of Mr JENKS,

Resolved, That the chairman of this committee communicate to the House for its consideration the refusal of J. Madison Wells, Thomas C. Anderson, Gaelane Casanave, and Louis M. Kenner, respectively, to produce before the committee for its inspection all returns of elections, all consolidated returns of supervisors of elections, all statements of votes and tally-sheets for each polling-place at the late election for electors for President and Vice-President of the United States, together with all affidavits, depositions, protests, and other written proof in their possession or under their control, touching the said election in the following parishes: East Baton Rouge, West Baton Rouge, Bossier, Calcasieu, Caldwell, Carroll, Catahoula, Claiborne, Concordia, De Soto, East Feliciana, West Feliciana, Franklin, Grant, Iberville, Jefferson, (right and left bank,) La Fayette, La Fourche, Lincoln, Livingstone, Madison, Morehouse, Ouachita, Plaquemines, Red River, Richland, Sabine, Saint Charles, Saint Martin, Tangipahoa, Vermillion, Vernon, Washington, Webster, Winn; which said several refusals are in contempt of the House.

The foregoing is hereby certified to be a correct statement of the proceedings in the matter of the refusal of Thomas C. Anderson to produce before the special committee on the Louisiana election the records and papers required by the committee to be produced by him.

WM. R. MORRISON, *Chairman.*

NEW ORLEANS, LOUISIANA, *December* 30, 1876.

Attest:
R. W. HUNTER,
Clerk Special Committee.

NEW ORLEANS, *January* 3, 1877.

SIR: I have the honor to communicate for the consideration of the House the proceedings in the matter of the failure and refusal of G. Casanave and Louis M. Kenner, members of the Louisiana returning board, to produce before the special committee to investigate the Louisiana election the records and returns required by the committee to be produced by them.

W. R. MORRISON, *Chairman.*

Hon. SAMUEL J. RANDALL,
Speaker House of Representatives, United States.

FORTY-FOURTH CONGRESS, SECOND SESSION.
CONGRESS OF THE UNITED STATES,
In the House of Representatives, December 5, 1876.

On motion of Mr. A. S. HEWITT,

Resolved, That three special committees, one of fifteen members to proceed to Louisiana, one of six members to proceed to Florida, and one of nine members to proceed to South Carolina, shall be appointed by the Speaker of the House to investigate the recent election therein and the action of the returning or canvassing boards in the said States in reference thereto, and to report all the facts essential to an honest return of the votes received by the electors of the said States for President and Vice-President of the United States and to a fair understanding thereof by the people; and that for the purpose of speedily executing this resolution the said committees shall have power to send for persons and papers, to administer oaths, to take testimony, and at their discretion to detail subcommittees, with like authority to send for persons and papers, to administer oaths, and to take testimony, and that the said committees and their subcommittees may employ stenographers, clerks, and messengers, and be attended each by a deputy sergeant-at-arms; and said committees shall have leave to report at any time, by bill or otherwise.

The Speaker appointed Mr. MORRISON of Illinois, Mr. JENKS of Pennsylvania, Mr. MCMAHON of Ohio, Mr. LYNDE of Wisconsin, Mr. BLACKBURN of Kentucky, Mr. MEADE of New York, Mr. HOUSE of Tennessee, Mr. PHELPS of Connecticut, Mr. NEW of Indiana, Mr. ROSS of New Jersey, Mr. TOWNSEND of Pennsylvania, Mr. DANFORD of Ohio, Mr. HURLBUT of Illinois, Mr. CRAPO of Massachusetts, and Mr. JOYCE of Vermont the said committee to proceed to Louisiana.

Attest:

GEORGE M. ADAMS, *Clerk.*

IN THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES,
December 7, 1876.

The Speaker appointed Mr. BEEBE, of New York, in the place of Mr. LYNDE, of Wisconsin, on the said committee to proceed to Louisiana.

Attest:

GEORGE M. ADAMS, *Clerk.*
By GREEN ADAMS, *Chief Clerk.*

Under said resolution the committee, in conformity with the power therein conferred, have sent for persons and papers. The committee caused a *subpœna duces tecum* to be issued and duly served on one G. Casanave, a member of the board of returning officers of elections for the State of Louisiana.

Said subpœna is in the words and figures following, to wit:

By authority of the House of Representatives of the Congress of the United States of America.

To JOHN G. THOMPSON, Esq.,
Sergeant-at-Arms, or his special messenger:

You are hereby commanded to summon G. Casanave to be and appear before the Louisiana affairs special committee of the House of Representatives of the United States, of which Hon. WILLIAM R. MORRISON is chairman, and with you to bring all returns of elections, all consolidated statements of supervisors of elections, all statements of votes and tally-sheets for each polling-place at the late election for electors for President and Vice-President of the United States, together with all affidavits, depositions, protests, and other written proof in your possession or under your control touching the said election in the following parishes: East Baton Rouge, West Baton Rouge, Bossier, Calcasieu, Caldwell, Carroll, Catahoula, Claiborne, Concordia, De Soto, East Feliciana, West Feliciana, Franklin, Grant, Iberville, Jefferson, (right and left bank,) La Fayette, La Fourche, Lincoln, Livingston, Madison,

Morehouse, Ouachita, Plaquemines, Red River, Richland, Sabine, Saint Charles, Saint Martin, Tangipahoa, Vermillion, Vernon, Washington, Webster, Winn, in their chamber in the city of New Orleans, at Saint Charles Hotel, on Tuesday, December 12, at the hour of one p. m., then and there to testify touching matter of inquiry committed to said committee; and he is not to depart without leave of said committee.

Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 11th day of December, 1876.

[SEAL.] SAM'L J. RANDALL, *Speaker.*

Attest:

GEO. M. ADAMS, *Clerk.*

Said G. Casanave was called as a witness before the committee on the 12th day of December, 1876, at one o'clock p. m., but did not appear.

C. S. Abell, secretary of the returning board, presented the following communication:

OFFICE BOARD OF RETURNING OFFICERS,
STATE OF LOUISIANA, SENATE CHAMBER, STATE HOUSE,
New Orleans, December 12, 1876.

To the honorable chairman and members of the special committee, House of Representatives, United States of America, on Louisiana affairs:

GENTLEMEN: The undersigned, returning officers of election for the State of Louisiana, on each of whom *subpœnæ duces tecum* have been served of the same purport as the one annexed, respectfully make the following joint return to these several subpœnas:

A careful examination of these writs discloses that all the papers and documents required to be produced are parts of the records of the office of the returning officers of elections for the State of Louisiana, and have reference to the election held in this State on the 7th day of November, 1876, for electors for President and Vice-President of the United States, and for other officers, State and national.

The papers being part of the records of the office of the returning officers in their official capacity, a board created by law, and not in their individual capacity, as individuals they have no legal control over them; consequently in their separate individual capacity they have no legal control over them; but answering these writs in their legal capacity as returning officers they respectfully submit that the board of returning officers of elections for Louisiana is a body created by the laws of Louisiana, with specific and well-defined duties, *partly ministerial* and *partly quasi-judicial;* that their action under the law of their creation is final to the extent provided by the law, and is not subject to review by any State or national tribunal.

The papers and documents called for by the subpœnas are parts of the records of the office of the returning officers of elections for Louisiana until they shall close their labors of canvassing and compiling the votes of the election for State and parish officers held on the 7th of November, 1876, which has not yet been completed; and that the returning officers of the election deem it their duty under the law to submit to the General Assembly of the State, upon its assembling on the first Monday of January next, a full and accurate report of their canvass and compilation of the votes, with the reasons of their findings and the evidence upon which such were predicated, in order to enable the General Assembly to count the vote for governor and lieutenant-governor in accordance to the requirements of article 66 of the constitution of the State; that for this purpose the original archives of the office of the returning officers of elections must be preserved, and cannot be allowed to be removed from the office without authority of the General Assembly. We may remark here that the danger of loss of such papers and documents is illustrated by the fact that the congressional committee sent to Louisiana in 1875 obtained possession of important papers of this office, took them away, and never returned them.

We, in our capacity as returning officers, therefore, respectfully decline the original papers called for by the subpœnas for the twofold reason that we deny the authority of the House of Representatives of the United States, or a committee thereof, to inquire into or in any legal manner to review the decision of the returning officers of election of the State of Louisiana, and the public interest of the State requires that these papers and documents should be carefully preserved; and no authority is vested in the returning officers to part with the custody thereof until they shall be delivered to the General Assembly for the purpose above stated.

The undersigned returning officers deem it our duty to enter this our earnest protest against this attempt of a committee of the House of Representatives of the United States to invade the rights of the State by demanding possessions of her archives with a view to review the action of her tribunals without any legal or constitutional right. It is a fact of public notoriety that during the time the returning officers of elections were canvassing and compiling the votes of the late election for electors for President and Vice-President of the United States committees of both political parties, composed of chosen partisans from other States, were present during the whole time of opening the election returns from the several parishes and taking the evidence on the charges of intimidation and fraud, and were invited by the returning officers to examine the same and to take copies of any paper or deposition received, of which they liberally availed themselves. This course was recommended in order that the people of the country should have an opportunity of knowing the facts in reference to the election, as a matter of public history.

The returning officers, in order that no fact connected with the late election in this State or the action of the returning officers shall be concealed, but that all the facts shall be placed before the people of the United States as matters of public history, "propose to have copies made and to certify such when made of the entire body of the official papers and evidence, affidavits, depositions, and all else in their possession or control in relation to the recent election, the whole of such papers to be copied and delivered to the committee as soon as the same can be completed."

But as no appropriation has been made by the Legislature that would enable the returning officers to defray the expenses of making such copies, and as the same are very voluminous and would have to be copied under the supervision of the secretary of the returning officers as a condition-precedent, the congressional committee will be required to provide for the necessary expense of taking such copies.

The returning officers of elections for Louisiana respectfully submit the foregoing as their answer to the writs of *subpœna duces tecum*, both in their individual and legal capacities.

All of which is respectfully submitted.

J. MADISON WELLS.
THOS. C. ANDERSON.
G. CASANAVE.
LOUIS M. KENNER.

Said G. CASANAVE appeared before the committee as a witness on the 20th day of December, 1876, and having been duly sworn, was interrogated as follows:

* * * * * * *

By the CHAIRMAN, (Mr. MORRISON:)

Question. Have you with you the rejected returns of the supervisors of registration, including the statements of commissioners of election and the papers returned to you?

Answer. We have them at the board.

Q. You have not them with you?

A. No, sir.

Q. You were subpœnaed to produce them, were you not?

A. I believe I was. I believe I read them on the paper.

Q. You have not brought them; do you intend to bring them?

A. I do not know, we can give you a copy, but cannot give you the originals.

Q. You were subpœnaed to bring them with you that we might inspect them; do I understand you that you intend to do it or not—I mean the returns made by the supervisors of registration of the parishes?

A. You want the original papers?

Q. We wanted you to bring them with you that we might inspect them here.

A. I cannot do that without the consent of the board. You may have copies of them.

Q. I am talking about the original papers. Have you considered the question of delivering or bringing with you for our inspection the original papers in your board since you were subpœnaed?

A. No, sir.

Q. I understand you to say you do not intend to bring them?

A. Not the original papers.

Q. Do you refuse to produce before us for our inspection the papers called for in the subpœna; that is, the returns to the board of the supervisors of registration, with the statements of the commissioners of election?

A. You just want to look at them.

Q. I want to know if you refuse to produce them here for our inspection.

A. No, sir, I do not refuse to produce them for your inspection. With the consent of the board I will do it.

Q. When will you bring them to us?

A. As soon as I can get the gentlemen together I will do it.

Q. Did I understand you to say then you have or have not considered that question before your board, or have you had any consultation with any of the members in regard to producing for the inspection of the committee those papers?

A. I have not. I don't know what the others have done. I have been busy for the last few days and have been away from the board; have not been there for eight days now.

Q. You have not yet considered the question whether you will produce the papers?

A. Yes, sir; I told you I had been very busy with my business on the outside; that I have not considered it.

* * * * * * *

December 21, 1876.

On motion of Mr. JENKS,

Resolved, That the chairman of this committee communicate to the House for its consideration the refusal of J. Madison Wells, Thomas C. Anderson, G. Casanave, and Louis M. Kenner, respectively, to produce before the committee for its inspection all returns of elections, all consolidated returns of supervisors of election, all statements of votes and tally-sheets for each polling-place at the late election for electors for President and Vice-President of the United States, together with all affidavits, depositions, protests, and other written proof in their possession or under their control touching the said election in the following parishes: East Baton Rouge, West Baton Rouge, Bossier, Calcasieu, Caldwell, Carroll, Catahoula, Claiborne, Concordia, De Soto, East Feliciana, West Feliciana, Franklin, Grant, Iberville, Jefferson, (right and left bank,) La Fayette, La Fourche, Lincoln, Livingston, Madison, Morehouse, Ouachita, Plaquemines, Red River, Richland, Sabine, Saint Charles, Saint Martin, Tangipahoa, Vermillion, Vernon, Washington, Webster, Winn; which said several refusals are in contempt of the House.

The foregoing is hereby certified to be a correct statement of the proceedings in the matter of the refusal of G. Casanave to produce before the special committee on the Louisiana election the records and papers required by the committee to be produced by him.

WM. R. MORRISON, *Chairman.*

NEW ORLEANS, LOUISIANA, *January* 3, 1877.

Attest:

R. W. HUNTER,
Clerk Special Committee.

FORTY-FOURTH CONGRESS, SECOND SESSION,
CONGRESS OF THE UNITED STATES,
In the House of Representatives, December 5, 1876.

On motion of Mr. A. S. HEWITT,

Resolved, That three special committees, one of fifteen members to proceed to Louisiana, one of six members to proceed to Florida, and one of nine members to proceed to South Carolina, shall be appointed by the Speaker of the House to investigate the recent election therein and the action of the returning or canvassing boards in the said States in reference thereto, and to report all the facts essential to an honest return of the votes received by the electors of the said States for President and Vice-President of the United States and to a fair understanding thereof by the people; and that for the purpose of speedily executing this resolution the said committees shall have power to send for persons and papers, to administer oaths, to take testimony, and at their discretion to detail subcommittees, with like authority to send for persons and papers, to administer oaths, and to take testimony; and that the said committees and their subcommittees may employ stenographers, clerks, and messengers, and be attended each by a deputy sergeant-at-arms; and said committees shall have leave to report at any time, by bill or otherwise.

The Speaker appointed Mr. MORRISON of Illinois, Mr. JENKS of Pennsylvania, Mr. MCMAHON of Ohio, Mr. LYNDE of Wisconsin, Mr. BLACKBURN of Kentucky, Mr. MEADE of New York, Mr. HOUSE of Tennessee, Mr. PHELPS of Connecticut, Mr. NEW of Indiana, Mr. ROSS of New Jersey, Mr. TOWNSEND of Pennsylvania, Mr. DANFORD of Ohio, Mr. HURLBUT of Illinois, Mr. CHAPO of Massachusetts, and Mr. JOYCE of Vermont, the said committee to proceed to Louisiana.

Attest:

GEO. M. ADAMS, *Clerk.*

IN THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES,
December 7, 1876.

The Speaker appointed Mr. BEEBE, of New York, in place of Mr. LYNDE, of Wisconsin, on the said committee to proceed to Louisiana.

Attest:

GEO. M. ADAMS, *Clerk.*
By GREEN ADAMS, *Chief Clerk.*

Under said resolution the committee, in conformity with the power therein conferred, have sent for persons and papers.

The committee caused a *subpœna duces tecum* to be issued and duly served on one Louis M. Kenner, a member of the board of returning officers of election for the State of Louisiana.

Said subpœna is in the words and figures following, to wit:

By authority of the House of Representatives of the Congress of the United States of America.

To JOHN G. THOMPSON Esq.,
Sergeant-at-Arms, or his special messenger:

You are hereby commanded to summon Louis M. Kenner to be and appear before the Louisiana affairs special committee of the House of Representatives of the United States, of which Hon. WILLIAM R. MORRISON is chairman, and with you to bring all returns of elections, all consolidated statements of supervisors of elections,

all statements of votes and tally-sheets for each polling-place at the late election for electors for President and Vice-President of the United States, together with all affidavits, depositions, protests, and other written proof in your possession or under your control touching the said election in the following parishes: East Baton Rouge, West Baton Rouge, Bossier, Calcasieu, Caldwell, Carroll, Catahoula, Claiborne, Concordia, De Soto, East Feliciana, West Feliciana, Franklin, Grant, Iberville, Jefferson, (right and left bank,) La Fayette, La Fourche, Lincoln, Livingston, Madison, Morehouse, Ouachita, Plaquemines, Red River, Richland, Sabine, Saint Charles, Saint Martin, Tangipahoa, Vermillion, Vernon, Washington, Webster, Winn, in their chamber, in the city of New Orleans, at Saint Charles Hotel, on Tuesday, December 12, at the hour of one p. m., then and there to testify touching matters of inquiry committed to said committee, and he is not to depart without leave of said committee.

Herein fail not and make return of this summons.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 11th day of December, 1876.

[SEAL.] SAM'L J. RANDALL, *Speaker.*

Attest:

GEO. M. ADAMS, *Clerk.*

Said Louis M. Kenner was called as a witness before the committee on the 12th day of December, 1876, at one o'clock p. m., but did not appear.

C. S. Abell, secretary of the returning board, presented the following communication:

OFFICE BOARD OF RETURNING OFFICERS,
STATE OF LOUISIANA, SENATE CHAMBER, STATE-HOUSE,
New Orleans, December 12, 1876.

To the honorable Chairman and Members of the Special Committee House of Representatives, United States of America, on Louisiana Affairs:

GENTLEMEN: The undersigned, returning officers of election for the State of Louisiana, on each of whom *subpœnæ duces tecum* have been served, of the same purport as the one annexed, respectfully make the following joint return to these several subpœnas: A careful examination of these writs disclose that *all* the papers and documents required to be produced are parts of the records of the office of the returning officers of elections for the State of Louisiana, and have reference to the election held in this State on the 7th day of November, 1876, for electors for President and Vice-President of the United States, and for other officers, State and national.

These papers, being part of the records of the office of the returning officers of elections for the State of Louisiana, are in possession of the returning officers in their official capacity, a board created by law, and not in their individual capacity; as individuals they have no legal control over them; consequently in their separate individual capacity they have no legal control over them, but answering these writs in their legal capacity as returning officers they respectfully submit:

That the board of returning officers of election for Louisiana is a body created by the laws of Louisiana with specific and well defined duties, *partly ministerial* and *partly quasi judicial*; that their action under the laws of their creation is final to the extent provided by the law, and is not subject to review by any State or national tribunal.

The papers and documents called for by the subpœnas are parts of the records of the office of the returning officers of elections for Louisiana until they shall close their labors of canvassing and compiling the votes of the election for State and parish officers held on the 7th of November, 1876, which has not yet been completed, and that the returning officers of the election deem it their duty under the law to submit to the General Assembly of the State upon its assembling on the first Monday of January next a full and accurate report of their canvass and compilation of the votes, with the reasons of their findings and the evidence upon which such were predicated, in order to enable the General Assembly to count the vote for governor and lieutenant-governor in accordance to the requirements of article 48 of the constitution of the State; that for this purpose the original archives of the returning officers of election must be preserved and cannot be allowed to be removed from the office without authority of the General Assembly. We may remark here that the danger of loss of such papers and documents is illustrated by the fact that the congressional committee sent to Louisiana in 1875 obtained possession of important papers of this office, took them away, and never returned them.

We in our capacity as returning officers therefore respectfully decline producing the original papers called for by the subpœnas, for the twofold reason that we deny the authority of the House of Representatives of the United States or a committee thereof to inquire into or in any legal manner to review the decision of the returning officers of elections of the State of Louisiana, and the public interest of the State requires that these papers and documents should be carefully preserved, and no authority is vested in the returning officers to part with the custody thereof until they shall be delivered to the General Assembly for the purpose above stated.

The undersigned returning officers deem it our duty to enter this our earnest protest against this attempt of a committee of the House of Representatives of the United States to invade the rights of the State by demanding possession of their archives with a view to review the action of her tribunal without any legal or constitutional right.

It is a fact of public notoriety that during the time the returning officers of elections were canvassing and compiling the votes of the late election for electors for President and Vice-President of the United States that committees of both political parties, composed of chosen partisans from other States, were present during the whole time of opening the election returns from the several parishes and taking the evidence on the charges of intimidation and fraud, and were invited by the returning officers to examine the same and to take copies of any paper or deposition received, of which they liberally availed themselves. This course was recommended in order that the people of the country should have an opportunity of knowing the facts in reference to the election, as a matter of public history.

The returning officers, in order that no fact connected with the late election in this State, or the action of the returning officers, shall be concealed, but that all the facts shall be placed before the people of the United States as matter of public history, "propose to have copies made, and to certify such when made of the entire body of the official papers and evidence, affidavits, depositions, and all else in their possession or control, in relation to the recent election, the whole of such papers to be copied and delivered to the committee as soon as the same can be completed."

But as no appropriation has been made by the Legislature that would enable the returning officers to defray the expenses of making such copies and as the same are very voluminous and would have to be copied under the supervision of the secretary of the returning officers, as a condition precedent, the congressional committee will be required to provide for the necessary expense of taking such copies.

The returning officers of election for Louisiana respectfully submit the foregoing as their answer to the writs of *subpœnæ duces tecum* both in their individual and legal capacities.

All of which is respectfully submitted.

J. MADISON WELLS.
THOS. C. ANDERSON.
G. CASANAVE.
LOUIS M. KENNER.

Said Louis M. Kenner appeared before the committee as a witness on the 20th day of December, 1876, and, having been duly sworn, was interrogated as follows:

* * * * * * *

By Mr. MORRISON:

Question. Have you with you, Mr. Kenner, the original returns made by the supervisors of registration, with the statements of the commissioners of election? Have you the papers which you were required to produce for the inspection of the committee?

Answer. No, sir; the board answered this honorable committee in a recent communication as regards the papers demanded of the board.

Q. You do not propose then to produce them for the inspection of the committee?

A. We have not had any consultation since this letter was addressed to the honorable committee.

Q. I ask you as regards your purpose.

A. We have not had any conversation about it since the letter was written.

Q. It is now eight or ten days since we subpœnaed you to bring with you the statements made to your board by the supervisors and the statements made by the commissioners to them. These are the papers of which I speak. You have not these papers with you?

A. No, sir.

Q. And as you refer to the reply of Mr. Anderson to my request to bring them, I infer you do not propose to bring them.

A. I do not know what the board intends to do.

Q. Answer whether you do or do not?

A. I could not bring them without consent of the board.

Q. During these eight or ten days have you ever asked for this consent?

A. No, sir; we have never spoken about it.

Q. You sent a communication about the second or third day of the meeting of this committee here stating that you would not produce them, and you must have had some consultation about it, as your name was signed to the communication.

A. We have not had any since then.

* * * * * * *

On motion of Mr. JENKS,

Resolved, That the chairman of this committee communicate to the House for its consideration the refusal of J. Madison Wells, Thomas C. Anderson, G. Casanave, and Louis M. Kenner, respectively, to produce before the committee for its inspection all returns of elections, all consolidated returns of supervisors of election, all statements of votes and tally-sheets for each polling-place at the late election for electors for President and Vice-President of the United States, together with all affidavits, depositions, protests, and other written proof in their possession or under their control touching the said election in the following parishes: East Baton Rouge, West Baton Rouge, Bossier, Calcasieu, Caldwell, Carroll, Catahoula, Claiborne, Concordia, De Soto, East Feliciana, West Feliciana, Franklin, Grant, Iberville, Jefferson, (right and left bank,) Lafayette, La Fourche, Lincoln, Livingston, Madison, Morehouse, Ouachita, Plaquemines, Red River, Richland, Sabine, Saint Charles, Saint Martin, Tangipahoa, Vermillion, Vernon, Washington, Webster, Winn; which said several refusals are in contempt of the House.

The foregoing is hereby certified to be a correct statement of the proceedings in the matter of the refusal of Louis M. Kenner to produce before the special committee on the Louisiana election the records and papers required by the committee to be produced by him.

W. R. MORRISON, *Chairman.*

NEW ORLEANS, LOUISIANA, *December* 30, 1876.

Attest:

R. W. HUNTER,
Clerk Special Committee.

Mr. HUNTON submitted the following resolution:

Resolved, That the reports just read, and the accompanying papers, be referred to the Committee on the Judiciary with instructions to report to the House at the earliest practicable day, what action, in their judgment, should be taken thereon.

Mr. KASSON. Before we proceed to vote upon that resolution, I would ask the gentleman from Virginia [Mr. HUNTON] to allow me to offer an amendment in addition.

Mr. HUNTON. I will hear the amendment read.

The amendment was read, as follows:

And that they make careful report upon the extent and limitations, if any, upon the power of this House to order the attendance of, and the production of official papers and documents by, the officers of the State of Louisiana, executing the functions of State government.

Mr. HUNTON. I consider that all that is embraced in the original resolution.

Mr. KASSON. Not specifically.

Mr. HUNTON. I think it is sufficiently. I call the previous question on the resolution.

The previous question was seconded and the main question ordered; and under the operation thereof the resolution was adopted.

Mr. HUNTON moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

ENROLLED BILL SIGNED.

Mr. HARRIS, of Georgia, from the Committee on Enrolled Bills, reported that they had examined and found truly enrolled a bill of the following title; when the Speaker signed the same:

An act (H. R. No. 4350) to abolish the board of commissioners of the Metropolitan police of the District of Columbia and to transfer its duties to the commissioners of the District of Columbia.

VENEZUELAN MIXED COMMISSION.

The SPEAKER laid before the House the following message from the President of the United States:

To the House of Representatives:

In answer to the resolution of the House of Representatives of the 19th ultimo, I transmit herewith the report of the Secretary of State, together with the papers which accompanied it.

U. S. GRANT

WASHINGTON, *January* 8, 1877.

To the President:

The Secretary of State, to whom was referred the resolution of the House of Representatives of the 19th ultimo, requesting the President, if not incompatible with the public interests, to transmit to that body all correspondence between this Government and the republic of Venezuela since the 15th day of May last in reference

to the Venezuelan mixed commission, held under the convention of April 25, 1866, has the honor to submit herewith a copy of the papers mentioned in the subjoined list, which contains all the correspondence upon the subject since the date above referred to.

Respectfully submitted.

HAMILTON FISH.

DEPARTMENT OF STATE,
Washington, January 8, 1877.

On motion of Mr. SWANN, the message, with accompanying documents, was referred to the Committee on Foreign Affairs.

COMMITTEE ON ENROLLED BILLS.

The SPEAKER. The Chair asks consent to appoint an additional member of the Committee on Enrolled Bills, in consequence of the absence of a member of that committee. The Chair hears no objection, and announces the appointment of Mr. HARRISON.

ORDER OF BUSINESS.

Mr. KASSON. I call for the regular order.

The SPEAKER. The regular order being called for, the morning hour now begins at twenty minutes past two o'clock. The business in order is the call of committees for reports, and the call rests with the Committee on Military Affairs.

ADVERSE REPORTS.

Mr. COOK, from the Committee on Military Affairs, reported back adversely the following bills, petitions, &c.; which were respectively laid on the table, and the accompanying reports ordered to be printed:

The bill (S. No. 828) for the relief of Peter Phillips;

Petition of Lieutenant B. R. Waller, Twentieth Kentucky Infantry Volunteers, for muster and pay;

Petition of 400 soldiers, sailors, and heirs of deceased soldiers and sailors of Indiana, praying for the immediate passage of a law providing for the equalization of bounties upon the basis of $8.33 per month, and against the unjust discrimination in reference to the bounties under existing laws;

Petitions of various citizens of Michigan, soldiers of the late war, for the passage of a bill equalizing bounties;

Petition of citizens of Pennsylvania, in favor of equalization of bounties;

Petition of 97 citizens of Pennsylvania, soldiers in the late war, asking for additional bounty;

Petition of 31 soldiers, praying for the passage of an act granting to soldiers, sailors, and marines of the late war and their heirs (except commissioned officers) a bounty of $8.33 arrears per month for the time served, deducting all United States bounty heretofore paid;

Petition of citizens of Potter County, Pennsylvania, that one hundred and sixty acres of land be allowed to soldiers who served not less than thirty days, and $200 to enable them to settle the same;

Memorial and resolutions of soldiers of the late war residing in Frostburgh, Maryland, and vicinity, in favor of equalization of bounties;

A bill (H. R. No. 1999) in relation to bounties to nine months' volunteers and their heirs;

A bill (H. R. No. 2621) for the removal of the charge of desertion from William F. Buck, late private in Company B, Seventieth Regiment Ohio Volunteer Infantry;

A bill (H. R. No. 4133) for the relief of James P. Carroll;

Memorial of H. M. Johnston and 20 other soldiers of Muskingum County, Ohio, praying for the enactment of a law equalizing bounties of soldiers of the late war;

Petition of E. A. Sellman, late a private of Company E, Fiftieth Regiment Ohio Volunteer Infantry, and 117 other soldiers of the late war, praying for the passage of a law giving to each soldier $200 in lieu of a land-warrant;

Petition of James Barry and others, of Benicia, California, for granting the right of way to narrow-gauge railway of Benicia; and

A bill (H. R. No. 2555) to equalize the bounties of soldiers who served in the war for the suppression of the rebellion.

VETERANS OF MEXICAN WAR.

Mr. COOK also, from the same committee, reported back, with a recommendation that it pass, the joint resolution (H. R. No. 173) granting permission to the officers and enlisted men of the Army and Navy to wear the medal badge adopted by the National Association of Veterans of the Mexican War, on occasions of ceremony.

The joint resolution was read. It provides that all who served as officers, non-commissioned officers, privates, sailors, marines, or other enlisted men in the regular Army, Navy, volunteer, or militia forces of the United States, during the war with Mexico of 1846, 1847, and 1848, and have been honorably discharged from the service, or remain still in the same, shall be entitled to wear, on occasions of ceremony, the distinctive medal badge struck at the United States Mint in accordance with the design adopted by the National Association of Veterans of the Mexican War, and issued as the insignia of membership in said association.

Mr. HOLMAN. I submit that under the rules this measure should certainly be in the form of a bill, instead of a joint resolution. It appears to me not to come within that class of legislative enactments which are properly put in the form of joint resolutions.

The SPEAKER. Either form would accomplish the object.

Mr. HOLMAN. But certainly under the rules this should be a bill.

The SPEAKER. As a joint resolution it will require the approval of the President just as much as if it were a bill. Does the gentleman indicate any amendment?

Mr. HOLMAN. Only that under the rules of the House this measure should be a bill. I have no amendment to offer; I only make a suggestion.

Mr. COOK. The Committee on Military Affairs have unanimously approved this resolution in its present form. I ask that it be put on its passage.

The joint resolution was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. COOK moved to reconsider the vote by which the joint resolution was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

ARMY COMMISSION.

Mr. A. S. WILLIAMS, from the Committee on Military Affairs, reported back joint resolution (S. No. 29) extending the time for the making of a report by the Army commission created by the act of July 24, 1876, with the recommendation that it do pass.

The joint resolution, which was read, provides that the period fixed by the fourth section of the act of July 24, 1876, making appropriation for the support of the Army for the fiscal year ending June 30, 1877, for the report of the commission named in said section be and is hereby extended to the 29th of January, 1877.

The joint resolution was ordered to a third reading; and it was accordingly read the third time, and passed.

Mr. A. S. WILLIAMS moved to reconsider the vote by which the joint resolution was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

SOLDIERS AND SAILORS' ORPHANS' HOME.

Mr. A. S. WILLIAMS also, from the same committee, reported back estimate of the treasurer of the Soldiers and Sailors' Orphans' Home for the fiscal year ending June 30, 1878, and moved that it be referred to the Committee on Appropriations; which motion was agreed to.

ADVERSE REPORTS.

Mr. A. S. WILLIAMS also, from the same committee, made adverse reports in the following cases; which were laid on the table, and ordered to be printed:

Memorial of Albert G. Peabody, jr.;

A bill (H. R. No. 3157) for the relief of Second Lieutenant Lewis Merriam, Fourth Infantry, United States Army; and

A bill (H. R. No. 4171) for the relief of Alonzo W. Baker, late a private of Company A, Twenty-fourth Regiment Wisconsin Volunteers.

VANCOUVER WATER COMPANY.

Mr. JOHN REILLY, from the Committee on Military Affairs, reported back a bill (S. No. 453) to authorize the Vancouver Water Company to lay water-pipes through the Fort Vancouver military reservation, with the recommendation that it do pass.

The bill, which was read, provides that the Vancouver Water Company, a company organized under the laws of Washington Territory, shall be authorized to lay down and keep in repair water-pipes for the conveyance of water through the military reservation of Fort Vancouver in said Territory, to be subject at all times to removal and to all orders and regulations of the War Department.

The bill was ordered to a third reading; and it was accordingly read the third time, and passed.

Mr. JOHN REILLY moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

PRESIDIO LANDS.

Mr. JOHN REILLY, from the same committee, reported back resolutions of the board of supervisors of San Francisco, in relation to the Presidio lands, and moved, as the legislation asked for had already passed the House, that the resolutions be laid on the table; which motion was agreed to.

THEODORE MOSHER, SIGNAL SERVICE.

Mr. BANNING, from the Committee on Military Affairs, reported back a bill (H. R. No. 4276) to authorize the appointment of a sergeant in the Signal Corps as a second lieutenant in the Army, with the recommendation that it do pass.

The bill, which was read, authorizes the President to appoint, and, by and with the consent of the Senate, to commission Theodore Mosher, jr., sergeant in the Signal Service of the United States, to be a second lieutenant in the Army, to fill any existing vacancy in any regiment, notwithstanding the provisions of section 1218, Revised Regulations; provided that said Mosher shall be duly found and deemed by the President to be otherwise qualified and eligible for such appointment.

Mr. WILSON, of Iowa. Mr. Speaker, should not that bill under the rules have its first consideration in Committee of the Whole?

Mr. BANNING. I think not.

The SPEAKER. The bill on its face does not make an appropriation, although ultimately it may involve one, but that appropriation

will have to be provided for in the Army appropriation bill. The Chair therefore gives the benefit of the doubt to the soldier.

Mr. WILSON, of Iowa. While I always sympathize with the Chair in his large-heartedness, yet I make the query because it is in the line of the decisions that we have had on this subject, and I think it would be well to have them carefully considered and followed. The rule says that "anything touching appropriations" shall be first considered in Committee of the Whole, and it seems where we directly incur liability the proposition does touch an appropriation of money, and should therefore have its first consideration in Committee of the Whole. But I do not insist on the point of order.

The SPEAKER. The Chair so understood, that the gentleman did not resolutely insist on his point of order. He will, however, take occasion to examine this subject carefully for future action. The Chair sympathizes and harmonizes in judgment with the gentleman from Iowa, that this is merely a mode of escaping what is the clear purpose of the rules.

Mr. WILSON, of Iowa. I wish to be permitted to remark further that I cannot be outdone by the Speaker in generosity toward the soldier.

The SPEAKER. The Chair is quite aware of that fact, and is glad to acknowledge it.

The bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. BANNING moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

BENJAMIN F. REYNOLDS.

Mr. TERRY, from the Committee on Military Affairs, reported back the bill (H. R. No. 1237) for the relief of Benjamin F. Reynolds, with amendments by the Senate, with the recommendaion that the amendments of the Senate be concurred in.

The amendments of the Senate were read, as follows:

In line 6, strike out the word "first" and insert "twenty-ninth."
In line 7, strike out the word "March" and insert "April."
So that the bill, if amended, will read as follows:
That the Secretary of War be, and he is hereby, authorized and directed to pay to Benjamin F. Reynolds, late captain of Company K, Forty-eighth Regiment of Illinois Volunteers, out of any money appropriated or which may hereafter be appropriated for the pay of the Army, a sum equal to the pay and emoluments of a captain of infantry from the 29th day of April, 1864, to the 22d day of May, 1864.

The amendments of the Senate were concurred in.

Mr. TERRY moved to reconsider the vote by which the amendments of the Senate were concurred in; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

POINT SAN JOSÉ MILITARY RESERVATION.

Mr. TERRY, also from the same committee, reported, as a substitute for House bill No. 2002, a bill (H. R. No. 4388) for the relief of the former occupants of the present military reservation at Point San José, in the city and county of San Francisco; which was read a first and second time.

The substitute was read, as follows:

Be it enacted, &c., That the Secretary of War be, and he is hereby, directed to appoint a board of three Army officers, who shall go upon the military reservation at Point San José, in the city of San Francisco, in the State of California, and ascertain and report to the next Congress the facts in relation to—

First. Who were the occupants of any portions of said military reservation at the time the United States took military possession thereof in the year , their heirs, grantees, assigns, or personal representatives.

Second. What improvements had theretofore been erected upon any portions of said military reservation, by whom made, and the cash value of the same at the time of the occupation, and whether these improvements are of value to and have since been used and occupied by the United States.

And to enable the board to properly perform the duties hereby prescribed, they shall have power to send for persons and papers, examine witnesses on oath, and with their report they shall return the evidence taken before them and upon which their report is based. The board shall also be empowered to employ a stenographer.

Mr. WILSON, of Iowa. As this bill suspends the rules of the House I would like to have it again read.

The SPEAKER. Does the gentleman desire the substitute or the original bill to be read?

Mr. WILSON, of Iowa. The substitute.

The SPEAKER. It will be read again.

The substitute was again read.

Mr. WILSON, of Iowa. Part of the bill suspends the rules of the House, and I reserve my right to object until the gentleman reporting the bill gives the House some reasons why it should pass.

Mr. TERRY. Mr. Speaker, this claim has been pending before Congress for many years, and a number of favorable reports have been made both by committees of the House and committees of the Senate. The committees in this case have not gone nearly as far as other committees have gone in favor of these claimants. Instead of reporting a bill making a direct appropriation we have taken what we regard as the best means of getting information upon which the House can safely act by sending a board of Army officers upon the ground to examine the improvements which have been put there; to ascertain whether they have been of value to the United States, and whether the United States have made use of those improvements or not.

The history of the case, in a word, is just this: This reservation was made by the order of President Fillmore, in 1851. The claimants allege that that order or proclamation announcing the reservation was never properly promulgated; that the citizens of San Francisco were in total ignorance of the reservation having been made, went upon the property, and made permanent and valuable improvements, and held it for years, the property in many instances passing from hand to hand by purchase. During the war, I think it was in 1863, this property was taken possession of for the first time by the military authorities of the United States. Now these claimants have asked for payment for the real estate. But the committee repudiate that claim, because the Supreme Court of the United States have held that they never had title to the property; but if they were allowed, in the face of the military authorities there, to make permanent and valuable improvements which the United States are to-day enjoying and occupying by the military, I say it is nothing but justice that these citizens should be paid the value of those improvements. That is the whole object of this substitute. It is to authorize the Secretary of War to appoint a board of officers to go there and examine and report to the next Congress what the facts are, so that Congress may then act intelligently upon it.

Mr. WILSON, of Iowa. I wish to ask the gentleman from Virginia a question. There is nothing, as I understand, in this bill that binds Congress to pay the finding of this board of officers.

The SPEAKER. There is in the bill the employment of a stenographer, which requires an appropriation of money.

Mr. TERRY. I did not hear the question of this gentleman from Iowa.

Mr. WILSON, of Iowa. Is there anything in this bill that would bind the next Congress to appropriate anything?

Mr. TERRY. Not at all. We avoid any expense by appointing a board of Army officers who will doubtless be selected on the ground. It would cost nothing but the employment of a stenographer, and if that is made a point against the bill I will move to strike that clause out.

Mr. HOLMAN. I hope the gentleman will do so.

The SPEAKER. The Chair will state also to the gentleman from Virginia that there is a blank which ought to be filled.

Mr. TERRY. We cannot fill that at present. I think it is 1863, but it will be a matter of evidence as to the time at which the military did take possession of Point San José.

The SPEAKER. The question is on the amendment of the gentleman from Indiana, [Mr. HOLMAN,] to strike out the clause empowering the board to employ a stenographer.

Mr. BANNING. I object to that being stricken out.

Mr. HOLMAN. If it is not stricken out the point of order will be insisted upon. It is an entirely unnecessary expense.

The SPEAKER. The question is first on the amendment of the gentleman from Indiana.

Mr. HOLMAN. I suggest that the gentleman from Iowa [Mr. WILSON] reserves points of order upon the bill.

The SPEAKER. The Chair does not so understand. Does the gentleman from Iowa still insist upon any point of order?

Mr. WILSON, of Iowa. No; but it is time enough now for anybody else to do it.

The SPEAKER. The Chair would so rule.

Mr. HOLMAN. I shall not insist upon the point of order if the stenographer is stricken out.

Mr. TERRY. I agree to striking out the stenographer.

Mr. BURCHARD, of Illinois. The amendment to the bill will not obviate the point of order.

The SPEAKER. But there is no point of order pending against the bill. The amendment of the gentleman from Indiana is to strike out the last clause of the bill, which provides for the employment of a stenographer.

The amendment was agreed to.

The bill, as amended, was ordered to be engrossed and read a third time; and it was accordingly read the third time, and passed.

Mr. TERRY moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

W. H. WOODWARD.

Mr. TERRY, from the Committee on Military Affairs, reported back with an amendment the bill (S. No. 845) for the relief of W. H. Woodward, of Indianola, Texas.

The bill was read.

Mr. WILSON, of Iowa. I make the point of order that that bill must have its first consideration in the Committee of the Whole on the Private Calendar.

Mr. TERRY. I hope the gentleman will not insist upon his point of order. I will have the report of the Senate upon this bill read, and I think it will satisfy him so thoroughly that he will not insist upon the point of order.

Mr. WILSON, of Iowa. I think the bill should go to the Committee of the Whole on the Private Calendar.

The SPEAKER. The Chair sustains the point of order, and the bill is referred to the Committee of the Whole on the Private Calendar, and the report ordered to be printed.

PENSIONS TO DISABLED SOLDIERS.

Mr. RUSK, from the Committee on Invalid Pensions, reported back the bill (S. No. 234) to allow a pension of $37 per month to soldiers who have lost both an arm and a leg, with an amendment in the nature of a substitute.

The bill was read. It provides that every person entitled to a pension under section 4698 of the Revised Statutes of the United States, and who has lost one hand and one foot, shall be entitled to a pension of $37 per month, and that the act shall take effect from and after the 1st of September, 1876.

The substitute reported by the committee was to strike out all after the enacting clause and insert in lieu thereof the following:

That all persons who, while in the military or naval service of the United States, and in the line of duty, shall have lost one hand and one foot, or have been totally and permanently disabled in both, shall be entitled to a pension for each of such disabilities at such a rate as is provided for by the provisions of the existing laws for each disability: *Provided*, That this act shall not be so construed as to reduce a pension in any case.

Mr. HOLMAN. I believe this is a House bill.

The SPEAKER. It is not; it is a Senate bill with an amendment reported by the House committee.

Mr. HOLMAN. The substitute then comes from the House committee?

The SPEAKER. It is an amendment recommended by the House committee.

Mr. HOLMAN. I trust the gentleman from Wisconsin, before asking action on the bill, will explain the effect of the amendment upon the original bill.

Mr. RUSK. I will state that the amendment which I have reported is precisely the substance of a bill passed by the House at the last session, but which has not yet been acted upon by the Senate. The Senate bill proposes to make the pension for the double disability of $37. The amendment proposed by the committee, and which I have stated passed the House last session, gives the pension for each disability according to the provisions of the present law, and, provided a man has lost a hand and a foot, he receives $36 per month, $1 less than the Senate bill proposes to give. If he has lost a leg above the knee and an arm above the elbow, he will then be entitled to $48 per month.

The substitute reported by the Committee on Invalid Pensions was agreed to.

The bill of the Senate, as amended, was ordered to a third reading; and it was accordingly read the third time, and passed.

Mr. RUSK moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

REPORTS FROM THE COMMITTEE ON NAVAL AFFAIRS.

Mr. WHITTHORNE. Has the Committee on Naval Affairs been called?

The SPEAKER. It was called.

Mr. WHITTHORNE. The call did not arrest my attention at the moment. I would ask unanimous consent to go back so that I may submit some reports.

Mr. O'BRIEN. I object to going back.

T. WILLIAM BULLARD.

Mr. RIDDLE, from the Committee on Invalid Pensions, reported back, with a recommendation that it do not pass, the bill (H. R. No. 3706) granting a pension to T. William Bullard; and the same was laid upon the table, and, with the accompanying report, ordered to be printed.

NATHANIEL JOHNSON COFFIN.

Mr. RAINEY. Will it be in order for me to report some private bills from the Committee on Invalid Pensions under this call?

The SPEAKER. The Chair thinks that a public bill cannot be reported on private-bill day except by unanimous consent; but private bills may be reported on public-bill day. The Chair is informed that is in accordance with the practice of the House.

Mr. RAINEY, from the Committee on Invalid Pensions, reported back, with a favorable recommendation, the bill (H. R. No. 1952) granting a pension to Nathaniel Johnson Coffin; which was referred to the Committee of the Whole on the Private Calendar, and the accompanying report ordered to be printed.

ADVERSE REPORTS.

Mr. RAINEY, from the same committee, also reported adversely upon the following; which were laid on the table, and the accompanying reports ordered to be printed:

A bill (H. R. No. 3247) granting a pension to John Etzell; and

A bill (H. R. No. 3429) for the relief of Nancy Dixon.

COUNTERFEITING COIN.

Mr. DURHAM, from the Committee on the Revision of the Laws of the United States, reported back, with a favorable recommendation, the bill (S. No. 739) to amend section 5457 of the Revised Statutes of the United States relating to counterfeiting.

The bill provides that section 5457 of the Revised Statutes of the United States shall be amended so as to read as follows:

"Every person who falsely makes, forges, or counterfeits, or causes, or procures to be falsely made, forged, or counterfeited, or willingly aids or assists in falsely making, forging, or counterfeiting any coin or bars in resemblance or similitude of the gold or silver coins or bars which have been, or hereafter may be, coined or stamped at the mints and assay offices of the United States, or in resemblance or similitude of any foreign gold or silver coin which by law is, or hereafter may be made, current in the United States, or are in actual use and circulation as money within the United States, or who passes, utters, publishes, or sells, or attempts to pass, utter, publish, or sell, or brings into the United States from any foreign place, knowing the same to be false, forged, or counterfeited, with intent to defraud any body politic or corporate, or any other person or persons whatsoever, or has in his possession any such false, forged, or counterfeited coin or bars, knowing the same to be false, forged, or counterfeited, with intent to defraud any body politic or corporate, or any other person or persons whatsoever, shall be punished by a fine of not more than $5,000, and by imprisonment at hard labor not more than ten years."

Mr. DURHAM. The object of this bill is to perfect the section of the Revised Statutes in relation to counterfeiting or having in possession counterfeit coin. In the original section the clause "with intent to defraud," &c., is omitted. Under that section whenever any person is found, for instance, with counterfeit coin of a foreign country in his possession, although not knowing the same to be counterfeit, and not intending to defraud any person by passing it, he is liable to the punishment prescribed by that section. This bill proposes to amend the section in that respect.

The bill was ordered to be read a third time; and it was accordingly read the third time, and passed.

Mr. DURHAM moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

INTERNATIONAL COMMISSION ON GOLD AND SILVER.

Mr. O'BRIEN, from the Committee on Coinage, Weights, and Measures, reported back, with an amendment, a joint resolution (S. R. No. 16) to authorize the President to appoint commissioners to attend an international conference upon the subject of the relative values of gold and silver.

The joint resolution provides that should the government of one or more countries invite a conference or convention to consider the important change which has recently occurred in the relative values of gold and silver and the adoption of international measures for the removal of embarrassments arising therefrom, the President of the United States is authorized to appoint three qualified persons as commissioners to attend such conference or convention.

The amendment was to add the following:

Resolved, That the President of the United States be, and he is hereby, authorized to propose such conference or convention to the governments of the leading nations of the world, if he should deem the same desirable.

Mr. O'BRIEN. I call the previous question upon the joint resolution and amendment.

Mr. FORT. I wish to raise a point of order on that resolution.

Mr. O'BRIEN. It is not subject to a point of order.

Mr. FORT. Well, let us see.

Mr. O'BRIEN. It does not appropriate a single dollar.

Mr. FORT. It provides for a commission.

The SPEAKER. The Chair is of opinion that the point of order rests against the joint resolution.

Mr. O'BRIEN. I desire to say a word before the Chair makes his decision.

The SPEAKER. Upon rereading the joint resolution, the Chair thinks it is not subject to a point of order, for it does not, on the face of it, make an appropriation.

Mr. FORT. How is it possible to appoint a commission without paying them? It seems to me that the very idea of employing an agent or servant involves his payment.

The SPEAKER. The Chair quite agrees with the gentleman in that respect, but the rule does not reach the case.

Mr. O'BRIEN. It may be that the President may appoint Army officers or Navy officers or some of our ministers abroad, or other salaried officers of the United States, who could not receive two salaries. The joint resolution does not necessarily contemplate the expenditure of a single dollar of money.

The amendment was agreed to.

The question was upon ordering the joint resolution, as amended, to be read a third time.

Mr. REAGAN. Is this joint resolution open to discussion?

The SPEAKER. The gentleman from Maryland has called the previous question upon it.

Mr. O'BRIEN. I will yield to the gentleman from Texas [Mr. REAGAN] without waiving my right to call the previous question.

Mr. REAGAN. Mr. Speaker, I wish to say that I look upon the appointment of this commission as a matter of much more importance than it would seem to be considered from the slight interest apparently taken in it by the House. It is proposed to create a commission for the purpose of determining a question in which American interests are certainly very different from English interests, and perhaps from those of other parts of the world. That difference consists in this: Our country is very largely a debtor country. Taking into consideration our national debt, our State debts, our municipal and corporate debt, we are perhaps the largest debtor nation in the world. One of our resources for meeting this indebtedness is the value of our silver. To encourage its mining and to bring it into use as a part of the currency of the country are of great interest to our people.

What is the condition of the English people in reference to this

question? England, I take it, is the largest creditor country in the world. A very large proportion of the English revenue-yielding property consists in the bonds of other governments and of corporations in other parts of the world. These securities aggregate billions. Whatever may give value to these securities will benefit English interests. Any restriction as to the kind of currency in which the principal and interest of those bonds may be paid augments their value in relation to the other property of the world by increasing the difficulty of such payment. It is obvious, therefore, that English interests tend toward augmenting the difficulty of paying these bonds by making gold alone the medium of payment. American interests are exactly opposite and in a very marked degree.

This being so, I am not willing to submit American interests to a commission composed largely of representatives of other governments, whose interests are different from ours and who will have stronger representation and greater influence than ourselves in the organization and action of such commission. It seems to me the highest duty of statesmanship, in fidelity to our own people and their interests, that we should control this question for ourselves as an American question. I trust, therefore, that this bill will not pass.

Mr. CLYMER. I call for the regular order.

The SPEAKER. The morning hour has expired.

Mr. O'BRIEN. I believe this bill goes over till the next morning hour.

The SPEAKER. It does.

BRIDGES ACROSS THE OHIO RIVER.

The SPEAKER. The special order for to-day after the morning hour is the bill (H. R. No. 2263) for the repeal of so much of the act of December 17, 1872, as provides for a pivot-draw in any bridge to be erected across the Ohio River between the cities of Covington, Kentucky, and Cincinnati, Ohio. The gentleman from Texas [Mr. REAGAN] is entitled to the floor.

Mr. HOLMAN. I trust that this bill will not be called up in the absence of the gentleman from Ohio, [Mr. SAYLER,] who feels great interest in it.

Mr. REAGAN. The gentleman from Ohio understood very well that this bill was set for to-day. If it be not acted on to-day it loses its place. I did not know of his absence or intended absence, but supposed he would be here.

The SPEAKER. The Chair desires to inform the gentleman from Texas that unless this bill is taken up to-day it loses its preference.

Mr. REAGAN. I must insist on the bill being proceeded with.

The bill was read. It provides that so much of the act entitled "An act to authorize the construction of bridges across the Ohio River, and to prescribe the dimensions of the same," approved December 17, 1872, as provides for a pivot-draw in any bridge hereafter to be erected across the Ohio River between the city of Covington, in the State of Kentucky, and the city of Cincinnati, in the State of Ohio, be repealed.

Mr. REAGAN. Mr. Speaker, the Committee on Commerce directed me to report this bill back to the House and recommend its passage. This was agreed on during the busy part of last session, and no written report was prepared to accompany the bill.

The measure was discussed on both sides before the committee; and the passage of the bill was objected to on the ground that it would tend to obstruct the free navigation of the Ohio River.

Under the sanction and authority of the laws of the United States, and of the States of Pennsylvania, Ohio, Virginia, West Virginia, Kentucky, and Indiana, bridges have been built across the Ohio River at Steubenville, Wheeling, Bellaire, Parkersburgh, Cincinnati and Newport, Cincinnati and Covington, and at Louisville, and one is being built, known as the Cincinnati and Southern Railroad bridge, for the accommodation of the vast and increasing inland commerce and travel which crosses that river.

It is no doubt true that these bridges do, to a small degree at least, interfere with the navigation of that river; and its commerce is very large. But the commerce and travel which cross it is also very extensive. And it is not probable that the obstruction to commerce and travel on that river caused by the construction of these bridges is greater than the obstruction to the commerce and travel of the country would be if denied the facilities which these bridges afford for crossing it. This would seem to be the just and practical way to look at that question, taking into view all the interests involved and seeing how we can best promote the general interests of commerce and travel, and at the same time cause the fewest impediments to them.

Comprehending this necessity, and in this spirit, Chief-Justice Taney in the Wheeling Bridge case said:

> The general convenience and interest of the public, in travel and trade across the river as well as on its waters, must be taken into consideration.

And as evidence that the Federal Government, which has authorized the construction of all the bridges on the Ohio, has never lost sight of the necessity of preserving its navigation, I may state that Congress has at various times, and down to the present, made appropriations of money to improve its navigation, amounting in all to millions of dollars.

But the question presented in this bill is narrower probably than the one above presented, while the same elements in a large measure enter into its consideration.

There is now, I understand, a bridge across the Ohio extending from the upper part of the city of Cincinnati to Newport, known as the Louisville Short Line Railroad bridge. Then there is the wire suspension bridge across this river, about a mile below the railroad bridge, which extends from about or a little above the business center of Cincinnati to Covington, on the Kentucky side of the river. There is also still another bridge in process of construction about a mile and a half below this wire suspension-bridge, known as the Cincinnati and Southern Railroad bridge.

It is also contemplated to construct another bridge across this river about sixteen hundred or two thousand feet below the wire suspension bridge, connecting Cincinnati and Covington lower down. It is proposed to build this bridge with "at least one span of a height not less than one hundred feet above low water, and not less than forty feet above the highest water, measured to the bottom chord of the bridge," and "that this span shall give a clear opening of at least four hundred feet between piers over the main channel of the river," as provided by the act of Congress of December 17, 1872.

But this act of Congress requires "that all bridges over the Ohio River, below the Covington and Cincinnati bridge," the one I have been calling the wire suspension bridge, "shall have, in addition to the high span prescribed above, a pivot draw, giving two clear openings of one hundred and sixty feet each, measured at right angles with the current at the average stage of water in the river," &c.

Now, the object of this bill is to enable those interested to build this new bridge, with the high span four hundred feet wide, and to relieve them from making the pivot-draw. This immunity is insisted on upon two principal grounds:

First. Because this bridge is to be "free to all the world for foot passengers, and likewise for all other uses, save and except such minimum tolls as shall be barely sufficient to meet the current expenses of the bridge." It is to be built at the expense of the city of Covington, to secure a cheap and convenient mode of intercommunication between that city and Cincinnati. And as a bridge for passengers, who would probably be passing over it quite constantly during all hours of the day, and who would necessarily be often impeded and delayed by the opening of the draw, it is not believed it would answer the purposes of its construction or the necessities of the community, if the pivot-draw should be required.

Second. It is believed the bridge with the pivot-draw, with two openings of 160 feet each, would be more of an impediment to the navigation of the Ohio than one with one opening 4[illegible] feet wide. And that, therefore, in view of both these important considerations, the repeal of so much of the act referred to as provides for a pivot-draw in any bridge hereafter to be erected across the Ohio River between the city of Covington, in the State of Kentucky, and the city of Cincinnati, in the State of Ohio, is proper.

It will be observed that this repeal would not extend to bridges built across the Ohio below these two cities. It would only extend to a bridge or bridges between these two cities.

Besides these considerations the bridge, it is estimated, would cost from sixty to a hundred thousand dollars more with than without the pivot-draw.

It is urged in behalf of this measure that the construction of this bridge would meet a great local necessity to these two cities in addition to affording general facilities of travel and transportation to the public. And there seems to be no objection to the construction of this bridge with the pivot-draw.

No bridge on the Ohio River, from and including the wire suspension bridge at Cincinnati to Steubenville, has a pivot-draw, and there are six of them. I will incorporate in my remarks a tabular statement showing in separate columns the height of each of these bridges above low water, the height of each above high water, the maximum local rise of water at each, and the width of the main channel span of each.

Bridges.	Above low water.	Above high water.	Maximum local rise.	Width of channel span.
	Feet.	*Feet.*	*Feet.*	*Feet.*
Steubenville railroad bridge	90	45	43	303½
Wheeling highway bridge	71½	48	43½	980
Bellaire railroad bridge	90	40	50	222
Parkersburgh railroad bridge	90	40	50	326½
Newport and Cincinnati railroad bridge (as commenced)	71½	9	62½	400
Newport and Cincinnati railroad bridge (as altered, &c)	100	37½	62½	400
Cincinnati suspension highway bridge	102½	40	62½	1,005

From this table it will be seen that the bridge at Steubenville is 90 feet above low water, 45 feet above high water, with a maximum local rise in the river of 43 feet, and with a main-channel span of 303½ feet over the channel of the river; that the Wheeling high bridge is 91½ feet above low-water mark, 48 feet above high water, with a maximum local rise in the river of 43½ feet, and with a main-channel span of 980 feet; that the Bellaire railroad bridge is 90 feet above low water, 40 feet above high water, with a maximum rise in the river of 50 feet, and with a main-channel span of 222 feet; that

the Parkersburgh bridge is 90 feet above low water, 40 feet above high water, with a maximum rise in the river of 50 feet, and with a main-channel span of 326½ feet; that the Newport and Cincinnati railroad bridge, as commenced with a pivot-draw, was 71½ feet above low water, 9 feet above high water, with a maximum rise in the river of 62½ feet, and a main-channel span of 400 feet; the same bridge as altered, under the advice of the United States engineers, without a pivot-draw, is 100 feet above low water, 37½ feet above high water, with a maximum rise in the river of 62½ feet, and with a main-channel span of 400 feet; and the wire or Cincinnati suspension bridge is 102½ feet above low water, 40 feet above high water, with a maximum rise in the river of 62½ feet, and a main-channel span of 1,005 feet.

The height of the proposed new bridge between Cincinnati and Covington is to be 105 feet; height above low water 102½ feet, above high water 40 feet, with a main-channel span of 400 feet in width.

Now, from what has just been said it will be seen that there is not a pivot-draw in any bridge across the Ohio from Steubenville to the Cincinnati suspension bridge, including these two. It will also be seen that a pivot-draw was commenced in the Newport and Cincinnati bridge, and that under the opinion and advice of the United States engineers the pivot-draw in this bridge was abandoned and a single span of four hundred feet was adopted. Without producing them I refer those who may wish to look more carefully into this question to the report of General Warren, General Weitzel, and Colonel Merrill, of the Engineer Corps, to General Humphreys, Chief of Engineers, on this subject, of April 19, 1871, in which they say "that time and experience have shown the utter incompatibility of bridges with draws with the peculiarities of Ohio River navigation." And on the same subject reference is made to the report of General Humphreys, Chief of Engineers, of 1871, page 400.

I have neither time nor inclination to go further into this view of this subject, and only say this much to show that, as there seems to be no objection to the construction of this bridge with a pivot-draw, there ought to be none to its construction without the pivot-draw; as this plan, as shown in the construction of all the bridges along the Ohio from this point up to Steubenville without pivot-draws, and as the judgment of the Corps of Engineers must have been and appears to have been against them. And this view is fully sustained by reference to the steady, continuous, and rapid increase of commerce on this part of the Ohio River, with a steady and continuous reduction of the cost of freights since these bridges were built. This needs no illustration to those familiar with that river.

Among the reasons urged for the construction of this bridge and in favor of the repeal asked for to secure its construction, one is that the present bridge between Covington and Cincinnati does not sufficiently accommodate those communities and the traveling public and transportation between them, and because the present bridge is a monopoly and is used more to obtain dividends for the company owning it than for the benefit of the public.

That we may the better understand the business relations between Cincinnati and Covington and the necessity for an increase of the facilities of intercommunication between them, in addition to the general interests of commerce and travel, I may say that Cincinnati has a population of over 275,000, as I am informed, with a taxed valuation of property of over $175,000,000; with an annual import trade of over $331,000,000, and an annual export trade of over $221,000,000; with an annual production of manufactures of over $144,000,000; while Covington has a population of about 30,000 and her taxable property is assessed at more than $15,000,000. Covington is really a suburb to and forms part of Cincinnati, as Brooklyn does of New York. The business intercourse and social and private relations of the people are as if they constituted one city. And it is natural, necessary, and proper that they should seek to enlarge, improve, and cheapen the means of that intercourse. They have now but a single bridge for that purpose, and it is managed for the benefit of the corporation which owns it rather than for the interests of the public.

The average daily number of foot-passengers crossing over the present bridge, for the year 1875, was 9,737, equal to 3,553,005 per annum. During the same year there was a daily average of 1,900 foot-passengers crossed at a ferry, which also belongs to this bridge company, between these two cities, and a short distance below the bridge, equal to 693,500 per annum; showing 4,246,505 foot-passengers crossing between those cities that year. I have only spoken of the foot-passengers, and not of the freights, vehicles, cattle, and other stock, &c. And the number will of course increase with the growth of those cities and of their business with each other and with the increase of general commerce.

I should also state that the northern terminus of the Kentucky Central Railroad is at Covington, and that the whole business of this important railroad going to or from Cincinnati passes over the present suspension bridge; and without the construction of this new, free bridge, these people, with all their business intercourse with each other and their means of intercommunication, will be at the mercy of a single corporation. The result of such a condition of things all know in advance would be the exaction of an enforced tribute from the people for the benefit of a monopoly—from the many for the benefit of the few—which could not fail to become odious and to produce a partial paralysis of all the great interests concerned, with real injury to both these cities and to the general public.

These are some of the reasons why the committee recommend the passage of this bill and why I believe it ought pass.

Much more may be said in behalf of this measure, but I leave the further discussion to those more interested and better prepared to discuss it.

I now yield to the gentleman from Missouri, [Mr. KEHR,] who wishes to present views perhaps adverse to mine.

Mr. GARFIELD. I wish to ask the gentleman from Texas what arrangement the committee provide for the opening of bridges across the Ohio River at the point under consideration. This measure appears to be simply a negative upon the method of having a draw. There certainly ought to be some method provided in regard to any bridge built over the river, unless it is built entirely above the reach of steamers.

Mr. REAGAN. I will state to the gentleman that it is proposed to have this bridge constructed just as the Cincinnati and Newport bridge is constructed: not less than one hundred feet above low water; not less than forty feet above high water; without a draw, and with an open span four hundred feet wide over the main channel.

Mr. GARFIELD. Is that all provided for in the bill? I want to know what provision the bill makes.

Mr. REAGAN. Under the act of Congress of December 17, 1872, which is a general law regulating the construction of bridges over the Ohio River, it is provided that any bridge built across the river above the mouth of Big Sandy shall have a certain height and a certain width of span, the latter being not less than three hundred feet; that bridges built below Big Sandy shall have an open span of not less than four hundred feet and that they shall be of a height which is indicated. From Cincinnati down the height must be at least one hundred feet above low water and not less than forty feet above high water.

Mr. GARFIELD. What is the height between the Big Sandy and the Ohio?

Mr. REAGAN. I have not the table before me just now, but it is less than this. I believe it is ninety feet. There are some bridges varying in height, and as I have the table here now I can tell the gentleman exactly the height of each.

Mr. GARFIELD. If the gentleman will allow me, I will say I merely make the suggestion to him. Of course I have not seen the bill, and gentlemen who live in Cincinnati should know more than I do about it. But I should deem it unsafe to repeal the arrangement now made by law for the height of bridges and the passage of steamers through or under bridges and make no provision in place of it, leaving it to the general laws, which may be vague. Whatever may be done, I think there should be added right in connection with the repeal such proviso as will regulate any bridge to be built at Cincinnati.

Mr. REAGAN. If the gentleman will wait for a moment, I will explain the matter to him and show that it is in harmony with the provisions already made in the law.

Now a word as to the height of these bridges:

Bridges.	Above low water.	Above high water.
	Feet.	*Feet.*
The Steubenville railroad bridge	90	45
Wheeling highway bridge	91½	48
Bellaire railroad bridge	90	40
Parkersburgh railroad bridge	90	40
Newport and Cincinnati railroad bridge, (as commenced)	71½	9
Newport and Cincinnati railroad bridge, (as altered, &c)	100	37½
Cincinnati suspension highway bridge	102½	40

The latter is the same which it is proposed to make this bridge.

The gentleman's difficulty, however, is not yet answered. If we make this repeal we must also show what arrangement will be substituted for it. Now, by reference to the act of Congress of 1872, the gentleman will find, after prescribing the height of bridges above the mouth of the Big Sandy and below the mouth of the Big Sandy, it provides that those built shall not be less than one hundred feet above low water and forty feet above high water, and that there shall be an open span of not less than four hundred feet across the main channel of the river; it adds then a proviso that all bridges built across the Ohio below the wire suspension bridge at Cincinnati shall, in addition to the span of four hundred feet wide and one hundred feet above low water and forty feet above high water, contain a draw. That is the provision of the law now, that they shall contain a draw. The object of this bill is to exempt those building any bridge between Cincinnati and Covington from making a draw.

The bill only provides that the repeal shall extend to so much of the proviso as applies between the cities of Cincinnati and Covington. Now then, looking at that subject, immediately above the wire suspension bridge, a bridge may be built just as it is proposed to build this one, of the same span, same height, and without a draw; and that covers all that part of Cincinnati, and Covington, and Newport which lies above the suspension bridge.

Mr. SAYLER. Will the gentleman allow me to interrupt him for one moment?

Mr. REAGAN. Not now. It covers a considerable distance from the mouth of Licking River to the suspension bridge. Now, then, what can be the difference between putting a bridge fifteen hundred or two thousand feet below this bridge without pivot-draws and putting a bridge the same distance above without pivot-draws? It seemed to us it was not necessary. And the great reason which exists for making a free bridge here for foot-passengers and for all the world besides, except such minimum charge as would keep the bridge in repair, is, and it ought to be, one which can be passed at all times. And if it is to be made with a draw, whenever the draw is open the foot-passengers must be stopped and impeded, and all other passengers and transportation upon the bridge must likewise be stopped. Therefore the great convenience to those communities and to the general public and to commerce which will arise from enabling them to build a bridge without a draw is manifest. And added to that, as I have already stated in my opening remarks, it seems to be the judgment of the United States engineers that a single opening of four hundred feet is less an impediment to the navigation of the river than two openings of one hundred and sixty feet each. The gentleman will therefore see that the provision he speaks of is already made in two law, and that we simply propose to suspend one provision of it as to that part of the river which lies between Cincinnati and Covington.

I will be glad to answer the question of the gentleman from Ohio, [Mr. SAYLER.]

Mr. SAYLER. I wish to suggest to the gentleman as a fair statement in regard to the situation of this bridge that, placing it as he does half a mile below where the law provides no bridge without a pivot draw shall be placed, he necessarily forces the landing of all the larger steamboats navigating the Ohio River below the localities in Cincinnati adapted to this business during every period of high water, and I wish to say to the gentleman and to the House that there is a protest against this bill from every business combination of citizens of Cincinnati, and that the only purpose of it is to save a corporation about $60,000 or $70,000 by authorizing them to evade the provision of a law which has been recognized ever since 1872, and which ought to control the bridging of the Ohio and Mississippi and all our rivers.

Mr. REAGAN. The statement of the gentleman from Ohio makes it necessary for me to add one word. The gentleman ought to be better acquainted with that river and its navigation than I am, and yet his statement does not show that he is so. He informs this House that the building of this bridge without pivot-draw would necessarily impede the reaching of the wharves of Cincinnati by a great many steamboats that come there. Now the gentleman ought to have known, and he will know when I call his attention to it, that the wharves at which the steamboats lie are above the suspension bridge and that none but three mail-boats, as I am informed, lie below that bridge and below the point at which this bridge would be built, I believe; but as to that I am not certainly informed. So that the gentleman is totally mistaken when he assumes as an argument against the bill that the building of this bridge will prevent the passage of steamboats, for they now pass under a bridge no higher than the one proposed to be built.

Mr. SAYLER. Will my friend allow me to correct him? I have lived in Cincinnati for a good while and know the situation there pretty well. As a matter of fact that suspension bridge does impede the passage of large boats; and the boats between Louisville and Cincinnati are compelled to make their wharfage below the suspension bridge. That bridge, however, with a span of over one thousand feet, is much easier got through than the bridge proposed. The proposed bridge is sixteen hundred or eighteen hundred feet below the suspension bridge, and will force boats to make their wharfage still lower down. The improvement of the Louisville and Portland Canal has resulted in putting on the river a much larger class of boats than have navigated the river before. You cannot get those boats up at any period of the year when there is high water unless the bridge has draws. You require a draw in every bridge below this point, and the only object is to save a small sum of money to a corporation.

Mr. REAGAN. It is not so much the money that is saved as that it would not serve the purposes of commerce.

Mr. SAYLER. Why not, when every other bridge is built with a draw?

Mr. REAGAN. I will tell the gentleman why. Every time the draw is opened the commerce and travel passing upon that bridge between two such cities is impeded. Another reason is that the very object of building this bridge is to relieve the people of Cincinnati and of Covington of an onerous monopoly. If you allow them by their influence to cripple and defeat the construction of this bridge in a way that it will be available, by placing a draw on it that will impede and interrupt travel, you strengthen the hands of that monopoly against the interest of those people.

But the gentleman from Ohio recurred again to the statement—and I must again call attention to it—that this bridge would arrest the passage of steamboats. I stated to the gentleman what he has not disputed, that the great body of the vessels trading on the Lower Ohio to Cincinnati now land above the wire suspension bridge. As I am informed, there are but three vessels belonging to the mail line, of very high dimensions, that do not pass under this wire suspension bridge, but land below it. Some five thousand and odd vessels that landed at that wharf last year passed under a bridge of the same height as the one proposed to be built; a line of three vessels landing below it, which preferred, as a matter of fancy, to have very tall chimneys.

But in relation to that I desire to present right here a few facts that may be serviceable to my friend from Ohio [Mr. SAYLER] in the consideration of this subject. I have here a table showing by official observations of twelve years the number of days that the water has stood at a given stage as compared with the height of these bridges. I desire to call the attention of the House to the facts shown in this table. In these twelve years the average number of days in which there were 5 feet of water with 98 feet between the water and the bridge was 325. The number of days in which there were 10 feet of water with 93 feet between the water and the bridge was 252. The number of days in which there were 15 feet of water with 88 feet between the water and the bridge was 191. The number of days in which there were 20 feet of water and 83 feet between the water and the bridge was 132. The number of days in which there were 25 feet of water and 78 feet between the water and the bridge was 90. The number of days in which there were 30 feet of water and 73 feet between the water and the bridge was 58. The number of days during which there were 35 feet of water and 68 feet below the bridge was 41. The number of days in which there were 40 feet of water and 63 feet between the water and the bridge was 18. The number of days in which there were 45 feet of water and 58 feet between the water and the bridge was 9. The number of days in which there were 50 feet of water and 53 feet between the water and the bridge was 3. And the number of days on which the water was 55 feet high and there was a space of 48 feet between the water and bridge was 1 day.

Now then, sir, I know that formerly high chimney-stacks were used on that river. Now a new plan has been required in some vessels since the building of these bridges, that under which, by a mechanical arrangement, they lower their chimney-stacks in passing under these bridges.

The policy which makes this necessary was adopted by the Congress of the United States on full consideration of the subject, as due to the commerce and travel passing across that river from east to west and from west to east, and as being fairly balanced against the necessity of the preservation of the navigation along the channel of that river. And it was the consideration of this fact that induced the Chief-Justice of the United States, as I said in my opening remarks, to say that both these matters should be considered in connection with the subject—that is, the interests of the commerce along the channel of the Ohio River, and the interests of the commerce which crosses the Ohio River.

While the commerce of that river is very great no man will assume or contend that the commercial interests which lie along its channel are so great in magnitude as the commerce which crosses it by virtue of the facilities afforded by the bridges which cross this river. We have to consider these subjects together.

I admitted in my opening remarks this fact, that it must be confessed that some impediment must be offered to the navigation of the Ohio River by the construction of bridges of this character, but the interests of the country demand that whatever slight impediments may be created in this way should be made in the interests of the general commerce of the United States.

I want to state one thing further, and it is that since the building of these six bridges along the Ohio River from Cincinnati to Steubenville without draws and with spans from three hundred to four hundred feet, there has been a steady and continuous increase of the commerce of the river from Pittsburgh to Cincinnati and a steady and continuous decline in the rates of freight. Now, here is a great fact stated, which enables us to see that these bridges cannot have seriously interfered with its navigation.

I will not take time to give the figures in relation to this fact, but they clearly prove the fact that notwithstanding the construction of these six bridges without draws, and none of them higher than the one proposed to be built if this bill is passed, the commerce of the river has steadily increased and the rates of freights have steadily diminished.

If a bridge of this description were a serious obstruction to the navigation of the river, could such results have happened? I do not believe that it is in the interests of commerce to resist the passage of this law, but in the interests of a single monopoly which is determined to levy a perpetual tribute upon the people of Cincinnati and Covington. The gentleman from Ohio [Mr. SAYLER] has said that every organized interest in the city of Cincinnati opposes this bridge. Well, he represents a portion of the city of Cincinnati, and he ought to have better information upon that point than I have.

I believe that the chamber of commerce opposes it, but I am informed that a portion of its members are stockholders in the wire suspension bridge; but if any other organized body of that city opposes this bill, I am not informed of it, and I do not believe the people of Cincinnati are opposed to it, for I do not believe they would oppose their own interest and the means of their own prosperity.

I now yield to the gentleman from Missouri, [Mr. KEHR.]

Mr. KEHR. Mr. Speaker, I desire to state that this bill is reported back not by the committee unanimously, but by a divided committee, and I was instructed by the minority to present some views against the passage of the bill.

After a conflict of a quarter of a century between the interests of the carriers by rail and those of the carriers by water, an agreement

was reached in 1872 concerning the system of bridging the Ohio River. On the 17th of December in that year the Congress of the United States passed a general law for the bridging of the Ohio. It is to be assumed that the law as then adopted underwent careful examination, and that in the deliberations which finally matured it all interests were consulted; that the judgment of the skilled engineer was taken on the engineering problems involved; that the demands of the commerce of the Ohio and Mississippi Valleys, as well as the special wants of the carrying service, by land and water, by rail and boat, were kept in view; that conflicts in interest were judiciously reconciled, so far as it was possible to reconcile them, and we may therefore well assume that the law as passed expressed the best judgment which the legislative body of the nation had reached, or could at the time reach, on the subject. It seems too that the system then adopted meets the approbation of those who dwell in the valley of the Ohio, for no complaint against it has been heard from that source.

I have stated that the law is a general law, under which any body of men who see fit to do so may construct bridges over the Ohio, provided they observe the requirements of the law applicable to all alike, and these requirements are, in substance, that all bridges below the mouth of the Big Sandy shall have at least one span of a height of not less than one hundred feet above low water and of not less than forty feet above highest water; that this span shall give a clear opening of at least four hundred feet between the piers; that it shall be placed over the main channel of the river, and that all bridges erected below the Covington and Cincinnati suspension bridge shall, in addition to the high span, be provided with a pivot-draw, giving two clear openings of one hundred and sixty feet each. Congress, in passing the law, deemed it essential to commerce and the free navigation of the Ohio that all bridges below the supension bridge at Cincinnati, then already in existence, should be provided with a pivot-draw giving two openings of one hundred and sixty feet each. In devising this bridge system, which was to set at rest a vexed subject involving great interests, and which was to control for the future, the requirement of a pivot-draw at all points on the Ohio below the point stated was deemed indispensable. The bill now before the House proposes to relieve bridges hereafter to be erected below that point, between Covington and Cincinnati, from the requirement of the pivot-draw; and the question is, shall the law of 1872 be undone? for to allow the exception now asked is simply to break in on and destroy the system then devised.

No argument can be used in support of the present bill that does not apply with equal force to any bridge project at any point on the Ohio below Cincinnati. If it is proper to grant the exemption in this case, justice will require that it be granted in all others. Any two cities, towns, or villages facing each other on the shores of the Ohio may ask the exemption with equal justice, and, the precedent being established, that fact will fortify their claim. My appeal, therefore, is to preserve the law against the first assault and to ward off the threatened inroad by piecemeal upon the bridge system which it created.

It is asserted that one purpose in asking this legislation is to defeat what is claimed to be an existing monopoly. To that I answer that there can be no monopoly where the law gives the right to build as many bridges as people see fit to build. There is now ample authority for building this bridge. The question is simply whether requirements in the interest of navigation, deemed to be proper in regard to all other bridges below Cincinanti, shall also be applicable to this bridge. If proposed to be built in conformity to law, there is no legal difficulty in the way. The only embarrassment presented is the unwillingness of those promoting the bridge project to conform to the law in the construction of the bridge.

It is incontestably true that, with a pivot-draw boats of all sizes will be able to pass up and down the Ohio at all times during the season of navigation, and it stands confessed on the other hand that without the pivot-draw certain vessels now navigating that river will not be able to pass the bridge; but it is claimed that this class of vessels is small in number. I will not stop to inquire whether the number be large or small, for if the obstruction can be removed by the construction of the draw I claim that it should be done. The shipper and the carrier have the right to demand it, and the trifling expense of the draw must not stand in the way. The certainty of being able to pass the bridge and to deliver cargo is altogether too important to the producer as well as to the consumer, the carrier as well as to the shipper, to permit an artificial barrier which a trifling outlay will obviate to block a water-course for the improvement of which the nation annually expends large sums of money. In any controversy in which I find the larger and more general interests on one side and a special or local interest on the other, I unhesitatingly range myself on the side of the former, and such I believe to be the case here.

It is claimed that to build a bridge between Covington and Cincinnati with a pivot-draw will somewhat inconvenience free passage across the bridge. I would ask if to close the river against vessels intended to navigate it is not only a greater inconvenience, but whether it does not also involve a much greater and more far-reaching loss? The argument that to dispense with the pivot-draw will save the expenditure of from $60,000 to $100,000 in the construction of the bridge is not to my mind entitled to much weight when the question of the navigability of a river is at stake. It is of vastly more importance that the system of bridging which was devised after mature deliberation should be carefully observed, than that it should be broken in upon in order to save the expenditure of a small sum of money.

Mr. REAGAN. The argument in favor of this bill is not placed on that ground, but on a different ground. It is that as the bridge is to be used continuously for the passage of passengers and freight it would be impracticable to have that passage frequently interrupted by the opening of the draw.

Mr. KEHR. In answer to that I will call attention to the fact stated a few minutes ago, namely, that it will be necessary to resort to the draw only at certain stages of the water and during a comparatively few days of the year. If that be so, the inconvenience to bridge travel will be limited to those brief periods. And the question is immediately suggested whether the delay to bridge travel arising from the opening of the draw is not an insignificant inconvenience in comparison to the fact that vessels freighted with cargo will, without the draw, be unable to pass at all.

The leading view that has controlled my action in this matter is that after a system of bridging a stream has been devised, it ought to be adhered to religiously. The bridges that span a navigable water-course should be constructed according to a uniform system, for it is only in this wise that vessels can be constructed and navigated to conform to them. It is impossible to have different systems of bridging upon the same stream and yet preserve the interest of boats and vessels and of those interested in navigating them.

If I have any portion of my time remaining I desire to yield to the gentleman from Ohio, [Mr. SAYLER.]

The SPEAKER *pro tempore*. The gentleman from Missouri has ten minutes of his time remaining.

Mr. GARFIELD. Does the gentleman from Missouri [Mr. KEHR] hold that he is alone in opposing this bill?

Mr. KEHR. I have no objection to state how the committee was divided, if in doing so I am not violating parliamentary etiquette.

Mr. GARFIELD. O, no; but this is a matter of public concern.

Mr. KEHR. I desire to say that I am not alone in opposing this bill in my committee——

Mr. SAYLER. This is a matter of so much importance that I hope discussion will not be cut off at the termination of the hour of the gentleman from Texas, [Mr. REAGAN.] I hope that those of us who live in the city of Cincinnati and along the Ohio and Mississippi Rivers and their tributaries will be permitted to express their views upon this subject. It is a matter of much more importance than gentlemen may at first suppose. And as it is now late and my friend from Indiana [Mr. HOLMAN] requests me to yield to a motion to adjourn, I will do so with the understanding that we will have time to-morrow for further discussion.

Mr. HOLMAN. I move that the House do now adjourn.

LEAVE OF ABSENCE.

Pending the motion to adjourn, leave of absence was granted as follows:

To Mr. ANDERSON, for ten days on account of important business.

To Mr. CASWELL indefinitely on account of sickness in his family.

DISPOSITION OF TROOPS.

The SPEAKER *pro tempore*, by unanimous consent, laid before the House a letter from the Secretary of War, transmitting a statement of the disposition of United States troops as called for by the resolution of December 18th, ultimo; which was referred to the Committee on Military Affairs.

D. DAVIS.

The SPEAKER *pro tempore* also laid before the House a letter from the Secretary of War, transmitting papers in relation to the claim of D. Davis for improving the Hudson River; which was referred to the Committee on Commerce.

EMPLOYÉS IN STATE DEPARTMENT.

The SPEAKER *pro tempore* also laid before the House a letter from the Secretary of State, transmitting a statement of persons employed and salaries paid to same in his Department for the year 1876; which was referred to the Committee on Appropriations.

The motion of Mr. HOLMAN was then agreed to; and accordingly (at four o'clock and twelve minutes p. m.) the House adjourned.

PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. BROWN, of Kansas: Papers relating to the petition of Sylvanus Sandford for compensation for sugar taken by the United States Army, to the Committee on War Claims.

By Mr. DOBBINS: The petition of Lawrence M. Smith, late of the Seventeenth Regiment Connecticut Volunteers, for a pension, to the Committee on Invalid Pensions.

By Mr. GOODIN: Petition of Lieutenant A. H. Von Luettwitz, for the correction of his Army record, to the Committee on Military Affairs.

By Mr. HILL: The petition of citizens of Georgia, for a post-route from Cumming to Dawsonville, to the Committee on the Post-Office and Post-Roads.

By Mr. HOAR: The petition of Harding Woods and others, of

Barre, Massachusetts, for cheap telegraphy, to the same committee.

Also, the petition of John Q. Ashford and other citizens of Iowa, for action by Congress concerning the Des Moines River lands, to the Committee on Public Lands.

By Mr. HOPKINS: The petition of Calvin Adams, that the Commissioner of Patents be authorized to extend his letters-patent on an improved door-lock, to the Committee on Patents.

By Mr. KIDDER: A paper relating to the establishment of post-routes from Fort Pierre via Rapid City to Deadwood; from Fort Randall to Rapid City; from Rapid City via Custer City to Deadwood; and from Rapid City to Crook City, all in Dakota Territory, to the Committee on the Post-Office and Post-Roads.

By Mr. LAPHAM: The petition of William De Mocker, late a private in Company A, One hundred and fourth New York Volunteers, for a pension and for the correction of his Army record, to the Committee on Invalid Pensions.

Also, the petition of A. Gibbs, that the heirs of deceased soldiers may be paid interest on the amount found to be due decedents at the time of their death, to the Committee on the Judiciary.

By Mr. LYNDE: The petition of Homer Glass and 107 vessel-owners of the lake ports, for the repeal of the law giving three months' pay to seamen discharged at foreign ports, to the Committee on Commerce.

By Mr. MUTCHLER: The petition of J. N. Barritt and Duncan S. Walker, that the House of Representatives investigate the subject of the removal of war material from some sections of the country to other sections; also, to inquire into the present strength, location, and occupation of the troops of the United States Army, how many are being used upon the frontier, in the Southern States, and in and around Washington; when the troops were ordered to Washington, the nature of their orders, by whom made, and the purpose for which they are or have been ordered here, to the Committee on Military Affairs.

By Mr. O'NEILL: The petition of Mrs. Sarah C. Hugg, widow of James S. Hugg, late captain Company G, Thirty-fourth New Jersey Volunteers, for a pension, to the Committee on Invalid Pensions.

By Mr. ROSS, of Pennsylvania: The petition of 22 citizens of Sullivan County, Pennsylvania, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. STEVENS, of Arizona: The petition of citizens of Arizona, for the construction of a military road over the Mogrillon Mountains, Arizona, to the Committee on Military Affairs.

By Mr. VANCE, of North Carolina: The petition of W. W. Green, for the establishment of a post-route from Shelby to Marion, North Carolina, via Camp Call and Dysartsville, to the Committee on the Post-Office and Post-Roads.

Also, the petition of citizens of New York, for a reduction of the cost of trade-marks, to the Committee on Patents.

By Mr. WILLIAMS, of Delaware: The petition of citizens of Millsborough, Delaware, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. WOOD, of Pennsylvania: The petition of 43 citizens of Montgomery County, Pennsylvania, for the purchase of the telegraph lines by the Government of the United States, to the same committee.

IN SENATE.

WEDNESDAY, *January* 10, 1877.

The Journal of yesterday's proceedings was read and approved.

INTERNATIONAL CONVENTION ON SILVER COIN.

Mr. BOUTWELL. I have received a memorial of the Boston Board of Trade upon the subject of renewing the coinage of silver. It is in form addressed to me, but it is in fact a memorial to the Senate and House. I ask the Secretary to read it.

The PRESIDENT *pro tempore*. The memorial will be read.

The Chief Clerk read as follows:

BOSTON, *January* 5, 1877.

Hon. GEORGE S. BOUTWELL,
United States Senate, Washington.

SIR: I beg to inform you that at a meeting of the Boston Board of Trade held this day the following was unanimously adopted:

Resolved, That the officers of the Boston Board of Trade be instructed to forward to the Senate and House of Representatives of the United States the following petition in the name of the board and also to transmit a copy of the same to the President of the United States.

The Boston Board of Trade respectfully prays the Congress of the United States to provide by law for the appointment of citizens learned in financial science and well acquainted with practical business affairs to be commissioners on the part of the United States to meet such commissioners as may be appointed by the several European governments, in convention, to consider the expediency of remonetizing silver coin at a fixed relation of value to gold coin by all the nations; and requesting the President to invite the several governments to participate in said convention, agreeing with them upon the time, place, and other conditions for holding such convention; and until the leading commercial nations of Europe shall join in an international agreement for the remonetization of silver coin and for fixing the value thereof in relation to gold coin, the Boston Board of Trade prays that silver coin shall not be made a legal tender in the United States for any sum larger than $10, and most earnestly protests against the passage of the bill making silver coin an unlimited legal tender for all debts, public and private, which bill has already passed the House of Representatives and is now pending before the Senate of the United States, and this for the following reasons:

1. Because the monetary standard of the United States has for more than half a century been practically limited to one metal, namely, gold, and all contracts and monetary transactions have been regulated by it.

2. Because this practical adoption of gold as a monetary standard was in 1873 confirmed by statute, so that all contracts then pending, except so far as modified by the legal-tender act, were definitely reduced to the gold standard and every departure from the same in monetary transactions and payments, public or private, with the above exception, is a positive violation of contract, which by the Constitution of the United States is expressly prohibited to the several States, and would be still more inexcusable and ruinous in its consequences if committed by the General Government.

3. Because such a step would involve great injury to the credit of the United States, which has been steadily improving since the close of the civil war to the great advantage of the Treasury and benefit of our people, and even should the price of silver be so maintained as to render the change comparatively harmless to the holders of our bonds, the fact that we had been willing to commit such a practical fraud would tell against us in all time to come.

4. Because, by committing ourselves prematurely to the re-establishment of silver as a legal standard we not only hold out an inducement to Germany, France, and other nations of Europe to discharge upon us the whole volume of their surplus silver coin, but put it out of our power to take hereafter a leading position in international conferences for the purpose of establishing the bimetallic standard on a uniform and permanent basis for all the civilized nations of the world.

Asking your kind offices in this matter,

I am, sir, very respectfully, your obedient servant,

JOHN W. CANDLER,
President Boston Board of Trade.

A true copy. Attest:
C. G. ATTWOOD, *Secretary.*

Mr. BOUTWELL. In presenting this memorial to the Senate I desire to make a statement as to the character of the memorialists and the subject to which the memorial relates, not however at any length, but very briefly. If this were a memorial from the board of trade of a large commercial city composed of men who devoted themselves exclusively to business and business pursuits, I think it would receive the careful attention of the Senate; but I am justified in saying further of the Boston Board of Trade that it comprises among its members many gentlemen who have made the science of money a study and who have brought, therefore, to the consideration of this subject the results of their thoughts and studies added to a very large business experience. They are concerned naturally in the preservation of individual credit and of the public honor. I may say generally that I concur in the views presented in this memorial, but as the subject is before a commission and a bill is in the hands of a committee of the Senate, I do not purpose now to enter into a consideration of the subject. I ask that the memorial be printed and referred to the Committee on Finance.

Mr. BOGY. While I concur with the Senator from Massachusetts in the statement that this memorial comes from a most respectable source and is signed by gentlemen who are no doubt well versed in the subject of finance, yet it seems to me there are some very singular statements in the paper. I say so with very great respect to those men, because I agree with the Senator from Massachusetts that they are men of undoubted intelligence. Nevertheless, in my opinion the fact is not generally known that by the law to-day silver as well as gold is a recognized coin with which you can pay duties and all the debts due to the Government by individuals. I will read the sections in the Revised Statutes to sustain what I have just stated.

SEC. 3473. All duties on imports shall be paid in gold and silver coin only, or in demand Treasury notes, issued under the authority of the acts of July 17, 1861, chapter 5; and February 12, 1862, chapter 20; and all taxes and all other debts and demands than duties on imports, accruing or becoming due to the United States, shall be paid in gold and silver coin, Treasury notes, United States notes, or notes of national banks; and upon every such payment credit shall be given for the amount of principal and interest due on any Treasury note not received in payment on the day when the same are received.

SEC. 3474. No gold or silver other than coin of standard fineness of the United States, shall be receivable in payment of dues to the United States, except as provided in section 2366, title "Public Lands," and in section 3567, title "Coinage, Weights, and Measures."

SEC. 2366. The gold coins of Great Britain and other foreign coins shall be received in all payments on account of public lands, at the value estimated annually by the Director of the Mint, and proclaimed by the Secretary of the Treasury, in accordance with the provisions of section 3564, title, "The Coinage."

SEC. 3567. The pieces commonly known as the quarter, eighth, and sixteenth of the Spanish pillar-dollar, and of the Mexican dollar, shall be receivable at the Treasury of the United States, and its several offices, and at the several post-offices and land offices, at the rates of valuation following: the fourth of a dollar, or piece of two reals, at twenty cents; the eighth of a dollar, or piece of one real, at ten cents; and the sixteenth of a dollar, or half real, at five cents.

According to my understanding, silver, in spite of the law of 1873, is a recognized coin to the extent that you can pay duties with it and all other obligations of the Government. Therefore the statement made by these most respectable gentlemen of Boston, that it would be a violation of contract and a breach of those obligations now existing that are based alone upon gold, is in my estimation not entirely correct. I mention this so that the fact may go before the country. I am myself extremely solicitous to have silver made a legal tender, but I desire that all these facts should go out so that the public mind of the country may take hold of them and elaborate the question as it should be. Let the facts go out, and I believe this is one fact not generally known.

Mr. BOUTWELL. Without questioning the view of the law taken by the Senator from Missouri, I think that the memorialists in the paper just read have said nothing which is in conflict with that view. That I say without assenting to or denying the proposition as to what the law is as laid down by the Senator from Missouri. The memorialists assert, as I understand, that for about fifty years, (I suppose meaning since the passage of the act revaluing gold in 1834,) by the understanding of men engaged in business, gold has been the

basis on which business has proceeded with the exception of the period during which paper money has been a legal tender. I think that is all that is intended by the memorialists; but, however that may be, that is an entirely subsidiary matter. The chief object, no doubt, of the memorialists is to present to Congress the views which they entertain touching the expediency of legislation for the issue of silver money until the effort has been made to bring other countries into harmony with this in favor of a bimetallic standard upon some agreed ratio of value between silver and gold.

Mr. BOGY. I heartily concur with that portion of the memorial myself. This question is not confined to one country; it affects the commercial world. The commercial world is a unit, and as a matter of course what is money in one portion of the commercial world should be considered as money in all other portions. That part of the memorial I heartily concur with, and I think at this session of Congress we should do something urging the appointment or providing for the appointment of a commission to meet commissioners from other portions of the world with a view of settling this question. I concur heartily with that portion of the memorial.

Mr. SHERMAN. I wish simply to say that the Senate already at the last session passed a bill which covers the very point now spoken of. I think some time during the last session we sent to the House a bill which provides for an international commission authorizing the President to appoint delegates on the part of the United States to adjust and arrange the relative value between gold and silver. The Senate also passed a bill which authorizes a treaty or a commercial arrangement between Great Britain and the United States, by which the gold units of money in this country and Great Britain may be harmonized so as to be converted readily one into the other. Those bills were sent to the House during the last session and are still pending there. I have no doubt the House at its own convenience will take up the bills and act upon them, and we can no doubt agree in having commissions authorized and the commissions will be organized and appointed at once.

Mr. BOGY. I will state simply my objection to the bill spoken of by the Senator from Ohio. I think I voted for that bill at the last session, but having at the same time an objection to it. It provided for the appointment of an international commission to whom was to be submitted the question of the double standard. I am not in favor of submitting that question, as far as we are concerned, to any international convention at all. I am in favor of submitting to an international convention the question as to the relation which should exist between the metals, and no more. In other words, the value, the relation, should be uniform throughout the commercial world, but the other question whether we should or should not have a double standard, that is a standard composed of gold and silver, I was not disposed and am not now disposed to submit to an international convention. I objected to the bill to that extent; yet I voted for it because at that time I could not have my amendment adopted by the Senate; but that was my objection and is yet.

The PRESIDENT *pro tempore*. The memorial will be referred to the Committee on Finance and printed, if there be no objection.

PETITIONS AND MEMORIALS.

Mr. SPENCER presented a joint resolution of the General Assembly of the State of Alabama; which was read and referred to the Committee on Commerce, as follows:

Joint resolution and memorial to the Congress of the United States asking for the passage of an act approving the act of the General Assembly of Alabama authorizing the construction of a breakwater in bay and harbor of Mobile.

Be it resolved by the House of Representatives, (the Senate concurring therein.) That the governor of the State be, and he is hereby, requested to forward the following memorial of the General Assembly of Alabama to our Senators and Representatives in Congress at his earliest convenience, requesting immediate attention thereto.

Memorial to the Congress of the United States for the passage of an act approving the act of the General Assembly of the State of Alabama entitled "An act to authorize the construction of a breakwater in the bay and harbor of Mobile," &c., approved March 6, 1876, and the amendments thereto.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The memorial of the General Assembly of Alabama respectfully invited the attention of the honorable Congress of the United States to the great benefit and convenience likely to result to this State and the general commercial interest of the country from the construction of a breakwater in the bay of Mobile as proposed and provided for by the above-stated acts of the General Assembly of this State. Your memorialists therefore respectfully pray that the honorable Congress of the United States will pass an act as speedily as may be, giving the assent and approval of the honorable Congress of the United States to the construction of said breakwater under and in pursuance of the said act of your memorialists and the amendments thereto, copies of which said act and amendments thereto are hereto attached as a part hereof. That the act which your honorable body is hereby prayed to pass may be in effect as follows, to wit:

SECTION 1. *Be it enacted, &c.*, That the approval and assent of Congress are hereby given to the construction of a breakwater in the bay and harbor of Mobile, within the State of Alabama, upon the terms and conditions and in accordance with the provisions contained in an act of the General Assembly of said State, approved March 6, 1876, incorporating the Mobile Breakwater Company, and the amendments thereto approved on the 30th day of November, 1876.

And your memorialists will ever pray, &c.

N. N. CLEMENTS,
Speaker of the House of Representatives.
R. W. COBB,
President of the Senate.

Approved 16th December, 1876.

GEO. S. HOUSTON,
Governor.

Mr. DAWES. I present the petition of Charles Lewis Scott, a citizen of California, praying for the removal of his disabilities. Mr. Scott was formerly a member of the House of Representatives from the State of California when I served there, and from that State he went into the rebellion. He went into the rebellion induced by the fact that he was a native of the Southern States, and he went back during the war to his native State, which was partly in rebellion. I think that if anybody ever deserved to have his disabilities removed it is Mr. Scott. I move that the petition be referred to the Committee on the Judiciary.

The motion was agreed to.

Mr. WEST presented the petition of Thomas A. Adams, president of the Board of Underwriters of New Orleans, and Cyrus Bussey, president of the chamber of commerce, and the presidents of the various commercial organizations of that city, praying an appropriation for the improvement of the navigation of the Red River from Jefferson, Texas, to its mouth; which was referred to the Committee on Commerce.

REPORT OF LIBRARIAN OF CONGRESS.

Mr. EDMUNDS. I am instructed by the Joint Committee on the Library of Congress to present the annual report of the Librarian of Congress for the year of 1876. I move that it be printed and that five hundred extra copies thereof be printed for distribution by the Librarian, which is the usual course. The latter motion may be referred to the Committee on Printing, as I believe is necessary under the law. In presenting this report I wish to ask the Senators in the first place to read it—as a matter of course they will—but particularly to read that part of it which touches the necessity, the absolute and indispensable necessity, of providing further accommodation for the great store of books that now belongs to the Library, a great many thousand volumes of which, together with charts, maps, &c., of great value and needful for reference, have to be stacked up like cord-wood, to the hinderance of access to the other books and totally inaccessible themselves.

The PRESIDENT *pro tempore*. The report will be printed, and the motion to print five hundred extra copies will be referred to the Committee on Printing.

REPORTS OF COMMITTEES.

Mr. WINDOM, from the Committee on Public Lands, to whom was referred the bill (H. R. No. 4168) to amend section 1 of the act of May 12, 1864, for a grant of lands to the State of Iowa, to aid in the construction of a railroad in said State, reported it without amendment.

Mr. WRIGHT. I should like to make one statement in reference to that bill, and ask the Senate to proceed to its present consideration. The bill makes no change of any grant of a single acre of public land. It leaves the grant precisely as it is. It expressly saves all rights of homesteaders and all other persons on the public lands. The railroad is being constructed, and it is all-important that this bill should pass, if passed at all, at an early day. I would state the circumstances. There is a road running from McGregor west to Sioux City. There is a road running from Sioux City to the Minnesota State line. It is provided in the original law that the road running from McGregor, known as the McGregor Western, shall strike the road running from Sioux City to the Minnesota State line in the county of O'Brien. When the road from Sioux City to the Minnesota State line came to be constructed, it turned out that it struck the county of O'Brien in the northwest corner, thus taking off a part of that county in the northwest corner. The road from McGregor west, in order to strike that road in O'Brien county, will have to diverge from the line on the forty-third parallel to the northwest, going in a direction different from what was contemplated originally. If the road from Sioux City to the Minnesota State line had been constructed through the county of O'Brien, through its center, it would have struck it upon the line which was contemplated, but it was found necessary to construct the road through Sioux City to the Minnesota State line so as to strike that county in the northwest part of the county line. The object of this bill is to authorize the McGregor Western to strike the road from Sioux City to the Minnesota State line at a point outside of O'Brien County, and still west, instead of compelling it to diverge to the northwest to strike it in the county of O'Brien, as the law originally provided. That is simply the object of the bill, to authorize the road to strike it out of the county, when as was originally contemplated it should have been in the county; but by reason of the manner in which the line was constructed from Sioux City to the Minnesota State line they could not do it without going from ten to fifteen miles north.

Mr. WINDOM. And then they must come back.

Mr. WRIGHT. And then it would have to come back south in order to get on the forty-third parallel. Those are the exact facts and circumstances connected with this bill, and I should like to have the Senate take it up.

Mr. EDMUNDS. I have had a fixed principle for a good while that no bill touching railroad land grants or any other grant of lands of the United States should go through by unanimous consent when it is presented——

Mr. WRIGHT. This bill has just been reported.

Mr. EDMUNDS. Or just reported. That is what I understand. I have not the least doubt that the Senator from Iowa states it as it is, but standing by the principle which I believe to be a very indispensable one, so that hereafter it shall not be said of me that I have not

put in my standing objection to one Senator and have to another, I must apply the same rule to my honorable friend from Iowa and ask that the bill go over and be printed.

The PRESIDENT *pro tempore*. Objection being made to the present consideration of the bill, it will be placed on the Calendar.

Mr. WRIGHT. Of course I have to yield; but I give notice now to my friend from Vermont that I shall ask the consideration of this bill to-morrow morning.

Mr. EDMUNDS. I shall have not the least objection, probably.

Mr. WRIGHT, from the Committee on Claims, to whom was referred the bill (S. No. 214) for the relief of James Rainey, Michael B. Brady, E. G. De L'Isle, and D. F. Boulin, of Louisiana, reported adversely thereon; and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (S. No. 1051) for the relief of Henson Wiseman, asked to be discharged from its further consideration, and that it be referred to the Committee on Indian Affairs; which was agreed to.

He also, from the same committee, to whom was referred the bill (S. No. 286) for the relief of W. S. McComb, of the State of Georgia, reported it with an amendment, and submitted a report thereon; which was ordered to be printed.

Mr. WRIGHT. The same committee have had before them the bill (S. No. 344) for the relief of W. S. McComb, of the State of Georgia, which is identical with the bill I have just reported back. The bill just reported back was introduced by the Senator from Georgia, [Mr. NORWOOD,] and the bill I have now in my hand was introduced by his colleague, [Mr. GORDON,] and having reported favorably upon the bill I have just sent to the desk, I ask that this bill lie on the table.

The PRESIDENT *pro tempore*. That order will be made if there be no objection.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. GEORGE M. ADAMS, its Clerk, announced that the House had passed the following bills and joint resolutions:

A bill (S. No. 453) to authorize the Vancouver Water Company to lay water-pipes through the Fort Vancouver military reservation;

A bill (S. No. 739) to amend section 5457 of the Revised Statutes of the United States relating to counterfeiting; and

A joint resolution (S. R. No. 29) extending the time for the making of a report by the commission created by the act of July 24, 1876.

The message also announced that the House had passed the bill (S. No. 234) to allow a pension of $37 per month to soldiers who have lost both an arm and a leg, with an amendment; in which it requested the concurrence of the Senate.

The message further announced that the House had agreed to the amendments of the Senate to the bill (H. R. No. 1237) for the relief of Benjamin F. Reynolds.

The message also announced that the House had passed the following bills and joint resolution; in which it requested the concurrence of the Senate:

A bill (H. R. No. 4276) to authorize the appointment of a sergeant in the Signal Corps as a second lieutenant in the Army;

A bill (H. R. No. 4388) for the relief of the former occupants of the present military reservation at Point San José, in the city of San Francisco; and

A joint resolution (H. R. No. 173) granting permission to the officers and enlisted men of the Army and Navy to wear the medal badge adopted by the National Association of Veterans of the Mexican War on occasions of ceremony.

ENROLLED BILLS SIGNED.

The message also announced that the Speaker of the House had signed the following enrolled bills; and they were thereupon signed by the President *pro tempore*:

A bill (S. No. 526) to amend section 1036 of the Revised Statutes relating to the District of Columbia;

A bill (S. No. 678) for the relief of Ephraim P. Abbott;

A bill (S. No. 752) authorizing the recorder of the District of Columbia to appoint an assistant with certain powers;

A bill (H. R. No. 4120) making appropriations for the payment of invalid and other pensions of the United States for the year ending June 30, 1878; and

A bill (H. R. No. 4350) to abolish the board of police commissioners of the Metropolitan police of the District of Columbia, and to transfer its duties to the commissioners of the District of Columbia.

BILLS INTRODUCED.

Mr. PADDOCK (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1126) regulating street paving and repairs in Washington and Georgetown, District of Columbia; which was read twice by its title, referred to the Committee on the District of Columbia, and ordered to be printed.

Mr. PADDOCK. I do not wish to be understood as committing myself in favor of the bill by the fact of its introduction. I may, however, be for it when I examine it.

Mr. WITHERS asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1127) for the relief of J. B. McCollough, Mrs. L. S. Fountain, administratrix of James Fountain, and John Houze, surviving partner of the firm of Houze & Hendricks; which was read twice by its title, referred to the Committee on Claims, and ordered to be printed.

Mr. WRIGHT asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1128) to extend for two years the act establishing the board of commissioners of claims and the acts relating thereto; which was read twice by its title, referred to the Committee on Claims, and ordered to be printed.

Mr. DORSEY asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1129) to amend an act entitled "An act granting a pension to Julia Scroggin;" which was read twice by its title, referred to the Committee on Pensions, and ordered to be printed.

MEXICAN CLAIMS COMMISSION.

Mr. INGALLS. Mr. President, I offer the following resolution:

Resolved, That the Secretary of State be requested to transmit to the Senate the report of the commissioners to adjust the claims between citizens of the United States and Mexico under the conventions of 1868, 1871, and 1876.

Mr. SHERMAN. That might involve an immense amount of labor. Does that call for all the proceedings and all the papers?

Mr. INGALLS. The report of the commission.

Mr. SHERMAN. I have no objection to that. I should suppose that would be communicated anyway.

Mr. CONKLING. The terms of this resolution are so broad that I venture to make a suggestion to the Senator from Kansas, to which I think he will see no objection. I suggest that he change the form of the resolution so as to address it to the President and put it in the ordinary form requesting the President if, in his judgment not incompatible with the public interest, to transmit the document. My reason is this: although part of it may be printed, I am inclined, to suspect that there may be other things which would be embraced under the resolution that possibly the Senator does not advert to; but at all events, out of abundant caution, he will answer his purpose, I think, if he will address his resolution to the President in the customary form and whatever ought to be sent there will be no objection to sending, and if there be anything which, for any reason, ought not to be transmitted the President under the resolution ought to be allowed to discriminate. If that is agreeable to the Senator, as the chairman of the Committee on Foreign Relations is not present, I make that suggestion.

Mr. INGALLS. I have no objection to the suggestion made by the Senator from New York. Before the Senate yesterday a report was submitted in relation to the condition of affairs between the government of Mexico and the United States, asking certain action to be taken by Congress, and until we have a report that shows what has been done by the commissioners appointed under these various conventions it will be impossible for us to act. All that the resolution contemplates is simply the amount that has been awarded to the various persons who had claims against the Mexican government. If the Clerk will amend the resolution in accordance with the suggestion of the Senator from New York, I shall be entirely satisfied.

The PRESIDING OFFICER, (Mr. MITCHELL in the chair.) The resolution will be so modified. The Secretary will report the resolution as modified.

The Chief Clerk read as follows:

Resolved, That the President be requested, if not in his own opinion incompatible with the public interests, to transmit to the Senate the report of the commissioners to adjust the claims between citizens of the United States and Mexico in the conventions of 1868, 1871, and 1876.

Mr. INGALLS. That is correct.

The resolution, as modified, was agreed to.

PRINTING OF TESTIMONY.

Mr. MORTON. I offer the following resolution, to be referred to the Committee on Printing:

Resolved, That 5,000 additional copies of the testimony taken before the Committee on Privileges and Elections in regard to the late presidential election in the States of Louisiana, Florida, and South Carolina, and to the casting of the electoral votes in the State of Oregon, be printed for the use of the Senate and House of Representatives.

Mr. BOGY. I was not aware that the report of the evidence had been yet made to the Senate.

Mr. MORTON. No, sir; but a part of the evidence is now in the printer's hands, and if there are to be more copies than the ordinary number it is important to have it known now before the type is distributed.

Mr. BOGY. It seems to me it is unusual. There has been no report made, and we ought to know what is the character of the report.

Mr. MORTON. The testimony has already been ordered to be printed. This is to fix the number of extra copies before the type shall be distributed, to save expense.

The PRESIDING OFFICER. The resolution will be referred to the Committee on Printing.

EXTENSION OF CAPITOL GROUNDS.

Mr. MORRILL. I move that Senate bill No. 1113 be taken up for action at the present time.

The motion was agreed to, and the bill (S. No. 1113) to authorize the taking of certain parcels of land for the public use, at the intersection of Pennsylvania and Maryland avennes on the west front of the Capitol grounds, was read the second time and considered as in Committee of the Whole.

Mr. MORRILL. I will merely say a word or two in explanation of the bill. It is only a proposition to take a corner of the land on Penn-

sylvania avenue and Maryland avenue in order to give room for the completion of the two circles in accordance with the plans of Mr Olmstead that have already been approved by Congress.

Heretofore, in years long gone by, bills have been reported from the committee of the Senate, formerly by Senator Bright, of Indiana, and subsequently by Senator Foot, of Vermont, taking the entire squares mentioned in this bill; but under the new plan of the grounds we propose to get along with much less, taking only small corners of the squares, so as to give room and verge enough for the travel around the circles that are now in process of construction. The bill further contemplates taking a small corner off from the Botanic Garden on each side so as to complete the circles on the side next to the garden.

I will say that I have a plan here of just what we propose to take. It is a small amount of land on either corner. The appraisal of the cash value of the land on the southern side is $1,086, and the cash value as appraised of the land on the northern side is $14,000.

I believe that the committee of the Senate were unanimously in favor of this bill, and, so far as we know, the committee of the House are of the same opinion. I think there can be no objection whatever to the bill, either to the measure or the manner of it. The bill is in the precise form that has heretofore been used in obtaining the condemnation and purchase of land for public use.

Mr. CONKLING. Mr. President, there are two parties for whom I feel moved to speak in regard to this matter. One is the American people, and the other the horses of America. I have observed this city for now about sixteen years. If during that time there has been one year when either the people or the horses could comfortably reach this Capitol, it is some year that I have forgotten. I think it is rather a remarkable circumstance that during so long it has been so difficult to approach this building in any comfortable mode. I do not say this to object to this bill. I believe I understand what it means, that a circular close now bounded by a curb-stone, which is to be the residence of a monument, has been projected in front of the Capitol grounds so as to occupy the beginning of Pennsylvania avenue, and in consequence of that a narrow throat is left through which all the vehicles must squeeze if they go at all; and that throat is occupied by trams, street-railroad tracks, among the most destructive contrivances to vehicles when they are driven across obliquely that can be found in any street. The Senator from Vermont by this bill proposes to cut off from the block on the north side of Pennsylvania avenue occupied by buildings such an area as will enable him to make a roadway farther to the east, or, more exactly speaking, to widen the roadway as it will be left, by extending it over a portion of this block now occupied by building, cutting off the corresponding tongue on the south side, which is the Botanic Garden. That is the plan, I think. I do not mean to object to it; but, without objecting to it, it is a relief to me to express the hope that some time to which men now living may hope to survive, there will be a means of driving with comfort and walking with comfort to this Capitol. And I hope these proceedings are such that if the property shall be condemned in order to give a right of way to the people to traverse that part of the town the arrangement will be such that the proceedings will take place expeditiously and that the thing will be done and done promptly.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

FRANCIS GUILBEAU.

Mr. WRIGHT. I move to proceed to the consideration of Senate bill No. 974.

The motion was agreed to; and the bill (S. No. 974) for the relief of Francis Guilbeau, of San Antonio, Texas, was read the second time and considered as in Committee of the Whole. It provides for the payment of $2,600, in full payment of the claim of Guilbeau against the United States for the use of his buildings at San Antonio and Galveston, Texas, in the years 1865 and 1866.

Mr. BOUTWELL. If there is a report I should like to hear it. In the absence of a report, I should be glad to hear a statement of the case.

Mr. WRIGHT. There is a report which perhaps will explain the case as briefly as I can do it myself.

The Secretary read the following report, submitted by Mr. WRIGHT, from the Committee on Claims, on the 5th of July, 1876:

The Committee on Claims, to whom was referred the petition of Francis Guilbeau, with accompanying papers, submit the following report:

This claim is for rent of certain buildings in San Antonio and Galveston, Texas, from June, 1865, to August, 1866, amounting to $3,701.67.

The occupation of the premises by the United States authorities for proper Army purposes, such as quartermaster's stores, officers' quarters, and the like, is well established, and this, too, under contracts to pay either an agreed sum or their reasonable rental value.

The loyalty of claimant is shown by competent and sufficient evidence.

The claim was presented to the proper accounting officers of the Treasury, and rejected by them because it originated in an insurrectionary district and they were prohibited under the law from considering it, and it was presented to the southern claims commission, but not considered by them, as there was no jurisdiction.

It would serve no useful purpose to set forth the evidence in detail, since, as we view the case, the only question is as to the amount of compensation to be allowed.

Looking at all the testimony, we conclude that $2,600 is a fair and proper allowance, and therefore report the accompanying bill and recommend its passage.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

REVISION OF THE STATUTES.

The PRESIDING OFFICER. The Chair will lay before the Senate the unfinished business, which is the bill (H. R. No. 3156) to perfect the revision of the statutes of the United States, which is now before the Senate as in Committee of the Whole.

Mr. BOUTWELL. I ask unanimous consent of the Senate if it is required, as I believe it is under the rule, that this bill shall be read by paragraphs covering particular subjects, not in full.

The PRESIDING OFFICER. The Chair hears no objection to that suggestion.

The Chief Clerk read as follows:

That for the purpose of correcting errors and supplying omissions in the act entitled "An act to revise and consolidate the statutes of the United States in force on the 1st day of December, A. D. 1873," so as to make the same truly express such laws, the following amendments are hereby made therein:

Section 197 is amended by inserting, at the end of the section, the words "except supplies of stationery and fuel in the public offices, and books, pamphlets, and papers in the Library of Congress."

Mr. SHERMAN. This bill is likely to be passed in the same way in which the Revised Statutes of the United States were passed and must necessarily be so. It is impossible for Senators or anybody to know what is the subject of important legislation in such a bill, and therefore we take the action of the committee practically as final. That was the way in regard to the revision of the laws. After the very careful examination of the laws, the final revision was passed in the Senate without any very full knowledge of the details. This bill is intended to correct the errors made in that revision. I ask the Senator from Massachusetts, therefore, wherever this bill attempts to change the revision, makes an important change, or a disputed change, or makes a change that has been controverted, to point it out to us, so that we may know that the matter under discussion is controverted. Without that we should be in ignorance of the action that we are voting.

Mr. BOUTWELL. I will say to the Senate and to the Senator from Ohio that this bill has had this amount of preparation: The Revised Statutes were taken by the House committee and by the Senate committee and all suggestions made to either of the committees were examined by the committees separately and an opinion formed as to whether there was an error in the revision as compared with the original law or not. When that work had been performed separately the two committees, by subcommittees, met and compared their work. Wherever there was any difference in the opinion of the committees that difference was carefully investigated, and wherever there was a doubt in the mind of any member of either committee as to whether a proposition to amend the Revised Statutes was in accordance with the original statutes that doubt has controlled.

I will call the attention of the Senate, if it should be the pleasure of the Senate to accept the suggestion of the Senator from Ohio, to every proposition which I consider important in the sense of affecting the rights of any parties or the interests of the country in any sensible degree. Most of these amendments, I may say, are verbal; some of them are for the purpose of correcting typographical errors, which corrections would not have been thought of by the committee except that it was convenient to do it in connection with more important corrections. There are one or two propositions in this bill which ought to receive the consideration of the Senate. When we come to those I will call the attention of Senators to them.

I should like to say in this connection, because the revision of the laws has been the subject of some criticism, that I was not a member of the commission nor of the committees that were charged with the revision of the laws; but I have had considerable opportunity to consider the manner in which that work was done, and I think I am justified in saying, and perhaps required to say, that in my opinion the work has been well done upon the whole, and that it is a great contribution to the legislation of the country and will for a series of years prove a great convenience in the administration of the laws.

Mr. WRIGHT. May I be allowed to make an inquiry of my friend the Senator from Massachusetts? Do I understand that the amendments that are proposed here are merely to make the Revised Statutes conform to the laws as they stood before, or is there in any instance any proposed new legislation?

Mr. BOUTWELL. There is really no new legislation in any case; and whenever in the mind of any member of the subcommittee either of the House or of the Senate there was a doubt as to whether a proposition to amend was justified by the original text of the statute, that doubt has controlled in every case. We have unanimously agreed to every proposition.

Mr. WRIGHT. Then I understand so far as the committee are concerned they have attempted to avoid studiously everything like new legislation?

Mr. BOUTWELL. Everything.

The Chief Clerk read as follows:

Section 215 is amended by adding at the end of the section the following:

"There shall be in the said Department an inferior officer, to be appointed by the said principal officer, to be employed therein as he shall deem proper, and to be called the chief clerk in the Department of War, and who, whenever the said principal officer shall be removed from office by the President of the United States, or in any other case of vacancy, shall, during such vacancy, have the charge and custody of all records, books, and papers appertaining to the said Department."

Section 225 is amended by adding at the end of the section the following:

"In settling the accounts of the commanding officer of a company for clothing and other military supplies, the affidavit of any such officer may be received to show the

loss of vouchers or company books, or any matter or circumstance tending to prove that any apparent deficiency was occasioned by unavoidable accident or lost in actual service, without any fault on his part, or that the whole or any part of such clothing and supplies had been properly and legally used and appropriated; and such affidavit may be considered as evidence to establish the facts set forth, with or without other evidence, as may seem to the Secretary of War just and proper under the circumstances of the case."

Section 252 is struck out.

Mr. COCKRELL. I should like to ask the chairman of the committee why section 252 is stricken out?

Mr. BOUTWELL. Section 252 is taken from the act of May 19, 1828, chapter 55, section 70, and the act of July 14, 1832, and was superseded by an act of August 30, 1842, which is found in chapter 270 of the statutes of that year, and therefore it was not law when it was inserted in the revision. The subsequent statute of course repealed the prior statutes.

Mr. COCKRELL. Is the act of 1842 in this revision?

Mr. BOUTWELL. Yes, sir; the act of 1842. They incorporated into the Revised Statutes the original section and incorporated also the subsequent one, and they conflicted, and the original one of course ought not to stand.

Mr. COCKRELL. Will the Senator refer me to the act of 1842 which is in the statutes?

Mr. BOUTWELL. Section 2902 is the statute, I think, which the Senator will find on page 565. The duty of the appraisers is there set forth in detail, and the original, section 252, is a general authority, which was the authority of the statutes of 1825 and 1832, and the whole power is contained in section 2902 more specifically.

The Chief Clerk read as follows:

Section 259 is amended by striking out, in the fourth line, the word "agriculture."

Section 317 is amended by adding thereto the following: "and shall perform all the acts, and exercise all the powers, relating to the receipts from customs and the accounts of collectors and the other officers of the customs or connected therewith, devolved by section 269 upon the First Comptroller in regard to other receipts and other accounts."

Section 335 is amended by striking out, in the fourth line, the word "agriculture."

Mr. WRIGHT. As I understand, the section in which it is proposed to strike out the word "agriculture" confines the matter of the collection of statistics by the Bureau of Statistics to domestic manufactures, and banks, and other items, in the several States and Territories. I had an impression that within the last two or three years we had devolved upon this bureau the duty of collecting agricultural statistics. I may be mistaken. I am sure the question was before the Senate, perhaps upon an appropriation bill or in some form; whether before the adoption of the revision or not I cannot say. I make the inquiry whether in this proposed legislation there is any provision to save any subsequent legislation that may change the Revised Statutes.

Mr. BOUTWELL. There is no such provision in the text of the bill. It can be incorporated. I think, however, the Senator from Iowa will find that when the Bureau of Agriculture was established the preparation of agricultural statistics was confided to it, and it has never been taken from the bureau.

Mr. WRIGHT. I remember that the Senator from Minnesota who is not now in his seat [Mr. WINDOM] had that matter in charge at one time, and there was a proposition, as I now recollect, to incorporate something of the kind into an appropriation bill, but I am not certain. I merely call attention to it at this time that it may be looked into further hereafter.

Mr. COCKRELL. I did not hear the explanation of the Senator making the report why the word "agriculture" is stricken out in section 259, and also in section 335. If the Bureau of Statistics are to furnish statistics of various matters, why not of agriculture as well as of other things?

Mr. BOUTWELL. I am not considering any reasons why it should not. I am only stating that agricultural statistics placed under the charge of the Bureau of Statistics, established by resolution No. 10, of June 15, 1844, were otherwise provided for in the act of May 15, 1862, which authorizes the Department of Agriculture to be formed, and were not included in the act of July 28, 1866, establishing the present Bureau of Statistics. Therefore, the present Bureau of Statistics were not authorized to obtain statistics relating to agriculture, and as a matter of fact did not do it. The committee have not considered why the business of collecting statistics should be in one bureau rather than in another, because that was not their duty; but I believe the fact is that the Bureau of Statistics has had nothing under the law to do with collecting the statistics relating to agriculture.

Mr. COCKRELL. Has the Bureau of Statistics not collected agriculture statistics heretofore?

Mr. BOUTWELL. They never have been collected in the Bureau of Statistics. In the Department of Agriculture they are collected.

Mr. COCKRELL. Yes, I know that.

The Chief Clerk read as follows:

Section 354 is amended by inserting after the word "questions," in the second line, the word "of."

Section 637 is amended by inserting after the word "circuit," in the ninth line, the word "court."

Section 702 is amended by inserting after the word "cause," in the eleventh line, the word "when."

Section 838 is amended by inserting after the word "be," in the first line, the word "the."

Mr. COCKRELL. I suggest that as we go along with this bill it be read so slowly that we may glance at the sections of the Revised Statutes as they are referred to. I have the statutes here before me and I can hunt up the sections referred to readily. I should like to see exactly the amendments, so as to know whether to object to them or not.

The Chief Clerk read as follows:

Section 875 is amended by adding at the end of the section the following:

"When letters rogatory are addressed from any court of a foreign country to any circuit court of the United States, a commissioner of such circuit court, designated by said court to make the examination of the witnesses mentioned in said letters, shall have power to compel the witness to appear and depose in the same manner as witnesses may be compelled to appear and testify in courts."

Mr. BOUTWELL. I may say that that was a section of the statute of 1855, the second section of chapter 140, which seems to have been omitted bodily, the whole of it. This is merely a reproduction of the second section of that statute.

The Chief Clerk read as follows:

Section 1094 is amended by striking out the word "post" in the twenty-fifth line before the words "ordnance sergeant."

Section 1097 is amended by inserting in the second line, after the word "who," the word "shall."

Section 1102 is amended by striking out after the word "majors," in the second line, the words "one surgeon, one assistant surgeon;" and in the seventh line, after the word "the," insert the words "seventh, eighth."

Mr. COCKRELL. Why is that change made in section 1102, I should like to know?

Mr. BOUTWELL. That change is made to conform to the provisions of the third section of the act of 1866, chapter 299, in volume 14 of the statutes, page 332. The third section provided for the addition of four regiments of cavalry and provided for their organization, and by accident "one surgeon and one assistant surgeon" were inserted where they should not have been and the seventh and eighth, being two of the regiments named in the section, were omitted from the statute.

The Chief Clerk read as follows:

Section 1110 is amended by striking out the word "post" before the words "ordnance sergeants" in the first line.

Section 1118 is amended by striking out the words "any criminal offense," in the third line, and inserting the words "a felony."

Mr. COCKRELL. I ask why it is that the words "any criminal offense" are stricken out there and "a felony," which would be a high crime alone, inserted. The statute reads:

No minor under the age of sixteen years, no insane or intoxicated person, no deserter from the military service of the United States, and no person who has been convicted of any criminal offense, shall be enlisted or mustered into the military service.

The amendment is to strike out "any criminal offense" and insert "a felony."

Mr. BOUTWELL. By a section of the statute of 1833 it was provided that no person who had been convicted of any criminal offense should be enlisted in the Army of the United States, and by the statute of 1863, March 3, chapter 75, volume 12 of the statutes, it was provided—

That no person who has been convicted of any felony shall be enrolled or permitted to serve in said forces.

That bill relating to the mustering and organizing of the forces of the United States; and it is held at the Department, and the committee were of opinion, that the recent statute modified the latter statute so that it made it specific that only those who had been convicted of felonies should be exempt.

Mr. COCKRELL. The statute of 1863 modified the previous statute, the Senator says.

Mr. BOUTWELL. Yes, sir. The statute of 1833 provided that no person who had been guilty of any criminal offense, which is rather an indefinite term, should be enlisted, but the statute of 1863 provided for excluding those who had been guilty of felony, which is more specific.

Mr. COCKRELL. Did the statute of 1865 affect that question at all?

Mr. BOUTWELL. The statute of 1863, perhaps the Senator refers to. There is no statute of 1865, that I am aware of, which changes this.

The Chief Clerk read as follows:

Section 1126 is amended by inserting a comma after the word "post" in the first line.

Section 1131 is amended by inserting after the word "Army," in the first line, the words "provided no promotion shall be made until the number of inspectors-general is reduced to four."

Mr. COCKRELL. It seems to me that that will not do. It will make the law read:

There shall be five inspectors-general of the Army: *Provided*, No promotion shall be made until the number of inspectors-general is reduced to four.

Mr. BOUTWELL. The act of June 8, 1872, authorizing the appointment of a particular person, a Mr. Davis, provided that no promotion should be made until the number of inspectors-general was reduced to four; and the Department say further that the act of July 28, 1866, establishing the Inspector-General's Department provides for four inspectors, three assistants with the rank of lieutenant-colonel, and two with the rank of major.

There seems to have been a conflict. The law of March 3, 1869, provided for new appointments or promotions in that Department, but did not abolish any of the officers. We have left it exactly where the law left it. There is an inconsistency, no doubt, but they treat it in the Department, I understand, as limiting the number of inspectors-general to four, and that there shall be no promotions to that rank until the number is reduced to four. Then when there is a vacancy there will be a promotion.

Mr. COCKRELL. Could there not be a better amendment so as to make it more explicit?

Mr. BOUTWELL. I can only say that if we get into that field we shall find great difficulty. There was an incongruity in the statutes, but nevertheless the Department interprets the statutes so as to limit the number of inspectors-general to four. As matter of fact both provisions of law stand that the number shall not exceed five, and that there shall be no promotion until the number is reduced to four, and the Department construe it as limiting the number to four.

Mr. COCKRELL. I understand that the intention was finally to bring the number of inspectors-general down to four, and that no promotion should be made until they were reduced down to that number; and I suppose that that is the intention of the law, but it does not very clearly express it.

Mr. BOUTWELL. I only say that the committee have followed the statutes. We felt bound to do that and to report the exact truth.

Mr. COCKRELL. In the original statute do the words "provided no promotion shall be made until the number of inspectors-general is reduced to four" come after the word "Army" or at the end of that section?

Mr. BOUTWELL. That was by the act of 1872. The act providing that there should be five inspectors-general was of one date, 1866, I think, and then by the act of 1872, by which authority was given to appoint Mr. Davis, it was provided that no promotion should be made until the number of inspectors-general was reduced to four, and therefore there was this incongruity. It was a way of reducing the number of inspectors-general in the Army. There is practically no difficulty. There is an incongruity in the language, but the Department construe it as authorizing the appoiatment of four and no more; and that evidently is the meaning.

Mr. COCKRELL. It seems to me it would be more explicit if the clause beginning with "provided" came in at the end of the section. As it is now, "there shall be five inspectors-general of the Army," and there the proviso comes in, and then these other words will follow, "with the rank of colonel of cavalry." If you go on and let the whole section be as it is and then put the proviso at the end of it, it seems to me it would be in better order, unless it is in conflict with the original act.

Mr. BOUTWELL. If the Senate desire to correct the incongruity by new legislation, we have only to strike out the word "five" in the first line, I suppose, and insert "four;" but that would be new legislation, and the committee did not feel authorized to make any such recommendation. I presume that would bring the statute just where it is by construction now; but I should not be willing to move that amendment. I think we have reported the law as it was.

Mr. COCKRELL. That was what I asked a moment ago, if the proviso came after the word "Army" in the statutes before they were revised as they are now or was it at the end of the section?

Mr. BOUTWELL. I do not know that I understand the Senator.

Mr. COCKRELL. The amendment now proposed is to insert after the word "Army" the words "provided no promotion shall be made until the number of inspectors-general is reduced to four." Did that proviso come in the original act after the word "Army" or at the end of the section?

Mr. BOUTWELL. It was in a different section, a different statute. The statute of 1866 provided for five inspectors-general of the army. Then in 1872, when Congress was authorizing the appointment of a certain person to office, a proviso was inserted that no promotion should be made until the number of inspectors-general was reduced to four; and undoubtedly the intention was to reduce the number to four, to change the law of 1866.

Mr. COCKRELL. Then there would be no impropriety in changing this amendment and having the proviso come in at the end of that section. I think the Senator will see at once that it will make the section read better and be more explicit; and as we are simply combining the two laws there can be no objection to making that change.

Mr. BOUTWELL. I would suggest to the Senator from Missouri that, if the amendment were introduced where he proposes it, it would limit promotions in other branches of the service; the qualification would extend to all the ranks that are named in the section. I think we had better let it stand as it was.

Mr. COCKRELL. No, there would be no change, because the section only refers to inspectors-general and assistant inspectors-general, and this proviso would be confined exclusively to inspectors-general and would not affect anything but them.

Mr. WRIGHT. My friend from Massachusetts will allow me to make one suggestion. As I understand it, the law is proposed to be incorporated here so as to declare the existing statutes; that is, the law contemplated the intention of this bill——

Mr. BOUTWELL. Yes, sir.

Mr. WRIGHT. That law was passed long after the section proposed to be amended here, and is regarded as modifying it. Now, I suggest to him that there can be no objection, as this is a House bill——

Mr. BOUTWELL. We shall have to amend it.

Mr. WRIGHT. I can see that there would be an objection to the suggestion I was about to make. If there was no occasion to amend the bill or if amending it would necessarily be fatal my suggestion is that the proviso follow the word "cavalry." I think that would be better law language and would better express the meaning of the statute.

Mr. BOUTWELL. I will not object to that. The bill will have to go back to the House.

Mr. WRIGHT. I think that would make it very much clearer.

Mr. BOUTWELL. I presume that will answer the Senator from Missouri.

Mr. COCKRELL. Yes; that meets the point I suggested.

Mr. BOUTWELL. Then I suggest that the amendment be after the word "cavalry," in the second line. I move to amend this bill by striking out "army," in the first line, and inserting "cavalry," in the second line.

The amendment was agreed to.

Mr. MAXEY. I suggest to the chairman of the committee whether the name "inspectors-general" conveys the idea. I do not think it does. The office is the office of inspector-general. It is used there as if the office were that of general inspector and as if we had four or five general inspectors. I do not think that is the idea. Take the case of a major-general. We have four major-generals; not four majors-general. The latter expression would make "major" the principal word and "general" the qualifying word. I believe the name is inspector-general and it should be "five inspector-generals," not "five inspectors-general," because it is a general assigned to the duty of inspector. "General" is the principal word or noun; "inspector" is the qualifying word. The language used is objectionable, I think.

Mr. BOUTWELL. I will say in reply to the Senator from Texas that the Revised Statutes use the compound word in the manner in which it is used in the amendment, and the Revised Statutes follow the statutes, I think, from the beginning of the Government. I do not think it wise for us to make any change.

Mr. MAXEY. I will say to the Senator that I know there is very considerable criticism as to which is the proper word among military men, and I made the suggestion of what I believe the correct word to be.

The PRESIDING OFFICER. The reading will be continued.

The Chief Clerk read the next clause of the bill, as follows:

Section 1132 is amended by adding at the end of the section the following:

"All appointments in the Quartermaster's Department shall be made from the Army. During the absence of the Quartermaster-General or the chief of any military bureau of the War Department, the President is authorized to empower some officer of the department or corps whose chief is absent to take charge thereof, and to perform the duties of Quartermaster-General or chief of the department or corps, as the case may be, during such absence."

Mr. COCKRELL. I desire to ask where that amendment is found that is proposed to be inserted? What was the date of its adoption?

Mr. BOUTWELL. This is an omission from a statute of 1855, chapter 356, found on page 117 of volume 5. It was omitted accidentally from the revision; and the amendment we propose is a precise copy of the fifth section of that statute; and I may say that all these amendments, after the committee had examined them, were submitted to Judge James, who was one of the commissioners that revised the statutes, and they all received his approbation as being required.

The Chief Clerk read as follows:

Section 1136 is amended by adding at the end of the section the following:

"It shall be the duty of all officers of the United States having any of the title papers (property purchased, or about to be purchased, for erection of public buildings) in their possession, to furnish them forthwith to the Attorney-General. No public money shall be expended until the written opinion of the Attorney-General shall be had."

Mr. BOUTWELL. This I may say is a case of omission from a joint resolution of 1841 found in volume 5 of the statutes, page 468. The first, second, and third sections of that joint resolution were omitted from the body of the Revised Statutes.

The Chief Clerk read as follows:

Section 1137 is amended by inserting in the third line, after the word "service," the following: "who shall be entitled to receive $40 per month and three rations per day, and forage for one horse."

Mr. COCKRELL. I should like to ask the Senator reporting the bill in what act that language is found.

Mr. BOUTWELL. This is from a statute of 1838, chapter 162, also in volume 5 of the statutes. Section 10 of that act provides—

That the Quartermaster-General be, and he is hereby, authorized, from time to time, to employ as many forage-masters and wagon-masters as he may deem necessary for the service, not exceeding twenty in the whole, who shall be entitled to receive each $40 per month and three rations per day, and forage for one horse.

That was omitted.

Mr. MORRILL. The word "each" seems to be left out here.

Mr. BOUTWELL. I am reminded of what is true that the word "each" should be inserted in this proposed amendment before "forty;" so as to read:

Who shall be entitled to receive each $40 per month.

The original statute contains the word "each." I move that amendment in line 114 of this bill.

The amendment was agreed to.

The Chief Clerk read as follows:

Section 1139 is amended by adding at the end of the section the following:

"And he shall account to the Secretary of War at least once in three months for all property and money that may pass through his hands or the hands of his subordinate officers."

Mr. BOUTWELL. That is omitted from a statute of 1812, chapter 46, volume 2, of the statutes.

The Chief Clerk read as follows:

Section 1162 is amended by striking out all after the word "many," in the first line, and inserting the following: "sergeants of ordnance, corporals of ordnance, and first and second class privates of ordnance, as the Secretary of War may direct."

Mr. COCKRELL. That strikes out the law of that section and just inserts those few words in lieu?

Mr. BOUTWELL. That amendment is required by an act of 1862, chapter 133. The attention of the committee was called to it by the War Department, and they state that the amendment should be made as it has been made by the committee. The statute of 1862 was in these words:

That the enlisted men of the Ordnance Department now designated as master-workmen shall hereafter be designated and mustered as sergeants; those now designated as armorers, carriage-makers, and blacksmiths shall be designated and mustered as corporals; those now designated as artificers shall be designated and mustered as privates of the first class; and those now designated as laborers shall be designated and mustered as privates of the second class: *Provided*, That the pay, rations, and clothing now authorized by law to the respective grades of enlisted ordnance men shall not be changed.

The Chief Clerk read as follows:

Section 1163 is amended by striking out in the third line the words "privates of first class," and inserting the words "ordnance enlisted men" in lieu thereof.

Section 1174 is amended by inserting after the word "line," in the second line, the words "under such rules and regulations as shall be prescribed by the Secretary of War."

Section 1191 is amended by adding at the end of the section the following:

"But the Quartermaster-General shall not be liable for any money or property that may come into the hands of the subordinate officers in his department."

Mr. COCKRELL. Under what act was that?

Mr. BOUTWELL. Under an act of 1812, chapter 92, the fourth section, found in the second volume of the general statutes, page 743:

That the Quartermaster-General, the deputy quartermasters, and the assistant deputy quartermasters shall, before they or either of them enter upon the duties of their appointment respectively, enter into bond with sufficient security, to be approved of by the Secretary of War, conditioned for the faithful expenditure of all public moneys, and accounting for all public property, which may come to their hands, respectively; and the Quartermaster-General shall not be liable for any money or property that may come into the hands of the subordinate officers of his department.

That is the original statute.

The Chief Clerk read as follows:

Section 1207 is amended by inserting after the word "engineers," in the first line, the words "or Ordnance Corps."

Mr. COCKRELL. Under what act is that?

Mr. BOUTWELL. That is from the statute of 1853, volume 10, page 219:

That whenever any lieutenant of the Corps of Engineers, Corps of Topographical Engineers, or Ordnance Corps, shall have served fourteen years continuous service as lieutenant, he shall be promoted to the rank of captain, &c.

Mr. COCKRELL. Why do you leave out the Topographical Engineers in the amendment? The section now reads:

"SEC. 1207. When any lieutenant of the Corps of Engineers has served fourteen years continuous service as lieutenant, he shall be promoted to the rank of captain," &c.

It is proposed to add "or Ordnance Corps;" so as to read:

When any lieutenant of the Corps of Engineers or Ordnance Corps.

You seem to have left out the Topographical Engineers, a class provided for in the act of 1853.

Mr. BOUTWELL. I am unable to state why the provision of the original statute in regard to the Corps of Topographical Engineers is omitted; but, inasmuch as the attention of the committee was called to this subject by the Department and nothing was said about that corps, I presume some other provision has been made or else they are included under the general head "Corps of Engineers." I cannot answer, however, as to that. I only know that no question has been made before the committee in regard to that branch of the service. I I am not familiar enough with the military statutes to give a reason for the omission, but I presume they are provided for.

The Chief Clerk read as follows:

Section 1220 is amended by adding at the end of the section the following:

"It shall be lawful for the commanding officer of each regiment, whenever it may be necessary, to cause the coats, vests, and overalls or breeches which may from time to time be issued to and for his regiment to be altered and new-made, so as better to fit them to the persons respectively for whose use they shall be delivered; and, for defraying the expense of such alterations, to cause to be deducted and applied out of the pay of such persons a sum or sums not exceeding twenty-five cents for each coat, eight cents for each vest and for each pair of overalls or breeches."

Mr. WHYTE. Is it necessary to spread upon the statutes of the United States a tailor's bill? Cannot the latter clause of this section be expressed by the words "the cost of such alteration to be deducted out of the pay of the soldier?" It strikes me it would look better on the Revised Statutes than to incorporate this tailor's bill. I suggest that the last clause be stricken out and the words "the cost of the alteration to be deducted from the pay of the soldier" be inserted in lieu thereof. I move that amendment.

Mr. BOUTWELL. I do not know but that that section will offend the taste of future generations; but it has been on the statute-book until the Revised Statutes, and since 1799. It was the twenty-third section of the act of that year, organizing the militia forces of the country; and at any rate the committee did not feel justified on a mere matter of taste, about which indeed they were not competent to judge when the subject-matter was considered, in making any alteration.

I will say, in reply to the suggestion made in regard to the last amendment by the Senator from Missouri, that I am informed by the Senator from Rhode Island [Mr. BURNSIDE] that the Corps of Topographical Engineers has been consolidated with the Corps of Engineers.

Mr. COCKRELL. That is what I supposed; but I did not have time to look.

Mr. BOUTWELL. I hope there will be no objection to this amendment. I trust the Senator from Maryland will not persist in his motion.

Mr. WHYTE. I withdraw the amendment. It is an old patch.

The Chief Clerk read as follows:

Section 1221 is amended by adding at the end of the section the following:

"Said returns and vouchers, after due examination by the Quartermaster-General, shall be transmitted for settlement to the proper accounting officer of the Treasury Department."

Mr. BOUTWELL. If it is desirable to have any explanation, that is an omission of what was contained in a statute of 1826, section 75.

Mr. COCKRELL. It only indicates the course that is already pursued now?

Mr. BOUTWELL. Yes, sir.

The Chief Clerk read as follows:

Section 1224 is amended by striking out the same and inserting in lieu thereof the following:

"No officer of the Army shall be employed on civil works or internal improvements, or be allowed to engage in the service of any incorporated company, or be employed as acting paymaster or disbursing agent of the Indian Department, if such extra employment requires that he shall be separated from his company, regiment, or corps, or if it shall otherwise interfere with the performance of the military duties proper."

Mr. COCKRELL. That, it seems to me, is simply a change of the language of the present section 1224, I suppose, to make it conform to the original.

Mr. BOUTWELL. That is all. The substance is the same. It is a little faulty in the Revised Statutes in grammar.

The Chief Clerk read as follows:

Section 1259 is amended by adding at the end of the section the following:

"*Provided*, That they receive from the Government only the pay and emoluments allowed by law to retired officers."

Mr. BOUTWELL. That relates to the Soldiers' Home?

Mr. COCKRELL. That is correct.

The Chief Clerk read as follows:

Section 1260 is amended by adding at the end of the section the following:

"But while so serving, such officer shall be allowed no additional compensation."

Section 1270 is amended by adding at the end of the section the following:

"*Provided, however*, That when forage in kind cannot be furnished by the proper departments, then, and in all such cases, officers entitled to forage may commute the same according to existing regulations: *Provided further*, That officers of the Army and of volunteers assigned to duty which requires them to be mounted shall, during the time they are employed on such duty, receive the pay, emoluments, and allowances of cavalry officers of the same grade respectively."

Mr. COCKRELL. I should like the Senator reporting the bill to make an explanation of how such an important section as that came to be omitted, and in what act that is found.

Mr. BOUTWELL. It is found in an act of 1862, chapter 200. The first section of it reads:

That officers of the Army entitled to forage for horses shall not be allowed to commute it, but may draw forage in kind for each horse actually kept by them when and at the place where they are on duty, not exceeding the number authorized by law: *Provided, however*, That when forage in kind cannot be furnished by the proper Department, then, and in all such cases, officers entitled to forage may commute the same according to existing regulations: *And provided further*, That officers of the Army and of volunteers assigned to duty which requires them to be mounted, shall, during the time they are employed on such duty, receive the pay, emoluments, and allowances of cavalry officers of the same grade respectively.

Mr. COCKRELL. I desire to ask if that law was not changed by enactments of Congress prior to the revision of 1873?

Mr. BOUTWELL. I think not, and I am confirmed in that by the circumstance that the War Department called the attention of the committee to it as late as last winter, and that we examined the subject and referred it also to Judge James. No intimation has been made to the committee of any such alteration of the statutes. I have never supposed it had been altered.

Mr. COCKRELL. I should like to reserve that section, so that if we should find any such legislation as I have indicated we may look into it.

Mr. BOUTWELL. Very well; that is right.

The Chief Clerk read as follows:

Section 1280 is amended by striking out in the third line the word "conditions" and inserting the word "additions," and by adding at the end of the section the following: "artificer of artillery and infantry, $15; wagoner of artillery, cavalry, and infantry, $14. The principal assistant in the Ordnance Bureau shall receive a compensation, including pay and emoluments, not exceeding that of a major of ordnance."

Mr. COCKRELL. That is simply to make the present statute conform to the law.

Mr. BOUTWELL. Yes, sir; that is so. There is no change of the law.

The Chief Clerk read as follows:

Section 1289 is amended by striking out in the first line, after the word "is," the word "honorably," and insert after the word "service" the words "except by way of punishment for an offense."

Section 1290 is amended by striking out in the first line, after the word "is," the word "honorably," and insert after the word "service" the words "except by way of punishment for an offense."

Section 1327 is amended by striking out in the marginal reference the words "8 Aug., 1848," and inserting the words "8 Aug., 1846."

Section 1328 is amended by striking out in the marginal reference the words "8 Aug., 1848," and inserting the words "8 Aug., 1846."

Mr. WRIGHT. I wish to call the attention of the Senator from Massachusetts to the necessity of this proposed amendment in regard to the marginal references. The marginal reference is no part of the statute. It is a mere notation by the codifiers or revisers, as I suppose. For us to modify and correct every reference they have made, it seems to me, is no part of our duty, and I question whether it is legislation in fact. This assumes that the marginal references are a part of our legislation.

Mr. BOUTWELL. I am inclined to think the Senator from Iowa is right about that. We had better omit those clauses which relate to marginal references, the references to sections 1327, 1328, and 1329. I move to strike out those—from line 210 to line 218 of this bill.

The amendment was agreed to.

The Chief Clerk read as follows:

Section 1337 is amended by striking out in the second line, after the word "tactics," the words "and the instructor of practical military engineering."

Section 1342 is amended by striking out in the fourth line of Article of War 26, after the word "such," the word "corporal," and in the third line of Article of War 38, after the word "such," the word "corporal."

Section 1375 is amended by adding the words "who shall receive the highest shore pay of his grade;" and said section 1375 shall have the same force and effect as though enacted as herein amended.

Mr. COCKRELL. May I ask the Senator reporting the bill if the clause last read would not be additional legislation declaring what is the effect of it and what will be the operation of that mere declaration? If these officers have been receiving pay according to the statute as it has been interpreted since its adoption, will not this give them different pay?

Mr. BOUTWELL. Yes; the interrogatory that the Senator put must be answered according to the suggestion which the interrogatory contains undoubtedly. The statute of 1862, chapter 183, section 18, contains the provision which is the basis of this amendment. That provides—

That the Secretary of the Navy be, and he hereby is, authorized to assign clerks and laborers attached to one bureau to duty in another, and also to detail a surgeon or assistant surgeon or passed-assistant surgeon as assistant to the Bureau of Medicine and Surgery, who shall receive the highest shore-pay of his grade.

The phrase "who shall receive the highest shore-pay of his grade" was omitted, and under that the pay which was authorized by this statute has been refused to these officers.

Mr. COCKRELL. What is the date of that statute?

Mr. BOUTWELL. Eighteen hundred and sixty-two; volume 12 of the statutes, page 587. It is true that in this particular the amendment does propose legislation; that is, it proposes to treat the officers precisely as though this error had not occurred, and it is for the Senate to say whether it ought to be done or whether they should come with a claim afterward. That is all there is about it. I do not insist upon the amendment, although it passed the House in that way.

Mr. WRIGHT. It doubtless may occur that there are other instances where perhaps there ought to be like legislation or at least like provision. I do not know that there are any others; but I should like to inquire of the Senator whether upon examination into the facts of the case he esteems that this is a case where justice demands there should be such force given to the statute which is now proposed to be amended?

Mr. BOUTWELL. I have no doubt about that. We did the same thing last winter in amending the statute in regard to payments on account of lands. I do not recollect the precise state of the case, but such payments it was thought should have the same effect as though there had been no error in the law. I really think this is the simple and perfectly just way for the disposition of this subject.

The Chief Clerk read as follows:

Section 1480 is amended by adding at the end of the section the following:

"The grades established in the six preceding sections for the staff corps of the Navy shall be filled by appointment from the highest members in each corps, according to seniority; and new commissions shall be issued to the officers so appointed, in which the titles and grades established in said sections shall be inserted; and no existing commission shall be vacated in the said several staff corps, except by the issue of the new commissions required by the provisions of this section; and no officer shall be reduced in rank or lose seniority in his own corps by any change which may be required under the provisions of the said six preceding sections: *Provided*, That the issuing of a new appointment and commission to any officer of the Pay Corps under the provisions of this section shall not affect or annul any existing bond, but the same shall remain in force, and apply to such new appointment and commission."

Mr. COCKRELL. That seems to be a very grave omission of a very important part of the law. In what act is this found?

Mr. BOUTWELL. The original statute is chapter 117 of the statutes of 1871, volume 16, page 537. I have no means of knowing how it happened that the omission was made; but it undoubtedly is an omission. I could read, if it would be any satisfaction, the original statute; but we have followed it.

Mr. COCKRELL. I should like to hear the original act read.

Mr. BOUTWELL—

That the foregoing grades—

We have altered it so far as to say "the grades established in the six preceding sections," which correspond to "the foregoing grades."

Mr. COCKRELL. Please read those "foregoing grades," so that we can compare them with "the six preceding sections" found in the statutes.

Mr. BOUTWELL. The Engineer Corps, Pay Corps, Marine Corps, Naval Academy, Bureau of Medicine and Surgery, Bureau of Provisions and Clothing.

Mr. COCKRELL. Then these six sections in the Revised Statutes include chaplains and naval constructors, and this amendment is proposed to be made applicable to them when it does not seem there to have been applicable to them before?

Mr. BOUTWELL. It was applicable to a larger number than it is here, I think.

Mr. COCKRELL. That is the point I am making, that in the old statute it was not applicable to as many as it will be applicable to in the Revised Statutes when this addition is adopted.

Mr. BOUTWELL. It is the opposite, I think. The classes are classified in this statute, beginning with, first, Bureau of Yards and Docks, Bureau of Equipment and Recruiting, Bureau of Navigation, Bureau of Ordnance, Bureau of Construction and Repair, Bureau of Provisions and Clothing, Bureau of Medicine and Surgery, Naval Academy, Marine Corps, Pay Corps, and Engineer Corps. The number, as I understand, has been reduced to which this provision applies by some subsequent legislation.

Mr. COCKRELL. That did not apply to chaplains there, did it?

Mr. BOUTWELL. No, sir; there is nothing about chaplains that I observe in this statute.

Mr. COCKRELL. Putting it in the position in which it is put here makes it apply to chaplains as well as the other corps. I do not know that it is usual—I am not advised as to that—to enforce the regulation in the appointment of chaplains to the Navy. I do not know whether it is or not, and if not we can change it by making an amendment to this proposed addition to the section. Probably that would be better and would only conform the law correctly to what it was, unless chaplains were originally embraced in the act.

Mr. BOUTWELL. I am unable to say. The act is lengthy, covers a great many pages, and all I can say is that we were advised by the Department and by Judge James, and it was the result of our own examination at the time which I do not recall with accuracy, that the grades established in "the six preceding sections" made the law conform to the statute as it was in 1871, as it had been amended by some legislation preceding the revision of the laws; and that this would bring the statute into harmony with the law as it was previous to the revision.

Mr. COCKRELL. I make no point except simply in regard to the chaplains, and I do not know whether this would change the law or not.

Mr. BOUTWELL. Let the clause be reserved, and if there is any question about it we can make it right hereafter.

The PRESIDING OFFICER. The paragraph will be reserved.

The Chief Clerk continued the reading of the bill, as follows:

Section 1602 is amended by striking out, in the second line, after the word "major" the word "the" and inserting the word "each."

Section 2034 is amended by inserting, in the last line, after the word "secretary" the word "of."

Section 2055 is amended by adding thereto the words "except as herein otherwise provided for."

Section 2073 is amended by inserting, in the second line, after the word "such" the word "agents," and by striking out, in the last line, the word "immigration" and inserting therefor the word "emigration."

Mr. COCKRELL. That would make it read "such subinterpreters and mechanics." Is it the intention, I ask the Senator reporting the bill, that the section should read:

The Secretary of the Interior shall, under the direction of the President, cause to be discontinued the services of such subinterpreters and mechanics, &c.?

Mr. BOUTWELL. "Subagents." It is an omission in some way. It should be "subagents."

Mr. COCKRELL. I suppose the word "agents" was intended to be stricken out.

Mr. BOUTWELL. Yes.

Mr. COCKRELL. Then insert before the word "agents" the word "subagents."

The PRESIDING OFFICER. The paragraph will be read as it is proposed to change the section.

The CHIEF CLERK. After the word "such" it is proposed to insert the word "agent;" so as to read:

The Secretary of the Interior shall, under the direction of the President, cause to be discontinued the services of such agents, subagents, interpreters, and mechanics, &c.

Mr. BOUTWELL. It is all right; "such agents, subagents," &c.

Mr. COCKRELL. O, yes.

The Chief Clerk continued the reading of the bill, as follows:

Section 2139 is amended by striking out, in lines 2 and 3, the words "except an Indian in the Indian country."

Section 2403 is amended by striking out, in the second line, the word "seven" and inserting the word "one."

Mr. BOUTWELL. I ask that the Senate disagree to the last paragraph. We passed a separate bill at the last session, after this bill passed the House, making provision for what is contemplated in this clause.

The PRESIDING OFFICER. Lines 268, 269, and 270 will be stricken out if there be no objection.

Mr. COCKRELL. They have already been covered by another bill, I understand?

Mr. BOUTWELL. Yes, by a special act.

The Chief Clerk continued the reading of the bill, as follows:

Section 2450 is amended by striking out, in the fourth line, the words "Secretary of the Treasury" and inserting the words "Secretary of the Interior."

Section 2451 is amended by striking out, in the first and second lines, the words "Secretary of the Treasury" and inserting the words "Secretary of the Interior."

Section 2504 is amended by striking out, in schedule M, after the word "sulphur," the word "flour" and inserting the word "flowers."

Mr. COCKRELL. I do not see where these words to be stricken out come in.

Mr. BOUTWELL. Under the head of "sulphur." It is merely a verbal correction.

Mr. COCKRELL. What will be the effect of the change?

Mr. BOUTWELL. It is merely a change in the spelling of the word so as to express the truth. There is no such article of commerce as "flour of sulphur."

The Chief Clerk read as follows:

Section 2505 is amended by striking out, after the words "skins, dried, salted, or pickled," the words "10 per cent. *ad valorem*."

Mr. COCKRELL. What is the effect of that amendment?

Mr. BOUTWELL. The Senator will find on page 492 of the Revised Statutes that these articles were in the free list, but accidentally there has been inserted after the enumeration of the articles the words "10 per cent. *ad valorem*."

Mr. COCKRELL. Then when those words are stricken out the articles will come in free?

Mr. BOUTWELL. There will be no question about it.

Mr. COCKRELL. I am in favor of that.

Mr. BOUTWELL. They were in the free list by the statutes. That item is on page 492.

Mr. COCKRELL. Yes; I have it all right.

The Chief Clerk read as follows:

Section 2508 is amended by inserting, in the fifth line, between the words "of" and "United States," the word "the."

Section 2514 is amended by inserting, in the last line, between the words "of" and "Treasury," the word "the."

Section 2517 is amended by striking out, in the seventh paragraph, the word "Ilesborough" and inserting the word "Isleborough;" by striking out, in the tenth paragraph, the word "Brunswick;" by striking out, in the thirteenth paragraph, the words "and Arundel as they were bounded on the 10th of May, 1800," and inserting therefor the words "Kennebunk and Kennebunkport;" and by striking out the words "Cape Porpoise" and by inserting therefor the word "Kennebunkport."

Section 2518 is amended by inserting, in the first line of the sixth subdivision, after the word "collector," the words "who shall reside at Bangor."

Section 2519 is amended by striking out, in the second line, the words "preceding section" and inserting therefor the words "section 2517;" also, in the fourth line, by striking out the words "Comptroller of the Treasury" and inserting the words "Commissioner of Customs."

Section 2527 is amended by striking out, in the seventh line of the eleventh subdivision, the word "Wattupper" and inserting the word "Watuppa."

Section 2530 is amended by striking out, in the second line, the word "appraiser" and inserting therefor the word "appraisers."

Section 2536 is amended by adding to the second subdivision the words "a surveyor at each of the ports of Cold Spring, on the north side of Long Island, and Port Jefferson, who shall reside at their respective ports."

Section 2545 is amended by striking out, in the third line, the word "appraiser" and inserting therefor the word "appraisers."

Section 2555 is amended by striking out, in the fourth line of the second subdivision, the word "Newburn" and inserting the word "Newberne," and by striking out, in the third line of the fourth subdivision, the word "Carlolina" and inserting the word "Carolina."

Section 2578 is amended by striking out, in the second line of the third subdivision, the word "Encinao" and inserting the word "Encinal."

Section 2579 is amended by striking out, in the second line of the second subdivision, after the word "Matagorda," the word "and," and inserting in the third line, after the word "Lavaca," the word "and."

Section 2582 is amended by striking out, in the fourth line of the first subdivision, the word "San Pedro" and inserting therefor the word "Wilmington."

Section 2585 is amended by striking out, in the second line, the word "either," and in the third line the words "or the port of Wilmington."

Section 2587 is amended by striking out, in the second line in the fourth subdivision, the letter "h" in the word "Townshend."

Section 2588 is amended by striking out, in the first line, the last letter "s" in the word "districts."

Section 2619 is amended by striking out, in the fourth line, all after the word "law" and inserting the following:

"And all bonds to be hereafter given shall be of the form following, to wit: Know all men by these presents that we —— are held and firmly bound unto the United States of America in the full and just sum of —— dollars, money of the United States; to which payment, well and truly to be made, we bind ourselves, jointly and severally, our joint and several heirs, executors, and administrators, firmly by these presents; sealed with our seals, and dated this —— day of ——, 18—.

"The condition of the foregoing obligation is such, that whereas the President of the United States hath, pursuant to law, appointed the said —— to the office of —— in the State of ——,

"Now, therefore, if the said —— has truly and faithfully executed and discharged, and shall continue truly and faithfully to execute and discharge, all the duties of the said office, according to law, then the above obligation to be void and of none effect; otherwise it shall abide and remain in full force and virtue.

"Sealed and delivered in the presence of ——.

"And the amount of penalty shall be fixed by the President, as provided in section 3639."

Mr. COCKRELL. I should like to have an explanation of the amendment to section 2619. That seems to be a very important addition and a striking out of quite a large portion.

Mr. BOUTWELL. The reason of that is, the statute of 1799 specified a form of bond which should be given in all these cases. That form has been literally complied with from that time probably until the present. The Revised Statutes, instead of repeating the form of that bond said, "according to law," or something of that nature.

Mr. COCKRELL. Yes, "the duties thereof, according to law, under penalty as follows." You propose to strike out all after the word "law," which would strike out some fourteen sections describing the amount of the bond, for you give the form of the bond and then put in:

And the amount of penalty shall be fixed by the President, as provided in section 3639.

Mr. BOUTWELL. The meaning of "striking out in the fourth line all after the word 'law'" is that all we strike out is the rest of that line.

Mr. COCKRELL. Then it does not strike out those other provisions of that section?

Mr. BOUTWELL. O, no; it only strikes out the words in the fourth line after the word "law," and then inserts the form of the bond, because questions might arise as to the form if it should be changed.

Mr. COCKRELL. That is all correct. The only question was whether the effect was to strike out these other fourteen provisions fixing the amount of the bond and leaving the whole thing in the discretion of the President.

Mr. BOUTWELL. I think we had better enumerate the words. Let it read "striking out in the fourth line the words 'under penalty as follows' and inserting"——

Mr. COCKRELL. "In lieu thereof."

Mr. BOUTWELL. Yes, "inserting in lieu thereof."

Mr. COCKRELL. That will be better, because then it will be explicit. As it is, this might strike out those fourteen separate provisions.

The PRESIDING OFFICER. The paragraph will be read as proposed to be modified.

The Chief Clerk read as follows:

Section 2619 is amended by striking out, in the fourth line, after the word "law" the words "under penalty as follows" and inserting in lieu thereof the following: "And all bonds to be hereafter given," &c.

The amendment was agreed to.

The Chief Clerk read as follows:

Section 2659 is amended by striking out, in the last line, the word "or" and adding at the end the words "and marine-hospital dues."

Section 2660 is amended by inserting, in the eighth line, after the words "Fall River" the word "Plymouth," and, in the eleventh line, after the words "Perth Amboy" the words "Gloucester" and "Nantucket."

Mr. COCKRELL. I suppose that is simply correcting an omission, inserting the words in the place where they formerly belonged, and does not increase the salary of the officers at these places.

Mr. BOUTWELL. No, sir; they were omitted entirely.

Mr. COCKRELL. And they are replaced in the same place where they were before?

Mr. BOUTWELL. Precisely. There is no difference in the emoluments.

The Chief Clerk read as follows:

Section 2775 is amended by inserting, in the eighth line, after the word "respectively" the words "on account of duties on imports, tonnage, and marine-hospital dues."

Mr. COCKRELL. I should like an explanation of why the word "respectively" does not comprehend the same thing. The section says:

The collectors for the districts of Chicago, &c., shall receive a salary of $1,000 a year each, and, in addition thereto, the fees allowed by law, and a commission of 3 per cent. on all moneys collected and accounted for by them respectively.

Why are the words "on account of duties on imports, tonnage, and marine-hospital dues" inserted? Does that increase the amount of money upon which they shall receive commissions, or does it decrease it, or does it leave it just the way it is?

Mr. BOUTWELL. It diminishes the amount of fees that they may receive. As it now reads, collectors would be entitled to commissions which had not been allowed them by any law existing at the date of the revision; that is, they would be allowed commissions upon all moneys collected; but the law provided that they should be allowed commissions only upon fees received on certain accounts, which were specified, on account of duties on imports, and tonnage, and marine-hospital dues.

Mr. COCKRELL. Then their fees would be restricted to these three sources of revenue?

Mr. BOUTWELL. To three, while as the Revised Statutes now stand the section allows them to collect fees for moneys received which before they were obliged to take without fees.

The Chief Clerk read as follows:

Section 2691 is amended by adding at the end of the section the following:

"No collector, surveyor, or naval officer shall ever receive more than $4,500 annually, exclusive of his compensation as collector, surveyor, or naval officer, and the fines and forfeitures allowed by law, for any services he may perform for the United States in any office or capacity, except as provided in sections 3654 and 3657."

Mr. COCKRELL. I should like an explanation of that. What is the date of the statute from which it is taken?

Mr. BOUTWELL. This section, which it is proposed to add to section 2691, is a copy of section 18, chapter 107, of the act of May 7, 1822, made subject, however, to exceptions contained in the statute of March 3, 1869, chapter 133, and the act of June 12, 1858, chapter 154, section 17. It is merely placing these officers where they were under those several statutes.

Mr. COCKRELL. This section 3654 allows to collectors certain fees as therein prescribed, and twenty-six hundred and——

Mr. BOUTWELL. Thirty-six hundred and fifty-seven is the other.

Mr. COCKRELL. Is that correct? Are they 3654 and 3657, or ought they to be 2654 and 2657? I think that is a misprint.

Mr. BOUTWELL. It is. It should read "2654 and 2657." That is an error. "Thirty" should be stricken out and "twenty" inserted in each case.

Mr. COCKRELL. Then section 2657 allows certain salaries and fees to the surveyors and inspectors, and then section 2691, to which this is proposed to be added, provides that:

Whenever the emoluments of any other collector shall exceed $3,000, or the emoluments of any other naval officer shall exceed $2,500, or the emoluments of any other surveyor shall exceed $2,000 in any one year after deducting therefrom the necessary expenses incident to his office in the same year, the excess shall in every such case be paid into the Treasury for the use of the United States. But the provisions of this and the preceding section shall not extend to fines, penalties, or forfeitures, or the distribution thereof.

Now it is proposed to add:

No collector, surveyor, or naval officer shall receive more than $400 annually, exclusive of his compensation as collector, surveyor, or naval officer, and the fines and forfeitures allowed by law, for any services he may perform for the United States in any office or capacity, except as provided in sections 2654 and 2657.

Mr. BOUTWELL. It means that the various commissions, such as those we were just considering, for collecting marine-hospital dues, tonnage fees, &c., shall never amount to more than $400, exclusive of the salary, as I understand it.

Mr. COCKRELL. What effect would the insertion of this provision now in the bill have upon the salaries? What are those $400 more for? Does that increase the salary allowed by sections 2654 and 2657 $400?

Mr. BOUTWELL. It does not affect the salaries at all, as I understand it. It retains the same salary, but the officer cannot take more than $400 for what would be called extra service and commissions, which applies, as the Senator will observe by reading the statute explicitly, to the small offices. The large offices took none of these fees, such offices as New York or Boston, but only some smaller offices where the salary is one, two, or three hundred dollars. However, as I understand it, I am sure this provision is merely a reproduction of the statutes of 1822, of 1858, and of 1869 in regard to this subject. I have not dealt with the effect upon the emoluments of the officers, but only attempted to ascertain what the law required us to do.

Mr. COCKRELL. That is true, but may there not have been a conflict between laws since 1822 which would have changed this law as now copied from that act?

Mr. BOUTWELL. No, sir; I do not understand it to be so. We have considered all the statutes as I have referred to them, the statute of 1822, the statute of 1858, and the statute of 1869, with reference to these provisions, and this is the result; and it conforms to the usage of the Department previous to the passage of the Revised Statutes.

Mr. COCKRELL. What has been their usage since?

Mr. BOUTWELL. I do not know what has been the usage since that time. The Department write that the section proposed, now under consideration, is contained in these various statutes which I have enumerated and that it conforms to the action of the Department previous to the revision of the laws.

Mr. COCKRELL. The collection of the custom dues causes the expenditure of a very large amount of money in proportion to the amount that is collected. At some of the ports of entry the expenses of collection far exceed the entire amount collected, and if this works any change to increase it in any way I should be opposed to it. In fact I think about thirty of our ports of entry ought to be abolished.

Mr. BOUTWELL. It works no change.

Mr. COCKRELL. I suggest that we reserve the clause from line 394 to line 400 of the bill, and we can make a little further examination of the matter.

Mr. BOUTWELL. Very well.

The PRESIDING OFFICER. The paragraph will be reserved.

Mr. BOUTWELL. I move to amend by striking out "thirty" in line 399 and in line 400 and inserting "twenty" in each case.

The amendment was agreed to.

The Chief Clerk read as follows:

Section 2702 is amended by striking out, in the first line, the word "Ellinsberg" and inserting the word "Ellensberg."

Section 2720 is amended by inserting, in the fifth line, after the word "States" the words "but each surveyor of this class shall be entitled to a maximum compensation of $2,000 a year out of any and all fees and emoluments by him received;" and by inserting, in the ninth line, after the word "surveyor" the words "at the ports designated in section 2719."

Mr. COCKRELL. I wish the Clerk would turn to page 535 of the Revised Statutes and read section 2720 as it will be amended.

The CHIEF CLERK. The section, if amended as proposed, will read:

Whenever the emoluments of any surveyor other than those named in the preceding section shall exceed $2,000 in any one year, after deducting therefrom the necessary expenses incident to his office in the same year, the excess shall be paid into the Treasury for the use of the United States. But each surveyor of this class shall be entitled to a maximum compensation of $2,000 a year out of any and all fees and emoluments by him received. And no surveyor shall, on any pretense whatever, in the aggregate receive or retain for himself more than $4,500 a year, including all commissions, or fees, or emoluments, or any other emoluments or salaries which are now allowed and limited by law; but each surveyor at the ports designated in section 2719 shall be entitled to a maximum compensation of $4,500 a year out of any and all fees and emoluments by him received. And when any surveyor shall perform the duties of collector he shall be entitled to the same compensation as is allowed to a collector for like services, and shall be subject to the same limitations.

Mr. COCKRELL. I will ask the Senator reporting the bill if this does not increase the salaries of a certain class of surveyors and bring them up to $2,000, when under the law as it was their salary would not be $2,000?

Mr. BOUTWELL. As I understand it, it leaves the salaries just where they were by the eighth section of chapter 251 of the statutes of 1870.

Mr. COCKRELL. Please read that section.

Mr. BOUTWELL. Taken in connection with the statute of 1841, chapter 35, one of the last clauses of which is:

Nor shall such surveyor in the aggregate receive, hold, or retain for himself hereafter more than $4,500 a year, including all commissions, or fees, or emoluments, or any other commissions or salaries which are now allowed and limited by law.

The eighth section of the statute of 1870 provided:

That section 5 of an act approved March 3, 1841, entitled "An act making appropriations for the civil and diplomatic expenses of the Government for the year 1841—

Which is the one I have just read—

shall be construed to have authorized and to authorize the naval officers and surveyors therein mentioned to receive the maximum compensation of $5,000 and $4,500, respectively, as therein named, out of any and all fees and emoluments by them received.

Mr. COCKRELL. I do not see how those sections which the Senator has read cover this point here. I will ask one question for general information. Has it been the rule where the committee found new provisions in the revision which were not in former statutes, to strike them out, or where they found certain provisions of former statutes not in the Revised Statutes to insert them? Which has been the rule, or have both rules been pursued? That is, if in examining the Revised Statutes and comparing them with the old statutes, you found a new section, has it been the rule to recommend that it be stricken out or to leave it stand? Then what has been the rule where you found that provisions of former statutes had been left out? As I understand, you report that they shall be inserted and added here.

Mr. BOUTWELL. Where we found that a statute had been brought forward which had been repealed by a subsequent statute, but bearing date prior to the passage of the Revised Statutes, we have reported to strike out that statute.

Mr. COCKRELL. Suppose you found a new provision entirely that was not in any of the old statutes?

Mr. BOUTWELL. We would strike that out, of course. I do not know that we have any such as that.

Mr. COCKRELL. Has the attention of the committee been called to any new provisions?

Mr. BOUTWELL. We have not had our attention called to any new provisions which turned out to be new. We had our attention called to a provision in regard to the tariff, or under the head of the tariff, in relation to damage on iron in sheets which was thought to be new; but we found that it existed. I do not recollect any other case.

Mr. COCKRELL. I should like to have this clause reserved until we can make a further examination of it.

Mr. BOUTWELL. Very well.

The PRESIDING OFFICER. The paragraph will be reserved.

The Chief Clerk read as follows:

Section 2727 is struck out.

Section 2742 is amended by striking out, in the second line, the words "same class of officers" and inserting therefor the word "gaugers."

Section 2746 is amended by striking out, in the second and third lines, the words "and weighers" and inserting in the second line, after the word "appraisers," the words "deputy collectors, deputy surveyors, and."

Mr. COCKRELL. These amendments merely restore the former laws, as I understand.

Mr. BOUTWELL. Yes; this amendment conforms to the act of June 14, 1858, volume 11 of the statutes, page 337, which allowed temporary additions, but not a permanent increase of certain salaries. Weighers were not mentioned in that act. The act of July 28, 1866, from which the section is taken, merely contained the additional compensation to officers "as now provided by law," that is, as then provided by law, temporarily.

Mr. COCKRELL. They were deputy collectors and deputy surveyors?

Mr. BOUTWELL. Yes.

Mr. COCKRELL. And deputy naval officers?

The Chief Clerk read as follows:

Section 2810 is amended by striking out, in the fourth line, after the word "officers," the word "are" and inserting the word "is."

Section 2819 is amended by striking out, in the third line, the words "Saint Marks" and inserting therefor the words "Cedar Keys."

Section 2820 is amended by inserting, in the third line, after the word "entered," the word "at."

Section 2821 is amended by striking out, in the second line, the words "Trinity River" and inserting therefor the words "Buffalo Bayou."

Section 2822 is amended by striking out, in the sixth line, the words "and Natchez, in Mississippi," and by inserting, in the fifth line, after the word "Missouri," the word "and."

Section 2825 is amended by striking out, at the end of the section, the word "importation" and inserting therefor the word "destination."

Section 2841 is amended by inserting in the second sentence of the "oath of consignee, importer, or agent," after the words "is (or are)," the words "the owner (or owners)."

Section 2865 is amended by substituting therefor the following:

"If any person shall knowingly and willfully, with intent to defraud the revenue of the United States, smuggle, or clandestinely introduce, into the United States, any goods, wares, or merchandise subject to duty by law, and which should have been invoiced, without paying or accounting for the duty, or shall make out or pass, or attempt to pass, through the custom-house, any false, forged, or fraudulent invoice, every such person, his, her, or their aiders and abettors, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding $5,000, or imprisoned for any term of time not exceeding two years, or both, at the discretion of the court."

Mr. COCKRELL. I should like to ask the Senator from Massachusetts if there is no provision for punishing those who attempt to smuggle or clandestinely introduce goods. I see this last amendment is in place of section 2865 which is stricken out, and yet it contains more than section 2865, and yet it contains no provision to punish an attempt to commit the crime of smuggling.

Mr. BOUTWELL. The Senator will bear in mind that we are not making the law, but merely finding out what it was.

Mr. COCKRELL. I was only calling attention to the point whether the law provides for it or not.

Mr. BOUTWELL. The truth about this section is that by some accident the first part of section 19 of chapter 270 of the statutes of 1842 was omitted from the Revised Statutes. What stands here as section 2865 is the last part of section 19 of chapter 270 of the statutes of 1842; but the first part by some accident was omitted. We have merely proposed in the amendment to take the whole of section 19 of that statute.

Mr. COCKRELL. And that has no provision about punishing an attempt.

Mr. BOUTWELL. No, sir, we have taken it just as it was. It reads precisely in the original as it does in the bill. That is the history of it. I do not know how the accident occurred.

The Chief Clerk read as follows:

Section 2909 is struck out.

Mr. COCKRELL. Why is that stricken out?

Mr. BOUTWELL. This section was taken from an act of August 30, 1842, chapter 270, section 17. That was repealed by the act of March 3, 1865, and the two sections 2902 and 2909 are both in the revision. Section 2902 represents the law at the time the statutes were revised, and this section 2909 was taken from a statute which was repealed by a subsequent statute, which is now section 2902.

The Chief Clerk read as follows:

Section 2936 is amended by inserting, in the eighth line, after the word "situated," the words "to make."

Mr. BOUTWELL. That is a case of new legislation; I do not know but that it is the only one. The words proposed to be inserted seem to be absolutely necessary to make sense and give effect to the statute. They are not, however, in the original statute, and the Senate will consider whether their insertion is in the nature of new legislation.

Mr. COCKRELL. That would seem to be a clerical omission.

The Chief Clerk read as follows:

Section 2978 is amended by adding at the end of the section the words "except as provided in section 3025."

Mr. BOUTWELL. This is contained substantially in section 3025.

The Chief Clerk read as follows:

Section 2984 is amended by striking out, in the second line, the word "industry" and inserting therefor the word "injury."

Section 2988 is amended by striking out all after the word "same" in the fifth line, and by inserting a period in lieu of the semicolon at the end of the section.

Section 2989 is amended by striking out, in the third line, the words "relating to warehouses" and inserting therefor the words "of this chapter."

Section 3001 is amended by adding thereto the following:

"And the Secretary of the Treasury is hereby authorized to remit, in whole or in part, on such conditions, and under such regulations, not inconsistent with law, as he may prescribe, the additional duty secured by the bond given for the transportation of merchandise from a port in one collection district to a port in another collection district prescribed by the preceding section: *Provided*, That it shall be proved to the satisfaction of the Secretary of the Treasury that the failure to transport and deliver the merchandise aforesaid according to the conditions of the bonds occurred without willful negligence or fraudulent intent on the part of the obligors."

Section 3002 is amended by striking out, in the ninth and eleventh lines respectively, the words "Point Isabel" and inserting therefor the word "Brownsville."

Section 3003 is amended by striking out, in the eighth line, after the words "del Norte," the word "and," and inserting the word "or."

Section 3005 is amended by striking out, in the fourth line, the words "Point Isabel" and inserting the word "Brownsville."

Section 3009 is amended by adding thereto the words "or coin certificates."

Mr. COCKRELL. What will be the effect of the clause just read, I ask the Senator reporting the bill?

Mr. BOUTWELL. It will be seen that it authorizes the receipt of coin certificates in payment of dues, which is the existing law, but this statute imposed a limitation, did not follow the statutes which authorized the receipt of coin certificates, which the Senator will understand are certificates of coin already deposited in the Treasury.

Mr. COCKRELL. I understand that. This section says:

All duties upon imports shall be collected in ready money, and shall be paid in coin or in United States notes, payable on demand, authorized to be issued prior to the 25th day of February, 1862, and by law receivable in payment of public dues.

Mr. BOUTWELL. "Or coin certificates." That they shall be payable either in coin, in demand notes, or in these coin certificates. The duties on imports shall be collected in ready money in this particular class of demand notes or in coin certificates. That was the law; but in the revision "coin certificates" were omitted, and therefore technically the Department would not be justified in receiving them, although they are evidence of coin already in the Treasury belonging to private persons. A coin certificate is a receipt for coin already deposited with the Treasurer of the United States.

Mr. COCKRELL. And the original act has that in?

Mr. BOUTWELL. The act which authorized the issue of coin certificates provided that they should be received in payment of customs dues.

Mr. COCKRELL. And it was omitted in the revision?

Mr. BOUTWELL. Omitted in the revision, so that technically they cannot receive a certificate which contains evidence that the coin is already in the possession of the Government.

Mr. COCKRELL. Is this section 3009 taken in the exact language from the former act?

Mr. BOUTWELL. I think not, because this is a compilation from two statutes. First, there was the general statute, which authorized the payment of duties only in coin; and then, when the demand notes were issued that are specified here, there was authority given for the payment of duties with those demand notes; and then, when authority was given to issue coin certificates, it was provided that those should be received in payment of customs; so that this is not a repetition in language of any particular statute. It was impossible in the revision of the laws that they should have brought forward the three different statutes in terms.

Mr. SHERMAN. Are there any demand notes out yet?

Mr. BOUTWELL. Only a very few. That is not the question now. It is merely whether coin certificates shall be received.

Mr. COCKRELL. What does the Senator understand by the words "and by law receivable in payment of public dues" in section 3009? To what do they refer?

Mr. BOUTWELL. They refer to the United States notes payable on demand.

Mr. COCKRELL. Then if you put in the words "coin certificates" right after, they just become the equivalent of those words.

Mr. BOUTWELL. Yes, in one sense they were payable on demand, but they were not authorized to be issued prior to the 25th day of February, 1862, and it will not do to put in the words there. The demand notes which were receivable for customs dues were a particular class of notes, limited in amount, issued under certain restrictions, and for the purpose of giving them additional currency they were made receivable. This statute is a limitation upon the use of demand notes. There are other demand notes outstanding by the Government which cannot be used for the payment of customs dues.

Mr. COCKRELL. I understand that there is no controversy about what is the intention of the insertion of these words, "or coin certificates;" but does it accomplish what is designed?

All duties upon imports shall be collected in ready money and shall be paid in coin or in United States notes—

That portion of the payment is qualified by the words:

payable on demand, authorized to be issued prior to the 25th day of February, 1862, and by law receivable in payment of public dues—

And now you add "or coin certificates." So it does not make coin certificates a payment for import duties, but only for these notes.

Mr. SHERMAN. I think "coin certificates" had better be put in after the word "coin."

Mr. COCKRELL. That would do; "coin or coin certificates, or United States notes."

Mr. BOUTWELL. Very well; let the section be amended so as to read:

Section 3009 is amended by inserting after the word "coin," in the second line, the words "or coin certificates."

Mr. COCKRELL. That makes that right.

Mr. BOUTWELL. I move that amendment.

The amendment was agreed to.

The Chief Clerk read as follows:

Section 3011 is amended by striking out all after the word "protest," in the eighth line, and by adding the words "and appeal shall have been taken as prescribed in section 2931."

Mr. COCKRELL. Under what law do those words come in? The present section says:

But no recovery shall be allowed in such action unless a protest, in writing and signed by the claimant or his agent, was made and delivered at or before the payment, setting forth distinctly and specifically the grounds of objection to the amount claimed.

Now it is proposed to strike that out and insert:

But no recovery shall be allowed in such action unless a protest and appeal shall have been taken as prescribed in section 2931.

Mr. BOUTWELL. This amendment is taken from the act of 30th June, 1864, and was omitted; and there was substituted for it the provision of the act of 1845.

Mr. COCKRELL. There is an express decision by the Supreme Court of the United States on this very section of the law, that this protest in writing was necessary—I think it came up in one of the New York cases—and that unless the protest in writing was made the

party had no right of action. Now, that law must have existed in some of the statutes, and the proposed change here strikes that out entirely. This amendment would leave out the words "unless a protest, in writing and signed by the claimant or his agent, was made and delivered at or before the payment, setting forth distinctly and specifically the grounds of objection to the amount claimed."

Mr. BOUTWELL. If the Senator will turn to section 2931 he will see that provision is made agreeably to the statute of 1864, to which reference is made in the proposed amendment in regard to the appeal.

Mr COCKRELL. Still that does not affect that provision that no recovery shall be allowed in such action unless a protest shall be made by the claimant or his agent setting forth the grounds of the objection.

Mr. BOUTWELL. Section 2931 provides that no recovery shall be had unless there is notice in writing to the collector setting forth the grounds of objection distinctly and specifically. Then there must be an appeal before suit can be commenced against the collector. I think the Senator will see that the sections as amended will leave the law precisely as it was in 1864.

Mr. COCKRELL. I have not had an opportunity of examining yet the law of 1864, but section 2931 in the Revised Statutes does not cover the language that is stricken out of section 3011 as proposed by this bill. It takes out that entire feature—a thing which has been decided to be essential. A decision was had upon a question arising on the construction of that act.

Mr. BOUTWELL. I do not agree with the Senator in regard to the construction of the statute; but I think he will find, whether he is right in that or not, that the proposed amendment makes the law conform to what it was when the statutes were revised, and I think that in section 2931 there is full power for the whole proceeding, and it is pointed out very specifically that there must be a protest and an appeal before there can be a suit.

Mr. COCKRELL. Do you find in the former acts this language that is employed in section 3011:

But no recovery shall be allowed in such action unless a protest, in writing and signed by the claimant or his agent, was made and delivered at or before the payment, setting forth distinctly and specifically the grounds of objection to the amount claimed;

Or is it found in the Revised Statutes?

Mr. BOUTWELL. This language here is found in the statute of 1845. The language that we propose to strike out in section 3011, and the statute of 1864 substituted for it, is reproduced in section 2931; and that provides for the protest, for the appeal, and for the suit.

Mr. COCKRELL. Does that statute of 1864 repeal the act of 1845?

Mr. BOUTWELL. Repeals it in substance, because it provides a new way of protest and appeal and has been so treated. The old act provided that the protest should be made in writing before the payment of the duties; but the new act provided that it should be made within ten days after the ascertainment and liquidation of the duties by the proper officers, and that language results from the change in the system of collecting the duties.

Mr. COCKRELL. If the act of 1864 repealed the act of 1845, this is correct.

Mr. BOUTWELL. Certainly it repealed it in substance, because it provided a new time for the protest, that it should be within ten days after liquidation, while under the act of 1845 it was before the payment of duties.

Mr. COCKRELL. I know that under the act of of 1845 there were several cases of litigation over it in regard to the fees, and that particular provision was construed by the Supreme Court and it was held to be essentially requisite that the protest should be made before any recovery could be had.

The Chief Clerk read as follows:

Section 3083 is amended by striking out, in the third and fourth lines, the word "Solioctir" and inserting the word "Solicitor."

Section 3090 is amended by striking out, in the third line, the word "dedcted" and inserting the word "deducted;" and by striking out, in the twenty-fourth line, the word "ncluding" and inserting the word "including."

Section 3100 is amended by transposing the eighth and ninth lines, and by striking out the amending clause to this section in the act approved February 18, 1875, entitled "An act to correct errors and to supply omissions in the Revised Statutes of the United States."

Mr. WRIGHT. I call the attention of the Senator from Massachusetts to what I think is perhaps the improper use of language in the clause last read. It is proposed here to amend a certain section by transposing the eighth and ninth lines, and to amend it by striking out an amending clause in another statute, an entirely different statute. I suggest to him whether it would not be better to strike out, if he has the language before him, the words "and by striking out the amending clause to this section," &c., and inserting the words "so much of" and then adding to the last clause "as amend said section 3100 be and the same is hereby repealed."

Mr. BOUTWELL. I think upon the whole that I will venture to suggest that we omit from this clause all after the word "lines" in line 520, so as to read:

Section 3100 is amended by transposing the eighth and ninth lines.

And allow the former attempt to correct this error to stand.

Mr. WRIGHT. I think that would be preferable.

Mr. BOUTWELL. I move that amendment. That will just correct the error in the Revised Statutes and let the former attempt pass without any notice.

The amendment was agreed to.

The Chief Clerk read as follows:

Section 3105 is amended by striking out, in the seventh line, after the word "affixing" the word "in."

Section 3120 is amended by adding thereto the following:

"And that the Secretary of the Treasury be, and he is hereby, authorized, in his discretion, to make such regulations as shall enable vessels engaged in the coasting trade between ports and places upon Lake Michigan exclusively, and laden with American productions and free merchandise only, to unlade their cargoes without previously obtaining a permit to unlade."

Section 3140 is amended by adding at the end of the section the words:

"And where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, the word 'person,' as used in this title, shall be construed to mean and include a partnership, association, company, or corporation, as well as a natural person."

Section 3141 is amended by striking out, in the fourteenth line, after the word "State" the word "is" and inserting the word "was."

Section 3145 is amended by striking out, in the thirty-first line, the word "entiled" and inserting the word "entitled."

Section 3168 is amended by striking out, in the third line, the word "spriits" and inserting the word "spirits."

Section 3197 is amended by striking out, in the twelfth line, the words "to be" before the word "seized."

Mr. BOUTWELL. I wish to call the attention of the Senate to the amendment last read because it is new legislation. The words "to be" were in the old statute and the Revised Statutes conform to the old statute; but the Department say that it is erroneous. It appeared so to the committee, and we finally as an exceptional case agreed to report it, to bring it to the attention of the two Houses. I therefore call the attention of the Senate to it. The committee were of opinion that the words ought to be struck out.

Mr. COCKRELL. I suppose it makes the sense plainer?

Mr. BOUTWELL. It makes it plainer, but it is new legislation. If there is no objection, I suppose we may consider it agreed to.

The Chief Clerk read as follows:

Section 3226 is amended by striking out, in the sixth line, after the words "Commissioner of" the word "the."

Section 3239 is amended by striking out, in the sixth line, the word "stamp" and inserting the word "stamps."

Section 3310 is amended by striking out, in the twenty-fifth line, the word "unadvoidable" and inserting the word "unavoidable."

Section 3318 is amended by striking out, in the twenty-ninth line, the word "therin" and inserting the word "therein," and by inserting, in the thirty-fourth line, after the word "shall" the words "on conviction."

Section 3355 is amended by striking out, in the forty-first and forty-second lines, the word "conspicious" and inserting the word "conspicuous."

Section 3362 is amended by striking out, in the fourth line of the fourth paragraph, the word "sweeping" and inserting the word "sweepings."

Section 3422 is amended by striking out, in the ninth line, after the word "document" the word "or," and by inserting, in the tenth line, before the word "order" the word "or."

Section 3429 is amended by inserting, in the sixteenth and seventeenth lines respectively, after the word "die" a comma.

Section 3433 is amended by inserting after the word "materials," in line twenty-six, the words "except distilled spirits."

Section 3456 is amended by inserting, in the ninth line, before the word "dealer" the word "liquor."

Section 3473 is amended by striking out all after the word "banks," in the eighth line, and inserting in the second line, before the word "or" the words "coin certificates.

Mr. BOUTWELL. This is the same amendment we had in a former section in regard to the duties on imports.

Mr. COCKRELL. The Revised Statutes now read:

All duties on imports shall be paid in gold or silver coin only, or in demand Treasury notes.

It will be changed to read:

All duties on imports shall be paid in gold or silver coin only, coin certificates, or in demand Treasury notes.

Mr. BOUTWELL. Yes.

Mr. COCKRELL. Why strike out all that provision after the word "banks," which is:

And upon every such payment credit shall be given for the amount of principal and interest due on any Treasury note not received in payment on the day when the same are received?

These words are proposed to be stricken out. Why are they proposed to be stricken out?

Mr. BOUTWELL. These lines allowing credit for accrued interest on Treasury notes in payment of public dues are not applicable to the issues of 1861 and 1862 which are referred to here. This phrase was taken from a statute which related to other notes, and not to the particular notes that are mentioned in this section.

Mr. COCKRELL. Then it was inserted here by error?

Mr. BOUTWELL. It was inserted by an accident.

The Chief Clerk read as follows:

Section 3536 is amended by inserting, in the fourth line, after the word "weighing" the word "a."

Section 3561 is amended by striking out, in the fourth line, the word "applying" and inserting the word "applicable."

Section 3568 is amended by striking out, in the fourth line, the word "turn" and inserting the word "return."

Section 3618 is amended by inserting after the word "Army," in the fifth line, the words "materials, stores, or supplies sold to officers and soldiers of the Army."

Mr. COCKRELL. I should like to have section 3618 read as it will stand if thus amended.

The Chief Clerk read as follows:

All proceeds of sales of old material, condemned stores, supplies, or other public property of any kind, except the proceeds of the sale or leasing of marine hospitals

or of the sales of revenue-cutters, or of the sales of commissary stores to the officers and enlisted men of the Army, materials, stores, or supplies sold to officers and soldiers of the Army, or of the sale of condemned Navy clothing, or of sales of materials, stores, or supplies to any exploring or surveying expedition authorized by law, shall be deposited and covered into the Treasury as miscellaneous receipts, on account of "proceeds of Government property," and shall not be withdrawn or applied except in consequence of a subsequent appropriation made by law.

Mr. COCKRELL. I should like an explanation of what that means.

Mr. BOUTWELL. The object is to make it conform to the act of 1872, chapter 348, which provided "that the fifth section of the act approved May 5, 1872, 'making appropriations for the executive, legislative, and judicial expenses of the Government for the year ending June 30, 1873, and for other purposes,' shall not be held to apply to stores, materials, and supplies sold to officers and soldiers of the Army or to exploring or surveying expeditions authorized by law."

Mr. COCKRELL. If that is the intention, right after the word "Army" the words "or of" should be inserted before the words "materials, stores, or supplies sold to the officers and soldiers of the Army." It does not mean anything the way it now is.

All proceeds of sales of old material, condemned stores, supplies, or other public property of any kind, except the proceeds of the sale or leasing of marine hospitals, or of the sales of revenue-cutters, or of the sales of commissary stores to the officers and enlisted men of the Army, materials, stores, or supplies sold to officers and soldiers of the Army.

The words "or of" must be inserted to make it mean anything at all.

Mr. BOUTWELL. That is so. My notes have "or of" before "materials."

Mr. COCKRELL. Then I move to insert before the word "materials" in this clause the words "or of."

Mr. BOUTWELL. It ought to be so.

The amendment was agreed to.

The Chief Clerk read as follows:

Section 3620 is amended by inserting after the word "law," in the fifth line, the words "and draw for the same only in favor of the persons to whom payment is made."

Mr. COCKRELL. Please read that section as amended.

The Chief Clerk read as follows:

It shall be the duty of every disbursing officer having any public money intrusted to him for disbursement to deposit the same with the Treasurer or some one of the assistant treasurers of the United States, and to draw for the same only as it may be required for payments to be made by him in pursuance of law, and draw for the same only in favor of the persons to whom payment is made.

Mr. COCKRELL. That is correct.

Mr. BOUTWELL. That conforms to the statute of 1857.

Mr. COCKRELL. It is correct, whether it conforms to the statute or not.

The Chief Clerk read as follows:

Section 3622 is amended by striking out, in the nineteenth line, the word "Department" and inserting the word "Departments."

Section 3625 is amended by inserting after the word "Treasury," in the fifth line, the words "or the Commissioner of Customs, as the case may be."

Section 3663 is amended by striking out, in the fifth line, the word "plan" and inserting the word "plans."

Section 3672 is amended by inserting, in the third line, after the word "kind," the words "except materials, stores, or supplies sold to officers and soldiers of the Army, or to exploring or surveying expeditions authorized by law."

Mr. COCKRELL. Let section 3672 be read as it will be when amended. The section now is:

A detailed statement of the proceeds of all sales of old material, condemned stores, supplies, or other public property of any kind shall be included in the appendix to the Book of Estimates.

Now read it with the amendment.

The Chief Clerk read as follows:

A detailed statement of the proceeds of all sales of old material, condemned stores, supplies, or other public property of any kind, except materials, stores, or supplies sold to officers and soldiers of the Army, or to exploring or surveying expeditions authorized by law, shall be included in the appendix to the Book of Estimates.

Mr. COCKRELL. Why are these things to be omitted from the appendix to the Book of Estimates?

Mr. BOUTWELL. The reason of it is that under the statute to which we just now referred, where this same subject was under consideration, the proceeds are not turned into the Treasury, but they are applied by the Department in the same branch of the public service. That is where an appropriation is made for supplies for the support of the Army and they are sold to the officers and soldiers, the proceeds go right into the fund for maintaining that branch of the service.

Mr. COCKRELL. I understand that.

Mr. BOUTWELL. And therefore it would not be possible for the Secretary of the Treasury to make any return in the Book of Estimates of the proceeds of those sales.

The Chief Clerk read as follows:

Section 3689 is amended by striking out, in the subdivision headed "Allowances and drawbacks, (internal revenue:)" the words "the act of July 1, 1862, chapter 119," and inserting therefor the words "section 3441."

Mr. BOUTWELL. That is merely an error of reference.

The Chief Clerk read as follows:

Section 3692 is amended by inserting after the word "Army," in the third line, the words "materials, stores, or supplies, sold to officers and soldiers of the Army."

Mr. COCKRELL. There should be inserted there, to correspond with the former section, the words "or from" before "materials." The section now reads:

All moneys received from the leasing or sale of marine hospitals, or the sale of revenue-cutters, or from the sale of commissary stores to the officers and enlisted men of the Army.

Then it is proposed to insert there "materials and supplies." There should be inserted before "materials" the words "or from."

Mr. BOUTWELL. That is right.

Mr. COCKRELL. I move that amendment; it will be explicit to put in after the words "or from" there the words "the sale of." That would make it correspond with the other provisions.

Mr. BOUTWELL. I have no objection to that.

Mr. COCKRELL. I move to amend by inserting before the word "materials" the words "or from the sale of."

The amendment was agreed to.

Mr. ANTHONY. I should like to ask the Senator who has this bill in charge whether it is intended that in the end these sections shall be re-enacted so that in some part of the statute-book the changed sections shall appear as they stand, so that it will not be necessary to look at each old section and then at the new and make up the law from both.

Mr. BOUTWELL. That would require the reprinting of the edition.

Mr. ANTHONY. I think it would be worth while to reprint the edition; but that would not be necessary. Why not say "that section 430 is amended so as to read as follows," and then recite the section as it will be when amended?

Mr. ALLISON. In the law we are passing now?

Mr. ANTHONY. Yes, in the law we are passing now we should repeal every section that is to be amended and then re-enact it as it is amended. I do not like to interfere in legal matters, because I do not know much about them; but we seemed to agree after the Revised Statutes were printed that we would not amend a law by a mere reference to the old law and stating the part to be stricken out and the part to be put in, but that we would repeal the old section and re-enact it as we proposed to amend it. We did so for some time. I recollect the Senator from Iowa [Mr. WRIGHT] was very strenuous upon that point, and several bills were sent back to committees to be reported again in that way. It is exceedingly inconvenient in referring to a law to have to look back to the statute as it was originally passed and then to see how it will read as it is amended, and in fact you often have to write it out if you want to comprehend it just as it is.

Mr. BOUTWELL. That suggestion would involve a reprinting of the Revised Statutes.

Mr. ANTHONY. I think not. Why not in this bill repeal the sections that are to be amended and then re-enact those sections as amended? We do not necessarily have to reprint the Revised Statutes when we amend the law by doing it in that way.

Mr. BOUTWELL. I think there would be as many objections to that course as to this; and I have to say of the present committee that we followed the precedent already set a year and a half or two years ago before I was on the committee. The amendments that were then made to the Revised Statutes were made in this way.

Mr. ANTHONY. I think amending the law in this way is a good deal like the practice of that celebrated tyrant who is so often referred to here. He put his laws up so high that the people could not read them.

Mr. WRIGHT. I remember very well when the amendments to which the Senator from Massachusetts refers were made, and at that point I made the suggestion the Senator from Rhode Island now makes and insisted that the only proper way to amend the Revised Statutes, or any statute, was to re-enact the section you proposed to amend so that any person taking up the statute could see just what it was, and that that method of amending statutes was to be condemned that amended them by putting in a word here or striking out a word there.

I take up this statute now that you propose to pass, and it will require any person, I do not care who it is, to get the old statute and take this and compare them before he is able to tell what the law is. I think I suggested then—and if not then I know I have frequently here—that by the constitutions of some of the States (I know it is in my own State) you cannot amend a statute without re-enacting the section or law that you propose to amend, and by saying that hereafter it shall be so and so. I made the remark as I have already said at the time the amendments to which the Senator from Massachusetts refers were adopted to the Revised Statutes. It was deemed then better to pursue the course that was adopted. I did not make the suggestion this morning when this bill was taken up because I supposed it was determined to adopt this rule. In some instances where there has been a proposition to amend a particular statute, and not several sections of the Revised Statutes, I have insisted upon the same rule, and I think it has been observed; and others have insisted on it. But inasmuch as this covers a great many sections of the statutes, the answer made to me before, that it covers so many that it would be impossible to do it and it would unnecessarily encumber our statutes to re-enact them all, I suppose will be made here. Indeed the Senator from Massachusetts has already made the suggestion that it would take up many hundred pages if you re-enacted these sections as is suggested by the Senator from Rhode Island. As a matter of principle that is the only true way to amend a statute.

Mr. ANTHONY. I will not set up my opinion against that of the committee; but it seems to me as a layman who wants to know what the laws are that the proper way is to repeal the section to be amended and to re-enact it as it is amended, and although it may make two or three hundred pages addition to our session laws, I do not think that inconvenience is at all to be compared to the great convenience of having laws so that every body will understand them. Now to understand the law you must make references to two statutes, and you must write out the new statute from them if you want to get it.

The Chief Clerk read as follows:

Section 3714 is amended by adding at the end of the section the following:

"And all agents or contractors for supplies or service as aforesaid shall render their accounts for settlement to the accountant of the proper Department for which such supplies or services are required, subject, nevertheless, to the inspection and revision of the officers of the Treasury in manner before prescribed."

Mr. BOUTWELL. The addition proposed makes this section of the Revised Statutes conform to the third section of the statute of 1798, chapter 85. Part of the section was brought forward and the remainder was left. I do not know how it happened.

Mr. COCKRELL. Ought not the word "the" to be in there before the word "manner?"

Mr. BOUTWELL. We followed the old statute in that respect.

Mr. COCKRELL. It does not make any difference.

The Chief Clerk read as follows:

Section 3740 is amended by inserting, in the sixth line, after the words "member of" the words "or delegate to."

DEFICIENCIES IN APPROPRIATIONS.

Mr. WINDOM. I ask the Senator from Massachusetts to yield to me a moment to make a report from the Committee on Appropriations.

I am instructed by the Committee on Appropriations, to whom was referred the bill (H. R. No. 4307) making appropriations to supply certain deficiences in the contingent fund of the House of Representatives, and for other purposes, to report the same with sundry amendments.

REMOVAL OF DISTRICT JAIL.

Mr. MORRILL submitted the following report:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. No. 842) authorizing the commissioners of the District of Columbia to remove the jail on Judiciary Square to grounds near to the Washington Asylum for the use of the District, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its amendment and agree to the Senate bill; and that the Senate agree to the same.

JUSTIN S. MORRILL,
A. S. PADDOCK,
Managers on the part of the Senate.
WM. S. HOLMAN,
A. M. KIMBALL,
CASEY YOUNG,
Managers on the part of the House.

Mr. MORRILL. I will state that, one of the managers on the part of the Senate, the Senator from Tennessee, [Mr. COOPER,] being absent, the report is signed by only two members, but I have no question that the Senator from Tennessee would agree to the report, as he was in favor of the former bill.

The report was agreed to.

Mr. EDMUNDS. I move that the Senate do now adjourn.

The motion was agreed to; and (at four o'clock p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

WEDNESDAY, *January* 10, 1877.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of yesterday was read and approved.

ENROLLED BILL AND JOINT RESOLUTION.

Mr. HARRIS, of Georgia, from the Committee on Enrolled Bills, reported that the committee had examined and found truly enrolled bill and joint resolution of the following title; when the Speaker signed the same:

An act (H. R. No. 1237) for the relief of Benjamin F. Reynolds; and

A joint resolution (H. R. No. 169) authorizing the Secretary of War to supply blankets to the Reform School in the District of Columbia.

DISTRICT POLICE INVESTIGATION.

Mr. BANKS. My duties on the several committees of which I am now a member compel me to decline the appointment by the Chair assigning me to service upon a committee connected with the government of this city. I hope the House will excuse me.

The SPEAKER. The gentleman from Massachusetts asks to be excused from service on the committee appointed to inquire into certain matters relating to the police in this District. If there be no objection the gentleman will be excused.

There was no objection.

TERRITORY OF OKLAHOMA.

Mr. SOUTHARD, by unanimous consent, presented from the Committee on the Territories, a report to accompany the bill (H. R. No. 3922) to provide for the organization of the Territory of Oklahoma and for the better protection of the Indian tribes therein; which was ordered to be printed.

Mr. FORT, by unanimous consent, presented the views of the minority of the committee on the same subject; which were ordered to be printed with the views of the majority.

RESURVEY OF LANDS.

Mr. KIDDER, by unanimous consent, reported back, from the Committee on Public Lands, with amendments, the bill (H. R. No. 3889) to authorize the resurvey of lands where the surveys are fraudulent, erroneous, or obliterated, and to legalize a certain survey; which was ordered to be printed and recommitted, not to be brought back on a motion to reconsider.

COMPENSATION OF UNITED STATES ATTORNEYS.

Mr. DURHAM. The bill (H. R. No. 3792) fixing compensation, &c., of United States attorneys was set as a special order for to-day after the morning hour; but I apprehend that owing to the regular business it will be utterly impossible to have action on that bill to-day. I desire, therefore, that it may be assigned for consideration on some other day. I hope it will be taken up immediately after the disposition of the diplomatic appropriation bill.

Mr. HOLMAN. I shall have to insist that this order be subject to the priority of all appropriation bills. The West Point Academy bill is now in Committee of the Whole, and the gentleman from Pennsylvania, [Mr. CLYMER,] having charge of that bill, will desire to bring it forward at the earliest moment.

Mr. DURHAM. Let the order as to this bill operate from day to day, so that it may come up after the disposition of the diplomatic bill and the West Point bill.

Mr. HOLMAN. Let the order be made subject to the priority of all appropriation bills.

Mr. DURHAM. I assent to that condition.

The SPEAKER. Under that condition the Chair hears no objection to the order proposed, and it is made.

NAVAL POLICY OF THE GOVERNMENT.

Mr. WHITTHORNE. By direction of the Committee on Naval Affairs, I ask consent to report back with a substitute (H. R. No. 4389) the bill (H. R. No. 2208) to authorize the formation of a mixed commission to inquire and report as to the future naval policy of the Government of the United States. I ask unanimous consent that the substitute be printed and that the bill be made a special order for the 23d instant after the morning hour and from day to day until disposed of.

Mr. KASSON. Owing to the accumulation of business I must object to the order operating from day to day until disposed of. I do not object to the naming of one day only for the consideration of this bill.

Mr. WHITTHORNE. Well, let the order be confined to one day—the 23d instant.

The SPEAKER. If there be no objection the order to print will be made, and the bill will be assigned as a special order for the 23d instant, after the morning hour, subject to appropriation bills.

There being no objection, it was ordered accordingly.

ELECTION OF PRESIDENT.

Mr. HUNTON, by unanimous consent, presented the petition of James W. Green, praying Congress to propose constitutional amendments concerning the executive office and counting the electoral vote; which was referred to the Committee on the Judiciary, and ordered to be printed.

COURTS IN ARKANSAS, ETC.

Mr. McCRARY. I ask unanimous consent that the bill (S. No. 155) to amend sections 533, 556, 571, and 572 of the Revised Statutes of the United States, relating to courts in Arkansas and other States, be taken from the Speaker's table for reference to the Committee on the Judiciary.

There being no objection, the bill was taken from the Speaker's table, read a first and second time, and referred to the Committee on the Judiciary, not to be brought back on a motion to reconsider.

INTEREST CHARGED BY NATIONAL BANKS.

Mr. VANCE, of North Carolina, by unanimous consent, presented the following resolution of the General Assembly of the State of North Carolina concerning the rate of interest to be charged by national banks; which was read, referred to the Committee on Banking and Currency, and ordered to be printed:

Resolution of instruction to the Senators and members of the House of Representatives in the United States Congress from North Carolina.

SECTION 1. *Resolved by the house of representatives, (the senate concurring,)* That the Senators and members of the House of Representatives in the United States Congress from this State are hereby requested to endeavor to procure such amendments to the law relating to the currency as will effectually prohibit national banks from taking more than 8 per cent. interest.

SEC. 2. That a copy of these resolutions be sent to each of the Senators and Representatives in Congress from this State.

Read three times, and ratified in General Assembly this 5th day of January, 1877.

STATE OF NORTH CAROLINA,
OFFICE OF SECRETARY OF STATE, RALEIGH, *January* 6, 1877.

I certify the above to be a true copy of the original record on file in this office.

[SEAL.] JOS. A. ENGELHARD,
Secretary of State.

SURGEON FRANCIS V. GREEN AND JOSEPH J. SOWERBY.

Mr. ROBBINS, of Pennsylvania, by unanimous consent, introduced a bill (H. R. No. 4390) authorizing the appointment of Acting Passed Assistant Surgeon Francis V. Greene and of Acting Passed Assistant Surgeon Joseph J. Sowerby as assistant surgeons in the Navy; which was read a first and second time, referred to the Committee on Naval Affairs, and ordered to be printed.

LOCATION OF THE ARMY.

Mr. BANNING, by unanimous consent, from the Committee on Military Affairs, reported back the letter of the Secretary of War in answer to House resolution calling for the number of enlisted men in the United States Army, their present location, also the number of men recruited under the act of August 15, 1876, the assignment of the same, and the amount expended of the fund appropriated by said act, and moved that the same be printed and recommitted.

Mr. HALE. What is the request?

Mr. BANNING. To have the same printed and recommitted.

Mr. HALE. Not to be brought back by a motion to reconsider.

Mr. BANNING. It is merely for the information of the House.

There was no objection, and it was ordered accordingly.

BRIDGES ACROSS THE OHIO RIVER.

Mr. REAGAN. I demand the regular order of business.

The SPEAKER. The House resumes the unfinished business at the adjournment yesterday, which is the bill (H. R. No. 2263) for the repeal of so much of the act of December 17, 1872, as provides for a pivot-draw in any bridge to be erected across the Ohio River between the cities of Covington, Kentucky, and Cincinnati, Ohio. The gentleman from Ohio [Mr. SAYLER] is entitled to the floor for ten minutes.

Mr. O'BRIEN. Does that bill take precedence of the morning hour?

The SPEAKER. It does.

Mr. SAYLER. Mr. Speaker, I have no desire to detain the House at any length in the discussion of this matter. It is so evident, as it appears to me, to everybody who has no direct interest in the construction of this bridge that the law of 1872 should not be departed from, as to scarcely require any discussion of the subject. The older members of the House of Representatives will bear me out in saying that they were about eight years in establishing the principle represented in the law of 1872. The suspension bridge at Cincinnati was then made the dividing point between the bridges constructed with a pivot-draw and bridges not so constructed. That bill was enacted into law after the most careful consideration on the part of the House and after most careful investigation on the part of the engineers of the Army.

Now, the only possible purpose this proposed amendment can subserve is to save a small sum of money to this bridge company. That is all there is in it. There is nothing else in it on the face of the earth, and my friend from Texas [Mr. REAGAN] must abandon one horn or the other of his proposition. He says, in the first place, that it is not necessary to have a draw because during the entire year you can go under the bridge without a draw, and in the next place, and in the same breath, it will not do to have a draw because it will have to be open all the time, and that will interfere with the passage on the bridge. That will not do. The fact is neither one way nor the other——

Mr. REAGAN. Allow me to interrupt the gentleman.

Mr. SAYLER. I quote the gentleman's words.

Mr. REAGAN. Let me explain——

Mr. SAYLER. I have read the gentleman's words this morning. The fact is neither one way nor the other. The fact is this, that by opening up, as I stated yesterday, the Louisville and Portland Canal, we have established the principle of building a larger class of boats than we have heretofore had, and there is a large portion of the year when it is utterly impossible for the larger class of boats to get under the suspension bridge at all.

The gentleman from Texas speaks of the boats which land above the suspension bridge. That is very true, but they are in a great measure the boats which come down, and not the boats which go up. In other words, they are the small boats of the upper river, and not the larger boats of the lower river.

The gentleman from Texas talks about high chimneys. Now, it is not a question of high chimneys at all. It is a question of how high your steamboat is. The Ohio River at Cincinnati has a variation of about sixty-two feet. At high-water mark under that suspension bridge you have not over thirty-eight feet, and you cannot then run an ordinary steamboat under it to save your life, if you take all her chimneys off.

So, it is not a question of high chimneys. It is not a question of the fancy construction of boats. It is simply a question of the ordinary navigation of the Ohio River. And I wish to say to gentlemen here, Mr. Speaker, that the Ohio River, with its navigation unimpeded and protected under this law of 1872, is worth more to the city of Cincinnati than all her railroads put together.

Mr. WATTERSON. Will the gentleman from Ohio allow me to ask him a question?

Mr. SAYLER. Certainly.

Mr. WATTERSON. How is it with the suspension bridge that crosses the river at Cincinnati?

Mr. SAYLER. It crosses a half mile farther up the river. It is a bridge with a span of over a thousand feet. It has been made the dividing line between the bridges that shall be built without a pivot-draw and those that shall be built with a pivot-draw; and practically every boat that runs from the city represented by the gentleman who now asks me the question is impeded in its progress there, and is compelled to make its landing below the suspension bridge.

Mr. WATTERSON. Then the suspension bridge interferes with the entire commerce of the Ohio River above Cincinnati?

Mr. SAYLER. Certainly not above it. I do not understand the gentleman, unless he is more explicit.

Mr. WATTERSON. I mean between Cincinnati and Pittsburgh.

Mr. SAYLER. Not at all. The gentleman's enigma is too profound for me. I do not understand his conundrum. It interferes with the large boats that run from Louisville to Cincinnati.

Mr. WATTERSON. And also Pittsburgh.

Mr. SAYLER. They do not run to Pittsburgh.

Mr. WATTERSON. But if they should want to run to Pittsburgh?

Mr. SAYLER. They cannot run to Pittsburgh. If they could, they would be obstructed. I can answer the gentleman in this way, that if the large boats could go up the river, it would obstruct them. And in addition to that, it compels the large boats to land below the wharfage at Cincinnati; and you put this a half mile lower down, and will further obstruct the business.

Now, it is a very plain business proposition. The question before the representatives of the country is simply this: For the sake of saving about $60,000 or $70,000 to a bridge company, when the bridge will cost nearly a million, will the people of this country do away with a provision that is the sole protection of the river interest? That is all there is in it, and upon that proposition I submit it to the House.

Mr. DURHAM. I desire to say a few words in regard to the subject under consideration; and I do so not for the purpose of antagonizing what I suppose to be the interests of the great city of Cincinnati. But I believe what I shall say will be in the interest not only of the commerce of Cincinnati and Covington, but of the commerce of both of the great States of Ohio and Kentucky.

I do not think so far as I have investigated this question that it is a mere question of dollars and cents, as to whether or not this draw-bridge shall cost $60,000 or $70,000 more by putting a draw in it. But there is a higher and graver consideration in this matter. For if I am correctly informed by those who have charge of this matter there is delay in what is called a draw-bridge; and in the construction of some of those bridges across the Ohio River wherever it has been optional to either have a draw or not to have a draw, the engineers have invariably reported that it is better not to have one. I do not want to prejudge the distinguished Representative from the city of Cincinnati, but there is another thing involved in this matter. There is a great monopoly now in existence between the city of Cincinnati and the city of Covington; it is what is called the wire suspension bridge. If the argument of my friend from Cincinnati holds good, what he contends for ought to have been adopted before the building of either of the three bridges that are now built and being built from Covington to Cincinnati and from Newport to the same city. My friend says you cannot now get above the suspension bridge. I admit it; and yet it was stated to you by the chairman of this committee yesterday that of over five thousand boats that ply to and fro upon that river all land above that suspension bridge, save and except the three mail-boats that ply between Louisville and the city of Cincinnati. And although my friend lives in the city of Cincinnati and knows more than any of us can possibly know in regard to that matter, yet I will say to him that even those three boats running from Louisville to Cincinnati land nearer the heart of Cincinnati than if they landed at the wharves above the bridge. They are confined principally to the carrying of passengers between Louisville and Cincinnati, and where they do land now below the suspension bridge, and where they would land even if this Covington and Cincinnati bridge were built, they are nearer the hotel accommodation than if they landed where most of the freights are landed in that city.

Mr. BANNING. How will they do about wharfage?

Mr. DURHAM. I do not know about that. I am only speaking about the convenience of the traveling community that go by the boats plying between Louisville and Cincinnati.

Now the true theory about this thing, I apprehend, is this—and I am authorized by a gentleman who stood high in the two last Congresses and who is a citizen of the city of Covington, to say that 90 per cent. of the business and of the population of Cincinnati demands that this bill do pass. Not only that, but a very large proportion of the interests outside of those who may have an interest in this great corporation, the wire suspension bridge, demand that this bill shall pass.

Mr. BANNING. Allow me one word. Do I understand you to say that you are authorized to make that statement by the gentleman to whom you have referred?

Mr. DURHAM. I am authorized by him to make that assertion.

Mr. BANNING. Let me say that I am authorized to state that the chamber of commerce, which represents the city of Cincinnati, opposes this bill.

Mr. DURHAM. And the chamber of commerce I learned was molded and controlled by the gentlemen controlling the wire suspension bridge. I am authorized to make the statement I have made.

Mr. SAYLER. Will the gentleman allow me a moment?

Mr. DURHAM. The gentleman can reply to me after I am through.

I know that whenever I strike that corporation I strike some gentlemen who live about Cincinnati, and I hope the gentleman will pardon me for declining to yield to him.

Mr. SAYLER. If the gentleman intended to make any personal reflection upon me, I will not do it.

Mr. DURHAM. Not at all; I know the gentleman has no interest in it; I exonerate him entirely.

Mr. CAULFIELD. How about BANNING? [Laughter]

Mr. SAYLER. I suggest to the gentleman from Kentucky that he exonerate my colleague also.

Mr. DURHAM. Your colleague is able to speak for himself.

Mr. BANNING. Does the gentleman have any reference to me?

Mr. DURHAM. O, no; not at all.

The SPEAKER. Now that amity is restored the Chair hopes that the debate will proceed.

Mr. DURHAM. If the gentlemen will allow me to proceed they can reply to me afterward. I apprehend that the real point of trouble in this matter is that here is a great corporation of Cincinnati and Covington, and that is the ground underlying the reason why the Chamber of Commerce of the City of Cincinnati opposes the construction of this bridge.

Now let us look at it for a moment—and I think I understand all the facts in the case—here is a corporation owning the wire suspension bridge, which cannot accommodate the traffic and travel between the two cities of Cincinnati and Covington.

It is proposed to build another bridge. For what purpose? For the purpose of facilitating the trade and commerce between those two cities and the whole country. What further do they propose? They propose to make it free of passage to those men who are directly interested in building up those two cities, to wit, the laboring classes, who are not able to buy property in Cincinnati, but who are able to buy it in Covington, and who do their business in Cincinnati. The object of the new corporation is to break down that monopoly.

Now, I have a statement here from official sources that in some instances the charges of transportation and travel upon this great wire suspension bridge have been increased over 300 per cent. and in some instances 200 per cent. All the interests involved in that wire suspension bridge of course opposed the organization of any other corporation which might reduce their profits.

I will say frankly that as a Representative of a part of the great State of Kentucky I am interested in this matter. But while as a Kentuckian I am interested in the matter, I still think I am the representative of the true interests of the State of Ohio in the course I take in reference to this bill.

I will not go over the argument made yesterday by the Representative from Texas [Mr. REAGAN] to show that the most enlightened engineers who have investigated this matter are opposed to a draw bridge because it delays traffic; and in proposing this new enterprise we propose to make cheap transportation, and to have a bridge so that every boat, whether the river be at high water or at low water, may not have to lower their chimneys before they can pass through.

Mr. SAYLER. And the large boats do not go through now when they lower their chimneys.

Mr. DURHAM. I understand differently.

Mr. SAYLER. And you are very wrong in your understanding, as a great deal of what you understand is wrong.

Mr. DURHAM. Here is a report which states that the pilot-houses of these steamboats are not fifty feet above the water.

Mr. SAYLER. Many of these boats are over seventy feet above the water. All of the large boats that navigate the Lower Ohio are from forty-seven to seventy-five feet above the water without any chimney at all; that is the fact.

Mr. DURHAM. The gentleman from Texas [Mr. REAGAN] has stated what are the facts of the case so far as the navigation of these rivers is concerned, and I will not go over them; gentlemen can read his remarks in the RECORD. The fact is that there is not one day in twenty when the water is so high as to prevent the running of boats under even the suspension bridge.

Besides showing that it is the interest not only of Cincinnati but of Covington to confer upon these laboring people this privilege, I might say that Cincinnati has grown so large in influence and so wide in territory that she has no other place on which to build, and her citizens must go over to Covington in order to find a place for their little habitations. They do not want all their little earnings taken away from them by this suspension bridge, and they require cheap toll.

Mr. SAYLER. I would like to ask the gentleman how much he calls——

Mr. DURHAM. I decline to yield. The gentleman may reply to me after I get through; but I do not intend to have my remarks cut up in that sort of style.

Mr. SAYLER. The gentleman is right in not allowing it to be done.

Mr. DURHAM. A note has just been sent to me by a gentleman who knows, stating that all these foot passengers are charged three cents toll each way over this bridge, whereas the new bridge proposed to be built under this bill will charge nothing to those foot passengers. I undertake to say, and it will not be controverted by those gentlemen who represent that city, that there are daily from three thousand to five thousand laborers who go from Covington to Cincinnati to perform their daily work. And so far as these men are concerned those tolls are a very large item.

Now, outside of the advantage which this will confer upon the cities of Cincinnati and Covington, I might as a Kentuckian appeal to the city of Cincinnati a moment in regard to this matter. When your great city undertook to build a railroad across Kentucky and desired to obtain a charter for that purpose, so as by that means to lead up to that city the vast commerce of all the southern country, where did you go for help if it was not to this very sixth congressional district of Kentucky in which Covington is situated? And did not that congressional district send representatives to the Legislature of Kentucky to aid and assist the great city of Cincinnati in procuring the right of way for this great artery of commerce?

Not only that, but did not the whole State of Kentucky, as far as her Representatives on this floor are concerned, aid and assist in the matter? Who was more interested in what is called the Louisville Canal than was the city of Cincinnati? Louisville certainly was willing that the business on the canal should stop there, but who upon this floor were more clamorous for these chartered rights and privileges than my distinguished friends from Cincinnati who now sit upon this floor? And where did they go and make their appeal? They made it to Kentucky, and Kentucky magnanimously surrendered every particle of stock that she had in that canal. For what purpose? For the purpose of accommodating Cincinnati and other cities higher up on the Ohio River.

I say, therefore, that I may well appeal to the generosity of that great city, even if it should be a little inconvenient to them, to do something for the city of Covington and for the people of the State of Kentucky at large. I stand here as one of her Representatives, having a just pride in the growth of Cincinnati. I am glad to announce that that great artery of commerce of which I spoke a moment ago runs through the heart of Kentucky, and the city of Cincinnati will be built up by the treasure not only of Kentucky, but of the other Southern States. And I think there ought to be comity and friendship between these two cities and these two States, and there should be no restriction placed on the commerce between these States.

I might enlarge these remarks and show what the commerce of Cincinnati has been. Some gentlemen have seen proper to state here that you will obstruct the commerce upon the Ohio River by making these bridges. I might contradict that statement by reading from statistics. During the past twenty years, although these bridges have been built across the Ohio River at Bellaire and other points without any draw, and no higher than it is proposed to build this bridge, yet within that short space of time the commerce of this great city has increased from three hundred millions to more than one thousand millions in value. That shows that these bridges do not obstruct commerce to the extent which these gentlemen claim. Pass this bill and you will have cheaper tolls and ample accommodation for trade and commerce across this river.

Mr. REAGAN. I call for the previous question.

The previous question was seconded and the main question ordered.

Mr. REAGAN. I rise to close the debate and propose to yield a portion of my time to my colleague on the committee, the gentleman from Massachusetts, [Mr. PIERCE.]

Mr. SAYLER. I rise to a point of order. I submit that the gentleman from Texas, [Mr. REAGAN,] having consumed his hour in the beginning of this debate, is not now entitled to an hour to close it.

The SPEAKER. The gentleman from Texas, according to the understanding of the Chair, consumed all but ten minutes of his hour.

Mr. SAYLER. I have no objection of course to the gentleman occupying a reasonable time; but it will not do for him to undertake to claim an hour to close the debate after he has occupied an hour in opening it.

The SPEAKER. The gentleman from Texas has the right to open and close the debate; but he has only one hour altogether.

Mr. SAYLER. And he has already consumed his hour.

Mr. REAGAN. I desire to say a word. I do not expect to occupy more than two or three minutes more upon this subject; but I desire to correct the statement of my friend from Ohio.

Mr. SAYLER. I am willing that the gentleman shall correct me if he will allow me to correct him.

Mr. REAGAN. I occupied, in opening, but a portion of my hour and the remainder was occupied by the gentleman from Ohio [Mr. SAYLER] and others. If the gentleman desires to occupy a portion of this last hour, I shall have no objection. I have very little more to say myself.

Mr. HOLMAN. I would like to occupy three or five minutes.

Mr. SAYLER. I have no objection to the gentleman from Texas occupying further time; I only dispute his right to occupy two hours, one in opening and another in closing the debate.

Mr. REAGAN. I assure the gentleman that I will do what is satisfactory to him.

The SPEAKER. How much time does the gentleman from Texas propose to yield to the gentleman from Massachusetts?

Mr. REAGAN. Five or ten minutes, as he may desire.

The SPEAKER. As the Chair understands, this is a practical extension of the time, which can only be granted by unanimous consent. The Chair hears no objection.

Mr. PIERCE. Mr. Speaker, I desire to say——

The SPEAKER. The Chair understands that the House has given unanimous consent to the gentleman from Massachusetts [Mr. PIERCE] to speak for five minutes.

Mr. REAGAN. I wish to understand this matter. As I understand, after the previous question has been ordered, there is an additional hour allowed for debate, which is under the control of the member who may have reported the measure.

The SPEAKER. Not if the member has in reporting the bill consumed his hour.

Mr. REAGAN. In this case that is not the fact. In opening the debate, I spoke not more perhaps than twenty minutes; then there followed a colloquial debate between several gentlemen, including myself. I allowed my hour to be thus consumed because I understood I would have the right to an hour in closing the debate. I do not, however, expect to consume all that time; I merely want the rule observed.

The SPEAKER. The present occupant of the chair was not presiding when the gentleman from Texas was on the floor; but, as the Chair is informed, that gentleman took the floor, spoke for some time, then yielded to other members; so that his entire hour, as it appears, was in fact consumed.

Mr. REAGAN. I ask the Chair for information whether the hour which was occupied in general debate precludes me from the right to occupy an hour in closing.

The SPEAKER. The gentleman has not the right to occupy one hour in opening the debate and also one hour in closing.

Mr. REAGAN. As a matter of fact I did not occupy one hour.

The SPEAKER. But as the Chair is apprised, the gentleman occupied a part of his hour and then yielded the floor to others.

Mr. HOLMAN. As this bill is one of very great importance, I trust that by unanimous consent half an hour more will be allowed for debate, the time to be equally divided between the friends and opponents of the bill.

The SPEAKER. The Chair will read from the Digest:

The right of the "member reporting the measure" to open and close debate is not affected by an order either for the previous question or that debate shall cease in committee. But he has only an hour allowed by the rules to close the debate; and if, after having occupied part of the hour in closing, he moves the previous question and it is seconded, he is then only entitled to so much of the hour as he has not already occupied.

Mr. REAGAN. I have not occupied any time in closing the debate; only in opening the discussion on the bill.

Mr. HOAR. My inquiry was why the gentleman from Texas is not entitled to an hour to close the debate.

The SPEAKER. The Chair thinks the gentleman is not entitled under the rules to one hour in opening and one hour in closing; that he has but one hour altogether for opening and closing; otherwise he would have a very decided advantage over other members.

Mr. SAYLER. That is the rule beyond all question. If he occupies his whole hour in opening the debate, he cannot occupy further time in closing.

Mr. BURCHARD, of Illinois. He can, if there has been a reply.

Mr. WILSON, of Iowa. The rule of the House provides that the mover or introducer of a proposition has the right to close the debate on it, and this right exists after the previous question is seconded and the main question ordered, provided there has been a general debate, in which other members have engaged and which has occupied time outside of the control of the member moving the subject-matter. But if the mover of a proposition occupies an hour and then calls for the previous question, he cannot, after the main question is ordered, have an hour to close the debate, in addition to the hour he may have already occupied in opening. If so, he would have two hours to discuss the proposition, while no other member would be allowed to speak at all. But few subjects are discussed longer than two hours, and if chairmen of committees can control so much time other members will be ignored to a greater extent than they are now, and it is seldom that many members who do not stand at the head of the leading committees can get the floor now. Do gentlemen desire to circumscribe the narrow privileges they now have and extend the time and powers of the few? The rule that directly treats upon this point is the sixty-third, and it contemplates discussion by other members, to which the mover of the proposition can reply after "every member choosing to speak shall have spoken."

Mr. HOAR. I understand the fact to be in this case that this bill is reported by a committee; that it is under the charge of the gentleman from Texas, who reported it from the Committee on Commerce; that he has occupied an hour in opening the debate, and that since that hour closed other gentlemen have replied to him. Now, my point of order is that it is the universal usage of the House, as well as the express provision of the rule, that the member reporting a bill or other measure from a committee has two hours. In ordinary cases, no member of the House can speak but once, but the mover of a proposition, no matter what it may be, can speak twice to that proposition. That right, however, is disposed of by the previous question or an order to take the vote at a particular time. But the right of a member reporting the measure from a committee to have one hour to open and another hour to close is not affected by the previous question.

The SPEAKER. In reply to the gentleman, the Chair directs his attention to Rule 60, which in part is as follows:

No member shall occupy more than one hour in debate on any question in the House or in committee; but a member reporting the measure under consideration from a committee may open and close the debate.

Mark you, it does not give an additional hour to close, one hour having been used by the gentleman reporting the bill in opening the debate.

Mr. HOAR. But it is specially provided that the member reporting the measure under consideration may open and close debate.

Mr. BURCHARD, of Illinois. Mr. Speaker, this is an important matter raised in reference to the interpretation of the rules of the House which will apply to other cases as well as to the one now pending before the House, and I wish to call to the attention of the Chair that the previous decision in reference to this question was that the mover of a proposition or gentleman reporting from a committee any measure had the right to open the debate and to occupy an hour and, as an additional right, an hour in closing the debate, unless there has been no reply; then he has only the right to one hour; but, if after having occupied one hour in opening the debate there is any reply, then he is entitled to an additional hour to close debate.

The SPEAKER. The Chair considers the letter and spirit of the rule are, that a member shall occupy but one hour. Of course the Chair recognizes the gentleman reporting a bill to demand the previous question so as to test the sense of the House on the measure without further debate.

Mr. GARFIELD. I think the practice has been uniform that a member reporting a bill from a committee may open the debate occupying one hour. The moment the bill is read and brought up for consideration, the member of the committee reporting it has the right to speak one hour. Now, the general rule permits no member more than one hour. But the rule referred to by the Chair is an exception that the member reporting the measure under consideration from a committee may open and close the debate. The rule is express, that he may open *and* close the debate, and such has been the uniform practice of the House. The language of that last line of the rule quoted seems to be an exception to the general rule or to the body of the rules.

While I have no interest in this particular question, and therefore no bias about it, I do say——

The SPEAKER. The Chair has none.

Mr. GARFIELD. I only speak for myself as a member, and do not wish to intimate that the Chair has any such bias.

The SPEAKER. The Chair knows that.

Mr. GARFIELD. The custom has been universal, where the member reporting the bill opens in a speech of an hour, that it does not cut him off from the right to close the debate in a speech of an hour, thus giving two hours for the member reporting a bill from a committee, who insists upon it. As a general custom or frequent custom, a member introducing a bill says, "I will not consume all my hour, but I will speak at the close." And I think the right of a committee is like the right in court of a plaintiff to have the opening and closing of the debate. The hour rule therefore does not apply to any such case as this.

The SPEAKER. The Chair will further direct the attention of the gentleman from Ohio and of the House to the Manual:

The right of the member reporting the pending measure to close the debate is never denied him, even after the previous question is ordered.—*Journal*, 1, 31, page 1056.

[But if, after having occupied part of his hour in closing the debate, he moves the previous question, he is then only entitled to occupy the floor for the remaining portion of the hour.]

This recognizes the right to disjoint his hour. In courts the plaintiff is not given an advantage in length of time over defendant.

Mr. GARFIELD. That all applies to the closing of the debate, and has no reference at all to the opening of the debate.

The SPEAKER. Both rules seem to imply and to state that a member is entitled to but one hour for debate.

Mr. GARFIELD. The rule is express, that the member shall open and close debate, and he is entitled to one hour in closing.

The SPEAKER. In the absence of any rule, or even the inference that a member is entitled to more than one hour for debate, the Chair decides that the member is entitled to but one hour for debate.

Mr. O'BRIEN. I desire to put a question to the Speaker in view of the decision just made, because, having reported a bill from a committee myself, I take the same interest in this point that the gentleman from Texas does. The rule is imperative that the member who reports a proposition from a committee is entitled not only to the opening but to the closing of the debate. Very well. Suppose the member consumes a full hour in the opening of the discussion; what right has he then in the closing of debate? Having occupied his hour in opening the discussion, if under the rule he is entitled to close the debate, is he not entitled to an hour for that purpose? If not, does not the rule then become inoperative?

The SPEAKER. The Chair will make a practical answer to the gentleman from Maryland by taking as an illustration the bill to which he alludes. The bill to which the gentleman alludes is in the morning hour. That bill comes up as unfinished business in the morning hour. It will run from day to day in the morning hour until the previous question is called on it, and if the demand for the previous question is sustained, then it goes out of the morning hour, into the House.

Mr. O'BRIEN. If the previous question should be sustained, would the mover of the proposition be entitled to an hour in closing?

The SPEAKER. The gentleman would, because he would have

his hour, not having occupied any time in opening and not having yielded any of such hour to others.

Mr. HOAR. Will the Chair allow me to make a suggestion?

The SPEAKER. Certainly.

Mr. HOAR. The question is certainly a very important one——

The SPEAKER. The Chair so esteems it.

Mr. HOAR. A good many of the experienced members of the House understand the present suggestion of the Chair as being a reversal of the uniform usage. I beg to ask the Chair whether, in the exercise of his undoubted prerogative, instead of ruling upon the question himself, he would not submit it to the House as an original question? It would be exceedingly disagreeable to take an appeal from the decision of the Chair, and it would not be necessary to do that, if the question were submitted to be passed upon by the House in the first instance as an original question.

Mr. BANKS. I desire to say a word upon this question. If the Chair will look to the history of this rule he will find that the suggestion made is not exactly in accordance with the spirit and purpose of the rule. This rule was adopted from absolute necessity. The House found that it was impossible to do its regular business, that business which is considered and reported by committees, under the old practice, where the member holding the floor last might be an opponent of the measure, or might be a friend according as it might happen. A committee which might have given many weeks to the consideration of a subject, would find that after it had been debated in the House some days all its work was wasted and lost, because, at the very last moment, some opponent to the measure reported by the committee would make a statement, either of fact or argument, which momentarily would influence the judgment of the House when the committee was in possession of the absolute knowledge which would have prevented the decision to which the House came at last. There was introduced, therefore, and the House adopted, an entirely new rule, independent altogether of all preceding rules as to the time that should be allotted to members; so that, as I say, the necessity of the case requires the chairman of the committee which reported a measure should be allowed at the close of the debate an opportunity to state whatever might be necessary in regard to the facts or the reasoning upon which the bill stood. And, of course, the only application which the rule that limits a member to one hour has to this question is that the time allowed after the main question is ordered cannot exceed one hour by the rules of the House.

Now, Mr. Speaker, I am sure that whatever the House may do upon this question—and I am perfectly certain that whatever the Speaker may decide now—and I have no desire to raise any question in regard to his decision—if it be that the chairman of a committee has not the right to close debate after the previous question is ordered upon a measure reported by a committee—if that construction be adopted, the House will find that it is impossible to do its business, and will be obliged to make another rule that will give him that right for one hour absolutely whether he had occupied time previously or not.

Mr. WILSON, of Iowa. Will the gentleman from Massachusetts allow me to ask him a question?

Mr. BANKS. Certainly.

Mr. WILSON, of Iowa. I want to get a clear understanding of what the very well-informed gentleman from Massachusetts really thinks upon this question. Does the gentleman then wish us to understand that a member proposing a measure can speak an hour, then move the previous question, and, after the previous question is seconded and the main question ordered, have another hour to the exclusion of everybody else?

Mr. BANKS. That would depend upon the action of the House. All I mean to say is that the practice of the House under the rule has been where a member of a committee reports a measure he should have, regardless of the debate which has taken place upon it previous to the ordering of the main question—the rule and practice of the House have been and the necessity of the case requires that he should have the right to speak one hour after the seconding of the previous question at the close of the debate.

Mr. SAYLER. The gentleman from Massachusetts strangely mistakes, as it seems to me, the situation. The rule provides absolutely that an hour shall be under the control of the chairman or the member of a committee reporting a particular measure. Therefore there can be no reason of the kind the gentleman from Massachusetts suggests, that that hour will be taken away from him, for it can only be taken away from him by his own consent and no portion of the hour can be used except upon his yielding.

Now I undertake to say that there is nothing in the whole history of the House, that there is nothing in the precedents of the House that departs in the least from the ruling of the Chair, that a member who is the mover of a measure is entitled to one hour. Let me say that I have no personal feeling about this bill being discussed for any length of time that may be desired, but when the member reporting the bill has discussed it for one hour, and that hour ends, he cannot control another hour under any possible rule of the House, and there is no reason why he should.

Mr. BANKS. I do not take exception to what the gentleman has stated. Where a member moves a question, he is entitled to one hour, and he cannot have more. But where the chairman or a member of a committee reports a measure from his committee, he has one hour to close debate under the rules and under the unbroken practice of the House.

Mr. SAYLER. That is true where additional time is occupied than the opening hour to which the member reporting the bill is entitled; but it is not true where a motion for the previous question is made by the mover of the measure at the expiration of the first hour.

Mr. BANKS. That makes no difference at all.

Mr. SAYLER. If he allows the bill to be opened to general debate, and the previous question being called is not sustained, then I concede perfectly the proposition of the gentleman from Massachusetts, [Mr. BANKS.]

The SPEAKER. The Chair would like to suggest to the gentleman from Ohio that if the previous question is not sustained then the bill passes, by parliamentary usage, from under the control of the gentleman who reported it.

Mr. GARFIELD. Allow me to make one suggestion to my colleague. I ask him how he can get over the peremptory language of the rule to be found upon page 171, which says:

> That the right of the member reporting the measure to close debate is never denied him, even after the previous question has been ordered.

My colleague claims that it can be denied him, if he has occupied one hour in opening debate.

The SPEAKER. The Chair would state to the gentleman from Ohio [Mr. GARFIELD] that that is the decision of a former Speaker and is manifestly qualified by the next paragraph in the Manual. It is not a rule, but a statement in the Manual.

Mr. SAYLER. If the member reporting the measure occupies his hour and general debate ensues and he then moves the previous question, I concede his right to an hour to close the debate. But he absolutely controls the first hour and can occupy it himself or yield it to others.

Mr. GARFIELD. And that right he ought to have at least.

Mr. HOAR. He must have the right to open and close the debate.

Mr. SAYLER. Unquestionably he has the right to open and close the debate during that hour, and he can open and close it and then move the previous question if he wants to.

Mr. HOAR. Then the rule is not that the member shall have a right to close the debate, but that he shall have a right to close his own mouth.

Mr. SAYLER. Oh, no; not at all.

Mr. HALE. I ask the Chair to allow me to make a suggestion. I am anxious to get at what is the existing right under the parliamentary law, and I only rise for the purpose of stating what is my recollection as to the practice in this matter.

Now, I do not remember of any case where a member of a committee who has reported a bill, and has seen fit to occupy his hour and has then called the previous question and the previous question has been seconded, and that the gentleman offering or presenting the bill has risen to close the debate has not been allowed to occupy another hour, or that his right to do so has ever been questioned.

I have, in my own experience, seen the time when a gentleman reporting a bill was speaking in his hour and I requested the privilege of speaking a few moments in that hour and have been told that I could take up as much time as I desired in the closing hour. I think if the Chair will refresh his recollection on this matter he must see that he has himself been in a position of that kind, and as chairman of a committee has granted that very privilege to other members.

I recall, for instance, the debate on the Geneva award bill, where the gentleman who had reported that bill occupied his hour and then called the previous question and took his closing hour, dividing the time. I have done the same thing myself in reporting bills from a committee.

The SPEAKER. The Chair recognizes the fact that by unanimous consent that has been allowed, but the gentleman from Maine will recognize the fact that the gentleman from Ohio [Mr. SAYLER] in this instance denied that right and the Chair therefore was compelled to rule upon that question under the rules as he finds them and comprehends them.

Mr. HALE. Then the Chair concedes that this is the first instance in which this right has been denied.

The SPEAKER. The Chair does not know that, but it is the first time that the question has arisen while the present occupant of the Chair has been Speaker, and the Chair decided it under the rules as he understands them.

Mr. HALE. Does the Chair know of any similar case during his long experience as a member of the House?

The SPEAKER. The Chair would not like to answer that question without referring back to the Journal or the RECORD. The House will understand that the Chair has no feeling upon this subject. His duty is confined to the administration of the rules as they appear to the mind of the Chair. The rule is susceptible of but one construction, and that is that a member is not entitled to more than one hour's debate. The Chair, however, recognizes the gentleman from Texas, [Mr. REAGAN,] he having under the rules occupied one hour, to move the previous question. When unquestioned more latitude may have been heretofore given.

Mr. HOAR. I am sorry to delay the decision of this question, but if the Chair will allow me one moment, I would call attention to Rule

63. That rule in the first place applies to all cases of debate, and declares that—

No member shall speak more than once to the same question without leave of the House, unless he be the mover, proposer, or introducer of the matter pending, in which case he shall be permitted to speak in reply, but not until every member choosing to speak shall have spoken.

Therefore under this rule the mover, introducer, or proposer of the matter is entitled to speak twice, once in opening and once in reply.

Mr. GARFIELD. For how long?

Mr. HOAR. Of course one hour each time, under the hour rule. By Rule 63 his right to speak twice is expressly affirmed. What becomes of the right to speak twice of the mover, introducer, or proposer of a measure when the previous question has been ordered? That is the only point left, and that point is settled upon page 171 of the Digest, where it is declared that if the introducer of a measure be the member reporting it from a committee, the previous question does not take away his right to reply. Therefore the mover of the measure can always speak twice, unless he is cut off by the order of the House to take the question at a particular time, in which case he cannot speak the second time unless he be the member reporting the measure from a committee.

The SPEAKER. The gentleman from Massachusetts [Mr. HOAR] will see that that right accorded to the mover or reporter of a measure is subject to the other rule governing the time he may occupy, which rule distinctly states that the time shall be but one hour. He may use a part of the hour in opening and the remainder of the hour in closing.

Mr. HOSKINS. I rise simply to call the attention of the Chair to the wording of Rule 60:

No member shall occupy more than one hour in debate on any question in the House or in committee; but a member reporting the measure under consideration from a committee may open and close the debate.

By the unvarying practice of this House since I have been a member, there have been two classes of subjects for debate: one where propositions are reported from a committee, in which case the member reporting the measure had the right for one hour to open the debate and then the right for one hour to close the debate. But the other class of cases, where a proposition is brought before the House otherwise than by reporting it from a regular standing committee of the House, does not give to the mover the right to close the debate if an hour has been occupied in opening the debate. No member can have the right to close the debate in such a case where he has exhausted his hour in the opening of the debate.

On page 88 of the Digest it is stated that "The right of the 'member reporting the measure' to open and close debate is not affected by an order either for the previous question or that debate shall cease in committee." If he has exhausted an hour in opening the debate, where the proposition is reported from a committee, under the present ruling of the Chair he would have no privilege whatever to close the debate. But to my mind, where the measure comes from a committee, the rule clearly contemplates that the member reporting the measure shall have the right to open and to close the debate. Since I have been upon this floor the unbroken precedents of the House have given to the reporter of a measure from a committee the right to use an hour to open the debate and also to use an hour to close debate. According to the present ruling of the Chair, the member, in order to be able to open and close the debate, must use a portion of the hour in opening, then call the previous question, and take the remainder of the hour for closing. That however has not been the practice of the House. Nor is it in harmony with a fair interpretation of Rule 60, which makes an exception in favor of the member who reports a proposition from a standing committee.

Mr. SPRINGER. As this is a question of very great importance and has given rise to a great diversity of opinion——

Mr. REAGAN. I desire to speak to the point of order.

The SPEAKER. The gentleman from Illinois is addressing the Chair upon the point of order.

Mr. SPRINGER. As there is no objection to allowing the gentleman from Texas to hold the floor for half an hour upon this bill, I suggest that the ruling of the Chair on this question be deferred until to-morrow morning, in order that the Chair may have time to take into consideration all the facts of the case, and to-morrow may deliver such formal opinion as he may desire after such further examination.

The SPEAKER. The House can at any time instruct the Chair what interpretation he should give to a rule. As at present advised, the Chair can see but one construction which he can place upon this rule, although of course he accepts the suggestion of the gentleman from Illinois, [Mr. SPRINGER.]

Mr. SPRINGER. If there is no objection, I hope unanimous consent will be given for the opinion of the Chair to be delivered to-morrow morning, with the right, of course, of any gentleman who desires to appeal from the decision of the Chair, and that a half hour for further debate be granted to the gentleman from Texas.

Mr. REAGAN. I desire to speak to the point of order.

Mr. PIERCE. I understood that by unanimous consent I was to be allowed five minutes.

The SPEAKER. The Chair will recognize the gentleman.

Mr. REAGAN. I do not desire to be cut off in this way from speaking to the point of order.

The SPEAKER. The Chair has no desire to cut off anybody; the gentleman from Texas will proceed.

Mr. SAYLER. The Chair is not required to hear further discussion on the point of order unless he desires.

The SPEAKER. The Chair desires to hear it.

Mr. REAGAN. It is a question of some moment, and I feel more free to discuss it because it is a matter of indifference to me personally whether I am permitted to close the debate upon this bill or not. I would not say a word but for the fact that, as I have understood the parliamentary law and practice, the decision of the Chair to-day reverses what has been the uniform course of practice in this House heretofore.

With all deference to the Chair I desire to state the reasons why it seems to me the ruling suggested by the Chair may not be correct.

I call attention first to Rule 60, which provides that—

No member shall occupy more than one hour in debate on any question in the House or in committee; but a member reporting the measure under consideration from a committee may open and close the debate.

I admit that this provision does not entirely settle the question now before us. But I read also from Rule 63—

No member shall speak more than once to the same question without leave of the House, unless he be the mover, proposer, or introducer of the matter pending; in which case he shall be permitted to speak in reply, but not until every member choosing to speak shall have spoken.

These rules, although having an important bearing on the question, do not, I concede, settle finally the precise question before the House. But the exposition of these rules, as found on page 171 of the Digest, to which the Speaker referred a while ago, seems to me conclusively to settle the question that the occupation of one hour in opening the debate does not preclude the right of the mover of a measure, especially when he has reported the measure from a committee, to occupy an hour in closing the debate.

The right of the member reporting the pending measure to close the debate is never denied him, even after the previous question is ordered.—*Journal*, I, 31, page 1056.

[But if, after having occupied part of his hour in closing the debate, he moves the previous question, he is then only entitled to occupy the floor for the remaining portion of the hour.]

Not where he has occupied a portion of his hour in opening the debate; but in the exposition of these two rules the diminution of his time after the ordering of the previous question occurs only when he has already occupied a part of the time in closing the debate. In that case he is not permitted to go on and occupy the whole hour in closing the debate, having already occupied a portion of the hour before calling the previous question.

But if, after having occupied part of his hour in closing the debate, he moves the previous question, he is then only entitled to occupy the floor for the remaining portion of the hour.

With all proper respect to the Speaker, I submit that the difficulty which has arisen in the consideration of this question results from confounding the opening with the closing of debate. The right to open the debate belongs of course to the mover of the measure; and the right to close it, especially on the part of a member reporting a measure from a committee, seems under Rule 63, and the interpretation of it on page 171 of the Manual, to be conclusively established. The right to an hour in closing the debate does exist, though it may be partly consumed before the ordering of the previous question.

In this view it seems to me it would be contrary to all parliamentary practice with which I have been acquainted and contrary to the rules, as I have always understood them and heard them interpreted, to assume that because a member moving a measure has occupied an hour in opening the debate he is therefore precluded from the right to close the debate, even after moving the previous question.

I desire to say that as a matter of fact I occupied in opening this debate perhaps twenty minutes, after which there arose a colloquial discussion which of course I would not have permitted if I had supposed that it came out of my time under the rules of the House, though I know the chair is not responsible for that.

The SPEAKER. The present occupant of the Chair was not presiding at the time.

Mr. REAGAN. This morning the gentleman from Ohio [Mr. SAYLER] in his own right took the floor and was followed by the gentleman from Kentucky, [Mr. DURHAM,] who in his own right occupied the floor. It seems to be assumed, however, that the two gentlemen who spoke to-day, as well as those who took part in the colloquial debate yesterday, occupied the floor in my hour and with my consent. The colloquial debate which sprang up yesterday was, as I understood, an ordinary running debate; and I had no idea the time occupied was regarded as a part of the hour to which I was entitled in opening the debate.

The SPEAKER. In reply to the gentleman from Texas the Chair desires to state that he has not denied the right of a gentleman reporting a bill from a committee to open and close the debate; but he does regard that right as subject to Rule 60, which gives to any member only one hour for debate. The terms of that rule are distinct, and it is for the member making a report to so divide his time, if he chooses, that he may be enabled to use part of his hour in opening the debate and part in closing. The present occupant of the chair was not presiding yesterday during the proceedings upon this bill, but he was informed that the gentleman from Texas consumed his

hour, and therefore the Chair only recognized him in virtue of his right as the mover of the proposition to call the previous question.

The Chair thinks he is right in his ruling, but is quite willing either to submit the question to the House for the purpose of obtaining its interpretation of the rule, or to take further time as suggested by the gentleman from Illinois [Mr. SPRINGER] to examine the rulings in cases where this question may have been in dispute.

Mr. SPRINGER. I do not think there will be any objection to letting the decision go over till to-morrow morning.

Mr. BURCHARD, of Illinois. I suggest to the Chair that in the first session of the Thirty-first Congress this precise question arose and was decided. On a report from the Committee on Elections Mr. Strong, who had presented the report, exhausted his hour in opening the debate. The discussion proceeded, being participated in by other members; and subsequently, on the 28th of June, 1850, the previous question was seconded and the main question ordered, when Mr. Strong claimed the floor and was recognized. The question of order was then raised whether he had the right to an additional hour. The Speaker ruled that he had, and the House sustained the decision.

The SPEAKER. In what year was that decision?

Mr. BURCHARD, of Illinois. It was made on the 28th of June, 1850, and will be found in volume 21, part 2, of the Congressional Globe, Thirty-first Congress, first session.

Mr. SPRINGER. I think there is no objection to the suggestion that this point of order go over until to-morrow morning; that the debate on this bill proceed as the gentleman from Texas desires, and that to-morrow morning if any gentleman wishes to take an appeal from the decision of the Chair, he may be permitted to do so.

The SPEAKER. The Chair hears no objection to that arrangement. The gentleman from Massachusetts will proceed with his remarks.

Mr. PIERCE. Mr. Speaker, it would seem proper for me to state that the Committee on Commerce was almost equally divided upon the question of reporting this bill, five members being in favor of it and four opposed to it. The minority of the committee believed that the enactment of 1872, requiring all bridges thereafter constructed across the Ohio River below the suspension bridge at Cincinnati to have a pivot-draw, should be maintained. Such a provision is necessary in order to enable the largest steamers to navigate the river at all seasons of the year.

The commerce of the Ohio River is in its infancy and it is impossible now to say how large steamers the future development of freight and passenger traffic on that river may require. It was in evidence before the Committee on Commerce that for fifty or sixty days in the year certain steamers could not pass under these bridges without a pivot-draw; that the chimneys of these steamers would not only strike the bridge, but the pilot-house would also strike the bridge unless there was a pivot-draw as proposed under the law of Congress since 1872.

There is no necessity for the passage of this bill, Mr. Speaker, in order to have this bridge constructed, because these petitioners have the fullest authority now if they construct it in compliance with the law. The only reason they allege for the passage of this bill, which suspends the operation of the law of 1872, is that by relieving them from the necessity of putting in a pivot-draw it will reduce the cost of the construction of the bridge some one hundred thousand or two hundred thousand dollars. That is the whole truth, and they ask you to suspend the law for that purpose. I cannot see the propriety of granting any such request, and I hope the bill will not be passed.

Mr. REAGAN. I yield now to the gentleman from Indiana, [Mr. HOLMAN.]

Mr. HOLMAN. Mr. Speaker, all I wish to say in regard to this bill is that I hope gentlemen will not consider it a mere question between the two cities of Cincinnati and Covington. It is a question to what extent it is proper the navigation of the Ohio Rivershould be impeded by the construction of bridges. The subject of bridging the Ohio became one of great interest from the time the Steubenville bridge was built down to 1872. It was the subject of constant contest. The bridges authorized to be erected at Bellaire and Parkersburg, and subsequently at Louisville and Paducah, were authorized during a period of war and were not the subjects of any particular discussion. But after the passage of the last bill, the bill authorizing the construction of a bridge across the Ohio River at Paducah, the subject began to arrest the attention of the interests involved in the navigation of the Ohio River to an extraordinary extent. After a long discussion in the Committee on Commerce of the House, of which I was a member some eight years, the subject was referred to a commission of the engineers of the Army. They reported a bill to Congress, which was referred to the Committee on Commerce, and reported back to the House, and after some discussion finally became the law. That is the act of 1872.

I trust, Mr. Speaker, it will be borne in mind that this act of 1872 was the result of long consideration, not only on the part of both branches of Congress, but also on the part of the Corps of Engineers of the United States Army, because it was a matter of vital moment that the Ohio River should not be obstructed in its navigation any further than the other interests of transportation absolutely required.

It must be remembered that the Ohio River is the poor man's highway. It is incapable of being made the subject of monopoly. It enables every citizen, with whatever capital he may invest, to avail himself of that navigation. Therefore, I repeat, what I said at the beginning, that I trust that this will not be regarded as a question between Cincinnati and Covington, but that on the contrary it should be considered how far it is wise and proper to allow the Ohio River to be obstructed by the construction of bridges.

Now I must say to my friend from Texas that if this bill passes, authorizing the building of a bridge half a mile below the suspension bridge at Cincinnati, you must apply the same principle to bridges below that, and to the bridge at Paducah, in Kentucky. That bridge was allowed to be built without a pivot, contrary to the remonstrances of the people living below it interested in the commerce of the Ohio River; and the law authorizing the construction of the bridge at Paducah was repealed.

I say, if it be deemed proper on the score of economy to allow the citizens of Cincinnati and of Covington to build a bridge without a pivot-draw, because the construction of such a bridge is a little cheaper, if it is proper to allow such a bridge to be constructed between Cincinnati and Covington, the same thing must be allowed at other points, and the navigation of the Ohio River must consequently be seriously impeded. I represent a constituency upon the Ohio River, and I know that the people living on the Ohio River feel that it would still further impair its navigation by allowing this bridge to be constructed. The navigation of that river is seriously impaired now. The Government was compelled, when the effect of this bridge became understood, to require the elevation of the railroad bridge above the suspension bridge, allowing the bridge companies to go into the Court of Claims to ascertain what damages they had sustained. A case is pending in the Supreme Court of the United States in which judgment was rendered against the Government of the United States growing out of that legislation.

I consider, therefore, that I would not properly represent the interests of my constituents upon the Ohio River, if I did not insist that the question of a little increased expense in the construction of a bridge in a given locality—and that is the only question here—should not be allowed to change the principles upon which the law of 1872 was founded.

My friend from Texas [Mr. REAGAN] must see and my friend from Kentucky [Mr. DURHAM] must see that if you change that law in the one instance, as to the pivot-draw below the suspension bridge between Covington and Cincinnati, you cannot well refuse to grant the same to other companies authorized to construct bridges across the Ohio River at points lower down the stream. And I feel confident, where the variation between high and low water mark runs up to fifty or sixty feet—sixty-two feet at Cincinnati, and to a greater extent at points below—where such is the fact, it is a matter of vital moment that the provisions of this law of 1872 shall be adhered to.

Let me say just one additional word. I desire to say that the navigation of the Ohio River is becoming of more and more moment in some respects every year; and that these natural channels, these natural highways, where there can be no such thing as monopoly, where competition is universal, ought not to be obstructed and the navigation impaired any further than is absolutely required by other public interests. In this case it is simply a question whether the cities of Covington and Cincinnati desiring to erect this new bridge shall be required to pay a little more money for that purpose or not. And I submit that the question of $50,000 or $60,000 more, in the construction of this bridge, is as nothing in the comparison with the magnitude of the interests involved, if anything is done materially to interfere with the navigation of that river.

Mr. REAGAN. I yield three minutes to the gentleman from Minnesota, [Mr. DUNNELL.]

Mr. DUNNELL. I desire to say but a single word in support of the pending bill, because as a member of the Committee on Commerce I took no little interest in the debate that was had upon it before the committee and the hearing upon it which was exceedingly exhaustive. Both sides were permitted a large amount of time to present their claims; first, those favoring the bill, and then the opposition to it. And while there may be some fancied objections to the construction of this bridge, as a member of the committee I became fully satisfied that the advantages to be derived from its construction very much overbalanced all fancied disadvantages which might result from it.

There has always been, as you are aware, Mr. Speaker, an opposition to the construction of bridges over navigable rivers. There has never yet been a bridge over the Ohio River or the Mississippi River that has not been stoutly opposed; and yet the statistics of commerce following the construction of those bridges show that in point of fact those bridges have not operated to the obstruction of commerce. It is a fact that just in proportion as these efforts have been made to build these bridges the opposition has increased; and yet, I say, history does not establish the fact that these bridges are any obstruction to the commerce of the rivers.

There was a time when no bridge was to be built across the Mississippi River. It was talked about as a great national highway, and it was declared that no bridge must be built across the river. Very many bridges, however, have been built across it, and yet it is not in evidence that those bridges have at all lessened the great value of the Mississippi River to the great West. We had a number of hearings on this question before the Committee on Commerce; and the fact has been developed that these bridges have never yet in point of fact operated as an obstruction to the commerce of the river. And I do not believe that would be the case in this instance.

One fact, Mr. Speaker, has impressed itself upon me. There is now existing at Cincinnati a monopoly. It is exacting; it is cruel; there is a great demand for an increased facility in the passage from one city to the other. The interests of commerce demand it.

Mr. SAYLER. Will the gentleman allow me to ask him a question?

Mr. DUNNELL. I have but a moment remaining.

Mr. SAYLER. I will be obliged to the gentleman if he will state what that monopoly is.

Mr. DUNNELL. The monopoly exists in the existing bridges.

Mr. SAYLER. There are two bridges now in existence and another in process of construction, and the ferries are running.

Mr. DUNNELL. This is opposed by a monopoly which the people of those places resist.

Mr. SAYLER. The gentleman should not make a statement of that kind unless he knows it to be true.

Mr. DUNNELL. I am stating the evidence which was presented to the committee, and I am justified in making the statement that nothing was more plainly shown to the Committee on Commerce than the existence of a monopoly at that point.

Mr. REAGAN. In looking at this question as a member of the committee and in determining so far as I was concerned the duty of the committee in relation to it, I have endeavored to look at it as a judge would look at a cause which he had for trial before him and to determine it with judicial fairness and justice to all the interests concerned. I tried to explain in the remarks that I made yesterday to the House the basis upon which the conclusion of the committee was reached from a fair examination of facts, and to make a presentation of facts which no one has disputed on this floor. I recognize the truth of what was said by the gentleman from Indiana [Mr. HOLMAN] that the Ohio River is a very great highway of commerce. I recognize the further proposition that it is important that we should not impede or interrupt its navigation any further than can be possibly avoided consistently with the other interests of the country. I discussed that question very fully yesterday, and do not therefore feel called upon to re-examine it to-day. I stated the fact then which I repeat now, that from Steubenville to the suspension bridge at Cincinnati there are six bridges over the Ohio River without draws on that part of the river which is of more difficult navigation than the portion below Cincinnati. I stated that the height above the mouth of Big Sandy were ninety feet above low-water mark, and the span not less than three hundred feet. I stated that all the bridges below the Big Sandy were to be of a height of not less than one hundred feet above low-water mark and of a span of not less than four hundred feet. I stated yesterday, and I call attention to the fact, that in the construction of the bridge at Cincinnati, which was commenced as a draw-bridge, the United States Government, in the interest of the navigation of the Ohio River, required a variation in the plan of the bridge, and that it should be one hundred feet above low-water mark without a draw, and it is for that act that the Government is charged, as stated by the gentleman from Indiana, with some thousands of dollars of damages. It was done because it was stated in the report of an able and distinguished engineer of the United States, approved by the Engineer in-Chief, that they believed the draw impracticable and improper on that river, and that a bridge with two spans of one hundred and sixty feet each, with draws, would more impede the navigation of the river than a single span of four hundred feet.

All these things I stated yesterday, and I simply call attention to them to refresh the memories of those gentlemen here who honored me with their hearing yesterday.

Now, in regard to the remark made by the gentleman from Indiana, [Mr. HOLMAN,] and that made by the gentleman from Ohio, [Mr. SAYLER,] that if we repeal this law, so far as is proposed by this act, we re-open the whole question settled by the act of 1872, let me say a word.

The act of 1872, to which reference is made, was that the bridges below the wire suspension bridge at Cincinnati should have draws. Now it is inquired why we propose an innovation upon that law and that it be repealed, so far as this bill proposes to repeal it. That question is entitled to be answered by reasons satisfactory, and if there is not a clear and satisfactory answer to it the objection ought to prevail against the bill, and I will undertake to make that answer very briefly. As it appeared to the committee on the evidence before them in preparing this bill, between the cities of Cincinnati and Covington a bridge may be built anywhere from the suspension bridge up to the mouth of the Licking River, which is as far above that bridge as it is proposed in this bill to build a bridge below it without a draw. Now, then, the thing to which I call attention is this: What reason is there why a bridge without a draw should not be built between these two cities fifteen hundred feet below the Covington bridge just as well as fifteen hundred feet above it, and especially when the proof shows that a great amount of shipping on the river, whether it comes down the river or up the river, lands at Cincinnati above the suspension bridge? It was shown that last year five thousand vessels landed above the bridge, and but three vessels, those belonging to the mail-boat line, below it. Now, if all the vessels land above a bridge without a draw, what impediment is put in the way of commerce by requiring them to pass under a bridge of similar character fifteen hundred feet below, under a bridge without a draw which has a span of the same height?

But it may be asked, what is the necessity for a bridge there? The answer was just made by the gentleman from Minnesota, [Mr. DUNNELL;] I repeat it: It is because there is now a single bridge, owned by a monopoly which also owns the only ferry-boat between the two cities. It was shown in the testimony before the committee that there is a daily average of 9,737 foot-passengers crossing the bridge, and 1,900 foot-passengers crossing by the ferry-boats, making a daily average of 11,637 foot-passengers, excluding those passengers on horseback and in vehicles, and leaving out all the conveniences to commerce, such as cattle, horses, hogs, and other stuff that passes there. I showed yesterday the importance of the business and the intimacy of the connection between the two cities.

Now the city of Covington proposes at its own expense, for the purpose of relieving the people of Cincinnati and Covington from the burdens of this monopoly, to build at its own cost a free bridge, free absolutely to all foot-passengers, and with only certain minimum tolls upon other traffic, for the purpose of paying the current expenses of the bridge. It is to be given freely to the people of these two cities. Why object to it when we show that commerce can be no more impeded by it than it is by the bridge now existing? Who objects? I desire to repeat what the gentleman from Kentucky [Mr. DURHAM] says and the gentleman from Minnesota, [Mr. DUNNELL,] that so far as the proof before the committee went nobody objected but the chamber of commerce; no organized body; and none of the people of Cincinnati have objected; nor do I believe that that wise, thrifty, and sagacious people would think of objecting to a measure so promotive of their own interests.

Mr. SAYLER. I ask the gentleman whether a single man from Cincinnati ever asked the committee to report this bill; whether anybody from Cincinnati ever appeared before that committee and advocated the passage of this bill? I say not a man from Cincinnati has ever appeared before the committee to advocate this bill.

Mr. REAGAN. I will not undertake to answer the question of the gentleman in the negative; but I say that no one has appeared before the committee to oppose the bill.

Mr. SAYLER. And I say that there was a delegation of persons of Cincinnati who did oppose it, and that there never was a single man in favor of it.

Mr. REAGAN. I do not remember.

Mr. SAYLER. Unquestionably the gentleman forgets.

Mr. REAGAN. I will go back to the proposition that the Chamber of Commerce of Cincinnati opposed this bill, and that members of the Chamber of Commerce are stockholders in this monopoly, and one of them a director. It is to their interest to continue a monopoly which yields to them the largest dividends.

Mr. SAYLER. Does the gentleman from Texas mean to say that the members of the Chamber of Commerce of Cincinnati are stockholders in the suspension bridge?

Mr. REAGAN. I mean to say that some of them are.

Mr. SAYLER. Will the gentleman mention one? There are a great many members of that board.

Mr. REAGAN. I will mention two, Mr. Sherlock and Mr. Shinkle, and one of them is a director.

Mr. SAYLER. I do not know anything of their personal connection with the bridge, but Mr. Shinkle is from Covington.

Mr. REAGAN. He may live there, but he is a member of the Chamber of Commerce of Cincinnati.

Mr. SAYLER. The idea that all the leading merchants of Cincinnati are stockholders in this bridge is simply absurd.

Mr. REAGAN. I have not much more to say upon this subject, except to add that the investigation which I have made of this matter induces me to believe that it is purely a question between a monopoly that is to be benefited by defeating this bill and the people who will be benefited by the construction of this bridge. Believing this, as I think the facts warrant me in believing, I was a little surprised to hear my friend from Indiana, [Mr. HOLMAN,] always a friend of the people, rise here this morning and advocate a monopoly.

Mr. HOLMAN. I am greatly astonished at the remark of the gentleman.

Mr. REAGAN. I am glad the gentleman is.

Mr. HOLMAN. If the gentleman from Texas still persists in regarding this as a mere contest between Cincinnati and Covington, he is deliberately seeking to deceive the House as to the real question now pending. The question is not between those two cities, but whether the whole people from Pittsburgh to Cairo shall be affected in the navigation of the Ohio River and their business upon that river by the construction of bridges of this character, when bridges can be made reasonably safe and convenient by an increased expenditure of a small amount of money. The question is whether their whole interests must suffer to avoid a little expense in the erection of these structures. It is a question affecting the whole people on the Ohio River, and the whole interests of those concerned in the navigation of that stream.

Mr. REAGAN. I wish to ask the gentleman whether he means to say, either directly or hypothetically, that I desire to deceive anybody?

Mr. HOLMAN. I cannot expect the gentleman to deceive the House; I did not intend that. But I do say that the effect of this discussion, creating the impression that this is a contest between a bridge company and the cities of Cincinnati and Covington, tends to keep out of view the main question, which is the effect which bridging that river will have upon its commerce from one end to the other.

Mr. REAGAN. The trouble with the gentleman is that he did not listen to the debate. I discussed with the utmost care the very question which he presents, and had he listened to me it would have saved him the trouble of interjecting what he has now done into the debate. He would know that I comprehended the question distinctly, and stated as directly and fully as my limited time would allow the very question which he now presents. I showed distinctly that the construction of this bridge would accommodate the commerce which crosses that river, and that the principle involved is sustained by the action of Congress, by the judgment of the Supreme Court, and the concurrent desire and judgment of the people. I now call for a vote.

Mr. WILSON, of West Virginia. I desire to ask the gentleman a question.

The SPEAKER. The previous question has been ordered, and the time for debate by agreement of the House has expired. The question is upon ordering the bill to be engrossed and read a third time.

Mr. WILSON, of West Virginia. I desire to ask the gentleman from Texas whether the only reason assigned for departing from the requirements of the law of 1872 is not the mere question of economy?

Mr. REAGAN. That is hardly an argument in this case. The real argument is the benefit to commence and travel between the two cities. The question of cost was mentioned merely as a slight incident, but it constitutes no part of the real argument.

Mr. PIERCE. I would like to ask the gentleman from Texas whether this bridge company, under existing laws, has not the fullest authority to construct a bridge.

Mr. REAGAN. With a draw.

Mr. PIERCE. Was not the only reason given for the passage of this bill that it would reduce the cost of constructing the bridge?

Mr. REAGAN. My friend from Massachusetts does not take in the whole argument. They object to building the draw, not because they do not want to expend the money but because they do not wish to destroy the usefulness of the bridge by interrupting travel and traffic over it by the opening of a draw.

Mr. SAYLER. Will the gentleman from Texas state how travel would be interrupted?

Mr. REAGAN. By the opening of the draw.

Mr. SAYLER. But the draw is necessary for the commerce of the river; and more than the $60,000 or $70,000 which it would cost to put in the draw will be lost every day to the people in the immediate vicinity of Cincinnati.

Mr. CONGER. I wish to ask the gentleman from Texas one question. Why is the provision of a general law forbidding the building of all bridges across the river at that point to be repealed? Why does the gentleman bring in a bill granting in this particular case the privilege of building a bridge without a draw of proper elevation?

Mr. REAGAN. If I can be allowed I will take pleasure in answering the gentleman.

Mr. CONGER. Why does the gentleman propose to repeal a general law which was passed, after long consideration, for the general protection of the commerce of the river?

Mr. REAGAN. I have answered the question already; but if I may be permitted I shall be glad to do so again. It is not the desire of the committee to have a general repeal of the law with reference to bridging the Ohio River, nor was it their purpose to indicate an opinion that it should be repealed. We propose to let the law of December, 1872, stand except as to a free bridge between Cincinnati and Covington, close to the existing bridge across that river.

Mr. CONGER. But this bill does not prevent any number of bridges being built without a draw. It repeals a law which was carefully prepared and was passed after more discussion than almost any other measure that has come before this House within my recollection—a law applicable to all bridges at this particular point, where the rise of water is so great as to absolutely require them to have a draw in order that steamboats may go through at high water. The gentleman proposes to repeal in favor of one bridge a general law and to permit the building of any number of bridges across there without a draw.

Mr. REAGAN. It will be limited——

Mr. CONGER. There is no limitation in the bill.

Mr. REAGAN. It will be limited to bridges between Cincinnati and Covington.

The bill was ordered to be engrossed and read a third time; and it was accordingly read the third time.

The question being taken on the passage of the bill, there were—ayes 53, noes 95.

Mr. BROWN, of Kentucky. I call for the yeas and nays.

The yeas and nays were ordered,

The question was taken; and there were—yeas 74, nays 133, not voting 82; as follows:

YEAS—Messrs. Ainsworth, Ashe, Atkins, Blount, Boone, Bradford, Bradley, John Young Brown, Buckner, Cabell, John H. Caldwell, William P. Caldwell, Campbell, Candler, Cannon, Carr, Caulfield, John B. Clarke of Kentucky, Cook, Cutler, De Bolt, Dibrell, Dobbins, Dunnell, Durand, Durham, Eden, Evans, Finley, Forney, Fort, Freeman, Gunter, Hancock, Henry R. Harris, John T. Harris, Harrison, Hartzell, Hatcher, Goldsmith W. Hewitt, Hoskins, Hunton, Hyman, Frank Jones, Franklin Landers, Lord, Milliken, Mills, Mutchler, Neal, O'Brien, Powell, Reagan, Riddle, Roberts, Sobieski Ross, Scales, Sheakley, Singleton, Stanton, Steuger, Stevenson, Stone, Tarbox, Thomas, Thornburgh, Robert B. Vance, White, Whiting, Whitthorne, James Williams, William B. Williams, Woodworth, and Yeates—74.

NAYS—Messrs. Abbott, Adams, Bagby, John H. Baker, Ballou, Banning, Bell, Bland, Bliss, Bright, William R. Brown, Horatio C. Burchard, Samuel D. Burchard, Burleigh, Cason, Cate, Chittenden, Clymer, Cochrane, Conger, Cowan, Crapo, Culberson, Davis, Davy, Denison, Eames, Felton, Flye, Foster, Franklin, Frye, Fuller, Garfield, Goode, Goodin, Hale, Andrew H. Hamilton, Robert Hamilton, Haralson, Hardenbergh, Benjamin W. Harris, Hartridge, Haymond, Henderson, Henkle, Abram S. Hewitt, Hoge, Holman, Hooker, Hopkins, Hubbell, Humphreys, Hunter, Hurd, Kasson, Kehr, Kimball, Lamar, George M. Landers, Lane, Lapham, Lawrence, Le Moyne, Levy, Lynch, Lynde, Magoon, Maish, Miller, Monroe, Morgan, Norton, Oliver, O'Neill, Packer, Page, John F. Philips, William A. Phillips, Pierce, Piper, Plaisted, Pratt, Rainey, Ren, John Reilly, James B. Reilly, John Robbins, William M. Robbins, Rusk, Sampson, Savage, Sayler, Schleicher, Seelye, Sinnickson, Slemons, Smalls, A. Herr Smith, William E. Smith, Sparks, Springer, Stowell, Swann, Teese, Terry, Thompson, Throckmorton, Martin I. Townsend, Tufts, Torney, Van Vorhes, John L. Vance, Wait, Waldron, Alexander S. Wallace, John W. Wallace, Warner, Warren, Erastus Wells, Wigginton, Wike, Willard, Andrew Williams, Alpheus S. Williams, Charles G. Williams, Jeremiah N. Williams, Willis, Wilshire, Benjamin Wilson, James Wilson, Alan Wood, jr., and Young—133.

NOT VOTING—Messrs. Anderson, George A. Bagley, John H. Bagley, jr., William H. Baker, Banks, Bass, Beebe, Blackburn, Blair, Caswell, Chapin, John B. Clark, jr., of Missouri, Collins, Cox, Crounse, Danford, Darrall, Douglas, Egbert, Ellis, Faulkner, Gause, Gibson, Glover, Hathorn, Hays, Hendee, Hereford, Hill, Hoar, House, Hurlbut, Jenks, Thomas L. Jones, Joyce, Kelley, King, Knott, Leavenworth, Lewis, Luttrell, Mackey, MacDougall, McCrary, McDill, McFarland, Mc Mahon, Meade, Metcalfe, Money, Morrison, Nash, New, Odell, Payne, Phelps, Platt, Poppleton, Potter, Purman, Rice, Robinson, Miles Ross, Schumaker, Southard, Spencer, Strait, Stephens, Washington Townsend, Tucker, Waddell, Charles C. B. Walker, Gilbert C. Walker, Walling, Walsh, Ward, Watterson, G. Wiley Wells, Wheeler, Whitehouse, Fernando Wood, and Woodburn—82.

So the bill was rejected.

Mr. SAYLER moved to reconsider the vote by which the bill was rejected; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

GOLD AND SILVER INTERNATIONAL CONFERENCE.

Mr. O'BRIEN. I demand the regular order of business.

The SPEAKER. The morning hour now begins at ten minutes after three o'clock, and the House resumes, as the unfinished business of the morning hour, the consideration of the joint resolution (S. No. 16) to authorize the President to appoint commissioners to attend an international conference on the subject of the relative values of gold and silver.

Mr. O'BRIEN. I ask that the joint resolution as amended be read for the information of the House.

The joint resolution, which was read, provides that should the government of one or more countries invite a conference or convention to consider the important change which has recently occurred in the relative values of gold and silver, and the adoption of international measures for the removal of embarrassments arising therefrom, the President of the United States is authorized to appoint three qualified persons as commissioners to attend such conference or convention.

It further authorizes the President of the United States to propose such conference or convention to the governments of the leading nations of the world, if he should deem the same desirable.

Mr. FORT. I understood there was an amendment pending to this joint resolution.

The SPEAKER. The amendment was adopted.

Mr. FORT. I have not heard the amendment read. If I am not mistaken, there was suggested an amendment providing that these commissioners should serve without pay.

The SPEAKER. No such amendment is pending.

Mr. FORT. Has the gentleman any objection to such an amendment being offered?

Mr. O'BRIEN. I do not yield to have any such amendment offered. None was offered yesterday. The resolution itself does not contemplate the appointment of any person who would require pay. There is no money appropriated by the resolution.

Mr. FORT. Then there should be no objection to my amendment.

Mr. O'RRIEN. The amendment is entirely unnecessary, and I do not yield to have it offered.

The joint resolution was ordered to a third reading; and it was accordingly read the third time.

The question then recurred on the passage of the joint resolution.

The joint resolution was rejected.

Mr. O'BRIEN. I am entitled, I believe, to an hour to close the debate, and I have not signified my intention as yet to call the previous question.

The SPEAKER. The gentleman was entitled to an hour, but the bill has been rejected.

Mr. FORT. I suggest that the gentleman from Maryland has slept on his rights.

The SPEAKER. The gentleman was entitled to an hour to speak on the joint resolution, and the joint resolution has been rejected. If there be no objection the Chair will recognize the gentleman from Maryland, and that the question shall again recur on the passage of the joint resolution.

Mr. BRIGHT. That question has been submitted to the House and the House has rejected the joint resolution. It is too late, therefore, for the mover to speak to a subject which has been determined. I object to going back.

Mr. O'BRIEN. I propose to occupy some time in explanation of this measure.

Mr. BLAND. The gentleman has tested the sense of the House on the question and it is now too late for him to go back.

The SPEAKER. If objection be made, the question having been decided, debate is not in order.

Mr. O'BRIEN. I enter a motion to reconsider the vote by which the joint resolution was rejected, and propose on that question to occupy an hour.

Mr. FORT. I move to lay that motion on the table.

Mr. O'BRIEN. But I do not yield for any such purpose, and I respectfully request the gentleman from Illinois to wait until I get through.

The SPEAKER. The gentleman from Maryland is entitled to an hour.

Mr. O'BRIEN. I yield ten minutes to the gentleman from Massachusetts, [Mr. SEELYE.]

Mr. SEELYE. Mr. Speaker, since this bill is at most only of a permissive sort, and since the permission is certainly harmless and seems to be quite desirable, I should not have supposed any objection would be made against it had I not on yesterday heard the remarks of the gentleman from Texas, [Mr. REAGAN,] and having heard them I am quite at a loss to know how they weigh against it. The joint resolution which as I am informed passed the Senate without any opposition, and which comes before the House with the unanimous recommendation of the Committee on Coinage, Weights, and Measures, simply authorizes the President of the United States in case any overtures come from any country to appoint commissioners to enter into an investigation respecting the recent change in respect to the relative values of gold and silver. An amendment of the Committee on Coinage, Weights, and Measures proposes to authorize the President when it seems desirable to initiate such a measure.

Now the gentleman from Texas argues against this because we are a silver-producing country and a debtor country. If these facts be admitted, (and nobody probably will deny them,) they furnish the very argument we need for precisely this commission; for if we are a silver-producing country it is certainly a matter of great interest to us what shall be the market value of silver and if we are a debtor nation it is a matter of great interest to us how to make our products most valuable. And this commission authorizes an investigation respecting this, and if any people has an interest in such a commission it is the United States. The matter seems to me so simple, so desirable, so free from objection, that I am unwilling to discuss it.

Mr. FORT rose.

Mr. O'BRIEN. I will yield five minutes to the gentleman from Illinois, [Mr. FORT.]

Mr. FORT. Mr. Speaker, it occurs to me that this is but one of the many measures that have been presented to Congress to rule silver out of the currency of the country. This is a proposition to appoint a commission to ramble over the world and hob-nob with the bullionists of Europe to ascertain what silver is worth. It does seem to me that commerce, a thousand years ago, determined that question much better than a learned commission can do it now. What do the gentlemen propose? What information do they desire? They desire to teach this people the relative values of gold and silver. As long, sir, as silver is demonetized, as long as it is discarded by law, as long as it is no longer a legal tender for debts, as long as we do not recognize it as money by law, why of course its value will fluctuate as compared with any other metal that is recognized by law. Demonetize gold, provide by law that gold shall not be a legal tender, and what will be the result? It will fluctuate in the market just as silver does to-day. It will go up and down as compared with whatever is a legal standard, just as much as silver.

Now, sir, what is this commission to do? Travel abroad, the gentleman says, without pay, to ascertain what they may learn on the board at New York; what they may learn in London by telegraph in an instant. What attention will commerce pay to the going and coming of this commission? Will they establish the values? Will they control the values? Will they advise us what silver will be worth if it is a legal tender or what it will be worth if it is not a legal tender? For, sir, it occurs to me that all we desire to do, if we are willing to do that, is to provide that this silver shall be a legal tender, as it was a legal tender before the act demonetizing it was passed; and then by law its value will be fixed and it will again rise to very near par with the other precious metal.

I am not disposed to entirely disregard the value of information that may be gathered by commissions. We have had one learned commission traveling over our own continent since the sitting of the last session of this Congress. So far we have not had their report. When that is made, we may be enlightened to some extent about the relative quantities of silver this country has produced. But, as far as I know, when we have learned that, we will have acquired no knowledge that will be of any practical benefit to us. In my judgment, everything that looks to acknowledging that silver is not money, that silver is not a valuable metal with which we shall be allowed to pay our debts, is acknowledging that we must be compelled to pay in gold and not in silver; and for one I am not willing here or elsewhere to concede that. All these schemes, all these projects have in view the continued demonetization of silver.

Mr. O'BRIEN. I now yield ten minutes to the gentleman from New York, [Mr. CHITTENDEN.]

Mr. FORT. I would like to know by what right the gentleman from Maryland can take me off my feet and give the floor to the distinguished gentleman from New York.

The SPEAKER. The time of the gentleman from Illinois has expired.

Mr. FORT. I thought I had the floor. I desire to raise the point of order—by what right the gentleman from Maryland can take me off the floor.

The SPEAKER. The gentleman from Maryland made a motion to reconsider and had an hour. The gentleman from Maryland stated that he yielded ten minutes of his time to the gentleman from Massachusetts, [Mr. SEELYE,] which that gentleman occupied in whole or in part. Then he yielded five minutes to the gentleman from Illinois, [Mr. FORT.] The gentleman from Illinois [Mr. FORT] was recognized in the hour of the gentleman from Maryland.

Mr. FORT. I understood that the gentleman from Maryland abandoned the floor and that the Speaker recognized me.

Mr. O'BRIEN. I did not abandon the floor.

Mr. PAGE. I ask unanimous consent that the gentleman from Illinois may proceed, and that the time he occupies be not taken out of the time of the gentleman from Maryland.

Mr. CHITTENDEN. I believe I have the floor.

The SPEAKER. The gentleman from New York [Mr. CHITTENDEN] has the floor.

Mr. PAGE. I ask unanimous consent that the gentleman from Illinois be allowed to complete his remarks.

Mr. O'BRIEN. I refuse anything of that kind. I have yielded to the gentleman from New York, [Mr. CHITTENDEN.]

The SPEAKER. The gentleman from New York will proceed.

Mr. CHITTENDEN. I hope, Mr. Speaker, that the objections made to an international monetary conference will not prevail. In framing his objection yesterday the gentleman from Texas [Mr. REAGAN] reminded us of very old Chinese walls against outside barbarians, and in his argument he appealed to the highest statesmanship. Well, now, Mr. Speaker, I think the gentleman's highest statesmanship on this question may be likened—I hope without the least offense—to the inconsiderateness of a man who should propose with one oar to row a boat up the rapids of the Niagara River or against a dead beating sea. We cannot cut the nerves and currents of the commerce of this continent and turn them back just as we come to the edge of the ocean. Our currency standard is inseparably connected with the commerce of the world, and any man here or elsewhere who hurries to accept a contrary opinion or to act upon a contrary opinion will find himself mistaken. At this very hour the experts of the world are studying with profound interest and care the necessity for holding an international monetary conference, while this House passed, pell-mell, eight or ten days ago, with scarcely an hour for debate, upon the whole subject, as if they understood it perfectly. And now here comes a perfectly reasonable, cautious, and statesman-like proposition from the Senate, which the great commercial powers of the world are in strict harmony with, for the appointment of a monetary commission, and it is proposed to dispose of it as we passed the silver bill the other day.

Now, Mr. Speaker, for my part I do not understand how the Representatives of a commercial people like ours, whose relations to the commerce of all the civilized nations are vital and becoming every hour more intimate and important—I say I do not quite understand how it is that men of intelligence and sagacity come here and act upon such questions of vast import from blind prejudice. I appeal, Mr. Speaker, to the common sense and conscience of this House to meet this question with that manly respect it deserves. It does intimately connect with every commercial nerve and current of civilized commerce. At this moment the most eminent French experts, the most eminent commercial men of the English nation, and most eminent men of the German Empire, are intensely and deeply interested in the general subject. Unless we who compose this House of Representatives of the people of the United States are disposed and willing to trifle with one of the grandest questions which concerns the commerce of the world, this question of a new currency standard cannot be decided here without grave consideration. The conference proposed is eminently fitted to the exigency. Its purpose is clear; there is no trick about it; it simply proposes to call together the most eminent men to secure unity of action.

I have spoken, Mr. Speaker, with more earnestness and with more voice than I intended, but could not help it. I am perfectly amazed that anybody here is willing to trifle with a question so vast and far-reaching as this.

Mr. O'BRIEN. I yield five minutes to the gentleman from Missouri, [Mr. BLAND.]

Mr. BLAND. At the last session of this Congress, while this question was pending in this House, it was urged on the part of those opposing the remonetizing of the silver of this country that no action should be taken in this House until a commission had been raised to report upon that subject; and for the purpose of advising this House and the country as to the propriety of this measure, a commission was authorized by Congress, and that commission will be ready to report in a short time.

This is simply asking a little further delay and postponement. If this resolution is passed the opposition to remonetizing silver will ask us to wait until this commission has reported. Another objection to this resolution is that it seems an abdication on the part of Congress of its jurisdiction and discretion over this whole subject, and a transfer to the executive department. The resolution does not simply re-

quire this commission or authorize it, but leaves it in the discretion of the President of the United States to organize it or not, at his own free will.

This silver question has been debated for the last year, both in Congress and out of Congress, and after we have remonetized silver and taken the initiatory and shown a determination to go back and resume specie payments where we left off with the double standard, it will be time enough for this Government to ask a commission upon this subject.

Let us take a step as a nation first. Let us act upon our own responsibility on this question, and then ask other nations to comply with our reasonable demands. It is simply a question before the people of this country and other nations, whether one-half of the money of the world shall be stricken from circulation and values reduced one-half; whether a man who owes a hundred dollars and whose wages for his work amount to $100 a month, so that he can pay his debt by one month's work, shall be required to work two months to pay his debt because of the reduction of the value of labor induced from a scarcity of money, and whether that rule shall apply to all the debts of this nation. It is simply requiring a double amount of work or produce to pay the debts due in the civilized world. I hope this Government will act independently of foreign nations. We have had enough dictation from foreign powers upon this subject. Let us go back and remonetize silver. I believe it was at the instance of foreign emissaries that silver was demonetized.

The objection I have to this bill is that it involves the delay and postponement of this subject, when the people of this country are demanding action by this House and the other branch of Congress. And I will say that in my opinion that is the object of this joint resolution, to give some excuse, to afford some plea for stifling the voice of the people of this country. I stand here in opposition to any measure or any proposition that proposes to postpone the desire of the people of this country, and to continue to grind men into the dust at the dictation of monopolized capital. If the Senate desire to thus postpone action on the silver bill, let it not be said that this House has concurred with them in passing this resolution for that purpose. I hope this House will afford the Senate no opportunity of shifting upon us the responsibility of delay in this matter. This House passed the silver bill by over two-thirds majority. Let us stand by that record and demand that the Senate shall act upon it or take the sole responsibility of their non-action. We will not share any of the responsibility of their shortcoming by telling them to postpone the subject till all nations give their assent.

[Here the hammer fell.]

The SPEAKER. The time of the gentleman has expired.

Mr. MONROE. With the consent of the gentleman from Maryland [Mr. O'BRIEN] I would ask that the joint resolution be again read.

Mr. O'BRIEN. I have no objection if the time does not come out of my hour.

Mr. MONROE. The debate will go on more intelligently I think if the joint resolution be again read.

The joint resolution, as amended, was read.

Mr. O'BRIEN. I will merely say to the House that in my opinion this is not so important a joint resolution as the advocates of the silver standard would seem to indicate by their opposition to it this morning. As I take it, the proposition is in its nature merely an invitation for a conference of the scientific men of the world, so that we may arrive at some definite opinion in regard to the variation of value in the gold and silver currency of the world. It seems to me it would be the part of wisdom to invite a discussion of this character, which will throw light upon a question in regard to which it is agreed there is no one now able to speak with any direct authority. There are differences of opinion among men of the different nations of the world in regard to the propriety of making silver a standard of value.

At present in this country we have but a single standard, but an effort has been made by the bill which passed this House a few days ago to create a second standard; I might say a third standard, because the greenback is just about as much a standard of value as ever silver can be made. I have taken the opportunity which has been presented by the discussion of this joint resolution to endeavor to ascertain whether it would interfere in any respect with those who advocate the silver standard, if a conference of this kind were to take place. I have arrived at the conclusion that it would be decidedly for the advantage of all those who advocate a silver standard to have the light of the wisdom and experience of the world rather than that they should continue to stumble on year by year as they have done for the last few years in advocacy of what, at most, is but a phantom and a chimera.

I have inquired of the Director of the Mint and the superintendent of the coinage of this country in regard to his opinion upon this subject, and I have it in writing here before me. He states if there is to be a silver standard, then it becomes almost imperatively necessary, in order that the two standards may not vary and that money, whether in gold or silver, shall have equal value, that international legislation shall take place. That can only be accomplished by the concurrence of the different nations of the world.

My friend from Texas [Mr. REAGAN] suggested yesterday that the country should assume an independent attitude upon this subject. Sir, I will remind him that this country is just as subject to the action of the great nations of the world upon this question of gold and silver standards of value as it is in any matter of commerce. Indeed it may be safely asserted that the value of silver in this country today is only known when we know its price in the London market.

I do not think that, to say the least, there is any great impropriety in asking that this conference of the scientific men of the world should be had upon this question, so that we may have the benefit of their great experience. There is no bugaboo in this proposition that should startle every man who is an advocate of the rag-baby or of silver money. There is nothing here that will involve the resumption of specie payments either to-morrow or next year. It is merely saying that we would like a conference of this kind to assemble in order that those men who are in favor of the silver standard may be convinced of the impropriety and error of their way.

If they are unwilling to have this light, if they would rather go on as blind men stumbling in the dark until they bring upon this country dangers of which they have no knowledge, then let them vote down this joint resolution. For one, I propose that the question shall be presented fairly to the House, that there shall not be a snap judgment, as it were, taken upon it by men without a single idea either of the merits or demerits of this joint resolution. Therefore it is that I have invoked the discussion which has taken place upon the motion to reconsider.

Before I yield to others, I will ask the Clerk to read the letter from the Director of the Mint to which I have referred.

The Clerk read as follows:

TREASURY DEPARTMENT,
OFFICE OF THE DIRECTOR OF THE MINT,
January 9, 1876.

SIR: Your dispatch of current date, stating that Senate Resolution No. 16, providing for an international convention "to consider gold and silver coinage and the embarrassments growing out of their different values," has been reported by your committee, and requesting my views on the propriety of such conference, has been received.

The experience of the past clearly demonstrates that a double standard, which contemplates the concurrent use and circulation of gold and silver coins, with unrestricted coinage and unlimited legal tender, can be effectively maintained only through its adoption on a uniform basis or ratio by the principal countries of the world. If it be practicable to bring this about at all, it can be accomplished only through an international conference.

The subject is unquestionably one of sufficient importance to justify and require such a conference as soon as the same can be brought about.

Very respectfully,

H. R. LINDERMAN,
Director of the Mint.

Hon. WILLIAM J. O'BRIEN,
Acting Chairman Committee Coinage, Weights, and Measures.

Mr. O'BRIEN. In the absence of the gentleman from Iowa, [Mr. KASSON,] to whom I had proposed to yield, I yield five minutes to the gentleman from New York, [Mr. HEWITT.]

Mr. HEWITT, of New York. Mr. Speaker, I was very much surprised that the opposition to this resolution should have come from the same quarter as the advocacy of the Bland bill remonetizing silver. The advocates of that bill seem to think that this resolution is in some measure antagonistic to the proposition that silver shall be again made a legal tender. On the contrary, if silver is again to be made a legal tender in the United States, it is indispensable that there should be an agreement among the leading commercial nations of the world as to the relative value of gold and silver in order that the latter may maintain its position as legal tender. The reason is very obvious. If we alone undertake to give a definite value to 412.8 grains of silver and call it equal to a dollar in gold, when it is not worth so much, we must buy all the silver of all the rest of the world and sell all the gold which we now have or are likely to have in circulation.

Under these circumstances—because we are a silver-producing nation and because we want it to bring a good price—because we want to pay our debts with silver—it is indispensable that there should be an agreement among the commercial nations as to the ratio of convertibility between gold and silver.

Up to a very recent period there has been a double standard of value among all the nations of the globe, with the exception of England. But within five years Germany and the Scandinavian nations have discontinued the use of silver as a standard of value. As a consequence the value of silver has been disturbed, falling at one time to 47 pence per ounce and rising again to 58 pence per ounce. It is quite obvious that a metal which is undergoing these rapid fluctuations is unsuitable as a standard of value; and it is the opinion of every political economist who has studied this question that only by agreement among the commercial nations using gold and silver as money can we re-establish that stable ratio of exchangeability which for more than two hundred years has existed between gold and silver, and which is essential, if a double standard is sought to be established.

Now at the present time the leading advocates in Europe of the re-establishment of the double standard are Mr. Ernest Seyd and Mr. Henri Cernuschi. The latter gentleman, who is to-day in the city of Washington, is the most eminent and probably the most learned advocate now living of the remonetization of silver. And it is his mission here, as he has proclaimed it throughout Europe, to urge the necessity of bringing about this international conference in order, if possible, to come to some agreement as to the convertible value of gold and silver. It is in order that silver may be re-introduced, as it is possible it will have to be, into the commerce of the world as a standard of value that this conference is indispensable.

Gentlemen seem to fear that if these commissioners should be appointed they are going in some way to bind the United States to unprofitable engagements to sell out the interests of this country. Why, Mr. Speaker, the resolution on its face purports only to be what it is in reality; a proposition for a conference to ascertain whether an agreement can or should be brought about. Of course such an agreement, before it can be effectual, must be the subject of treaty between the nations concerned; and the whole matter will come before us in a definite and distinct form before it can be finally concluded. But before such treaty can even be initiated, it is absolutely indispensable that the various nations whose interests are bound up in this question (and none so much as the people of the United States, from the fact that they are to-day the great producers of silver and therefore want to have it assume a stable value) should arrive at some basis upon which the diplomatic negotiations may proceed, so as to reach an adjustment of this difficult question, which has disturbed the finances of England with reference to India and which has brought about in the East Indies a panic second only to that which we had in 1873. It is absolutely indispensable that the subject should be discussed in all its bearings and a conclusion reached in the shape of an advisory report, nothing more, which may make intelligent legislation possible in this country as well as throughout the civilized globe. In no other way can the objects aimed at by the advocates of the Bland silver bill be reached. The passage of this bill is essential to the success of their plans, if success be possible, and I am, as I said before, quite at a loss to comprehend the grounds of their opposition to a measure which looks to placing the continued use of silver as money upon a stable basis, by agreement among the leading commercial nations. Whether with such agreement the maintenance of a double standard of value is possible may well be doubted; but without such agreement it is surely impossible; and if the Bland bill should be enacted into a law, we shall simply put the United States in the same category with India and China, and step back two centuries in the march of progress.

Mr. O'BRIEN. I yield five minutes to the gentleman from Texas.

Mr. REAGAN. Mr. Speaker, I stated yesterday without elaboration my general objection to the passage of this resolution. The five minutes allowed me to-day will not permit me to enter at all into the general subject. I have listened to the reading of the pending proposition with some degree of interest and curiosity; and I have also listened to the distinguished gentlemen who have advocated it to hear the explanations which might be given of its purpose. The only explanation which has been offered to us is that of the chairman of the committee himself, who states the purpose of this commission to be to ascertain whether scientific men can devise a plan for reaching a standard based upon both gold and silver.

I have neither time nor opportunity to enter into a discussion of the question as to the practicability of this double standard. I will only say that in my view it would be just as practical and feasible a work for us to appoint a commission of scientific gentlemen to make corn and wheat invariably of the same value. Commerce regulates such questions. Commerce regulates the value of money. The relative value of gold and silver is controlled by the commercial interests of the world. The report of the Director of the Mint shows us in table 15 the relative value of gold and silver from 1760 to 1876. It also shows that the average relative value of gold and silver from the establishment of the money system of the United States in 1792, down to 1876, was about 1 to 15½—about the rate which we fix. Of course there have been some variations according to the exigencies of the times and the necessities of commerce; but this is the general rate. What we need to do is in the spirit of the Constitution to recognize gold and silver as the currency of the country, and let their value regulate itself.

If the object of this commission is to try to find scientific men who can make one standard of value of gold and silver, I advise the abandonment of it as utterly and hopelessly impracticable and never believed, so far as I know, by any theorist on the subject to be practicable.

I said that I did not understand this resolution. In the first place we invite the other powers of the world to propose a commission of this kind to us. That is the joint resolution which came from the Senate. Why we are advised to do so I am not informed. No member has informed us what induced us to invite the other powers to propose such a conference. The committee of this House, it seems to me with more dignity and propriety, have added to the joint resolution a provision proposing a commission by this country itself. A commission to do what? To discuss what? The joint resolution says to invite a conference or a convention to consider the important change which has recently occurred in the relative values of gold and silver, and the adoption of international measures for the removal of embarrassments arising therefrom. Which one of the changes that recently occurred is it proposed to investigate? Is it the manner by which the silver dollar of 412½ grains fell from over 100 to 98.86 from 1873 to 1874, falling to 96 cents in 1875, and still further in the first seven months of 1876 to 89 cents; or is it the change——

The SPEAKER. The gentleman's time has expired.

Mr. REAGAN. I ask the gentleman from Maryland to allow me to finish my sentence.

Mr. O'BRIEN. Certainly.

Mr. REAGAN. Or is it the other change by which its value sprang back to its original standard since the time of the introduction of this bill? Which of these changes is referred to?

Mr. O'BRIEN. I now yield for five minutes to the gentleman from Iowa, [Mr. KASSON.]

Mr. KASSON. I hardly know, sir, that anything which may be said touching the merits of this proposition will be addressed to a House in that mood which would lead them to give practical effect to suggestions on either side, and that, owing to the fact that prejudices have been brought into existence which, I think, have led to a misunderstanding both of the object and the purpose of this joint resolution.

What is it that is proposed? First, in view of the fact that foreign nations are considering this question with reference to an international conference, it authorizes this Government to meet them in such conference, if proposed by them, by three commissioners; and, second, by an amendment of the House yesterday it gives authority to this Government to invite such conference. That is the whole extent and scope of the joint resolution.

Is it worthy of consideration by this House? Is the House disposed to recognize that there is no interest in the world connected with the question of money in gold and silver except that limited between the two oceans and within the jurisdiction of the United States? Does the action of any foreign government affect the gold or silver product or the gold or silver value of the United States? I affirm, and I believe it is not denied, that the question cannot be separated from the action of other governments; that if the governments of Europe demonetize silver it throws a flood of foreign silver into this country that prostrates values beyond recovery for years.

Let me show gentlemen how it has operated, for I have made this subject a study for some eight years. The Latin union, so called, was created in Europe to save the silver-money interest of France and neighboring countries, and limiting the coinage to be produced to prevent one of those countries from flooding the other with silver, thus prostrating values. France demanded that conference and combination with other countries to save her bimetallic currency.

Now, the advocate most frequently quoted by gentlemen on this floor who passed the bill the other day, and whom I should not refer to by name had not the honorable gentleman from New York done so, Mr. Cernuschi, has advised gentlemen on this floor that the safety of the bimetallic system depends upon the co-operation of European nations with this country. Therefore, Mr. Speaker, those gentlemen who say they are against the demonetization of silver come directly in conflict with historical precedent and the assurances of their own friend which have been recently made to numbers of us upon this floor.

Mr. BANKS. But why does the gentleman support it?

Mr. KASSON. I support it for the simple reason that it seeks to obtain that information for which we have been asking for months on this floor, namely, can you fix such a relative value between gold and silver as will prevent foreign nations from destroying the utility of our silver money by so cheapening it as to expel all gold from the country and make us the reservoir of all the refuse silver of Europe? I ask it still further, sir, for the reason that if we can establish that relative value in combination with other countries we are increasing the metallic currency of this country by adding silver to gold. The whole question hinges upon the establishment of such relations between gold and silver that we can adapt both the standards in this country. I avow myself for the resolution if that result can be obtained.

[Here the hammer fell.]

Mr. O'BRIEN. I yield two minutes to the gentleman from Ohio, [Mr. MONROE.]

Mr. MONROE. I am one of those who have accepted the arguments of the great writers in favor of a bimetallic standard; and in accordance with this result of my reflections upon the subject, I voted the other day for the restoration of the legal-tender silver dollar, believing, from all the information I then had before me, that with the buoyancy which the value of silver had recently exhibited in the market we could safely restore the dollar, expecting it to maintain its value, especially when we consider the additional firmness that would be given to that value by our own legislation.

But, Mr. Speaker, I do not feel compelled because I am an advocate of the bimetallic standard to vote for that reason against this resolution. I deny the right of any gentleman to say that consistency requires of me, because I am a friend of the double standard, that therefore I must oppose this resolution. On the other hand, I fully expect that the result of the inquiries which a commission of this kind should make would be to restore silver to the favor of the civilized world as money. I expect that commission, when appointed, to be a fair one. I expect it to go out simply for the purpose of ascertaining the truth; and when the truth is attained, I expect it will be found favorable to the restoration of silver as a standard of value.

I do not understand the joint resolution which is now before the House as containing one word which is at all hostile to the restoration of silver as money. It speaks of silver in the same terms in which it speaks of gold. We have no more right to infer that the resolution is hostile to silver as a standard than to infer that it is hostile to gold. As a friend of the bimetallic standard, I shall give my vote for the resolution.

[Here the hammer fell.]

Mr. O'BRIEN. I yield one minute to the gentleman from Ohio, [Mr. GARFIELD.]

Mr. GARFIELD. During all the discussions which we have had on the silver question, I have held that under proper regulations and restrictions a silver currency could be maintained. It is becoming

clearer to my mind every day that this can be safely done only by the concurrent action of several leading nations of the world. The pending resolution asks for such concurrent action, not to delay our legislation, but to lay before us an intelligible statement of the great leading facts as they exist in the different countries of the world in relation to this extremely important and interesting question, the relation of silver to gold. I hope this joint resolution will pass, and that we shall avail ourselves not only of this but of all other means of obtaining all the light we can upon the question.

I think I can contribute in one minute, if the House will allow me, something of value on this general question. I do not know that all of the members may have seen a very interesting and valuable letter written by our minister to France to the State Department a few weeks since, in which he states the case as it is now being argued in the legislative body of France. I ask that this letter may be printed in the RECORD for the information of members.

A MEMBER. Let it be read.

Mr. GARFIELD. I should be very glad to have it read, but there is not time to read it without unanimous consent. It shows the condition of the controversy at the present moment in the chief silver countries of the world.

The SPEAKER. The gentleman from Ohio asks unanimous consent that the letter which he has indicated may be printed in the CONGRESSIONAL RECORD. Is there objection?

There was no objection. The letter is as follows:

WASHINGTON, D. C., *December* 21.

Minister Washburne has sent to the State Department an interesting summary of the present status of the silver controversy in France. The following is the text of the paper:

LEGATION OF THE UNITED STATES, PARIS.

SIR: The rapid and growing depreciation of silver, which had for some time attracted the attention of the principal economists and financial men of Europe, is now becoming a matter of serious uneasiness to the governments that have the largest proportion of silver currency in the world. I mean America, France, Germany, and England, the last named for her Indian empire.

The question is of such vital importance, it threatens to assume such vast proportions, and is, in so many respects, connected with the measures at present under consideration in our country regarding the resumption of specie payments, that I have thought it would not be uninteresting to you to know how it is presented in Europe and what solutions the most competent French economists propose for a crisis whose consequences might prove disastrous for the whole commercial world.

The European states may be divided into two classes with regard to metallic currency: those which have adopted gold alone for their monetary standard, and those which use both a gold and a silver standard. The first are England, Germany, (the latter since the 1st of January only,) and Holland. It may be noticed, however, that while England recognizes no other legal standard than gold, her immense Indian empire has no other currency than silver. The second class comprises France, Italy, Belgium, Switzerland, and Greece. To these we should, temporarily at least, add Germany; for though the German Empire has begun to withdraw its various silver coins, and has decided by law that on and after the 1st of January of the present year the gold mark shall be the only legal tender, it has, nevertheless, authorized, for an indeterminate lapse of time, the circulation of thalers.

Russia and Austria, which are both doomed to paper currency for a long time to come, need not be taken into consideration.

The bimetallic or double-standard system can evidently subsist but by the assumption of an unvariable ratio between the value of gold and that of silver. In France, that ratio was determined by a law of the year XI. (1803,) which is the basis of the French monetary system, and which established for the relative value of gold and silver the ratio of 1 to 15½. This means that to have in silver the equivalent of any given weight of gold we must multiply that weight by 15½.

The French ratio was successively adopted by the six above-named states, and during a long time the value thus settled underwent very slight variations. When gold was discovered in California, it was believed in Europe that this metal would suffer a certain depreciation, and various measures were resorted to in order to avoid the impending danger. Holland even went so far as to declare that *gold* should no more be a legal tender, but after a short perturbation the relative value of the two metals was brought back to its former state, and the ratio of 15½ to 1 remained unchanged.

It was not until 1867 that this ratio began to experience variations detrimental to silver and favorable to gold. Eighteen hundred and sixty-seven was the year of the universal exhibition at Paris. On that occasion an international monetary conference was held there, the great object of which was the investigation of the means of establishing monetary unity. The conference, in which nearly all the civilized countries, the United States among others, were represented, and to which men eminently skilled in financial matters had been called, gave a large majority in favor of the adoption of gold as the sole monetary standard. From that moment the value of silver began to decline. At first the depreciation was very slow and hardly perceptible, but by degrees it went on accelerating. In 1872 it was as yet but 2 per cent., in 1873 it had become 1 per cent. more. In the course of the latter year the French government, in hopes of preventing, or at least restraining, the further depreciation of silver, determined to restrict the coining of that metal. This measure, which was contrary to the spirit if not to the letter of the law of the year XI. (for till then any denizen had a right to send to the mint for coining as much metal as he chose,) produced an effect quite the reverse of what was expected; the value of silver continued declining, and in 1874 its depreciation with regard to gold was 4 per cent.

At that time other events took place which seem also to have essentially contributed to the depreciation of silver.

Germany, whose metallic currency had, up to 1870, been almost entirely limited to silver, finding herself after the conclusion of peace possessed of an immense capital, resolved to unify her monetary system and adopt gold as the sole standard. She therefore ordered that none of the foreign coins, of which a great number were in free circulation throughout the empire, should thereafter be a legal tender, called in the florins and other silver coins of Southern Germany and of the Hanseatic cities, decreed that on and after the 1st of January, 1876, the sole legal tender should be the gold mark, and coined gold pieces of ten and twenty marks, to the amount of 1,200,000,000. In order to complete this reformation, it would have been necessary to call in all the thalers then in circulation; but as their total amount is equal to 740,000,000 francs and as the sudden withdrawal of so great a mass of meta presents difficulties of all kinds, Germany has decided to accomplish it gradually, and has therefore retained the thalers as a legal tender, assimilating them, however, to gold pieces of three marks, and adopting for their value with regard to gold the ratio of 1 to 15½, accepted by the bimetallic States, so that every thaler, now worth three marks, weighs 15½ times as much as the three-mark gold piece.

Therefore, though adopting as a principle the monometallic system, and declaring the thaler to be a provisional currency, which is retained, but not allowed to be increased, Germany belongs *de facto* to the class of bimetallic states, since the thaler, or silver mark, and the gold mark are, in that country, exchangeable at par. The consequences of such a state of things were not slow to appear. As the value of silver abroad was everywhere declining, while it suffered no depreciation at home, the German bankers exported German gold to meet their payments in foreign countries, and kept the German silver for their liabilities at home, so that the government was obliged to buy and import its own gold, with which it paid for the silver called in, and then sell that same silver at a loss.

Such being the situation, all the bimetallic states had reason to fear that Germany might send to their mints the silver she withdrew from her own circulation, and which she could dispose of only at a heavy loss in London, the great mart of the precious metals of the world.

In fact, at that time, 1874, silver, which was then, and still is, a legal tender in France, Belgium, Italy, and Switzerland, could be coined to any amount in those countries. There was no law to prevent a French, a Belgian, an Italian, or a Swiss citizen from carrying to the mint all the silver he could obtain; the coining of it could in no case be denied him. It would, therefore, have been an easy matter for Germany to have her florins and thalers, which could not be advantageously disposed of in England or in the United States, converted into francs and lires, circulating at a par with gold. France hoped to avert this danger—if there was any danger in the case—by the formation of a monetary league, the object of which was to restrict the liberty of coining. This is what is known as the Latin Monetary Union. It was constituted in 1874 by a convention signed at Paris. These countries bound themselves not to produce during the year 1874 more than 120,000,000 of francs in silver coinage. Such an agreement was of reality nothing else than a step toward the adoption of gold as the sole standard, since the measure of precaution was against silver alone, while leaving the coinage of gold completely free.

The results of this measure, however, did not correspond to what its authors expected. The value of silver still declined, and at the end of 1874 it was 5 per cent. below par. In 1875 a second conference of the Latin Union fixed the limit of the coinage of silver in the four states at 150,000,000 francs for that year. Nevertheless the decline continued. It had reached 8 per cent. when the conference held its third meeting at the beginning of the present year. No other remedy was sought for than what had been attempted so far, and the amount of silver coinage was still further reduced for 1876. France was allowed to make five-franc pieces only to the amount of 54,000,000 francs instead of 75,000,000, which had been authorized in 1875; Italy, 36,000,000 francs instead of 50,000,000; Belgium, 10,800,000 francs instead of 15,000,000; Switzerland, 7,200,000 francs instead of 10,000,000. Greece, which had recently joined the Union, was authorized to coin 15,000,000 francs, of which 8,400,000 francs were allowed in the place of the old silver specie withdrawn.

This determination had scarcely been adopted when silver suffered a new decline much more rapidly this time than previously. In the space of two months it lost 3 and even 4 per cent., so that the difference between the commercial and the legal value of the metal reached 12 and 13 per cent.

Such was the state of things when the new chambers of France met. One of the first acts of the new minister of finances was to present a bill empowering the government to restrict the coinage of silver in so far as it might be deemed necessary, or, in other words, not to avail itself to the full extent of the right granted to France by the monetary convention. It must be observed, in fact, that while the convention established a maximum amount of coinage, it establishes no minimum, and that in 1874 and 1875 France coined the maximum allotted to her only because her laws did not allow her to do otherwise.

The object of the bill introduced by Mr. Léon Say is to alter this state of things; it was brought before the senate on the 21st of this month, and gave rise to a long and interesting debate, in which Mr. De Parieu, a man eminent by his special knowledge of monetary matters, attacked the principle of the double standard vigorously, while Mr. Roland, governor of the Bank of France, with marked ability, defended it. The bill will certainly pass, but the question now is whether the new law will produce the result expected from it. When France has completely stopped coining silver, will the depreciation of this metal be prevented thereby, or even partially checked? It is, at least, doubtful.

On this highly important question two essentially distinct doctrines are entertained by the financial men and economists of Europe.

On one side stand the monometallists, or champions of gold as the sole monetary standard; on the other, the bimetallists, or supporters of the old system of the double standard. Among the former are Messrs. Louis Bamberger, of Berlin; Max Wirth, of Vienna; Frère Orban, of Brussels; Feer Herzog, of Berne, and in France, Michel Chevalier, De Parieu, Victor Bonnet, Frédéric Passy, and Leroy Beaulieu. Their principal organs are, in London, the Economist; in Paris, the Journal des Débats and the Économiste.

On the other side are Messrs. Malon, minister of finances in Belgium; Laveley and Allard, of Brussels; Count Sclopis, of Turin; Léon Say, Magne, Wolowsky, André, Courcelle-Seneuil, and Henri Cernuschi, of France. The principal organs of this group are the Siècle and the République Francaise.

The theory of the monometallists may be summed up as follows: The first cause of the perturbation now prevailing in the monetary market is the superabundant production of silver. The mines of the New World, by pouring in upon us tons of this metal at the very time when the coinage of silver is restricted in almost every country, have produced such a difference between its value and that of gold that the balance is irretrievably destroyed. Every attempt, moreover, to maintain a constant ratio between the values of the two metals, both of which are subject to so many causes of variation, must always prove utterly useless. There exists but one remedy of real efficacy for the state of things created by the bimetallic system. We must completely abandon that system and adopt gold as our sole monetary standard. On that condition only we shall be able to extricate ourselves from the dangers and difficulties of two metallic standards legally exchangeable at par, though one of them is much more abundant than the other, and at the same time very bulky.

To these arguments, which the very able economist of the Journal des Débats, Mr. Leroy Beaulieu, advances with great force, and which M. de Parieu presented in the senate with all the authority of his long experience in financial matters, the bimetallists oppose the following answer:

It is not the superabundant production of silver that has caused the perturbation; it is the limitation of the coinage of silver, a measure almost equivalent to total suppression, and the withdrawal of a great part of the silver coin already existing. Silver having lost the principal use to which it has always been applied, remains partly unemployed, and its depreciation increases as the demand for it goes on decreasing. The total adoption of the monometallic system, far from improving the present state of things, would do nothing but aggravate it, and infallibly result in a fearful financial catastrophe. To extricate ourselves from these difficulties, we should, on the contrary, hasten to retrace our steps and restore silver to its natural destination, by repealing all measures restricting its coinage. So soon as the great powers, resuming the bimetallic system fully, shall decree that the coinage of gold and silver is unlimited, and that the two metals shall always be exchangeable at a rate established once for all—that of 15½ for 1, for instance, which is already generally accepted—there will be no more fluctuations in the relative value of gold and silver. As the two metals will constitute but one monetary mass, the greater or less quantity produced by the mines of either of them can then affect only the total mass. The purchasing power of this mass may increase or diminish, according to its greater or less abundance, but gold and silver, whatever may be the quantity of either, will retain their relative value, since the one will always be the representative of the other.

This theory is certainly very attractive, and it has found in Mr. Henri Cernuschi a most ardent, indefatigable, and ever-ready advocate. In the daily notes, which he published in the Siecle, as well as in a multitude of pamphlets that are immediately translated into English and German, this bold and original economist defends the double-metallic standard by arguments which I cannot undertake to reproduce in this summary, but which certainly deserve the serious attention of all who take an interest in the question.

Among the considerations invoked by the bimetallists two are certainly of special importance. The first is that every measure restricting the coinage of silver has immediately been followed by a decline of the metal. The fact is undeniable; but it may be a mere coincidence, and not a consequence. It is possible that silver would have declined even if its coinage had not been restricted. The bimetallists here merely invert the argument of the monometallists, who say that the coinage was restricted for the very reason of the decline of silver. The second consideration bears on the enormous perturbations that would infallibly follow the general application of the monometallic system. In order to accomplish it, it would, in fact, be necessary to withdraw from circulation an enormous quantity of metal. What, for example, would be the amount of it for France, Germany, and British India alone?

In France, from 1795 to 1871 inclusive, silver has been coined to the value of 5,122,000,000 francs. Of these, 236,000,000 have been withdrawn by government, and it is estimated that of the balance only 1,200,000,000 to 1,500,000,000 in five-franc pieces still exist in France, of which 495,000,000 are at present in the vaults of the bank. Suppose 400,000,000 be kept for small payments and as change, from 800,000,000 to 1,100,000,000 will be left for withdrawal.

In Germany, according to official statements published in Berlin, the total amount of the silver coined by the different German states before 1871 was £68,000,000 sterling. The silver still circulating amounts to £21,000,000; thus leaving a balance of £47,000,000. Suppose about £17,000,000 to have disappeared by exportation or melting, there would remain £30,000,000 sterling, or 750,000,000 francs, to be withdrawn.

For India we have no statistics. It is generally supposed that the circulation of that country amounts to £150,000,000, which is not at all extraordinary when we consider that the population of India is seven times that of Great Britain, and that gold coin is unknown in the country. In India alone the sum to be withdrawn would, therefore, be as much as 1,500,000,000 or 2,000,000,000 of francs, so that the total amount to be called in would be at least 3,500,000,000 of francs; that is, $700,000,000 rendered useless as a currency, and of which the government would have to dispose at an enormous discount. The bare mention of these figures is sufficient to give an idea of the crisis that would take place in the whole world as a consequence of so gigantic an operation as that recommended by the monometallists.

I shall not undertake to discuss and still less to propose a solution for the great monetary problem now impending over the world. I hope, however, that this summary of the question, perhaps too long extended, may be of some utility in helping you to a clearer understanding of the manner in which it is viewed in France.

I have, &c.,

E. B. WASHBURNE.

Mr. O'BRIEN. How much time have I remaining?

The SPEAKER. There are three minutes of the morning hour remaining and eight minutes of the gentleman's hour.

Mr. O'BRIEN. I yield the three minutes remaining of the present morning hour to the gentleman from Indiana, [Mr. LANDERS.]

Mr. LANDERS, of Indiana. The question now under consideration is, will the House reconsider its action in refusing to pass the joint resolution providing for a joint commission to consider the question of the relative value of gold and silver? We had a commission, Mr. Speaker, appointed at the last session of Congress to inquire into this question. If this House or the country is any wiser because of the appointment of that commission, I am not aware of it. The opposers of silver as money, being unable any longer to find men to report in favor of their policy of demonetizing silver in this country in the interest of bondholders, now seek to have a conference with the holders of our bonds in foreign countries in order that they may get a report in their favor. It is said, Mr. Speaker, that these men will act without compensation. That convinces me that I have always been right in my conjecture that there is a conspiracy between the holders of our bonds in this and other countries against silver. If gentlemen are willing to go to foreign countries to consider this question without pay they have some private interest to subserve. That is evident; nothing can be clearer.

If gentlemen will consider a moment they will remember that Germany, as well as this country, has been taught a bitter lesson in regard to the disadvantages arising from the demonetization of silver, and that public sentiment in that country is now tending, as in this, toward its remonetization. If we send a commission of our wise men (of course the President would appoint such) to Europe, whom would they consult? Would it be the business men and the laboring classes who have been well-nigh ruined by the demonetization of silver there as here, or would it be the money kings and bondholders, through whose schemes, there as here, the demonetization of silver was brought about? The President is, according to this resolution, to appoint the commissioners. Can there be any doubt as to whom he would appoint? I defy any man on this floor to point to a single act of Congress relating to financial matters passed during Grant's administration that has not been in the interest of the bondholders and against the people.

The people, Mr. Speaker, have spoken out upon this question. In my State, in Indiana, there is no party to-day that raises its voice against silver as money. No man has been elected to the next Congress from Indiana who did not boldly avow himself in favor of remonetizing silver. It is no party question. There can be found no party to oppose it in Indiana. It is a settled question there.

I am gratified that this House fully understands this question. It is useless to discuss it longer before this House. The manner in which they have always acted upon the question shows that they understand it.

If the Senate will pass the bill passed by this House a short time ago making the silver dollar a full legal tender, and authorizing its coinage by our mints, more than $50,000,000 a year will be coined and enter into circulation without any cost to the Government, stimulating to some extent our paralyzed industries. Mr. Speaker, I have witnessed the persistent efforts of the bondholders' advocates on this floor to bring about a change in the standard silver dollar. When we consider that the law of 1870 authorizing the issue of $1,500,000,000 of bonds to refund the public debt provides for their payment in coin of the standard value as it then existed, it is easy to see why this effort is made to change the standard. This, Mr. Speaker, is manifestly nothing more than a flank movement to give the Senate a pretext to refuse to carry out the will of the people as expressed by this House in its bill to remonetize silver. I trust, Mr. Speaker, that his House will not furnish the Senate with any such excuse.

The best way to bring about the relative value of gold and silver as established by the law of 1837 is to remonetize silver, for the value of these metals depends chiefly upon their use as money among civilized nations. The sooner this fact is recognized and acted upon the better it will be for the nation at large. Silver is one of our greatest products, and it is to the interest of the people of this country to have silver used as money throughout the civilized world. To encourage others to use it we should use it ourselves. In regard to the argument advanced by the gentleman from New York, [Mr. CHITTENDEN,] and so often used by others, that our money should conform to the money of other nations, there is nothing in it whatever. It is a pure fallacy. Our money, whether gold or silver, is a commodity as soon as it leaves our shores, and the same is true of the coin of any other nation as soon as it leaves its boundaries.

[Here the hammer fell.]

ORDER OF BUSINESS.

The SPEAKER. The morning hour has expired, and the gentleman from Mississippi [Mr. SINGLETON] rises to call up the special order.

Mr. SINGLETON. I rise to move that the rules be suspended and that the House resolve itself into Committee of the Whole to resume the consideration of the diplomatic and consular appropriation bill.

COUNTING THE ELECTORAL VOTE.

Mr. SPRINGER. I ask the gentleman from Mississippi to yield to me for one moment. I desire to ask unanimous consent to have passed a joint resolution for the purpose of having immediately bound the reserve copies of the compilation in regard to counting the electoral vote, in order that members may have their bound copies now instead of at the end of the session. It will only take a moment and will cost nothing.

Mr. SINGLETON. I yield to the gentleman for that purpose.

Mr. SPRINGER, by unanimous consent, introduced a joint resolution (H. R. No. 181) authorizing the Public Printer to bind in cloth the reserve and stitched copies of the House compilation entitled Counting the Electoral Vote; which was read a first and second time.

The joint resolution, which was read, authorizes and requires the Public Printer to bind in cloth, at the earliest time practicable, for the use of the two Houses of Congress, the stitched and reserve copies of the House compilation entitled Counting the Electoral Vote, except such copies as are required for distribution to public libraries.

Mr. HOLMAN. I wish to inquire how these copies are to be distributed?

Mr. SPRINGER. *Pro rata* among the members under the law.

Mr. HOLMAN. Is that the law? And how about the distribution to public libraries?

Mr. SPRINGER. That is not disturbed at all.

The joint resolution was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. SPRINGER moved to reconsider the vote by which the joint resolution was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

CONSULAR AND DIPLOMATIC APPROPRIATION BILL.

Mr. SINGLETON. I now insist on my motion that the House resolve itself into Committee of the Whole on the state of the Union.

The motion was agreed to; and the House accordingly resolved itself into Committee of the Whole on the state of the Union, (Mr. CAULFIELD in the chair,) and resumed the consideration of the bill (H. R. No. 4251) making appropriations for the consular and diplomatic service of the Government for the year ending June 30, 1878, and for other purposes.

The question pending before the committee was upon the amendment offered by the gentleman from Indiana, [Mr. HOLMAN,] which is as follows:

That from and after the 30th day of June, 1877, embassadors, envoys extraordinary, ministers plenipotentiary, and ministers resident shall be entitled to the salaries following, namely:

Envoys extraordinary and ministers plenipotentiary to Great Britain, France, Germany, and Russia, $15,000 each; to Spain, Austria, Italy, Brazil, Mexico, Japan, and China, $10,000 each; to Chili and Peru, $10,000 each.

Ministers resident accredited to Belgium, Netherlands, Sweden and Norway, Turkey, Venezuela, Hawaiian Islands, and the Argentine Republic, $6,000 each.

Minister resident accredited to Guatemala, Costa Rica, Honduras, Salvador, and Nicaragua, to reside at such place in either of said states as the President may select, $8,000.

Minister resident and consul-general to Hayti and Liberia, $4,000 each.

Mr. HOLMAN. I believe, Mr. Chairman, that I have submitted almost all the views which I desire to submit on this subject. I wish only to call the attention of the committee to the fact that this amendment is substantially the same as the provisions on this subject in the bill which passed the House at the last session of Con-

gress, except that the bill which passed at the last session fixed the salaries of ministers of the first class, to England, France, Germany, and Russia, at $14,000, while this amendment fixes the salaries of those ministers at $15,000. In all other respects this provision is the same for all these diplomatic officers as the bill which passed at the last session.

I ought to add that if $14,000 was deemed sufficient for a minister of the first class, $10,000 for a minister of the second class, and $6,000 for a minister of the lowest class last session, nothing certainly has occurred since then to warrant a change of opinion; indeed, the condition of the country now more imperatively demands economy than it did then.

Mr. SINGLETON. Mr. Chairman, it is not often that I am called upon to differ with the chairman of the Committee on Appropriations, nor do I differ with him now in the abstract views which he presents upon this amendment.

Members of this House will remember that at the last session of Congress I advocated the reduction of the salaries of first-class ministers at $14,000. It will be further remembered that during that session the question was very fully discussed in this House and in the Senate, and after several conferences a bill was agreed upon between the two Houses. The ground taken by the Senate was that this House should not be permitted to change an existing law by an amendment to an appropriation bill, and, as I stated in my opening remarks, we had four committees of conference on that question. The Senate declined to yield anything on that point, and at last the House yielded in part, only reserving the right to fix the sum to be appropriated in gross for the carrying on the diplomatic service.

Now, sir, I am quite sure that the Senate have not undergone any change of opinion upon that question, and gentlemen upon the other side of this House now manifest a determination to adhere to their expressed opinions on the subject.

In view of these facts, and in view of the further fact that a new Congress is to come in shortly, when this whole subject can be considered, it was deemed advisable by the Committee on Appropriations, by a unanimous vote, to report the bill as it now stands before the House.

My friend from Indiana has thought proper, notwithstanding that report was made without a dissenting vote in committee, to offer an amendment to change the salaries of these ministers. I take the ground that after the report was made to this House under instructions from that committee, the gentleman of Indiana [Mr. HOLMAN] consenting thereto, it is not quite respectful to the committee to be now making war upon that report.

It was deemed best to report the bill substantially as it passed the House at the last session, that it might go through with as little opposition as possible. I am quite sure, Mr. Chairman, that if this debate goes on it will consume much time and involve a greater expenditure of money than would be saved to the Government, even if the amendment should prevail. There is no statesmanship in such a course, and the country will have no occasion to thank us for it.

I speak advisedly when I say that the Senate will not recede from its position, and it is evident that gentlemen upon the opposite side of this House are not inclined to do so, and I can therefore see no practical good that can possibly result from this amendment; but on the contrary nothing but humiliation, as it will involve the necessity of our again backing down from the position we have assumed. While, therefore, I believe that these salaries might be reduced and am in favor of that reduction, I do not think this an opportune moment to attempt this reduction.

We shall soon have grave matters before us, which will give rise to much debate, and there are only eight weeks of the session remaining. If we adopt the amendment, we shall probably have several committees of conference with the Senate, and the delay and consequent expense would be of greater value to the country than the amount which would be saved to the Treasury. The bill in its present form will save $50,000 in addition to last year's reduction of $225,000, and I think this should be satisfactory to my friend from Indiana.

I hope therefore that the House will pass the bill as it comes from the committee, and let us give our time to the consideration of other appropriation bills yet to be passed, that the ship's deck may be cleared for other battles soon to come off. The country expects this of us. Let us not disappoint their hopes and expectations.

The CHAIRMAN. Debate on the pending amendment has been exhausted.

Mr. SPRINGER. I move to strike out the last word for the purpose of stating that this amendment is substantially, with one exception, the same as provided in the bill which in the first instance was passed by the House at the last session of Congress. The bill as it then passed had been very carefully prepared by the Committee on Appropriations, and I can now see no reason for departing from the standard of diplomatic compensation which was then fixed. We departed from it at that time not because we thought we had placed these salaries too low, but from the necessity under which we then labored by reason of the demands of the Senate to increase our appropriations for this purpose.

The change proposed by this amendment from the bill as it passed at the last session of Congress is this: the compensation of our ministers to England and to other first-class powers is fixed by the amendment at $15,000 a year, instead of $14,000 as proposed by the bill. With that exception this amendment will make this bill the same as the one which was first passed by the House at the last session of Congress.

It is said that we are now proposing to fix these salaries at random or in the dark. It might as well be said that they were fixed in that way at what they now are, because a few years ago they were even less than now; and yet we then secured the very best talent in the country to represent this Government abroad. By the amendment submitted by the gentleman from Indiana [Mr. HOLMAN] we propose to give these officials a much larger compensation than is paid to other officials of this Government who perform much more service, and who live in places where their expenses are much greater than are the expenses of our ministers abroad.

In addition to that, if members will look at the list of expenses of these officials abroad they will find that for all these courts there is provided a contingent fund amounting to from $3,000 to $8,000 a year, which covers all the expenses to which their offices are subjected. Everything pertaining to those offices, even the newspapers served upon their tables in the morning, is paid for out of the contingent fund; so that all the salaries appropriated here go into the pockets of the ministers themselves. They are not required to pay the expenses for rent, clerk hire, or anything of the kind.

If a Cabinet officer in the city of Washington, who has as many calls upon his resources as any minister abroad, can serve the Government for $8,000 a year, I cannot see by what rule we should be required to pay our ministers abroad $17,500 a year in gold. Believing, therefore, that the compensation proposed by the amendment of the gentleman from Indiana is ample, that it is much in excess of the compensation paid to other officers of the Government, I hope it will be adopted by this committee.

THE MORRISON TARIFF BILL.

Mr. WOODWORTH. Mr. Chairman, I have secured the floor for a purpose in the execution of which I trust that I shall be indulged. That purpose is to discuss in this connection the tariff bill, known as the Morrison bill, now standing, if I mistake not, under another order upon the Calendar of this Committee of the Whole House. I shall do so not only because under the rule and the practice I may, but also because such discussion will be pertinent to the immediate proposition before us, for the reason that the subjects of public expenditures and of public revenues are inseparable, and for the further reason that both the tariff and the diplomatic and consular service for which you are providing are each instruments affecting the trade of the United States with other countries.

I have been led to apprehend from indications that I have seen that this tariff bill will be called up for action at no distant day of the session, and fearing that no better opportunity will occur, I seize upon the present to express myself with regard to it. It infolds within its provisions so much that would be disastrous to the interests of the district which I have the honor to represent, and as I believe of the whole country—it is so perfectly indefensible as a measure of statesmanship from the stand-point of any interest that is truly American—that I feel that I should do less then I ought did I fail, even under the present circumstances of disadvantage, to raise my voice in argument and in protest against it.

What, sir, is this bill as it stands now upon your Calendar? Its title asserts that it is "a bill to revise and simplify existing laws imposing duties on imports, and to reduce taxation." A seductive title truly, but a misnomer. Sir, I assert that this proposed measure instead of reducing taxation would increase it; that it would put in operation an oppressive system of raising revenues, and that it would eliminate from the law the chief result that justifies the custom-house, to wit, the encouragement of home industry. It revises but with the sole aim of a tariff for revenue only. It is confessedly an anti-protective measure, and is a blow directed, unwittingly no doubt so far as its ostensible author is concerned, against the prosperity and general good of the whole country. Should the blow fall many of the leading industries will be crushed, all will be injured, and the fingers that have registered the advancement, the grand advancement of the last decade and a half, will be turned back by the shock to the first poor figures upon the dial. It would rerivet the almost loosened chain of our industrial vassalage to other peoples; it would help to make our country that which it was the life labor of Lord Brougham and many of his compeers to make it, a dependency upon the mills and the factories and the ships of England; it would be the confession that the wisdom and valor which achieved political independence one hundred years ago has degenerated into the stupidity and unmanliness which now refuses to grasp material independence also.

But, sir, I did not take the floor to characterize or to indulge in general expressions of the disaster that would wait upon the footsteps of this legislation. I have stated my view of the bill and I purpose now to justify what I have said of it by a discussion of its merits. In doing this I shall speak of it first as a measure of revenue and second as a measure operating upon the industrial interests of the country. I hope in this course to make conclusive reply to the mistakes of philosophy and of fact which have served for argument in the mouths of gentlemen who urge the justice and propriety of this bill.

As a measure of revenue I believe, as I have intimated, that while it as a whole decreases the rates of impost duties it will ultimately increase very largely the sum total of taxation, and that it directly

violates the only just and equitable principle of levying taxes. If this be true it is enough to condemn the proposition. Let us see. I have in my hand a statement furnished to me by the Chief of the Bureau of Statistics, setting forth in detail the operation of this bill upon the revenues, which, with the permission of the House, I will append to my remarks in the RECORD. It shows that this bill takes off duties upon certain articles to the amount of $12,909,116.21 and adds to certain other articles duties to the amount of $1,520,699.63, making a net decrease of $11,388,416.58 per annum. This, it should be observed, is upon the basis of importations for the last fiscal year. To judge truly of the effect of the bill upon taxation we must comprehend its operation upon importations. With the closing up of some industries and the decrease in production of many others, which as I shall show would result from this legislation, the volume of foreign goods coming into our ports would be so largely swelled to meet the demands of the people that an increase of taxation would result. The increase of importations must so largely exceed the decrease of rates that the amount of taxation will be equal to a large percentage of the total expenditures of the people.

The revenues would be swelled, but it would be at the expense, as I will undertake to demonstrate before I sit down, of the vital energies of the country, and would put into operation a most unjust and unjustifiable system of taxation. Why unjust and unjustifiable I can in a word point out. Under a tariff purely for taxation, such as this bill closely approximates, duties must be so low as to give to the foreign producer the full control of American markets, for upon imports depend revenues, and they must not be interfered with by suggestions of home production contained in a high tariff. No distinction is made between articles which we do and articles which we do not produce, nor between things of luxury and things of necessity. Hence the rich who consume the luxuries are required to contribute no more to our national exchequer than do the less fortunate of the people who purchase only the necessary and useful articles of life, the proportion of purchases being considered. The tinware that is indispensable in the kitchens of the farmer and the workingman will be taxed equally with the silver that glistens on the sideboards of the palace, and tea and coffee, the sole luxury and real necessity of the humble, must pay tribute just as surely as do the costly wines which none but the affluent can afford. I mention tea and coffee, although not taxed by this bill, but as taxable under the principle which, with these exceptions, is almost completely embodied in this proposition. A tariff, therefore, purely for revenue, which your Committee of Ways and Means propose to approximate so closely as that its chief results shall be realized, is a tax—not on wealth, the only just basis of taxation—but it is a tax upon hunger, a tax upon necessity, a tax upon the constantly-recurring wants of human kind; and I declare it to be wrong. I pronounce it to be unjust, because through it the burdens of taxation would fall as heavily upon the poor as upon the rich, and I pronounce it to be unwise because it fails to discriminate in favor of the products of American skill and the fruits of American soil. These in the briefest words are the reasons which lead me to believe that this bill will operate to increase taxation and to impose that taxation, by an unjust and oppressive system, reasons which ought to be sufficient to defeat it without further scrutiny.

The most serious phase, however, of the questions presented is not whether this bill will increase or diminish taxation or whether it rests upon a just principle of raising revenues. The most important consideration is the effect it would have upon the leading industries of the country. I say leading industries without words of limitation, for although a part only are directly attacked there is no branch of labor that will not be injured by it. Of those directly affected I cannot of course undertake to specify all the changes proposed throughout an almost interminable schedule. It is not necessary, for gentlemen have the bill before them. I can much more briefly and to equal advantage speak of the chief articles affected in groups. Manufactures of iron, steel, hemp, flax, wool, and cotton, and in some instances the raw material, are to suffer a reduction averaging about one-third of the present duty, while in other instances articles which we do not and cannot produce in this country are to be taken from the free and placed upon the taxable list. What will be the result of this to the interests represented? Sir, I assert that the changes proposed would close every blast-furnace in the United States, would shut every rolling-mill and empty half the coal-mines, would render profitless the growing of wool and of flax, and would discourage into abandonment of their pursuits a large percentage of those who are now engaged in the manufacture of woolen and flax goods. Do I exaggerate in what I say? That must depend entirely upon the question whether the profit realized by the domestic producer is greater or less than the reduction of duties proposed by this bill. The difference in cost between home and foreign production is made up by the cheaper labor, the cheaper capital, measured by interest rates, and in some instances also by superior artificial facilities enjoyed in countries older and richer than ours. In natural resource the advantage is with us. Taking, however, into account every factor, it stands demonstrated as a truth, by figures and by experience, that the Englishman and the Frenchman can put their wares into our markets at prices less than the cost of manufacture here, which difference it is the aim of the existing tariff to cover. To take off, therefore, a part of existing duties, if that part be in excess of profits to the manufacturer, would annihilate the industry undefended against foreign competition. What are the facts as to the ones I have mentioned? Let us see:

The reduction proposed upon pig-metal is to be from $7 to $5 per ton, and upon merchant iron, nails, &c., in about the same proportion. It will be recollected that last spring it was known that evidence was given before the Committee of Ways and Means that in the iron regions of Pennsylvania furnaces were yielding in no case a profit exceeding $1 per ton, and oftener were running at an absolute loss, while rolling-mills were doing no better. The evidence of this was so abundant that even the free-traders here did not controvert it. The same was true of the section that I represent—the Mahoning and Tuscarawas Valleys in Ohio. Letters addressed to me in reply to inquiries that I made of leading iron men in those valleys show by day-book and ledger that at that time not a single furnace or a single rolling-mill in that region was yielding an appreciable profit, and that some were running at a loss to work up stock on hand, while many had gone out of operation. I might quote from these letters, but it is unnecessary. This, as I said, was some months ago, but matters are no better now, except perhaps that there is something more of a demand. The published quotations then and now show no sensible advance in prices. That this is true, no man informed upon the status of the iron industry will honestly question. Now, sir, I submit that, with the furnaces and iron mills of the country turning out their products in some instances at a loss, and in no case at a profit of one-half of the reduction proposed, this legislation would fill our markets with foreign iron, darkening every furnace and silencing every rolling-mill between the two oceans. It would be inevitable unless, with the advent of free trade into the policy of our laws, human nature shall suffer a change so that men will consent to waste fortunes in producing an article at a cost greater than its selling price.

Upon wools and manufactures of wool, the effect would be only a little less destructive. The value of the fleece, the demand for mutton, the peculiar value of sheep-grazing to renew the energies of the soil, well understood by intelligent farmers, have caused so large a number of people to engage in the avocation of Abel that it is a leading branch of American husbandry. Over $60,000,000 are realized yearly to our farmers from wools alone, and a very considerable sum, I do not know how much, is realized from sheep for slaughter. It is a source of wealth which must not be ruined. But this bill would ruin it. It proposes to reduce the tariff on wools, averaging the reduction in the various classes about 50 per cent., or one-half of the present duty. This would cheapen foreign wools and by consequence domestic wools also so greatly that wool-growing must cease to be a profitable business. It must as a great industry go down. The looms of the country will then be supplied with wools from the fields of Canada, the plains of Australia, and the steppes of the La Plata, where land is as cheap as it is boundless, and peon labor an inconsiderable item of cost. Will this inure to the advantage of the wool-manufacturers of the country? Not at all. The home demand will not be increased by a cheaper fabric, and, as about the same ratio of reduction is proposed on the finished goods, in which there is a larger amount of labor than in the raw material, the total of the result will be against them. The consumption of woolen and mixed goods in the United States amounts to $240,000,000 annually, nearly five-sixths of which is supplied by home manufacturers. It is an immense interest, involving immense capital, and is entirely the creature of protection. Now, if you reduce the duty on wool you not only take money out of the pocket of the farmer directly, but by driving him into other branches of his industry you place the manufacturer at the mercy of the foreign wool-grower for his raw material, while you lessen the prices of his fabrics to the extent of the reduction upon them. The foreign wool-grower can then with impunity advance the price of wools until our farmers once more engage in its production and then by dropping down to old prices again render his flocks valueless. Thus you not only destroy the wool-growing interest, but you place the manufacturer and the consumer entirely at the mercy of foreign greed. I submit that it would be disastrous to the great wool-growing and wool-manufacturing interests of the country and without advantage to consumers to legislate as proposed in this bill.

I have not time, sir, in the course that I propose to pursue to speak specifically of other interests comprehended in the groups of chief industries affected. The spinning and weaving of cotton, the culture of flax and the manufacture of flax goods, the coal, copper, and other interests, would each in various degrees be injured by the operation of causes similar to those I have mentioned in the matters of iron and wool. And here I beg to be allowed for a moment to step aside to repeat that which I have so often heard from the lips of intelligent manufacturers and others, that what they and the country most need is stability, permanency, something upon which they may rely as abiding. While the present rate of duties upon leading commodities is so low as to admit most freely of foreign competition upon something like terms of equality, they do not ask for change in their favor, and insist that their industries cannot survive if a change is made against them. The possibility of frequent changes of policy upon economic questions is a disadvantage in our system; a disadvantage which carries compensation in the means of escape from existing evils, but a disadvantge nevertheless. It is not to be expected that enterprise will take that scope or feel that vigor, confronted with

the liability of radical change each four years, that it would, could the assurance exist that a present policy would abide so that men might be certain to reap from their sowing. Men will not build mills and factories with so liberal a hand, knowing that a shift in the political weather-vane may result to flood the country with cheaper wares than they can produce, as they would do if this possibility were more remote. This disadvantage—necessary disadvantage in our system, may be greatly mitigated, if men called to make the laws would educate themselves up to a higher sense of the importance to every interest of permanence in the economic policies of government.

This bill is wrong not only because it reduced duties where it should not, but also because it imposed taxation upon articles that should remain upon the free list. The most conspicuous instance of this, as I have already stated, is the proposed duty of 3 cents per pound on tin. This metal of almost universal use, of value in the mechanic arts, of indispensable worth in every humble household, has not yet been found to exist in paying quantities in this country. Our tin comes to us from over the sea. Its mining is not, and I fear never will be, an American industry. A duty upon it will therefore be a tax, and nothing more—a tax heavy handed to the poor and of gentle touch to the rich. It would be an outrage upon the people, and an assault upon justice in the principle of taxation.

In the original, for which this bill is a substitute, tea and coffee were to be taxed—the former 15 cents, and the latter 3 cents per pound. The substitute leaves tea and coffee upon the free list, but I understand that the sense of the House is to be taken on taxing them by a vote upon an amendment. Not only tin, which is only found in minable quantities in Cornwall and in India, and, perhaps in a few other places foreign to us, but tea, which can only be successfully cultivated in the valleys of Japan and of the Flowery Kingdom, and coffee, which only grows in the perpetual solstice of far-away countries, have become to be necessaries to the people. Since the fathers rebelled in part because of the tea tax the people have looked upon a tax upon tea and coffee as a kind of sumptuary legislation, intolerably odious, and they are right in doing so. These things are necessaries of life, the production of which is not and never can be a home industry, and they should therefore go to the people untaxed. How plainly in the proposition to tax tin and tea and coffee is exhibited the smearing finger-prints of the importer and of men of the fortunate classes, who want to fill the Treasury with such larcenous pickings from the tables and kitchens of the farmers, the mechanics, and the operatives of the country? But we have been told, and no doubt shall be told again, that the President has twice recommended a restoration of the duty upon tea and coffee. So much the worse for the President and his ill-advised advisers in this. Apropos of this there occurs to me a scrap of history which exposes the mistake which gentlemen make when they urge that the restoration of this duty will not increase prices. Sir, I remember, and others here will remember, that immediately after the executive recommendation to this effect three years ago a number of speculators, in anticipation of an advance in prices, bought up a large part of the tea and coffee in bond and afloat likely to come into port before the law should become operative, and that when a few weeks later the then Committee of Ways and Means determined not to follow the President's recommendation these gentlemen came trooping down here to the capital to reverse, if possible, the action of the committee, proclaiming it to be a swindle upon them that the tea and coffee tax was not imposed. They had purchased, however, and prices had to be and were advanced to save them from loss. I speak of this because it is the testimony of sagacious men to the fact that the imposition of a duty will surely be followed by an increase of price. It is the consumer in every instance who must pay for every factor that enters into the cost of a commodity, and a duty on tin or tea or coffee will as surely advance the prices of these things as would an advance in the price of labor in the country where produced or in the cost of transporting them to us. The theory that the tax will come out of the Cornishman, the Chinaman, and the Dons of the Antilles, is absurd. Gentlemen advance some theory about forcing down the cost of production, based upon the necessity of the working-man for employment and of the employer for a market. It is a mistake. The cost of production is a fixed quantity, and the price to the consumer is the only movable part in the machine of demand and supply. It is that which must yield to the pressure created by an increase in prime or intermediate cost. Good sense and every scrap of human experience sustains what I say.

Now, Mr. Chairman, having thus briefly pointed out the practical bad effect and injustice of this bill in its most prominent features, I wish to discuss for a few moments the merit of the principle, as an idea in political economy, by which your committee seem to have been guided in framing it.

I said in the beginning of my remarks that this was an anti-protective measure, a statement that will not be questioned by its friends. It is so because, as I have shown, it reduces duties upon leading articles of domestic supply to a point less than the existing difference between the cost of production at home and abroad, plus the expense of transportation. This will shut out the home producer and insure the supply of our markets from abroad. It is therefore, in its results upon the industries of the country, identical with free trade. For this I denounce it as wrong in principle and disastrous in practice to the best interests of the country.

Self-preservation is nature's first law. To take care of ourselves and have a care for the future is a natural duty applicable equally to individuals and to nations. In this natural duty the principle of protection takes root. It is the inspiration of a comprehensive prudence exalted above selfishness, for through it the largest good may be realized to the largest number. Men may talk cosmopolitism in legislation upon trade, but they would feed a few abroad at the expense of many at home. They may dilate upon the beauties of an untrammeled law of demand and supply between nations, but they would strangle that law among their own people. They may go into rhapsody upon the virtues of an unselfish policy toward other countries, but, at the sacrifice of generosity to their own, they universalize unselfishness, spreading it out so thin that it becomes a gossamer and then dissolves into vagary. There is no subject in the whole range of political science upon which there has been more refinement of reasoning to cheat common sense than this. Still the broad truth is not hidden that the natural obligation to take care of ourselves and be mindful of the interests of those who are to come after us demands that we seek to diversify and shield in their infancy all useful industries, so that one day, without legislative defenses, they may be able to compete with their brothers of the older hemisphere in the markets of the world, adding to the sum-total of human comforts and giving to us as a people the material independence, the wealth, the development, the prosperity which the lavish gifts of nature hint that the American people may enjoy. We are comparatively a young people. But a few days ago we completed our first century. We are not able to compete in the industrial arena with the peoples of the Old World. The accumulations of wealth, of populations, of artificial aids, which centuries have piled up in other lands, render the contest so unequal that without some device to equalize the advantages we must go down inevitably in the contest. That device—the only one that has been or I think can be suggested—lies in a judicious use of the constitutional power of Congress to lay imports on foreign goods coming into our ports. This is the whole philosophy of protection. I believe it to be the duty of the nation to its people.

A judicious adjustment of a tariff I think to be this: First, protection secured by a duty at least equal to the difference in cost between home and foreign products for all commodities which we do or can produce in this country; second, a tariff for revenue only upon all articles of luxury, fashion, or fancy which we do not and cannot produce; third, free trade for all things of necessity, either to life or for raw material, which our own country cannot supply. This would give protection where protection is needed, free trade where protection can yield no advantage, and an incidental revenue derived from the unenforced contributions of those who consume imported luxuries.

Not only is the idea of protection to home interests justified by the reasons and obligations upon which it rests, but to us its wisdom is taught by the testimony of our earlier and better statesmen and by the experience of all history. So important did the fathers deem it to be to the public welfare that one of the objects sought by the Federal Union was to afford it. The men whose courage and wisdom gave birth to the Republic were protectionists. It was left to the philosophasters of later years to discover the beauties of free trade. The first session of the first Federal Congress sitting in New York in 1789 imposed a duty upon imports and declared in the preamble of the law that it was necessary for the support of the Government "and the encouragement and protection of manufacture that duties be laid on goods, wares, and merchandises imported." George Washington was then President, and although he had no Cabinet until some months after the passage of the act he was surrounded by counselors composed of the ablest men of that period. In Congress were many of the patriots and sages of the Revolution. From this time downward, as long as the generation of wise and pure men who achieved the nation controlled its affairs and for many years thereafter, until the mischievous teachings of foreign interests began to be felt, protection was a cardinal doctrine and practice of the Government. Washington in his first and in his last annual addresses delivered respectively January 8, 1790, and December 7, 1796, most forcibly presented to Congress the wisdom of encouraging home manufacture. Thomas Jefferson, in messages delivered December 15, 1802, December 2, 1806, and November 8, 1808, urged that protection was the duty of the Federal Government and enforced his views by reasons drawn from the objects of the Constitution and the situation of the people. James Madison, "the father of the Constitution," as he has been called, did the same in his messages of December 5, 1810, November 5, 1811, February 20, 1815, and December 5, 1815. Congress responded to the last by giving to the country the high tariff of 1816, in the debate upon which Calhoun, Clay, Lowndes, and many other prominent statesmen of the period advocated it as in the interests not only of manufacturers but of all classes. The next tariff act was passed in the administration of Mr. Monroe, in 1824. It imposed still higher rates of duties and was supported by both Clay and Jackson. This was revised in 1828 still in the interest of protection. It was at this time that the tariff was first made a political question. The law of 1828 became very unpopular in the Southern States but continued in force until 1832, when Clay's compromise tariff bill, declared by him to be for protection, was passed and was approved by that protectionist, Andrew Jackson, then President. This act provided for future reductions, under the operations of which, in 1842, a new revision was required. The act of that year was both for protection and for an incidental revenue. It was not until the famous Walker tariff of 1846, in the

administration of Polk, that this country had a tariff purely and exclusively for revenue. This continued until 1857, when it was modified still further in the interest of free trade, and this continued until the act of 1861 brought the principle of protection, the principle and practice of the fathers, abandoned for more than fourteen years, once more into the polity of the nation. I make this brief historical *résumé* to enforce my statement that protection was the idea and practice of the men of the earlier time, and that its antithesis is the creature of a more modern and I think a less wise statesmanship. I have before me and I might quote from the utterances of Franklin, of Washington, of Jefferson, of Hamilton, of Madison, of Adams, of Dallas, of Calhoun, of Clay, of Jackson, and of many others, whose opinions we have been taught with reason to respect as founded in wisdom and uttered with purity of intent, declaring that the public welfare demands protection to home industries through tariff laws, but I will not consume time to do so, as with the opinions of these men gentlemen are familiar. If the practices of the earlier years and the beliefs of the truly great men whose names adorn our history are worthy of note in this debate or of influence upon this question, then let us not forget them.

The basis of wisdom is experience, theories; the edifices of genius built of seeming truths may err, but the teachings of actual events are infallible. What are we taught by this best of school-masters upon this subject? This country has experienced both protection and substantial free trade, as I have shown, and we ought to be able to judge between them upon a better than a theoretic claim of merit. The chairman of the Ways and Means Committee [Mr. MORRISON] at the last session labored to prove the beneficence of the purely revenue tariff of 1846, and denominated it "a very just and practical financial measure." Made in the presence of men who have memories, and who are supposed not to be altogether ignorant of the facts of history, his statement possessed at least the merit of boldness. If the gentleman had taken the trouble to compare the fifteen years prior to 1861 with the fifteen years that have since elapsed, he would scarcely have claimed what he did.

Sir, take down your book of statistics and see under which policy we made the most rapid strides in the accumulation of wealth and when the citizen was most prosperous. As statistics are only gathered at decennial periods, we must be content with the contrast between the fifth and sixth decades. The total of wealth, as shown by the Census Reports, was increased from $16,159,616,068 in 1860 to $30,068,518,507 in 1870. In this period the wealth of the Southern States was reduced by the emancipation of slaves and other consequences of the war, $2,525,201,630. This taken into account, and the increase of wealth is shown to have been in the sixth decade, $16,533,904,069, which is $7,510,068,229 more than the increase of the previous decade—more than twice as great. The wealth *per capita* in 1860 was $510.74 and in 1870 it was $779.76. Had it not been for the decrease of wealth in the Southern States, there is no doubt that it would have been twice as much at the end of the sixth as at the end of the fifth decade. This increase of wealth is chiefly due to manufactures, although the interests of agriculture were greatly extended and the values of farming lands much increased everywhere except in the Southern States.

The products of the manufactories of the country in 1870 were $4,232,325,424, an increase of $3,213,218,808 over 1860, and $2,346,463,748 greater than the increase of the preceding decade. To avoid the tediousness of figures, I will say that the increase in the capital invested, the establishments operated, the hands employed, and the wages paid to them, was about in proportion to the increase of products which I have given. In mining operations the comparison between the two periods is equally marked in favor of the latter, while in railroad and other public enterprises the increase in the second period was considerable. These are the leading statistics exhibited by our most recent experience of free trade and protection. With these figures accessible to him, with the facts as to the general prosperity under each which he witnessed, and which ought to be alive in his memory, I cannot but express surprise that the gentleman from Illinois [Mr. MORRISON] or any one else on this floor should seek to overthrow the existing law that has done so much and return to the "very just and practical financial measure" of 1846, that did so little. The lesson of these figures teaches the wisdom of protection.

But, sir, we need not stop with the experience of our own country. The wisdom of protection is taught by the history of every civilized people on the globe, if that history be read aright. Of course I do not speak now of protection as applied by tariffs only, but as applied by such devices of legislation suited to each particular condition as shall secure the same end. Look for a moment into the histories of the two nations standing nearest us upon the other hemisphere with which our past was most closely associated. Rivals in arts and in arms, France and England represent the highest cunning in political science to be found in Europe, and each illustrate, but by different processes, the truth of my assertion. We are apt to point with admiration to the greatness achieved in manufactures and in commerce by England, the country from whose loins ours came, and whose learning and institutions have been our model. A little island, less in area than the State of New York, and of limited natural resources except in iron and coal, has by a consummate statesmanship become the workshop and common carrier by ocean highways for a good portion of the civilized world, while the emprise and valor of its people have extended its dominion over one-sixth of the habitable globe. The iron and steels of Birmingham, the cutlery of Sheffield, the pottery of Staffordshire, the cottons of Manchester, and the woolens of Leeds to a large extent supply the people of almost every clime, while fleets of English ships carry a large part of the international freights over every ocean and sea. She has taken tribute through the profits of her factories and the tolls of her carrying trade from other peoples until her citizens have become so rich that they furnish much of the capital for the enterprises of the world. That the weakness or wickedness of her internal policies has left this enormous wealth so unequally divided among her people does not subtract from our admiration of the cunning of her external policies which have achieved so much.

Now, sir, what has done this for England? It was protection for herself as long as she needed it and free trade for everybody else. The policy of English legislation has been to restrain importations so long as necessary, and to encourage exportations for the building up of its manufacturing interests, and to discriminate in favor of English ships to extend the carrying trade of its subjects. Restraints upon importations were by tariffs sometimes protective and in instances prohibitory, but always discriminating. Exportations were encouraged by drawbacks or deductions allowed in the payment of any duty or excise for exportations by the persons from whom due; by bounties given directly by the government to manufacturers to build up a particular industry or in instances to enable them to undersell and drive from the market a foreign competitor; by advantageous treaties with other countries, gaining for English wares the freedom of their markets; by the establishment of colonies to control their trade and their markets in the interests of English ship-owners and manufacturers, and by penalties imposed, at times, as in the reigns of George I and of George II, upon artificers quitting the kingdom. That these were among the acts of the English government, I have the warrant of English history for saying. Adam Smith, the great free-trade writer of the last century, in his Wealth of Nations, speaks of them as the means by which the manufacturing interests of England were built up. I should not omit to speak of still another method more recently adopted to strengthen British manufacturers at the expense of others, which I may not with inaptness term the missionary method, the immediate effort being to teach the excellence of free trade to the people whose markets are wanted and cannot be obtained by force. The design of our English cousins was well expressed by the president of the British Iron-Trade Association, in his inaugural address delivered February 16, 1876. He said:

> Now that every continental nation and the United States of America have decided to foster special native industries by artificial restrictions, it behooves those concerned in the British iron-trade to keep close watch upon commercial treaties and the tariffs of foreign states, to see that the former be acted upon and the latter grappled with when not absolutely prohibitive.

Our tariff is being "grappled with" by free-trade agents in the lobbies of our Congress, by free-trade books and publications scattered among our people, by the influence of the Cobden club, with its fifty-six American members smeared with the flattery of English notice, an official list of whom I have in my desk, and by the organization of free-trade leagues, which are said now to exist in thirty-one States of the Union.

In 1840 England began to take off restraints upon importations and now has only a light tariff upon a very few articles. Her manufactories had become so firmly established that they needed no legislative aid to control the home market. An open port became for the interest of her industries, because but little was imported that was not raw material for her mills or food for her operatives, very small proportions of which England herself was able to supply.

Thus, sir, did England apply the principle of protection as completely as her statesmen could devise the means of doing it. Without this she could never have achieved the proud eminence in the arts of peace as well as of war that she now enjoys. She enforced free trade upon other countries because it helped her manufacturers to do so. What were the consequences to those other countries? We may learn something more of the folly of that which England is trying to teach us by inquiring. Ireland is perhaps the saddest example. Ireland was once—yes, at two or three periods—a prosperous country. Her linen and woolen fabrics went into every port and plenty stood on the hills of the Emerald Isle. This was so, if we can trust the historian, during the reign of William and Mary and for many years thereafter. England was so thoroughly for protection that she taxed most heavily all Irish goods that came to her across the channel. She saw Ireland's prosperity and wanted to transfer it to English soil, so she procured heavy export duties upon Irish fabrics. Ireland's prosperity vanished. In 1782 the Irish parliament, known as the independent parliament, repealed this export duty and placed heavy protective duties on imports; England consented because, with the American and French wars to prosecute, fought largely with Irish troops, it was impolitic to interfere. Prosperity came once more to Ireland, but immediately upon the union in 1800 the old policy of England was revived and Ireland has since been—

> The most distressed country
> That ever yet was seen.

I do not mean to say that English free trade was the exclusive cause of the impoverishment of the Irish people, but that it was one of the causes of it the intelligent student of Irish history will not dispute. But the results of England's policy upon this subject have other illus-

trations. She forced free trade upon the Turkish Empire and ruined it; upon India and impoverished it; upon Peru and other Spanish American states and they have made no progress; upon China and Japan; and although a ray or two of civilization went with it, I doubt if these countries are better off for English acquaintance. What English free trade has done for others it seeks to do for us. Do we want it? The spectacle of England accomplishing magnificence for herself by protection and ruin for others by anti-protection ought to give us warning and be conclusive as to the policy to which wisdom bids us to adhere.

The experience of France teaches the same lesson, although not throughout by the same means. The people of that country having steadily maintained protection from a very early date were enabled to endure the shifting dynasties; the changes in forms of government; the exhaustion of wars; the scourge of the commune and the shock of revolutions, and recover after each with marvelous rapidity. The most independent peasantry in Europe is found in provincial France. Among them are five and a half millions of land-owners and a less percentage of pauperism than is to be found with their English neighbors. The annual exports of France amount to about $22 *per capita*, and this, the result of protection, having long continued, enabled that country guided by the statesmanship of Thiers to pay to Germany in the short space of two and a half years a thousand million dollars as an indemnity after an almost equal expenditure at home—to keep its bonds at a premium and its *coers force* or legal-tender paper money at a par with gold, and through it all to remain the most prosperous country on the continent of Europe. These things, sir, to my mind reflect more glory on the French name than was achieved in arms by Napoleon the Great, or in philosophy by Rousseau, or in letters by Voltaire. Germany triumphed in the ten months' war for Alsace and Lorraine, but the exhibition of French resource and statesmanship which triumphed over the disaster of defeat will have the largest and brightest page in history.

Still other countries than those of which I have spoken give testimony upon this question. Prussia, since the unification of Germany, with a free domestic commerce and a degree of protection, although largely devoted to agriculture and the raising of cattle, exhibits a condition of prosperity, interrupted last year by the demonetizing of silver. Australia under protection is rising rapidly in wealth and power, and Italy, seeing the folly of English-taught free trade, will not be long in imitating her example. But, sir, I am consuming more time than I ought in arraying the experience of other countries. I have said enough to show that history, current and past, justifies the principle of taking care of ourselves through a protection of home interests and industries, and that the opposite of this principle is a folly, a weakness, and may be a crime against ourselves and against the future.

I wish now, sir, to say a word or two—and I will be very brief—of the reasons urged against protection. The chief argument for free trade, and it has been exhausted in the debate upon this bill, is that a high tariff increases prices in the interests of monopolies. It is true that a tariff is a tax on consumption, and is as I have said not justifiable unless there is in it some measure of protection which ultimately cheapens prices and destroys monopoly. How does protection do this? Without home production the consumer is at the mercy of the foreign producer, paying his prices plus the costs of transportation and the tolls of middle-men, the most complete and the most ruinous monopoly that could be suggested. Now, when a tariff is applied sufficiently high to stimulate home production, mills and factories appear on every hand, and while at first costs are increased the foreign monopoly is destroyed and competition among our own citizens brings prices down to a proper standard; the tolls of numerous middlemen and the costs of distant transportation does not enter into it, and there at the proper standard it must remain, permanently benefiting the consumer. Even while this process is going on, compensation for the temporary hardships comes at once in the better prices realized for those articles which the consumer himself has to sell. I do not, sir, rely upon theory, but I point to our own experience in the last fifteen years to prove the truth of what I say. Wares in the manufacture of which labor constitutes the chief element of cost cannot now, and I trust never can, be made in the United States for as few dollars as in England; for that would mean cheap labor, and we do not want it. I assert, however, that by reason of the tariff of 1861 we have to-day cheaper wares of iron and steel and cheaper woolen and cotton goods than we should have had without it. The people of this country pay less now for many of the articles most fully protected than they did for the same articles in the revenue tariff times before the war. Is it not so? I have here a table prepared by David Williams, publisher of the Iron Age, which shows this to be the fact. I will read from it:

Articles.	Quantity.	Description.	Gold, 1860.	Currency, 1876.
Axes	Per dozen		$9 00 to $10 00	$9 00 to $10 00
Augers, cast steel	Per dozen	1 and 2 inch	2 88 to 5 76	4 00 to 8 00
Auger bits, steel	Per dozen	½ inch	1 44	1 54
Chisels, socket framing	Per dozen	1 and 2 inch	4 80 to 6 00	4 80 to 7 20
Chisels, socket firmer	Per dozen	Per set	2 50	3 00
Hammers, best cast-steel adze eye	Per dozen	Nos. 1, 1½, and 2	9 50, 8 50, 7 50	9 85, 8 80, 7 43
Hatchets, best shingling	Per dozen	Nos. 1, 2, 3	6 00 to 7 50	5 70 to 7 00
Hatchets, common shingling	Per dozen	Nos. 1, 2 3	3 37 to 4 28	3 57 to 4 29
Pick axes, best	Per dozen	Assorted	8 00 to 9 00	7 50 to 9 00
Wrenches, screw, Coe's genuine	Per dozen	12 inch	9 10	7 76
Wrenches, screw, Taft's	Per dozen	12 inch	5 60	3 78
Saws, hand, 26-inch	Per dozen	Common	6 85	6 00
Saws, hand, 26-inch	Per dozen	Good	10 85 to 19 88	11 90 to 19 12
Saws, cross-cut	Per foot		37 to 48	36 to 48
Saws, back	Per dozen	12 in. com. and best	10 88 to 13 80	10 20 to 15 30
Planes, double iron jack	Each		52	54
Brass rocking cocks	Per dozen	½ inch	5 95	4 05
Brass bibbs, plain	Per dozen	inch	17 00	12 60
Molasses gates, Stebbins's	Per dozen	No. 2	4 00	2 70
Brass butts, middle, (pairs)	Per dozen	2 inch	77	1 00
Cast-butts, loose joint, (pairs)	Per dozen	3 by 3 inch	89	80
Wrought butts, fast joint, (pairs)	Per dozen	3 inch	52	54
Strap hinges, light, (pairs)	Per dozen	6 inch	66	54
T hinges, light, (pairs)	Per dozen	6 inch	54	48
Plate hinges	Per pound		5 to 6	5 to 6
Wrought-iron hasps and staples	Per dozen	8 inch	42	32
Wrought-iron hooks and staples	Per gross	4 inch	2 09	2 12
Carriage bolts, best	Per hund.	⅝ by 3 inch	1 48	1 40
Carriage bolts	Per hund.	⅝ by 2½	1 04	94
Curry-combs, 6 bar, open	Per dozen	No. 1	55	72
Measuring-tapes, 50 feet, asses' skin	Per dozen		5 63	5 00
Brick-trowels	Per dozen	10½ inch	6 17	7 11
Anvils, steel-face, cagle, p. h.	Per pound		6⅝	8
Bench-vises, Wilson s	Each	No. 2	3 08	2 93
Nails	Per keg	10d	2 75 to 3 25	2 75
Rules	Per dozen	No. 68	1 50	1 44
Levels	Per dozen	No. 0	6 00	6 48
Try-squares	Per dozen	7½ inch	3 45	2 88
Squares, iron	Per dozen	No. 2	3 75	4 50
Fry-pans, iron	Per dozen	No. 3	2 62	2 38
Coffee-mills, box	Per dozen		3 00 to 12 00	2 82 to 10 00
Enameled kettles, (4 quart)	Each	421	45	40
Cast-steel shears, trimming, common	Per dozen	8 inch	5 60	3 55
Cast-steel shears, best	Per dozen	8 inch	6 00	4 90
Cut tacks, full half weight	Per paper	8 ounce	1⅝	3⅛
Iron shoe-nails	Per pound		6½	8
Shovels	Per dozen	No. 2	6 50 to 10 00	6 30 to 10 00
Cast-steel dividers, Binns's	Per dozen	7 inch	4 98	5 27
Cast-steel dividers, others	Per dozen	7 inch	3 90	3 90
Casters, table, iron wheels	Per set	No. 1 to 6	6 to 13	5½ to 11
Casters, table, brass wheels	Per set	No. 1 to 6	10½ to 36	11 to 30
Meat-cutters, Hale's	Per dozen	No. 12	21 00	20 73
Counter-scales, Hatch's	Per dozen		21 60	25 20
Tea-scales, Hatch's	Per dozen		10 00	10 00
Door-knobs, mineral	Per dozen	No. 400	1 25	1 12 to 1 29
Door-knobs, porcelain	Per dozen	No. 300	1 25	1 50 to 1 69
Screws, iron, for wood, (same proportion for other sizes)	Per gross	1 inch No. 9	24½	17½

Deducting 10 per cent., the gold premium at the time the table was prepared, from the prices in 1876 given in currency, and it will be seen that the reduction is very marked, and because there is now competition among our citizens in the manufacture of these articles, no advance upon these reduced prices is likely to occur. The same is true of many articles of cotton and wool, but I will not trouble the House with the figures. This, sir, is the result of protection, which gentlemen say is a tax on the consumer for the advantage of the monopolist. If these facts do not explode the chief argument for free trade, I mistake the force there is in the homely lessons of experience.

There is another idea urged by free traders as an argument, replying to a reason given for protection, of which I must speak. Admitting, as all the writers which they quote have been obliged to do, that protection is a means of giving an excess of exports over imports, they argue, by a subtilty of reasoning hard to understand, that this is a matter of no consequence and may be disadvantageous. The reported author of this bill in his speech said that "foreign balances and balances of trade against us are some of the catch-words of protection," and he then proceeded, by a most inapt illustration, in an attempt to show that the claimed advantage of a favorable balance of trade was illusory and unreal.

Sir, the school boy who answered that the long days of summer and the short ones of winter were due to the expansive and contractile powers of heat and cold will grow up to be another just such a political economist. I know that there is very reputable authority for the opinion that it is wise to send money out of the country and prevent its return, and that the real prosperity of a people is marked by what they buy and not by what they sell. All the free-trade *doctrinaires* hold to this idea, so that the gentleman does not stand alone in his views.

As long, sir, however, as we know that we need the gold and silver of our neighbors to meet the immense volume of interest yearly payable to foreigners upon our public and upon private indebtedness—to reduce as we can the principal of our debt and to pay our coin expenditures—to enter into our circulation, cheapening interest, and rendering specie payments possible—as long, I say, as we know that we need gold and silver for these more than we need foreign articles that "perish in the using," we cannot be convinced that a favorable balance of trade is not of the highest importance to us. The man, the head of a family who will see to it that he sells each year more than he buys, even though his children wear homespun, will grow rich and be able to pay his debts. The man who does not will become bankrupt. This is common sense, and the best statesmanship is but the most thorough common sense in the affairs of ordinary life enlarged and applied to the business of the state, for the same law operates whether upon the household or the nation.

What I said a few moments ago as to the result of the existing law on prices brought to my mind other results accomplished and to be expected from it. I can only speak of these in a synoptical manner, for I have already consumed more time than I ought. It has, sir, for fifteen years sustained the Government in war and in peace by its revenues and built up many industries by its protection. It aided to restore the lost credit of the nation which under a revenue tariff had fallen to a discount of 12 per cent. and is now at a greater percentage of premium. It furnished chiefly the means to pay off more than five hundred millions of principal of the public debt and was mainly instrumental in bringing down the gold premium from 285 to 7 per cent. It has given to us that which we never had before and should never have had at all without it, namely, a high diversification of industries. It has, as I have shown, added enormously to the wealth and to the production of the country. It has increased the rewards of husbandry by building up home markets for the fruits of the field and the flock. It has built up towns and cities and filled them with the music of the anvil and the engine. It has honey-combed the land with mines, dotted it with emporiums, decorated it with factories, and net-worked it with railroads. There is not an American acre that has not been made more valuable by it. There is not an American home that holds not some evidence of its beneficence. These, sir, are some of its fruits. Shall they be overthrown and the tide of prosperity turned back? Shall we destroy that which has done so much and is still doing more merely to advance the interest of a handful of importers in New York City and a host of manufacturers in Leeds and Birmingham and Manchester, or to gratify a few pale pundits who fulminate shadowy theories in political science and ask that the nation be guided by them? I trust not, sir. Wiser and better counsels will prevail if heed be given to the reasons and the exhibitions that stand arrayed against this measure.

There are three things which all right-thinking men desire to see accomplished. They are, first, a restoration of business upon a permanent basis, and the steadfast prosperity of the people; second, the regain and maintenance of the world's standard of values and the honest payment of the public debt; third, the material independence of the country and the utmost development of all the resources of our magnificent continent. The ambition that does not point to these is an unworthy ambition. With the continuance of a judicious protection of our industrial interests, all these things are possible; without it none will be realized. Let this bill become law and you will wipe out, as I have shown, our leading manufacturing interests, and thus you will intensify the existing depression, which even now is beginning to pass away. You will contribute to the impoverishment of the people, and thus lessen their ability to meet the public obligation. You will lessen the exports and increase the imports, thus draining the country of the precious metals and thereby rendering still more distant the fact of maintainable resumption of specie payments. You will palsy the hand that would utilize the exhaustless wealth that the Almighty has planted in our soil and beaten down with the tread of His ages into the bowels of our mountains. These results, sir, await the advent of free trade into the policy of our laws before we are prepared for it as surely as the years of the future await the coming of the Republic upon its theater of events. It behooves us to study well and be careful what we do. Let us "prove all things; hold fast that which is good." I know of no better maxim, and its observance, in this instance, as in all others, will be the summit of wisdom.

I have now, sir, upon this subject, in a manner too hurried to be satisfactory, said my say. I have tried to make plain these truths: first, that the proposed bill will increase the total of taxation and establish an unjust and oppressive system of raising revenues; second, that it would destroy many of the leading industries of the country and inflict injury upon all; third, that the protection which it would eliminate from our tariff laws is the dictate of duty and of wisdom enforcing what I urged by reasons and by the teachings of experience; fourth, that the chief objections to the existing law of duties have no basis in reason, and are disproved by results; and, fifth, that the existing law has operated with beneficent results which the proposed law would destroy. If I have impressed upon those who have honored me with their attention these truths one-half as forcibly as I myself feel them to exist, my gratification is complete; for then this bill cannot receive the sanction of the House when it shall come up for action.

APPENDIX.

Statement exhibiting the quantities and values of articles enumerated in House bill No. 3132, entered into consumption in the United States during the fiscal year ended June 30, 1876, with the present and proposed rates of duties, the estimated amount of duties derived from the same, net decrease of, and percentage of decrease of rate of duties.

Articles.	Quantities and values entered into consumption during the fiscal year ended June 30, 1876—		Rates of duties under—		Duties received and estimated under—		Decrease of duty.	Percentage of decrease.
	Quantities.	Values.	Present rate.	Proposed rate.	Present act.	Proposed act.		
Cotton manufactures: manufactures of, (except jeans, denims, drillings, bed tickings, ginghams, &c.) not bleached, colored, stained, painted, or printed, and not exceeding 100 threads to the square inch, counting the warp and filling, and exceeding in weight 5 ounces per square yard—								
unbleached ..... sq. yds.	114,130	$17,209.00	5c. per sq. yd.	3c. per sq. yd.	$5,706.54	$3,423.92	$2,282.62	40.00
bleached ..... sq. yds.	13,180,576	1,068,782.76	5½c. per sq. yd.	4c. per sq. yd.	724,931.68	527,223.04	197,708.64	27.27
colored, stained, painted, &c. ..... sq. yds.	4,233	720.88	5½c. per sq. yd. and 10 p. c.	4½c. per sq. yd.	304.90	190.49	114.41	37.51
finer and lighter goods of like description, not exceeding 200 threads to the square inch, counting the warp and filling—								
unbleached ..... sq. yds.	.....	.....	5c. per sq. yd.	4c. per sq. yd.	.....	.....	.....	20.00
bleached ..... sq. yds.	.....	.....	5½c. per sq. yd.	4½c. per sq. yd.	.....	.....	.....	18.18
colored, stained, painted, &c. ..... sq. yds.	10,509,762	1,570,021.11	5½c. per sq. yd. and 20 p. c.	5c. per sq. yd.	892,041.13	578,036.91	314,004.22	35.20

Statement exhibiting the quantities and values of articles enumerated in House bill No. 3132, &c.—Continued.

Articles.	Quantities and values entered into consumption during the fiscal year ended June 30, 1876.		Rates of duties under—		Duties received and estimated under—		Decrease of duty.	Percentage of decrease.
	Quantities.	Values.	Present rate.	Proposed rate.	Present act.	Proposed act.		
Cotton manufactures—Continued.								
goods of like description, exceeding 200 threads to the square inch, counting the warp and filling—								
unbleached ..... sq. yds	.....	.....	5c. per sq. yd ...	4c. per sq. yd	.....	.....	.....	20.00
bleached ..... sq. yds	.....	.....	5½c. per sq. yd ...	4½c. per sq. yd	.....	.....	.....	18.19
colored, stained, painted, &c	575,742	$83,063 00	5½c. per sq. yd. and 20 per c.	5c. per sq. yd	$48,278 41	$31,665 81	$16,612 60	34.41
jeans, denims, drilling, bed tickings, ginghams, &c., and not exceeding 100 threads to the square inch, counting the warp and filling, and exceeding 3 ounces to the square yard—								
unbleached ..... sq. yds	3,435.75	700 00	6c. per sq. yd ...	4c. per sq. yd	206 15	137 43	68 72	33.33
bleached ..... sq. yds	11,291.42	1,486 36	6½c. per sq. yd..	4½c. per sq. yd ..	733 93	508 11	225 82	30.77
colored, stained, painted, &c ..... sq. yds	6,350	1,090 31	6½c. per sq. yd .... and 10 p. c.	5c. per sq. yd	521 80	317 50	204 30	39.14
finer or lighter goods of like description, not exceeding 200 threads to the square inch, counting the warp and filling—								
unbleached ..... sq. yds	.....	.....	6c. per sq. yd ...	4c. per sq. yd	.....	.....	.....	33.33
bleached ..... sq. yds	.....	.....	6½c. per sq. yd ...	4½c. per sq. yd	.....	.....	.....	30.77
colored, stained, painted, &c ..... sq. yds	1,116,386	148,485 00	6½c. per sq. yd. and 15 p. c.	5c. per sq. yd	94,837 84	35,819 30	39,018 54	41.14
goods of lighter description, exceeding 200 threads to the square inch, counting the warp and filling—								
unbleached ..... sq. yds	.....	.....	7c. per sq. yd ...	4½c. per sq. yd	.....	.....	.....	35.71
bleached ..... sq. yds	292	32 54	7½c. per sq. yd..	5c. per sq. yd ...	21 90	14 60	7 30	33.33
colored, stained, painted, &c ..... sq. yds	15	3 00	7½c. per sq. yd. and 15 p. c.	7½c. per sq. yd ...	1 58	1 23	35	22.15
provided plain woven goods, not included in the foregoing schedule—								
unbleached, valued at over 16 cents per square yard ..... sq. yds	94,047	23,403 00	35 p. c	25 p. c	8,191 05	5,850 75	2,340 30	28.57
bleached, valued at over 20 cents per square yard ..... sq. yds	332,656	90,801 00	35 p. c	25 p. c	31,780 35	22,700 25	9,080 10	28.57
colored, valued at over 20 cents per square yard ..... sq. yds	3,945,192	780,014 00	35 p. c	25 p. c	273,004 90	195,003 50	78,001 40	28.57
jeans, denims, and drillings, unbleached, valued at over 20 cents per square yard ... sq. yds	443	98 00	35 p. c	25 p. c	34 30	24 50	9 80	28.57
all other cotton goods, the value of which shall exceed 25 cents the square yard ... sq. yds	.....	.....	35 p. c	25 p. c	.....	.....	.....	28.57
cotton thread, yarn, warps, or warp-yarn not wound upon spools, whether single or advanced beyond the condition of single by twisting two or more single yarns together, whether in beams or in bundles, skeins or cops, or in any other form—								
valued at not exceeding 40 cents per pound, lbs	13,410	4,912 00	10c. per lb. and 20 p. c.	6c. per lb	2,323 40	1,341 00	982 40	42.29
valued at over 40 cents, and not exceeding 60 cents per pound ..... lbs	297,084.35	154,679 80	20c. per lb. and 20 p. c.	20c. per lb	90,352 23	59,416 27	30,935 96	34.24
valued at over 60 cents, and not exceeding 80 cents per pound ..... lbs	622,902.50	456,989 00	30c. per lb. and 20 p. c.	30c. per lb	278,208 55	186,870 75	91,337 80	32.84
valued at over 80 cents per pound ..... lbs	1,544,479.50	1,966,374 90	40c. per lb. and 20 p. c.	40c. per lb	293,066 78	605,791 80	333,274 98	39.36
spool thread of cotton, containing on each spool—								
not exceeding 100 yards of thread ..... doz	369,421.58	55,457 00	6c. per doz. and 30 p. c.	6c. per doz	38,802 30	22,165 20	16,637 10	42.88
exceeding 100 yards, for every additional hundred yards of thread on each spool or fractional part thereof, in excess of 100 yards, doz	389,432.83	58,247 00	6c. per doz. and 35 p. c.	6c. per doz	41,752 42	23,365 97	18,386 45	44.04
cotton cords, gimps, and galloons and cotton laces, colored	.....	2,718,081 39	35 per cent	30 per cent	951,328 49	815,424 41	135,904 08	14.29
cotton shirts and drawers, woven or made on frames	.....	1,054 43	35 per cent	30 per cent	369 05	316 32	52 73	14.29
cotton hosiery	.....	4,744,098 19	35 per cent	30 per cent	1,660,434 37	1,423,229 45	237,204 92	14.29
cotton velvet	.....	742,593 14	35 per cent	30 per cent	259,907 60	222,777 94	37,129 66	14.29
cotton braids, insertings, lace, trimming or bobinet	.....	.....	35 per cent	30 per cent	.....	.....	.....	14.29
all manufactures of, not otherwise provided for	.....	4,561,010 61	35 per cent	30 per cent	1,596,353 71	1,368,303 18	228,050 53	14.29
Section 2.								
Iron and steel, and manufactures of—								
pig iron ..... cwt	1,498,400.47	1,781,222 96	$7 per ton	$5 per ton	524,440 16	374,600 12	149,840 04	28.57
pig iron spiegeleisen ..... cwt	3,391.34	6,967 00	.....	$6 per ton	1,186 97	1,017 40	169 57	14.29
bar iron, rolled or hammered, comprising flats not less than 1 inch or more than 6 inches wide, nor less than ⅛ of an inch or more than 2 inches thick; rounds, not less than ¾ of an inch nor more than 2 inches in diameter; and squares, not less than ¾ of an inch nor more than 2 inches square ..... lbs	6,006,696	167,093 00	1c. per lb	½c per lb	60,066 96	30,033 48	30,033 48	50.00
bar iron, rolled or hammered, comprising flats less than ⅛ of an inch or more than 2 inches thick, or less than 1 inch or more than 6 wide; rounds less than ¾ of an inch or more than 2 inches in diameter; and squares less than ¾ of an inch or more than 2 inches square ..... lbs	1,058,127	33,640 34	1½c. per lb	½c. per lb	15,871 90	7,935 95	7,935 95	50.00
iron in slabs, blooms, loops, or other forms less finished than iron in bars, &c ..... lbs	33,442,968	1,073,108 80	35 p. c	½c. per lb	375,588 08	167,214 84	208,373 24	55.47
muck iron, made from sand-ore by one process ..... cwt	7,605	55,751 00	$7 per ton	$10 per ton	2,661 75	3,802 50	*1,140 75	*30.00
iron bars for railroads or inclined planes .. lbs	12,067,864	274,612 00	70c. per 100 lbs.	$10 per ton	84,475 04	53,874 50	30,600 54	36.22
boiler or other plate iron, not less than 3-16 of an inch in thickness ..... lbs	30,617	1,900 40	1½c. per lb	½c. per lb	459 26	382 71	76 55	16.6
boiler and other plate, not otherwise provided for ..... cwt	.....	.....	$25 per ton	$20 per ton	.....	.....	.....	20.007

* Increase

Statement exhibiting the quantities and values of articles enumerated in House bill No. 3132, &c.—Continued.

Articles.	Quantities and values entered into consumption during the fiscal year ended June 30, 1876.		Rates of duties under—		Duties received and estimated under—		Decrease of duty.	Percentage of decrease.
	Quantities.	Values.	Present rate.	Proposed rate.	Present act.	Proposed act.		
Iron and steel, and manufactures of—Continued.								
iron wire, bright, coppered, or tinned, drawn and finished, not more than ¼ of an inch in diameter—								
not less than No. 16 wire gauge.....lbs	1,263,528	$63,705 00	2c. per lb. and 15 p. c.	1¼c. per lb	$34,389 81	$22,186 74	$12,653 07	36.79
over No. 16 and not over No. 25.....lbs	184,324	13,780 00	3½c. per lb. and 15 p. c.	3c. per lb	8,518 34	5,529 72	2,988 62	35.08
over or finer than No. 25.....lbs	6,097	1,063 00	4c. per lb. and 15 p. c.	4c. per lb	403 23	243 88	159 35	39.56
wire—covered with cotton, silk, or other material—								
not less than No. 16 wire gauge.....lbs	242	109 00	7c. per lb. and 15 p. c.	6¾c. per lb	42 29	16 34	25 95	61.79
over No. 16 and not over No. 25.....lbs	1,461.50	439 03	8½c. per lb. and 15 p. c.	8c. per lb	190 09	116 92	73 17	38.50
over or finer than No. 25.....lbs	608	474 00	9c. per lb. and 15 p. c.	9c. per lb	125 82	54 72	71 10	56.49
round iron in coils 3-16 of an inch or less in diameter, whether coated with metal or not so coated, and all descriptions of iron wire, &c.....lbs	9,230	507 00	2c. per lb. and 15 p. c.	1¾c. per lb	260 65	161 53	99 12	37.30
wire spiral furniture springs.....lbs	42,772	2,396 00	2c. per lb. and 15 p. c.	1¾c. per lb	1,214 84	748 51	466 33	38.38
smoothed or polished sheet iron.....lbs	5,347,017	505,601 00	3c. per lb	2c. per lb	160,410 51	106,940 34	53,470 17	33.33
sheet iron, common or black—								
not thinner than No. 20 wire gauge.....lbs	962,670	36,522 15	1¼c. per lb	1c. per lb	12,033 37	9,626 70	2,406 67	20.00
thinner than No. 20 and not thinner than No. 25.....lbs	783,652	37,947 96	1¼c. per lb	1c. per lb	11,754 78	7,836 52	3,918 26	33.33
thinner than No. 25 wire gauge.....lbs	271,673	12,595 28	1¼c. per lb	1¼c. per lb	4,754 28	3,395 91	1,358 37	28.57
band, hoop, and scroll iron from ½ to 6 inches in width—								
not thinner than ⅛ of an inch.....lbs	3,406,042	105,337 00	1¼c. per lb	¾c. per lb	42,575 52	25,545 36	17,030 16	40.00
under ⅛ of an inch and not thinner than No. 20 wire gauge.....lbs	240,695	8,089 00	1½c. per lb	1c. per lb	3,610 43	2,406 95	1,203 48	33.30
thinner than No. 20 wire gauge.....lbs	68,051	2,723 00	1½c. per lb	1½c. per lb	1,190 89	850 64	340 25	28.57
slit rods.....lbs			1½c. per lb	1c. per lb				33.33
all other rolled or hammered iron, not otherwise provided for.....lbs	6,433,423	182,126 00	1¼c. per lb	¾c. per lb	80,417 79	48,250 68	32,167 11	40.00
Hand saws:								
not over 24 inches in length.....doz	60.50	229 00	75c. per doz. and 30 p. c.	$2 per doz	135 09	121 00	14 09	10.43
over 24 inches in length.....doz	44.50	413 25	$1 per doz. and 30 p. c.	$2.50 per doz	168 48	111 25	57 23	34.00
Buck saws:								
not over 10 inches in length.....doz	63.08	405 00	75c. per doz. and 30 p. c.	$2 per doz	168 81	126 16	42 65	25.23
over 24 inches in length.....doz	73.75	501 00	$1 per doz. and 30 p. c.	$2.50 per doz	254 05	189 38	64 67	24.46
Files, file-blanks, rasps, and floats:								
not exceeding 10 inches in length.....lbs	191,875.95	136,433 00	10c. per lb. and 30 p. c.	30c. per lb	60,117 50	38,375 19	21,742 31	36.16
exceeding 10 inches in length.....lbs	351,537	89,001 00	6c. per lb. and 30 p. c.	9c. per lb	47,792 52	31,638 33	16,154 19	33.80
needles for knitting or sewing machines.....m	1,389.71	13,523 00	$1 per m. and 35 p. c.	$2 per m	6,122 76	2,779 42	3,343 34	54.60
Iron squares:								
marked on one side.....lbs			3c. per lb. and 30 p. c.	3c. per lb				
all other of iron or steel.....lbs	210	23 00	6c. per lb. and 30 p. c.	3c. per lb	19 50	6 30	13 20	67.69
Manufactures of steel, all, not otherwise provided for.....lbs		853,543 39	45 per cent	30 p. c	384,094 52	256,063 02	128,031 50	33.33
steel railway bars.....lbs	13,336,096	402,779 00	1¼c. per lb	$15 per ton	166,701 20	89,304 00	77,397 20	46.41
railway bars made in part of steel.....lbs	37,871	938 00	1c. per lb	$15 per ton	378 71	253 50	125 21	33.04
Chains, trace-chains, halter, and fence:								
not less than ½ of an inch in diameter.....lbs	3,072,019	153,548 50	2½c. per lb	2c. per lb	76,800 47	61,440 38	15,360 09	20.00
less than ½ of an inch in diameter and not under No. 9 wire gauge.....lbs	654,709	47,410 24	3c. per lb	2½c. per lb	19,641 27	16,367 73	3,273 54	16.67
under No. 9 wire gauge.....lbs	31,759	4,822 00	35 per cent	30 p. c	1,667 70	1,446 60	241 10	14.29
anchors or parts thereof.....lbs	117,626	6,030 00	2½c. per lb	1½c. per lb	2,646 59	1,764 39	882 20	33.33
blacksmith's hammers and sledges, axles or parts thereof.....lbs	48,578	4,956 00	2½c. per lb	2c. per lb	1,214 47	971 56	242 91	20.00
malleable iron, in castings.....lbs	6,198	275 88	2½c. per lb	2c. per lb	154 95	123 96	30 99	20.00
wrought-iron railroad chairs, nuts, and washers.....lbs	83,448	3,991 00	2c. per lb	1c. per lb	1,668 96	834 48	834 48	50.00
bed screws, hinges, board nails, spikes, rivets, and bolts.....lbs	91,555	5,735 00	2½c. per lb	1½c. per lb	2,288 87	1,373 32	915 55	40.00
steam, gas, and water tubes, wrought.....lbs	274,685	15,239 00	3½c. per lb	2½c. per lb	9,613 96	6,867 13	2,746 83	28.57
Screws for wood:								
two inches or over in length.....lbs	25,711	4,064 85	8c. per lb	4c. per lb	2,056 88	1,028 44	1,028 44	50.00
less than 2 and more than 1 inch in length.....lbs	163,385	41,380 93	11c. per lb	6c. per lb	17,972 35	9,803 10	8,169 25	45.46
1 inch or less in length.....lbs			11c. per lb	8c. per lb				27.27
steam, gas, and water pipe, cast-iron.....lbs	222,963	7,216 25	1½c. per lb	¾c. per lb	3,344 48	1,672 24	1,672 24	50.00
hollow ware, glazed or tinned.....lbs	40,006	2,776 00	3½c. per lb	2½c. per lb	1,400 21	1,000 15	400 06	28.57
Scrap iron:								
cast.....cwt	14,324	8,299 38	86 per ton	$4 per ton	4,295 89	2,864 80	1,431 09	33.33
wrought.....cwt	438,911.16	392,123 04	88 per ton	$6 per ton	175,564 46	131,673 34	43,891 12	25.00
Steel in ingots, bars, coils, sheets, and steel wire, not less than ¼ of an inch in diameter:								
valued 7 cents or less per pound.....lbs	10,469,607	537,176 40	2½c. per lb	1½c. per lb	235,566 16	157,044 11	78,522 05	33.33
valued at above 7 and not above 11 cents per pound.....lbs	7,572,991	757,801 00	3c. per lb	2½c. per lb	227,189 73	189,324 77	37,864 96	16.67
valued at above 11 cents per pound.....lbs	1,064,774	139,002 64	3½c. per lb. and 10 p. c.	3½c. per lb	51,167 35	37,267 09	13,900 26	27.17
Steel wire, less than ¼ of an inch in diameter:								
not less than No. 16 wire gauge.....lbs	316,458	58,002 00	2½c. per lb. and 20 p. c.	4c. per lb	19,511 85	12,656 32	6,853 53	35.12
less or finer than No. 16.....lbs	129,681	49,905 00	3c. per lb. and 20 p. c.	7c. per lb	13,871 43	9,077 61	4,793 82	34.56
crinoline, corset, and hat wire.....lbs	496.25	172 00	9c. per lb. and 10 p. c.	6c. per lb	61 86	29 78	32 08	51.86

Statement exhibiting the quantities and values of articles enumerated in House bill No. 3132, &c.—Continued.

Articles.	Quantities and values entered into consumption during the fiscal year ended June 30, 1876.		Rates of duties under—		Duties received and estimated under—		Increase of duty.	Percentage of decrease.
	Quantities.	Values.	Present rate.	Proposed rate.	Present act.	Proposed act.		
Lead:								
sheets and pipes ..... lbs	4,656	$337 00	2½c. per lb	2c. per lb	$128 02	$93 12	$34 90	27 27
shot ..... lbs	20,037	1,204 00	2½c. per lb	1½c. per lb	750 20	350 12	200 08	36 38
pigs and bars ..... lbs	14,329,366	682,132 00	2c. per lb	1½c. per lb	286,587 32	214,940 49	71,646 83	25 00
old scrap, fit only for remanufacture ..... lbs	265,869	9,534 00	2c. per lb	1c. per lb	5,987 00	2,658 00	1,329 33	33 33
Copper:								
old, fit only for remanufacture ..... lbs	239,987	35,545 29	1c. per lb	2c. per lb	9,599 48	4,799 74	4,799 74	50 00
plates, bars, ingots, pigs, &c ..... lbs	5,284	787 77	3c. per lb	2c. per lb	264 05	105 62	158 43	60 00
rolled plates, called brazier's copper, sheets, rods, pipes, and copper bottoms	.....	325 70	45 per cent	30 per cent	146 56	97 71	48 85	33 33
manufactures of, not otherwise provided for ..	.....	29,806 37	45 per cent	30 per cent	13,412 86	8,941 91	4,470 95	33 33
Tin in bars, blocks, or pigs ..... lbs	10,435,690	1,816,506 00	Free of duty	3c. per lb	.....	313,069 70	*313,069 70	.....
Section 3:								
Cigars, cigarettes, and cheroots ..... lbs	629,326	2,289,712 89	$2 50 per lb. and 25 p. c.	$3 50 per lb	2,145,743 31	2,202,641 00	*56,897 69	*2 65
Paper cigars and cigarettes, including wrappers ..... lbs	.....	.....	$2 50 per lb. and 25 p. c.	$2 per lb	.....	.....	.....	.....
Tobacco in leaf, unmanufactured and not stemmed ..... lbs	7,067,006.75	3,848,984 77	35c. per lb	40c. per lb	2,473,473 36	2,826,826 70	*353,353 34	*14 28
Section 4:								
Wools and woolen manufactures:								
Wools—								
First class:								
value, 32 cents or less per lb ..... lbs	7,850,679	1,894,194 33	10c. per lb. and 11 p. c.	5c. per lb	903,429 27	471,040 74	522,388 53	52 58
value over 32 cents per lb ..... lbs	783,102.50	288,260 00	12c. per lb. and 10 p. c.	10c. per lb	122,798 30	78,310 25	44,488 05	36 23
Second class:								
value, 32 cents or less per pound ..... lbs	517,918	153,509 00	10c. per lb. and 11 p. c.	5c. per lb	68,677 79	25,895 90	42,781 89	62 29
value over 32 cents per pound ..... lbs	2,631,333	999,952 00	12c. per lb. and 10 p. c.	10c. per lb	415,755 16	263,133 30	152,621 86	36 71
Third class:								
value, 12 cents or less per pound ..... lbs	16,560,069	2,045,069 45	3c. per lb	3c. per lb	496,802 07	496,802 07	.....	.....
value over 12 cents per lb ..... lbs	11,904,936	2,501,329 00	6c. per lb	5c. per lb	714,296 16	357,148 08	357,148 08	50 00
First class—washed:								
value, 32 cents or less per lb ..... lbs	7,348	3,659 00	20c. per lb. and 22 p. c.	12c. per lb	2,254 58	869 76	1,384 82	61 33
value over 32 cents per lb ..... lbs	4	2 00	24c. per lb. and 20 p. c.	20c. per lb	1 36	0 80	0 56	41 88
First class—scoured:								
value, 32 cents or less per pound ..... lbs	2,332	1,598 00	30c. per lb. and 33 p. c.	18c. per lb	1,226 94	419 76	807 18	65 78
value over 32 cents per lb ..... lbs	.....	.....	36c. per lb. and 30 p. c.	30c. per lb	.....	.....	.....	.....
Second class—washed:								
value, 32 cents or less per lb ..... lbs	.....	.....	20c. and lb. and 22 p. c.	10c. per lb	.....	.....	.....	.....
value over 32 cents per lb ..... lbs	.....	.....	24c. per lb. and 20 p. c.	20c. per lb	.....	.....	.....	.....
Second class—scoured:								
value, 32 cents or less per lb ..... lbs	56	43 00	30c. per lb. and 33 p. c.	15c. per lb	30 99	8 40	22 59	72 90
value over 32 cents per lb ..... lbs	.....	.....	36c. per lb. and 30 p. c.	40c. per lb	.....	.....	.....	.....
Third class—washed:								
value, 12 cents or less per lb ..... lbs	.....	.....	6c. per lb	6c. per lb	.....	.....	.....	.....
value over 12 cents per lb ..... lbs	.....	.....	12c. per lb	9c. per lb	.....	.....	.....	.....
Third class—scoured:								
value, 12 cents or less per lb ..... lbs	.....	.....	9c. per lb	9c. per lb	.....	.....	.....	.....
value over 12 cents per lb ..... lbs	.....	.....	18c. per lb	9c. per lb	.....	.....	.....	.....
woolen rags, shoddy, mungo, waste, and flocks ..... lbs	282,629	53,494 00	12c. per lb	6c. per lb	33,915 48	16,957 74	16,957 74	50 00
woolen cloths, shawls, and all manufactures of wool not herein otherwise provided for ..... lbs	6,057,880.85	9,432,173 45	50c. per lb, and 35 p. c.	70c. per lb	6,315,201 13	4,219,516 59	2,095,684 54	33 18
flannels, blankets, hats of wool, knit goods, balmorals, worsted, and woolen yarns, and all manufactures of wholly or in part of worsted, &c.:								
valued at not above 40 cents per pound .. lbs	2,691.25	932 61	20c. per lb. and 35 p. c.	20c. per lb	864 66	538 25	326 41	37 67
valued at above 40 and not above 60 cents per pound ..... lbs	48,737	26,874 17	30c. per lb. and 35 p. c.	30c. per lb	24,027 05	14,621 10	9,405 95	39 15
valued at above 60 and not above 80 cents per pound ..... lbs	145,722.25	112,640 90	40c. per lb. and 35 p. c.	40c. per lb	97,713 21	58,288 90	39,424 31	40 35
valued at above 80 cents per pound ..... lbs	1,959,256.42	2,886,966 41	50c. per lb. and 35 p. c.	50c. per lb	1,990,066 24	979,628 00	1,010,438 24	50 77
endless belts or felts for paper or printing machines	97,284.25	106,249 00	30c. per lb. and 35 p. c.	30c. per lb	56,644 00	29,185 27	27,458 73	48 48
bunting ..... sq. yds	10,840	2,646 00	20c. per sq. yd. and 35 p. c.	15c. per sq. yd ..	3,094 10	1,626 00	1,468 10	47 45
women's and children's dress goods and real or imitation Italian cloths, composed, &c.:								
valued at not exceeding 20 cents per square yard ..... sq. yds	21,553,789	3,794,128 37	6c. per sq. yd. and 35 p. c.	9c. per sq. yd ...	2,621,172 26	1,939,841 01	681,331 25	25 9
valued at above 20 cents the sq. yds . sq. yds	34,065,632	11,023,310 19	8c. per sq. yd. and 40 p. c.	15c. per sq. yd ...	7,182,574 63	5,199,844 80	1,982,729 83	27. 6
goods weighing 4 ounces and over the square yard ..... lbs	1,129,155	1,737,661 0	50c. per lb. and 35 p. c.	40c. per lb	1,172,758 85	903,324 00	269,434 85	22. 97
clothing, ready-made, and wearing apparel, &c., except knit goods ..... lbs	671,133	2,117,363 14	50c. per lb. and 40 p. c.	$2 per lb	1,182,511 75	1,342,266 00	*159,754 25	*13. 51
webbings, weltings, bindings, braids, galloons, fringes, gimps, &c., made of wool, worsted, or mohair	453,179	1,388,376 95	50c. per lb. and 50 p.c.	50 p. c.	920,777 97	694,188 4	226,589 50	24. 61

*Increase of duty.

Statement exhibiting the quantities and values of articles enumerated in House bill No. 3132, &c.—Continued.

Articles.	Quantities and values entered into consumption during the fiscal year ended June 30, 1876.		Rates of duties under—		Duties received and estimated under—		Decrease of duty.	Per centage of decrease.
	Quantities.	Values.	Present rate.	Proposed rate.	Present act.	Proposed act.		
Woods and woolen manufactures—Continued.								
carpets:								
Saxony, Wilton, and Tournay velvet carpets ..... sq. yds.	41,780.75	$86,297 00	70c. per sq. yd and 35 p. c.	60c. per sq. yd ...	$59,450 47	$37,602 67	$21,847 80	36.75
Brussels, wrought by the Jacquard machine ..... sq. yds.	256,504.75	364,956 00	44c. per sq. yd. and 35 p. c.	35c. per sq. yd...	240,596 03	167,728 03	72,868 00	30.28
patent velvet and tapestry velvet carpets ..... sq. yds.	149,502	234,471 00	40c. per sq. yd and 35 p. c.	35c. per sq. yd...	141,866 25	97,176 30	44,689 95	31.50
tapestry, Brussels, printed on the warp sq. yds.	516,958	492,590 30	28c. per sq. yd and 35 p. c.	40c. per sq. yd...	325,654 84	218,783 20	106,871 64	32.82
treble ingrain, three-ply and worsted, chain, &c ..... sq. yds.	1,231.2	1,425 00	47c. per sq. yd and 35 p. c.	35c. per sq. yd ..	7 8 03	430 93	277 10	39.14
yarn, Venetian, and two-ply ingrain.. sq. yds.	1,358	1,216 0	42c. per sq. yd and 35 p. c.	30c. per sq. yd ..	588 56	407 40	181 16	30.78
druggets and bockings, printed or colored ..... sq. yds.	15,915.00	8,390 0	25c. per sq. yd and 35 p. c.	27c. per sq. yd..	6,915 25	3,183 00	3,732 25	53.97
Section 5.								
Candied citron, orange, and lemon peels.....	.....	.....	.....	8c. per lb.....	.....	.....	.....	.....
Oranges:								
in cases, 41 by 18 by 15 inches ..... cases	.....	.....	.....	55c. per case ...	.....	.....	.....	.....
in boxes, 30 by 16 by 13 inches ..... boxes	.....	.....	.....	18c. per box	.....	.....	.....	.....
Lemons:								
in boxes, 30 by 16 by 13 inches ..... boxes	.....	.....	.....	35c. per box	.....	.....	.....	.....
oranges and lemons, not herein otherwise provided for	.....	3,412,027 45	40 p. c	20 p. c.....	682,405 50	682,405 50	.....	.....
Gloves:								
of kid ..... doz.	.....	.....	.....	34 per doz	.....	.....	.....	.....
of buckskin or leather ..... doz.	.....	3,755,842 65	50 p. c	52 per doz	1,877,921 33	1,251,947 53	625,973 80	33.33
Gunpowder and all explosive substances, &c:								
valued at 24 cts. or less per pound ..... lbs.	.....	.....	6c. per lb. and 20 p. c.	6c. per lb.....	.....	.....	.....	.....
valued at over 20 cts per pound ..... lbs.	122.00	69 00	10c. per lb. and 20 p. c.		26 00	7 32	18 68	71.85
fulminating powder	.....	2,200 00	30 p. c	.....	660 00	*440 00	220 00	33.33
hair-pins, made of iron	.....	67,907 00	50 p. c	30 p. c.....	33,953 50	20,372 10	13,581 00	40.10
Marble:								
white, brocatella, Sienna and verd antique, in blocks, rough or square ..... c. ft.	474.58	1,151 00	81 p. c. ft. and 25 p. c.	40c. p. c. foot....	762 33	284 74	477 59	62.65
veined, all other, in blocks, rough or square ..... c. ft.	479,943.94	529,126 00	60c. p. ft. & 20 p. c.	33c. p. c. foot	345,797 18	143,983 18	201,814 00	58.36
sawed, dressed, polished, &c., and paving tiles ..... s. s. ft.	1,398.2	595 50	25c. p. ft. & 35 p. c	10c. p. s. s. ft....	523 52	179 83	388 3	73.34
manufactures of, not otherwise specified	.....	60,596 25	50 p. c.....	30 p. c.....	30,298 14	18,178 86	12,119 25	40.00
Stone:								
freestone, granite, sandstone, and all building or monumental stone, except marble.. tons.	8,199.24	34,124 50	$1.50 per ton ...	$1 per ton.....	$12,298 86	8,199 24	4,099 64	33.33
Do ..... tons.	.....	7,174 15	10 p. c		717 42	*502,343 55	19,063 78	24.32
Do ..... tons.	.....	388,449 57	20 p. c		77,689 91			
grindstones, rough or unfinished ..... tons.	6,079.34	69,925 63	$1.50 per ton.....	$1 per ton.....	9,119 05	6,079 34	3,039 72	33.33
Pencils of wood filled with lead or other material ..... gross.	40,703.82	78,329 60	50c. per gross and 30 p. c.	70c. per gross ...	43,880 85	28,534 67	15,346 17	34.97
Pens, metallic, other than gold ..... gross.	269,707	97,110 85	10c. per gross and 25 p. c.	12c. per gross ...	51,248 40	32,364 84	18,883 56	36.85
Pens, gold	.....	*	40 p. c	35 p. c.....	.....	.....	.....	.....
Soap:								
fancy, perfumed, honey, &c., and all toilet and shaving soaps ..... lbs.	198,270.18	77,253 51	10c. per lb. and 25 p. c.	12c. per lb	39,141 67	23,792 42	15,349 25	39.21
soaps, not otherwise provided for ..... lbs.	3,095,166	178,970 01	1c. per lb. and 30 p. c.	2c. per lb	84,643 60	61,903 32	22,739 34	26.86
Varnish:								
valued at $1.50 or less per gallon ..... gall.	1,061	1,408 0	50c. per gallon and 20 p. c.	50c. per gallon ..	812 10	530 50	281 60	34.68
valued at over $1.50 per gallon ..... gall.	22,267.32	71,413 44	50c. per gallon and 25 p. c.	$1 per gallon....	28,987 02	22,267 32	6,719 70	23.18
Putty ..... lbs.	160	51 60	1½c. per lb	1c. per lb	2 40	1 60	80	33.33
Lead:								
nitrate ..... lbs.	233,744	15,976 00	3c. per lb	2c. per lb	6,981 42	4,654 28	2,327 14	33.33
white, dry, or in oil ..... lbs.	2,546,766	175,776 20	3c. per lb	2c. per lb	76,402 98	50,935 32	25,467 66	33.33
red ..... lbs.	749,948	54,884 60	3c. per lb	2c. per lb	22,497 54	14,998 36	7,499 1	33.33
Litharge ..... lbs.	47,054	2,562 00	3c. per lb	2c. per lb	1,411 62	941 08	470 54	33.33
Oil, linseed or flaxseed, (7½ pounds to the gallon) ..... galls.	3,409.47	2,180 91	30c. per gallon .	25c. per gallon ..	1,022 84	852 37	170 47	16.67
Castor seeds or beans, (50 pounds to the bushel) ..... bush.	.....	.....	60c. per bushel ..	40c. per bushel ..	.....	.....	.....	.....
Castor oil ..... galls.	627.50	873 00	31 per gallon	70c. per gallon ...	627 50	439 25	188 27	30.01
Opium, prepared for smoking ..... lbs.	53,189.42	577,288 51	$6 per lb	$9 per lb	319,136 50	478,704 78	*159,568 28	*33.34
Champagne and all other sparkling wines in bottles—								
containing each not more than one quart and more than one pint ..... doz.	192,062.40	1,203,910 86	$6 per doz.....	$9 per doz	612,374 40	918,561 60	*306,187 17	*50.00
containing each not more than one pint and more than one-half pint ..... doz.	110,687.36	690,444 79	$3 per doz	$4 50 per doz ...	332,062 10	498,093 12	*166,031 02	*50.00
containing ½ pint each or less ..... doz.	6,254.25	19,400 09	$1.50 per doz ...	$2 25 per doz ...	9,394 88	14,092 31	14,697 4	150.00
Collodion	22.50	40 00	$1 per lb	50c. per lb	22 50	11 25	11 25	50.00
Ether of all kinds	3 c.5	656 00	$4 per lb	5c. per lb	359 50	179 75	179 75	50.00
Licorice paste or ro ls	1,261,711	152,044 40	10c. per lb	5c. per lb	126,171 10	63,085 55	63,085 55	50.00
Emery:								
grains ..... lbs.	385,246	18,999 00	2c. per lb	1c. per lb	7,704 92	3,852 46	3,852 46	50.00
ore ..... cwt.	27,912	40,027 09	$6 per ton.....	$3 per ton.....	8,373 63	4,186 80	4,186 83	50.00
manufactured, ground or pulverized..... lbs.	77,342	2,534 00	1c. per lb	½c. per lb.....	773 82	386 91	386 91	50.00
Aniline dyes or colors ..... lbs.	165,753	415,434 25	50c. per lb. and 35 p. c.	25 p. c	228,278 50	103,853 56	124,419 94	54.50
French green, Paris green, mineral and Prussian blue ..... lbs.	33,465	10,296 66	30 p. c	15 p. c	3,092 00	1,531 00	1,531 00	50.00
Indian red, (includes Spanish brown).. lbs.	1,524,919	19,555 00	25 p. c	12½ p. c.....	4,888 75	2,444 37	2,444 38	50.00

* Estimated ½ reduction.

† Increase.

Statement exhibiting the quantities and values of articles enumerated in House bill No. 3132, &c.—Continued.

Articles.	Quantities and values entered into consumption during the fiscal year ended June 30, 1876.		Rates of duties under—		Duties received and estimated under.		Decrease of duty.	Percentage of decrease.
	Quantities.	Values.	Present rate.	Proposed rate.	Present act.	Proposed act.		
Logwood and other dye-wood, extracts, &c.. lbs.	.....	$78,845 00	0 p. c	5 p. c	$7,884 50	$3,942 25	$3,942 25	50 00
Ochers, &c., dry lbs.	3,962,646	47,405 00	50c. per 100 lbs	25c. per 100 lbs	19,814 55	9,906 64	9,906 02	50 00
Ochers, &c., ground in oil lbs.	63,916	3,365 00	$1 50 per 100 lbs	75c. per 100 lbs	958 74	479 37	479 38	50 00
Spanish brown, (see Indian red) lbs.	.....	.....	25 p. c	12½ p. c	.....	.....	.....	50 00
Umber lbs.	681,199	7,527 00	50c. per 100 lbs	25c. per 100 lbs	3,405 99	1,702 99	1,703 00	50 00
Vandyke brown lbs.	44,362	1,569 00	20 p. c	10 p. c	313 80	156 90	156 90	50 00
Wood-lake, Venetian red, vermilion, chrome yellow, rose pink, and paints and painters' colors, (except white and red lead and oxide of zinc,) dry or ground in oil, &c	.....	257,241 64	25 p. c	12½ p. c	64,310 40	37,983 08	42,645 71	52 89
Wood-lake, Venetian red, vermilion, chrome yellow, rose pink, and paints and painters' colors, (except white and red lead and oxide of zinc,) dry or ground in oil, &c	.....	56,623 96	45 p. c		16,318 39			
Potash:								
chromate and bichromate of lbs.	1,665,011	175,795 00	4c. per lb	2c. per lb	66,600 44	33,300 22	33,300 22	50 00
chlorate of lbs.	474,598	104,549 00	5c. per lb	1½c. per lb	14,237 94	7,118 97	7,118 97	50 00
hydriodate, iodate, iodide, &c lbs.	61	1,525 00	75c. per lb	37½c. per lb	45 75	22 87	22 88	50 00
acetate lbs.	.....	.....	25c. per lb	12½c. per lb	.....	.....	.....	50 00
prussiate, yellow lbs.	55,439	13,647 00	5c. per lb	5c. per lb	2,771 95	2,771 95	.....	.....
prussiate, red lbs.	9,534	5,042 00	10c. per lb	5c. per lb	953 45	476 70	476 70	50 00
Quinine, sulfate of oz.	1,413	2,016 00	45 p. c	15 p. c	920 70	306 90	613 80	66 66
Soda:								
bicarbonate or saleratus lbs.	4,482,911	125,587 00	1¼c. per lb	¾c. per lb	67,243 65	33,621 84	33,621 81	50 00
sal soda lbs.	20,074,269	244,630 53	¾c. per lb	¼c. per lb	50,185 67	25,092 83	25,092 84	50 00
soda ash lbs.	165,502,897	2,967,372 10	¾c. per lb	¼c. per lb	413,757 24	206,878 64	206,878 60	50 00
caustic lbs.	32,093,691	1,107,200 38	1½c. per lb	¾c. per lb	481,405 37	240,702 68	240,702 69	50 00
hyposulphate of, and all carbonates of lbs.	.....	.....	20 p. c	10 p. c	.....	.....	.....	50 00
Vitriol:								
white or sulphate zinc lbs.	38,402	1,456 00	20 p. c	10 p. c	291 20	145 60	145 60	50 00
blue lbs.	4,729	247 00	4c. per lb	2c. per lb	165 16	82 58	82 58	50 00

SECTION 6.—That on and after the —— day of ——, A. D. 1877, the importation of the articles enumerated and described in this section shall be exempt from duty; that is to say:

Acetates of—								
ammonia lbs.	28	$76 00	25c. per lb	Free of duty	$7 00	.....	$7 00	.....
beryta lbs.	.....	.....	25c. per lb	do	.....	.....	.....	.....
copper lbs.	238	84 00	10c. per lb	do	22 80	.....	22 80	.....
iron lbs.	.....	.....	25c. per lb	do	.....	.....	.....	.....
lead—								
brown lbs.	.....	.....	5c. per lb	do	.....	.....	.....	.....
white lbs.	.....	.....	10c. per lb	do	.....	.....	.....	.....
lime lbs.	1,998,919	60,497 00	25 p. c	do	15,124 25	.....	15,124 25	.....
magnesia lbs.	2	1 00	50c. per lb	do	1 00	.....	1 00	.....
potassa lbs.	.....	.....	25c. per lb	do	.....	.....	.....	.....
soda lbs.	7	1 00	25c. per lb	do	1 75	.....	1 75	.....
strontia lbs.	.....	.....	25c. per lb	do	.....	.....	.....	.....
zinc lbs.	.....	.....	25c. per lb	do	.....	.....	.....	.....
Acids—								
acetic, acetous, and pyroligneous of the specific gravity of 1047 or less lbs	2,975	610 00	5c. per lb	do	148 75	.....	148 75	.....
acetic, acetous, and pyroligneous, over 1047 lbs.	170	70 00	30c. per lb	do	51 00	.....	51 00	.....
benzoic lbs.	4,684	10,188 00	10 p. c	do	1,018 80	.....	1,018 80	.....
carbolic, liquid lbs.	52,987	23,385 00	10 p. c	do	2,338 50	.....	2,338 50	.....
chromic lbs.	120	45 00	15 p. c	do	6 75	.....	6 75	.....
citric lbs.	37,341	26,486 00	10c. per lb	do	3,733 10	.....	3,733 10	.....
gallic lbs.	.....	.....	$1 per lb	do	.....	.....	.....	.....
nitric lbs	.....	.....	10 p. c	do	.....	.....	.....	.....
sulphuric, fuming, (nordhausen) lbs.	202	24 00	1c. per lb	do	2 02	.....	2 02	.....
tannic lbs.	8 13	20 00	$1 per lb	do	8 13	.....	8 13	.....
tartaric lbs.	2	1 00	15c. per lb	do	30	.....	30	.....
acid other, used for medicinal or fine arts lbs.	.....	1,745 00	10 p. c	do	174 50	.....	174 50	.....
Do	.....	10,520 00	20 p. c	do	2,104 00	.....	2,104 00	.....
Alum, patent alum, alum substitute, sulphate of alumina, and aluminous cake lbs.	7,236,735	103,152 00	60c. per 100 lbs.	do	43,600 40	.....	43,600 40	.....
Ammonia—								
sulphate of lbs.	2,245	266 00	20 p. c	do	53 20	.....	53 20	.....
carbonate of lbs.	523,798	63,463 00	20 p. c	do	12,692 60	.....	12,692 60	.....
muriate of, (sal ammoniac) lbs.	766,137	68,679 00	10 p. c	do	6,867 90	.....	6,867 90	.....
Antimony, crude, and regulus of lbs.	946,809	119,441 00	10 p. c	do	11,944 10	.....	11,944 10	.....
Asphaltum lbs.	1,613,090	23,818 00	25 p. c	do	5,954 50	.....	5,954 50	.....
Assafœtida lbs.	89,760	6,598 00	20 p. c	do	1,319 60	.....	1,319 60	.....
Balsams	.....	19 00	30 p. c	do	5 70	.....	5 70	.....
Barytes:								
sulphate of lbs.	2,655,349	25,325 00	½ c. per lb	do	13,276 75	.....	13,276 75	.....
nitrate of	.....	6,461 00	20 p. c	do	1,230 20	.....	1,230 20	.....
Beeswax lbs.	22,511	6,120 00	20 p. c	do	1,224 00	.....	1,224 00	.....
Benzoates	.....	.....	30 p. c	do	.....	.....	.....	.....
Black of bone, or ivory drop-black	.....	.....	25 p. c	do	.....	.....	.....	.....
Bladders, manufactures of	.....	286 20	30 p. c	do	85 86	.....	85 86	.....
Books in other than the English, Greek, and Latin languages	(not returned	separate.)	25 p. c	do	.....	.....	.....	.....
Borax, refined	3,145	691 35	10 c. per lb	do	314 50	.....	314 50	.....
Brimstone, in rolls or refined cwt.	877.34	1,927 00	$10 per ton	do	4.38 70	.....	438 70	.....
Brick:								
brick, (building) m	411.55	3,147 35	20 p. c	do	629 47	.....	629 47	.....
fire	.....	69,062 57	20 p. c	do	13,892 51	.....	13,892 51	.....
roofing-tile	.....	29,903 00	20 p. c	do	5,980 60	.....	5,980 60	.....
Bulbous roots, not otherwise provided for	.....	64,678 23	30 p. c	do	19,403 47	.....	19,403 47	.....
Calomel	.....	5,820 00	30 p. c	do	1,746 00	.....	1,746 00	.....
Camphor, refined lbs.	5,433	27,924 00	5 c. per lb	do	6,828 80	.....	6,828 80	.....
Chloroform lbs.	136,576	37 00	$1 per lb	do	21 25	.....	21 25	.....
Cobalt, oxide of lbs.	21.25	11,180 00	20 p. c	do	2,236 00	.....	2,236 00	.....
Coke lbs.	4,440	8,656 69	25 p. c	do	2,164 17	.....	2,164 17	.....
Copperas, green vitriol or sulphate of iron tons.	1,843.50	385 00	½ c. per lb	do	344 02	.....	344 02	.....
Copper ore, including mate or regulus of lbs.	69,802	68,924 00	½ c. per lb	do	16,169 16	.....	16,169 16	.....
	538,972							

Statement exhibiting the quantities and values of articles enumerated in House bill No. 3132, &c.—Continued.

Articles.	Quantities and values entered into consumption during the fiscal year ended June 30, 1876.		Rates of duties under—		Duties received and estimated under—		Decrease of duty.	Percentage of decrease.
	Quantities.	Values.	Present rate.	Proposed rate.	Present act.	Proposed act.		
Crayons of all kinds		7,175 00	30 p. c	Free of duty	2,152 50		2,152 50	
Dried pulp		1,925 00	20 p. c	do	385 00		385 00	
Finishing powder			20 p. c	do				
Fish-skins			20 p. c	do				
Glass, window painted or stained, imported by and for the use of philosophical, educational, literary, scientific, or religious associations, and not for sale			10 p. c	do				
Grease, all not specified		75,000 00	10 and 20 p. c	do	7,564 50		7,564 50	
Gum substitute, or burnt starch	168,324	9,714 00	10 p. c	do	971 40		971 40	
Hair, curled, used for beds or mattresses		14,742 75	10 p. c	do	4,422 83		4,422 83	
Hair of hogs			1c. per lb	do				
Lemon juice	402,171	75,482 85	10 p. c	do	7,548 29		7,548 29	
Magnesia:								
carbonate of lbs	244,841	27,910 60	5c. per lb	do	14,639 53		14,639 53	
calcined lbs	8,936	2,914 75	12c. per lb	do	1,072 32		1,072 32	
Mineral and bituminous substances in a crude state, not otherwise provided for, except chromate of iron		18,255 00	20 p. c	do	3,641 00		3,641 00	
Mineral kermes			10 p. c	do				
Cod-liver oil:								
crude gal	14,068	12,527 00	20 p. c	do	2,505 60		2,505 60	
medicinal		14,818 50	10 p. c	do	5,927 40		5,927 40	
Blanc-fixe, enameled white, satin white, lime white, and all combinations of barytes with acids or water	15,744	2,091 00	3c. per lb	do	472 32		472 32	
Carmine lake, dry or liquid			5 p. c	do				
Indigo extracts	612,475	71,889 20	10 p. c	do	7,188 92		7,188 92	
Indigo, carmined			20 p. c	do				
Iron liquor			10 p. c	do				
Lamp-black			0 p. c	do				
Paper size		45 00	20 p. c	do	9 00		9 00	
Paving-stone		1,005 20	10 p. c	do	100 52		100 52	
Pitch		$503 00	20 p. c	do	$100 60		$100 60	
Plants: Fruit, shade, lawn and ornamental trees, shrubs, plants, and flower-seeds, not otherwise provided for		89,989 45	20 p. c	do	17,997 89		17,997 89	
Garden-seeds, and all the seeds for agricultural and horticultural purposes, not otherwise provided for		344,459 58	20 p. c	do	68,891 90		68,891 90	
Polishing powders		1,693 56	25 p. c	do	423 39		423 39	
Frankfort black, and Berlin, Chinese, fig and wash blue			25 p. c	do				
Red precipitate			20 p. c	do				
Resins, gums, not otherwise provided for		175 00	20 p. c	do	35 00		35 00	
Resin lbs	11,927	694 00	20 p. c	do	138 80		138 80	
Rochelle salts lbs			15c. per lb	do				
Roman cement lbs		247,200 00	20 p. c	do	49,440 00		49,440 00	
Salts, Epsom lbs	21,962	390 00	1c. per lb	do	219 62		219 62	
Salts, Glauber lbs	11,518	421 00	½c. per lb	do	58 59		58 59	
Santonine lbs	427	2,816 00	$3 per lb	do	1,284 00		1,284 00	
Sponges		87,620 74	20 p. c	do	17,524 15		17,524 15	
Starch—								
of potatoes or corn lbs	280,295	9,981 00	1c. p. lb. and 20 p. c	do	4,779 05		4,779 05	
of any other material lbs	8,258	600 20	3c. p. lb. and 20 p. c	do	368 88		368 88	
Strychnine, salts of oz	.25	2 00	$1.50 per oz	do	38		38	
Sulphur, flowers of lbs	92,000	2,114 00	$20 p. t on and 15 p. c.	do	1,138 50		1,138 50	
Tallow lbs	9,482	690 50	1c. per lb	do	94 00		94 00	
Taunin lbs	17	19 00	$2 per lb	do	34 00		34 00	
Tar bbls	435	1,817 00	20 p. c	do	363 40		363 40	
Tartar emetic lbs	132	44 00	15c per lb	do	19 80		19 80	
Provided, That alcohol to be exclusively used for the manufacture of ethers, chloroforms, and the vegetable alkaloids, made free of duty by this act, may be withdrawn from bond free of the specific internal-revenue tax per gallon in quantities not exceeding one thousand gallons at any one time, under such rules, regulations, and bonds as the Secretary of the Treasury shall prescribe.								

RECAPITULATION.

							Decrease.	
Total of section 1, cottons		$19,859,107 42			$7,999,555 45	$6,149,919 72	$1,849,635 73	
Total of section 2, metals		8,810,322 75			3,272,777 46	2,164,558 62	1,108,218 84	
Total of section 3, tobacco								
Total of section 4, wools		39,642,414 13			24,009,862 20	16,276,500 72	7,733,361 57	
Total of section 5, sundries		14,940,812 82			5,021,054 76	3,217,826 18	1,803,228 58	
Total of section 6, free of duty		1,976,474 77			414,671 49		414,671 49	
		85,229,131 89			40,717,921 45	27,808,805 24	12,909,116 21	31.69
							Increase.	
Total of section 2, metals		1,872,277 00			2,661 75	316,872 20	314,210 45	
Total of section 3, tobacco		6,138,697 66			4,619,216 67	5,029,467 70	410,250 03	
Total of section 4, wools		2,117,363 14			1,182,511 75	1,342,266 00	159,754 25	
Total of section 5, sundries		2,501,044 16			1,272,967 91	1,909,451 81	636,483 90	
		12,629,361 96			7,077,358 18	8,598,057 71	1,520,699 63	21.49
Net decrease		97,849,493 85			47,795,279 53	19,210,747 53	11,388,416 58	23.19

BUREAU OF STATISTICS, *December 5, 1876.*

EDWARD YOUNG, *Chief of Bureau.*

Mr BLOUNT. Mr. Chairman, when this measure was under consideration the other day, I stated some reasons which had induced certain members of the committee to favor this reduction. In the first place, let us remember that even our Cabinet ministers residing in this city are receiving only $8,000, though they have perhaps quite as much occasion, so far as the public service is concerned, to entertain as have our foreign ministers.

Again, sir, from 1803 to 1855, a period of more than half a century, our ministers at all these courts were not paid a salary more than $9,000 each. It is true that they were allowed an outfit of the same amount the first year and an infit of half that amount, it being contemplated in that legislation that the term of service would naturally cover at least four years, the period of any one administration. But, with a view of avoiding the abuses which grew up under that system, the salaries were increased, that of the British mission being fixed in 1855 and of the French mission in 1856 at $17,500, at which figures they remained until 1872.

Sir, I imagine that in the early period of our history, when our resources were less than they are now and our capacity for resenting injuries from foreign powers not so great as at present, there was stronger necessity for our resorting to negotiation and diplomacy than at this time.

Furthermore, our facility of communication with foreign governments at that time was not such as it is now. With the present rapid means of communication between this country and the Old World it is far easier for us to understand properly at all times our relations with other countries.

Again, sir, it is well understood that there has been a change in the policy of our Government with respect to diplomatic relations. For more than a quarter of a century a very large part of our diplomatic negotiations, wherever questions of great importance have been involved, has been transacted in this country. We all remember that when the Virginius affair was pending, instead of the trouble being adjusted through our minister to Spain, that government sent Admiral Polo to this country, and the whole affair was adjusted in this city. I imagine that in any matter of very great weight, for which the administration would be held to grave responsibility for its action, no administration would at this day permit negotiations to be conducted through its minister abroad, but would manage the affair here under its own eye.

The whole argument in favor of these extravagant salaries seems to be embraced in the fact that these ministers are to entertain. Diplomatic questions are settled at Washington; but we are told that when our friends travel abroad they expect to be entertained, and that it is absolutely necessary for our ministers to receive salaries which will enable them to entertain in a manner befitting the dignity of this nation. If entertaining, as it would appear, has become the whole duty of these ministers, then, instead of a mere reduction of their salaries, I think we might properly consider whether the offices should not be abolished altogether.

[Here the hammer fell.]

Mr. HALE. I am sorry that the chairman of the Committee on Appropriations [Mr. HOLMAN] has led the gentleman from Georgia [Mr. BLOUNT] off on the course that he has taken against the committee; and I want to call the attention of our chairman particularly to the danger of insubordination. Upon this bill the committee has stuck by everything that was done last year in saving more than $200,000, and has made a still further decrease to the extent of about $30,000. This being the action of a committee which certainly during the long session of last year gained some reputation for economy, I do think that the gentleman from Indiana and the gentleman from Georgia, both members of the committee, can well afford to let these matters stand and not seek to embark in a new conflict with the Senate, a conflict in which the gentleman from Mississippi [Mr. SINGLETON] has well said we are sure to get worsted.

If anybody believes that the salaries for this service are really extravagant, it is worth while for him to look at some of the salaries paid by other nations for similar service. For instance, the gentleman from Indiana objects to the salary of our minister to France as extravagant, outrageous in amount. Yet the British government (with which of course we do not undertake to compete) pays to its minister at Paris £10,000 in gold, or $50,000, besides house rent. In Prussia, or Germany as it is now, the English minister gets £7,000 in gold, equal to $35,000. To its minister in Turkey the English government pays £8,000, or $40,000. Even the British minister to the United States (and this is not reckoned as a position of the highest class) gets £5,000, or $25,000, and $1,000 for house rent.

The gentleman from Georgia has called attention to the fact that our cabinet ministers here get but $8,000, and he argues that therefore the salaries of our foreign missions should be cut down. Why, sir, the rule holds good throughout the world that ministers abroad receive more pay than cabinet ministers at home. Under the British government, while the salaries of foreign ministers are such as I have named, the head of the state department gets but £5,000 in gold. The salaries of all the foreign ministers go beyond the salaries of the home secretaries because everything abroad is more expensive than at home; many things have to be transported, and some measure of style has to be kept up in accordance with the society of the place; so that a foreign minister never knows the end of the drain upon him.

There really seems to me no call for departing from the adjustment of last year and seeking to make upon these salaries a reduction which will amount in the aggregate to perhaps only $30,000 or $40,000. The game is not worth the powder; and I hope my friend from Indiana, chairman of the committee, will, before the vote is taken, withdraw his amendment so as to save himself a defeat upon it.

Mr. HOLMAN. I withdraw my *pro forma* amendment in order that the gentleman from Georgia may renew it.

Mr. BLOUNT. I renew the amendment. Mr. Chairman, my colleague on the committee from Maine complains that I have been led off by the chairman of the Committee on Appropriations in favor of this reduction. Well, sir, it is a good thing for somebody to be led off. There has not been much leading off on this line until last winter. I think it is a good line to move on, and so far as I am concerned I propose to follow whoever leads in that direction.

The gentleman has seen fit to compare the salaries of the ministers of this country with those of England and other countries. We do not aspire to imitate those extravagant governments in their army, navy, diplomatic, or other service. In the next place, so far as the diplomatic service is concerned, we are in a very different attitude from any country of the Old World. To-day Russia, Germany, England, and France are agitated about the eastern question. The business interests of all those countries are alarmed, while we here are a people and Government disentangled from any question of that sort—not affected by it, completely freed from such investigation, freed from the need of diplomacy, acting on the principle of the Government from its first inception, that we would be neutral in all these troubles, and justified by our geographical situation in that position. Therefore any attempt to magnify our diplomatic service, located as we are by comparison with the service of those governments, thrown geographically together, intensely interested in any changes in the affairs of those governments, is absolutely unreasonable. Therefore I trust this House will see fit so to treat it.

We have been endeavoring to economize, and there has been some reduction, but it has not been in this service what it should have been. In 1870 our whole diplomatic service cost $933,047, and with our vast reductions to which the gentleman on the other side referred in the appropriation bill passed at the last session of Congress, we exceeded that amount and appropriated $1,137,000.

Mr. SINGLETON. Now that gentlemen have spread their opinions upon the RECORD for the information of their constituents, I think there is no necessity for further discussion, the subject having been so fully discussed at the last session, and therefore I move the committee rise for the purpose of closing debate.

The motion was agreed to; and the Speaker having resumed the chair, Mr. CAULFIELD reported that the Committee of the Whole on the state of the Union had, according to order, had under consideration the special order, which was the bill (H. R. No. 4251) making appropriation for the consular and diplomatic service of the Government for the year ending June 30, 1878, and for other purposes, and had come to no resolution thereon.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of its clerks, announced that the Senate had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the bill (S. No. 842) authoring the commissioners of the District of Columbia to remove the jail on the Judiciary Square to ground near to the Washington arsenal, for the use of the District of Columbia.

The message further announced that the Senate had passed bills of the following titles; in which he was directed to ask the concurrence of the House:

A bill (S. No. 1113) to authorize the taking of certain parcels of land for the public use at the intersection of Pennsylvania and Maryland avenues and the Capitol grounds; and

The bill (S. No. 974) for the relief of Francis Guilbeau, of San Antonio, Texas.

ENROLLED BILLS.

Mr. HARRIS, of Georgia, from the Committee on Enrolled Bills, reported that they had examined and found truly enrolled bills and a joint resolution of the following titles; when the Speaker signed the same:

An act (S. No. 453) to authorize the Vancouver Water Company to lay water-pipes through the Fort Vancouver military reservation;

An act (S. No. 739) to amend section 5475 of the Revised Statutes of the United States relating to counterfeiting coin; and

Joint resolution (S. R. No. 29) extending the time for the making of a report by the Army commission created by the act of July 21, 1876.

LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted to Mr. HEREFORD, for eight days.

DISTRICT POLICE BOARD.

The SPEAKER announced the appointment of Mr. DAVY as a member of the committee to investigate certain matters relating to the police board of the District of Columbia, in place of Mr. BANKS, excused.

And then, on motion of Mr. BANNING, (at four o'clock and thirty-two minutes p. m.,) the House adjourned.

PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. HALE: The petition of S. B. Kelley, guardian of the heirs of Thomas McGuire, deceased, that they be granted a pension, to the Committee on Invalid Pensions.

By Mr. ROBBINS, of North Carolina: Joint resolution of the General Assembly of North Carolina, favoring the fixing of a uniform rate of interest throughout the Union, to the Committee of Ways and Means.

By Mr. TERRY: The petition of John Kelley, of Harrisonburgh, Virginia, for compensation for property taken and used by the United States Army, his claim having been rejected by the southern claims commission, to the Committee on War Claims.

By Mr. A. S. WILLIAMS: The petition of Philetus Birch, a soldier in the Mexican war, for a pension, to the Committee on Invalid Pensions.

By Mr. WILLIAMS, of New York: The petition of W. W. Wood, E. M. Seymour, and other citizens of New York, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

Also, the petition of G. T. Treadway, G. E. Thomas, and other citizens of New York, of similar import, to the same committee.

IN SENATE.

THURSDAY, *January* 11, 1877.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

WILLIAM SHARON, a Senator from the State of Nevada, appeared in his seat to-day.

The Journal of yesterday's proceedings was read and approved.

RATES OF PENSION.

The PRESIDENT *pro tempore* laid before the Senate the amendment of the House of Representatives to the bill (S. No. 234) to allow a pension of $37 per month to soldiers who have lost both an arm and a leg; which, on motion of Mr. INGALLS, was referred to the Committee on Pensions, and ordered to be printed.

HOUSE BILLS REFERRED.

The following bills and joint resolution from the House of Representatives were severally read twice by their titles and referred to the Committee on Military Affairs:

A bill (H. R. No. 4276) to authorize the appointment of a sergeant in the Signal Corps as a second lieutenant in the Army;

A bill (H. R. No. 4388) for the relief of the former occupants of the present military reservation at Point San José, in the city of San Francisco; and

A joint resolution (H. R. No. 173) granting permission to the officers and enlisted men of the Army and Navy to wear the medal badge adopted by the National Association of Veterans of the Mexican War on occasions of ceremony.

CREDENTIALS.

The PRESIDENT *pro tempore* presented the credentials of Edward H. Rollins, chosen by the Legislature of New Hampshire a Senator from that State for the term commencing March 4, 1877; which were read, as follows:

THE STATE OF NEW HAMPSHIRE.

To all whom it may concern:

Be it known that Edward H. Rollins, esquire, has been duly elected a Senator of the State of New Hampshire in the Congress of the United States, for the term of six years from the 4th day of March next.

In testimony whereof I have caused the seal of said State to be hereunto affixed. Witness Person C. Cheney, governor of said State, the 14th day of July, in the year of our Lord 1876 and of the Independence of the United States the one hundred and first.

P. C. CHENEY.

By the governor:

[SEAL.] B. F. PRESCOTT, *Secretary of State.*

Mr. EDMUNDS. I want to suggest that it may be open to some question under the acts of Congress regulating the election of Senators whether that certificate is as full as it ought to be. Of course in a case where there was no doubt about the regularity of the proceeding, nobody would make any objection; but I wish to call the attention of the Senate to the fact that that is a very, very narrow certificate indeed. It does not even say that it is done in pursuance of law, or duly done, or whether the Legislature met on a second Tuesday of the session, the day provided by law; but it is simply the old antique certificate of fifty years ago, before there was any act of Congress on that point. Of course I only make these observations in order that attention may be called to the subject.

The PRESIDENT *pro tempore*. The credentials will be filed.

PETITIONS AND MEMORIALS.

Mr. CONKLING. I present a petition praying that party feeling and the strife for party advantage may be discarded in ascertaining the election of President and Vice-President, and that the accustomed and constitutional modes be observed by the two Houses in ascertaining the truth of the result. This petition is signed by the Gorham Manufacturing Company, the Whiting Manufacturing Company, and a large number of other manufacturers and business men of the State of New York. I ask its reference to the select committee to whom it appropriately belongs.

The PRESIDENT *pro tempore*. The petition will be referred to the Select Committee to devise a mode for counting the electoral votes for President and Vice-President.

Mr. CONKLING. I present the petition of Caroline Knapp and William C. Sturgis, administrator, praying that an additional 2 per cent. in currency be allowed to those who have received awards from the Alabama claims commission, and declaring that they see no reason why 6 per cent. should not be paid in currency upon those awards. I move the reference of the petition to the Committee on the Judiciary.

The motion was agreed to.

Mr. HAMLIN. I have received and been requested to present the memorial of B. D. Metcalf and a large number of other commercial men, merchants, and persons interested in navigation, who represent that they are citizens of the State of Maine; that during the late civil war they retained their ships under the flag of their own country, thereby suffering great loss in consequence of the extra war premiums, and suffered also from rebel cruisers. They ask that the House bill relating to the distribution of the balance of the Geneva fund may receive the favorable consideration of this body. I move that the memorial be referred to the Committee on the Judiciary.

The motion was agreed to.

Mr. WINDOM presented a resolution of the Board of Trade of Minneapolis, Minnesota, in favor of the establishment of a post and military road from Fort Lincoln to Deadwood City in the Black Hills, Dakota Territory; which was referred to the Committee on Post-Offices and Post-Roads.

He also presented a memorial of the Chamber of Commerce of the City of Saint Paul, Minnesota, in favor of the passage of the bill (H. R. No. 4189) authorizing the coinage of the standard silver dollar and restoring the legal-tender character; which was referred to the Committee on Finance.

Mr. SPENCER. I present the petition of J. M. Wooten, postmaster, and certain merchants of Blountsville, Alabama, stating that they believe that the telegraph belongs properly to the Post-Office Department and that it should be incorporated therewith and worked for the benefit alike of the Government and the people, and that the Government alone can secure to us the freedom of the press and the sanctity of private correspondence. They therefore pray for the transfer of the telegraph business to the Post-Office Department, and for cheaper telegraphic facilities. I move its reference to the Committee on Post-Offices and Post-Roads.

The motion was agreed to.

Mr. CAMERON, of Pennsylvania, presented the petition of Rev. Charles M. Blake, praying to be restored to his former position of chaplain in the United States Army, with full pay and allowances from date of last payment; which was referred to the Committee on Military Affairs.

ELECTORAL VOTE OF OREGON—RECUSANT WITNESS.

Mr. MORTON submitted the following resolution; which was considered by unanimous consent, and agreed to:

Resolved, That Enos Runyon, having appeared before the Committee on Privileges and Elections and answered the questions propounded to him, and thereby purged himself of contempt, is hereby discharged from the custody of the Sergeant-at-Arms.

REPORTS OF COMMITTEES.

Mr. BRUCE, from the Committee on Pensions, to whom was referred the bill (H. R. No. 3281) granting a pension to Hannah A. Wood, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

Mr. SPENCER submitted the views of the minority of the joint select committee appointed at the last session of Congress to frame a form of government for the District of Columbia; which were ordered to lie upon the table and be printed.

Mr. WRIGHT, from the Committee on Claims, to whom was referred the petition of S. B. Holt, praying compensation for services rendered as ganger of the sixth division of the fifth collection district of the State of Virginia for one hundred and fifty-five days, submitted an adverse report thereon; which was ordered to be printed; and he moved that the claim be rejected; which motion was agreed to.

He also, from the same committee, to whom was referred the memorial of the personal representatives of Richard Hall, praying compensation for losses sustained during the last war with Great Britain, submitted an adverse report thereon; which was ordered to be printed; and he moved that the claim be rejected; which motion was agreed to.

POST-ROUTE BILL.

Mr. HAMLIN, from the Committee on Post-Offices and Post-Roads, to whom was referred the action of the House of Representatives on the amendments of the Senate to the bill (H. R. No. 3628) establishing post-roads, reported a recommendation that the Senate insist upon its amendments.

On motion of Mr. HAMLIN, it was

Resolved, That the Senate insist upon its amendments to the said bill disagreed to by the House of Representatives and ask a conference with the House on the disagreeing votes of the two Houses thereon.

By unanimous consent, it was

Ordered, That the conferees on the part of the Senate be appointed by the President *pro tempore*.

Messrs. HAMLIN, PADDOCK, and MAXEY were appointed.

DEFICIENCIES IN APPROPRIATIONS.

Mr. WINDOM. I move that the Senate proceed to the consideration of the bill (H. R. No. 4307) making appropriations to supply certain deficiencies in the contingent fund of the House of Representatives, and for other purposes.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill.

The bill was reported from the Committee on Appropriations, with amendments.

The first amendment was in line 5, after the word "appropriated," to strike out the words "to be paid into the contingent fund of the House to enable the Clerk of the House;" so as to make the clause read: "that the following sums be, and the same are hereby, appropriated out of any money of the Treasury not otherwise appropriated, to pay the sums as provided under the following resolutions of the House," &c.

Mr. BAYARD. I would ask the Senator who has charge of this bill whether the House has or has not followed the customary channel of payment of such sums. It is a matter of very little importance whether the money shall pass directly, under the resolutions, into the hands of the parties named, or whether it shall pass into the contingent fund and be paid by the Clerk to them. The latter is a matter of convenience and also perhaps a matter of custom. If it has been the custom of the House to pay claims of this character through the agency of its Clerk and it prefers that mode of doing it from its contingent fund, I think it would probably be just as well to let it choose its own method of paying the parties.

Mr. WINDOM. I think the bill as it came from the House did follow the ordinary form; but that form would not apply to some portions of the bill which came to us. For instance, the bill came to us with a provision to authorize the payment of $11,000 for a deficiency in the expenses of the Attorney-General's Office, to be disbursed by him, and it seemed hardly proper that that should be paid into the contingent fund of the House. So we made it general, thinking it would cover the whole ground, and we consulted our Secretary and he thought the amendment would put the bill in accordance with the forms, and that under it he could pay the items reported for the Senate contingencies.

Mr. BAYARD. I took it for granted the committee had some good reason for changing that phraseology.

Mr. WINDOM. That was the reason, that it would not apply to other provisions of the bill. If it is found by the House of Representatives that they cannot pay out the money under this language, it can readily be amended by them.

The amendment was agreed to.

The next amendment was after line 8 to insert as a heading "House of Representatives."

The amendment was agreed to.

The next amendment was in line 54 to strike out "fourteenth" and insert "fifteenth;" so as to make the clause read:

Under resolution of August 15, 1876, to provide for the expense of the ventilation of the Hall of the House, to be expended under the direction of the Architect of the Capitol, $3,500

The amendment was agreed to.

The next amendment was after line 89 to insert:

SENATE.

For compensation and mileage of Senators for the current fiscal year, $10,311.72.

For nine messengers, from January 1 to March 4, 1877, at the rate of $1,440 per annum, $2,268.

For clerks to committees and pages for the current fiscal year, $5,000.

For miscellaneous items for the fiscal year 1876, $214.85.

To pay the stenographers for the select committee of the Senate appointed to investigate the election in the State of Mississippi the amounts certified to be due by the chairman of said committee, $1,541.30.

To defray the actual and necessary expenses of the Committee on Privileges and Elections, and other expenses necessarily incurred in making the investigations directed by Senate resolution of December 5, 1876, in the several States named therein, the sum of $25,000, or so much thereof as may be necessary; said appropriation to be paid into the contingent fund of the Senate; and the disbursing officer of the Senate shall advance such parts of the sum above appropriated to the Sergeant-at-Arms of the Senate as the chairman of said committee shall in writing direct, for the purposes aforesaid; and the Sergeant-at-Arms shall, as soon as practicable, make a detailed report of the expenditures thereof, with proper vouchers, which, when so made, shall be received by said disbursing officer, and returned with his accounts to the proper officer of the Treasury Department.

The amendment was agreed to.

The next amendment was after line 124 to insert as a heading "Miscellaneous."

The amendment was agreed to.

The next amendment was in line 126 to strike out after the word "to" the words "remedy error and supply" and insert "provide for a deficiency in the contingent expenses of the Department of Justice arising from;" so as to make the clause read:

To provide for a deficiency in the contingent expenses of the Department of Justice arising from omissions in enrolling act of last session "making appropriations for the legislative, executive, and judicial expenses of the Government for the year ending June 30, 1877, and other purposes," $11,000, to be disbursed under the Attorney-General.

Mr. BAYARD. I should like to ask the Senator from Minnesota what is the nature of this appropriation, whether there were omissions to enroll certain items of expenditure for which appropriations were made agreed to by the committees but left out of the enrollment.

Mr. WINDOM. That is the fact. The appropriation bill as it passed both Houses contained an appropriation of $11,000 for the contingent expenses of that Department, and by a mistake in the enrollment it was omitted.

Mr. BAYARD. It is not in the nature of an extra appropriation?

Mr. WINDOM. No, sir; but it is a deficiency arising on account of that omission.

The motion was agreed to.

Mr. JOHNSTON. On the second page, thirty-fourth line, the name of Mr. Merrick is wrong. It should be "William M. Merrick" instead of "W. N. Merrick." I suggest to the chairman that the correction be made.

Mr. WINDOM. If that is not correct, there is no objection.

The PRESIDENT *pro tempore*. The correction will be made if there be no objection.

The next amendment reported by the Committee on Appropriations was to insert after line 132 the following:

For transportation of notes, bonds, and other securities of the United States, being a deficiency for the current fiscal year, $40,000.

The amendment was agreed to.

Mr. WINDOM. I move, in line 135, to strike out the characters "&c." I do not like the look of them in the bill.

The amendment was agreed to.

Mr. WINDOM. It is suggested that "and" should be inserted between "coal" and "labels," in line 135. I move that amendment.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The amendments were ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time.

Mr. EDMUNDS. Mr. President, before we pass this bill I wish to ask the honorable chairman of the Committee on Appropriations how it is, in this age of reform and retrenchment, that so soon after the ides of August, (when a patriotic and retrenching Congress, composed of a Senate and House of Representatives and so on, had made provision for all the wants of the people for a whole fiscal year and every necessity of the Government, and went to the country upon it with congratulations and peans and songs of great joy as to the great amount of reduction in public expenditures that had been made,) a bill of this character comes in so soon?

Mr. WINDOM. Mr. President, this is not a very large bill. I wish I could congratulate the Senator from Vermont that it is the only deficiency bill we shall have. It is a forerunner, I think, of larger ones. It only contains as it came from the House $54,879.

Mr. EDMUNDS. For expenses of the two Houses chiefly?

Mr. WINDOM. Expenses of the House of Representatives alone, with the exception of the provision for the omission of $11,000 in the Attorney-General's Department. All of the items mentioned in the bill as it came from the House, with the exception of the one named for the Attorney-General's Department and the deficiency for the Botanical Garden, I believe were, under resolution passed by the House last August. They perhaps should have been appropriated for before the close of the last session in August, but it was omitted; it was not done.

Mr. EDMUNDS. They are for expenses of last year?

Mr. WINDOM. Mainly for expenses of the last session.

Mr. EDMUNDS. Then it seems we were laboring in some way under rather a grand mistake when we supposed we had diminished the expenses of the Government to that great degree which has been mentioned and talked about so much.

Mr. WITHERS. I would ask the Senator from Vermont if it is anything unusual to have deficiency bills passed at every session?

Mr. EDMUNDS. No, sir; it is not anything very unusual; but it is very unusual for people to make a great pretense of retrenchment and not provide for their expenses until after an election, and then come in with their little bills. That is very unusual, in my opinion.

Mr. WITHERS. I beg to dissent from the Senator entirely, but without taking up the gauntlet which he throws down as to unusual pretensions to economy, it strikes me that it would be impossible, with the most sincere desire to promote economy and practice economy in the expenditures of the Government, that any Committee on Appropriations could gauge the scale and standard of expenditures which were necessary to the proper performance of the civil service of this Government, and I think the records of the Senate and the House will show that deficiency bills have been passed at every session of every Congress.

The bill was passed.

ADMIRAL CHARLES WILKES.

Mr. CONKLING. I move to take up the bill (S. No. 993) for the relief of Admiral Charles Wilkes, and I wish to state that this is a bill to allow a credit to be made of I think between $200 and $300 to Admiral Wilkes who in his illness is much distressed by a discrepancy which exists in his accounts at the Treasury Department. The bill

comes from the Committee on Naval Affairs, they having made report upon a memorial sent here by Admiral Wilkes. The Senator from Rhode Island [Mr. ANTHONY] is familiar with the facts. I will not detain the Senate but I think it will take but a moment and therefore I ask the Senate to allow it to be acted on.

The motion was agreed to; and the bill (S. No. 993) for the relief of Admiral Charles Wilkes was read the second time and considered as in Committee of the Whole. It is a direction to the proper accounting officers of the Treasury Department to credit Admiral Charles Wilkes, now on the retired list of the Navy, with the sum of $350, being the amount paid by Paymaster Hosford to Paymaster Tolfree on account of mess bill, and which was repaid to Paymaster Hosford, but not taken up in his account.

The bill was reported to the Senate, ordered to be engrossed for a third reading, read the third time, and passed.

CENTENNIAL CONGRATULATIONS.

Mr. CAMERON, of Pennsylvania. The Committee on Foreign Relations, to whom was referred the joint resolution (H. R. No. 171) in reference to the congratulations from the republic of Pretoria, South Africa, and also the joint resolution (H. R. No. 172) relating to the congratulations from the Argentine Republic, have had the same under consideration and directed me to report them back. Both resolutions are in regard to the Centennial, and as they will occupy but a moment, I ask that the Senate take them up immediately.

There being no objection, the joint resolution (H. R. No. 171) in reference to the congratulations from the republic of Pretoria, South Africa, was considered as in Committee of the Whole. It is a direction to the Secretary of State to communicate to the republic of Pretoria the high appreciation by the Congress of the United States of the complimentary terms in which that republic has referred to the first centennial of our national Independence in their resolutions to Congress in May last.

The joint resolution was reported to the Senate without amendment, and ordered to a third reading.

Mr. EDMUNDS. I should like to hear that explained by the chairman of the committee.

Mr. CAMERON, of Pennsylvania. The only explanation that can be given is that the little republic of Pretoria, somewhere in South Africa, was kind enough to congratulate the Government of the United States on the occasion of the Centennial. The House of Representatives have passed this resolution in compliment to that little republic.

Mr. EDMUNDS. What is the republic?

Mr. CAMERON, of Pennsylvania. I never heard of it until recently.

Mr. EDMUNDS. Where is that republic situated?

Mr. CAMERON, of Pennsylvania. Somewhere in South Africa. It is a little republic composed of people from Holland.

The joint resolution was read the third time, and passed.

By unanimous consent, the Senate, as in Committee of the Whole, proceeded to consider the joint resolution (H. R. No. 172) relating to congratulations from the Argentine Republic. It directs the Secretary of State to acknowledge a dispatch of congratulation from the Argentine Republic, and the high appreciation of the Congress of the United States of the compliment thus conveyed.

The joint resolution was reported to the Senate, ordered to a third reading, read the third time, and passed.

BILL INTRODUCED.

Mr. MORRILL (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1130) for the relief of the executors of the estate of John S. Miller, deceased; which was read twice by its title, referred to the Committee on Finance, and ordered to be printed.

J. MILTON BEST.

Mr. MITCHELL. As a member of the Committee on Claims and at the instance of members of that committee, I conceive it to be my duty to give notice that at an early day I shall endeavor to get the Senate to consider the bill that has been reported from that committee favorably and is now on the Calendar, which has taken up considerable time and attention of the Senate; I refer to the claim of J. Milton Best. That claim, I will state in passing, did receive the favorable consideration and approval of President Lincoln over eleven years ago; it has passed the Committee on Claims of this body five several times, meeting the favorable approval of your committee; it has passed both branches of Congress, and it has been reported again, the sixth time I believe, from the committee and is on the Calendar. In justice to the claimant, in justice to this body, it seems to me we ought to take up the bill at an early day and give it consideration. Therefore I give notice that at an early day I shall endeavor to get the bill before the Senate.

Mr. CONKLING. I hope the Senator from Oregon will not call up the bill in reference to J. Milton Best until the Senate is full. The Senator remembers that that bill was once the subject of a veto. It involves a principle which is very important, and is perhaps what lawyers might call a border case, a case which does not fall very far or distinctly on either side of a certain line which has been observed or which an attempt has been made to observe in the legislation of the country thus far. Many Senators are absent who I think ought to be here, markedly the Senator from Wisconsin, [Mr. HOWE,] who has been deputed by the Senate to go to a distant city to conduct an investigation. Whenever the bill does come up, I imagine it will be the subject of considerable debate, and I think when the bill is put to a vote it ought to be voted on by as many Senators as can conveniently be found.

Mr. MITCHELL. The remarks of the Senator from New York are pertinent and proper. I know that this matter has been a subject of dispute, and it should not be acted upon unless by a full Senate; nor had I any intention of calling it up until the committee's return. I simply desired to give notice that at as early a day as possible I should call the matter to the attention of the Senate.

Mr. WRIGHT. Before I make the motion that I rise to make, I wish to supplement what has been said by the Senator from Oregon in reference to the case of J. Milton Best. I think it a matter of sheer justice to this claimant that the Senate should take up the bill and dispose of it one way or the other. It has been before Congress about ten or twelve years and the claimant has become poor and grown gray in waiting for the action of Congress. I think it is a reproach to our legislation that we do not dispose of these claims when they are very frequently reported from the committee, and get them out of the way. Whatever may be the action of the Senate on this bill, it being called up as it ought when the Senate is full, I think it due to this claimant and to all claimants of this kind that it should be disposed of. I therefore trust my friend from Oregon will press the bill whenever the Senate shall be so reasonably full that we can have attention to the principles involved. There are other bills that come within the line of this; and to the committee it is all-important that the Senate should decide the question one way or the other, that we may know what to do. Therefore I trust, without expressing any opinion on the bill at this time, that we may have action.

Mr. CONKLING. Does the Senator mean by that action, while notoriously a large number of Senators are gone and properly gone?

Mr. WRIGHT. I have said already "whenever the Senate shall be reasonably full."

Mr. CONKLING. I beg the Senator's pardon. I agree with him entirely.

R. J. HENDERSON.

Mr. WRIGHT. I move that the Senate proceed to the consideration of House bill No. 2835.

The motion was agreed to; and the bill (H. R. No. 2835) for the relief of R. J. Henderson, of Newton County, Missouri, was considered as in Committee of the Whole. It is a direction to the Secretary of the Treasury to pay to R. J. Henderson, of Newton County, Missouri, $7,253.90, in full compensation for all balances due Henderson growing out of a contract made in 1835 with Captain William Mills, postquartermaster at Nashville, Tennessee, at the time, to cut and deliver three thousand cords of wood at the Cumberland River for the use of the Army.

The bill was reported to the Senate, ordered to a third reading, read the third time, and passed.

REPORT OF LIBRARIAN OF CONGRESS.

Mr. ANTHONY. The Committee on Printing, to whom was referred a resolution for the printing of five hundred additional copies of the annual report of the Librarian of Congress, have instructed me to report it back, without amendment, and recommend its passage.

The resolution was considered by unanimous consent and agreed to, as follows:

Resolved, That 500 extra copies of the annual report of the Librarian of Congress for the year 1876 be printed, with covers, for distribution by the Librarian.

BROOKLYN NAVY-YARD LANDS.

Mr. KERNAN. I move that the Senate proceed to the consideration of House bill No. 7.

The motion was agreed to; and the bill (H. R. No. 7) to provide for the sale or exchange of a certain piece of land in the Wallabout Bay, in the State of New York, to the city of Brooklyn, was considered as in Committee of the Whole.

Mr. EDMUNDS. I have heard something about that bill recently from some officers of the Navy Department, and from an examination of it I think it highly desirable for it to be again considered by the Committee on Naval Affairs, and as it will make very little delay if it be necessary to consider it again, I move that it be recommitted to the Committee on Naval Affairs.

Mr. KERNAN. Will the Senator allow me one moment before he makes the motion?

Mr. EDMUNDS. With pleasure.

Mr. KERNAN. Of course if there is good reason for the bill going back, I shall make no objection; but it was reported by the committee at the last session, when they examined it of course with care, and if it is to be acted upon and passed, it is somewhat important that it should be passed soon, as in case it is amended it will have to go back to the House.

The Senator is aware that there has been some prior controversy, and there has been some objection made by some parties to this exchange, but I am informed by the framers of the bill that the Secretary of the Navy and the Department do not object to the bill with the amendment put in by the committee, that the commission the President shall select shall report both on the expediency of the exchange and the terms on which the exchange can be made. Unless

the Senator thinks it is important that the committee should again consider it, I hope he will allow it to be considered now. I tried to get it up at the last session, but I was not among the fortunate ones, not that I have any zeal about it, but the people of Brooklyn, the mayor and common council and the board of supervisors, have resolved in favor of this measure. It is considered of importance; that it will be advantageous to them and not any injury to the Government. The whole matter will be in the power of Congress after there is a report from the commissioners appointed under the bill.

Mr. EDMUNDS. I am sure the Senator from New York does not desire to unduly press this bill; but he must bear in mind that this property of the United States is worth a great deal of money, and that if it be parted with by the United States, it will be worth a great deal of money to somebody who shall acquire title to it. It is on the shore of that magnificent harbor of New York and lies almost between the two greatest cities of the Union; and I think, from information that has come to my possession, that before we pass any bill upon the subject, there being no claim to it by anybody and the title of the United States being entirely admitted, it is highly desirable that the Committee on Naval Affairs should, in the light of additional circumstances, again consider the bill. It may be that it will turn out to be perfectly correct; it may be that it will turn out that it is not advisable even to start the entering-wedge of getting rid of this property of great value, in this way or any other way. I do not know. I certainly should not make the motion if I did not feel very sincerely that it was very desirable that the committee should again consider the measure, as it involves so much.

Mr. KERNAN. I admit that there should be scrutiny. This bill is simply to arm this commission with power to consider the expediency of selling the property to the city of Brooklyn, not to an individual, for a market. I see in the papers before the House that the city asked to have this opportunity of purchasing the tract, and the papers from the House show that it was originally donated by the city to the Government. Of course I will not persist if it is contrary to the judgment of my friend in pressing the bill now. I examined it as it is my duty, and the committee considered it and reported favorably, and there was an amendment proposed to the bill, so that the city authorities should be allowed to take what is a detriment to the public now, as it is unoccupied and somewhat swamp land; and that they may fill it up after purchasing, or if it is rented that other lands may be procured more advantageous. Whatever Congress may think best shall be done will be done for this purpose. But the Senator from Vermont does me no more than justice when he says that I do not want to press the bill unduly; and I would not want it passed if it should be in the judgment of Senators against the interest of the Government.

Mr. CRAGIN. Since this bill was reported at the last session, information has been laid before the Committee on Naval Affairs, or letters have been written, sent us from different naval officers, and also some communications from the Bureau of Yards and Docks, which have led me to doubt the policy of passing this bill in its present shape. Therefore, I have not been willing to call it up. I am not prepared to say that it would not be proper to pass a bill organizing a commission to investigate and report upon this subject. I have no personal wish that it should be recommitted, but if it is recommitted I will say that the committee will give it thorough investigation and report without much delay.

Mr. KERNAN. With that suggestion, of course, I concur. I conferred with the chairman of the committee and he will do me the justice to say that he did not suggest to me that he desired the bill to be recommitted. I shall now yield to the motion that it be recommitted, trusting that the committee will consider it as soon as possible and report one way or the other.

The PRESIDENT *pro tempore*. It is moved that the bill be recommitted to the Committee on Naval Affairs.

The motion was agreed to.

FEDERAL TROOPS IN PETERSBURGH.

Mr. WITHERS. I wish to state to the Senate that if I can get the floor on Tuesday next, I propose to call up the message of the President of the United States with accompanying documents, in regard to the military occupation of the city of Petersburgh; and I shall then wish to make some remarks upon that subject.

REVISION OF THE STATUTES.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. No. 3156) to perfect the revision of the statutes of the United States.

Mr. BOUTWELL. Questions were reserved yesterday upon three or four propositions at the suggestion of the Senator from Missouri, [Mr. COCKRELL.] I understand that he is satisfied in regard to some of them, and it would be perhaps a relief to the Clerk to dispose of those paragraphs first, if they can be disposed of at this time.

The PRESIDENT *pro tempore*. The reserved paragraphs will be reported.

The CHIEF CLERK. The first reserved clause is:

Section 1270 is amended by adding at the end of the section the following:

"*Provided, however*, That when forage in kind cannot be furnished by the proper departments, then, and in all such cases, officers entitled to forage may commute the same according to existing regulations: *Provided further*, That officers of the Army and of volunteers assigned to duty which requires them to be mounted shall, during the time they are employed on such duty, receive the pay, emoluments, and allowances of cavalry officers of the same grade respectively."

Mr. COCKRELL. I would ask that that be passed over and the other reserved paragraphs read. We have not had time to examine that matter, but it will be considered before the consideration of the bill is concluded.

The PRESIDENT *pro tempore*. The next reserved paragraph will be reported.

The Chief Clerk read as follows:

Section 1480 is amended by adding at the end of the section the following:

"The grades established in the six preceding sections for the staff corps of the Navy shall be filled by appointment from the highest members in each corps, according to seniority; and new commissions shall be issued to the officers so appointed, in which the titles and grades established in said sections shall be inserted; and no existing commission shall be vacated in the said several staff corps, except by the issue of the new commissions required by the provisions of this section; and no officer shall be reduced in rank or lose seniority in his own corps by any change which may be required under the provisions of the said six preceding sections: *Provided*, That the issuing of a new appointment and commission to any officer of the Pay Corps under the provisions of this section shall not affect or annul any existing bond, but the same shall remain in force, and apply to such new appointment and commission."

The PRESIDENT *pro tempore*. The next reserved paragraph will be read.

The Chief Clerk read as follows:

Section 2691 is amended by adding at the end of the section the following:

"No collector, surveyor, or naval officer shall ever receive more than $400 annually, exclusive of his compensation as collector, surveyor, or naval officer, and the fines and forfeitures allowed by law, for any services he may perform for the United States in any office or capacity, except as provided in sections 2554 and 2657."

Mr. THURMAN. The Clerk read 2654. It is 3354 in the print.

Mr. BOUTWELL. That was altered yesterday. It is an error in the print. It is right as read at the desk.

Mr. THURMAN. I do not rise to say anything upon this particular amendment, about which I know nothing, but I want to make an inquiry of the chairman of the committee who reported this bill. As I understood him the other day, he said that the bill makes no changes in the law; that the object of the bill is simply to make the Revised Statutes conform to what was the law on the 1st of December, 1873. Am I right in that?

Mr. BOUTWELL. The Senator from Ohio is right in the main. Speaking generally of the bill there are no changes of the law; but the attention of the Senate was yesterday called to two questions where the Revised Statutes followed the original statute and brought forward what was manifestly an error; that is to say, where the language does not express the intention exactly: one in regard to the seizure of distilleries, where the phrase "to be" preceded "seized," when it manifestly should have been otherwise. The attention of the Senate was called to those two cases, but speaking generally there is no change in the law known to the committee.

Mr. THURMAN. If this bill passes, of course it changes the Revised Statutes wherein the Revised Statutes differ from the law as it was before December, 1873. Of course the Revised Statutes being the last statutes enacted and approved in June, 1874, they operate to repeal the previous law wherever there is a difference. There can be no question about that. If then this bill changes the Revised Statutes so as to make the law what it was before the passage of the Revised Statutes, it is just so much amending the Revised Statutes, which now are the statutes in force. As to the mode of doing this, I have looked over this bill and I find a great many amendments, and let us see of what character they are:

Section 259 is amended by striking out, in the fourth line, the word "agriculture."

* * * * * * * * *

Section 335 is amended by striking out, in the fourth line, the word "agriculture."

Section 354 is amended by inserting after the word "questions," in the second line, the word "of."

Section 637 is amended by inserting after the word "circuit," in the ninth line, the word "court."

Section 702 is amended by inserting after the word "cause," in the eleventh line, the word "when."

Section 838 is amended by inserting after the word "be," in the first line, the word "the."

And a great many more. I read these for the purpose merely of illustration. Let me read one or two others:

Section 1097 is amended by inserting, in the second line, after the word "who" the word "shall."

* * * * * * * * *

Section 1118 is amended by striking out the words "any criminal offense," in the third line, and inserting the words "a felony."

And here is another:

Section 1123 is amended by inserting a comma after the word "post," in the first line.

Then there are other amendments which consist in changing "and" to "or," or "or" to "and," and the like, very minute indeed. What I wish to know is in what condition we shall have the laws for reference and use when all these amendments, some of them merely verbal, others of them that affect the sense, shall be simply in the session laws, and the volume that is in use all through the country, in the courts, in lawyers' offices, in Legislatures, in Congress, the Revised Statutes, stands uncorrected.

What I wish to submit to the committee is whether the time has not necessarily come for a new edition, owing to the amendments heretofore made to the Revised Statutes, and owing to those which this bill proposes, and which may be good for aught I know, but no mortal man can tell unless he takes up the Revised Statutes and goes over them *seriatim*, just, no doubt, as the members of the committee

have done, whether the alterations are wise or unwise. I cannot tell what legislation you are making by this bill, and could not unless I had more time than I certainly have to devote to it. But what I suggest to the Senator from Massachusetts is whether the time has not now come, owing to the amendments heretofore made, amounting, I think, to between two and three hundred, perhaps over three hundred, and those which are proposed by this bill, which will add a hundred or more to those already made, to direct that there shall be a reprint of the Revised Statutes, with all the amendments up to this time in a correct form as the law will stand after this bill shall be passed. I know that involves some expense, but the expense is nothing compared to the necessity of having the law in proper form so that it can be understood.

I know from long experience how it will be with this revision. We pass all these amendments. A careful, prudent lawyer will take his copy of the Revised Statutes and the session laws and with his pen or pencil in hand he will make the corrections in the margin of his Revised Statutes; but even then he will have great difficulty in stating at every proper place when the amendment took place. He will do that; but for one man who will do it there will be a thousand who will not do any such thing. Therefore every court, every member of a Legislature, everybody who uses the statutes, is in danger every day of being misled by the previous publication of the laws.

I therefore submit that if the amendments are to be made, especially in the very singular way these are made, (and I do not know that they could have been otherwise, by simply saying that you shall insert a word after another word in some place in the Revised Statutes or that you shall strike out a word in some place in the Revised Statutes,) it is indispensable that there shall be a republication of those statutes as thus corrected up to this time; and I submit whether or not an amendment to this bill would not be proper that would require such a republication.

Mr. BOUTWELL. I agree with very much that has been said by the Senator from Ohio. He will bear in mind, however, that while he has called the attention of the Senate to many proposed amendments which considered separately would be quite unimportant in changing the construction of the statutes, yet when the attention of the committee was drawn to discrepancies between the Revised Statutes and the text of the original statutes the committee did not feel at liberty to decline to notice those differences and report them to the Senate. For the most part, however, where the amendments reported in this bill do change the Revised Statutes, in the particulars wherein the change is made they bring the Revised Statutes in conformity with the original statutes.

There were two ways open for the amendment of the Revised Statutes. One was to reproduce the text of each section as it stands in the Revised Statutes, incorporating into it the amendment. That would add very much to the volume of the text of the new statute, and practically in use would not relieve those who have occasion to consult the statutes, whether they are citizens, attorneys, or judges, from the necessity of considering the session acts as well as the volume of Revised Statutes. The committee were controlled in regard to this bill as to its form by the circumstance that two years ago another committee reported a bill amending the Revised Statutes in the manner in which this bill is now presented to the Senate. The committee did not feel at liberty, if they had had a different opinion, which I am not prepared to say they had, to change the mode of presenting the amendments.

As to the more important matter to which the Senator from Ohio has called the attention of the Senate, whether the time has not come when there should be a new edition of the Revised Statutes, I should say that the time is near when first by resolution and agreement there should be no further revision of the statutes for the purpose of making them conform to the text of the laws from which the Revised Statutes are drawn, but that we should accept them as the basis of all future legislation, and any proposed amendment should depend upon its merits and not upon the fact that the law was otherwise before these statutes were adopted. I think that is the first thing to be done.

Then, secondly, we should have a new edition of the Revised Statutes, and for three reasons that occur to me: First, for the reason stated by the Senator from Ohio, that in one body of statutes the country may find its law; secondly, that we may have a new and better index to the statutes, because whatever may be said in the way of criticisms, (and, as I said yesterday, I think too much has been said in the way of criticism of this work,) should in my judgment be directed to the index. It is very imperfect. Then when another edition is prepared it would at least be respectable. Then prefixed to it should be the Constitution of the United States, if not the Articles of Confederation and the Declaration of Independence. I think it is an anomalous thing in the history of this country that the body of its law is presented without the Constitution, which is the basis of its law. Those reasons would lead me to the view, and I do not object to an amendment, if the Senator from Ohio will propose one, that this be considered the last act for the amendment of the Revised Statutes for the purpose of making them harmonize with the text of the original laws, and that we then order a new edition the expense of which may not be great.

Mr. ANTHONY. I hope the Senator from Ohio will offer such an amendment as he has suggested.

Mr. THURMAN. If the Senator will allow me one moment, I wish to say that I am glad to know the chairman of the committee agrees substantially in the opinion I expressed, that there ought to be a new edition of the statutes published, and I am glad to hear the suggestion that this should be considered as the last of the corrections. There is still another reason that would operate to some extent to induce the republication, that is, to insert the laws that have been passed since which are not merely corrections or amendments of the statutes. What the Senator says about a copy of the Constitution being prefixed is certainly correct. My attention was called to that the other day by a letter which I received from a very eminent judge in my own State. He said it was a perfect shame that the Constitution was not prefixed to or contained in this revision, and that he did not know why it had been omitted unless it had become obsolete! That may be the reason; I cannot tell; but it ought to be there so that those who think it is not entirely obsolete may sometimes more conveniently have reference to it than if they have to go and hunt it up elsewhere.

This is a matter of printing, and I do not know whether I could frame an amendment so well as the chairman of the Committee on Printing; he understands the subject of printing so much better than I do. I would be very glad to unite my labors with his to fix up something that would be right. I am afraid to attempt it myself, however; I might make some blunder about it. Possibly it ought to be in a separate bill and more carefully matured than by putting it in as an amendment to this bill; but all I wish to express is the hope that before this session ends some provision will be made by bill, and I think it will come more properly from the Committee on the Revision of the Laws.

Mr. ANTHONY. It will be remembered that this great book was printed in three days, and I suppose it was one of the greatest feats if not the greatest in typography that we have any record of. Necessarily there must have been a great many errors, although I think the errors did not arise from the Printing Office. We have been obliged from time to time to enact laws to make the statutes, as they have been revised, conform to what they were intended to be, and what they were before they were revised. I understand the chairman of the committee to say that this bill completes this work, and that, after it has passed, all the errors in the revision, so far as they have been ascertained—and they have probably nearly all been reached now—will have been corrected. It will be perfectly safe then to accept the Revised Statutes with this last correction as the basis of future legislation. That being the case, it is certainly very desirable that we should have this basis of future legislation all before us, in every act, upon each particular subject, and that we shall not have to look to the session laws to find out what the laws were before they were revised.

Whether it would be advisable to make another revision and to incorporate into the statutes the acts that have been passed since, I will not undertake to say. I should suppose that would be a pretty laborious work, and would be, of course, liable to a good deal of delay and to some error; but it seems to me that the laws, as they will now be revised when this bill is passed, ought to be corrected, and the present revision, going back to correct the statutes at the date of their publication, should be republished, so that the laws up to that time will be understood.

Mr. INGALLS. Have not the stereotype plates been preserved from which the original revision was printed?

Mr. ANTHONY. Yes; but I suppose they would be useless for this purpose.

Mr. INGALLS. I should suppose they might be made serviceable with very little additional expense.

Mr. ANTHONY. It may be. That would reduce the expense very much.

Mr. HAMLIN. I listened with very great pleasure to the suggestion made by the Senator from Ohio this morning. I concur, I may say perhaps entirely, with what he has said; but it would seem to me that something more should be done than the adoption of the amendments now pending before we shall venture to reprint our statutes. In running my eye over this bill hastily, I find no suggestion of amendments emanating from the Post-Office Department. I have not myself carefully examined the principal statutes.

Mr. BOUTWELL. There are some amendments relating to the Post-Office, all that the attention of the committee was called to.

Mr. HAMLIN. The Senator tells me that there are some and that all that the committee's attention had been called to had been indorsed by that committee. I had not myself carefully examined all the original statutes in the original text and compared them with the text in the Revised Statutes, but there is one chapter in that book which, if it is as erroneous in other States as the State which I partially represent here, it will be a marvel of *errata* such as never were known to creep into any book on earth. I refer to that chapter which contains the post-routes. Now, without a post-route first being established by law, the Postmaster-General has no power to place mail service upon it. We create the route. The law vests the authority in him to place and to regulate service upon the route after we have created it. I will not say with absolute certainty, but I think there are fifty errors in that chapter in the post-routes in Maine, names of places, names of localities, and some of them do not even profess to retain the *idem sonans* of what should be there. If

we are going to reprint this volume, (and I think it ought to be reprinted and am clearly and entirely of opinion with the Senator from Ohio,) we want, I affirm, before we make such an order, to do a little more with the Revised Statutes than this bill does. I confess I was in doubt myself by what power or by what ingenuity the Post-Office Department could relet the mails over some of the routes in Maine, and I do not know now, for there are no such places above the earth or beneath the skies ever known to man, woman, or child as are stated in the statutes regulating routes in Maine. I have had my attention by some other gentlemen called to the same condition of things in other States. I only mention this to say that while I concur in the idea of having our statutes all before us there should be something more done than the mere adoption of this bill before that is done.

The PRESIDENT *pro tempore*. The next reserved clause will be read.

The CHIEF CLERK. On page 17, the next reserved clause is:

Section 2720 is amended by inserting, in the fifth line, after the word "States" the words "but each surveyor of this class shall be entitled to a maximum compensation of $2,000 a year out of any and all fees and emoluments by him received;" and by inserting, in the ninth line, after the word "surveyor" the words "at the ports designated in section 2719."

The PRESIDING OFFICER, (Mr. WITHERS in the chair.) The bill will now be resumed at the point where it was left off yesterday. The Chief Clerk read as follows:

Section 3740 is amended by inserting, in the sixth line, after the words "member of" the words "or Delegate to."

Mr. BOUTWELL. I ought to state to the Senate the facts in connection with this amendment. The preceding section, which is a limitation upon the right of members of Congress to participate in contracts with officers of the Government, says "no member of or Delegate in Congress." The commissioners introduced the phrase "or Delegate." The original statute was an injunction upon members of Congress, without specifying whether they represented States or were Delegates from Territories. The harmony of the different sections, all relating to the same subject, requires that these words "or Delegate to" should be inserted, but I have to say that the introduction of them by the commission was not authorized by the original text.

Mr. THURMAN. Do you propose to strike them out?

Mr. BOUTWELL. No, sir. We propose to make two sections which relate to the same subject also embrace Delegates, inasmuch as the first section on the subject of contracts barring members of Congress from participating in them says "no member of or Delegate in Congress" shall so and so.

Mr. THURMAN. I think what the Senator says is perfectly correct, that Delegates were not originally included; but I think they always ought to have been.

Mr. BOUTWELL. And the commission evidently so thought, but neglected in two sections to incorporate the words.

The Chief Clerk read as follows:

Section 3741 is amended by inserting, in the third line, after the words "member of" the words "or Delegate to."

Section 3742 is amended by inserting, in the fourth line, after the words "member of" the words "or Delegate to."

Section 3743 is amended by inserting after the word "States," in the fourth line, the words "the Second Comptroller of the Treasury of the United States or the Commissioner of Customs, respectively, according to the nature thereof."

Section 3772 is amended by striking out, in the first line, the word "furnising" and inserting the word "furnishing."

Section 3802 is amended by striking out, in the first line, the word "appropriation" and inserting the word "appropriation."

Section 3823 is amended by striking out all after the word "in," in the first line, to the word "one," in the third line, and inserting therefor the words "each State and Territory of the United States."

Mr. COCKRELL. I ask the chairman of the committee why that change is made in section 3823. It reads:

The Clerk of the House of Representatives shall select in Virginia, South Carolina, North Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, and Arkansas, one or more newspapers, not exceeding the number allowed by law.

Now it is proposed to strike out all that and insert in lieu of those particular States the words "each State and Territory of the United States."

Mr. BOUTWELL. By a statute to be found in volume 14, page 407, a statute of March 2, 1867, the authority was limited to the States that are enumerated in this section now under consideration of the Revised Statutes. By a subsequent act, passed March 13, 1867, which was, as will be observed, at a subsequent session of Congress, although in the same month, those words were stricken out and the authority was extended to all the States and Territories of the Union, using the language which is employed in this clause of the bill by way of amendment.

The Chief Clerk read as follows:

Section 3915 is amended by adding at the end of the section the following:

"The Postmaster-General shall cause to be prepared a special stamp or stamped envelope, to be used only for official mail matter, for each of the Executive Departments; and said stamps and stamped envelopes shall be supplied by the proper officer of said Departments to all persons under its direction requiring the same for official use; and all appropriations for postage made prior to March 3, 1873, shall no longer be available for said purpose; and all stamps and stamped envelopes shall be sold or furnished to said several Departments or clerks only at the price for which stamps and stamped envelopes of like value are sold at the several post-offices."

Mr. COCKRELL. I desire an explanation of that. In section 3915, to which this is proposed to be added, the language used is:

The Postmaster-General shall provide suitable letter and newspaper envelopes, with such water-marks or other guards against counterfeits as he may deem expedient, and with postage stamps with such device and of such suitable denominations as he may direct, impressed thereon; and such envelopes shall be known as "stamped envelopes," and shall be sold, as nearly as may be, at the cost of procuring them with the addition of the value of the postage stamps impressed thereon; but no stamped envelope furnished by the Government shall contain any lithographing or engraving, nor any printing except a printed request to return the letter to the writer. Letters and papers inclosed in such stamped envelopes shall, if the postage-stamp is of a denomination sufficient to cover the postage properly chargeable thereon, pass in the mail as prepaid matter.

This amendment proposes that—

The Postmaster-General shall cause to be prepared a special stamp or stamped envelope, to be used only for official mail matter for each of the Executive Departments; and said stamps and stamped envelopes shall be supplied by the proper officer of said Departments to all persons under its direction requiring the same for official use.

Then the amendment provides:

And all appropriations for postage made prior to March 3, 1873, shall no longer be available for said purpose; and all stamps and stamped envelopes shall be sold or furnished to said several Departments or clerks only at the price for which stamps and stamped envelopes of like value are sold at the several post-offices.

It would seem under the first clause of this amendment that the special stamps and the special stamped envelopes shall be furnished to all the employés of the Post-Office Department, and then the last clause of the amendment would seem to imply that the other Departments should buy them from the Post-Office Department.

Mr. BOUTWELL. The provision of the existing law is taken from a statute of 1872; that was previous to the abolition of the franking privilege; and it gave to the Postmaster-General power to furnish stamps to the public through the post-office on sale. When the franking privilege was abolished in 1873, there was an amendment in the form of a proviso to an appropriation bill which will be found in volume 17 of the statutes, page 542, containing the phrase which is in the amendment now before the Senate; and that amendment, it will be observed, relates to envelopes and stamps for the use of the several Departments and properly to be sold or furnished. That phrase was used in order to cover any arrangement that might be made as to the mode. There was a difference of opinion at one time whether they should be sold to the Departments and money actually paid and taken out of the contingent fund on a specific appropriation for that purpose, or whether they should be furnished upon account. This is merely bringing into the Revised Statutes an express provision of the law of 1873. There is no change even of a word, I believe, as it was read at the desk.

Mr. COCKRELL. Making it discretionary with the Department either to furnish the envelopes already stamped, or to sell them to the parties to be paid out of the contingent fund?

Mr. BOUTWELL. I do not understand that. I only understand that this law contemplated that under some other statute the Postmaster-General might be directed to furnish them, or he might be directed to sell them, and it would cover either case. I do not understand that this gives him discretion; but, however, I confine myself not to the effect of the statute so much as to the fact whether the amendment is required by the language of the law.

Mr. COCKRELL. This amendment as taken from a former statute would only allow them to be sold.

Mr. BOUTWELL. I do not mean to say that. I mean to say it authorizes the Postmaster-General to provide these stamped envelopes and to furnish them to the Departments either for sale or upon account, just as the law may authorize him to do. He is acting under some statute, of course.

Mr. INGALLS. This amendment appears to me to perpetuate what I have always regarded as a very transparent fiction on the part of the Post-Office Department. If this proviso is contained in any statute that has been adopted since the passage of the revision of the laws, I think it is high time it was abandoned, and I should regret exceedingly to see it incorporated into any further revision that the committee may see fit to submit to us.

If I understand the amendment correctly, it provides that one Department of the Government shall prepare a certain number of stamps and envelopes to which shall be attached a purely fictitious valuation, and that they shall be sold to another Department of the Government for a sum that has been thus fictitiously attached to them for the purpose of diminishing as far as possible an apparent deficiency in the revenues of the Post-Office Department. Now we are annually appropriating a deficiency of several millions of dollars for the purpose of carrying on the transportation of the mail. It is certainly immaterial to the Government whether this amount is increased or diminished by the transportation of its own matter. What I conceive to be the true theory is that in regard to all envelopes and stamps that are used by the Post-Office Department the Government should be called upon simply to pay the actual cost of their manufacture and no more.

What is the use of continuing this absurd fiction of attaching a value to stamps and to envelopes in which the matter of the Government itself is to be transported? Why not increase the deficiency and submit to the country what is the actual expense of this transportation, instead of attempting by this very transparent device to deceive the people as to the discrepancy that exists between the

amount actually received and the amount expended for the transportation of the mail?

I trust that this amendment will not be agreed to.

Mr. DAWES. The Senator does not seem to understand the purpose of this.

Mr. INGALLS. I think I do.

Mr. DAWES. The purpose of it is very apparent. It was in the beginning. It was to satisfy the people in this way how much was saved by abolishing the franking privilege.

Mr. INGALLS. That was what I understood.

Mr. DAWES. I am surprised the Senator should not have seen it.

Mr. BOUTWELL. Perhaps all that is said about the wisdom of abolishing the franking privilege may be true; but I respectfully submit that it does not concern us upon this bill. This is merely bringing into the Revised Statutes a provision of law that was adopted in March, 1873, in order to meet the condition of things that would take place when the act abolishing the franking privilege should take effect, which was by the bill to take effect the 1st day of July, 1873. It has not been restored; and the Departments have business; they must carry it on, and their postage account must be made by furnishing the stamps and stamped envelopes either without pay or with pay. But I do not see that it concerns us to-day. Some day when the Committee on Post-Offices and Post-Roads have the floor, and will either assail or defend the franking privilege, then I think it will become the Senate to discuss the question.

Mr. INGALLS. What is the object of incorporating this amendment, which the Senator himself admits to be nugatory and empty and idle, in another revision of the Revised Statutes?

Mr. BOUTWELL. I do not know how the Post-Office Department has gone on since the statutes were revised; but I cannot find in them any authority for furnishing these envelopes to the Departments, though I suppose it has been done; but I do not mean to express an opinion about that. There may be some authority, but the committee are advised that there is in fact no authority for doing what is done and that the reproduction of this provision is necessary to enable the Departments to go on with their business, to go on by specific authority of the law.

Mr. INGALLS. How have the Departments gone on before?

Mr. BOUTWELL. I do not know.

Mr. INGALLS. I regard this as being wholly deceptive and illusory. I do not think it ought to be adopted. It is part of that absurd humbug which has prevailed in this country for a considerable period of time in regard to making the Post-Office Department, as it is called, self-sustaining, and I am surprised that the chairman of the Committee on the Revision of the Laws is willing to lend himself to this preposterous humbug, and I hope he will not insist on this amendment.

Mr. BOUTWELL. Mr. President, I hardly ever defend myself against such a charge; but I submit to the Senate that I am in no way defending the policy of the Post-Office Department, whether it be wise or whether it answer to the classical phrase which the Senator from Kansas employed, in reference to the abolition of the franking privilege and the policy that grew out of it. The Committee on the Revision of the Laws have nothing whatever to do with the policy of the franking privilege or the abolition of the franking privilege. What we are charged with is to bring to the attention of the Senate any defects or errors that may have occurred in the revision of the statutes, and as far as I am informed this was an error, and upon that fact I ask the judgment of the Senate, and I hope the Senator from Kansas will not object to this. Until we have an opportunity in some way to revise the system of using the mails by the Departments of the Government, there certainly ought to be legal authority for doing what is absolutely necessary to be done; that is, to furnish from the Post-Office Department to the other Departments the means of using the mails. That is all this does.

Mr. INGALLS. Is this merely an incorporation of the language of a statute passed subsequently to the revision?

Mr. BOUTWELL. No, before the revision. It is left out of the revision.

Mr. INGALLS. Is this in *hæc verba*?

Mr. BOUTWELL. Just the same. I will read the original statute, if the Senator desires.

Mr. INGALLS. I shall be willing to take the Senator's statement.

Mr. BOUTWELL. Very well. I hope there will be no question upon this.

The Chief Clerk read as follows:

Section 4203 is amended by striking out in the first line, after the word "to," the word "the."

Section 4219 is amended by substituting therefor the following:

"Upon vessels which shall be entered in the United States from any foreign port or place there shall be paid duties as follows:

"On vessels built within the United States but belonging wholly or in part to subjects of foreign powers, at the rate of thirty cents per ton; on other vessels not of the United States, at the rate of fifty cents per ton.

"Upon every vessel not of the United States, which shall be entered in one district from another district, having on board goods, wares, or merchandise taken in one district to be delivered in another district, duties shall be paid at the rate of fifty cents per ton. Nothing in this section shall be deemed in any wise to impair any rights or privileges which have been or may be acquired by any foreign nation under the laws and treaties of the United States relative to the duty of tonnage on vessels.

"On all foreign vessels which shall be entered in the United States from any foreign port or place, to and with which vessels of the United States are not ordinarily permitted to enter and trade, there shall be paid a duty at the rate of $2 per ton; and none of the duties on tonnage above mentioned shall be levied on the vessels of any foreign nation if the President of the United States shall be satisfied that the discriminating or countervailing duties of such foreign nations, so far as they operate to the disadvantage of the United States, have been abolished.

"In addition to the tonnage duty above imposed, there shall be paid a tax, at the rate of thirty cents per ton, on vessels which shall be entered at any custom-house within the United States from any foreign port or place; and any rights or privileges acquired by any foreign nation under the laws and treaties of the United States relative to the duty of tonnage on vessels shall not be impaired; and any vessel any officer of which shall not be a citizen of the United States shall pay a tax of fifty cents per ton."

Mr. COCKRELL. I should like to hear an explanation of that. I see it is very different from the tonnage duties in chapter 3 of the Revised Statutes.

Mr. BOUTWELL. Different from what, sir?

Mr. COCKRELL. This substitution seems to be entirely different from the present statutes. How did that difference arise that the Revised Statutes should have omitted so much or should be so incorrect?

Mr. BOUTWELL. That I am unable to say. The subject to which this relates, the tonnage duties upon vessels, is a complicated subject from the circumstance that there have been since the beginning of the Government at least five different statutes passed in regard to it; and if the Senate vote for this amendment it must be pretty largely upon faith, because it would hardly be possible in the presence of the Senate to go through with the different statutes and show wherein section 4219 is defective or erroneous as compared with the proposed amendment.

In the first place the matter has been very carefully revised at the Treasury Department, and I have to say that the provisions relating to tonnage duties embraced in the amendment proposed by the committee conform exactly to the practice of the Department under existing laws at the time that the revision of the laws was made; but the commissioners omitted in some particulars, introduced provisions from statutes that had been repealed, and changed the tonnage duties to some extent in violation of existing treaties, I believe.

In addition to the revision by the Treasury Department, the committee have been carefully over the whole subject and examined all the statutes. I can refer the Senator to the statutes.

Mr. COCKRELL. No, I do not ask that. Does this substitute now bring the law to what the custom and practice of the Department was at the time of the revision?

Mr. BOUTWELL. Exactly, and I believe to the law. I have no doubt the practice of the Department conformed to the law, and this amendment conforms to the practice of the Department, to the present opinion of the Department, and conforms to the best judgment which the committee were able to make upon an examination of the statutes.

Mr. COCKRELL. The next amendment, to section 4264, I suppose is just the same?

Mr. BOUTWELL. Yes, sir.

The Chief Clerk read as follows:

Section 4264 is amended by adding at the end of the section the following:

"The provisions, requisitions, penalties, and liens enumerated in the several sections of this chapter relating to the space in vessels appropriated to the use of passengers are hereby extended and made applicable to all spaces appropriated to the use of steerage passengers in vessels propelled in whole or in part by steam, and navigation from, to, and between the ports and in manner as herein named, and to such vessels and to the masters thereof; and the space appropriated to the use of steerage passengers in vessels as above propelled and navigated is hereby made subject to the supervision and inspection of the collector of the customs in any port in the United States at which any such vessel shall arrive, or from which she shall be about to depart; and the same shall be examined and reported in the same manner and by the same officers directed in the preceding section to examine and report."

Mr. BOUTWELL. I should correct the answer I just now made without sufficient thought to the Senator from Missouri. This amendment is the introduction of the tenth section of chapter 213 of the statutes of 1855, found in volume 10 of the statutes page 718, which was omitted bodily from the revision, and is in the exact words of the original text.

The Chief Clerk read as follows:

Section 4284 is amended by striking out, in the seventh line, the word "owner" and inserting the word "owners."

Section 4290 is amended by striking out, in the second subdivision, the last word "thirty" and inserting therefor the words "ninety-seven."

Section 4315 is amended by inserting in the second line, before the word "vessel," the words "steamboat or."

Section 4318 is amended by striking out, in the sixth line, the word "register" and inserting the word "registry."

Section 4319 is amended by inserting in the third line, after the word "following," the word "form;" and by striking out, in the thirty-first line, the word "act" and inserting the word "title."

Section 4320 is amended by striking out, in the last line, the words "the duty of six cents per ton being first paid."

Section 4347 is amended by striking out, in the first line, the word "imported" and inserting therefor the word "transported."

Section 4381 is amended by inserting in the second line of the sixth subdivision, after the word "cents," a comma, and in the third line, after the words "less than fifty tons," a semicolon; and by adding at the end of the section the following: "Where a surveyor certifies a manifest, or grants a permit, or receives a certified manifest and grants a permit, the fees arising therefrom shall be received by him solely for his use; and all other fees arising by virtue of this section shall be received and accounted for by the collector, or, at his option, by the naval officer, where there is one, and where there is a collector, naval officer, and surveyor, shall be equally divided monthly between the said officers; and where there is no naval officer, two-thirds to the collector and the other third to the surveyor; and where there is only a collector, he shall receive the whole amount thereof; and where there is more than one surveyor in any district, each of them shall receive his propor-

tional part of such fees as shall arise at the port for which he is appointed; and in all cases where the tonnage of any ship or vessel shall be ascertained by any person appointed for that purpose, such person shall be paid a reasonable compensation therefor out of the fees aforesaid, before any distribution thereof as aforesaid."

Mr. COCKRELL. I desire to ask the chairman of the committee if there is an omission in section 4381 of the Revised Statutes of as much as that?

Mr. BOUTWELL. Yes, sir. It is brought forward from the statutes of 1793, chapter 8, part of section 34, omitted entirely from the revision.

Mr. COCKRELL. Was it not repealed by any statute between that time and the revision?

Mr. BOUTWELL. No, sir.

The Chief Clerk read as follows:

Section 4390 is amended by striking out, in the second line, the words "forty-four hundred and fifty-three" and inserting the words "forty-three hundred and eighty-seven."

Section 4409 is amended by striking out, in the third line, the word "and" and inserting the word "or."

Section 4415 is amended by striking out, in the twentieth line, the word "liable" and inserting the word "able;" by striking out, in the twenty-sixth line, the word "inspectors" and inserting the word "inspector;" and by inserting in the twenty-fifth line, after the word "hulls," the words "or an inspector of boilers."

Mr. COCKRELL. I desire to call the attention of the chairman. I think there is evidently a mistake or omission. If the last part of this clause as it will be here amended is read, I think the chairman will see that there must be some change made in it. It is on the bottom of page 860, the last three lines. The statute now reads:

The inspectors of hulls and the inspector of boilers thus designated, when approved by the Secretary of the Treasury, shall, from the date of designation, constitute a board of local inspectors.

Now it is proposed to strike out the letter "s" in the first word there, "inspectors," and insert after the word "hulls" the words "or an inspector of boilers." When the amendments are made it will read then:

The inspector of hulls or an inspector of boilers and the inspector of boilers.

I do not think that was the intention, certainly.

Mr. BOUTWELL. It now reads:

The inspectors of hulls and the inspector of boilers thus designated.

And the proposition is to have it read:

The inspector of hulls and the inspector of boilers.

Mr. COCKRELL. But the way you have the amendment it will not be that. That is the reason I am calling attention to it. It will be when you have the amendment inserted:

The inspector of hulls or an inspector of boilers and the inspector of boilers.

Mr. BOUTWELL. The Senator errs in the place.

Mr. COCKRELL. You do not strike out any words there, if you will notice.

Mr. BOUTWELL. If the Senator will observe, the first amendment is by striking out in the twenty-sixth line the word "inspectors." The twenty-sixth line is the third line from the bottom:

The inspectors of hulls and the inspector of boilers.

It should be "The inspector of hulls and the inspector of boilers." That amendment will make that read as it should. Then, by inserting in the twenty-fifth line, which is the preceding line, after the the word "hulls" the words "or an inspector of boilers," it will read:

No appointment of an inspector of hulls or an inspector of boilers shall be made without the concurrence of the supervising inspector.

Mr. COCKRELL. That makes it intelligible.

Mr. BOUTWELL. It is right.

The Chief Clerk read as follows:

Section 4420 is amended by striking out, in the first line, after the word "preceding" the word "section" and inserting therefor the word "sections."

Section 4421 is amended by inserting, in the fifth line, after the word "made" a comma.

Section 4440 is amended by striking out, in the second line, the word "inspector" and inserting the word "inspectors."

Section 4441 is amended by striking out, in the second line, the word "inspector" and inserting the word "inspectors."

Section 4467 is amended by striking out, in the fourth line, the word "opened" and inserting the word "open."

Section 4472 is amended by striking out, in the fifteenth line, the word "practical" and inserting the word "practicable."

Section 4490 is amended by striking out, in the second line, the word "carry" and inserting the word "carrying."

Section 4513 is amended by striking out of the first line the words "preceding section" and inserting in lieu thereof the words "section 4511."

Section 4522 is amended by inserting, in the last line, after the word "proceed" the word "on."

Section 4575 is amended by striking out, in the second line of the second subdivision, the words "shipping commissioner or officer acting as such in" and inserting the words "collector of the customs of."

Section 4605 is amended by striking out, in the fifth line, the word "seamen" and inserting the word "seaman."

Section 4622 is struck out.

Section 4658 is amended by striking out, in the seventh line, the word "fo" and inserting the word "of."

Section 4768 is amended by striking out, in the second line, after the word "of" the word "pensions" and inserting the word "pension."

Section 4770 is struck out.

Mr. COCKRELL. I find that section 4770 reads:

In place of original checks issued for pensions, when lost, stolen, or destroyed, disbursing officers and agents of the United States are authorized, after the expiration of six months from the date of such checks, to issue duplicate checks, and the Treasurer, Assistant Treasurers, and designated depositaries of the United States are directed to pay such checks drawn in pursuance of law by such officers or agents, upon notice and proof of the loss of the original checks, under such regulations in regard to their issue and payment, and upon the execution of such bonds, with sureties, to indemnify the United States, as the Secretary of the Treasury may prescribe. But this section shall not apply to any check exceeding in amount the sum of $500.

This proposes to strike that out. I think that was adopted in April, 1871, and I find no other provision made for issuing duplicate checks under the present law. If there is, I have not found it.

Mr. BOUTWELL. In 1872 an act was passed which will be found in volume 17, page 29 of the statutes, which made the same provision, but said "this section shall not apply to any check exceeding in amount the sum of $1,000," which increased the amount $500. That act of 1872 is brought forward in the Revised Statutes as sections 3546 and 3647.

Mr. COCKRELL. It is not under the heading in regard to pensions.

Mr. BOUTWELL. The phraseology may not be precisely the same, but the object is the same, and it increases the amount; and I may say that the statute of 1872 is general, while the statute of 1871 was limited to pensions. It was considered that the statute of 1872 worked a repeal of the statute of 1871; at any rate it is of no value, because section 3646 is the larger statute and is in operation.

Mr. COCKRELL. Does the Senator suppose then that the provisions of section 3646 cover these checks or drafts on the pension fund?

Mr. BOUTWELL. Yes, sir; they cover everything, not only the pension fund but all other disbursing business of the Government.

Mr. COCKRELL. Section 3646 is almost the same as this except that it is a general provision.

Mr. BOUTWELL. Yes; the operation of the statute of 1871 is limited to checks not exceeding $500, and the general statute of 1872 extends the operation of the law to checks not exceeding a thousand dollars.

The Chief Clerk read as follows:

Section 4787 is amended by adding at the end of the section the following:

"The provisions of this section shall apply to all officers, non-commissioned officers, enlisted and hired men of the land and naval forces of the United States, who, in the line of their duty as such, shall have lost limbs or sustained bodily injuries depriving them of the use of any of their limbs, to be determined by the Surgeon-General of the Army; and the term of five years herein specified shall be held to commence in each case with the filing of the application for the benefits of this section."

Section 4790 is amended by inserting in the second line, after the word "rebellion," the words "or is entitled to the benefits of section 4787."

Section 4791 is amended by adding at the end of the section the following:

"The transportation allowed for having artificial limbs fitted shall be furnish by the Quartermaster-General of the Army, the cost of which shall be refunded from the appropriations for invalid pensions."

Section 5020 is amended by inserting in the first line, after the word "from," the word "time."

Section 5174 is amended by striking out, in the second line, the words "but pieces" and inserting the word "bed-pieces."

Section 5211 is amended by striking out, in the seventh line, the word "associations" and inserting the word "association."

Section 5225 is amended by striking out, in the second line, the word "six" and inserting the word "five."

Section 5269 is amended by adding at the end of the section the following: "to be recovered by an action or actions at law in any district court of the United States."

Section 5291 is amended by striking out, in the third line, the word "enlist" and inserting the word "enlists."

Section 5292 is amended by inserting in the sixth line, after the word "vessels," the words "and for regulating the same;" and by inserting in the twenty-third line, before the word "he," the word "as."

Section 5293 is amended by striking out the first subdivision, and transposing the fourth subdivision so as to read as the first subdivision.

Section 5309 is amended by inserting in the third line, after the word "same," the word "may."

Section 5413 is amended by inserting in the seventh line, after the word "may," the word "be."

Section 5455 is amended by inserting, after the word "seaman" in the twelfth, fourteenth, and fifteenth lines, and after the word "sailor" in the seventeenth line, the words "or other person," and by adding to the section the words "to be enforced in any court of the United States having jurisdiction."

Section 5470 is amended by inserting, in the sixteenth line, after the word "thereon," a semicolon.

Section 5479 is amended by striking out, in the eleventh line, the word "to" immediately preceding the word "procure" and inserting the word "or."

Section 5579 is amended by striking out, in the fourth line, the words "the Patent Office" and inserting the word "Patents."

The PRESIDING OFFICER. This concludes the text of the bill as reported from the committee.

Mr. BOUTWELL. I have several amendments to propose which relate to the second volume of the Statutes, those concerning the District of Columbia. They are found in Senate bill No. 758.

The PRESIDING OFFICER. If there be no objection, that will be regarded as an amendment to this bill.

Mr. BOUTWELL. I will state that these amendments which I now propose have been agreed to by the committee. The House has passed a bill for amending the second volume of the statutes which agrees I believe exactly with the bill reported by the Senate, which I now offer as amendments to the pending bill. I do that because the bill which has come from the House has not been considered by the committee of the Senate and therefore I am not authorized to report the House bill; but I purpose to take the Senate bill, which has been agreed to by the committee, and offer its several provisions as amendments. I ask the Clerk to read the bill, omitting lines 31 and 32, which should be stricken out.

The Chief Clerk read as follows:

SEC. 2. That the following amendments be, and the same are hereby, made to the Revised Statutes relating to the District of Columbia, namely:

Section 192 is amended by inserting after the word "the," in the second line, the word "Union."

Section 195 is amended by inserting after the word "ten," in the seventh line, the words "Revised Statutes of the United States."

Section 309 is amended by striking out in the third line, where it occurs the second time, the word "three" and inserting the word "six."

Section 312 is amended by striking out, in the fifth line, the word "three" and inserting the word "six."

Section 322 is amended by inserting after the words "United States," in the second line, the words "by and with the advice and consent of the Senate."

Section 445 is amended by striking out, at the end of the section, the word "two" and inserting the word "three."

Section 467 is amended by inserting after the word "President," in the second line, the words "by and with the advice and consent of the Senate."

Section 476 is amended by inserting after the word "section," in the first line, the words "four hundred and thirty nine."

Section 717 is amended by inserting after the words "Revised Statutes" the words "of the United States."

Section 754 is amended by adding, at the end of the section, the words "Whenever at a general term, held by four justices, the court shall be equally divided, such division shall be noted on the minutes; and within four days either party may file with the clerk a motion to have the cause re-argued before five justices; and such re-argument shall be as soon as conveniently may be."

Section 764 is amended by inserting after the words "Revised Statutes," in the last line, the words "of the United States."

Section 765 is amended by inserting after the words "Revised Statutes," in the third line, the words "of the United States."

Section 780 is amended by inserting after the words "Revised Statutes," in the fifth line, the words "of the United States."

Section 811 is amended by inserting after the words "indebted to," in the second line, the words "the defendant in."

Section 841 is amended by inserting after the word "section," in the third line, the letter "s," so as to read "sections;" and inserting after the words "one hundred and four," in the third line, the words "one hundred and seven and one hundred and eight;" and adding at the end of the section the words "and of bribery at elections."

Section 843 is amended by inserting after the words "Revised Statutes," in the eighth line, the words "of the United States."

Section 847 is amended by striking out, in the last line, the words "in the following section" and inserting the words "otherwise by law."

Section 853 is amended by inserting after the words "the circuit," in the second line, the words "and district;" and by striking out in the second line, commencing with the word "District," the remainder of the section and inserting the words "of the United States, by the act of February 26, 1853."

Section 897 is amended by inserting after the words "Revised Statutes," in the last line, the words "of the United States."

Section 1193 is amended by inserting after the words "Revised Statutes," in the fourth line, the words "of the United States."

Section 1283 is amended by striking out the word "eight," in the fourth line, and inserting the word "nine."

Section 1288 is amended by inserting after the words "Revised Statutes," in the second line, the words "of the United States."

The amendment was agreed to.

Mr. BOUTWELL. I now offer an amendment not as coming from the committee. My attention has been recently called to an omission by a judge of the supreme court of this District in section 763 and I move to amend by striking out said section and inserting in lieu thereof what I send to the Secretary to be read.

Mr. COCKRELL. Does the Senator refer to section 763 of the general statutes?

Mr. BOUTWELL. No, sir; section 763 of the statutes relating to the District of Columbia.

The PRESIDING OFFICER. The amendment submitted by the Senator from Massachusetts will be read.

The CHIEF CLERK. After line 42 of section 2 it is proposed to insert the following:

Section 763 is amended by striking out said section and inserting in lieu thereof the following as section 763:

"Said court shall have cognizance of all crimes and offenses committed within said District, and of all cases in law and equity between parties, both or either of whom shall be resident or be found within said District, and also of actions or suits of a civil nature at common law or in equity in which the United States shall be plaintiffs or complainants, and of all seizures on land or water, and of penalties and forfeitures made, arising, or accruing, under the laws of the United States; and any one of the justices may hold a criminal court for the trial of all crimes and offenses arising within said District."

Mr. BOUTWELL. I will state that my attention was called to this omission by a judge of the supreme court of the District. I have examined the matter, and I find that what is proposed as new is contained in the statute of 1799, found in the first volume of the statutes, and was not brought forward in connection with the revision. It will be observed that the present section 763, which is a section of two lines only, is the conclusion of the new section which is proposed as section 763. I have no doubt that it is an omission. I will state to the Senate that this bill will go to the House and before it is acted upon in the House I will confer with the chairman of the House committee, and we will make further examination of it, but I have no doubt that the conclusion to which the judge of the court has come, which is verified by the examination I have made, will be found to be correct.

The amendment was agreed to.

Mr. BOUTWELL. I have only one other amendment to submit, and I suppose the error exists. The Senate has already passed upon the subject-matter. It relates to the pay of messengers bringing the votes of the various electoral colleges. I move to amend by adding in its proper place the following:

Section 144 is amended by adding at the end thereof the words "going and returning."

I have no feeling about it myself. I bring the matter to the attention of the Senate because manifestly these words are omitted in the Revised Statutes.

Mr. CONKLING. That is the same question that was debated the other day.

Mr. BOUTWELL. It is the same question. There were some objections made the other day to the proposition because it was new legislation upon an appropriation bill. If the law is to be restored, this is the proper time and the proper place for its restoration. I submit the question to the Senate.

Mr. SHERMAN. I hope the amendment will not be adopted for this reason: The Revised Statutes are unquestionably the law now. It is true in revising them there may have been a mistake. The revisers did not consider it so, nor did Congress consider it so at the time. But the conclusive answer is that twenty-five cents a mile is enough pay for an elector carrying the vote of a State from any of the States in the Union. Since the original law was passed the whole mode of traveling has changed. Now it is an expeditious and easy mode. I hope, therefore, that this amendment will not be passed. The Senate debated this matter and by a very decisive vote held that pay one way was sufficient compensation for electoral messengers coming from any State in the Union.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Massachusetts.

The amendment was rejected.

Mr. BOUTWELL. The Senator from Maine [Mr. HAMLIN] desires to offer an amendment which he thinks should be made to the Revised Statutes. It is one to which the attention of the committee has not been called. He has not the amendment prepared, and in his behalf I ask that the bill be laid aside informally to be taken up and disposed of whenever he is prepared to submit his amendment, which will probably be to-morrow morning. There has been one paragraph reserved, I recollect.

The PRESIDING OFFICER. If no objection be made the bill will be regarded as laid aside informally until to-morrow.

Mr. COCKRELL. I object to that being done at this time because I desire to offer an amendment.

Mr. BOUTWELL. I do not press the request against any amendments that may be proposed.

The PRESIDING OFFICER. The proposition is temporarily withdrawn.

Mr. COCKRELL. At the last session I reported a bill from the Committee on Military Affairs and had it called up for passage. It is Senate bill No. 684, accompanied by report of committee No. 218. The chairman of the Committee on the Revision of the Laws then objected to the passage of the bill because of the pendency of the present measure. Now if the present bill is to correct omissions in the law, I desire that this omission shall also be incorporated into the bill. It is founded upon a letter of the Secretary of War, which I shall read.

Mr. BOUTWELL. If the Senator will excuse me, I did not observe the nature of the amendment, nor the section to which the Senator proposes to apply his amendment.

Mr. COCKRELL. I will apply it to one of the sections in regard to the Army. The amendment relates to the Ordnance Department. The Secretary of War under date of February 25, 1876, transmitted to the United States Senate and House of Representatives a letter from the Chief of Ordnance which is dated February 19, 1876, and that letter of the Chief of Ordnance reads thus:

ORDNANCE OFFICE, WAR DEPARTMENT,
Washington, February 19, 1876.

SIR: I have the honor to invite your attention to an omission in the Revised Statutes not enumerated in my letter of August 17, 1875.

The laws under which persons intrusted with ordnance stores were required to make returns of the same to the Chief of Ordnance were as follows:

Act of March 3, 1813. * * * The commissary of ordnance, his assistants and deputies, * * * and all other officers, agents, or persons who shall have received or may be intrusted with any stores or supplies of any description whatever for the use of the Army of the United States, and of the volunteers or militia in their service, shall render quarterly accounts of the disposition and state of all such stores and supplies to the superintendent-general of military supplies. * * *

Act of February 8, 1815, which organized the Ordnance Department upon its present basis, required that the keepers of all magazines and arsenals, in addition to the returns mentioned in the act of 1813, should "quarterly, or oftener if so directed, and in such manner as directed by the colonel of the Ordnance Department, make correct returns to the colonel or senior officer of the Ordnance Department of all ordnance, arms, and ordnance stores they may have in charge."

Most of the sections of the act of February 8, 1815, have been incorporated in the Revised Statutes, but the sixth and tenth sections, relating to ordnance returns, seem to have been entirely overlooked; and, as the act itself is repealed by the Revised Statutes, this Department is without any legislative authority whatever under which persons responsible for ordnance stores may be required to render accounts of the disposition thereof.

It is, therefore, respectfully requested that the matter be brought to the attention of Congress, and such legislation be asked as will enable this Department to continue in use the system of property accountability authorized by previous laws and regulations.

Very respectfully, your obedient servant,

S. V. BENÉT,
Brigadier-General, Chief of Ordnance.

The Hon. SECRETARY OF WAR.

I reported from the Committee on Military Affairs the following bill:

That every officer of the Ordnance Department, every ordnance storekeeper, every post ordnance sergeant, each keeper of magazines, arsenals, and armories, every assistant and deputy of such, and all other officers, agents, or persons who shall have received or may be intrusted with any stores or supplies, shall quar-

terly, or oftener if so directed, and in such manner and on such forms as may be directed or prescribed by the Chief of Ordnance, make true and correct returns to the Chief of Ordnance of all ordnance arms, ordnance stores, and all other supplies and property of every kind received by or intrusted to them and each of them, or which may in any manner come into their and each of their possession or charge.

SEC. 2. That the Chief of Ordnance, subject to the approval of the Secretary of War, is hereby authorized and directed to draw up and enforce in his department a system of rules and regulations for the government of the Ordnance Department, and of all persons in said department, and for the safe-keeping and preservation of all ordnance property of every kind, and to direct and to prescribe the time, number, and forms of all returns and reports, and to enforce compliance therewith.

I have the act of 1813 and also the act of 1815, showing the law as it was then enacted and as it continued ever since up to the revision, when it was omitted. I think this bill which is prepared covers the omission of the statute and it might be put in as an amendment here.

Mr. BOUTWELL. Upon the statement made by the Senator from Missouri I will not object to the adoption of the amendment, with the understanding of course that the committee of the House, with such aid as I can give, will make an examination for the purpose of satisfying themselves that it is right, although I dare say it is.

Mr. COCKRELL. Certainly.

The PRESIDING OFFICER. The amendment proposed by the Senator from Missouri will be reported.

The CHIEF CLERK. After line 131 of the bill it is proposed to insert the following:

Section 1167 is amended by adding thereto the following words:

"Every officer of the Ordnance Department, every ordnance storekeeper, every post ordnance sergeant, each keeper of magazines, arsenals, and armories, every assistant and deputy of such, and all other officers, agents, or persons who shall have received or may be intrusted with any stores or supplies, shall quarterly, or oftener if so directed, and in such manner and on such forms as may be directed or prescribed by the Chief of Ordnance, make true and correct returns to the Chief of Ordnance of all ordnance arms, ordnance stores, and all other supplies and property of every kind, received by or intrusted to them and each of them, or which may in any manner come into their and each of their possession or charge. The Chief of Ordnance, subject to the approval of the Secretary of War, is hereby authorized and directed to draw up and enforce in his department a system of rules and regulations for the government of the Ordnance Department, and of all persons in said department, and for the safe-keeping and preservation of all ordnance property of every kind, and to direct and prescribe the time, number, and forms of all returns and reports, and to enforce compliance therewith."

The amendment was agreed to.

Mr. BOUTWELL. In regard to the amendment to section 1270 that was reserved, some reasonable doubt exists I think as to whether that amendment should be adopted. I will move to strike it out.

The PRESIDING OFFICER. The Secretary will report the reserved clause.

The CHIEF CLERK. The amendment is to strike out from lines 183 to 193, in the following words:

Section 1270 is amended by adding at the end of the section the following:

"*Provided, however*, That when forage in kind cannot be furnished by the proper Departments, then, and in all such cases, officers entitled to forage may commute the same according to existing regulations: *Provided further*, That officers of the Army and of volunteers assigned to duty which requires them to be mounted shall, during the time they are employed on such duty, receive the pay, emoluments, and allowances of cavalry officers of the same grade respectively."

The motion to strike out was agreed to.

Mr. BOUTWELL. I now suggest that the bill be informally laid aside to be taken up when the Senator from Maine is ready.

The PRESIDING OFFICER. That course will be pursued, if there be no objection.

CENTRAL BRANCH PACIFIC RAILROAD.

Mr. WRIGHT. I move to proceed to the consideration of the bill (S. No. 60) declaring the true intent and meaning of the Union Pacific Railroad acts approved July 1, 1862, July 2, 1864, and July 3, 1866, and for other purposes.

The question being put, a division was called for.

Mr. CONKLING. If I may be allowed by consent of the Senator from Iowa, as his motion will be pending, I move that the Senate proceed to the consideration of executive business.

Mr. EDMUNDS. It will not be pending. It will fall with an adjournment.

Mr. COCKRELL. Can that motion be made while we are dividing?

Mr. CONKLING. If the Senator who makes the motion consents.

The PRESIDING OFFICER. The Senate has not actually divided.

Mr. INGALLS. I desire to understand before that motion is submitted what will be the condition of the motion of the Senator from Iowa to proceed to the consideration of Senate bill No. 60.

The PRESIDING OFFICER. That motion would fall, because the Senate has not decided to take up the bill. The question is on the motion of the Senator from New York that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After seven minutes spent in executive session, the doors were re-opened, and (at two o'clock and fifty-two minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

THURSDAY, *January* 11, 1877.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of yesterday was read and approved.

SWEARING IN OF A MEMBER.

Mr. HEWITT, of New York. I rise to a question of privilege and beg leave to present the credentials of my colleague Mr. David Dudley Field, and move that they be read.

The Clerk read as follows:

STATE OF NEW YORK, *ss:*

We, the secretary of state, comptroller, treasurer, attorney-general, and State engineer and surveyor of said State, having formed a board of State canvassers and having canvassed and estimated the whole number of votes given for Representative in the Forty-fourth Congress of the United States, at a special election held in the seventh congressional district of State, pursuant to a proclamation of the governor of said State, dated December 11, 1876, on the 2d day of January, 1877, according to the certified statements of the said votes, received by the secretary of state, in the manner directed by law, do hereby determine, declare, and certify that David Dudley Field was, in accordance with the laws of this State, duly and regularly elected Representative of the State of New York in the Forty-fourth Congress of the United States, to fill vacancy occasioned by the resignation of Smith Ely, jr.

Given under our hands at the office of the secretary of state of the said State, in the city of Albany, the tenth day of January, in the year of our Lord one thousand eight hundred and seventy-seven.

JOHN BIGELOW,
Secretary of State.
F. P. ALCOTT, *Comptroller.*
CHARLES N. ROSS, *Treasurer.*
CHARLES S. FAIRCHILD,
Attorney General.
JOHN D. VAN BUREN, JR.,
State Engineer and Surveyor.

STATE OF NEW YORK,
Office of the Secretary of State, ss:

I certify that I have compared the foregoing with an original certificate filed in this office, and that the same is a correct transcript therefrom, and of the whole of such original.

Given under my hand and seal of office, at the city of Albany, this 10th day of January, 1877.

JOHN BIGELOW,
Secretary of State.

Mr. HEWITT, of New York. I move that Mr. Field be now sworn in.

Mr. FIELD, accompanied by Mr. HEWITT of New York, presented himself in front of the Speaker's desk and was duly qualified by taking the customary oath.

COUNTING THE ELECTORAL VOTE.

Mr. HUNTER, by unanimous consent, introduced a joint resolution (H. R. No. 182) providing a mode for counting the electoral vote in February next; which was read a first and second time, referred to the joint committee on the counting of the electoral votes for President and Vice-President, and ordered to be printed.

Mr. HUNTER. I ask unanimous consent that the joint resolution may be printed in the CONGRESSIONAL RECORD.

There was no objection. The joint resolution is as follows:

Whereas grave fears have been and still are entertained by many persons throughout the country that the electoral vote for President and Vice-President of the United States will not be fairly and honestly counted when the two Houses of Congress meet for that purpose on the 14th day of February next, and that by reason thereof results of the most serious nature may befall the country, even to the shedding of blood;

And whereas for the purpose of quieting all unnecessary fears on this subject and re-assuring the country that no purpose is entertained by either House of Congress to do anything in the counting of the electoral vote that is not warranted by law and sanctioned by the acts and declarations of the ablest and wisest statesmen in the earlier days of the Republic; Therefore,

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in counting the electoral votes for President and Vice President of the United States on the 14th day of February next, the Senate and House of Representatives shall, in making such count, proceed in the identical form and manner, so far as the same is applicable, as provided for in a bill for the count of the electoral vote which passed the Senate of the United States on the 19th day of April, 1824, which bill on the 21st day of the same month was referred to the Committee on the Judiciary in the House of Representatives, and on the 10th day of May following was reported from that committee by Daniel Webster without amendment to the House of Representatives and with a recommendation that it pass; the fourth, fifth, and seventh sections of which bill are applicable to the present count, and read as follows:

"SEC. 4. That before the Senate and House of Representatives shall assemble for the purpose of counting the votes, as hereinafter directed, each House shall choose by ballot two members thereof as tellers, whose duty it shall be to receive the certificates of the electors from the President of the Senate after they shall have been opened, and to read, and note in writing, the dates of the certificates, the names of the electors, the time of their election, and the time and place of their meeting, the number of votes given, and the names of the persons voted for, and also the substance of the certificate from the executive authority of each State accompanying the certificate of the electors; and the minutes thus made by the tellers shall be read in the presence of both Houses and a copy thereof entered on the Journals of each House.

"SEC. 5. That at twelve o'clock of the day appointed for counting the votes that may have been given for President and Vice-President, the Senate and House of Representatives shall meet in the Hall of the House of Representatives, * * * at which meeting the President of the Senate shall be the presiding officer, but no debate shall be had nor question taken. The packet containing the certificates from the electors of each State shall then be opened by the President of the Senate, beginning with the State of New Hampshire and going through to Georgia, in the order in which the thirteen original States are enumerated in the Constitution, and afterward through the other States in the order in which they were respectively admitted into the Union; and if no exceptions are taken thereto, all the votes contained in such certificate shall be counted; but, if any exceptions be taken, the person taking the same shall state it in writing directly, and not argumentatively, and sign his name thereto; and if the exception be seconded by one member from the Senate and one member from the House of Representatives, and each of whom shall sign the said exception as having seconded the same, the exception shall be read by the President of the Senate, and then the Senate shall immediately retire, without question or debate to its own apartment, and each House shall take the question on the exception, without debate, by ayes and noes. So soon as the question shall be taken in either House a message shall be sent to the other, informing them of the decision of the question and that the House sending the message is prepared to resume the count; and when such message shall have been received by both

Houses, they shall again meet in the same room as before, and the count shall be resumed. And if the two Houses have concurred in rejecting the vote or votes objected to, such vote or votes shall not be counted; but unless both Houses concur, such vote or votes shall be counted. The vote of one State being thus counted, another shall, in like manner, be called, and the certificates of the votes of the State thus called shall be proceeded on as is hereinbefore directed; and so on, one after another, in the order above mentioned, until the count shall be completed.

"SEC. 7. That in all cases where the election of President and Vice-President of the United States shall have been by the electors the same shall be declared and communicated to the persons elected in such manner as the Senate shall direct. In every case in which the President shall be chosen by the House of Representatives, the choice shall be declared and communicated to the person chosen in such manner as the House of Representatives shall direct; and in every case in which the Vice-President shall be chosen by the Senate, the choice shall be declared and communicated to the person chosen in such manner as the Senate shall direct."

The other sections of the bill refer to the pay of electors and such minor matters and are therefore not important.

And whereas by said bill no provision is made for counting the votes of States where the votes of more than one set of electors have been sent to the President of the Senate, which is the condition of our present electoral vote.

And whereas such vote must be counted and some body of men must be trusted to count the same, if the question is to be settled peaceably and in accordance with the forms of law: Therefore, in order to make such settlement,

Be it resolved, That the Senate and House of Representatives, in making the count of the electoral votes on the 14th day of February next, and from day to day thereafter, as provided by law, shall in all cases where one or more States have sent to the President of the Senate the vote of more than one set of electors settle the question as to which votes of electors shall be counted from such State or States in accordance with the spirit of the first section of a bill reported from a select committee of the Senate on the 24th day of January, 1800, providing a mode for deciding disputed elections of President and Vice-President of the United States, as follows, to wit:

"The Senate and House of Representatives shall choose by ballot in each House six members th reof, neither of whom shall be of kin to either of the candidates, and the persons thus chosen shall form a joint committee, and no change in such committee shall be made except in case of death of one or more of its members, in such case the vacancy shall be supplied by selecting another person by ballot from the same House and in the same manner in which the deceased had been appointed. And such committee shall have power to examine into and decide which set of electors from any such State or States as aforesaid was legally elected or appointed by such State or States to cast their electoral votes as aforesaid, and the vote of such electors thus decided to be legal from any such State or States shall only be counted, and none others, in making the count of the electoral vote as herein provided. The question of the legality of electors where the votes of more than one set of electors are sent to the President of the Senate from any State or States as aforesaid shall be settled by such committee at least two days before the 4th day of March next, and no exceptions shall be taken or vote had by either House in reference to the vote of any such State or States until the report of such committee shall be made therein as aforesaid. In case such committee cannot agree at least five days before the 4th day of March next, as to which set of electors are the legal electors from any State or States where more than one set of electors have been elected and have cast their votes and sent them to the President of the Senate as aforesaid, then such committee shall call in the Chief-Justice of the Supreme Court of the United States, who shall act as umpire and shall in each case submitted to him decide it under his oath as Chief-Justice strictly in accordance with the principles of law, and without any reference whatever to the political questions involved as to which set of electors were legally entitled to cast the electoral vote of any such State or States as aforesaid, and the decision thus made shall be final; and the vote or votes of the electors thus decided as the legal elector or electors from any such State or States as aforesaid shall be counted by the Senate and House of Representatives before the 4th day of March next as provided herein, to the end that the votes of all the States shall be counted by the Senate and House of Representatives as aforesaid, and the result of such count announced prior to the 4th day of March next."

Mr. LUTTRELL, by unanimous consent, submitted a resolution in relation to counting the electoral vote; which was referred to the joint committee on the counting of the electoral vote for President and Vice-President, and ordered to be printed in the CONGRESSIONAL RECORD.

The resolution is as follows:

Resolved by the House of Representatives of the people of the United States of America, That in the opinion and judgment of this House the twelfth article of the amendments of the Constitution of the United States hath not clothed the President of the Senate with any other or greater power in respect of the votes of the electors of President and Vice-President than to open in the presence of the two Houses the certificates of such votes.

That in the opinion and judgment of this House it is the duty of the President of the Senate, under the twelfth article of the amendments of the Constitution, to open all the certificates which he may have received, and to lay them before the two Houses of Congress to be then counted, in such manner as by act of Congress or joint rule of the two Houses may have been directed, or as the two Houses may then there determine.

That the House of Representatives of the United States goeth nowhither as a House except with its Speaker at its head, and is present and sitteth nowhere as a House except with its Speaker in his chair of office, presiding over it; and that no officer of any other body can preside over it, sitting as a House, but only its own Speaker, elected by itself.

That the certificates of the electoral votes are to be opened in the presence of the two Houses of Congress, and the electoral votes are to be counted by the two Houses, by such agents as each may appoint; each House sitting by itself in the presence of the other, presided over by its own President or Speaker, and deliberating and voting by itself, either having the right at any moment to withdraw; or if the twelfth article of the amendments of the Constitution doth permit the two Houses, in virtue of an act of Congress theretofore enacted to that effect, or by joint rule, or by mutual agreement and common consent at the time, to resolve themselves into a joint assembly or convention, such assembly or convention is one, all who compose it having equal voices; and the presiding officers of both are jointly to preside, and all questions are to be determined by majority of voices.

That no vote or votes can be counted as the electoral vote or votes, or one or more of the electoral votes of any State, without the consent of this House, or of a majority of the voices of the joint assembly or convention; nor in the absence of either House.

That no person will be President unless, upon the counting of the two Houses, he shall be found to have received the votes of a majority of the whole number of electors eligible under the Constitution and otherwise lawfully appointed, and so recognized to have been by both Houses or by a majority of voices of the joint assembly or convention.

Which being the well-considered conclusions and definitive resolutions of this House, it does further declare and resolve:

That if the mode and manner of procedure to ascertain who have been lately elected President and Vice-President of these United States be not presently settled, and the powers and rights of each House of Congress be not presently defined by act of Congress or by joint rule of these two Houses, as the peace and safety of the country demand and as this House doth most earnestly desire (being ready to hear reason in the matter, and to yield if in any wise in error) this House will unalterably adhere to and abide by and be governed by these resolves.

JONAS A. BIGELOW.

Mr. WALLING, by unanimous consent, introduced a bill (H. R. No. 4391) granting a pension to Jonas A. Bigelow, of Company K, Fourteenth Regiment Ohio Volunteer Infantry; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

ADDITIONAL LAND DISTRICT IN IDAHO.

Mr. SOUTHARD, by unanimous consent, from the Committee on Territories, reported back the bill (S. No. 538) to create an additional land district in the Territory of Idaho; and moved that the Committee on Territories be discharged from the further consideration of the same, and that it be referred to the Committee on Public Lands.

The motion was agreed to.

JAMES L. HIGH.

Mr. CAULFIELD, by unanimous consent, from the Committee on Expenditures in the Department of Justice, reported back the bill (H. R. No. 3052) for the relief of James L. High; and moved that the Committee on Expenditures in the Department of Justice be discharged from the further consideration of the same, and that it be referred to the Committee of Claims.

The motion was agreed to.

DOWER IN THE DISTRICT.

Mr. LAWRENCE, by unanimous consent, from the Committee on the Judiciary, reported back the bill (H. R. No. 2043) to improve the law in relation to dower in the District of Columbia, with amendments by the Senate; and moved that the House non-concur in the amendments of the Senate, and ask for a committee of conference.

The amendments of the Senate were read, as follows:

Strike out all after the enacting clause and insert:

"That one-third in value of all the equitable estate in real property owned and held by the husband within the District of Columbia at any time during the marriage, to which the wife has made no relinquishment of her right, shall be set apart to said wife as her dower-right in such property. Such dower may be assigned specifically by metes and bounds, or as of a third part of the net annual value of the rents, issues, and profits of the lands and tenements, or interest therein, in which the dower-right exists."

Amend the title so as to read: "An act in relation to dower in the District of Columbia."

The motion of Mr. LAWRENCE was agreed to.

ORDER OF BUSINESS.

Mr. SINGLETON. If in order, I move that the House resolve itself into Committee of the Whole on the state of the Union, to resume the consideration of the consular and diplomatic bill.

Mr. O'BRIEN. I hope the House will have the morning hour before we go into committee.

The SPEAKER. The House has it in its power to go into committee before the morning hour.

Mr. O'BRIEN. I understand that; but I wish to notify the House that this motion, if agreed to, cuts off the morning hour.

Mr. SINGLETON. And pending the motion to go into Committee of the Whole, I move that all debate on the pending amendment be closed in one minute.

The motion to close debate was agreed to.

The motion that the House resolve itself into Committee of the Whole was also agreed to.

CONSULAR AND DIPLOMATIC APPROPRIATION BILL.

The House accordingly resolved itself into Committee of the Whole on the state of the Union, (Mr. CAULFIELD in the chair,) and resumed the consideration of the bill (H. R. No. 4251) making appropriations for the consular and diplomatic service of the Government for the year ending June 30, 1878, and for other purposes.

The CHAIRMAN. By order of the House, debate on the pending amendment has been limited to one minute. The Clerk will read the pending amendment, which is the substitute offered by the gentleman from Indiana [Mr. HOLMAN] for the second paragraph of the bill.

The Clerk read as follows:

That from and after the 30th day of June, 1877, embassadors, envoys extraordinary, ministers plenipotentiary, and ministers resident shall be entitled to the salaries following, namely:

Envoys extraordinary and ministers plenipotentiary to Great Britain, France, Germany, and Russia, $15 000 each; to Spain, Austria, Italy, Brazil, Mexico, Japan, and China, $10,000 each; to Chili and Peru, $10,000 each.

Ministers resident accredited to Belgium, Netherlands, Sweden and Norway, Turkey, Venezuela, Hawaiian Islands, and the Argentine Republic, $7,000 each.

Minister resident accredited to Guatemala, Costa Rica, Honduras, Salvador, and Nicaragua, to reside at such place in either of said states as the President may select, $8,000.

Minister resident and consul-general to Hayti and Liberia, $4,000 each.

The question being taken on Mr. HOLMAN's amendment, there were —ayes 29, noes 70; no quorum voting.

Mr. HOLMAN. A quorum has not voted and I call for tellers.

Tellers were ordered; and Mr. HOLMAN and Mr. HALE were appointed.

The committee again divided; and the tellers reported—ayes 59, noes 100.

So the amendment was not agreed to.

The Clerk resumed the reading of the bill, and read the following paragraph:

For ministers resident at Belgium, Netherlands, Sweden and Norway, Turkey, Venezuela, Hawaiian Islands, and the Argentine Republic, at $7,500 each, $52,500.

Mr. REAGAN. I offer the amendment which I send to the desk.

The Clerk read as follows:

Amend line 20 by striking out the words "Hawaiian Islands," and by striking out, of line 22, the words "fifty-two thousand five hundred" and by inserting in lieu thereof the words "forty-five thousand."

Mr. REAGAN. I have proposed four amendments, and I will call the attention of the committee to the object of them at this time as briefly as I can.

The first is to strike out, in line 20, the words "Hawaiian Islands," and to strike out, in line 22, the words "$52,500" and insert in lieu thereof the words "$45,000;" so as to make the amount required to be appropriated in the paragraph corresponding with the change made in the first amendment.

The second amendment is to strike out lines 27 and 28 of the bill, being the provision for a minister resident and consul-general to Hayti, $7,500.

The third amendment is to strike out the provision for minister resident and consul-general to Liberia, at a salary of $4,000.

The fourth amendment is to insert after line 73 the words: "For consuls at the Hawaiian Islands, Hayti, and Liberia, $3,500 each, $10,500."

I am induced, sir, to offer this amendment from looking at the general object and character of the bill and having reference to the action of the House at the last session, and in this connection I desire to call the attention of the House to the fact that at the last session we abolished the office of minister to Ecuador, in South America, a civilized people with a population of 1,200,000. We also abolished the office of minister to Colombia, in South America, with a civilized population of 2,500,000. We also abolished the office of minister resident to Bolivia, a civilized community, with a population of 1,868,252. We abolished the minister resident to Switzerland, a Republic with a population of 2,534,240. We also abolished the mission to Greece, a civilized community, with a population of 1,067,216. We also abolished the mission to the pontifical states, with a population of 692,106. And we now retain a minister resident and consul to the Hawaiian Islands, a barbarous people, with a population of only 70,000; we retain a minister resident to Hayti, a barbarous people, with a population of only 572,000; we retain a minister to Liberia, a semi-barbarous people, without commerce, with a population not exceeding 120,000.

I do not understand, and that is the reason why I offered my amendments, why, in the three countries which I have last named, with their small population, barbarous and semi-barbarous, and with a very limited commerce, and one of these countries with no commerce at all, we should incur the expense of having a minister resident, while at these other civilized courts, with vastly more population and more commerce, we abolish the office of minister resident, they being civilized, Christianized, and commercial nations.

I am unable to comprehend or see the propriety of it; and I trust that, unless better explanation than is known to me shall be made, the House will sustain the amendment and abolish the office of minister resident to these three republics.

Mr. HOLMAN. If the gentleman will omit the addition to the consuls, in regard to which the question as to amount is a mere matter of calculation afterward, it will avoid confusion.

Mr. REAGAN. The gentleman will understand that the question now is upon my first amendment.

The question was taken; and the amendment was not agreed to.

The Clerk resumed the reading of the bill, and read as follows:

For minister resident and consul-general at Hayti, $7,500.

Mr. REAGAN. I move to strike out those two lines.

Mr. HOLMAN. Before the question is taken upon striking out, I make an informal motion to reduce the amount of that appropriation to $4,000, and I would ask my friend from Mississippi whether it would not be proper to put Hayti and Liberia on the same footing. The minister to Hayti receives $7,500. The minister to Liberia receives only $4,000. Would it not be proper to put Hayti on the same footing with Liberia?

Mr. SINGLETON. I believe that we attempted to do that in the bill that passed last session; but we thoroughly failed, because the Senate would not agree to it.

Mr. HOLMAN. I withdraw my amendment.

Mr. WATTERSON. I ask the consent of the gentleman from Texas [Mr. REAGAN] to move an amendment in a portion of the bill preceding his, and it is in line 19, to insert after the word "Belgium" the word "Switzerland;" so as to provide for a minister to Switzerland.

The CHAIRMAN. That portion of the bill has been passed.

Mr. HALE. I make the point of order that we cannot go back.

Mr. WATTERSON. I ask unanimous consent to go back so as to offer that amendment.

Mr. HALE. What is the purpose of the amendment?

Mr. WATTERSON. Its purpose is to insert the name of the only republic in the world, except the United States, composed of a civilized people, which has been omitted from the list, and that is the republic of Switzerland.

Mr. O'BRIEN. I object. I do not consider Switzerland a republic in any respect.

Mr. BANKS. Let the amendment come in, and let us vote upon it.

Mr. O'BRIEN. I withdraw the objection.

Mr. WATTERSON. I then offer the amendment.

Mr. HOLMAN. I wish to reserve the point of order upon that amendment until the gentleman from Kentucky shall be heard, if he desires to be heard.

Mr. WATTERSON. I simply wish to state my belief that the Republic of the United States should not discontinue its representation in the only republic in Europe, which is the republic of Switzerland.

Mr. HOLMAN. The point of order is that the amendment would change existing law. There is no law providing for a minister to Switzerland.

Mr. HALE. I submit that the point of order comes too late.

Mr. HOLMAN. I do not press it.

Mr. WATTERSON. This provision was in the original bill, but was left out by accident.

Mr. SINGLETON. O, no! The gentleman is mistaken about that.

The question was taken on Mr. WATTERSON's amendment; and on a division there were—ayes 70, noes 58.

Mr. HOLMAN. No quorum has voted.

Mr. O'BRIEN. I call for tellers.

Tellers were ordered; and Mr. HOLMAN and Mr. WATTERSON were appointed.

The committee divided; and the tellers reported—ayes 70, noes 81.

So the amendment was not agreed to.

The question recurred upon Mr. REAGAN's amendment to strike out the twenty-seventh and twenty-eighth lines of the bill.

Mr. SPRINGER. I desire to call the attention of the committee to that amendment. If there is a place in the universe that is less important to this Government than any other, in a diplomatic sense, it is the republic of Hayti. That the Government should support a minister there at an expense of $7,500 per annum for the purpose of diplomatic intercourse, seems to me quite inexplicable.

I recognize the fact that we must have a consular officer at the commercial port of those islands. But what necessity there can be for a diplomatic officer for a small group of islands in the ocean with which we have and can have no diplomatic relations of any importance is a mystery to me.

I desire also to call attention to the fact that our efforts at the last session of Congress to reduce these supernumeraries have had a very wholesome effect. Gentlemen will remember we made an effort to eliminate from the diplomatic correspondence which is annually transmitted to this House and the other certain portions which were of no earthly importance to any one. From an examination of the papers furnished to Congress at this session by the State Department I am happy to see that the diplomatic correspondence with various foreign governments, especially with the government of Greece, has been so pruned by some gentleman in the State Department as to relieve it of many of the offensive and objectionable parts. In the correspondence of J. Meredith Reed, our minister to Greece, I find numerous lines of stars dividing the various paragraphs. That I presume indicates that the State Department, in pursuance of the intimation of the House, has caused to be stricken out a great portion of his correspondence which can be of no use to any one.

In regard to the pending amendment to strike out the appropriation for the minister resident and consul-general at Hayti, I desire to say that if it is adopted and it will deprive the commercial port of that country of a consul, then I would move, or ask the gentleman from Texas to move, to supply the omission when we reach the portion of the bill providing for consuls.

Mr. REAGAN. I would refer the gentleman to my fourth amendment, which covers that point.

Mr. SPRINGER. I see that the gentleman from Texas has already anticipated the difficulty which I thought might arise by leaving Hayti without a consul. I insist that the Committee of the Whole should strike out this appropriation for a minister resident at Hayti who by the terms of this bill receives the same compensation as is paid to our ministers resident at the most courtly governments in Europe and South America.

Mr. BANKS. So far as I could understand the remarks of the gentleman from Illinois, [Mr. SPRINGER,] it does not seem to me that he presents any sufficient reason for striking out the appropriation for a minister resident and consul-general at Hayti. It may very well be said that commercially speaking the trade of Hayti is not now of great importance to the United States, but it may be made a matter of some advantage. The policy of the Government for a long time past has been such as to strip the United States of nearly all its commerce with the islands of the Gulf, with Mexico, and the Central American and South American governments. The principal part of their commerce is with the nations of Europe, three thousand miles distant, and we rest here within a couple of days' sail of the principal ports of the West Indies and South America, embracing a population of 30,000,000 or more, without any of the advantages of communication or trade which belong to us. There should be a policy adopted to restore that trade to us, to whom it naturally belongs.

Another reason why this appropriation should not be stricken out is this: Hayti is one of the principal governments of the Gulf of Mexico, the most important sea of the United States. The course of

events, or the policy of the Government, has been such that we have scarcely a sail to-day on its waters. It is no longer an American sea, as it should be. That results from the fact that we take little or no interest and give no encouragement to any of the republics or states of that portion of the world. Our course has been such as to lead them, or at least to encourage them, to continue their trade with European governments.

Mr. SPRINGER. What policy is it to which the gentleman refers as discouraging our trade with these countries?

Mr. BANKS. I have not said what the policy is; I do not care what it is; I speak of the fact and its inevitable result. One step further in that line of policy is the proposition advocated by the gentleman from Illinois.

Mr. SPRINGER. Mr. Chairman——

Mr. BANKS. The gentleman must excuse me; I have but five minutes. The island of Hayti is the key to the Gulf of Mexico. The government of that island may part with its jurisdiction at any time it pleases to any foreign government. I know it will be said we can interfere with any such transfer, and perhaps successfully resist it; but why should we put ourselves in the attitude of seeming indifference if not of absolute hostility to the government of an island so important to us as to justify even the thought of opposing any action it might think proper to adopt, or to give the opponents of this country an opportunity to encourage a belief that the United States is hostile to their interests? If we want to maintain our power in the Gulf of Mexico, and certainly I think gentlemen must at least favor that proposition, why should we make enemies of those who have a just, natural right to control in part this most important island?

Another and still more pregnant reason for opposition to this amendment is that the government of Hayti is a government of colored people. The solution of the question as to the ultimate destiny of the colored people of this continent is a problem of vast importance, one which very few men of our time can fully comprehend. I have heard two men, one some years ago, and the other very recently, speak with great interest of the island of Hayti and San Domingo, its relation to the ultimate condition and destiny of the colored people of this Republic. One was Mr. Seward, who made a voyage to all the states of the Gulf to satisfy his own mind on that question, and the other was President Grant, whose views of the importance of the island now in question were presented with such force as to be still alive in the remembrance of the people. Mr. Seward said with great earnestness that the subject was one of the most important that could be presented to the people of this country; that whatever might be our purposes or our views now, we should hereafter turn to the Gulf of Mexico and the states upon its coasts for a solution of this great question which so much embarrasses the people of this country at this time. The President under circumstances altogether different expressed in equally earnest language the same general views. The most distinguished officers of the Army and Navy have repeatedly asserted its importance to us as a means of national defense. If this be true, why step out of our way to put ourselves on record as utterly indifferent spectators, if not opponents, of a people and government that is possibly to occupy so important a position hereafter with reference to this country?

What do we do by adopting this amendment? At the most we may save $4,000 a year, though I do not think we shall save anything. But suppose we do save $4,000, is that a sufficient reason for cutting off official communication with that portion of the world, which is so important to us in every point of view? I know that the time was when the best part of the trade of New England, that trade which built up its foreign commerce, which gave it a commercial power that enabled its merchants to extend their commerce to the East Indies, had its basis in the eastern trade with West India Islands. Similar results can be attained now if we choose to encourage commercial intercourse with that part of the world, and the way to encourage it is to maintain our connection as a government with those countries, thus increasing the natural and proper influence, intercourse, and trade with prosperous states around us.

[Here the hammer fell.]

Mr. REAGAN. I move, *pro forma*, to strike out the last word. If this amendment would have the effect supposed by the gentleman from Massachusetts, [Mr. BANKS,] I would not favor it. If the retention of a minister resident in that country would be of material service in promoting our commercial interests or would accomplish any important result in relation to the amelioration of the colored population of the United States, either of these considerations would be, with me, a good reason for retaining a minister resident. But, as I understand, the office of a minister is to go into the higher fields of diplomacy, while the interests of commerce are, in a very large degree, attended to by a consul, an officer that it is proposed to provide at a salary of $2,500. If this consul can do all that is necessary in a commercial point of view, if there is no high reason of state for a diplomatic representative, it seems to me we should not make the discrimination to which I called attention a while ago, of abolishing the office of minister resident to six powers of the earth, having a population of from one to two and a half millions of civilized people, and yet give a minister resident in the case now under consideration.

I would do all in my power to encourage the improvement of our commercial interests in that direction; I feel as much anxiety, I trust, for the advancement of our commerce as does the gentleman from Massachusetts. But our commerce cannot be improved by simply sending a minister there. Our commerce with that and other West India Islands is to be advanced, the trade of the Gulf and of South America is to be secured, by improving the industrial interests of our own country and by a modification of the tariff so as to enable us, in seeking the trade of those countries, to compete with the skill and capital of other nations. This improvement of our commerce as I understand will not come through sending a minister there, but must come through the improvement of the condition of our own country and the promotion of commercial facilities through a modification of our tariff laws.

Now, it seems to me that in a country so small in territory and population, we need not have a minister resident; that a consul there will answer all necessary purposes of commerce and international intercourse. In offering the amendment I was partly influenced by this consideration and partly by the desire to make this bill harmonize with our general action heretofore, by which the positions of six ministers resident at countries of far more population, of far higher civilization, and of far greater commercial importance were abolished.

Mr. BANKS. Will the gentleman state what they are?

Mr. REAGAN. I will in a moment; I have not my notes here just now.

Mr. BANKS. They are not in that part of the world, I presume.

Mr. REAGAN. Three are in South America and three in Europe.

Mr. BANKS. The gentleman from Texas is certainly in error in regard to the commercial powers which he ascribes to the consuls of this Government at any foreign port where we have established diplomatic intercourse. I know very well that consuls and consular agents attend to the details of trade and commerce; but I must suggest to the gentleman that there is not a single instance in the history of this country where a consul has opened or established originally a trade between this and other countries. In almost every instance the system of trade and the conditions of trade are established by diplomatic agents, ministers resident, or others; and where there is a minister resident, or any other diplomatic officer of high character to introduce a commercial system, or contribute to its establishment, then consuls attend to the duties of detail connected with the matter.

We want a trade with the South American countries. I do not believe that we have abolished absolutely ministers resident in six of the South American states or the Central American states. We have doubtless consolidated the offices in some cases; but is there a South American or Central American state where we have no diplomatic agency at all?

Mr. REAGAN. I now call the attention of the gentleman to the fact, which appears by the statement before me, that we have refused to provide ministers resident for Ecuador, Colombia, and Bolivia in South America, and for Switzerland, Greece, and Rome in Europe.

Mr. BANKS. Are not those South American States, in reference to diplomatic matters, attached to some other country?

Mr. REAGAN. Yes, sir; we are represented in the South American states as in Europe by our agents at designated places.

Mr. BANKS. We have, as I understand, a diplomatic representative at each of these States; but if we adopt the amendment of the gentleman from Texas we shall have no diplomatic agent there; and I call the gentleman's attention to the fact that no consul can communicate in any way whatever with the government of Hayti. We cannot through such an officer communicate with that government on any subject of trade or commerce or anything else, and hence we must lose important advantages which may be secured by other countries.

[Here the hammer fell.]

Mr. REAGAN. I withdraw my formal amendment.

The question then recurred on the amendment of Mr. REAGAN.

The House divided; and there were ayes 27, noes not counted.

So the amendment was rejected.

Mr. SPRINGER. I move to strike out "$7,500" and insert "$4,000," as the salary of the minister resident and consul-general to Hayti. The salary of the minister resident and consul-general to Liberia is fixed in this same bill at $4,000. Liberia is remote from the United States and requires on the part of the minister resident and consul-general much greater expense in going to and returning from his post of duty. Perhaps, too, the expense of living is much greater in Liberia than in Hayti, but of that I do not know. At all events, I do not see why there should be $7,500 for the minister resident and consul-general to Hayti and only $4,000 for the minister resident and consul-general to Liberia. I therefore hope the committee will strike out "$7,500" and insert "$4,000," so that the salaries shall be the same at both places.

Mr. SINGLETON. I rise to a question of order. I think that matter was fully considered on the amendment offered by the gentleman from Indiana, [Mr. HOLMAN.] That proposition embraced precisely this proposition.

Mr. SPRINGER. But it embraced a great deal more.

Mr. SINGLETON. The House has already rejected the amendment.

Mr. SPRINGER. But the amendment of the gentleman from Indiana embraced several propositions. Mine is a single proposition, to strike out "$7,500" and insert "$4,000" in the case of the minister resident and consul-general to Hayti. This, under the rules, is perfectly in order.

The CHAIRMAN. The Chair sustains the point of order raised by the gentleman from Mississippi, that this being embraced in the proposition of the gentleman from Indiana is not in order now.

Mr. SPRINGER. This single question has never been put to the House, and under the rules is in order.

The CHAIRMAN. It was part of the proposition voted down, and is therefore not in order.

Several MEMBERS. Regular order!

Mr. SPRINGER. This is the regular order. I rise to the point of order that my amendment is in order, as it is a proposition the House has not yet voted on.

The CHAIRMAN. The point of order has been ruled against the gentleman.

Mr. SPRINGER. I take an appeal from the decision of the Chair.

Mr. BLOUNT. And I move to lay it on the table.

The CHAIRMAN. The Chair will submit the question to the House whether the judgment of the Chair shall be sustained or not.

Mr. SPRINGER. I withdraw the appeal, as I do not desire to press a matter of so little importance.

Mr. O'BRIEN. I renew the appeal from the decision of the Chair, that the amendment having been offered in gross and defeated, the same amendment of only a part is out of order. With due respect to the Chair, I say that the Chair is radically and entirely wrong.

The CHAIRMAN. The House will decide that question.

Mr. TOWNSEND, of New York. I rise to a question of order.

The CHAIRMAN. The question before the House is, Shall the judgment of the Chair be sustained?

Mr. TOWNSEND, of New York. I desire to be heard on this question of order. An appeal was taken from the decision of the Chair, and that appeal, as I understand, was laid on the table.

The CHAIRMAN. No, the appeal was withdrawn.

Mr. O'BRIEN. Besides it cannot be laid upon the table, as there is no table in committee. That motion can only be made in the House. I renew the appeal from the decision of the Chair, believing that the Chair's decision is radically wrong.

Mr. HUBBELL. Is it in order to lay the appeal upon the table?

The CHAIRMAN. Not in committee.

Mr. O'BRIEN. I wish to state my reason for taking an appeal from the decision of the Chair.

The CHAIRMAN. The question before the committee is, Shall the judgment of the Chair stand as the judgment of the committee?

The House divided; and there were—ayes 86, noes 16.

The CHAIRMAN. So the decision of the Chair is sustained.

Mr. O'BRIEN. But I should like to know whether a quorum voted?

The CHAIRMAN. A quorum did not vote, but the decision of the vote was announced by the Chair.

Mr. SPRINGER. Is it in order to move to insert $4,500 as the salary of the minister resident and consul-general of Hayti?

The CHAIRMAN. It is.

Mr. SPRINGER. Then I move to strike out $7,500 and insert $4,500.

The amendment was rejected.

The Clerk read as follows:

For minister resident and consul-general to Liberia, $4,000.

Mr. REAGAN. I move to strike that out.

The motion was rejected.

The Clerk read as follows:

For contingent expenses of foreign intercourse proper and of all the missions abroad, $85,000.

Mr. SPRINGER. I ask the gentleman from Mississippi who has charge of the consular and diplomatic appropriation bill, on behalf of the Committee on Appropriations, what is the amount of reduction in the contingent expenses of foreign intercourse proper made by this bill as compared with the sum appropriated for the contingent expenses of foreign intercourse in the last session of Congress?

Mr. CONGER. There is no proposition pending upon which debate can be had, and I therefore object.

Mr. SPRINGER. I move to strike out the word "dollars," at the end of the line, to allow me to put the question to the gentleman from Mississippi as what sum was appropriated for this purpose in the Forty-third Congress?

Mr. SINGLETON. The amount appropriated in the Forty-third Congress was $100,000. The Secretary of State asked us to appropriate for this same purpose $100,000 for the next fiscal year; but we thought $85,000 would be sufficient. That is an increase of $10,000 over the sum voted by this House at the last session. The Secretary stated that the accounts had not all come in, or he could state exactly what sum was required; but he believed the amount would be far in excess of $75,000, and asked $100,000, and we gave him only $85,000.

Mr. SPRINGER. I desire to call the attention of the committee to the fact that at last session of Congress when this item was pending the expenses for postage and other contingent expenses of the dispatch agent at London, which were paid out of this item, were referred to as excessive. It was then shown that these expenses for postage were about, on the average, $1,400 per month. I desire to call the attention of the committee to the gratifying result of the legislation of that session, as shown by a statement of the expenses for the same purpose since the passage of the bill of last session. Before the legislation of last session the expenses for postage, stationery, &c., of the dispatch agent at London averaged $1,400 a month, but since the passage of the bill of last session they have been reduced to $331 per month, showing the benefits of our reformatory legislation. I ask that this table may be published as part of my remarks.

There was no objection. The memorandum is as follows:

Memorandum of monthly disbursements made by B. F. Stevens as dispatch agent at London for the fiscal years ending June 30, 1875 and 1876, for postages, stationery, &c.

1875.

Amount expended:	
1874—July	$1,282 81
August	1,566 42
September	1,426 00
October	1,549 07
November	1,313 28
December	1,538 19
1875—January	1,458 14
February	1,282 28
March	1,362 70
April	1,452 75
May	1,318 84
June	2,189 25
	28,336 69

1876.

1875—July	1,094 78
August	1,084 39
September	1,251 48
October	1,091 37
November	1,081 65
December	1,267 80
1876—January	1,086 99
February	994 75
March	897 70
April	443 88
May	449 72
June	413 12
	11,147 63

1877.

1876—July	331 31
August	340 95
September	345 92
October	475 54

The attention of the country was called to the exorbitant expenses of Mr. Stevens for postage, &c., in February, 1876. At that time his account was over $1,000 per month. At once it begins to decrease, as will be seen above, and for July, 1876, the first month after the law of last session took effect, it amounted to only $331.31. This is a gratifying exhibit, and shows what might be accomplished in other departments of the public service by the enforcement of a rigid economy.

Mr. CONGER. I understand then that the gentleman from Illinois [Mr. SPRINGER] thinks that the fewer letters our ministers and commercial agents abroad write on the business of the United States, the better it is for the country?

Mr. SPRINGER. Not at all.

Mr. CONGER. And that it is true economy to show to this House that there has been less postage, and consequently fewer letters written by our agents abroad?

Mr. SPRINGER. No, sir; that is not the question at all. It has nothing to do with it. If the gentleman from Michigan had been informed upon the subject, he would not have made that point. The legislation of last session required that all letters of foreign ministers abroad should be postpaid here, under the arrangement of the international postal union, which is substantially free postage for Government matter to all parts of the world; whereas previously they had been forwarded to England, to a special agent in London, and the postage was there prepaid to foreign parts.

Mr. CONGER. As I understand now, the sack is saved to the country.

The CHAIRMAN. What is the gentleman from Michigan speaking to?

Mr. CONGER. The amendment last proposed.

The CHAIRMAN. Debate on that amendment is exhausted.

Mr. CONGER. I am glad that sack is saved to the country.

Mr. SPRINGER. I withdraw the *pro forma* amendment.

The Clerk resumed the reading of the bill, and read as follows:

For the consul at Liverpool, $6,000.

Mr. REAGAN. I had given notice of an amendment to insert at this point these words:

For consuls at the Hawaiian Islands, Hayti, and Liberia, $3,500 each, $10,500.

The three former amendments that I offered, which, if adopted, would have made this amendment necessary, having been negatived, I withdraw it.

The Clerk resumed the reading of the bill, and under the heading of "Consuls, Vice-Consuls, and Commercial Agents," read as follows:

Friendly and Navigators' Islands. Apia.

Mr. TEESE. I offer the following amendment:

After line 217 insert the following:

Italy. Milan. The consulship at Milan, Italy, shall be, and the same is hereby, placed under class 7 of this bill, and the consul at Milan shall hereafter receive a salary of $1,000 per annum.

Mr. HOLMAN. That is subject to the point of order, but I will withhold it until the gentleman from New Jersey is heard.

Mr. TEESE. What point of order?

Mr. HOLMAN. That it is independent legislation.

Mr. TEESE. Mr. Chairman, the object of this amendment is to restore this consulship to where it was before the appropriation bill of last year. The salary was then $1,000. By the appropriation bill of last session this was stricken out and fees substituted. This consulship is of very considerable importance. Milan is the second city of Italy; and it is the second city of the world so far as the trade in raw silk is concerned. There are many thousands of Americans there annually and the duties of the consulship at Milan are very considerable. I think, sir, it is right and fair that this consulship should be put back to the position it occupied before the passage of the last appropriation bill.

Mr. SINGLETON. It will be noticed that we have a minister resident in Italy with a salary of $12,000 a year; and then under class 6 we have consuls at Genoa, Naples, Leghorn, Florence, Palermo, and Messina—six points—getting $2,500 a year. Under the compromise which we made last year it was considered sufficient that we had consulships at six different points with a full mission to Italy. That was a part of the compromise. I hope, therefore, that the amendment will not be adopted.

Mr. HOLMAN. The gentleman from Mississippi [Mr. SINGLETON] will observe too that we have a consul at Milan who is paid by fees.

Mr. SINGLETON. Yes; I failed to make that remark. We have a consul at Milan who is not paid a stated salary, but receives an income from the fees of the consulship.

The question being taken on the amendment of Mr. TEESE, it was not agreed to.

Mr. HARRISON. I offer an amendment to come in at line 138——

Mr. SINGLETON. I make the point of order that we have passed that.

Mr. HARRISON. We passed it but the Clerk did not stop reading. Must we stop the reading of the Clerk as he proceeds?

The CHAIRMAN. Certainly. The line at which the gentleman from Illinois desires to offer an amendment having been passed, the point of order made by the gentleman from Mississippi must be sustained.

Mr. HARRISON. I ask for information whether it has been determined that the passing of a clause in the rapid reading of the Clerk prevents a member from offering an amendment?

The CHAIRMAN. Yes, sir; except by unanimous consent. Any member of the committee has the right to interrupt the Clerk in his reading at any point where he desires to offer an amendment. If he does not, he waives his right.

Several members called for the regular order.

The CHAIRMAN. The Clerk will proceed with the reading of the bill.

The reading of the bill was resumed and concluded.

Mr. SINGLETON. I move that the committee rise and report the bill to the House.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. CAULFIELD reported that the Committee of the Whole on the state of the Union had had under consideration the bill (H. R. No. 4251) making appropriations for the consular and diplomatic service of the Government for the year ending June 30, 1878, and for other purposes, and had directed him to report the same to the House without amendment, and with a recommendation that it pass.

The bill was ordered to be engrossed and read a third time; and it was accordingly read the third time, and passed.

Mr. SINGLETON moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of its clerks, informed the House that the Senate insisted upon its amendments disagreed to by the House to the bill (H. R. No. 3628) establishing post-roads, asked a conference with the House upon the disagreeing votes thereon, and had appointed as managers on the part of the Senate, Mr. HAMLIN, Mr. PADDOCK, and Mr. MAXEY.

The message further announced that the Senate had passed, without amendment, a bill and joint resolutions of the House of the following titles:

A bill (H. R. No. 2835) for the relief of R. J. Henderson, of Newton County, Missouri;

A joint resolution (H. R. No. 171) in reference to the congratulations from the republic of Pretoria, South Africa; and

A joint resolution (H. R. No. 172) relating to the congratulations from the Argentine Republic.

The message also announced that the Senate had passed, with amendments, in which the concurrence of the House was requested, the bill (H. R. No. 4307) making appropriations to supply certain deficiencies in the contingent fund of the House of Representatives, and for other purposes.

The message further announced that the Senate had passed, and requested the concurrence of the House in, a bill of the following title:

A bill (S. No. 993) for the relief of Admiral Charles Wilkes.

MILITARY ACADEMY APPROPRIATION BILL.

Mr. CLYMER. I move that the House resolve itself into the Committee of the Whole on the state of the Union for the consideration of the bill (H. R. No. 4306) making appropriations for the support of the Military Academy for the fiscal year ending June 30, 1878, and for other purposes; and, pending that motion, I move that all general debate upon the bill be limited to one hour.

The motion to limit debate was agreed to.

The question was then taken on the motion to go into Committee of the Whole; and it was agreed to.

The House accordingly resolved itself into Committee of the Whole on the state of the Union (Mr. TURNEY in the chair) and proceeded to the consideration of the bill (H. R. No. 4306) making appropriations for the support of the Military Academy for the fiscal year ending June 30, 1878, and for other purposes.

Mr. CLYMER. I move that the first reading of the bill be dispensed with.

The motion was agreed to.

Mr. CLYMER. I propose at a later stage in the consideration of this bill to make a brief explanation of its contents. For the present I yield a portion of my time to the gentleman from Florida, [Mr. FINLEY.]

Mr. FINLEY. Mr. Chairman, a member of this body, and representing, as I do, a constituency on this floor, I do not feel that I shall overstep the bounds of a modest reserve if at this time I shall offer a few observations on the state of the Union.

If there ever was a juncture in the history of the Government which demanded thoughtful consideration and deliberate and wise action, it is now.

That our Government has reached a crisis in its existence can no longer be disguised, a crisis fraught with more danger to the integrity of our political institutions than any which has hitherto marked its history.

When I take a careful survey of the present political condition of the country; when I witness the anxiety and unrest which now pervade the public mind; when I attentively consider the alarming tendencies which have marked the administrative policy of the Government for several years past, I must confess that my mind is filled with distressing fears and gloomy forebodings. It is indeed a time of dark omen, when even thoughtful and brave men grow pale and stand appalled in the presence of the fearful possibilities in the near future which, like stalking apparitions, mysteriously forewarn of approaching calamity.

What I now have to say shall be said without passion, and wholly unintluenced by any mere party consideration; for I hold that to love one's country above all party is the highest duty of patriotism, *especially* at a time like this, when the wisest and most thoughtful statesmen in the land are filled with apprehension and alarm for the safety of our institutions, and when, if ever, partisan rancor should stand rebuked in the presence of the dangers by which the nation is now confronted.

When our common habitation is on fire, let us not be guilty of the insane folly of continuing our family controversies until its smoking rafters shall come tumbling about our heads.

It is indeed true that the body-politic is diseased, but it is not the helpless yielding of attenuated age to the inexorable demands of death and decay; it is rather the mighty struggle between life and death in the robust system of a young giant, who yet has strength to rally into renewed and vigorous life. Yet, I am profoundly impressed with the conviction that we have now reached a point in our national life when nothing but the invisible power and omnipotent force of a sound patriotic public opinion can save our institutions from a fearful and complete overthrow.

If I am asked by whom this saving power is to be applied, I answer that it can only be done by our brethren of the North and Northwest, *irrespective of party.* I say *our brethren of the North and Northwest,* because, in the present stage of party strife, the Southern States occupy a position so anomalous that they can scarcely hazard an opinion without increasing and intensifying sectional jealousy to a degree which might again consolidate public opinion, both North and South, upon the basis of sectional antagonism—that dangerous rock which has already well nigh wrecked our noble ship of state, leaving her in such a shattered condition that a repetition of the shock would certainly cause her to go down in the seething waters of an angry sea.

If I may be pardoned for pursuing the simile a moment longer, I venture to affirm what every considerate man in the country will admit, and that is, that our ship of state, which has so nobly survived all the vicissitudes of a whole century's voyage, is now, in the very hour in which I am speaking, driven by the most fearful tempest she has ever encountered head on to a rock-bound coast, with every timber strained, and every mast and beam quivering, and unless the popular sentiment of the North and Northwest (which can alone control the helm) shall speedily "'bout ship," and draw out into an open and smooth sea, the noble craft upon which is freighted the hopes of republican freedom throughout the world must inevitably perish.

Representatives, *this rock-bound coast is centralized power.*

If I am asked how this popular opinion of which I have spoken can be aroused in time to deliver us from the peril in which we now stand, I unhesitatingly reply: Let some leading statesmen of both parties in each wing of this Capitol, who come from the North and North-

west, and have the ear of their people, throw wide their hearts and minds to the divine inspirations of patriotism, and first raising themselves up to the exalted heights of a sublime love of country, let them appeal to their people in the name of republican and constitutional government, and they will "draw all men after them"; and to the honor of having once saved the Union let them add the imperishable glory of preserving the very life of our Constitution and of re-establishing the tottering foundations of our Government.

A careful observer cannot fail to perceive that there is in our Government a conflict between two antagonizing principles which are fiercely contending for the mastery. Upon its result will depend the continued existence of our political institutions. It is a conflict between a manifest tendency to centralism on the one side and constitutional government on the other. It is the conflict of two opposing principles, between which there can be no compromise. For the concession of any constitutional guarantee would imperil our institutions, while to abandon ourselves to the policy of progressive innovation would, in the end, accomplish the complete overthrow of our whole system of government.

I need not tell the intelligent representatives of the American people of the various steps which have been taken in the direction of an unauthorized central power. They stand forever recorded in our political history, and will readily occur to all who have carefully studied the theory and practice of the Government. I forbear to mention or dwell upon them in detail, because, from my locality, and that of the constituency I represent, I cannot do so without the risk of imparting fresh irritation to that sectional sensitiveness which all good men, both North and South, should be so anxious to allay. But I implore my countrymen to bury the bitter memories of the past, and calmly consider and ponder the events of the last ten years, *each one for himself*, and in the light of sound constitutional interpretation determine for himself whether indeed it be true that we are drifting into the vortex of a dangerous central power.

In this solemn juncture, when, in the opinion of many of our wisest statesmen, the very life of constitutional government is put at peril, the helpless and exhausted South calls upon the patriotic people of the North and Northwest, *without regard to party*, to come to the rescue not of the South alone, but of the whole country; for rest assured, that whatever may have been our past relations and antagonisms, *now*, when our common heritage is in danger of being wrested from us, you may truly exclaim that the cause of any one State is "the cause of us all."

I appeal to you to-day, and ask if you can contemplate the danger to which we are alike exposed with feelings of indifference? I implore you to rise from the death of apathy to a life of patriotism, and remember that "at certain moments, in certain places, in certain shades, *to sleep is to die*." Then will you not arouse yourselves to active and earnest effort to restore the Government to a purely constitutional administration? Not to do so would be a crime against yourselves. It would be an unatonable sin against all the generations to come after you. I speak to my countrymen to-day without regard to party. I speak to the Representatives of the nation. I speak to the whole American people. I here proclaim that we are not only debtors to the present, but that we owe a solemn duty to the future. What our forefathers *achieved* in 1776 the men of 1876 *must preserve*. If neglected, it will entail upon our children for all time to come a heritage of woe. It will fill all the coming ages with the fruitless wailings of a crushed and down-trodden people.

I will now look into this subject somewhat, promising, however, to avoid even the appearance of party bias or sectional prejudice.

When the philosophy of our Government is carefully studied, it will be seen to be a system of *distributed powers* between the different departments thereof. It will also be seen that these departments have been so incorporated into the general system, and endowed with such functions, as to enable them to act as checks upon each other; and hence, among the earlier statesmen of our country, it was called a system of "checks and balances." In this distribution all the powers of Government are vested by the Constitution in the legislative, executive, and judicial departments, and that instrument has, with rare precision and certainty, assigned to each its appropriate functions, and has wisely guarded the whole by expressly forbidding the exercise by any one of them of the powers assigned to either of the others.

It will be further seen that all the powers not conferred on the General Government by the Constitution, and not "prohibited to the States, are reserved to the States respectively, or to the people." Here we have the various departments of the National Government acting as checks the one upon the other, while the General and State Governments are alike checks upon each other. It is in this admirable distribution of power between the different departments of the General Government, and between the General and State Governments, that we find the wisdom, beauty, and strength of our system. While it is *complex* it is also *simple*, and when its theory is rightly understood no practical solecism will be found in this declaration. It will be found to be complex in its machinery, but at the same time simple in its operation. It will be found to be the only feasible system by which absolute power can be avoided and at the same time civil liberty preserved. As a system of government it is the wonder of the ages, and if not perverted or destroyed it will in less than a century become the model upon which all the governments of the world will be molded. The inspirations of popular government have already entered into the hearts of the masses in Europe, and if we shall illustrate by our example that republican liberty is not the synonym of license, some who exist to-day may possibly live to see all the world substantially republican; otherwise all the world will be given over to kingly power. Which shall it be? Our experiment in government must and will solve the problem. If we fail in the experiment, our own countrymen will be "dead to all hope and buried in the grave of their calamities," and the last hope of republican freedom will die out from the hearts of all mankind and all the peoples of the earth will be subjected to absolute rule.

But I digress from my purpose. I desire to say a little more of the antagonistic principles of centralism and republican liberty, which in my judgment are now grappling in a fierce and deadly struggle in the United States. If the former triumphs it will be at the expense of all the checks provided by the Constitution; if the latter, it guarantees the perpetuation of our institutions, it may be, for all time to come.

It must I think be admitted by all candid minds that have fairly comprehended the nature and scope of our system that a centralization of power beyond the limits prescribed by the Constitution would necessarily involve a substantial change in both its nature and operations; would disadjust the balance of power and destroy the checks which have been so wisely provided by that instrument. If this be true would it not be well for the leading men both in and out of Congress to pause for a while in the maddening whirl of partisan politics, and, in a calm and dispassionate retrospection of the past, endeavor to ascertain whether it be true that our ship of state is being loosed from its constitutional moorings, and whether she is indeed drifting toward the dangerous reefs of centralized power.

If our statesmen, the trusted mariners placed on the ship's lookout to discover the dangers ahead, so that they may be avoided, shall fail in their duty it will then be time for the ship's crew—the people—to look into the matter for themselves, and by a timely foresight provide against the threatened catastrophe. I have only mentioned these things to put the people upon inquiry and the nation upon its guard. It is against any wrong and dangerous tendency in the administration of the Government, and which may finally culminate in usurpation, that the country should be vigilantly guarded.

I do not believe that the present Chief Executive has ever for a moment contemplated a *coup d'état*. Nay, I go further and declare, that I do not believe he would desire to do so even if the way were fairly and securely opened to him.

At the present day any President would be rash indeed to attempt to play the rôle of Napoleon III. He would find himself opposed by the earthquake power of a nation's resistance, which no man, not even Washington himself, if alive, could withstand.

It is no present *coup d'état* that I fear. If it be true that the day for such things has not passed by in the revolutionary governments of Europe and in our sister republic of Mexico, it is also true that the day has not yet come in the United States for such a daring usurpation of power. It is that we may take timely warning, and prevent it in the future, that I have ventured, although almost unknown as an active participant in the proceedings of this body, to raise my voice in solemn warning to my countrymen both North and South.

In a government like ours, where popular sovereignty rules, we cannot watch too sedulously, and, I will add, too jealously, the *general tendencies* of its administration; and in this connection I beg to say that if the employment of the military arm of the Government, of late years, in any of the States is unauthorized by the Constitution, such employment is in the direction of consolidated power, and has an alarming tendency to dictatorial rule. Such a tendency is manifestly dangerous to our institutions, and should be promptly and effectually arrested by the people at the ballot-box. This is the more essential to our safety because in our Government a precedent once set and repeated soon solidifies itself into the potential force of an organic law.

What I mean, if possible, to impress upon the minds of my countrymen is, that although President Grant might and doubtless would follow the illustrious example of Cincinnatus and repudiate the dictatorship, still as a natural outgrowth of unauthorized military power it may be that at some time not very far in the future some Servilius Geminus may rise up in our country and seize the reins of dictatorial rule, and we may find the history of the Roman republic repeated in our own.

We value and regard our institutions of government as being eminently wise and benign in themselves; and indeed they are, but even if they were less so the spirit of the second century of our national life is opposed to any radical change in their organic form, whether such change is effected by formal amendments of the Constitution or by precedents which have been sanctified by continued use. At this very moment the great national heart, so long silent, is throbbing in audible pulsation and is ready to articulate in deep and unmistakable tones its demand for *peace, Union, and the Constitution as it is*.

What we need in the United States is *stability* in the organic forms of our Government, unvarying obedience to organic law, and just such frequent changes in our rulers as may be necessary to secure honest, economical, and efficient administration.

In this nineteenth century the voice of civilization demands peace instead of revolution, and pleads for stability in all governments which do really and substantially secure to citizens and subjects the enjoyment of life, liberty, and property.

Our own Government, if wisely and honestly administered, is abundantly adequate to this great and salutary end; and we shall become of all the nations on earth the most reprobate if we either pollute or break down the sacred altars which our fathers erected to constitutional freedom one hundred years ago.

That something is wrong in the working of the government machinery must, I think, be apparent to all who will take the pains to observe its operations. It will be seen that there is derangement somewhere, in some of its parts; that its regularity and harmony of movement have been disturbed. This must be patent to all intelligent and unprejudiced minds. And perhaps no better proof of this can be found than is presented in the known fact that the patriotic and thoughtful statesmen of the entire country are at this moment oppressed with perplexity of mind and anxious foreboding on account of the events that are now transpiring around us.

It must be apparent to all that the great balance-wheel in the machinery of government has been thrown from its axis, and unless it is speedily replaced and re-adjusted it must and will result in fearful collision, and in the ultimate destruction of a system which in times past has performed its functions with a certainty and precision that has not only secured the confidence of our own people, but has excited the wonder and challenged the admiration of the world. In the very nature of our political system, involving as it does both national and State organization, it is indispensable, in order to insure its harmonious working, that each shall be confined within its own appropriate and constitutional sphere. This delicate and difficult task was sought to be accomplished by the sages who framed the Constitution. That the system has from time to time been drawn within the influence of disturbing causes has been owing more to administrative mismanagement than to any inherent defect.

The sphere in which both the national and State governments were intended to move is accurately and expressly defined in the tenth amendment of the Federal Constitution, and clearly means that the General Government may exercise such powers only as are delegated to it, and that the States may only exercise such powers as are not delegated to the United States and as are not prohibited to the States by the Constitution. The language of the Constitution in this connection is so clear and so free from all ambiguity that there would seem to be no room for doubt as to the intention of its framers; and the only chance for misinterpretation would be in determining with certainty what merely implied powers the General Government may, under the Constitution, rightfully claim to exercise. These questions of construction have often arisen since the foundation of the Government; and as the executive and legislative departments have from time to time assumed to decide them the one way or the other, the executive and legislative policy of the country has been made to fluctuate. But hitherto an appeal to the judicial power of the Government has afforded the only authoritative solution of doubtful constitutional questions. That there should be some tribunal clothed with the power to determine whether executive or legislative action has transcended the limitations of the Constitution was absolutely necessary to prevent usurpations which might be utterly subversive of our entire system of government.

The question of greatest difficulty was, *where* this important and delicate power might be most safely lodged.

Knowing, as they did, the imperfection of all human systems, and knowing too that ultimate power could not be vested in any man or body of men, whose determinations would be infallibly correct, the framers of the Constitution lodged it in the Federal judiciary as a co-ordinate branch of the Government; and, in order to secure impartial action on their part, they were clothed with the life tenure in office, and thus made independent of the other co-ordinate branches of the Government. Whatever objection has been or may be urged against this appropriation of power, it is, I believe, generally conceded that it was the best and safest that could be devised, and it may here be added that the interpretations of the Constitution given by this high and august tribunal have rarely been brought in question.

Whether the Constitution thus interpreted has been disregarded by either of the other departments of the Government is certainly a question which the people *may as a matter of right*, and *should as a matter of duty*, inquire into.

As in the natural world changes are ever taking place, so it may be said of all human institutions, that they are continually liable to transmutations, and frequently by such slow and gradual processes as scarcely to be perceptible at any given moment of observation. This is especially so in republics, and hence the importance of sleepless vigilance on the part of the people, who are the acknowledged source of political power in a government such as ours. It is their duty to examine and scrutinize *every act* of *every administration* of the Government. To do this in a spirit of fairness, and with the sole purpose of preserving the integrity of our institutions, is what patriotism demands of every American citizen.

If the foundations of republican liberty have been weakened by either corrupt or unwise administration, I implore my countrymen without delay to inquire into the nature and extent of the evil, and thoughtfully and wisely to consider of, and apply, the best and most practicable means of removing or lessening it. But, in our anxiety to restore the Government to a healthful state, let us not be rash or inconsiderate in choosing the methods to be used for that purpose. *Above all, let us seek a peaceful escape from all the dangers which may, either now or hereafter, threaten our institutions.*

Neither section of our country can stand the strain of another civil war, the direst of all calamities. Let us trust to public opinion, which will assuredly open up the way to a peaceful solution of all our troubles for in republics public opinion is more powerful than the sword, and, if relied on, will sooner or later overthrow all conspirators against the constitution. Let us then trust in that; and if hereafter rash and ambitious men shall assail the Constitution, the time will have come when, in the language of Victor Hugo, it, "in spite of all conspirators against the constitution, and mysteriously to them, before the invisible resistance of the moral sentiment, before the invisible force of progress accomplished, before the formidable and mysterious refusal of an entire century, will arise at the North and the South, at the East and the West around tyrants, and tell them *No!*" and all conspirators against the Constitution of the United States will find that it is safer to play with the lightning and the fierce thunderbolts of heaven than to trifle with a deceived and outraged people.

If the public opinion and moral sentiment of the nation cannot preserve the purity of the ballot, and the integrity of our institutions, then I proclaim our experiment in government a failure—for it is a government of consent and not of force—the idea of a government maintained by armed force is opposed to all our political theories. If ever we shall reach this point, we shall find that a radical change in the theory of our system will become inevitable, and we shall be compelled to adopt some other form of government. In that event (which I pray may never occur) it would be wise to meet the *inevitable* and respond to its demands by effecting the transition by peaceful and bloodless methods. But I have an abiding faith in a better destiny. Let us vindicate before the world the excellence of our political institutions by keeping as we can, the theory and practice of our Government in perfect harmony and agreement.

It has been said by De Tocqueville, the great political philosopher, that "France was the first to throw into the world, amid the thunders of her first revolution, dogmas which have subsequently become the regenerating principles of all modern societies, which has been the glory and most precious portion of her history." So it may be justly said of the United States that it was her glory, amid the thunders of her first revolution, to seize upon those dogmas and make a practical application of them, so as to illustrate to all the nations of the earth the possibility of successful popular government; and this has become "the most precious portion of our history." And as De Tocqueville said of France, so it may be as truly said of the United States at this time, that it is "these very principles which our example at the present day is depriving of force. The application which we seem to make of them, in our own case, leads the world to doubt their truth. Europe, which is watching us, begins to ask if we were right or wrong. She asks if it is true, what we have so often affirmed, that we are leading the nations of the earth toward a happier and more prosperous future, or whether we are not dragging them down after us into moral degradation and ruin. This, gentlemen, is what causes me most grief, in the spectacle which we are offering to the world. It not only injures us, but it injures our principles and our cause."

I fear we are making dangerous departures from the true theory of our Government. It is to be feared that we have wandered very far out into the wilderness of unauthorized administration. We seem, for a time at least, to have forgotten that the only safety for our Government is in the Union of the Constitution and the perfect and absolute equality of the States. Let us not close our eyes to the fact that, in proportion to the expansion of our territory and the multiplication of States, with the diversity of interests which naturally arise between remote regions, the preservation of unity and equality will become more difficult; and let us remember in time that a strict observance of the Constitution is the only possible method for establishing them upon sure and lasting foundations. To-day our territory spans a continent. With one foot resting on the Atlantic and the other on the Pacific, our Government stands forth among the nations of the earth in all the grand proportions of a Colossus, which can only be saved from dwarfing by preserving the unity of its parts. Let us by our example show to skeptical Europe that the principles of our political institutions are not only capable of securing good government to thirteen States with three millions of citizens, but that it is adequate to the government of thirty-seven States with forty-five millions of people, who are distributed over a vast domain "over which the sun rises and sets through a thousand successive horizons, and above whose carpet of verdure heaven spreads out half its stars."

To preserve so magnificent a country from despotic rule and continue to it and its rapidly increasing millions of population the paternal government bequeathed to us by our forefathers should command the earnest and ceaseless efforts of every patriot in the land throughout all the coming generations.

To this patriotic work we are called by all the memories of the past, urged by all the grave responsibilities of the present, and invited by all the great and glorious hopes of the future. Not only the eyes of the whole world are upon us, but if it be permitted to

the spirits of the departed to revisit the earth, I doubt not that the grand army of the heroes of the Revolution, with the immortal Washington at their head, have descended "on the rushing pinions of their fame," and, though invisible to mortal eyes, are now hovering in breathless anxiety above the heads of Senators and Representatives as they sit in deliberation in their respective Halls in this Capitol, and in mute eloquence are pleading for the preservation of the priceless government for the achievement of which they pledged their lives, their fortunes, and their sacred honor.

I must confess that I cannot contemplate even the *possibility* of the failure of our experiment in government without growing sick at heart, and if in the vicissitudes of our national life it is destined to destruction, I feel that I would accept it as a blessing at the hands of an all-merciful Providence not to be allowed to survive its overthrow.

Whatever of misfortune to my country may lie hidden in the misty and unexplored future, when I come to stand on the dim and mysterious boundary of the two worlds, and when my mortal vision is closing upon all sublunary things, I pray that my last and dying gaze may rest upon the flag of my country without one star missing from its glittering folds.

Mr. CLYMER. I propose to make a brief statement for the information of the committee, as to the provisions of this bill. It is substantially the same as that reported last year for the same purposes. The estimates of the Department for the support of the Military Academy for the fiscal year ending June 30, 1877, were $437,470, which sum was largely reduced by the Committee on Appropriations. The law as passed appropriated $290,065, being a reduction on the estimates for 1877 of $147,405.

The estimate of the Department for the fiscal year ending June 30, 1878, amounts to the sum of $395,080, and the appropriations as recommended by this bill amounts to $265,161, being $129,859 less than the estimate and a reduction of $24,904 from the law of last year.

The reductions were made in the following items:

Pay department	$23,150
Expenses of military band	8,544
Repairs	10,500
Transportation	200
Materials for office, &c.	300
Department of chemistry	2,800
Department of natural philosophy	3,000
Department of French	100
Department of law	285
Department of ordnance and gunnery	400
Department of drawing	440
Miscellaneous and contingent expenses	5,440
Buildings and grounds	74,700
Total	129,859

The item of $23,150 is made up by striking out the estimate of $6,700 for additional pay to professors for length of service, and by refusing to recommend additional compensation to officers serving as assistant professors and instructors at the Academy, over and above their pay as officers in the line, amounting to $10,500, and by declining to make appropriations for certain clerkships recommended by the Department, and by reducing the compensation of other employés.

The reduction in the expenses of the band, amounting to $8,544, from $14,880, the sum estimated for by the Department, was made in obedience to the suggestion of the last board of visitors that the military band at West Point was unnecessarily expensive, and should be reduced to its number prior to July 1, 1875.

This recommendation being in harmony with the general views of reform and economy entertained by the committee, they did not fail to observe it. In order to determine what number legally constituted a band prior to July, 1875, an examination was made of the several acts of Congress touching the subject, and, as this question gave rise to much discussion at the last session and seemed not to be clearly understood, it may be of interest to briefly trace the legislation regarding the matter. By the act of July 29, 1861, increasing the military establishment of the United States it was provided that the bands of regular regiments should consist of not more than twenty-four musicians for each regiment of infantry and artillery.

By the act of July 2, 1864, the bands were to be paid as follows: One-fourth of each band, $30 per month; one-fourth of them, $20 per month; and the remaining half, $17 per month. By the act of July 28, 1866, the number of bands in the Army was reduced to fifteen, and by the act of March 3, 1869, all the bands in the service were honorably discharged, except the band at the Military Academy.

From this statement it will appear that the committee in recommending an appropriation of $6,336 have complied strictly with the law and the recommendation of the board of visitors, by reducing the numbers and pay of the band to what they were prior to July 1, 1875, and have thereby effected an important reduction in the estimates this year, and of the existing expenditures for the same purpose, the amount appropriated last session being $11,000.

The estimate of the Department for repairs was $22,500. This the committee have reduced to $12,500, being the amount appropriated last session, and amply sufficient in the judgment of the committee for all needful repairs. Large appropriations for this purpose tend to extravagant and unnecessary expenditures, which can easily be avoided by watchful and prudent supervision. It is sometimes the habit to make new erections and improvements under appropriations for repairs which were never contemplated or authorized.

In the department of chemistry the committee declined making an appropriation for a dynamo-magneto-electric machine costing $2,800, and in the department of natural and experimental philosophy they reduced the estimate for additions to apparatus from $3,500 to $1,000, under the conviction that the real progress of the cadets in learning would not be retarded or impeded by their action.

The committee made reductions in the estimates for the departments of French, law, ordnance and gunnery, drawing, and in miscellaneous and contingent expenses, amounting to $9,665. I will not at this time particularize them. The items generally are small in amount, but have been scrutinized with care. When the bill is considered by sections it will be my pleasure to explain our action in each case, if it is desired by any one.

The chief reduction made by the committee was under the head of buildings and grounds, the estimates of the Department being—

For completion of the hospital	$42,000
For drainage of grounds	16,000
For new reservoir	15,000
For continuing parapet wall	500
For a shed to protect field batteries	1,200
Total	74,000

This large sum was recommended by the Department for the completion of structures already begun and for other and new improvements.

The hospital was begun several years ago, and is partially completed. It may well be doubted if a new hospital is needed at West Point, by considerations either of health, convenience, or comfort, the doubt in my mind being based upon the report of the Surgeon-General of the Army made in 1870. Speaking of the old hospital he says that—

> While this is far from being a model hospital, either in internal arrangement, access of air and sunshine, ventilation, or drainage, the records do not show that any exceptions have ever been made to its sanitary condition, due no doubt to the fact that the number of sick in hospital is usually small and the ailments slight.

From this statement it would appear that there is no such urgent necessity for the completion of the new hospital as would make the appropriation asked for indispensable. If in the near past the old hospital answered all the requirements of the academy, surely the completion of the new one may be delayed until the Treasury is in better condition to meet the expense. I may with propriety make the same remarks regarding the estimate submitted by the Department for the drainage of the grounds, amounting to $16,000. The system was begun some years ago and has cost much money, but if any one will take the trouble to examine the report of the Surgeon-General, to which I have referred, which discusses the subject of sewerage at West Point at length and with great particularity, he cannot fail to be convinced that there is no pressing necessity for the appropriation. That a perfect system of sewerage is desirable is not to be disputed; that it is demanded by any sanitary reasons cannot be maintained, and until we can appropriate for all purposes of absolute necessity, we should postpone those which are simply desirable and convenient.

The estimate made by the Department of $15,000 for a new reservoir received the thoughtful consideration of the committee, and there was a diversity of opinion as to the necessity for the improvement. It is alleged that during the great drought of last summer the post was without water for several days from the usual source of supply, a reservoir upon a stream in the rear of the post, and that the water had to be hauled from the river and distributed by carts. If there was a probability that this was likely to occur again, no one would hesitate as to the propriety of the appropriation; but this is an exceptional and isolated instance of want of capacity, not so much of the reservoir as doubtless of the stream which supplies it, so that a majority of the committee were of opinion that the asked for appropriation might be deferred until a more convenient season. If the judgment of the committee should differ from us in regard to this matter, it will be no subject of regret that we have been corrected.

The estimates for the continuation of the parapet wall and the section of a shed to protect the field batteries, amounting to $1,700, are demanded by no considerations which should outweigh those of the necessity for absolute economy in expenditures at this time; therefore the committee have not recommended appropriations for these purposes.

I have thus endeavored to briefly explain the principal reductions made by the bill, and might with propriety commit it to the action of the committee; but I may not refrain from adverting to the great cost of the management of the Academy and of the instruction afforded by it, as compared with other great seats of learning, such as Harvard, Yale, and Princeton. The average number of cadets is three hundred and ten. The number of officers, professors, assistant professors, masters, and surgeons employed and detailed from the Army for their government, instruction, and care is fifty-seven, as follows: One major-general, three professors with the rank and pay of colonel, six professors with rank and pay of lieutenant-colonel, one lieutenant-colonel, two majors, six captains, sixteen first lieutenants, eighteen second lieutenants, one sword-master, three surgeons, whose pay and allowances amount to $168,394.64, or at the rate of $543.27 a year for the government and tuition of each cadet. The proportion of officers

to cadets is as one to five and a half. The cost of boarding, clothing, and general maintenance of each cadet is $540 a year, amounting to $167,400, or $994.64 less than the cost of their government and tuition.

These are startling figures, which should make us pause and reflect. The academic staff has become overgrown, and the time will come when it must and will be reduced. It should be done now, but in this short session neither time nor opportunity has been given us to consider the subject with the care its importance demands. The changes and reductions should be radical. In 1863, when the number of cadets was 253, and when many items were included in the appropriation which are not now estimated for, being provided for in other bills, the entire appropriation for the Academy was only $173,842. The growth in cost and expenditure as shown by these figures is only cumulative proof of the wasteful extravagance of our generation.

I would not willingly cripple the usefulness of this institution in any regard. I acknowledge its value to the country; I know the skilled soldiers it has given to us in the past. They have been and are our pride and glory. I would have men of equal skill and learning trained for the grave duties of the future, but to produce them I do not deem it necessary that there should be wasteful extravagance in the management and support of the Academy. As at present organized its government is extravagant; the cost of its instruction is without parallel. The pruning-knife of economy may be safely applied without fear of detriment to its usefulness. My chief regret is that time will not permit it to be done here and now.

Mr. Chairman, I have detained the committee longer than I intended. When the particular items of the bill are under consideration I shall be glad to give the committee any information I may have acquired by a careful and patient examination of the whole subject.

The Clerk proceeded to read the bill by clauses for amendment.

The following paragraph was read:

For pay of the Military Academy band, $6,336; which shall be in full for the pay of the said band, and for all company musicians, for the fiscal year ending June 30, 1878, any law to the contrary notwithstanding: *Provided*, That the pay herein allowed and given shall be in full of all other pay, allowance, forage, and commutation, except for quarters, fuel, and light; and that the pay for other professors, instructors, and assistants, being officers of the Army, when detailed and assigned to service at the Military Academy, shall be only their Army pay and allowances; and that all other acts and parts of acts in conflict with the provisions of this act be, and the same are hereby, repealed.

Mr. CLYMER. I move to amend the paragraph just read by striking out after the word "band" these words: "and for all company musicians."

The amendment was agreed to.

Mr. HOLMAN. I wish to suggest to the gentleman from Pennsylvania [Mr. CLYMER] that in the twenty-fourth and twenty-fifth lines of this paragraph the words "provided that" should be omitted so as to make this not merely a limitation upon this appropriation, but a permanent provision. It will then read: "The pay herein allowed and given shall be in full," &c.

Mr. CLYMER. I have no objection to that amendment.

Mr. HOLMAN. I suggest further that the word "other" preceding the words "pay, allowance, forage, and commutation" should also be struck out as well as the word "other" in the last clause, so that the clause will read: "And that all acts and parts of acts," &c.

Mr. CLYMER. I accept the suggestion of the gentleman and propose further that the word "that" in the twenty-seventh line preceding the words "pay for other professors," and also the word "that" in line 30, near the beginning of the last clause, be also struck out.

The CHAIRMAN. If there be no objection, the modifications proposed will be made.

There was no objection, and it was ordered accordingly.

The Clerk resumed and concluded the reading of the bill

Mr. CLYMER. I move that the committee rise and report the bill as amended to the House.

The motion was agreed to.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. TURNEY reported that the Committee of the Whole on the state of the Union had had under consideration the bill (H. R. No. 4306) making appropriations for the support of the Military Academy for the fiscal year ending June 30, 1878, and for other purposes, and had directed him to report the same with certain amendments, and with a recommendation that it pass as amended.

The amendments reported from the Committee of the Whole were agreed to.

The bill, as amended, was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. CLYMER moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

REMOVAL OF DISTRICT JAIL.

Mr. HOLMAN submitted a report; which was read, as follows:

The committee of conference on the disagreeing votes of the two House on the amendment of the House to the bill (S. No. 842) authorizing the commissioners of the District of Columbia to remove the jail on Judiciary Square to grounds near to the Washington Asylum for the use of the District, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its amendment and agree to the Senate bill; and that the Senate agree to the same.

WM. S. HOLMAN,
A. M. KIMBALL,
CASEY YOUNG,
Managers on the part of the House.
JUSTIN S. MORRILL,
A. S. PADDOCK,
Managers on the part of the Senate.

Mr. HOLMAN. I will state in a few words the point of disagreement in reference to this bill. The original bill appropriated $14,000 for the removal of the jail and proposed that the money should be paid out of the public Treasury. The House amended the bill so as to direct that the money be paid out of the treasury of the District of Columbia. The conferees on the part of the House have agreed with the conferees on the part of the Senate that the House recede from its amendment so that, if this report be adopted, the bill will pass in its original form appropriating $14,000 out of the public Treasury. I do not think, sir, if it could have been well avoided, this appropriation should be made from the Treasury of the United States. I think it should have come out of the treasury of the District; but it is important this work should be done and it is quite manifest the treasury of the District would not bear the expenditure of that amount of money.

The report was adopted.

Mr. HOLMAN moved to reconsider the vote by which the conference report was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

RECORDER OF DEEDS OF THE DISTRICT OF COLUMBIA.

The SPEAKER, by unanimous consent, laid before the House a letter from the Secretary of the Interior, transmitting the claim of the recorder of deeds for the District of Columbia for re-imbursement of money expended by him for record books; which was referred to the Committee of Claims.

DEFICIENCIES IN HOUSE CONTINGENT FUND.

Mr. FOSTER. I move, by unanimous consent, to take from the Speaker's table the bill (H. R. No. 4307) making appropriation to supply certain deficiencies in the contingent fund of the House of Representatives, and for other purposes, with the amendments of the Senate; and that they be referred to the Committee on Appropriations.

There was no objection, and it was ordered accordingly.

FLORIDA ELECTION TESTIMONY.

Mr. THOMPSON. I ask unanimous consent to have printed for the select committee on the recent election in Florida the testimony taken by that committee.

There was no objection, and it was ordered accordingly.

THE GOLD AND SILVER INTERNATIONAL CONFERENCE.

Mr. O'BRIEN. I demand the regular order of business.

The SPEAKER. The morning hour now begins at ten minutes after three o'clock, and the House resumes, as the unfinished business of the morning hour, the consideration of the joint resolution (S. R. No. 16) to authorize the President to appoint commissioners to attend an international conference on the subject of the relative values of gold and silver. The gentleman from Maryland is entitled to the floor.

Mr. O'BRIEN. At the request of gentlemen on both sides of the House, I ask unanimous consent that the joint resolution now pending be postponed until the morning hour of Tuesday next.

The SPEAKER. If there is unfinished business in the morning hour coming up on that day it will of course under the rules take precedence.

There was no objection, and it was ordered accordingly.

Mr. WILLARD. I ask unanimous consent to offer a substitute for that joint resolution and to move that it be printed, and also that it be printed in the RECORD.

Mr. O'BRIEN. I do not object to the substitute being printed, but I object to its being considered as pending.

Mr. WILLARD. I only ask that it be printed.

There was no objection, and it was ordered accordingly.

The substitute is as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in the event of the full remonetization of silver in the United States, should the governments of one or more countries invite a conference or convention with a view to agree upon and establish a uniform relation of silver with gold as a legal standard of value the President of the United States is hereby authorized to appoint three qualified persons as commissioners to attend such conference or convention.

Resolved, That the President of the United States is hereby authorized to propose to the governments of such countries as use both gold and silver as a legal standard of value such conference or convention, in the event and for the purpose stated in the foregoing resolution.

CENTENNIAL COINS.

Mr. O'BRIEN, from the Committee on Coinage, Weights, and Measures, reported back adversely the bill (H. R. No. 3159) to authorize the coinage of centennial coins, and for other purposes, and moved that it be laid on the table.

The motion was agreed to.

AMENDMENT OF COINAGE ACT.

Mr. O'BRIEN also, from the same committee, reported back ad-

versely the bill (H. R. No. 658) to amend the coinage act of 1873, and moved that it be laid on the table.

The motion was agreed to.

OVERCHARGE OF DUTIES ON TONNAGE AND IMPORTS.

Mr. WOOD, of New York, from the Committee of Ways and Means, reported back the bill (H. R. No. 4250) to provide remedies for overcharge of duties on tonnage and imports, with amendments.

Mr. WOOD, of New York, asked the reading of the report of the committee.

The Clerk read as follows:

The bill is a copy, with one or two verbal corrections, of a bill agreed upon by the Judiciary Committee of this House in January, 1875, and reported therefrom to the House on the 15th of that month, and a recent decision of the Supreme Court, and a conflict between sections 2931 and 3011 of the Revised Statutes, make its immediate enactment into a law a duty to importers and to the Government.

It modifies existing laws in the following particulars:

I. By requiring collectors of customs to inform importers by mail, whenever the post-office address has been left with the collector, of the date of the ascertainment and liquidation of entries, from which the ten days within which a notice of dissatisfaction therewith begins to run. Up to 1867 the several collectors of customs were required to mail, and did mail, such notices.

But on May 10, 1867, the Treasury Department issued a new circular, completely changing the former one, and directing the collectors, instead of informing importers by mail, to publish the date of liquidation in the custom-house, a form of notice not likely to reach those not living or doing business in the place, unless they employed some one to daily watch the posted bulletin. In this circular Secretary McCulloch said:

"In view of this provision making the rights of importers dependent on a compliance therewith within a specified time, 'after the ascertainment and liquidation of the duties,' it is deemed proper that they should be duly notified of the time at which the duties on their respective entries may have been ascertained and liquidated. You will therefore cause to be kept a record of the several entries liquidated from day to day, stating the name of the vessel, the place from which and the time when she arrived, the name of the importer, and the date of entry; and will give notice of the liquidation of such entries by posting in some conspicuous place in the custom-house accessible to the public, on the day succeeding the date of ascertainment and liquidation, a transcript of such record, there to remain for ten days, when such transcript will be removed and filed with the records of your office; and the posting of such transcript will be deemed and taken to be a full notice to all parties interested.

"The notice of dissatisfaction or protest referred to in the section before cited must, in all cases, be presented to the collector within ten days, and the appeal to the Secretary of the Treasury be taken within thirty days after notice of the ascertainment and liquidation of the duties as herein provided.

"When an appeal is taken from the decision of a collector, such appeal, addressed to the Secretary of the Treasury, may be delivered to such collector, who is hereby instructed to receive and transmit the same to this Department, with a full report of the case, together with a statement of the reasons for his decision."

This was the condition of importers till, by a decision of the Supreme Court of the United States, in the case of Westray, reported in the eighteenth volume of Wallace, page 322, the court said there was under the law of 1864 no law requiring any notice at all. In that case, the importer offered to show that in October, 1864, he made the import in controversy; that the amount of duty on which was illegal, and the illegality was conceded, but the Government said its suit for the amount must prevail, because he had made no protest against the liquidation within ten days of liquidation of the entry. He offered to prove that he never had any notice of the liquidation, and that none had been sent to him, although the collector was at that time ordered to send it. It must be borne in mind that the liquidation is merely a making up on the custom-house books of the account of duties after the reports of the appraiser or other examiner are received by the collector, and the date of doing it is necessarily known only to the collector's clerks. The importer may not then pay the duty, and on a warehouse entry does not oftentimes for months, but under the law of 1864 he is, unless he protests, estopped from questioning the accuracy of the transaction.

To be sure, under a law of 1866, (section 3013 of the Revised Statutes,) the Secretary has a discretionary authority to relieve from hardship, but it is believed by the committee that the matter ought not to rest on discretion but be regulated by law.

II. By relieving the importer from the labor of sending on each protest a separate appeal to the Secretary in Washington, as now required by section 2931 of Revised Statutes. The regulations under this section now compel the importer to file a duplicate protest with the collector, one copy of which is for the Treasury, and this should be sufficient. The committee see no necessity for requiring a new appeal to the Treasury on each entry. In 1858, the Treasury required the importer to file with the collector duplicate protests. The order was in these words, and this order is now in force:

TREASURY DEPARTMENT, *June* 19, 1858.

SIR: In all cases hereafter, when duties are paid under protest, you are instructed to require of the importer a duplicate of the same, one to be filed in your office, the other to be transmitted to this Department at the time the protest is made.

In making out the certified statements, a copy of the protest will be required, in accordance with the regulations now in force.

I am, &c.,

HOWELL COBB, *Secretary.*

AUGUSTUS SCHELL, *Collector, New York.*

As by this order the duplicate protest is to be forwarded to the Treasury, and by the order of 1867 the appeal is to be filed with the collector, there seems to be no sufficient reason for vexing the importer with making and forwarding so many papers to inform the Treasury of the same thing; but it is sufficient to require one protest to be left with the collector, and he to report to the Treasury why he exacted the duty, the Treasury to inform the importer of his decision, and if the exaction was unwarranted to immediately repay the amount.

III. By enabling the importer, if the Treasury sustains the collector, to bring his suit in a Federal court. Now, the suit must be begun in a State court and removed, by *certiorari*, into a Federal court; and also by giving to the importer six months in which to begin his suit, instead of two months, as now, and compelling him to include all his claims in that single suit instead of multiplying suits, as must now be (section 2931) on every entry. This matter has been under consideration at the Treasury, as appears by the following communication:

TREASURY DEPARTMENT,
Washington, D. C., June 19, 1874.

SIR: * * * I desire to say, in addition, that, upon further examination of the subject-matter of said letter, I am inclined to the opinion that in cases where litigation arises between importers and the Government, as to the proper rate of duty on imports, such importer should be required to bring one suit on every question that may thus arise in order to protect his rights before the court and the Department, and that when in one such case protest and appeal and suit have been instituted by any importer, the filing of protests at the custom-house on each subsequent entry, involving the same question, should be sufficient to protect his rights, without further appeal to this Department, which would save a vast amount of correspondence between the custom house and the Department, and quite as well protect the interest of the Government.

I am, very respectfully,

W. A. RICHARDSON, *Secretary.*

Hon. J. S. MORRILL,
United States Senate.

TREASURY DEPARTMENT,
Washington, June 16, 1874.

* * * I am also of opinion that the existing law, act of June 30, 1864, (chapter 177, sections 14, 15,) should be so modified as to dispense with the necessity of more than one action being brought to determine the correctness of this Department's decision upon any single question arising under the tariff laws. This can be done by making such action a test case. The necessity of a suit being brought by every importer who may deem himself aggrieved by such decision is not apparent, as his rights may be fully secured by protest and appeal without suit, and thus a multiplicity of actions and the consequent accumulation of costs avoided.

I am, very respectfully,

B. H. BRISTOW, *Secretary.*

Hon. JOHN SHERMAN,
Chairman Finance Committee United States Senate.

It has seemed to the committee a better course to require a suit every six months, or two suits in each year when the litigation continues undecided in the courts for so long a time, and the importer continues the importation of a similar article on which the same question arises. This will be more prudent than one suit, because it will enable the Treasury to know every six months just what amount is involved. And it is to be hoped that, by vigor in the district attorneys in pressing suits for trial, and similar diligence on the part of the plaintiffs, the litigation may be speedily disposed of.

IV. By requiring the clerk of the court, on a final judgment, to transmit a copy thereof to the Treasury, and the Secretary to forthwith pay it in the kind of money that was exacted, with costs of court duly taxed.

V. By permitting an importer to make a protest by a duly authorized agent, evidence of whose agency must be filed with the collector, and also the post-office address of both, to provide for evidence, or place of business outside the port of entry, and enabling the Secretary to do equity when satisfied that notice of liquidation was not received.

VI. The Supreme Court has decided, in Barney *vs.* Schneider, (9 Wallace, 248,) that on trials of a suit by an importer to recover excess of duties, he could only use the copies of his protests and entries certified by Treasury officers, and that failure of those officers to procure them on legal notice did not, under the statute, warrant the introduction of copies as evidence. This is a hardship and expense which should be and is remedied in the proposed bill.

VII. There is need that the rule of presumption declared by the Federal courts, (United States *vs.* Ullman, 4 Benedict, 54,) in suits to recover excessive taxes, be made secure by statute, and that has been done at the end of the second section of the proposed bill.

VIII. For many years it was assumed by the Treasury that the protest law of March 3, 1857, (11 Statutes, 195,) repealed that of February 26, 1845, (5 Statutes, 727.) The importers denied it, and finally, in October, 1875, the Supreme Court, in Barney *vs.* Watson, (92 United States Reports, 449,) so decided. This decision makes it needful that legislation be had as in the third section of the proposed bill, to save accrued rights and to enforce the decision. In addition this section reveals a blunder of the revision in incorporating the law of 1845, (section 3011,) and that of 1864, (section 2931,) which conflict.

How this conflict arose before the enactment of the present Revised Statutes appears from the following official correspondence:

CUSTOM-HOUSE, SAN FRANCISCO,
Collector's Office, September 30, 1872.

SIR: I have the honor to acknowledge the receipt of your letter of 18th instant, relative to a letter from C. A. McNulty, an attorney in this city, in which he states that Hon. Lorenzo Sawyer, United States judge for the district of California, held, in a case brought before him, that it is necessary to protest at the time of payment of duty, as well as within ten days after the ascertainment and liquidation of duties, &c.

In reply, I have to respectfully transmit herewith copy of the brief in argument by the United States district attorney, together with a copy of the record of the court sustaining the demurrer, and triplicate protest, and beg to state in this connection that the question involved was raised by the attorney of the United States, on demurrer to the complaint, in the case of the San Francisco and Pacific Sugar Company against John F. Miller, late collector, on the ground that no protest was made at the time of the payment of duties upon an entry for consumption, and not within ten days after ascertainment and liquidation of duties.

I have also to state that, since the date of said decision, the numerous appeal cases represented by Mr. McNulty, as attorney for importers, have been in accordance with the ruling laid down therein, although the general practice at this port has been to protest but once, and that within ten days after the liquidation and ascertainment of duties.

I shall continue to comply with the rules laid down in revised regulations, and the fourteenth and fifteenth sections act June 30, 1864, until otherwise instructed by the Department.

I am, very respectfully,

T. B. SHANNON, *Collector.*

Hon. GEORGE S. BOUTWELL,
Secretary Treasury.

TREASURY DEPARTMENT, *October* 19, 1872.

SIR: I submit herewith a letter from the collector of customs at San Francisco, dated the 30th ultimo, with certain other papers in connection therewith relative to a decision rendered by Hon. Lorenzo Sawyer, United States judge for the district of California, in a suit which was brought by certain parties against John F. Miller, late collector at that port, to recover duties claimed to have been exacted in excess.

From these papers it appears that the district attorney demurred to the complaint on the ground that it was not shown that the parties had made a protest at the time of the payment of the duties, and the court sustained the demurrer, with leave to amend the complaint. Of course, if no protest was filed at the time of the payment of the duties, which is understood to have been the fact, the demurrer is fatal to the case, if this point is insisted upon by the Government. Protest in this case was made within ten days after the ascertainment and liquidation of the duties, and this office has always considered that a protest filed within ten days, and an appeal taken within thirty days after the liquidation of the duties, as a sufficient compliance with the law requiring protest and appeal.

If the decision of Judge Sawyer in this case is to be taken as a rule of action, it would seem to require double protest on every consumption entry, one at the time of the payment of duties, and the other within ten days after the ascertainment and liquidation of duties, except, of course, where the date of payment, filing of protest, and liquidation are simultaneous. This rule, if adhered to, would be fatal to a number of hundred suits now pending at the principal ports of the United

States, and it occurs to this office that it would not be wise for the Government to insist upon this point being sustained. If you concur therein, you are hereby authorized to give such instructions in the matter to the district attorney as shall carry out these views.

I am, &c.,

GEO. S. BOUTWELL, *Secretary.*

E. C. BANFIELD, Esq., *Solicitor, &c.*

DEPARTMENT OF JUSTICE,
OFFICE OF THE SOLICITOR OF THE TREASURY,
November 14, 1872.

SIR: I have the honor to acknowledge the receipt of your letter of the 21st ultimo, together with certain papers relative to a decision recently made by Hon. Lorenzo Sawyer, judge of the United States circuit court for the district of California, in the case of the San Francisco and Pacific Sugar Company against John F. Miller, collector of customs at San Francisco, for the recovery of duties claimed to have been exacted in excess and paid under protest.

It appears that the United States attorney demurred to the complaint, on the ground specifically that it is not averred that protest was made in writing and signed by the plaintiff at or before the payment of the duties claimed to be recovered in the action.

The court sustained the demurrer, with leave to the plaintiff to amend, which, as stated, is fatal to the action, as the plaintiff had made no protest in writing at or before the payment of the duties, but had, according to the provisions of the act of 1864, protested within ten days after the ascertainment and liquidation of those duties, the fact as well as that of due appeal to the Secretary of the Treasury being averred in the complaint. I am advised by your letter that the rule thus established by Judge Sawyer's decision, if adhered to, would prove fatal to the numbers of suits now pending at the principal ports of the United States, and that, in your opinion, it would not be wise for your Department to insist upon the point taken by the Government's counsel. I am accordingly requested, if this view receives my concurrence, to give proper instructions. In reply I have to say that I am not advised as to the ground taken by the court, but I have before me the brief of the United States attorney, as well as the demurrer, showing the ground taken by that officer specifically, and that I am constrained to doubt the correctness of the position taken. The plaintiff will doubtless take the case to the Supreme Court. Until the decision is sustained by that tribunal I do not think it advisable for your Department to alter the rule of practice which has grown out of what would seem to be a very proper construction of the act of 1864, regarding the time of protest. I do not, however, think of any special instructions to be given to the United States attorney which could result, as far as this case is concerned, in carrying out the views expressed in your letter, but I will direct him to refrain from raising the point in future cases until he is advised on the subject by this office.

Very respectfully,

E. C. BANFIELD,
Solicitor of the Treasury.

Hon. GEO. S. BOUTWELL,
Secretary of the Treasury.

TREASURY DEPARTMENT,
November 16, 1872.

SIR: I am in receipt of your letter of the 30th of September last, in regard to the ruling of Hon. Lorenzo Sawyer, United States judge for the district of California, that it is necessary to protest at the time of payment of duties, as well as within ten days after the ascertainment and liquidation of duties; and in reply would inform you that, notwithstanding said ruling, the Department will continue to regard a compliance with the requirements of the fourteenth and fifteenth sections of the act of June 30, 1864, and the regulations of the Department as affording ample protection to the rights of importers in such cases.

I am, &c.,

GEO. S. BOUTWELL,
Secretary.

T. B. SHANNON, Esq.,
Collector, San Francisco, California.

The court in California decided that the law of 1845 was, in 1871-'72 not repealed by the law of 1857 or 1864 respecting protests, but was in force. The Treasury Department, however, said that whether it was or not, the importer was safe if he proceeded under that of 1864, but did not say what would happen if he proceeded alone under that of 1845. Thus the question stood till the Revised Statutes, which inserted that of 1845 (section 3011) and that of 1864 (section 2931) as both in force. Even a casual glance shows that both ought not to be in force, for section 3011 says the importer may bring a suit if he protests "at or before payment" of duties, but section 2931 declares he shall not maintain a suit unless he files a notice of dissatisfaction within "ten days after the ascertainment and liquidation" of duties. Must the importer do both? So Judge Sawyer held in California. An importer enters his goods to-day; the duties are estimated, a deposit of money made to cover them, and the merchandise in part delivered. The "liquidation" may not be for a week. Or he may enter for warehouse, the entry liquidated, and the goods not withdrawn and duties paid for six months after liquidation. The entry may be on the 1st of January, the liquidation on the 10th of that month, and the duties paid on the 1st of March; but when, under these two sections, need protests be filed? Was not the California court correct in law and Secretary BOUTWELL right in equity?

Thus embarrassment has been intensified by the late decision of the Supreme Court in Watson's case, which holds, as the importers claimed, that the law of 1845 was not repealed by that of 1857, as the Treasury thought it was.

To remedy this conflict of sections for the future, the committee recommend the very simple and clear provisions of law in the first two sections of the accompanying bill, and to save the rights of all importers who have protested either under section 2931 or 3011, the committee recommend the third section of the bill. This last enables importers to proceed to test the legality of the exactions made of them under the limitations and provisions of either. Under that of 3011 they could, as the Supreme Court now decides, have sued down to 1864, and that right the accompanying bill declares shall not have been taken away, nor shall section 3011 take away any rights under that of 2931.

In order to secure a prompt collection of the revenue the Federal laws prohibit the interference of the judicial powers with the assessment and collection of any amount the executive inflicts. The citizen must first pay and then sue to get it back, if the court says the exaction was illegal. The customs officers, of course exact, in case of doubt, the highest rate for their own protection, either when the article is novel or the law new, although in all State tax laws the citizen has the benefit of the doubt where the law-making power has spoken ambiguously. But the Government owes it to importers to make the remedies open to them clear, unmistakable, and speedy.

Mr. WOOD, of New York. I now ask that the bill be read as amended by the committee.

The Clerk read as follows:

That on the future entry of any vessel, or of any merchandise, the decision of the collector of customs at the port of importation and entry, as to the rate and amount of duties to be paid on the tonnage of such vessel or on such merchandise, and the dutiable costs and charges thereon, shall be final and conclusive against all persons interested therein, unless the owner, master, commander, or consignee of such vessel, in the case of duties levied on tonnage, or the owner, importer, consignee, or agent of the merchandise, in the case of duties levied on merchandise, or the costs and charges thereon, has given, or shall give, within ten days after the final liquidation of the duties and closing the account thereof on the books of the custom-house, information whereof is to be communicated by the collector, as is hereinafter required, if dissatisfied with such decision, a notice thereof in writing to the collector, signed by the party or parties making entry, or his, her, or their duly constituted agent or attorney, as hereinafter directed, setting forth therein distinctly and specifically the grounds of objection thereto; and, on the reception of every such protest, the collector shall forthwith transmit the same to the Secretary of the Treasury, with a full report of the circumstances of the decision complained of, and such answer as can be made to the complaint of the importer; and the Secretary of the Treasury shall, within ninety days after receiving such report, prepare and transmit by mail to the party making entry, or agent, as aforesaid, his decision thereon; and if in favor of the complainant, or if the Secretary of the Treasury shall, for the period of ninety days as aforesaid, not make and transmit a decision, then he shall immediately draw his warrant upon the Treasurer, in favor of the party entitled to the overpayment, directing a refund of the same out of any money in the Treasury not otherwise appropriated; but if the decision of the Secretary of the Treasury be adverse to the complainant, then such decision shall be forever final and conclusive, unless, within six months after the date of such decision, the party making entry, or his or their legal representatives, shall institute a suit at law against the collector aforesaid in a district or circuit court of the United States for the district or circuit wherein the payment was made, setting forth all the particulars now required by section 3011 of chapter 8 of the Revised Statutes, approved June 22, 1874. And if in said suit final judgment shall be rendered for the plaintiffs, in either of said courts, the clerk of said court shall within twenty days, provided no appeal shall have been taken, transmit a transcript thereof to the Secretary of the Treasury, who shall immediately cause the judgment to be paid out of the Treasury, in the same description of money as was exacted of the plaintiff by the defendant, together with costs of court and attorney's fees, as regulated by the highest court of the State wherein the said suit is brought. And each and every of the justices of the Supreme Court of the United States shall have authority to enforce, by writ of mandamus, the payment as aforesaid of every such final judgment.

SEC. 2. That whenever any before-mentioned protest shall not be signed with the signature of the party or parties making entry as aforesaid, but by an agent or attorney, then, in every such case, evidence in writing of such agency, or appointment of such attorney, according to the law of the land, shall be filed with the collector, at or before the serving on him of said protest. And every party making entry of merchandise at any custom-house shall declare thereon his post-office address, and to such address the collector shall mail a notice of the date of the final liquidation of the entry aforesaid and closing of the account thereof in the books of the custom-house, stating the amount of balance, if any there be, due on either side; and the date of receiving such notice in due course of mail, by the party to whom it is addressed, shall be held to be the date of such liquidation and closing for the purposes of protest, unless the Secretary of the Treasury shall be satisfied that such notice was not sent or received, and in such case the time for making protest shall be extended by him to ten days from the time when the party making entry was in fact informed of such liquidation and closing. And every suit begun as aforesaid by any party or parties shall contain each and every item of money claimed by said party to have been exacted from him, her, or them by the defendant up to the date of said suit, and which has not been included in some previous suit; and if any party shall, in the opinion of the court before which trial is had, unduly multiply such suits, he shall not, on final judgment therein in his favor, be entitled to recover therein costs against the defendant, but shall pay therein double costs if such judgment be in favor of the defendant. And, on the trial of every such suit, the respective officers of the Government shall, on due notice in writing served by the plaintiff on the defendant, or his attorney, produce before the court in which the trial is had the originals of all entries, and all other papers in their possession relating to the importation or importations in controversy, which are pertinent to the issue, and in default thereof the plaintiff may read in evidence copies of such entries and papers. And on the trial of every such suit, the plaintiff having given evidence, to the satisfaction of the court, of making entry of the importation in controversy, of the rate and amount of duty thereon exacted by the defendant and paid by the plaintiff, and of the protest aforesaid, shall be entitled to rest his cause; and it shall thereupon be for the defendant to make it appear that the exaction complained of was warranted by law; and in every case where the statute relied upon by the defendant is, in the opinion of the court, ambiguous, and fairly capable of two conflicting interpretations as to the rate of duty imposed, the benefit of the doubt shall be given to the plaintiff.

SEC. 3. That nothing in any law of Congress shall take away, or be construed to take away or impair, the right of any person or persons who have, on or before the passage of this act, paid money as and for duties, under protest, according to the requirements and provisions of the act of Congress, chapter 23, approved February 26, 1845, or its revision, contained in section 3011 of the Revised Statutes, chapter 8, approved June 22, 1874, to any collector of customs, or other person acting as such, in order to obtain merchandise imported by him or them, or the fourteenth section of an act approved June 13, 1864, or its revision, in section 2931 of the Revised Statutes, which duties were not authorized wholly or in part by law to maintain an action at law against the persons exacting said money, to ascertain and try the legality of such exaction and payment of duties, according to the limitations and provisions of either of the said acts of Congress.

SEC. 4. That all laws and parts of laws inconsistent with the provisions of this act are hereby repealed.

Mr. WOOD, of New York. I demand the previous question on the bill as amended.

The SPEAKER. The Chair hears no objection to the question being taken in that form.

The previous question was seconded and the main question ordered; and under the operation thereof the bill, as amended, was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time.

The question was on the passage of the bill.

Mr. GARFIELD. I desire to ask the gentleman from New York a question in regard to the last clause of the second section of the bill, where it is provided that—

The benefit of the doubt shall be given to the plaintiff.

Perhaps I ought to apologize for asking this question, being a member of the committee, but I was not present when the committee agreed to report the bill. I wish to ask the gentleman from New York if the plaintiff in that case is the person who owes the duty.

Mr. WOOD, of New York. Yes, sir. I understand the effect of this provision to be that where an importer has sued for the purpose of settling the construction of the law and the court has, in any way, expressed a doubt as to the interpretation of the law imposing the duty, the importer shall be entitled to the benefit of the doubt.

The bill was passed.

Mr. WOOD, of New York, moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

WILLIAM N. HALDEMAN.

Mr. WATTERSON, from the Committee of Ways and Means, reported back, with the recommendation that it do pass, the bill (H. R. No. 4262) for the relief of W. N. Haldeman.

The bill was read, as follows:

Whereas, on the 25th of June, 1858, Walter N. Haldeman executed bond to the United States in the penal sum of $50,000, with sureties, covenanting for the faithful discharge of his duties as surveyor of customs at the port of Louisville, in the State of Kentucky, and also as designated depositary for the United States;

And whereas in the year 1861 the said Haldeman ceased to be surveyor of customs and depositary;

And whereas, on the 18th day of November, 1861, suit was instituted in the circuit court of the United States for the district of Kentucky against the said Haldeman and his sureties, in which judgment was claimed for the balance due on settlement of the account of said Haldeman, late surveyor of customs and depositary;

And whereas, on the 17th of June, in the year 1863, by the judgment of said court, said suit was dismissed agreed;

And whereas, on the 30th day of August, 1870, the United States instituted another suit in said court against the said Haldeman and his sureties for the same cause of action, in which said defendants pleaded the adjudication of said court in a former suit in bar;

And whereas said court held as matter of law that such former judgment was not a bar, and rendered judgment against the said Haldeman, which, upon appeal, was affirmed by the Supreme Court on the question of law therein involved;

And whereas it is alleged by the said Haldeman and his sureties that such judgment against them is unjust and inequitable: Therefore,

Be it enacted, &c., That the proper accounting officers of the Treasury are hereby authorized and directed to re-open the accounts of the said Haldeman, late surveyor and depositary as aforesaid, and allow him credits for such sums as the Secretary of the Treasury may find to be justly and equitably due; and thereupon the Secretary of the Treasury shall cause to be entered in said court satisfaction of said judgment to the extent of the credit which may be so allowed.

SEC. 2. That the proper accounting officers of the Treasury Department be, and they are hereby, authorized and directed, in the settlement of the accounts of Walter N. Haldeman, late surveyor of customs at the port of Louisville, Kentucky, to credit and allow such amounts as may be shown to have been improperly charged against him in the statement of his accounts; also, such sums as may be shown to have been paid by said Haldeman or his sureties to any officer of the Government having charge of the reported balance against him for collection, it being first proved to the satisfaction of the Secretary of the Treasury that such payments were made, or that said Haldeman is justly and equitably entitled to such credits; and upon the final statement of the accounts of said Haldeman under this act, the Secretary of the Treasury shall cause satisfaction to be entered on a judgment lately obtained against said Haldeman and his sureties in the circuit court of the United States for the Kentucky district, to the extent of the reduction of the amount of balance now held against him, by the allowance of such credits.

Mr. WATTERSON. I ask that the report of the committee be read.

The report was read.

Mr. STONE. I make the point of order that the bill should have its first consideration in Committee of the Whole.

Mr. WATTERSON. The bill does not appropriate one dollar of money.

The SPEAKER. As far as the Chair can find, by looking over the bill quickly, the facts of this case are that this is a debt due the Government by Mr. Haldeman. The bill authorizes credits against that debt, and releases to that extent a debt due to the United States. The Chair is of opinion that this brings it within the rule that—

All proceedings touching appropriations of money, and all bills making appropriations of money or property, or requiring such appropriations to be made, or authorizing payments out of appropriations already made, shall be first discussed in a Committee of the Whole House.

The House will notice the use of the word "touching." The use of this word seems to indicate that there should be great delicacy in discriminating between points of order when raised as to the taking of money out of the Treasury. The Chair, therefore, is of opinion that any doubt on this subject should be given in the direction of protecting the Treasury of the Government from anything that would prevent money coming into the Treasury or make appropriations from it. "Touching" would seem to mean in the least degree relating to appropriations of money or property. A debt due an individual is the property of such individual, and so with a debt due the Government; it is in like manner the property of the Government, and the word "touching" therefore attaches. The Chair therefore gives the benefit of the doubt to the Treasury, and rules that the bill is subject to the point of order.

The Chair desires to say further that this ruling works no hardship to the bill; that if a majority favor the bill they can readily, in the course of legislation, reach it. It is better then that the word "touching" should be construed to mean, as above stated, as relating in the least degree to the taking of money out of the Treasury or the taking of property of the Government. The Chair sustains the point of order made by the gentleman from Missouri, and rules this bill must have its first consideration in Committee of the Whole.

Mr. WATTERSON. I ask unanimous consent that the bill be considered in Committee of the Whole this day week after the morning hour.

Mr. FORT. I object.

Mr. HALE. Let it take its course.

Mr. BLAND. Is this a private bill?

The SPEAKER. It is. It goes to the Committee of the Whole on the Private Calendar.

Mr. WATTERSON. I move that the House do now adjourn.

LEAVE OF ABSENCE.

Pending the motion to adjourn, by unanimous consent, leave of absence was given as follows:

To Mr. DOUGLAS, for three days on account of illness.

To Mr. JAMES B. REILLY, for one week.

DOWER IN THE DISTRICT.

The SPEAKER. The Chair appoints as managers on the part of the House of the conference on the disagreeing votes of the two Houses on the bill (H. R. No. 2043) to improve the law in relation to dower in the District of Columbia, Mr. LAWRENCE of Ohio, Mr. LYNDE of Wisconsin, and Mr. LORD of New York.

ORDER OF BUSINESS.

Mr. FORT. I ask the gentleman from Kentucky [Mr. WATTERSON] to yield to me for a moment, that I may make a report.

Mr. WATTERSON. I decline to yield.

The question being taken on Mr. WATTERSON'S motion, it was agreed to; and accordingly (at four o'clock and ten minutes p. m.) the House adjourned.

PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By the SPEAKER: The petition of Dr. George McCoy, acting assistant surgeon United States Army, for a pension, on account of disability incurred in the line of his duty, to the Committee on Military Affairs.

By Mr. G. A. BAGLEY: The petition of citizens of Lewis County, New York, for the purchase and operation of the telegraph lines of the country by the Government, to the Committee on the Post-Office and Post-Roads.

By Mr. BURCHARD, of Illinois: The petition of George C. Crisly and other citizens of Iowa, for an investigation of the Des Moines River land grant, to the Committee on Railways and Canals.

By Mr. DURHAM: The petition of Mary Riley, mother of George Ward, deceased, late a private in Company C, Fifth Regiment Kentucky Volunteer Infantry, for a pension, to the Committee on Invalid Pensions.

By Mr. FOSTER: The petition of L. G. Martin and George N. Lamphere, for compensation for additional services in the office of the Secretary of the Treasury, to the Committee on Appropriations.

By Mr. HENDEE: The petition of Messrs. Strong & Ross, of Vermont, for an extension of a patent for improvements in weighing-scales, to the Committee on Patents.

By Mr. HENKLE: Memorial of Anna Maria Biscoe, widow of General George W. Biscoe, of the Nineteenth Regiment Maryland Volunteers in the war of 1812, for a pension, to the Committee on Invalid Pensions.

By Mr. HOLMAN: A paper relating to the establishment of a post-route from Aurora to Hartford, Indiana, to the Committee on the Post-Office and Post-Roads.

By Mr. HOPKINS: The petition of citizens of Pittsburgh, Pennsylvania, for the improvement of Youghiogheny River, to the Committee on Commerce.

By Mr. LORD: The petition of R. P. Buck, of Brooklyn, New York, administrator of the estate of Franklin Spofford, deceased, for an increase of interest on claims allowed by the court of Alabama claims, to the Committee on the Judiciary.

Also, the petition of Brett, Son & Co., of New York, of similar import, to the same committee.

Also, the petition of Oliver Bulkley, of Connecticut, administrator &c., and Lathrop L. S. Clearman, of New York, of similar import, to the same committee.

Also, the petition of D. T. Trundy, of Brooklyn, New York, of similar import, to the same committee.

Also, the petition of Charles James, G. N. Bowman, Samuel Harwood, S. Godley, J. B. Fuller, Elijah Drake, V. B. Perry, W. H. Buell, and other business men of Holley, Orleans County, New York, of both political parties, expressing satisfaction in the appointment of conference committees to consider the mode of counting the ballots for President and Vice-President, and earnestly asking that all party considerations may be thrown aside, to the committee on counting the electoral vote.

By Mr. SMITH, of Pennsylvania: The petition of citizens of Lancaster, Pennsylvania, that the investigation of the recent presidential election shall be fair, and for an amendment to the Constitution to prevent a recurrence of existing evils, to the same committee.

By Mr. STRAIT: The petition of Joseph Bobleter and 72 others, of Minnesota, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. TURNEY: The petition of citizens of Westmoreland County, Pennsylvania, of similar import, to the same committee.

By Mr. WARREN: The petition of H. M. Whitney, for a change of the name of the propeller Ella Knight to that of City of Gloucester, to the Committee on Commerce.

By Mr. WILLIAMS, of Alabama: The petition of J. W. Tucker and other citizens of Alabama, for a post-route from Lake City, Covington County, via Alford's Mills, to Geneva, in Geneva County, Alabama, to the Committee on the Post-Office and Post-Roads.

IN SENATE.

FRIDAY, *January* 12, 1877.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

The Journal of yesterday's proceedings was read and approved.

EXECUTIVE COMMUNICATION.

The PRESIDENT *pro tempore* laid before the Senate a letter of the Secretary of War, accompanying a memorial from citizens of Wrangle, Alaska, asking for the establishment of courts of justice in that Territory; which was ordered to lie on the table and be printed.

PETITIONS AND MEMORIALS.

Mr. FRELINGHUYSEN. Mr. President, I present a memorial numerously signed by leading business men in the city of Newark, New Jersey, relative to the counting of the electoral vote, which, as it is brief, I ask to have read by the Secretary.

The PRESIDENT *pro tempore*. The Chair hears no objection to its reading. The petition will be read.

The Chief Clerk read as follows:

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

Your memorialists, representing a large proportion of the financial, commercial, manufacturing and business interests of the city of Newark, beg leave most respectfully to express their great satisfaction at the action of your honorable bodies in appointing committees of conference to consider the proper mode of counting the ballots for President and Vice-President of the United States.

They hail this action as an indication that the two Houses of Congress are desirous of settling this complicated question in a spirit of moderation and conciliation; and they beg leave to represent that in acting thus your honorable bodies have the cordial sympathy of the great mass of the American people, irrespective of party.

Your memorialists, most respectfully but most earnestly, pray that all mere party considerations may be thrown aside, and that in this crisis in the history of the United States the pure and unselfish patriotism which inspired the founders of the Republic may guide your legislative action, and that you may thus relieve the country from its present uncertainty and apprehension by a prompt determination of the mode in which the pending momentous issue shall be decided.

And your memorialists will ever pray, &c.

Mr. FRELINGHUYSEN. I wish simply to say, Mr. President, that I sympathize with the sentiments of this petition, and believe there is patriotism enough and statesmanship enough in the representatives of the American people to reach a satisfactory solution of the present embarrassment, and I hope that statesmanship and that patriotism may be exercised.

Let me add that should a satisfactory result be reached, the complications that we deprecate may in their effect in mitigating the acerbities of party prove a boon to the nation worthy of the memorial year.

The PRESIDENT *pro tempore*. The petition will be referred to the select committee to devise a mode of counting the electoral votes for President and Vice-President.

Mr. SHERMAN presented petition of citizens of Ohio, soldiers in the late war, praying the passage of a law for the equalization of bounties; which was ordered to lie on the table.

Mr. WHYTE. I present a petition of H. Clay Naill, Charles W. Miller, Charles Cole, and other citizens of Frederick, Maryland, urging the passage of the bill allowing to pensioners the arrears due them but from which they are debarred by the limitations of the existing pension laws, which I ask may be referred to the Committee on Pensions.

Mr. INGALLS. The committee have reported the bill to the Senate to which the petition refers, and I therefore suggest that it lie on the table.

The PRESIDENT *pro tempore*. The petition will lie on the table.

REPORTS OF COMMITTEES.

Mr. WRIGHT, from the Committee on Claims, to whom was referred the petition of Samuel Crown, of the District of Columbia, praying compensation for the use and occupancy of his lands in said District, and the destruction of certain property thereon by the United States troops during the late war, submitted an adverse report thereon; which was ordered to be printed; and he moved that the claim be rejected; which motion was agreed to.

He also, from the same committee, to whom was referred the bill (S. No. 1071) for the relief of H. E. Woodhouse & Co., of Brownsville, Texas, reported it without amendment, and submitted a report thereon; which was ordered to be printed.

Mr. PADDOCK, from the Committee on Post-Offices and Post-Roads, to whom was referred the bill (S. No. 28) for the relief of D. S. Miller and G. W. Riley, reported adversely thereon; and the bill was postponed indefinitely.

Mr. SPENCER, from the Committee on the District of Columbia, to whom was referred the bill (S. No. 1121) to abolish the board of commissioners of "the metropolitan police district of the District of Columbia," and for other purposes, moved that it be postponed indefinitely, a House bill of a similar import having already passed; which motion was agreed to.

PENNSYLVANIA AVENUE PAVEMENT.

Mr. INGALLS. The Committee on the District of Columbia have had under consideration the bill (H. R. No. 4281) to amend an act entitled "An act authorizing the repavement of Pennsylvania avenue," and the act amendatory thereof, and have instructed me to report it without amendment. This bill proposes to extend the period of limitation for the completion of the pavement from the 15th of January until the 1st of June, 1877. The period named in the act for the completion of the pavement having very nearly arrived, it is essential that some immediate action should be taken. The committee have directed me to report favorably upon the bill. I ask that it be read for information, and if there is no objection I will then ask the Senate to put it on its passage.

The Chief Clerk read the bill.

Mr. EDMUNDS. I think the bill had better go over. It is a very important subject to the property-holders.

Mr. INGALLS. Of course I know that the bill is liable to objection and goes over under the suggestion of the Senator from Vermont; but as the period of limitation expires on the 15th, which is Monday of next week, and it is possible that this Senate may adjourn over to-morrow, it is exceedingly desirable, unless there is some objection, in order to save the rights of all parties under this contract, that action should be had to-day. I do not propose to urge the matter against the judgment of the Senator from Vermont, but wish merely to say that the necessity is very urgent and would probably prevent some legal questions that might possibly arise if the period of limitation should expire without the work having been completed.

Mr. EDMUNDS. I see the force of what the honorable Senator from Kansas says, but I also saw the force of what the Senator from New York [Mr. CONKLING] said the other day about the state of the Avenue, (either here or elsewhere, I do not say it was here,) and about the wrong—he did not say that, that I know of, but I do—the apparent wrong that has been done to the property-holders on the whole of the south side of that Avenue, or almost the whole of them, by the manner in which this work has been performed, and by the want of diligence apparently, (I do not now criticise it or condemn it because causes I know nothing about may have made it necessary, but the apparent want of diligence,) in the contractors in coming to time in respect of their contract, so that the people on the south side of the Avenue could have the benefit of the street and the use of their property. It appears to have done a great injury to them. Therefore, I ask that this bill may go over in order that there may be a day during which the public in this town will know that the bill is up for consideration, and if they have any views to present about it they will have time to do so.

Mr. INGALLS. May I be permitted to say one word, Mr. President, in response to the suggestion of the Senator from Vermont that the people of the town may have information of the pendency of the bill. While it is exceedingly proper that they should be advised, yet the Senator may not be aware that this is a House bill, that the measure has been pending before the House and before the committees both in the House and the Senate, and that there is no objection to the adoption of this measure coming from any source, so far as I am advised.

Mr. EDMUNDS. I am very glad to hear that they understand it.

Mr. INGALLS. In regard to the action of the contractors in connection with the rights of property-holders upon the south side of the street, I am not prepared to say that injustice has not been done. There is apparently an embargo, a blockade, that has been imposed upon traffic on the south side of the Avenue. That appears to me to have been irregular and improper, to say the least, but I am advised that the action of the contractors was had under the direction of the commissioners who were appointed by the act, and therefore the contractors ought not to be held responsible for that portion of the difficulty that has arisen. Unless the Senator from Vermont has some special reason for believing that obstacles will be interposed to the passage of this bill by parties interested, I wish he would permit it to pass.

Mr. CONKLING. If I am not out of order I should like to say a word about this matter. Unwisely probably, when the bill to which this is an amendment was before the Senate, I said that I would not vote at any time for the extension of the period within which the contractors might do their work. That remark, perhaps not a very provident one, arose in this way: I had ascertained the number of square yards of pavement requisite for the Avenue. It was 90,000. A thousand yards a day, was the statement of the contractors of the amount of pavement which could be laid in workmanlike and proper manner. Thus ninety days were necessary to put down the pavement. The Senate, possibly upon my suggestion, (I will not say that, although I think so, at any rate on a suggestion which I heartily concurred in, as did a majority of the Senate,) added a considerable number of days; perhaps the Senator from Kansas will remember how many; I think fifteen, twenty, or twenty-five days.

Mr. DORSEY. Forty-five.

Mr. CONKLING. Forty-five, my friend behind me says, so as to make it one hundred and thirty-five days, excluding Sundays, to allow for inclement weather, not likely to occur at the season of the year to be covered by this period, and still to leave a margin of time within which the contractors might do this work. I am told,—the committee know about it, I presume,—that the contractors, or those who supervised them, or both, lay upon their oars for a considerable time, and day after day and week after week of pleasant weather, at the time of year that everybody knows is applicable to such work, elapsed. Then, and I may add then, as usual in the doing of such work in this city, when a day had arrived near enough to the coming

of frost to make it pretty certain that frost would intercept the work, it began; and now it is as every Senator who has passed down the Avenue has seen it. The Senator from Vermont speaks of property-holders on the south side of the Avenue. I suggest to him that he does not describe the aggravation of their case. They are property-holders, but they are tradesmen.

Mr. EDMUNDS. I should have said "the occupiers." I did not mean the mere owners of the property, but the people who do business there.

Mr. CONKLING. Of course, I know my friend's meaning; but I remind him that it is worse than the ordinary case of property-holders who want to go and come to and from their residences. These men are tradesmen, tenants and owners together, carrying on trade upon the south side of Pennsylvania avenue, retail trade, the life of which consists in the freedom with which everybody can drive to their doors and walk to their doors, and bring in and send out packages of goods. Here all this winter these tradesmen have been practically shut out, as the Senator from Kansas said embargoed, and their traffic too, because the street has been torn up in front of where they are. Between the trams which lie in the middle of the street and the curb on their side barrels of asphalt or coal tar, or whatever they may be, have been piled, and in many places it has been impossible to traverse the street and impossible cross-wise to go to the doors of these shops.

Now, I think that is a pretty serious matter, Mr. President. I do not know who is to blame for it. I do not say that anybody is to blame; but it is a very unfortunate casualty, to say the least, that a pavement cannot be laid on Pennsylvania avenue without entailing such disadvantages upon the people. I should like to hear why it is that these contractors did not proceed to execute their thousand yards a day, which was their own statement, during the pleasant and tranquil season of the year, and why it is that they deferred the beginning until the end was overtaken by weather which prevents them going on. Then I should also like to hear why it is that the 1st of June, which I believe is fixed by the bill, is deemed a day necessary. Early in March there ceases to be winter here. Soon after, the weather becomes sufficiently settled for their purpose. There are to be March, April, May, three months, ninety days, of probably settled weather, after more than half the work has been done, the whole of which originally was compassable by ninety days, and for which one hundred and thirty-five days were given in the original act.

Mr. INGALLS. Mr. President——

Mr. THURMAN. Are resolutions in order?

Mr. INGALLS. I was asking the passage of a bill.

The PRESIDENT *pro tempore*. The Senator from Kansas asked the present consideration of the bill. The Senator from Vermont objected. Does the Senator from Vermont insist on his objection?

Mr. EDMUNDS. I do, until I take it back.

The PRESIDENT *pro tempore*. Objection being made, the bill will be placed on the Calendar.

Mr. MORRILL. Will the Senator from Ohio allow me to say a single word in relation to the subject, if it has not already passed out of reach?

Mr. INGALLS. I wish to give notice, if the Senator will excuse me a moment, that the bill having gone over under the objection of the Senator from Vermont, I will on Monday morning during the morning hour, if I can obtain the floor, ask the attention of the Senate to House bill No. 4281.

Mr. MORRILL. I merely desire to say that I have not kept myself posted up in relation to all the complications about this new pavement. I have been told that the reason of the first delay was because of the contractors not being able to get the proper asphalt, and that they had to send and order it from abroad before it could be obtained. That delayed them for some considerable time; and then in the month of November there was not more than half of the time when there was weather which enabled them to go on with their work.

BILLS INTRODUCED.

Mr. PADDOCK asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1131) to authorize the removal of obstructions in the channel of the Missouri River and to repair and protect levees at Omaha, Plattsmouth, and Brownville, Nebraska, and Sioux City and Council Bluffs, Iowa; which was read twice by its title, referred to the Committee on Commerce, and ordered to be printed.

Mr. CHAFFEE (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1132) to abolish the use of stoves in passenger railroad cars; which was read twice by its title, referred to the Committee on Railroads, and ordered to be printed.

Mr. CAMERON, of Pennsylvania, asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1133) to correct an appointment in the Pay Department of the Army; which was read twice by its title, referred to the Committee on Military Affairs, and ordered to be printed.

Mr. GORDON asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1134) to create a sinking fund for the liquidation of the Government bonds advanced to the Central Pacific Railroad Company of California and the Western Pacific Railroad Company and to the Union Pacific Railroad Company, under and in pursuance of the act of Congress entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and the acts amending the same or supplemental thereto, and for the settlement of the claims of the Government on account of said lands; which was read twice by its title, referred to the Committee on Railroads, and ordered to be printed.

Mr. MAXEY asked, and by unanimous consent obtained, leave to introduce a joint resolution (S. R. No. 30) to amend the joint resolution authorizing the Secretary of War to issue arms, approved July 3, 1876; which was read twice by its title.

Mr. MAXEY. I ask for the present consideration of this joint resolution, as it is important to the frontier States and Territories.

The PRESIDENT *pro tempore*. The joint resolution will be read for information, subject to objection.

The Chief Clerk read as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the joint resolution, approved July 3, 1876, authorizing the Secretary of War to issue arms to the Territories and the States bordering thereon be, and the same is hereby, amended by inserting after the words "each of said Territories" the words "and ammunition for the same not to exceed fifty ball-cartridges for each man."

Mr. MAXEY. I will state that a joint resolution was passed and approved on the 3d of July last authorizing the issuance of certain arms which had gone out of use in the United States Army to the Territories and States liable and subject to Indian raids. In pursuance of that joint resolution the Secretary of War has on the request of the governor issued that class of arms to the State of Texas. One thousand have been issued. The fixed ammunition that goes along with those guns, by an oversight in the joint resolution, was not authorized to be issued. The only purpose of the joint resolution which I now introduce is to authorize the issuance of the fixed ammunition which belongs to those guns. I will state that I ask for its consideration now because it is a matter of immediate necessity. In my own State within the last few days, at the close of December, we had an Indian raid in one of the counties, the county of Kerr, by thirteen Indians, and a large amount of stock was driven off and two citizens killed. We depend upon the rangers and frontiersmen to whom these guns have been distributed for the protection of that country, and it is only in consequence of the necessity of this ammunition to enable them to use those guns that I have introduced the joint resolution. I hope there will be no objection to it.

Mr. WRIGHT. Is it reported from a committee?

Mr. MAXEY. No, sir. I will state to the Senator from Iowa that I submitted this question to the Chief of Ordnance, calling his attention to the oversight in the joint resolution of July last. The resolution which I introduce, which is merely amendatory, in order to let the ammunition go with the guns, meets with his approval, and at my request he prepared such an amendment as would meet the approbation of the Ordnance Department. It is a trifling matter, but it is important to the Territories and States liable to Indian raids. I gave, as the reason for immediate action, that we have already had, on the 27th of December, a raid in which property was stolen and life destroyed.

Mr. WRIGHT. I doubt not that this matter is all right, and I especially have no doubt of the truth of the statement made by the Senator from Texas; but I think, as the bill has just been introduced now and has never been in the hands of a committee and never has been printed, it would be better, under the rules, that it should go to the Committee on Military Affairs. A day or two cannot make any great difference.

Mr. MAXEY. The whole object of the joint resolution is simply to let the ammunition go with the guns that were distributed by the Government to the frontier States and Territories.

Mr. WRIGHT. Has the Senator any objection that the resolution should go to the committee? It will only delay the matter a day or two.

Mr. MAXEY. My only objection is that the chairman of that committee is absent. As we all know, all the committees are scattered now; and it is exceedingly difficult to get a committee together. It is a short session, and this is a Senate joint resolution, and therefore it has to go from here to the House. I hope the Senator from Iowa will not object to its present consideration.

Mr. WRIGHT. I think it had better go over, or if the Senator prefers let it go to the committee, and if the chairman is absent the next member, of course, is acting chairman, and the joint resolution can be reported back in a short time.

Mr. MAXEY. Of course if the Senator objects I have nothing further to say. I asked the courtesy of the Senate for its immediate consideration.

The PRESIDENT *pro tempore*. The joint resolution will be referred to the Committee on Military Affairs, if there be no objection.

Mr. EDMUNDS. And printed.

The PRESIDENT *pro tempore*. And printed.

REPUBLICATION OF REVISED STATUTES.

Mr. THURMAN. I submit the following resolution and ask for its present consideration:

Resolved, That the Committee on the Revision of the Laws are hereby instructed to inquire into the propriety of providing for the publication of a new edition of the Revised Statutes, as corrected by subsequent acts of Congress, and to include

in the same the other acts enacted since December 1, 1873; and also the Articles of Confederation and the Constitution of the United States with the amendments; and that said committee report by bill or otherwise.

It is a mere resolution of inquiry.

Mr. CONKLING. And I think you might say something about an index.

Mr. THURMAN. It would necessarily require a new index, and that we can provide for.

The resolution was considered by unanimous consent, and agreed to.

ADJOURNMENT TO MONDAY.

On motion of Mr. ALLISON, it was

Ordered, That when the Senate adjourns to-day it adjourn to meet on Monday next.

WILLIAM H. WARD.

Mr. JOHNSTON. When the chairman of the Committee on Patents [Mr. WADLEIGH] left here to attend a committee in the South, he requested me to ask the Senate to proceed to the consideration of the bill (S. No. 419) for the relief of William H. Ward. I make that motion.

The PRESIDENT *pro tempore*. The bill will be read for information.

The Chief Clerk read the bill.

Mr. EDMUNDS. I should like to hear the report read, if there is one, before we take up the bill.

The PRESIDENT *pro tempore*. The report will be read.

The Secretary read the following report, submitted by Mr. WADLEIGH, from the Committee on Patents, July 21, 1876:

The Committee on Patents, to whom was referred the petition of William H. Ward, for the extension of his bullet and shell molding machine patents, as also for compensation for the use of the same by the Government of the United States during the life-time of said patents, make the following report:

Letters-patent were granted to the said William H. Ward, of Auburn, New York, on the 10th day of November, A. D. 1857, for the term of fourteen years, for an "improved bullet-making machine;" and on the 1st day of December, A. D. 1857, a patent was granted to the said Ward for a "machine for molding shells," for a like term of fourteen years, both of which inventions are "original" or "first patents" of their respective classes or kinds, and are known by the term of "foundation patents," which, as a rule, require a great deal of mental consideration to perfect them, as ideas that must be followed up with costly experiments, requiring both time and money, as is instanced in almost every new invention wherein capital and labor are taxed to their utmost in perfecting some new labor-saving device.

These inventions of Mr. Ward seem to your committee to embrace all the essentials of perfection of their kind, and they have proved to be economical of material and a great saving of labor in the production of bullets from cold lead and bomb shells from molten iron, respectively, as is shown in evidence and from copies of the special reports, &c. From the copies of official reports it appears that Mr. Ward commenced shell-experiments as early as 1841, with good results, and from that time forward he seems to have been more or less engaged until he had expended on his bullet-machine invention upward of forty-nine thousand dollars ($49,700) and on the shell-molding-machine invention upward of twenty thousand dollars, ($20,712.) making for the two, counting interest, the sum of $70,000 up to the 10th day of February, 1874.

And it further appears in evidence that these patented inventions and machines of Mr. Ward have been made use of by the Government from the time of their issue and all through the life-time of the said patents in the manufacture of leaden bullets and iron shell without any compensation to Mr. Ward, as is certified to by the letter of the Secretary of the Navy to Congressman MACDOUGALL, a copy of which is hereto added, and of the bullet-machine by testimony of Hon. Thomas Hood, a copy of which is also added, both of which are supported by the testimony of the patentee, who seems to have been diligent in trying to obtain some just consideration for his invention, as set forth in his petition and his letter to your committee, a copy of which letter is also added hereto.

It further appears that during the years from 1860 to 1866, inclusive, the Government, from necessity, were obliged to build machines for the manufacture of bullets without reference to patents generally, and in doing so it appears that the Chief of Ordnance (at the time) was fully aware of Mr. Ward's patent, as set forth in the said testimony of Mr. Hood, when he, as Chief of Ordnance, gave authority for the construction of bullet-machines; and it further appears in evidence that he in no instance paid or caused to be paid to William H. Ward any consideration whatever, but referred him to Congress.

It is further manifest and known to your committee that William H. Ward made application for the extension of his patents aforesaid, and such extensions were passed through the House of Representatives by an almost unanimous vote, during the first session of the Forty-third Congress, and in their regular order came to your committee, together with the petition for compensation for use of same, and that your committee, considering that the granting of the said extension would again render the Government liable to William H. Ward, the said patentee, for such extended term of said patents, denied the granting of the said extensions, with the understanding that the matter be referred to the Court of Claims for adjudication on the merits of the inventions and claims arising therefrom, and in accordance with such consideration your committee recommend the accompanying bill.

WASHINGTON ARSENAL,
October 29, 1841.

SIR: I respectfully report that three shells, as directed in the letter from the Ordnance Office of October 27 instant, were prepared, and, after being charged by Mr. Ward with the composition of his invention, were tested, with the following results.* These trials, limited as they are, afford evidence that the invention merits consideration, and it would be desirable that others be made more fully to test it.

I am, sir, very respectfully, your obedient servant,

JOHN SYMINGTON,
Captain of Ordnance.

Captain A. MORDECAI,
Ordnance Office.

ORDNANCE OFFICE, WASHINGTON NAVY-YARD,
November 12, 1858.

SIR: I respectfully state that in obedience to your order I have continued the experiments with Mr. Ward's machine for making shells, casting usually one per day. On the 10th instant Mr. Ward reported twenty-five flasks ready for use; they were placed in the hands of the molder, who prepared sixteen molds with them during the forenoon. In the same time four men made by the mode at present in use forty-four. It is but justice to Mr. Ward to add that these men worked with unusual zeal and rapidity, as the foreman of the factory reported to me, while the operator with the other machine seems to have displayed less than the usual industry, for I have seen Mr. Ward prepare a mold, adjust a core, &c., in six minutes, and know that it has also been done by one of our own workmen.

The shells produced by the machine are in no respect inferior to those hitherto cast in the foundery.

I am, respectfully, your obedient servant,

F. K. MURRAY,
Executive Officer Ordnance Department in the Yard.

Capt. D. N. INGRAHAM,
Chief of Bureau of Ordnance and Hydrography, Washington, D. C.

NAVY DEPARTMENT,
Washington, February 14, 1874.

SIR: I have the honor to reply to your letter of the 5th instant, in reference to the machine furnished by Mr. W. H. Ward, of Auburn, New York, that the machine was furnished to the Department, and used for the service of the Government; that it is of present use and value to the service, and that no payment has been made to Mr. Ward for the same.

Very respectfully,

GEO. M. ROBESON,
Secretary of the Navy.

Hon. C. D. MACDOUGALL,
House of Representatives.

In the matter of the bill for the relief of William H. Ward, being Senate bill 419, introduced by Mr. WADLEIGH, February 9, 1876, and before the Committee on Patents, United States Senate.

Thomas Hood, of the city of Washington, D. C., being duly sworn, on oath says: "That as attorney for William H. Ward, at different times during the years 1871 and 1872, and possibly as late as 1873, affiant had repeated interviews with the late Brigadier-General Dyer, then Chief of Ordnance, United States Army, in relation to the claim of William H. Ward for the use of his patented bullet-machine by the United States. At these interviews, when speaking of the subject of this claim, Mr. Dyer would say something like this: 'That he had no doubt the Government ought to pay something to Mr. Ward on account of his claim, but that he would have to go to Congress for it; that he had no doubt the machinery used by the Government in the manufacture of bullets was adopted from Ward's machine, or from Ward's invention; or that the Government had taken all that was of value in Ward's machine, and utilized it,' or words equivalent to the foregoing. As already stated, I had repeated conversations with Mr. Dyer on the subject of this claim, and I give the above as the substance of what he would say tending to recognize the claim of Mr. Ward, which I state according to my best recollection.

"THOMAS HOOD."

Subscribed and sworn to before me this 6th day of March, 1876.

R. J. MEIGS,
Clerk Supreme Court District of Columbia,
By L. C. WILLIAMS,
Assistant Clerk.

To the honorable Committee on Patents, United States Senate:

The pending, or third petition to Congress, was presented on the 19th day of December, 1873, to both Houses of Congress, and on the 21st of January following the bullet-machine case was submitted to the War Department for examination and report, by the House Military Committee, and on the 10th of February, 1874, the War Department returned said petition with their report thereto, which was printed, and referred to said committee. And as the result of such reference the said Military Committee, as a body, prepared a bill (as is now before your committee) which was placed on the Private Calendar of the House, but never reached during the session. On the 8th of April, 1874, the House of Representatives unanimously passed the bullet-machine extension case, which came before your committee the following 16th, and was taken charge of by the then acting chairman, Mr. WADLEIGH, who at the time had (as a member of the Senate Military Committee) the Senate's bullet-machine petition. Mr. WADLEIGH desired to know if I would accept of a bill granting a specified sum for the claim, at the same time naming an amount; my reply then was that no such consideration could be carried through Congress, for already I had unsuccessfully tried $30,000 for the shell-molding machine claim; and as an alternate the Naval Committee of the House, as a body, advised me to combine the bullet and shell machine claims in one bill, with authority to go before the Court of Claims. (See Debates House of Representatives, as per RECORD of Sunday, May 3, 1874.) Next in order was the passing of the shell-molding machine extension case, which took place on the 2d day of May, 1874; and on the 7th was before the Senate Committee on Patents, and was taken charge of by Mr. WADLEIGH, making three bills of mine in his charge, two of which had already passed the House, and the other on the Private Calendar.

At the second session all my energies were with the Senate Committee on Patents, as that committee had the bills, and near the close thereof the present chairman informed me that the committee had concluded to send my claims to the Court of Claims and drop the extension cases, and not to make the Government a second time liable.

In January of the current year your petitioner again presented himself to your committee and learned from the chairman thereof that the bill for the Court of Claims would go forward; and on the 9th day of February following Mr. WADLEIGH did offer the bill now before your committee, which seems to embrace all that is necessary and essential to send these claims to the Court of Claims for adjudication on their respective merits.

All of which is most respectfully submitted by your humble servant and petitioner,

W. H. WARD.

The PRESIDENT *pro tempore*. Is there objection to the present consideration of the bill?

Mr. DAWES. I ask that the bill be read.

Mr. SHERMAN. If a single objection will put it over, I object.

Mr. EDMUNDS. The question is on the motion to take it up.

The PRESIDENT *pro tempore*. It is in the hands of the Senate. A majority can control it.

Mr. SHERMAN. The Chair called for objection.

The PRESIDENT *pro tempore*. The bill is on the Calendar. It will be read, the reading being called for by the Senator from Massachusetts.

The bill was read.

The PRESIDENT *pro tempore*. There is an amendment reported by the committee, which will also be read.

* The results, being lengthy, are omitted.

The CHIEF CLERK. The committee report an amendment to the bill by adding to it the following:

With full power to send for persons, books, and papers, &c., having any reference thereto, so as to enable the court to adjudicate said claims on their respective merits, without reference to the statutes of limitations.

Mr. EDMUNDS. I think we had better wait until the chairman of the committee comes back. We have no official report from the Navy Department about this bill, and I wish somebody would offer a resolution that we may. There may be merit in it, but it is rather unfortunate to take up bills of this character without an official report on the subject from the Department that had to do with the supposed claim. There is here a letter from the Secretary of the Navy written at some time stating one very narrow fact, that a particular machine was used. That is a mere bubble in this bill. The real thing is the infringement, as it is called, and the use of the patent during the great number of years that are said to have elapsed since this gentleman began. I should hope the Senator from Virginia would not insist on its being taken up to-day, but let us have a resolution directing the proper Executive Department to report all the facts with their judgment upon them as to the state of this claim and what it was.

Mr. JOHNSTON. It seemed to me that the letter of the Secretary of the Navy was sufficient; but, of course, I do not desire to have the case taken up without a full knowledge of its merits on the part of the Senate. I will therefore prepare a resolution, and ask that it be adopted by the Senate, calling for information from the Department on this subject.

Mr. EDMUNDS. That is the correct thing.

Mr. JOHNSTON. When that information comes in, if the chairman of the committee be not here, I will ask the Senate to take up the bill.

Mr. EDMUNDS. I understand the Senator to say he will prepare a resolution calling on the Navy Department for information.

Mr. JOHNSTON. I will do so.

Mr. COCKRELL. It ought to be the Ordnance Department.

Mr. EDMUNDS. Whatever the proper Department may be.

Mr. JOHNSTON. I will prepare a resolution and offer it for adoption. I withdraw the motion to take up the bill at present.

GLENWOOD CEMETERY.

Mr. INGALLS. If there is no further morning business, I move that the Senate proceed to the consideration of the bill (H. R. No. 3741) amending an act incorporating the proprietors of Glenwood Cemetery.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill, which declares that nothing in the act of incorporation shall prevent the owner or owners of any lot or lots therein from making such improvements or decorations thereon without let or hinderance as may not be inconsistent with the objects and purposes of the cemetery.

Mr. SHERMAN. I wish to offer as a substitute for the bill an amendment of which I gave notice at the last session at the time it was reported. I will state in offering it that while it has been very carefully prepared and I have read it, I would have no objection at all to having the matter referred to the Committee on the District of Columbia if they desire it.

Mr. INGALLS. In regard to a reference of this subject to the Committee on the District of Columbia, I have this to say: that it is a local question that has excited a great deal of feeling between the incorporators or owners of this cemetery and the lot-holders and other persons having interments in it. The committee had the subject under consideration at the last session of Congress and differed radically as to the method that should be pursued, and I conclude therefore that a further reference would be unadvisable and unnecessary. I hope the Senate will act upon it without any further reference to the committee.

Mr. SHERMAN. I do not know that there will be any objection to the amendment that I offer. Let it be read.

The PRESIDENT *pro tempore*. The amendment will be reported.

The Chief Clerk read the amendment of Mr. SHERMAN, which is to strike out all after the enacting clause of the bill, and in lieu thereof to insert the following:

That the above-entitled act of incorporation be, and the same is hereby, amended as follows, to wit:

First. The name and title of said corporation shall be The Glenwood Cemetery, and in that corporate name it shall hereafter sue and be sued as a body politic and corporate, and exercise all the corporate authority and powers conferred upon it, and be subject to all the liabilities and duties imposed under the original act of incorporation aforesaid.

Second. That the affairs, business, and property of the said corporation shall be under the direction, control, and management of a board of five trustees, any three of whom shall constitute a quorum, with full authority to act, which board of trustees shall be elected annually, three by the proprietors of lots in said cemetery and two by the original proprietors; and the trustees shall select and appoint, from their own board, a president, secretary, and treasurer, and also, from their own board or otherwise, a superintendent, to have the immediate custody, supervision, and management of the cemetery, under the rules and regulations of the board. The trustees shall have authority to fill temporary vacancies occurring in their board, and shall hold their offices until their successors are elected and qualified: *Provided, however*, That the original proprietors shall have no representation in said board of trustees until a conveyance shall have been made to the cemetery corporation of the ninety acres of ground now dedicated for the purpose of burial.

Third. The annual meeting of the proprietors of lots shall be held on the first Monday of June of every year, the place and hour of assembling to be specified in a public notice previously given by the trustees. The president of the board of trustees shall preside and the secretary act at such meeting; but, in the absence of either, his place shall be filled by a vote of the meeting. At such meeting there shall be at least twenty lot-proprietors to constitute a quorum to transact business, either in person or by proxy, although a less number may adjourn the meeting from day to day until a quorum be present. In the election of the trustees at such meeting, each lot proprietor shall be entitled to one vote for each lot owned by him in good faith, upon which a burial has been made. The two trustees of the board which are to be elected by the original proprietors shall be elected in such manner as said original proprietors shall determine.

Fourth. The affairs of the cemetery shall be so conducted under the authority of the board of trustees as to secure the equitable rights of each and every person having in any way any vested interest in the said cemetery; and the cemetery shall be amenable and subject to the jurisdiction of the equity courts of the District of Columbia for any disregard of the rights or interests of any person whatsoever. And any person who may refuse peaceable possession of said grounds to said trustees, or obstruct or disturb such possession in said trustees for said purposes of burial, shall forfeit and pay, as a penalty therefor, the sum of $100 for each and every day of such refusal or disturbance, to be collected in an action of debt, in the name of the cemetery corporation; and the sum that may be recovered shall be appropriated for the improvement of the cemetery grounds.

Fifth. That the words "the proprietors of Glenwood Cemetery," where they occur in the original act of incorporation hereby amended, shall be interpreted and construed to mean the proprietors of lots in said cemetery, and which is hereby now declared by this amendment to be the true intent and meaning of said words.

Sixth. That from the receipts from the sale of lots hereafter sold, of the ground now dedicated for burial purposes, there shall be paid, on the first Monday in June in each year, by the board of trustees, to the original proprietors, one-fourth of the gross receipts arising from such sales, the remainder to be devoted to the improvement and maintenance of the cemetery.

Seventh. That within ten days after the approval of this act, any five proprietors of lots in said cemetery may call a meeting by giving two days' notice thereof in any newspaper published in the city of Washington, at which meeting the said proprietors shall proceed, as provided in sections 2 and 3 of this act, to elect a board of trustees, who shall hold office until their successors are duly elected and qualified under the annual election to be held on the first Monday in June following.

Mr. SHERMAN. In 1854 Congress incorporated this cemetery company, (Statutes at Large, volume 10, pages 789 and 790.)

By the first section of the charter twelve persons were named as corporators, the first eight of whom were residents of the District of Columbia and the last four residents of New York City or that vicinity, to wit: Joseph B. Close, William Phelps, William S. Humphreys, and Randolph S. Evans. The sixth section provided "That until an election shall be held under the provisions of this act, the four last-named persons in section 1 shall be the managers of said corporation," and the second section provided "That the affairs of the said corporation shall be conducted by a president and three managers, who shall be elected annually by a majority of the votes of the proprietors; the president and managers to fill all vacancies in their own body," &c.

It seems that under this act of incorporation a very valuable piece of ground was purchased called Glenwood Cemetery and lots were sold under the law until finally some three hundred or four hundred lots have been sold and many of the leading citizens of the city of Washington have purchased, as they supposed, lots in a cemetery, which would give them the right to participate in the management and improvement of the cemetery. A great many dead have been buried, and there are a great many very valuable and expensive monuments erected over the graves. It turned out finally that the four gentlemen who, by the peculiar phraseology of this law, claimed that they alone were the proprietors undertook to manage it entirely themselves; not only absolutely control the mangement of it, but have imposed unreasonable charges upon the proprietors of lots for improvements made there, and allow no improvements to be made without their consent and without contributing more or less to what are called the proprietors of the land. In other words, they claim to have a monopoly, a perpetual monopoly, without end, vested in four nonresidents of the District of Columbia, who, without any control or power over them, have since that time managed this cemetery. Recently it created so much feeling and trouble, so much excitement, that large public meetings were held a year ago in regard to this matter, and the proprietors of the lots joined together in a public memorial to Congress asking relief. All the relief that this amendment gives them is to authorize the proprietors of lots, those who have purchased lots in the cemetery, to participate in the government of the cemetery, so that they may have some part in the management of it and in directing the expenditure of money upon it.

It seems that the proprietors of this land have endeavored to turn it into a speculation. Although they held the property under this corporate act, they have been re-imbursed several times the cost of the land; they claim it to be exempt from taxes on the ground that it is a public burial ground. They manage it as a monopoly without any authority whatever in any one to interfere with them, and they have so conducted the matter as to create a great and bitter public feeling, and gentlemen of the highest standing in this city have come to me complaining about it over and over again. I may say that I myself some years ago, having occasion to buy a cemetery lot, being attracted by the beauty of the position, selected this as the place and purchased a lot for cemetery purposes, supposing that it was an ordinary cemetery association, and I was as much surprised as the rest of the proprietors no doubt were to ascertain that we had no rights whatever in the management of its affairs; that our money went to swell the already swollen profits of a foreign corporation; a corporation that would not, according to their construction of the law, be represented by any one here, and that was used simply for the purpose of making money. I believe it is conceded on all hands that these proprietors of the land who now claim that they are a perpetual corporation have

been re-imbursed the entire outlay they have made several times. At any rate that is the allegation.

I have here the proceedings of a public meeting held in this city, setting out, in temperate, well-considered language, the complaints made by them, signed by S. T. G. Morsell, president of the lot-proprietors' meeting, William Lord, secretary, and resolutions reported by a committee consisting of T. W. Bartley, W. H. Morrison, William Lord, Dr. Daniel McFarland, and Wilson E. Brown. It sets out the whole management of this cemetery corporation and the complaints which the lot-holders make. It seems to me that the amended charter which is now before you carefully guards the property-rights of all persons interested, and it provides for a mode of trying before the courts the legal right of these original incorporators by providing them a remedy. It gives to them a portion of the management and control of the cemetery. It is just and fair in all its details. If it be desired, I can have this paper read, which contains all the facts, I believe, that are material to the matter.

I suppose the committee had some difficulty about a question of law involved; but that is fully provided for by the amendment that is now proposed by me on behalf of the lot-proprietors, which gives to the alleged corporators fair rights in the management of the cemetery, and provides for a remedy for them in case they think their rights are invaded, and an appeal can be taken by either or a decision may be procured from the courts by either side. I hope therefore the amendment will be adopted and the bill passed. It is a House bill, and was pretty well considered during the last session.

The PRESIDENT *pro tempore*. The morning hour has expired, but there is no special order and no unfinished business. The Chair will call the attention of the Senate to the fact that the Senator from California [Mr. BOOTH] gave notice of his intention to submit some remarks to-day.

Mr. JOHNSTON. I ask permission to introduce the resolution I referred to some time ago.

Mr. INGALLS. I should like to ask the Senator from California if he desires to proceed immediately or whether he would not be willing to allow this bill to be further considered?

Mr. BOOTH. I have no objection to the further consideration of the bill.

Mr. INGALLS. I yield then for the purpose of the consideration of the resolution offered by the Senator from Virginia.

W. H. WARD.

Mr. JOHNSTON. I offer the following resolution:

Resolved, That the Ordnance Department be directed to furnish the Senate with all the facts and documents, if any, in possession of the Department touching the use by the Government of a patented machine or machines of W. H. Ward, for making bullets and molding shells.

Mr. WEST. I suggest to the Senator that that be a requirement on the Secretary of War. We do not deal with the Ordnance Department directly.

Mr. JOHNSTON. Let that change be made.

The PRESIDENT *pro tempore*. The resolution will be so modified.

The resolution was considered by unanimous consent and agreed to.

The PRESIDENT *pro tempore*. House bill No. 3741 is before the Senate.

Mr. INGALLS. The Senator from California [Mr. BOOTH] has stated to me that he would like to proceed at this time. I will yield the floor for that purpose, with the understanding that if no Senator objects I may resume the floor at the conclusion of his remarks in opposition to the amendment of the Senator from Ohio.

The PRESIDENT *pro tempore*. Is there objection to temporarily laying aside this bill for the purpose stated? The Chair hears none.

MODE OF COUNTING THE ELECTORAL VOTE.

Mr. BOOTH. Mr. President, I gave notice on Monday that I would speak to-day on the resolution that I had the honor to introduce.

The PRESIDENT *pro tempore*. The resolution will be considered as before the Senate and will now be read.

The Chief Clerk read the resolution, as follows:

Resolved, That in counting the votes for President and Vice-President of the United States whose terms are to begin on the 4th of March, 1877, the following rules be observed:

One. The President of the Senate *pro tempore* shall report the certificate of each State before handing it to the tellers. It shall then be the right of any Senator and of any member of the House of Representatives to object to the counting of the votes of said State; which objection shall be reduced to writing. Upon objection being made, the President of the Senate *pro tempore* shall rule whether or not the votes of said State shall be counted, and for whom. Any Senator or member of the House of Representatives may appeal from said ruling; which appeal shall be reduced to writing. Upon appeal being taken, the two Houses shall immediately separate, and each shall convene in its own Chamber without delay.

Immediately on the convening of each House its presiding officer shall submit the following propositions, in the order herein named, which shall be decided without debate:

1. Shall the ruling of the President of the Senate *pro tempore* upon the counting of the vote of the State of —— be affirmed?

2. How many votes of the State of —— shall be counted?

3. For whom shall the votes of the State of —— be counted?

Upon each proposition each Senator and each member of the House of Representatives shall announce his vote *viva voce*, and it shall be entered upon the Journal.

The Journal of each House of the proceedings of that meeting shall then be read and approved, and no other business shall be in order.

The two Houses shall then assemble in the Chamber of —— for the purpose of continuing the count.

Two. When the President of the Senate *pro tempore* shall have received two or more packages purporting to contain the certificate of the votes of the same State, he shall open and report all of said purported certificates, and then rule for whom the votes of said State shall be counted. Any Senator or member of the House of Representatives may appeal from said ruling; which appeal shall be reduced to writing. Upon appeal being taken, the two Houses shall separate, convene in their respective Chambers, and the same proceedings shall be had as prescribed as in Rule 1.

Three. A complete record of the proceedings when the two Houses are assembled together, and of the proceedings of each House, together with all the certificates and purported certificates of the votes to the counting of which objection has been made, shall be submitted to the justices of the Supreme Court of the United States for their decision.

The Senate and House of Representatives may each appoint a committee of three to present the cases to the justices, subject to such rules as the justices may prescribe. If the justices deem it essential to a final determination, they may, in their discretion, receive as evidence the official acts and proceedings of any State officer or board of State officers and the reports of any committee appointed by either House of Congress.

The Chief Justice shall transmit to the President of the Senate the decision of the majority of the justices upon each case of contested votes, when all the cases have been decided, whereupon the two Houses shall assemble in the Chamber of ——, and the contested votes shall be counted in accordance with such decision.

Mr. BOOTH. Mr. President, one of the difficulties of the present complication in regard to counting the electoral vote arises from the fact that the plan for the election of a President was devised to meet a condition of society essentially different from ours. The authors of our Constitution designed in part to fetter and restrain the democratic spirit and tendencies of this nation. They deemed it unwise to trust the people with the immediate choice of their Chief Executive. The people of each State were to choose certain eminent citizens who were to make the selection for them, and even without their knowledge.

One of the most distinguished authors of the Constitution said that it was contrary to the spirit of that instrument for an elector to divulge his vote before the certificates were opened; the people were to be in ignorance as to who their President should be until the official announcement; and that the reason why upon a failure of choice by the electoral votes the House of Representatives was required to elect *immediately* was to prevent the influence of foreign powers from controlling the choice and reducing our Government to practical vassalage! Now we should as much expect the choice of a President to be controlled by the conjunction of the planets, the influence of the stars, or phases of the moon, as by foreign nations; and so far from the electors making a President have we drifted that at the late election as little attention was paid to the constitutional provision concerning their eligibility as to a text of the Koran or a chapter of the Talmud. The existence of such a provision to the mass of voters was a discovery or a revelation after it had been violated. Spirit is stronger than letter. Life finds its own channel—political growth its own form.

The problem before us to-day, and which engages the anxious attention of us all, is not to make a President, but to determine who has been made President under the forms of a law whose spirit is obsolete in a method which will satisfy the moral sense and command the moral support of the American people.

The emergency is a grave one. I do not think its dangers have been exaggerated. The rock is in the channel; if we drift we shall strike it. If passion steer, we shall run upon it. To be clear in his great office the President of the United States must hold by an undoubted title. Possession will not sanctify it; arms cannot sustain it; submission cannot justify it.

We may endeavor to reason ourselves into the philosophy of regarding the Presidency as a place, in the language of the Senator from Vermont, to sign appropriation bills and commissions for postmasters, but it still remains a glittering prize of ambition, imperial in power and patronage, royal in opportunity for good and evil; kingly in everything save crown and title. Lawfully held and worthily filled it is the highest political position on earth. But the magnitude of the office as a personal possession is dwarfed into insignificance when compared to its importance to the country.

Every four years the American people meet in committee of the whole on the state of the nation and their report is rendered in the choice of a Chief Magistrate. In making that choice every political question that touches the honor, progress, and well-being of the country is considered. Policies, laws, institutions, character, are assailed and defended; the past is reviewed, the future predicted; nothing is too sacred to be questioned; patriotism and prejudice, reason, imagination, and passion, are appealed to until the whole public mind is agitated and inflamed with a single thought and desire.

In other republics in history this agitation has shaken the very foundations of social order, and to avert that danger they have established or submitted to dynasties; preferring the calm of despotism to the stormy sea of liberty. In existing republics the choice of a chief executive officer is a question of force, an occasion of revolution and a cause of anarchy. In our own generation we have seen two great historical forces, moral and political, come in conflict around the election of our President and culminate in the bloodiest civil war of modern times.

The great difficulty we confront to-day is one of the results of that war. It is the groundswell of the ocean not less perilous to the ship of state than the storm itself.

I know the people as a body want peace. So they did sixteen years ago. Who shall say that the forces and antagonism may not be evoked by a contested election which were by a contest for an election?

Sir, we must provide in advance the method of settling that con-

test, or we shall be at the mercy of chance and accident when the imprisoned winds of passion are loosed on the sea of public opinion. What chance and accident may bring, no one can predict. Certainly a scene of confusion and turbulence which would convert a solemn occasion to one of unseemly violence, and degrade us in the eyes of the civilized world; certainly in a loss of our self-respect, and of the confidence of the world in American statesmanship; certainly in a weakening of the respect for the constituted authorities which is their moral support, and a growing distrust of that form of government which has cost so much; at best the inauguration of a President to whom a large portion of his fellow citizens would render not homage, respect, willing obedience, but contumely, reproach, and sullen discontent; in an administration embarrassed, hampered, and fettered at every step—incapable at home, insignificant abroad; possibly a divided government with contending chiefs and factions, anarchy, and war. Whoever leaves out of calculation the emotions, prejudices, and passions of human nature omits the great factors from the problem of life.

I have no words of condemnation strong enough for the men who in this time of supreme difficulty appeal to passion, foment disorder, and threaten violence.

Every consideration of patriotism and wisdom requires calm deliberation and prudent forbearance. The responsibility of a solution is upon the American Congress. The patriotism, love of order, respect for law of the people can find expression in memorial and petition, through public meetings, and the public press; it can only find organized form and action here. Time is precious. Every hour brings us nearer the hour when agreement will be difficult or impossible, or action too late. We shall take no step forward by charges and counter-charges of violence and fraud. It is but too evident that our Centennial has not brought the millennium.

We shall reach no conclusion by arguing with each other disputed propositions of law and fact. We shall end as we begin, in disagreement. Each may be strengthened in conviction, until pride of opinion forbids concession or retreat and makes arbitrament impossible.

It is clear as daylight to the eye that no plan can be now or at any time agreed upon which will produce a fore-known result. You and I may have convictions as to the law of the case strong as proof of Holy Writ. Senators on the other side are as strongly intrenched in their opinion as we in ours. Neither can enforce his opinions save by the employment of force or in that sullen acquiesence in the presence of force and for the sake of peace which is scarcely better than resistance. It is as morally certain now as it will be certain in fact then that on the 14th of February the two Houses of Congress will differ as to the legal result of that day's proceeding. It will be the old problem of an irresistible force and impenetrable object, but with the added awful interest, the fate of this Government between.

With the certainty of this disagreement, the eyes of the people have instinctively turned to that august tribunal established to decide the highest questions of law which can arise in this Government.

Through that tribunal I believe a settlement can be devised which will commend itself to the sense of justice and propriety of the country and reconcile the losing party, whichever that may be, to defeat.

In the resolution I have presented for the consideration of the Senate I have endeavored to devise a method of making a record which will bring the legal questions involved before the justices of the Supreme Court for their arbitrament.

There are three theories in respect to power and jurisdiction in this question. Without some tribunal to decide where the power and jurisdiction are "the rest is chaos."

First. There is the theory that the President of the Senate has the absolute right conferred by the Constitution to determine the validity of the votes of each State.

Secondly. That the votes of no State can be counted without the consent of both Houses of Congress.

Thirdly. That the votes of no State can be rejected without affirmative action of both Houses.

The recent suggestion that the House of Representatives has the sole authority to decide upon the votes for President, and can confer upon itself the opportunity to elect, would be the most original discovery if it were not the most unique invention in American politics and the concession that the Senate has a similar authority and prerogative as to the Vice-President is an insignificant tender to a leviathan monster.

The second and third theories would still leave undetermined the votes of States which have sent double returns and how many votes a State is entitled to that has selected inelegible electors if the Houses shall differ.

The resolution contemplates that all these questions shall appear of record and authorizes the tribunal appointed, if it is deemed essential to the final determination of either, to take cognizance of all the facts of which Congress has official knowledge.

It may be suggested that the justices of the Supreme Court would not exercise the power conferred.

Sir, if in this exigency the Congress of the United States believes it to be necessary, they cannot refuse. Honor, patriotism, and gratitude alike forbid.

I do not intend to discuss the legal questions involved in this controversy further than is necessary to a brief expression of my own opinion.

The calcium light of reason and investigation has been thrown upon the clause of the Constitution in relation to counting the electoral votes to ascertain in whom the authority is vested to determine the validity of the votes, and nothing has been discovered because nothing is there. When the authors of the Constitution said "the votes shall then be counted" they meant simply the act of enumeration. There was nothing judicial about it. It was rather clerical than ministerial. It was a question of addition, which an intelligent page could perform as well as Euclid or Sir Isaac Newton, as well as Mansfield or Marshall. The decision as to the validity of votes and counting them are acts as distinct in fact and different in nature as the judgment of a court and the mechanical impression of the seal. In that view the resolution of the Senate of the first Congress, that the President of the Senate should count the votes, has no significance in this question.

When the Constitution was framed the States were organized governments, fully equipped and in successful operation, while the government created was an experiment.

It was not anticipated that by any defect of State government or administration the question which we confront would ever arise, and it was not provided for. Perhaps if it had been anticipated it could not have been provided for in express terms without so exciting the jealousy of the States as to embarrass the adoption of the Constitution.

In the early debates in Congress we find many arguments against the authority of Congress to reject the votes of a State, none I think against the authority of the President of the Senate, for the proposition that he could was never entertained or conceived.

Regarding this question in the light of precedent and experience—recalling the facts of history—States in rebellion, their governments, the organized machinery of revolution, passing through all the phases of civil war and reconstruction—the proposition that the power to determine their relation to the General Government is vested absolutely in the President of the Senate, in the absence of express words, seems to me incredible. Does any one suppose if such a proposition had been submitted to the convention that framed the Constitution it would have been seriously considered?

In my judgment this power is neither ministerial nor judicial, but political, and in the absence of express provision is vested in the Congress of the United States. The resolution I have offered accordingly provides that the decision of the justices shall be adopted by Congress. Their decision could not be enforced by any sanction known to the law, but is an appeal to honor and good faith in the interest of peace and good government.

Upon the other questions I shall only express the opinion that the certificate of returns, when regular upon its face, makes a *prima facie* case, which it requires the affirmative action of both Houses to overrule, and that when there are double returns the *prima facie* case is with that of the government *de facto*. I hold these opinions with unfeigned respect for those who differ. Who shall decide between us? Who shall decide between the two Houses of Congress? There are but two appeals; the one is to law, the other to arms.

Mr. President, in the great problem of human existence the important part has been assigned to the American people to solve the question of a continental republic. That question was never more difficult than now. It demands a wisdom and forbearance which are above statecraft. Our wide country with its varying conditions of life could not fail to produce strongly distinct types of character and society. We have not the strong kinship of blood. We have the antagonism of races. We have four million inhabitants suddenly emancipated from generations of servitude and enfranchised with the rights and privileges of a citizenship which no other people have ever attained except by generations of experience. The passions of the country are scarcely cooled from the white-heat of civil war, and the revolutionary element which exists at all times in every civilized society was never so powerful in our country as to-day.

These are conditions which in any other age and country would inevitably result in separation or despotic form of government; but liberty and union are the immediate jewels of our soul, dearer than life.

The responsibilities of public position were never more solemn. Our personal interest, the interest of our personal advancement, Mr. President and Senators, in any public question is inconsiderable. Life owes us nothing. We have no account against fate. If the book were closed now the balance would be against us. We have each, in honors, consideration, all that makes life attractive, received more than we have given, more than we deserve. Behind us is a past sanctified by the dead who have died for our country and theirs. Before us is the illimitable possibility of national honor and usefulness. Around us are forty million people, bearing life's burdens, toiling, suffering, hoping, trusting. They ask peace. It is for us to give or to refuse.

GLENWOOD CEMETERY.

The PRESIDENT *pro tempore*. The Senate resumes as in Committee of the Whole the consideration of the bill called up by the Senator from Kansas, being the bill (H. R. No. 3741) amending an act incorporating the proprietors of Glenwood Cemetery. The pending question is on the amendment submitted by the Senator from Ohio, [Mr. SHERMAN.]

Mr. INGALLS. Mr. President, the amendment proposed by the Sen-

ator from Ohio to the bill now under consideration involves a very interesting legal proposition to which I desire particularly to call the attention of the lawyers of the Senate.

Twenty-three years ago a number of gentlemen, residents of the city of New York, purchased a tract of ground, embracing ninety acres, adjacent to the city of Washington. They obtained an act of incorporation from Congress authorizing them to lay off thirty acres of this property into cemetery lots and dispose of them for burial purposes. Out of the tract of ninety acres which they secured they platted and laid off and embellished and decorated the portion required by the act of incorporation, leaving the remainder unimproved to this day, it being still used for agricultural purposes; at least no part of it is used for the purpose contemplated by the act of incorporation. A large number of citizens of Washington have from time to time become proprietors of lots in the thirty acres that have since been known as Glenwood Cemetery, and which has been consecrated by the interment of their friends and relatives. More than two thousand interments have been made, I am informed, and sales are continually being made. A difficulty has arisen between the proprietors of these lots and the original owners of the land in relation to the disposition of the proceeds arising from the sales of the lots, and a further difficulty in regard to the regulations that have been imposed by the original corporators upon those who have subsequently purchased lots and become proprietors.

It is claimed on the one hand that the act of the original corporators, laying out the thirty acres for a cemetery, constituted what is called a dedication of the whole ninety acres to a public or charitable use; that to that extent these corporators became divested of their title to the property that they had bought and paid for, which thereby became vested either in the lot proprietors or in the public; and, acting upon that theory, the amendment proposed by the Senator from Ohio has been offered.

It proposes that hereafter the management and control of affairs of the corporation shall be taken out of the hands of those who purchased the land and paid for it; and that the business shall be committed to a board of trustees, "five in number, three of whom shall constitute a quorum, three to be elected annually by the proprietors of the lots, and two by the original proprietors." The Senate will observe that a very large proportion of the original tract of land, the ninety acres, still remains unoccupied as a cemetery; it never has been platted as a burial ground; no lots, no walks, no avenues have been laid out upon it; also that a very large proportion of the thirty acres that were originally designated as a cemetery still remains unsold and unoccupied. The amendment offered by the Senator from Ohio proposes not only to deprive the original proprietors of their interest in the thirty acres that they laid out as a cemetery, but in the sixty acres that have remained as agricultural land, and to invest the whole management of this corporation in the hands of five trustees, a majority of whom shall be elected by those who own a minority of the property.

I am not prepared to say that this is not right, nor that there was not by the act of these corporators a dedication of this land to a public or charitable use; but, considering it as a legal proposition, I was unable to give it my assent.

It is not agreeable to raise any question of law about a purpose so pious and so sacred as that affecting the interment of the dead. But it has occurred to me, from an investigation of the authorities and of the questions that have arisen under similar acts of incorporation, that these parties in buying this land adjoining the town and laying out a portion of it as a cemetery occupied no different relation to the people of this community or to the proprietors of the lots in this cemetery than the owner of a suburban addition would do. In the one case, the lots are occupied by the living; in the other, they are occupied by the dead. And if the Senator from Ohio can show any reason or point to any authority or precedent that authorizes Congress to deprive these parties of the property they have bought and paid for and turn it over bodily into the hands of persons who do not even claim to own it, I shall be very glad to have him do so. It seems to me to be a matter purely of sentiment; that the effort is being made to induce Congress to take this property away from these persons who own it and turn it over to those who do not, because, as they urge, this is an attempt to make money out of the sale of land for a purpose so sacred as the burial of the dead.

It may be a very reprehensible and a very inappropriate thing for an association of gentlemen to endeavor to get gain out of a cemetery; but it is not very unusual or very uncommon; for I believe that there are few cemetery associations in the country that have not been established on the expectation of remuneration from the sales of lots. And when the Senator from Ohio attempts to stigmatize these proprietors because of the fact that they have endeavored to make profit out of the purchase of this land, he is going outside of the authority of law into the realm of sentiment, to say the least.

These trustees, the Senate will observe, are five in number, of whom the lot-proprietors are to have a majority. The amendment offered by the Senator from Ohio provides "that the original proprietors"—that is, the men who bought the ninety acres of ground—"shall have no representation in said board of trustees until a conveyance shall have been made to the cemetery corporation of the ninety acres of ground now dedicated for the purpose of burial." The fact is that there has been no dedication at all of any portion of this ground to any public use. The formalities necessary to "dedicate" a tract of land to a public use require a public record of its area, dimensions, boundaries, and subdivisions, or some public ceremonial or declaration that will be sufficient to advise the world of the fact. There never has been any dedication in any legal or formal sense of any portion of this land. In no event could it be claimed that there has been any dedication of the sixty acres that were not laid out into lots and paths and avenues.

The amendment proceeds further in the sixth clause to declare—

> That from the receipts from the sale of lots hereafter sold, of the ground now dedicated for burial purposes, there shall be paid, on the first Monday in June in each year, by the board of trustees, to the original proprietors, one fourth of the gross receipts arising from such sales, the remainder to be devoted to the improvement and maintenance of the cemetery.

There is an arbitrary division of the funds arising from the proceeds of the sales of this land, that is based on some principle with which I am not familiar, declaring what proportion of their own money the owners of the land shall receive and what proportion shall be devoted to the uses of persons who own none of it. I hope, therefore, that before this amendment is adopted by the Senate it will receive careful consideration and that the Senator from Ohio will be able to give some reason other than that which now appears why it should prevail.

I will say before closing that my theory about the subject has been that the rights both of the original proprietors and of the lot-owners are already defined under existing laws. They arise under the act of incorporation, which was passed in 1854; and if the parties are not able to determine what their respective rights are, the most appropriate action for Congress to take would be to repeal the act of incorporation and leave these parties to ascertain their rights in court.

Mr. SHERMAN. Mr. President, the Senator from Kansas seems to forget that we are dealing with a creature of our own creation, a corporation which has no powers except such as are conferred upon it by law. We are not dealing with private people engaged in a speculation. We are not dealing with the subdividers of a town plat or an addition to a city. We are dealing with people whose sole rights depend upon the language of a law of our own and which is subject to repeal and modification. In the charter which incorporates this Glenwood Cemetery Company I find this provision:

> That it may be lawful for Congress hereafter to alter, amend, modify, or repeal the foregoing act.

And this bill now before us is simply an appeal to Congress to alter, amend, and modify this act so far as to give the proprietors of lots, the persons beneficially interested, for whose benefit this corporation was created, some share in its management. That is all there is in the proposition I offer. Every provision of the amendment is fair, honest, and right. These proprietors never paid one single cent on their stock; they never invested one single dollar of money. Upon the blind phraseology of an act of incorporation, passed probably without any close examination, the last four of twelve corporators were made a body-corporate with certain powers, but with a right reserved to Congress to change or modify those powers.

These four men then bought on credit some valuable property near the city of Washington, some sixty, eighty, or ninety acres of land. They paid for that out of the contribution of the proprietors. They sold the lots and the capital stock was paid by the proprietors of the lots and all the money put into this corporation was put in by the owners of the lots; and yet these four non-resident persons, who, under the peculiar phraseology of this act of Congress, called themselves the proprietors of the cemetery, who have invested no money, have governed without an election, from that day to this, this corporation, created by us and subject to our control. They have done it for the purpose of making money. That is a laudable purpose, and I have no objection to it; but these four men without investing money have received from the lot-proprietors twice the cost of the land, have paid themselves dividends on the stock they created without paying any money on it, and now seek to deny the power of Congress to modify or change this law.

Mr. President, there is no question of legal rights or vested rights involved in this matter; we are dealing with a corporation of our own creation, and if these people have any vested rights or any property-rights, the amendment itself provides for their protection. I find in section 4 of the amendment this provision:

> Fourth. The affairs of the cemetery shall be so conducted, under the authority of the board of trustees, as to secure the equitable rights of each and every person having in any way any vested interest in the said cemetery. And the cemetery shall be amenable and subject to the jurisdiction of the equity courts of the District of Columbia for any disregard of the rights or interests of any person whatsoever.

So that if these particular persons who claim to have property-rights have any vested rights, here is ample provision for their protection.

Now, Mr. President, the question is whether Congress, having improvidently created an artificial body called a corporation, under a false cloak, a false color, with apparently the humane and benevolent purpose of burying the dead, will allow the exercise of the corporate powers that have been complained of by these people to be continued to the injury of the lot-owners. That is what Congress is to determine, the express right to amend or modify this charter having been reserved.

Now, I will ask the Secretary to read the pamphlet to which I referred, signed by the lot-proprietors, for the purpose of putting upon the record this brief statement of the law and facts involved in this amendment; and if the few Senators who are here listen to that, they will get all the information I could communicate to them by speaking at length.

The Chief Clerk read as follows:

THE CONDITION OF GLENWOOD CEMETERY.

A statement of the facts in relation to Glenwood Cemetery, constituting the grounds upon which the lot-proprietors have asked Congress for an amendment of the act incorporating the company.

The cemetery was incorporated by act of Congress, approved July 27, 1854. (See United States Statutes at Large, volume 10, pages 789 and 790.)

William S. Humphreys, of the city of New York, contracted for the purchase of the ground for the cemetery, and he, together with three other persons of New York City, or that vicinity, procured the act of incorporation to be passed without making known to Congress their places of residence.

The first section of the charter named twelve persons as the corporators, the first eight of whom were residents of the District of Columbia, and the last four residents of New York City, or that vicinity, to wit: Joseph B. Close, William Phelps, William S. Humphreys, and Randolph S Evans. And the sixth section provided "that until an election shall be held under the provisions of this act the four last-named persons in section 1 shall be the managers of said corporation." And the second section provided "that the affairs of the said corporation shall be conducted by a president and three managers, who shall be elected annually by a majority of the votes of the proprietors; the president and managers to fill all vacancies in their own body," &c.

These four New York men, having constituted themselves "proprietors," controlled the elections entirely, and elected one of their number president and the other three managers. And they sent here a citizen of New York, Mr. G. Glendenin, (a brother-in-law of said Humphreys,) who has from the beginning acted as superintendent of the cemetery. And so the matter has continued under the sole control of four speculators residing under a foreign jurisdiction ever since the cemetery was incorporated. The eight first-named corporators, being citizens of the District of Columbia, were thus made mere men of straw, and not allowed any voice or authority whatever in the matter. No stock-books were opened for the subscription of stock, or otherwise any opportunity whatsoever given to any of the residents of the District of Columbia to acquire any influence or authority in the management of the cemetery. Thus by strategem, four New York speculators, by deceiving Congress and the people of the District, obtained a charter whereby they took the entire control of the cemetery in the District of Columbia for the purpose of mere speculation. Neither Congress nor the people of the District had any suspicion that any such chicanery or artifice would be resorted to to control and speculate out of the graves of the dead, and therefore did not scrutinize the phraseology of the charter or inquire into the unexpressed places of residence of the corporators. And the lot-owners, when they purchased their lots, had no knowledge of the plot or scheme of the speculators, and supposed that everything was right because the company was incorporated by Congress.

The scheme of the venture is made apparent in the provision of section 3 of the charter, which is as follows: "That the capital stock of said company shall be represented by two thousand shares, of $50 each, divided among the proprietors according to their respective interests, and transferable in such manner as the by-laws may direct." No notice was given and stock subscribed in the usual form, giving to any of the community directly interested an opportunity to become stockholders. And these two thousand shares, or $100,000 of stock, thus factitiously created to represent the capital, was never paid up, or one dollar ever paid on it. It was a mere fiction, and a part of the chicanery of the whole scheme.

The land purchased by William S. Humphreys is said to have been about ninety acres, and bought for $9,000, or $100 per acre. Of this ground about thirty acres were laid out into Glenwood Cemetery. And some years afterward sixty acres more of the ground were ostensibly added to the dedication for the cemetery. But it does not appear from the public records of the District that any title for any of this land was ever conveyed to the cemetery corporation. The legal title of the ground appears to be held by J. B. Close, individually. This is as far as the public records disclose the title. The cemetery coporation professes to convey a title in fee to the lot-proprietors without showing upon the public records of the District that it ever was invested with the title. After the grounds shall have been all sold out in lots and the cemetery ceases to be a source of income to the New York operators, the lot-proprietors have no assurance whatever, as the matter now stands, that the cemetery will be kept up and their titles be made secure.

The lots in the cemetery vary in size from eighty to three hundred and twenty superficial square feet. The price of an ordinary sized lot is $100; half lot, $55, and quarter of a lot, $30, all divisions of lots being made by the superintendent. The inclosure and improvement of the grounds made by the cemetery company have not been costly, and no expensive or heavy grading has been made. The sales of the lots for the first two years after the grant of the act of incorporation furnished means more than sufficient (as we have reason to believe) to refund the purchase-money paid for the grounds and pay for all improvements made, together with the interest thereon. And the superintendent says that the stock of the company pays good and satisfactory dividends.

The management of the affairs of the cemetery, as now conducted, is not satisfactory to the lot-proprietors, the chief part of whom reside in the District of Columbia; and some of the lot-owners make serious complaints of extortion having been practiced and of the failure in the progress of improvement in the cemetery grounds.

No civilized and intelligent community, in any locality in this country, would willingly consent to have their cemetery or the sacred resting-places of their dead under the exclusive control and management of non-resident or foreign speculators. Even if the present managers in New York were humane and good men, we can have no assurance as to what their successors may be; and no lot-proprietor can rest in entire confidence that the sanctity of the graves in which he has interred the remains of his deceased friends will remain inviolate from the aggressive spirit of cupidity in the future if the exclusive control of it be left in the hands of foreign managers, having no interest in the cemetery beyond that of mere speculation.

Besides the fact that the charter was surreptitiously obtained by a deception practiced on Congress, as well as on the citizens of the District of Columbia, the corporation is subject to the objection that, although nominally an institution of the District of Columbia, yet it is in fact an incorporation of citizens of the State of New York to carry on a local business within this District. By comity a corporation in one State or Territory is allowed to do commercial business in another State or Territory; but the citizens of a foreign jurisdiction are never knowingly allowed a grant of corporate power to engage in an enterprise and manage and control it within any State or Territory in which they are not commorant; and the objection applies with still greater force to a corporation of the nature of this one. The common feelings of humanity revolt at the very idea of a combination of persons to speculate out of the graves of the dead in a foreign jurisdiction, with no feelings or interests in common with those who use the ground for the purposes of burial.

The twelfth section of the charter provides "that it may be lawful for Congress hereafter to alter, modify, or repeal the foregoing act." (See United States Statutes at Large, volume 10, page 790.)

The amendment proposed simply contemplates a change in the mode and form of selecting the trustees or managers for the control and conduct of the affairs of the cemetery, in order to transfer the authority from the foreign board of managers to a board of trustees to be elected by the lot-proprietors, who reside in the District of Columbia, the persons most interested in the beneficial objects of the institution, as well as the proper management of its affairs.

The bill provides for the protection of all rights of property in the cemetery of any person or persons whatsoever, as follows:

"The affairs of the cemetery shall be so conducted under the authority of a board of trustees as to secure the equitable rights of each and every person having in any way any vested interest in said cemetery. And the Cemetery Company and the trustees thereof shall be amenable and subject to the jurisdiction of the equity courts of the District of Columbia for any disregard of the rights or interests of any person whatsoever." &c.

Here is afforded all the opportunity which could be fairly and reasonably asked for the protection of rights and the administration of justice. The charter by its terms being subject to amendment, all the rights of property acquired in any form in the cemetery were subject to this express condition. If the New York operators have no confidence in the administration of justice by the courts of the District of Columbia, they should not have sought this locality for their grave-yard speculation.

Without, therefore, intending to wrong or injure any person, but for the charitable and disinterested purpose alone of providing for the most proper and suitable management of this cemetery, the memorialists have petitioned Congress for the proposed amendment of the charter upon the grounds above set out, which may be summed up as follows, namely:

First. By strategem and artifice in framing the bill for the charter, and suppressing the places of residence of the corporators, a deception was practiced on Congress as well as on the people of the District of Columbia in obtaining the grant of the corporate authority as it now stands.

Second. By deception and chicanery a private combination of four or five men in the city and State of New York obtained the franchise and the exclusive control of a cemetery corporation, in the District of Columbia, for the mere purpose of private speculation.

Third. A cemetery association in charge of the sepulchers of the dead, which is in its nature a charitable and public institution, should be under the control and management of the community or people directly interested in its charitable objects, and not those of non-resident and foreign speculators.

Fourth. The managers of a cemetery association should not have an interest therein based on a fictitious and fraudulent issue of stock never subscribed, nor actually and in good faith paid up.

Fifth. A cemetery should never be intrusted to the exclusive control of managers directly interested against the expenditure of the proceeds of the sales of the lots in the improvement and ornament of the grounds, nor should the control of it be given to those who, after the sale of all the lots, and when it ceases to be a source of profitable income, are at liberty to abandon it, and have no motive for keeping it up and in order.

For these and other reasons the lot-proprietors respectfully ask for the exercise of the power, expressly reserved by Congress, to amend the charter of this corporation as proposed.

S. T. G. MORSELL,
President of the Lot-Proprietors' Meeting.
WM. LORD, *Secretary.*
T. W. BARTLEY,
W. H. MORRISON,
WM. LORD,
DR. DANIEL McFARLAND,
WILSON E. BROWN,
Committee.

Mr. INGALLS. I move to amend the amendment proposed by the Senator from Ohio in the second paragraph by striking out in line 15 the word "three" and inserting the word "two," and in line 16 by striking out the word "two" and inserting the word "three;" so that the proprietors of lots shall have two of the trustees and the original proprietors of the tract of ground shall have three; and I move to further amend in line 27 of the second clause by striking out the word "ninety" and inserting the word "thirty;" so that it will read:

Provided, however, That the original proprietors shall have no representation in said board of trustees until a conveyance shall have been made to the cemetery corporation of the thirty acres of ground now dedicated for the purpose of burial.

In support of this latter suggestion I would call the attention of the Senate to the first section of the act of incorporation, passed on the 27th of July, 1854, page 789 of volume 10 of the statutes, by which the parties named and others were empowered—

To purchase and hold not exceeding one hundred acres of land in the District of Columbia, north of the limits of the city of Washington, to sell and dispose of such parts of said land as may not be wanted for the purpose of a cemetery: *Provided*, That at least thirty contiguous acres shall be forever appropriated and set apart as a cemetery, with authority to said corporation to receive gifts and bequests for the purpose of ornamenting and improving said cemetery, and to hold such personal property as may be requisite to carry out the object of this act.

The corporators have fully complied with the terms of the act under which they derived their powers; they were authorized to purchase not exceeding one hundred acres of land and to sell such portions of it as might not be needed for a cemetery. They were required to lay out thirty acres into a cemetery, which they have done. They bought ninety acres instead of one hundred, and the sixty acres not laid out have remained agricultural lands. It is a tranquil, peaceful, old pasture, with forest fruit-trees, partly in grass and partly in grain, surrounded by an old stone wall, and is entirely separate from that portion of the tract that is laid out for a cemetery. There certainly can be no reason why Congress should divest those parties of the title to those sixty acres of land when they have fully complied with the act of Congress that required them to dedicate only thirty for a cemetery.

Mr. COCKRELL. Will the Senator from Kansas allow me to ask him one question?

Mr. INGALLS. Certainly, sir.

Mr. COCKRELL. There were to have been only thirty acres dedicated for the purpose of a cemetery?

Mr. INGALLS. Only thirty acres laid out for a cemetery.

Mr. COCKRELL. Now have these original corporators paid taxes on the other sixty acres since the act of incorporation?

Mr. INGALLS. Upon that subject I am not informed; I do not know anything about it. I presume, if they had not, that the argument filed against them by the lot-proprietors would show it, because this is an exceedingly vindictive and aggressive controversy, and if they had not paid taxes on this sixty acres that fact as an argument—and I see the pertinence of the Senator's inquiry—would undoubtedly have appeared in this brief that has been filed by the attorneys of the lot-proprietors.

Mr. SHERMAN. I think I can answer the Senator; that is, I have credible information from gentlemen of high standing; I have not any personal information. As I understand the facts the whole ninety acres have been paid for by money received from the proprietors of the lots. First, thirty were openly, publicly dedicated. They afterward bought an addition to that, and the payment for it has been from the money received from the proprietors of lots, and they have always claimed that the whole was exempt from taxation, although I believe there has been some ruling by the present District commissioners on that subject; but I do not know what it is. For years they had it exempt from taxation and paid no taxes on any portion.

Mr. COCKRELL. And have paid only recently, if payment has been enforced.

Mr. SHERMAN. Recently, I believe, they have been forced to do it. I have no feeling about this matter, and if the Senator really thinks that this proviso is unjust and hard on these proprietors, I will not object to striking out the whole proviso and let the question as to what is the extent of the cemetery grounds depend on the decision of the courts.

Mr. INGALLS. That is fair.

Mr. SHERMAN. I am perfectly willing to strike out the proviso, and then if the whole ninety acres are cemetery property the courts will say so; if not, all right. In regard to the proportion of trustees, that is a question of equity. Is it not better to give the majority of the trustees to the lot-proprietors, who have graves there, grave-stones, &c., rather than to those who are interested simply in putting money in their pockets, and not in improving the grounds? I think it is perfectly right. These men in drawing this amendment have endeavored to be fair. They have given to themselves, as lot-proprietors, a majority of the trustees, three, and have allowed to the original proprietors two. If on the other hand you give the original proprietors three trustees they have the absolute control of it, and therefore the beneficial effect of the amendment would cease; but if there is any injury to the property of these parties section 4 provides for it. If any of their rights are affected you will find in section 4 that they have a right to appeal to the courts for protection. So there can be no injury done them. I was in hopes that, by common consent, including my friend from Kansas, that would be agreed to. I am willing to strike out the proviso and let it stand on the law before the courts. Strike out the proviso and pass the amendment as it is, and I will consent.

Mr. INGALLS. The Senator from Ohio, in my judgment, is in error in his effort to base the representation in the board of trustees upon the numerical relation between the original proprietors and the lot-holders, rather than upon the amount of property that each has in the tract of land. The original proprietors, as I am informed, retain up to this time a very large proportion of the title, even to the thirty acres that have been dedicated. I believe I am correct in that statement. A very large portion even of the thirty acres has not been sold up to this day. Where is the justice, although there are a great many more lot-proprietors than there are original owners—where is the equity in turning over this property into the hands of a board of trustees, and in that board giving the majority and the control to those parties who own a minority of the property? I certainly have no objection to the fair representation of the lot-proprietors in this board; I think it is just and proper; but I may be allowed to say in passing that I never have heard until this moment any complaint against the original corporators in regard to the proper care, embellishment, and decoration of this cemetery. I am advised that they have expended liberal sums in the maintenance and in the embellishment and care of this tract of ground; that the walks and avenues and all the surroundings and inclosures have been kept up in good condition, and that in this respect there can be no just ground of complaint.

Mr. SHERMAN. There is but one remark I wish to make in addition. The rights of these original proprietors, as they are called, are simply money rights. Theirs is a money investment, which they can protect in the courts. It does not require them to look after the property in order to protect their investment of money; but the lot-proprietors, the persons who own the lots, several hundred of them citizens of this city, two thousand people having already been buried there, have an interest of a different character. It is not a money interest so much as it is an interest of feeling, affection, a desire to improve, ornament, and adorn the places of sepulture of their departed relatives and friends. Now is it not right that these people who have that kind of an interest should have the management of the property rather than those who have simply a money interest, which may be protected in the courts? It is as in the case of a railroad. The stockholders of a railroad govern the railroad. The bondholders may have the whole money interest in the road. They may own it and their bonds may be sufficient to exhaust the entire property; yet the bondholders have no vote; they simply hold a legal title or legal right in the case of a failure to pay the interest on their bonds. That is the way with these parties. They ought not to manage the cemetery. Their interest would be protected by the courts, and the proprietors themselves ought to be allowed to manage this property as they think is best for the ornamentation and for the dedication of a cemetery, not as a mere means of money-making. That is the view I take of it. Therefore I think it is far preferable indeed to give to the original proprietors, who have been re-imbursed for their capital, two out of five trustees; but to give them three out of five would be practically to defeat the object of the amendment altogether.

Mr. INGALLS. The argument of the Senator from Ohio certainly rests upon improper premises. It is those men who have a pecuniary interest in this property who are most likely to protect its interest and to do everything necessary to the accomplishment of the purpose which he says they have in view, that is of pecuniary profit. The men who own the land, who expect to make a profit out of it, are the men who ought to have the control of it, even in the view entertained by the Senator from Ohio, because they know that unless they do expend a proper proportion of the moneys received for the maintenance and embellishment and adorning of these grounds, the sales of their lots will cease. Unless they protect the rights of the lot-holders there will be no demand for the purchase of the lots by those who desire to inter their dead.

Therefore, these parties whom he denounces are the very ones to whom this control ought to be confided. Again, the interests of the proprietors of the lots are to a very great extent isolated and separate. They have no community of interest. After a time the profoundest and most poignant grief at separation and bereavement ceases. New relations are formed. The father and mother who have buried their children have others born to them. Those who lose their friends and relative assume other relations in life, and their interest in the dead to a certain extent vanishes away. Grief softens into regret, and the survivors less and less often visit the scene where the remains of their dead are interred, impelled at last by a pathetic recollection that brings no pang. In addition to this families perish; they become entirely extinct; the survivors even of those who die themselves die and are forgotten.

Therefore, the interest that these proprietors have is necessarily evanescent and temporary and fleeting, but the interest of those who own the property and who are to obtain a continuous revenue from it is perpetual and abiding; it never ceases so long as any property remains to be sold; and their interest in the maintenance and care of the property must necessarily continue active and enduring. All the reasons which can be advanced, even those of a sentimental character, would seem to me to indicate that the control ought to be in the hands of the owners of the property. I ask a vote on the motion which I made to amend the bill.

Mr. SHERMAN. The Senator agrees to strike out the proviso? I think that better.

Mr. INGALLS. No, I want to amend it.

Mr. SHERMAN. I object to that.

Mr. INGALLS. My motion was to strike out in line 15 the word "three" and insert "two," and in line 16 to strike out "two" and insert "three," the effect of the amendment being to give to the proprietors who own a majority of the property a majority of representation in the board of trustees.

The PRESIDING OFFICER (Mr. EATON in the chair) put the question on the amendment to the amendment; and declared that the ayes appeared to prevail.

Mr. SHERMAN. I hope not.

Mr. INGALLS. I hope so.

Mr. SHERMAN. I will let it go, rather than to break up a quorum, but I think it unjust.

The PRESIDING OFFICER. The amendment to the amendment will be regarded as agreed to unless a division be called for. It is agreed to.

Mr. INGALLS. The question now recurs on the amendment in line 16.

The PRESIDING OFFICER. In line 16 of the amendment it is moved to amend by striking out the word "two" and inserting the word "three."

The amendment to the amendment was agreed to.

Mr. INGALLS. As I understand, the Senator from Ohio consents that the proviso contained in lines 24 to 28 of his amendment shall be stricken out.

Mr. SHERMAN. I have no objection to that now. I am willing that that shall be stricken out.

The PRESIDING OFFICER. If there be no objection, the proviso will be considered as stricken out. It is stricken out. The question now is on the amendment of the Senator from Ohio, as amended.

The amendment, as amended, was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The amendment was ordered to be engrossed, and the bill to be read a third time. The bill was read the third time, and passed. Its title was amended so as to read: "A bill to amend an act incorporating the proprietors of Glenwood Cemetery, approved July 27, 1854."

REVISION OF THE STATUTES.

Mr. GORDON. I move to proceed to the consideration of House bill No. 231.

Mr. BOUTWELL. I ask the Senator from Georgia to yield to me. By unanimous consent yesterday I was authorized to bring to the attention of the Senate the bill in regard to the revision of the statutes. It will occupy not more than five minutes.

Mr. GORDON. I yield, with the understanding that my motion shall not lose its place.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. No. 3156) to perfect the revision of the statutes of the United States.

Mr. BOUTWELL. I desire first to call the attention of the Senate to the amendment which was proposed yesterday to section 1270, on page 9 of the print that I use. I wish now to say to the Senate that under the influence of a letter from General Meigs yesterday the Senate struck out the whole of the proposition to amend section 1270. I received a letter this morning from the Paymaster-General of the Army, stating, and I am satisfied the statement is correct, that so much of that proposition as is contained between lines 189 and 193 should be preserved. I therefore ask the consent of the Senate to reconsider the vote and to strike out all of lines 185, 186, 187, and 188, including the word "further," in line 189; so that it will read, if amended:

Section 1270 is amended by adding at the end of the section the following:

"That officers of the Army and of volunteers assigned to duty which requires them to be mounted shall, during the time they are employed on such duty, receive the pay, emoluments, and allowances of cavalry officers of the same grade respectively."

Mr. COCKRELL. I hope the Senate will concur in that. That is not the portion of the addition to which I objected. I am satisfied that that is correct. That is my understanding of it. It was the first part to which I objected, and that has been stricken out, and will remain so.

The PRESIDING OFFICER. If there be no objection, the vote by which the amendment was made striking out lines 183 to 193 will be reconsidered. The Chair hears no objection. The question is upon the amendment now proposed by the Senator from Massachusetts.

The amendment was agreed to.

Mr. BOUTWELL. I call attention now to the next item of amendments under the head of section 1280. So much of the proposition to amend section 1280 as follows in line 196 after "additions" should be added to section 1279, instead of 1280. I am informed by the Paymaster-General of the Army that if it remains as an amendment to section 1280 it may be open to the construction of increasing the pay of these men, and that if it is added to section 1279 it will leave them where they were before. I therefore move that all following "additions," in line 196 of that paragraph, be stricken out and then I will move to add the substance of what is stricken out to section 1279.

The amendment was agreed to.

Mr. BOUTWELL. Now I move to insert after line 193:

That section 1279 be amended by adding at the end thereof the following: "Artificer for artillery and infantry, $15 per month; wagoner of cavalry, artillery, and infantry, $14 per month. The principal assistant in the Ordnance Bureau shall receive a compensation, including pay and emoluments, not exceeding that of a major of ordnance."

The amendment was agreed to.

Mr. BOUTWELL. That is all I have to present. The Senator from Maine desires to move an amendment.

Mr. HAMLIN. After line 416 of the bill to come in after section 2742, as section 2742½, I move to insert the following words:

There shall be allowed and paid the following fees to weighers and gaugers respectively at all ports other than those provided for in the four preceding sections, to be paid monthly by the collector out of the revenue and charged to the United States: For the measurement of every 100 bushels of grain, 45 cents; for the measurement of every 100 bushels of salt, 75 cents; for the measurement of every 100 bushels of coal, 90 cents; for the weighing of every 112 pounds, and marking every cask, box, or package weighing more than 200 pounds each, except sugar, coffee, pepper, pimento, and indigo in bales, bags, mats, canisters, or screons, with the weight in durable characters, in the district of Norfolk, 2½ cents; in other districts, 3 cents; for the gauging and marking every cask, to be marked in durable characters, with his own name, and the quantity, 12 cents; for computing the contents of, and marking cases containing distilled spirits and wines, 4½ cents per case; for actually counting the number of bottles of cider, beer, ale, perry, or porter contained in any cask or other package or packages, 1½ cents per dozen; and in proportion for any greater or lesser quantity; and the allowances aforesaid shall be deemed to include a compensation for making returns of the merchandise weigher, gauger, and measurer, specifying the quality as well as quantity; but the compensation of no weigher or gauger shall exceed the sum of $1,500 per annum; nor shall the union of two or more of these offices in one person entitle him to receive more than that sum per annum.

I will say to the Senate that if this amendment shall be adopted it will make the Revised Statutes precisely according to the text of the original statutes that were in force when the Revised Statutes were passed. That is, the amendment is made up of three different sections which were in force, and they were omitted either accidentally or by design, I do not know which. I have here a communication from the Treasury Department stating the precise mode which is contained in the amendment as the one to restore the matter to its original status.

Mr. COCKRELL. I should like to hear that portion about the payment of salaries read again to see if it is not changing the whole law upon that subject.

Mr. HAMLIN. It does not change it a particle.

Mr. COCKRELL. Let the Clerk read it.

The Chief Clerk read as follows:

There shall be allowed and paid the following fees to weighers and gaugers respectively at all ports other than those provided for in the four preceding sections, to be paid monthly by the collector out of the revenue, and charged to the United States; for the measurement of every one hundred bushels of grain, forty-five cents; for the measurement of every one hundred bushels of salt, seventy-five cents——

Mr. COCKRELL. That is sufficient. I only wanted to know the manner of pay. It seems this is to be paid out of revenue. Is this the way it was paid before?

Mr. HAMLIN. Formerly these fees were collected and they were paid all over the country out of the revenue. By the Revised Statutes there is a change of the law. In what are called the exceptional ports, to wit, Boston, New York, Philadelphia, New Orleans, and perhaps San Francisco, salaries were fixed for these officers. They were formerly paid, as it is proposed now to pay these men, from the fees which they received. This amendment restores the fees precisely as they were before the Revised Statutes, leaving the officers in these large ports to be paid a salary not exceeding $2,000. It restores the law precisely to what it was.

Mr. ALLISON. I should like to hear the letter of the Secretary of the Treasury read with reference to these fees. It seems to me that seventy-five cents for each hundred bushels of salt is rather an extraordinary fee.

Mr. HAMLIN. It is just what they have been paid. It is the precise sum. I wish to say in this connection that while by design or carelessness these fees were omitted in the Revised Statutes, the Department have assumed the right to go on with the law and have adopted precisely the same rules that existed under the law. The paper is not in the form of a letter, but a memorandum. Last summer the attention of the Committee on Revision was called to this subject by the Department after the bill had been reported. I called upon the honorable Senator from Massachusetts, and he could not find the letter. I went to the Department yesterday morning. The Assistant Secretary writes me:

TREASURY DEPARTMENT,
Washington, January 11, 1877.

DEAR SIR: The letter in relation to fees of weighers, gangers, and measurers, to which you referred in your interview with the Chief Clerk this morning, cannot, after diligent search in the files of the Department, be found. The matter treated of in the letter, however, will be found to be fully covered by the inclosed memorandum.

Very truly yours,

CHAS. F. CONANT.

Hon. HANNIBAL HAMLIN,
United States Senate.

Now this is the memorandum:

The fees for weighing, gauging, and measuring, provided in the act of March 2, 1799, and amended by the act of 26th April, 1816, are omitted in the Revised Statutes.

That is precisely the law:

All quantities of merchandise formerly measured are now ascertained by weight—

This varies from the old statute, as the old statute said "measurers, weighers, and gangers." "Measurers" are left out because everything is reduced to the standard of weight. Be it wheat, be it salt, be it anything, it is reduced to the standard of weight—

thus rendering the office of measurer practically of no use. The act of July 26, 1866, abolished the office of measurer at New York.

By special legislation the persons performing the duties of weighers, gangers, &c., (from which duties the fees in question arise, in the larger ports, namely, Portland, Boston, New York, Philadelphia, Baltimore, New Orleans, and San Francisco,) are paid a specific salary out of the Treasury.

Before the passage of the Revised Statutes the fees were used as a measure, to ascertain the compensation to be paid out of the Treasury to the persons acting as weighers, gaugers, or measurers, not to exceed the maximum of $1,500 in any one year.

Fees only accrued to the United States in those cases where weight, gauge, or measure was ascertained for the benefit of the parties interested in the merchandise.

Since the passage of the Revised Statutes, in which no provision was made for these fees, where services were performed which would have, under the law as it existed prior to June 22, 1874, required the payment of fees by importers, the same sum has been charged as would have accrued under the old law, this being thought a fair measure of the actual expense.

Weighing and gauging are now performed by persons appointed for that purpose and paid a regular salary from the Treasury.

The only thing that seems to be needed is for the law to be so amended as to state explicitly the amount to be paid by importers for weighing and gauging when required, and the salary to be paid to the persons performing the duty.

This amendment does that precise thing and restores the law to precisely what it was.

Mr. BOUTWELL. I only desire to say that this amendment has not been considered by the committee or by any member of the committee. I am content that it should be agreed to as an amendment, with the understanding, however, on my part that it shall be examined before the bill is finally acted on by the House, so that the House committee may know, and if the Department have any information to communicate to them we may know what it is.

Mr. COCKRELL. It does seem to me that the mode of paying the salaries is in contravention of the whole system fixed by the Revised Statutes.

Mr. HAMLIN. At those five large ports.

Mr. COCKRELL. Without making any objection to the amendment now, I desire simply to call the attention of the committee to that point. It was the custom of the Government for many years to pay all the customs officers out of the custom duties which they received. Then the whole system was changed and they were paid

certain amounts out of a regular appropriation. Now this seems to be going back to the original custom and giving them fees out of their collections. I am opposed to that on principle, and I desire to call the attention of the committee to it.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Maine.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The amendments were ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time, and passed.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. GEORGE M. ADAMS, its Clerk, announced that the House had concurred in the amendment of the Senate to the bill (H. R. No. 2309) granting a pension to Margaret C. Bell.

The message also announced that the House had concurred in the report of the committee of conference on the disagreeing votes of the two Houses on the bill (S. No. 842) authorizing the commissioners of the District of Columbia to remove the jail on Judiciary Square to grounds near to the Washington Asylum for the use of the District.

The message further announced that the House had non-concurred in the amendments of the Senate to the bill (H. R. No. 2043) to improve the law in relation to dower in the District of Columbia, asked a conference with the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. WILLIAM LAWRENCE of Ohio, Mr. WILLIAM P. LYNDE of Wisconsin, and Mr. SCOTT LORD of New York managers at the conference on the part of the House.

The message also announced that the House had passed the following bills and joint resolution; in which it requested the concurrence of the Senate:

A bill (H. R. No. 4250) to provide remedies for overcharge of duties on tonnage and imports;

A bill (H. R. No. 4251) making appropriations for the consular and diplomatic service of the Government for the year ending June 30, 1878, and for other purposes;

A bill (H. R. No. 4306) making appropriations for the support of the Military Academy for the fiscal year ending June 30, 1878, and for other purposes; and

A joint resolution (H. R. No. 181) authorizing the Public Printer to bind in cloth the reserve and stitched copies of the House compilation entitled Counting the Electoral Vote.

ENROLLED BILLS SIGNED.

The message also announced that the Speaker of the House had signed the following enrolled bills and joint resolutions; and they were thereupon signed by the President *pro tempore*:

A bill (S. No. 453) to authorize the Vancouver Water Company to lay water-pipes through the Fort Vancouver military reservation;

A bill (S. No. 739) to amend section 5457 of the Revised Statutes of the United States relating to counterfeiting;

A joint resolution (S. R. No. 29) extending the time for the making of a report by the Army commission created by the act of July 24, 1876;

A bill (H. R. No. 1237) for the relief of Benjamin F. Reynolds; and

A joint resolution (H. R. No. 169) authorizing the Secretary of War to supply blankets to the Reform School in the District of Columbia.

JUNIUS T. TURNER—VETO.

The PRESIDENT *pro tempore* laid before the Senate the following message from the President of the United States; which was read:

To the Senate of the United States:

On the eve of the adjournment of the last session of Congress I returned to the Senate bill No. 561, entitled "An act for the relief of Major Junius T. Turner," with my objections to its becoming a law. I now desire to withdraw those objections as I am satisfied they were made under a misapprehension of the facts.

U. S. GRANT.

EXECUTIVE MANSION, *January* 12, 1877.

Mr. SPENCER. The bill was considered by the Committee on Military Affairs. I move that the message also be referred to that committee.

The motion was agreed to.

HOUSE BILLS REFERRED.

The following bills and joint resolution from the House of Representatives were severally read twice by their titles and referred as indicated below:

The bill (H. R. No. 4250) to provide remedies for overcharge of duties on tonnage and imports—to the Committee on Commerce.

The bill (H. R. No. 4251) making appropriations for the consular and diplomatic service of the Government for the year ending June 30, 1878, and for other purposes—to the Committee on Appropriations.

The bill (H. R. No. 4306) making appropriations for the support of the Military Academy for the fiscal year ending June 30, 1878, and for other purposes—to the Committee on Appropriations.

The joint resolution (H. R. No. 181) authorizing the Public Printer to bind in cloth the reserve and stitched copies of the House compilation entitled Counting the Electoral Vote—to the Committee on Printing.

ROBERT ERWIN.

Mr. GORDON. I now move that the Senate proceed to the consideration of the bill (H. R. No. 231) for the relief of Robert Erwin.

Mr. CONKLING. Is there a favorable or an adverse report in that case?

Mr. GORDON. An adverse report.

Mr. CONKLING. While the Secretary is looking for the bill, I wish to say to the Senator from Georgia, without meaning to interpose against this bill at all, that he is aware that it will lead to debate. The chairman of the Committee on Claims [Mr. WRIGHT] I do not see at this moment. He, as a member of the Judiciary Committee, made a report on this subject, I believe, and will expect to be here to discuss it when it is to be discussed.

Mr. GORDON. I thought the Senator from Iowa was present. He was here when I called up the bill, a few moments ago. I presume he is in the building now.

Mr. CONKLING. If the Senator from Georgia will allow me, I will explain to him the purpose of my interruption. I wish to ask the Senate to hold a short executive session when I do not interfere with any other Senator by doing it, as I am compelled to leave the Senate to attend a meeting of a committee.

Mr. GORDON. I will not insist under the circumstances. I ask that the bill be taken up and I will have it laid aside as unfinished business.

Mr. CONKLING. I have no objection to that.

The PRESIDING OFFICER. The Senator from Georgia moves to proceed to the consideration of the bill which he has indicated.

The motion was agreed to.

Mr. CONKLING. The bill being taken up so as to be left as unfinished business, I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After ten minutes spent in executive session the doors were re-opened, and (at three o'clock p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

FRIDAY, *January* 12, 1877.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of yesterday was read.

CORRECTION OF THE JOURNAL.

Mr. O'BRIEN. I rise to a correction of the Journal. There is a slight error, where it states that the motion I made was that the consideration of Senate resolution No. 16 should be laid over until the next morning hour. It should be the morning hour of Tuesday next. There might be a morning hour to-morrow.

The SPEAKER. The morning hour of to-day is for private bills.

Mr. O'BRIEN. But not the morning hour of to-morrow. The proposition I made (and it was made by unanimous consent) was that which I have stated.

The SPEAKER. The Chair recollects very distinctly about it, that the object of the gentleman was that it should go over until the morning hour of Tuesday.

Mr. O'BRIEN. But the Journal says the next morning hour.

The SPEAKER. The Journal will be corrected in that respect.

The Journal, as corrected, was then approved.

COUNTING OF THE PRESIDENTIAL VOTES.

Mr. TARBOX, by unanimous consent, presented the memorial of citizens of Lawrence, Massachusetts, of both political parties, in which they pray for a just and honorable settlement of the presidential dispute, such as shall satisfy the conscience of the country; and the same was referred to the special committee upon the electoral votes, and ordered to be printed.

CLERK TO A COMMITTEE.

Mr. FROST, by unanimous consent, from the Committee of Accounts, submitted the following resolution; which was read, considered, and agreed to:

Resolved, That the Committee on the Expenditures in the Treasury Department be allowed a special clerk for the remainder of the session, to be appointed by the chairman thereof, and to receive the same compensation as the clerks of the regular committees.

INTERNAL IMPROVEMENTS IN MICHIGAN.

Mr. BRADLEY introduced a bill (H. R. No. 4392) making appropriations for continuing the improvements upon certain harbors in Michigan; which was read a first and second time, and, with the accompanying letter from the Department, referred the Committee on Commerce, and ordered to be printed.

ORDER OF BUSINESS.

The SPEAKER. The morning hour begins at eighteen minutes past twelve o'clock, and the business is the call of committees for reports of a private nature.

CYNTHIA A. MIZELLE.

Mr. BAGBY, from the Committee on Invalid Pensions, reported back, with a recommendation that it do pass, the bill (H. R. No. 2742) granting a pension to Cynthia A. Mizelle, of Bertie County, North Carolina; which was referred to the Committee of the Whole on the Private Calendar, and, with the accompanying report, ordered to be printed.

CATHERINE BRENNAN.

Mr. BAGBY also, from the same committee, reported back, with a favorable recommendation, the bill (H. R. No. 3972) granting a pension to Catherine Brennan; which was referred to the Committee of the Whole on the Private Calendar, and, with the accompanying report, ordered to be printed.

ADVERSE REPORT.

Mr. BAGBY also, from the same committe, reported back, with an adverse recommendation, the bill (H. R. No. 3710) granting a pension to Martin V. Day, of Massac County, Illinois, which was laid on the table, and the report ordered to be printed.

JOHN C. FENSCKE.

Mr. RAINEY, from the same committee, reported back, with a favorable recommendation, the bill (H. R. No. 1313) granting a pension to John C. Fenscke; which was referred to the Committee of the Whole on the Private Calander, and, with the accompanying report, ordered to be printed.

ADDINE DAVIS.

Mr. SINNICKSON, from the same committee, made an adverse report on the petition of Addine Davis, asking to be restored to the pension-roll.

MARGARET C. BELL.

Mr. SINNICKSON also, from the same committee, reported the bill (H. R. No. 2300) granting a pension to Margaret C. Bell, returned from the Senate with an amendment, with the recommendation that the Senate amendment be concurred in.

The amendment of the Senate was read and concurred in, as follows:

At the end of the bill add the following:
Which shall be in lieu of the pension now received by her.

Mr. SINNICKSON moved to reconsider the vote by which the amendment of the Senate was concurred in; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

ELIZABETH FULKS.

Mr. RIDDLE, from the same committee, reported a bill (H. R. No. 4333) to restore to the pension-roll Mrs. Elizabeth Fulks, widow of Elkanah Fulks, of Company A, Ninth Regiment Tennessee Cavalry; which was read a first and second time, referred to the Committee of the Whole on the Private Calendar, and ordered to be printed.

BETSY ANN FRY.

Mr. RIDDLE also, from the same committee, reported back the bill (H. R. No. 3550) granting a pension to Mrs. Betsy Ann Fry, widow of Captain Alfred Fry, of Company A, Seventy-third Regiment Indiana Volunteers; which was referred to the Committee of the Whole on the Private Calendar, and ordered to be printed.

ADVERSE REPORTS.

Mr. RIDDLE also, from the same committee, reported adversely on the following cases; which were severally laid on the table, and the reports ordered to be printed:

The bill (H. R. No. 3089) granting a pension to Mrs. G. A. Dennis, widow of Abraham Dennis, captain of Company D, Second Regiment of Indiana Volunteers, in the war with Mexico;

The bill (H. R. No. 3708) granting a pension to Enoch L. Folsom, of Lake County, Indiana;

The bill (H. R. No. 2206) granting a pension to Mrs. Rebecca Franklin and her children, as widow of Jeremiah S. Franklin, late a private in Company B, Eighth Regiment, Tennessee Volunteers; and

The bill (H. R. No. 4394) granting a pension to Jacob Powers.

JOHN W. JENNINGS.

Mr. HUMPHREYS. I am directed by the Committee of Accounts to report back the resolution which I send to the Clerk's desk, and at the request of the parties interested I move that it be referred to the Committee on Appropriations.

The Clerk read the resolution, as follows:

Resolved, That the Clerk of the House be authorized and required to pay John W. Jennings, late assistant doorkeeper, his salary as such officer from the date of his discharge, September 15, 1876, up to the day of the meeting of the second session of the Forty-fourth Congress, the 4th of December, 1876.

The motion of Mr. HUMPHREYS was agreed to; and the resolution was accordingly referred to the Committee on Appropriations.

GEORGE C. JENCKS.

Mr. BRADLEY, from the Committee of Claims, reported a bill (H. R. No. 4395) for the relief of George C. Jencks, of New York; which was read a first and second time, referred to the Committee of the Whole on the Private Calendar, and, with the accompanying report, ordered to be printed.

W. B. DUFFIELD.

Mr. BRADLEY also, from the same committee, reported adversely on the petition for the relief of W. B. Duffield, late United States marshal for the Territory of Arizona; which was laid on the table.

MRS. SARAH B. FRANKLIN.

Mr. PRATT, from the same committee, reported back favorably the bill (H. R. No. 3305) for the relief of Mrs. Sarah B. Franklin; which was referred to the Committee of the Whole on the Private Calendar, and the accompanying report ordered to be printed.

WILLIAM S. ROBINSON.

Mr. TARBOX, from the same committee, reported back, with a favorable recommendation, the bill (S. No. 436) for the relief of the legal representatives of William S. Robinson, of Malden, Massachusetts; which was referred to the Committee of the Whole on the Private Calendar, and the accompanying report ordered to be printed.

JULIUS S. BOHRER.

Mr. TARBOX, from the same committee, also reported back, with amendments, the bill (H. R. No. 4035) for the relief of Julius S. Bohrer, of the United States Navy; which was referred to the Committee of the Whole on the Private Calendar, and, with the accompanying amendments and report, ordered to be printed.

ORDER OF BUSINESS.

The SPEAKER. The call of committees having been concluded for reports of a private nature, the Chair will now recognize gentlemen to make such reports who were not present when their committees were called.

CHIPPEWAS OF LAKE SUPERIOR.

Mr. TUFTS, from the Committee on Indian Affairs, reported back, with an amendment, the bill (H. R. No. 2142) to authorize the Secretary of the Interior to invest in the bonds of the United States the unexpended balance of the money appropriated to the L'Anse and Vieux de Sert bands of Lake Superior.

The bill was read, as follows:

Be it enacted, &c., That the Secretary of the Interior be, and he is hereby, authorized and directed to invest in the bonds of the United States, bearing interest at a rate not to exceed 5 per cent. per annum, the unexpended balance, together with interest thereon at the rate of 5 per cent. per annum, from the 22d day of June, 1874, of the money appropriated to the L'Anse and Vieux de Sert bands of Chippewas of Lake Superior, under the provisions of the act entitled "An act making appropriations to supply deficiencies in the appropriations for the service of the Government for the fiscal year ending June 30, 1873 and 1874, and for other purposes," approved June 22, 1874; the principal sum and interest thereon to be expended as provided in said act.

The amendment reported from the committee was in the last clause of the bill to strike out the words "principal sum and."

Mr. TUFTS. The object of the amendment is to provide that the interest only shall be invested, and that the principal shall remain where it now is.

The amendment was agreed to, and the bill, as amended, ordered to be engrossed and read a third time; and it was accordingly read the third time, and passed.

Mr. TUFTS moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

ADVERSE REPORTS.

Mr. WILLIS, from the Committee on Naval Affairs, reported adversely upon the following; which were laid on the table and the accompanying reports ordered to be printed:

A bill (H. R. No. 1037) to appropriate $136,597 for necessary improvements at Mare Island navy-yard, Vallejo, California;

A bill (H. R. No. 2603) for the relief of the administrator of Samuel T. Anderson, of Baltimore;

A bill (H. R. No. 3947) for the relief of L. L. Reamy, United States Navy;

A bill (H. R. No. 4005) for the relief of Henry Hoover;

A bill (H. R. No. 4203) for the relief of the legal representatives of Charles McCord and Reuben McCord; and

The petition of John S. Gallager, jr., of the city of Washington, District of Columbia, for difference of pay.

WILLAMETTE AND COLUMBIA RIVERS, OREGON.

The SPEAKER laid before the House resolutions of the Board of Trade of Portland, Oregon, asking an appropriation for the improvement of the Willamette and Columbia Rivers; which were referred to the Committee on Commerce.

NORTHERN PACIFIC RAILROAD.

The SPEAKER also laid before the House a resolution of the Board of Trade of Portland, Oregon, asking favorable legislation for the Northern Pacific Railroad; which was referred to the Committee on the Pacific Railroad.

MESSAGE FROM THE PRESIDENT.

A message, in writing, from the President of the United States was communicated to the House by Mr. GRANT, his Private Secretary.

ORDER OF BUSINESS.

Mr. BRIGHT. I move that the rules be suspended and the House now resolve itself into Committee of the Whole on the Private Calendar. Pending that motion I ask unanimous consent of the House that to-day be considered as objection day.

Mr. HUNTER. I object to that.

Mr. BRIGHT. Then I insist upon my original motion.

The motion of Mr. BRIGHT was agreed to.

The House accordingly resolved itself into Committee of the Whole, Mr. WILSON, of Iowa, in the chair.

The CHAIRMAN. This not being objection day, the bills upon the Private Calendar will be reported for consideration. The first bill is House bill No. 344, to confirm certain private land claims in the Territory of New Mexico.

Mr. BUCKNER. That bill was reported from the Committee on Private Land Claims by the gentleman from Vermont, [Mr. JOYCE,] who, I believe, is entitled to the floor on the bill. He is now absent, by order of the House, upon an investigating committee in Louisiana, and desires that I should ask that this bill lie over without prejudice until his return. I make that motion.

The motion of Mr. BUCKNER was agreed to, and the bill was accordingly passed over.

THE MISSION OF SAINT JAMES, WASHINGTON TERRITORY.

The next business on the Private Calendar was the bill (H. R. No. 820) for the relief of the mission of Saint James, in Washington Territory, reported, with amendments, from the Committee on Private Land Claims.

The bill was read, as follows:

Whereas Congress, in the act entitled "An act to establish the territorial government of Oregon," passed on the 14th of August, 1848, provided "that the title to the land, not exceeding six hundred and forty acres, now occupied as missionary stations among the Indian tribes in said Territory, together with the improvements thereon, be confirmed and established in the several religious societies to which said missionary societies respectively belong," and by the act entitled "An act to establish the territorial government of Washington," passed on the 2d of March, 1853, provided "that the title to the land, not exceeding six hundred and forty acres, now occupied as missionary stations among the Indian tribes in said Territory, or that may have been so occupied as missionary stations prior to the passage of the act establishing the territorial government of Oregon, together with the improvements thereon, be, and is hereby, confirmed and established to the several religious societies to which said missionary societies respectively belong;"

And whereas the honorable Secretary of the Interior, by his official and final decision, under date of January 29, 1872, after taking cognizance of the testimony and law in the case, acknowledges that a Catholic mission, called the mission of Saint James, existed at Vancouver, Territory of Washington, on the 14th of August, 1848, within the meaning and provision of the aforesaid acts, and that the said mission is entitled to whatever quantity of land these acts are intended to grant;

And whereas the intention of the aforesaid acts is to grant to each missionary station among the Indian tribes in Oregon and Washington Territories on the 14th of August, 1848, and 2d of March, 1853, respectively, the quantity of six hundred and forty acres of the public lands of the United States, where this quantity can be found in compact form, so as to include the mission improvements, or so much of said land as can be found, not to exceed six hundred and forty acres;

And whereas by order of the Commissioner of the General Land Office, dated September 29, 1859, a survey of said claim was made, and a plat thereof, dated December, 1861, approved by the surveyor-general of Washington Territory, was forwarded, and is now on file in the General Land Office of the Department of the Interior, such survey placing the mission improvements as near the center of the claim as possible, and interfering with no prior legal rights: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it is hereby made the duty of the Secretary of the Interior, within two months after the passage of this act, to cause a patent to be issued for the claim of the Saint James mission of Washington Territory, in accordance with the aforesaid plat of survey, dated in December, 1861.

The amendments were to strike out the third paragraph of the preamble, and to add to the bill the following:

Provided, That nothing in this act shall operate in any way to affect, impair, or defeat any adverse claim to the land described in said patent, or to any part thereof: *And provided further*, That the United States shall have the right to remove therefrom any property, buildings, or fixtures it may have thereon.

Mr. BUCKNER. I ask that the report of the committee be read.

The report was read, as follows:

The Committee on Private Land Claims, to whom was referred the bill (H. R. No. 820) for the relief of the mission of Saint James, in Washington Territory, respectfully report:

That by the act of Congress approved August 14, 1848, by which the Territory of Oregon was organized, it was provided "that the title to the land, not exceeding six hundred and forty acres, now occupied as missionary stations among the Indian tribes in said Territory, together with the improvements thereon, be confirmed and established in the several religious societies to which said missionary stations respectively belong."

There was established at Vancouver, on the north bank of the Columbia River, in the then Territory of Oregon, a missionary station, which has ever since been known as the mission of Saint James, and which has continued to exist as an active mission, from the time of its first establishment, in 1838, down to the present time. Houses were built, a burial-ground laid out, lands cultivated, and other acts of use, occupancy, and enjoyment necessary and proper for the purposes of evangelizing, civilizing, and teaching the Indians resorting to these mission grounds, were performed. It was such an occupancy and use of soil, timber, and grass as was needful for the prosecution of the purpose of the mission. When first established, and until May, 1859, the Hudson Bay Company was in lawful possession of the land on which this mission was located under treaty stipulations between Great Britain and the United States. This company not only encouraged the establishment of this mission by allowing it to occupy the land for its operations, but contributed regularly and liberally to its support. It is clear that the mission of Saint James being, at the passage of the act of August 14, 1848, in the lawful occupancy of the land then and now occupied by it, it is within the provisions of said act.

In the instructions of the Commissioner of the General Land Office to the surveyor-general of Oregon, issued in 1859, he construed the act of August 14, 1848, "to give to each missionary station six hundred and forty acres, and in order to comply with the terms of the grant made by Congress under circumstances where the land now (then) occupied, together with the improvements thereon, cannot be brought within the legal subdivisions without doing manifest injustice to the missionary stations," he instructs him "to cause to be made a special survey of a square *mile, which shall include the land occupied, with buildings and improvements, as the center as nearly as may be.*" The rights of occupancy of the Hudson Bay Company expired in 1859, and in obedience to the aforesaid instructions of the Land Department, the surveyor-general of Oregon made a survey and plat of a mile square, which included the buildings and improvements of the mission, and caused the same to be filed in the Land Office of the Department of the Interior. The object of this bill is to cause a patent to be issued, according to said survey and plat.

Since the establishment of the Saint James mission several conflicting claims have sprung up to this land. The United States has established a military reservation on a portion of it, and other claimants are contesting the right of the mission. It is not the purpose of the committee to determine as to the validity or invalidity of these adverse claims, and they have amended the bill referred to them so as to enable these claimants to assert their rights before the courts as to any part or the whole of the six hundred and forty acres. But while the bill saves the adverse rights of these claimants, it becomes absolutely essential, in order to give this mission a legal status in court as to the land outside of the half acre on which its church building and mission-house are located, that the land surveyed and platted to the mission in satisfaction of the grant by Congress should be separated from the public domain and patented; and your committee therefore recommend the passage of the bill referred to them, with an amendment thereto saving the rights of adverse claimants, and the rights of the United States to any buildings or other fixtures on said land, also striking out part of the preamble on second page of the bill.

The CHAIRMAN. The question is upon agreeing to the amendment reported by the committee.

Mr. HOLMAN. I wish to suggest to the gentleman from Missouri [Mr. BUCKNER] that it may be desirable to prevent speculation in these lands granted by the Government for a highly charitable object. I would be glad therefore if he would consent to add to the bill the following words:

Provided, however, That all sales, assignments, and contracts for sales of any such lands, made by any such societies prior to the passage of this act, shall be null and void.

In a number of instances where grants of this character have been made by the Government and finally confirmed, the societies themselves have virtually died, so that some few remaining persons exercising the powers of the corporation have made the sales of the property, which has thus become a matter of personal speculation. It seems to me that so far as possible this property should be secured for the benefit of the society alone, and not be allowed to go to the personal benefit of speculators. I trust therefore the gentleman from Missouri will consent to the adoption of the amendment.

Mr. BUCKNER. I am not authorized to admit the amendment. I will ask my friend from Indiana whether he has any information, or whether there is any ground to suppose that there is any necessity for the amendment?

Mr. HOLMAN. Not perhaps with reference to the specific grant now in question; but this bill is very broad in its terms and it does not appear exactly what grants may be reached.

Mr. BUCKNER. The bill has no reference to any other grant than this particular one.

Mr. HOLMAN. Is it confined to a single grant?

Mr. BUCKNER. It is confined to the grant named in the bill; all others have been satisfied, as I understand.

Mr. HOLMAN. I ask that the bill be again read.

The Clerk read the bill again.

Mr. JACOBS. Mr. Chairman, I rise to oppose this bill, and I wish to make a statement of the facts in this case. By the organic act of Washington Territory and also of Oregon there was granted to the various missions established in Oregon and Washington Territory the lands actually occupied by them for missionary purposes, not exceeding six hundred and forty acres in each case. In this grant there were two limitations: first, the land must be actually occupied for mission purposes, no more land being granted to these societies than they might actually occupy in that manner; and in the next place, the grant was not to exceed in any case six hundred and forty acres. This is the construction which has been put upon this provision of the organic act, not only by the courts of Oregon and Washington Territory, but by the Interior Department of this Government. There were many of these missions; and they have all submitted their proof in the local land offices of the Government, which have granted to these societies the amount of land to which the proof showed them to be entitled. Some of them have received six hundred and forty acres; others less than that quantity.

Now this bill proposes to grant to this mission six hundred and forty acres of land. A portion of this land is already covered by a patent, one hundred and sixty acres having been already patented to the city of Vancouver. What does this bill propose? This grant of six hundred and forty acres covers the town of Vancouver, a town of fifteen hundred inhabitants; and it also covers about half of the military reservation at Vancouver, one of the most important military reservations upon the Pacific coast. The property which the bill proposes to give to this mission is worth at least half a million of dollars; and the Government of the United States has already expended in the building of barracks and other improvements on this land at Vancouver over half a million of dollars.

Now I ask what reason can be given that this case should take a course different from that which has been followed in the other cases? The other missionary societies in Oregon and Washington Territory have presented their claims to the local land offices, and when appeals have been taken the claims have gone before the Commissioner of the General Land Office and the Secretary of the Interior. This is the

course which all the other missionary claims have taken. Even in this very case the evidence was taken before the local land offices; the case was decided against the mission; an appeal was taken to the Commissioner of the General Land Office, and from him to the Secretary of the Interior. At every step the decision was against the validity of this claim.

Mr. BUCKNER. The gentleman is mistaken about that.

Mr. JACOBS. I think I am not mistaken.

Mr. BUCKNER. I think the gentleman is.

Mr. JACOBS. I do not mean to deny the Secretary of the Interior, in the decision which he made upon the appeal, gave the mission the ground upon which their buildings were situated, together with a small quantity of land around the buildings, but no more.

Mr. BUCKNER. How much did the same Secretary give to the Methodist mission at the Dalles?

Mr. JACOBS. Six hundred and forty acres, I believe. After this long and expensive litigation, in which the decision has been uniformly against this mission, with what justice can the Congress of the United States now grant to this defeated party a patent to this property which has been in dispute so long? Why make this case an exception to the rule which has prevailed in all the other cases? The other cases have all taken the course which I have indicated; and the parties have rested satisfied with the decision of the Land Department of the Government.

Mr. BUCKNER. Will the gentleman tell me what mission in the Territory of Washington or Oregon has ever obtained less than six hundred and forty acres?

Mr. JACOBS. I do not know, sir.

Mr. BUCKNER. The gentleman cannot mention one such case.

Mr. JACOBS. I do not know the exact quantity of land that these missions have obtained; but we make an exception in this case.

Mr. BUCKNER. We do not make any exception, but merely sustain the rule.

Mr. JACOBS. The other parties have made their proofs in the Land Department of the Government and have taken the quantity of land given them by the Government upon that proof.

Mr. HOLMAN. Will the gentleman from Washington Territory inform the committee whether by the law making this grant for missionary purposes in Oregon certain proofs were required to be made before the local offices, upon which patents were finally issued. Is that the law? How do they obtain their titles under ordinary circumstances?

Mr. JACOBS. The law is very indefinite on that subject. The lands were located upon legislative grant and then proof was made in the local offices, and if the parties were dissatisfied an appeal was taken to the General Land Office.

Mr. HOLMAN. Then upon the right to the land being confirmed by the Commissioner a patent was issued?

Mr. JACOBS. Yes, sir.

Mr. HOLMAN. For six hundred and forty acres of land?

Mr. JACOBS. Yes, sir; or for whatever quantity of land that was claimed.

Mr. HOLMAN. I understand the Delegate from Washington Territory to say that in all the other cases the proofs have been submitted under the law, and that a patent ought to have been issued in this particular case from the local office.

Mr. BUCKNER. That was done in this case.

Mr. HOLMAN. I understand then in this case proofs were submitted to the decision of the local office, and that that decision was against the claim, and then that an appeal was taken to the General Land Office, where the decision was against the claim, at which time the Secretary of the Interior confirmed to these parties the land occupied by their buildings, with a small portion of adjacent land. Is this am I correct?

Mr. BUCKNER. Yes, sir.

Mr. HOLMAN. One other point. I understand the Delegate to state that a portion of the town of Vancouver occupies this section of land, and that Vancouver has a population of some fifteen hundred persons. I understand further that a portion was appropriated by the Government as a military reservation, and that buildings were erected upon it. Now, will the gentleman inform me how much of this land has been appropriated for the purposes of the town of Vancouver, and whether that has been done under patent obtained from the Government or not—in other words, for how much of this land has the Government already issued patents?

Mr. JACOBS. The town of Vancouver covers about three hundred and twenty acres of this land. One hundred and sixty acres of this land has been patented to the town of Vancouver, and the other one hundred and sixty acres is claimed under the donation law. About three hundred and sixty acres are covered by this military reservation.

Mr. BUCKNER. I ask my friend from Washington Territory whether, if these parties are entitled to the land upon which the town of Vancouver is located, he supposes this bill in any way will affect their rights? If they have a superior right to this land, does this bill in any way affect that right?

Mr. JACOBS. I will answer that question in this way: that there is no necessity for this kind of legislation, because now, under the laws of Washington Territory, an appeal can be instituted on the equity side, and that suit can be tried without further legislation of this kind.

Mr. BUCKNER obtained the floor.

Mr. HOLMAN. I hope my friend will let me ask another question.

Mr. BUCKNER. I think I understand the point of the gentleman from Indiana, and will answer it.

Mr. HOLMAN. The question I wish to ask my friend from Missouri is, when the Government took possession of this land as a military post, when buildings were erected upon it, and does the Government still occupy it as a military reservation? Further, for what reason did this missionary society refuse to receive that portion of land awarded to it by the Secretary?

Mr. BUCKNER. I understand, Mr. Chairman, a portion of this land was occupied by order of the Secretary of War as a military reservation. If it is not so occupied now, it is because it has been removed; but there are still buildings there which belong to the Government, and for which this bill provides.

In further answer to the gentleman's question, I will state that when in 1859 this land was authorized to be sold and surveyed, the then surveyor-general of Oregon was directed to lay off six hundred and forty acres to each of these missions. That was the construction at that time, and, I hold, was the proper construction of the law, that they were entitled to six hundred and forty acres each. That was the amount to which each mission in Washington and Oregon was entitled. He did lay off those six hundred and forty acres, including the mission grounds of this mission, as well as the Dalles mission, the Methodist mission. The Methodist mission is precisely in the same condition as this. The General Government made a military reservation on a portion of the Methodist mission at the Dalles. The Government came in and bought the land from the Methodist mission and paid $23,000 for it. That was under the act of Congress of 1873.

Now, when this question came up, when these contesting claims represented by my friend from Washington Territory came up before the Secretary of the Interior, he decided, I say, contrary to the clear meaning of this act, and contrary to the entire practice of the Government at that time and to the decisions of the Land Commissioner and the Secretary of the Interior in 1868, that the mission was only entitled to the actual ground on which the church and buildings were located, and gave them a patent for only half an acre of ground, when other missions had received six hundred and forty acres.

Now what is the object of this bill? It does not say that Vancouver has not a good title or that other adverse claimants have not a good title as against this mission; but it gives these parties the only status they can have—that is, by giving them a patent—without prejudicing the claims of any adverse party. The object of the bill is to enable these parties to go into court and test the question whether they are entitled to six hundred and forty acres or to half an acre, or whether the town of Vancouver or any other claimant has any right against them. That is the object of this bill, and no other.

Mr. BRIGHT. Will the gentleman from Missouri permit me to ask him a question?

Mr. BUCKNER. Certainly.

Mr. BRIGHT. Do I understand the gentleman correctly, that the patent is simply intended to give the parties a status in court that they may litigate their respective rights?

Mr. BUCKNER. That is all.

Mr. BRIGHT. It does not propose to divest any other parties of their rights, or disturb them in the possession of them?

Mr. BUCKNER. Not at all. That is the object of this bill, as I understand the law. The gentleman from the Territory of Washington says that the law is different there from what I understand it to be. I understand that these parties have no right to the public lands unless they have been set aside by survey, unless they have been severed from the public domain; and this patent is issued in order that they may go into court and test the legality of their alleged rights. That is what the report says.

Mr. JACOBS. Will the gentleman allow me to ask him a question?

Mr. BUCKNER. Yes, sir.

Mr. JACOBS. It is true that a patent must be issued by the Government before a suit can be instituted upon the equity side of the court. But a portion of this land has already been patented to the city of Vancouver. If, then, the lands have been patented, cannot these parties commence a suit now, and try the validity of their title, just as they could after the issuance of the patent under this bill?

Mr. BUCKNER. I hold not.

Mr. JACOBS. Why not? The laws of Washington Territory expressly authorize that. So do the laws of Oregon.

Mr. BUCKNER. I do not know about that. If that be the case, the bill can do no harm.

Mr. JACOBS. But why issue the patent to the defeated party? Why not issue the patent to the party that has been successful in all this litigation in the Land Department of the Government? Why turn around and issue the patent to the defeated party? Let the patent issue to the parties who have succeeded in this long, expensive, and tedious litigation, and then this mission can at once institute its suit and try the title of the land. That is all we desire.

Mr. BUCKNER. In answer to the gentleman I might ask why the Secretary of the Interior made an exception of this claim against all others? why he gave the patent to the Dalles and these other missions and refused it to this one? why he did not give a patent of six hundred and forty acres for this mission under the same law which governed the issue of patents to the others? why he refused to give

this mission more than half an acre? I might ask this and think it is a sufficient answer to the gentleman. To show what is the object of the bill, I will read a portion of the report. It says:

Since the establishment of the Saint James mission several conflicting claims have sprung up to this land. The United States has established a military reservation on a portion of it, and other claimants are contesting the right of the mission. It is not the purpose of the committee to determine as to the validity or invalidity of these adverse claims, and they have amended the bill referred to them so as to enable these claimants to assert their rights before the courts as to any part or the whole of the six hundred and forty acres. But while the bill saves the adverse rights of these claimants, it becomes absolutely essential, in order to give this mission a legal status in court as to the land outside of the half acre on which its church building and mission house are located, that the land surveyed and platted to the mission in satisfaction of the grant by Congress should be separated from the public domain and patented; and your committee therefore recommend the passage of the bill referred to them, with an amendment thereto saving the rights of adverse claimants, and the rights of the United States to any buildings or other fixtures on said land, also striking out part of the preamble on second page of the bill.

Now the whole object of this bill is that these parties may go into court. The gentleman from Washington Territory says he wants that done. I take it that is not so much his object as to prevent these parties from having a status in court.

Mr. BRIGHT. Will the gentleman yield to me for a question?

Mr. BUCKNER. Yes, sir.

Mr. BRIGHT. If a suit were brought in the equity side of the court in the Territory, I wish to ask would that court have jurisdiction over the title which is in the United States so as to divest it from the United States and rest it in these parties?

Mr. BUCKNER. I cannot see how any court can have any jurisdiction to settle this matter as between these parties unless they can have a legal status in the courts; and that can only be had by virtue of an act of Congress, and if they had had it this bill would not have been introduced. It is well recognized that these parties have no right to test the question in court unless the land has been set aside to them. Now let it be remembered that this was originally done. After survey, this land was set aside, under the orders of the Land Office, to this mission of Saint James, and it is that survey that they ask shall be confirmed so far as respects the United States. As to the other parties claiming this land, let them go into court. This bill gives the mission no rights against the city of Vancouver or anybody else. It does not pretend to do it. Let the gentleman read the proviso, which is as follows:

Provided, That nothing in this act shall operate in any way to affect, impair, or defeat any adverse claim to the land described in said patent, or to any part thereof: *And provided further*, That the United States shall have the right to remove therefrom any property, buildings, or fixtures it may have thereon.

Now as to the United States, of course if these lands were granted to the mission, the United States had no right to use them as a military reservation; nor had any one else a right to occupy them. And that is the question which the bill proposes to put in the court; and the question cannot be settled in any other way. It may be settled in favor of the men who have squatted on the land and who have established the town of Vancouver. But until that point is settled, I cannot see how the right of the Saint James mission to this land can ever be adjudicated by any court; and if any gentleman will tell me how it can be done, I shall be obliged to him.

Mr. HAMILTON, of New Jersey. I rise to a question of order. I submit that the time for debate has expired.

The CHAIRMAN. Will the gentleman tell us what limit of debate he has reference to?

Mr. HAMILTON, of New Jersey. Is there no limit to debate?

The CHAIRMAN. None, except under the hour rule.

Mr. KNOTT. I move that the committee do now rise to enable the Committee on the Judiciary to make a report in reference to a recusant witness.

Mr. BRIGHT. I desire to ask the chairman of the Judiciary Committee what probable length of time it will take to transact that business, in order that we may then go back into Committee of the Whole on the state of the Union?

Mr. KNOTT. I suppose not more than three-quarters of an hour, perhaps an hour. I cannot say exactly.

The question was taken on Mr. KNOTT's motion; and on a division there were—ayes 28, noes 19.

So the motion was agreed to.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. WILSON, of Iowa, reported that the Committee of the Whole on the state of the Union had had under consideration sundry bills from the Private Calendar, and had come to no resolution thereon.

RECUSANT WITNESS—E. W. BARNES.

Mr. KNOTT. I am instructed by the Committee on the Judiciary to submit a report, and as it is written in a rather illegible hand, I trust I may be allowed to read it myself at the Clerk's desk.

The SPEAKER. The gentleman has the right to do that.

Mr. KNOTT then read the report of the committee, as follows:

The Committee on the Judiciary having had under consideration the report of the select committee, of which Hon. WILLIAM R. MORRISON is chairman, in relation to the contempt and breach of the privilege of this House by E. W. Barnes in refusing to produce to said committee certain telegrams mentioned in a subpœna served upon him on the 13th of December, 1876, as well as the answer of said Barnes made to the House on the 5th day of January, 1877, would respectfully submit the following report:

The first question to be considered is whether there is anything in the nature of the papers called for by the committee in this instance which exonerates their custodian from the duty of producing them in obedience to the subpœna served upon him. True there are certain communications which the law will not permit to be disclosed in court by the parties to whom they are made for obvious reasons of public policy, growing out of the peculiar relations which the parties between whom they pass sustain toward each other, such as communications between husband and wife, client and attorney, and under some circumstances between public officers in relation to affairs of state involved in the discharge of their official functions, whether such communications may have been made orally or in writing, or whether sent by private bearer, transmitted through the mail, or dispatched by telegraph. But the question presented here is not whether the messages demanded are privileged on account of the existence of any such relations between the sender and receiver, but simply and solely on account of the particular method in which they were transmitted.

Now, if A in Washington should make an oral communication in the strictest confidence to B to be repeated by him to C in New Orleans, and to C only, and it should afterward become material to prove that communication in a court of justice, no one will pretend that B could not be compelled to disclose it unless protected by the existence of some one of the peculiar relations above referred to; and in the absence of those peculiar circumstances it is equally clear that if A should hand to B a communication in writing, even under the most solemn pledge of secrecy on the part of B, to be delivered to C, and it should become material to show the contents of that writing in a proceeding in a court of justice while the same remained in B's possession, he could be compelled to produce it, notwithstanding he might be the repository of an indefinite number of written messages to the same or other parties. Why, therefore, the same communication handed to B in writing or made to him orally to be transmitted to C by telegraph should become so sacred as to be forever beyond the reach of legal process, simply by reason of the seemingly occult and marvelous method of its transmission, it is difficult, if not quite impossible, to see; so much so indeed that no court in this country or in England has yet been able to perceive it. Even Judge Cooley, whose weighty words this House has been so solemnly conjured to carefully consider before venturing to form an opinion upon this point, has failed to explain the sanctifying influence of electricity upon a communication transmitted through its subtle and mysterious agency, or why it should enjoy superior privileges in the eye of the law to every other vehicle of intelligence known among men. Eminent and distinguished as he is as jurist and writer, it is to be observed that his opinion, cited in the answer of this witness, stands unsupported by the authority of a solitary adjudicated case, and seems to have been called forth by the carefully considered judgment of a distinguished judicial tribunal in which precisely the opposite doctrine was maintained, notwithstanding the view which this learned writer had expressed upon the question in a former edition of his work, and which he may or may not have felt some pride in sustaining in the edition quoted by the witness. It is true, as Judge Cooley suggests, that there is a manifest propriety in securing to telegraphic correspondence all necessary safeguards of privacy, and it is eminently proper that telegraph operators should even be restrained by statutory penalties from willfully disclosing the contents of messages in their custody or passing through their hands. The business interests of their employers and those who patronize them render such enactments necessary and proper; nevertheless, such considerations have never been permitted by any enlightened Legislature nor by any intelligent judicial tribunal that has yet been called upon to expound such statutes, to defeat the superior claim which society has upon the testimony of all its members when essential to the proper administration of public justice. Without pausing to note several inaccuracies, both in the premises and conclusions stated by Judge Cooley in the extract quoted by the witness, it is sufficient to observe that the whole may be completely answered by the following brief quotation from the opinion of Judge King, in the case Henisler *vs.* Freedman, 2 Patson's Select Cases, 274, which the learned author may possibly have overlooked:

"It must be apparent that if we adopt this construction of the law the telegraph may be used with the most absolute security for purposes destructive to the well-being of society, a state of things rendering its absolute usefulness at least questionable. The correspondence of the traitor, the murderer, the robber, and the swindler, by means of which their crimes and frauds could be more readily accomplished and their detection and punishment avoided, would become things so sacred that they never could be accessible to the public justice, however deep might be the public interest involved in their production."

Indeed, it would seem to be a sufficient answer to all the sentimental solicitude which some seem to indulge in relation to the inviolability of telegraphic correspondence as contradistinguished from other private writings, that whoever has a communication to make which he would be either ashamed or afraid to have exposed if the ends of public justice should require it, had better employ some medium of transmission less accessible to the ordinary process of law, for, as the learned judge remarks, in the opinion just quoted:

"The law is jealous of extending the circle of persons excused or interdicted from giving testimony. Parents are required to testify against children, children against parents, brothers against brothers, and friends against friends, communications or letter, made under the deepest obligations of friendship, affection, or honor, still must be produced if deemed necessary to the ascertainment of truth and the administration of justice by the public tribunals. To this great end of social organization all secondary causes are required to give way. If there exists any great overruling public necessity which requires that telegraphic communications should be exempted from this almost universal principle, it is for the legislature and not for the judiciary to say so."

Or perhaps a more complete answer may be found in the opinion of Chief-Justice Appleton of the supreme court of Maine in the case of The State *vs.* Litchfield, 58 Maine, 267, which called forth the remark of Judge Cooley quoted with such solemnity by the witness:

"A verbal message communicated to the prisoner," says the learned judge, "would be admissible, and the party communicating it would be compelled to state it. So a written message, or its contents, after due notice to produce the original and a failure of its production by the party notified, would be received in evidence. The mode of transmission to the person delivering the message, whether by telegraph or otherwise, has nothing to do with the matter. The important fact is its materiality. Nor can telegraphic communications be deemed any more confidential than other communications. * * * The honest man asks for no confidential communications, for the withholding the same cannot benefit him. The criminal has no right to demand the exclusion of evidence because it would establish his guilt."

It is urged by the witness, however, that under the rules and instructions received from his employers he did not believe that the legal possession and control of the messages described in the subpœna, if any of them remained in the files of the New Orleans office, resided in him as a subordinate employé, and that he sincerely and honestly believed that under those rules and instructions he would have been guilty of a palpable breach of duty and an actual trespass if he had undertaken to rummage for them among the files and carry them away from the place where they were deposited without the permission of the competent authority of the company. The ground of defense thus submitted presents questions of law as well as of fact, which will be considered in their proper order.

The rule laid down in Archbold's Queen's Bench Practice (volume 1, page 353) upon the authority of the decision in Amy *vs.* Long (9 East, 473) is that it is no excuse that the *legal* custody of the instrument belongs to another if it be in the *actual* possession of the witness. The court held in that case the writ of *subpœna duces tecum* is of compulsory obligation on a witness to produce papers thereby demanded which he has in his possession and which he has no lawful or reasonable excuse for withholding, of the validity of which excuse the court and not the witness must judge.

Lord Ellenborough in delivering the opinion of the court said: "The only question here to be considered is whether the defendant had the warrant in his custody with the capacity of producing it. If it was in his power to have done so, and he did not, it is not to be endured that by any contrivance between him and G. necessary evidence should be withheld, and the purposes of justice should be defeated."

The witness seems to think, however, that the mere fact that he had possession of the papers called for as the employé of the telegraph company is a legal and sufficient excuse for his refusing to produce them in obedience to the mandate of the House, unless he had permission from the competent authority of the company to do so, that is, although the papers may have been in his actual custody and capable of being produced by him, yet the command of his superior officer would be the paramount law no matter how urgently the ends of public justice might demand their production. The only American case cited in support of this position is that of The President, Directors and Company of the Bank of Utica *vs.* Hillard, 5 Cowen, 153. In that case a *subpœna duces tecum* was issued at the instance of Hillard, the defendant in the action, commanding one Collings, the *clerk* of the bank, who was plaintiff, to produce certain books and papers which belonged to the bank, and the question having arisen on his refusal to produce them, the court said "the obligation of Collings to produce the books upon the *duces tecum* depends on the question whether they were in his possession and under his control. He was the mere clerk of the plaintiffs, and in that character had no such property in, or possession of, the books as imposed the obligation to bring them. They were under the control of the cashier, who might forbid their removal or place them beyond the reach of the witness." So it will be seen that the reason assigned by the court for refusing to enforce the subpœna was that the clerk was not the custodian of the books, as any one at all acquainted with the organization of banking institutions can readily understand.

The judgement having been reversed, the defendant sent out a *subpœna duces tecum* commanding the *cashier* to produce the papers, and upon his refusing to do so a motion was made for an attachment against him, which was overruled on the proper grounds that "the course for proving the books or papers of a bank where it is the adverse party *is to give notice to produce them*, and on its non compliance, to show the contents by inferior evidence as in other cases." It is true the court in overruling the motion uttered an *obiter dictum* unsupported by either principle or authority, to the effect that the cashier of a bank holds its books and papers in the same character that an attorney holds the papers of his client, and intimated that he could not on that account be coerced to produce them upon *subpœna duces tecum*; but, as has already been observed, the point was decided upon the familiar principle of common law, that a party to an action at law could not be compelled to furnish evidence to his adversary, whether that party were a corporation or a natural person, but might choose between the alternative of producing the books and papers or having their contents proven by evidence *aliunde*. The case has consequently no significance as authority upon the question under consideration.

The attention of your committee has been called to two English election cases, reported in O'Malley & Hardcastle's Election Petitions, known as the "Taunton Case" and the "Strand Case," in each of which an officer of the post-office was excused from producing telegrams in his hands as such. It will be observed, however, that there is such a wide difference in the circumstances attending those cases and the one at bar that the opinions expressed therein, even if they had not been delivered with great doubt, as both of them were, can afford no authoritative guide to a conclusion in this. It must be remembered that in each of those cases the witness was a government official, engaged in a department depending for its efficiency, as well as the extent of its patronage, upon an implied pledge of the confidence of the Crown, the sovereign power. Hence there was a strong reason for the ground, and the sole ground upon which the witnesses were excused, namely, the impolicy of the Crown—the only power which could compel its agent to disclose the messages in his possession—violating the confidence it had invited and the faith it had impliedly pledged in establishing its postal telegraph. It will be observed, moreover, that in neither of the cases was it denied that cases might arise in which it would be proper for the Crown to violate even that pledge, but the contrary plainly intimated in both. It is scarcely necessary to add that no such circumstances exist here, and that consequently the cases can have no analogy to the one under consideration. Nor do your committee deem it necessary to add to the length of this paper by reviewing the English cases cited by the witness in support of his view of the question under discussion, in order to show their want of analogy to other reasons that might be urged against their consideration as authority here, but will call attention to one directly in point which seems to have escaped the observation of the witness and his counsel. It is the case of Ince, decided in the court of common pleas in 1869, and reported in 20 Law Times N. S., 421:

"Mr. James Ince, examined by James, said he was a telegraph clerk in charge at Coventry.

"Question. Do you produce any telegram from London from Mr. Seymour? First, give any from Mr. Seymour, whether to Leicester or London.

"Answer. I have one or two from Mr. Seymour, *but I have instructions from our secretary not to let those papers leave my hands.*

"James. You must address yourself to his lordship.

"Witness. (addressing his lordship.) I have instructions not to let those papers leave my hands and to answer no question unless I am authorized by you.

"Willes, J. The secretary has no such power. The only persons who can refuse to answer questions are attorneys, and of course counsel, who would stand on the same footing for a stronger reason. I do not enter into any questions whether another class is or is not privileged. I do not choose to introduce matter that is doubtful; but, with the exception perhaps of people in government offices, as to matters of state, and counsel, and attorneys, I do not know of any class that is privileged. On another class the question might arise, but I do not mention it here. It is quite clear that telegraph companies are not privileged.

"Witness. Then I am authorized by you to produce these papers to counsel?

"Willes, J. From what you have stated has passed with the secretary, *it is quite clear that his attention has been called to the subject*, and he has sent you to represent him, and I must address you exactly as I would address the secretary. If you did not produce these papers everybody connected with the telegraph company who could lay his hand on them would be subject to be brought here and to be punished for not producing them."

The telegrams were read.

But admitting for the sake of the argument that the witness could not be compelled to produce the telegrams called for without the consent of his employers, your committee find from his own answer that at the time the papers were demanded by the committee he actually had that permission.

According to the witness's own statement the following was the standing rule of the company prior to May 2, 1873:

"94. No original message or duplicate of a received message will be permitted to leave the possession of the company except by authority of an executive officer. Whenever a manager or other employé is subpœnaed to produced messages in court or before commissioners, he will notify the secretary of the company at once by telegraph for *instructions*."

The ninety-fourth rule, above mentioned, was modified in 1873, as follows:

EXECUTIVE OFFICE WESTERN UNION TELEGRAPH COMPANY,
New York, May 2, 1873.

Executive Order No. 147.

Rule 94 is hereby modified as follows:

No original sent message or duplicate of a received message will be allowed to pass out of the possession of the company except by authority of an executive officer.

Whenever a manager or other employé is subpœnaed on the part of the sender or receiver of a message to produce it before a court or other legal tribunal, he will comply with the subpœna and afterward return the message to the files. When subpœnaed by any other party than the sender or receiver, he will take the message into court and submit to the judge that he ought not to produce it, the communication being privileged, and that he cannot do so unless a rule of the court is entered requiring it. If such rule is entered the manager must obey it, asking the clerk to give him a copy of the rule and message.

The subpœna and other papers in connection therewith should be retained on file with the message to which they relate.

WILLIAM ORTON, *President.*

This order the witness admits was in force at the time the subpœna was served upon him; and it would be mere trifling with the patience of the House to pretend that it does not authorize any manager or other employé of the Western Union Telegraph company to obey any *subpœna duces tecum* issued by lawful authority by at once producing the telegrams demanded, if in his possession, without telegraphing to the secretary of the company for instructions as required by rule 94. It is manifest that it was intended to avoid unnecessary delay in such matters, as well as useless annoyance to an officer of the company, perhaps at a remote point from the place of investigation, by investing each manager or other employé in possession of dispatches with permission to carry them immediately to the tribunal demanding them, with general directions to secure the company as far as possible from all blame, by taking certain prescribed steps to throw the responsibility of exposing their contents upon the tribunal ordering their production.

It will not do to say that such permission extended no further than to take such messages before courts of justice. The language of the order is not merely permissive, but mandatory. It leaves no discretion in the employé, but commands him to do what is therein required whenever subpœnaed to produce messages before a court "*or other legal tribunal.*" In view of the plain language of this order it is more than idle to pretend that the witness was the mere depositary of the messages, with no power to "rummage for them among the files," or to carry them before the committee in obedience to the subpœna without being "guilty of a palpable breach of duty and an actual trespass." The plain simple truth is, so far from having no authority to obey the subpœna, he was "guilty of a palpable breach of duty" by violating the standing rule of the company in failing to do so.

Having it thus clearly within his power to produce the papers in his custody at the time of the service of the subpœna, any subsequent order he may have received from Merriweather or Van Horne or Orton or any one else could avail him nothing as an excuse for refusing to do so. In the language of Lord Ellenborough, in Amy *vs.* Long: "If it was in his power to have done so, and he did not, it is not to be endured that by any contrivance between him and either or all of them necessary evidence should be withheld and the purposes of justice defeated."

The witness claims, however, that the subpœna served upon him was "not in form or substance a subpœna to *him*, or to any one except to John G. Thompson named therein; and that said paper is not in *any* sense an order or direction of this House subject to obedience or disobedience by *him*, the witness.

It might possibly be too harsh to say that this is a subterfuge, but it is certainly not going too far to pronounce it an after-thought, especially when the language of the writ is interpreted in the light of the witnesses own conduct and statements after it was served upon him. The language of the subpœna is as follows:

By authority of the House of Representatives of the United States of America.

To JOHN G. THOMPSON, Esq.,
Sergeant-at-Arms, or his special messenger:

You are hereby commanded to summon E. W. Barnes, manager of the Western Union Telegraph Company at New Orleans, Louisiana, to be and appear before the Louisiana affairs special committee of the House of Representatives of the United States, of which Hon. WILLIAM R. MORRISON is chairman, and with *you* bring all telegrams sent or received by William Pitt Kellogg, &c., at the office of the Western Union Telegraph Company, New Orleans, from and after the 15th day of August, 1876, in their chamber in the city of New Orleans, Saint Charles Hotel, forthwith, then and there to testify touching matters of inquiry committed to said committee. Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives at the city of Washington this 13th day of December, 1876.

[SEAL.] SAMUEL J. RANDALL, *Speaker.*
Attest:
GEORGE M. ADAMS, *Clerk.*

It is true that by a clerical misprision the pronoun "*you*" is used instead of "*him*," nevertheless when the subpœna was served upon him Mr. Barnes understood it precisely as every other sane mind on the continent would have understood it. He understood it to be a command to *him*—Mr. Barnes—to produce the telegrams therein designated. He accordingly at once sent the following dispatch to his superior officer:

NEW ORLEANS, 13 *December*, 1876.

To C. G. M., *Superintendent, Mobile:*

I am subpœnaed to produce all messages sent and received by W. P. Kellogg and others from and after 15 August by congressional committee. Had I better produce as far as in my possession, leaving those not, for further inquiry, if it is to be done?

E. W. BARNES.

But if such injustice could by any possibility be done to Mr. Barnes's common sense as to suppose that he could have believed that the paper served upon him was "not in form or in substance a subpœna to him," or that he could have mistaken the true meaning and intent of the mandate to produce the messages, notwithstanding the clerical misprision, it would at least be some slight compensation for the outrage upon his intelligence to give him some credit for candor and fairness, and to suppose that he would have told the committee that he did not know or believe from the terms of the writ that he was desired or commanded to produce the telegrams described. Had he done so he would not have been sent here until his misapprehension had been corrected and a fair opportunity afforded him to act with a distinct knowledge of the true meaning of the writ. But the committee were apprised that he needed no such information, for he distinctly stated under oath that he did understand that *he* was required by the subpœna to bring the messages, as witness his answer to the following plain question:

"You answered that you were subpœnaed to appear and produce telegrams sent by and received by parties named in this subpœna?

"Answer. Yes, sir."

The witness knew, therefore, what the real meaning of the paper was just as distinctly and certainly as if there had been no clerical error in its language at all; he knew that *he* was commanded to bring the telegrams just as perfectly as if the pronoun "him" had been really employed instead of the word "you," and yet with this distinct, confessed knowledge on his part, he chose to disobey the subpœna upon the assurance of Mr. Orton that *he* would take the responsibility.

In view of these facts it would seem that the pretense that the witness should be excused on account of a forced construction of the words of the subpœna, which perhaps never occurred to him until "advised by counsel," is scarcely up to the dignity of a decent quibble.

By way of further objection to the subpœna, the witness excepts to the manner in which the desired papers are described, and insists that it is in effect a "*general warrant*," and within the prohibition of the fourth amendment to the Constitution. Without diverging here into a history of the abuses of those unauthorized engines

of executive power known as "general warrants," or pausing to inquire into the circumstances arising out of such abuses, which led to the authoritative declaration of these essential elements of personal liberty, protected by the fourth amendment to the Federal Constitution, which must be familar to every student of political history, it is perhaps sufficient to say that in the hundreds of instances in which the *subpœna duces tecum* has been resorted to in the British Parliament, the English courts, the Congress and Legislatures of the United States, and in our Federal and State courts, the similarity which the witness supposes to exist between that writ and the "general warrants" condemned by the constitutional provision cited by him has never yet been detected.

Again he says:

"I am further advised by my counsel that no judicial tribunal, proceeding in due course of law, would compel a witness to obey a *subpœna duces tecum* in such general form as I have mentioned, and that such attempts have often been condemned in the highest courts as efforts to abuse and prostitute the administration of justice by turning such subpœnas into bills of discovery."

And as evidence of the frequency with which such subpœnas as the one under consideration have been condemned by the highest courts, he cites two English cases, the Attorney-General *vs.* Wilson, 9 Simons, 528, in which the court said the description of the books and papers was so vague that the court could not enforce the subpœna, and Lee *vs.* Angas, law reports, 2 equity, 63, in which the subpœna was objected to because it called "*upon the witness to ransack his papers for a period of thirty-three years,*" but in which the witness was nevertheless required by the court to produce the papers, inasmuch as he had admitted that he had them in his possession.

A variety of adjudged cases might be cited against the doctrine asserted by the witness in this particular, but a most complete answer to his objections to the subpœna may be found in the opinion of Judge Dillon, concurred in by Judge Treat, in a recent case of some celebrity, The United States *vs.* Orville E. Babcock, 3 Dillon's C. C. R., 567, where the correct rule, and the one which has been followed by the committee in this instance, is very clearly and succinctly stated.

A *subpœna duces tecum* had been issued in that case requiring William Orton to produce copies of all telegrams received through the office of the Western Union Telegraph Company at Long Branch, in the State of New Jersey, from the 15th of June to the 15th of September, 1874, and from June 15 to September, 1875, addressed to General O. E. Babcock, signed John McDonald, John A. Joyce, John, or J.; with books showing the delivery of the same; all telegrams sent from Long Branch through said office during said months, signed O. E. Babcock, O. E. B., Bab., or B., addressed to John McDonald, or John A. Joyce, Saint Louis, Missouri, or Ripon, Wisconsin; all telegrams sent through the office of said company at the city of New York, upon the 9th, 10th, 11th, or 12th days of December, 1874, signed John McDonald, John, Mac, or Mc., addressed to John A. Joyce, Saint Louis, Missouri, or General O. E. Babcock, Washington, District of Columbia; also copies of all telegrams received from the city of Saint Louis, at the city of New York on the 25th, 26th, 27th, 28th and 29th days of October, 1874, addressed to Mrs. John A. Joyce, Mrs. Kate M. Joyce, Mrs. Kate Joyce, Kate Joyce, or Kate M. Joyce, with books showing their delivery. Mr. Orton, as president of the Western Union Telegraph Company, appeared by counsel and moved to quash the subpœna on the ground that it had been improvidently issued. The court, after hearing elaborate argument and a thorough examination of the authorities, proceeded to dispose of the various objections to the subpœna, and among other things said:

"The only other objection was that the petition and writ do not sufficiently identify the messages or show them to be in the possession of the company, and that the writ in fact requires the company to *search* for these messages. We think that the objection is not made with a proper view of the statements of the petition in that regard, *and of the functions of the writ.* It is very easy, if Mr. Orton or the company is not in possession of the papers, for them to come here and say '*We have no such papers.*' That excuses them to the court, if the court is satisfied that such is the fact. But some degree of certainty is undoubtedly required in undertaking to specify the papers, and we have looked through books which have been referred to by counsel and others, and we find the law and practice to be quite well settled. It is this: The papers are required to be stated or specified only with that degree of certainty which is practicable, considering all the circumstances of the case, so that the witness may be able to know what is wanted of him and to have the papers on the trial, so that they can be used if the court shall then determine that they are competent and relevant evidence. * * * The writ describes with sufficient particularity, indeed with all the particularity that seemed to be practicable under the circumstances, the very messages that are wanted.

"It is objected that the writ as framed in effect, though not in terms, commands Mr. Orton to *search* for the messages. It is the *duty* of a person to whom such a writ is directed to make reasonable search for the papers and documents if in his possession."

This plain, practical, common-sense rule, so clearly expressed by the court, which has been followed by the committee in this instance and which will doubtless be observed by every honorable congressional committee in discharge of like duties, would seem to be sufficient to quiet all undue apprehensions of "*drag nets*" and other instrumentalities which are supposed to be inimical to the privacy of innocent telegraphic correspondence.

The witness finally under the advice of counsel suggests the possibility that he would have laid himself liable to a criminal prosecution under section 3763 of the revised statutes of Louisiana had he produced the telegrams demanded in the subpœna, and so perhaps he might, as any innocent man is liable to be *prosecuted* either through malice or mistake for any crime whatever; but it requires but little reflection to convince any legal mind that he would not have been guilty of a misdemeanor and that he could not be convicted of such in any just and enlightened court, either in Louisiana or elsewhere, for obeying the subpœna.

The witness being a layman may not have known, and possibly his counsel may not have remembered at the moment, that in order to constitute a crime or misdemeanor the act done must have been *willfully* committed, and that the production of the papers by him in obedience to the command of one having lawful authority to require them to be produced would in no sense be an act of his own volition, but of the party ordering it to be done. Now, it has never been questioned that the House of Representatives has the inherent power under the Constitution from the very nature and purposes of its organization to institute any investigation which in its judgment may be necessary to the proper discharge of any of its functions, that in such investigations it has the power to examine witnesses, and to require the production of any paper that may be necessary to render the same effectual, and that its jurisdiction in that regard is co-extensive with the limits of the United States, including Louisiana. It is furthermore certain that it may in the exercise of those powers act through a committee regularly appointed and authorized for that purpose. These principles are so universally understood and admitted that it requires neither argument or authority for their illustration. It follows, therefore, that the law of any State which might either directly or by implication undertake to abridge the exercise of any of these powers by the House would be in derogation of its constitutional functions and to that extent absolutely void. The question then in this case is not whether Congress can curtail the powers of the Legislature of Louisiana, but whether the Legislature can abridge the true scope and intendment of the Constitution of the United States.

There is another principle that should be borne in mind in this connection, and that is that the statutes of Louisiana must be construed, as they doubtless will be by the courts of that State, according to the true intent and meaning of the Legislature which enacted them, and that the statute cited by the witness cannot be construed to apply to a telegraph operator or employé who produces a telegram in obedience to legal process regular on its face, and emanating from a source legally empowered to issue it, any more than a statute making it a felony for any one to draw blood in the street should be held to embrace the case of a surgeon who should open the vein in the arm of a person who had fallen upon the sidewalk in a fit of cerebral congestion that might otherwise have caused his death.

The books abound in illustrations of this principle. For instance, in Lee *v.* Birrell, 3 Campbell, 387, where a witness refused to produce a certain book or to answer any question concerning the defendant's acts as collector, on the ground that before entering upon his office as clerk to the commissioners they had administered to him an oath not to disclose anything he should learn in that capacity respecting the property tax except with their consent, or by force of an act of Parliament, Lord Ellenborough said:

"I clearly think the oath contains an implied exception of evidence to be given in a court of justice in obedience to a writ of subpœna. The witness must produce the book and answer all questions respecting the collection of the tax as if no such oath had been administered to him."

So also grand jurors are generally, if not invariably, sworn to keep secret what may transpire in the grand-jury room, yet it has never been disputed that where the testimony of a grand juror as to what has taken place there is necessary in a court of justice he must testify notwithstanding his oath of secrecy. So also the members of courts-martial are sworn to the maintenance of secrecy as respects certain parts of their proceedings, yet when it becomes necessary that those proceedings shall be known in a court of justice they are obliged to testify in regard to them.

It was manifestly the intention of the Legislature in passing the law cited by the witness to protect the interests of telegraph companies, as well as of their patrons, by making it a penal offense for an operator to willfully, wantonly, or fraudulently expose or make use of messages in their custody or passing through their hands, and not to defeat the ends of public justice or public duty. And fortunately there have been solemn judicial decisions to that effect directly in point.

The statute of Louisiana is almost a literal copy of a similar provision enacted by the Legislature of Pennsylvania, April 14, 1851. On the trial of the case of Henisler *vs.* Freedman, already cited, which took place in the June following, David Brooks, the manager of the Ohio and Atlantic Telegraph Company, on being required to produce certain dispatches, pleaded the Pennsylvania statute and his fear of prosecution thereunder as an excuse for refusing to do so, precisely as the witness has done in this instance, but the court held that he was bound to produce the telegrams, and that in so doing he would commit no violation of the statute then recently passed.

Again: The statute, 17 Victoria, chapter 2, section 9, incorporating the New York, Newfoundland and London Telegraph Company, provided that "every operator, agent, or servant of said company employed in the transmission or delivery of intelligence or messages shall before he enters on the duties of his office make oath before a judge or a justice of the peace that he will not willfully divulge the contents of any message transmitted by the said company or left with any of its operators or servants for transmission or delivery; and every person violating the said oath shall be adjudged guilty of a misdemeanor and punished by imprisonment for a period not exceeding one year and by a fine not exceeding £200."

In Waddell's case, reported in 8 Jurist, N. S., part 2, 181, Mr. John Waddell was sworn and requested to disclose the contents of a message which had been transmitted by the company, but declined to do so on the ground that as an operator in the employment of the company he would be liable to the penalties denounced by the act just recited; and the question being submitted to the Lord Chief-Justice he took time to consider, and after deliberation delivered the following judgment:

"In this case, after full consideration of the general law relating to privileged communications, and as to the true construction of the legislative enactment set forth in the special case, and the decision of Lord Ellenborough in Lee *vs.* Birrell under circumstances so very analogous, I do not entertain a doubt that the communications or messages through telegraph offices are not in law privileged communications, and that Mr. Waddell and others in similar positions are compelled to attend a judicial proceeding, they are bound to disclose the contents of such messages, and that in so doing they do not at all violate the oath they have taken that they will not willfully divulge the contents of messages, nor do they subject themselves to any prosecution under that enactment."

As to the dispatches which the witness had transmitted to his superior officers before the service of the subpœna upon him, he could not of course be expected or compelled to produce them, as they had passed beyond his control, but your committee, in view of the law and facts presented in the whole case, are of the opinion that Mr. Barnes was legally bound to produce to the committee all dispatches within the description contained in the subpœna which remained in his possession at the time he was served with the subpœna, and that he could not evade the obligation to produce such telegrams by delivering them up to Mr. Orton, Mr. Merriweather, or any one else after he was subpœnaed to produce them, and that in refusing to produce those in his possession he was guilty of a contempt of the authority and a breach of the privilege of the House of Representatives. They would therefore recommend the adoption of the resolutions;

Which I ask the Clerk to read.

The Clerk read the resolutions reported by the committee, as follows:

Resolved, That E. W. Barnes be required to produce to the select committee of which Hon. WILLIAM R. MORRISON is chairman, the telegrams mentioned in the subpœna which had not been sent to Mobile by order of the superintendent before the service of the subpœna upon him on the 13th of December, 1876.

Resolved, That said Barnes be again brought to the bar of the House and the Speaker then demand of him if he is now willing to produce to said committee the telegrams mentioned in the subpœna which had not been sent by him to Mobile before the 13th of December, 1876, when the subpœna was served on him, and whether he will do so.

Resolved, That if said Barnes shall answer that he is now willing to produce said telegrams to said committee, and promises to do so, that he be allowed to do so without unnecessary delay, and upon so doing he shall be discharged from custody.

Mr. KNOTT. I move the previous question upon the adoption of the resolutions.

Mr. GARFIELD. I wish the gentleman would state whether the committee has found in that report—I did not catch the entire reading of it—that this subpœna was a proper subpœna to him, on which we can base proceedings for contempt.

Mr. KNOTT. In answer to the inquiry of the gentleman from Ohio, I will say that a majority of the committee were of the opinion that this was a legal and sufficient subpœna. There were others on the committee who denied its efficiency, who nevertheless concurred unanimously in the resolutions presented as the conclusions of the committee.

Mr. GARFIELD. I wish the gentleman would put it in a shape where the House can demand an answer to the questions propounded and if he refuses the contempt will be in his refusal to do it, but not the refusal to answer under this subpœna.

Mr. KNOTT. If the gentleman had listened to the resolutions, he would have found that they required that precisely to be done.

Mr. GARFIELD. Very well; but I would like to hear the resolutions again read.

The Clerk again read the resolutions.

Mr. GARFIELD. A single question more. As I understand, from the reading of the resolutions, there is nothing in them that lays the foundation for a contempt for not heretofore producing the messages called for. If the witness shall refuse to produce them now, that will be the foundation for the contempt; is that it?

Mr. KNOTT. The gentleman can put his own construction upon the resolutions.

Mr. GARFIELD. I want to know the construction that the committee puts upon them.

Mr. KNOTT. The construction of the committee is contained in the report. The resolutions are susceptible of the construction that the witness will be in contempt if he violates the order now made or sought to be made in the first resolution.

Mr. GARFIELD. That is satisfactory; I have no further question to ask.

The previous question was seconded and the main question ordered.

Mr. CONGER. I ask that the resolutions be again reported.

Many MEMBERS. O, no.

Mr. CONGER. O-h, y-e-s! [Laughter.]

The SPEAKER. As this is an important proceeding, the Chair would suggest that it would be better to have the resolutions again read.

The resolutions were again read.

The question was then taken, and the resolutions were adopted.

Mr. KNOTT moved to reconsider the vote by which the resolutions were adopted; and also moved to lay the motion to reconsider on the table.

The latter motion was agreed to.

The SPEAKER. Pursuant to the order of the House, the Sergeant-at-Arms will now produce the witness E. W. Barnes at the bar of the House.

The SERGEANT-AT-ARMS then appeared at the bar of the House accompanied by Mr. Barnes, and said:

Mr. Speaker, in obedience to the order of the House, I have now at its bar the witness E. W. Barnes.

The SPEAKER. I am directed, Mr. Barnes, by the House to ask you if you are now willing to produce before the committee sitting in New Orleans, of which WILLIAM R. MORRISON is chairman, the telegrams mentioned in the subpœna served upon you which had not been sent by you to Mobile before the 13th day of December, 1876, when the subpœna was served?

Mr. HOAR. I would inquire of the Chair if the resolutions reported by the Committee on the Judiciary and adopted by the House have been read to the witness? If not, I think they should be read to him.

The SPEAKER. The Chair thinks that is a very proper suggestion. The Chair understood that the witness was present in the Hall when the resolutions were read and adopted. Perhaps it would be as well to have all the resolutions read in the hearing of the witness for his information.

The Clerk accordingly read the resolutions just adopted by the House.

The SPEAKER. Mr. Barnes, are you now willing to produce before the committee sitting in New Orleans, of which WILLIAM R. MORRISON is chairman, the telegrams mentioned in the subpœna which had not been sent by you to Mobile before the 13th day of December, 1876, when the subpœna was served upon you?

Mr. BARNES, (the witness.) Mr. Speaker, when I left New Orleans I was necessarily superseded, being under heavy bonds and being unwilling to be responsible for the money and business of the office when not personally present; I am therefore not at present in control of anything or any messages in the New Orleans office. Should I come in possession of the messages again, and should there prove to be any such messages there as are described in the subpœna, I will willingly produce them.

The SPEAKER. The witness at the bar is in the charge and custody of the Sergeant-at-Arms.

Mr. KASSON. Is there not another question in the resolution adopted by the House? I had the impression that there were two questions.

The SPEAKER. There is no instructions for the Chair to make any other inquiry.

Mr. KASSON. I understood the resolution to embrace two questions; I may be in error about that.

The SPEAKER. The resolution states conditionally that if said Barnes shall answer that he is now willing to produce said telegrams before said committee and shall promise to do so, he shall be allowed an opportunity to do so without unnecessary delay, and that upon his doing so he shall be discharged from custody.

Mr. KASSON. Then there is no other question but the one propounded by the Chair?

The SPEAKER. There is no other question.

Mr. GARFIELD. The witness is not now in the custody of the Sergeant-at-Arms, but in the custody of the House.

The SPEAKER. The Chair believes that the execution of the order of the House requires him to declare that the witness at the bar is in the charge and custody of the Sergeant-at-Arms.

Mr. GARFIELD. Does the Chair by that declaration decide that the witness has not answered as the resolution directs?

The SPEAKER. The Chair thinks that the witness has not answered as he should have answered, categorically.

Mr. KASSON. If the Speaker will permit me, I will say that the witness is not discharged from custody until the House so orders; that is the uniform practice of the House. The Speaker cannot order him to be discharged without a previous resolution of the House.

The SPEAKER. By the resolution the Sergeant-at-Arms is made the custodian of the witness.

Mr. GARFIELD. The Sergeant-at-Arms has delivered up his custody to the House.

The SPEAKER. And the House has passed a resolution, the effect of which is to again place him in the custody of the Sergeant-at-Arms.

Mr. GARFIELD. Certainly, if the House has so resolved.

Mr. WOOD, of New York. The order of the House was given when the resolution was passed, to the effect that if the witness shall refuse to answer he of course should be committed for contempt.

The SPEAKER. And the resolutions adopted to-day are in entire harmony with that.

Mr. GARFIELD. If the Speaker will allow me——

The SPEAKER. Certainly.

Mr. GARFIELD. I submit that the witness has now answered to the House, and there is no power but the House that can determine whether his answer is satisfactory. Until the House acts upon that subject, the witness is not discharged from the custody of the House nor delivered over to the Sergeant-at-Arms. If the House now declares that his answer is satisfactory, then his discharge will follow as the result of such declaration.

Mr. HOLMAN. That is not the effect of the resolution.

Mr. GARFIELD. If the House declares that his answer is not satisfactory, and orders his commitment again to the custody of the Sergeant-at-Arms, then of course he is so committed.

Mr. HOLMAN. The gentleman misapprehends the effect of the resolution. I ask that it be again reported. The present action does not discharge the witness; it is not so intended.

The SPEAKER. Nor did the Speaker intend to have it supposed that he had any power to commit.

Mr. HOLMAN. The witness still remains in custody under that resolution.

The SPEAKER. The resolution passed to-day affirms the former action of the House putting the prisoner in the custody of the Sergeant-at-Arms.

Mr. HOLMAN. The witness is to be discharged when he shall comply with the order of the House.

The SPEAKER. And the Chair merely made his statement in conformity with that order.

Mr. HOLMAN. The resolution furnishes to the witness an opportunity to comply with the order of the House; and on doing so, he is discharged.

Mr. BURCHARD, of Illinois. Or on promising to do so.

Mr. HOLMAN. No; on doing so.

Mr. KASSON. I think that the only point on which there can be any difference arises from the expression of opinion on the part of the Speaker that the witness had not purged himself from contempt. Of course it is the House only that can express such an opinion. I agree with the Speaker that the witness is in the custody of the Sergeant-at-Arms until otherwise ordered by the House; and it remains for the gentleman in charge of this matter, the chairman of the Judiciary Committee, to offer hereafter such resolution based upon this reply as he may think proper.

The SPEAKER. The Chair thinks that he has made no mistake about this question. In the comparatively recent case of Mr. Stewart, the then occupant of the chair, following the practice in such cases, decided that the witness at the bar must make categorical answer. The present occupant of the chair only stated his opinion that this witness had not made a categorical answer.

Mr. BRIGHT. I submit that the resolution we have already adopted provides the precise time when the witness shall be discharged; and it is when he has complied with the terms of the resolution which expresses the action of the House.

Mr. WILSON, of Iowa. I understand that the Chair will entertain at any time, as a matter of privilege, a resolution proposing to discharge the witness, if the House sees fit to do so.

The SPEAKER. The Chair would not decide that point now. He thinks that the question of privilege is exhausted so far as this report is concerned when definite action has been taken on the report.

Mr. WILSON, of Iowa. But I presume the Chair will still hold that so long as Mr. Barnes remains in custody a resolution relative to him is privileged.

The SPEAKER. It would come up as new matter, and of course in a new relation of the case.

Mr. WILSON, of Iowa. But still it would be privileged.

The SPEAKER. Yes, sir; in a new relation of the case.

Mr. HALE. I do not say that the case I am about to state has arisen; but supposing that the answer of the witness had been such that a majority of members believed it purged him of contempt and that he should be discharged; does the Chair, in his intimation that the witness is still in custody, go so far as to rule that in the case I

have supposed a motion would not be in order from the floor to discharge him?

The SPEAKER. When the supposition which the gentleman states is realized then the Chair will decide that point.

Mr. HALE. But my point is that, supposing in the judgment of a certain number of members, making in the aggregate a majority, such a case has arisen, does the Chair hold that in this case, with the witness before the House, a motion would not be entertained to discharge him, but that the Speaker might by virtue of his position rule the witness to be still in custody?

The SPEAKER. The original resolution continues in force, and its effect is to keep the witness in custody. The Chair has never made any such ruling as seems to have been apprehended by the gentleman from Maine.

Mr. HALE. I only wanted to know the extent of the ruling, because this is of course not the end of proceedings in like matters. I wanted to know for my own satisfaction, and perhaps for the information of other members, whether at this stage of proceeding in a like transaction the Chair would not recognize a motion, if it were made, to discharge the prisoner.

The SPEAKER. So far as the Chair is able to gather the meaning of the gentleman, he will state that this proposition comes before the House from a committee who were charged with its consideration; that the chairman of the committee demanded the previous question on the resolution. Upon that demand a majority of the House had it within their power either to bring about a direct vote upon the resolution, or if the demand for the previous question should not be sustained, then to admit any amendment which the gentleman from Maine or any other gentleman might wish to offer. But if the gentleman reporting the resolution demands the previous question and the previous question be sustained and the main question ordered, then the Speaker does hold that no amendment, such as proposing the discharge of this witness, would be in order.

Mr. HALE. Of course, then, the Speaker decides that the House has no control over it at present.

The SPEAKER. Not until the question so far as the report of the committee has been disposed of.

Mr. KASSON. According to my recollection of the precedents, Mr. Speaker, on the response of the witness in pursuance of an order which the House has made, and which is executed on the floor, that response of the witness is followed by a resolution declaring the disposition the House wishes to make on that answer. In other words, I suggest the offering of a resolution, to which I call the attention of the gentleman from Kentucky, of this nature: that the witness be remanded to the custody of the Sergeant-at-Arms and his answer to the question propounded by the Speaker be referred to the Committee on the Judiciary. The necessity for it arises, I judge, from the remark of the Speaker that he does not regard the witness as saying categorically that he is willing to produce the papers. The witness does say categorically, however, that there has been a change in his relation to the custody of the papers without his being responsible for it, and that therefore he makes the answer which he does make, that if he does come into the possession of the papers he will then produce them.

The SPEAKER. Is it modified by the answer?

Mr. KASSON. It is modified by that phrase used by the witness that he has not the power now to produce the papers, but that he is willing to do so when he shall have the power. But whatever it may be I do not wish to take up the time of the House in further discussion, and will merely suggest that, in my judgment, the question should be referred to the Committee on the Judiciary for further action.

The SPEAKER. The action taken by the Chair is precisely that taken by the Speaker in the similar case of Mr. Stewart, who was brought in like manner before the bar of the House for contempt in refusing to answer questions propounded to him by a committee. The statement of the Chair was in exact harmony and accord with all the proceedings of the House at that time.

Mr. BROWN, of Kentucky. Mr. Speaker, the resolution which the House has passed, if I understand it correctly, provided a contingency in which the witness should be released if he answered to the satisfaction of the House. His answer has been read. It strikes me that the Speaker has assumed individually to pass upon the sufficiency of that answer, which is a prerogative belonging only to the House. It seems to me, sir, that the House, by resolution, should take further action in this matter, remanding the witness to the custody of the Sergeant-at-Arms for contempt; and that it does not belong to the Speaker to decide that question without action by the House.

The SPEAKER. The Chair desires to say that nothing could be further from his purpose than to assume anything. He has disclaimed any assumption in the matter whatever. What he has done has been in strict harmony with the instructions of the House contained in the last paragraph of the resolution which was adopted. This it was the duty of the Chair to do. The House passed an order in this matter, and it was his duty to see that that order was executed.

Mr. BROWN, of Kentucky. The fact is that the Speaker alone has decided the sufficiency of the response, as I understand it. This House, and not its Speaker, should pass upon that matter.

The SPEAKER. The Chair has only stated, as he was bound in duty to state, that the witness at the bar remained in the custody and charge of the Sergeant-at-Arms; that is all.

Mr. KASSON. If the Chair will have the clause of the last resolution read, he will find, I think, that the resolution omits to say what shall be done with the witness.

Mr. KNOTT. I desire to say, Mr. Speaker, it occurs to me that, if these gentlemen would recur to the resolution passed when Mr. Barnes was last brought to the bar of the House, the difficulties which seem to be upon their minds would be removed. That resolution, sir, distinctly provides that Mr. Barnes shall remain in the custody of the Sergeant-at-Arms until he shall be discharged by order of the House. That is already provided for in advance.

The SPEAKER. And what the Speaker has said and done has been in strict compliance with the instructions of the House contained in the resolution adopted by the House.

Mr. KNOTT. But in order, sir, to relieve this matter from all difficulty I offer this resolution.

The Clerk read as follows:

Resolved, That the answer made by the witness, E. W. Barnes, to the questions propounded to him by the Speaker under the resolution of the House is not deemed sufficient; and that he be remanded to the custody of the Sergeant-at-Arms and by him closely kept until he shall produce to the committee all telegrams demanded from him and be discharged from custody by order of the House.

Mr. KASSON. I hope the gentleman from Kentucky will not insist upon the House passing at this moment upon the sufficiency of that answer, assuming that it is in his power to answer, when he answers that it is not in his power. I hope he will allow it to be referred to his committee, to consider what ought to be done.

Mr. KNOTT. I will say to the gentleman from Iowa that, if the previous question should be sustained and there should be a desire to discuss the resolution for an hour, gentlemen on the other side can have half of that hour.

Mr. KASSON. That is fair.

Mr. GARFIELD. I hope the gentleman will also open the door to receive an amendment.

The SPEAKER. The gentleman from Kentucky [Mr. KNOTT] demands the previous question on the resolution which he has submitted.

Mr. GARFIELD. I will suggest to the gentleman from Kentucky that there will be no chance for debate on the resolution after the previous question is ordered, this not being a report of a committee.

Mr. HOAR. I desire to make a parliamentary inquiry: Whether if the previous question is sustained, there will be the hour which the gentleman from Kentucky proposes and whether his purpose will not be accomplished by his now taking the floor himself upon his resolution, with the notice that he will call the previous question at the expiration of an hour.

The SPEAKER. The Chair understood the gentleman from Kentucky to ask consent that there should be an hour for debate after the previous question was seconded, and that one-half of it should be assigned to the one side and one-half to the other.

Mr. HOAR. But the Chair was putting the question on the demand for the previous question, without first asking that consent.

The SPEAKER. The Chair did not hear any dissent, and supposed there was none.

Mr. CAULFIELD. I rise to a parliamentary inquiry. Supposing the witness at the bar desires to make further answer to the question propounded to him a while ago by the Speaker; should he be permitted to do so before the adoption of the resolution just offered?

The SPEAKER. That can be done by consent.

Mr. CAULFIELD. Then I ask unanimous consent that the witness be permitted to make further answer to the question propounded, as I am informed by his counsel that he is ready to do so.

Mr. HALE. If the gentleman from Kentucky would modify his resolution so as to provide that the witness shall remain in custody until further order of the House, that would give opportunity for further answer.

The SPEAKER. The Chair hears no objection to the arrangement suggested by the gentleman from Kentucky, that one hour be allowed for debate under the terms indicated by him. The gentleman has moved the previous question on the resolution. Is the demand for the previous question seconded?

Mr. CAULFIELD. I have asked for unanimous consent that the witness be allowed to make further answer to the interrogatory propounded to him.

The SPEAKER. The gentleman from Illinois [Mr. CAULFIELD] asks unanimous consent that the witness at the bar be permitted to make further answer to the interrogatory heretofore propounded to him by the Chair, under the direction of the House.

Mr. KASSON. And that that take precedence of the call for the previous question?

The SPEAKER. It will if unanimous consent is given. Is there objection? [After a pause.] The Chair hears none.

The following further answer was then made by the witness and read by the Clerk:

I intended my answer to be such as the resolution seemed to me to require. I thought it proper in candor to inform the House as to my present circumstances. I am entirely willing to produce the messages, and will do so if I can.

Mr. WOOD, of New York. As I understand the position of this question and of the witness in relation to this investigation, he is now in the custody of the Sergeant-at-Arms, and remains so until he

produces those papers. And as I further understand the resolution which we have just adopted, he shall still remain in the custody of the Sergeant-at-Arms until he either positively declines to furnish the papers or until he proceeds to do so to the extent of his ability.

The SPEAKER. The Chair thinks that is the substance of the last resolution.

Mr. WOOD, of New York. Now if the witness answers that he is ready to produce those papers if he can, it appears to me it is all this House can require of him to do, provided he remains in the custody of the Sergeant-at-Arms; and if he fails to produce them then it is for the House to determine upon his discharge or upon his committal. That appears to me to be the condition of the question.

Mr. KASSON. I ask the reading of the last clause of the resolution. I think the order of the House has been fully executed.

The Clerk read as follows:

Resolved, That, if said Barnes shall answer that he is now willing to produce said telegrams to said committee and shall promise to do so, he be allowed an opportunity to do so without unnecessary delay, and upon his so doing he shall be discharged from custody.

Mr. KASSON. The instruction is there which I suppose will now be executed without further orders of the House.

Mr. WILSON, of West Virginia. I desire to hear the first answer of the witness read; for if I understood it correctly he has severed his connection with the telegraph company. If that be the case, if he has been superseded, it gives an entirely different phase to this question.

The SPEAKER. That is a question of fact on which the Chair has not ruled.

Mr. WILSON, of West Virginia. I should like to have the first answer of the witness again read.

The SPEAKER. The first answer of the witness will be again read for the information of the House.

The Clerk read as follows:

When I left New Orleans I was necessarily superseded, being under heavy bonds and being unwilling to be responsible for the money and business of the office when not personally present. I am therefore not at present in control of any thing or any messages in the New Orleans office. Should I come into possession of the messages again, and should there prove to be any such messages there as are described in the subpœna, I will willingly produce them.

Mr. HUNTON. I am authorized by the counsel for the witness to say that with the explanation contained in his first statement he is now willing to strike out the latter clause of the last answer.

The SPEAKER. The witness at the bar desires still further to modify his second answer. Is there objection?

Mr. GARFIELD. We have no right to strike out anything from the answer of the witness. The witness has.

The SPEAKER. The House has power to give consent to the witness to modify his answer. Is there objection? [After a pause.] The Chair hears none. The witness may modify his second answer in the manner he may wish.

After a pause,

Mr. HOOKER. I call for the reading of the amended answer.

The SPEAKER. The Chair is informed that it is not yet prepared.

After another pause,

Mr. BLAND. I rise to a point of order. I desire to know what business is before the House.

Mr. RUSK. If there is no business before the House, I think we had better adjourn.

After a further pause,

Mr. BLAND. I call for the regular order of business. We have a right to know what is the amended answer of the witness and how it has been prepared.

The SPEAKER. Unanimous consent was asked of the House and given by the House that the witness should be allowed to modify his second answer. The Chair is waiting to hear from the witness, and the Chair supposes that a reasonable time should be allowed him to confer with his counsel.

Mr. WATTERSON. The witness desires to know whether he may be allowed through counsel, on returning the amended answer, to make some verbal explanation thereof.

The SPEAKER. The Chair will submit the question to the House. The Chair is of the opinion that it would require unanimous consent. There has been a case where a witness was allowed to answer in a written paper prepared by his counsel.

Mr. GARFIELD. That is this case. He has done so.

The SPEAKER. It was also done in the case of Hallet Kilbourn. Does the Chair understand the gentleman from Kentucky to say that the witness desires to be heard through counsel? The Chair thinks that that question should be submitted to the House, and if the House is disposed to hear the witness by counsel, it can do so.

Mr. WATTERSON. The witness feels himself incompetent to explain his qualifications in his own person, and for that reason he desires to be heard for a moment, merely in explanation of his last amended answer. I move that he be allowed to do so.

Mr. WOOD, of New York. O, no. We want categorical answers and no trifling.

Mr. REAGAN. This is the first time in my life that I ever heard of an unsworn statement of attorney being offered in answer to a question propounded by a judicial tribunal.

The SPEAKER. The Chair is willing to submit the question to the House. The Chair recollects that the same request was made in a former case and that the House refused to hear the witness by counsel.

Mr. WATTERSON. The witness does not desire to submit an unsworn statement, but an explanation simply, and it is my desire that the present House of Representatives shall not take its cue from the action of former Houses in matters of this description.

The SPEAKER. The gentleman is mistaken. If the leave were granted the counsel, the witness would have the right to an hour for explanation.

Mr. WATTERSON. He wants only a moment to make a very necessary and proper explanation of his amended answer.

The SPEAKER. The Chair thinks it competent for the House to hear the witness by counsel. The Chair merely stated that if entitled to be heard, he would be entitled to one hour.

Mr. O'BRIEN. Not by counsel.

Mr. BRIGHT. I rise to inquire whether the first resolution adopted by the House does not absolutely require that the answer of the witness shall be in writing.

The SPEAKER. The Chair thinks that it should be in writing.

Mr. BANKS. The witness, Mr. Speaker, has answered to the House in reply to the inquiry propounded to the Speaker by order of the House, that he will produce these papers if he can. As the Chair has said, that is an answer to the question propounded to him, but it involves a question of fact. It is manifestly impossible for the House to determine whether he can or cannot produce these papers. I think therefore that the witness should be remanded to the custody of the Sergeant-at-Arms, in whose custody he now is, and that his answer should be sent to the Committee on the Judiciary, to report hereafter what is the proper course to be taken by the House under the circumstances.

The SPEAKER. The witness can at any time make a communication to the House.

Mr. BANKS. If the gentleman from Kentucky [Mr. KNOTT] will permit me, I will move to amend the resolution so that the answer of the witness shall be referred to the Committee on the Judiciary.

Mr. WILSON, of Iowa. Before that is done I hope the witness will be heard. I cannot bear the idea that a man shall be cut off when he desires to explain his answer.

The SPEAKER. The Chair has stated more than once that he is entirely ready and willing to submit the question to the House whether they will hear the witness. If they decide to hear the witness, then the Chair believes that the witness, under the hour rule, will have the right to speak for one hour.

Mr. BANKS No answer the witness can make will help the House, unless he answers directly whether he will produce these papers or not.

The SPEAKER. The Chair would suggest that the House by unanimous consent allow the witness an opportunity to modify his second answer.

Mr. BANKS. Let him modify it now.

Mr. RUSK. Let it be read as modified.

Mr. HARRIS, of Virginia. It seems to me that the House is drifting away from the question before it. The contempt which this witness committed was in not producing these papers when called on by the committee in New Orleans.

The chairman of that committee has reported to the House, and the Committee on the Judiciary has sustained that report, that when this witness was first called before the committee in New Orleans he said that he had at least a part of the telegrams called for by the committee, and the chairman understood him to say that on a certain day or hour he would furnish copies of these telegrams provided the committee would furnish the necessary clerical force to copy them. When that time arrived, an issue arose between the chairman and the witness, the chairman insisting that he had understood the contract or agreement between them to be that he would produce copies of the telegrams if the necessary clerical force was furnished, and when that time expired the witness said that he did not mean to say that he *would* produce them, but that he *could* produce them if the clerical force were furnished. The question is upon his contempt in not producing them at that time.

Unless we hold him for that contempt, this process of contempt under *subpœna duces tecum* is absurd, because a witness would have nothing to do when he was served with a subpœna but to pass the papers to somebody else or resign his office and say "I am not able to produce them because after receiving the summons I placed them in the hands of somebody else." I think that the case goes back to the beginning, and that the witness should be committed for a contempt in not having produced the papers when it was in his power to produce them, and not fritter away our time here by listening to his statement that he cannot *now* produce them. Mr. Orton has been subpœnaed to produce certain papers, and since he had notice he has had time to hand those papers over to somebody else, and when he is brought to the bar of the House he will give the same answer that this witness has given, and so it will go on *ad infinitum*, and the 4th of March will be here and this House will be still listening to dilatory pleas by witnesses. If the House means to act upon these great questions, let them act promptly and commit this witness for his contempt in not producing the papers when required to do so at New Orleans. The questions involved are too momentous and the time too short to listen

to evasive answers from recusant witnesses. Let us act, and act at once by confining the witness or abandon this line of seeking evidence. Public justice and the interests of the country demand this. Let us do it. [Applause in the galleries.]

Mr. GARFIELD. I hope the galleries will not assume all the judicial functions of this House, but allow us to exercise them.

Mr. KNOTT. Mr. Speaker——

Mr. TOWNSEND, of New York. Are those in the galleries part of the one hundred thousand we have have heard so much of?

The SPEAKER. The gentleman from New York [Mr. TOWNSEND] is not in order, not being recognized by the Chair. The gentleman from Kentucky [Mr. KNOTT] is recognized by the Chair to offer a resolution.

Mr. KNOTT. I offer the resolution which I send to the Clerk's desk, in lieu of the one heretofore offered by me; and upon it I call the previous question.

The Clerk read the resolution, as follows:

Resolved, That the answer of E. W. Barnes, the witness, to the questions propounded to him by the Speaker in obedience to the resolution of the House, is not deemed sufficient, and that said Barnes is hereby adjudged to be in contempt of the authority of this House, and to have committed a breach of its privileges, in refusing to produce telegrams to the special committee, of which WILLIAM R. MORRISON is chairman, in obedience to the subpœna served upon him on the 13th of December, 1876, and that he be remanded to the custody of the Sergeant-at-Arms, to be held in such confinement by him, until said witness shall purge himself of his contempt by producing the telegrams specified in the subpœna which he had not sent to Mobile before the subpœna was served upon him, to said select committee, or until he be discharged from custody by the order of the House.

The question was upon seconding the call for the previous question.

Mr. GARFIELD. I desire to ask the gentleman from Kentucky [Mr. KNOTT] a question. I propounded an interrogatory to him some time ago as to whether the contempt of the witness in this case was the refusal to obey the subpœna in the first instance, or whether it would rest upon the witness refusing to answer here the question which the Speaker of the House should propound to him. The gentleman replied to me that the answer here would lay the foundation for contempt or otherwise, according to what that answer should be. Now having made that admission, having called upon the witness and he having expressed his willingness to produce the papers; and the witness having also in good faith explained to the House that weeks before this question was propounded to him by the Speaker to-day he was discharged from the place where the papers are, that he is no longer an officer there, and has no longer any possible custody, either manual or legal, of these papers; but that if he shall be re-instated, and shall become the custodian in either sense of the papers, he would produce them, it seems to me that it is not an act of good faith to go back and punish him for not producing the papers before the committee when the subpœna was served upon him.

Mr. KNOTT. I would like to know whereabout the interrogatory comes in. The gentleman said he wanted to ask me a question.

Mr. GARFIELD. I will now put the interrogatory, and ask the gentleman where he can find any justice or equity in the resolution which he has now offered?

Mr. KNOTT. That is your question, is it?

Mr. GARFIELD. Yes.

The SPEAKER. The gentleman from Kentucky [Mr. KNOTT] has called the previous question upon his resolution.

Mr. HALE. Allow me to ask the gentleman from Kentucky——

Many MEMBERS. Regular order.

Mr. HALE. I rise to a point of order.

The SPEAKER. The gentleman will state it.

Mr. HALE. My point of order is that the answer of the witness is pending before the House, and has not yet been completed according to the leave given him by the House. In addition to that, I appeal to the gentleman not to press his resolution until we get a full answer from the witness.

The SPEAKER. How long would the gentleman suggest that the House should wait for the answer?

Mr. HALE. I would have a monition given the witness that if he intends to finish his answer he should do so. We certainly should not be called upon to vote upon this resolution until we get the answer of the witness.

The SPEAKER. The Chair is informed by the Clerk that the answer of the witness has been returned without modification.

Mr. HALE. The members of the House did not know that.

The SPEAKER. And the Chair did not know it until informed by the Clerk.

Mr. HALE. Before we vote upon this resolution let us have the answer read as finally left.

Mr. WATTERSON. I am requested by the witness to state that the different opinions expressed by members on the floor have so confused him that he is unable to make any amendment of his answer. [Laughter.]

Mr. KNOTT. I would express the hope at least that the proceedings here have not so far confused the witness that he has lost sight of the plain duty required of him to produce papers for which a legal demand has been made upon him. I therefore move the previous question on the resolution I have offered, so that we may have some conclusion of this matter.

Mr. KASSON. I rise to a point of order—one which embarrasses me at least, if it will not embarrass other gentlemen. The answer made by the witness in execution of the resolution already adopted was a complete execution of the order of the House. A motion to reconsider the first order was made and laid on the table. That order has been executed by the witness; and, as I suggested some time ago, under that order the business before the House is disposed of, unless the Chair should rule that this has become a new question of privilege by virtue of the terms of this new resolution. I submit that this resolution is in conflict with the order of the House already made, and, without rescinding that previous order, is not now properly presented to the House.

The SPEAKER. The Chair would remind the gentleman that all this proceeding comes from the chairman of the Committee on the Judiciary.

Mr. KASSON. This last resolution, however, is an individual one; and in order that we may at least vote intelligently upon it, if the Chair does not consider the point of order well taken that the business is disposed of as a privileged report, I ask that the disposition ordered by the first resolution be now read, and that then this resolution be read if the gentleman from Kentucky insists upon offering it.

The SPEAKER. The gentleman from Kentucky asks the previous question upon the adoption of the resolution.

Mr. KASSON. The Chair, then, overrules my point of order?

The SPEAKER. What is the point of order? The Chair was unable to see any point of order in the gentleman's remarks.

Mr. KASSON. My point of order is that the previous resolution is to be executed and in the present situation has exhausted the power of the House over the subject; that this second resolution is not in order for that reason, and is not entitled to any privilege until the officer of the House has executed its first order; that the two resolutions are inconsistent.

The SPEAKER. That is somewhat in the nature of an argument why this second resolution should not be offered; but the Chair is unable to see any point of order in it.

The previous question was seconded and the main question ordered; which was upon the adoption of the resolution submitted by Mr. KNOTT.

Mr. PAGE. I call for the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 131, nays 72, not voting 87; as follows:

YEAS—Messrs. Abbott, Ainsworth, Ashe, Bagby, John H. Bagley, jr., Banning, Bland, Bliss, Blount, Boone, Bradford, Bright, John Young Brown, Buckner, Samuel D. Burchard, Burleigh, Cabell, John H. Caldwell, William P. Caldwell, Campbell, Candler, Carr, Cate, Caulfield, John B. Clark, jr., of Missouri, Clymer, Cochrane, Collins, Cook, Cowan, Culberson, Cutler, Davis, De Bolt, Dibrell, Douglas, Durham, Eden, Ellis, Felton, Field, Finley, Forney, Fort, Franklin, Fuller, Glass, Glover, Goode, Gunter, Andrew H. Hamilton, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Haymond, Henkle, Goldsmith W. Hewitt, Hill, Holman, Hopkins, Humphreys, Frank Jones, Kehr, Knott, Lamar, Franklin Landers, George M. Landers, Lane, Levy, Mackey, Maish, Milliken, Mills, Morgan, Neal, O'Brien, Odell, John F. Phillips, Piper, Poppleton, Rea, Reagan, John Reilly, Riddle, John Robbins, William M. Robbins, Roberts, Savage, Scales, Schleicher, Sheakley, Singleton, Siemons, William E. Smith, Southard, Sparks, Stanton, Stenger, Stone, Tarbox, Teese, Terry, Thomas, Thompson, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Gilbert C. Walker, Warner, Warren, Erastus Wells, Whitehouse, Whitthorne, Wigginton, Wike, Alpheus S. Williams, James Williams, Jeremiah N. Williams, Wilshire, Benjamin Wilson, Fernando Wood, Yeates, and Young—131.

NAYS—Messrs. Adams, George A. Bagley, John H. Baker, Ballou, Banks, Blair, Bradley, Horatio C. Burchard, Cannon, Cason, Chittenden, Conger, Davy, Denison, Dobbins, Dunnell, Eames, Evans, Flye, Foster, Freeman, Frye, Garfield, Hale, Hereford, Benjamin W. Harris, Hendee, Henderson, Hoge, Hoskins, Hubbell, Hunter, Kasson, Kimball, Lapham, Le Moyne, Lynch, Magoon, McDill, Miller, Monroe, Norton, O'Neill, Packer, William A. Phillips, Pierce, Plaisted, Potter, Pratt, Ramey, Robinson, Rusk, Sampson, Seelye, Sinnickson, A. Herr Smith, Strait, Stowell, Thornburgh, Martin I. Townsend, Tufts, Van Vorhes, Wait, Alexander S. Wallace, Whiting, Andrew Williams, William B. Williams, Willis, James Wilson, Alan Wood, jr., Woodburn, and Woodworth—72.

NOT VOTING—Messrs. Anderson, Atkins, William H. Baker, Bass, Beebe, Bell, Blackburn, William R. Brown, Caswell, Chapin, John B. Clarke of Kentucky, Cox, Crapo, Crounse, Danford, Darrall, Durand, Egbert, Faulkner, Gibson, Goodin, Hathorn, Hays, Hereford, Abram S. Hewitt, Hoar, Hooker, House, Hunton, Hurd, Hurlbut, Hyman, Jenks, Thomas L. Jones, Joyce, Kelley, King, Lawrence, Leavenworth, Lewis, Lord, Luttrell, Lynde, MacDougall, McCrary, McFarland, McMahon, Meade, Metcalfe, Money, Morrison, Mutchler, Nash, New, Oliver, Page, Payne, Phelps, Platt, Powell, Purman, James B. Reilly, Rice, Miles Ross, Sobieski Ross, Sayler, Schumaker, Smalls, Spencer, Springer, Stephens, Stevenson, Swann, Washington Townsend, Waddell, Waldron, Charles C. B. Walker, John W. Wallace, Walling, Walsh, Ward, Watterson, G. Wiley Wells, Wheeler, White, Willard, and Charles G. Williams—87.

So the resolution was adopted.

Mr. KNOTT moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

The SPEAKER. The witness is still in the custody and charge of the Sergeant-at-Arms.

COMMITTEE ON COUNTING THE ELECTORAL VOTES.

Mr. KNOTT. The select committee appointed to inquire into the privileges, powers, and duties of the House in counting the electoral votes have instructed me to report the resolution which I send to the Clerk, and to ask its adoption.

The Clerk read as follows:

Whereas additional duties have been devolved by resolution of the House upon the select committee of seven appointed to inquire and report upon the privileges

powers, and duties of the House of Representatives in counting the electoral votes for President and Vice-President of the United States: Therefore,

Resolved, That two additional members be appointed by the Speaker to serve on said committee.

Mr. KNOTT. I call for the previous question on the adoption of this resolution.

The previous question was seconded and the main question ordered; and under the operation thereof the resolution was adopted.

Mr. KNOTT moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

COUNTING THE ELECTORAL VOTE.

Mr. KNOTT. I am instructed by the committee to ascertain and report what are the privileges, powers, and duties of the House of Representatives in counting the votes for President and Vice-President of the United States, to report in part the following resolutions for the adoption of the House; and I give notice I will call them up for consideration next Wednesday immediately after the morning hour.

The Clerk read as follows:

The committee to ascertain and report what are the privileges, powers, and duties of the House of Representatives in counting the votes for President and Vice-President of the United States beg leave to report in part the following resolutions for the adoption of the House:

Resolved, First. That the Constitution of the United States does not confer upon the President of the Senate the power to examine and ascertain the votes to be counted as the electoral votes for President and Vice-President of the United States.

Second. That the only power which the Constitution of the United States confers upon the President of the Senate in respect to the electoral votes for President and Vice-President of the United States is to receive the sealed lists transmitted to him by the several electoral colleges, to keep the same safely, and to open all the certificates or those purporting to be such in the presence of the Senate and the House of Representatives.

Third. That the Constitution of the United States does confer upon the Senate and the House of Representatives the power to examine and ascertain the votes to be counted as the electoral votes.

Fourth. That in execution of their power in respect to the counting of the electoral vote the House of Representatives is at least equal with the Senate.

Fifth. That in the counting of the electoral votes, no vote can be counted against the judgment and determination of this House of Representatives.

Sixth. That the committee have leave to sit again and report hereafter further matter for the consideration of the House.

Mr. CONGER. Is not this the same committee to which additional members have just been added?

The SPEAKER. It is the same committee.

Mr. CONGER. Then why should the report be made before those additional members have been added?

Mr. KNOTT. Simply because the committee desired to make this report.

The SPEAKER. The Chair would like to hear the question again.

Mr. CONGER. This committee has been enlarged by the action of the House a few minutes since, and yet the committee have now reported to the House without the concurrence of the committee as it is now organized or rather as it has been re-organized. If objection would lie to the reception to this report then I shall object.

The SPEAKER. The Chair thinks the gentleman's objection would not avail against the reception of the report. The additional members to the committee have not yet been announced. The committee making this report is a committee having full power in the premises.

Mr. CONGER. It is not the fault of the House which has ordered the additional members.

The SPEAKER. The Chair thinks he ought to have at least a minute or two of consideration before the appointment of the additional members.

Mr. CONGER. I think it would show courtesy to the House to wait until the Chair could announce the additional members of this committee.

The SPEAKER. What is the gentleman's motion?

Mr. KNOTT. I move that the report be printed and recommitted.

Mr. BURCHARD, of Illinois. Before disposing of this matter I wish to announce that the minority committee desire also to present their views, and ask that they be printed.

The SPEAKER. The Chair will immediately after disposing of this motion recognize the gentleman from Illinois [Mr. BURCHARD] for that purpose.

Mr. KNOTT. I will include that in my motion, that the gentlemen of the minority may present their views; and that those views also be printed and recommitted.

Mr. BURCHARD, of Illinois. I will also suggest that the minority of the committee have time in which to prepare their views for presentation to the House.

The SPEAKER. Then the Chair would suggest that the majority report and the views of the minority be printed separately.

Mr. CONGER. O, no; print them together.

The SPEAKER. That would retard the printing of the majority report, which is now ready to be presented, while the minority ask for time in which to prepare their report.

Mr. CONGER. It will also give the Chair time to appoint the additional members of the committee.

Mr. BURCHARD, of Illinois. We should like to have the views of the minority accompany the report of the majority in print.

Mr. KNOTT. My motion is that the report just read be printed and recommitted; and that the gentlemen of the minority, at such time as may suit their convenience, may have their propositions printed also.

Mr. BURCHARD, of Illinois. No; their views as well.

Mr. WILSON, of Iowa. Do we understand these reports are to be printed together?

The SPEAKER. That is not the motion of the gentleman from Kentucky, but that the minority views shall be presented at such time as may suit their convenience, and be printed and recommitted.

Mr. KNOTT's motion was agreed to.

Mr. KNOTT. I now enter the motion to reconsider.

Mr. BANKS. I should like to know what is the understanding in reference to this matter.

The SPEAKER. The understanding is, so far as the Chair could gather, that the gentleman from Kentucky will call up the motion to reconsider on Wednesday next, after the morning hour.

Mr. BURCHARD, of Illinois. Is the privilege of the committee to report at any time exhausted by the report made this morning?

The SPEAKER. The motion to reconsider is a privileged motion, which the gentleman from Kentucky can call up at any time.

Mr. BURCHARD, of Illinois. Was the privilege accorded to the committee of reporting at any time?

Mr. GARFIELD. What is the notice?

The SPEAKER. The gentleman from Kentucky gave notice in presenting this report that he would call it up for consideration on Wednesday next after the morning hour, which is his right, having made the motion to reconsider.

ADJOURNMENT OVER UNTIL MONDAY.

Mr. HOLMAN. I move that when the House adjourns to-day it be to meet on Monday next.

The motion was agreed to.

Mr. HOLMAN moved to reconsider the vote by which the motion was agreed to; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

RIVER AND HARBOR APPROPRIATIONS.

The SPEAKER. The Chair lays before the House a message from the President of the United States.

The Clerk read as follows:

To the House of Representatives:

In reply to a resolution of inquiry dated December 29, 1876, of the House of Representatives respecting the expenditure of certain moneys appropriated by the act of August 14, 1876, for river and harbor improvements, I have the honor to transmit herewith for your information a report and accompanying papers received from the Secretary of War, to whom the resolution was referred.

U. S. GRANT.

EXECUTIVE MANSION, *January 12, 1877.*

WAR DEPARTMENT,
Washington City, January 11, 1877.

MR. PRESIDENT: In reply to the resolution of the House of Representatives of the 23d ultimo, requesting information concerning the action of the executive branch of the Government under the act making appropriations for river and harbor improvements, I beg leave to state the action of this Department, as follows:

The act was signed on the 14th of August, 1876, and on the same day the President sent a special message to the House of Representatives stating that he did not consider it obligatory upon him to expend all the money appropriated in the bill, and that during his term of office no money should be expended on works not clearly national; and that, owing to a contemplated loss of revenue, it might be unadvisable to expend any money upon new works.

The principles enunciated in this message have governed my action on this subject in every case presented to me. Immediately after receiving the bill, the Chief of Engineers was directed to ask for statements from the engineers in charge of works as to what works could be postponed for the present. The replies from these officers recommended the expenditure of about $4,500,000 of the appropriation.

This reduction was so slight as practically to amount to nothing; and therefore on the 4th of September, having obtained your approval, I directed the Chief of Engineers, whose knowledge of this subject is more extended than that of any other officer of the Government, to make allotments from the sums appropriated for the various works, according to the best of his judgment, and in such manner that the total amount should not exceed $2,000,000, only providing that no new works should be begun and none continued that were not national in character. In making these allotments it was found that the amount designated, $2,000,000, was not quite sufficient for the purpose of carrying on the works absolutely necessary, and, therefore, the Chief of Engineers, after an extended interview with the President, was authorized in October to increase the amount to $2,237,600. Since that date a few cases where small sums were urgently required to prevent damage, or to make important examinations, have been favorably acted upon; and possibly there may be more of them.

A full statement of these allotments up to date is contained in the accompanying report of the Chief of Engineers. The resolution also requests the President "to state under what law or authority these orders and limitations upon said act of Congress were made."

In reply I would suggest that the law and authority are found in the act itself, which appropriates certain sums to be expended for certain purposes under the direction of the Secretary of War, but is in no way mandatory upon him to expend the full amount; and a moment's reflection will show that it is not feasible to so limit his discretion, since change of plan, decrease of cost of material and labor, or any one of many other contingencies, might leave a portion of the appropriation unexpended; there are now three or four such credits in the Treasury, where they have remained for several years, and one or two cases in which appropriations for specific improvements have never been drawn upon at all. The executive officer who is charged with these expenditures is bound by his regard for the interests of the public service, but his discretion is not limited by any express provision of law.

The exercise of this discretion in the present instance has been influenced by the condition of the Treasury and the nature of the appropriations for other public works of quite as much importance as the river and harbor improvements. With the appropriations for the public buildings imperatively required by the War and other Departments of the Government reduced to less than half of the average appropriations for the past five years, it was considered that economy required a similar

reduction in the expenditures for the current year upon works for the benefit of commerce and other interests of remote advantage to the Government; and with an estimated deficiency in the surplus revenue of $7,000,000, and every executive department reduced to its very minimum working force, (and in some cases below that necessary for the transaction of business,) it was determined to reduce the expenditures in that branch which could best stand the reduction, and where the least reduction had been made in the appropriations.

It should be borne in mind that these appropriations are of the character of "indefinite appropriations," *i. e.*, they do not lapse into the Treasury if unexpended at the end of two years. Under existing laws they are at any time available for the objects designated, upon the warrant of the Secretary of War. And should the anticipations concerning the revenue prove to be unfounded, or a purpose be indicated of liberally supporting the public works of all kinds throughout the country, it may then be deemed advisable to allot a further portion, or all of the appropriation. If, however, it had been allotted at present and contracts had been entered into, there would have been no means of preventing the expenditure.

In conclusion, I submit with all respect, that while the Legislature, with the approval of the Executive, appropriates the money and specifies the purposes for which it is given, the Executive Departments of the Government are always held responsible for the expenditures, not only as to the manner, but the amount of them; and that they violate no law if they keep the expenditures within the amount appropriated, and apply them to the purposes for which they are designated.

I have the honor to be, with great respect, your obedient servant,

J. D. CAMERON,
Secretary of War.

Mr. HOLMAN. If that is a brief report I trust it will be read.

The SPEAKER. The report is quite voluminous.

Mr. HOLMAN. Then I do not ask for the reading.

Mr. REAGAN. I rise for the purpose of moving that the message be referred to the Committee on Commerce, and printed; and I desire to submit some remarks at this time on the subject of that communication.

Mr. CONGER. I would suggest to the gentleman that he should make his speech at some other time. I think the House wishes to adjourn.

Mr. REAGAN. I prefer to go on now. I want to send the antidote with the poison.

The question discussed in the report which comes to us from the Secretary of War is one of no ordinary import. The circumstances connected with it are of a character that should arrest the attention of this House. It will be remembered that during the last session of Congress a bill appropriating money for the improvement of rivers and harbors passed the two Houses and was approved by the President, and his approval was accompanied by a message in which he stated substantially that he would only expend so much of the money appropriated in that bill as it might seem proper should be expended; that he would see to it that no money was spent on works not national, and that no money should be spent on new works. I was struck with surprise when that message came in, and more so when, in his annual message, the President gave us an account of what had been done under that bill. I desire to present very briefly some principles of law which apply to measures of this character, as well as to call attention to the operation of the action of the President as disclosed by the different communications to which I shall refer.

The President's order resulted in an allotment of the sums to be expended under the act of the last session for the improvement of rivers and harbors which was unfair in its distribution to the different parts of the country, and the discrimination was against that part of the Union which has received far the least benefit from such appropriations and which needs those benefits most now.

The number of works for which appropriations were made in that act was		147
Number in northern and Pacific waters	107	
Number in southern waters	40	
		147
Number to be improved under the order of the President		68
In northern and Pacific waters	52	
In southern waters	16	
		68

Under this order of the President the money appropriated by law for seventy-nine different works of internal improvement was withheld in the face of the provisions of this law, enacted by Congress and approved by the President, on the assumption that these were proper and necessary, and after the President by approving this law had said the objects of appropriation were proper and the law constitutional.

The aggregate sum appropriated by this law was		$5,015,000
For northern and Pacific waters	$3,355,000	
For southern waters	1,660,000	
		5,015,000

The proportion of the sum which was to be expended in the improvement of southern waters was $35,000 less than one-third of the whole.

The aggregate sum to be expended under the order of the President was		$2,000,000
In northern and Pacific waters	$1,370,000	
In southern waters	630,000	
		2,000,000

The proportion of this sum which was to be expended in southern waters was $110,000 less than one-third of the whole.

These figures are submitted in part to show that the lawful action of Congress was more fair and just than this unlawful and arbitrary action of the President.

They also show that the President has sought to deprive the country of the use of $3,015,000, which Congress in the performance of its constitutional duty, with the formal sanction of the President, believed to be necessary for the improvement and enlargement of the commercial facilities of the country and for the development of its vast resources.

The President, in returning the bill in which these appropriations were made to this House with his approval on the 14th of August last, said:

In affixing my signature to the river and harbor bill, No. 3022, I deem it my duty to announce to the House of Representatives my objections to some features of the bill, and the reason I sign it. If it was obligatory on the Executive to expend all the money appropriated by Congress, I should return the river and harbor bill with my objections, notwithstanding the great inconvenience to the public interests resulting therefrom, and the loss of expenditures from previous Congresses upon incompleted works. Without enumerating, many appropriations are made for works of purely private or local interest, in no sense national. I cannot give my sanction to these, and will take care that during my term of office no public money shall be expended upon them.

There is a very great necessity for economy in expenditures at this time growing out of the loss of revenue likely to arise from a deficiency of appropriations to insure a thorough collection of the same. The reduction of revenue districts, diminution of special agents, and total abolition of supervisors may result in great falling off of the revenue. It may be a question to consider whether any expenditure can be authorized under the river and harbor appropriation further than to protect works already done and paid for. Under no circumstances will I allow expenditures upon works not clearly national.

How the President has executed the purposes indicated in the foregoing message will be seen by reference to the following extract from his annual message of December 5, 1876. He says:

The appropriations for river and harbor improvements for the current year were $5,015,000. With my approval, the Secretary of War directed that of this amount $2,000,000 should be expended, and no new work should be begun and none prosecuted which were not of national importance. Subsequently this amount was increased to $2,237,600, and the works are now progressing on this basis.

In further explanation of the action of the President I read the following extracts from the annual report of General Humphreys, Chief of Engineers, dated October 21, 1876. He says:

The amounts appropriated for public works on rivers and harbors by the act approved August 14, 1876, certain allotments have been made in compliance with the instructions of the Secretary of War of September 4, limiting the expenditures under the act to $2,000,000, and directing that no new work of improvement should be begun.

After setting out these *allotments* in his report, he says further:

The officers in charge of the improvements were notified of the amount *allotted*, and the works are being conducted on this basis. Operations have not been commenced upon the new works of improvement provided for in the last river and harbor act.

I present these extracts, showing the position of the President on this subject in his own language, and to avoid doing injustice to his views. I try to cultivate an habitual respect for the President of the United States, and for all others holding high official position; and I regret to be compelled to say that in my judgment I have seen no communication of equal length with his message of August 14, which I have just read, which contained so many and so material errors. As the practices of the Government and the public acts of its high officials are constantly referred to as establishing the meaning of the Constitution and as guides in its exposition, I feel that we would neglect a great duty if we should allow this matter to pass by in silence. If we were the subjects of an imperial government, whose powers were not limited in this respect, and where the will of the emperor was the law of the land, then such a course would have been allowable. But being citizens of a constitutional republic, in which the powers of Government are carefully specified, and as carefully distributed among different Departments of the Government, and their execution confided to different and distinct classes of officers, it would seem that such a course could not fail to arrest the attention of the country, and to produce the gravest apprehensions for the safety of our free, constitutional system of Government.

And it seems to be a wide departure from the views expressed by the President when entering on the duties of his great office in 1869. In pointing out the manner in which he intended to perform his official duties, in his first inaugural address, he said:

All laws will be faithfully executed, whether they meet my approval or not.

And to make this still more explicit, he added:

I shall on all subjects have a policy to recommend, but none to enforce against the will of the people.

There are various modes of expressing the will of the people in this country, the most solemn and imposing of which is in the form of laws enacted by their constitutionally chosen Representatives and Senators, sanctioned by the President. Such was the will of the people as expressed in this act for the improvement of the rivers and harbors. This lawfully expressed will of the people provided for one hundred and forty-seven different public improvements, to be made under the direction of the proper Department of the Government, and for the expenditure of $5,015,000. The will of the President is that but $2,000,000 shall be expended, and that these expenditures shall be limited to sixty-eight works of improvement.

The act of Congress required that some new works should be begun. The will of the President is that no new work shall be begun.

Congress, in the exercise of its legislative discretion, and with the sanction of the President in approving the law, said that each of the

one hundred and forty-seven works provided for was a national work. The will of the President determines that some of these, without naming them, are not national works.

After a little I shall submit some authority as to the relative powers of Congress and the President over these questions. I shall also submit what the courts of the country have determined to be national works which may be provided for by law.

But before I do this I will call attention to some other matters which may be of interest in the examination of this subject.

One of the grounds assigned by the President for limiting the expenditures for this purpose was the necessity for economy. Congress would no doubt listen with great satisfaction to any recommendations of economy in expenditures which the President might make to influence their legislative action. But his open defiance of legislative authority and of a law of the land presents another question.

But the President said:

The reduction of revenue districts, diminution of special agents, and total abolition of supervisors may result in great falling off of revenue.

The only answer I shall now take time to make to this statement will be to quote the following extract from the observations made by the then chairman of the Committee of Appropriations, now the Speaker of this House, when this special message was under consideration. He said:

Now I want to state the fact that more than one-half of the revenue comes by receipts from the customs, which in no wise whatever passes under the control of Congress so far as to make appropriations necessary for their collection.

Further on he said:

There is, however, in the appropriation bill something to do with the collection of internal revenue. In regard to the internal revenue the House recommend that the collection districts should be reduced to one hundred and five; the Senate raised the number to one hundred and thirty-one, but lest the Government should be embarrassed in the collection of internal revenue the House receded from the number they had fixed at one hundred and five, and conceded the number asked by the Department, one hundred and thirty-one, which the Senate insisted upon.

And he adds:

I do not believe any of the conferees—

For the bill had gone to a conference committee—

on this or the other side of the House or of the Senate will consider that we have embarrassed in any degree whatever the collection of internal revenue.

From this it will be seen that, if the statement of the President is good for anything, it is to show that his Secretary of the Treasury and a republican Senate had adopted a policy which might cripple the collection of internal revenue.

It is worthy of remembrance, too, that at the very time this special message was sent to the House, and for many months previously, the House of Representatives, under democratic control, was and had been making a most earnest effort to secure economy in the public expenditures by reducing in every way consistent with the good of the public service their amount; and that these efforts were persistently resisted by the great body of the republicans in the House, and by the republican Senate, and by the messages from the President himself sent to this House.

I think it proper, too, in this connection, to call attention to the fact that the President has approved many bills before he was called on to approve this for the improvement of rivers and harbors, four at least of which each appropriated more money than the one of 1876, and for the improvement of as great a variety of waters; and he was not, so far as we can know, beset with the constitutional scruples or the special care for economy which he has manifested in relation to this law. The following are the amounts of appropriations for the improvement of rivers and harbors which he has approved for the years named:

1869–'70	$3,947,900 00
1870–'71	4,407,500 00
1871–'72	5,588,000 00
1872–'73	6,102,900 00
1873–'74	5,193,000 00
1874–'75	6,643,517 50
Aggregating in six years	31,882,817 50

And averaging for these six years $298,802.91 more than the amount appropriated at the last session for these purposes. While we may not attribute sinister motives to the President, in the light of the foregoing facts it is certainly difficult to determine the real reasons for his action. He had no difficulty in approving a bill appropriating nearly $7,000,000 for the improvement of rivers and harbors in 1875, but could only approve one for about $5,000,000 in 1876 under protest, on both economic and constitutional grounds; and certainly the latter is not more objectionable than the former on either ground.

Mr. CONGER. Will the gentleman allow me one question?

Mr. REAGAN. Yes, sir. I would prefer, however, if the gentleman would permit me, to finish my remarks before he asks me any questions.

Mr. CONGER. It is just one single question I desire to ask.

Mr. REAGAN. Very well.

Mr. CONGER. The bill to which the gentleman alludes provides that this expenditure shall be made under the direction of the Secretary of War. It therefore leaves a discretion as to the expenditure.

Mr. REAGAN. I am coming to that subject directly.

Mr. CONGER. The gentleman is criticising very much the President for using the discretion which the law gives him.

Mr. REAGAN. I do so because the President announced in advance what he would do, and subsequently stated in his annual message that the Secretary of War, with his approval, had limited the expenditures under this law.

But this matter presents points of still greater interest.

The President tells us in his last annual message that under his direction the Secretary of War had directed that no new work should be begun under the authority of this law. This is a short, simple statement. And it comes from the President of the United States, who has taken an oath that to the best of his ability he will preserve, protect, and defend the Constitution of the United States. What does it mean? Congress is the law-making power. It judges for itself as to the expediency, necessity, and constitutionality of its own action. There are but two ways in which its action can be legally questioned. The President may veto a bill for constitutional reasons. It is not so certain that he can rightfully do so for economic reasons or reasons of expediency. If he does so, the bill fails to become a law unless upon reconsideration two-thirds of each House shall vote for it notwithstanding the veto. Then the courts upon a proper case made may declare a law unconstitutional.

This law is not met in either of these ways. It is simply nullified by the single will of one man, and that man the President of the United States. He has substituted his personal wishes and will for an act of Congress, a law of the land. And one at least of his constitutional advisers, the Secretary of War, has acquiesced in and sanctioned this proceeding. A few years ago it was popular to denounce the Emperor of the French for aspiring to the personal government of France. What now shall we say of the President of this constitutional Republic when he has shown us by a great public example what an act of personal government is? If he can substitute his will for the law in this case, why not in all others? Liberty has been crushed out in other countries, but always by a series of acts—never by a single act; and these acts had a beginning, often disguised, seldom open and bold like this. It begins by striking down the partition and division of powers between the different departments of the Government as provided by the Constitution. On this subject we are told by Mr. Madison, in 1788, in the forty-seventh number of the Federalist, that—

The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self appointed, or elective, may justly be pronounced the very definition of tyranny.

Montesquieu has said:

There can be no liberty where the legislative and executive powers are united in the same person or body of magistrates.

Mr. Justice Blackstone has said:

In all tyrannical governments, the supreme magistracy, or the right of both making and enforcing the laws, is vested in the same man, or one and the same body of men.

The Constitution of the United States distributes the great powers of Government into three departments: the legislative, the executive, and the judicial. It confides the power of making the laws to Congress, of construing and interpreting them to the courts, and of executing them to the President.

Mr. Justice Story, in his Commentaries of the Constitution, says:

Every government must include within its scope, at least if it is to possess suitable stability and energy, the exercise of the three great powers upon which all governments are supposed to rest, viz: the executive, the legislative, and the judicial powers.

He says further, that—

In absolute governments the whole executive, legislative, and judicial powers are, at least in their final result, exclusively confined to a single individual; and such a form of government is denominated a despotism, as the whole sovereignty of the state is vested in him.

And he shows, as is known to us all, that this division of the powers of Government into three departments, and the confiding of the powers and duties of each department to a separate officer or class of officers, and the prohibition of the officers of either from exercising powers or performing duties confided to one of the others, has been adopted in the constitutions of every State in the Union.

Mr. Justice Story says further:

It is no small commendation to the Constitution of the United States, that instead of adopting a new theory it has placed this practical truth as the basis of its organization. It has placed the legislative, executive, and judicial powers in different hands.

President Washington, in his farewell address, said:

Those intrusted with its (the Government's) administration should confine themselves within their respective constitutional spheres. * * * The spirit of encroachment tends to consolidate the powers of the departments in one, and thus creates, whatever the form of government, a real despotism. * * * Let there be no change by usurpation. For though this in one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil any partial or transient benefit which the use can at any time yield.

If the President was not advised of the existence of these great and well-established constitutional principles when acting on this river and harbor bill, it was unfortunate for the country. If he was advised of them and chose deliberately to violate them, though we may say it with sorrow, it was a great political wrong; and the members of Congress would be unfaithful to their duties and unworthy of the

trust confided in them if they were to permit it to pass by without their earnest and solemn protest.

In his special message of August 14, which accompanied his return of this river and harbor bill to the House with his approval, the President says:

> Without enumerating, many appropriations are made for works of purely private or local interest, in no sense national. I cannot give my sanction to these, and will take care that during my term of office no public money shall be expended upon them.

If this statement is true, then the Senate and House of Representatives had exceeded their powers, violated the Constitution, and attempted, under the forms of law, to pervert the public moneys to private and local uses. And if the President so believed, it would have been his plain duty to veto the bill. This would have placed Congress in a position to review its action and recede from it if wrong or justify it if right. Instead of doing this the President chose to approve the bill, make it a law, and then, in plain violation of all law, to nullify it, refuse to obey it, set it aside as no law.

The War Department is charged with the construction of public works and with the making of public improvements of this kind. In that Department this branch of the service is confided to the Bureau and Corps of Engineers. The usual course in proceeding with such works is for Congress to determine what rivers and harbors shall be improved and to direct by law that surveys and estimates be made by the Bureau of Engineers to determine the cost and practicability of such improvements. When these surveys and estimates come to Congress through the War Department, it determines upon this and any other available evidence whether such works are national in their character and whether it is expedient to appropriate money for their construction.

Now I wish to state that I gave a great deal of attention to this bill in committee, and that I do not believe there is a single work provided for in it that had not been surveyed by the United States Engineers, and the cost of the work estimated by them, and these surveys and estimates transmitted to Congress by the Secretary of War. So that if there are items of appropriation in that law for works of purely private and local interest they were surveyed and estimated for and the amount and character of the commerce to be accommodated by them shown. And these surveys and estimates come to us I think in every instance without objection from the War Department.

There may have been a very few items of appropriation in this law of questionable propriety, but could not, I think, have been more than a half dozen, and each of these for very small amounts. But I am not aware of one which is not national in its character, under the Constitution, as it is interpreted by the courts and standard law-writers of the country.

In the case of the General Cass, in United States district court for eastern district of Michigan, January term, 1872, Mr. Justice Longyear says:

> Those waters are navigable in law which are navigable in fact, and they are public navigable waters in fact when they are used or are susceptible of being used in their ordinary condition as highways of commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water.

And he adds:

> That the Saginaw River, (in Michigan,) from Saginaw City to its mouth, upon which the towage services are claimed to have been rendered, fully answers the description above given, there can be no dispute. It is, therefore, public navigable water and is clearly within the admiralty jurisdiction of this court.—*American Law Times Reports*, volume 5, page 13.

This river was navigable about forty miles.

In the case of the Daniel Ball, in the Supreme Court of the United States, Mr. Justice Field, delivering the opinion of the court, (December term 1870,) says:

> The doctrine of the common law as to the navigability of waters has no application in this country. Here the ebb and flow of the tide do not constitute the usual test, as in England, or any test at all of the navigability of waters.

After giving the reasons for this he adds:

> Those rivers must be regarded as public, navigable rivers in law which are navigabel in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water. And they constitute navigable waters of the United States within the meaning of the acts of Congress, in contradistinction from the navigable waters of the States, when they form in their ordinary condition by themselves, or by uniting with other waters, a continued highway over which commerce is or may be carried on with other States or foreign countries in the customary modes in which commerce is conducted by water.—10 *Wallace*, 563.

Mr. Justice Story, in his Commentaries on the Constitution, section 1273 of the edition of 1873, in treating the question of the appropriation of money for internal improvements, says:

> The true test is, whether the object be of a local character, and local use; or whether it be of general use to the States. If it be purely local, Congress cannot constitutionally appropriate money for the object. But, if it be general, it matters not whether in point of locality it be in one State or several; whether it be of large or of small extent; its nature and character determine the right, and Congress may appropriate money in aid of it, for it is then, in a just sense, for the general welfare.

Other authorities might be added to the same effect, but these are believed to contain the spirit of the decisions of the courts on the points considered in them. They show:

First. That all rivers are navigable in law which are navigable in fact.

Second. That they are public navigable waters in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways of commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water.

Third. That the doctrine of the common law as to the navigability of waters has no application in this country.

Fourth. That the ebb and flow of the tides do not constitute the test of the navigability of waters in this country.

Fifth. That they constitute navigable waters of the United States within the meaning of the acts of Congress, in contradistinction from navigable waters of the States, when they form in their ordinary condition by themselves, or by uniting with other waters, a continued highway over which commerce is or may be carried on with other States or foreign countries in the customary modes in which commerce is conducted by water.

Sixth. That the true test as to whether Congress can appropriate money for such works is, whether the object be of local character and local use, or whether it be of general use to the States.

Seventh. If it be purely local, Congress cannot appropriate money for it; but, if it be general, it matters not whether in point of locality it be in one State or several, or whether it be of large or small extent; its nature and character determine the right.

The President, in his special message of August 14, told us:

> If it was obligatory on the Executive to expend all the money appropriated by Congress, I should return the river and harbor bill with my objections.

It may be technically true that he was not required absolutely to expend the whole of this money; but, if so, it is not because he had the right in advance to determine that he would not expend it, but would result from the fact that it might not be necessary to expend the whole sum appropriated for some particular work or works. This might be the case where more money was appropriated than was necessary to complete the given work or works; not because he has the right to nullify or disregard a law, but because the law would be satisfied when the work or works were completed, and any balance of appropriations should be retained in the Treasury.

So again, if an amount of money should be appropriated for a given work which in the judgment of the engineer would not be sufficient to complete the work, or to put it in a condition to await future appropriations, without danger of losing the work done under it, I would suppose it a proper and allowable exercise of executive discretion to withhold the use of such an appropriation, and to submit the matter to Congress for further appropriation or the abandonment of the work.

There may be other cases in which, from the nature of the business, an expenditure of such an appropriation might properly be suspended by the Executive; but such a course would in no case be allowable on the ground that the President had the right to substitute his will for an act of Congress, and could only be allowable where it grew necessarily out of the exigencies of the service, in some such way as those above mentioned.

The time, and the only time, when the President may rightly pass upon the constitutional question as to whether works appropriated for are or are not national in character is when he is called on to determine whether he will approve or disapprove a bill making such appropriations. And he has no more right to determine in advance that an appropriation shall not be expended on a new work provided for by law than he has to determine that an appropriation for the judicial, or military, or naval service shall not be expended.

It is with regret that, as a member of the Committee on Commerce, which reported the House bill on this subject, I call attention to the great mistake and grievous error into which, it seems to me, the President has fallen on this subject.

In the remarks which I have submitted I have intentionally avoided entering on the broad and long controverted field of discussion as to how far it may be wise for Congress to go in making appropriations for works of this kind. This was not necessary to my present purpose.

And on the question of the true test of what are national works I have simply referred to such authorities as seem to determine that question now, without comparing them with other doctrines held at other times on this subject and without expressing any opinion of my own on the subject.

My only object has been to call attention to what seems to me to be a gross violation of the Constitution, to test the action of the President by the Constitution, in the light of the existing doctrine on this subject, and of his own acts and practices in relation to other laws of the same kind.

Mr. RIDDLE. I wish to ask the gentleman from Texas a question. Does he not understand that the three millions of dollars withheld under the order of the President remain in the Treasury of the United States subject to be expended under the direction of his successor? In other words, does he not understand that the suspension of the expenditure under the river and harbor bill does not involve a liability of its being covered back into the Treasury of the United States by the statute of limitations?

Mr. REAGAN. I have not examined that subject myself. But the Secretary of War in his letter accompanying the message of the Presi-

dent says such appropriations do not lapse into the Treasury in two years.

I ask that the letter of the Secretary of War sent with the message be printed in the CONGRESSIONAL RECORD.

Mr. HOLMAN. I think that is hardly necessary. I understand the report is very voluminous.

Mr. REAGAN. I do not ask for the printing of the whole report in the RECORD, but for the printing of the letter of the Secretary of War, which is comparatively brief, along with the President's message.

The SPEAKER. The question is on the motion of the gentleman from Texas that the message and accompanying documents be referred to the Committee on Commerce and printed.

The motion was agreed to.

Mr. CONGER. I enter a motion to reconsider the vote by which the message has been referred.

PRINTING OF TESTIMONY.

Mr. SAYLER. I ask unanimous consent that the committee on the election in South Carolina may have printed for their use the testimony taken.

There was no objection, and it was so ordered.

WITHDRAWAL OF PAPERS.

On motion of Mr. WOODWORTH, by unanimous consent, leave was given to withdraw from the files of the House papers in the case of William H. Nessle.

On motion of Mr. BAGBY, by unanimous consent, leave was given to withdraw from the files of the House papers in the case of Ellen A. Ramsey, (H. R. No. 3663.)

ADDITIONAL MEMBERS OF A COMMITTEE.

The SPEAKER appointed as the additional members ordered for the committee heretofore appointed on the privileges, powers, and duties of the House of Representatives in counting the vote for President and Vice-President of the United States Mr. FIELD, of New York, and Mr. LAWRENCE, of Ohio.

And then, on motion of Mr. TOWNSEND, of New York, (at four o'clock and forty minutes p. m.,) the House adjourned until Monday next.

PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. BANNING: Memorial of B. H. Cheever, for the insertion of a proviso to Senate bill No. 1044, appropriating moneys to pay the claim of A. G. Sloo, that one-half of the amount appropriated be retained in the Treasury until the rights of the assignees and personal representatives of said Sloo thereto are adjusted, to the Committee on the Judiciary.

By Mr. BURLEIGH: The petition of A. K. Shurtleff and other citizens of Portland, Maine, for a reduction of the taxes on deposits, circulation, and capital of banks, to the Committee of Ways and Means.

By Mr. CRAPO: The petition of George F. Bartlett, for an American register for the English bark W. A. Farnsworth and for a change of its name, to the Committee on Commerce.

Also, the petition of C. W. Underwood and other citizens of Massachusetts, for cheap telegraph, to the Committee on the Post-Office and Post-Roads.

Also, memorial of Alexander Sutorius, late captain Third United States Cavalry, for re-instatement as captain of cavalry in the United States Army, to the Committee on Military Affairs.

By Mr. HOPKINS: Memorial of the Chamber of Commerce of Pittsburgh, Pennsylvania, for an appropriation for the improvement of the Youghiogheny water route to the seaboard, to the Committee on Commerce.

By Mr. LAPHAM: A letter from the Commissioner of Pensions, relating to the petition of Elizabeth Reese for a pension, to the Committee on Invalid Pensions.

By Mr. MACKEY: The petition of citizens of Elk County, Pennsylvania, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. O'NEILL: Memorial of citizens of Philadelphia, suggesting that the solution of the presidential question may be harmonious, to the committee on counting the electoral vote.

By Mr. ROBERTS: The petition of Alexander M. Templeton, of Havre de Grace, Maryland, for additional compensation for services rendered and for losses incurred while a spy in the service of the United States Army, to the Committee on War Claims.

By Mr. STRAIT: Resolutions of the Board of Trade of Minneapolis, Minnesota, for the establishment of a post-route and military road from Fort Lincoln to Deadwood City, in the Black Hills, to the Committee on the Post-Office and Post-Roads.

By Mr. WALLACE, of South Carolina: The petition of Alexander Mattison, for pay for services as a United States revenue officer in South Carolina, to the Committee of Claims.

IN SENATE.

MONDAY, *January* 15, 1877.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

The Journal of the proceedings of Friday last was read and approved.

DOWER IN THE DISTRICT OF COLUMBIA.

The Senate proceeded to consider its amendments to the bill (H. R. No. 2043) to improve the law in relation to dower in the District of Columbia, disagreed to by the House of Representatives.

On motion of Mr. WRIGHT, it was

Resolved, That the Senate insist on its amendments to the said bill disagreed to by the House of Representatives, and agree to the conference asked by the House on the disagreeing votes of the two Houses thereon.

By unanimous consent, it was

Ordered, That the conferees on the part of the Senate be appointed by the President *pro tempore*.

Mr. WRIGHT, Mr. INGALLS, and Mr. STEVENSON were appointed.

EXECUTIVE COMMUNICATIONS.

The PRESIDENT *pro tempore* laid before the Senate a letter of the Secretary of War, transmitting a communication from Major-General John M. Schofield, Superintendent of the Military Academy, recommending that a clause be added to the bill making appropriations for the Military Academy which will admit of the assignment of an officer on the retired list to duty as commissary of cadets at the Military Academy; which was referred to the Committee on Appropriations.

He also laid before the Senate a letter of the Secretary of War, transmitting, in compliance with law, a copy of the final report of Major William P. Craighill, Corps of Engineers, upon the survey of that portion of the central route designated by the Senate Committee on Transportation Routes to the Seaboard as a connection by canal or freight railway from the Ohio or Kanawha River to tide-water in Virginia; which was referred to the Select Committee on Transportation Routes to the Seaboard, and ordered to be printed.

He also laid before the Senate a letter of the Secretary of the Treasury, transmitting copies of all accounts which have been received at that Department from persons charged or intrusted with the disbursement or application of money, goods, or effects of any kind, for the benefit of the Indians, from the 1st of July, 1875, to the 30th of June, 1876, &c.; which was ordered to lie on the table.

PETITIONS AND MEMORIALS.

The PRESIDENT *pro tempore* presented a letter of Richard C. Rohner, secretary of the democratic convention at Columbus, Ohio, inclosing a copy of resolutions adopted at said convention January 8, 1877, relative to the late election for President and Vice-President; which was referred to the select committee to devise a mode for counting the electoral votes for President and Vice-President.

He also presented a petition of C. W. Ingalls, W. W. Bowen, and 113 others, of Emmet County, Michigan, praying for an appropriation for the light-house at the harbor at Little Traverse, Michigan; which was referred to the Committee on Commerce.

Mr. SPENCER presented a petition of J. G. Masterson and 30 other citizens of Florence, Alabama, praying that the telegraphic business may be transferred to the superintendence of the Post-Office Department and for cheaper telegraphic facilities; which was referred to the Committee on Post-Offices and Post-Roads.

Mr. CONKLING. I present the resolutions and memorial of the Chamber of Commerce of the State of New York praying that measures be taken for convening an international monetary congress,—conference it is called here,—to fix the relative values of gold and silver coin. This memorial and the resolutions on which it is based review the silver question in an instructive view. The matter belongs appropriately I suppose to the Committee on Finance. I move its reference to that committee.

The motion was agreed to.

Mr. HAMLIN. I have received and been requested to present a memorial signed by Harvey Mills and very many other citizens, merchants and ship-owners, who represent that they suffered materially during the war by paying extra war premiums and from rebel cruisers, so called, not included in the law which has passed Congress; and I also present another petition of a like nature signed by Isaiah Stetson and many other merchants and ship-owners, each praying for the passage of the bill of the House which has been referred in the Senate to the Judiciary Committee with regard to distributing the Geneva award. I move that these memorials be referred to the Committee on the Judiciary.

The motion was agreed to.

Mr. MORRILL presented the following resolution of the Legislature of the State of Vermont; which was read, and ordered to lie on the table and be printed, as follows:

A joint resolution relative to fisheries in waters within the jurisdiction in part of different States and the British provinces.

Whereas under existing provisions of law and treaty there is no adequate means of preventing or punishing the wrongful destruction of fish in the waters partly within the jurisdiction of the several States and the British provinces of North America, by reason of which great injury is done to an important branch of industry, commerce, and food supply of the United States: Therefore,

Resolved by the senate and house of representatives, That our Senators be instructed, and our Representatives in Congress be requested, to use all proper efforts to the end of preserving and protecting such fisheries, and the interests of citizens of the United States in the same.

REDFIELD PROCTOR,
President of the Senate.
JOHN W. STEWART,
Speaker of the House of Representatives.

STATE OF VERMONT,
Office of Secretary of State:

I, George Nichols, secretary of state of the State of Vermont, hereby certify that the foregoing is a true copy of a joint resolution adopted by the General Assembly, at its biennial session, A. D. 1876.

In testimony whereof I have hereunto set my hand and affixed the seal of this office, at Montpelier, this 28th day of November, A. D. 1876.

[SEAL.] GEORGE NICHOLS,
Secretary of State.

Mr. WRIGHT. I hold in my hand a petition signed by M. E. Black and 160 other citizens of Adair County, Iowa, praying for the equalization of the bounties for soldiers. I believe that subject has been reported upon, and that the bill is now upon the Calendar. That is my recollection, and I therefore move that this petition lie upon the table.

The motion was agreed to.

Mr. WRIGHT. I also present the petition of James L. Matthews and 120 other citizens of Daytonville, Washington County, Iowa, stating that injustice and inequality have been done the soldiers in the subject of pensions in that they are not allowed to date back to the time of their disability, but confined to the time of their allowance, and praying that legislation be had to give them pensions from the time the disability occurred. I ask that the petition be referred to the Committee on Pensions.

Mr. INGALLS. The Committee on Pensions have reported a bill, which is on the Calandar, on that subject, and the petition should lie on the table.

Mr. WRIGHT. Very well.

The PRESIDENT *pro tempore*. The petition will lie on the table.

Mr. CAMERON, of Pennsylvania, presented a resolution of the Pittsburgh Chamber of Commerce, in favor of an appropriation for the construction of a transallegheny line of water transportation from the Atlantic to the West via the Youghiogheny route; which was referred to the Committee on Commerce.

Mr. BOUTWELL. I present the memorial of Jonathan Bourne and 34 others, merchants and ship-owners of the City of New Bedford, Massachusetts, asking for the passage by the Senate of the House bill known as the Geneva award bill. I move its reference to the Committee on the Judiciary in the hope that these petitioners and others will be gratified by having a report upon the bill.

The motion was agreed to.

Mr. CRAGIN presented the petition of William H. Babcock, praying for an increase of pension and for arrears of pension; which was referred to the Committee on Pensions.

Mr. CRAGIN. I also present a copy of a petition of Edward H. Cobb, late private Company B, First New Hampshire Heavy Artillery, praying to be allowed a pension. I present this copy with the understanding that the original petition and accompanying papers have been mislaid. I move that it be referred to the Committee on Pensions.

The motion was agreed to.

Mr. WALLACE. I present a memorial of citizens of Lancaster, Pennsylvania, without distinction of party, praying for a settlement of the presidential question through legal and amicable means. I will say in presenting this petition that it is largely signed by citizens of both political parties, many of whom are judges of courts, leading lawyers, and business men, and in respect to their views I ask that it be read.

The PRESIDENT *pro tempore*. The Chair hears no objection and the memorial will be read.

The Chief Clerk read as follows:

To the honorable Senate and House of Representatives of the United States:

We, the undersigned, citizens of Lancaster, Pennsylvania, and vicinity, realizing that in the political history of our country we have reached the point and now stand face to face with the evil spirit of party, against which we were so plainly warned in the earnest words of Washington's Farewell Address, telling us that—

"The alternate domination of one faction over another, sharpened by the spirit of revenge natural to party dispensation, which in different ages and countries has perpetrated the most horrid enormities, is itself a frightful despotism. The disorders and miseries which result, gradually incline the minds of men to seek security and repose in the absolute power of an individual, and sooner or later the chief of some prevailing faction, more able or more fortunate than his competitor, turns this despotism to the purposes of his own elevation on the ruins of public liberty. It serves always to distract the public councils, and enfeeble the public administration. It agitates the community with ill-founded jealousies and false alarms, kindles the animosity of one party against another, foments occasional riot and insurrection"—

Fully realizing that at the present moment the evil of party spirit is placing in danger all of the rights, liberties, and privileges of the people, which were secured to us by the wise and patriotic men of the past, and feeling that it is the sacred duty on our part as citizens to use our best endeavors to preserve pure and intact all of the blessings that can be enjoyed under a republican form of government based upon the general education of the people, and under which we have with God's blessing thrived and prospered for the last one hundred years as no other nation has ever thrived or so prospered in the history of the world.

We do appeal to you most earnestly as our representatives in Congress in this hour of danger to place yourselves above all party, and to do all in your power to make the fullest and fairest investigations of the recent election for President, and in deciding between the two candidates, to be governed by the evidence at the polls as to who is honestly the choice of a majority of the people.

None but an honest decision, unaided by party tricks or straining of the law, will restore confidence and prosperity to the country.

And as it is evident that under the present form of the Constitution the same danger may arise in the future, we appeal to you to adopt such measures as may be necessary by amendments to the Constitution.

First. To prevent any interference, direct or indirect, by the Government or administration in power in the elections—making the State officers and State courts the judges of elections in their respective States.

Second. To insure an honest and economical civil service and to deprive partisans of the power to corrupt the people.

We ask that rotation in all of the minor offices of the Government be stopped. The patronage of Congress and of the Executive has now become so large that it is exercising a very evil effect among the people.

With the growth of the country and the natural tendency to increase the number and emoluments of office, the gift of office will soon, if it has not already, become so large as to be a constant source of partisan agitation and excitement on the one hand, and on the other improperly used to influence the elections in its favor by the party in power.

Mr. WALLACE. I move that the memorial be referred to the select committee to devise a method for counting the electoral votes for President and Vice-President.

The motion was agreed to.

Mr. CAMERON, of Wisconsin, presented the petition of the Sons of Temperance of Wisconsin, officially signed, asking for prohibitory legislation for the District of Columbia and the Territories; the prohibition of the foreign importation of alcoholic liquors; that total abstinence be made a condition of the civil, military, and naval service, and for a constitutional amendment to prohibit the traffic in alcoholic beverages throughout the national domain; which was referred to the Committee on Finance.

Mr. SARGENT. I hold in my hand a petition signed by a considerable number of leading merchants of San Francisco, many of whose signatures I recognize. I know them to be of large business and strong financial standing, who suffered losses during the late rebellion by reason of depredations of confederate cruisers on the high seas. They state that the bill which passed the House of Representatives on the 6th day of July would enable them to present their claims before a competent tribunal and they ask the favorable consideration of the Senate to that bill. It is very seldom that a petition is presented which contains the names of so many men of high character who are directly interested in the subject-matter of the petition. I move that it be referred to the Committee on the Judiciary, and I trust that the committee will give their earnest attention to the subject and due weight to this important petition.

The motion was agreed to.

Mr. GOLDTHWAITE presented a memorial of the General Assembly of the State of Alabama, praying the passage of a law approving the act of the Legislature of said State authorizing the construction of a breakwater in Mobile Bay; which was referred to the Committee on Commerce.

REPORTS OF COMMITTEES.

Mr. WRIGHT, from the Committee on Claims, to whom was referred the petition of Catharine D. Hunt, of Bristol, Rhode Island, praying compensation for services rendered as nurse in camps and hospitals of sick and wounded Union soldiers during the late war, reported adversely thereon, and moved that the claim be rejected; which motion was agreed to.

He also, from the same committee, to whom was referred the bill (S. No. 822) for the relief of Samuel A. Wilkins, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

PRINTING OF TESTIMONY.

Mr. ANTHONY. The Committee on Printing, to whom was referred a resolution to print additional copies of the testimony taken before the Committee on Privileges and Elections in regard to the late presidential election in Louisiana, Florida, and South Carolina, and the counting of the electoral votes in Oregon, have instructed me to report it with an amendment and recommend its passage. This testimony is not completed and it is impossible to make an estimate of the cost of printing the extra copies. It is thought desirable by the committee that the testimony should be in print as it goes along, and undoubtedly it will be ordered to be printed after it is completed; but it is impossible to present an estimate until the work is finished.

The PRESIDENT *pro tempore*. Does the Senator ask the present consideration of the resolution?

Mr. ANTHONY. I do.

The amendment reported was agreed to; and the resolution, as amended, was adopted, as follows:

Resolved, That 5,000 additional copies of the testimony taken before the Committee on Privileges and Elections in regard to the late presidential election in the States of Louisiana, Florida, and South Carolina, and to the casting of the electoral votes in the State of Oregon, be printed; 1,500 for the use of the Senate and 3,500 for the use of the House of Representatives.

BILLS INTRODUCED.

Mr. PADDOCK asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1135) to authorize money received by the General Land Office for exemplified copies to be used for the employment of clerical labor; which was read twice by its title, referred to the Committee on Public Lands, and ordered to be printed.

Mr. ROBERTSON asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1136) to remove the political disabilities of Wade H. Gibbes, of South Carolina; which was read twice by its title,

and, together with the accompanying petition, referred to the Committee on the Judiciary.

Mr. GORDON asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1137) to remove the political disabilities of Charles L. Scott, of Alabama; which was read twice by its title, and referred to the Committee on the Judiciary.

He also asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1138) to remove the political disabilities of Henry Meyers, of Georgia; which was read twice by its title, and referred to the Committee on the Judiciary.

Mr. PADDOCK asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1139) to change the time of holding the October term of the United States district court for the district of Nebraska; which was read twice by its title, referred to the Committee on the Judiciary, and ordered to be printed.

W. H. WARD.

Mr. JOHNSTON. I offered on Friday a resolution calling on the War Department for information in regard to a certain matter. To make it complete there ought to be a resolution calling for information on the Navy Department, and I therefore offer the following resolution and ask for its present consideration:

Resolved, That the Secretary of the Navy be directed to furnish the Senate with all the facts and documents, if any, relating to the use by the Government of any machine or machines for making bullets or molding shells, patented by W. H. Ward.

The resolution was considered by unanimous consent, and agreed to.

PENNSYLVANIA AVENUE PAVEMENT.

Mr. INGALLS. Pursuant to the notice that I gave on Friday, I now move that the Senate proceed to the consideration of the bill (H. R. No. 4281) to amend an act entitled "An act authorizing the repavement of Pennsylvania avenue," and the act amendatory thereof.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill.

Mr. CONKLING. Mr. President, as I said the other day, I do not feel called upon to oppose this bill; but, probably in consequence of some debate which took place the other day in the Senate, property-holders and others in the city who feel deeply concerned in the subject have made representations to me, all of which I think it would hardly do to pass over quietly and retain in my hand without saying anything to the Senate on the subject. A memorandum has been handed to me stating that on the 12th of August one of these contracts was awarded to the Grahamite Company to pave from Sixth to Fifteenth streets, and on the 16th of August the other was awarded to the Neufchâtel Company; that one of these companies commenced tearing up the Avenue on the 2d of September, and laid some of their concrete base on the 12th of September, but no top-coat until October 16. This paper states further, that there are only 82,000 square yards of pavement on Pennsylvania avenue divided between those contractors, 56,000 yards to one and 26,000 to the other.

This paper states various other things which I do not feel it my duty to bring in detail to the knowledge of the Senate; but it states one thing which it seems to me should be observed, and which seems to be fortified by the report made by the commission appointed by Congress. It contains an allegation that this pavement is and is to be a failure; that if it is to be completed the time here proposed is wholly unnecessary; but that whether completed in that time or any other time, it is to be a disappointment; and these petitioners I cannot call them, because I do not know that these particular men have addressed the Senate, although a memorial is annexed to this memorandum, which I judge has been presented to the Senate, and which, among other things, calls attention to the fact, if it be a fact, to which I now advert.

These petitioners suggest that, in place of such an amendment as is proposed, leaving this work to go on as originally intended and extend the time for its completion until the 1st of June, it should be looked into, and that either by means of having the commissioners of the District take charge of it, or committing it to some other authority, measures should be taken to ascertain, before this goes further, whether the pavement that is described in this report of the commission, and described in this memorandum, shall be laid down, or whether changes shall be made likely to lead to a more permanent and satisfactory pavement.

This memorandum states instances of various streets here in which pavements have been laid in a very short time; here is one instance, K street, one of the best paved streets in this city was paved from Ninth to Fourteenth street, over 27,500 square yards, in thirteen and one-half days; and such pavements it is alleged are not the pavement which is being laid down on the Avenue and that they have approved themselves by wear and experience.

I think, Mr. President, that I have discharged any duty which may be incumbent upon me by bringing so much of these facts to the notice of the Senate. I am not on the Committee on the District and have no special information on the subject; but if the allegations made by the petitioners who say that their petitions have been presented and by the additional persons who have furnished this information, be well founded, I think all will agree that something more is necessary than merely to give a continuation of opportunity to these contractors to go on. If they be ill founded, of course the argument based upon them falls.

Mr. INGALLS. Mr. President, justice to the commission and the contractors and to the District Committee requires me to say but one single word upon the subject of the length of time to which the period for the completion of this pavement is extended. Admitting all the allegations in the document that has been presented by the Senator from New York to be true, the extension of time to the 1st day of June is in the interest of the discovery of those facts. If this pavement is insufficient and imperfect and unsatisfactory, it is the interest of the contractors to have the period within which they may complete their work as short as possible. The object of extending the time until the 1st of June is to enable the commission to ascertain whether these allegations made against the sufficiency of the pavement be correct. It cannot be ascertained now. While the frost is in the ground, and while snow is covering a large portion of the surface, experiments cannot be conducted to ascertain what the sufficiency of the pavement is. The commissioners themselves ask this extension of time for the purpose of being able to ascertain under favorable atmospheric conditions whether the allegations that are made against this pavement are correct or not.

Mr. EDMUNDS. I wish to inquire whether this bill will have the effect to relieve the contractors from the duty to pay damages, if there be any, occasioned for their non-completion of the work according to their contract?

Mr. INGALLS. It is my understanding and the understanding of the committee that all rights are saved under this bill; that before the extension can be made the sureties upon the bonds are compelled to file their assent, or if they do not do so that the contractors shall file a new undertaking.

Mr. SHERMAN. On my return to Washington this winter, I was very much surprised to see a pavement freshly laid within a few months torn up in places here and there and that this extended over a considerable portion of the pavement. It seemed to me that this was a confession on the part of some one in charge of this work that imperfect work had been done and that we should not secure what we had hoped to secure, a perfect pavement on Pennsylvania avenue. Therefore I inquired of one of the distinguished officers who were placed in charge of this work the explanation of this somewhat extraordinary thing apparently, that a pavement intended to be the best possible should be torn up in so short a time; and his answer was satisfactory to me. I state it in justice to the commissioners who have charge of this work and to the public who do not seem to be informed as to the reason why the work had to be partly done over again. They say that in all pavements of this kind made out of the materials of which this pavement is laid, the success of the work depends entirely on the degree of heat of the materials composing the upper crust or surface of the pavements; that a very slight change in the temperature of the mixture which covers the pavement will make it bad or make it good.

They discovered this; and in many cases within a day or two after the pavement was laid the imperfections were detected; and they thereupon gave the subject careful examination so that within twenty-four or forty-eight hours after a piece of pavement was laid they had to carefully examine in detail to see whether any spots in the pavement showed imperfection, and, if so, they required it to be taken up to the extent of the imperfection and replaced. He says that when it is done it is a complete and perfect pavement, and he is an officer of high standing in the Army. He says that he has no doubt the entire public will be satisfied with this pavement when it is completed, but that in the process of laying down the pavement, especially in a cold season of the year, it is almost impossible to have it all perfect, but when it is repaired in this way it is made as perfect as such pavement can be. That is his opinion, and I know him to be an officer of high standing. He expresses his opinion that the entire pavement when completed under the careful surveillance under which it now is will be a perfect pavement as good as or better than any laid in the city of Washington.

Mr. EDMUNDS. It appears to me that this act, if passed, would relieve the contractors from all liability on account of the non-completion of their work to-day. I do not know but that they ought to be. That depends upon the equity, which the committee no doubt have examined. I do not think after to-day, if this act passes, the contractors or their sureties could be prosecuted or that money could be withheld on account of the non-completion of the work down to this time. But it may be that that would not be very essential. I am not sufficiently acquainted with the circumstances to know whether this delay has been through a fault of theirs that they ought to render compensation for or not.

But there is another part of this provision to which I should like to call the attention of the honorable Senator from Kansas, that it does appear to me may possibly put it in a rather unpleasant attitude respecting the substance of this contract, as to the quality of the thing that the contractors have done and have been in part paid for. This provides that so much of the act as requires the completion of the work by the 15th of January—

Is hereby amended so as to extend the time for the completion of said work to the 1st day of June, 1877: *Provided*, That the sureties in the contract for doing said work shall file with the said paving commissioners their consent in writing to the extension of time provided for in this act.

If they do that, I do not myself perceive that they would be relieved from any liability in any other respect than that of the non-

completion of the work. But supposing the sureties do not assent to this novation, what then? Then the act says:

And, in default thereof, that the contractors shall file a new bond, to the satisfaction of the said paving commissioners, before said contractors shall be entitled to any benefits under the provisions of this act.

Now, if the contractors file a new bond on this novation, the old sureties not having consented to it, are they not absolutely discharged from all liability? We have made a different contract covering a different period of the year and affected by different circumstances; and if, therefore, you provide for this extension without the consent of these sureties and enter into another, I suggest that it would hardly do to say that they may be sued in respect of default upon one part of the contract where they might not have been upon another. The contract itself as to them has become absolutely determined, and they are no longer parties to it in the sense that the law speaks of their being responsible. You have a new contract with the old contractors who are indeed not required to assent to this extension unless the old sureties decline to assent themselves; but you have a new contract to do something, taking up the old one, if you please, by the 1st day of June. What the conditions of suretyship are to be the statute does not say, except that they are to be satisfactory to the paving commissioners.

Now, then, if you make a contract to-day with these people to go on and complete this work by the 1st day of June, and to complete it in a workmanlike manner, a contract in that language would not apply to the work that is already entirely completed and upon which they have got part of their pay. What, then? In order then to hold these contractors liable as they now are for a defect in the quality of the performance of their contract by force of this new suretyship, you have got to have an arrangement which is indemnity for damages that may have occurred from the injury that has happened to the United States and the District through their precedent failure to perform that has already occurred. Still whether these paving commissioners would think of all that and would provide that the new sureties shall stand in exactly the relation that the old ones would had they assented, I do not know. The old law, I believe, required in pretty explicit terms what sort of bonds should be given, both as to quality and as to time. This leaves it, to say the best of it, entirely at the discretion of the paving commission. It appears to me, with all submission to Senators who have this bill in charge, that unless the old sureties do sign their assent to the extension, they will be completely discharged from all liability as sureties upon the old contracts of every description as well as that touching the time within which the work is to be completed.

Mr. INGALLS. Does the Senator suggest any amendment?

Mr. EDMUNDS. To draw a proper one the old bill should be taken and the provision drawn from it.

Mr. INGALLS. It is my understanding that the subject to which the Senator from Vermont refers is fully protected and will be guarded by the commissioners in the novation of the contract, if one should occur. I believe, however, it will be merely a continuation with the assent of all parties under which the same relations will subsist that have heretofore been created by the contract that has been entered into. The provision of the original contract in regard to the completion of the work is that—

The party of the second part further covenants and agrees that all the pavement hereinbefore described shall be fully completed and ready for use on or before the 15th day of January, 1877, and that no hydraulic concrete shall be laid when in the judgment of the party of the second part the road-bed is not in fit condition to receive it, or the weather is so cold as to injure the cement or prevent or seriously retard its setting.

The facts are in regard to the progress of this work that during the three months that intervened from the time the work was commenced until the 1st day of December there were but thirty-six days in which the work could be carried on. The meteorological records of this station show that there were forty-seven days of inclement weather, when there was precipitation of moisture sufficient to prevent this work from being continued. The parties who are operating under the Grahamite pavement require but twenty-one days of working weather to complete their contract. If they could have one-half of the time which they have been deprived of by the bad weather they would have sufficient to carry out their contract in full, and as the delay has been made necessary by the inclement weather during which, in the judgment of the commissioners, it was impossible for them to proceed, and as the period that is fixed by the commissioners is for the purpose of ascertaining whether the work is satisfactory, whether the pavement is such as ought to be laid, and as payments will not be made until the commissioners have approved it, and as further than this all the legal relations between the parties are to be observed in the contract that is made hereafter, I can conceive of no aspect in which the bill is open to objection.

Mr. MORRILL. Mr. President, it is perhaps due to the commissioners that a little further explanation should be made in relation to the imperfections that have been already discovered in the pavement which has been put down. I understand it is necessary that the sand that is used should be perfectly dry. They obtained one ship-load that was not dry; and, therefore, wherever that was put down they have had to take it up and put down other sand. In addition to that, the carts that bring the asphalt and other preparations in proper proportions on to the Avenue are used through the day without scraping out the carts very clean, and at the end of the day they are then cleaned out entirely, and the last remains of the concrete that is taken out of these carts at the close of the day are found to be too much burnt, and therefore little spots wherever they have taken this out and used it, have been found defective.

Mr. ANTHONY. I noticed in the debate on Friday when this subject was up that representations were made of the injuries which abutting proprietors had received on account of the manner in which this work had been performed, and which injuries have been largely increased by this delay. I want to know if this bill will deprive such sufferers from any remedy which they would otherwise have against the contractors for non-performance of the work within the stipulated time?

Mr. INGALLS. I understand the right of action is not affected by the passage of this bill.

Mr. ANTHONY. I suppose the right of action accrued by reason of the work not being performed within the stipulated time. Now, if Congress extends that time and does not save the rights of persons that have been injured by the delay, does not that deprive them of any legal remedy?

Mr. INGALLS. I should suppose not.

Mr. ANTHONY. I am not much of a lawyer; but I should think it would. Whether they have any such rights, or whether they have any such just cause of complaint, is a matter which I do not pretend to know. But if they have, I would not like to have this bill deprive them of it; and it seems to me there ought to be a saving clause to that effect in it.

Mr. INGALLS. I am not advised whether any such right of action has accrued; but, if it has, I understand it has already ripened under the action of the commissioners and of the contractors, and nothing we can do can deprive them of their right of action, either against the contractors or their sureties.

The bill was reported to the Senate without amendment.

Mr. ANTHONY. I think there ought to be a provision to save any rights which abutting proprietors have against the persons who have caused this delay, if it has been caused from any reasons which make them responsible. There ought to be a saving clause. If their rights have not ripened, and they have no remedy now, then such a saving clause will be inoperative and of no injury; but if they have rights—and certainly it seems to me they have—they ought not to be destroyed by our legislation.

The bill was ordered to a third reading, and read the third time.

Mr. EDMUNDS. I ask for the yeas and nays on the passage of the bill. I think I ought to vote against its passage myself in its present shape, and I want to be on record.

The yeas and nays were ordered.

Mr. ANTHONY. I shall vote against the bill for the simple reason I have stated. I believe that it invades individual rights, takes from persons who have suffered a legal remedy. If the bill could be so amended as to preserve that remedy, I should vote for the bill, but if not, I shall vote against it.

The question being taken by yeas and nays, resulted—yeas 21, nays 18; as follows:

YEAS—Messrs. Allison, Booth, Cameron of Pennsylvania, Cameron of Wisconsin, Chaffee, Cragin, Dorsey, Ferry, Goldthwaite, Gordon, Hamlin, Ingalls, Jones of Florida, Kernan, Mitchell, Robertson, Sargent, Sherman, Spencer, Wallace, and West—21.

NAYS—Messrs. Alcorn, Anthony, Bayard, Bontwell, Conkling, Dawes, Edmunds, Johnston, Kelly, McCreery, Maxey, Patterson, Price, Ransom, Stevenson, Whyte, Withers, and Wright—18.

ABSENT—Messrs. Barnum, Blaine, Bogy, Bruce, Burnside, Christiancy, Clayton, Cockrell, Conover, Cooper, Davis, Dennis, Eaton, Frelinghuysen, Hamilton, Harvey, Hitchcock, Howe, Jones of Nevada, Key, Logan, McDonald, McMillan, Merrimon, Morrill, Morton, Norwood, Oglesby, Paddock, Randolph, Saulsbury, Sharon, Teller, Thurman, Wadleigh, and Windom—36.

So the bill was passed.

WITHDRAWAL OF PAPERS.

On motion of Mr. INGALLS, it was

Ordered, That John S. Friend have leave to withdraw his petition and papers from the files of the Senate.

ROBERT ERWIN.

The PRESIDENT *pro tempore*. If there be no further morning business the morning hour has expired, and the Chair will call up the unfinished business, which is the bill (H. R. No. 231) for the relief of Robert Erwin. That bill is before the Senate as in Committee of the Whole.

Mr. WRIGHT. If I can have the attention of the Senate I wish to make known to the Senate the character of this bill, that we may proceed to its consideration with a full understanding of what is involved. The report from the Committee on the Judiciary was adverse to this claim. I suggest to my friend from Georgia, [Mr. GORDON,] who called this bill up, that, while in itself the bill does not involve so much, nevertheless there are questions and principles contained in it that are of very great importance; questions that received the very careful consideration of the Committee on the Judiciary; questions in which as members of that committee and as members of the Senate, in view of the principles involved, they feel a very great interest. It is known to the Senator that four members of that committee are necessarily absent, attending to duties that have been devolved upon them by the Senate. I am for myself exceedingly anxious that they should be present at the time when this bill is considered. As I un-

derstand, it is possible, to say the least of it, that they can be in their seats after to-day, and be present when this bill shall be considered. I therefore suggest to the Senator and ask of him that the bill shall go over until they can be present.

I have the utmost reluctance to make this request for the reason, as I have said from the beginning, that I do not wish to throw obstacles in the way of the consideration of this bill; but in view of the importance, not of this bill alone but of the questions that are involved, (they being, as has been said here, border questions; questions that run right upon a line that it is very important should be settled after a full understanding on the part of the Senate of the nature of the questions,) I shall ask that we pass the bill over until to-morrow at least, when I believe the Senate will be full, much more so than now, and when my colleagues upon the committee can be present for the purpose of taking a part in the discussion. As I say to the Senator, I make this request with the very greatest reluctance, because I have the most kindly feeling toward the person who is interested in this bill and have very great anxiety that it shall be disposed of, so far as he is concerned. I do not wish to throw anything that can be regarded as possibly captious in the way of its consideration. I make this appeal to my friend, for the members of the committee, who are now engaged otherwise as the Senator knows, will be in their seats, I think, to-morrow, and thus we can have the matter settled, and settled in such a way as will be more satisfactory to us all.

Mr. GORDON. Mr. President, I think I may say to my friend from Iowa that I have shown no disposition to unduly press this bill. I think that no less than twice before I consented to its being postponed in consequence of the absence of certain members of the Senate. It is known to the Senator from Iowa and to other members of the committee that this bill has twice passed the House of Representatives by a unanimous vote, both of the committee which considered it and of the House itself. The petitioner has been before Congress since 1875. This bill has been thoroughly considered by the committee, and two members at least of that committee are now present upon the floor of the Senate. I apprehend that the very presence of Senators whose absence the Senator now makes an objection would, in spite of the good intentions on his part—which I do not doubt in the least and which I appreciate most fully—lead to debate upon graver and more important questions; for when those members of the Judiciary Committee shall have been discharged from the consideration of the grave questions now before them we shall have other matters brought before this body which transcend all questions of a mere personal nature.

I therefore prefer to submit to the Senate the question whether they will now proceed with the consideration of this bill, which is of a very minor character. I must beg leave to differ with the Senator on the ground that it involves any very great questions. It is a case that cannot set any precedent because it is *sui generis* peculiar in its character; the circumstances are peculiar which attend it. I therefore think we can commit no very serious blunder by considering the bill. I am, however, very willing to resign myself and this bill to the determination of the Senate as to whether they will postpone it. If the Senator will make a motion to that effect, I am ready to abide by the decision of the Senate, althought I must say that I prefer to go on with it.

Mr. WRIGHT. I feel very much disinclined to make a motion to postpone the bill. I appealed to my friend from Georgia, hoping the bill would go over on that request. I had reluctance in doing that because I do not want to be regarded in the attitude of seeming to captiously antagonize this bill. The chairman of the Committee on the Judiciary and three other members are absent; one absent South. I suggested the matter to the chairman of the committee this morning. He himself requested of me that I should make this request. He said that he thought the questions involved were of such a character that it would be better that we should have a full Senate, or at least more present than we have now.

I suggest to the Senator that there are important questions involved in this case. The prime question involved, on which there is no doubt, is that the person who makes this claim was in an attitude where there was no chance for him to have a standing in court under the laws of Congress, and that standing alone, by the construction that has been given to the case by the Supreme Court of the United States, the day of grace, or his right to go into court has been lost to him, as was found by the committee, by reason of the negligence and want of care upon the part of his attorney. The Senate has over and over again decided that unless the claimant could show affirmative loyalty they would not allow his claim. That has been the action of the Committee on Claims in numberless cases. This is a case were the party claims that he failed to go into the Court of Claims by reason of the negligence of his attorney. Under the law of Congress, as construed by Congress itself, he would have no standing to-day in court. The question to be determined, and which the Senate has to determine now, is whether, notwithstanding its repeated action with reference to this class of cases, they will remove this bar in favor of one who under the law of Congress could have no standing there.

I concede that if there is a case to which you can apply the exception and let a person in notwithstanding that positive enactment of Congress, this may be that case. But there have been numberless cases where the same question has arisen, where action has been taken and reports made by the committee here, and where the Senate has concurred in such reports over and over and over again. Now this case is brought up and asked to be made an exception. If the Senate shall decide in favor of this bill, then in my judgment it overturns all the rulings that have been made by the committee on this subject in the Senate and the action of the Senate in affirming those reports. Because it is thus important I appeal to my friend to allow the bill to go over until to-morrow. If this request is not concurred in, I shall feel it to be my duty, in view of my relation to the other members of the committee and because of what I know to be their interest in this question, to move its postponement either to a day certain or to postpone it without day.

Mr. STEVENSON. Mr. President, I should like to ask my honorable friend from Iowa, who is more familiar with these questions than I am, whether in the case of Stephen A. Douglas's children, who were residents of one of the seceded States, Congress did not pass a bill touching certain interests that they had in the South? I understood the Senator to say that this case was without precedent. Now if I am not mistaken there are several cases, not half as strong as this, which have received the assent of Congress. Indeed, I think this is the strongest case I have ever known presented to the discretion of Congress since I have had a seat on this floor. Here is a man who was pardoned by the President, whose property was seized under the act of 1863 as abandoned property. The money for it was received and put into the Treasury of the United States, his own hard earnings. He comes exactly within the Padelford case and the Klein case; and unless the Senate intend to repudiate the doctrine of the late Chief-Justice Chase, who said that a pardon covered all past delinquencies and entitled its recipient to all rights after that act as if he had never been in the rebellion, this case cannot be answered unless it shall be upon a question of *laches;* and that is not individual to him, but is to hold him liable for what his attorney did. He was informed by his attorney that the case was filed; the attorney, through the negligence of one of his clerks, was himself mistaken. Could there be a stronger case?

Has it come to this, that the Government of the United States will under such circumstances take the money of any citizen of the South and hold it, and then plead the statute of limitations? What would be thought of any gentleman who, having borrowed money and given his note, should afterward plead the statute of limitations? Where would he find a footing in society in any State in this land? And yet it seems to me that that is this precise case.

I have no objection to the bill going over, but I rose to correct what I thought was a mistake. I may be mistaken myself, but I think there are cases from the South where relief has been granted which are not as strong as this.

Mr. WRIGHT. I desire to say that the case of the Douglas heirs to which my friend refers is very clearly distinguishable from this. There was no pretense of disloyalty there, but on the contrary the loyalty was established and they had merely lost their day in court and were sent there. The statute of limitations was not insisted on. But here there is no question upon the point to which I now refer. If it be true that a pardon removes all disabilities so that all persons can go into court and recover just precisely the same as if they were never disloyal, then this bill ought to pass, aside from the question of *laches* to which I may refer if the bill is taken up. But that is the question there is in this case. I say that Congress, as far as I know, never has passed a bill yet where the disloyalty was conceded. When I say "disloyalty" I do not apply that personally; but I mean that the attitude of the person toward the Government was such that there was no question as to what that attitude was. I say this of course in all kindness to Colonel Erwin. He does not disguise, nor does any person for him, his relations to the Government. His disabilities were removed. Can all persons who had their disabilities removed come in and recover precisely as they could if they had been ever so loyal? That is the question that is in this case.

I do not remember that a case has ever passed Congress where the person occupied that relation to the Government who had his disabilities removed; but the decisions have been uniform by the Committee on Claims and the other committees that where the parties came to Congress and asked relief as a matter of grace and favor, then Congress should insist upon its legislation that they should not have a right to recover.

Mr. GORDON. Mr. President, I think that the honorable Senator from Iowa clouds this case a little in his last remark. The peculiar manner in which the disability of Mr. Erwin was removed I think very essential in the consideration of this bill. It was not a case of pardon under general proclamation embracing all or certain classes of citizens, or under any general law of Congress; but the party claiming from the Government had himself accepted, by his own act, amnesty under Mr. Lincoln's proclamation, and accepted at the earliest moment possible. It was in the city of Savannah, when the army of General Sherman reached that point. It is notorious, I believe, and admitted in the report of the committee, that this petitioner immediately on the entrance of the army into Savannah took the oath of allegiance to the United States Government in a public meeting in that city, and advised others to do so. I must be allowed to repeat the language of Mr. Lincoln himself, that if the Government shall repudiate such an action as this on the part of the citizens who in good faith embraced the very first opportunity to accept the terms of that proclamation, it will be bad faith on the part of Congress. I use

language much milder than that employed by Mr. Lincoln himself. This petitioner did accept the terms of that proclamation. He isolated himself from his own people, and in the midst of that city, in a public meeting, declared his adhesion to the Government of the United States when the war was yet in progress. More than a month after this act his cotton was seized, not taken as abandoned property, but seized while actually in his personal possession. Not only so, but six months thereafter, although he had accepted the terms of this proclamation in the presence of the United States Army, in the presence of the citizens of his own town, notoriously accepted, another lot of his cotton was seized. Now, I submit that there is not a decision of the Supreme Court rendered upon like cases which would not entitle this gentleman, so far as the principles of law are involved, to recover in the Court of Claims.

This much only at this time upon the question of his loyalty. As to his laches, it is simply a question of whether the United States Government will hold in its possession property which the courts have decided belonged not to the Government but to the individual under such a plea as this. Because, forsooth, an agent of this gentleman has deceived him as to the status he had obtained in the courts of the country will the Government take advantage of such misfortune and refuse possession of his property?

It strikes me, Mr. President, that this is a case, as I remarked a while ago, *sui generis*. I have known nothing like it. As early as 1867 this gentleman had his case, as he supposed, brought before the Court of Claims. He was notified by his attorney that the case with all the testimony was properly before the court. Suit, as he supposed and was informed, had been brought at the same term of court with other cases of similar character, every one of which has since been decided in favor of the claimants. This gentleman, standing upon precisely the same foundation of law, with precisely the same character of claim, with identical proof of loyalty, is to be defeated because a clerk in the office of his attorney has failed to discharge his duty.

At that time, it must be remembered—and I ask the attention of Senators to this peculiar and striking fact—a case was pending before and was afterward decided by the Supreme Court, involving the question of jurisdiction by the Court of Claims. Suppose Mr. Erwin had come to Congress while that case was pending, what would the Senator from Iowa have said to him? What would the Judiciary Committee have said? What would Congress have said? They would have asked, "Why do you come before Congress? Here is the Court of Claims, why not prosecute your case before that?" Suppose he had replied: "Because I apprehend that the jurisdiction of that court may have expired as to these peculiar cases." The Senator from Iowa and the committee would have said to him: "Wait, sir, until the decision of the Supreme Court is had upon the cases now pending before it." He did wait, rightfully waited; and the very moment the case of Haycroft—I believe that is the case—was decided by the Supreme Court, declaring the jurisdiction of that court extended two years instead of six, Mr. Erwin presented his claim before the Congress of the United States.

Mr. President, I must conclude that any decision by the Senate based upon all these facts, upon the law, and upon the question of laches, must bring to Mr. Erwin the relief he seeks.

Mr. WRIGHT. Mr. President, I have no intention to enter upon the discussion of the merits of this bill at this time. The report made by the committee sets forth all the facts as we understand them, and discusses the law. My appeal was that this matter might go over for the present. The Senator from Kentucky [Mr. STEVENSON] says he has no objection to its going over; I do not understand whether the Senator from Georgia [Mr. GORDON] insists upon having the bill heard at this time or not. I suggest that if they allow this bill to pass over until Wednesday, I shall make no objection at all to its consideration—shall interpose no obstacle whatever to its consideration at that time. If that is not agreeable to the Senator from Georgia, he must be aware of the condition of the Senate now; it is doubtful if we have a quorum here, and if a vote be taken on the bill we shall be locked, so that it will be impossible for us to do anything.

Mr. GORDON. I have a great deal of respect for the ability of the Senator from Iowa, and I do not doubt that he can present this case to the Senate with all the ability that any member of that committee can. I think we have a quorum, and, as I remarked a while ago, we have business of decidedly more importance to consider when this is over. I beg, therefore, that the Senate will consider this bill and let us have the verdict upon it.

Mr. WRIGHT. I shall then move, if in order, that the further consideration of the bill be postponed until Wednesday.

The PRESIDING OFFICER, (Mr. WITHERS in the chair.) The motion is in order. The Senator from Iowa moves that the further consideration of the bill be postponed until Wednesday next.

Mr. WRIGHT. I ask for the yeas and nays on that motion.

The yeas and nays were ordered.

Mr. GORDON. Before the roll-call commences, if it is agreeable to the Senator from Iowa, instead of fixing a day I am willing that it shall be laid aside informally to be left as the unfinished business.

Mr. WRIGHT. I have no objection to that—none in the world.

The PRESIDING OFFICER. By unanimous consent, then, the roll-call will be dispersed with, and the bill under consideration will be laid aside informally to come up as unfinished business.

PRESIDENTIAL APPROVAL.

A message from the President of the United States, by Mr. U. S. GRANT, jr., his Secretary, announced that the President had this day approved and signed the joint resolution (S. R. No. 29) extending the time for the making of a report by the Army commission created by the act of July 24, 1876.

WILLIAM S. MORRIS ET AL.

Mr. WALLACE. I move to take up Senate bill No. 405. It was under consideration some time ago and postponed, and it ought to be decided.

The motion was agreed to; and the Senate resumed the consideration of the bill (S. No. 405) for the relief of William S. Morris, William S. Mann, Charles A. Oakman, George W. Hillman, the Union Transfer Company, all of Philadelphia, Pennsylvania; the Union Transfer Company of Baltimore, Maryland; and John R. Graham, late of Philadelphia, now of Washington, District of Columbia; the question being on ordering the bill to be engrossed for a third reading.

Mr. WALLACE. The Senate will remember that this is a bill which came from the Committee on Claims and was put on its passage and was suspended for want of the decision of the court bearing on the question. One of the cases was made a test case. It was supposed then that there was a decision by the Court of Claims. It was, however, a decision by the circuit court for the southern district of New York, Judge Shipman presiding. I have obtained a specific statement of the facts in that case. There was a judgment against the collector for the amount then in contest. I have also a report of the case which I will ask the Clerk to read to show the point decided. It is not reported in book form.

The Chief Clerk read as follows:

[From the New York Herald of January 31, 1874.]

DODD'S EXPRESS COMPANY—EXPRESS COMPANIES NOT LIABLE TO TAX ON GROSS RECEIPTS—IMPORTANT DECISION.

In the United States court yesterday before Judge Nathaniel Shipman an action of a somewhat important character was tried. Alexander Spaulding, collector of the eighth internal revenue district, caused a duty of 3 per cent. on the gross receipts of Dodd's Express Company to be levied. He claimed that his action in this respect was sustained by section 104 of the act of 1864. This law is to the effect that all person doing express business are bound to pay a tax of 3 per cent. on the gross receipts of such business. The company paid the amount claimed under protest and then brought the present suit to recover back the sum thus paid.

Counsel for the express company contended that the business they transacted was merely of a local character; consisting of carrying boxes and parcels around the city; that, under the terms of the law, they could not be regarded as an express company, and that therefore the Government could not legally demand the tax from them. The judge stated that his opinion was that the act had reference only to large express companies.

The United States district attorney advanced the proposition that the act applied to all who did any business as express companies.

The amount claimed in this case is but $200. Judge Shipman directed a verdict for the express company.

The matter thus disposed of was a test case, but other suits in relation to the same point involve an amount of about $40,000. The question had been under the consideration of the Secretary of the Treasury and the Commissioner of Internal Revenue, and the conclusion they arrived at was that it was not within the power of the collector to exact the tax, but pending the result of this suit they had declined making any final decision.

Mr. ALLISON. Let us hear the report of the committee.

The PRESIDING OFFICER. The report will be read.

The Secretary read the report submitted by Mr. WADLEIGH, from the Committee on Claims, on the 2d of August, 1876, which has been heretofore published in the RECORD.

The bill was ordered to be engrossed for a third reading, and was read the third time.

Mr. SARGENT. I ask for the yeas and nays on the passage of the bill.

The yeas and nays were ordered.

Mr. SHERMAN. I have examined the internal-revenue laws, and I am perfectly satisfied that by a fair construction of the law Dodd's Express Company and all the express companies of the various characters are embraced within its provisions. It seems to me so plain a case that I do not see how a respectable court could have made a decision to the contrary. That decision is only before us in the form of a newspaper report, very imperfect in its character, which does not give the reason for the decision, but simply very briefly states the case. I believe it is contained in the report of our committee.

Now, will any Senator take up the law and say to me that his opinion is that under the provisions of the law a company like Dodd's Express Company, delivering packages to over a million of the people of the United States, carrying them from one end of Manhattan Island to the other, from railroad to wharf, from wharf to railroad, reaching every private citizen in that island of one million of inhabitants, is not subject to the tax? If that is not an express company within the meaning and language of the law, I do not know what is.

Under the circumstances, unless the Supreme Court of the United States, or some other tribunal whose decisions are binding on us and should control the construction of our laws, should decide in favor of the exemption, I am not willing to surrender a revenue already collected from these express companies. The language of the law is plain. It seems to me that the decision of the Commissioner of Internal Revenue was correct. He ought to have collected this money, as he did; and the mere fact that a court upon a casual hearing of a case, perhaps imperfectly argued or not argued at all, decides that the

words "express company" do not include Dodd's Express Company and all the other city express companies, is not sufficient justification to us for taking money out of the Treasury of the United States and paying it back.

After the case was up the other day I took the pains to take up the statutes and read carefully the language of the law. If we were endeavoring to describe Dodd's Express Company and the United States Express Company and Adams Express Company, and all the other express companies of a kindred character, we could not have expressed it in language more general and more specific. The reason given by the court was that it was not the intention of Congress to do anything but tax express companies like the Adams Express and the United States Express, &c., that carried packages all over the United States. That is not founded on any provision of the law, not founded upon any words used in the law, because the language of the law extends to all express companies and companies that carry baggage and goods for hire and who receive pay for carrying goods. When the law has been enforced and money collected and paid into the Treasury of the United States, now to pay it back to the companies, when they have charged it over to their customers, would not be right. Every one of these express companies in consequence of this tax during the war and after the war to some extent raised their charges. Their business was enormously increased by the war and the events that followed; they have levied this tax twice, perhaps many-fold on the business transacted by them, on their customers; and now years afterward, when probably the stockholders of these express companies have changed, to come in and ask the refunding of this tax upon a mere casual expression by a court, it seems to me, is carrying the doctrine of obedience to the courts too far; and therefore I shall vote against the bill.

Mr. WALLACE. I will only say, in reply to what the Senator from Ohio states, that if he will take the act of 1864 and the amendment of 1866 and remember the fact that these taxes were assessed after the act of 1866, were collected after the act of 1866, he will see that the Department in its construction of the statute and in the refunding of money and the courts in their decision were correct.

Mr. SHERMAN. Will the Senator send up those statutes and let them be read at the desk—the two statutes on which he relies—because I referred to them at once when the report was read, and I thought the language was clear.

Mr. WALLACE. Yes, sir; let section 104 of the act of 1864 be read.

The Chief Clerk read as follows:

That any person, firm, company, or corporation carrying on or doing an express business shall be subject to and pay a duty of three per cent. on the gross amount of all the receipts of such express business.

Mr. WALLACE. Now read the act of 1866.

The Chief Clerk read as follows:

That section 103 be amended by striking out all after the enacting clause and inserting in lieu thereof the following: That every person, firm, company, or corporation owning or possessing or having the care or management of any railroad, canal, steamboat, ship, barge, canal-boat, or other vessel, or any stage-coach or other vehicle, except hacks or carriages not running on continuous routes, engaged or employed in the business of transporting passengers for hire, or in transporting the mails of the United States upon contracts made prior to August 1, 1866, shall be subject to and pay a tax of 2½ per cent. of the gross receipts from passengers and mails of such railroad, canal, steamboat, ship, barge, canal-boat, or other vessel, or such stage-coach or other vehicle: *Provided*, That the tax hereby imposed shall not be assessed upon receipts for the transportation of persons or mails between the United States and any foreign port; but such tax shall be assessed upon the transportation of persons from a port within the United States through a foreign territory to a port within the United States, and shall be assessed upon and collected from persons, firms, companies, or corporations within the United States, receiving hire or pay for such transportation of persons or mails; and so much of section 109 as requires returns to be made of receipts hereby exempted from tax when derived from transporting property for hire is hereby repealed.

Mr. SHERMAN. The section last read does not relate to section 104 of the act of 1864. Section 103 is the one that relates to steamboats, railroads, ferry-boats, and bridges, and the amendment to section 103 read now is substantially like section 103 in the other law, but it is section 104 under which the tax was laid.

Mr. WALLACE. I understand. Section 103 had a construction put upon it in the act of 1866, just read, showing that sections 103 and 104 only applied to persons or property carried on continuous routes.

Mr. SHERMAN. That is the very point. I want the Senator to show me wherein the act of 1866 in redrawing section 103 affects section 104 of the act of 1864.

Mr. WALLACE. I know only that after full argument in the case brought by Dodd's Express Company the circuit court ruled that it did not apply to such cases. I have here a letter from the Department.

Mr. SHERMAN. But I ask the Senator where was that decision made? Was that the decision that is quoted in the report?

Mr. WALLACE. Yes, sir.

Mr. SHERMAN. I can only say that that decision as there stated is so meager that I cannot really tell what the meaning is. The judge expresses the opinion that Congress could not have contemplated express companies that were confined in their delivery, &c. I think the judge must have had under his eye section 103 instead of section 104 of the law of 1864. If the decision had been given fully, we could have told exactly whether the judge was misled by a hurried reading or not.

Mr. WALLACE. The point decided is stated in the letter of the Commissioner of Internal Revenue.

Mr. WRIGHT. Will the Senator from Pennsylvania allow me to make one inquiry of the Senator from Ohio?

Mr. WALLACE. Certainly.

Mr. WRIGHT. Whatever the grounds upon which the decision was made by the court, I call his attention to the fact that the officers of the Department have followed that decision and have ordered a refund of the taxes in all the cases except this. They, therefore, accept the decision of the court as having construed the law; they abide by that decision; and, as I understand, the reason that these claimants did not bring their suit in time was that they were given to understand that action in the Department would be withheld until the courts decided it, and that the Department would follow the decision of the courts. They have done so and have ordered a refund in all the cases except this, and the reason the Commissioner of Internal Revenue does not order a refund in this is that he stands upon the technical rule that he has no power, or will not undertake to review the decision of his predecessor.

The PRESIDING OFFICER. The question is on the passage of the bill, upon which the yeas and nays have been ordered.

Mr. WALLACE. It is plain that there is no quorum here, and if the Senator desires the bill to go over, I will consent that it shall lie over for the present.

The PRESIDING OFFICER. By unanimous consent, the bill will be laid aside.

BILL RECOMMITTED.

Mr. ANTHONY. I move that House bill No. 3373, for the relief of Susan E. Willard, widow of Sylvester D. Willard, of New York, which was indefinitely postponed, be recommitted to the Committee on Claims. I have to ask unanimous consent to do that, as the time for reconsidering the motion has passed. The chairman of the committee will testify, I believe, to the correctness of the fact that it was by a misunderstanding that this bill was reported adversely, and before the parties had an opportunity for a hearing. The parties are now present and desire to have an opportunity of hearing; and I understand the chairman of the committee is willing it should be recommitted.

Mr. WRIGHT. I wish to state in that connection that the bill was before the committee at the last session of Congress. I was appealed to at that time by a member of the House not to take action until the parties had an opportunity to be heard. I advised them that action would not be taken until such opportunity was given. At the present session of Congress, having forgotten that conversation, the bill was taken up and reported back. That matter being brought to my attention, of course, in all fairness, the bill should be recommitted, that the parties may have an opportunity. That being so, I make no objection to the recommittal.

The PRESIDING OFFICER. Unanimous consent is asked for the reconsideration of the vote postponing the bill which has been mentioned. Unless objection be made, it will be regarded as the order of the Senate, and the bill will be recommitted to the Committee on Claims.

H. E. WOODHOUSE & CO.

Mr. MAXEY. I move that the Senate proceed to the consideration of the bill (S. No. 1071) for the relief of H. E. Woodhouse & Co., of Brownsville, Texas. The bill is to refund the sum of $952, "being the amount demanded of them by the collector of customs and by them paid on account of non-dutiable goods." The order of the collector of customs required that amount to be repaid on non-dutiable goods. The money was paid. The fact was reported to the Secretary of the Treasury. I have his report here in full. The case came before the Committee on Claims, and was reported favorably by the Committee on Claims. The Secretary of the Treasury also recommends the refunding of the money. The bill was examined by the Senator from Iowa, [Mr. WRIGHT,] who is present and will vouch for the correctness of my statement.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill. It authorizes the Secretary of the Treasury to pay H. E. Woodhouse & Co., of Brownsville, Texas, $952, being the amount demanded of them by the collector of customs and by them paid on account of non-dutiable goods, October 30, 1876.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

NICHOLAS WAX AND OTHERS.

Mr. WEST. I move that the Senate proceed to the consideration of the bill (S. No. 907) for the relief of Nicholas Wax, Michael Granary, and Moline Lange.

The motion was agreed to; and the bill was read the second time, and considered as in Committee of the Whole. It directs the Secretary of the Treasury to pay to Nicholas Wax, Michael Granary, and Moline Lange, each, the sum of $500, in refundment of so much money exacted from them as joint obligors on a bond taken by Colonel Don A. Pardee, provost-marshal of the district of Baton Rouge, Louisiana, in the year 1863, for the appearance of one B. F. Rhodes, the payment of which was improperly and illegally enforced by the marshal.

Mr. WEST. I will state briefly in regard to the bill that it was reported by the late Senator from West Virginia, [Mr. Caperton.] The case is so palpable and plain, the committee, I think, being unanimous on the subject, that I cannot see any objection to its passage.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

OREGON DONATION LAND LAW.

Mr. KELLY. I move to take up Senate bill No. 859. It will only take but a minute or two.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill (S. No. 859) for the relief of certain claimants under the donation land law of Oregon, approved September 27, 1850. It provides that the claims of such persons who were duly qualified thereto, and made *bona fide* settlements upon lands in the State of Oregon and Washington Territory, under the provisions of the act of Congress approved September 27, 1850, entitled "An act to create the office of surveyor-general of the public lands in Oregon, and to provide for the survey and to make donations to settlers of the said public lands," and the legislation supplemental thereto, which have been included, in whole or in part, within the limits of any reservation made by the United States for military purposes subsequent to the date of such settlement and prior to the completion of the period of residence and cultivation required by that act, which reservation has been, or may hereafter be, declared abandoned by the Secretary of War as no longer necessary to the United States for military or other purposes, shall be adjudicated and patented the same as other donation claims arising under that act and supplemental legislation, as though such reservation had never been made; but no claim of any settler coming within the purview of this act shall be validated or confirmed the value of whose improvements at the time such reservation has been made by the United States has been ascertained and paid for by the Secretary of War, as required by the act of September 27, 1850, and the legislation supplemental thereto.

Mr. INGALLS. From what committee is the bill reported?

Mr. KELLY. The bill was reported by the Senator from California [Mr. BOOTH] from the Committee on Public Lands. There is a very short report, which I will ask to have read. The passage of the bill is recommended by the Commissioner of the General Land Office.

The PRESIDING OFFICER. The report will be read.

The Secretary read the following report submitted by Mr. BOOTH, from the Committee on Public Lands, July 20, 1876:

The Committee on Public Lands, to whom was referred the bill (S. No. 859) for the relief of certain claimants under the donation land law of Oregon, approved September 27, 1850, report as follows:

The fourteenth section of the act of Congress approved September 27, 1850, entitled "An act to create the office of surveyor-general of the public lands in Oregon, and to provide for the survey and to make donations to the settlers of the said public lands," authorized the President of the United States to reserve from the operation of said act such portions of the public lands as he might deem necessary for forts, magazines, arsenals, dock yards, and other needful uses. That section contains this proviso:

"*Provided*, That if it shall be deemed necessary, in the judgment of the President, to include in any such reservation the improvements of any settler made previous to the passage of this act, it shall in such case be the duty of the Secretary of War to cause the value of such improvements to be ascertained, and the amount so ascertained shall be paid to the party entitled thereto out of any money not otherwise appropriated."

Under this law the military officers of the United States, under authority of the President, made quite a number of reservations, including in several instances portions of the claims of settlers upon which improvements had been made before the passage of the act of Congress. Some of these reservations were made merely with the view that possibly they might be needed for military purposes, but were never occupied as such, and were soon afterward abandoned by the military authorities as unsuitable and unnecessary. The Secretary of War never caused the value of the improvements of the settler to be made, as provided by the law, and no compensation was ever made to him. In some such instances, where no compensation was made to the settler for his improvements, he continued to reside upon and cultivate the land, as required by the act of Congress, until the title became perfected in him, excepting so far as he might be precluded from acquiring it by reason of the same having once been reserved but afterward abandoned by the Government.

Under these circumstances, the committee consider it simply an act of justice that where the improvements of any settler under the donation land law were made prior to the reservation of the same for military purposes, and no compensation was made to him for such improvements, that the title should be confirmed to him, if such settler has, in other respects, complied with the provisions of that act of Congress.

The subjoined letter from the Commissioner of the General Land Office is in conformity with these views:

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., July 12, 1876.

SIR: In reply to your note of yesterday, accompanied by Senate bill No. 859, Forty-fourth Congress, first session, for the relief of certain claimants under the donation land law of Oregon, approved September 27, 1850, and asking to be advised whether said bill meets the views of this office, I have the honor to state that said bill fully accords with the views of this office; and I would respectfully recommend its passage.

Very respectfully, your obedient servant,

J. A. WILLIAMSON,
Commissioner.

Hon. NEWTON BOOTH,
United States Senate.

The committee recommend the passage of the bill.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. GEORGE M. ADAMS, its Clerk, announced that the House had passed a bill (H. R. No. 2142) to authorize the Secretary of the Interior to invest in the bonds of the United States the unexpended balance of the money appropriated to the L'Anse and Vieux de Sert bands of Lake Superior; in which it requested the concurrence of the Senate.

ENROLLED BILLS SIGNED.

The message also announced that the Speaker of the House had signed the following enrolled bills and joint resolution; and they were thereupon signed by the President *pro tempore:*

A bill (S. No. 842) authorizing the commissioners of the District of Columbia to remove the jail on Judiciary Square to grounds near to the Washington Asylum for the use of the District;

A bill (H. R. No. 2300) granting a pension to Margaret C. Bell;

A bill (H. R. No. 2835) for the relief of R. J. Henderson, of Newton County, Missouri;

A bill (H. R. No. 4281) to amend an act entitled "An act authorizing the repavement of Pennsylvania avenue," and the act amendatory thereof;

A joint resolution (H. R. No. 171) in reference to the congratulations from the republic of Pretoria, South Africa; and

A joint resolution (H. R. No. 172) relating to congratulations from the Argentine Republic.

THE SILVER COMMISSION.

Mr. JONES, of Nevada. Mr. President, a committee was authorized at the last session of Congress to inquire into the change that has taken place in the relative value of gold and silver, the cause thereof, the policy of restoring the double standard in this country, and of continuing greenbacks concurrently with the metallic standards, and the best means for the resumption of specie payments.

These questions, Mr. President, are so comprehensive in their character, so broad in their scope, and, should any legislation be had upon them influenced by the report of this commission, so far-reaching in their effects that the commission have thought it better not to make a hasty report, but to avail themselves of all the facts necessary to an enlightened discussion and a correct solution of them. To this end they have examined a large number of witnesses in this country and have propounded interrogatories to correspondents, to distinguished financiers and business men abroad. They also through the State Department have sent interrogatories touching these various propositions to the representatives of the United States in the different countries of the world. To these interrogatories they are but now receiving responses, responses which are voluminous, and many of them in foreign languages. The committee have not had time yet to digest, classify, and arrange them, and harmonize in many instances apparent contradictions. This they desire to do; and to this end they offer the resolution which I now send to the desk.

The PRESIDING OFFICER, (Mr. WITHERS in the chair.) The resolution offered by the Senator from Nevada will be read.

The Chief Clerk read as follows:

Resolved by the Senate, (the House of Representatives concurring,) That the commission to inquire into the change which has taken place in the relative value of gold and silver, and the causes thereof, the policy of restoring the double standard in this country, and of continuing greenbacks concurrently with the metallic standards, may report on or before the 15th day of February, 1877, instead of on or before the 15th day of January, 1877.

Mr. MORRILL. I think that had better lie over until to-morrow.

Mr. JONES, of Nevada. I simply ask that the resolution shall pass giving us more time, as this is the day on which the report should be made. I supposed the Senate would not hesitate for a moment.

The PRESIDING OFFICER. The Senator from Nevada asks for the present consideration of the resolution. Is there objection to its present consideration? The Chair hears no objection, and assent is given to the present consideration of the resolution. The resolution is agreed to.

PERSONAL EXPLANATION—CHARGES AGAINST MR. WINDOM.

Mr. WINDOM. I ask that the Secretary read the article in this morning's Union which I have marked in the copy I send to the desk.

The PRESIDING OFFICER. The paper will be read.

The Chief Clerk read as follows:

Last summer charges were preferred against William McMicken, surveyor-general of Washington Territory, of alleged malfeasance in office, but it is said, through the influence of Senator WINDOM, the charges were "pigeon-holed," although there was the most positive proof of McMicken's peculations. Within the last week charges have again been made both to the President and Secretary Chandler against McMicken of corruption in office and with having paid money to Senator WINDOM for his (McMicken's) appointment and retention in office. No action has been taken in the matter, and there is thought to be a disposition to keep the charges quiet until after WINDOM'S re-election to the Senate. The election will take place to-morrow.

Mr. WINDOM. Mr. President, I regret to have to ask the indulgence of the Senate for a personal matter of this kind. I believe this is the first personal explanation I have ever made during seventeen years of congressional service. But the circumstances under which this charge is made and the respectability of the paper in which it appears seem to justify me in doing so.

I called this morning on the responsible editor of the Union—Hon. Montgomery Blair—and made a statement of the facts. He expressed regrets that the article just quoted should have appeared in his paper, and handed me this note or telegram, which I am authorized to publish, and which I now request the Secretary to read.

The Chief Clerk read as follows:

[Telegram.]

WASHINGTON, *January* 15, 1877.

The charge made in the Union of this date against Senator WINDOM on the authority of H. I. Chapman would not have been published if my attention had been called to it, for I do not believe it to be true.

MONTGOMERY BLAIR.

J. A. WHEELOCK,
Saint Paul, Minnesota.

Mr. WINDOM. In addition to that, Mr. President, the honorable gentleman who has editorial charge of the Union assured me that he would take great pleasure in making the correction to-morrow morning. I am not willing, however, to let the matter drop here; for it is true that charges of the character mentioned in the Union have been made against myself in the Interior Department. They were made by one H. I. Chapman, of Washington Territory, or Oregon—I am not quite certain which. I think neither that State nor the Territory is ambitious to claim him. Last summer there was a controversy with reference to the removal of William McMicken, surveyor-general of Washington Territory. This man Chapman came here for the purpose of getting the appointment to that office. He charged McMicken with certain peculations and corrupt practices in office. Having known General McMicken for many years I did not believe them to be true. I went to the Interior Department and demanded an investigation of those charges. They were thoroughly investigated; witnesses were called and examined and affidavits taken; and upon this investigation General McMicken was triumphantly vindicated. Indeed the man in Washington Territory who fathered Chapman's charges has since admitted that they were false. I heard nothing more of it until last Saturday morning, when I received a letter which I will hand to the Secretary to be read. This letter is dated January 11—last Thursday—but was not mailed until Saturday, the 13th. I ask the Clerk to read it.

The Chief Clerk read as follows:

WASHINGTON CITY, D. C., *January* 11, 1877.

SIR: Prompted by a strong desire to serve the republican party and to prevent its humiliation by the publication of frauds practiced upon the Government of so flagrant a nature as to bring the whole Administration into disrepute, I am forced to address to you this letter, hoping that it may be received in the same spirit in which it is written.

The offender against the dignity of the Government to whom I refer is no other than William McMicken, surveyor-general of Washington Territory. Mr. McMicken would have been removed from office last year had not you prostituted the influence of your office to have him retained. His corruption in office has been of so notorious a character that suspicion has pointed to you as the partner of his peculations, and proof is not wanting to change this suspicion into a reality. Now, I am fully determined that Mr. McMicken shall be removed *at once* from office, or I shall give to the public the facts and let it judge who is the greater offender, *the man guilty of peculation in office, or the Senator who is his apologist, champion, and shearer of the spoils.*

I care not who is appointed, but I do most emphatically insist on Mr. McMicken's removal. A man who was ostracized from Minnesota as being unworthy public confidence is certainly not a fit person to hold the principal office in Washington Territory.

If your answer disclaiming all intention of opposing the removal of Mr. McMicken shall not have been received by five p. m. to-morrow, I shall "loose the dogs of war," let the consequences be what they may. I write this letter not as a threat but in hopes that you will assist in having honest men appointed to office.

Yours, very respectfully,

H. I. CHAPMAN,
457 *Missouri avenue.*

Hon. WILLIAM WINDOM,
United States Senate.

Mr. WINDOM. Mr. President, my first impulse on the receipt of that letter was to write a note to the author telling him that if he had any "dogs of war" to let loose the entire kennel; but knowing something of the low and despicable character of its author, I thought it not worth while to notice it, and I made no answer. I did however on Saturday say to Senator MITCHELL, of Oregon, that I wished he would be good enough to convey to the creature Chapman the assurance from myself that if he had any expectation of ever becoming surveyor-general of Washington Territory or of holding any other office that required the confirmation of the Senate, I thought he might safely dismiss it from his mind so long as that letter remained in existence, for I should take occasion to use it hereafter. Saturday evening an individual came to my residence to assure me that this letter had been written; he did not find me there but found my friend Mr. M. C. Fosnes, of Minnesota, to whom he unbosomed himself, stating that this charge would be published this morning in the Union, that it had been postponed until the day before the senatorial election in Minnesota so that there would be no opportunity for me to answer it at home, that he had come as my friend to notify me so that I might take measures to prevent its publication in the Union, or telegraph home in order to weaken the force of the blow which was impending. I neither telegraphed home nor called on any person connected with that journal. I preferred, if there was anything of the kind to be published, that it should be done at once.

This morning on further inquiry I find that this same H. I. Chapman has filed certain other charges against Surveyor-General McMicken, of Washington Territory, a gentleman who instead of having been "ostracized in the State of Minnesota" is respected by everybody; a gentleman of the very highest character, an honest man, a brave soldier, and in every respect worthy of confidence. Among the charges filed against him is the following:

Fifth. That the said McMicken did pay and is paying to Senator WINDOM a money consideration for his (WINDOM's) influence in retaining him (McMicken) in the office of surveyor-general.

Finding, Mr. President, that this matter had gone so far, I thought it was about time to stop it, and I called this morning upon the grand jury, now in session, and presented the case, and the individual will have an opportunity to prove before the courts the truth of these charges, for he will doubtless be indicted.

But as I wish to place one other item on record, I beg for the information of the Senate to state the character of this creature who proposes to black-mail Senators, and for this purpose I submit a letter from General James Tilton, civil engineer, who was many years surveyor-general of Washington Territory, who does not belong to my party, but is a good, sound democrat. I ask the Clerk to read it.

The Chief Clerk read as follows:

WASHINGTON CITY, D. C., *January* 15, 1877.

SIR: In reply to your inquiry as to my knowledge of the character and antecedents of H. I. Chapman, of Washington Territory, I beg to leave to state:

Having resided in Washington Territory for many years, and during at least ten or twelve years of that time having been well acquainted with H. I. Chapman, I am constrained by truth to say upon any question in which his interest or revenge was concerned I would not believe H. I. Chapman upon oath. His reputation for truth and honor at Puget Sound, and wherever known in Oregon and Washington Territory, is bad. In all places where he has lived there I have uniformly heard him spoken of as entirely unscrupulous in the pursuit of either his interests or his enemies.

From the year 1854 to 1861 I was United States surveyor-general for the Territory of Washington, after that period till 1866 was a resident of the Territory, and was territorial treasurer for several of those years; was a civil engineer in the service of the Northern Pacific Railroad Company for four or five years in Washington Territory, till 1873; as H. I. Chapman's father was surveyor-general of Oregon during a part of the period during which I was a similar functionary in Washington Territory, and as H. I. Chapman himself was a land surveyor, and as such a competent one, I had ample opportunities to know him well and thoroughly, and I can only say he is, as a man of truth and honor, so totally devoid of standing that no charges or denunciations of any one in either Washington Territory or Oregon would affect the public estimation of the person charged, nor, in my opinion, would it be regarded by any gentleman resident in Oregon or Washington Territory as worth while to answer any published denunciations or charges made and signed by H. I. Chapman.

In conclusion, I deem it proper to say I have never had any quarrel or variance whatever with Chapman, but, on the contrary, procured him employment as surveyor for the Northern Pacific Railroad, chiefly from regard and old friendship for his father, who like myself is an old and life-long democrat.

Respectfully yours,

JAMES TILTON,
Civil Engineer.

Senator WINDOM.

Mr. WINDOM. The writer of that letter is known by nearly everybody in Oregon and Washington Territory as a gentleman of high standing. In addition to his testimony, I will state that the Hon. O. Jacobs, Delegate in Congress from Washington Territory, formerly chief-justice of that Territory, who is now seated at my right, authorizes me to say that this letter of General Tilton's is none too strong; that it is simply what he would say himself. I was unable to find him before making the statement.

All I want to say further, Mr. President, is that the charge that I have ever received any consideration in money or otherwise, directly or indirectly, from General McMicken for appointing him or keeping him in office, or in any manner or form connected with or growing out of his official position, is wholly, wickedly, and absolutely false, and without a shadow of foundation in fact. But as this charge is made and on file in the Department, I move that a committee of three be appointed for the purpose of investigating it, and that that committee be composed entirely of gentlemen on the democratic side of the House.

The PRESIDING OFFICER. The Senator from Minnesota moves that a special committee of three be appointed to investigate the matter which he has just ventilated to the Senate.

Mr. MORRILL. I hardly think it is necessary to pass a resolution of that kind. I do not think there is a single member of the Senate who would have any other opinion than he at present entertains, after the most searching investigation.

Mr. GORDON. I rose when the Senator from Vermont did, to make a similar remark. I have no doubt that there is not a gentleman on this floor who does not know that the charge is false. The whole country knows it; and it is dignifying this assault upon the Senator from Minnesota to make any investigation about it.

Mr. HAMLIN. I concur most cordially in what the Senator from Vermont and the Senator from Georgia have said. We here, who know the Senator from Minnesota, who have associated with him for long years and know that high character to which he is entitled, are fully justified in saying that it would be an error to undertake to prosecute such a dirty character as this any further; and I hope the Senator will withdraw his motion.

Mr. CRAGIN. I concur fully in what has just been said by the Senator from Maine and other Senators who have preceded me. But I rose mainly to say that during the last session of the present Congress this same Chapman made charges against the present governor of Washington Territory, when his name was before the Committee on Territories for confirmation or for recommendation for confirmation. Being upon that committee, I listened to those charges. The governor came before the committee and refuted them, and the committee were unanimously of the opinion that this Chapman had lied to the committee; and we recommended the confirmation of the man who was nominated for governor of that Territory.

Mr. DAWES. Mr. President, it is hardly worth while to add anything to what has been said, and so truthfully; but my knowledge of the Senator from Minnesota and official connection with him goes back ten years before he became a member of this body, and that, as much as anything that could be said by those who have known him here, strengthens me in urging that the Senator from Minnesota do not press this motion.

Mr. FERRY. I hope the Senator from Minnesota will not withdraw

the resolution, and I trust the Senate will show its appreciation of the Senator and its indignation at such an attack upon him by voting unanimously against the appointment of such a committee.

Mr. COCKRELL. If I thought there was the least shadow of foundation for the charge I would gladly vote for the resolution; but I do not think it would be possible for the report of any committee of investigation on that subject to add anything to the vindication of the Senator from Minnesota. I think he already stands fully vindicated before this Senate and before the country; and, believing so, I shall vote against the resolution for the appointment of a committee.

The PRESIDING OFFICER. The question is on the adoption of the resolution.

The resolution was rejected unanimously.

RULES OF THE SENATE.

Mr. FERRY. I move that the Senate take from the table and proceed to the consideration of the report of the Committee on Rules. I think it lies on the table at present.

The PRESIDING OFFICER. The question is on the motion of the Senator from Michigan.

The motion was agreed to.

Mr. FERRY. I will state for the information of Senators that the print shows the rules as now adopted and in force by the Senate upon the left-hand side of the pamphlet which lies upon their tables; and on the right-hand side, at page 27, commences the report of the committee with the portions of the old rules omitted in brackets and the new portions advised by the committee in italics. With that explanation, and with the print before them and the attention that has already been given, as this print has been before Senators three or four weeks, I think the Senate is prepared to go on with the report, and the first rule may be read.

Mr. MORRILL. Had we not better begin at the point where we left off?

Mr. FERRY. The Senator at my right suggests that we continue where we left off on a previous occasion when the matter was considered.

The PRESIDING OFFICER. If there be no objection that course will be pursued.

Mr. COCKRELL. I desire that we shall begin at the beginning of the report.

The PRESIDING OFFICER. The Senator from Missouri objects. The report will be considered from the beginning.

Mr. WHYTE. I would suggest to the Senator from Michigan that the Senators who objected the last time we had this subject under consideration are now absent from the Senate engaged in business connected with their duties as members of a committee which has had leave to sit during the sessions of the Senate. They are absent, and I think the Senator from North Carolina, [Mr. MERRIMON,] a member of the Committee on Rules, proposed or did offer some minority report.

Mr. FERRY. The Senator is mistaken in that respect. The Senator from North Carolina, a member of the committee, concurs with this report, and authorized me to make it and have it considered, if it could be done, in his absence.

Mr. WHYTE. I may be mistaken in regard to the last statement; but I am not mistaken, because I was personally present, in regard to the first statement which I made, that the very inquiry made of the Senator from Michigan when we had this subject up before, in regard to the changes that had taken place and the desire that a report should be made of the rules in the form in which it has now been made, was made by Senators who are now absent from the Senate Chamber; and unless they have given some assent to taking up this report in their absence, I think it would be probably more courteous to give them an opportunity of being heard before we adopt these rules.

Mr. FERRY. The Senator from Maryland is substantially correct in what he states, as I recollect. My object is not to press the rules to adoption entirely to-day, but to pass the report through the Committee of the Whole, which we can as well do to-day. I am aware that when the rules were up before it was felt by some Senators that my explanation of the rules as we progressed was not sufficiently clear; in other words, that it could not be made so apparent, so palpable to other Senators who were watching the progress of the consideration. Therefore the report was recommitted for the purpose of a new print. It now appears in the form which the committee have recommended, and I think it is so plain that he who runs may read. My purpose now is to go through the report in Committee of the Whole, which we can as well do with those Senators who are present and save that much time; but when the report reaches the Senate I will move, if no other Senator does, that it be laid aside temporarily, so that those Senators can be present when it is finally considered. I was aware that they are not present. I was also aware that the Senator from North Carolina, a member of the committee, was not present, and I had his consent and his desire that I should call up the report so that the rules might be adopted. I would state that the report is the unanimous report of the committee. I now ask that Rule 1 be read.

The PRESIDING OFFICER. The clerk will report the first rule reported by the Committee on Rules, the rules being before the Senate as in Committee of the Whole.

The Chief Clerk read as follows:

Quorum—reading the Journal.

1. The presiding officer having taken the chair, and a quorum being present, the Journal of the preceding day shall then be read, and any mistake made in the entries may be corrected. The reading of the Journal shall not be suspended unless by unanimous consent; and when any motion shall be made to amend or correct the same, it shall be deemed a privileged question, and proceeded with until disposed of by the Senate.

The PRESIDING OFFICER. This rule is now open to amendment. No amendment being offered, unless objection be made it will be regarded as obtaining the assent of the Senate as in Committee of the Whole. No objection being made to it, the next rule will be reported.

The Chief Clerk read as follows:

When a quorum is not present.

2. If either at the commencement of any daily session of the Senate, or at any time during its daily sessions, a question shall be raised by any Senator as to the presence of a quorum, the presiding officer shall forthwith direct the Secretary to call the roll of Senators, and shall announce the result to the Senate; and these proceedings shall be without debate.

Mr. FERRY. I suggest, if there be no amendments offered to the rules as they are read as reported by the committee, that they be considered as agreed to, which course will save time.

The PRESIDING OFFICER. By unanimous consent that suggestion will be regarded as the wish of the Senate. The next rule will be reported.

The Chief Clerk read as follows:

Absent Senators sent for to make a quorum.

3. No Senator shall absent himself from the service of the Senate without leave first obtained. Whenever it shall be ascertained that a quorum is not present, a majority of the Senators present may direct the Sergeant-at-Arms to request, and, when necessary, to compel, the attendance of the absent Senators, which order shall be determined without debate; and, pending its execution, and until a quorum shall be present, no motion, except a motion to adjourn, nor debate, shall be in order; and all proceedings under this rule shall cease upon an adjournment.

Mr. WHYTE. It is well for us to understand at this time from whom a Senator has to obtain leave of absence. The powers of the President of the Senate may again be involved in this inquiry hereafter, and perhaps it had better be ascertained before any question arises. The words "of the Senate" after "leave" are proposed to be stricken out of the old rule. Then from whom are we to obtain leave if we desire to be absent? That ought not to be left open to question hereafter.

Mr. FERRY. The committee thought that was tautology. No such permission can be granted by the presiding officer. The permission comes from the Senate. Leave of absence can only be granted by the Senate, and as it was a mere repetition of words the committee deemed it best to strike it out, as their object was to make the rules as terse as possible, combining the idea and force of the rules in as simple language as possible.

Mr. WHYTE. I should prefer to see the words "of the Senate" remain. It certainly does no harm to the rule to retain them, and it relieves it of all embarrassment whatever. That is one objection that I have to this proposed amendment. Now, I object to the other amendment which authorizes a majority of the Senate to compel members of the Senate to attend. Under the rule heretofore a request through the Sergeant-at-Arms has been quite sufficient to induce Senators to return to the Senate Chamber in order to make up a quorum. That rule has prevailed in the Senate for years, and I think the honor of a Senator ought to be sufficient to guarantee his presence when the Sergeant-at-Arms notifies him that the Senate is without a quorum. I shall, therefore, vote against striking out the words "of the Senate" and against the substitute proposed by the committee for that part of the old rule which is in brackets.

Mr. FERRY. I have no particular objection to retaining the words "of the Senate" if they make it clearer in the judgment of the Senator from Maryland. I make no point there. I on my part make no special point in regard to the second amendment, to which he has called attention; but, there being as the committee found on every such occasion a desire and in many cases an attempt to move the compulsory attendance of Senators, it was thought best by the committee that this should be included in the rule, leaving the power in hands of the Senate or in the minority at the time to say which they wanted, whether a simple request or a compulsory attendance. We have found ourselves in difficulty at several sessions of the Senate on account of a minority not being able to secure the attendance of a majority of the Senate. For that reason it is left by the report of the committee optional with the minority to determine which course they will pursue. It is not mandatory: it gives them the opportunity, the privilege, and the power to do so at the time. We well know by the force of the rules it is impossible to change a rule at that time without giving a day's notice. In such cases we find ourselves in a predicament, without the possibility of relieving ourselves. For that purpose these words were ingrafted in the report, to enable the Senate to relieve itself at the time when it found the necessity arise.

The PRESIDING OFFICER. The Chair understands that the Senator from Maryland is moving an amendment to that portion of the rule.

Mr. WHYTE. Yes, sir; I ask that the words "of the Senate" be restored.

Mr. WEST. I am inclined to concur with the views expressed by

the Senator from Maryland as to the impropriety of changing what has been the standing order of the Senate since its establishment. If the inclination of the Senate should be to change it, let it be done when there is such a representation here as will command the respect of the entire body. We are quite a minority here at present, and I would suggest to the Senator having charge of these rules that he let that particular question lie over until an ampler attendance here can determine it. In the mean time the attention of Senators will be called to it. For one I shall agree with the Senator from Maryland, and object to its being made compulsory to require the attendance of Senators.

The PRESIDING OFFICER. That rule will be reserved, if there be no objection.

Mr. FERRY. I appreciate the observation of the Senator from Louisiana in regard to the fewness of the number of Senators present, and have no objection to this rule being passed over. I suggest to the Senator that it might be reported as it is to the Senate, and when we come to concur in the amendments made as in Committee of the Whole, an amendment might be made and thus the question reached when there is a full Senate. Several Senators have expressed a desire that that power should be included in the rules. The committee considered the matter very carefully and were unanimous in the view that the Senate ought to have the privilege of compelling attendance. As is seen by the language it is a choice, and the minority present can either request or compel. If the words are left out they can simply request, and we shall find ourselves frequently without a quorum when it is impossible to make a quorum.

Mr. INGALLS. I have no objection to this clause of the rule being passed over, but I am unwilling that it shall be omitted at this time under the impression that has been produced by the Senators from Maryland and Louisiana, that this interpolation is in any sense an innovation or the result of any improper action on the part of the committee. If those Senators will refer to section 5 of the first article of the Constitution they will observe that "each House shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each House shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members in such manner and under such penalties as each House may provide." That is, therefore, a provision that is older than the rules of the Senate and it rests upon a constitutional requisition.

Mr. WEST. A Constitutional permission.

Mr. INGALLS. If the committee omitted this provision entirely there would still exist a power under the Constitution to compel the attendance of absent members of the Senate.

The PRESIDING OFFICER. The understanding of the Chair is that the amendment of the Senator from Maryland suggesting the addition of the words "of the Senate," which were stricken out by the committee, has been adopted by unanimous consent.

Mr. FERRY. I interpose no objection to that. That will be the understanding.

Mr. INGALLS. What is the understanding?

Mr. FERRY. That the words "of the Senate" after "without leave" be retained.

The PRESIDING OFFICER. In the second line of the rule in the report as printed.

Mr. FERRY. I trust the Senator from Louisiana will allow this rule to be concurred in as in Committee of the Whole, and when we come into the Senate and the question is upon concurring in the amendments made as in Committee of the Whole an amendment can then be offered. We shall in this way go through with the rules and make such amendments as we can while in committee, and when the Senate is full and the report is in the Senate proper, we can then conclude the consideration of the report.

Mr. STEVENSON. Did the Senator from Maryland offer an amendment?

The PRESIDING OFFICER. It is the understanding of the Chair that the Senator from Maryland wishes further to amend the rule.

Mr. STEVENSON. Why can we not vote on that amendment?

Mr. WEST. It has not been presented.

Mr. WHYTE. I move to strike out in the fourth line of the amendment to the rule printed in italics the words "and, where necessary, to compel;" so as to read:

> Whenever it shall be ascertained that a quorum is not present, a majority of the Senators present may direct the Sergeant-at-Arms to request the attendance of the absent Senators, &c.

Mr. WEST. I have the same objection to voting upon that amendment that I have to voting upon the original proposition, that that would define a rule for the whole body when few Senators are present, and I think of very great consequence and importance. Therefore we had better adopt the suggestion of the Senator who has charge of the report and let the matter go over with the understanding that it will not be voted on finally until there shall be a full Senate or at least a quorum here. I do not want to decide it now according to my view of the case for or against it.

Mr. STEVENSON. Mr. President, I concur with the Senator from Louisiana. I think the amendments of the committee ought not to be voted upon finally until we have a full Senate.

And now I have a word to say to the Senator from Kansas, [Mr. INGALLS.] Although the Constitution does confer the power, let me tell that Senator that for eighty-odd years that power has never been asserted. I recall a historical incident in the history of the Senate which is somewhat remarkable. At the meeting of the First Congress they were a month without a quorum. I think not less than three or four steps were offered by distinguished members of the Senate to compel absent Senators to come from the separate States; but our fathers had so great a respect for this body that they refused to exercise the constitutional power by resorting to any compulsion. If those wise men could wait for a quorum for a month, and I think it was fully that time, and if from that time to this no necessity has been found to use any disrespectful term by putting in this word "compulsion," I hope it will not be done now. I do not think there is any necessity for it. For eighty-odd years a mere request has been sufficient, and I hope the same respect will be shown the Senate hereafter, and that we shall exercise no such compulsory power.

Mr. COCKRELL. Will the Senator from Kentucky inform the Senate when it was that those Senators were so clement, when the Senate was in session so long without any quorum?

Mr. STEVENSON. I do not understand the question.

Mr. COCKRELL. At what time was it?

Mr. STEVENSON. At the first session of Congress.

Mr. WEST. From March 4 to April 6.

Mr. STEVENSON. At the beginning of the Government, as shown from the archives of the Government, at the first session after the Constitution was adopted.

Mr. INGALLS. In 1789.

Mr. STEVENSON. My recollection is that they were in session nearly a month without a quorum.

Mr. COCKRELL. From March 4 to April 6.

Mr. STEVENSON. Yes; over a month.

Mr. COCKRELL. This Government did not have all the machinery of the Constitution at that time. It was at a time when we were passing from the Congress of the confederation to the government under the Constitution of the United States. The President had not been inaugurated; the Senate never had organized and was not a body under the Constitution of the United States at that time. There had never been an organization of the Senate under the Constitution at that time; the President had not been declared elected; and a minority of those pretending to be the Senate then, as a matter of course, could not have exercised the power which afterward was exercised.

Mr. STEVENSON. No; but the argument is against the Senator. If there ever was a time in history when Senators should have been present, that was the occasion, and there was no such effort attempted; and from that day to this no such attempt has been made. The Senator says, at least that is the inference, that we are wiser than our fathers; that there are greater men here now than there were then. I differ with him. I would to God we had some of them now, men of enlarged intellect, of the highest patriotism, of the soundest judgment, who were willing to meet every exigency and to pass such rules as the safety of the country demanded and the honor of the Senate suggested.

Mr. COCKRELL. Mr. President, I am exceedingly gratified at the patriotic burst of eloquence coming from the Senator from Kentucky and at the noble tribute which he has paid to our fathers; but I believe that those worthy fathers still have illustrious and worthy children; that we have not degenerated to the extent which his speech would indicate; and that in this body to-day there are as much patriotism and as much devotion to the Constitution and constitutional liberty as there were from the 4th day of March to the 6th day of April, 1789, when the Senate first organized under the Constitution. I believe that we are just as patriotic and will do justice just as fairly and even-handedly as they did then. I cast no aspersion upon those characters and I cast no reflection upon those who are living to-day. I think if the Senate had been in session and organized under the Constitution, then the very patriotic citizens referred to by the Senator from Kentucky would have exercised their constitutional power in bringing absentees here. If States send Senators to this body to transact the business of this country and we cannot keep a quorum of them here, I am in favor of putting forth the power of the Constitution to bring them here, or I am in favor of a constitutional amendment which would authorize each State to appoint substitutes for its Senators, which substitutes should take the place of absent Senators and draw their pay. If such a provision were adopted, I think it would be a most excellent thing.

Mr. FERRY. I ask that this rule be temporarily passed over.

The PRESIDING OFFICER. Unless objection be made, the rule under consideration will be passed by informally.

Mr. COCKRELL. The whole rule?

Mr. FERRY. The whole rule.

Mr. COCKRELL. I wanted to ask a question in regard to one point, and that is as to these proceedings ceasing, determining, upon an adjournment?

Mr. FERRY. That is the practice. It has been the uniform practice of the Senate that in case of finding the Senate without a quorum, at the adjournment all the proceedings connected with it shall cease.

Mr. COCKRELL. For example, if process issue to compel the presence of absent Senators, and they are not here in the city, but are absent, and that process cannot be executed within two or three days, shall the Senators who are here be kept in session all that time? If

they adjourn, the process which has been started out fails according to the rule and the Sergeant-at-Arms or officer would have no authority to go on and execute the order of the Senate after its adjournment. Cannot provision be made and the rules so amended that in case the Sergeant-at-Arms should be sent for absent Senators, the power to bring those absent Senators would remain after the adjournment of the Senate?

Mr. FERRY. The object of the clause was to secure the attendance of Senators and a quorum of the Senate. If the Senate adjourns without compelling the attendance of the Senators, they fail to secure their object. That being done by the vote of the majority of those present in their judgment, it is thought best that no further proceedings shall be had when they adjourn. For that reason the committee thought it was best to terminate all proceedings with the adjournment in a case of that kind.

Mr. WEST. The rule is to be passed over, I understand?

Mr. FERRY. It is to be passed over.

The PRESIDING OFFICER. The rule will be passed by, and the next rule will be reported.

Mr. INGALLS. I am not willing that this subject shall be finally concluded without some better reason having been given than has been yet assigned by the Committee on Rules for the omission of the definition of a quorum. The Constitution provides that "a majority of each House shall constitute a quorum to do business." The standing rules as they exist at the present time declare that "a quorum shall consist of a majority of the Senators duly chosen and sworn." The Constitution further provides that the Senate "shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years; and each Senator shall have one vote." It certainly is exceedingly important for the Senate to determine, and it never was more important than now, whether a quorum to do business shall be a quorum of the number of Senators which the Senate is entitled under the Constitution to have, or whether it shall be a majority of those persons who are chosen and sworn, or whether it shall be a majority of a majority who may be present at the time in the Chamber. There are three different views which may be taken of this question. At the present time I believe thirty-eight Senators constitute a majority of those duly sworn. Therefore a quorum to do business in one view of the case may consist of a majority of thirty-eight Senators. In another view a quorum would consist of a majority of those who are actually present and sworn in excess of thirty-eight. I believe there are at this time vacancies in one of the States and perhaps more.

Mr. FERRY. One; Louisiana.

Mr. INGALLS. There is one vacancy in Louisiana. It is possible that hereafter there may be vacancies in more than one State. Therefore it seems to me that it is exceedingly important that the Senate should determine in its rules what shall be a quorum sufficient for the transaction of business. When this matter was before the Senate on a previous day, the Senator from Michigan who has charge of this subject said that they omitted the definition of a quorum simply because it was defined in the Constitution; but that does not do, because while that has always existed the Senator knows that there have been occasions heretofore when it was exceedingly necessary to have a definition outside of the Constitution, and that definition was made in May, 1864, and March, 1868. It seems to me very important that this definition should be continued.

Mr. FERRY. The committee thought that by following the Constitution they were explicit enough. I do not exactly understand the point made by the Senator from Kansas. The Constitution says that a majority of each House shall constitute a quorum. Certainly no person is entitled to a seat in this body until he has been duly sworn. He does not become a member of this body until then. He may be a member-elect, but he is not entitled to participate in the proceedings of the Senate until he has been duly sworn. He cannot constitute a portion of the body without being sworn; and if a quorum be a majority of the Senate, then certainly if he be sworn he is a part of that membership and enters into the number that shall constitute a quorum; and if he has not been sworn in he is not entitled to a seat. I cite the case of the State of Louisiana where the State is now represented by but one Senator. There may be a Senator-elect from that State and yet not sworn into this body. Therefore he is not a member of the body, so that thirty-eight members to-day constitute a quorum of the Senate, when, if the Senate were full and the State of Louisiana represented fully by two Senators, it would require thirty-nine Senators to constitute a quorum. The committee deemed it sufficient to follow the language of the Constitution.

Mr. INGALLS. The Senator from Michigan will observe that under the Constitution the Senate is a definite body, of fixed membership. It is not like the House of Representatives, that may vary from time to time according to the population of the country; but the Senate of the United States, under the Constitution, "shall be composed of two Senators from each State." Therefore, at the present time there being thirty-eight States in the Union, under the Constitution there should be seventy-six members of this body. As the number of members in this body is expressly defined by the Constitution, and as the Constitution further provides that a majority of each House shall constitute a quorum to do business, the question arises whether if there is anything less than the number of Senators defined by the Constitution the number necessary to constitute a quorum is changed. It seems that the Committee on Rules previously acting, in 1864 and 1868, thought differently, and they said that a majority of those members chosen and sworn shall constitute a quorum. There has evidently been a difference of opinion on this subject, and it seems to me we ought to determine now whether a majority of the entire number of two from each State shall be a quorum, or whether a majority of those chosen and sworn shall be a quorum.

Mr. FERRY. The fact that it requires but thirty-eight to-day to constitute a quorum of this body is a sufficient answer to the remark of the Senator from Kansas. It settles the question what this Senate is. To-day the Senate is not full, although every State is entitled and has the right by the Constitution to be represented here by two Senators. Each State has that right, but the State of Louisiana is represented by but one Senator. In that event but thirty-eight Senators are required to constitute a quorum. I therefore repeat that, if the State of Louisiana were fully represented and all the States of the Union were fully represented to-day on this floor, we should require thirty-nine Senators instead of thirty-eight to constitute a quorum. Now the committee deemed that in following the language of the Constitution which says that a majority of each House shall constitute a quorum, they were strictly within the injunction of the Constitution, and could not properly travel beyond it.

The Senator cites attention to the old rule, the present rule now in force, which says that "a quorum shall consist of a majority of the Senators duly chosen and sworn." No Senator can be sworn until he is chosen. There would be no need of inserting in a rule that a Senator shall be duly chosen and sworn when he cannot participate in the proceedings of the Senate until he is sworn. The fact that the language of the Constitution is that a majority of each House shall constitute a quorum does not settle what a House is. The fact that a Senator is sworn in entitles him to his place, and the number of Senators sworn into this body compose this body, this House. I cannot see how there can be any difference of opinion upon that point or any doubt upon the question. The language of the present rule is perhaps more explicit, though it is not needed; but the rule might say, as the old rule, that "a quorum shall consist of a majority of the Senators duly chosen and sworn." As I said, no Senator can participate here or become a member of this body until he is sworn. If that be the case, if I am correct in that statement, then certainly a majority of each House would be as to-day a majority of those who have been sworn. I call the attention of the Senator from Kansas again to the fact that we are to-day practicing upon that view; that we consider to-day thirty-eight a majority of the Senate, when in fact, if the other Senator from Louisiana were here and a member of this body, it would require thirty-nine to be a quorum.

Mr. INGALLS. I believe, under the Constitution, that thirty-nine Senators form to-day a legal quorum of the Senate, and that thirty-eight are not a quorum.

Mr. ANTHONY. For a long time after I first came into this body the rule prevailed which the Senator from Kansas thinks to be the constitutional law. A quorum consisted of a majority of the number, equal to two Senators from every State; and for a long time after the southern Senators had withdrawn it was necessary for a quorum to consist of the same number as though they were here. The present rule was then introduced, providing that a quorum should consist of a majority of the Senators elected and sworn. That rule, I believe, had always prevailed in the House. The debate here was very long, and the subject was very thoroughly discussed when the present rule was adopted, I think by a pretty considerable majority.

Mr. GORDON. When was that?

Mr. ANTHONY. That must have been about 1864. I voted against that rule, but I think I voted wrong. I think that the rule was perfectly right.

Mr. DAWES. The language of the Constitution in reference to what constitutes a quorum is the same in its application to both Houses. The House of Representatives is as much fixed by statute in its number as the Senate is fixed by the Constitution; and it has long been the practice of the House that a majority of the qualified members shall constitute a quorum. I suggest to the Senator from Michigan whether the term "qualified members" does not express the whole idea; and whether it is not better than the phrase "chosen and sworn." Never since I have known the House of Representatives has any other rule prevailed there, and the language of the Constitution is the same in respect to both.

Mr. INGALLS. If the Senator will excuse me, there is no qualifying phrase in the rule at all, neither the words "qualified members" nor "members chosen and sworn." There is an entire omission of a definition of a quorum, and it is my opinion that if the definition is dropped, from the time the rules now proposed are adopted it will require thirty-nine members to be a quorum instead of thirty-eight, the whole number of Senators remaining as at present.

Mr. DAWES. I must be allowed to say that it seems to me that no other rule can possibly prevail than that a quorum shall consist of a majority of the qualified members. Nothing else constitutes the Senate; not the majority of possible members but the majority of those who are authorized to transact business. That number constitutes the Senate. Why should the fact that it may be possible hereafter to increase that number have any effect upon what constitutes

a quorum to-day? A quorum to-day in the language of the Constitution is a majority of the members, and no person can possibly be a member who is not also a qualified member.

Mr. INGALLS. But the Senator from Rhode Island says that the contrary rule prevailed from the foundation of the Government down to 1864.

Mr. DAWES. I know that the Senator from Rhode Island said that, and the Senator from Kansas said that he was of the opinion that that was the true rule. With great deference to the Senator from Rhode Island, and with some hesitancy after his expression of opinion, I venture to suggest that I do not see how it is possible that any person not authorized to act at all, not qualified to act, whose vote cannot be taken if he offers it, could be counted upon the question of a quorum to determine whether there are sufficient members here to transact business, and that you should go outside and count in the number any individual who had no more right or voice here than a stranger. I do not see, in the absence of any words that would compel me to such a conclusion, that it would be reasonable.

Mr. ANTHONY. I did not say as my friend from Kansas reports me that the former rule went back to the beginning of the Government. My memory goes back a good while in this Chamber but not quite so far back as that. It was the rule when I first came into this Chamber now nearly eighteen years ago. How long it had been the rule previous to that time, I do not know, and although I believe I voted against the modification of the rule I am satisfied now that I voted wrong. I think the present rule is the only one that is consistent in the transaction of the business of the Senate.

Mr. INGALLS. Then ought it not to be retained?

Mr. ANTHONY. I think the rule ought to be retained as it is now. I think in voting for the old conservative rule of making a quorum consist of the whole number of possible Senators, I voted wrong. I think I had very great authority with me however. I think Mr. Foster and Mr. Foot voted that way.

Mr. MAXEY. The Constitution declares that no State shall be deprived of equal representation in the Senate; but suppose a State, from any cause over which the Senate has no control, fails to secure its equal representation in the Senate, then such a rule would require the Senate to be composed of a quorum of men who were never appointed or of a majority of men who never had position in the body. The case as put by the Senator from Michigan is undoubtedly true. If the entire body to-day were filled there would be seventy-six members and consequently thirty-nine would be a quorum; but this body is not filled. There is but one Senator from Louisiana. Hence seventy-five comprise all who are legally chosen and qualified, and thirty-eight constitute a quorum. It seems to me that the correct view is to have a majority of those duly chosen and qualified to constitute a quorum. That is the only correct view that can be taken, it seems to me.

Mr. FERRY. As we have already passed over the rule, I suggest to the Senator from Kansas who has raised the point that we pass on, and when we come into the Senate, if he be so disposed when the Senate shall be fuller than it is now, he suggest an amendment to the Senate.

Mr. INGALLS. That is satisfactory to me.

The PRESIDING OFFICER. The rule will be regarded as passed over. The Clerk will report the next rule.

The Chief Clerk read as follows:

President pro tempore to be chosen.

4. In the absence of the Vice-President, the Senate shall choose a President *pro tempore*, and the presiding officer shall have the right to name a Senator to perform the duties of the Chair, but such substitution shall not extend beyond an adjournment.

Mr. FERRY. That substantially is the old rule. We have prefixed "in the absence of the Vice-President the Senate shall choose a President *pro tempore*," which is in the Constitution. We have used, substantially, the language of the Constitution. We changed the phraseology, but the substance is the same.

The PRESIDING OFFICER. No objection being made the rule will be regarded as adopted and the next rule will be read.

The Chief Clerk read as follows:

Making up the Journal.

5. The proceedings of the Senate shall briefly and accurately be stated on the Journal; messages of the President in full; titles of bills and joint resolutions, and such parts as shall be affected by proposed amendments; every vote, and a brief statement of the contents of each petition, memorial, or paper presented to the Senate shall be entered.

The PRESIDING OFFICER. If there be no objection, this rule will be regarded as adopted. The next will be read.

The Chief Clerk read as follows:

Separate journals to be kept.

6. The legislative proceedings, the executive proceedings, the confidential legislative proceedings, and the proceedings when sitting as a court of impeachment of the Senate, shall each be recorded in a separate book.

The PRESIDING OFFICER. If there be no objection, this rule will be regarded as adopted. The next rule will be read.

The Chief Clerk read as follows:

PRESENTATION OF CREDENTIALS.

7. The presentation of credentials of Senators-elect and other questions of privilege shall always be in order, except during the reading and correction of the Journal, while a question of order or a motion to adjourn is pending, or while the Senate is dividing; and all questions and motions arising or made upon the presentation of such credentials shall be proceeded with until disposed of by the Senate.

The PRESIDING OFFICER. If no objection be made, this rule will be regarded as adopted. The next will be read.

The Chief Clerk read as follows:

ORDER OF BUSINESS.

[*Morning business, petitions, reports, &c.*] *Morning hour.*

8. One hour next after and including the reading of the Journal shall be designated as the morning hour, during which the order of business shall be as follows:

First. The presiding officer shall lay before the Senate messages from the President, reports and communications from the heads of Departments, and other communications addressed to the Senate; and such bills, joint resolutions, and other messages from the House of Representatives as may remain upon his table from any previous day's session undisposed of.

Second. The presiding officer shall then call for, in the following order:

The presentation of petitions and memorials.

Reports of the standing and select committees.

The introduction of bills and joint resolutions.

Concurrent and other resolutions.

Until the business of the morning hour shall have been concluded and so announced from the Chair, no motion to proceed to the consideration of any bill, resolution, report of a committee, or other subject upon the Calendar shall be entertained by the Chair, unless by unanimous consent; and if such consent be given, the motion shall not be open to amendment, and shall be decided without debate upon the merits of the subject proposed to be taken up; nor shall the consideration of any subject taken up during the morning hour, except a motion to amend the Journal, or a motion pertaining to the credentials of a Senator-elect, or his admission to his seat, be extended, unless by unanimous consent, beyond the expiration of the morning hour.

If any portion of the morning hour shall remain after the call for resolutions, the presiding officer shall lay before the Senate, in their order, resolutions and concurrent resolutions introduced on any prior day, and the same shall be proceeded with, but not beyond the expiration of the morning hour, unless by the unanimous consent of the Senate.

Mr. COCKRELL. "One hour next after and including." Is not that a singular expression?

Mr. FERRY. The object of that, as the Senator will see, is this: If the reading of the Journal is not included, the hour will fluctuate and the close of the morning hour will not be at one o'clock but at a varying time afterward, whereas by including the reading of the Journal the morning hour will expire at one o'clock when we meet at twelve o'clock. If the reading of the Journal should take ten, fifteen, or twenty minutes, the morning hour would be extended that time, unless some such language as this were employed and its expiration would be indefinite. Now we are to be guided by the hour.

Mr. COCKRELL. That is what I supposed. But it reads:

One hour next after and including the reading of the Journal.

Mr. FERRY. "And including;" the conjunction "and" is used.

Mr. COCKRELL. If it is "one hour next after," it cannot include the reading of the Journal.

Mr. FERRY. If it ended there, it would not; but as the conjunction "and" is there, of course the sentence is not closed nor is it completed until it includes the reading of the Journal.

Mr. COCKRELL. The question is whether you can make anything "next after and including." Can you make "one hour next after and including the reading of the Journal?"

Mr. FERRY. It is a mere question of language. The idea is the same. If the Senator will suggest any amendment, very well.

Mr. COCKRELL. The point is, "one hour after the meeting of the session, including the reading of the Journal."

Mr. FERRY. If the Senator will suggest any modification which will convey more clearly to his mind the object, I shall be glad.

Mr. COCKRELL. "One hour after the convening of the Senate, and including the reading of the Journal," or say "one hour, including the reading of the Journal."

Mr. STEVENSON. I hope not; let it stand as it is.

Mr. FERRY. The Senator will perceive that the rule now does not fix exactly when the hour shall be. Putting in "one hour next after and including the reading of the Journal" makes the hour expire independent of the time consumed in the reading of the Journal. The time when the hour shall commence is to be at the commencement of the reading of the Journal.

Mr. COCKRELL. That is the first business in order.

Mr. FERRY. That is the first business in order.

Mr. COCKRELL. Why not say "one hour after the convening of the Senate shall be designated as the morning hour;" the first hour of time from the moment the Senate convenes?

Mr. FERRY. The Senator will see the difficulty in framing language that will cover both ideas; and perhaps if he dwells a little longer upon the real idea conveyed by the language, he will see that it perhaps is as well as it can be framed for that purpose. "Next, after and including" is the phrase. Of course "next after" and "including" something must go together; the two go together; it is one hour next after and including the reading of the Journal. It means, in other words, that there shall be more time than is occupied by the reading of the Journal; that it shall cover the reading of the Journal not only but as much more time as that reading does not occupy of one hour.

Mr. COCKRELL. Then it should be "one hour next after the convening of the Senate, and including the reading of the Journal." But you have "next after" following the reading of the Journal; it makes them conflict entirely, I think. If it was "one hour next after the opening of the Senate, and including the reading of the Journal," it would be plain.

Mr. FERRY. I suggest that we pass along, and meanwhile the Senator from Missouri may frame some language that will express

it more explicitly. The committee will be perfectly satisfied with anything that will carry the idea.

Mr. INGALLS. Is it the understanding of the committee that the Journal shall be read in the morning hour?

Mr. FERRY. Yes, in the morning hour.

Mr. INGALLS. Then let the language be that "one hour next after the opening of the Senate shall be designated as the morning hour," during which the order of business shall be as follows:

"First, the Journal shall be read," &c.

Mr. FERRY. We have already governed the question of the opening of the session by Rule 1. The object of this new draught of the rules is to make them as terse as possible, conveying no multiplication of ideas, and keeping but one leading idea in a rule. That has been the purpose; and if there is any force and merit in the report of the committee, it is the accomplishment of that object. And that is why Senators will see considerable modification in the rules, because the committee have attempted to change the phraseology and narrow it down so as to convey the idea intended by each rule.

The PRESIDING OFFICER. This rule will be passed over in accordance with the suggestion made, if there be no objection. The next rule will be read.

The Chief Clerk read as follows:

Unfinished business.

9. Immediately upon the expiration of the morning hour, the presiding officer shall lay before the Senate the unfinished business at its last adjournment, which shall take precedence of the special orders, and shall be proceeded with until disposed of by the Senate.

The PRESIDING OFFICER. No objection being made, this rule will be regarded as adopted. The next will be read.

The Chief Clerk read as follows:

Special orders.

10. Any subject or matter may, by a vote of two-thirds of the Senators present, be made a special order; and when the hour fixed for the consideration of a special order shall arrive, it shall be the duty of the presiding officer to lay such special order before the Senate, unless there be unfinished business of the preceding day, in which case the unfinished business shall have precedence.

The PRESIDING OFFICER. Is there objection to this rule? There being none, it is adopted. The next will be read.

The Chief Clerk read as follows:

Precedence in special orders.

11. When two or more subjects shall have been made special orders for the same day and hour, they shall have precedence according to the order of time at which they severally were assigned; which order shall not be changed, unless by direction of the Senate.

The PRESIDING OFFICER. Is there any objection to the rule reported? There being none, it will be regarded as adopted. The next will be read.

The Chief Clerk read as follows:

Special order of the day.

12. Every special order shall, unless superseded by the unfinished business, be called upon the day and at the hour to which it was assigned; and if not disposed of on that day, it shall then take its place upon the Calendar of Special Orders, in the order of time at which it was made a special order, unless it shall become by adjournment the unfinished business.

Mr. INGALLS. If it is superseded by any unfinished business, what becomes of it?

Mr. FERRY. It goes back to the Calendar.

Mr. INGALLS. Will it remain a special order?

Mr. FERRY. It will remain a special order.

Mr. INGALLS. When to be taken up?

Mr. FERRY. According to its order, whenever there is no unfinished business. It is not supplanted in relation to other special orders.

The PRESIDING OFFICER. No objection being made to the rule reported it will be regarded as agreed to. The next will be read.

The Chief Clerk read as follows:

Calendar of General Orders.

13. At the expiration of the morning hour, if there shall be neither unfinished business nor special order, the Senate shall proceed with the Calendar of General Orders, unless it shall otherwise determine; and the subjects upon the Calendar of General Orders shall be taken up in the order in which they stand, and, if not finally disposed of, shall retain their respective positions on said Calendar until such final disposition. And in all cases where the Senate shall take up the Calendar of General Orders, and shall not have gone through therewith when the same shall be resumed, it shall be at the point which was reached when last under consideration.

The PRESIDING OFFICER. No objection being made, the rule is adopted. The next will be read.

The Chief Clerk read as follows:

PETITIONS.

Presentation and reference.

14. Before any petition or memorial shall be received or read at the table, it shall be signed by the petitioner or memorialist and a brief statement of its contents shall be made by the Senator or presiding officer presenting it. But no petition or memorial or other paper signed by citizens or subjects of a foreign power, unless the same be transmitted to the Senate by the President, shall be received.

Every petition or memorial shall be referred of course, without putting the question, unless objection be made by a Senator; in which case all motions for the reception or reference of such petition, memorial, or other paper shall be put in the order in which the same shall be made, and shall not be open to amendment, except to add instructions; but a motion to refer to a standing committee shall take precedence of a motion to refer to a select committee.

The PRESIDING OFFICER. Is there objection to this rule? There being none made, the rule is adopted. The next will be read.

The Chief Clerk read as follows:

Reading Papers.

15. When the reading of a paper is called for, and the same is objected to by any Senator, it shall be determined by a vote of the Senate, and without debate.

The PRESIDING OFFICER. Is this rule objected to? No objection being made, the rule is adopted. The next will be read.

The Chief Clerk read as follows:

VOTING.

Calling yeas and nays.

16. When the yeas and nays shall be called for by one-fifth of the Senators present, each Senator, when his name is called, shall, unless for special reasons he be excused by the Senate, declare openly and without debate his assent or dissent to the question; and in taking the yeas and nays upon any question the names of the Senators shall be called alphabetically.

The PRESIDING OFFICER. No objection being suggested, the rule will be regarded as adopted. The next will be read.

The Chief Clerk read as follows:

Assigning reasons for not voting.

17. When a Senator, being present and declining to vote when his name is called, shall be required to assign his reasons therefor, and shall so assign them, the presiding officer shall thereupon submit the question to the Senate, "Shall the Senator, for the reasons assigned by him, be excused from voting?" which shall be decided without debate. And these proceedings shall be had after the roll shall have been called and before the result of the vote is announced; and any further proceedings by the Senate in reference thereto shall be after such announcement.

Mr. COCKRELL. I suppose that rule is to bring the horse to the water and make him drink. I see that it is an entirely new rule.

Mr. FERRY. It is simply the practice of the Senate reduced to form. Each Senator is required to vote unless excused by the Senate; and this is merely putting into form that practice; simply that and nothing else.

The PRESIDING OFFICER. If no objection be made, the rule will be regarded as adopted.

Mr. INGALLS. Is not that an unnecessary addition to Rule 16?

Mr. COCKRELL. This Rule 17 may be the practice of the Senate, but according to the theory of the committee reporting these rules it is entirely new, because it is so reported and printed as a new rule.

Mr. FERRY. Certainly the Senator is correct. So, also, Rule 7 as to the presentation of credentials is a new rule, but it is simply formulating the practice of the Senate. So this rule is; but it only provides and defines that there shall be no other interruption of a roll-call of the Senate except the excuse of a Senator who desires to withhold his vote and the Senate sees fit not to allow him to withhold his vote, that it shall be done then, and if there are any other proceedings that the call shall not be further interrupted, but that they shall be afterward. It is simply to facilitate and make certain the practice of the Senate.

The PRESIDING OFFICER. The rule will be regarded as adopted. The next will be read.

The Chief Clerk read as follows:

Cannot vote after decision announced.

18. When the yeas and nays shall be taken upon any question, no Senator shall, under any circumstances whatever, be permitted to vote after the decision shall have been announced from the Chair; but a Senator may, for special reasons assigned by him, with the unanimous consent of the Senate, change or withdraw his vote after such announcement. No motion to suspend this rule shall be in order.

Mr. FERRY. That is the practice now.

Mr. COCKRELL. After the announcement of the result, may a man change his vote then?

Mr. HAMLIN. By unanimous consent of the Senate.

Mr. FERRY. By unanimous consent. There may have been a mistake. There have been such cases. It only allows him to do it by unanimous consent, not without.

Mr. INGALLS. Ought there not to be some limitation of time within which that can be done? It seems to me that opens a very wide field. There is absolutely no limitation then in the rule to the time when a Senator can change his vote. It seems to me there certainly ought to be some period fixed within which that change should be made.

Mr. HAMLIN. The remedy there is in the fact that it will require at any time, whether it be immediate or remote, the unanimous consent of the body. I vote under a misapprehension and I call the attention of the Senate to it immediately. We do sometimes, not very frequently, mistake a question when it is put, and we correct it within the time when we can do it under the rule. Now, the correction in this matter is with the Senate. If there be a case made where the unanimous consent of the Senate, the unanimous judgment of the Senate would say the Senator ought to have the right to change his vote, it would be done; not otherwise.

Mr. INGALLS. The rules do not allow a Senator to record his vote after the result has been announced; and I can see no reason why, if he is to be permitted to change it after the result is announced, there should not be some very brief limitation of time.

Mr. FERRY. The Senator from Kansas will remember how often it is that Senators who are paired, the fact of the pair having slipped their mind, vote, and after the announcement it occurs to them by some little circumstance and then they are allowed by unanimous consent to withdraw the vote. According to the strict construction of the rule, that would be prohibited. The modification of the rule is based upon "special reasons assigned by him." It would be unjust to the Senator away, who has left with the idea that he is paired

with another Senator, so that the vote shall be recognized on subjects which he has designated—it would be hardly fair to him to require a Senator who has voted by misapprehension to keep his vote recorded. It is only in such instances, simply to protect the rights of Senators, that unanimous assent of the body may allow a vote to be changed or withdrawn.

The PRESIDING OFFICER. Is there any objection to the rule as reported?

Mr. INGALLS. I think it had better be reserved.

The PRESIDING OFFICER. The rule under consideration will be reserved. The next will be read.

The Chief Clerk read as follows:

Vice-President shall give casting vote.

19. When the Senate shall equally be divided, the Vice-President shall, by his vote, determine the question.

Mr. FERRY. I call the attention of the Senate to the change here in which "shall" and "may" occur. One is permissive and the other is imperative. The committee thought that the permanent presiding officer, in case of a tie, should be required to vote. The present rule does not require him.

Mr. INGALLS. What does the Constitution say?

Mr. ANTHONY. Can we do that? The Constitution does not require the Vice-President to vote.

Mr. FERRY. The Constitution says:

The Vice-President of the United States shall be President of the Senate, but shall have no vote unless they be equally divided.

Mr. ANTHONY. That does not require him to vote.

Mr. FERRY. It does not require him to vote.

Mr. ANTHONY. This rule requires him to vote.

Mr. FERRY. This rule requires him to vote.

Mr. ANTHONY. Can we impose by rule any duty on the Vice-President? I think not.

Mr. FERRY. It is for the Senate to determine its own rules.

The PRESIDING OFFICER. Is there objection to the rule reported?

Mr. INGALLS. I object.

The PRESIDING OFFICER. It is open to amendment.

Mr. FERRY. Let it be passed over, then, until we reach the Senate.

The PRESIDING OFFICER. It will be passed by informally, if there be no objection. The next rule will be read.

The Chief Clerk read as follows:

Reconsideration.

20. When a question has once been decided by a vote of the Senate, whether that vote be determined by a majority or by two-thirds of the Senate, any Senator voting on that side which prevailed may move for a reconsideration thereof, at any time, on the same day on which the vote was taken, or on either of the next two days of actual session thereafter; and all motions to reconsider shall be decided by a majority of the Senate. When a bill, resolution, report, amendment, order, or message, upon which a vote has been taken, shall have gone out of the possession of the Senate and been communicated to the House of Representatives, the motion to reconsider such vote shall be accompanied by a motion to request the House to return the same to the Senate; which last motion shall be acted upon immediately, and determined without debate.

The PRESIDING OFFICER. Is there objection to the rule as reported? There being no objection, it is adopted. The next will be read.

The Chief Clerk read as follows:

Reconsideration—how limited.

21. If the Senate shall refuse to reconsider a vote, or if, upon the reconsideration of a vote, it shall re-affirm it first decision of the question, no further motion to reconsider shall be in order, unless by unanimous consent. And every motion to reconsider a vote taken upon any amendment or other question connected with a subject under consideration shall be decided at once, and a motion to reconsider may be laid on the table without affecting the question in reference to which the same may be made; and, if carried, shall be held to be a final disposition of such motion.

The PRESIDING OFFICER. Is there any objection to the rule as reported? There being no objection, it is adopted. The next will be read.

The Chief Clerk read as follows:

BILLS.

Bills—notice given for leave to bring in.

22. One day's notice at least shall be given of an intended motion for leave to bring in a bill or joint resolution; but in the introduction of bills or joint resolutions on leave, such notice may be dispensed with by unanimous consent.

Mr. INGALLS. What is the use of retaining that provision?

Mr. FERRY. The question was up once before and several Senators, I think, objected to this being dispensed with.

Mr. INGALLS. It is never enforced.

Mr. FERRY. The Senator is correct; it is never enforced. It is always done by unanimous consent, and the committee thought it best that it should be ingrafted in the rule.

Mr. HAMLIN. I beg to dissent from the declaration that it is never enforced. I have seen it enforced in this body on several occasions. There have been bills, there may be again bills, introduced here which Senators believe to be improper subjects to be brought before the body. Such being the case, a Senator wants the right, and in this case the rule will give it to him of asking the judgment of the Senate whether the bill shall be received or not. It can do no harm. It will afford that protection if a case shall ever arise.

The PRESIDING OFFICER. Is there objection to the rule as reported? There being none it is adopted. The next will be read.

The Chief Clerk read as follows:

Bills—three readings on three different days.

23. Every bill and joint resolution shall receive three readings previous to its being passed; and the presiding officer shall give notice at each reading whether it be the first, second, or third; which readings shall be on three different days, unless the Senate unanimously direct otherwise.

The PRESIDING OFFICER. Is there objection to the rule as reported? There being no objection suggested, the rule is adopted. The next will be read.

The Chief Clerk read as follows:

Bills—first and second reading for reference.

24. No bill or joint resolution shall be committed or amended until it shall have been read twice; bills and joint resolutions introduced on leave, and bills and joint resolutions from the House of Representatives, shall be read once, and may be read twice, on the same day, if not objected to, for reference; but shall not be considered on that day, as in Committee of the Whole, nor debated, except for such reference, unless by unanimous consent.

The PRESIDING OFFICER. Is there objection to the rule as reported? There being no objection, the rule is adopted. The next will be read.

The Chief Clerk read as follows:

Bills—placed on Calendar.

25. Every bill and joint resolution reported from a committee, not having previously been read, shall be read once, and twice, if not objected to, on the same day, and be placed on the Calendar in the order in which the same may be reported; and every bill and joint resolution introduced on leave, and every bill and joint resolution of the House of Representatives which shall have received a first and second reading without being referred to a committee, shall, if objection be made to further proceeding thereon, also be placed on the Calendar.

The PRESIDING OFFICER. Is there objection to the rule as reported? There being no objection, the rule is adopted. The next will be read.

The Chief Clerk read as follows:

Bills—Committee of the Whole.

26. All bills and joint resolutions which shall have received two readings shall first be considered by the Senate in the same manner as if the Senate were in Committee of the Whole, after which they shall be reported to the Senate; and any amendments made in Committee of the Whole shall again be considered by the Senate, after which further amendment may be proposed. When a bill or resolution shall have been ordered to be read a third time, it shall not be in order to propose amendments, unless by unanimous consent, but it shall at all times be in order, before the final passage of any bill or resolution to move its commitment; and when the bill or resolution shall again be reported from the committee, it shall be placed on the Calendar, and when again considered by the Senate, it shall be as in Committee of the Whole.

The PRESIDING OFFICER. Is there any objection to the rule as reported? There being no objection, it is adopted. The next will be read.

The Chief Clerk read as follows:

AMENDMENTS.

Amendments—general appropriation bills.

27. All general appropriation bills shall be referred to the Committee on Appropriations, except bills making appropriations for rivers and harbors, which shall be referred to the Committee on Commerce; and no amendment shall be received to any general appropriation bill, the effect of which will be to increase an appropriation already contained in the bill, or to add a new item of appropriation, unless it be made to carry out the provisions of some existing law, or resolution previously passed by the Senate during that session; or unless the same be moved by direction of a standing or select committee of the Senate; or proposed in pursuance of an estimate of the head of some one of the Departments.

The PRESIDING OFFICER. Is there objection to the rule as reported?

Mr. HAMLIN. My impression is that the rule is well enough as it is, but I am not quite sure but that it would be wise to add the words "or treaty." A treaty, it is true, is the law. I had the impression that the old rule did contain that word.

Mr. ANTHONY. I think so.

Mr. FERRY. The Senator will see on the left-hand page the old rule.

Mr. HAMLIN. I think the word "treaty" ought to be in there. If there is a treaty obligation, I say the same power ought to exist as if it were in a law.

Mr. INGALLS. The language of the old rule is "treaty stipulation."

Mr. HAMLIN. I move to add the words "treaty stipulation" after the word "law;" so as to read: "unless it be made to carry out the provisions of some existing law or treaty stipulation, or resolution previously passed," &c.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Maine.

The amendment was agreed to.

The PRESIDING OFFICER. Is there objection to the rule as amended? The Chair hears none, and it will be regarded as agreed to. The next will be read.

The Chief Clerk read as follows:

Amendments—referred one day before proposed.

28. All amendments to general appropriation bills moved by direction of a standing or select committee of the Senate, proposing to increase an appropriation already contained in the bill, or to add new items of appropriation, shall, at least one day before they are offered, be referred to the Committee on Appropriations; and when actually proposed to the bill, no amendment proposing to increase the amount stated in such amendment shall be received; in like manner, amendments proposing new items of appropriation to river and harbor bills shall, before being offered, be referred to the Committee on Commerce; also, amendments to the bill establishing post-roads, proposing new post-roads, shall, before being offered, be referred to the Committee on Post-Offices and Post-Roads.

Mr. INGALLS. I observe that the committee have left out the proviso in the present Rule 30, which prohibits amendments whose object is to provide for private claims. Was the omission intentional?

Mr. FERRY. It is provided for in another rule. The Senator will see it as we approach it.

The PRESIDING OFFICER. There being no objection to the rule as reported, it will be regarded as adopted. The next will be read.

The Chief Clerk read as follows:

Amendments—general legislation—relevancy—may be laid on the table.

29. No amendment which proposes general legislation shall be received to any general appropriation bill; nor shall any amendment not germane or relevant to the subject-matter contained in the bill be received; nor shall any amendment to any item or clause of such bill be received which does not directly relate thereto; and all questions of relevancy of amendments under this rule, when raised, shall be submitted to the Senate and be decided without debate; and any amendment to a general appropriation bill may be laid on the table without prejudice to the bill.

The PRESIDING OFFICER. Is there objection to the rule as reported? There being no objection, the rule is adopted. The next will be read.

The Chief Clerk read as follows:

Amendments—private claims.

30. No amendment, the object of which is to provide for a private claim, shall be received to any general appropriation bill, unless it be to carry out the provisions of an existing law or a treaty stipulation, which shall be cited on the face of the amendment.

The PRESIDING OFFICER. If there be no objection, the rule is adopted. The next will be read.

Mr. ANTHONY. One objection strikes me to the twenty-ninth rule:

No amendment which proposes general legislation shall be received to any general appropriation bill.

That is a sound principle in legislation. There ought not be any legislation upon an appropriation bill; but I submit that that should be a joint rule. Now the other House sends us legislation on appropriation bills. If we are not allowed to put legislation on appropriation bills then we should also make a rule that we would not consider legislation upon an appropriation bill when it comes here. The House has the right to put legislation upon appropriation bills and we must act upon it; but we cannot put any legislation on appropriation bills, and so we restrict ourselves from a privilege which the House does not restrict itself in. Therefore I think this rule should be a joint rule. I agree to the soundness of the proposition and have several times called the attention of the Senate to it, and I think that it was on my motion the subject was referred to the Committee on Rules; but surely it seems to me, we ought not to restrict ourselves in a respect in which the House is not restricted.

Mr. SHERMAN. The rules of the House are more restrictive in this respect than the rules of the Senate, much more, and now they can only put on these provisions by a suspension of the rules and a two-thirds vote.

Mr. ANTHONY. But the appropriation bills come to us loaded with legislation.

Mr. SHERMAN. I know that; but only during the present Congress. They are generally put on by a two-thirds vote. We are now very good about these things, but formerly it was the Senate that loaded down the appropriation bills, and not the House.

Mr. FERRY. I ask the Senator from Rhode Island if it would not be an excellent way for the Senate to fortify itself by setting a good example to the House in this case. If the position is a sound one, as the Senator has happily remarked, then ought we not to include it in our rules, and, when such a bill comes here from the House with legislation, strike it out? The Senator from Ohio has stated that the House is more restricted than the Senate. If so, then we have not traveled as far as the House; but if they should overleap the barrier and send us legislation on appropriation bills we shall by our rule be inhibited from doing that and can send it back to the House stricken out, and the House will appreciate the force of the rule of the Senate and yield to it doubtless.

Mr. ANTHONY. I understand, of course, that if an appropriation bill comes to us from the House with legislation upon it we must consider that legislation because it is in the bill. We can reject the legislation, it is true; but I think if we restrict ourselves from putting legislation on an appropriation bill we should also restrict ourselves from considering legislation that comes to us on appropriation bills. If the House has the privilege I think we ought to have it. I should be very glad to see it taken from both.

Mr. ALLISON. I do not see how that is possible. Here an appropriation bill comes from the House with legislation in it. That bill must be referred to the Committee on Appropriations, and they must consider the legislation. They must either recommend its rejection in this body or its adoption, because it is there; it is put on there by a two-thirds vote of the House of Representatives. That is the only way the slightest legislation can be placed upon an appropriation bill in the House, as I understand, except under the new rule of last session which is a rule of economy, or was intended to be. It seems to me that this rule is about as it ought to be now.

Mr. FERRY. This is simply prohibiting the reception of a general amendment to an appropriation bill. That is all. It does not interfere with what appears in the bill as it comes from the House; it is only prohibitory to the Senate.

Mr. ANTHONY. Then would it not be advisable for us to adopt the same rule as is adopted in the House? The House puts on legislation by a two-thirds vote. Why not let us do it by a two-thirds vote? I do not propose any amendment. I only wished to call the attention of the committee to this, which seems to me to be restricting the privilege of the Senate; and although it is taking from us a privilege which I think we ought not to have, still I think that one House ought to have it if the other has, and that therefore this restriction should be by a joint rule.

The PRESIDING OFFICER. This rule having already been declared adopted, unless a motion to reconsider be made for the purpose of amendment the Clerk will report the next rule.

Mr. ANTHONY. I do not mean to make any motion.

The Chief Clerk read as follows:

Amendments—division of a question.

31. If the question in debate contain several propositions, any Senator may have the same divided, except a motion to strike out and insert, which shall not be divided; but the rejection of a motion to strike out and insert one proposition shall not prevent a motion to strike out and insert a different proposition; nor shall it prevent a motion simply to strike out; nor shall the rejection of a motion to strike out prevent a motion to strike out and insert. But pending a motion to strike out and insert, the part to be stricken out and the part to be inserted shall each be regarded for the purpose of amendment as a question; and motions to amend the part to be stricken out shall have precedence.

The PRESIDING OFFICER. Is there any objection to the rule as reported? There being none, the rule is adopted. The next will be read.

The Chief Clerk read as follows:

Amendments—filling blanks.

32. In filling blanks the largest sum and the longest time shall first be put.

The PRESIDING OFFICER. Is there objection to this rule? There is none, and it is adopted. The next will be read.

The Chief Clerk read as follows:

RESOLUTIONS.

Shall lie over one day.

33. All resolutions shall lie over one day for consideration, unless by unanimous consent the Senate shall otherwise direct.

The PRESIDING OFFICER. Is there any objection to this rule? It is adopted. The next will be read.

The Chief Clerk read as follows:

Resolutions—treated as bills.

34. Resolutions to which the approbation and signature of the President may be requisite, or which may grant money out of the contingent or any other fund, shall be treated in all respects in their introduction and form of proceeding in like manner with bills.

The PRESIDING OFFICER. Is there objection to the adoption of this rule? The Chair hears none. It is adopted. The next will be read.

The Chief Clerk read as follows:

Resolutions proposing amendments to the Constitution.

35. Joint resolutions proposing amendments to the Constitution shall be treated in all respects, in their introduction and form of proceeding in like manner with bills; but the concurrence of two-thirds of the Senators present shall not be requisite to decide any question on amendments nor extending to the merits, being short of the final question on the passage of the resolution, except a motion to postpone indefinitely, which shall be decided by a vote of two-thirds; but upon a question of insisting upon or receding from an amendment of the Senate to a resolution of the House of Representatives, or upon the final question of agreeing to an amendment of the House to a resolution of the Senate, and also upon agreeing to the report of a committee of conference upon any joint resolution proposing amendments to the Constitution, the vote shall be determined by two-thirds of the Senators present.

The PRESIDING OFFICER. Is there objection to the rule as reported?

Mr. INGALLS. The word "joint" seems to be superfluous in that rule. There is no such thing under the Constitution as a joint resolution, as I understand.

Mr. FERRY. That word may be stricken out.

The PRESIDING OFFICER. The Senator from Kansas moves to amend by striking out the word "joint." Is there objection? The Chair hears none, and the motion is agreed to. The rule, as amended, is adopted. The next will be read.

The Chief Clerk read as follows:

DEBATE.

A Senator may be called to order.

36. If any Senator, in speaking or otherwise, transgress the rules of the Senate the presiding officer shall, or any Senator may, call him to order; and when a Senator shall be so called to order he shall sit down, and shall not proceed without leave of the Senate, which leave, if granted, shall be upon motion that he be allowed to proceed in order; which motion shall then be in order and be determined without debate.

The PRESIDING OFFICER. Is there objection to the rule as reported? There being no objection, it is adopted. The next will be read.

The Chief Clerk read as follows:

Exceptionable words in debate taken down.

37. If a Senator be called to order for words spoken in debate, upon the demand of the Senator so called to order, or of any other Senator, the exceptionable words shall be taken down in writing.

The PRESIDING OFFICER. Is there any objection to the rule as reported? There being no objection, the rule is adopted.

The Chief Clerk read the next rule, as follows:

Senators not to be interrupted in debate.

38. The presiding officer shall name the Senator who is to speak, and in all cases the Senator who shall first rise and address the Chair shall speak first. No Senator shall speak to or interrupt another Senator in debate without his consent; and to obtain such consent he shall first address the Chair.

The PRESIDING OFFICER. Is there any objection to the rule as reported? There being no objection, it is adopted. The next will be read.

The Chief Clerk read as follows:

Limit in debate.

39. Every Senator, when he speaks, shall address the Chair, standing in his place; and no Senator shall speak more than twice upon any one question in debate on the same day without leave of the Senate, which shall be determined without debate.

Mr. ALLISON. What does the committee mean by the words "on the same day without leave of the Senate?" I know Senators who rise here a dozen times a day and speak on questions, without asking leave.

Mr. FERRY. By unanimous consent. "Silence gives consent" is a common maxim. It is a very thoroughly practiced maxim in this Senate.

Mr. ALLISON. I only wanted to know what the committee understood by asking leave.

The PRESIDING OFFICER. No objection being made, the rule will be considered as adopted. The next will be read.

The Chief Clerk read as follows:

ORDER.

Questions of order.

40. A question of order may be raised at any state of the business, and, when raised, shall be decided by the presiding officer, without debate, subject to an appeal to the Senate; or he may submit any question of order for the decision of the Senate.

The PRESIDING OFFICER. Is there any objection to the rule as reported? There being no objection, the rule is adopted. The next will be read.

The Chief Clerk read as follows:

Appeals on questions of order.

41. When an appeal is taken from the decision of the Chair, any subsequent question of order which may arise before that appeal shall be determined, likewise any appeal therefrom, shall be decided without debate. All appeals taken when a proposition not debatable is pending shall also be decided without debate; and any appeal may be laid on the table without prejudice to the pending proposition, and thereupon shall be held as affirming the decision of the Chair.

The PRESIDING OFFICER. Is there any objection to the rule as reported? There being no objection, the rule is adopted. The next will be read.

The Chief Clerk read as follows:

MOTIONS.

Motions seconded and when to be reduced to writing.

42. All questions shall be put by the presiding officer of the Senate, and before a motion be debated it shall be seconded, and if desired by the presiding officer, or any Senator, it shall also be reduced to writing.

The PRESIDING OFFICER. Is there any objection to the rule as reported? There being none, it is adopted. The next will be read.

The Chief Clerk read as follows:

Precedence of motions.

43. When a question is pending, no motion shall be received but—
To adjourn,
To adjourn to a day certain, or that when the Senate adjourn it shall be to a day certain,
To take a recess,
To proceed to the consideration of executive business,
To lay on the table,
To postpone indefinitely,
To postpone to a day certain,
To commit,
To amend;
which several motions shall have precedence in the order in which they stand arranged; and the motions relating to adjournment, to take a recess, to proceed to executive business, and to lay on the table, shall be decided without debate.

The PRESIDING OFFICER. Is there any objection to the rule as reported? There being none, the rule is adopted. The next will be read.

The Chief Clerk read as follows:

Motion may be withdrawn or modified.

44. Any motion or resolution may be withdrawn or modified by the mover at any time before a decision, amendment, or ordering of the yeas and nays, except a motion to reconsider, which shall not be withdrawn without leave of the Senate.

The PRESIDING OFFICER. Is there objection to the rule as reported? There being none, the rule is adopted. The next will be read.

The Chief Clerk read as follows:

Preamble may be withdrawn or laid on the table.

45. When a bill or resolution is accompanied by a preamble, the question shall first be put on the bill or resolution, and then on the preamble, which may be withdrawn by the mover before an amendment of the same or ordering of the yeas and nays; or it may be laid on the table without prejudice to the bill or resolution, and shall be a final disposition of such preamble.

The PRESIDING OFFICER. Is there objection to the rule as reported? There being none, the rule as reported is adopted.

Mr. ALLISON. I move that the Senate proceed to the consideration of executive business.

Mr. FERRY. Can we not go on with the rules?

Mr. ALLISON. We cannot finish them to-night.

The PRESIDING OFFICER. The question is on the motion of the Senator from Iowa.

The motion was agreed to; and the Senate proceeded to the consideration of executive business.

After six minutes spent in executive session, the doors were reopened, and (at four o'clock and eight minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

MONDAY, *January* 15, 1877.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of Friday last was read and approved.

ORDER OF BUSINESS.

Mr. HEWITT, of New York. I ask unanimous consent to present a petition.

Mr. HALE. I call for the regular order.

Mr. HEWITT, of New York. I ask unanimous consent to present a petition signed by 8,000 citizens of the State of Vermont.

Mr. HALE. I must insist on the regular order. The gentleman from New York will have an opportunity to present it when his State is called.

Mr. HEWITT, of New York. But it is not from my own State; it comes from another State.

Mr. HALE. That makes no difference, the gentleman from New York can present a paper from any State when his State is called.

The SPEAKER. The Chair desires to state that upon the 19th day of January this House directed, by resolution, the Sergeant-at-Arms to bring to the bar of the House William Orton. The Chair understands that the Sergeant-at-Arms is not now present.

After a pause,

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED.

Mr. HARRIS, of Georgia, from the Committee on Enrolled Bills, reported that the committee had examined and found truly enrolled bills and joint resolutions of the following titles; when the Speaker signed the same:

An act (H. R. No. 2835) for the relief of R. J. Henderson, of Newton County, Missouri; and

An act (H. R. No. 2300) granting a pension to Margaret C. Bell.

A joint resolution (H. R. No. 171) in reference to the congratulations from the republic of Pretoria, South Africa; and

A joint resolution (H. R. No. 172) relating to congratulations from the Argentine Republic.

NATIONAL MEDICAL LIBRARY.

The SPEAKER, by unanimous consent, laid before the House the memorial of the International Medical Congress, held at Philadelphia, Pennsylvania, in 1876, to the Congress of the United States, in behalf of the National Medical Library, for the completion and publication of its catalogue; which was referred to the Committee on Appropriations.

The SPEAKER also, by unanimous consent, laid before the House resolutions relative to the National Medical Library, passed by the International Medical Congress, at Philadelphia, in September, 1876; which were referred to the Committee on Appropriations.

MEXICAN OUTRAGES.

The SPEAKER also, by unanimous consent, laid before the House a letter from certain United States soldiers and citizens of Galveston, Texas, relative to outrages committed by the Mexican authorities; which was referred to the Committee on Military Affairs.

FOURTH ARKANSAS MOUNTED VOLUNTEERS.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of the Interior, relative to the bill for the relief of the Fourth Arkansas Mounted Volunteers; which was referred to the Committee on Military Affairs.

RESERVATION IN COLORADO.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of War, transmitting a report relative to the establishment of the agency on the south part of the reservation in Colorado; which was referred to the Committee on Indian Affairs.

PRINTING OF THE PATENT OFFICE.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of the Interior, relative to appropriations for the printing in the Patent Office; which was referred to the Committee on Appropriations.

RECUSANT WITNESS—WILLIAM ORTON.

The SERGEANT-AT-ARMS appeared at the bar of the House, having in custody William Orton, and said:

In obedience to the order of the House, I have arrested and now have at its bar the witness William Orton.

The SPEAKER. Mr. Orton, it is the duty of the Chair to ask you what excuse you have to offer for your failure to appear before a committee of this House sitting at New Orleans, Louisiana, to testify, and further, to produce before said committee, in compliance with a *subpœna duces tecum*, duly served on you and dated December 18, 1876, certain telegrams therein called for?

Mr. ORTON, (the recusant witness.) My answer is in writing and sworn to. I respectfully ask that it be read by the Clerk.

The SPEAKER. The witness submits an answer in writing and asks that the same be read by the Clerk. The Chair hears no objection, and the Clerk will read the answer.

The Clerk read as follows:

To the honorable the House of Representatives:

I understand that I am arraigned before this honorable House to answer for a breach of its privileges and contempt of its authority, supposed and alleged to have been committed by me—

First. By failing to appear and testify at New Orleans on the 26th day of December, 1876, as a witness before the select committee, of which Hon. WILLIAM R. MORRISON is chairman; and

Second. In not bringing before said committee certain papers as required by a certain subpœna served on me the 19th day of December, 1876, as follows:

By authority of the House of Representatives of the Congress of the United States of America.

To JOHN G. THOMPSON, Esq.,
Sergeant-at-Arms, or his special messenger:

You are hereby commanded to summon William Orton, president of the Western Union Telegraph Company, to be and appear before the select committee of the House of Representatives of the United States, of which Hon. WILLIAM R. MORRISON is chairman, to investigate the recent elections in Louisiana, and to bring with you all telegrams in your possession or under your control received or sent by William E. Chandler, Zachariah Chandler, J. Don Cameron, J. M. Edmunds, James Casey, William Pitt Kellogg, S. B. Packard, John F. Casey, J. R. G. Pitkin, Henry C. Dibbell, H. C. Warmoth, George W. Carter, and General Augur, from and at New Orleans, Louisiana, Washington City, District of Columbia, New York City, New York, since the 1st day of September last, in their chamber, in the city of New Orleans, Louisiana, on 26th day of December, 1876, at the hour of twelve o'clock m., then and there to testify touching matters of inquiry committed to said committee; and he is not to depart without leave of said committee.

Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 18th day of December, 1876.

[SEAL.] SAM. J. RANDALL, *Speaker.*

Attest:

GEO. M. ADAMS, *Clerk.*

At the time of the service of said subpœna upon me, and for a long time before, I was and had been suffering from ailments of a character which then and at all times since rendered it impossible for me to take any long journey.

I am advised by my attending physician, Dr. William J. Baner, of New York, who has been my family physician for many years, and under whose treatment I then was and still am, and also by Drs. William Tod Helmuth and William Bodenhamer, surgeons of the city of New York, both of whom in conjunction with Dr. Baner have had me under treatment during the past two months, that I could not at the time required by said subpœna, or at any time since, have made such or any similar journey without suffering serious injury to my health.

As soon as possible after receiving the subpœna above referred to and consulting my medical adviser, I addressed to the honorable Speaker of this House a letter, from which the following is an extract, and to the contents of which letter I made oath, as appears upon the foot of said extract:

EXECUTIVE OFFICE, WESTERN UNION TELEGRAPH COMPANY,
New York, December 23, 1876.

SIR: * * * I beg leave respectfully to inform you that, if any such messages have ever existed, (of which I have no knowledge,) I have never had, either personally or officially, any possession of them; that I have never had any control over them except as an agent of the Western Union Telegraph Company, through and by the co-operation of subordinate agents; that the Western Union Telegraph Company has, without any knowledge or participation on my part, taken from me all power and control over all messages now in the possession of the company. I beg leave, therefore, respectfully, to be excused from compliance with the above-mentioned requirement, it never having been at any time since the service of the subpœna and being not now in my power to comply with the same.

Very respectfully, &c.,

WILLIAM ORTON.

Hon. SAMUEL J. RANDALL,
Speaker of the House of Representatives, Washington, D. C.

CITY AND COUNTY OF NEW YORK, *ss:*

Personally appeared before me, the 23d day of December, 1876, William Orton, to me personally known, who, being duly sworn, deposed that the annexed statement, addressed to Hon. SAMUEL J. RANDALL, Speaker of the House of Representatives, is true, and that the same is made as and for his return to the certain paper purporting to be a subpœna referred to therein.

[SEAL.] WILLIAM ARNOUX,
Notary Public, City and County of New York.

I also at the same time addressed to Hon. WILLIAM R. MORRISON a letter, of which the following is a copy:

EXECUTIVE OFFICE, WESTERN UNION TELEGRAPH COMPANY,
New York, December 23, 1876.

SIR: Accompanying this I send you a communication made by me this day to the Speaker of the House of Representatives in respect to a paper served upon me, and which requires the Sergeant-at-Arms of the House of Representatives to summon me to appear before your committee at New Orleans on the 26th of December. I do not suppose it is thought I possess any personal knowledge concerning any of the matters to be investigated by that committee.

I am but now recovering from a long and serious illness, and my health is in such a state that I could not, without great inconvenience and risk as well as unnecessary expense to the Government, make so long a journey as that to New Orleans. I trust, therefore, that I may be relieved from personal attendance, and that such report as you may think proper to make to the Speaker of the House may not involve me in a contempt for a failure to appear personally. I possess no knowledge in respect to any matter confided to you for investigation or in respect to the papers which you seek, which would be of any value to you if I were there.

I am, very respectfully,

WILLIAM ORTON.

Hon. WILLIAM R. MORRISON,
Chairman, New Orleans, Louisiana.

All the statements contained in those letters were and are true.

I have obtained and caused to be placed in the hands of the honorable the Speaker, on the 12th of January, the respective certificates of the three medical men named above, in order that there might be full opportunity to examine them and verify their contents previous to my arraignment, preferring that course to spreading upon the records of this House matters of this personal character. The said certificates are, of course, at the service of the House, to be treated as a part of my answer, if the House shall see fit.

After the writing of the letter above set forth to the Speaker of this House, I was served with another and different subpœna, as follows:

By authority of the House of Representatives of the Congress of the United States of America.

To John G. THOMPSON, Esq.,
Sergeant-at-Arms, or his special messenger:

You are hereby commanded to summon William Orton, president of the Western Union Telegraph Company, to be and appear before the select committee of the House of Representatives of the United States, of which Hon. WILLIAM R. MORRISON is chairman, to investigate the recent election in Louisiana; and said William Orton is hereby commanded to bring with him all telegrams in his possession, or under his control, received or sent by William E. Chandler, Zach. Chandler, J. Don Cameron, J. M. Edmunds, James Casey, William Pitt Kellogg, S. B. Packard, John F. Casey, J. R. G. Pitkin, Henry C. Dibbell, H. C. Warmoth, George W. Carter, and General Augur, from and at New Orleans, Louisiana, Washington City, District of Columbia, New York City, New York, since the 1st day of September last, and to produce the same to said committee, in their chamber, in the city of New Orleans, Louisiana, forthwith, and then and there to testify touching matters of inquiry committed to said committee; and he is not to depart without leave of said committee. Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 26th day of December, 1876.

[SEAL.] SAM. J. RANDALL, *Speaker.*

Attest:

GEO. M. ADAMS, *Clerk.*"

Upon the service of that paper I addressed to the honorable the Speaker the following, which I have his permission to embody in this answer:

EXECUTIVE COMMITTEE, WESTERN UNION TELEGRAPH COMPANY,
New York, January 2, 1877.

SIR: In my sworn return to the paper served upon me December 19, 1876, purporting to require me to appear at New Orleans on the 26th of December, 1876, I stated as to certain telegraphic messages described there in that, if such messages ever existed, (of which I had no knowledge,) they had never been in my possession, and that I had no power to comply with any demand to produce them. At the same time, I communicated to Hon. WILLIAM R. MORRISON the personal reasons affecting my health, which rendered it impracticable for me to go to New Orleans at this time, and informing him of the official return made to you. Knowing that no person could suppose that I possessed knowledge upon any of the subjects confided to the committee, I assumed that my personal attendance without the papers in question was not wanted and would be excused, and so informed Mr. MORRISON.

On the 27th of December I was served with another paper requiring me to appear at New Orleans forthwith, bringing the papers before described. As to these papers, I repeat my former return, the facts concerning them having in no wise changed.

As to the required journey to New Orleans, I beg respectfully to state that I am not yet recovered from a painful illness and am still under surgical advice and treatment. I am, therefore, reluctantly compelled to choose between the consequences of traveling fifteen hundred miles at this inclement season, under the warning of my physician that I should incur great risk by so doing, and such other consequences as the justice and magnanimity of the House of Representatives may think suitable under the circumstances for an immaterial disobedience of its process involving a merely technical contempt, if any.

I anticipate a compulsory journey to Washington at the command of the House or of the Senate, (by whom I am summoned to be in Washington at the same time that your subpœna requires me to be in New Orleans, and to whose demand for messages I have made a similar answer.) If at that, or any time, I am called to answer any supposed contempt for this decision, I must, after pleading such matters of legal defense as I may be advised and showing the facts above stated, take all such consequences as the law inflicts.

Both official and personal respect to you seem to require me to notify you as soon as, after consultation with my physician, I had arrived at the determination expressed above. But this letter is not written with any view to publication, unless subsequent events should make it necessary.

I shall make oath to the statement herein to serve as my formal return to the paper served upon me.

Very respectfully,

WILLIAM ORTON.

Hon. SAMUEL J. RANDALL,
Speaker of the House of Representatives, Washington, D. C.

CITY AND COUNTY OF NEW YORK, *ss:*

Personally appeared before me, the 2d day of January, 1877, William Orton, to me personally known, who, being duly sworn, deposed that the annexed statement, addressed to Hon. SAMUEL J. RANDALL, Speaker of the House of Representatives, is true, and that the same is made as and for his return to the certain paper purporting to be a subpœna referred to therein.

[SEAL.] WM. ARNOUX,
Notary Public City and County of New York.

Prior to the service of any subpœna upon me, I had, being then in Washington, addressed to Hon. J. PROCTOR KNOTT, chairman of the Judiciary Committee, the following letter:

WESTERN UNION TELEGRAPH COMPANY.
Washington, D. C., December 18, 1876.

SIR: On Saturday last the House of Representatives referred to the Judiciary Committee a communication from Hon. WILLIAM R. MORRISON, New Orleans, chairman of the House committee for the investigation of the election and canvass in the State of Louisiana and elsewhere, to which was appended a communication which I had addressed to Mr. MORRISON, giving reasons why the Western Union Telegraph Company should not be required to furnish the messages of sundry persons named in subpœnas which had been served upon certain employés of the company.

I regret that the motive of my action in this matter has been misunderstood, and that an impression appears to prevail in some quarters that, for political reasons, I desire to delay and embarrass the investigation which the House has ordered.

I think it due to your committee, no less than to myself, to make to you the following statement:

While the canvass of the presidential vote was in progress in several of the States, Dr. Norvin Green, a vice-president of the company, and my chief assistant, had a consultation with me at my house, to which I had been confined several weeks by illness, at which it was decided that the political messages of both parties sent from and received at stations nearest the headquarters of the two national committees, to and from Washington, Columbia, (South Carolina,) Tallahassee, New Orleans, San Francisco, Portland and Salem, (Oregon,) and several other cities, including relay copies at repeating stations, should be removed from such offices and forwarded to places of greater security, and with a view to their destruction. Instructions were issued to have this plan promptly carried out, and before any of the subpœnas were issued much of the work had been accomplished. Dr. Green is a well-known citizen of Kentucky, who has held prominent positions in that State, and is esteemed wherever known for his high character. The fact that he is and has always been in politics a democrat should relieve him at least from the imputation that he is seeking to cover up the acts of his political opponents by thwarting an investigation carried on by his political friends. Dr. Green has had the whole charge of this business at all stations south of New York, while I have given the directions at the western cities and the Pacific coast.

To what extent it would be possible to produce the messages covered by the subpœnas heretofore issued, I am unable to say, but that the majority have been removed from the sending and receiving stations is undoubtedly true, and equally so that their production would be attended with serious difficulty.

The sole motive for taking the course above described was the protection of the affairs of our customers from public exposure. I distinctly disclaim, in my own behalf, as well as on behalf of my business associates, any desire or intention to thwart the work of the committee of the House or in any way to show disrespect for its authority. Nor am I disposed to raise the question that telegrams are, under existing laws, privileged communications, nor that the House has not the power to compel their production. But I submit that the senders of twenty-five millions of messages a year, representing as they do the capital, the enterprise, and the intelligence of the country in every department of human affairs, have peculiar claims upon Congress for protection from the seizure and search of their private communications, and especially from any use of them which would be liable to intensify political excitement.

It may not be out of place to say, in this connection, that no person of either political party has directly or indirectly advised or requested the withholding of messages in this case, and it follows necessarily that no "protection" has been offered or asked for so doing.

I am, with high regard, your obedient servant,

WILLIAM ORTON.

Hon. J. PROCTOR KNOTT,
Chairman Judiciary Committee House of Representatives.

I am the president of the Western Union Telegraph Company, but as such I possess no powers except such as are conferred upon me by the by-laws of the company, a copy of which will be deposited with the Speaker, or from time to time by the board of directors or executive committee exercising their power *ad interim*. These powers have never included any charge, custody, possession, or knowledge of messages delivered to the company for transmission. The powers and duties of the president are, in his absence from the executive office in New York, devolved by the by-laws upon one of the vice-presidents of the company. The subpœna in this case was served upon me in Washington on the 19th of December.

I have made inquiry from Mr. Whitney, manager of the company's office in Washington, who informs me, and I believe the same to be true, that there were no messages of the description named in the subpœna in any Washington office at that date, and that in response to a similar subpœna he had some time before that date made oath to that effect.

I returned to New York on the 20th of December, and found, as stated to the Speaker in my letter of December 23, that the company had deprived me of any power which I might otherwise have possessed over any messages in the possession of the company. This was done by a resolution of the executive committee at its regular weekly meeting, passed during my absence and without knowledge or participation on my part, as follows:

"*Resolved*, That all messages, whether originals or copies, in the offices of this company are hereby declared to be in the exclusive custody and under the control of the executive committee, acting by resolution, and that no officer of the company shall have authority to take or remove them from the actual possession in which they at present are without the consent and direction of this committee or of the board of directors."

Subsequently the board of directors passed the following resolutions:

"*Resolved*, That the Western Union Telegraph Company regards itself as the confidential agent of such of the people of the United States as may wish to employ its agencies for the transmission of communications by telegraph, and bound to resist by every lawful means all publications or examination of its records.

"*Resolved*, That, excepting such messages as may be directed by the sender to be preserved for a period not exceeding six months, the executive committee is hereby directed to provide in the future for such speedy destruction of all written messages as the necessary keeping of accounts between the respective offices of the company will allow.

"*Resolved*, That the board of directors hereby approve the action of the executive committee in removing all messages now on hand from the control or possession of any of its officers."

I was not present at and did not participate in these proceedings.

I do not know and have no reason to believe that any such messages as those described have ever been in possession of the Western Union Telegraph Company, except that I recognize among the names mentioned those of several persons of prominence who may fairly be presumed to have used the telegraph. I have never at any time since the removal of the messages from New Orleans (under the decision arrived at in October last, as stated in my letter to Mr. KNOTT) had, nor have I now, any possession, custody, or control of said messages or any of them.

I do not deny that in failing to appear to testify I have subjected myself to a charge of technical contempt. I distinctly disavow any such intention; and respectfully submit that the circumstances stated above ought to excuse me for not making a journey to New Orleans merely to inform the special committee, as I had already under oath informed this House through the Speaker, that I had no messages to produce.

Being informed that the House have in the case of Mr. Barnes passed upon various other matters of defense adversely to my views, I shall not detain the House by a repetition of them at this time, and now respectfully ask to be discharged from custody.

It is perhaps proper to add that I have never had any objection, except the long journey necessarily involved, to appear before the special committee to testify; and that I shall be ready and willing to appear before that committee on its return, or to appear now before any other committee for any examination which the House may think proper.

WILLIAM ORTON.

Sworn and subscribed to before me this 15th day of January, A. D. 1877.
[SEAL.] HENRY R. ELLIOTT,
United States Commissioner for the District of Columbia.

The SPEAKER. The Chair gathers from the reading of the answer of the witness that reference is made in it to a letter dated January, 1877, addressed to the Chair, and the writer states that a portion of that letter was not intended for publication. The Chair did not gather from the reading whether his reply was also embraced with that letter. The Chair will therefore ask permission to lay before the House the reply which he made by telegraph to Mr. Orton, in order that the record of the facts may be complete.

The Clerk read as follows:

WASHINGTON, D. C., *January* 3, 1877.

WILLIAM ORTON, Esq.,
President Western Union Telegraph Company:

Yours of the 2d instant received. As I have before stated, I have no power to release you from your duty to appear in person at the time and place and before the committee, as directed by the subpœnas heretofore served upon you, nor have I authority to pass upon the validity of your excuse.

Very respectfully,

SAMUEL J. RANDALL, *Speaker.*

Mr. HUNTON. I offer the resolution which I send to the Clerk's desk, and upon it I call for the previous question.

The Clerk read as follows:

Resolved, That the report of the committee of which WILLIAM R. MORRISON is chairman, the answer just read to the House, and all other papers relating to a breach of the privileges of this House and contempt of its authority, alleged to have been committed by William Orton, now in custody and at the bar of the House, be referred to the Committee on the Judiciary with instructions to report as early as practicable what action in their judgment should be taken by the House in relation thereto, and that the said William Orton be kept in the custody of the Sergeant-at-Arms of this House until discharged by order of the House.

The previous question was seconded and the main question ordered; and under the operation thereof the resolution was adopted.

Mr. HUNTON moved to reconsider the vote by which the resolution was adopted; and also moved to lay the motion to reconsider on the table.

The latter motion was agreed to.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of its clerks, informed the House that the Senate had passed, without amendment, a bill of the House of the following title:

A bill (H. R. No. 4281) to amend an act entitled "An act authorizing the repavement of Pennsylvania avenue," and the act amendatory thereof.

The message further announced that the Senate insisted upon its amendments disagreed to by the House to the bill (H. R. No. 2043) to improve the law in relation to dower in the District of Columbia, and agreed to the conference asked by the House on the disagreeing votes of the two Houses thereon, and had appointed as the conferees on the part of the Senate Mr. WRIGHT, Mr. INGALLS, and Mr. STEVENSON.

The message also announced that the Senate had passed, with amendments in which the concurrence of the House was requested, bills of the House of the following titles:

A bill (H. R. No. 3156) to perfect the revision of the statutes of the United States; and

A bill (H. R. No. 3741) amending an act incorporating the proprietors of Glenwood Cemetery.

The message also announced that the Senate had passed and requested the concurrence of the House in a resolution to print 5,000 additional copies of the testimony taken before the Committee on Privileges and Elections in relation to the late presidential election in the States of Louisiana, Florida, and South Carolina, and to the casting of the electoral votes in the State of Oregon.

MESSAGE FROM THE PRESIDENT.

A message, in writing, from the President was communicated to the House by Mr. GRANT, his Private Secretary.

ORDER OF BUSINESS.

Mr. COCHRANE. I ask unanimous consent to submit for consideration and adoption at this time a resolution which I send to the Clerk's desk.

Mr. HENDEE. I call for the regular order.

The SPEAKER. The regular order being called for, the morning hour commences at one o'clock, and this being Monday, the first business in order is the call of States and Territories, beginning with the State of Maine, for the introduction of bills and joint resolutions for reference to their appropriate committees, not to be brought back on motions to reconsider. Under this call, memorials and resolutions of State and territorial Legislatures may be presented for reference and printing.

COURTS OF THE DISTRICT OF COLUMBIA.

Mr. FRYE introduced a bill (H. R. No. 4396) to re-organize the courts of the District of Columbia; which was read a first and second time.

Mr. WHITE. I call for the reading of the bill in full.

The bill was read.

Mr. FRYE. I move that the bill be referred to the Committee on the Judiciary and printed.

Mr. HENDEE. I think this bill should go to the Committee for the District of Columbia, unless the gentleman who introduced it has a preference for the Committee on the Judiciary. The Committee for the District of Columbia has now and has had this matter under consideration, and it seems to me that it ought not to be taken away from it.

Mr. FRYE. It is a matter in which I have no pride of opinion.

The motion of Mr. HENDEE was agreed to; and the bill was accordingly referred to the Committee for the District of Columbia, and ordered to be printed.

FRANCIS M. STRONG AND THOMAS ROSS.

Mr. HENDEE introduced a bill (H. R. No. 4397) for the relief of Francis M. Strong and Thomas Ross; which was read a first and second time, referred to the Committee on Patents, and ordered to be printed.

FISHERIES.

Mr. HENDEE also presented a joint resolution of the Legislature of the State of Vermont, relative to fisheries in waters within the jurisdiction in part of different States and the British provinces; which was referred to the Committee on Foreign Affairs, and ordered to be printed.

REPEAL OF THE BANKRUPT LAW.

Mr. HENDEE also presented a joint resolution of the Legislature of the State of Vermont, asking for the repeal of the bankrupt law; which was referred to the Committee on the Judiciary, and ordered to be printed.

LEWIS COLLIER.

Mr. DENISON introduced a bill (H. R. No. 4398) for the relief of Lewis Collier; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

SIOUX, ARAPAHOE, AND CHEYENNE INDIANS.

Mr. SEELYE introduced a bill (H. R. No. 4399) to ratify an agreement with certain bands of the Sioux Nation of Indians, and also with the Northern Arapahoe and Cheyenne Indians; which was read a first and second time.

Mr. HALE. I ask that the bill be read in full.

The bill was read, referred to the Committee on Indian Affairs, and ordered to be printed.

SOPHIA VINCENT.

Mr. WILLIAMS, of New York, introduced a bill (H. R. No. 4400) granting arrears of pension to Sophia Vincent, widow of Martin Vincent, late of Company E, Fourteenth Regiment United States Infantry; which was read a first and second time, (the first reading being in full upon the call of Mr. KELLEY,) referred to the Committee on Invalid Pensions, and ordered to be printed.

PAY OF WATCHMEN, ETC.

Mr. NORTON introduced a bill (H. R. No. 4401) allowing pay to certain watchmen and others therein named; which was read a first and second time, referred to the Committee on Appropriations, and ordered to be printed.

GEORGE W. WELSH.

Mr. WALLACE, of Pennsylvania, introduced a bill (H. R. No. 4402) for the relief of George W. Welsh, of Beaver Falls, Pennsylvania; which was read a first and second time, (the first reading being in full on the call of Mr. KELLEY,) referred to the Committee of Claims, and ordered to be printed.

CASUALTIES IN THE UNITED STATES NAVY.

Mr. MAISH introduced a joint resolution (H. R. No. 183) to authorize and require the Public Printer to print and bind 5,000 copies of the surgical report of casualties in the United States Navy from 1860 to 1870; which was read a first and second time, referred to the Committee on Printing, and ordered to be printed.

CATHARINE CHAMBERLAIN.

Mr. STENGER introduced a bill (H. R. No. 4403) granting a pension to Catharine Chamberlain, widow of David Chamberlain, late first sergeant Company D, Twenty-first Regiment Pennsylvania Cavalry; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

ANN MARIA BISCOE.

Mr. HENKLE introduced a bill (H. R. No. 4404) granting a pension to Ann Maria Biscoe, widow of General George W. Biscoe, late major of the Nineteenth Regiment of Maryland Volunteers of the war of 1812; which was read a first and second time, referred to the Committee on Revolutionary Pensions, and ordered to be printed.

DISTRICT COURT, EASTERN DISTRICT OF VIRGINIA.

Mr. GOODE introduced a bill (H. R. No. 4405) to amend section 571 of the Revised Statutes of the United States so as to confer circuit-court jurisdiction upon the district court of the United States for the eastern district of Virginia; which was read a first and second time, (the first reading being in full on the call of Mr. HALE,) referred to the Committee on the Judiciary, and ordered to be printed.

J. HENRY POLLARD.

Mr. CABELL (for Mr. HUNTON) introduced a bill (H. R. No. 4406) for the relief of J. Henry Pollard and wife; which was read a first and second time, (the first reading being in full on the call of Mr. HUBBELL,) referred to the Committee on the Judiciary, and ordered to be printed.

IMPROVEMENT OF COOSA RIVER.

Mr. FELTON introduced a bill (H. R. No. 4407) to appropriate money for the improvement of the Coosa River from Rome, Georgia, to the crossing of the Rome and Selma Railroad bridge in Alabama; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

IMPROVEMENT OF SAVANNAH HARBOR.

Mr. HARTRIDGE introduced a bill (H. R. No. 4408) making an appropriation to continue the improvement of the harbor at Savannah, Georgia; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

BREAKWATER IN MOBILE HARBOR.

Mr. BRADFORD presented a joint resolution of the General Assembly of the State of Alabama, asking for the passage of an act of Congress approving the act of the General Assembly of Alabama, authorizing the construction of a breakwater in the bay and harbor of Mobile; which was referred to the Committee on Commerce, and ordered to be printed.

IMPROVEMENT OF COOSA RIVER.

Mr. CALDWELL, of Alabama, introduced a bill (H. R. No. 4409) authorizing an appropriation to remove obstructions in the Coosa River between Rome, Georgia, and the bridge of the Selma, Rome and Dalton Railroad across said river in Alabama; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

COUNT OF THE ELECTORAL VOTE.

Mr. FOSTER introduced a bill (H. R. No. 4410) providing for the count of the electoral vote; which was read a first and second time, referred to the select committee on counting the electoral vote, and ordered to be printed.

JOHN W. SKILES.

Mr. LAWRENCE introduced a bill (H. R. No. 4411) for the relief of John W. Skiles; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

RAND GAS-LIGHT COMPANY.

Mr. NEAL (by request) introduced a bill (H. R. No. 4412) to incorporate the Rand Gas-light Company of the District of Columbia; which was read a first and second time, referred to the Committee for the District of Columbia, and ordered to be printed.

J. B. CORNELL AND OTHERS.

Mr. BANNING (by request) introduced a bill (H. R. No. 4413) for the relief of J. B. Cornell and others; which was read a first and second time, referred to the Committee on Naval Affairs, and ordered to be printed.

GEORGE TRAPNALL.

Mr. DURHAM introduced a bill (H. R. No. 4414) for the relief of George Trapnall, of Harrodsburgh, Kentucky; which was read a first and second time, referred to the Committee on War Claims, and, with the accompanying papers, ordered to be printed.

ALDERSON T. KEAN.

Mr. DURHAM also introduced a bill (H. R. No. 4415) for the benefit of Alderson T. Kean, late first lieutenant Company I, First Kentucky Cavalry Volunteers; which was read a first and second time, referred to the Committee on War Claims, and ordered to be printed.

B. F. RONEY.

Mr. MILLIKEN introduced a bill (H. R. No. 4416) for the relief of B. F. Roney; which was read a first and second time, referred to the Committee on War Claims, and ordered to be printed.

IMPROVEMENT OF TENNESSEE RIVER.

Mr. ATKINS introduced a bill (H. R. No. 4417) to improve the navigation of the Tennessee River; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

WILLIAM L. SCRUGGS.

Mr. HAMILTON, of Indiana, introduced a bill (H. R. No. 4418) to pay William L. Scruggs, late minister at Bogota, from October 10 to November 21, 1876; which was read a first and second time, referred to the Committee on Foreign Affairs, and, with the accompanying papers, ordered to be printed.

THOMAS E. MALEY.

Mr. HUNTER (by request) introduced a bill (H. R. No. 4419) for the relief of Thomas E. Maley; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

MRS. REBECCA HALL.

Mr. MORGAN introduced a bill (H. R. No. 4420) granting a pension to Mrs. Rebecca Hall, widow of George R. Hall; which was read a first and second time, referred to the Committee on Pensions, and ordered to be printed.

JURORS, UNITED STATES COURTS.

Mr. GAUSE introduced a bill (H. R. No. 4421) to repeal section 820 of the Revised Statutes; which was read a first and second time, referred to the Committee on the Judiciary, and ordered to be printed.

MRS. MARTHA FLINT.

Mr. GAUSE also introduced a bill (H. R. No. 4422) for the relief of Mrs. Martha Flint, of Phillips County, Arkansas; which was read a first and second time, referred to the Committee on War Claims, and ordered to be printed.

GOVERNMENT CENTENNIAL EXHIBITS.

Mr. WILSHIRE introduced a joint resolution (H. R. No. 184) to appoint a joint committee to inquire into the propriety of providing suitable buildings for the reception and preservation of centennial exhibits donated to the United States; which was read a first and second time, referred to the Committee on Public Buildings and Grounds, and ordered to be printed.

JOHN H. RUSSELL.

Mr. WALDRON (by request) introduced a bill (H. R. No. 4423) for the relief of John H. Russell; which was read a first and second time, referred to the Committee on Private Land Claims, and ordered to be printed.

PUBLIC LANDS, FLORIDA.

Mr. FINLEY introduced a bill (H. R. No. 4424) to limit the purchase of public lands by private entry and public sale in the State of Florida; which was read a first and second time, referred to the Committee on Public Lands, and ordered to be printed.

PATENTS.

Mr. SAMPSON introduced a bill (H. R. No. 4425) to amend section 4886 of the Revised Statutes, in relation to obtaining patents; which was read a first and second time, referred to the Committee on Patents, and ordered to be printed.

IMPROVEMENT OF KENOSHA HARBOR.

Mr. WILLIAMS, of Wisconsin, introduced a bill (H. R. No. 4426) making an appropriation for continuing the improvement of the harbor at Kenosha, in the State of Wisconsin; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

IMPROVEMENT OF RACINE HARBOR.

Mr. WILLIAMS, of Wisconsin, also introduced a bill (H. R. No. 4427) making an appropriation for continuing the improvement of the harbor at Racine, in the State of Wisconsin; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

JAMES H. COOK.

Mr. KIMBALL introduced a bill (H. R. No. 4428) granting a pension to James H. Cook; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

IMPROVEMENT OF HARBOR AT GREEN BAY.

Mr. KIMBALL also introduced a bill (H. R. No. 4429) making an appropriation for continuing the improvement of the harbor at Green Bay, in the State of Wisconsin; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

IMPROVEMENT OF HARBOR AT AHNAPEE.

Mr. KIMBALL also introduced a bill (H. R. No. 4430) making an appropriation for continuing the improvement of the harbor at Ahnapee, in the State of Wisconsin; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

IMPROVEMENT OF FOX AND WISCONSIN RIVERS.

Mr. KIMBALL also introduced a bill (H. R. No. 4431) making an appropriation for continuing the improvement of the Fox and Wisconsin Rivers in the State of Wisconsin; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

BUSINESS OF THE DISTRICT OF COLUMBIA.

Mr. WOOD, of New York. Mr. Speaker, has the morning hour expired?

The SPEAKER. The morning hour has expired, and the hour of two o'clock having arrived, the regular order is the reception of reports from the Committee for the District of Columbia.

Mr. BUCKNER. I ask unanimous consent that the business of the Committee for the District of Columbia may be postponed until this day two weeks, with the same privileges as those to which it is entitled to-day.

The SPEAKER. The chairman of the Committee for the District of Columbia asks unanimous consent that the Committee for the District of Columbia, which, under the rules, is entitled to the floor to-day at two o'clock, be entitled, instead of reporting to-day, to the same privilege on this day two weeks. Is there objection? [After a pause.] The Chair hears none, and it is so ordered.

USE OF THE ARMY IN THE SOUTHERN STATES.

Mr. WOOD, of New York. I move that the rules be suspended, and that the preamble and resolution which I send to the desk be adopted.

The Clerk read as follows:

Whereas on the 8th of December, 1876, the following resolution was unanimously adopted by this House:

"*Resolved*, That the President be requested, if not incompatible with the public interest, to transmit to this House copies of any and all orders or directions emanating from him or from either of the Executive Departments of the Government to any military commander or civil officer, with reference to the service of the Army, or any portion thereof, in the States of Virginia, South Carolina, Louisiana, and Florida, since the 1st of August last, together with reports by telegraph or otherwise from either or any of said military commanders or civil officers;"

And whereas the President has omitted to comply with this request: Therefore, *Resolved*, That the attention of the President be respectfully called to the resolution referred to, and that he communicate the information asked for at the earliest practicable moment.

Mr. HALE. Will the gentleman from New York [Mr. WOOD] allow me to make a single remark? I have no objection to the resolution. But I will state that I am aware of the fact that the preparation of this information is being sought from the different Departments, and that only a few days ago it had not all reached the President; but that there is the expectation of an answer to the resolution being sent in at the earliest day possible. If upon that statement the gentleman from New York——

Mr. WOOD, of New York. If the gentleman from Maine will give us his personal assurance that it is the intention of the President to reply to the resolution of the 8th of December within a few days, I will withdraw this resolution.

Mr. HALE. I give my personal assurance that it is my belief that an answer to the resolution will be sent within a week.

Mr. WOOD, of New York. Upon that assurance, I withdraw the resolution.

THE LATE PRESIDENTIAL ELECTION.

Mr. WHITE. I offer the preamble and resolution which I send to the desk.

The Clerk read as follows:

Whereas fears are entertained by a large number of American citizens lest there shall not be a peaceful settlement of the questions arising from the late election for President of the United States;

And whereas it pleased the founders of the Republic in ordaining and establishing the Constitution of the United States to make provision for the election of a President of the United States of America;

And whereas the Constitution provides for the counting of the electoral votes and the determining of who is elected President of the United States: Therefore,

Resolved, That any attempt, come from whatever source it may, to prejudice or excite the public mind in advance of the decision of the authority known to and provided for in the Constitution of the United States is unwise, unpatriotic, and full of danger to our free institutions; and that we deprecate all efforts to excite public passions as tending to increase the embarrassment and depression of the business interests of the country, and declare it to be the duty of all good citizens to peaceably and faithfully abide by the results reached in accordance with the Constitution of the United States. That we deem all such declarations as "Tilden or fight" to be only worthy of the fanatics, fools, and traitors who would rend the fair fabric of our National Government, spread ruin and destruction throughout the country, or plunge a great and prosperous people into civil war; and that whoever by wink or word lends his influence to arouse warlike passions, breed strife or stir up sedition by enkindling a vicious party feeling among the masses of our people, should be regarded as an incendiary freebooter and an enemy to the best interests of the whole country.

Mr. WHITE. I move to suspend the rules and pass the resolution which has been read, with the exception of the last part. I withdraw that portion of the resolution.

Mr. KASSON. Let the resolution be read as it will be when thus amended.

Mr. STEVENSON. I would like to know what portion of the resolution is withdrawn.

Mr. WOOD, of New York. As I understand, the gentleman from Kentucky modifies his own resolution. The House would like to know how it now stands.

The SPEAKER. The Chair thinks the gentleman from Kentucky has a right to withdraw a portion of the resolution as originally read.

Mr. STEVENSON. We have no objection to that, but wish to know what part is withdrawn.

The SPEAKER. The resolution will be now read as the gentleman from Kentucky desires it to be voted upon.

The resolution, as modified by the omission of the last clause beginning with the words "that we deem all such declarations," was read.

The question was taken upon Mr. WHITE'S motion to suspend the rules and adopt the preamble and resolution; and (two-thirds voting in favor thereof) the preamble and resolution were adopted.

WESTERN UNION TELEGRAPH COMPANY.

Mr. COCHRANE. I move that the rules be suspended and the preamble and resolution I send to the Clerk's desk be adopted, and on which I call for the yeas and nays.

The Clerk read the preamble and resolution, as follows:

Whereas the Western Union Telegraph Company, through their officers who have been summoned before committees of this House to answer questions in respect to telegrams passing over their line, and to produce the same, have refused to produce them, and the said company have also failed to produce the same, and said officers are now in contempt of the authority of the House;

And whereas under acts of Congress the said company have had valuable privileges conferred upon them in connection with their corporate rights: Therefore,

Be it resolved, That the Committee on the Judiciary be instructed to inquire whether any and what concessions and privileges heretofore granted by Congress and now enjoyed by the Western Union Telegraph Company are revocable by Congress; and, if said committee shall determine that said concessions and privileges are revocable, then to further inquire into the expediency of reporting a bill revoking the same, and repealing the acts of Congress under which they were conferred, leave being hereby granted to said committee to report at any time.

The yeas and nays were ordered.

The question was taken; and there were—yeas 120, nays 85, not voting 85; as follows:

YEAS—Messrs. Abbott, Ashe, Atkins, Bagby, John H. Bagley, jr., Banning, Bland, Blount, Boone, Bradford, Bright, John Young Brown, Buckner, Cabell, John H. Caldwell, William P. Caldwell, Candler, Carr, Cate, Caulfield, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Cochrane, Collins, Cook, Cowan, Davis, De Bolt, Dibrell, Douglas, Durand, Durham, Eden, Ellis, Felton, Field, Finley, Forney, Franklin, Fuller, Gause, Glover, Goode, Goodin, Gunter, Andrew H. Hamilton, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, John T. Harris, Hartridge, Hartzell, Hatcher, Hereford, Goldsmith W. Hewitt, Holman, Hopkins, House, Humphreys, Frank Jones, Knott, Lamar, Franklin Landers, George M. Landers, Levy, Lewis, Lord, Luttrell, Mackey, Maish, Metcalfe, Milliken, Mills, Morgan, Mutchler, Neal, Odell, John F. Philips, Piper, Poppleton, Rea, Reagan, Riddle, John Robbins, William M. Robbins, Savage, Scales, Schleicher, Schumaker, Sheakley, Siemons, William E. Smith, Southard, Sparks, Stanton, Stenger, Stevenson, Stone, Tarbox, Terry, Thompson, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Charles C. B. Walker, Warner, Whiting, Wigginton, Alpheus S. Williams, Jeremiah N. Williams, Wilshire, Benjamin Wilson, Fernando Wood, Yeates, and Young—120.

NAYS—Messrs. Adams, George A. Bagley, John H. Baker, William H. Baker, Ballou, Banks, Blair, Bradley, William R. Brown, Horatio C. Burchard, Burleigh, Cannon, Cason, Chittenden, Conger, Cutler, Danford, Denison, Dobbins, Eames, Evans, Flye, Fort, Frye, Garfield, Hale, Haralson, Benjamin W. Harris, Hendee, Henderson, Hoge, Hoskins, Hunter, Hurlbut, Kasson, Kelley, Kimball, Lapham, Lawrence, Leavenworth, Le Moyne, Magoon, McDill, Monroe, Norton, O'Brien, Oliver, O'Neill, Packer, Page, William A. Phillips, Pierce, Plaisted, Potter, Powell, Pratt, Purman, Rainey, John Reilly, Robinson, Rusk, Sampson, Smuckson, Smalls, A. Herr Smith, Strait, Stowell, Thornburgh, Martin I. Townsend, Tufts, Van Vorhes, Wait, Waldron, Alexander S. Wallace, John W. Wallace, Erastus Wells, White, Whitehouse, Andrew Williams, Charles G. Williams, William B. Williams, Willis, James Wilson, Alan Wood, jr., and Woodworth—85.

NOT VOTING—Messrs. Ainsworth, Anderson, Bass, Beebe, Bell, Blackburn, Bliss, Samuel D. Burchard, Campbell, Caswell, Chapin, Cox, Crapo, Cronnse, Culberson, Darrall, Davy, Dunnell, Egbert, Faulkner, Foster, Freeman, Gibson, Harrison, Hathorn, Haymond, Hays, Henkle, Abram S. Hewitt, Hill, Hoar, Hooker, Hubbell, Hunton, Hurd, Hyman, Jenks, Thomas L. Jones, Joyce, Kehr, King, Lane, Lynch, Lynde, MacDougall, McCrary, McFarland, McMahon, Meade, Miller, Money, Morrison, Nash, New, Payne, Phelps, Platt, James B. Reilly, Rice, Roberts, Miles Ross, Sobieski Ross, Sayler, Seelye, Singleton, Spencer, Springer, Stephens, Swann, Thomas, Washington Townsend, Waddell, Gilbert C. Walker, Walling, Walsh, Ward, Warren, Watterson, G. Wiley Wells, Wheeler, Whitthorne, Wike, Willard, James Williams, and Woodburn—85.

So (two-thirds not voting in favor thereof) the rules were not suspended and the preamble and resolution were not adopted.

During the roll-call the following announcements were made:

Mr. LEAVENWORTH. I desire to announce that my colleague, Mr. HATHORN, is detained at his house by sickness.

Mr. STRAIT. I desire to state that my colleague, Mr. DUNNELL, is sick at his room.

TAX ON TOBACCO.

Mr. HATCHER. I move that the rules be suspended and that the bill which I send to the Clerk's desk be passed.

The Clerk read the bill. It provides that the growers or producers of tobacco, from and after the passage of this act, shall have the right to sell the same in leaf to any person and any person shall have the right to purchase the same free from any tax, fine, or other restriction whatever.

Mr. GARFIELD. That bill ought to go to the Committee of Ways and Means.

Mr. KASSON. It should certainly be referred to that committee.

Mr. HOLMAN. It certainly ought to go to the Committee of Ways and Means.

Mr. WOOD, of New York. I suggest to the gentleman from Missouri [Mr. HATCHER] that this question is now before the Committee of Ways and Means.

The SPEAKER. Debate is not in order on a motion to suspend the rules.

Mr. WOOD, of New York. I merely suggest to the gentleman the reference of his bill to that committee.

The SPEAKER. The motion is to suspend the rules and pass the bill as it stands.

The question was taken on Mr. HATCHER's motion; and on a division there were—ayes 73, noes 72.

Mr. BUCKNER. I call for the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 103, nays 100, not voting 87; as follows:

YEAS—Messrs. Ashe, Atkins, Bagby, John H. Bagley, jr., Bland, Blount, Boone, Bradford, Bright, John Young Brown, Buckner, Samuel D. Burchard, Cabell, John H. Caldwell, William P. Caldwell, Candler, Carr, Cason, Cate, Caulfield, John B. Clark, jr., of Missouri, Cook, Culberson, Danford, Davis, De Bolt, Dibrell, Douglas, Durham, Ellis, Felton, Finley, Forney, Franklin, Fuller, Gause, Glover, Goode, Goodin, Gunter, Hancock, Henry R. Harris, John T. Harris, Hartridge, Hartzell, Hatcher, Haymond, Henkle, Hereford, Goldsmith W. Hewitt, House, Humphreys, Hyman, Lamar, Franklin Landers, George M. Landers, Lawrence, Levy, Lewis, Lord, Luttrell, Mackey, McFarland, Meade, Milliken, Mills, Morgan, Neal, Poppleton, Powell, Rea, Reagan, Riddle, William M. Robbins, Roberts, Sampson, Savage, Scales, Schleicher, Schumaker, Slemons, Smalls, William E. Smith, Sparks, Terry, Thornburgh, Throckmorton, Tucker, Van Vorhes, John L. Vance, Robert B. Vance, Charles C. B. Walker, Walsh, Warner, Watterson, White, Whitthorne, James Williams, Wilshire, Yeates, and Young—103.

NAYS—Messrs. Adams, Ainsworth, George A. Bagley, William H. Baker, Ballou, Banks, Bell, Blair, Bradley, William R. Brown, Horatio C. Burchard, Burleigh, Cannon, Chapin, Chittenden, Clymer, Cochrane, Conger, Cowan, Cutler, Davy, Dobbins, Durand, Eames, Eden, Evans, Flye, Fort, Foster, Frye, Garfield, Hale, Andrew H. Hamilton, Robert Hamilton, Haralson, Hardenbergh, Benjamin W. Harris, Harrison, Hendee, Henderson, Hoge, Hopkins, Hoskins, Hubbell, Hunter, Frank Jones, Kasson, Kehr, Kelley, Kimball, Lapham, McDill, Metcalfe, Mutchler, Norton, Odell, Oliver, O'Neill, Packer, Page, John F. Philips, William A. Phillips, Pierce, Piper, Plaisted, Potter, Rainey, John Robbins, Robinson, Rusk, Seelye, Sinnickson, A. Herr Smith, Southard, Strait, Stenger, Stevenson, Stone, Tarbox, Teese, Thompson, Martin I. Townsend, Tufts, Turney, Wait, Waldron, Alexander S. Wallace, John W. Wallace, Warren, Whitehouse, Whiting, Wike, Andrew Williams, Alpheus S. Williams, William B. Williams, Willis, James Wilson, Alan Wood, jr., Fernando Wood, Woodburn, and Woodworth—100.

NOT VOTING—Messrs. Abbott, Anderson, John H. Baker, Banning, Bass, Beebe, Blackburn, Bliss, Caswell, John B. Clarke of Kentucky, Collins, Cox, Crapo, Cronnse, Darrall, Denison, Dunnell, Egbert, Faulkner, Field, Freeman, Gibson, Hathorn, Hays, Abram S. Hewitt, Hill, Hoar, Holman, Hooker, Hunton, Hurd, Hurlbut, Jenks, Thomas L. Jones, Joyce, King, Knott, Lane, Leavenworth, Le Moyne, Lynch, Lynde, Magoon, Maish, MacDougall, McCrary, McMahon, Miller, Money, Monroe, Morrison, Nash, New, O'Brien, Payne, Phelps, Platt, Pratt, Purman, John Reilly, James B. Reilly, Rice, Miles Ross, Sobieski Ross, Sayler, Sheakley, Singleton, Spencer, Springer, Stanton, Stephens, Stowell, Swann, Thomas, Washington Townsend, Waddell, Gilbert C. Walker, Walling, Ward, Erastus Wells, G. Wiley Wells, Wheeler, Wigginton, Willard, Charles G. Williams, Jeremiah N. Williams, and Benjamin Wilson—87.

So (two-thirds not voting in favor thereof) the rules were not suspended.

During the call of the roll, the following announcement was made:

Mr. LUTTRELL. I desire to state that my colleague, Mr. WIGGINTON is detained at home on account of illness; if present, he would vote "ay." I would further state that Mr. LANE, of Oregon, is detained from the House by sickness, and if present he would vote "ay."

Mr. WOOD, of New York. I move that the bill be referred to the Committee of Ways and Means.

The SPEAKER. That motion is not in order, as the bill is not now before the House.

ENROLLED BILLS SIGNED.

Mr. HARRIS, of Georgia, from the Committee on Enrolled Bills, reported that they had examined and found truly enrolled bills of the following titles; when the Speaker signed the same:

An act (S. No. 842) authorizing the commissioners of the District of Columbia to remove the jail on Judiciary Square to grounds near to the Washington Asylum, for the use of the District; and

An act (H. R. No. 4281) to amend an act entitled "An act authorizing the repavement of Pennsylvania avenue," and the act amendatory thereof.

TROOPS IN THE DISTRICT.

Mr. CAULFIELD. I move that the rules be suspended so that the House shall pass the bill which I send to the Clerk's desk.

The Clerk read the bill, as follows:

Whereas serious apprehension exists in the minds of the people that the deliberations of their representatives in Congress may be controlled or in some way interfered with by the presence of any considerable portion of the Army of the United States in Washington during the sessions of Congress;

And whereas it is of the highest importance that all the deliberations of Congress shall not only be free from extraneous influences, but that no reasonable ground of fear or suspicion should exist in the popular mind that any act has been the product or result of any other cause than the unbiased sense of the Representative's duty to his constituents: Therefore

Be it enacted, &c, That it shall be unlawful for more than one regiment or battalion of infantry of not more than five hundred men, one company of infantry and one battery of artillery not exceeding six guns, to be stationed or kept for any purpose whatsoever during the session of Congress within the limits of the District of Columbia; and the troops so stationed in said District shall be so disposed as only to guard and protect the public property. That no more than one company shall be stationed at any one point, nor shall they be drilled or reviewed in greater number than one company at a time; and no part thereof shall be brought for any purpose within a half mile of the Capitol during said session without request of Congress: *Provided, however*, That, in time of war or invasion during said session of Congress, Congress shall have power to call on the President for such increase of troops in said District as to it shall seem necessary. Any officer of the United States, in the civil or military service, who brings together, or issues any order for bringing together, a larger body of troops than is above provided, or for keeping or maintaining them except as provided in this act, shall be guilty of high misdemeanor, and shall be subject to all the penalties by which such misdemeanors on the part of such officers are now punished.

Mr. KASSON. That is a violation of the Constitution of the United States.

The SPEAKER. The question is upon the motion to suspend the rules and pass the bill.

Mr. PLAISTED. I call for the yeas and nays.

The yeas and nays were ordered.

Mr. KASSON. I rise to a point of order.

The SPEAKER. The gentleman will state his point of order.

Mr. KASSON. My point of order is that the Constitution of the United States is a rule of this House which cannot be suspended; that the Constitution says that the President shall be Commander-in-Chief of the Army, and this bill proposes to take away that power from him and to transfer it to Congress.

The SPEAKER. The Chair desires to say to the gentleman from Iowa [Mr. KASSON] that that is not a point of order. The long service of the gentleman from Iowa certainly should prompt him not to ask the Chair to sustain such a point of order. The Chair desires further to say that he cannot but condemn the frequent efforts on the part of members, by rising to points of order, to subsequently inject arguments out of order into the proceedings of this House.

Mr. KASSON. The Chair will allow me to say in reply that I make this point of order in the interest of the House and in good faith, believing that this bill proposes to overrule a provision of the Constitution.

The SPEAKER. The Chair overrules the point of order.

Mr. SOUTHARD. I should like to ask the gentleman a question.

The SPEAKER. Debate is not in order.

Mr. WHITE. I desire to make a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. WHITE. Would it be in order to move to refer this bill to the editor of the Louisville Courier-Journal? [Laughter.]

The SPEAKER. That is not in order.

The question was taken; and there were—yeas 99, nays 97, not voting 94; as follows:

YEAS—Messrs. Anderson, Atkins, Bagby, John H. Bagley, jr., Bland, Blount, Boone, Bradford, Bright, John Young Brown, Buckner, Cabell, John H. Caldwell, Candler, Cate, Caulfield, John B. Clarke of Kentucky, Clymer, Cook, Cowan, Culberson, Davis, De Bolt, Dibrell, Douglas, Durham, Ellis, Felton, Field, Finley, Forney, Franklin, Gause, Glover, Goode, Gunter, Andrew H. Hamilton, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, John T. Harris, Hartridge, Hartzell, Hatcher, Henkle, Hereford, Goldsmith W. Hewitt, House, Humphreys, Hurd, Frank Jones, Franklin Landers, Levy, Lewis, Luttrell, Mackey, Metcalfe, Milliken, Mills, Mutchler, Odell, Piper, Poppleton, Powell, Rea, Reagan, Riddle, John Robbins, William M. Robbins, Roberts, Scales, Schleicher, Schumaker, Sheakley, Slemons, Southard, Sparks, Stanton, Stenger, Stone, Tarbox, Teese, Terry, Thompson, Throckmorton, Tucker, Turney, Robert B. Vance, Warren, Watterson, Erastus Wells, Whitthorne, Wike, Wilshire, Benjamin Wilson, Fernando Wood, Yeates, and Young—99.

NAYS—Messrs. Adams, Ainsworth, George A. Bagley, John H. Baker, William H. Baker, Ballou, Banks, Banning, Blair, Bradley, William R. Brown, Horatio C. Burchard, Burleigh, Campbell, Cannon, Cason, Chittenden, Conger, Cutler, Danford, Davy, Denison, Dobbins, Eames, Evans, Flye, Fort, Foster, Frye, Goodin, Hale, Haralson, Benjamin W. Harris, Haymond, Hendee, Henderson, Hoge, Hopkins, Hoskins, Hubbell, Hunter, Hyman, Kasson, Kehr, Kelley, Kimball, George M. Landers, Lapham, Magoon, McDill, Monroe, Morgan, Neal, Norton, O'Brien, Oliver, O'Neill, Packer, Page, William A. Phillips, Pierce, Plaisted, Potter, Pratt, Rainey, John Reilly, Robinson, Rusk, Sampson, Savage, Seelye, Sinnickson, Smalls, A. Herr Smith, Strait, Stowell, Thornburgh, Martin I. Townsend, Tufts, Van Vorhes, John L.

Vance, Wait, Alexander S. Wallace, John W. Wallace, Walsh, Warner, White, Whitehouse, Whiting, Andrew Williams Charles G. Williams, William B. Williams, Willis, James Wilson, Alan Wood, jr., Woodburn, and Woodworth—97.

NOT VOTING—Messrs. Abbott, Ashe, Bass, Beebe, Bell, Blackburn, Bliss, Samuel D. Burchard, William P. Caldwell, Carr, Caswell, Chapin, John B. Clark, jr., of Missouri, Cochrane, Collins, Cox, Crapo, Crounse, Darrall, Dunnell, Durand, Eden, Egbert, Faulkner, Freeman, Fuller, Garfield, Gibson, Harrison, Hathorn, Hays, Abram S. Hewitt, Hill, Hoar, Holman, Hooker, Hunton, Hurlbut, Jenks, Thomas L. Jones, Joyce, King, Knott, Lamar, Lane, Lawrence, Leavenworth, Le Moyne, Lord, Lynch, Lynde, Maish, MacDougall, McCrary, McFarland, McMahon, Meade, Miller, Money, Morrison, Nash, New, Payne, Phelps, John F. Philips, Platt, Purman, James B. Reilly, Rice, Miles Ross, Sobieski Ross, Sayler, Singleton, William E. Smith, Spencer, Springer, Stephens, Stevenson, Swann, Thomas, Washington Townsend, Waddell, Waldron, Charles C. B. Walker, Gilbert C. Walker, Walling, Ward, G. Wiley Wells, Wheeler, Wigginton, Willard, Alpheus S. Williams, James Williams, and Jeremiah N. Williams—94

So (two-thirds not voting in favor thereof) the motion to suspend the rules and pass the bill was not agreed to.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of its clerks, announced that the Senate had adopted a resolution (in which the concurrence of the House was requested) extending the time for the reporting of the commission appointed to inquire into the change which has taken place in the relative value of gold and silver.

ORDER OF BUSINESS.

Mr. HOLMAN. I move that the House now adjourn.

Mr. THROCKMORTON. I ask leave to offer a resolution.

Mr. HOLMAN. I yield to the gentleman for that purpose.

Mr. GLOVER. I desire unanimous consent to introduce a bill for reference.

Several members called for the regular order.

The SPEAKER. Does the gentleman from Indiana insist on the motion to adjourn?

Mr. HOLMAN. I yield that the resolution of the gentleman from Texas [Mr. THROCKMORTON] may be read.

The SPEAKER. The gentleman cannot yield conditionally, because the regular order is demanded.

Mr. HOLMAN. Then I yield unconditionally.

The SPEAKER. The motion to adjourn being withdrawn, the resolution may be read.

Mr. HUBBELL. I renew the motion to adjourn.

The motion was agreed to; and accordingly (at half past three o'clock p. m.) the House adjourned.

PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. CANDLER: The petition of citizens of Perry County, Georgia, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. DENISON: The petition of Andrew Burgess, William Roundtree, and John Y. Hall, of Washington, District of Columbia, for compensation for services rendered as firemen in the new United States jail in the District of Columbia during the months of December, 1875, and January, 1876, to the Committee of Claims.

By Mr. DURHAM: The petition of citizens of Kentucky, for a post-route from Monticello to Mount Pisgah, Kentucky, to the Committee on the Post-Office and Post-Roads.

By Mr. GAUSE: The petition of citizens of Springfield, Arkansas, for cheap telegraphy, to the same committee.

By Mr. HARRIS, of Massachusetts: The petition of William Gordon, for compensation for the loss of his property by reason of the destruction of the schooner Rienzi by the confederate steamer Florida, on July 8, 1863, to the Committee on the Judiciary.

By Mr. KIDDER: The petition of Alexander Griggs and 99 others, to build a bridge on the military road in Grand Forks County, Dakota Territory, to the Committee on Military Affairs.

By Mr. LAWRENCE: The petition of D. Whitmore, Owen Elleman, and 44 other citizens of Ohio, for the enforcement of the provisions of the act of Congress of July 24, 1866, and purchase the telegraph lines of the United States and put them under the control of the Post-Office Department, to the Committee on the Post-Office and Post-Roads.

Also, the petition of William Scott and 100 business men of Piqua, Ohio, for the repeal of all war taxes on banks, to the Committee of Ways and Means.

Also, the petition of John W. Skiles, for re-imbursement of $1,938.38, paid clerks at Tod Barracks, Columbus, Ohio, while he was acting as city provost-marshal and commandant of the draft rendezvous for the State of Ohio, to the Committee on Military Affairs.

By Mr. LUTTRELL: The petition of J. B. Alvord and others, of California, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. MAISH: The petition of Joseph Beale, jr., late a cadet midshipman at the United States Naval Academy at Annapolis, Maryland, to be restored to his former position, to the Committee on Naval Affairs.

By Mr. McDILL: The petition of Horace Everett and 13 other citizens of Council Bluffs, Iowa, remonstrating against the passage of the bill known as the Burlington and Missouri River Railroad prorate bill, to the Committee on the Judiciary.

By Mr. MUTCHLER: The petition of citizens of Allentown, Pennsylvania, for the repeal of the tax upon the capital, deposits, and circulation of banks, to the Committee of Ways and Means.

By Mr. NORTON: The petition of 45 citizens of Chautauqua County, New York, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. PHILLIPS, of Kansas: The petition of citizens of Kansas, for a post-route from Smith Center, Kansas, to Riverton, Nebraska, to the same committee.

By Mr. PIPER: The petition of C. E. Pickett, of California, upon the subject of a competing transcontinental railway, protesting against the formation by legislation of a triumvirate to control transportation across the continent, to the Committee on the Pacific Railroad.

By Mr. PLAISTED: The petition of Zenas Herrick, a soldier of the war of 1812, for a pension, to the Committee on Revolutionary Pensions.

By Mr. JOHN REILLY: The petition of citizens of Somerset County, Pennsylvania, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. SEELYE: The petition of citizens of Clinton, Massachusetts, of similar import, to the same committee.

Also, the petition of citizens of Southbridge, Massachusetts, for a national commission of inquiry into the results of the traffic in alcoholic liquors, to the Committee of Ways and Means.

By Mr. STENGER: The petition of citizens of Huntingdon County, Pennsylvania, asking Congress to enforce the provisions of the act of Congress of July 24, 1866, with reference to the purchase of the telegraph lines in the United States by the General Government, to the Committee on the Post-Office and Post-Roads.

By Mr. WARNER: The petition of Harriet E. Edwards, widow of David S. Edwards, late surgeon United States Navy, for a pension, to the Committee on Invalid Pensions.

By Mr. WILLIAMS, of Wisconsin: A paper relating to the establishment of a post-route between Jonesville and Beloit, Wisconsin, to the Committee on the Post-Office and Post-Roads.

By Mr. WILSON, of West Virginia: The petition of Charles H. Day, late a private in the Second Virginia Regiment, United States Army, and colonel of the Seventeenth Regiment West Virginia Infantry, for an increase of pension, to the Committee on Invalid Pensions.

IN SENATE.

TUESDAY, *January* 16, 1877.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

The Journal of yesterday's proceedings was read and approved.

HOUSE BILLS REFERRED.

The bill (H. R. No. 2142) to authorize the Secretary of the Interior to invest in the bonds of the United States the unexpended balance of the money appropriated to the L'Anse and Vieux de Sert bands of Lake Superior was read twice by its title and referred to the Committee on Indian Affairs.

EXECUTIVE COMMUNICATION.

The PRESIDENT *pro tempore* laid before the Senate a letter of the Secretary of War, transmitting a copy of House Executive Document No. 126, Forty-third Congress, first session, which contains all the information in the possession of the Department, called for by the resolution of the Senate of January 12, touching the use by the Government of a patented machine or machines of W. H. Ward for making bullets or molding shells; which was ordered to lie on the table and be printed.

PACIFIC RAILROAD ACTS.

Mr. THURMAN. I ask for an order in reference to the bill (S. No. 984) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, an amendment of said first-named act, which was made the special order for to-day. We have received a telegram from the Senator from Nebraska, [Mr. HITCHCOCK,] whose constituents are very much interested in the bill, asking that it may be laid over for a week in order that he may be present; and the Judiciary Committee, by whom the bill was reported, think, for the reasons stated by him, that his request is reasonable. I ask, therefore, that it may be postponed to this day a week, and made the special order for that day at one o'clock.

The PRESIDENT *pro tempore*. Is there objection to this bill, the special order for to-day, being postponed for one week at the same hour of one o'clock? The Chair hears no objection, and it is so ordered.

ELECTION IN SOUTH CAROLINA.

Mr. PATTERSON. I present the memorial of D. H. Chamberlain and R. H. Gleaves, and other officers of the State government of South Carolina, addressed to the Congress of the United States. This document is very long. I would ask to have it read, but if there be no

objection I desire to have it printed in the RECORD and referred to the Committee on Privileges and Elections.

Mr. DAVIS. I should like to hear the nature of the memorial stated.

The PRESIDENT *pro tempore*. The Senator from South Carolina will state the nature of the memorial.

Mr. PATTERSON. It is a memorial of Governor Chamberlain and other State officers, addressed to the Senate and House of Representatives. If the Senator from West Virginia desires to hear it read I will have it read.

The PRESIDENT *pro tempore*. Is there objection to the memorial being printed in the RECORD without being read?

Mr. ALCORN. I wish to say that I think it is not proper to print matter in the RECORD unless we know what it is. Anything that goes in the RECORD should be read, I think, to the Senate, and I insist upon that being done.

The PRESIDENT *pro tempore*. The Senator from Mississippi objects.

Mr. PATTERSON. Then I ask to have it read.

Mr. ALCORN. That is right.

The PRESIDENT *pro tempore*. Is there objection to the reading? The Chair hears none, and the memorial will be read.

The Chief Clerk proceeded to read the memorial and was interrupted by——

Mr. SHERMAN. I suggest that it is not important to have the document read. I think it had better be printed at once. We cannot hear it very well. It is a reply to a document read here the other day, I understand.

Mr. PATTERSON. Yes, sir; it is a reply to the memorial presented by the Senator from Georgia, [Mr. GORDON.]

Mr. SHERMAN. I suggest, therefore, that it be printed in the RECORD without reading.

Mr. ALCORN. I object.

Mr. PATTERSON. I asked to have the memorial printed in the RECORD without being read at the desk.

Mr. SHERMAN. Very well; let it be printed in the RECORD, as the other paper was.

Mr. ALCORN. I object to it.

The PRESIDENT *pro tempore*. The Senator from Mississippi objects and the reading will proceed.

Mr. ALCORN. I make the point that the Senate should not permit anything to go into the RECORD that has not been reviewed by the Senate, read in its presence. I have no idea that there is anything improper in this memorial, for I do not know what it is. When I objected I did not know to what subject it pertained; but I do insist that the Senate, being responsible for whatever goes into the RECORD as part of its proceedings, should know at least the contents of any document ordered to be printed there. Something might be in the memorial disrespectful to the Senate; there might be something there disrespectful to the Government. A man could introduce here a biography, if you please, a work upon medicine, or law, or anything else, and ask that it be printed in the RECORD. I insist on knowing what goes into the RECORD.

Mr. SHERMAN. I think there cannot be any doubt on that subject, for when a Senator produces a document and asks to have it printed he probably has read it himself and he is a guarantor that there is nothing disrespectful in the paper. However, it is the right of any Senator to have it read, and I have nothing further to say.

Mr. ALCORN. If the document should be referred to a committee of the Senate who would examine it and say that there was nothing improper in it, I would be willing for that to be done; but I insist on its being read under present circumstances.

The PRESIDENT *pro tempore*. Does the Senator from Mississippi withdraw his objection?

Mr. ALCORN. No, sir, I do not.

The PRESIDENT *pro tempore*. The reading will be resumed.

The Secretary resumed the reading of the memorial and (at twelve o'clock and forty-five minutes) was interrupted by—

Mr. SHERMAN. It is manifest that this is a mere statement about the election in the State of South Carolina, of which we have heard a good deal more from other sources. The Senator from Mississippi must be satisfied now that there is nothing disrespectful to the Senate in the document.

Mr. ALCORN. Having made my point, now I am entirely willing, if it is the sense of the Senate, to withdraw any opposition to the memorial going into the RECORD without further reading. I think it is not proper that a document should go into the RECORD without being read. I think it is a rule that should be adhered to that nothing should be put into the RECORD that is not read, or at least well vouched for.

Mr. DAVIS. I listened to the Senator from South Carolina who presented the memorial, and if I had heard him say that he had read it and that there was nothing disrespectful in it, I should have joined with other Senators in saying that it was hardly worth while to read it; but unless that Senator thinks it is a proper document and says there is nothing disrespectful in it and knows that fact, I shall insist upon its being read.

Mr. PATTERSON. I desire to be frank with the Senator. I will tell the Senator very frankly that I have not read the paper. I only received it this morning and did not have time to read it.

Mr. SHERMAN. It merely relates to the election in South Carolina.

Mr. PATTERSON. It relates to the election there and the transactions connected with it. I did not read it; I had not time to read it. It was sent to me by Governor Chamberlain, and I took it for granted that there was nothing that a Senator could object to in it, for I know he would not put in anything but what was true; but I did not read it.

Mr. DAVIS. As to the printing, of course no Senator will object to that as all the memorials and evidence that have come from the three disputed States have been printed, I believe, without objection. This is different, as I understand it; it is desired to have it printed in the RECORD as well as printed otherwise.

Mr. SHERMAN. I will state that the reason I did not object, for otherwise I would have objected to the reading of it, was that the other paper to which this is a reply was printed in the RECORD. It was read in full, and it was printed in the RECORD on the motion of the Senator from Georgia.

Mr. DAVIS. I ask the Senator if that was not a very short paper?

Mr. SHERMAN. It was about two columns, according to my recollection of it. It was a shorter document than this.

Mr. PATTERSON. If the Senator from West Virginia will allow me, I will state that the Senator from Georgia presented a paper from Wade Hampton, claiming to be governor of South Carolina, which was printed in the RECORD. This paper is an answer to that; and I therefore asked that it be printed in the RECORD also.

Mr. DAVIS. If the Senator will state that he believes that there is nothing improper or disrespectful in the paper, I will not ask that it be read.

Mr. PATTERSON. I will state that I have no doubt about that. I have full confidence in Governor Chamberlain that he would not present anything here that is not true.

The PRESIDENT *pro tempore*. Unless some Senator insists on the further reading, it will be dispensed with, and the memorial will be printed in the RECORD.

The memorial is as follows:

To the Senate and House of Representatives of the Congress of the United States of America:

The memorial of Daniel H. Chamberlain, governor; of Richard H. Gleaves, lieutenant-governor; Francis L. Cardozo, State treasurer; Thomas C. Dunn, comptroller-general; Henry E. Hayne, secretary of state; Robert B. Elliott, attorney-general; John R. Tolbert, superintendent of education; James Kennedy, adjutant and inspector general of the State of South Carolina; of the house of representatives and of the senate, composing the General Assembly of said State, respectfully showeth to your honorable bodies:

That they have seen and read a certain document entitled "the memorial of Wade Hampton," &c., and addressed and heretofore presented to your honorable bodies;

That in said memorial are set forth various matters and things affecting the undersigned as public officers and the government and other public interests of said State;

That many of the statements contained in said memorial are untrue in fact, that many others are so presented as to mislead your honorable bodies unless otherwise informed, and many other statements requisite to a correct knowledge of the affairs in question are omitted and suppressed.

Your memorialists, therefore, pray your honorable bodies to accept from the undersigned a full and correct statement of said affairs, all of which the undersigned stand ready to make good by proper proof whenever required.

I.

General character of the recent election.

A general election for State and county officers, for members of the house of representatives, and for a part of the senators of this State was held on the 7th day of November, 1876.

During the canvass which preceded the said election, the republican voters in many counties of the State were subjected to such illegal constraint and fear as to render the duty of voting dangerous to their lives. Violence, taking the form of murder, whipping, shooting, and maiming; threats of violence, consisting of public and private declarations of the intention of the persons uttering said threats to do violence to the persons of republican voters; constraint and fear, arising from the denial of employment and homes, as well as the ordinary social rights of citizens, overspread the State. The domestic violence caused by this effort to abridge and deny the right of suffrage in this State became so great and wide-spread as to require the governor of the State to apply to the President of the United States for protection against the same pending the said election. Although this protection was granted so far as practicable by the President of the United States, it was wholly impossible to so guard the voters from the violence and its effects already referred to as to insure to all the people of the State the right of suffrage guaranteed to them by the Constitution and laws of the country.

II.

The canvass and result of the election.

Under the general circumstances now stated the said election was held, and, in accordance with the laws of the State, the returns thereof were forwarded to the several officers of the State authorized by law to receive the same.

The duty of canvassing all returns of election for county and State officers, except the governor and lieutenant-governor, as well as members of each branch of the General Assembly, is by the laws of the State imposed upon the board of State canvassers, consisting of certain executive officers of the State. Obedient to the laws of the State, the board of State canvassers met on the 10th day of November, 1876, and entered upon the work of canvassing the returns of said election, as to all officers voted for at the said election, except the governor and lieutenant-governor, and continued in session from day to day until the 22d day of November, 1876, on which day by the terms of the laws creating said board the time allowed for the canvass of the election expired. In conducting said canvass the said board, under the power conferred on them by the laws, were called upon to decide many cases of contested elections, and particularly to decide upon protests against the validity of the entire election in the counties of Edgefield and Laurens.

III.

The rejection of the returns of Edgefield and Laurens Counties.

Upon abundant proof submitted to said board and in accordance with the laws of the State, the board of State canvassers declared your memorialists, Francis L. Cardozo, Thomas C. Dunn, Henry E. Hayne, Robert B. Elliott, John R. Tolbert, and

James Kennedy duly elected respectively to the several offices hereinbefore named, and further declared that, upon the evidence presented to them, the said board was unable to declare any persons elected in the counties of Edgefield and Laurens, owing to the violence and frauds which attended the election in said counties.

The result of the canvass of the election for members of the house of representatives showed the due election of one hundred and sixteen members only, and in accordance with the laws the board of State canvassers so declared and the secretary of state so certified to each of the persons declared elected by the said board.

IV.

Proceedings in the supreme court.

Your memorialists further show that while the board of State canvassers were in the discharge of the aforesaid duties imposed upon them by law, on the 14th of November, 1876, proceedings were instituted in the supreme court of the State with the view to limit and control their action.

These proceedings were of a dual character, and were instituted by R. M. Sims, Johnson Hagood, S. L. Leaphart, James Connor, H. S. Thompson, and E. W. Moise, as citizens of the State, and as candidates for the offices of secretary of state, comptroller-general, state treasurer, attorney-general, superintendent of education, and adjutant and inspector general. Two petitions were filed by them; one praying for a writ of mandamus against the board, and the other praying for a writ of prohibition.

The two petitions were substantially the same, except in the character of the relief prayed.

They stated in substance:

1. That a general election was held in the State on the 7th of November, 1876, for the following offices: Electors of President and Vice-President of the United States, members of the Congress of the United States, governor, lieutenant-governor, secretary of state, comptroller-general, treasurer, attorney-general, superintendent of education, and adjutant and inspector general, members of the General Assembly of the State, sheriffs, clerks of court, judges of probate, school commissioners, county commissioners, and coroners in the several counties, and solicitors in the several circuits of the State.

2. That the boards of managers of said election had duly counted the votes cast, and made return thereof to their county boards of canvassers, and the said county boards having made their statements of the votes cast as required by law, made return thereof, with all protests and papers appertaining to said election, to the board of State canvassers.

3. That the statements transmitted by the boards of county canvassers to the board of State canvassers were in a large number of instances accompanied by protests and contests of said election, upon the part of certain candidates for office, and that the relators [petitioners] on the 11th day of November, 1876, appeared before the said board of State canvassers and insisted that so far as pertained to the election of ——, members of the General Assembly, said board should do no more than to state the votes of the counties as certified to it by the boards of county canvassers, and thereupon declare what persons had received the highest number of votes for the senate and house of representatives and declare the election accordingly. That said board of State canvassers refused the demand of the relators, and resolved to consider and determine matters of contest and protest in such cases, and said board is now proceeding to hear and determine all cases of protest or contest accordingly.

4. That so far as pertains to the election of electors for President and Vice-President of the United States and members of Congress of the United States, the relators demanded that the board of State canvassers should limit itself to aggregating the managers' returns from the several counties as certified to said board by the county canvassers of the several counties, and so declare who had received the highest number of votes cast, and declare their election accordingly, and should not hear or decide any question of protest or contest. That the said board of State canvassers refused the said demand and resolved to hear protests and contests and are now proceeding to do so.

5. That the relators further say that for the offices of treasurer, comptroller-general, secretary of state, attorney-general, superintendent of education, and adjutant and inspector general contests or protests have been made before the board of State canvassers; and that said board as organized consists, among others, of Hon. F. L. Cardozo, as treasurer, who is a candidate for re-election; of Hon. T. C. Dunn, as comptroller-general, who is a candidate for re-election; and of Hon. H. E. Hayne, secretary of state, who is a candidate for re-election, and that at said general election the said members of the board of State canvassers, together with all the candidates for the several offices, on one side, were voted for on one and the same ticket, and the relators with all candidates for the said offices on the other side were voted for on one same opposition ticket; and the offices of each and every one of them depend on one and the same canvass and decision; and for the said F. L. Cardozo, the said T. C. Dunn, and the said H. E. Hayne, or any one of them, to hear and decide any contest or protest in regard to any of said offices, is for them to make themselves judges in their own cases and enable them to declare the election in their own favor; that the board of State canvassers have resolved that said treasurer, comptroller-general, and secretary of state shall sit as members of said board to hear and determine all questions that shall come before them, except only that the said officers shall not vote upon their own election, and that said board is so proceeding.

6. That the board of State canvassers have assumed to exercise and discharge duties and functions which are clearly judicial. That said board consists of the State treasurer, comptroller-general, secretary of state, attorney-general, and the adjutant and inspector general of the State, and all belong to the executive department of the State.

That said executive officers have no power to exercise judicial functions, as article 1, section 26 of the constitution of the State provides that "in the government of this Commonwealth the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other."

7. That the only power or duty of the board of State canvassers is to certify to the secretary of state the persons who have received the highest number of votes as appears by the managers' returns and the statements of the board of canvassers of the respective counties, without regard to, or consideration of, any protest or contest.

Prayer.

Wherefore your relators pray that a writ of prohibition may issue from this honorable court to the said H. E. Hayne, secretary of state, as chairman; F. L. Cardozo, as State treasurer; T. C. Dunn, comptroller-general; William Stone, attorney-general; H. W. Purvis, adjutant and inspector general, members of the said board of State canvassers, prohibiting and forbidding them, the said board of State canvassers, from exercising any judicial functions or duties whatever in regard to any protests or contests which have been, or may be, submitted to them touching the said election held on the 7th day of November instant, and from hearing or determining any such contests or protests, and from doing anything other or further than the ministerial acts of ascertaining from the managers' returns and statements forwarded by the boards of county canvassers for the respective counties, the persons who have received the highest number of votes for the offices for which they are candidates, and declaring the same and certifying such statements to the secretary of state.

Prayer to petition for mandamus.

The petition for mandamus prayed that a writ of mandamus may issue from this honorable court to the said H. E. Hayne, secretary of state, as chairman, and the said F. L. Cardozo, State treasurer, T. C. Dunn, comptroller-general, William Stone, attorney-general, H. W. Purvis, adjutant and inspector general, members of the said board of State canvassers, commanding and compelling them to ascertain from the managers' returns and statements forwarded to them by the boards of county canvassers the persons who, at the general election on the 7th day of November, instant, received the greatest number of votes for the offices for which they were candidates respectively, and to declare the same, and certify such declaration, and none other, to the secretary of state, and commanding and compelling them to perform all ministerial acts devolved upon them by the acts of the General Assembly; and commanding and compelling them to revoke and annul all illegal and unauthorized acts by them committed, and to revoke and annul any determination or decision which they have made in any case of contest or protest, if any such there be.

Order of court.

Upon the filing of the two petitions the court made the following order in each case, varying only in the word "mandamus" or "prohibition," as the case might be.

Ordered, That a rule do issue requiring the said chairman and members of the board of State canvassers and the said secretary of state to show cause on Thursday next, November 16, 1876, at twelve o'clock and thirty minutes p. m., why a writ of prohibition should not issue in accordance with the prayer of the suggestion.

To each of these petitions and rules the board of State canvassers, on November 16, 1876, made the same return, as follows:

That their duties and powers as a board of State canvassers are defined in chapter 8, title 2 of the general statutes of the State of South Carolina, as follows:

"SEC. 21. The secretary of state shall appoint a meeting of State canvassers, to be held at his office or some convenient place, on or before the 10th day of November next, after such general election, for the purpose of canvassing the votes of all officers voted for at such election.

"SEC. 22. The secretary of state, comptroller-general, attorney-general, State auditor, State treasurer, adjutant and inspector general, and the chairman of the committee on privileges and elections of the house of representatives, shall constitute the State canvassers, four of whom shall be a sufficient number to form a board.

"SEC. 23. If a majority of these officers shall be unable or shall fail to attend, the president of the senate, being notified by the secretary of state, shall attend without delay, and with the officers attending shall form a board.

"SEC. 24. The board when thus formed shall, upon the certified copies of the statements made by the board of county canvassers, proceed to make a statement of the whole number of votes given at such election for the various officers and for each of them voted for, distinguishing the several counties in which they were given. They shall certify such statements to be correct and subscribe the same with their proper names.

"SEC. 25. They shall make and subscribe on the proper statement a certificate of their determination, and shall deliver the same to the secretary of state.

"SEC. 26. Upon such statements they shall then proceed to determine and declare what persons have been by the greatest number of votes duly elected to such offices or either of them. They shall have power, and it is made their duty, to decide all cases under protest or contest that may arise, when the power to do so does not by the constitution reside in some other body.

"SEC. 27. The board shall have power to adjourn from day to day for a term not exceeding ten days.

* * * * * * *

"SEC. 29. The secretary of state shall record in his office, in a book to be kept by him for that purpose, each certified statement and determination which shall be delivered to him by the board of State canvassers, and every dissent or protest that shall have been delivered to him by a canvasser.

"SEC. 30. He shall, without delay, transmit a copy, under the seal of his office, of such certified determination to each person thereby declared to be elected, and a like copy to the governor.

"SEC. 31. He shall cause a copy of such certified statements and determinations to be printed in one or more public newspapers of this State.

"SEC. 32. He shall prepare a general certificate, under the seal of the State and attested by him as secretary thereof, addressed to the House of Representatives of the United States, in that Congress for which any person shall have been chosen, of the due election of the person so chosen at such election as Representative of this State in Congress, and shall transmit the same to said House of Representatives at their first meeting."

That, as to the duty of the board of State canvassers in relation to the election of electors of President and Vice-President, section 7, chapter 9, general statutes, page 35, provides as follows:

"The board of State canvassers shall proceed in making a statement of all the votes, and in *determining* and certifying the person elected, in the manner prescribed by law in relation to the election of other officers."

The duty of the secretary of state in connection with this election is defined as follows by section 8, chapter 9, general statutes:

"The secretary of state shall, without delay, cause a copy, under the seal of his office, of the certified determination of the board of State canvassers, to be delivered to each of the persons therein declared to be elected, and for that purpose he may employ such and so many messengers as he shall deem necessary."

And these respondents further say, as to the matters of fact set out and alleged in the suggestion of the relators, that they admit the same to be true, except as follows:

That as to whether the several boards of managers of said election have duly counted the votes cast of said election and have duly returned the same in their respective counties to the board of canvassers of said counties respectively, and whether the board of county canvassers have made their statements of the votes cast in the manner required by law, and the same, together with all the protests and papers appertaining to said election, have been forwarded by said boards of county canvassers, or are in course of transmission, these respondents are not informed, and as yet have not sufficient information to found a belief relating thereto. They admit that a portion of the returns of the managers of election and of the board of county canvassers have been received, but as yet they have not proceeded to examine and certify the same. That the returns of the managers of election and the board of county canvassers for several counties in the State have not as yet been received by these respondents, and no opportunity, therefore, as yet has been had to pass upon the same as required by law.

As to the suggestion on the part of the relators, that, as Hon. F. L. Cardozo, treasurer; Hon. T. C. Dunn, comptroller-general, and Hon. H. E. Hayne, secretary of state, members of the State board of canvassers, are candidates for re-election, and were voted for on one and the same ticket, and the relators, with all candidates for said offices on the other side, were voted for on one and the same opposing ticket, and the offices of each and every one of them depended upon the same canvass and decision; and for the said F. L. Cardozo, the said T. C. Dunn, and the said H. E. Hayne, or any one of them, to hear and decide any contest or protest in regard to any one of said offices is for them to make themselves judges in their own cases, these repondents say they deny the same, and say that when the said board passes upon the election or right of any one of these persons to the office for which he was a candidate and for which he was voted at the election, that person must and will retire from the board for the time being and until the other members of the board shall determine whether he or his opponent is entitled to a certificate of election.

This mode of procedure does not in any proper sense make any member of the board a judge in his own case, but expressly excludes him from such position.

These respondents say, as to the matters of law set out in the suggestion of the relators, the same are erroneous and contravene the statute law of the State hereinbefore recited and the practice of the board of State canvassers of the State.

These respondents say that they are ready and willing, as soon as the returns of the managers of election and the returns of the board of county canvassers, and all papers connected therewith, of the election held on the 7th of November instant are received, to proceed and discharge their whole duty according to the constitution and laws of the State, keeping strictly within the same; and this they are, under heavy penalty, bound to do.

The issues between the relators and the board of State canvassers being thus made up, on the 16th day of November, A. D. 1876, the board of State canvassers came into court and prayed the advice of the court as to whether it was intended by said court by the rules to show cause on the suggestions for writ of mandamus and prohibition, made on the 14th day of November, 1876, to restrain said board from proceeding to exercise the functions imposed upon said board by law; and said board, by their attorneys, submitted an order, if so intended, to permit said board to proceed to perform the merely ministerial duties imposed by law, to wit, to aggregate the returns of the boards of county canvassers and ascertain the number of votes apparently cast for the several persons voted for as candidates for office in said election; but that as to the exercise of any judicial functions, hearing protests and contests, said board should be enjoined and restrained until the court should pass upon and determine their right to do so. This prayer by the board, and order suggested, were refused of the court.

The cases made by the relators and the board of State canvassers in the petitions and returns were then fully argued by counsel.

On the 17th day of November, 1876, the court, not yet having made any decision in the cause, made the following order:

The State of South Carolina, in the supreme court.

THE STATE EX REL. R. M. SIMS ET AL. }
vs. } Mandamus.
H. E. HAYNE ET AL., STATE CANVASSERS. }

It is ordered, in the above-entitled cause, that the board of State canvassers, consisting of H. E. Hayne, secretary of state, as chairman; and F. L. Cardozo, treasurer; T. C. Dunn, comptroller-general; William Stone, attorney-general, and H. W. Purvis, adjutant and inspector general, do forthwith proceed to aggregate the statements forwarded to them by the boards of county canvassers, and ascertain the persons who have received the greatest number of votes for the offices for which they were candidates respectively at the general election held in the State on the 7th instant, and *certify their action in the premises under this order to the court.* This order to apply to all officers voted for at said general election, except the office of governor and lieutenant-governor, which are not in question by the pleadings.

F. J. MOSES.

COLUMBIA, *November* 17, 1876.

I dissent from so much of this order as requires that the board of State canvassers certify their action in the premises to this court.

J. J. WRIGHT,
A. J., South Carolina.

The board of State canvassers objected to this order, and, even after it had been granted, moved by their counsel to have the same set aside as improvidently granted, as the same was contrary to law and practice in mandamus, which writ could only be used to compel the board to go forward and make a decision, and not to compel a particular decision, and further, that the writ could not be used to bring before the court the decision of the State canvassers for the purpose of review.

These objections were overruled by the court, and Justice Willard, speaking from the bench, said that "he only justified the order on the ground that the suggestion in mandamus might be treated as an informal application for a writ of *certiorari.*" He said further, that "the court only desired from the board such information as any clerk could give with the election returns before him."

The board of State canvassers thereupon, on the 21st of November, 1876, certified to the court as follows: "The board of State canvassers, respondents herein, hereby certify that it appears by the statements of the several boards of county canvassers laid before the board, that the following-named persons have received the number of votes set opposite their respective names for the several offices designated, namely:

* * * * * * *

EDGEFIELD COUNTY.

Senator.

M. W. Gary	6,268
L. Cain	3,121

NOTE.—This county is allowed one senator.

Representatives.

W. S. Allen	6,250
J. C. Sheppard	6,250
James Callison	6,245
T. E. Jennings	6,250
H. A. Shaw	6,251
Paris Simpkins	3,123
Elisha B. Harris	3,118
David Graham	3,120
Archie Weldon	3,118
Augustus Simpkins	3,119

NOTE.—This county is allowed five representatives.

LAURENS COUNTY.

Senator.

R. S. Todd	2,808
V. J. P. Owens	1,813

NOTE.—This county is allowed one senator.

Representatives.

J. B. Humbert	2,911
J. Washington Watts	2,909
D. Wade Anderson	2,908
A. T. B. Hunter	1,811
W. H. Rutherford	1,810
Harry McDaniel	1,809

NOTE.—This county is allowed three representatives.

* * * * * *

The board further certifies that: "This statement is made to the court in obedience to its order of November 17, 1876, but it is respectfully submitted that under the present proceedings in this court this board is not by law compelled to report any of its actions to the court."

* * * * * *

"This board further shows to this court that allegations and evidence of fraud have been filed with this board as to the election held in Edgefield County by many of the managers of election in said county; that similar allegations have been made and filed as to one or more precincts in Barnwell County; that the statements of the commissioners of election for Laurens County laid before this board are signed by two commissioners only, one of whom signed, as he certifies, under protest. Said commissioner has also filed an affidavit that the reason he signed said statements was because he was in fear of bodily injury if he refused to do so; that various protests and notices of contest have been filed from many other counties of the State, alleging irregularities on the part of the election officers, illegal voting, &c.

"That in view of the said allegations, protests, and notices of contests, none of which has been heard or passed upon by this board because of the pendency of these proceedings, this board cannot in their opinion properly ascertain and certify who have actually received the greater number of legal votes in said counties for the several officers voted for, unless they have the opportunity of investigating these allegations and hearing evidence upon these protests."

NOTE.—All persons voted for, and the votes received by each at said election for any office, except those voted for for the offices of governor and lieutenant-governor, are set out in said report, but as no question was made except as to the election in the counties of Edgefield and Laurens the vote is omitted.

This certified statement having been made to the court on November 21, 1876, the next morning, November 22, 1876, the said court made the following *order* in the cause, to wit:

"*It is ordered*, That a writ of peremptory mandamus do issue, directed to the chairman and members of the board of State canvassers and the secretary of state, commanding the said board forthwith to declare duly elected to the offices of senators and members of the house of representatives the persons who by said certificate of the said board to this court have received the greatest number of votes therefor, and to forthwith deliver a certified statement and declaration thereof to the secretary of state; and commanding the secretary of state to make the proper record thereof in his office, and without delay transmit a copy thereof, under the seal of his office, to each person thereby declared to be elected, a like copy to the governor, and cause a copy thereof to be printed in one or more public newspapers of this State."

In accordance with this order a peremptory writ of mandamus was on the same day issued, and late on the evening of that day, to wit, between ten and eleven o'clock p. m., and the next morning at 9.30 o'clock, served upon the individual members of the board. No member of the said board was in the court-room at the time the foregoing order was made or knew anything of it, directly or indirectly, until after the board had adjourned, as hereinafter stated. That before said writ was issued and served on the board of State canvassers said board had sat out the ten days allowed by law, excluding two Sundays, (having met on the 16th day of November and sat till November 22, 1876,) canvassed the election returns, declared the election, and adjourned *sine die*. As to the election of senators and representatives in the counties of Edgefield and Laurens the board declined to declare any persons elected, and for the reasons stated in their report to the court of November 21, 1876, viz, "on account of the allegations and evidences of fraud filed with the board." Attention is called here in passing to the facts that the supreme court did not, although the cases of mandamus and prohibition were argued before it on November 16, make any decision in either of said causes upon any question involved till November 22, the last day of the legal existence of the board, and the same was not then brought to the knowledge of the board or any of its members till after, by law, the board must and did determine and declare the election and had adjourned *sine die*.

Attention is further called to the fact that the board did not certify to the court who had "actually received the greater number of legal votes" in the counties of Edgefield and Laurens, but expressly declined to do so, on account of the "evidences of fraud filed with them."

And attention is further called to the fact that the supreme court, instead of directing the board of State canvassers to proceed and determine and declare the election, as it might have done, if the board neglected or refused to make a decision, drew from them not their *determination* of the vote, but a mere statement of what the face of the returns showed it to be, and then, without asking them what the evidence of fraud relative thereto showed, *ordered* them to declare the election according to the statement certified and in a particular manner, viz: that those having the apparent majority should be declared elected.

And attention is further called to the fact that the court without warrant of law usurped the functions of the board and undertook in effect to determine and declare the election. That in doing this the court violated every principle of law and practice in the use of the writ of mandamus in the case made before it. That in drawing to itself the record, or a portion of it, of the board of State canvassers, and then reviewing and passing judgment on the same, the court did precisely what it solemnly decided it could not do in the case of *Ex parte* Carson, 5 S. C. Reports, (new series,) 117.

Attention is further called to the fact that the board of State canvassers applied to the court November 16, 1876, to know if it was intended by the proceedings to restrain the board from exercising any of its functions, and the court expressly declined to make any order restraining the action of the board.

Finally, attention is called to the fact that, right or wrong, the board of State canvassers had for itself determined that no certificates of election could be given to any persons claiming to be elected in the counties of Edgefield and Laurens, and had adjourned *sine die* and was *functus officio* when a decision of the supreme court directing it to do differently was made and brought to its attention. That no law existed by which the board could reconvene and perform any function.

Proceedings for contempt.

The relators came into court on November 24, 1876, and informed the court in substance that the board of State canvassers, on November 22, 1876, "refused to certify as elected the persons who, in Edgefield and Laurens Counties, had received the greatest number of votes for members of the General Assembly, as appears by the certified report of the said board submitted to this court, as required to do by the order (heretofore recited) of the court of November 22, 1876; and that the said board adjourned *sine die* between twelve and one o'clock p. m. of November 22, 1876."

The court thereupon made the following order against each member of the late board of State canvassers:

Rule to show cause.

"*It is ordered*, That the respondent (naming him) show cause before this court at four o'clock p. m. this day why he should not be attached for contempt of this court, as shown by the record of the proceedings of the board of State canvassers, taken on the 22d day of November, 1876, after the judgment of this court had been filed, and by his failure to obey the mandate of this court.

"F. J. MOSES.

"NOVEMBER 24, 1876."

This order was served on the several members of the late board of State canvassers between one and half past one o'clock p. m.; and that day at four o'clock p. m. they came into court and asked further time to answer; and for that purpose filed the following affidavit, namely:

STATE EX REL. R. M. SIMS ET AL. }
vs. }
H. E. HAYNE ET AL. }

STATE OF SOUTH CAROLINA,
Richland County:

Personally appeared Henry E. Hayne, secretary of state; Thomas C. Dunn, comptroller-general; F. L. Cardozo, State treasurer; William Stone, attorney-general; and H. W. Purvis, late adjutant and inspector general, who, on oath, says, each for

himself, as follows: That he, H. E. Hayne, was served at 1.30 o'clock p. m.; he, Thomas C. Dunn, was served at 1.30 o'clock p. m.; he, F. L. Cardozo, was served at one o'clock p. m.; he, William Stone, was served at 1.15 o'clock p. m.; and he, H. W. Purvis, was served at 1.15 o'clock p. m. with a certified copy of a rule to show cause before this court at four o'clock p. m. of this day (November 24, 1876) why he and they should not be attached for contempt in not obeying the mandate of this court in this case.

That these deponents have received no copy of any suggestions upon which said rule was issued, and are not informed with particularity as to what they are required to make answer to; that one mandate was served upon them as a board, which they conceive they have obeyed, and do not know in what way they have violated it or can be charged with having violated it; that the leading counsel for the deponents, D. T. Corbin, esq., has also been served with a rule to show cause why he should not be attached for contempt of court; which rule is also made returnable at four o'clock p. m. this day; that in the interval of only three hours allowed them by the court these deponents have had no sufficient opportunity to consult with counsel as to what sort of a return they should make to said rule; that these deponents, and each for them, have endeavored to follow out the provisions of the statute regulating them in the discharge of their duties, and they respectfully submit that a reasonable time ought to be permitted to them in which to make their defense; and they believe that if time is allowed them they can fully and satisfactorily answer the said rule.

To obtain such necessary time, and not for the purpose of delay, this affidavit is made.

H. E. HAYNE, *Secretary of State.*
WILLIAM STONE, *Attorney-General.*
F. L. CARDOZO, *Treasurer South Carolina.*
THOMAS C. DUNN, *Comptroller-General.*
H. W. PURVIS.

Sworn to before me the 24th day of November, 1876.

HENRY B. JOHNSON,
Notary Public, South Carolina.

Upon the reading of this affidavit the court refused to grant further time to answer, and at once proceeded to adjudge each and every of said officers, members of the late board of State canvassers, guilty of contempt, and the following morning ordered that each pay a fine of $1,500, and that the sheriff of Richland County do take them into custody and confine them in the common jail of said county until they be discharged by the order of the court.

Comments.

And your memorialists show that in reference to this proceeding for contempt the court acted hastily, passionately, and oppressively.

The supreme court, the highest court of the State, proceeded in a criminal cause against five executive officers of the executive department of the State, tried and found them guilty on two and a half hours' notice, and without giving them the indictment against them, or giving them a chance to make their defense by counsel. It is submitted that the proceeding was in gross violation of section 13, article 1, of the constitution, which provides that "no person shall be held to answer for any crime or offense until the same is fully, fairly, plainly, substantially, and formally described to him, * * * and be fully heard in his defense by himself or by his counsel, or by both, as he may elect."

It is further submitted that the members of the board of State canvassers were convicted of a contempt of court in that they had refused to obey the peremptory writ of mandamus of November 22, 1876, when in fact said writ was not served upon them until after the board had completed the canvass of the election returns and finally adjourned according to law, and after the members of said board, as such, were incapable in law of performing any further official functions. (See Cooley's Constitutional Limitations, page 622; Clark *vs.* Buchanan, 2 Minn., 346; also 33 N. Y. Rep., 603.)

Writ of habeas corpus issued by Hon. Hugh L. Bond, circuit judge United States.

The members of the board of State canvassers, finding themselves suddenly seized and confined in jail wrongfully (as they were advised and believed) by order of the supreme court of the State, from which there was no appeal, petitioned Hon. Hugh L. Bond, circuit judge of the United States, for a writ of *habeas corpus*. The petition and the proceedings thereupon, together with the learned opinion of Judge Bond, discharging the prisoners, are hereto appended in full. It is submitted that these proceedings show that the supreme court of South Carolina, in its attempt to control and coerce the board of State canvassers into making a particular declaration of the election, and a declaration different from what, in their judgment, they ought to make, proceeded wholly without jurisdiction or authority of law, and its acts were simply void.

V.

Organization of the senate on the 28th day of November, 1876.

Agreeably to the constitution of the State, the senators holding over from a previous election, as well as those declared elected on the 7th day of November, 1876, and to whom the secretary of state had issued lawful certificates of election, met in the senate chamber in the capitol of the State at Columbia, and forthwith proceeded to organize by the election of a president *pro tempore* (the lieutenant-governor under the constitution being the president of the senate) and other officers. No question of the legality of the organization or constitution of the senate has ever been raised.

VI.

Organization of the house of representatives.

On the said 28th day of November, 1876, the clerk of the former house of representatives, agreeably to precedent, as well as general parliamentary law and the rules of the said house, proceeded to organize the said house of representatives. The said clerk placed upon the roll of members all persons who had been declared elected to said house by the board of State canvassers and who had received certificates of said election from the secretary of state, numbering one hundred and sixteen in all. By the order of the said clerk all persons were directed to be excluded from the floor of the house except those holding certificates of election signed by the secretary of state. Sixty persons holding such certificates entered the hall of the house of representatives and were present at the organization thereof. Sixty-four other persons, of whom fifty-six held certificates of the secretary of state, presented themselves at the door of the hall of said house and requested admission.

Under the orders of the said clerk all of said fifty-six persons were freely allowed to enter the hall. The remaining eight persons were denied admission. In consequence of this denial of admission to persons holding no certificates of election, the sixty-four persons above referred to retired from the State-house, and subsequently one other person, W. H. Wallace, withdrew and joined the said sixty-four persons, making sixty-five in all.

Your memorialists here specially affirm that all of said sixty-five persons were admitted to the State-house, and were not, as is alleged in the memorial of Wade Hampton and others, and have not at any time been, excluded therefrom by the officers or forces of the United States or of the State of South Carolina. Eight persons claiming to be elected as members of the house of representatives from the counties of Edgefield and Laurens were excluded, not from the State-house, but from the hall of the house of representatives. These eight persons, as has already been stated, held no certificates of election from the secretary of state, and were not entitled to be admitted to the said hall except by the favor of the house of representatives when duly organized.

A majority of all the persons elected to said house, to wit, sixty, a lawful and constitutional quorum of said house, being present, the clerk proceeded with the organization of the house. Your memorialist, E. W. M. Mackey, was by a majority of all the members present duly elected as speaker, and the house was in all other respects duly and completely organized.

Your memorialists here affirm that at no time since the said day of organization has the number of members of said house been reduced below a legal and constitutional quorum, but, on the contrary, the number has been increased by the decision of cases of contested elections to the number of seventy-three, of whom sixty-nine remain at this time lawful and regular members thereof.

VII.

Case of William H. Wallace vs. H. E. Hayne, secretary of state, and E. W. M. Mackey.

And your memorialists further show that the said William H. Wallace thereafter demanded of Henry E. Hayne, secretary of state, the election returns for governor and lieutenant-governor. The secretary of state declined to deliver said returns to said Wallace, at the same time informing him that said returns had been delivered to Hon. E. W. M. Mackey, speaker of the house of representatives assembled at the State-house.

Thereupon, said William H. Wallace, styling himself speaker of the house of representatives, filed a petition in the supreme court and prayed that a writ of mandamus might be issued against Henry E. Hayne, secretary of state, and E. W. M. Mackey, claiming to be speaker of the house of representatives, commanding them forthwith to deliver to the said William H. Wallace, as the speaker of the house of representatives, the returns of the managers of election for governor and lieutenant-governor.

This petition was filed December 2, 1876, and a rule was thereupon issued by the supreme court, requiring H. E. Hayne, secretary of state, and E. W. M. Mackey, to show cause, on Monday, December 5, 1876, why the prayer of the petitioner should not be granted.

On Monday, December 5, 1876, Hon. H. E. Hayne, secretary of state, made return to the rule that he had delivered the election returns to Hon. E. W. M. Mackey, speaker of the house of representatives, before the service of said rule upon him, and that said returns were out of his custody and control.

On the same day Hon. E. W. M. Mackey made return to the rule that he was duly elected speaker of the house of representatives, which body was duly organized and sitting in the hall of the house of representatives in the State-house, and as such speaker he had received the returns of the election for governor and lieutenant-governor, under the provisions of act 4, article 3, of the constitution, and now held said returns for the purposes indicated in the constitution. That the supreme court had no power or jurisdiction in the matter. The trial then proceeded and evidence was produced to show that the house of representatives, presided over by E. W. M. Mackey, was organized with fifty-nine members, and no more, holding certificates of election from the secretary of state; and that at the time of the organization of said house only one hundred and sixteen members of the house had been by the board of State canvassers declared elected and had received certificates of election. Evidence was further introduced showing that of the members constituting the house of representatives which organized by the election of William H. Wallace only fifty-seven had certificates of election from the secretary of state and eight (five from Edgefield and three from Laurens) had certificates from the clerk of the supreme court, showing that from the records of that court it appeared that they had received the highest number of votes at the recent election.

[NOTE.—This was obtained from the report of the board of State canvassers to the supreme court above cited, in which they expressly declined to certify the election of those counties on account of fraud.]

Decision of the court.

The court upon the case thus made announced its opinion, the conclusion of which was as follows:

"That W. H. Wallace is the speaker of the lawfully constituted house of representatives of the State of South Carolina, and as such officer was and is entitled to the possession of the returns of the elections for governor and lieutenant-governor held on the 7th day of November, A. D. 1876, and which were transmitted to H. E. Hayne, secretary of state, but it appearing that the said election returns had been unlawfully delivered by said H. E. Hayne, secretary of state, to E. W. M. Mackey, one of the respondents, the question is reserved for future argument and consideration whether the writ of mandamus should now issue to said H. E. Hayne, secretary of state. It is further ordered and adjudged that the petition be dismissed as to E. W. M. Mackey."

In coming to this conclusion the court said "that sixty-three members were in their seats when Mr. Wallace was elected. * * * That the house of representatives consisted of one hundred and twenty-four members, and sixty-three were necessary for a quorum to do business. * * * That all the members had certificates (of election) from the secretary of state except *eight*, and the qualification of these eight was established by the proceedings in this court. * * * The only matter what was the *character of the certificates* they had, the return of the board of State canvassers to the court showing that they had received the greatest number of votes in their particular counties entitled them to access to the floor for the purpose of organization."

Comments.

Your memorialists call attention to the fact—

1. The court expressly counts in the eight members from Edgefield and Laurens to make up a quorum of the Wallace house, and these are the counties the election in which the board of State canvassers expressly refused to certify at all on account of the evidence of fraud before them.

2. That the court having been unable to compel the board of State canvassers to decide the election according to its own view of their duty and not their view, it decides that its own declarations of the election in Edgefield and Laurens Counties shall stand and be taken instead of the decision and declaration of the board of State canvassers and the certificates of the secretary of state.

3. That this was simply usurpation of power on the part of the court, not given to it directly or indirectly by the constitution or statute laws of the State.

4. That as to sixty-three members being necessary to a quorum of the house of representatives, it is undoubtedly true, assuming that the whole number, one hundred and twenty-four, are elected; but when only one hundred and sixteen members are elected, as found by the board of State canvassers, then a majority of that whole number, fifty-nine, constitute a quorum to do business. This has been expressly so decided by each House of the Congress of the United States, shown in another part of this memorial. But the court expressly avoided this question, saying, "We do not feel it incumbent upon us either to inquire or determine if Mr. Mackey, one of the respondents in this case, is the speaker of a legally constituted house of representatives of the State of South Carolina." It is therefore fair to presume that the court, had it not overstepped its jurisdiction, (see opinion of Judge Bond,) and assumed the function of the board of State canvassers and decided one hundred and twenty-four members of the house of representatives elected instead of one hundred and sixteen, would have had a case before it in which it would have "felt it incumbent upon it to determine and decide if Mr. Mackey was the speaker of a legally constituted house of representatives of South Carolina," the same being

composed of fifty-nine members, and decided the matter precisely as the Congress of the United States decided it, that that number was a majority of those duly elected, and therefore was a quorum.

5. This opinion of the court is *obiter dictum*. It could not grant the relief prayed, or any relief at all, and did not, but expressly refused to do so. It dismissed the petition as to E. W. M. Mackey, and should have dismissed it as to Hon. Henry E. Hayne, but did not, but retained it for *further argument*. It should have dismissed it as to him, as no principle of law is better settled than that an officer cannot be compelled by mandamus to do an act which is out of his power to do. But the court may require very grave argument on this question.

It is submitted that the court had no jurisdiction in the matter at all, and its own conclusion showed it had none; and all therefore said by it about the legality of the Wallace house was unnecessary to the judgment rendered, and therefore *obiter dictum* and of binding force on nobody. A single statement will show that the court had no jurisdiction in any event to grant the relief prayed; and it should have decided the petition with saying more, namely: If Mackey was the speaker of the lawfully organized house of representatives, then he was rightfully in possession of the returns and Wallace was not entitled to them, and the court could not order them delivered to him; and if he was not the speaker of the lawfully organized house of representatives, then, as the court said, he was not such an official person as could be compelled by mandamus to deliver the returns.

It is therefore plain from the first that the court had no power to grant any relief in the cause and should have simply dismissed the petition. That it did not do so shows that it sought to express an opinion when it could not render a judgment. (Carroll *vs.* Lessee of Carroll, 16 Howard Reports United States Supreme Court, 287.)

VIII.

Declaration of the election of governor and lieutenant-governor.

Your memorialists further show that, with respect to the election of governor and lieutenant-governor, the constitution of the State requires that the returns thereof shall be transmitted by the managers of the election to the secretary of state, who is required to transmit the same to the speaker of the house of representatives, who is required thereafter, in the presence of both houses, to open and publish the said returns. In accordance with these constitutional provisions the secretary of state did transmit the returns of the election of governor and lieutenant-governor to your memorialist, E. W. M. Mackey, as speaker, and thereafter, on the 5th day of December, 1876, the speaker did, in the presence of both houses, open and publish the said returns. Whereupon, with regard to the returns of the election in the counties of Edgefield and Laurens, both houses, upon objection being made thereto, voted in separate session, to exclude the said returns. The canvass of the returns being completed, the result was announced by the speaker to be as follows:

For governor.

Daniel H. Chamberlain received ..... 86,216 votes.
Wade Hampton received ..... 83,071 votes.

For lieutenant-governor.

Richard H. Gleaves received ..... 86,620 votes.
William D. Simpson received ..... 82,521 votes.

The speaker thereupon declared your memorialists, Daniel H. Chamberlain and Richard H. Gleaves, duly elected, respectively, governor and lieutenant-governor of the State of South Carolina for the ensuing two years.

Your memorialists further show that on the 7th day of December, 1876, in the presence of both houses of the General Assembly, in the State-house, Daniel H. Chamberlain was duly inaugurated as governor of said State, and that thereafter your memorialists, who had been duly elected to the several State offices before named, duly qualified and entered upon their respective offices; and that constantly since their accession to office your memorialists have continued in full possession and exercise of their respective offices, and are now in possession of the same, together with all the insignia and appliances connected therewith.

IX.

The pretended house of representatives and its action.

Your memorialists further show that after the withdrawal of the fifty-seven members of the house of representatives from the house of representatives, as hereinbefore stated, they did, in conjunction with the eight pretended members from Edgefield and Laurens Counties, proceed to organize a pretended house of representatives, and to elect one W. H. Wallace as pretended speaker thereof, said pretended house of representatives having at the time of its pretended organization only fifty-seven persons duly elected as members of the house of representatives; that thereafter the said pretended house of representatives did, without the presence of the senate and without the returns of the election, proceed, in defiance of the provisions of the constitution, to declare Wade Hampton and W. D. Simpson elected as governor and lieutenant-governor, and that thereafter, on the 14th day of December, 1876, the said Hampton and Simpson went through the ceremony of a pretended inauguration as governor and lieutenant-governor.

And your memorialists further show that since the 14th day of December, 1876, the said pretended house of representatives and the said Hampton and Simpson as pretended governor and lieutenant-governor have claimed to exercise the functions of the house of representatives and of governor and lieutenant-governor, thereby causing obstruction to the lawful government of the State and setting an evil example to the people of the State.

Your memorialists, for further confirmation of the statements of fact and law herein contained, crave permission of your honorable bodies to refer to a certain official document adopted and published by the house of representatives of this State, being a "report of the special committee of the house of representatives of South Carolina relative to the organization of that body and the constitutional validity thereof, adopted December 21, 1876," hereto appended, and to make the same a part of this memorial, together with a copy of the opinion and decision of Hon. Hugh L. Bond, circuit judge of the fourth judicial circuit of the United States, to which special reference is made in the said memorial of Wade Hampton and others.

Wherefore your memorialists respectfully pray that your honorable bodies will, by all lawful and constitutional means, continue to uphold the authority of the lawful and constitutional executive and legislative departments of the government of South Carolina as represented by Daniel H. Chamberlain as governor, and your other memorialists as the several State officers and the senate and house of representatives of the said State, by protecting the said State against the domestic violence now threatened by Wade Hampton and others falsely styling themselves officers of said State.

D. H. CHAMBERLAIN,
Governor South Carolina.
R. H. GLEAVES,
Lieutenant-Governor South Carolina.

Report of the special committee of the house of representatives of South Carolina, relative to the organization of that body, and the constitutional validity thereof. Adopted December 21, 1876.

REPORT.

The special committee of this house, appointed under the following resolution—"*Resolved*, That a special committee of five, of which the speaker shall be chairman, be appointed for the purpose of preparing a report relative to the organization of the house of representatives, and such subsequent acts thereof as may seem to said committee pertinent to the matter of the constitutional validity of the said house"—

beg leave to submit the following report:

In considering the question of the organization of this house, and its constitutional validity, your committee have deemed it best to present such statements of facts as seem necessary for a proper understanding of the entire case submitted to their consideration, with a full discussion of all the legal questions involved, in the following order:

I. A statement of the action of the board of State canvassers relative to members of the house of representatives, together with the grounds and reasons for such action.

II. A statement of the proceedings had in the supreme court of the State relative to members of the house of representatives.

III. The proper and legal mode of organizing the house of representatives, as established by general parliamentary law and by the law and practice of this State.

IV. A discussion of the authority of the clerk in excluding from the organization of the house of representatives all but legally elected members having proper certificates of election.

V. A discussion of the legal question of a legislative quorum and a statement of the precedents relating thereto.

VI. A statement of the actual facts connected with the organization of the house, and such subsequent acts thereof as are pertinent to the matter under consideration.

Following this order, your committee now proceed to consider:

I.—ACTION OF THE BOARD OF STATE CANVASSERS.

On the 7th November, 1876, a general election was held in this State for the election, among others, of members of the house of representatives of this State. In accordance with the laws of the State, the returns of this election were forwarded to the proper officers at the capital to be submitted to the board of State canvassers. This board met on the 10th day of November, and began the work of canvassing the returns. In the course of the canvass the board was called upon to consider the election in the counties of Edgefield and Laurens, where it was alleged upon evidence submitted to the board, that certain unlawful influences had so affected the election in these counties as to render it impossible for the board to determine and declare who had been duly elected.

Edgefield County.

It may be here stated that the leading evidences against the validity of the election in Edgefield County are:

First. The immense disproportion between the whole number of votes cast at this election as compared with the entire population of the county, as exhibited by the United States census of 1870 and the State census of 1875.

By the former census (United States, 1870) the entire population of Edgefield County, as then constituted, was 42,486. This included the village of Hamburg and the townships of Gregg, Hammond, and Schultz, having at that time, according to the same census, a population of 7,728, all of which were, in 1871, made a part of the new county of Aiken. Deducting this from the entire population, as above stated, we have left 34,758 as the population in 1870 of the territory now comprised in Edgefield County. A further deduction should here be made for the township of Shaw's Creek, fully one-third of which is also included in the county of Aiken. For this, however, we have made no deduction.

According to the State census of 1875, the entire population of Edgefield County, as now constituted, is 35,039.

The whole number of votes cast in this county at the late election, according to the returns before the board of State canvassers, was 9,374. Taking, then, either the United States census of 1870 or the State census of 1875, as giving the population of this county, the result is that at the late election the votes cast considerably exceeded the ratio of one vote for every four inhabitants. This fact alone would throw great discredit upon the accuracy of the returns.

But, by the State census of 1875, the whole number of male persons over twenty-one years of age in the county of Edgefield is only 7,122, showing an excess, in the total vote cast at this election, according to the returns, of 2,252 over the entire possible vote of the county.

Second. A comparison of the vote of this county at previous elections will establish the same result as above stated.

In 1870, the entire vote of this county for governor was 8,251. In connection with the vote of this year, it should be remembered that General M. C. Butler was a candidate upon the democratic ticket for lieutenant-governor. It is fair to presume that, owing to the fact of his being a citizen of this county and the acknowledged leader of the democratic party in that county, he brought out the full democratic strength. In the vote of 1870, as above given, is included the vote of that portion of the county which has since been made a part of the county of Aiken. By reference to the United States census of 1870 it will be found, as already stated, that the entire population of the territory now embraced in Aiken County was 7,728, which gives a voting population—reckoning by the same ratio as is established by a comparison of the entire population of the county with the whole number of males over twenty-one years of age—of, in round numbers, 1,500. Deducting this number from the entire vote, 8,251, we have 6,751 as the vote for 1870 of what constitutes the present county of Edgefield.

The aggregate vote of Edgefield County, as reported by the returns for this year, is 9,374, showing an excess over the unusually full vote of 1870 of no less than 2,623, or an excess over the vote of the entire county of Edgefield, before the present county of Aiken was established, of 1,123; or, again, an excess in the vote of the present year for the democratic candidates over the entire vote of the old county of Edgefield for General M. C. Butler in 1870 of 2,545.

In 1872, there being no democratic candidate for governor, it will be necessary to take the vote for State senator in that county as the standard of comparison. This vote in the aggregate was 5,374, or exactly 4,000 less than the reported vote of this year.

In 1874 the entire vote of the county was 6,298. By the United States census of 1870, the entire population of the territory embraced in the present county of Edgefield was 34,758. Allowing one voter for every five persons, the ratio established by the same census, there would have been in this county in 1874 a total voting population of 6,951. By the State census of 1875, the whole number of males over twenty-one years of age in this county was 7,122. An examination of these figures will show that the above vote of 1874 (6,298) is very nearly six-sevenths of the entire number of persons over twenty-one years of age, according to the United States census of 1870 or the State census of 1875. The statistics of popular elections in this country have established the fact that six-sevenths of the entire voting population is the highest limit reached in any elections, except in a few extreme and exceptional cases, which do not affect the general rule as here stated.

The conclusion is, that the vote of this county in 1874 was a full vote, under all ordinary circumstances, and yet this year the reported vote of this county exceeds the vote in 1874 by 3,076. And, in this connection, it may be added that General M. W. Gary, who claims to have been elected State senator from this county at the late election, has stated, in a public card, that about six hundred colored voters did not vote, which number being added to the excess just named would give an aggregate vote of 3,676 over the very full vote of 1874.

Third. The evidence before the board of State canvassers also showed that this large excess of voters over the lawful vote of the county was due to the increase exclusively of the democratic vote; for, while the vote was, at the recent election, largely increased over the vote at any previous election, yet the republican vote was

decreased. This decrease in the republican vote was shown, by the evidence before the State board of canvassers, to be due not to a natural change of party connections, but to the fact of an organized and systematic plan of intimidation and violence carried on throughout the canvass and reaching its culmination on the day of the election.

The increase of the reported democratic vote of this year over the vote for General M. C. Butler in 1870, before the county of Edgefield was divided, is 2,545, and an increase over the democratic vote in 1874 of 3,367.

Fourth. The evidences before the board of canvassers also establish the fact that many of the election officers in Edgefield County were deterred by fear of physical violence from discharging their duties according to their convictions of justice and right. This result was accomplished in various ways. Some of the managers were prevented by threats from assuming the duties of their offices at all; others, again, during the progress of the election were prevented from rejecting the votes of persons not authorized to vote; others were prevented from making such returns of the election as their judgment dictated, or from forwarding their statements or other written evidences of the fraud and violence practiced at their poll; and, finally, the republican members of the board of county canvassers were coerced by threats of violence into signing returns which they believed registered the results of this overwhelming fraud and violence rather than the free ballots of the lawful voters of this county.

Laurens County.

In Laurens County the conduct of the election in its leading features was not unlike that in Edgefield County. This additional feature appeared, that the return of the board of county canvassers was signed by but two of the three commissioners composing the board, and one of the two signers signed the returns under protest, affixing his protest to the return itself, and afterward filing his affidavit with the board of State canvassers in the following terms:

"That so universal was this system of intimidation that deponent, influenced by this knowledge, and also by a personal observation of the illegal way in which the election was conducted in some particulars, did not feel justified in subscribing to the returns of the election in his official capacity as commissioner, and only consented to do so under protest, as said return will show on its face, when he became satisfied that his life would be placed in jeopardy if he declined to so subscribe the said return."

Under these circumstances and for these causes, of which the foregoing statement is but a brief and imperfect summary, the board of State canvassers reached the conclusion that no valid and lawful election had taken place in the counties of Edgefield and Laurens, and accordingly refused to declare any persons elected from these counties.

Having concluded the discharge of their duties, the board of State canvassers adjourned *sine die* on the 22d November, 1876.

II.—PROCEEDINGS IN THE SUPREME COURT.

During the sittings of the board of State canvassers, proceedings were instituted in the supreme court for the purpose of controlling the action of the board. That the supreme court had no jurisdiction to control the board in the manner attempted, will be clear to all impartial minds when the case is fully understood. It is possible that after the work of the board was fully completed, the court could, by some process of review, have inquired into the correctness of its action as to some officers; but it was clearly beyond its power to attempt to control its action in advance of any decision by the board; and as to the declaration of the election for members of the Legislature, the court could not have, either before or after the work of the board of canvassers was completed, any jurisdiction or right to interfere with, control, or modify that action. Upon this point the authorities are abundant and conclusive, but the length of this report precludes your committee from presenting them here at length. Your committee will content themselves with quoting two authorities only, in which the language is brief and pointed. Cushing, in his Law and Practice of Legislative Assemblies, page 52, section 141, in speaking of returning officers, says:

"It remains to be observed, in conclusion, that the proceedings of these officers, from the necessity of the case, are, in the first instance, uncontrollable by any other authority whatever, so that if on the one hand, notwithstanding an election has been effected, the returning officers refuse or neglect to make the proper return, the party thereby injured is without remedy or redress until the assembly to which he is chosen has examined his case and adjudged him to be duly elected; and, on the other hand, if the returning officers make a return when no election has in fact taken place, or of one who is not eligible, the person returned will not only be entitled but it is his duty to assume and discharge the functions of a member until his return and election be adjudged void."

In the celebrated Dorr case, Chief-Justice Durfee, of Rhode Island, used the following significant language in his charge to the jury:

"Courts and juries, gentlemen, do not count votes to determine whether a constitution has been adopted or a governor elected or not."

After enlarging upon this principle, he continues:

"And why not? Because, if we did so, we should cease to be a mere judicial and become a political tribunal, with the whole sovereignty in our hands. Neither the people nor the Legislature would be sovereign."

This view of the want of jurisdiction in the supreme court is fully sustained by the decision of Judge Bond, of the United States circuit court, in deciding the *habeas corpus* case; and from that decision we quote, as follows:

"The first question, then, to be decided at this time, and upon this motion, is whether or not the supreme court of the State of South Carolina had jurisdiction to hear and determine the matter before it.

"Article 1, section 26, of the constitution of South Carolina provides, 'In the government of this Commonwealth, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.'

"Section 4 of article 6 of the same instrument defines the power of the supreme court thus: 'The supreme court shall have appellate jurisdiction only in cases of chancery, and shall constitute a court for the correction of errors at law under such regulations as the General Assembly may by law prescribe: *Provided*, The said court shall always have power to issue writs of injunction, mandamus, *quo warranto*, *habeas corpus*, and such other original and remedial writs as may be necessary to give it a general supervisory control over all other courts in this State.'

"The powers of the board of State canvassers, so far as this case is concerned, are defined by chapter 8, title 2, sections 24, 25, and 26, thus:

"'SEC. 24. The board, when thus formed, shall, upon the certified copies of the statements made by the board of county canvassers, proceed to make a statement of the whole number of votes given at such election for the various officers, and for each of them voted for, distinguishing the several counties in which they were given. They shall certify such statements to be correct, and subscribe the same with their proper names.

"'SEC. 25. They shall make and subscribe on the proper statement a certificate of their determination, and shall deliver the same to the secretary of state.

"'SEC. 26. Upon such statements they shall then proceed to determine and declare what persons have been, by the greatest number of votes, duly elected to such offices, or either of them. They shall have power, and it is made their duty, to decide all cases under protest or contest that may arise when the power to do so does not, by the constitution, reside in some other body.'

"And the objection to the jurisdiction of the supreme court made by the petitioners is that they are a part of the executive department of the government, charged with the execution of a law of the State, and that they alone are authorized to canvass the votes, and that they are not subject in the exercise of their functions to the control of the judicial branch of the government.

"The Supreme Court of the United States, in a very able opinion by Mr. Justice Miller, in the case of Gaines *vs.* Thompson, 7 Wallace, 347, has very clearly determined what the law is on this subject, and that is that 'if it appear that the act which the court is asked to compel the officer of the executive department of the Government to do be purely ministerial, the court having jurisdiction to issue the writ of mandamus may compel the executive officer to perform his duty; but, if the act required to be done by the executive officer be not merely ministerial, but discretionary, or one about which he is to exercise his judgment, a court cannot, by mandamus, act directly upon the officer, and guide and control his judgment or discretion in the matters committed to his care, in the ordinary exercise of official duty;' and the court further says that 'the interference of the courts with the performance of the ordinary duties of the Executive Departments would be productive of nothing but mischief, and we are quite satisfied that such a power was never intended to be given them;' and for this Mr. Justice Miller quotes the opinion of Chief-Justice Taney, in the case of the Commissioner of Patents *vs.* Whitely, 4 Wallace, 522; and the law is stated to the same effect in a very celebrated case in Maryland, by Mr. Chief-Justice Bowie, Miles *vs.* Bradford, 22 Md. Rep., 170, a case where the power of the governor to canvass the votes was not so broadly given as in the case at bar.

"That the duty of this board of canvassers was not ministerial, but that they were clothed with a large discretion, it seems to me, is very plain. They were not merely to take the returns and aggregate them; they were to canvass them; that is, they were to examine, to sift, to scrutinize them, which implies a power to reject such as were not lawful in their judgment; and more, they were to decide all cases under protest or contest that might arise, when the power to do so did not, by the constitution, reside in some other body.

"They were the executive officers, appointed to declare the election of such persons as had, in their judgment, the majority of the legal votes cast. If they decided erroneously or falsely, the remedy of those candidates who thought themselves wronged was by *quo warranto;* but no court had the jurisdiction to compel the board of State canvassers to do otherwise than their own judgment dictated.

"It remains now to be seen what the court was asked to do by the relators. Their suggestion sets forth: 'That the board is proceeding to hear and determine all matters of contest and protest before them in regard to the election of persons who were candidates at the general election, and is proceeding to certify their determination on such contests and protests to the secretary of state.' And they pray that a writ of mandamus may issue, commanding them to ascertain from the managers' returns and statements, forwarded to them by the boards of county canvassers, the persons who, at the general election held on the said 7th day of November ultimo, had the highest number of votes; and commanding them and compelling them to revoke and annul any determination or decision which they may have made in any case of contest or protest, if any such there be."

"Under the cases cited in the opinion of the Supreme Court of the United States, 7 Wallace, 347, Gaines *vs.* Thompson, above referred to, I am of opinion that the supreme court of the State of South Carolina had no jurisdiction to entertain any such 'suggestion' or petition."

In the closing portion of his opinion Judge Bond says:

"That the State board of canvassers were clothed, under the law, with discretionary powers, which required them to discriminate the votes, to determine and certify the candidates elected after scrutiny; and that they were a part of the executive department of the government, and were in no wise subject to the control as to what they should do, after they had commenced to perform that duty, to the judicial department."

Your committee, therefore, reach the conclusion that the board of State canvassers acted justly and properly, in view of the law and the facts, as to the election in Edgefield and Laurens Counties.

It will be seen that your committee have presented and defended at some length the conclusions of the board of State canvassers. This has been done for the sole purpose of establishing the fact that the action of that board was in itself just and legal; but it should be borne in mind that the validity of the present organization of this house does not depend in any degree upon the correctness or justice of the action of the board of canvassers. That board having completed its work, whether that work was just or not, it was final, and it only remained for this house to act in view of their declaration as it was actually made. It then became the duty of those who were elected to this house to proceed to effect an organization in accordance with general parliamentary law and the law and usage of this State.

III.—MODE OF ORGANIZING THE HOUSE.

Your committee now proceed to consider what is the proper and legal mode of organizing the house of representatives, as upon that question depends, to some extent, the validity of the present organization of this house.

In the well-known case of Kerr *vs.* Trego, 47 Pa. S. R., 292, cited in Brightley's Leading Cases on Elections, (p. 632,) Chief-Justice Lowrie, of the supreme court of Pennsylvania, laid down the following principle:

"On the division of a body that ought to be a unit, the test of which represents the legitimate social succession is, which of them has maintained the regular forms of organization, according to the law and usages of the body, or, in the absence of these, according to the laws, customs, and usages of similar bodies in like cases, or in analogy to them. This is the uniform rule in such cases."

And in the same case, speaking of the custom of the clerk of the former organization taking charge of the organization of the new body, he says, (p. 638:)

"It has the sanction of the common usage of every public body into which only a portion of new members is annually elected; it is the periodical form of re-organizing the select council and the senate of the State, and also the form of organizing the Senate of the United States on the meeting of a new Congress, when the Vice-President does not appear, and the last President *pro tempore* does; and we understand this custom to be uniform throughout the United States, though this is not very important. And when there is a president whose term as a member has expired, then the functions of the clerks continue, and they, in all cases, act as the organs of re-organizing the body, and continue to hold office until their successors are chosen and qualified. Our State and Federal Houses of Representatives are illustration enough of this. So universal is this mode of organizing all sorts of legislative and municipal bodies, that all departures from it can be justified only as founded on special and peculiar usages, or on positive legislation. Whenever this form is adhered to, a schism of the body becomes impossible, though the process of organization may be very tardy. * * *

"It is objected that a rule that attributes so much power to the officers of the previous year gives them an advantage which they may use arbitrarily and fraudulently against the new members, so as to secure to themselves an illegitimate majority. No doubt this may be so; but no law can guard against such frauds, so as to entirely prevent them, just as it cannot entirely prevent stealing and perjury and bribery; the people are liable to such frauds at every step in the processes of an election or organization. But so much more the need for order and law in this part of the process; the law *can* dictate that, though it cannot furnish honesty and sound judgment to the actors in it. That the law and order which we have announced have existed so long and so generally, is proof, at least, that they are better than no law at all."

In Wilson's Digest of Parliamentary Law, section 1603, page 221, this author says:

"At the commencement of every regular session, the Clerk of the House opens the session by calling the names of members by States and Territories, if in Con-

gress, *and by counties*, if in State legislative assemblies. If a quorum answer to their names, he will put the following question: 'Is it the pleasure of the House to proceed to the election of a Speaker?' If decided in the affirmative, tellers are generally appointed to conduct the vote."

This seems to be the universal custom in the organization of legislative bodies, and such custom not only prevails in this State, but is specially established by the rules of the house of representatives of this State.

Rule 80 of the rules of the house of representatives of this State is as follows:

"In all cases not determined by these rules, or by the laws, or by the constitution of this State as ratified on the 14th, 15th, and 16th days of April, 1868, this house shall conform to the parliamentary law which governs the House of Representatives of the United States Congress."

Rule 81 is as follows:

"These rules shall be the rules of the house of representatives of the present and succeeding General Assemblies, until otherwise ordered."

Turning now to Barclay's Digest, (pages 44 *et seq.*, and 126,) we find that the parliamentary law governing the House of Representatives of the United States Congress requires the Clerk of the last House to make up the roll of the members of the new House by placing thereon the names of such persons only whose credentials show "that they were regularly elected;" that having ascertained by a call of this roll that a quorum is present, the Clerk then proceeds to call the names of the members for the choice of a Speaker; the Speaker being chosen, assumes the duties of presiding officer, and after swearing in the members, the oath of office being first administered to him, proceeds to complete the organization; pending the election of a Speaker, the Clerk preserves order and decorum.

Such being not only the custom and parliamentary practice of this State, but also the general parliamentary law governing legislative bodies, the question arises: Was the present house of representatives organized on the 28th day of November in accordance with this universally established custom? That it was so organized the facts prove beyond a doubt.

IV.—AUTHORITY OF THE CLERK IN EXCLUDING ALL BUT LEGALLY ELECTED MEMBERS.

Before stating, however, the facts connected with the organization of the house of representatives, your committee deem it proper to consider next the question whether the clerk of the last house was authorized to omit from the roll the names of the claimants from Edgefield and Laurens Counties.

Your committee have already in this report stated the fact that the board of state canvassers determined that no valid election had taken place in the counties of Edgefield and Laurens, and had refused to issue certificates of election to any person in those counties.

Upon the question of the right of the claimants from these counties to be placed upon the roll, and to participate in the organization, the following citation from Cushing's Law and Practice of Legislative Assemblies, section 229, page 87, is in point:

"The right to assume the functions of a member, in the first instance, and to participate in the preliminary proceedings and organization, depends wholly and exclusively upon the return or certificate of election; those persons who have been declared elected and are duly returned being considered as members, until their election is investigated and set aside, and *those who are not so returned being excluded from exercising the function of members*, even though duly elected, until their election is investigated and their right admitted."

To the same effect is section 141 (page 52) of the same work, which your committee have already cited in connection with the action of the supreme court.

In section 238 (page 91) of the same work, in discussing the principles of parliamentary law governing the assembling and organization of legislative bodies, Cushing says:

"Hence it has occurred more than once that struggles for political power have begun among the members of our legislative assemblies even before their organization; and it has happened on the one hand, that persons whose rights of membership were in dispute, and who had not the legal and regular evidence of election, have taken upon themselves the functions of members; and, on the other, that persons having the legal evidence of membership have been excluded from participating in the proceedings."

In order to avoid such difficulties, this distinguished writer lays down the following principles in section 240, which are applicable to the question now under consideration:

"That no person who is *not duly returned* is a member even though legally elected, until his election is established.

"That those members who are duly returned, and they alone, (the members whose rights are to be determined being excluded,) constitute a judicial tribunal for the decision of all questions of this nature."

In Kerr *vs.* Trego, (Brightley's Election Cases, page 636,) already cited, the chief-justice said:

"In all bodies that are *under law*, the law is that where there has been an authorized election for the office in controversy, the certificate of election, which is sanctioned by law or usage, is the *prima facie* written title to the office, and can be set aside only by a contest in the form prescribed by law. This is not now disputed. No doubt this gives great power to dishonest election officers, but we know no remedy for this but by the choice of honest men."

It is proper here, in this connection, to again refer to the language already quoted from the same authority, (page 638:)

"It is objected that a rule that attributes so much power to the officers of the previous year gives them an advantage which they may use arbitrarily and fraudulently against the new members, so as to secure to themselves an illegitimate majority. No doubt this may be so; but no law can guard against such frauds so as to entirely prevent them, just as it cannot entirely prevent stealing, and perjury, and bribery; the people are liable to such frauds at every step in the processes of an election or organization. But so much the more need for order and law in this part of the process; the law can dictate that, though it cannot furnish honesty and sound judgment to the actors in it. That the law and order which we have announced have existed so long and so generally, is proof, at least, that they are better than no law at all."

Applying the law, as now stated, to the facts in the present instance, it is clear, first, that there were no representatives from Edgefield and Laurens Counties having certificates of election according to the law and usage of this State; and, second, that, under the law, without such certificates, the clerk had no right to place the names of any persons upon the roll of the house as representatives from these counties.

It is true that certain parties did appear at the time of the organization of the house, claiming to represent these two counties, and presenting certain certificates signed by the clerk of the supreme court, upon which certificates they claimed that their names should be placed upon the roll, and that they should be admitted to participate in the organization of the house. These certificates the clerk of the house very properly refused to recognize as certificates of election sanctioned either by law or usage. But, aside from their validity, it is a fact worthy of notice here that these certificates were not authorized to be issued by the court itself. On the contrary, when asked to do so, the court distinctly refused to grant such certificates, but remarked that the parties in interest before the court could obtain transcripts of the record of the court from the clerk. In the proceedings of the court, as reported at the time in the leading democratic journals of the State, and, so far as your committee knows, undisputed up to the present time, the following appears:

"Mr. Youmans then submitted an order that the clerk of court issue certificates to the persons who had received the highest number of votes for members of the General Assembly for the counties of Edgefield and Laurens, and that his certificates stand in lieu of those which should have been issued by the board.

"Judge WILLARD. That we cannot do. There is no authority or precedent for such an order. If our opinion has not weight enough to be respected in the organization of the houses, putting it on paper would not add to it."—*Charleston News and Courier*, November 27, 1876; *Columbia Register*, November 26, 1876.

But admitting that the court itself had undertaken to issue certificates of election to persons from Edgefield and Laurens Counties, such certificates would be clearly of no value as certificates of election entitling the holders to be regarded as representatives of those counties, nor could they be regarded as such *prima facie* evidence of election as entitled the holders to be placed upon the roll of the clerk.

The position assumed and maintained by the republican party before and during this entire contest was:

First. That no persons except those declared elected and duly returned by the board of State canvassers, and holding certificates of the secretary of state, were entitled by law or usage to be placed upon the roll. (Cushing, sections 229 and 240.)

Second. That the organization of the house must be effected by those persons only whose election had thus been declared by the board of State canvassers and certified by the secretary of state in accordance with the law of the State.

Third. That all other persons claiming to be entitled to seats in the house as representatives must submit their claims to the house after its organization by the members whose seats were undisputed. (Cushing, sections 229 and 240.)

In these just and reasonable demands the democratic members-elect of the house of representatives refused to acquiesce, although in the organization of the senate the course which the republicans had laid down was not only followed, but acquiesced in by all the democratic senators without protest or debate; and even to this date no person has been admitted to a seat in the senate from either Edgefield or Laurens County.

V.—LEGISLATIVE QUORUM.

Having ascertained and determined the proper course to be pursued in organizing the house, and having discussed the authority of the clerk to exclude all but legally elected members having the proper certificates of election, the only legal question now remaining to be considered is, what number of the duly elected members were sufficient to constitute a quorum for the purpose of organizing the house of representatives and discharging the functions of a legislative body?

By the action of the board of State canvassers in regard to the counties of Edgefield and Laurens but one hundred and sixteen persons were returned as duly elected members of the house of representatives, and the question now arises, what number of these one hundred and sixteen members were necessary to form a quorum for the purpose of perfecting a valid organization?

By section 4, article 2, of the constitution of the State it is provided that "the house of representatives shall consist of one hundred and twenty-four members, to be apportioned among the several counties according to the number of inhabitants contained in each;" and by section 14 of the same article it is further provided that a "majority of each house shall constitute a quorum to do business."

The language of the Constitution of the United States upon the subject of a legislative quorum is identical with the language used in the constitution of our State: "A majority of each (house) shall constitute a quorum to do business." (Constitution United States, section 5, article 1.) And while it is true that the number of members of which the two Houses of Congress may consist is not as precisely fixed as in this State, yet the possible number of which each House may be composed at any given time is absolutely as certain as though it was an unalterable number, the possible membership at any given time being always an absolutely fixed number.

This similarity in the constitutional provisions in regard to the Legislature of South Carolina and the Congress of the United States is important in determining what constitutes a quorum of the house of representatives of this State, since, in the absence of all precedents in our own legislative annals, your committee are compelled to refer to the decisions of Congress upon this question.

Fortunately, this matter has been decided by both Houses of Congress, and is no longer a disputed question. During the first session of the Thirty-seventh Congress, in the House of Representatives, the Speaker (Hon. G. A. Grow, of Pennsylvania,) decided that a quorum of the House consisted of a majority of the members *chosen*, and in this decision of the Chair the House acquiesced. (Journal H. R., first session Thirty-seventh Congress, page 117.) This decision was not rendered, as has been erroneously stated on several recent occasions, for the purpose of enabling the House to organize, because several of the States failed to choose Representatives, but it was made fifteen days after the organization, upon a question which in nowise affected the validity of the organization.

The question as to whether a quorum consisted of a majority of the entire number of members provided for by the Constitution or a majority of the members actually chosen was first raised in the Senate of the United States on the 11th April, 1862, and after a discussion, which was prolonged for several sessions, it was finally decided, on May 4, 1864, by a vote of 26 yeas to 11 nays, that "a quorum of the Senate consists of a majority of the Senators duly chosen." Among those voting for this decision we find the names of eminent men of both political parties, such as Reverdy Johnson, Lyman Trumbull, Charles Sumner, Henry Wilson, W. P. Fessenden, Benjamin Wade, and others.

Precedents to the contrary may be found in the earlier decisions in Congress and among the earlier writers, but they have been overruled by these later decisions, in which all recent writers concur. For instance, Professor Farrar, in his Manual of the Constitution of the United States, page 166, says, in relation to the constitutional provision in regard to a quorum, that "this has been held to be a majority of the members actually sworn in and entitled to seats at the time, and not a majority of a full delegation from all the States."

This question of a constitutional quorum has also been decided by the Legislature of Indiana. Certain members of the Legislature resigned, in order to leave the Legislature without a quorum, the constitution of Indiana providing that two-thirds of the members shall constitute a quorum. The Legislature, in consequence of the withdrawal of these members, adjourned without passing the regular appropriation bills, and the governor ordered new elections to fill the vacancies, and again convened the Legislature. The appropriation bills were passed, when certain members, in order to defeat a vote upon the ratification of the fifteenth amendment, withdrew again, as on the former occasion. The Legislature thereupon decided that two-thirds of the actual membership constituted a quorum, and proceeded to ratify the amendment. This action was certified in forwarding the vote of the Legislature on the ratification of the amendment. No question was raised in regard to it by Congress, and the vote of Indiana, as thus cast, was passed upon and counted.

From this examination of the provisions of our constitution relating to a legislative quorum, and from the precedents in the Congress of the United States which have been cited, as well as the Indiana case, your committee feel fully warranted in concluding that the true definition of a legislative quorum, under our constitution, is a *majority of the members chosen*, and the organization of the House of Representatives upon this basis would be constitutioual and valid.

It is objected to the view which your committee has presented of a legislative quorum under our constitution that, if less than a majority of the possible number of members was elected, it would then place it within the power of but a very few members to organize the house. This your committee admit; for, unless we act upon this view of the constitution, in certain contingencies it would become impossible to organize a house of representatives in this State. Without such an organization no speaker could be elected, and consequently no writs of election could be

issued to fill vacancies, if by any possibility the people failed at the general election to elect a majority of the one hundred and twenty-four members provided for by the constitution. The government, therefore, would, in such an emergency, be brought to a permanent stand-still until the next general election. Such a result cannot be reasonably supposed to be within the scope or intent of the constitution.

VI.—STATEMENT OF FACTS RESPECTING ORGANIZATION OF THE HOUSE.

Having concluded their examination of all the legal questions involved in the organization of the present house of representatives, your committee now proceed to state the facts connected therewith.

The clerk of the last house of representatives, Mr. A. O. Jones, was, as your committee have already explained, charged with the duty of organizing the new house by preparing the official roll of members-elect, and by calling the house to order and presiding during the election of a speaker. Mr. Jones placed upon the roll of the house the names only of the one hundred and sixteen persons bearing the certificates of the secretary of state, based upon the decision of the board of State canvassers, the election in Edgefield and Laurens Counties being declared by the canvassers to be void by reason of fraud and violence.

At twelve o'clock m. of Tuesday, the 28th November, 1876, the day fixed by the constitution for the assembling of the Legislature, Mr. Jones proceeded with the organization of the house, having previously given orders to the sergeant-at-arms to admit no person to the floor of the house as members except those holding the certificates of the secretary of state. It may be mentioned here that in enforcing this latter order of the clerk, the sergeant-at-arms found himself confronted at the door of the house by the entire body of democratic members, headed by the persons claiming to be elected from Edgefield and Laurens Counties. Having no force at hand sufficient to guard against the entrance of these persons from Edgefield and Laurens, the sergeant-at-arms called upon the United States Army officer on duty in the building to aid him against being overpowered while executing the order of the clerk. The officer complied with the call, and assisted the sergeant-at-arms in maintaining his position. It is not true, all statements to the contrary notwithstanding, that any officer or soldier passed upon or undertook to pass upon the certificates of members of the house. The United States forces acted at this point simply as a support to the sergeant-at-arms, who was engaged in executing a lawful order of the clerk.

Upon the refusal of the sergeant-at-arms to admit the persons claiming to be elected from Edgefield and Laurens, the entire body of democratic members retired from the State-house, notwithstanding all who held certificates of the secretary of state were freely permitted, and even invited and urged, to enter the hall of the house.

At twelve m. the clerk proceeded to call the roll of the house; whereupon fifty-nine answered to their names. The clerk then immediately announced that an election for speaker was in order, and immediately called the roll upon this question; whereupon fifty-nine members voted, one democrat, Mr. W. H. Wallace, of Union, who had entered the hall subsequently to the first call of the roll, being present, but not voting. The result of the vote was declared by the clerk to be that E. W. M. Mackey received 55 votes, and was, therefore, duly elected. Mr. Mackey immediately appeared, took the oath of office, and assumed the duties of speaker. After the election of clerk, a message was sent to the senate, informing that body of the organization of the house, and immediately thereafter received a similar message from the senate, announcing the organization of that body. A joint committee of the two houses was thereupon appointed and waited upon the governor, and informed him that the two houses were duly organized and were ready to receive any communications which he might be pleased to make. After transacting other business, the house and senate adjourned until twelve o'clock the next day. During the second day's session the committee on privileges and elections reported upon the contest for seats from Barnwell County, and their report, seating the republican contestants, was adopted, and four of the persons declared elected were sworn in and took their seats; the other member from Barnwell subsequently appeared and qualified. The house again adjourned until twelve m. of Thursday, the 30th November, the senate adjourning until twelve m. of Friday, the 1st December.

Your committee would here state the action of the democratic members after their refusal to enter the house on Tuesday the 27th ultimo. They then immediately proceeded to the hall of the Richland rifle club, where they elected General W. H. Wallace, before named in this narrative, as speaker, the parties from Edgefield and Laurens taking part in all the proceedings. The whole number of persons present at this time was sixty-five, of whom only fifty-seven held the certificates of the secretary of state. This body continued its session from time to time until the morning of Thursday the 30th ultimo. At about 11.30 a. m. of the 30th, the entire body which had been sitting in the hall of the Richland rifle club appeared in a body at the door of the hall of the house of representatives in the State-house, and demanded admission of the officers of the house then on duty at the door. While these officers were endeavoring to enforce the rules of the house, excluding from the floor of the house all parties except members and officers of the house and certain privileged persons, the democratic members overpowered the doorkeepers and forced their way, together with the claimants from Edgefield and Laurens, into the hall of this house. Mr. Wallace immediately seized and occupied the speaker's chair and Mr. Sloan took possession of the clerk's desk.

At twelve m. of the same day the speaker and clerk of this house appeared and demanded possession of their respective positions. This demand was refused. This situation was continued until Monday, December 4, 1876, when the house adopted the following preamble and resolutions:

"Whereas the house of representatives of the State of South Carolina did assemble in the hall of the house of representatives on Tuesday the 28th day of November, 1876, a constitutional quorum of all the members duly elected as members thereof being present and answering to their names, and did organize by the election of Hon. E. W. M. Mackey as speaker and A. O. Jones, esq., as clerk, and did in all respects proceed to perfect its organization in conformity with the constitution and laws of South Carolina, and has continued in session from day to day until the present time;

"And whereas on Thursday the 30th November, 1876, a body of men, comprising many persons having no legal claim or credentials, did enter the hall of the house of representatives by force and arms, and did proceed to usurp the speaker's chair and the clerk's desk, and did refuse, upon the demand and order of the speaker of the house of representatives, to yield the same;

"And whereas said body of men has been since the said 30th day of November, 1876, engaged in interrupting the proceedings and defying the authority of the house of representatives, and are now preventing the house of representatives from proceeding with business;

"And whereas the senate and house of representatives, by concurrent resolution, have appointed this the 4th day of December, at two o'clock p. m., in the hall of the house of representatives, as the time and place for opening, counting, and publishing the returns of the election of governor and lieutenant-governor;

"And whereas the house of representatives is unable to enforce its authority against said body of men, who have unlawfully intruded themselves into the house of representatives;

"And whereas said intruders have openly proclaimed that they will not obey the orders of the house of representatives or retire from the hall thereof, but will resist by force of arms any attempt on the part of the officers of the said house to enforce its orders and authority: Therefore,

"*Be it resolved*, That the governor of the State be, and he is hereby, requested to take such measures as will protect the house of representatives against the unlawful intrusion, interruption, and violence caused and done by the said body of men who have unlawfully intruded themselves into the hall of the house of representatives, as hereinbefore set forth, and who are now engaged in unlawfully interrupting the proceedings thereof, and who are also, by their unlawful conduct and presence in the house of representatives, preventing the assembling of the General Assembly in joint convention, as is provided by the constitution of the State of South Carolina."

Upon the adoption of the foregoing preamble and resolutions and upon a notification from the speaker of this house that the governor was prepared to immediately respond to the request contained in the resolution, Mr. Wallace, after a few remarks addressed to the body co-operating with him, withdrew with them.

Previous to the withdrawal of Mr. Wallace and his companions, the committee on privileges and elections made a report, which was adopted by the house, confirming the action of the board of State canvassers in regard to the counties of Edgefield and Laurens, and declaring that no valid election was held in either of those two counties on the 7th November, 1876.

On the same day (2d December, 1876) the committee on privileges and elections also reported upon the contest for seats from Abbeville County, and their report seating the republican contestants was adopted, four of whom immediately qualified and took their seats, the other member subsequently appearing and qualifying.

On the 5th December, 1876, the same committee reported upon the contest for seats from Aiken County, and their report seating the four republican contestants was adopted, all of whom being in attendance were duly sworn in and took their seats.

At one o'clock of the same day, pursuant to a joint resolution previously adopted, the senate and house of representatives met in joint convention in the hall of the house of representatives, for the purpose of canvassing the returns of the late election for governor and lieutenant-governor, in accordance with section 4, article 3, of the constitution of this State. The returns were opened and read by the speaker of the house, and when the counties of Edgefield and Laurens were reached, objections being made to the returns from those counties, in accordance with the rules previously adopted, the senate withdrew, and the two houses, acting separately, decided not to count the votes alleged to have been cast in the counties of Edgefield and Laurens. The canvass of the returns was then completed, and the following result was announced:

For governor.

D. H. Chamberlain received	86,216
Wade Hampton received	83,071

For lieutenant-governor.

R. H. Gleaves received	86,620
W. D. Simpson received	82,521

The speaker then declared that Hon. Daniel H. Chamberlain and Hon. Richard H. Gleaves were duly elected, respectively, governor and lieutenant-governor of the State of South Carolina for the ensuing two years. The joint convention was then dissolved and the senate retired.

On the 7th of December, 1876, at one o'clock p. m., the senate and house of representatives met in joint assembly, pursuant to a resolution adopted by both houses, for the inauguration of the governor-elect. The constitutional oath of office was then administered to Hon. D. H. Chamberlain, governor-elect, who thereupon delivered his inaugural address, after which the joint assembly was dissolved and the senate returned to its chamber, where the oath of office was administered to Hon. R. H. Gleaves, the lieutenant-governor-elect, thereby perfecting the organization of the government of the State in accordance with the will of the people, as expressed by their legal votes at the general election on the 7th November, 1876.

Your committee have now presented, as they trust with sufficient clearness and detail, the facts which have attended the history of this house since the declaration of the late election by the board of State canvassers. They have also presented the law which, as it has seemed to them, was applicable to the decision of the legal and parliamentary questions which have arisen and were involved in the facts.

In conclusion, it only remains for your committee to express their unhesitating opinion that the foregoing report establishes in all respects the legal and constitutional validity of this house, and, by consequence, the validity of all its acts since its organization on the 28th day of November, 1876.

E. W. M. MACKEY,
Speaker of the house of representatives.
J. H. FERITER,
JNO. VANDERPOOL,
FRED. A. PALMER,
R. H. HUMBERT,
Committee.

UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit:

Ex parte H. E. Hayne, Thomas C. Dunn, Francis L. Cardozo, William Stone, H. W. Purvis.

Petition for writ of habeas corpus.

To the honorable Hugh L. Bond, circuit judge of the circuit court of the United States in and for the said circuit and district.

The humble petition of H. E. Hayne, Thomas C. Dunn, Francis L. Cardozo, William Stone, and Henry W. Purvis respectfully shows:

That your petitioners, Henry E. Hayne, (as secretary of state of the State of South Carolina,) Thomas E. Dunn, (as comptroller-general of said State,) Francis L. Cardozo, (as State treasurer of said State,) William Stone, (as attorney-general of said State,) and Henry W. Purvis (as adjutant and inspector general of said State) were, by the laws of the said State, constituted the board of State canvassers and authorized and required to canvass the returns and other evidences of election for each general election occurring in said State, and among other things to make a statement of the whole number of votes given at such election for the various officers voted for, upon the certified copies of the statements of the boards of county canvassers, and to certify such statements to be correct, and to certify their determinations to the secretary of state, and, further, to determine and declare what persons have been by the greatest number of votes duly elected to such offices, with power and duty to decide all cases under protest and contest, when the power to do so does not by the constitution reside in some other body.

That the secretary of state, upon receiving such certificate of the determinations of the board of State canvassers, is required to transmit a copy thereof, under seal, to each person thereby declared to be elected; and as to members of the Congress of the United States to prepare a general certificate under the seal of the State, addressed to the House of Representatives, of the due election of the persons chosen at such election as Representatives of said State according to such certified determination of said board of State canvassers; and as to the electors of President and Vice-President of the United States, the board of State canvassers is required to make a statement of all the votes and determine and certify the persons elected in the same manner as provided for the election of other officers; and the secretary of state is required to cause a copy of such certified determination of said board to be delivered to each of the persons therein declared to be elected, and, further, to prepare three lists of the names of the electors of President and Vice-President, and deliver them, with the signature of the governor and under the seal of the State, to the president of the college of electors on or before the first Wednesday in December; and, for a fuller and more specific statement of the duties and powers hereinbefore set forth, reference is now craved to the statutes of said State.

That the Legislature of said State in conferring upon your petitioners the powers and duties hereinbefore set forth and referred to acted in pursuance and solely by authority of, in respect to the election of members of Congress, section 4 of article 1 of the Constitution of the United States, and, in respect to the election of President and Vice-President, of section 1 of article 2 of the Constitution of the United States.

That, in pursuance of the Constitution and laws of the United States and of the said State, a general election for electors of President and Vice-President of the United States, for members of the House of Representatives of the United States, for the various State and county officers, members of the General Assembly of said State, and for circuit solicitors of said State, was held on the 7th day of November, 1876.

That in pursuance of the powers and duties hereinbefore named, your petitioners assembled and organized, upon the notification of the secretary of state, on the 10th day of November, 1876, for the purpose of performing the duties imposed upon them by law, as a board of State canvassers; that they adjourned from day to day, Sundays excepted, until the 22d day of November, 1876, on which day, by the laws of said State defining their powers and duties, their powers to act as a board of State canvassers of said election ceased and determined by the express provisions of the twenty-seventh section of chapter 8 of title 2 of the general statutes of said State, and on which said day your petitioners, having fully, legally, fairly, and honestly, according to the measure of their best skill and judgment, discharged and fulfilled their powers and duties as a board of State canvassers, did adjourn without delay.

That in the lawful discharge of their duties as a board of State canvassers your petitioners duly canvassed, according to law, the returns of the election of electors of President and Vice-President of the United States, and of members of the House of Representatives of the United States, and determined and certified that John Winsmith, Christopher C. Bowen, Timothy Hurley, Thomas B. Johnston, Wilson Cooke, W. B. Nash, and William F. Myers were duly elected by the greatest number of votes as electors of President and Vice-President of the United States, and that JOSEPH H. RAINEY, Richard H. Cain, ROBERT SMALLS, D. Wyatt Aiken, and John H. Evans were duly elected members of the House of Representatives of the United States.

That in canvassing the returns of said election for members of Congress and for electors of President and Vice-President, and determining, declaring, and certifying the result thereof, your petitioners were compelled to canvass and declare the election for all the State and other officers voted for at said election, except the governor and lieutenant-governor, not only by reason of their duties as defined by the laws of said State, in respect to such State officers, but also by reason of the fact that the returns of all the persons voted for, and all other papers and evidences pertaining to said election and within the custody and jurisdiction of the board of State canvassers, covered and embraced the entire election, and were, therefore, necessarily blended and commingled as one general whole.

That if your petitioners had failed to discharge their duties in full on or before the said 22d day of November, 1876, the said election for electors of President and Vice-President and members of Congress would have failed, inasmuch as by the laws of said State no power is given to the board of State canvassers, or to any other person or persons, to canvass and determine said elections after said day.

That on the 13th day of November, 1876, after your petitioners had organized as the board of State canvassers, and while they were in discharge of their duties as such board of State canvassers, your petitioners were served with a notice, signed by James Conner, as counsel for certain relators in a proceeding in the supreme court of said State, wherein your petitioners were informed that motions would be made in said supreme court, on the 14th day of November, 1876, for writs of prohibition and mandamus against your petitioners; that, as subsequently appeared, the said proceeding in the said supreme court was intended to restrain your petitioners from acting in a judicial capacity as a board of State canvassers, or to inquire into any matter not appearing on the face of the returns of said election, and, further, to compel your petitioners to proceed to perform the merely ministerial duty of aggregating the returns of the several boards of county canvassers, and to certify the results thereof in accordance with the results of such aggregation; that your petitioners appeared in said supreme court, by their counsel; whereupon a rule of said court was made requiring your petitioners to show cause before said court why writs of prohibition and mandamus should not be issued against them in accordance with the prayers of said relators; that said court subsequently granted an order requiring your petitioners to proceed to aggregate the returns of the several boards of county canvassers and to report the results to said court; that your petitioners thereupon proceeded to aggregate said returns of the boards of county canvassers and reported the results to said court, including the results of said returns as to the electors of President and Vice-President of the United States and as to the members of the House of Representatives of the United States; that your petitioners, in regarding the order of said court and in reporting the results of said canvass to the said court, acted in a spirit of courtesy to a high judicial tribunal, but then and now protesting and averring that the said court had no authority to issue said order or otherwise to restrain or coerce your petitioners as a board of State canvassers, or to guide or direct them in the discharge of their duties; that your petitioners, having, as hereinbefore stated, performed the duty required of them by the supreme court, and having, as hereinbefore stated, fully discharged all their duties in strict accordance with the Constitution and laws of the United States, and the constitution and laws of the said State, as a board of State canvassers, adjourned without day, whereupon, after said adjournment without day, your petitioners were served with an order of the said supreme court requiring them as a board of state canvassers to certify the elections as senators and representatives in the General Assembly of said State of all persons who appeared by the said report of your petitioners to the said court to be elected, and to deliver a certified statement thereof to the secretary of state, and requiring your petitioner, Henry E. Hayne, as secretary of state, to certify such statement of your petitioners to the said persons so to be declared elected; that your petitioners, having already discharged all their duties as a board of State canvassers, and having at the time of the service of said order ceased to exist as a board of State canvassers, were and are wholly unable to perform any other or additional duties as a board of State canvassers; that your petitioners, failing to comply with the last-named order of the said court, for the reasons now set forth, the said court proceeded, at 1.30 p. m. of the 24th day of November, 1876, to issue its order requiring your petitioners to show cause to the said court why they should not be attached for contempt of the said court in failing to obey the said order of the court, and made the said rule returnable at four o'clock p. m. of the said 24th day of November; that at said hour your petitioners appeared by counsel and by affidavit informed the court that for want of time they were unable to make due answer to said rule, whereupon the court refused to grant your petitioners further time to answer, and adjudged them forthwith to be in contempt of said court, and on the 25th day of November, 1876, ordered that your petitioners do pay each a fine of $1,500, and that the sheriff of Richland County do take them into custody and confine them in the common jail of said county until they be discharged by the order of said court; that subsequently, on the 25th day of November, 1876, your petitioners were taken into custody by the sheriff of said county and confined in the common jail of said county, where they are now, and each of them confined and restrained unlawfully, and against right and justice, of their liberty.

And your petitioners further show that a part of the proceeding hereinbefore referred to in the supreme court of said State consists of a petition for a writ of mandamus to compel your petitioners, as a board of State canvassers, to proceed to change the results determined and declared by them on or before the 22d day of November, 1876, while your petitioners were lawfully acting as such board of canvassers, as to the election of President and Vice-President of the United States, and to compare and correct said results by the returns of the managers of the several polls or precincts throughout the State, and otherwise still further to change said results as to said electors; that in accordance with said petition for mandamus the said supreme court issued its rule to your petitioners, requiring them to show cause on the 24th day of November, 1876, why a writ of mandamus should not issue in accordance with the prayer of said petition; that your petitioners made return to said rule that they were no longer capable of acting as a board of canvassers, whereupon the said court heard argument as to the sufficiency of said return, and, as your petitioners are advised and believe, the said court now have the said matter under consideration; that a part of said proceedings in said supreme court likewise consists of an application by the relators therein that the said court shall restrain and command, guide and direct your petitioners as a board of State canvassers in the discharge of their duties in determining ascertaining, and declaring the results of the election of members of Congress voted for at said election; that as appears both by the order of commitment and the reasons therein set forth under which your petitioners are now confined, and by other proceedings in said cause in the supreme court, the said court did, by its order, require your petitioners to make certified statements to said court of the persons who had received the highest number of votes for all the offices for which they were respectively candidates at the said general election held on the 7th day of November, 1876, including among said officers the offices of electors of President and Vice-President of the United States and of members of the House of Representatives of the United States.

And your petitioners further show that the said proceedings in said supreme court, including all its said orders, were wholly without jurisdiction and an interference with the legal powers and duties of your petitioners as a board of State canvassers in respect to said election for electors for President and Vice-President and members of the House of Representatives of the United States, which powers and duties, as hereinbefore stated, your petitioners were during said proceedings in said court executing under the laws of the said State, passed in pursuance of the authority conferred by the Constitution of the United States; that said proceedings, and especially said order committing your petitioners to jail, were and are an attempt by unlawful means to induce your petitioners as a board of State canvassers, and as officers whose duty it was to ascertain, announce, and declare the result of the said election, wherein an election was held for members of the Congress of the United States, and whose duty it was to give and make certificates, documents, and evidence in relation thereto, to violate and refuse to comply with their duty and the laws regulating the same; that for this reason said proceedings and said order committing your petitioners to jail were and are in violation of section 5511 of the Revised Statutes of the United States.

Wherefore your petitioners, and each of them, show that they are in custody and confinement and restrained of their liberty for acts done in pursuance of laws of the United States, and that they are in custody in violation of the Constitution and laws of the United States.

Wherefore your petitioners humbly pray your honor to grant the writ of *habeas corpus*, directed to Jesse E. Dent, sheriff of Richland County, in whose custody your petitioners now are detained in jail as aforesaid, requiring him to produce the bodies of your petitioners before your honor, at such time as your honor may direct by said writ, to be disposed of as law and justice may require.

And your petitioners will ever pray, &c.

H. E. HAYNE.
THOMAS C. DUNN.
FRANCIS L. CARDOZO.
WILLIAM STONE.
H. W. PURVIS.

STATE OF SOUTH CAROLINA,
Richland County:

Personally came Henry E. Hayne, Thomas C. Dunn, Francis L. Cardozo, William Stone, and Henry W. Purvis, and each made oath in due form of law that the facts set forth in the foregoing complaint are true as therein set forth, according to their best information, knowledge, and belief.

H. E. HAYNE.
THOMAS C. DUNN.
FRANCIS L. CARDOZO.
WILLIAM STONE.
H. W. PURVIS.

Sworn to and subscribed before me this 27th day of November, 1876.

J. E. HAGOOD,
Clerk Circuit Court United States, District of South Carolina.

ORDER.

Mr. HAGOOD, *Clerk*: Let the writ issue as prayed, and make it returnable before me in the circuit-court room immediately.

HUGH L. BOND.

NOVEMBER 27, 1876.

THE UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit:

The President of the United States to the sheriff of the county of Richland of the State of South Carolina:

We command you that you have the bodies of Henry E. Hayne, William Stone, Francis L. Cardozo, Thomas C. Dunn, Henry W. Purvis, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatever name the said Henry E. Hayne, William Stone, Francis L. Cardozo, Thomas C. Dunn, and Henry W. Purvis shall be called or charged, before Hon. Hugh L. Bond, judge of the United States circuit court for the district of South Carolina, at the court-rooms of the United States court-house, in the city of Columbia, South Carolina, on Monday, the 27th instant, immediately, to do and to receive what shall then be considered concerning the said Henry E. Hayne, William Stone, Francis L. Cardozo, Thomas C. Dunn, and Henry W. Purvis.

And have you then and there this writ.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, at Columbia, in the district aforesaid, this 27th day of November, A. D. 1876.

By order of the court.

[L. S.]

J. E. HAGOOD,
Clerk Circuit Court United States, District of South Carolina.

MARSHAL'S RETURN—IN CIRCUIT COURT.

UNITED STATES OF AMERICA,
District of South Carolina, Fourth District:

Ex parte Henry E. Hayne, William Stone, Francis L. Cardozo, Thomas C. Dunn, Henry W. Purvis.
Writ of habeas corpus.

I do hereby certify that I did serve a copy of the within writ of *habeas corpus* on Jesse E. Dent, sheriff of Richland County, State of South Carolina, on the 27th of November, 1876, at Columbia, South Carolina, and that, in obedience to the said writ, the said Sheriff Dent on the same day did produce the above-named prisoners before Hon. Hugh L. Bond, circuit judge, who thereupon ordered the said prisoners to

be delivered into my custody by the said sheriff, which was immediately done, and I now hold the said prisoners to await the further order of his honor the circuit judge.

R. M. WALLACE,
United States Marshal, District South Carolina.

COLUMBIA, SOUTH CAROLINA, *November* 29, 1876.

SHERIFF DENT'S RETURN.

THE STATE OF SOUTH CAROLINA,
Richland County:

I, Jesse E. Dent, sheriff of said county, do hereby certify and return to Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, that by virtue of a judgment an order issued out of the supreme court of the State of South Carolina, and signed by Hon. F. J. Moses, chief-justice, the said H. E. Hayne, William Stone, F. L. Cardozo, T. C. Dunn, and H. W. Purvis were by me taken into custody and confined in the jail of said county on the 25th day of November, A. D. 1876; one of which said judgments and order is in words as follows:

"It is now adjudged that the said H. E. Hayne is in contempt of this court, and it is ordered that he do pay a fine of $1,500, and that the said sheriff of Richland County do take him, the said H. E. Hayne, into custody and confine him in the common jail of said county until he be discharged by the order of this court."

And the same order was made in respect to each of the above-named persons, certified copies of which are herewith filed, and the bodies of the said Hayne, Stone, Cardozo, Dunn, and Purvis I have here, as commanded by this writ of 27th November, A. D. 1876.

J. E. DENT,
Sheriff Richland County.

REPLY TO RETURN OF J. E. DENT, SHERIFF.

Ex parte H. E. Hayne, Thomas C. Dunn, Francis L. Cardozo, William Stone, H. W. Purvis—United States Circuit Court.

Come now the said petitioners, and for reply to the return made by the said J. E. Dent, sheriff, &c., they say that they admit that the order set out in said answer was made by said supreme court, but they say that the same was made in a certain cause wherein the State *ex relatione* R. M. Sims and others, as citizens and candidates, were petitioners, and these petitioners were defendants, and t ey now file and make part hereof a copy of the record and proceedings had in said court and make the same a part hereof; and they say that the said supreme court had no jurisdiction or authority or jurisdiction of the subject-matter in said proceedings alleged, or over your petitioners, and that therefore the said order of said court was and is void.

And they further say that, at the time the said order set out in the said answer was made, the said petitioners had completed their labors as a board of canvassers and had adjourned and ceased to be a board, and therefore they were unable to comply with any order said court could or did make in the premises.

D. T. CORBIN,
THOMAS SETTLE,
J. C. DENNY,
For Petitioners.

UNITED STATES OF AMERICA,
District of South Carolina:

William Stone, one of the petitioners, on oath, says that the foregoing answer is true to the best of his knowledge, information, and belief.

WILLIAM STONE.

Sworn to before me the 29th day of November, 1876.

J. E. HAGOOD,
Clerk Circuit Court United States, District South Carolina.

PETITION AND WRIT FOR HABEAS CORPUS—IN THE CIRCUIT COURT.

UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit:

Ex parte Henry E. Hayne, William Stone, Francis L. Cardozo, Thomas C. Dunn, Henry W. Purvis.

Opinion of the court.

Upon the petition of several persons styling themselves the board of State canvassers of South Carolina, which was presented to me on the first day of the regular term, I issued a writ of *habeas corpus* commanding the sheriff of Richland County, in whose custody they were alleged to be, to produce the bodies of the petitioners before me that I might inquire into the legality of their imprisonment.

This is a motion to dismiss the petition and remand the petitioners into the custody of the sheriff.

Section 755, title 13, of the Revised Statutes of the United States provides "the court or justice to whom application for the writ of *habeas corpus* is made shall forthwith award it, unless it appears from the petition itself that the party is not entitled thereto."

It is not a question, at the time of the application for the writ, whether or not the facts alleged in the petition are true or false.

They are to be verified by the oath of the petitioner, and if he sets out in his petition what is necessary to give a Federal court jurisdiction, the writ must issue, and the truth or falsity of the facts alleged must be determined at the hearing.

Whether or not, then, this writ issued properly or improperly depends upon the fact whether the petitioners have embraced in their petition what is necessary to give jurisdiction to the Federal courts.

To give such jurisdiction the party must allege that he is in custody in violation of the Constitution or of a law of the United States.

These petitioners do allege, in substance, that they were a board of State canvassers, charged with the duty, among others, of canvassing the votes recently cast at a general election, at which members of Congress and presidential electors were to be chosen.

That they proceeded to canvass the votes cast, when, on the 13th day of November, 1876, while in discharge of their functions, they were informed an application had been made to restrain them from exercising what they thought to be their powers as a board of canvassers, charged as well with a Federal as a State trust, and that in consequence of further proceedings against them, under said notice, they are now restrained of their liberty for acts done in pursuance of laws of the United States, and are in custody in violation of the Constitution and laws of the United States.

When such a petition, including every requirement of the statute, was presented to me, there was nothing to be done but to order the writ to issue.

But it is very plain that if these parties are in custody for disobedience of an order of a State court of competent jurisdiction, there is no power in the Federal courts to release them.

It is not to the point to show that the order of commitment is erroneous. It must be absolutely void. The judgment of a State court having jurisdiction of the person or thing in controversy must be respected by every other court. It cannot be reviewed except in the way pointed out by the statute.

The first question then to be decided at this time and upon this motion is whether or not the supreme court of the State of South Carolina had jurisdiction to hear and determine the matter before it.

Article 1, section, 26, of the constitution of South Carolina, provides: "In the government of this Commonwealth the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other."

Section 4 of article 4 of the same instrument defines the power of the supreme court thus: "The supreme court shall have appellate jurisdiction only in cases in chancery, and shall constitute a court for the correction of errors at law under such regulations as the General Assembly may by law prescribe: *Provided*, The said court shall always have power to issue writs of injunction, mandamus, *quo warranto*, *habeas corpus*, and such other original and remedial writs *as may be necessary to give it a general supervisory control over all other courts in this State*."

The powers of the board of State canvassers, so far as this case is concerned, are defined by chapter 8, title 2, sections 24, 25, and 26, thus:

"SEC. 24. The board when thus formed shall, upon the certified copies of the statements made by the board of county canvassers, proceed to make a statement of the whole number of votes given at such election for the various officers, and for each of them voted for, distinguishing the several counties in which they were given. They shall certify such statements to be correct, and subscribe the same with their proper names.

"SEC. 25. They shall make and subscribe on the proper statement a certificate of their determination, and shall deliver the same to the secretary of state.

"SEC. 26. Upon such statements they shall then proceed to determine and declare what persons have been, by the greatest number of votes, duly elected to such offices, or either of them. They shall have power, and it is made their duty, to decide all cases under protest or contest that may arise, when the power to do so does not, by the constitution, reside in some other body."

And the objection to the jurisdiction of the supreme court made by the petitioners is that they are a part of the executive department of the government charged with the execution of a law of the State, and that they alone are authorized to canvass the votes, and that they are not subject in the exercise of their functions to the control of the judicial branch of the government.

The Supreme Court of the United States, in a very able opinion by Mr. Justice Miller, in the case of Gaines *vs.* Thompson, 7 Wallace 347, has very clearly determined what the law is on this subject, and that is "that if it appear that the act which the court is asked to compel the officer of the Executive Department of the Government to do be purely ministerial, the court having jurisdiction to issue the writ of mandamus may compel the executive officer to perform his duty; but, if the act required to be done by the executive officer be not merely ministerial, but discretionary, or one about which he is to exercise his judgment, a court cannot, by mandamus, act directly upon the officer and guide and control his judgment or discretion in the matters committed to his care in the ordinary exercise of official duty; and the court further says that the interference of the courts with the performance of the ordinary duties of the Executive Departments would be productive of nothing but mischief, and we are quite satisfied that such a power was never intended to be given them;" and for this Mr. Justice Miller quotes the opinion of Chief-Justice Taney, in the case of the Commissioner of Patents *vs.* Whitely, 4 Wallace, 522, and the law is stated to the same effect in a very celebrated case in Maryland, by Mr. Chief-Justice Bowie, Miles *vs.* Bradford, 22 Md. Rep., 170, a case where the powers of the governor to canvass the votes was not so broadly given as in the case at bar.

That the duty of this board of canvassers was not merely ministerial, but that they were clothed with a large discretion, it seems to me, is very plain. They were not merely to take the returns and aggregate them. They were to canvass them. That is, they were to examine, to sift, to scrutinize them, which implies a power to reject such as were not lawful in their judgment; and more, they were to decide all cases under protest or contest that might arise when the power to do so did not, by the constitution, reside in some other body.

They were the executive officers, appointed to declare the election of such persons as had, in their judgment, the majority of the legal votes cast. If they decided erroneously or falsely, the remedy of those candidates who thought themselves wronged was by *quo warranto*; but no court had the jurisdiction to compel the board of State canvassers to do otherwise than their own judgment dictated.

It remains now to be seen what the court was asked to do by the relators. Their suggestion sets forth "that the board is proceeding to hear and determine all matters of contest or protest before them in regard to the election of persons who were candidates at the general election, and is proceeding to certify their determination on such contests and protests to the secretary of state." And they pray that a writ of mandamus may issue commanding them to ascertain from "the managers' returns and statements, forwarded to them by the boards of county canvassers, the persons who, at the general election held on the said 7th day of November ultimo, had the highest number of votes; and commanding them and compelling them to revoke and annul any determination or decision which they may have made in any case of contest or protest, if any such there be."

Under the cases cited in the opinion of the Supreme Court of the United States, 7 Wallace 347, Gaines *vs.* Thompson, above referred to, I am of opinion that the supreme court of the State of South Carolina had no jurisdiction to entertain any such "suggestion" or petition.

But it does not follow because a party is in custody by reason of a void judgment of a State court that a Federal judge or court has jurisdiction to release him from his imprisonment.

He must be in custody in the language of the statute for an act done or omitted, in pursuance of a law of the United States, or in custody in violation of the Constitution of the United States, and the question therefore presents itself whether the board of State canvassers, in exercising their functions in reference to the late general election in the State at which members of Congress and electors of President and Vice-President were to be chosen, were acting in any respect in pursuance of an act of Congress, or under the Constitution of the United States. That they were so acting is partly shown from the fact that Congress has undertaken by statute to punish these State officers for dereliction of duty. Section 5515 of the Revised Statutes United States provides "that every officer of an election at which Representatives or Delegates in Congress is voted for, whether such officer of election be appointed or created by or under any law or authority of the United States, or by or under any State, territorial, District, or municipal law or authority," who commits the acts forbidden by that section, shall be punished as therein provided. This was beyond the power of Congress unless these officers were acting in pursuance of a law, or under or by virtue of the Constitution of the United States.

But that these petitioners, though appointed by the State, are under the protection of the courts of the United States, is apparent from the fact that the board of State canvassers have certain powers to perform the authority for the exercise of which is derived directly from the Constitution of the United States.

Section 1, article 2, of the Constitution provides that electors shall be appointed in such manner as the Legislature of each State may direct. When the Legislature of a State, in obedience to that provision, has by law directed the manner of appointment of the electors, that law has its authority solely from the Constitution of the United States. It is a law passed in pursuance of the Constitution.

In South Carolina the Legislature has passed such a law. It has provided that electors shall be chosen by the qualified voters of the State, and the power of the State canvassers to canvass, determine, and declare the result of such election, and to hear all questions of protest and contest relative to said officers, is expressly given in the sections of the statute above quoted. Section 2, article 1, of the Constitution of the United States provides that members of Congress shall be chosen

by the people of the several States, and in South Carolina the mode of choosing them has been fixed by law, and the board of State canvassers are appointed the proper officers for determining and declaring the result of such election.

An examination of the laws of South Carolina will show "that State and county officers are elected on the same day that electors of President and Vice-President and Representatives to Congress are voted for, and that they are voted for on the same general ticket, and that all ballots at the several precincts in each county are deposited in the same box, and are counted and returned by the same set of election officers, and the result of such election is certified to the board of State canvassers by the officers holding the election."

And section 5514, title 70, Revised Statutes United States, provides "that any one who is proved to have voted at such general election shall be deemed to have voted for Representatives in Congress."

The board of State canvassers is required to meet on the 10th day of November for the purpose of sifting, scrutinizing, not merely aggregating, the statements of the county boards. The validity of the entire election in a certain precinct or county depends upon a state of facts applicable to every officer, State or Federal, who has been voted for on the general ticket at that particular precinct. So far as the laws of the United States are concerned, at an election where members in Congress are to be chosen, any alleged intimidation or violence toward a voter, or other misdemeanor described in section 5511 of the Revised Statutes, would be a proper consideration for the board in determining the result; because such violations of the laws of the United States, if sufficient in degree in the judgment of the board of State canvassers, would control the result.

This is the law of South Carolina as applied concurrently with the paramount law of the land—the acts of Congress made in pursuance of the Constitution of the United States.

The board of State canvassers was not at liberty in canvassing the votes to shut its eyes to the laws of Congress respecting what was a fraudulent poll. In the petition the board alleges it was necessary, in canvassing the returns for Federal officers at this general election, when both State and Federal officers were voted for on the same ticket, to canvass all the votes polled and to declare the election of State officers after such canvass as well as Federal officers, and it is manifest that to determine a general election the amount of fraud and intimidation, if there was any exercised, to control the vote for State officers, must have had some influence upon the election of Federal officers, and what the effect of it was upon such election it was for the board to determine.

The return of the sheriff shows that he holds the petitioners under an order of the supreme court, in which it is alleged they are in contempt of that court for disobedience of an order passed in a certain cause.

This cause, by the papers filed, appears to be the case of the State at the relation of R. M. Sims and others against H. E. Hayne, chairman, and others, as members of the State board of canvassers.

We have shown from the "suggestion" itself that in our judgment the court had no jurisdiction to entertain it, and though the returns show that the parties are in custody to-day solely for not obeying the mandate of the court respecting State officers, it is our duty to go behind the returns and look at the case as it presented itself to the supreme court at its inception. United States *ex rel.* Hendrochs *vs.* Harris; *Ex parte* Dock Brodges, 2 Circuit Court, L. I., 327; 21 Int. Rev., 214. What the relators asked the court to do in their original suggestion is perfectly plain, and we have above quoted the paragraphs of the "suggestion" which constituted the ground of complaint of the relators. In my judgment the whole matter was beyond the jurisdiction of the supreme court, and any order passed by them upon such "suggestion" is void.

A commitment for contempt is like any other judgment in a criminal case. While it gives me great concern to hear and determine a cause where parties are charged with disobedience to the orders of a State court, yet where the liberty of men is concerned who have a right to appeal under the act of Congress to the Federal courts, I am sure my brother judges of the State courts will not think me wanting in courtesy if I hear them, as I am bound by law to do, and will believe me when I say there is no one who regrets more than myself this conflict of jurisdiction.

I think this proceeding in the supreme court was beyond the jurisdiction of that court. That the State board of canvassers were clothed, under the law, with discretionary powers, which required them to discriminate the votes, to determine and certify the candidates elected after scrutiny, and that they were a part of the executive department of the government, and were in no wise subject to the control as to what they should do after they had commenced to perform that duty to the judicial department; and that as this was a general election at which members of Congress were to be elected and electors of President and Vice-President of the United States to be chosen, they were acting in a Federal capacity, or, in other words, in pursuance of a law of the United States, and therefore if any one disturbs them in the exercise of their functions they are entitled to the protection of the courts of the United States.

And while I greatly regret to differ from my brethren of the State court, I shall make an order discharging the parties from custody.

I am happy, however, to think that this controversy may be referred to a tribunal whose judgment we all respect—the Supreme Court of the United States—and I shall be displeased as little as any one to hear that in this judgment I have been in error.

In the course of the preparation of these notes I have had occasion to refer to the following authorities:

Ex parte H. E. Hayne *et al.*—Petition for *habeas corpus*.

AUTHORITIES.

The circuit court can look behind the return of the officer and the commitment and examine into the cause of the detention. Rev. Stat. U. S., section 753; U. S. *ex rel.* Hendricks *vs.* J. O. Harris; Atlanta Whig, June 13, 1872; *Ex parte* Dock Bridges, 2 Cent. L. J., 327; opinion of Bradley, J., in same case; 21 Int. Rev. Record, 214; *Ex parte* Jenkins, 2 Wall., Jr., 521; *Ex parte* Mattison, manuscript; opinion of Bond, J., U. S. Circuit Court Dist. of S. C.; Bigelow *vs.* Forrest, 9 Wall., 339; *Ex parte* Lange, 18 Wall., 163; People *vs.* Liscomb, 60 N. Y., 573.

The supreme court had no jurisdiction to control by mandamus the action of the board of State canvassers in matters within their discretion. Const. of S. C., art. 4, sec. 4; const. of S. C., art. 1, sections 26 and 33; gen. stat. of S. C., chap. 8; Astrom *vs.* Hammond, 3 McL., 107; Elliott *vs.* Piersol, 1 Pet., 328; People *ex rel.* Tweed *vs.* Liscomb, 60 N. Y., 560; Gaines *vs.* Thompson, 7 Wall., 347; Secretary *vs.* McGanahan, 9 Wall., 298; Mississippi *vs.* Johnson, 4 Wall., 475; Atty. Gen. *vs.* Bartow, 4 Wis., 567; State of Ohio *ex rel.* Grissel *vs.* Marlow, 15 Ohio, 114; Rice *vs.* Austin, 19 Minn., 103. See as to executive officers in S. C. gen. stat., chap. 16, section 1.

Mandamus will not lie where there is any other remedy. People *vs.* Cover, 50 Ill., 100; Bassett *vs.* School Directors, 9 La., 513.

Board could not re-assemble after adjournment *sine die*. Cooley Const. Lim., 622; Clark *vs.* Buchanan, 2 Minn., 346; 33 N. Y., 603.

Board cannot be punished for disobedience to a void order. Walton *vs.* Deneling, 61 Ills., 201; Dickey *vs.* Reed *et al.*, supreme court of Illinois, not yet reported; *ex parte*, Grace, 12 Iowa, 207.

Board was acting under Constitution and laws of the United States. Const. U. S., article 1, sec. 2; Const. U. S., art. 2, sec. 1; Rev. St. U. S., sections 5520 and 5511; Hard on Habeas Corpus, 412; *Ex parte* Kearney, 7 Wheat., 38; New Orleans *vs.* Steamship Co., 20 Wall., 392; U. S. *vs.* Johnson, 3 McLean, 96; Norris *vs.* Newson, 5 McLean, 100; Tarble's case, 13 Wall., 407; Alleman *vs.* Booth, 21 How., 523; *Ex parte* Cabrera, 1 Wash. C. C., 237; *Ex parte* Watkins, 3 Peters, 201.

F. L. CARDOZO,
State Treasurer, South Carolina.
THOS. C. DUNN,
Comptroller-General, South Carolina.
ROBT. B. ELLIOTT,
Attorney-General, South Carolina.
H. E. HAYNE,
Secretary of State, South Carolina.
JNO. R. TOLBERT,
Superintendent of Education, South Carolina.
JAMES KENNEDY,
Adjutant and Inspector General, South Carolina.
L. A. SWAILS,
President pro tempore of the Senate, South Carolina.
E. W. M. MACKEY,
Speaker House of Representatives, South Carolina.

PETITIONS AND MEMORIALS.

The PRESIDENT *pro tempore* presented the petition of Samuel C. Busey, M. D., president of the Medical Society of the District of Columbia, praying for an appropriation for the publication of a catalogue of the National Medical Library; which was referred to the Committee on the Library.

He also presented a memorial of the international medical congress held at Philadelphia, Pennsylvania, September, 1876, praying for an appropriation for the completion and publication of the catalogue of the National Medical Library; which was referred to the Committee on the Library.

He also presented resolutions of the international medical congress held at Philadelphia, in September, 1876, in favor of an appropriation for the benefit of the National Medical Library; which was referred to the Committee on the Library.

He also presented a petition of Charles Reitz & Brother, Canfield & Wheeler, and 65 others, lumbermen, vessel-owners, and citizens of Manistee, Michigan, praying an appropriation for the improvement of the harbor at that place; which was referred to the Committee on Commerce.

Mr. MORRILL. I present the petition of Benjamin J. Cady, William Ready, John H. Gray, William A. Hamilton, and a considerable number of other citizens of Washington, asking the passage of "an appropriate act for the purchase by the United States of all the real estate owned as private property situated between Second street east and Second street west and B street north and B street south, in the city of Washington, District of Columbia, for the purpose of enlarging the Capitol grounds as heretofore projected, thereby affording fit locations for the erection of suitable buildings for a Congressional Library, Supreme Court, and National Museum." The petitioners also "beg leave to suggest the appropriation of the $1,500,000 which are about to be refunded by the centennial commission of Philadelphia to be applied to this purchase." I move that the petition be referred to the Committee on Public Buildings and Grounds.

The motion was agreed to.

Mr. COOPER. I present the memorial of Joseph Ramsey, of Shelbyville, Bedford County, Tennessee, in reference to the mode of counting the electoral vote. While the petitioner holds no official position, he is an intelligent, patriotic citizen of that State. His patriotism I can no better illustrate than by assuring the Senate that at the vote for the secession of the State, in his district three hundred voting in favor of secession, he voted solitary and alone for the Union. I move that the memorial be referred to the select committee to devise a mode for counting the electoral votes for President and Vice-President.

The motion was agreed to.

REPORTS OF COMMITTEES.

Mr. SPENCER, from the Committee on Military Affairs, to whom was referred the bill (S. No. 253) for the relief of Mary Thompson, asked to be discharged from its further consideration, and that it be referred to the Committee on Pensions; which was agreed to.

He also, from the same committee, to whom was referred the bill (H. R. No. 2229) for the relief of Chancy J. Poore, late a private in Battery G, First New York Light Artillery, reported it without amendment, and submitted a report thereon; which was ordered to be printed.

Mr. CLAYTON, from the Committee on Military Affairs, to whom was referred the bill (S. No. 1105) to amend an act entitled "An act granting a portion of the United States military reservation at Salt Lake City for cemetery purposes," approved May 16, 1874, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the petition of John Edwards, jr., late captain third United States Artillery, praying to be restored to his former rank and position in the Army, submitted an adverse report thereon; which was ordered to be printed, and the committee was discharged from the further consideration of the petition.

He also, from the same committee, to whom was referred the petition of Theodore Higgins, late captain of Company D, Twentieth Regiment Illinois Volunteers, praying to be allowed the pay of captain of

that company from April 10, 1863, to July 4, 1863, while acting as captain thereof, submitted an adverse report thereon; which was ordered to be printed, and the committee was discharged from its further consideration.

Mr. COCKRELL. I ask that the report be placed upon the Calendar.

The PRESIDENT *pro tempore*. The adverse report of the committee will be placed upon the Calendar.

Mr. CLAYTON, from the Committee on Military Affairs, to whom was referred the bill (H. R. No. 3367) to remove the charge of desertion from the military record of Alfred Rouland, reported it without amendment, and submitted a report thereon; which was ordered to be printed.

Mr. WRIGHT, from the Committee on Claims, to whom was referred the petition of F. W. E. Lohman, Walter H. Ruth, and Charles M. Carter, praying compensation for secret service during the late war, submitted an adverse report thereon; which was ordered to be printed; and moved that the claim be rejected; which motion was agreed to.

Mr. SHERMAN. I am directed by the Committee on Finance, to whom was referred the bill (H. R. No. 4189) authorizing the coining of the standard silver dollar and restoring its legal-tender character, to report it back without recommendation and ask that it be placed upon the Calendar. The Committee on Finance have taken the action of the Senate yesterday in extending the time for the report of the silver commission as an instruction not to act upon the bill now. As a matter of course, until that report comes in we shall not have the benefit of the information that that commission has gained, and we thought it better and more respectful to the Senate to report this bill back and let it be placed on the Calendar without recommendation, subject to the future action of the Senate.

The PRESIDENT *pro tempore*. The bill will be placed on the Calendar.

Mr. SHERMAN. I wish also in the same connection to give notice that when this bill is called up again I, as an individual, as a Senator, will offer as a substitute what I now send to the Chair, and which I ask to have printed, accompanying the bill.

The PRESIDENT *pro tempore*. The proposed substitute will be printed.

KENDRICK AND AVIS ET AL.

Mr. SHERMAN. I am directed by the Committee on Finance, to whom was referred the bill (H. R. No. 4155) amending the act of July 28, 1876, entitled "An act for the relief of Kendrick & Avis, Kuner, Zisemann & Zott, Kuner & Zott, all of Saint Louis, Missouri, and Nachtrieb & Co., of Galion, Ohio," to report it without amendment. As the bill is very brief and is to correct an error in the law of last year for the relief of these parties, I ask for its consideration now.

By unanimous consent, the bill was considered as in Committee of the Whole. It amends the act of July 28, 1876, entitled "An act for the relief of Kendrick & Avis, Kuner, Zisemann & Zott, Kuner & Zott, all of Saint Louis, Missouri, and Nachtrieb & Co., of Galion, Ohio," by inserting in the third line thereof, after the words "to remit," and before the words "so much," the words "refund and pay back."

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

SAMUEL B. STAUBER ET AL.

Mr. MORRILL. I am directed by the Committee on Finance, to whom was referred the bill (H. R. No. 767) for the relief of Samuel B. Stauber and others, to report it without amendment. As it is a brief bill and seems to be an equitable one, and has already passed the House, if there is no objection I ask for its present consideration.

By unanimous consent, the Senate, as in Committee of the Whole, proceeded to consider the bill. It releases certain persons named from certain taxes assessed on the brandy distilled by them in the fall of 1868.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

BILL RECOMMITTED.

Mr. COCKRELL. I am directed by the Committee on Military Affairs to request of the Senate that the bill (S. No. 1001) to provide for the disposition of the Fort Dalles military reservation, with the accompanying report, be recommitted to the Committee on Military Affairs.

The PRESIDENT *pro tempore*. Is there objection? The Chair hears none. It is so ordered.

BILLS INTRODUCED.

Mr. PADDOCK asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1140) to establish certain post-roads in the State of Nebraska; which was read twice by its title, referred to the Committee on Post-Offices and Post-Roads, and ordered to be printed.

Mr. WHYTE asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1141) to encourage and promote telegraphic communication between America and Europe; which was read twice by its title, referred to the Committee on Foreign Relations, and ordered to be printed.

REVOLT IN TURKISH PROVINCES.

Mr. ANTHONY submitted the following resolution; which was considered by unanimous consent, and agreed to:

Resolved, That the President be, and he hereby is, requested, if not incompatible with the public interest, to transmit to the Senate any correspondence which has taken place with the diplomatic officers of the United States in Turkey, or any information in the possession of the Government, concerning the revolt in the Turkish provinces.

STATE GOVERNMENT OF SOUTH CAROLINA.

Mr. PATTERSON. I offer the following resolution:

Resolved by the Senate, That the State government now existing in the State of South Carolina and represented by D. H. Chamberlain as governor is the lawful government of said State; that it is republican in form, and that every assistance necessary to sustain its proper and lawful authority in said State should be given by the United States when properly called upon for that purpose, to the end that the laws may be faithfully and promptly executed, life and property protected and defended, and all violators of law, State or national, brought to speedy punishment for their crimes.

The PRESIDING OFFICER, (Mr. ANTHONY in the chair.) Does the Senator ask for the present consideration of the resolution?

Mr. PATTERSON. No, sir.

Mr. SHERMAN. It ought to be referred.

Mr. PATTERSON. I move that it be referred to the Committee on Privileges and Elections.

The motion was agreed to.

ORDER OF BUSINESS.

The PRESIDING OFFICER. The morning hour has expired and it is the duty of the Chair to call up the unfinished business of yesterday, which is the bill (H. R. No. 231) for the relief of Robert Erwin.

Mr. WRIGHT. I have advices from the Senator from Georgia [Mr. GORDON] that he is detained from the Senate to-day by sickness, and he requests that the bill may go over as unfinished business. I accede to that request and I trust the Senate will that the bill may go over as unfinished business by reason of the absence of the Senator from Georgia, who is detained at his rooms by sickness.

The PRESIDING OFFICER. It will not retain its place as unfinished business.

Mr. WRIGHT. I suppose it can be passed over now informally and then it can be called up before the adjournment to-day, so as to be the unfinished business.

The PRESIDING OFFICER. It will be so disposed of, if there be no objection. The Chair hears none.

Mr. WITHERS. I gave notice a few days ago that I would ask the Senate to take from the table to-day the message of the President in reference to the occupancy of Petersburgh on election day by a portion of the Army of the United States. I ask that the message be now taken up.

Mr. FERRY. I should have felt disposed to press the further consideration of the report of the Committee on Rules were it not for the fact that the Senator from Virginia had given notice on a former day that he would to-day call up that matter. I trust after he has concluded his remarks, and all others that may speak to the same subject, the report will then be taken up by unanimous consent.

TROOPS AT PETERSBURGH ON ELECTION DAY.

Mr. WITHERS. I offer the following resolution, to be considered in connection with the message to which I have referred:

Resolved, That the Committee on the Judiciary be instructed to examine whether the construction of the laws touching the elective franchise, promulgated by the Attorney-General in General Orders No. 96, of date September 7, 1876, be correct; and that they report by bill or otherwise.

Mr. WITHERS. Mr. President, I now yield to my colleague, who desires to address some remarks to the Senate on the same subject.

Mr. JOHNSTON. Mr. President, when it became known throughout the State of Virginia, a few days before the presidential election, that United States troops had been sent to Petersburgh, it produced a mixed feeling of anxiety and surprise—anxiety on account of what the people regarded an unwarranted and unconstitutional act, one that menaced the freedom of elections, and surprise that any pretext could be found for such a movement. We believed that nothing had occurred, or was at all likely to occur, to justify it. While violence, outrage, intimidation, murder, and every other crime that people are capable of committing had been freely imputed to our sister States of the South, and especially of the far South, we had escaped. If the Ku-Klux organization, the so-called rifle clubs, the White League, were ever charged to exist among us, we had not heard it. We had never been "investigated," and more than once, both in the House and Senate, republicans had borne testimony in our favor. Notably, when the Senator from Ohio [Mr. SHERMAN] introduced his resolutions which led to the southern outrage committee, did he make an honorable exception in favor of Virginia when his attention was called to it by myself. Here is an extract from the debate on that occasion:

Mr. JOHNSTON. Mr. President——

The VICE-PRESIDENT. Does the Senator from Ohio yield further?

Mr. SHERMAN. I desire to make a regular connected statement, but I yield to my friend from Virginia if he desires me to do so now, before I have commenced to make my remarks.

Mr. JOHNSTON. I desire to make a single statement. If I understand the resolution—I have not had an opportunity of reading it, and only heard it read—it declares that the state of things set forth in it exists in the late insurrectionary States. I presume the Senator who drew the resolution means to include the State of Vir-

ginia as one of the late insurrectionary States, and to declare by resolution that the Ku Klux Klan and organized perjury and resistance to the laws exist in that State. I do not desire to interrupt the Senator any further than to deny positively the statements of that resolution in regard to the State of Virginia and to declare that they are utterly untrue.

Mr. SHERMAN. Mr. President, I stated before that I have no testimony now bearing on the case of Virginia; but I intend to give to the Senate this day a connected statement of the evidence disclosed, not only in this document, but in other proof that I shall present, to show that there is a condition of society in nearly all, and I believe, with the exception of Virginia, the evidence will go to all the lately rebellious States, that is disgraceful to American civilization, that is so startling that although I had read the newspapers from time to time, yet it startled me.

We in Virginia knew that peace and good order prevailed throughout the State; that the races lived together in harmony; that the colored people had their rights and as a body made no complaint. And knowing these things, and knowing too what had been the opinions of the republican party in regard to the State, having had our example held up as worthy and proper to be followed, we were surprised—profoundly surprised—at what we thought we had a right to regard as an attack both upon our good name and our constitutional rights. It was possible, but not at all probable, that some sufficient reason existed unknown to us for the action of the President, and we desired to know this reason if its announcement was not inconsistent with the public interest. If there was no good reason, we equally wanted to be informed as to the attitude of the Government toward us. In the brief discussion that arose when the resolution of my colleague was adopted, republican Senators who took part in the debate did not themselves seem to have ever heard of anything which required or excused the action of the President.

The Senator from Illinois [Mr. LOGAN] proceeded upon the idea that the troops were poor, houseless wanderers, with no place upon which to lay their heads and had to stay somewhere, and that place might as well be Petersburgh as anywhere else. But the President has corrected this impression, and has shown that his object was not merely to have a company of soldiers temporarily entertained and provided for at Petersburgh for mere convenience and without any special object.

I will not notice the charge that the President sees fit to make or insinuate, that the fourth district in Virginia was the only one in that State in which "the legal and constitutional voters have been able to return as elected the candidates of their choice," further than to say that it is untrue and is a slander by the Chief Magistrate of the nation upon a part of the people over whom he presides.

The act of sending troops to Petersburgh was, under all the circumstances, most serious and grave, and I propose, in a dispassionate and non-partisan manner, to consider briefly the legal and constitutional right of the President to proceed as he did, and whether, admitting his right, he had sufficient reasons for his action, and whether he acted with the consideration and care the occasion demanded, and how far the election law was regarded by the United States officers at the late election.

In his message in reply to the resolution of the Senate, the President says:

> These inclosures [those accompanying the message] will give all the information called for by the resolution, and I confidently believe will justify the action taken.

The papers referred to are before the Senate, and I need not specially describe them. The provisions of the election law are those under which the President and his advisers find their warrant. Section 2002 of this law provides as follows, namely:

> No military or naval officer, or other person engaged in the civil, military, or naval service of the United States, shall order, bring, keep, or have under his authority or control any troops or armed men at the place where any general or special election is held in any State, unless it be necessary to repel the armed enemies of the United States, or *to keep the peace at the polls*.

This section as well as others of the law are mere evasions of the Constitution. It is true that the power is given to Congress "to enforce by appropriate legislation the provisions of the thirteenth, fourteenth, and fifteenth amendments." But "keeping the peace at polls" is enforcing the provision of no one of them. The intention of Congress was to secure to every voter an uninterrupted right to vote. But breaches of the peace at the polls might not necessarily interfere with the right to vote of anybody. A fight between two drunken rowdies is a breach of the peace—so is a fisticuff between two negro women. Both of these things come within the letter of section 2002 if that section was construed literally; such trifling events might be made the pretext for moving the Army of the United States and attempting to control and subvert the right of the people to vote freely, instead of protecting them in the right. The mere right or power to keep the peace at the polls, in all events and without any reference to the character of the breach and the purpose for which it is committed, are not appropriate legislation to carry ont any one of the late constitutional amendments. The law should be confined to such classes of offenses as come within the purview of the Constitution, and are committed with the design of impairing the constitutional rights of some one to vote. The law, as it stands, gives the President the opportunity of saying there was a fight at the polls in Richmond or Petersburgh at the last election, and that is a reason to believe there will be again at this election. "That will be a breach of the peace. But I have the right to send troops to keep the peace at the polls; therefore I will send troops to Richmond."

Such a right as this is inconsistent with express provisions of the Constitution and incompatible with its whole spirit. I need not remind the Senate and the country how jealous the people were, when the Constitution was adopted, of military encroachment, and how anxiously they endeavored to protect the civil rights of the people from military power. The one thing that stood out more conspicuously than any other feature in the Constitution was the determination to keep the military subordinate to the civil power. In this spirit that instrument provides that Congress shall have power "to raise and support armies;" but, lest the Army might become too powerful, it was carefully added "that no appropriation of money to that use shall be for a longer term than two years." The power is also given "to provide and maintain a Navy;" but it was not considered necessary in this case to restrict and limit the right of Congress to make appropriations, because the Navy was not likely to be, as the Army might be, dangerous to the liberties of the people. And still further in the same spirit it was provided that "Congress might exercise exclusive legislation over all places purchased, *by the consent of the Legislature of the State in which the same shall be*, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings."

The fourth section of article 4 of the Constitution declares that "the United States shall protect each State against invasion, and on application of the Legislature, (or of the executive when the Legislature cannot be convened,) against domestic violence." And, finally, the third article provides that "no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in a manner to be prescribed by law."

Take all these provisions—their purpose, intent, and spirit—and how does section 2002 of the election law agree with them? The duty of keeping the peace in the States belongs to the State and municipal authorities. The United States cannot interfere except upon their request. The Constitution looks to concerted and united action between the General and State Governments to repel invasion and suppress domestic violence. For the mere purpose of keeping the peace, it was never intended to invoke the mighty and dangerous powers of the United States. The soldier was to repel the invasion of a foreign enemy and to prevent the overthrow of the legally constituted authorities. It is degrading him to convert him into a policeman. The Constitution contemplates the use of the Army only in concert with and in aid of the State authorities, and then when the latter are unequal to the task of repelling invasion and suppressing domestic violence. By "domestic violence" is meant resistance to the authorities or an attempt to subvert the Government. A riot or a mere mob fighting from passion, and doing nothing more, can make no case for the interference of the Army. But the election law ignores the State authorities altogether and provides for separate action on the part of the General Government, not only without but against the consent of the State; and when there no is suggestion even that the State and municipal authorities cannot keep the peace the intention of the Constitution was that the General and State Governments should act harmoniously, and not come in conflict. The Supreme Court has declared that ours is an "indestructible union of indestructible States." But if the law is correctly laid down and the power of the United States marshals properly defined in the circular of the Attorney-General of September 7, 1876, it is in the power of any United States marshal or deputy marshals to overthrow, destroy, and paralyze, any State government. He says: "In this connection I advise that you and each of your deputies, general and 'special,' have a right to summons to your assistance, in preventing and quelling disorder, every person in the district above fifteen years of age, *whatever may be their occupation. There is no officer of a State whom you may not by summons embody into your own posse*," &c. This description would embrace the governor of a State, the judges of its courts, and the members of its legislative bodies. A "special" deputy marshal, if the attorney-General be right, can take the governor from his office, the judge from the bench, the legislator from his hall, and thus leave an "indestructible" State without authorities to conduct it. In short, under the construction of Mr. Taft, a petty "special deputy marshal," who may not be able to read or write, can compel the governor and all officers of a State, legislative, executive, and judicial, to serve in the posse and thus overthrow a sovereign and "indestructible State."

Who may be summoned upon a posse is thus defined by an English elementary author:

> NOTE. Where the sheriff or other officer is enabled to take the power of the county, they may command and ought to have the aid and attendance of all knights, gentlemen, yeomen, husbandmen, laborers, tradesmen, servants, and apprentices, and of all other such persons, being above the age of fifteen years and that are able to travel.

The "power of the county" is for maintaining the government and executing the laws. That which is intended as one of the main supports of good order cannot be made an instrument for the destruction of the government itself. When the object is to enable the governor, the judges, and the other State officers to execute their functions without interruption, it cannot be they are themselves to be machinery by which it is to be done. But the theory of our learned Attorney-General is otherwise. He tells his marshals and deputies in printed instructions: "If you think you have occasion to summon a posse, you can take *any* citizen, no matter what civil office he holds. You can disregard the autonomy of a State government; put the governor, the venerable judges, and the members of the Legislature in your posse, arm them with revolvers and clubs, and make them engage in scuffle and conflict with rioters and criminals."

The Supreme Court has decided that Congress cannot tax the salary of a State judge, because the operation of a State government may be interfered with. But Mr. Taft decides that a judge may be taken out of his robes and inducted into the coat and cap of a police officer.

But let us see how and when deputy special marshals may be appointed and what are their duties and powers. The Attorney-General refers, in his letter of instruction, to sections 2021 and 2022 of the election law. Section 2021 is as follows:

Whenever an election at which representatives or delegates in Congress are to be chosen is held in any city or town of twenty thousand inhabitants or upward, the marshal for the district in which the city or town is situated shall, on the application, in writing, of at least two citizens residing in such city or town, appoint special deputy marshals, whose duty it shall be, when required thereto, to aid and assist the supervisors of election in the verification of any list of persons who may have registered or voted, to attend in each election district or voting-precinct at the times and places fixed for the registration of voters and at all times and places when and where the registration may by law be scrutinized and the names of registered voters be marked for challenge, and also to attend, at all times for holding elections, the polls in such district or precinct.

SEC. 2022. The marshal and his general deputies and such special deputies shall keep the peace and support and protect the supervisors of election in the discharge of their duties, preserve order at such places of registration and at such polls, prevent fraudulent registration and fraudulent voting thereat, or fraudulent conduct on the part of any officer of election, and immediately, either at the place of registration or polling place or elsewhere, and either before or after registering or voting, arrest and take into custody, with or without process, any person who commits or attempts or offers to commit any of the acts or offenses prohibited herein, or who commits any offense against the laws of the United States; but no person shall be arrested without process for any offense not committed in the presence of the marshal or his general or special deputies or either of them, or of the supervisors of election or either of them; and, for the purposes of arrest or the preservation of the peace, the supervisors of election shall, in the absence of the marshal's deputies, or if required to assist such deputies, have the same duties and powers as deputy marshals; nor shall any person, on the day of such election, be arrested without process for any offense committed on the day of registration.

The city of Petersburgh does not have a population of 20,000, and therefore no "special deputy marshals" could be legally appointed there. If it was done at the late election it was a gross violation of law.

The duties of the marshals and "special deputies" are "to keep the peace and support and protect the supervisors of election in the discharge of their duties, preserve order, prevent fraudulent voting or fraudulent conduct on the part of any officer of election," &c. Both the marshal and his deputies are United States officers, clothed with the authority of the law and vested with great powers in enforcing and executing it. They should be like other officers of the United States, impartial and honest in the discharge of their duties. They should understand and obey the law under which they act, and execute it fully, neither more nor less. They should not be partisans nor use their power to advance one side or the other, or to promote the success of either party.

There was no power in the first place to appoint the "special deputies" in Petersburgh, and they were not appointed for the purposes contemplated by the law, but to secure a republican majority. They did their duties in no respect. They were not needed to keep the peace, for there was no intention of violating it. How the "special deputies" thus illegally appointed in Petersburgh acted on the day of election I learn from good authority. There are about twenty-five hundred colored voters in that city. They were all listed and a captain assigned to each ten voters, who was responsible for the votes of his squad. To each of these captains, of whom there were about two hundred and fifty, a commission in the Grand Army of the Republic was issued. Commissions as United States deputy marshals were given to each of them, thus constituting them United States officers and giving them the authority of the Government over the ignorant and credulous negroes. On election day each captain marched his squad to the United States custom-house, where the troops were, and there a Hayes and Wheeler ticket was issued to each man. They were then *sworn* to vote the ticket so received, and the squad was marched to the polls under the escort and superintendence of a man wearing the badge and having the power of a United States marshal.

And this was the purpose for which special deputy marshals were appointed in Petersburgh, and this was the way in which they "kept the peace, protected the supervisors, prevented fraudulent voting," &c.

But this was not all. Instead of aiding and supporting the officers of election, as it was their duty to do, these special deputies openly defied them, and at two polling-places, twice during the day of the election, it was necessary to apply to Judge Hughes to have them ejected from the interior of the voting-places, where only by law the State conductors, judges, and the United States supervisors were allowed. In the first ward the negroes were found in solid column, two or three hundred deep, to the exclusion of the white voters, and when the judges to meet this unfairness opened two avenues of approach, and proceeded to allow the whites and blacks to vote alternately, the assistant district attorney notified the mayor that unless the column of whites were made to fall into the rear of the blacks he would disperse it by force. Rather than see this done the whites left their places and went into the rear of the blacks, and for hours none of them could get to give in their ballots. But this was still not all, for the negroes after voting, instead of leaving the way open, went back and fell into the column again in order to keep the whites away if possible. And of this trick the marshal, whose duty it was to see that all were allowed to vote, afterward openly boasted. At one ward after the voting was over the negroes to the number of several hundred formed around the voting-place and swore aloud if that poll was against them that they would murder the white men, rather than the box should be carried to the central depot. Yet neither soldier, nor marshal, nor special deputy-marshal, nor district attorney, nor district judge, appeared to prevent the execution of this threat or to keep the peace.

The President had had some experience in regard to Petersburgh that should have made him cautious this time. An alarm was raised once before, in 1874, by the same parties who pretended to be frightened at the last election. Two republican papers in this city published sensational communications or editorials to the effect that the property of the United States in Petersburgh and the lives of the United States officials were in danger from an armed mob. The President was beseeched for soldiers, and, moved by the statements made to him, ordered or was about to order troops to that city. Fortunately a citizen of Petersburgh was in this city and, hearing of what had occurred, went to see the President and asked him to suspend further action till an answer could be received from Petersburgh to a telegram. The telegram was sent as follows at once to the assistant marshal in Richmond:

WASHINGTON, *June* 17, 1874.

WILLIAM CALDWELL,
Assistant United States deputy marshal, Richmond, Virginia:

Did you meet with any resistance to your arrest of the Petersburgh judges of election on Thursday last and were you aware of any armed mob resisting or threatening to interfere with United States property or preventing United States officials from discharging their duty? Answer by boy.

W. E. HUNTON, JR.

The reply was as follows:

W. E. HUNTON, JR., *Metropolitan Hotel:*

In answer to your telegram, I have to say that I met with no resistance in arresting the Petersburgh judges of election on Thursday last. I was not aware of any armed mob threatening to interfere with United States property or to interfere with United States officials in the discharge of their duties.

W. W. CALDWELL.

This reply was shown to the President and satisfied him that he had been misled and misinformed, and he took no further action in the matter. But he does not seem to have profited by his experience, and though he had been deceived once he lent a willing ear to the same persons who had deceived him. Neither he nor the General of the Army appear to have taken any trouble to examine into the matter. All the latter seemed to consider was, whether there were any troops to spare. His letter professes to give a "complete understanding of the case," and that complete understanding consists of the statement that, a gentleman came to him from the Attorney-General, representing that there was reason to apprehend a breach of the peace in Petersburgh, Virginia, and asking a detachment of troops to be sent there. He proceeds to say, that not being able to see the Secretary of War "in person" he saw Judge Taft "in person," and then saw General Hancock "in person," and after some inquiries as to the troops available, he ordered a certain company to be sent to Petersburgh. And that is all! The President asks the General of the Army if he can spare some troops to send to Petersburgh. The General says he will look around and see about it, and does find out that there is a company of artillery without a present engagement, and so he sends it.

With the President's message are certain papers which purport to be affidavits of colored men as to what had occurred at the elections in Petersburgh in the spring. After the most diligent search it seems that only one of these men, William White, could be found, and he made oath that he had never given any such affidavit, and that moreover he was not afraid to vote and did not know anybody else who was.

The marshal in his letter says expressly that the opinion of the district attorney as to the necessity of sending troops to Petersburgh was doubtless based upon the history of elections in that city for the past two years, which have been anything but orderly. Neither he nor the attorney give any other reason. The attorney in fact says that "the election on the 7th of November in that city will be a farce as gigantic as it will be fraudulent." And he invites the Army of the United States to amuse itself by witnessing this farce.

Only at this present session the Congress of the United States received with appropriate honors the statues of two distinguished citizens of Massachusetts presented by that State. One of the chief claims to distinction and respect of one of them, Samuel Adams, is thus eloquently set forth by a member of the House:

On the day of the Boston massacre Adams intrusted no other messenger with the demand for the removal of the regiments. Yonder statue represents the great popular leader and chieftain, king of men, the genius of American liberty speaking through his lips, as he stood in the presence of the royalty of England represented by Governor Hutchinson: "If you have the power to remove one regiment you have power to remove both. It is at your peril if you refuse; night is approaching; an immediate answer is expected. Both regiments or none."

It seems from the remarks of the Senators from Indiana and Illinois, when this subject was under consideration early in the session, that they thought as the troops neither imprisoned nor killed anybody in Petersburgh, therefore there was no harm in sending them there. Those Senators apparently overlooked or disregarded all the questions of propriety, of law, and of the Constitution, and seemed to consider it as only a matter of the behavior of the troops themselves. But this is not the standard by which to measure the act. If the law and the Constitution and the facts of the case did not justify the action of the President, then he is not to be excused because brave and gallant

men only behaved with the good order and good conduct that might be expected of them. If the act of the President was not in itself right, it could not be made right by the merits of the soldiers themselves.

When about to exercise the right of suffrage the minds of the people should be entirely free from any disturbing or alarming influences. They should be allowed to act calmly, carefully, and freely. But could this be done by the people of Petersburgh in the presence of an armed force, sent by a man who had used the Army as the President has done? The country had seen him supporting usurpers by the bayonet, keeping men in office who had not been elected, expelling men from the legislative halls of a State who had been duly returned, and taking possession of a State-house. And when he does send troops to any place the people naturally expect them to be used in the same lawless way. The presence of an armed force under the order of such a man who has done these things can be nothing but a menace and a dread.

As to this we may take a good lesson from our English ancestors. This Government is called a republic. Great Britain is a monarchy. We claim to be the only really free people on earth. Here, it is said, personal liberty, and respect and protection for the rights of the citizen, have reached the highest point. But here is what Blackstone says about troops at elections in England:

> And as it is essential to the very being of Parliament that elections should be absolutely free, therefore all undue influences upon the electors are illegal and strongly prohibited. For Mr. Locke ranks it among those breaches of trust in the executive magistrate which, according to his notions, amount to a dissolution of the government, "if he employs the force, treasure, and offices of the society to corrupt the representatives, or openly to pre-engage the electors, and prescribe what manner of persons shall be chosen. For, thus to regulate candidates and electors, and new-model the ways of election, what is it," says he, "but to cut up the government by the roots and poison the very fountain of public security." As soon, therefore, as the time and place of election, either in counties or boroughs, are fixed, all soldiers quartered in the place are to remove, at least one day before the election, to the distance of two miles or more; and not to return till one day after the poll is ended.—*Blackstone's Commentaries*, volume 1, page 177.

The law of England, passed more than a hundred years ago—in the reign of George II—is worth putting on record here. I will ask the Clerk to read chapter 30.

The Chief Clerk read as follows:

CHAPTER XXX.

An act for regulating the quartering of soldiers during the time of the elections of members to serve in Parliament.

Whereas by the ancient common law of this land all elections ought to be free:

And whereas by an act passed in the third year of the reign of King Edward I, of famous memory, it is commanded, upon great forfeiture, that no man by force of arms, nor by malice, or menacing, shall disturb any to make free election: and forasmuch as the freedom of elections of members to serve in Parliament is of the utmost consequence to the preservation of the rights and liberties of this kingdom:

And whereas it hath been the usage and practice to cause any regiment, troop, or company, or any number of soldiers, which hath been quartered in any city, borough, town, or place where any election of members to serve in Parliament hath been appointed to be made, to remove and continue out of the same during that time of such election, except in such particular cases as are hereinafter specified: To the end therefore that the said usage and practice may be settled and established for the future,

Be it enacted by the King's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal and commons in Parliament assembled, and by authority of the same, That when and as often as any election of any peer or peers to represent the peers of Scotland in Parliament, or of any member or members to serve in Parliament, shall be appointed to be made, the secretary at war, for the time being, or, in case there shall be no secretary at war, then such person who shall officiate in the place of the secretary at war, shall and is hereby required, at some convenient time before the day appointed for such election, to issue and send forth proper orders in writing for the removal of every such regiment, troop, or company, or other number of soldiers as shall be quartered or billeted in any such city, borough, town, or place where such election shall be appointed to be made, out of every such city, borough, town, or place, one day at the least before the day appointed for such election, to the distance of two or more miles from such city, borough, town, or place, and not to make any nearer approach to such city, borough, town, or place as aforesaid, until one day at the least after the poll to be taken at such election shall be ended and the poll-books closed.

2. *And be it further enacted by the authority aforesaid*, That in case the secretary at war for the time being, or such person who shall officiate in the place of the secretary at war, shall neglect or omit to issue or send forth such orders as aforesaid according to the true intent and meaning of this act, and shall be thereof lawfully convicted upon any indictment to be preferred at the next assizes or sessions of over and terminer to be held for the county where such offense shall be committed, or on an information to be exhibited in the court of King's Bench within six months after such offense committed, such secretary at war, or person who shall officiate in the place of the secretary at war, shall for such offense be discharged from their said respective offices, and shall from thenceforth be utterly disabled and made incapable to hold any office or employment, civil or military, in His Majesty's service.

3. *Provided, nevertheless*, That nothing in this act contained shall extend or be construed to extend to the city and liberty of Westminster, or the borough of Southwark, or and in respect of the guards of His Majesty, his heirs, or successors, nor to any city, borough, town, or place where His Majesty, his heirs, or successors, or any of his royal family shall happen to be or reside at the time of any such election as aforesaid, for or in respect of such number of troops or soldiers only as shall be attendant as guards to His Majesty, his heirs, or successors, or to such other person of the royal family as is aforesaid; nor to any castle, fort, or fortified place where any garrison is usually kept, for or in respect of such number of troops or soldiers only whereof such garrison is composed.

4. *Provided likewise*, That nothing in this act contained shall extend or be construed to extend to any officer or soldier who shall have a right to vote at any such election, as aforesaid, but that every such officer and soldier may freely, and without interruption, attend and give his vote at such election, anything hereinbefore contained to the contrary thereof notwithstanding.

5. *Provided always*, That the secretary of war, or, in case there shall be no secretary at war, then such person who shall officiate in the place of the secretary at war, shall not be liable to any forfeiture or incapacity for not sending such order, as aforesaid, upon any election to be made of a member to serve in Parliament on a vacancy of any seat there, unless notice of the making out any new writ for such election shall be given to him by the clerk of the Crown in chancery or other officer making out any new writ for such election, which notice he is hereby directed and required to give with all convenient speed after making out the said writ.—*Pickering's Statutes*, volume 16, pages 548-550.

Mr. JOHNSTON. Mr. President, the English statute preserved and enforced for more than a century and only declaratory of an immemorial usage makes it the imperative duty of the secretary of war to remove troops two or more miles from voting-places, and in case of his failure degrades him from place and disables him from holding any office, civil or military, in the service of the king. And this in a monarchy!

Our statute authorizes the sending of troops *to* voting-places merely to keep two citizens from fighting, and that without a suggestion even that the State and municipal authorities are not equal to the emergency. And this in a republic!

It is one of the theories of our Constitution that the three branches of the Government, the legislative, executive, and judicial, are equal and co-ordinate, and that the judiciary ought to be and is independent. But this election law has overthrown this theory and waked the people from the delusion under which they labor. Just before the late presidential election the President sent the following *order* to the Hon. R. W. Hughes, judge of the district court of the United States for the eastern district of Virginia:

EXECUTIVE MANSION,
Washington, November 4, 1876.

To Hon. R. W. HUGHES,
United States District Judge of the Eastern District of Virginia:

Whereas I have reason to believe that offenses are likely to be committed within said judicial district against the provisions of chapter 7, of the title "Crimes," of the Revised Statutes of the United States, you are, therefore, hereby requested and directed to attend at Petersburgh, Virginia, on the 6th, 7th, 8th, 9th, and 10th days of November current for the purposes mentioned in section 1988 of said Revised Statutes.

U. S. GRANT.

Section 1988 is as follows:

> Whenever the President has reason to believe that offenses have been or are likely to be committed against the provisions of chapter 7, of the title "Crimes," within any judicial district, it shall be lawful for him, in his discretion, to direct the judge, marshal, and district attorney of such district to attend at such place within the district, and for such time as he may designate, for the purpose of the more speedy arrest and trial of persons so charged, and it shall be the duty of every judge, or other officer, when any such requisition is received by him, to attend at the place and for the time therein designated.

The President appoints the judges, and under this section a judge may be *ordered* by him to go anywhere in his district that the President may indicate, whether it be a place fixed by law for holding court or not, and keep it open as long as the President may direct, and may arrest and try citizens charged with offenses under chapter 7, title "Crimes." When the order comes, the judge may be holding his regular term at the place prescribed by law; may have a jury impaneled and be engaged in the actual trial of a cause; perhaps a prisoner may be having a hearing; but the judge must adjourn his court, dismiss his jury, remand the prisoner to jail, send parties, counsel, and witnesses home, and go wherever his orders direct and stay there at the pleasure of the President. No clerk is directed to attend, so it is presumed that no record of the court's proceedings is to be made or preserved. The judge may arrest a man, try him instantly, convict and sentence him, and all this in a barn or stable if the judge chooses. If the President can order the judge to remain to hold these terms a week, he can a month; if a month, a year; and thus practically overthrow the courts, for there is no limit on the President's power as to time. And this is an independent judiciary!

But it is not only at the mercy and under the power of the President that the judges are placed. Sections 2011 and 2012 of the Revised Statutes contain these provisions.

I ask the Clerk also to read them:

The Chief Clerk read as follows:

> SEC. 2011. Whenever, in any city or town having upward of twenty thousand inhabitants, there are two citizens thereof, or whenever, in any county or parish in any congressional district, there are ten citizens thereof, of good standing, who, prior to any registration of voters for an election for Representative or Delegate in the Congress of the United States, or prior to any election at which a Representative or Delegate in Congress is to be voted for, may make known, in writing, to the judge of the circuit court of the United States for the circuit wherein such city or town, county or parish, is situated, their desire to have such registration, or such election, or both, guarded and scrutinized, the judge, within not less than ten days prior to the registration, if one there be, or, if no registration be required, within not less than ten days prior to the election, shall open the circuit court at the most convenient point in the circuit.
>
> SEC. 2012. The court, when so opened by the judge, shall proceed to appoint and commission, from day to day and from time to time, and under the hand of the judge, and under the seal of the court, for each election district or voting-precinct in such city or town, or for such election district or voting-precinct in the congressional district, as may have applied in the manner hereinbefore prescribed, and to revoke, change, or renew such appointment from time to time, two citizens, residents of the city or town, or of the election district or voting-precinct in the county or parish, who shall be of different political parties, and able to read and write the English language, and who shall be known and designated as supervisors of elections.

Mr. JOHNSTON. Thus, Mr. President, not only may the judges be ordered about the country at pleasure by the President, and made to hold court at any place he may designate in the district, and as long as he pleases, but in one event two citizens and in another ten citizens may require them to open and hold their courts! Instead of being the independent judge that the theory of our Constitution requires, he is at the orders not only of the President but of any two citizens who choose to issue an edict to him.

Mr. WITHERS. Mr. President, the Congress and the people of the United States have with anxious solicitude been for weeks engaged in the consideration and discussion of the question "how shall the electoral vote be counted?" The sovereign voice of the people uttered at the polls has not, as in times past, calmed the agitated waters of political strife. On the contrary, these waves appear to mount higher and higher, and to be lashed into yet greater fury by the breath of rival disputants, as with mutual recrimination they attack and defend the fairness of the election and the fairness of the count. Grave as this question undoubtedly is, vital as it must be to the future destinies of our common country, there is another, intimately connected it is true, but still distinct from it, in my view, of yet greater importance, and which has attracted comparatively little attention, and which I propose now to discuss.

It is true that the question of the presence or absence at the polls of an insignificant city in the interior of Virginia of a small number of United States soldiers might appear at the first blush a trivial incident, of which it is trifling with the time and attention of the Senate to ask their consideration. But, sir, the true question involved in this matter is this: whether the executive department of the Government shall be permitted, in defiance of the Constitution, to use the Army of the United States to control the ballot and thus absolutely to destroy the freedom of elections. If this can be done with impunity, we are but wasting time in the consideration of matters connected with the counting of votes and the making up of returns.

When at an early period of the present session I submitted a resolution of inquiry calling upon the President to inform the Senate "whether troops of the United States were stationed at the city of Petersburgh, in the State of Virginia, on the 7th day of November, 1876, and, if so, under what authority and for what purpose," I was influenced by no captious spirit, no factious purpose of cavilling at the legitimate exercise of executive authority. As one of the representatives of a State which has ever been known in the history of our country as the determined advocate of the rights of the people and the principles of constitutional liberty, I felt it my duty, where these rights were invaded or these principles jeopardized, to maintain the one and defend the other. Not unmindful of the teachings of history or the prophetic words of warning uttered by the wise fathers of our Constitution, educated to believe that the greatest danger which threatens the perpetuity of our free institutions lurks in the legislation which provides for the maintenance of a standing army in time of peace, and remembering that no people have ever yet lost their liberties through any instrumentality other than the weapons of an organized and disciplined soldiery dominating the freedom of elections and directed and controlled by the despotic will of an ambitious commander, I plead guilty to the charge recently uttered on this floor of "sensitiveness" on this subject, and confess with no feeling of shame that the presence of the military at the polls for the purpose of influencing the popular will filled me with apprehension and alarm for the perpetuity of our free Government.

Desirous, however, of ascertaining all the facts connected with the transaction and anxious to vindicate my people from the implied censure involved in the occupancy of one of her principal cities on the day of election by the soldiery, I have sought the evidence upon which the executive action was based, that I, and the country as well, might be the better prepared to criticise and condemn or justify and approve the act. This evidence is before us, embodied in the message of the President and the papers by which it is accompanied; "evidence," to quote the language of the message, which he "confidently believes will justify the action taken." To the calm and dispassionate consideration of these official papers and of the momentous consequences involved in the recognition and sanction of the principles they embody, I invoke the attention of the Senate.

A careful consideration of the message itself will leave us at a loss whether most to admire the perspicuity of its diction, the independence with which it sets at defiance the ordinary rules of grammatical construction, the felicitous innuendo whereby it conveys an insinuation against the character and good name of the people of Virginia as gratuitous as it is slanderous, or the bold avowal of a principle which, if admitted and accepted unchallenged, will with its inevitable and unavoidable corollary, put an end to republican institutions and utterly subvert and destroy the fundamental principles of our Constitution.

Mr. President, the fourth section of the fourth article of the Constitution of the United States conveys all the powers which are granted to the Government of the United States under any circumstances to march their troops into the interior of any State. It is as follows:

> The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and on application of the Legislature, or of the executive, (when the Legislature cannot be convened,) against domestic violence.

It will be thus seen that by the provisions of the Constitution the United States is authorized only in one single instance without qualification to occupy the territory of a State with its armed troops; that is, to repel invasion. On the application of the Legislature, or of the executive when the Legislature is not in session, it is also authorized to march its troops into the territory of any State.

Mr. President, these I say are the only two circumstances contemplated by the Constitution which justify the use of the military arm of the Government in interfering in the interior affairs of any State. Did either of these conditions exist in Virginia on the 7th of November last? I undertake to say broadly and unequivocally that they did not, and that there is not the shadow or semblance of an assertion that either condition of things described by the Constitution existed then in the State of Virginia.

This possible occupancy of any State by the military and the dangers incident to its abuse were early recognized by the fathers of the Republic, and Edmund Pendleton, the president of the Virginia convention which considered the articles submitted them by the convention which framed the Constitution, used this language in discussing this particular provision of the Constitution:

> The fourth section of the fourth article provides that Congress may, at their pleasure, on application of the State Legislature, or (in vacation) of the executive, protect each of the States against domestic violence. This is a restraint upon the General Government not to interpose. The State is in full possession of the power to use its own militia to protect itself against domestic violence, and the power in the General Government cannot be exercised or interposed without the application of the State itself.

Was any such application made? The Legislature was not in session, and of course could not make such an application. Did the governor indicate by any means or in any manner his desire that United States troops should be sent to Petersburgh on the day of the election? On the contrary, I have before me the message of the governor of Virginia embodying a firm and distinct and an indignant protest against this invasion of the State of Virginia by the troops sent there by order of President Grant. When Petersburgh was occupied by the United States Army and information of the fact was conveyed to the city of Richmond, the governor issued the following proclamation:

A PROCLAMATION BY THE GOVERNOR.

To the people of Virginia:

Information has just been received, from authentic sources, that a detachment of the United States Army was this day quartered at Petersburgh, with orders to remain until after the elections and to be under the sole direction of Federal officials. The voting-places at Petersburgh are being surrounded with a cordon of bayonets on the eve of the elections.

It is provided by the Constitution of the United States that the Government thereof shall protect each of the States, on the application of the Legislature, (or the executive when the Legislature cannot be convened,) against domestic violence.

No domestic violence, no breach of the peace, no molestation of any citizen in the exercise of any right, exists, or is threatened, or apprehended, or likely to arise in this Commonwealth. Perfect peace, order, and security reign throughout all our borders. Every citizen, of whatever race, color, or condition, is protected, can be protected, and will be protected in all his personal and political rights, privileges, and immunities by all the authorities of this State.

No application by the Legislature or by the executive has been made to the President for protection against domestic or other violence.

No complaint is made, anywhere, that the rights of any citizen are assailed or threatened. Nevertheless, in the midst of profound peace, and without a constitutional requisition from any quarter, the President of the United States has stationed troops in a city of this Commonwealth, with the design, as cannot be doubted, of intimidating the people and controlling the pending elections for partisan purposes.

And whereas so flagrant a usurpation of ungranted authority endangers the liberties of the people and the integrity of the Government, imperils the freedom of the elective franchise, and is well calculated, as it is doubtless designed, to incite and foment the domestic violence which is falsely pretended to be threatened:

Now therefore, I, James L. Kemper, governor of Virginia, solemnly protesting before the States of the Union, and in the name of the Constitution, against this despotic invasion of our guaranteed rights, do call upon the good people of this Commonwealth, and I command the authorities and officers thereof, to keep the peace at any cost, and to persevere in abstaining from every act and manifestation which might be made a pretext for the employment of armed force in our midst. And I enjoin upon all such moderation and self-denying forbearance, such patience and composure, as will prevent the possibility of any disturbance of the public order.

Done at Richmond, this 4th day of November, in the year of our Lord 1876, and in the one hundred and first year of the Commonwealth.

JAMES L. KEMPER.

By the Governor:
JAMES McDONALD,
Secretary of the Commonwealth.

There we see, Mr. President, that the governor of Virginia, so far from authorizing or inviting the presence of troops, uttered his indignant protest in a proclamation to the people, embodying it in language that will live through all time as a manly vindication of the rights of the State and protest against this usurpation of power in the hands of the Executive of the United States. And this is the same James L. Kemper, the same governor of Virginia whom the Senator from Indiana [Mr. MORTON] quoted as having incurred the reprobation and indignation of the people of the city of Petersburgh by having vetoed an unconstitutional charter, as he alleged, to the extent that they burned him in effigy. Sir, he is a man who is never afraid nor ashamed to discharge all the duties and responsibilities officially devolving upon him, whether he thereby offend friends or enemies.

But, sir, the denial of the right of the Government to employ the military in the interior of any State is not restricted alone of the governor of Virginia. The President of the United States himself has given utterance to a sentiment identical in spirit, and which, if adhered to, would forever have prevented his sanction of the outrage perpetrated in Virginia. In his special message of January 13, 1875, occurs this paragraph:

> Any military interference by officers or troops of the United States with the organization of a State Legislature or any of its proceedings, or with any civil department of the Government, is repugnant to our ideas of government. I can conceive of no case, not involving rebellion or insurrection, where such interference by authority of the General Government ought to be permitted or can be justified.

What change has come over the spirit of our President's dream since he gave utterance to those manly and patriotic and law-abiding

sentiments, it is not for me to say; certainly some new light must have been shed upon the question, which has prompted him to depart so far from the line of conduct which he there laid down, and to commit acts which he himself had denounced as being such as ought not to be permitted and cannot be justified.

But, sir, I am not unaware of the fact that the peculiar events which have transpired in this country for the last few years have brought about a condition of things that has culminated in the enactment of laws which extend indefinitely and very largely the restrictions which were thrown around this matter of military occupancy. I am not unaware of the fact that to these two causes, which justify the armed intervention of the Government in the affairs of a State the legislation of Congress has added a third, to wit, "the keeping of the peace." After the elaborate and exhaustive examination of that question to which my colleague [Mr. JOHNSTON] has just given utterance, it is unnecessary and improper for me to repeat the arguments which he adduced to show how fallacious is the idea and how preposterous and absurd the proposition that, in order to prevent a breach of the peace, in the legal acceptation of the term, soldiers of the Army and Navy of the United States can be invoked to perform those duties which in every State and in every community devolve upon its municipal police.

Perfect candor compels me to admit that I can to some extent realize the influences which surrounded the minds of Senators and Representatives when they gave such a broad latitude to the employment of the military in elections, when I remember the arguments and appeals that were made to them, the prejudices which were aroused by the assertion that the recently enfranchised blacks of the South would, unless this protection were afforded them, be denied the free exercise of the right of suffrage, and that this highest duty of a citizen could only be guaranteed to them by the presence of the armed forces of the United States Government. But, sir, while I know, and while all representatives from my section of the country know, how groundless were these assertions in the main, (certainly they were so with regard to my own State,) I am still not disposed to criticise with too great harshness the precipitate action which induced the Congress of the United States to embody this legislation in such form that, if it remains on the statute-book, this and other circumstances which have transpired under its ostensible authority should teach us is fraught with the most momentous ills that can accrue to the body-politic.

But, sir, to these three causes which authorize the employment of military at times of elections in the States, it has remained for this message of the President of the United States and the accompanying documents to add a fourth hitherto unrecognized and unknown in this country, never intimated by any one, extending indefinitely and without any qualification or restriction this right of employing troops; because we learn from the official documents embodied in this message that the troops in this instance were furnished upon—what? "A message from a gentleman in the Attorney-General's Office." This unknown and anonymous gentleman in the Attorney-General's Office, who seems to wield such immense power, is unrecognized by any one; and yet upon his simple *ipse dixit* the rights of the State of Virginia have been violated and with them the rights of all the other States of this Union; and the civil has been subordinated utterly and entirely to the military authority. The President of the United States justified this action. It is for the people of this country to decide whether this loose interpretation of law and its loose administration in matters involving their vital interests is for their welfare or their safety.

Mr. President, I do not propose in the remarks which I intend to submit, to criticise with any degree of harshness beyond what the facts would justify the action of the Chief Executive of this nation. I find upon an examination of this document that General Grant's action is predicated and sustained and defended by the opinion of his constitutional adviser, and to that extent I hold that he is not altogether responsible for the action which has been taken or the outrage which has been perpetrated. The Attorney-General of the United States is his constitutional adviser in matters of law, and it is not remarkable that the President of the United States, with a military education, all unused to civil law and unacquainted with its provisions and its limitations, should have applied to this officer for advice under the circumstances; and the Attorney-General's opinion and his circular of instructions issued to the deputy United States marshals accompany the executive message upon which I have been commenting.

It is not too much, I think, to assert that if the construction placed by Mr. Taft upon the statutes of the United States be a correct and proper one, it is now in the power and ever hereafter will be in the power of the Chief Executive of this nation at any time when in his pleasure he may think it necessary, or when the interest of his party may demand it, to absolutely destroy the freedom of election at any and every point throughout these United States, for I assert that there is not a town or city of this Union containing ten thousand inhabitants that does not witness annually greater scenes of disorder, greater breaches of the peace than that alleged to have been perpetrated in the municipal election in Petersburgh last spring and upon which this whole action of the President and the Attorney-General is predicated. If that construction be true, the petty office of a deputy United States marshal is invested with greater power and prerogatives, and he can wield more absolute authority than the President himself can exercise; because under the provisions of this opinion there is no civilian throughout the land, from the governor down to the lowest member of society, that cannot be summoned imperatively to obey the orders of this deputy marshal, and all are placed utterly and entirely under his control. Nay, sir, it goes further than that; it goes on to specify that the Army and Navy and marine force of the United States occupy no better ground than a civilian in this matter; and we have the strange spectacle therefore presented of the Army itself, from its highest official, the General in command, through all its ramifications of grade and rank, placed utterly and absolutely under the control and at the disposition of a deputy United States marshal—the office being filled, as it was in the case under consideration, not by men of intelligence and standing and moral worth in the community, but largely by ignorant colored people, too ignorant even to write their own names. And yet each of these colored deputy United States marshals in the city of Petersburgh, under this construction of the Attorney-General of the United States, was the superior of General Sherman or any one else in the exercise of power on the day of election! It is a subject well worth inquiry; it is a subject that demands the careful and most assiduous investigation to know whether this unwonted, this unwarranted, this preposterous stretch of power is authorized by the legislation of Congress.

Not to inform the Senate, nor to repeat merely what my colleague has already quoted, but to show that I have not spoken without authority, I beg leave to quote a passage or two from this General Order No. 96, issued by the Attorney-General as instructions to the marshals:

> In this connection, I advise that you and each of your deputies, general and "special," have a right to summon to your assistance, in preventing and quelling disorder, "every person in the district above fifteen years of age whatever may be their occupation, whether civilians or not, and including the military of all denominations, militia, soldiers, marines, all of whom are alike bound to obey you. The fact that they are organized as military bodies, [whether of the State or of the United States,] under the immediate command of their own officers, does not in any wise affect their legal character. They are still the *posse comitatus*."

And the next clause:

> I need hardly add that there can be no State law or State official in this country who has jurisdiction to oppose you in discharging your official duties under the laws of the United States. If such interference shall take place, (a thing not anticipated,) you are to disregard it entirely.

It seems, therefore, that these deputy marshals are armed with plenary powers. From their orders there is no appeal. Every citizen in the whole community, the justices of the supreme court, of all the inferior courts, the governors, the executive officers, the militia, the Army, the Navy, and the marines of the United States, each, one and all, are compelled to obey the orders of these deputy United States marshals.

The President of the United States in his message seems to make a point that the troops which were sent to Petersburgh were not present at the polls, that they were not designed to be near the polls, and consequently could not have controlled the election; and yet by reference to the letter of the Attorney-General directed to the Secretary of War, found on page 7 of the document from which I read, we find that the troops were sent there designed and intended and required to be present at the polls.

> DEPARTMENT OF JUSTICE,
> *Washington, December 9, 1876.*
>
> SIR: Replying to your letter of the 7th instant, I have the honor to transmit herewith copies of all papers on file in this Department containing information showing the necessity for troops to be sent to Petersburgh, Virginia, to be present near the polls of that city on November 7, 1876. I also inclose newspapers containing articles in reference to this subject.
>
> Very respectfully, your obedient servant,
>
> ALPHONSO TAFT,
> *Attorney-General.*
>
> Hon. J. D. CAMERON,
> *Secretary of War.*

Thus it will be seen that the President and the Attorney-General admit that the troops were sent to Petersburgh *for the purpose of being present at the polls.* After the thoroughly exhaustive quotations from the English law on the subject given by my colleague, I shall curtail that portion of my speech in which I designed to contrast the spirit of the English law with that which pervades our own, and to show that while in that monarchical government the provisions of the law were imperative, requiring the commandant of any troops that might be quartered in a city where an election was to be held to remove them at least two miles beyond its limits, in the free Republic of America these troops are required to be moved from other places to the polling-place in order that they may control and influence the voters.

Now, Mr. President, I do not desire to detain the Senate by any lengthened discussion of the particular details of the case under consideration further than to justify and defend the people of the city of Petersburgh from the allegations contained in this document which has been sent us from the Executive. I assert that so far from any circumstances existing in the city of Petersburgh either at the time the troops were sent or at any antecedent time to justify the opinion that the municipal authorities were not fully competent to preserve the peace and vindicate the majesty of the law, precisely the contrary was the case, and that the allegation and the affidavits embodied in this document, upon which the action of the President was predicated, furnished no justification whatever for the act of which we complain. These consist briefly of what? First, of the letter of Mr. L. L. Lewis, the United States district attorney for the eastern

section of the State. Mr. Lewis testifies in his application, which seems to have been the initiative in this movement:

I am, from my knowledge of the character of that and other elections held in Petersburgh—

Speaking of the last State election—

prepared to say that, unless the marshal is furnished with a better and more reliable posse than he will be able to summon to his aid from residents of the city, the election on the 7th of November in that city will be a farce as gigantic as it will be fraudulent. I am not now prepared to express the opinion that the presence of troops to act as the marshal's posse will be essential to the preservation of order, and to insure a fair election at other points in the eastern district of Virginia, but of the necessity of their presence to prevent bloodshed and secure a fair election in Petersburgh I think there cannot be a shadow of doubt.

That is very explicit; and but for the fact that the deponent, Mr. Lewis, had had no opportunity whatever of knowing whereof he spoke, we might attach some importance and give some heed to it. But when we recognize the fact, which I understand cannot admit of question or doubt, that Mr. Lewis was not within the fourth congressional district of Virginia during the whole canvass from first to last, I submit to the Senate whether his testimony with regard to the condition of the people of that city and the sentiment of the people of that district is to be received as implicitly and entirely true. His letter of September 16, containing the phrase which I have quoted, and a subsequent letter of October 10, which is also published, addressed "Dear Doctor"—I presume Dr. Jorgenson, who was candidate for Congress in that district—pledging himself to come to Washington and asserting that it would be criminal in his judgment to fail to send troops to Petersburgh, I leave with the comment I have made, that he was absent from that city during the the whole of the canvass, knew nothing of the condition or sentiments of the people of that city, and therefore knew nothing of the facts to which he was testifying.

But Mr. C. P. Ramsdell seems to have been the active agent in securing the presence of troops in the city of Petersburgh. Mr. Ramsdell is the United States marshal for the eastern district of Virginia. In 1874 an effort was made by a Federal official in the city of Petersburgh to secure the presence of troops in that city at that election; and the Attorney-General at that time, Mr. Williams, wrote to Mr. Ramsdell, who held the same office then as now of United States marshal, stating that troops would be furnished if there was anything in the condition of affairs there that rendered it necessary, in his opinion, either to protect the property of the United States or the United States officials in the discharge of their duty or to preserve the peace; and this same Mr. C. P. Ramsdell made no application for troops, and, consequently, no troops were sent; and yet he now bases his application for troops upon the condition of the district as existing at that very time, when by his own action he admitted that there was no disorder or violence, threatened or contemplated, to justify their employment. But the difference in the circumstances of the case are these: At that time Mr. C. P. Ramsdell was merely the United States marshal for that district; he was attending to the legitimate discharge of the functions of his official position. In the recent contest Mr. C. P. Ramsdell also held the office of chariman of the State republican executive committee; and it was in the latter character that political interests demanded and required of him such active interference as would secure the control of the vote of the city of Petersburgh. An examination of the documents which lie before me shows a remarkable unanimity of sentiment in one respect between the United States marshal and the President of the United States. The marshal declares that "troops can do no harm to well-disposed citizens, and in the light of experience I am of opinion that they will be needed." The President of the United States says, "It is well understood that the presence of the United States troops at polling-places never prevented the free exercise of the franchise by any citizen, of whatever political faith."

Now, sir, are we to admit in all their length and breadth, as the basis of executive action, the allegations contained in these two sentences, that troops can do no harm to well-disposed citizens and that the presence of the military never interfered with the free exercise of the right of suffrage? If such be the case I undertake to say upon the floor of the Senate, if that principle be recognized and acted on by future executives, a few years only will have elapsed before we shall find the last vestiges of constitutional liberty prostrate at the feet of executive power, and a despotic Government substituted for this free Republic.

But to return to this report of Mr. Ramsdell. I find in a letter of the 31st of October this paragraph:

I am this moment in receipt of information from Portsmouth, Virginia, as follows:

Last night a meeting at which Mr. Segar, candidate for Congress in that district on the republican ticket, and Mr. Ball, of Alexandria, attempted to speak was broken up, and on their going out a regular assault was made on them by the democratic roughs, and Mr. Dezendorf, who attempted to speak in the hall, was beaten, and burned by the powder of a pistol discharged at his head.

Now, Portsmouth is not in the fourth congressional district. Portsmouth is the only place where the official communications of this United States marshal mention that any act of violence was committed during the whole canvass, and yet no application was made for troops for Portsmouth, nor were any ordered there. But if we look further at this letter we find that this is not the official report of a United States officer to his superior making known the condition of a district of country which was under his charge, but it is simply the report of a subordinate political official made to his political superior, conveying political information and designed to promote the political interest of his party, because he goes on to say:

I have appointed deputy marshals in Portsmouth, Norfolk, and in some of the counties of that district. I spoke in Portsmouth about four weeks ago at an open-air meeting. There was some disturbance, but not serious.

I have made a thorough canvass of the fourth or Petersburgh congressional district, traveling between two hundred and three hundred miles and speaking at the court-house in each of the eleven counties. Deputy marshals have been appointed in each county and every possible precaution made to preserve the peace and secure the citizens in their rights under the Constitution; but I am prepared to witness and hear of violence in this part of the South. The truth is this:

The white people are generally opposed to colored suffrage, and regard any means justifiable to render that vote nugatory.

I see here that this United States marshal, in an official report of his duties to a United States officer, conveys the information that he has canvassed the whole eleven counties of his district and traveled several hundred miles, and yet there is not one word mentioned in it nor an intimation given that with all this enlarged experience of the condition of the fourth district of Virginia there is anything that has occurred within the limits of that district to justify the slightest anticipation of violence or breach of the peace. I do not assume too much when I assert that if such a case had come to his knowledge it would certainly and assuredly have been reported and embodied in this document, and the fact that no such assertion is made, that no such intimation is given, I assume to be equivalent to an admission on his part that perfect peace and order were observed throughout that whole district; and I have other evidence to show the same thing. I have the authority of the mayor of the city of Petersburgh; I have the authority of the candidates who canvassed the district, that no act of violence, no breach of the peace, no personal intimidation or violence to any person can be pointed to as having occurred within the limits of that district during the whole of the canvass; and I take it that the statements of these gentlemen will not be denied.

Appended to these letters of Mr. Ramsdell and Mr. Lewis we find a certain number of affidavits, testifying in the main to violent scenes which are said to have occurred at the municipal election there in May last. Marble, the principal witness, is a custom-house official, whose character, I understand, is not of the best, though I know nothing of him personally, and consequently do not wish to impugn it. The others are, I believe, without exception colored people. I do not impute to these colored people any desire or design of falsifying any facts; but I do assert that, owing to their ignorance and their credulity, they are entirely at the mercy of any person in whom they have confidence who can procure their signatures to any statement they may think proper to make. Therefore the affidavits of this class of persons are always to be received with many grains of allowance. I have a striking evidence of the fact in the case before me, because I find here that one of the strongest affidavits embodied in this report purports to be signed by one William White, a blacksmith, who lived near the scene of the reputed act of violence, and yet this very man has furnished this affidavit:

This is to certify that I, William White, blacksmith in fifth ward, did not authorize any one to sign my name to the affidavit published in the Washington Republican, nor did I sign it myself, and hope the citizens will not regard it.

his
WILLIAM + WHITE.
mark.

Witness:
E. M. WILLIAMSON.
JAMES C. BAIN.

This 6th day of November, 1876, personally appeared before me William White, blacksmith in fifth ward of Petersburgh, and made oath to the truth and correctness of the above certificate, witnessed by E. M. Williamson and J. C. Bain, and swore to the answers to the following questions:

Question. Are you afraid to vote the republican ticket on the 7th of November?
Answer. No.
Q. Do you know of any one who is afraid to vote it?
A. No.
Q. Do you think it necessary for any military force to be here for the protection of any citizens in their rights to vote?
A. No.

J. R. QUARLES,
Justice of the Peace.

And it is upon the testimony of this man in part that this action is predicated. I ask also in this same connection, to rebut the statements embodied in these affidavits, and the assertions made by Mr. C. P. Ramsdell and Mr. Lewis, to read the affidavit of the mayor of the city, Mr. W. F. C. Gregory, who was mayor of the city at the time this alleged act of violence occurred, to wit, in 1876. It is as follows:

I, W. F. C. Gregory, do hereby certify that on the afternoon of the 25th day of May, 1876, while seated in the mayor's office attending to official business, Dr. Jorgenson came in and in an excited manner stated that a serious fight was going on at the election precinct in fifth ward. The captain of police being in my office, I directed him to go at once and attend to the matter. Thinking it however best I entered a carriage and went in person directly to the place, and found no fighting there; but from testimony heard by me as mayor it appeared that there had been a fight such as occurs in many cities on like occasions.

I. Nathan Stoner was brought before me, as mayor, charged with shooting Edward Edwards; several witnesses were examined, among them A. W. Archer, a justice of the city, who was present at the time of the fight, who put an end to it by commanding the peace. It was in evidence that a pistol was fired by an unknown party, but that the prisoner could not have shot Edwards from the position which he occupied. The physician who examined the wound could not say whether the wound was caused by a pistol-shot or with a brick or some such thing. Stoner was discharged. I have been informed that Edwards soon recovered and is now well.

I regarded the whole affair as the result of free use of whisky on the election day, and not a premeditated affair.

Given under my hand this 19th day of December, 1876.

W. F. C. GREGORY.

STATE OF VIRGINIA,
City of Petersburgh, to wit:

This day personally appeared before me, John M. Pleasants, a justice in and for the said city, W. F. C. Gregory, who made oath that the foregoing statement is true.

Given under my hand this 19th day of December, 1876.

JOHN M. PLEASANTS,
Justice of the Peace.

Such is the evidence of the mayor of the city, who gives a clear, succinct, and, I will guarantee, from my personal knowledge of the man, a true account of the whole occurrence, which appears to have been nothing but a little collision produced by bad whisky on the close of a municipal election.

Certain newspaper articles are filed also and made a part of this record. Their general scope and tenor, I admit, are inflammatory and violent on both sides, whether the republican newspaper or the conservative newspaper, but the threats of violence which the latter embody are predicated in every single instance upon an assumed and hypothetical condition of things, namely, that in the event of the occurrence of a certain contingency, to wit, the provoking a riot by the carpet-baggers who control the negroes, then these carpet-baggers would be held to a strict accountability for any loss of life or property that might occur in the city of Petersburgh. I had expected, from what was said by the Senator from Indiana on the day the resolution calling for the information was brought up and considered and adopted, that evidence would have been adduced here to show the facts as connected with an asserted riot in 1874; but for some reason, doubtless a good one, there was nothing said about that riot or the circumstances which precipitated it upon the people; but I will state here that that was a difficulty and a collision far exceeding in its dimensions any which are alluded to in the case under consideration. There it was that under the administration of a republican mayor a mob of colored people paraded the streets of Petersburgh for hours, stoning the houses of white people and committing other acts of violence, assaulting and stoning them until, in accordance with that principle of self-preservation which the law itself recognizes as right under certain circumstances, the people of Petersburgh, despairing of securing relief from their authorities, took the law into their hands and by the strong hand, suppressed this violence. But there is nothing said about that in this report.

I wish here to state that in what I have said I have uttered no word of apology and certainly none of approval for the intemperate character of the newspaper articles which are copied in this document. The Virginia Citizen was an ephemeral campaign paper, owned, it was alleged, by Dr. Jorgenson, the republican candidate for Congress in the district, and edited by one Van Auken, who formerly held office in the custom-house there and who is now a defaulter to the Government. Of course the utterances of a paper thus controlled and thus edited must be received with many grains of allowance.

But now, Mr. President, I should not have performed my duty in the premises without stating the "true inwardness" of this whole Petersburgh matter. In the Petersburgh district, which is largely controlled by the colored voters, there has been for some years a growing hostility on the part of the native colored people of that district against the carpet-bag element which has hitherto controlled it and enjoyed all the offices, and they have more and more frequently and determinedly evinced their disposition and purpose to resist the control of the carpet-baggers who had hitherto fattened upon the offices which they had given them by their vote. Consequently, prior to the last presidential election a convention of colored people in that district was held and one De Mortie, a highly respectable colored man, was nominated as their candidate for Congress. The custom-house "ring" and other Government officers held a convention and nominated one Dr. Jorgenson, the present postmaster at Petersburgh, who has been in the enjoyment of office all the time since he has been within the confines of the State. The antagonism between these two elements became very strong. Hinton was nominated by the democrats and conservatives of the district as their candidate for Congress, under the impression and belief that notwithstanding the immense republican majority in that district the division of the votes between the carpet-bagger and the colored man would give him a fair chance of being elected. The canvass progressed. Larger and larger numbers of the colored people avowed their purpose of supporting the man of their own color, De Mortie, and a great many of them became members of the democratic club and said they were tired of this trouble and preferred acting with their own white people, and avowed their purpose of supporting Hinton. The canvass went on with this condition of things up to within a few days of the time of election. I will state here that I made myself a partial canvass of that district during the presidential contest, and I know whereof I speak. I myself met, and talked with, many colored people who avowed their purpose of voting the democratic ticket, and I met many others, a much larger number, who avowed their purpose of supporting De Mortie, the man of their own color, who was the man of their choice. But these carpet-bag officials and custom-house officers, finding as the day of election approached that the result would be prejudicial to their candidate, hit upon this device: they went through the country everywhere asserting that it was the desire of President Grant and the Administration that the colored people of that district should vote for Jorgenson and not for De Mortie, and that soldiers would be sent there to compel them thus to vote. Hence it was that this anxiety was displayed by the leaders of the republican party in Petersburgh and by Mr. C. P. Ramsdell, the United States marshal, and chairman of the State committee, to get United States troops there on the day of the election in order that they might control the colored vote and secure it for the candidate of their choice. That is the whole of it.

It is not too much to assert that the presence of the military in Petersburgh, though "quartered in the custom-house," as General Grant says, "at a considerable distance from any polling-place," did materially affect the result of the election in that district. The colored people, finding that these soldiers were there, naturally considered it as proof of the correctness of the statements which had been made to them by Jorgenson and his friends; and unless the statements which come to me are untrue, but which I am promised shall be verified during the progress of a contested election before the other House, letters purporting to come from General Grant himself were read to the negroes directing and ordering that they should cast their votes for Jorgenson. The consequence was that the whole colored vote was concentrated for him, and De Mortie, who expected to carry some two or three thousand votes in the district, was left with two or three hundred only. This change was effected, the whole of it, within two or three days preceding the election and by the presence of the military. Many white persons were deterred from going to the polls. Men who were timid, men who were afraid of trouble and violence, seeing United States soldiers there and recognizing that the only pretext upon which their presence was justified was the expectation of a collision between the two races, remained away. All who were timid and disinclined to become participants in such a difficulty as was very likely to arise remained away from the polls, and consequently their votes were lost to the conservative candidate. I have a letter here from the mayor of the city corroborating the statements which I have made, and which I have in fact embodied from his letter.

Mr. President, I have nothing further to say with regard to the details of the particular case under consideration, but I wish to ask of the Senate a brief consideration of the dangers which underlie the practice of employing the military at elections in order that they may control them. The founders of our Government, as I asserted in the beginning, clearly recognized those dangers. In the discussions which preceded the adoption of the Federal Constitution, not only in the convention itself which framed that instrument but when the old States were called upon to consider it in convention for adoption, they one and all recognized through their leading men the fact that dangers to our free institutions lurked in this military organization. George Mason, whose authority on questions of constitutional law is second to that of no man who ever lived, gave utterance to this sentiment:

> The liberty of the people—
>
> Said he—
>
> has been destroyed only by those who are military commanders.

You may cast your eye back along all the ages which have preceded us of which we have any record in history, and in the light of this examination I assert that this statement of George Mason stands to-day as an axiom in politics, that there is no instance on record where the liberties of a people ever have been destroyed by any other than a military commander. Another one of the fathers in Virginia utters this sentiment in the Virginia conventions which was called to consider the Federal Constitution:

> Governments ought not to depend on armies for their support, but ought to be so formed as to have the confidence, respect, and affection of the people. Some degree of virtue must exist or freedom cannot live. * * *
>
> In a country extensive as ours the power of the sword is more sensibly felt than in small communities. * * *
>
> The tyrant of a single town or a small district would soon discover that one hundred armed soldiers were a weak defense against ten thousand peasants or citizens, but ten thousand well-disciplined soldiers will command with despotic sway millions of subjects, and will strike terror into the most numerous populace.

These words are just as true to-day as they were when uttered in the constitutional convention in 1788. The danger which Mr. Dawson so hypothetically states in the paragraph which I have quoted from his speech is, so far as human reason can judge, now rapidly becoming a reality. It is no true statesmanship which intrusts dangerous powers in the hands of its Chief Executive with no safeguard to protect the people from its unlawful exercise except the virtue and patriotism of the incumbent. On this point I quote the utterance of a man whose name will live while history has an existence as the greatest champion of civil liberty that this country has ever known. I quote from a speech made by Patrick Henry in the Virginia convention in 1788:

> It is on a supposition that your American governors shall be honest that all the good qualities of this government are founded; but its defective and imperfect construction puts it in their power to perpetrate the worst of mischiefs, should they be bad men; and, sir, would not all the world, from the eastern to the western hemisphere, blame our distracted folly in resting our rights upon the contingency of our rulers being good or bad? Show me that age and country where the rights and liberties of the people were placed on the sole chance of their rulers being good men, without a consequent loss of liberty! I say that the loss of that dearest privilege has ever followed, with absolute certainty, every such mad attempt.
>
> If your American chief be a man of ambition and abilities, how easy is it for him to render himself absolute! The army is in his hands, and if he be a man of address, it will be attached to him, and it will be the subject of long meditation with him to seize the first auspicious moment to accomplish his design; and, sir, will the American spirit solely relieve you when this happens? I would rather infinitely—

and I am sure most of this convention are of the same opinion—have a king, lords and commons than a government so replete with such insupportable evils. If we make a king we may prescribe the rules by which he shall rule his people and interpose such checks as shall prevent him from intringing them; but the President, in the field, at the head of his army, can prescribe the terms on which he shall reign master, so far that it will puzzle any American ever to get his neck from under the galling yoke.—3 *Elliot's Debates*, page 59.

Mr. President, have the conditions thus graphically portrayed by this great orator been reached in our country? It is a grave and pregnant question, and one that demands the careful consideration of all who revere our Government and are desirous of preserving the liberties of the people. It is no discredit to the present head of the executive department; in what I shall say in this connection I am actuated by no spirit of hostility toward him personally; I will merely mention what are known to be historic facts, that the present head of our Government, by his education, by his past experience, by his habits of thought, knows little or nothing of the restraints of civil or constitutional law. Having been accustomed to rule by the strong hand of military despotism, it is not to be expected that he can unlearn all the lessons of his youth and divest himself of those convictions which have grown up with his growth and strengthened with his strength. Of his character in this regard the following has been said:

He knows little of our form of government. By a military education and military genius he represents the idea of force. Nor is he any exception to the rule of his profession, which appreciates only slightly a government that is not arbitrary.

Such are the utterances, not of a democratic statesman, not of a southern fire-eater; but they are the utterances of that republican statesman who to-day stands higher in public estimation than any other man of his party whose voice has ever rung through these halls; they are the utterances of Senator Sumner, of Massachusetts. They are his estimate of the character of the present incumbent of our executive chair. Sir, is there nothing in the past experience of this country, is there nothing in the actions which have been performed by General Grant since he has been President, to justify the character which has thus been given him by Senator Sumner, and which his education and past associations would entitle us to expect him to exhibit? When the chief executive officer of this nation forgets that he was elected and sworn to discharge the duties of a President of the United States and hesitates and blushes not to avow himself the President of a party; when we have seen him time and again invoke the aid of the military to crush out the very muniments of liberty in the States, and to take possession of one, and another, and another of the State governments by armed military interference, I say it is not too much to assert that the period described by Patrick Henry has arrived in the history of this country and that we ought to look well to the conditions by which we are surrounded, in order that we may guard against the dangers which so imminently threaten us.

True, the President of the United States attempts to make light of the inquiry which I had the honor to institute with regard to the occupancy of Petersburgh by ironically referring of the small number of soldiers who constituted the detachment that was sent to that city. Twenty-four soldiers, with a captain and a lieutenant, he thinks, should scarcely so threaten the liberties of the people of Petersburgh or of the State of Virginia as to render it a proper subject of apprehension. It is not the number of the soldiers who were present, but it is the fact that they represent the whole strength and majesty and might of the Government of the United States that makes them formidable. Ah, sir, in the history of nations there are not wanting instances where the presence of military as few in numbers as those that perpetrated this outrage in the city of Petersburgh have subverted utterly the foundations of government and established a despotism upon the ruins of a republic. History records the period when, at the head of the paltry number of thirty armed soldiery, Cromwell stalked into the British Parliament, and drove from their seats the members of that body and all its officers, seized the reins of government, and became at once dictator and emperor in truth, if not in name, of the great English nation; and yet but thirty soldiers were present when this consummation was effected. I tell you, Mr. President, with a grave conviction of the perils which now surround our Government, it is a time which should make us all pause and reflect upon the dangers with which we find ourselves confronted. It is a question which is totally distinct and separate from all political connections and affiliations. It rises above and beyond them. All who love republican liberty, whether they belong to the so-called republican or democratic party, are interested now in throwing every possible protection around the liberties of the people and the constitutional government which our fathers gave us; for they are in danger, in imminent danger, of being destroyed. Not only has the Army of the United States been used to subvert State governments, but we are now confronted with the fact that that Army is itself concentrating around this Capitol and that Senators and Representatives here are to legislate under the shadows of the bayonets of the United States Army controlled by the Chief Executive. As I said before, there is nothing in his character, in his education, or in his antecedents, if opportunity serves and he believes himself that he could be sustained by the Army, that will prevent his taking the last step and sending the Republic of America to join the long list of republics that have lived and passed away. When we look at the history of all other republics, we find that certain steps have been invariably taken indicating their decline and their final destruction. What are they? Corruption first, fraud next, violence last. He would be a bold man who would rise in his place in this Senate and assert that the first steps have not been taken in this country. He would be a bold man who would assert that corruption has not stalked forth in the midday with unblushing effrontery, challenging our admiration if not our respect. He would be a bold man who would rise in his place on this floor and assert that frauds in elections have not been perpetrated time and again, constantly increasing in boldness, in extent, and in magnitude with each successive election. And, sir, if these two first steps have thus been taken, who can say that the third will not follow in their train? We must recollect that the present incumbent of the executive chair is a man who has been elevated to the high position which he now occupies, if not by the strong arm of military power in the first place, by his services to the country in his position as Commander-in-Chief of the Army, and that to his military service is he indebted for the high position and honors which he now enjoys. That he is ambitious beyond any President who has ever preceded him in that chair, I presume his warmest friends will not deny; and it is for you to say whether, with a President of this character and with these antecedents, whose course in the past has been such as to indicate that his trust and reliance is mainly on the military arm to carry out and compass and accomplish his wishes, when the time comes and the opportunity is considered to be favorable, the last step will not be taken.

For myself and for my people I can say this: that we are as truly and earnestly devoted to the principles of constitutional liberty as we ever were. That Southern Senators have remained quiet and passive spectators of all the heated debates which have hitherto occurred here, is true; but that proceeds not from indifference. We considered that it would be perhaps prejudicial to the cause of liberty if we were to raise our voices in this Hall, certainly until all the evidence which it was possible to bring to bear on the case should be laid before you. We, sir, have passed through the fires of affliction; we, sir, do not propose to assume the initiative in any contingency which may arise pending the decision of the immense questions which are now pressing upon public attention. We consider that our past experience of despotic power has enabled us to appreciate beyond what the people of any other section can imagine what is meant by despotic power; and as we have lived under it in the past, we can live under it in the future, if the northern people shall give their assent to the change of government which is involved.

The PRESIDING OFFICER, (Mr. WRIGHT in the chair.) The question is on the resolution submitted by the Senator from Virginia, [Mr. WITHERS.]

Mr. WHYTE. Mr. President, I should like to add an amendment to the resolution, if my friend from Virginia does not object. The difficulty, as it strikes me, in regard to the sending of troops into any of the States at the time of a State election or an election of a member of Congress, grows out of the legislation which took place during the war. Prior to 1865 there is no doubt that the sentiment of the people was against the permission of the presence of troops near a polling-place during an election. In old times, as far back as 1800, the principle which prevailed in England, of removing soldiers from the polls, had a lodgement with a very large body of the citizens of the United States. It was supposed to be really an objection to the right of a party declared elected to take his seat if soldiers had been in his interest stationed near the polling-place; and the Senate will remember that in one of the early contested elections, the case of Trigg *vs.* Preston, that was one of the grievances complained of by the petitioners. A reference to that case and the matter attached to it will show that in the House of Representatives, on the 17th of February, 1800, a resolution was passed submitting to a committee of inquiry whether it was expedient "to pass some legislative provision either for removing any military force of the United States from the places of holding elections, or for preventing the interference of any such force with said elections." That committee reported a bill, and it passed the House of Representatives, but subsequently failed in the Senate.

From 1800 until 1865 I believe no statute whatever existed upon that subject; but in 1865 a bill was introduced to accomplish that very purpose of keeping the officers of the Army and Navy from interfering in any way with elections. It passed both Houses without debate, without change; and I rather suspect it passed without the attention of both bodies being drawn specially to the few words which now appear in our Revised Statutes, and which create the very difficulty under which the people of Petersburgh labored at the last election, and it is by the insertion of these few words, "or to keep the peace at the polls." That is a very broad authority; and it is a very questionable thing whether under the law the President has not got a color of authority at least for sending soldiers into a State to keep the peace at the polls.

I therefore think, Mr. President, that there should be an inquiry sent to the Judiciary Committee whether that law should not be amended so as to remove these words, which seem to justify the President of the United States in the interference with elections by sending soldiers to a polling-place. I would suggest therefore to my friend from Virginia to add the words, "and whether some change of the law in regard to the stationing of soldiers at the polls to keep the peace thereat should not also be made."

Mr. WITHERS. I have no objection whatever to the amendment

suggested by my friend from Maryland, and will state in that connection that it was the primary purpose of my colleague and myself to have offered a bill repealing so much of the election laws to which he has referred as ever furnished, as I admit they have, color of ground for the action taken; but upon an examination of the question it was our opinion that there were so many changes which were required to be made, so many amendments, that it would require more time than we should now be able to bestow upon it, because the same principle runs clear through the statute-book; laws under many other heads would require to be amended to conform to it. I wished to secure the attention of the Judiciary Committee to the particular construction which has been placed on these laws by the Attorney-General in the opinion from which I have quoted, because I believed that, broad as those laws were and indisputable as is the fact that there is some color of ground for the action taken, yet still I do not believe they furnish authority for the broad construction which has been given them by the opinion of the Attorney-General, and I wish the attention of the Judiciary Committee particularly directed to that question, supposing that being authorized to report by bill or otherwise they would bring in a bill, if in their opinion it was judicious to do so, covering the whole ground, and repealing such provisions of the law as they might think dangerous to the liberties of the country.

The PRESIDING OFFICER. Does the Senator from Maryland offer an amendment?

Mr. WHYTE. I withdraw the amendment on the statement of the Senator from Virginia. I wanted to call attention to this provision of the law.

The PRESIDING OFFICER. The question is on the resolution.

Mr. SHERMAN. I ask that the resolution be read again.

The resolution was read.

The resolution was agreed to.

A. M. GAROUTTE.

Mr. CHRISTIANCY. I wish to call up the bill for the relief of Captain A. M. Garoutte. It is a case of much importance to him, a poor man who has been long in attendance here. It is a bill of the last session, and I think it might be disposed of in a few moments. I move to take up Senate bill No. 949.

The motion was agreed to; and the bill (S. No. 949) for the relief of A. M. Garoutte, late captain and assistant quartermaster, United States Army, was read the second time, and considered as in Committee of the Whole. It provides for the payment to A. M. Garoutte, late captain and assistant quartermaster, United States Army, of $1,544.15, in full for the amount refunded by said Garoutte to H. Hurdle, by order of General Boyd, in the year 1865, and of hotel bills paid by him for clerks and auctioneer while making sale of personal property of the United States at various places in the State of North Carolina in 1865 and 1866, and for amount of fine wrongfully imposed upon him by a court-martial in August, 1866, and paid by him; and for all sums which would have been due to him for military services in the capacity stated if he had been honorably discharged on the 14th of August, 1866. It also requires the Secretary of War to cause to be issued to Garoutte an honorable discharge, to take effect from the 14th of August, 1866.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

RULES OF THE SENATE.

Mr. FERRY. I move that the Senate resume the consideration of the report of the Committee on Rules.

The motion was agreed to; and the Senate, as in Committee of the Whole, resumed the consideration of the rules reported by the Committee on Rules.

Mr. FERRY. I ask that the next rule in order after the last one acted on yesterday be reported.

The Chief Clerk read as follows:

COMMITTEES.

Appointment of committees.

46. In the appointment of the standing committees, the Senate, unless otherwise ordered, shall proceed by ballot to appoint, severally, the chairman of each committee, and then, by one ballot, the other members necessary to complete the same. A majority of the whole number of votes given shall be necessary to the choice of a chairman of a standing committee, but a plurality of votes shall appoint the other members thereof. All other committees shall be appointed by ballot, unless otherwise ordered, and a plurality of votes shall appoint.

When the chairman of a committee shall resign or cease to serve on a committee, and the presiding officer be authorized by the Senate to fill the vacancy in such committee, unless specially otherwise ordered, it shall be only to fill up the number on the committee.

Mr. FERRY. I ask, if there be no objection, that the rules be considered as adopted as read.

The PRESIDING OFFICER, (Mr. WRIGHT.) If no amendment be offered or objection made, this rule will be considered as adopted. It is so regarded and the next will be read.

The Chief Clerk read as follows:

Standing committees.

47. The following standing committees shall be appointed at the commencement of each session, with leave to report by bill or otherwise:

A Committee on Privileges and Elections, to consist of nine Senators.
A Committee on Foreign Relations, to consist of nine Senators.
A Committee on Finance, to consist of nine Senators.
A Committee on Appropriations, to consist of nine Senators.
A Committee on Commerce, to consist of nine Senators.
A Committee on Manufactures, to consist of five Senators.
A Committee on Agriculture, to consist of five Senators.
A Committee on Military Affairs, to consist of nine Senators.
A Committee on Naval Affairs, to consist of nine Senators.
A Committee on the Judiciary, to consist of seven Senators.
A Committee on Post-Offices and Post-Roads, to consist of nine Senators.
A Committee on Public Lands, to consist of nine Senators.
A Committee on Private Land Claims, to consist of five Senators.
A Committee on Indian Affairs, to consist of seven Senators.
A Committee on Pensions, to consist of seven Senators.
A Committee on Revolutionary Claims, to consist of five Senators.
A Committee on Claims, to consist of nine Senators.
A Committee on the District of Columbia, to consist of seven Senators.
A Committee on Patents, to consist of five Senators.
A Committee on Public Buildings and Grounds, to consist of five Senators, who shall have power also to act jointly with the same committee of the House of Representatives.
A Committee on Territories, to consist of seven Senators.
A Committee on Railroads, to consist of eleven Senators.
A Committee on Mines and Mining, to consist of seven Senators.
A Committee on the Revision of the Laws of the United States, to consist of five Senators.
A Committee on Education and Labor, to consist of nine Senators.
A Committee on Civil Service and Retrenchment, to consist of seven Senators.
A Committee to Audit and Control the Contingent Expenses of the Senate, to consist of three Senators, to which shall be referred all resolutions directing the payment of money out of the contingent fund of the Senate, or creating a charge upon the same.
A Committee on Printing, to consist of three Senators.
A Committee on the Library, to consist of three Senators.
A Committee on Rules, to consist of three Senators.
A Committee on Engrossed Bills, to consist of three Senators, who shall examine all bills, amendments, and joint resolutions before they go out of the possession of the Senate.
A Committee on Enrolled Bills, to consist of three Senators, who, or some one of whom, shall examine all bills or joint resolutions which shall have passed both Houses, to see that the same are correctly enrolled, and, when signed by the Speaker of the House and President of the Senate, shall forthwith present the same, when they shall have originated in the Senate, to the President of the United States in person, and report the fact and date of such presentation to the Senate.

Mr. FERRY. I suggest that the Committee on Printing, together with the Committee on the Library and the Committee on Enrolled Bills, should have power to act jointly with the same committee of the House of Representatives. I ask that these amendments be added as to each of these committees empowering them to act jointly with the committees of the House.

The PRESIDING OFFICER. The Senator from Michigan moves an amendment which will be stated.

Mr. FERRY. I move to add "who shall have power also to act jointly with the same committee of the House of Representatives" in the case of the Committee on Enrolled Bills, the Committee on the the Library, and the Committee on Printing.

The PRESIDING OFFICER. The Chair hears no objection, and the amendment is adopted. The question is on the rule as amended. If there be no objection, the rule as amended will be considered as adopted.

The Chief Clerk read the next rule, as follows:

Reference to committees.

48. When motions are made for the reference of the same subject to a standing committee and to a select committee, the question shall first be put upon referring to a standing committee, and a motion simply to refer shall not be open to amendment, except to add instructions.

The PRESIDING OFFICER. There being no objection, this rule will be regarded as agreed to. The next will be read.

The Chief Clerk read as follows:

Reports of committees of conference.

49. The presentation of reports of committees of conference shall always be in order, except while the Journal is being read or a question of order or a motion to adjourn is pending, or while the Senate is dividing; and, when received, the question of proceeding to the consideration of the report shall immediately be put, and shall be determined without debate.

The PRESIDING OFFICER. If there be no objection this rule will be regarded as agreed to, and it is agreed to. The next will be read.

The Chief Clerk read as follows:

Reports of committees and motions to discharge a committee to lie one day for consideration.

50. All reports of committees and motions to discharge a committee from the consideration of a subject, and all subjects from which a committee shall be discharged, shall lie one day for consideration, unless by unanimous consent the Senate shall otherwise direct.

The PRESIDING OFFICER. This rule will be regarded as agreed to unless there be objection. It is agreed to. The next rule will be read.

The Chief Clerk read as follows:

MESSAGES.

Messages from the President and from the House of Representatives.

51. Messages from the President of the United States or from the House of Representatives may be received at any state of business, except while the Senate is dividing, or while the Journal is being read, or while a question of order or a motion to adjourn is pending.

The PRESIDING OFFCER. If there be no objection this rule will be regarded as agreed to. The Chair hears no objection, and it is agreed to. The next will be read.

The Chief Clerk read as follows:

Communications to the House of Representatives and to the President.

52. Messages shall be sent to the House of Representatives by the Secretary, who shall previously certify the final determination of the Senate upon all bills, joint

lutions, and other resolutions which may be communicated to the House, or in which its concurrence may be requested; and he shall likewise certify and deliver to the President of the United States all resolutions and other communications which the Senate shall direct to be laid before him.

Mr. COCKRELL. I desire to ask a question in regard to Rule 51 which we have just passed. Will that admit of the reception of a message from the President or from the House while the yeas and nays are being called?

Mr. FERRY. The Senator will observe that while the Senate is dividing a message cannot be received.

Mr. COCKRELL. Does that refer to a call for the yeas and nays or a standing division?

Mr. FERRY. A division of the Senate in any form, whether by count or by yeas and nays. "While the Senate is dividing" is the language used in all rules.

On the next rule I suggest after the word "final" in the second line before "determination" be stricken out. "Determination" is sufficient. "Final" is tautology.

The PRESIDING OFFICER. The question is on the amendment indicated by the Senator from Michigan.

The amendment was agreed to.

The PRESIDING OFFICER. If there be no objection, Rule 52 as thus amended will stand as the judgment of the Senate. The Chair hears no objection, and the rule is agreed to. The next will be read.

The Chief Clerk read as follows:

PRINTING.

Printing of papers.

53. Every motion to print documents, reports, or other matter transmitted by either of the Executive Departments, or to print memorials, petitions, accompanying documents, or any other paper, except bills of the Senate or House of Representatives, resolutions submitted by a Senator, communications from the Legislatures or conventions, lawfully called, of the respective States, and motions to print by order of the standing or select committees of the Senate, shall, unless the Senate otherwise order, be referred to the Committee on Printing. When a motion is made to commit with instructions, it shall be in order to add thereto a motion to print.

The PRESIDING OFFICER. The Chair hears no objection to this rule, and it will be regarded as adopted. The next will be reported.

The Chief Clerk read as follows:

Printing additional numbers.

54. Motions to print additional numbers shall also be referred to the Committee on Printing; and when the committee shall report in favor of printing additional numbers, the report shall be accompanied by an estimate of the probable cost thereof; and when the cost of printing such additional numbers shall exceed the sum of $500, the concurrence of the House of Representatives shall be necessary for the order to print the same.

The PRESIDING OFFICER. Is there objection to this rule? The Chair hears none, and it is agreed to. The next will be reported.

The Chief Clerk read as follows:

Printing bills, joint resolutions, and reports of committees.

55. Every bill and joint resolution introduced on leave or reported from a committee, and all bills and joint resolutions received from the House of Representatives, and all reports of committees, shall be printed, unless, for the dispatch of the business of the Senate, such printing may be dispensed with.

The PRESIDING OFFICER. Is there any objection to this rule? The Chair hears none. The next rule will be reported.

The Chief Clerk read as follows:

WITHDRAWAL OR REFERENCE.

Withdrawal of papers.

56. No memorial or other paper presented to the Senate, except original treaties, finally acted upon by the Senate, shall be withdrawn from its files except by order of the Senate. But when an act may pass for the settlement of any private claim the Secretary is authorized to transmit to the officer charged with the settlement the papers on file relating to the claim.

The PRESIDING OFFICER. Is there any objection to this rule? The Chair hears none, and it is agreed to. The next rule will be reported.

The Chief Clerk read as follows:

When an adverse report has been made, copies to be left with the Secretary of the Senate.

57. No memorial or other paper upon which an adverse report has been made shall be withdrawn from the files of the Senate unless copies thereof shall be left in the office of the Secretary.

The PRESIDING OFFICER. Is there any objection to this rule? The Chair hears none, and it is agreed to. The next will be reported.

Mr. FERRY. I see that Rules 58 and 59 have not been changed. I ask that their reading be dispensed with.

The PRESIDING OFFICER. If there be no objection the reading will be dispensed with.

Mr. FERRY. Also the next, Rule 60, is unchanged with the exception that the word "and" occurring in three places is stricken out.

The PRESIDING OFFICER. These rules will be considered as agreed to without reading, if there be no objection.

These rules are as follows:

Claims adversely reported not again referred.

58. Whenever a claim is presented to the Senate and referred to a committee, and the committee report that the claim ought not to be allowed, and the report shall have been agreed to by the Senate, it shall not be in order to move to take the papers from the files for the purpose of referring them, at a subsequent session, unless the claimant shall present a memorial for that purpose, stating that new evidence has been discovered since the report, and setting forth the new evidence in the memorial.

BUSINESS CONTINUED FROM SESSION TO SESSION.

59. At the second or any subsequent session of a Congress, the legislative business of the Senate which remained undetermined at the close of the next preceding session of that Congress shall be resumed and proceeded with in the same manner as if no adjournment of the Senate had taken place; and all subjects referred to committees and not reported upon at the close of a session of Congress shall be returned to the office of the Secretary of the Senate, and be retained by him until the next succeeding session of that Congress, when they shall be returned to the several committees to which they had previously been referred.

PRIVILEGE OF THE FLOOR.

Persons admitted to the floor of Senate.

60. No person shall be admitted to the floor of the Senate while in session, except as follows:

The officers of the Senate.
Members of the House of Representatives and their Clerk.
The President of the United States and his Private Secretary.
The heads of Departments.
Ministers of the United States.
Foreign ministers.
Ex-Presidents and Ex-Vice-Presidents of the United States.
Ex-Senators and Senators-elect.
Judges of the Supreme Court.
Governors of States and Territories.
General of the Army.
Admiral of the Navy.
Members of national Legislatures of foreign countries.
Private secretaries of Senators duly appointed in writing, and the Librarian of Congress.

The Chief Clerk read as follows:

SUSPENSION.

Suspension of the rules.

61. No motion to suspend, modify, or amend any rule, or any part thereof, shall be in order, except on one day's notice in writing, specifying precisely the rule or part proposed to be suspended, modified, or amended, and the purpose thereof. Any rule may be suspended without notice by the unanimous consent of the Senate; and the rule proposed to be suspended shall precisely and distinctly be stated; but the eighteenth rule shall never be suspended under any circumstances whatever.

The PRESIDING OFFICER. If there be no objection, this rule will be regarded as agreed to.

Mr. WITHERS. Is the rule just adopted sufficiently precise to prevent the possibility of a question as to the ability to repeal the eighteenth rule? Manifestly it ought not to be repealed, and yet this gives us the privilege of repealing any rule whatever other than the eighteenth rule. Cannot this rule itself be repealed which contains the inhibition of the repeal of the eighteenth rule?

Mr. FERRY. This states in precise language that it cannot be repealed in any case whatever.

Mr. WITHERS. But if every rule can be repealed, this rule itself which contains the inhibition can be repealed and the inhibition with it.

Mr. MORRILL. I suggest to the Senator from Michigan to insert in the first part of the rule "any rule excepting the eighteenth." Then the two provisions would harmonize together. As it reads now, there is, first, a provision that all rules may be repealed, and then, second, a provision that the eighteenth rule shall never be repealed. There seems to be an inconsistency which could be provided for by inserting in the first part "excepting the eighteenth rule."

Mr. FERRY. I have no objection to that amendment if it renders it more explicit. The committee were satisfied with the language as reported; but I make no opposition to the suggestion of the Senator from Vermont.

The PRESIDING OFFICER. The Senator from Vermont suggests an amendment inserting the words "excepting the eighteenth rule."

Mr. FERRY. I ask that the rule be read again. I cannot see the force of the suggestion of the Senator from Vermont since I have looked at the rule again.

The PRESIDING OFFICER. The rule will be read.

The Chief Clerk read Rule 61.

Mr. FERRY. In the same rule it makes the exception that the eighteenth rule cannot be suspended in any case whatever. It provides for suspending the other rules by unanimous consent, but this under no circumstances whatever shall be suspended.

Mr. MORRILL. My idea was, not having the print before me, that it was included in two rules. But the point I make is nevertheless as valid in the one case as the other. This rule provides "any rule may be suspended," and then in the next breath that the eighteenth rule shall not be suspended. Now, if you will insert after the words "any rule may be suspended without notice by the unanimous consent of the Senate" the words "excepting the eighteenth," then it will be all harmonious.

Mr. FERRY. That is simply changing the word "but" to the word "except." The committee supposed that the word "but" being used covered as much as the word "except." I accept the change. It is a mere change of phraseology.

The PRESIDING OFFICER. The Chair understands the amendment of the Senator from Vermont is to strike out "but" and insert "except," in next to the last line. If there be no objection, the amendment is agreed to.

Mr. COCKRELL. I see no objection to the amendment there or to the change suggested by the Senator from Vermont. The first provision of the rule provides for taking steps to suspend or amend or modify a rule, requiring previous notice to be given. The second clause of the rule provides for the suspension of a rule by unanimous consent, and this third clause is a limitation or restriction upon that unanimous consent. Now, if it is intended that the eighteenth rule

shall be eternal and invariable and immortal, as much so as the Louisiana returning board, then I shall certainly object to such language and move to strike out the words "under any circumstances whatever," because I do not think and I do not hold that we can make a rule which can never be changed, make a rule that we cannot give notice of a motion to change and finally have modified or altered. For that reason I think that, even taking it the way it is, the meaning would be the same as it will be when the amendment suggested by the Senator from Vermont is adopted. It is only a limitation upon the power of the Senate to suspend the eighteenth rule by unanimous consent.

Mr. FERRY. The Senator will see by reference to Rule 18 that it relates to the denial of permission to a Senator to vote after the result has been announced. The rule has always been so. The practice has been never to allow a Senator to vote after the announcement of the result. Now, if there is any force in that, the privilege ought never to be granted, and the reason of the thing, as is well known to the Senator, who has already apprehended it, is that, if after the result were announced a Senator were permitted to vote, he might change the result entirely; and for that reason it is prohibited altogether under any circumstances whatever. I cannot say, under the circumstances which the Senator has alluded to, that if the Louisiana returning board were imported to the Senate but that the whole phase of the rules might be changed; but in the absence of that returning board I think the rules ought to have full force.

Now, if the Senator desired to reach this very rule itself he might, by giving one day's notice, offer a proposition for the repeal of this very rule, so as to take it out of the code of rules; but so long as it is a rule it says that "Rule 18 shall never be suspended under any circumstances whatever;" and it seems to me there is a great deal of force and a great deal of safety in it.

Mr. STEVENSON. Is not the Senator mistaken in supposing that a Senator has never been allowed to vote after the result is announced? I think that if the Senator will look at the records of the Senate he will find at least in one instance that a Senator on the following day was allowed to record his vote.

Mr. FERRY. Under what circumstances, I should like to ask the Senator?

Mr. STEVENSON. Under the circumstances that he was not present in the Chamber when the vote was called, and he came in the next day and asked leave to record his vote. I am particularly positive on that subject, because the vote I refer to was on the expulsion of the late Senator John C. Breckinridge, when a Senator from Minnesota [Mr. Rice] on the following day said he was not in the Senate when the resolution of expulsion was up, and he asked to be allowed to record his vote. It was allowed, and I think you will find the vote recorded.

Mr. FERRY. I would ask the Senator whether that was not in the face of the rule, that under no circumstances whatever shall a Senator be permitted to vote after the announcement of the result.

Mr. STEVENSON. I do not know what the rule was; I cannot answer my friend from Michigan on that question; but I heard him say that it never had been allowed in the Senate; but in the case in my mind there was a request of the Senator from Minnesota to record his vote, and I know it was done, and the record will support me, I am sure, in the fact that his vote is recorded for the expulsion, and that vote was allowed to be recorded on the day after the resolution was passed.

Mr. FERRY. I doubt not the Senator from Kentucky is correct in his statement of recollection. He is always correct in his statement of recollection, but the case had escaped my notice, and I am prepared to say that it is an unsound proposition and an unsafe one.

Mr. STEVENSON. I agree with that. I am not proposing it. I only wanted to show the history, and not allow the statement to pass unchallenged. I do not think a Senator ought ever to be allowed to record a vote after the result has been announced. I agree to that proposition; but it has been done.

Mr. FERRY. I do not dispute the statement of fact, of course, for the Senator's recollection is clear and vivid always, although the fact had escaped my notice. I am only contending for the soundness of the proposition embodied in the rule; and I think (and the Senator agrees with me) it is better that the rule should be enforced that under no circumstances should a Senator be permitted to vote after the result has been announced.

Mr. SHERMAN. The case cited by the Senator from Kentucky is certainly the only one that I ever heard of in the history of the Senate. Indeed, I supposed it was the uniform and universal rule that no Senator was ever, in any case from the foundation of the Government, allowed to vote unless he was present when the vote was taken, especially where his vote would change the result. I suppose in the case cited that it was owing to peculiar circumstances that the recording of the vote was allowed to Mr. Rice. I was here then a member of the Senate, and I can readily understand that under the peculiar relations that existed between Mr. Rice and Mr. Breckinridge, it might have been granted in that case by general consent; but I never heard of such a case; I do not remember that.

Mr. FERRY. I presume upon examination of the record it will be seen that that vote did not change the result; and on that account, in courtesy to the Senator who had been absent, he was permitted to record his vote; but if that vote had changed the result from yea to nay or from nay to yea, I think the Senate would not have granted it. Probably those were the circumstances under which the vote was cast.

Mr. COCKRELL. I heartily indorse the sentiment of the eighteenth rule, as a matter of course, but I was protesting against the unlimited, eternal power we were trying to exercise in the language used here. I still contend that the Senate can repeal that rule at any time it chooses by pursuing the form required by the rules.

Mr. FERRY. There is no question of that. If the Senator follows the method of the prior rule giving one day's notice, he can secure its repeal by a majority vote; and this rule itself can be repealed by giving the proper notice, provided the Senate concurs in doing it; but so long as this rule is in force, Rule 18 cannot be suspended under any circumstances whatever.

The PRESIDING OFFICER. If there be no amendment proposed to this rule and no objection made, the rule will be regarded as agreed to as amended. The rule will be read as amended.

The Chief Clerk read as follows:

61. No motion to suspend, modify, or amend any rule, or any part thereof, shall be in order, except on one day's notice, in writing, specifying precisely the rule or part proposed to be suspended, modified, or amended, and the purpose thereof. Any rule may be suspended without notice by the unanimous consent of the Senate; and the rule proposed to be suspended shall precisely and distinctly be stated; excepting the eighteenth rule shall never be suspended under any circumstances whatever.

Mr. MORRILL. The amendment proposed by me should come in after "notice;" so as to read, "Any rule may be suspended without notice, except the eighteenth rule, by the unanimous consent of the Senate;" and then the language as proposed to be amended in the rule here would read all right:

Any rule may be suspended without notice, except the eighteenth rule, by the unanimous consent of the Senate; and the rule proposed to be suspended shall precisely and distinctly be stated; but the eighteenth rule shall never be suspended under any circumstances whatever.

Mr. COCKRELL. I suggest to insert the words "except the eighteenth rule" just after the words "any rule" in the fourth line; so as to read, "Any rule except the eighteenth rule."

Mr. MORRILL. That perhaps would be better. I accept the suggestion.

Mr. FERRY. If the Senate is disposed to transpose these words let the whole of the paragraph be transposed, including the words, "not be suspended under any circumstances whatever."

Mr. SHERMAN. In trying to be virtuous, Senators may perhaps violate the Constitution. We cannot prevent the Senate of the United States from making rules and changing the rules at pleasure, because the Constitution gives expressly to the Senate the power to make its rules and therefore to change its rules and vary its rules or suspend its rules. You cannot say, therefore, that it shall not do it; nor can this Senate bind its successors. It cannot deprive the Senate of the power to change these rules if it chooses. Therefore this great care over a rule that everybody seems anxious to preserve should not be carried so far as to violate the Constitution or interfere with the right of the Senate to change its rules. Nothing prevents me, as a Senator, making a motion to amend the rules, however absurd the motion might be and however illogical the proposition that I might submit.

Mr. FERRY. There is a special rule that provides for modifying and changing the rules and suspending them on notice, and the Senator from Ohio understands that he cannot move the Senate to change a rule without giving a day's notice.

Mr. SHERMAN. That is true.

Mr. FERRY. We must conform to the rule which requires it. There is no prohibition here to the suspension or modification of this very rule upon the one day's notice, provided the Senate concur in suspending or modifying it; so that this is only absolute so long as it is in force.

Mr. SHERMAN. This simply says that even unanimous consent shall not at the moment suspend Rule 18. I assert that the Senate may by unanimous consent disregard all its rules and this rule among the rest, because the Senate exists as an organized body, and can act according to its own will and pleasure. It may regulate the mode and manner of carrying measures; and where a unanimous vote of the Senate declares that a certain thing shall be, there is no power to reverse that decision if it is within the power of the Senate to do the act. Therefore it may disregard all your rules and pass a bill in a moment, as is often done. We might disregard all the rules. I think, therefore, that all these provisions that tie up our rules against ourselves are simply null and void.

Mr. FERRY. I understand the amendment of the Senator from Missouri to be after the word "rule" to insert "except the eighteenth;" and then let the rest of the rule stand as proposed by the committee?

Mr. COCKRELL. Yes, sir.

Mr. FERRY. That I assent to.

The PRESIDING OFFICER. Is there objection to the rule as thus proposed to be amended? The Chair hears none, and the rule stands as thus amended. The next rule will be read.

The Chief Clerk read as follows:

SENATE WING OF THE CAPITOL UNDER CONTROL OF PRESIDING OFFICER.

62. The presiding officer of the Senate shall have the regulation and control of such parts of the Capitol building and of its corridors and passages as are, or may be, set apart for the use of the Senate and its officers, unless otherwise ordered by the Senate.

The PRESIDING OFFICER. Is there objection to this rule? The Chair hears none, and the rule is agreed to. The next rule will be reported.

The Chief Clerk read as follows:

OATHS OF OFFICE.

63. The oath or affirmation required by the Constitution and prescribed by the act of June 1, 1789, shall be taken in open Senate by each Senator before entering upon his duties; and he shall also take and subscribe in open Senate the oath or affirmation prescribed by the act of July 2, 1862, or he shall take and subscribe the oath of affirmation prescribed by the act of July 11, 1868, as the case may be, before entering upon his duties. The said oaths shall also be taken and subscribed in the same manner by the Secretary of the Senate; but the other officers of the Senate may take and subscribe them in the office of the Secretary.

The PRESIDING OFFICER. If there be no objection, this rule will be regarded as agreed to. It is agreed to. The next rule will be reported.

The Chief Clerk read as follows:

SESSION WITH CLOSED DOORS.

Doors closed on motion.

64. On a motion made and seconded to shut the doors of the Senate, on the discussion of any business which may, in the opinion of a Senator, require secrecy, the presiding officer shall direct the galleries to be cleared; and during the discussion of such motion the doors shall remain closed.

The PRESIDING OFFICER. If there be no objection, this rule will be regarded as agreed to. The Chair hears none, and it is agreed to. The next rule will be reported.

The Chief Clerk read as follows:

EXECUTIVE SESSION.

President meeting the Senate in executive session.

65. When the President of the United States shall meet the Senate in the Senate Chamber for the consideration of executive business, he shall have a seat on the right of the Chair. When the Senate shall be convened by the President of the United States to any other place, the presiding officer of the Senate and the Senators shall attend at the place appointed, with the necessary officers of the Senate.

The PRESIDING OFFICER. The Chair hears no objection, and the rule is agreed to. The next rule will be reported.

The Chief Clerk read as follows:

Officers admitted in executive session.

66. When acting upon confidential or executive business, the Senate Chamber shall be cleared of all persons except the Secretary, the Chief Clerk, the principal legislative clerk, the executive clerk, the minute and journal clerk, the Sergeant-at-Arms, the assistant doorkeeper, and such other officers as the presiding officer shall think necessary; and all such officers shall be sworn to secrecy.

The PRESIDING OFFICER. This rule will be regarded as agreed to unless there be objection.

Mr. COCKRELL. I desire to ask the Senator reporting these rules whether there has ever been a rule that in executive session the debates shall be taken down when they are wanted to be preserved, by having a reporter sworn?

Mr. FERRY. Not during secret session. It would be defeating the very object of secrecy, perhaps.

Mr. COCKRELL. We keep a record of our proceedings.

Mr. FERRY. But no one has access to it except the President.

Mr. COCKRELL. The Senate might at certain times want the proceedings reported.

Mr. FERRY. It has never been the case, and I think the committee did not deem it prudent to open the door any farther than is now allowed by the rule.

The PRESIDING OFFICER. The next rule will be reported.

The Chief Clerk read as follows:

Subjects embraced in injunction of secrecy.

67. All confidential communications made by the President of the United States to the Senate shall be by the Senators and the officers of the Senate kept secret; and all treaties which may be laid before the Senate, and all remarks, votes, and proceedings thereon, shall also be kept secret, until the Senate shall, by their resolution, take off the injunction of secrecy.

The PRESIDING OFFICER. If there be no objection, this rule will be regarded as agreed to. No objection is made, and the rule is agreed to. The next rule will be read.

The Chief Clerk read as follows:

Violation of injunction of secrecy.

68. Any Senator or officer of the Senate who shall disclose the secret or confidential business or proceedings of the Senate shall be liable, if a Senator, to suffer expulsion from the body; and if an officer, to dismissal from the service of the Senate, and to punishment for contempt.

The PRESIDING OFFICER. This rule will be regarded as agreed to, if there be no objection. The next rule will be reported.

The Chief Clerk read as follows:

Proceedings on treaties.

69. When a treaty shall be laid before the Senate for ratification, it shall be read a first time; and no motion in respect to it shall be in order, except to refer it to a committee, or to print it, in confidence, for the use of the Senate.

When a treaty is reported from a committee with or without amendment, it shall, unless the Senate unanimously otherwise direct, lie one day for consideration; after which it may be read a second time and considered as in Committee of the Whole, when it shall be proceeded with by articles; and the amendments reported by the committee shall be first acted upon, after which other amendments may be proposed; and when through with, the proceedings had as in Committee of the Whole shall be reported to the Senate, when the question shall be, if the treaty be amended, "Will the Senate concur in the amendments made in Committee of the Whole?" And the amendments may be taken separately, or in gross, if no Senator shall object; after which new amendments may be proposed.

The decisions thus made shall be reduced to the form of a resolution of ratification, with or without amendments, as the case may be; which shall be proposed on a subsequent day, unless, by unanimous consent, the Senate determine otherwise; at which stage no amendment shall be received unless by unanimous consent.

On the final question to advise and consent to the ratification in the form agreed to, the concurrence of two-thirds of the Senators present shall be necessary to determine it in the affirmative; but all other motions and questions upon a treaty shall be decided by a majority vote, except a motion to postpone indefinitely, which shall be decided by a vote of two-thirds.

The PRESIDING OFFICER. This rule will be regarded as agreed to, if there be no objection. It is agreed to. The next rule will be reported.

The Chief Clerk read as follows:

When action upon treaties shall expire.

70. Treaties transmitted by the President to the Senate for ratification shall be resumed at the second or any subsequent session of the same Congress at the stage in which they were left at the final adjournment of the session at which they were transmitted; but all proceedings on treaties shall terminate with the Congress, and they shall be resumed at the commencement of the next Congress, as if no proceedings had previously been had thereon.

The PRESIDING OFFICER. This rule will be regarded as agreed to, if there be no objection. It is agreed to. The next rule will be read.

The Chief Clerk read as follows:

Indian treaties, when acted upon in open session.

71. All treaties concluded with Indian tribes shall be considered and acted upon by the Senate in its open or legislative session, unless the same shall be transmitted by the President to the Senate in confidence; in which case they shall be acted upon with closed doors.

The PRESIDING OFFICER. This rule will be regarded as agreed to, if there be no objection. The next rule will be reported.

The Chief Clerk read as follows:

Nominations—proceedings.

72. When nominations shall be made by the President of the United States to the Senate, they shall, unless otherwise ordered by the Senate, be referred to appropriate committees; and the final question on every nomination shall be, "Will the Senate advise and consent to this nomination?" Which question shall not be put on the same day on which the nomination is received, nor on the day on which it may be reported by a committee, unless by the unanimous consent of the Senate.

The PRESIDING OFFICER. This rule will be regarded as agreed to, if there be no objection. The Chair hears none, and it is agreed to. The next rule will be read.

The Chief Clerk read as follows:

Remarks and votes not to be disclosed.

73. All information communicated or remarks made by a Senator when acting upon nominations, concerning the character or qualifications of the person nominated, also all votes upon any nomination, shall be kept secret. If, however, charges shall be made against a person nominated, the committee may, in its discretion, notify such nominee thereof, but the name of the person making such charges shall not be disclosed. The fact that a nomination has been made, or that it has been confirmed or rejected, shall not be regarded as a secret.

The PRESIDING OFFICER. This rule will be regarded as agreed to, if there be no objection. The Chair hears none. It is agreed to. The next rule will be reported.

The Chief Clerk read as follows:

Nominations—reconsideration.

74. When a nomination is confirmed or rejected, any Senator voting in the majority may move for a reconsideration on the same day on which the vote was taken, or on either of the next two days of actual executive session of the Senate; but if a notification of the confirmation or rejection of a nomination shall have been sent to the President before the expiration of the time within which a motion to reconsider may be made, the motion to reconsider shall be accompanied by a motion to request the President to return such notification to the Senate. Any motion to reconsider the vote on a nomination may be laid on the table without prejudice to the nomination, and shall be final.

Mr. FERRY. I suggest that the word "a" be put in between "the" and "final," and the words "disposition of such motion" added; so as to read:

Shall be a final disposition of such motion.

Which would be more explicit.

The PRESIDING OFFICER. Is there objection to this amendment. The Chair hears none, and the amendment is agreed to. If there be no objection, the rule as thus amended will be regarded as agreed to. The Chair hears no objection, and it is agreed to. The next rule will be reported.

The Chief Clerk read as follows:

Nominations—when returned to the President.

75. Nominations confirmed or rejected by the Senate shall not be returned by the Secretary to the President until the expiration of the time limited for making a motion to reconsider the same, or while a motion to reconsider is pending, unless otherwise ordered by the Senate.

The PRESIDING OFFICER. This rule will be regarded as agreed to, if there be no objection. The Chair hears none, and it is agreed to. The next rule will be reported.

The Chief Clerk read as follows:

Nominations—when motion to reconsider shall fall.

76. When the Senate shall adjourn or take a recess for more than thirty days, all motions to reconsider a vote upon a nomination which has been confirmed or rejected by the Senate, which shall be pending at the time of taking such adjournment or recess, shall fall; and the Secretary shall return all such nominations to the President as confirmed or rejected by the Senate, as the case may be.

The PRESIDING OFFICER. If there be no objection, this rule will be regarded as agreed to. No objection being made, the rule is agreed to. The next rule will be read.

The Chief Clerk read as follows:

Nominations—not finally acted upon at close of session to fall and be returned to the President.

77. Nominations neither confirmed nor rejected during the session at which they are made, shall not be acted upon at any succeeding session without being again made to the Senate by the President; and if the Senate shall adjourn or take a recess for more than thirty days, all nominations pending and not finally acted upon at the time of taking such adjournment or recess shall be returned by the Secretary to the President, and shall not again be considered unless they shall again be made to the Senate by the President.

The PRESIDING OFFICER. If there be no objection, this rule is agreed to. The next rule will be reported.

The Chief Clerk read as follows:

President furnished with copies of record.

78. The President of the United States shall from time to time, be furnished with an authenticated transcript of the executive records of the Senate, but no further extract from the executive journal shall be furnished by the Secretary, except by special order of the Senate; and no paper, except original treaties transmitted to the Senate by the President of the United States, and finally acted upon by the Senate, shall be delivered from the office of the Secretary without an order of the Senate for that purpose.

Mr. FERRY. I suggest that in line 4 the words "by the Secretary" be stricken out; because that would imply that copies could be given by some other person.

The PRESIDING OFFICER. If there be no objection, the rule as thus amended will stand as approved. The rule is approved. The reading of the rules is concluded.

Mr. FERRY. I desire to call the attention of the Senate to Rule 12.

Mr. McCREERY. I move that the Senate do now adjourn.

Mr. FERRY. I hope the Senator will not press his motion. There are two or three amendments to be inserted. It is only four o'clock.

Mr. McCREERY. That is a good time to adjourn.

Mr. FERRY. Ten minutes will conclude the work.

Mr. STEVENSON. Will my colleague withdraw his motion for a second?

Mr. McCREERY. Yes, sir, for a second.

Mr. STEVENSON. I wish to call up the bill for the relief of Robert Erwin, the Senator from Georgia [Mr. GORDON] being sick, so that it may remain the unfinished business.

The PRESIDING OFFICER. The Chair will see that that is laid before the Senate prior to the adjournment. The Senator from Kentucky [Mr. MCCREERY] moves that the Senate do now adjourn.

Mr. FERRY. We can soon conclude this matter.

The PRESIDING OFFICER. Does the Senator from Kentucky withdraw the motion?

Mr. McCREERY. I believe I will.

Mr. FERRY. I call attention to Rule 3. The Senator from Kansas who is not now in his seat [Mr. INGALLS] called the attention of the Senate to the fact that in the case of the lack of a quorum, and a failure to obtain a quorum, the proceeding would fall upon an adjournment under that rule. He suggested that there might be a case when the Sergeant-at-Arms in the execution of an order of the Senate might be away partially discharging his duty, when he would be arrested by that fact. I suggest that that latter clause, "and all proceedings under this rule shall cease upon an adjournment," be stricken out.

The PRESIDING OFFICER. The Senator from Michigan moves that the last line of Rule 3 be stricken out. The question is on this amendment.

The amendment was agreed to.

Mr. COCKRELL. I made an objection yesterday which has been removed by striking out this last line.

Mr. FERRY. That is all. The other part of the rule stands to be reported to the Senate. There is an amendment pending to the other part.

Mr. COCKRELL. That has not been adopted, as this rule was reserved.

Mr. FERRY. I am aware of that. It was the understanding on that question that it should be reported to the Senate and the question come up then. I am not asking any action upon that.

Mr. COCKRELL. Very well.

Mr. FERRY. In Rule 12 I ask that the word "finally" be inserted in the third line between the words "not" and "disposed;" so as to read:

If not finally disposed of on that day, it shall then take its place upon the Calendar of special orders.

The PRESIDING OFFICER. Is there objection to this amendment? The Chair hears none, and it is agreed to.

Mr. FERRY. In Rule 8, as the Senator from Missouri raised a question in order to make it more explicit, I suggest this phraseology so that the rule read:

The first hour of daily session shall be designated as the morning hour, during which the order of business shall be as follows.

And the next line read:

First after the Journal is read the presiding officer shall lay before the Senate messages from the President, &c.

Mr. COCKRELL. That meets exactly the suggestion I made. I had different language; but this is sufficient.

The PRESIDING OFFICER. Is there any objection to this amendment? The Chair hears none, and it is agreed to

Mr. COCKRELL. Rules 18 and 19 were reserved yesterday, and I suppose they will go into the Senate.

Mr. FERRY. They will go into the Senate. I desire to call attention to Rule 20. I ask the Secretary to read the last clause commencing "when a bill, resolution," &c.

The PRESIDING OFFICER. It will be reported at the desk.

The CHIEF CLERK. The second clause in the rule is:

When a bill, resolution, report, amendment, order, or message, upon which a vote has been taken, shall have gone out of the possession of the Senate and been communicated to the House of Representatives, the motion to reconsider such vote shall be accompanied by a motion to request the House to return the same to the Senate; which last motion shall be acted upon immediately, and determined without debate.

Mr. FERRY. The practice under the rule now in force is that when a bill or resolution passes from the possession of the Senate a motion to reconsider does not obtain. Now this rule provides that it shall be accompanied by a resolution that the bill or resolution be returned to the Senate. This will hold the bill or resolution here until the Senator who moves the reconsideration shall at his convenience deem it proper to have the motion to reconsider considered. He might keep the matter here for days and weeks. I suggest that this be added to the rule:

And when determined in the negative shall be held to be a final disposition of the motion to reconsider.

In other words, that when it is accompanied as proposed by this rule with a resolution that a bill or resolution be returned to the Senate, if that is negatived it shall be considered as a determination of the question of reconsideration.

Mr. WEST. I should like to ask the Senator who has the rules in charge what becomes of the notice of a motion to reconsider? Does that restrain or affect the bill?

Mr. FERRY. It does not affect it at all.

Mr. WEST. Does it not keep it here?

Mr. FERRY. This would cover it. A motion to reconsider would do the same thing. It has got to be accompanied by a motion to return.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Michigan.

The amendment was agreed to.

Mr. COCKRELL. I should like to hear the latter clause read as amended.

The Chief Clerk read as follows:

When a bill, resolution, report, amendment, order, or message, upon which a vote has been taken, shall have gone out of the possession of the Senate and been communicated to the House of Representatives, the motion to reconsider such vote shall be accompanied by a motion to request the House to return the same to the Senate; which last motion shall be acted upon immediately, and determined without debate, and when determined in the negative shall be a final disposition of the motion to reconsider.

Mr. COCKRELL. That would have the effect, then, of determining the motion to reconsider by the negative vote and not permitting any debate upon the question. Debate is prohibited upon this last motion and not upon the motion to reconsider.

Mr. FERRY. That is true.

Mr. COCKRELL. And it would cut off debate entirely upon this last motion.

Mr. FERRY. That is true.

Mr. COCKRELL. Was that the intention of the rule?

Mr. FERRY. It was.

Mr. COCKRELL. That when the bill or resolution had gone to the House and a motion to reconsider was made within the time prescribed by the rule, that motion should then be accompanied by a request to the House to return the same to the Senate, and that that request should be acted upon immediately, and, if determined in the negative, should be a determination of the motion to reconsider.

Mr. FERRY. The Senator will bear in mind that the rule now in force prohibits the possibility of a reconsideration of a bill or resolution after it has passed from the possession of the Senate. This opens a way to reach any such bill or resolution by an order of the Senate that the bill or resolution be returned to the Senate. If that vote shall be a negative one, the Senate being prepared to act upon it without debate, it ought to be equivalent to deciding that the Senate does not care to act upon the question of reconsideration, and that negative vote is taken to be a sufficient indication of the judgment of the Senate.

Now I call attention to Rule 27. In the eighth line the words "some act or" have been stricken out. I ask that the words "act or" be retained; so as to read: "existing law, or act, or resolution."

Mr. COCKRELL. I believe we inserted the words "treaty stipulation" yesterday.

Mr. FERRY. I think not in that connection.

Mr. COCKRELL. Will the Clerk read and see whether the words "treaty stipulation" were not inserted yesterday.

The Chief Clerk read as follows:

All general appropriation bills shall be referred to the Committee on Appropriations, except bills making appropriations for rivers and harbors, which shall be referred to the Committee on Commerce; and no amendment shall be received to any general appropriation bill, the effect of which will be to increase an appropriation already contained in the bill, or to add a new item of appropriation, unless it be made to carry out the provisions of some existing law or treaty stipulation.

Mr. COCKRELL. The words "treaty stipulation" were inserted.

Mr. FERRY. The language should be "law, or act, or resolution." The construction is that a bill passed by the Senate is considered as an act; that it then changes from a bill to an act, although strictly it is not an act until it has passed both Houses of Congress and received the approval of the President. In parliamentary language, however, it is considered an act; and where the Senate passes a bill in such a case as that, certainly an amendment ought to be admitted to carry it into effect.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Michigan to restore the words "act or."

The amendment was agreed to.

Mr. FERRY. Rule 40 provides that—

A question of order may be raised at any state of the business.

I desire to move as an amendment to add the words "except when the Senate is dividing."

The amendment was agreed to.

Mr. FERRY. That concludes the amendments that the committee propose. I ask that the rules be reported to the Senate and lie on the table.

The rules were reported to the Senate.

Mr. STEVENSON. I think the Senator from Michigan had better let the subject lie over until to-morrow; the Senate is so exceedingly thin.

Mr. FERRY. I am not disposed to ask action now. The rules have been reported to the Senate and will lie on the table for the present, to be taken up hereafter.

The PRESIDING OFFICER. The rules have been reported to the Senate.

Mr. FERRY. I move that the report be laid on the table.

The motion was agreed to.

ROBERT ERWIN.

The PRESIDING OFFICER. The Chair will lay the unfinished business before the Senate, being the bill (H. R. No. 231) for the relief of Robert Erwin.

Mr. McCREERY. I renew my motion that the Senate adjourn.

The motion was agreed to; and (at four o'clock and seven minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

TUESDAY, *January* 16, 1877.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

ZEPHENIAH CRUBOUGH.

Mr. GARFIELD, by unanimous consent, introduced a bill (H. R. No. 4432) granting a pension to Zepheniah Crubough; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

PURCHASE OF FREEDMAN'S BANK BUILDING.

Mr. DOUGLAS. I am instructed by the select committee on the Freedman's Savings and Trust Company to ask that the committee be discharged from the further consideration of the bill (H. R. No. 4285) authorizing the Secretary of the Treasury to buy certain property for the use of the United States, and that the same be referred to the Committee on Public Buildings and Grounds.

The SPEAKER. If there be no objection, the order will be made with the understanding that the bill shall not come back on a motion to reconsider.

There being no objection, it was ordered accordingly.

REVISION OF THE STATUTES.

Mr. DURHAM. I ask unanimous consent that the bill (H. R. No. 3156) to perfect the revision of the statutes of the United States, which has been returned from the Senate with amendments, be taken from the Speaker's table and referred to the Committee on the Revision of the Laws.

There being no objection, it was ordered accordingly; and the bill with the amendments was referred as indicated, not to be brought back on a motion to reconsider.

WAR CLAIMS.

Mr. EDEN, by unanimous consent, reported from the Committee on War Claims a bill (H. R. No. 4433) making appropriations for the payment of claims reported allowed by the commissioners of claims under the act of Congress of March 3, 1871; which was read a first and second time, ordered to be printed and recommitted, not to be brought back on a motion to reconsider.

KANSAS AND NEOSHO VALLEY RAILROAD.

Mr. GOODIN, by unanimous consent, reported from the Committee on Public Lands a substitute (H. R. No. 4434) for the bill (H. R. No. 4357) to secure the rights of settlers upon railroad lands, and to repeal the first section of an act granting lands to the State of Kansas to aid in the construction of the Kansas and Neosho Valley Railroad and its extension to the Red River; which was ordered to be printed and recommitted, not to be brought back on a motion to reconsider.

GLENWOOD CEMETERY.

Mr. STEVENSON. I ask unanimous consent that the bill (H. R. No. 3741) amending an act incorporating the proprietors of Glenwood Cemetery be taken from the Speaker's table, that the amendments of the Senate be non-concurred in, and a conference with the Senate asked.

There being no objection, it was ordered accordingly.

CHARLES METCALF.

Mr. BANNING. The bill (H. R. No. 3283) for the relief of Charles Metcalf was reported from the Committee on Military Affairs by mistake, and is now on the Private Calendar. I ask that it be recommitted to the Committee on Military Affairs.

There being no objection, it was ordered accordingly.

ESTATE OF SAMUEL P. FEARON.

Mr. BRIGHT. House joint resolution No. 178 has been improperly referred to the Committee of Claims. I am directed by the committee to ask that they be discharged from its further consideration, and that it be referred to the Committee on Appropriations. The title of the resolution is joint resolution (H. R. No. 178) authorizing the Secretary of the Treasury to pay Mary Fearon and Jessie Crossin, executrices of Samuel P. Fearon, deceased, for certain registered United States bonds redeemed by the Government on forged assignments and power of attorney.

There being no objection, it was ordered accordingly.

JENKINS A. FITZGERALD.

Mr. BRIGHT, by unanimous consent, moved that the Committee of Claims be discharged from the further consideration of a bill (H. R. No. 4287) for the relief of Jenkins A. Fitzgerald, assistant surgeon United States Army, and that the same be referred to the Committee on Military Affairs; which motion was agreed to.

HAYDEN'S REPORT.

Mr. VANCE, of Ohio. I am directed by the Committee on Printing to report back the resolution to print 4,500 copies of Hayden's report for 1875 and 1876 with a favorable recommendation.

The resolution was read, as follows:

Be it resolved by the House of Representatives, (the Senate concurring therein,) That there be printed 4,500 copies of Professor Hayden's annual report of geological and geographical survey of the Territories for 1875 and 1876; 3,000 copies of which shall be for the use of the House of Representatives, 1,000 copies for the use of the Senate, and 500 copies for the use of the office of the survey.

The resolution was adopted.

Mr. VANCE, of Ohio, moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

REMOVAL OF WOMAN'S LEGAL DISABILITIES.

Mr. GLOVER, by unanimous consent, introduced (by request) a bill (H. R. No. 4435) to relieve the legal disabilities of women; which was read a first and second time, referred to the Committee on the Judiciary, and ordered to be printed.

Mr. GLOVER. I ask that the memorial accompanying the bill be printed in the RECORD.

There was no objection, and it was ordered accordingly.

The memorial is as follows:

To the Senate and House of Representatives in Congress assembled:

Your petitioner would respectfully represent that she is a citizen of the District of Columbia, and has been a resident therein for the past ten years.

That she graduated in Genesee College, New York, in June, 1857; received her second degree in Syracuse University in 1870; was admitted to the National Law University of Washington, District of Columbia, and passed through its curriculum of study, receiving her diploma therefor in May, 1873.

That on the 24th of September, 1873, she was admitted to the bar of the supreme court of the District of Columbia; and that since that time she has been continuously in practice before the said court, her said practice having been interspersed with a large and varied practice before the several Departments of the Government.

That it has been the custom hitherto to admit members of the bar of the District of Columbia to the Supreme Court of the United States on a motion of a member thereof, and taking the oath prescribed.

That your petitioner has been debarred from admission to the United States Supreme Court on the ground that she is *a woman*; and that fact has been largely published over the country much to the detriment of her law practice, upon which she and her family are dependent for support; and for which profession she has duly prepared herself by the expending of much time, labor, and money.

Wherefore your petitioner prays that a statute may be enacted requiring the United States Supreme Court to receive as members of its bar your petitioners and all other women similarly situated; and thus will ever pray.

BELVA A. LOCKWOOD.

[From the members of the bar of the supreme court, District of Columbia.]

To the Senate and House of Representatives in Congress assembled:

The undersigned would respectfully request the passage of House bill No. —, entitled "An act to relieve the legal disabilities of women."

THOMAS J. DURANT,
CHARLES W. HORNOR,
O. D. BARRETT,
A. G. RIDDLE,
And many others.

To the Senate and House of Representatives, in Congress assembled, of the United States of America:

The undersigned would respectfully request the passage of House bill No ——, entitled "A bill to relieve the legal disabilities of women."

Elizabeth Cady Stanton, Tenafly, New Jersey; Matilda Joslyn Gage, Fayetteville, New York; Elizabeth C. Clark, Washington, District of Columbia; Susan B. Anthony, Rochester, New York; Matilla M. Ricker, Dover, New Hampshire; P. Holmes Drake, Alabama; Buell McClung, Alabama; Frank B. McCarty, Alabama; Annie B. Robertson, Alabama; Alice D. Brooks, Alabama; Ellen V. Griffiths, Wilmington, Delaware; Eliza Anne Chambers, Washington, District of Columbia; Mrs. H. H. Stowell, New York City.

CUSTOM-HOUSE, PARKERSBURGH, WEST VIRGINIA.

Mr. WILSON, of West Virginia, by unanimous consent, introduced a bill (H. R. No. 4436) for the completion of the custom-house at Parkersburgh, West Virginia, and to furnish the same; which was read a first and second time, referred to the Committee on Public Buildings and Grounds, and ordered to be printed.

FRANK S. ARMISTEAD.

Mr. WILSON, of West Virginia, also, by unanimous consent, introduced a bill (H. R. No. 4437) to remove the political disabilities of Frank S. Armistead, a citizen of West Virginia; which was read a first and second time.

Mr. WILSON, of West Virginia. I hope, by unanimous consent, that the bill will be put upon its passage at this time.

There was no objection.

The bill, which was read, (two-thirds of each House concurring therein,) removes the political disabilities imposed by the fourteenth amendment to the Constitution of the United States on Frank S. Armistead, a citizen of West Virginia.

The bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed, two-thirds voting therefor.

ROCK ISLAND A PORT OF DELIVERY.

Mr. HENDERSON, by unanimous consent, introduced a bill (H. R. No. 4438) to establish a port of delivery at the city of Rock Island, in the State of Illinois; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

JOHN H. FORNEY.

Mr. CALDWELL, of Alabama, by unanimous consent, introduced a bill (H. R. No. 4439) to remove the political disabilities imposed upon John H. Forney, of Calhoun County, Alabama, by the fourteenth amendment to the Constitution of the United States; which was read a first and second time.

Mr. CALDWELL, of Alabama. I hope this bill will be passed at this time.

Mr. GARFIELD. Is it at his request?

Mr. CALDWELL, of Alabama. It is.

There was no objection.

The bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed, two-thirds voting therefor.

JAMES ATKINS.

Mr. GARFIELD, by unanimous consent, from the Committee of Ways and Means, reported back a bill (S. No. 1040) to authorize sundry allowances to James Atkins, late collector of internal revenue of the fourth district of the State of Georgia, in the settlement of his accounts, with the recommendation that it do pass.

Mr. WILSON, of Iowa. Ought not that to go to the Committee of the Whole?

Mr. GARFIELD. I hope the gentleman will reserve his objection for the present until the bill is read. It is reported from the Committee of Ways and Means, and should be passed.

The bill, which was read, provides that James Atkins, late collector of internal revenue of the fourth district of the State of Georgia, shall be allowed in the settlement of his accounts, $7,750.03 on account of items of assessment and abatement, and further the sum of $1,415.08 on account of expenses incurred by him in the performance of the duties of his office.

The SPEAKER. Does the gentleman from Iowa [Mr. WILSON] make the point of order?

Mr. WILSON, of Iowa. I will not insist on it.

Mr. GARFIELD. This is merely for the purpose of permitting the adjustment of this officer's accounts, and the report of the committee is unanimous.

The bill was ordered to be read a third time; and it was accordingly read the third time, and passed.

Mr. GARFIELD moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

Mr. GARFIELD. I ask that the report of the Senate committee in this case may be printed in the RECORD.

There was no objection. The report is as follows:

The Committee on Finance, to whom was referred the bill (S. No. 1040) to allow the late collector of internal revenue for the fourth district of Georgia his salary, hitherto withheld, have had the same under consideration, and submit the following report:

Your committee referred the bill to the Commissioner of Internal Revenue for examination and report, and received in reply the following letter:

TREASURY DEPARTMENT, OFFICE OF INTERNAL REVENUE,
Washington, August 14, 1876.

SIR: I have the honor to acknowledge the receipt of the letter of Hon. JUSTIN S. MORRILL, referred by you to this office, inclosing Senate bill No. 1040, for the relief of James Atkins, late collector of internal revenue for the fourth district of Georgia, and in reply I have to state that this subject has heretofore had the attention of my predecessor, Hon. D. D. Pratt, a copy of whose letter I have the honor herewith to transmitting.

Mr. Atkins is charged on the books of this office with the sum of $17,220.65, made up of the following items:

Balance of assessment lists uncollected	$2,755 02
Amounts abated as uncollected and charged back as having been collected	1,985 32
Amounts turned over to successor and charged back as having been collected	1,842 22
Amounts charged to Mr. Atkins for taxes collected by his deputy and not accounted for	4,579 28
Amount retained from disbursing fund in excess of amount allowed for salary, &c	6,058 21
Total	17,220 05

Upon examination of the records of this office, I find that the various allowances made by the Secretary of the Treasury to Mr. Atkins as collector amount to the sum of $21,309.72, and that the sum of $17,743.46 has been passed to his credit, leaving the sum of $3,566.26 of said allowances not passed to his credit, which amount was reduced by $1,000 by the Secretary of the Treasury on an order made subsequent to the original order, which would constitute the contract between the United States and the collector, which reduction seems not to have been in accordance with law. (See Patton *vs.* The United States, 7 C. Cl. R., 362.)

In the adjustment of Mr. Atkins's accounts, therefore, this office is disposed to give him credit for the said sum of $3,566.26 on account of salary. Mr. Atkins's accounts for expenses in his district were for the sum of $71,525 29
Of which was allowed 70,110 21

Leaving a balance of 1,415 08

For which he filed vouchers, but which were disallowed, as the payments were in excess of the appropriation made by order of the Secretary of the Treasury for the expenses of his district. Mr. Atkins claims, with considerable show of reason, that as these appropriations were made several months after he commenced incurring the expenses for the fiscal year, it would be unfair for the item of $1,415.08 to be disallowed.

This office would not be adverse to allowing Mr. Atkins both of said items, amounting to $4,981.31, which, if deducted from the amount with which he is chargeable, would leave him debited with the sum of $12,329.34, made up of the items before mentioned. Of these items, the sum of $4,579.28 is said to have been collected by his deputy, and that the securities of said deputy are perfectly solvent, thus leaving a balance that Mr. Atkins and his securities would be personally responsible for of $7,750.03. This sum of money seems to have been lost to Mr. Atkins by the dishonesty and incompetency of some of his deputies.

While Mr. Atkins held the office of collector he received and paid into the Treasury over three millions of dollars, and there is no charge in this office that he misappropriated any of the funds coming into his hands, except in the instance of retaining about $1,500 on account of salary and expenses in excess of the amount allowed.

The foregoing facts are given for the purpose of enabling Congress to determine whether it will exercise the power of giving Mr. Atkins the relief desired. If such a bill is to be passed, I would recommend that he be relieved to the extent of $7,750.03 on account of items of assessments and abatements and $1,415.08 on account of expenses, leaving him chargeable with $4,579.28 collected by his deputy.

Very respectfully, your obedient servant,

GREEN B. RAUM,
Commissioner.

Hon. LOT M. MORRILL,
Secretary of the Treasury.

And in view of the facts set forth therein, recommend the passage of the accompanying substitute:

SALE OF LANDS IN SALT LAKE CITY.

Mr. CANNON, of Utah, by unanimous consent, introduced a bill (H. R. No. 4440) authorizing the sale and private entry of certain tracts of land within the limits of Salt Lake City, Utah Territory; which was read a first and second time, referred to the Committee on Public Lands, and ordered to be printed.

PHILIP W. COLEMAN.

Mr. DURAND, by unanimous consent, submitted a resolution for payment of monthly salary of Philip W. Coleman for month of January, 1877; which was referred to the Committee of Accounts.

ADVERSE REPORTS.

Mr. STRAIT, by unanimous consent, from the Committee on Military Affairs, reported back, with adverse recommendations, the following bills and petitions; and they were severally laid on the table, and the accompanying reports ordered to be printed:

The bill (H. R. No. 2521) for the relief of John H. Ruff;

The petition of G. W. Penn, late captain of Company M, Thirteenth Kentucky Volunteers, for arrears of pay, &c.;

The petition of Captain W. P. Berry and others, of the Fourth Arkansas Mounted Infantry;

The bill (H. R. No. 627) for the relief of James M. Lee;

The bill (H. R. No. 1394) for the relief of Lieutenant W. H. Collins, late of the Fourteenth Pennsylvania Cavalry, now of the county of Venango, State of Pennsylvania:

The petition of Jackson Roberts, of Kentucky, for arrears of pay as captain of Company B, Forty-seventh Regiment Kentucky Volunteers; and

The bill (H. R. No. 2029) to remove the charge of desertion against Levi Sutton and George Grooms, of Company K, Eleventh Tennessee Cavalry.

DANIEL H. KELLY.

Mr. STRAIT also, by unanimous consent, from the same committee, reported back, with the recommendation that it do pass, the bill (S. No. 685) to place the name of Daniel H. Kelly upon the muster-roll of Company F, Second Tennessee Infantry.

The bill was read. It directs the Secretary of War to place the name of Daniel H. Kelly, deceased, upon the muster-roll of Company F, Second Tennessee Infantry Volunteers, to date December 1, 1861.

Mr. STRAIT. I ask for the reading of the report.

The report was read, as follows:

The Military Committee, to whom was referred the petition of Delilah Kelly, with the Senate bill No. 655, an act to place the name of Daniel H. Kelly upon the muster-roll of Company F, Second Tennessee Infantry, have had the same under consideration, and return the same to the House with the recommendation that it pass. Your committee have carefully considered all the papers in this case, and concur fully in the report made by the chairman of the Senate Military Committee, which is hereto attached.

The report of the Senate committee is as follows:

The Committee on Military Affairs, to whom the petition of Delilah Kelly was referred, having had the same under consideration, submit the following report:

This is the petition of Delilah Kelly, who claims to be the widow of Daniel H. Kelly, deceased, late a private of Company F, Second Regiment Tennessee Volunteers. The evidence shows that deceased enlisted in the military service of the United States about December 1, 1861, at Couche's Gap, Tennessee, under Captain David Fry; that while on their way, in Lee County, Virginia, the command was attacked by a large force of rebels, and, after a hard fight, continuing from two o'clock till dark, the deceased, the captain, and several others were taken prisoners. The recruiting papers were in the hands of deceased, who had been made orderly sergeant, and, by direction of said Captain Fry, were destroyed the night after their capture, on which account no return was ever made of the enlistment of deceased. The deceased was sent to the rebel prison at Richmond, where he died.

The facts in this case are testified to by Captain Fry and Ione Thomas Davis, both of whom were taken prisoners with deceased. The particulars are stated minutely and so clearly as to satisfy the committee of their truthfulness; and the signature of Captain Fry is verified by the War Department.

The committee, being fully satisfied of the justness of this claim, recommend the passage of the accompanying bill.

The bill was ordered to be read a third time; and it was accordingly read the third time, and passed.

Mr. STRAIT moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

H. T. BURROWS.

Mr. FOSTER, by unanimous consent, submitted a resolution providing for payment of salary of H. T. Burrows, a special messenger to assistant doorkeeper, from December 5 to 31, 1876, inclusive; which was referred to the Committee of Accounts.

DESTITUTION IN EAST WASHINGTON.

Mr. HOOKER, by unanimous consent, presented the memorial of a meeting of colored citizens of East Washington, held on Wednesday evening, January 10, 1877; which was referred to the Committee for the District of Columbia.

Mr. HOOKER. I ask unanimous consent that the memorial be printed.

The SPEAKER. In the usual form or in the RECORD?

Mr. HOOKER. That it be printed in the RECORD.

There was no objection; and the memorial was ordered to be printed in the CONGRESSIONAL RECORD, without the names of the petitioners, as follows:

Memorial of a meeting of colored citizens of East Washington, held on Wednesday evening, January 10, 1877, at Mount Sinai African Methodist Episcopal Church.

To the honorable the Senate and House of Representatives in Congress assembled:

A large and interesting meeting of the colored citizens of the eastern portion of the city of Washington, seeing the absolute destitution, and unmitigated suffering of great masses of our fellow-citizens for want of the common necessities of life—many of them being men and women of marked honesty and industrious habits—who are unable to obtain employment of any kind by which they may earn their daily bread, feel it to be our duty to petition your honorable body in their behalf for an appropriation that will relieve their present necessities and enable them to survive the severe cold weather through which we are now struggling.

The severity of the winter, the great number of destitute strangers from abroad, and the large reduction of the employés of the various Departments of the Government, have combined to produce a degree of suffering in this city unparalleled in the history of many of our oldest citizens.

The various churches, as well as a few charitable associations in the city, have rendered such aid as they could bestow on a number of those who reached them in the early part of the winter; but their supplies proved so inadequate to the demands that it allayed but a very small proportion of the suffering among the masses.

Your honorable bodies are aware of the fact that the poor of the District have not often called upon you to aid them in this particular manner; and even now, in their present dilemma, numbers of them without fire, without food, and but a scanty supply of clothing, detest the necessity that compels them to seek this relief.

We are assured that something must be done as speedily as possible to give them relief or hunger and cold will open the grave for many who to-day are physically able to perform any kind of manual labor.

We therefore again most earnestly beseech you to make, at the earliest possible moment, such appropriation for the relief of the famishing poor of this District as you in your wisdom may deem advisable; and your memorialists will ever pray.

Signed in behalf of the meeting.

HORACE E. MULLAN.

Mr. O'BRIEN, by unanimous consent, introduced a bill (H. R. No. 4441) for the relief of Horace E. Mullan, late a lieutenant-commander in the Navy of the United States; which was read a first and second time, referred to the Committee on Naval Affairs, and ordered to be printed.

WOMAN SUFFRAGE.

Mr. TEESE. I ask unanimous consent to present the memorial of Dr. Mary E. Walker, accompanied by a bill to protect woman in her suffrage, and ask that it be read, printed in the RECORD, and referred to the Committee on the Judiciary.

There was no objection, and it was so ordered.

The memorial is as follows:

To the honorable the Senate and House of Representatives in Congress assembled:

GENTLEMEN: Your memorialist most respectfully asks that—

Whereas the women of New Jersey exercised the rights, duties, and privileges of the elective franchise before the Constitution of the United States was adopted, and continued to exercise the same until 1844, long after the framers of the Constitution as well as the adopters were all dead, clearly proving that the fathers intended to make this country a *perfect* republic instead of a *limited* one: Therefore,

Your memorialist, in behalf of the women citizens of the United States, asks your honorable body to pass the following bill to protect women citizens from State laws that are clearly in conflict with the Constitution of the United States of America.

DR. MARY E. WALKER.

BILL TO PROTECT WOMAN IN HER FRANCHISE.

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That the penalties made and provided for the hindering or preventing men citizens from the free exercise of the elective franchise on election days shall be in full force in regard to women citizens in all the States and Territories of the United States.

MARY E. WALKER, M. D.

WASHINGTON, D. C., *January* 15, 1877.

Mr. HEWITT, of New York. I desire to present a memorial.

Mr. RUSK, Mr. GARFIELD, and others called for the regular order.

INTERNATIONAL CONFERENCE ON GOLD AND SILVER.

The SPEAKER. The morning hour begins at twenty minutes to one o'clock p. m., and the House resumes the consideration of the motion to reconsider the vote by which the joint resolution (S. No. 16) was rejected. The gentleman from Maryland [Mr. O'BRIEN] is entitled to ten minutes.

Mr. O'BRIEN. I ask for the reading of the joint resolution.

The Clerk read the joint resolution, as follows:

Joint resolution (S. R. No. 16) to authorize the President to appoint commissioners to attend an international conference upon the subject of the relative values of gold and silver.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That should the government of one or more countries invite a conference or convention to consider the important change which has recently occurred in the relative values of gold and silver, and the adoption of international measures for the removal of embarrassments arising therefrom, the President of the United States is authorized to appoint three properly qualified persons as commissioners to attend such conference or convention.

Mr. WILLARD. Last Thursday, by the courtesy of the gentleman who has charge of this bill, I offered an amendment in the nature of a substitute which I ask may be read, and I will also state, sir, that there was an inadvertent omission of three words in the amendment which I have inserted. The words are "the government of," after the word "should," in the fourth line.

The amendment, as modified, was read, as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in the event of the full remonetization of silver in the United States, should the government of one or more countries invite a conference or convention with a view to agree upon and establish a uniform relation of silver with gold as a legal standard of value, the President of the United States is hereby authorized to appoint three qualified persons as commissioners to attend such conference or convention.

SEC. 2. That the President of the United States is hereby authorized to propose to the governments of such countries as use both gold and silver as a legal standard of value such conference or convention in the event and for the purpose stated in the foregoing resolution.

Mr. O'BRIEN. I wish it understood that the amendment is only offered for the purpose of being read for information, and is not to be considered before the House.

Mr. WILLARD. I desire to say but a word in regard to this amendment. I have prepared it to meet the objections of those who opposed the joint resolution as submitted by the committee to the House. It occurred to me that in the event that silver should be remonetized in this country it would be very important that our nation should be in agreement with such other nations of the world as use both gold and silver as a legal standard of value. It is well known that in this country our coinage acts previous to 1873 undervalued silver as compared with France and the other countries of the Latin Union. In those countries fifteen and one-half ounces of silver are equal to one ounce of gold. In this country from 1834 to 1873 sixteen ounces of silver were equal to one ounce of gold. In other words, 399.9 grains of standard silver are equivalent to a dollar in France, Italy, and the other nations belonging to the Latin Union, while in this country it requires 412.5 grains. Under our precarious coinage laws the owner of silver in bringing his silver to our mints received less in value for it than he would have received if he had taken it to the mints of those countries, $100 in the United States being equal to $103.15 in the European countries which with us had adopted the double standard.

Now, Mr. Speaker, can we afford, being the greatest silver-producing country in the world, to stand before the nations as undervaluing this important product? It seems to me that we cannot. And while the double-standard countries of the old world are making this grand battle in behalf of that system of coinage, it would certainly appear that we ought at least to extend to them the cordial hand of sympathy, and if possible to come to some terms of agreement with them.

We in this country practically banished silver of legal standard value from our coinage by undervaluing it for nearly forty years, and when silver shall rise again in value, as it has been fast rising in the last six months, we, under our present system and under the present relations between the two metals in our coinage, should encounter great and serious difficulty.

If the opportunity shall be given to bring the substitute which I have offered to a vote, I trust it will be adopted in the place of the resolution now under consideration. It implies that this country shall restore the *status quo* of our coinage previous to 1873, and upon that basis to assume an expectant attitude in regard to the relation to be permanently fixed between silver and gold and the united coin of the realm. It will be eminently proper, in my opinion, for the United States Government, upon the restoration of silver to its old position in our coinage system, to unite with such nations as use the optional or double standard in securing an international conference to consider simply the relation which silver should uniformly bear to gold in its coinage value.

[Here the hammer fell.]

Mr. O'BRIEN. Mr. Speaker, before demanding the question on reconsideration I propose to reply to the several objections and arguments that have been urged against its adoption, and to offer some reflections on the important questions which the resolution proposes to submit to an international conference or convention. The gentleman from Texas [Mr. REAGAN] considers it the highest duty of statesmanship and fidelity to our own people to control the question of a gold standard of value or a double standard of silver and gold legal tender for ourselves as an American question. He bases his argument on the assertion that American interests are very different from English interests, because our country is very largely a debtor country, perhaps the largest debtor nation in the world. If it were possible, Mr. Speaker, for us, on account of our large silver-mining interests, to consider and legislate upon the question of remonetizing silver without our action being affected by the conduct of European nations we might well grant all that the advocates of the bimetallic standard require; but can we afford to pursue an independent line of action? Are not our material interests inseparably bound up with the legislation of the leading nations when we attempt to proclaim as a legal tender and as a standard of value silver, which is not acknowledged as such either by England or Germany. Further, in the face of the fact that the Latin Union, under the lead of France, has gone to the verge of demonetizing silver by limiting its coinage, how can the United States, which is tributary to these great nations in all things which pertain to trade and commerce, the whole commercial world being a unit—how can we disregard the demands of continental Europe for conference and combination without producing serious disadvantage and peril to our commerce and finances? The highest statesmanship will always demand the most exhaustive examination of the whole question and seek all the light that the wisdom and experience of the nations of the world can bestow, before entering upon a path of action which may lead to commercial and financial disaster.

This joint resolution is almost the reverse, Mr. Speaker, of the charge made against it by the gentleman from Illinois, [Mr. FORT,] that it is a measure "to rule silver out of the currency of the country." If the legislation proposed by an international conference would be adverse to making silver a standard of value and an equivalent legal tender with gold, the gentleman would pause in his wild scheme of creation of a double standard. He would be admonished by the decree of so important a convention; but, sir, the resolution proposes no such consideration. Rather, sir, that the very object desired by the advocates of bimetallic money may be sustained, if deemed wise and advantageous, by regulating the value of the two metals and thus creating an invariable standard of value, if possible, by which the two metals—gold and silver—may be used, and thus advancing especially the silver-mining interests of our country.

Nor, Mr. Speaker, are the adverse views of the gentleman from Missouri [Mr. BLAND] any more in point. The passage of this resolution would not postpone action by the Senate on the silver bill passed by the House. On the contrary, the advocates of silver money in that body, notably the Senator from Missouri, the gentleman's own State, [Mr. BOGY,] is on record in favor of it. He states that "the value, the relation of the two metals, should be uniform throughout the commercial world." And as the resolution only proposes a conference to determine the relation, it is in accord with the views of every writer of note in Europe who favors the monetization of silver. Further, sir, their opinions are supplemented by the prominent men of this country who have made the science of money a study and have given to this all-important question reflection and consideration.

I therefore press the resolution before the House. I ask its adoption with the firm conviction that only by an international conference can the relative value of gold and silver be agreed upon by the commercial nations, and that only by such decision can the vast silver-mining interests of this country be secured and made permanently prosperous. Besides, Mr. Speaker, the conclusions of such a conference, though of vast importance in guiding national legislation, would in no sense be binding on Congress or the country until fully approved by the law-making power, no more than the results of the silver commission heretofore constituted by Congress and whose report will, I believe, recommend just such action as is proposed by the pending joint resolution. While, as present advised, I am in favor of gold as the only legal-tender standard of value, I am not regardless of the views of the eminent advocates of bimetallic money. On the contrary, it may be that under a proper system provided by wise legislation and enforced by joint action of the leading nations, silver may yet be restored, and, side by side with gold, work out the problems of financial science and gratify the objects, although unwisely pursued, I believe, of my honorable friends who differ so widely from me on the immediate demands of the silver question.

The Bland silver bill now before the Senate will hardly suffer anything from the passage of this resolution. It, Mr. Speaker, must stand or fall on its own merits.

The rise of silver in value has doubtless been promoted somewhat by the attempts at remonetization of that metal by this Congress, and the effect of successful legislation in that direction on the ratio proposed of 1 to 16 may give us silver money—a legal tender in no part of the world but here—and rid us of gold faster than silver can be coined. Can this be our true interest? We will become the receptacle of the demonetized silver of Europe, which will not recognize our silver legal tender, and be compelled to part with our gold—the only money which is money the world over.

But, says the gentleman from Texas, [Mr. REAGAN,] we are a debtor nation. In what money will we then pay our debts, the interest on our bonds, the value of our importations? Not in unrecognized silver, but in gold—the only money known and acknowledged by commerce—and that gold we must buy from Europe at its price on demand.

This will be but one of the inevitable disadvantages of remonetization of silver. Gold and silver now stand at a relation of 17 to 1, and if coined at 16 to 1 it needs no argument to convince every candid and properly informed person that the cheaper money, silver, will remain at home and the gold coinage be lost to the country. This result, Mr. Speaker, leads me to consider whether the advocates of the silver standard are not meditating a crusade against our gold currency and striving, not to obtain a double standard, but to substitute silver for gold as the coin legal tender of the country. I am not surprised, Mr. Speaker, at the design of the advocates of the Bland silver bill. There is admittedly an irrepressible conflict between the two metals, and one or the other, in my opinion, must survive as the only acknowledged legal tender. For forty years prior to 1873, while silver was by law a legal tender, the monetary standard was practically limited to gold in all the relations of commerce and contracts were made on the basis of that metal except as limited since and by the legal-tender act. The variations in the value of silver should cause us to pause and consider whether even international legislation can fix a certain relation of value between gold and silver. If fixed at 15½ or 16 to 1, will it prove invariable? I am not sanguine that universal law can make the relation of to-day stand to-morrow, but, sir, it is to me self-evident that, as our country's interests on this question are inseparably interwoven with the action of other nations, only international conference and united action of the commercial nations can even measurably solve this great problem of finance. Certainly, sir, discordant legislation will shut out from us all hope of reaching a solution, and in that view, with a lively faith, with hope of the best results, I submit the joint resolution to the House.

The SPEAKER. The question is upon the motion to reconsider.

Mr. BLAND. I ask unanimous consent to say a word on that proposition.

The SPEAKER. How much time does the gentleman desire?

Mr. BLAND. Only a few moments.

The SPEAKER. The gentleman must indicate a time.

Mr. BLAND. I ask unanimous consent to speak for three minutes.

Mr. CARR. I object.

Mr. BLAND. I rise then to a parliamentary inquiry, and that is if the motion to reconsider prevails I would like to understand whether the substitute will then be pending together with the original joint resolution?

The SPEAKER. If the motion to reconsider the vote shall fail then the joint resolution will fall of course. Of course if the motion to reconsider the vote by which the joint resolution was rejected should prevail, then the next question will be upon its passage. But the Chair supposes the gentleman from Missouri wants to know how he can get at a motion to amend the joint resolution. The Chair would recognize any one to move a reconsideration then, but the vote by which the joint resolution was ordered to its third reading, and if that motion should prevail the joint resolution would then be open to amendment.

Mr. FORT. There are some of us who want to kill the joint resolution, and I would suggest that the Chair state also that a vote against the motion to reconsider will help to kill it.

The SPEAKER. The Chair will say in further reply to the gentleman from Missouri, that a vote in the negative on the motion to reconsider the vote by which the joint resolution was rejected will kill it.

Mr. SAVAGE. I move to lay the motion to reconsider on the table.

Mr. O'BRIEN. I have not yielded for any such motion.

Mr. SAVAGE. The gentleman is obliged to yield to it, for he does hold the floor.

Mr. BLAND. I ask unanimous consent to be heard for one minute on the motion to lay on the table.

Mr. CARR. I object.

The SPEAKER. Then the Chair has no power to grant the gentleman that leave.

The question was taken upon the motion of Mr. SAVAGE; and upon a division there were—ayes 89, noes 64.

Before the result of this vote was announced,

Mr. O'BRIEN called for the yeas and nays.

The question was taken upon ordering the yeas and nays, and there were 26 in the affirmative; not one-fifth of the last vote.

Mr. O'BRIEN. I call for tellers on ordering the yeas and nays.

Tellers were ordered, there being 35 in the affirmative; more than one-fifth of a quorum.

The SPEAKER. The vote on ordering tellers is sufficient to order the yeas and nays, and if there be no objection the yeas and nays will be regarded as ordered.

There being no objection, the yeas and nays were ordered accordingly.

The question was taken; and there were—yeas 127, nays 104, not voting 59; as follows:

YEAS—Messrs. Ainsworth, Ashe, Atkins, Bagby, John H. Baker, Bell, Blount, Boone, Bradford, Bright, John Young Brown, William R. Brown, Buckner, Horace C. Burchard, Cabell, John H. Caldwell, William P. Caldwell, Campbell, Cannon, Carr, Cate, Caulfield, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Cochrane, Collins, Cook, Cowan, Culberson, Davis, Dibrell, Dobbins, Durham, Eden, Ellis, Evans, Felton, Finley, Forney, Fort, Franklin, Fuller, Glover, Goode, Goodin, Gunter, Andrew H. Hamilton, Robert Hamilton, Henry R. Harris, John T. Harris, Hartridge, Hartzell, Hatcher, Haymond, Henderson, Hereford, Goldsmith W. Hewitt, Hoge, Holman, Hopkins, House, Humphreys, Hunter, Hunton, Hyman, Frank Jones, Kelley, Knott, Lamar, Franklin Landers, George M. Landers, Lawrence, Lewis, Luttrell, Lynde, Mackey, McDill, McFarland, Millikin, Mills, Morgan, Mutchler, Neal, New, John F. Philips, William A. Phillips, Piper, Poppleton, Rea, Reagan, John Reilly, Riddle, William M. Robbins, Roberts, Robinson, Rusk, Sampson, Savage, Scales, Sheakley, Singleton, Stemons, William E. Smith, Southard, Sparks, Stanton, Strait, Stevenson, Stone, Teese, Terry, Thomas, Tufts, Turney, John L. Vance, Robert B. Vance, John W. Wallace, Whiting, Whitthorne, Jeremiah N. Williams, Wilshire, Benjamin Wilson, James Wilson, Woodworth, Yeates, and Young—127.

NAYS—Messrs. Abbott, Adams, George A. Bagley, John H. Bagley, jr., William H. Baker, Ballou, Banks, Blair, Bland, Bliss, Bradley, Burleigh, Candler, Chittenden, Conger, Cox, Cutler, Danford, Davy, De Bolt, Denison, Douglas, Durand, Eames, Five, Foster, Frye, Garfield, Gause, Hancock, Haralson, Hardenbergh, Benjamin W. Harris, Harrison, Hendee, Henkle, Abram S. Hewitt, Hoar, Hooker, Hubbell, Hurd, Kasson, Kehr, Kimball, Lapham, Leavenworth, Le Moyne, Levy, Loel, Lynch, Maish, Meade, Metcalfe, Miller, Monroe, Norton, O'Brien, Odell, Oliver, O'Neill, Packer, Page, Payne, Pierce, Plaisted, Potter, Powell, Pratt, Rainey, John Robbins, Schleicher, Seelye, Sinnickson, Smalls, A. Herr Smith, Springer, Stenger, Swann, Tarbox, Thompson, Throckmorton, Martin I. Townsend, Van Vorhes, Wait, Waldron, Charles C. B. Walker, Gilbert C. Walker, Alexander S. Wallace, Walsh, Ward, Warner, Warren, Watterson, Erastus Wells, Wike, Willard, Andrew Williams, Alpheus S. Williams, Charles G. Williams, James Williams, William B. Williams, Willis, Alan Wood, jr., and Fernando Wood—104.

NOT VOTING—Messrs. Anderson, Banning, Bass, Beebe, Blackburn, Samuel D. Burchard, Cason, Caswell, Chapin, Crapo, Crounse, Darrall, Dunnell, Egbert, Faulkner, Field, Freeman, Gibson, Hale, Harborn, Hays, Hill, Hoskins, Hurlbut, Jenks, Thomas L. Jones, Joyce, King, Lane, Magoon, MacDougall, McCrary, McMahon, Money, Morrison, Nash, Phelps, Platt, Purman, James B. Reilly, Rice, Miles Ross, Sobieski Ross, Sayler, Schumaker, Spencer, Stephens, Stowell, Thornburgh, Washington Townsend, Tucker, Waddell, Walling, G. Wiley Wells, Wheeler, White, Whitehouse, Wigginton, and Woodburn—59.

So the motion to reconsider was laid on the table.

ORDER OF BUSINESS.

Mr. HOLMAN. I desire to report, from the Committee on Appropriations, a bill making appropriations for the legislative, executive, and judicial expenses of the Government for the year ending June 30, 1878, and for other purposes.

The SPEAKER. That is not in order during the morning hour, except by unanimous consent.

Mr. HOLMAN. Then I ask unanimous consent to make the report at this time.

Mr. WOOD, of New York. I object.

The SPEAKER. Objection being made, the report is not now in order.

Mr. WOOD, of New York. How much of the morning hour is there remaining?

The SPEAKER. Eleven minutes.

DISTRICT OF COLUMBIA 3.65 BONDS.

Mr. WOOD, of New York, from the Committee of Ways and Means, reported back, with amendments, the bill (H. R. No. 3689) to prevent default or delay in the payment of the interest on the bonds authorized by an act of Congress approved June 20, 1874.

The bill was read, as follows:

Be it enacted, &c., That in order to carry out the pledge, upon the part of the United States, in section 7 of an act of Congress approved June 20, 1874, entitled "An act for the government of the District of Columbia, and for other purposes," and in order to prevent default or delay in payment of the interest on the bonds authorized by said act, which interest is, by an act approved February 20, 1875, amending said act of June 20, 1874, made payable at the Treasury of the United States, the Secretary of the Treasury is hereby authorized and directed to pay the interest on said bonds, when and as the same shall mature, at the Treasury of the United States and at the office of the assistant treasurer in New York. To re-imburse the United States, the commissioners of the District, or their successors in office, are hereby directed to transfer to the United States Treasury the sums advanced for the payment of the semi-annual interest falling due on said bonds from any revenues of the District subject to their requisition.

The amendments reported from the committee were to strike out in line 17 the words "in office," and to insert in line 18, after the words "United States Treasury," the words "on or before the 15th day of June of each year;" so that that portion of the bill would read as follows:

To re-imburse the United States, the commissioners of the District, or their successors, are hereby directed to transfer to the United States Treasury, on or before the 15th day of June of each year, the sums advanced for the payment of the semi-annual interest falling due on said bonds from any revenues of the District subject to their requisition.

Mr. HOLMAN. I rise to a point of order upon this bill.

The SPEAKER. The gentleman will state his point of order.

Mr. HOLMAN. My point of order is that the bill makes a permanent appropriation of money for a specific object.

Mr. WOOD, of New York. I think the gentleman from Indiana [Mr. HOLMAN] is in error in stating that this bill provides for the appropriation of any money. It is simply a bill to carry out existing law, which existing law makes it obligatory on the part of the Government to pay the interest on certain bonds, which interest is to be re-imbursed from the revenues of the District of Columbia. The bill does not make any appropriation of money at all; I call the attention of the Chair to that fact.

Mr. HOLMAN. I wish to be heard on that point a moment.

The SPEAKER. The Chair will hear both gentlemen.

Mr. HOLMAN. The Chair will perceive that this bill places these District of Columbia bonds on the same footing as other bonds issued by the United States, and makes a permanent appropriation of money for the purpose of paying the interest on them. No further annual appropriation will be required. These bonds are simply bonds upon which the Government has made certain guarantees. Even if these guarantees are construed as requiring an appropriation to be made, a bill for that purpose must receive its first consideration in Committee of the Whole. This is not simply an annual appropriation, but a permanent appropriation, placing these bonds on exactly the same footing with the bonds issued by the United States in the exercise of its powers.

Mr. WOOD, of New York. The argument of the gentleman is conclusive against himself. The interest upon the bonds of the United States is not provided for by ordinary appropriations directly, but it is paid when the interest accrues out of the Treasury without any specific action upon our part. Now these bonds are precisely of the same character. The proposition now submitted from the Committee of Ways and Means, which was unanimously adopted by them to-day, is to place these bonds, so far as the payment of interest is concerned, in precisely the same attitude, so that no specific appropriation by Congress will be required semi-annually for the purpose of carrying out the existing pledge of the Government. There is, however, in this case the additional merit that the amount which the Government is semi-annually to disburse for the payment of this interest is to be re-imbursed from taxes collected upon the property of the District of Columbia itself.

Mr. HOLMAN. Mr. Speaker——

The SPEAKER. The Chair is ready to decide the point of order.

Mr. HOLMAN. I submit that the gentleman's own argument is conclusive in favor of the point of order. He admits that this bill proposes a permanent appropriation, standing on the same footing with any other permanent appropriation of the Government.

The SPEAKER. This bill embraces two clauses. The first provides for the payment of money, the amount not being stated, it is true, but sufficient to pay the interest on the bonds issued by the District of Columbia under the authority of Congress. This first clause is therefore not only an appropriation of money but an appropriation for all time until the principal of this debt shall be paid. The second clause provides a separate and distinct manner in which the Government of the United States shall be re-imbursed from the taxes of this District for the money that may be paid out of the Treasury under the authority of this bill in the payment of interest on these bonds.

Now Rule 112 provides that "all bills touching appropriations of money or property shall first be considered in the Committee of the Whole." The Chair is of the opinion that this bill in the first clause not only "touches an appropriation of money" but in fact makes an appropriation not only for one year but for all time. The bill is in effect a permanent appropriation of money from the Treasury. The Chair therefore sustains the point of order. The bill must first be considered in Committee of the Whole.

Mr. HOLMAN. Has the morning hour expired?

The SPEAKER. Not quite.

Mr. WOOD, of New York. If the morning hour has expired, I move that the House resolve itself into the Committee of the Whole for the consideration of the bill reported by me.

The SPEAKER. The morning hour has not yet expired; there are two minutes of it remaining. Reports are still in order from the Committee of Ways and Means.

Mr. WOOD, of New York. I desire to inquire whether I shall be recognized at the expiration of the morning hour to move that the House resolve itself into Committee of the Whole upon this bill?

The SPEAKER. The Chair desires to state that such a motion would be in order; but that he is already under obligation to recognize two other gentlemen on privileged reports, one of them involving a question of privilege.

Mr. WOOD, of New York. I desire to say that, after that business shall be disposed of, I propose to make my motion.

The SPEAKER. The morning hour has now expired.

COUNTING THE ELECTORAL VOTES.

Mr. SPARKS. I am instructed by the special committee on the privileges, powers, and duties of the House in reference to counting the electoral votes to offer a resolution which I send to the Clerk, and upon its adoption move the previous question.

The Clerk read as follows:

Resolved, That with respect to any or all subjects to be considered by the special committee of the House on the privileges, powers, and duties of the House of Representatives in counting the electoral votes for President and Vice-President of the United States, said committee shall have power to send for persons and papers, and to sit during the sessions of the House.

Mr. BURCHARD, of Illinois, (before the reading of the resolution was concluded.) I desire to reserve the point of order whether the committee have the privilege of reporting this resolution at the present time.

The SPEAKER. The reading of the resolution will be concluded, after which it will of course be open to any point of order.

Mr. GARFIELD. Let it be understood that all points of order are reserved.

The Clerk concluded the reading of the resolution.

Mr. SPARKS. Upon the adoption of this resolution I ask the previous question.

Mr. GARFIELD. I rise to a point of order. I submit that the resolution is not a privileged one, and I object to it. It cannot be introduced now except by unanimous consent.

Mr. WILSON, of Iowa. Let it be read again.

The Clerk again read the resolution.

Mr. BURCHARD, of Illinois. Mr. Speaker, this is a resolution proposing to confer additional powers upon this committee. It does not come within the leave given to the committee to report at any time in pursuance of the authority to ascertain and report what are the privileges, powers, and duties of the House in reference to a particular subject-matter. This is merely a resolution proposing to give the committee additional powers. If the resolution should be entertained, I would desire to say a word or two as to the necessity or propriety of adopting it; but it would not be proper to discuss that question at present.

The SPEAKER. The Chair has sent for the resolution creating this committee.

Mr. WILSON, of Iowa. The point which it appears to me lies against this resolution is this: standing and select committees have under the rules certain powers; and any resolution extending those powers must in effect be a suspension of the rules, and, therefore, requires either unanimous consent or (when a motion to suspend the rules is in order) a two thirds vote.

The SPEAKER. The Chair will cause to be read the original resolution creating the committee.

Mr. BANKS. Yes, sir; that should be read for the information of the House.

The Clerk read as follows:

Whereas there are differences of opinion as to the proper mode of counting the electoral votes for President and Vice-President, and as to the manner of determining questions that may arise as to the legality and validity of returns made of such votes by the several States;

And whereas it is of the utmost importance that all differences of opinion and all doubt and uncertainty upon these questions should be removed, to the end therefore that the votes may be counted and the result declared by a tribunal whose authority none can question and whose decision all will accept as final: Therefore

Resolved, That a committee of seven members of this House be appointed by the Speaker, to act in conjunction with any similar committee that may be appointed by the Senate, to prepare and report without delay such a measure, either legislative or constitutional, as may in their judgment be best calculated to accomplish the desired end, and that said committee have leave to report at any time; and that the Clerk of this House inform the Senate of the adoption of this resolution.

Resolved, That a committee of seven members be appointed by the Speaker of this House to ascertain and report what are the privileges, powers, and duties of the House of Representatives in counting the votes for President and Vice-President of the United States, and that said committee have leave to report at any time.

Mr. GARFIELD. My point of order is that this resolution is not a report from the committee on the subject-matter which they were authorized to investigate, nor does it claim to be. It is an independent resolution proposing to confer additional powers and privileges upon the committee, and must stand precisely as though for the first time it was proposed to create a committee or confer powers upon it.

It is a new proceeding relating to powers just as though it had never begun, and is in no sense a report from that committee on the subject-matters committed to it. They can only get this new power by unanimous consent, or by a suspension of the rules, and I object to unanimous consent.

Mr. LAWRENCE. Additional power, Mr. Speaker, was conferred upon this committee by a resolution of the House which was adopted Monday a week ago, on motion of the gentleman from New York, [Mr. WILLIS,] and I suggest that it would be well to have that additional authority, or the resolution conferring it, read for the information of the House.

The SPEAKER. The Chair will cause it to be read.

The Clerk read as follows:

Be it resolved by the House of Representatives in Congress assembled, That the committee on the privileges, powers, and duties of the House of Representatives in counting the vote for President and Vice-President of the United States be, and said committee hereby are, instructed to ascertain whether any votes were given at the recent election contrary to the prohibition contained in the first section of the second article of the Constitution, and what ought to be done with them; and whether any, and what, provision ought to be made for securing the faithful observance in the future of said section of the Constitution; and also to inquire into any facts affecting the fairness or legality of any electoral vote certified to have been cast in said election; and that the committee, for the purpose of such ascertainment, and inquiry, have power to send for persons and papers, and examine witnesses.

Mr. O'BRIEN. That confers this power upon the committee now beyond all question.

Mr. SPARKS. The resolution last read confers upon the committee the power to send for persons and papers with respect to a certain examination mentioned therein. But with respect to the subject-matter of the examination as embraced in the original resolution of the rights, powers, and privileges of the House, the committee find an impediment in the way. They do not find, as they conceive, that they have the power conferred upon them by that resolution to carry out the objects of the examination by the way of calling for persons and papers. Now, to remedy that defect, to remove all obstructions in the way, they make this report of the facts to the House, and ask that this additional power be conferred upon them, in order that they may carry into effect the objects designed according to the spirit of the resolution.

The SPEAKER. The Chair conceives argument as to the propriety of adopting the resolution is not in order.

Mr. SPARKS. I am speaking to the point of order.

The SPEAKER. The Chair thinks that the propriety of adopting the resolution is distinct from the point of order as to whether the committee has the power of executing an order heretofore given by the House.

Mr. SPARKS. We report these facts by the resolution now before the House and ask for its adoption in order that we may be enabled to give effect to the spirit of the resolution under which we derive our authority to act.

The SPEAKER. The Chair does not think that discussion of a point of order would permit within its scope what he must respectfully describe as argument going to the merits of the question.

The Constitution of the United States, in a certain contingency, provides that this House shall elect a President of the United States, and the Chair considers that to be a question of the very highest privilege, going to the rights, powers, and privileges of this House. But in addition to that, by resolutions which have been read within the hearing of the House, power to report at any time has been expressly conferred upon this committee. The Chair therefore decides that the resolution pending before the House is a question of privilege, the committee having by authority of the House the right to report at any time, in addition to the fact that the question itself involves matters of the very highest privilege.

Mr. BURCHARD, of Illinois. The Chair does not rule the point is not well taken: that is to say, that it is not the right of the committee under its resolution of appointment, but as an independent proposition and as a question of privilege, that the gentleman from Illinois has the right to report this resolution from the committee?

The SPEAKER. The Chair again states that under the Constitution of the United States, in a certain contingency, this House of Representatives elects the President of the United States. That clearly is a question of the very highest privilege. The question of the powers, duties, and privileges of this House in connection with that provision of the Constitution have been referred to this committee, and by resolution of this House that committee was given the power to report at any time. Therefore the Chair can reach no other conclusion than to overrule the point of order and to decide that the report at this time is in order as a question of privilege.

Mr. WILSON, of Iowa. The Constitution gives the House of Representatives power to make its own rules, and yet the Chair would not recognize any member to propose under that constitutional sanction any amendment to the rules, unless introduced on Monday and referred and reported back from the Committee on Rules. Here is the difficulty in which the ruling of the Chair will involve us. They do not report relative to the subject-matter, but they propose a suspension of the rules of the House in their report. I recollect one of your predecessors [Mr. BLAINE] ruled, when a constitutional point was raised, that he was called upon to rule upon the rules of the House, not upon the Constitution.

The SPEAKER. The Chair has only stated, and again repeats, that the Constitution of the United States provides in a certain contingency that a President of the United States shall be elected by this House of Representatives and that was of itself a question of the very highest privilege. There he stopped, so far as that point is concerned. But this committee is already empowered to report at any time.

Mr. WILSON, of Iowa. That is true, but next Monday, when a motion to suspend the rules can be entertained, this thing would be in order.

The SPEAKER. Yes; but under the rules of the House that is a second branch of this subject. The House has given permission to this committee to report at any time.

Mr. WILSON, of Iowa. Yes; on the subject-matter referred to them.

Mr. GARFIELD. If I understand the ruling of the Chair it is this: that any resolution offered here that relates to the rights of the House concerning the election of President, must be privileged. I do not see how else he puts it. The Chair does not plant his decision on the resolution creating the committee.

The SPEAKER. The gentleman will be able to read exactly what the Chair said, in the RECORD, to-morrow, and then he will be able to see that the Chair has not gone so far as the gentleman suggests.

Mr. GARFIELD. I listened very attentively to the remarks of

the Chair. The point I made was, that the report on the resolution offered is not a report touching the election of President, or touching the rights of the House in that regard; but is a simple resolution conferring an unusual power upon a committee; that it is just the same as a resolution which should be offered by the gentleman from Illinois himself, without the instructions of the committee behind him. The Chair rules that the point made so far as related to the mere question of privilege under the rule was good, but that the Constitution——

The SPEAKER. The Chair did not make any such ruling as that.

Mr. GARFIELD. But that the Constitution made this a privileged question.

The SPEAKER. The gentleman from Ohio will permit the Chair to interrupt him. The Chair did not make any such decision as the gentleman from Ohio has just stated. But the Chair is now willing to hear an amended point of order by the gentleman from Ohio.

Mr. GARFIELD. I do not think that I want to amend the point of order; but I fear the Chair did not understand the point of order which I made, which was that this resolution offered by the gentleman from Illinois has no privilege.

The SPEAKER. The Chair overrules the point of order.

Mr. GARFIELD. I know the Chair does. But my point is that this is not a report from that committee upon the subject on which they were authorized to report at any time.

The SPEAKER. If the Chair was allowed to lay any weight on what was stated as matter of information, he might remark that the gentleman from Illinois [Mr. SPARKS] distinctly stated that it was to execute their duties in connection with the subject confided to them that this resolution was offered.

Mr. GARFIELD. Will the Chair allow me to inquire if the original resolution creating this committee was itself a privileged resolution?

The SPEAKER. The Chair ruled that it was.

Mr. GARFIELD. I do not understand that it was privileged, because a committee reported it when it was called.

The SPEAKER. The Chair thinks not.

Mr. GARFIELD. It was reported from the Judiciary Committee, as was shown by the reading of the resolution this morning.

The SPEAKER. By consent, and not in order; but the Chair thinks that is not material.

Mr. GARFIELD. If the original resolution creating that committee was not privileged, then this resolution giving additional powers is not privileged.

Mr. SPARKS. It is privileged because the original resolution authorized the committee to report at any time.

Mr. GARFIELD. On the subject committed to them.

Mr. SPARKS. And what is that subject? The privileges, rights, and duties of the House.

Mr. GARFIELD. They come and ask, as any other committee may, a special power——

Mr. EDEN. I rise to a question of order. Is this debate in order? Is there any point of order before the House?

The SPEAKER. The Chair wished to hear anything that the gentleman from Ohio desired to say on the point of order. The gentleman from Illinois [Mr. EDEN] now wishes to know if there is any point of order pending. There is not.

Mr. SPARKS. I demand the previous question on the adoption of the resolution.

Mr. BURCHARD, of Illinois. Will my colleague yield to me for a moment? I desire on behalf of the minority of the committee to say a word.

Mr. THORNBURGH. I ask that the resolution may again be reported.

The resolution was again read.

Mr. BURCHARD, of Illinois. I ask my colleague to yield to me for a moment or two.

Mr. SPARKS. I would like to oblige my colleague of course, but there is serious objection all around me to doing so. I must insist on the demand for the previous question.

Mr. BURCHARD, of Illinois. The gentleman himself has the control of the resolution.

The question being taken on seconding the demand for the previous question, there were—ayes 138, noes 69.

Mr. BURCHARD, of Illinois. I call for tellers; and pending that I move that the House do now adjourn.

The question being taken on the motion to adjourn, on a division by sound the Speaker stated that in the opinion of the Chair the noes had it.

Mr. BURCHARD, of Illinois. I will not insist on further count if my colleague will allow me a few moments.

Mr. SPARKS. How long does my colleague want.

Mr. BURCHARD, of Illinois. Five minutes.

Mr. SPARKS. I yield five minutes to the gentleman.

Mr. BURCHARD, of Illinois. All that I desire to say in regard to the pending resolution is that the original instructions under which that committee was formed merely referred a legal and constitutional question to the committee, namely, to ascertain what are the powers, privileges, and duties of the House of Representatives. In my judgment, there is no earthly necessity for sending for persons and papers to investigate that question.

Upon any other question referred to the committee there is full and ample power to send for persons and papers, and I cannot understand the necessity under that branch of the resolution for investing this committee with the power to send for persons and papers. We can have access to all the law-books in the country if it be deemed necessary, but the committee has, under the powers granted to it by the three resolutions which have been read, the power to investigate questions and to send for persons and papers to an extent which will occupy its time until the 4th of March next. It has power to investigate—and I will not say that it is not unwilling to exercise that power, for in doing so I might expose the proceedings of the committee—but I will say that it has the power to examine, and perhaps it will exercise that power to examine, all the questions referred to other committees, the committee on the election in Florida, the committee on the election in Louisiana, the committee on the election in South Carolina; all the questions relating to the fairness and legality of every election can be investigated by this committee, and they can send for persons and papers; and they may be willing to assume the exercise of that power and send for persons and papers and take jurisdiction of those questions which have been referred by the House to other committees, consisting of twenty-seven members.

The committee having all the work to do that it can do, being in fact overloaded with work, being ready and having the power to investigate all these questions which have been referred to other committees, I do not desire to have additional powers conferred upon and other duties imposed upon the committee. That, sir, is all I desire to say as to the reason why I shall vote against conferring these increased powers upon the committee.

The main question was then ordered, being upon the adoption of the resolution.

Mr. WILSON, of Iowa. I call for the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 149, nays 70, not voting 71; as follows:

YEAS—Messrs. Abbott, Ainsworth, Ashe, Atkins, John H. Bagley, jr., Banning, Bell, Bland, Bliss, Blount, Boone, Bradford, Bright, John Young Brown, Buckner, Burleigh, Cabell, John H. Caldwell, William P. Caldwell, Campbell, Candler, Cate, Caulfield, Chapin, Chittenden, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Cochrane, Collins, Cook, Cowan, Cox, Culberson, Cutler, Davis, De Bolt, Dibrell, Douglas, Durand, Durham, Eden, Ellis, Felton, Field, Finley, Forney, Fort, Franklin, Fuller, Gause, Glover, Goode, Goodin, Gunter, Andrew H. Hamilton, Robert Hamilton, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Haymond, Henkle, Hereford, Goldsmith W. Hewitt, Holman, Hooker, Hopkins, House, Humphreys, Hurd, Frank Jones, Kehr, Knott, Lamar, Franklin Landers, George M. Landers, Le Moyne, Levy, Lewis, Lord, Luttrell, Lynde, Malsh, McFarland, Meade, Metcalfe, Milliken, Morgan, Mutchler, Neal, New, Odell, John F. Philips, Piper, Poppleton, Powell, Rea, Reagan, John Reilly, Riddle, William M. Robbins, Roberts, Savage, Scales, Schleicher, Schumaker, Sheakley, Slemons, William E. Smith, Southard, Sparks, Stanton, Stenger, Stevenson, Stone, Swann, Tarbox, Teese, Terry, Thomas, Thompson, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Charles C. B. Walker, Gilbert C. Walker, Walsh, Warner, Warren, Watterson, Erastus Wells, Whitehouse, Whitthorne, Wike, Alpheus S. Williams, James Williams, Jeremiah N. Williams, Willis, Wilshire, Benjamin Wilson, Fernando Wood, Yeates, and Young—149.

NAYS—Messrs. Adams, George A. Bagley, John H. Baker, William H. Baker, Ballou, Banks, Blair, Bradley, William R. Brown, Horatio C. Burchard, Cannon, Conger, Danford, Davy, Denison, Dobbins, Eames, Evans, Five, Foster, Frye, Garfield, Benjamin W. Harris, Hendee, Henderson, Hoskins, Hunter, Hyman, Kasson, Kelley, Kimball, Lapham, Lawrence, Leavenworth, Miller, Monroe, Norton, O'Neill, Packer, Page, William A. Phillips, Plaisted, Purman, Rainey, Robinson, Rusk, Sampson, Seelye, Sinnickson, Smalls, A. Herr Smith, Strait, Stowell, Thornburgh, Martin I. Townsend, Tufts, Van Vorhes, Wait, Wahlron, Alexander S. Wallace, John W. Wallace, White, Whiting, Andrew Williams, Charles G. Williams, William B. Williams, James Wilson, Alan Wood, jr., Woodburn, and Woodworth—70.

NOT VOTING—Messrs. Anderson, Bagby, Bass, Beebe, Blackburn, Samuel D. Burchard, Carr, Cason, Caswell, Crapo, Crounse, Darrall, Dunnell, Egbert, Faulkner, Freeman, Gibson, Hale, Hancock, Haralson, Hathorn, Hays, Abram S. Hewitt, Hill, Hoar, Hoge, Hubbell, Hunton, Hurlbut, Jenks, Thomas L. Jones, Joyce, King, Lane, Lynch, Mackey, Magoon, MacDougall, McCrary, McDill, McMahon, Mills, Money, Morrison, Nash, O'Brien, Oliver, Payne, Phelps, Pierce, Platt, Potter, Pratt, James B. Reilly, Rice, John Robbins, Miles Ross, Sobieski Ross, Sayler, Singleton, Spencer, Springer, Stephens, Washington Townsend, Waddell, Walling, Ward, G. Wiley Wells, Wheeler, Wigginton, and Willard—71.

So the resolution was adopted.

Mr. SPARKS moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

During the roll-call the following announcements were made:

Mr. LUTTRELL. I desire to state that my colleague, Mr. WIGGINTON, and the gentleman from Oregon, Mr. LANE, are both detained from the House by sickness; if here they would vote "ay."

Mr. EDEN. I desire to state that my colleague, Mr. SPRINGER, is absent serving upon the committee on the electoral vote; if present he would vote "ay."

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of its clerks, announced that the Senate had passed, with amendments in which the concurrence of the House was requested, bills of the following titles:

A bill (H. R. No. 767) for the relief of Samuel B. Stanbar and others; and

A bill (H. R. No. 4155) amending the act of July 28, 1876, entitled "An act for the relief of Kendrick & Avis, Kuner, Zisemann & Zott, Kuner & Zott, of Saint Louis, and Nachtrieb & Co., of Galion, Ohio.

The message further announced that the Senate had passed and

requested the concurrence of the House in bills of the following titles:

A bill (S. No. 1071) for the relief of H. E. Woodhouse & Co., of Brownsville, Texas; and

A bill (S. No. 967) for the relief of Nicholas Wax, Michael Granary, and Moline Lange.

PRINTING OF TESTIMONY.

Mr. HOUSE. I ask unanimous consent to have printed for the use of the committee appointed to investigate the recent election in Louisiana certain testimony taken by that committee.

There was no objection, and the leave was granted.

RECUSANT WITNESSES—RETURNING BOARD OF LOUISIANA.

Mr. LYNDE, (from the Clerk's desk.) The Committee on the Judiciary having had under consideration the report of the select committee, of which Hon. WILLIAM R. MORRISON is chairman, in relation to the contempt and breach of the privileges of this House by J. Madison Wells, Thomas C. Anderson, G. Casanave, and Louis M. Kenner, in refusing to produce to said committee certain papers mentioned in a *subpœna duces tecum* duly served upon them and each of them, would respectfully submit the following report:

The committee instructed by the House to investigate the recent election in the State of Louisiana, and the action of the returning or canvassing board in said State in reference thereto, and to report all the facts essential to an honest return of the votes received by the electors of said State for President and Vice-President of the United States, and to a fair understanding thereof by the people, with power to send for persons and papers, have reported to the House that J. Madison Wells, Thomas C. Anderson, G. Casanave, and Lewis M. Kenner, claiming to be the returning board of canvassers for said State, have refused to obey a *subpœna duces tecum*, duly issued and served upon them, commanding them to appear before the committee now sitting in New Orleans and bring with them "all returns of elections, all consolidated statements of supervisors of elections, all statement of votes, and tally-sheets for each polling-place at the late election for electors for President and Vice-President of the United States, together with all affidavits, depositions, protests, and other written proofs in their possession or under their control, touching the said election in certain parishes," naming them.

The witnesses refusing to obey the subpœna have sent a written communication to the investigating committee, claiming that these papers are "a part of the records of the returning officers of elections for the State of Louisiana and are in the possession of the returning officers in their official capacity;" and submit that "the board of returning officers of elections for Louisiana is a body created by the laws of Louisiana, with specific and well-defined duties, partly ministerial and partly quasi-judicial; that their action under the law of their creation is final to the extent provided by the law, and is not subject to review by any State or national tribunal."

Your committee do not feel called upon at this time to express an opinion upon the question as to whether "the action of the returning officers is subject to review by any State or national tribunal."

The Constitution of the United States, article 2, section 1, provides that "each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress."

This clause of the Constitution not only secures to each State the right to appoint electors in such manner as the Legislature thereof shall direct, but it secures to the United States the right to require that the persons claiming to act as electors for any State shall have been appointed in such manner as the Legislature of the State shall have directed. The power to ascertain that fact is, and must be, in Congress, and if legislation is necessary to carry out this provision of the Constitution, Congress alone has the power to legislate upon the subject.

Public rumor charges fraud and perjury and violations of law in the appointment of the electors in the State of Louisiana, and that the electors who have been returned were not appointed in such manner as the Legislature of the State has directed, and this House has decided to investigate these charges. The investigating committee has subpœnaed these witnesses for the purpose of ascertaining whether those papers show that the charges are true or false, and whether the electors returned by the returning officers have been appointed in compliance with the requirements of the Constitution of the United States. Your committee are of the opinion that these charges are within the power and duty of the House to investigate, and that the returning officers, either in their individual or official capacity, cannot conceal fraudulent acts or violations of law in the appointment of electors for the office of President or Vice-President of the United States under the claim that in perpetrating the fraud or violating the law they were acting in an official capacity as State officers.

Courts sometimes excuse public officers from producing papers in their possession and custody upon the ground of public convenience, and substitute secondary evidence or copies of such papers for the original. But it is a rule adopted for public convenience and is never applied when the original is necessary, as in a case of forgery or perjury, or when the original alone can answer the purpose and object of the investigation.

If it be true that frauds have been perpetrated and the law has been violated, and copies of the papers were furnished to the investigating committee without the opportunity to inspect the originals, it would be in the power of the board to conceal the frauds and cover up the violations of law. It is true that courts do not require public officers to disclose secrets of state, but here are no state secrets; these papers relate to the appointment of electors for President and Vice-President of the United States and are public in their character, and every American citizen is interested in them. Your committee do not recognize the right of any citizen or officer, whether Federal or State, to defeat an investigation of either House which may involve the existence of the Government by refusing to appear and testify. If a State officer can be compelled to appear before a committee of this House appointed to investigate a question involving the existence of the Government, then it is for the House to determine when the power shall be exercised.

This House having appointed a committee to investigate these charges, your committee are of opinion that J. Madison Wells, Thomas C. Anderson, G. Casanave, and Lewis M. Kenner, in refusing to obey the writ of *subpœna duces tecum* to appear and bring with them certain papers named in the writ, have violated the privilege of this House. They therefore recommend the adoption of the following resolution.

The Clerk read the resolution, as follows:

Resolved, That the Speaker of this House issue a warrant under his hand and the seal of the House of Representatives, directing the Sergeant-at-Arms of this House, either by himself or his special deputy, to arrest and bring to the bar of the House without delay J. Madison Wells, Thomas C. Anderson, G. Casanave, and Lewis M. Kenner to answer for a contempt of the authority of this House and a breach of privilege in refusing to produce to the special committee of which Hon. WILLIAM R. MORRISON is chairman, now sitting in New Orleans, certain papers in obedience to a *subpœna duces tecum* which was duly served upon them, and to be dealt with as the law under the facts may require.

Mr. LYNDE. I now call the previous question on the adoption of the resolution which has just been read by the Clerk.

Mr. GARFIELD. I would inquire of the gentleman if it is his purpose to allow any debate on this question?

Mr. LYNDE. Yes; I will claim my hour and will give to gentlemen on the other side half of the hour to debate this question. I have already offered to give that time to the gentleman from Maine, [Mr. FRYE,] a member of the Judiciary Committee, who can divide it as he thinks best.

Mr. GARFIELD. I desire to suggest that this report is a very important one both in its legal and its constitutional relations. I ask gentlemen to let the report be printed and to allow a reasonable time for debate. For one, I am not willing that this House, with but one short hour for debate immediately upon the first reading of the report, shall proceed to its consideration and decision. And in order to save the time of the House, which will be far better saved in debating than in resisting immediate action upon this resolution, I hope the gentleman will allow the report to be printed and give a few hours for debate.

For one, I will not consent that this resolution shall now be acted upon, with the previous question as a gag upon it before we begin to debate it. I hope the gentleman will allow it to go over and be printed. I will say that three hours for debate will be enough, divided between the two sides of the House equally; certainly one hour is not enough. Let this resolution be made a special order for any time that the House may see fit, and let the report be printed, so that we can read the paper and see what will be left of the independence of the States if this resolution shall be adopted.

Mr. LYNDE. Gentlemen are well aware that the time is rapidly passing when this special committee should report to this House, and if any action is to be taken for the purpose of obtaining the evidence which the committee seeks to obtain by this *subpœna duces tecum*, that action must be taken very quickly. I think that an hour's discussion of this subject would enable the House to come to an intelligent decision as to its rights and privileges and the rights of these witnesses.

I therefore must insist upon my motion for the previous question, with the understanding that if the previous question shall be sustained I will have a right to an hour for debate upon this resolution.

Mr. GARFIELD. I will say for myself—not for anybody else, for I do not know what others may do—that I shall feel it my duty to resist to the utmost any attempt to put the previous question on this resolution now. If the gentleman will fix an hour to-morrow when this subject can be considered, I will consent that we should hold an evening session to debate it rather than to have any delay. I want to do nothing to delay an early decision upon this question; but I will not consent, so far as I am concerned, to allow the previous question to be put on this resolution without some brief time for debate.

Mr. BURCHARD, of Illinois. Allow me to suggest whether, should the previous question now be seconded, the gentleman from Wisconsin [Mr. LYNDE] would have any right, without an order of the House, to an hour for debate, he not having made any speech in opening, and there being no speech for him to reply to in the closing hour? My understanding of the rule is that he would not have that right. The gentleman under the rule has the right to an hour to open the debate, and if there is any reply made to him then, even after the previous question is called, he would have the right to close the debate. But having made no speech in the opening, should the previous question be now called and sustained, he would have no right to any time to close debate.

The SPEAKER. The Chair does not suppose that any member would insist that, if the gentleman from Wisconsin [Mr. LYNDE] now demands the previous question and it is sustained, he will not be entitled to one hour for debate. If required to do so the Chair would again hold that a gentleman occupying one hour before demanding the previous question, and then without there being other debate demanding the previous question, would not have the right to claim another hour to close the debate.

The Chair will now take occasion to say that on to-morrow he will give his views in length upon that point, as submitted to the House on Wednesday last. The Chair may as well now state that he remains of the same opinion that he expressed at that time, and will on to-morrow give a lengthy review of the subject.

Mr. HOLMAN. I would suggest to the gentleman from Wisconsin [Mr. LYNDE] to allow two hours for debate at this time, with the understanding that the previous question shall operate at the end of the two hours.

Mr. GARFIELD. Does not the gentleman see that every member who speaks on this subject would be glad to speak with a little more careful consideration than he can now give the question? By waiting until to-morrow, gentlemen would have time to acquaint themselves more thoroughly with the subject and would be able to speak more wisely, justly, and satisfactorily to themselves and to all interested, than they would if compelled to start into a debate sprung here without any other notice than the reading of the report at this time.

The SPEAKER. The Chair desires to say that the time now being occupied in arranging the order and duration of the debate will not be counted as part of the hour of the gentleman from Wisconsin.

Mr. HOLMAN. I trust that there will be no objection to our going on and discussing this question for two hours now.

Mr. GARFIELD. It is important that the report should be printed so that we may see precisely what it is. Then, to-morrow, at as early an hour as gentlemen may please to fix, we can go on and discuss the question, thus giving us this evening to look over the general authorities and enabling us in the morning, after the RECORD comes out, to see what is the report in fact.

Mr. HOLMAN. The report is very brief and the points are very clearly presented, as the gentleman from Ohio must perceive.

Mr. GARFIELD. Yes, they are very clearly presented on that side.

Mr. HOLMAN. It is important in the interest of the public business, as well as in regard to the progress of this investigation, that this question should be disposed of as soon as possible.

Mr. GARFIELD. I think my suggestion that three hours altogether be allowed, to be divided equally between those opposed to the report and those in favor of it, is a reasonable one.

The SPEAKER. Does the Chair understand the gentleman from Wisconsin to accept the proposition of the gentleman from Indiana?

Mr. LYNDE. I do.

The SPEAKER. The proposition of the gentleman from Indiana, as the Chair understands it, is that debate shall proceed now, and that at the end of two hours the gentleman from Wisconsin shall be recognized to demand the previous question.

Mr. KASSON. That would give the gentleman from Wisconsin an hour after the ordering of the previous question.

The SPEAKER. It would, unless he should occupy an hour in opening.

Mr. KASSON. And the whole time is to be equally divided.

Mr. GARFIELD. If that be the understanding, I think it will be satisfactory. If it be understood that there are to be two hours for debate before the previous question and one afterward, we will consent to that.

The SPEAKER. The Chair will then state that the understanding is that debate shall now proceed for three hours, when the adoption of the resolution shall be voted on.

Mr. HOLMAN. It may be that the gentleman from Wisconsin may not desire to occupy his whole hour. If the debate closes at the end of two hours and he then calls the previous question, he will occupy so much of the hour as he thinks proper.

The SPEAKER. The Chair, however, understands the gentleman from Wisconsin to claim the last hour.

Mr. LYNDE. I claim the disposition of the last hour.

Mr. GARFIELD. The last hour must not be cut off.

Mr. LAWRENCE. It seems to me very desirable that this arrangement should not include the right to demand the previous question upon the resolution without an opportunity to have a vote upon amendments. Now it may happen that it may be sufficient for us to direct the committee at New Orleans to ask for an inspection of the State records and permission to have a copy, without requiring the absolute production of the originals before the committee. What I desire is that there shall be an opportunity to offer amendments so as to modify the proposition of the committee.

The SPEAKER. That is entirely within the province of the House; the Chair has nothing to do with that.

Mr. KASSON. I will ask the Chair to state again the proposition, which I believe embraces everything that everybody desires. It is, I believe, that the debate shall be open for three hours and then a vote shall be taken on seconding the previous question.

Mr. HOLMAN. The debate is to run for two hours, as I understand.

The SPEAKER. The understanding is that the debate shall run for two hours; that then the gentleman from Wisconsin will demand the previous question, and if it is sustained he will control the last hour.

Mr. GARFIELD. Which he agrees to divide equally between the friends and opponents of the resolution.

The SPEAKER. The Chair has nothing to do with that; but if the gentleman from Wisconsin embraces it as a part of the proposition the Chair will repeat it.

Mr. LYNDE. The proposition which I accepted, and which I understand was submitted to the House, was to give two hours before the previous question for the purpose of debate. I cannot consent that these two hours shall be occupied for any other purpose.

The SPEAKER. The Chair so understood and so repeated the proposition to the House. The gentleman from Ohio [Mr. LAWRENCE] proposed to vary that; but the Chair did not understand the gentleman from Wisconsin to yield for that purpose.

Mr. GARFIELD. This arrangement does not preclude the right to offer amendments at all.

The SPEAKER. The power to allow amendments is entirely within the control of the House; it is not within the province of the Chair to control that subject. If the House should vote down the previous question, then of course the resolution will be open to amendment, not otherwise.

Mr. LYNDE. I now yield to the gentleman from Maine, [Mr. FRYE.]

EMIGRATION.

Mr. HEREFORD, by unanimous consent, from the Committee on Commerce, reported back, with amendments, the bill (H. R. No. 3853) to regulate emigration; which was ordered to be printed and recommitted.

RECUSANT WITNESSES—RETURNING BOARD OF LOUISIANA.

Mr. FRYE. Mr. Speaker, I do not take the floor for the purpose of discussing at any length the question which is now before the House; but as this appears to be a report of the Judiciary Committee, I wish to state that when the resolution was adopted no members on the republican side of the House were present in the committee-room. The gentleman from Ohio [Mr. LAWRENCE] was necessarily with the House committee on the electoral vote; the gentleman from Massachusetts [Mr. HOAR] and the gentleman from Iowa [Mr. MCCRARY] were necessarily detained before the joint committee; and I was called away just as the vote was to be taken. I do not speak of this as a censure at all upon the committee, because it was understood that they should proceed to consider the resolution and have a vote taken upon it. But it did seem to me necessary that as a member of the Judiciary Committee I should state to the House and to the country that, so far as I was personally concerned, I did not assent to this report. On the contrary, it seems to me that the doctrine announced in it is a monstrous one. What is it? It is that there is no paper, and no record, there are no archives, there is no officer in the whole United States of America, not subject to the control of a committee of this House of Representatives.

There is no sovereignty whatever anywhere which is not subject to be called before a committee of the House of Representatives and compelled to produce its records—all of its papers. Not copies, but its original papers and its original records.

I know that gentlemen say in the report that secondary evidence is not required and will not be taken in this case, because public rumor charges fraud upon the officers of the State of Louisiana who had this business in their hands to conduct. Well, sir, public rumor then, if the necessity comes for the production of papers, may charge fraud upon any officer in the United States of America and thus compel any officer, and any State, and any court to produce all of the originals, all of its records before a committee of the House of Representatives.

I know the report says that in case of forgery you must produce the original. Then all that is necessary under that report is for public rumor to charge forgery and then nothing is sacred against the committee whose duty it is to investigate.

Now, sir, I do not believe in that doctrine, and I cannot assent to it, no matter if the times do seem to require that information shall be had from the State of Louisiana.

I hold, sir, to the contrary doctrine, that this Congress has no more to do with the returning board of the State of Louisiana than I as an individual have. I hold that the returning board of Louisiana, having been legally constituted under the authority of the Constitution of the United States and having proceeded with its duty under the law of the State of Louisiana, having made its return, that return having been authorized by law, we are precluded from going behind it. And the only authority we have is the general good of the country, the public weal, in inquiring whether or not in the State of Louisiana there is a condition of things which Congress ought to take notice of. It is not whether or not the returning board of Louisiana have fulfilled their duty, and their entire duty, in counting the votes which were brought before them, but whether or not there is a condition of things in the State of Louisiana which calls for the attention of the Congress of the United States. On that question I should at once assent that there was a condition of things there which required congressional intervention, if we have a right to intervene, and prevent murder, and outrage, and every other barbarism known in the wide world.

Sir, the Constitution of the United States says that each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, &c. Under the authority of that Constitution the State of Louisiana, by its Legislature, provided for this very returning board which is now under discussion in this House.

I do not know of any particular in which that Legislature violated the Constitution of our country in creating that returning board. I do believe that a returning board, created as that has been and with the quasi-judicial powers that returning board has been clothed with, was an absolute necessity for a free exercise of the right of suffrage in the State of Louisiana. I do believe that there is a purpose, and for eight years has been a purpose, fixed, determinate, certain, absolute, that certain citizens in the State of Louisiana shall not be permitted to exercise the right of suffrage, notwithstanding the Constitution of the United States guarantees to them that right; and I believe, sir, that they are prevented from the exercise of that right by murder, by blows, by every conceivable outrage; and I say, and it has been proven over and over again—the witnesses are by the thousands and tens of thousands, and no man can doubt to-day—that those terrible outrages have been committed in that State for the purpose of preventing the exercise of that right guaranteed by the Constitution.

To protect American citizens in their constitutional rights, this Legislature made that returning board quasi-judicial in its character, and not only authorized, but compelled by law that returning board to investigate these questions of fraud, of intimidation, of murder. In certain cases, as the law prescribes, in the performance of the duty which the Legislature placed upon that State returning board, it was the law that certain returns should be made to it; that certain consolidated returns should be made to it; certain testimony should be taken before it. And this committee calls for returns of all the papers, of all the affidavits, that are in the hands and possession of the Louisiana returning board, a court created by the authority of the constitution by the Legislature of the State of Louisiana.

It has always seemed to me that in some things States were supreme, and that in some things the United States was supreme; that in the protection of its archives the Congress of the United States had no more authority to take those papers and records, and bring them out from the jurisdiction of the State and to the city of Washington, than the State of Louisiana has in return to take the papers of the United States and carry them to the State of Louisiana. And it seems to me that gentlemen on the other side have held to that doctrine for a good many years.

I believe that that is one of the rights of a State; and for State rights we have had one war. Now is it possible that the gentlemen who went into war for State rights have been so far converted by defeat in that war that to-day they are ready to say that a committee of Congress may go within the borders of a State, may go within its courts, may go within its returning board, may go within its governor and council, and take from them any records, any original papers they may desire to inspect? If they are, then that war taught them more than I have been supposing it did teach them.

Why, sir, in the case of Aaron Burr—which will be brought up in this discussion beyond any question—when a demand was made upon Thomas Jefferson to produce certain original papers before the court, Thomas Jefferson did not produce the papers. He never produced the papers. He produced copies, as this returning board has agreed it will do. Now, sir, I concede that Thomas Jefferson may have been a much greater man and a much better man than the members of this returning board.

Mr. SOUTHARD. Will the gentleman allow me to interrupt him for a moment?

Mr. FRYE. Yes, sir.

Mr. SOUTHARD. I wish to ask the gentleman whether, in the case of Jefferson, the question was not whether he should appear, he being President, rather than whether the papers or copies should be furnished?

Mr. FRYE. One question was whether the President of the United States could be subpœnaed to appear, and the other was whether he could be compelled to produce papers, as I understand it; and I have his letter here before me in which he says that the Executive has certain rights which even Congress is bound to respect. In the latter part of his letter he says:

> With respect to papers, there is certainly a public and private side to our offices—

Not to the office of President, but "our offices"—

> To the former belong grants of land, patents for inventions, certain commissions, proclamations, and other papers patent in their nature. To the other belong mere executive proceedings. All nations have found it necessary that, for the advantageous conduct of their affairs, some of these proceedings, at least, should remain known to their executive functionary only. He, of course, from the nature of the case, must be the sole judge of which of them the public interest will permit publication.

Again:

> The respect mutually due between the constituted authorities in their official intercourse, as well as sincere dispositions to do for every one what is just, will always insure from the Executive, in exercising the duty of discrimination confided to him, the same candor and integrity to which the nation has in like manner trusted in the disposal of its judiciary authorities.

Now, sir, the reply to that here is, that public rumor says that the officers of the returning board have committed fraud. *Prima facie* officers do not commit fraud. *Prima facie* they stand here as Jefferson stood then; and until fraud is shown, certainly you have no right to assume fraud, and then to say under that assumption that you can command the production of the original papers, and will not be satisfied with secondary evidence, or the copies.

I do not cite Thomas Jefferson as authority. I only cite him to show that he held some very foolish antiquated notions. Now hear Andrew Jackson. Here is what he says:

> The heads of Departments may answer such requests as they please, provided they do not withhold their own time and that of the officers under their direction from public business to the injury thereof to that business. I shall direct them to devote themselves to their duties in preference to any illegal and unconstitutional call for information, no matter from what source it may come—

Even a congressional committee—

> no matter from what source it may come and however anxious they may be to meet it. For myself, I shall repel all such attempts as an invasion of the principles of justice as well as of the Constitution, and I shall esteem it my sacred duty to the people of the United States to resist them as I would the establishment of a Spanish inquisition.

How unfortunate for the Forty-fourth Congress it would have been if Andrew Jackson had been President of the United States instead of Ulysses S. Grant. I do not cite Andrew Jackson as authority, because there seems to be no authority on earth to-day except the authority of a committee of the House of Representatives, against which there is nothing sacred, who even to-day are committing the indecency of demanding from national committees their whole manner of conducting a national political campaign, their whole correspondence, all of their telegrams, their whole money collections, all the dispositions of the money I suppose. I am happy to say as a member of the national committee of the republican party that my advice was to the witness to put in everything that there was—books, letters, telegrams, everything—for I knew perfectly well that there was nothing there which would indicate fraud in Louisiana or Louisiana returning boards, or in Florida or in South Carolina. I knew, sir, that we believe, as we believe in our existence, that we had carried those three States honestly and fairly, and that they would be counted for Rutherford B. Hayes unless the democratic party of those States and the United States stole by fraud the votes of those States from us. [Ironical applause and hisses on the floor and in the galleries.] I hope the galleries will not help that side of the House in this debate.

Mr. GARFIELD. Or this.

Mr. LUTTRELL. I would like to ask the gentleman a question.

The SPEAKER *pro tempore*, (Mr. CLYMER in the chair.) Does the gentleman from Maine yield to the gentleman from California?

Mr. FRYE. Yes, sir.

Mr. LUTTRELL. I do not think the gentleman has a right to charge the democratic party with stealing when his committee robbed the poor widows and orphans in the Treasury Department to carry on the campaign. [Applause.]

The SPEAKER *pro tempore*. There must be order in the Hall.

Mr. LUTTRELL. He has no right to make that charge when they robbed in that way women working to support their families. When democrats control the Government, I trust they will never be parties to any such proceeding.

Mr. FRYE. The gentleman from California desired to ask me a question and I did not know when I gave him the liberty to ask a question that he wanted to insert here a little demagogical stump speech which would meet the approval of the galleries on the other side.

Mr. LUTTRELL What I stated is true. Do you deny it?

The SPEAKER *pro tempore*. The gentleman from California is not entitled to the floor.

Mr. LUTTRELL. The gentleman from Maine is on the committee, and he knows that an assessment was levied upon these poor widows and they were compelled to pay it or lose their places.

Mr. FRYE. There is a committee now made up of members of this House, intelligent members of this House, who are investigating that very subject and have summoned witnesses from the national republican committee to inform them whether they did steal money from these poor widows. Now, that committee will find out and answer that question.

Mr. LUTTRELL. The gentleman knows they did assess these poor widows, and they were compelled to pay it or lose their positions.

The SPEAKER *pro tempore*. The gentleman from Maine is entitled to the floor, and the gentleman from California has no right to interrupt him without his consent.

Mr. LUTTRELL. Well, sir, did not he bull-doze the Department clerks? [Laughter.]

Mr. FRYE. Now, Mr. Speaker, as this interruption has occurred, it compels me to say, and as I have been challenged to say it, compels me to say it, that we never did assess, demand, or ask for contributions from any such persons as the gentleman has described. On the contrary, we sent out a very polite request—— [Laughter and hisses upon the democratic side of the House and in the galleries.]

Hold on one moment before you laugh. We sent forth that polite request to gentlemen who had been commissioned by the President of the United States and confirmed by the Senate to help us run the campaign, and I believe, and I have not so much fear of civil service as to hesitate to say that I believe, that if there are any men who should contribute to run a campaign they are the men who hold pub-

lic office by the gift of the President and confirmed by the Senate of the United States. I do not believe in levying contributions upon any man, but in asking for them.

Mr. LUTTRELL. Was it not understood that everybody who refused to make those contributions politely requested should be removed from office? [Laughter.]

Mr. FRYE. It was not so understood, and I say further that there never was an office-holder asked twice to contribute.

Mr. LUTTRELL. No, sir; because he dare not refuse the first time. [Laughter.]

Mr. FRYE. There never was a suggestion made that any man should make contribution, or that any man should be punished for refusing to make contribution, and there never was any contribution levied upon the Department clerks whatever.

Mr. LUTTRELL. Mr. Speaker——

The SPEAKER *pro tempore*. The gentleman from Maine is entitled to the floor.

Mr. FRYE. Now, Mr. Speaker, I have been led so far away from the poor returning board of the unfortunate State of Louisiana that I will not attempt to retrace my steps, but will leave the further discussion of this question to abler men than I am, and men who have also examined the subject.

Mr. LYNDE. I yield now to the gentleman from New York, [Mr. COX.]

Mr. COX. Mr. Speaker, I do not design to answer what might be called rodomontade of the gentleman from Maine. He made no argument which in any way took from the force, tenor, and effect of this able report. He made no allusion which was not properly answered by the *badinage* of the gentleman from California [Mr. LUTTRELL] and by the ironical cheers of the gallery.

The point now before the House is simply this: Shall the authority of this House be disregarded by the returning board of Louisiana? There is no other question. We send out our committee. They have the right to send for persons and papers. They have the right to issue *subpœna duces tecum*. And if there be one thing which they should search carefully and faithfully, it should be with a *subpœna duces tecum* for the returns and reports made as to the Louisiana election. What else can they do but that? Name something that can be more relevant to this investigation than to bring forward these very original returns. Can the gentleman from Maine or any other member conceive of anything more thoroughly pertinent to the examination into a Federal election than an examination of the returns themselves? This was not a State election. This was an election involving the election of Federal officers who were to cast their votes for President and Vice-President of the Union. It involves the sanctions of rights and duties under the twelfth amendment of the Constitution. We are bound as Congressmen to see that these returns were fair and honest, and it comes with an ill grace from the gentleman from Maine, or from any gentleman on that side of the House, after their own committee from the Senate have gone down there and gone beneath the *prima facie* specifications, to say that you shall not have the originals of these papers.

Non constat that they are not forgeries; let us have them therefore to inspect. *Non constat* that they are not more or less mutilated; let us have them to inspect and find out if that be so.

For all that appears, for all that we know of this returning board, *a priori* we should infer that it was bad, bad all through, bad all over, the worst of all the boards we ever had in this country in connection with elections. A committee of this House heretofore have spoken of that board. Was the gentleman from Maine on that committee? And what did he say about it? Did he not say that he believed it was arbitrary, that it had acted illegally? Did he not believe that it was a bad board?

Mr FRYE. Will the gentleman allow me to answer?

Mr. COX. Certainly.

Mr. FRYE. I did not join in any report that said that that board was arbitrary; I joined in no report that said it was a bad board. The section of the committee with which I was associated declared—I may not use the exact words, but I give the substance—that in their opinion the members of that board were honest men, men who intended to deal honestly, and simply proceeded under a misapprehension of the law.

Mr. COX. That is it! [Laughter.] Has it come to this, that after that committee had indorsed that report which was read here, signed by GEORGE F. HOAR, chairman, with the word "adopted" written on it; when it was signed by two republicans and one democrat, if I remember aright—after all that, and when we ascertained by subsequent examination that there was something worse than mere misapprehension of law, when we found that this misapprehension of law was built on stubble, or worse, built on rottenness, then the gentleman from Maine comes forward and says to this House, that it was only "a misapprehension of law." Yes, there has been too much misapprehension of law on your side.

Mr. FRYE. Has there been any on yours?

Mr. COX. Certainly, very frequently, but not corrupt. But I am ready to show that by the report of your own committee, again and again adopted, according to a report made and signed by GEORGE F. HOAR, "the committee thereupon voted to adopt the report." The gentleman was one of the committee. What does the word "adopt" mean? Why, it means to swallow it whole. [Laughter.] What does that committee say? They say in their report:

> We are constrained to declare that the action of the returning board on the whole was arbitrary, unjust, and in our opinion illegal, and that this arbitrary, unjust, and illegal action alone prevented the return by the board of a majority of conservative members of the lower house.

Mr. FRYE. Will the gentleman allow me——

Mr. COX. I do not know how long my time is; that depends upon the gentleman from Wisconsin. [Mr. LYNDE.]

Mr. FRYE. The time of the gentleman was not limited. I suppose the gentleman does not want to misrepresent.

Mr. COX. Certainly not.

Mr. FRYE. Messrs. HOAR, WHEELER, and FRYE never agreed to and never adopted the language which the gentleman from New York has just read. That is contained in the report of Messrs. Phelps, FOSTER, and Potter, and as they were in the minority, Mr. HOAR'S name was put to it simply for the purpose of affording that minority an opportunity to bring that report before the House and have it printed. And this statement which I have just made has twice been made during the present session of this House.

Mr. COX. Now, I would like to know from republicans of this House whether Mr. CHARLES FOSTER is not a tolerable good republican? [Laughter.] And I would ask whether William Walter Phelps does not hold a fine position of standing in the republican party? Is he not your peer as a republican? Was he not the pet of a republican House? And of all the republicans of this House, who was looked to for advice and counsel, for beauty of face and elegance of deportment, if it was not CHARLES FOSTER, of Ohio? [Great laughter.] Yet the gentleman from Maine makes an attack upon this committee, a majority of them signing this subreport, and all of them voting to adopt it. Ah! methinks it comes rather late for the gentleman to now disavow what has been said so solemnly by the committee and what has been accepted by the country.

But my point was not so much to call in question at this time the returning board of the State of Louisiana. I rose at this time for the purpose of making this point: that *a priori* we might have inferred by reasonable probability and the antecedents that it was a bad board; that it needed overhauling; that the papers and returns and documents in the possession of that board should have personal inspection; that they should be made profert to your committee; that if necessary they should be brought here.

Sir, what depends upon this? Why, the inauguration of the President of forty-five millions of people. On it hang all our business interests, now suspended and paralyzed. On it hang our thirty billions of value. On it hang, I was about to say, peace and war. On it hang all the issues that belong to true honest government.

What can be more important than the ballot? It is the basis of all, the foundation of all liberty. Lord Holt (Ashby *vs.* White) two hundred years ago, I think—though in that I may be mistaken—in a leading case, in giving the right to sue for a ballot illegally rejected, said that it was the most transcendent right of man; that on it law was based, and personal liberty, life, and property depended upon it. Yet when all these great interests are involved, when with all their magnitude they confront us, we are told by the gentleman from Maine, [Mr. FRYE,] O, you cannot see the returns of this pious, good returning board of Louisiana.

[Here the hammer fell.]

The SPEAKER *pro tempore*. The time of the gentleman from New York [Mr COX] has expired.

Mr. LYNDE. I now yield to the gentleman from Iowa [Mr. KASSON] for ten minutes.

Mr. KASSON. Mr. Speaker, I should have been glad if the proposition to let this debate stand over until to-morrow morning had been accepted. The question presented is so exceedingly grave in point of constitutional law that I feel it is a burden upon any gentleman of the House, not a member of the committee, to be required to confront it upon this short notice and upon the first hearing of the able report of the honorable gentleman from Wisconsin.

It has been my uniform desire, Mr. Speaker, while preserving the privileges of the House on these questions of contempt, to see that we did not complicate the precedents affecting personal liberty in such a way as to embarrass future Congresses. The question has presented itself to me in that light more particularly because of having served with varying majorities on this floor; and I need not say to gentlemen who have before served with me that we are, all of us, when acting with the majority, disposed to go by the leadership of the party organs, even against the rights of personal liberty.

In this particular case it is proposed not merely to arrest a private citizen of the United States, and to bring him a prisoner to the bar of the House, but the resolution proposes to take a portion of the officers of the State government of Louisiana and bring them as prisoners to our bar to answer for contempt. Hence, when the resolution was offered, I asked leave of the honorable gentleman from Virginia [Mr. HUNTON] to submit an amendment that the committee inquire into the question of the limitation, if any exists, upon the power of this House to arrest the persons and secure the papers of officers of State governments in this Union.

I forget Louisiana; I forget Florida; I think of New York; I think of Iowa; and I ask myself, can a committee of this House summon

the governor of my State to come before them, leaving his official functions, to bring the papers of his office and deliver them to a House committee? Has that committee the right, being in possession, to bring them from the capital of Iowa to the capital of the nation at Washington? Has it the right to bring the governor of my State upon this floor and degrade him—a high officer of a State of this Union—by asking him to stand at the bar and answer for contempt, because he did not humbly present himself in person, and produce the records of his State before a committee of this House?

That is the question I ask of gentlemen on both sides of this House. If you can take one State officer, you can take another State officer. If you can take one State paper, you can take another State paper. You may plunder the archives of my State or the adjoining State of Missouri, and bring them here to Washington to abide the action of this House upon them as a part of the report of your committee.

I deny in the face of this honorable body, and of the American people, the right of a committee of this House, or of the House itself, or of both Houses of Congress, by resolution, or by law, with the President's sanction, to invade the executive office of my State where the official papers of that State are deposited by State law, and bring them away from the State capitol or from the custody of the officers to whom they are intrusted by State law. I challenge gentlemen to meet that proposition. It is not a question of discovering fraud in an election. It is a question whether there are any constitutional rights left in the officers or the government of a State of this Union.

It is true, sir, that the Constitution says the electors of President and Vice-President shall be appointed by the State "in such manner as the Legislature thereof may direct." It is true that under this authority a State may choose electors by popular vote, or by legislative appointment, by ballot, by resolution, by the action of the supreme court, by a returning board, by any tribunal that the State designates, with or without the popular vote, as the State Legislature may determine. But that question belongs to another branch of the duties of a committee of this House and to another committee. The question now is as to our right to take possession of the papers of a State, required in obedience to State law, deposited for the use of a State and needed in adjusting State contests, held in the custody of State officers, and to take the officers themselves, who have those papers, and bring them here to stand before the Speaker of this House, abandoning their State functions to do so, and seized away from their State jurisdiction.

Mr. Speaker, if you assert that right, you may vacate the government of any State of this Union. If you may thus bring here these State officers, you may order Governor Packard, you may order the lieutenant-governor, you may order the members of the Legislature, to attend here as witnesses. In the same way the Senate may order the officers of the Nicholl's government. You may vacate the whole State government, including the judiciary, and bring all the officers here to stand before the bar of this House to answer for contempt.

The question is more serious, I submit, than it is represented even by the labored report of my honorable friend from Wisconsin. I dare not meet the proposition now except to oppose it; for it nullifies all the protection given to the State governments by the Constitution, not only in respect to the electors, but in respect to the supremacy over their local affairs and their local tribunals. This House cannot bring the officers and records of a State government outside of their jurisdiction by its own order. It is not sovereign to that extent. It has not the power even with the co-operation of the Senate to do it; it has not the power to do it even with the co-operation of the President; because between us and those State officers stands the Constitution, under the shield of which they hold their rights, and no power here can take those rights from them without their consent.

Mr. Speaker, I submit this view of the question for the purpose of having it fairly met. God forbid that on this or any other question arguments should be addressed on this floor to the unsworn galleries of this House. We are sworn to maintain the Constitution; we are sworn to do our duty as we see it. It is a question of constitutional right, not a question of the mere will of either a majority or of the whole of the House of Representatives.

[Here the hammer fell.]

Mr. LYNDE. I now yield twenty minutes to the gentleman from Mississippi, [Mr. HOOKER.]

Mr. HOOKER. Mr. Speaker, I shall not follow in the very few remarks which I have to submit to the House on this subject the line of debate, or the course of debate, which has been indicated so far as I have heard from the gentlemen on the other side, and more especially shall I not follow in the course indicated by the gentleman from Maine [Mr. FRYE] who has addressed the House on this question and who seeks to evade and avoid the plain, simple, principle embraced in the admirable report submitted by the gentleman from Wisconsin [Mr. LYNDE] from the Judiciary Committee by turning the attention of this body from the grave questions of violations of the privileges of the House by the refusal, by the contemptuous refusal of these witnesses to appear before the committee and bring the records of the returns of the votes in Louisiana before them. I say, sir, I shall not follow the attempt to avoid and evade the plain and simple question submitted by this report by referring to what has been the course of the people of Louisiana, or by stating with the emphasis which the gentleman from Maine did that he believed that for a series of years the great body of the people of the State of Louisiana had determined to deny the right of suffrage to certain classes of our people who are entitled to it under the Constitution of the United States. His belief may be ever so fixed and positive upon that question, but I imagine that no diatribe of his against the people of the sovereign State of Louisiana will affect the sense of the House in determining the simple, legal proposition which is embraced in the report of the committee. It stands before the country by investigation which has been repeatedly made, proving, sir, that there has been here and there violence, probably, in the State of Louisiana; but should I be justified in turning to the papers of to-day if I saw an act of violence committed in the State of Maine and hold the whole body of that people responsible because some one man has violated the law, outraged decency, and perpetrated crime? And yet, sir, I would be as justified to hurl against the State of Maine or New York accusations similar to those which fell from the lips of the gentleman from Maine against the people of Louisiana; I would be as fully justified as he is in taking isolated instances to refer to the State of Louisiana.

The committee have been very careful, sir, to let the House understand, in the able reports which they have made, what they desire of this returning board and the men who compose it, and on the second page of that report they recite from the terms of the *subpœna duces tecum* the purpose and object which our committee at New Orleans had in asking this board should come before them and produce their papers. They say these men should come before them and bring with them—what, sir? All returns of elections, all consolidated statements of supervisors of elections, all statements of votes and tally-sheets for each polling-place at the late election for President and Vice-President of the United States, together with the affidavits, depositions, protests, and other written proofs in their possession or under their control touching the State election in certain parishes, naming them. This was what the subpœna called for; and, sir, what is there that surrounds this returning board of New Orleans with a sanctity which shall prevent it from giving to a committee of this House the evidence of what has been the actual honest vote of the people of Louisiana in this presidential election? Why, sir, under the laws of my own State, and, I understand from gentlemen who are more familiar than I am, under the laws of Louisiana, any man who believes he has been deprived of an office has a right to contest for that office. Indeed so simple is the remedy in many of the States that the contest is made before the humble courts of justices of the peace, and there the question of the right to county office is determined in many of the States.

Suppose, sir, this returning board had returned that certain gentlemen (naming them) were elected State officers of the State of Louisiana, and there had a contest grown up under the laws of Louisiana as to whether those parties were actually entitled by the actual vote of that State to their offices; would it be said that the humblest court in Louisiana possessed not the power by authority of its subpœna to require this returning board with its papers, its votes, its depositions, its affidavits, and protests, to come into that court, however humble, in order that the court might intelligently decide who in deed and truth had received the vote of the State of Louisiana for the office of secretary of state or any other minor office? And, Mr. Speaker, if this power could exist in an ordinary court in which there was a contest between A and B as to who was entitled to official position, shall it be said that the grand inquest of the country investigating the question as to how the vote of Louisiana has been cast in an election which affects not only Louisiana but which affects every State in this broad confederacy from Maine to California, and from ocean to ocean—shall it be said when we have sent a committee for investigating how and in what manner and for what class of electors Louisiana has voted, and the people of Louisiana have voted—that it shall be said you are closed from investigating this question; the sole fountain source of information which can shed the daylight of truth upon this vexed question shall be closed to your committee, because the returning board is invested with sanctity; that the papers which it receives from the various returns of the various parishes of the State are so sacred that the committee sent to investigate this very question shall not have the privilege to inspect them? Sir, if they were subject to be produced in a court of justice in an ordinary contest between two officers, shall it be said now that they shall be surrounded with such sanctity that a committee of this House, sent to investigate that very question of how the vote of Louisiana was cast, shall be debarred the privilege and the power of inspecting these records?

[Here the hammer fell.]

Mr. HOOKER. I should like to have my time extended for one moment.

Mr. LYNDE. I yield the gentleman ten minutes further.

Mr. HOOKER. I do not desire so much time as that, but will close in a very few moments what I desire to say.

Under the ordinary powers of the House of Representatives in appointing committees, which have been exercised from time immemorial in our own country and which were also exercised by the House of Commons in former times, compelling the production of persons and papers before a committee, the rule of law upon the subject is that they have a right to the production of any papers which are pertinent to the subject-matter of inquiry. Sir, what papers could your committee find in the State of Louisiana that were so pertinent to the particular subject they were sent there to investigate and inquire of

and ascertain the truth about—what papers could throw such a flood of light upon that, as the papers of this returning board; some of which, as was proven by evidence taken before the committee there, had an extraordinary facility of having their seals opened, there being absolutely found within those returns affidavits dated days after the returns themselves had been sent to the returning board?

What is the function of this returning board? It is to truthfully declare by the returns from the precincts, by the returns from the supervisors of elections as appointed by them all over the State, what, in truth and in fact, has been the vote of the people. And shall it be said, sir, that this returning board possesses the power, setting in secret in its adjudications, to cast out the votes from this parish or that parish or the other, at its own pleasure, or to alter and change this or that; and that there is no power to investigate the question whether they have acted legally in this matter; that their arbitrary actions in rejecting votes from one parish and receiving them from another are not the subject of inquiry? Should they say "this is the return from a certain supervisor in a certain parish," when in truth and in fact no such return had been made? Is their false finding of this return absolutely incontrovertible and not to be the subject of inquiry? I submit not, sir, by any rule binding this House as the highest quasi-judicature of the land in investigating a question particularly pertinent, not to the State of Louisiana—of whose rights and interests and State sovereignty the gentlemen upon the other side at a late day are becoming the defenders and advocates—but a question which, as I before remarked, involves the question of who shall hold the highest offices within the gift of the people, and which therefore goes out of the limits of the State of Louisiana and reaches every city, every town, every hamlet, every interest of this great country, now paralyzed by the terrible suspense which exists because we are not able to know and to find out what is the right in reference to this case.

The rule of law upon the subject, Mr. Speaker, with reference to the powers of the committee in the production of persons and papers, is laid down by Mr. Cushing in his work on Parliamentary Law, in section 634, as follows:

> It has always, at least practically, been considered to be the right of legislative assemblies to call upon and examine all persons within their jurisdiction, as witnesses, in regard to subjects in reference to which they have power to act, and into which they have already instituted or are about to institute an investigation. Hence they are authorized to summon and compel the attendance of all persons, within the limits of their constituency, as witnesses, and to bring with them papers and records, in the same manner, as is practiced by courts of law. When an assembly proceeds by means of a committee in the investigation of any subject the committee may be, and usually is, authorized by the assembly to send for persons, papers, and records.

And in section 936 the rule is further provided, which I shall send to the Clerk's desk to be read; and with these remarks I conclude what I have to say.

The Clerk read as follows:

> The order for the attendance of witnesses, or for the issuing of a Speaker's warrant to summon them, may also require the production of books, papers, and records. In the former case, the order ought to be as specific and to describe the books, papers, or records to be produced, with as much certainty as the nature of the case will admit of; in the latter, the order may be in as general terms, as, for example, for such books or writings as shall be desired, as the order for issuing the warrant; but the warrant itself should be as specific and as certain as above mentioned. It does not appear to be necessary, however, that the name of the particular witness who is required to produce a paper or other document should be mentioned in the order or warrant, provided he be otherwise designated or may be ascertained with sufficient certainty. Thus the order may direct that the proper person or officer shall attend with the books, papers, or records desired, as, for example, a proper person from a banking house named, with their banking-books for a particular month; or the proper officer with a specified paper from one of the public offices; or a particular paper may be ordered to be laid before the House without specifying by whom it is to be done.

Mr. LYNDE. I yield thirty minutes to the gentleman from Ohio, [Mr. GARFIELD.]

Mr. GARFIELD. The strength of the case presented by the committee is found in these words of the report from which I will read. After quoting the article of the Constitution in relation to the power of the States to appoint electors of President and Vice-President, the committee say:

> This clause secures to the United States the right to require that the persons claiming to act as electors for any State shall have been appointed in such manner as the Legislature of the State shall have directed. The power to ascertain that fact is and must be in Congress, and if legislation is necessary to carry out this provision of the Constitution, Congress alone has the power to legislate upon this subject, and therefore the power to make the inquiries necessary as the basis of legislation.

I take it that there can be no stronger point made in favor of the power of the House to pass the proposed resolution than the one I have just read. I acknowledge its strength in so far as it is sustained by the Constitution.

I will read the only two clauses from which it is claimed that Congress derives any power whatever to inquire into the action of the States in appointing electors of the President and Vice-President. The second clause of the first section of article 2 provides as follows:

> Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

And the third clause of the same section provides—

> The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

These two clauses contain all the powers conferred upon the States in appointing electors, and contain also all the limitations upon these powers. There are five expressed or implied limitations upon the power of the States, and only five. The limitations are either absolute in the Constitution itself or such as authorize Congress to fix limitations. And if Congress has any authority whatever to interfere with the action of the States in the appointment of electors, that authority must be found in some one or more of the five limitations.

Now what are these five limitations?

First. It must be a State that elects the elector; and, as Congress alone has the authority to admit new States into the Union, if there should be any political organization not a State that shall cast a vote for presidential electors, and if such pretended electors send a certificate of their vote, for President and Vice-President, the Congress would undoubtedly have the right to inquire into the right of such political organization to participate in the election. That is the first limitation.

Second. No State can have more electors than the number of Senators and Representatives to which that State is entitled in Congress at the time of the presidential election. If any State presumes to elect more, no doubt that can be inquired into. The surplus votes cannot be counted. That is the second limitation.

Third. The Constitution provides that no person shall be appointed an elector for President and Vice-President who is either a Senator or Representative in Congress or holds any office of trust or profit under the United States. Without doubt, a violation of this provision may be inquired into; for it is distinctly declared as a limitation of the authority of the State. That is the third limitation.

Fourth. Congress is empowered by the Constitution to fix the day when the States shall vote for electors; and as Congress has fixed a day, the Tuesday after the first Monday in November, the State has no right to vote for electors on any other day, except that, in case a State, having held an election on that day, has failed to make a choice, its Legislature may provide for holding an election on a subsequent day, in accordance with the act of Congress approved January 23, 1845. There is the fourth limitation. Doubtless the inquiry may be made whether the election was held on the day fixed by law.

Fifth. The Constitution provides that Congress may determine the day on which the electors in all the States shall give their votes for President and Vice-President. By the act of March 1, 1792, that fixed day is the first Wednesday of December, within thirty-four days of the date of the general election. From this it follows that all the steps which are necessary to complete the appointment of the electors must have been taken by the first Wednesday in December, when the electors are to vote for President and Vice-President. For the purposes of this debate I do not follow the process of electing a President beyond the appointment of the electors.

To sum up these limitations in brief: Congress, in obedience to the Constitution, fixes the day for choosing the electors and the day when they must vote. The Constitution prescribes that *States* only shall choose electors. It prescribes the number of electors for each State and limits their qualifications. These are the limitations upon the authority of the States in the appointment of electors of the President, and I defy any man to find any other limitation whatever upon their power. Every other act and fact relating to the appointment of electors is placed as absolutely and exclusively in the power of the States as it is within their power to elect their governors or their justices of the peace. Across the line of these limitations Congress has no more right to interfere with the States than it has to interfere with the election of officers in England. To speak more accurately, I should say that the power is placed in the Legislature of the State, for if the constitution of any State were silent upon the subject its Legislature is none the less armed with plenary authority conferred upon it directly by the national Constitution.

Now apply these considerations to the recent appointment of electors by Louisiana.

It is not denied that Louisiana is recognized by every department of the National Government as one of the States within the Union. It is not denied that on the day fixed by law an election for electors of President and Vice-President was held in that State. It is not denied that within the time prescribed by the national statute the officers empowered by the Legislature of Louisiana to canvass, compile, and make return of the votes at all elections held in that State, did declare that six persons, the number required by the Constitution, had received a majority of the votes for electors at said election and were duly elected. And it is not alleged that any of the persons so chosen were ineligible to such appointment under the Constitution. It is not denied that the electors so appointed met on the day fixed by law and cast their votes for President and Vice-President.

If any of these facts is denied, I have not heard of it. But the validity of the appointment of these electors is vehemently and passionately assailed. It is not a little remarkable that though their appointment was proclaimed on the 6th of December last, no statement has yet been made, so far as I am aware, of the authority on which Congress or either House of Congress claims the right to challenge the validity of the appointment. The intimation that somebody may forbid the counting of the votes which these electors cast for President and Vice-President is a topic quite apart from the validity of their appointment. It is incumbent upon those who question its validity to show their authority for so doing. They cannot find it in

the Constitution or laws of the United States, unless their objection be based upon one or more of the five grounds I have mentioned.

If this House bases its right to inquire into the election in Louisiana upon any of these limitations, their inquiry might have some ground of authority; but if we presume to inquire as to any other point, we are absolutely violating the Constitution of the United States. The manner of appointment within these five limitations is absolutely and exclusively in the control of the State Legislature. The words of the Constitution declare it. The laws of Congress acknowledge it, and the ablest and earliest expounders of the Constitution confirm it. Listen to the words of Pinckney, one of the foremost members of the convention that framed the Constitution, and long a conspicuous member of the Senate. Seventy-seven years ago, while discussing the very clauses of the Constitution we are now considering, he said:

> Knowing that it was the intention of the Constitution to make the President completely independent of the Federal Legislature, I well remember it was the object, as it is at present, not only the spirit but the letter of that instrument, to give to Congress no interference in or control over the election of a President. * * *
>
> This right of determining on the manner in which the electors shall vote, the inquiry into the qualifications, and the guards that are necessary to prevent disqualified or improper men voting, and to insure the votes being legally given, rests and is exclusively vested in State Legislatures. If it is necessary to have guards against improper elections of electors and to institute tribunals to inquire into their qualifications, with the State Legislatures, and with them alone, rests the power to institute them, and they must exercise it.

Here is a plain and authoritative declaration that Congress has no authority whatever to inquire into the votes of a State for electors of the President; not even to provide against fraudulent and improper elections. This speech of Pinckney was made upon a bill then pending in the Congress of 1800, to prescribe a mode of deciding disputed elections of President and Vice-President. The bill, which in different forms passed both Houses, (but unfortunately failed to become a law,) contained, in all the various forms it assumed, one proviso which is most significant. I will read it, as found in the eighth section.

> *Provided always*, That no petition or exception shall be granted, allowed, or considered by the sitting grand committee which has for its object to dispute or draw into question the number of votes given for an elector in any of the States or the fact whether an elector was chosen by a majority of votes in his State or district.

From this it appears that the great statesmen, who lived in the early days of the Republic and acted under the fresh and immediate inspirations of the Constitution, disclaimed any authority on the part of Congress even to listen to a petition which had for its object to dispute or draw into question the votes of a State for electors. What more weighty or conclusive authority can be conceived against the position assumed by our Judiciary Committee to-day?

Now let us follow this line of thought a little further. It is none of our business how a State exercises this power to appoint electors so long as it keeps within the five limitations I have named. The Legislature of a State may itself choose the electors, as was frequently done in the early days of our history. A State may authorize its governor or its court to appoint the electors; it might allow a sheriff to appoint them. In 1796 the State of Vermont had no word in her constitution or her laws to regulate the appointment of electors. And no election of electors was held by the people. But when the day for the appointment of the electors came, the Legislature of Vermont, without any State law, without any constitutional provision on the subject, elected the electors. And their election was valid, and the votes they cast were counted without question. Why? Because that Legislature drew its authority directly from the Constitution of the United States, and its action was final and conclusive.

Mr. Speaker, I have never believed in the democratic theory of State sovereignty. I do not believe in it to-day. But if there be one power more sovereign than another, if there be differences between supreme acts, then I would say that the supremest act that a State can perform is the act of casting its vote for the President of the United States. And if that be done within the five limitations I have named, there is not a prince, a potentate, a power, a Legislature, a Congress, much less a committee of Congress, that can forbid or question such act. The pending resolution is based upon an assumption of power to break over the limitations I have named, to penetrate the very heart of State independence by arresting its own officers, seizing its own archives, and inquiring what votes were cast and whether they were honestly cast.

Now, I admit that an impure ballot-box is a fearful evil. A fraudulent election and a false count are sins that cry to Heaven. But anarchy is a greater evil, for it includes all others. And a violation of the fundamental law is the open door by which anarchy enters. And I warn this House that they are about to open a new and wide door and beckon the fiend to enter, if they pass this resolution. I wish to remind the House that never yet since we have had a Government has any Congress passed a law, or even proposed a law that should go behind the declared majority of the votes of a State for electors, to inquire how that majority was obtained. Such an inquiry as that never has been attempted; but not because there were no frauds. What careful student of American history does not know that in the year 1844 Henry Clay was robbed of the electoral vote of this same State of Louisiana, and by the most shameless, outrageous, and proved fraud and violence it was delivered over to James K. Polk? I refer, of course, to the Plaquemines fraud.

To show that I do not speak at random, I refer gentlemen to Senate Document No. 173 of the Twenty-eighth Congress, where the Committee on the Judiciary of our Senate embodied in their report, made however upon another subject, a long and exhaustive report of the Legislature of Louisiana, with all the testimony, in which it appeared that under the leadership of John Slidell a steamboat load of men, who had voted in New Orleans on the 4th day of November, went to Plaquemines, by violence and intimidation drove whig voters from the polls, and in shameless violation of the law and in collusion with the election officers of that place, voted by the hundreds, and many of them voted many times. They put into that ballot-box more votes than there were white male inhabitants within the precinct. They put into that box three times as many votes as were put into it at the presidential election four years before, and twice as many as were put into it four years afterward, when General Taylor, the pride of Louisiana, was the candidate for President. The judges of the election "counted all these ballots actually cast," as some gentlemen desire Louisiana to do now. And the contents of that box alone changed the result in Louisiana and gave its electoral vote to James K. Polk.

But there was not a statesman in this House or in the Senate of that day who claimed any right on the part of Congress to go behind the declared majority of that State, and to unearth and rectify even that outrageous and open fraud. The vote of Louisiana was counted in this Capitol for James K. Polk. Sad and disgraceful as that proceeding was, the vote was so counted, because there was no authority here to question it. Even on the five grounds I have mentioned, Congress has always been reluctant to question the action of a State. In a few instances the question has been raised whether a political organization which had thrown an electoral vote was really a State within the Union, but generally the benefit of the doubt has been given in favor of the right to be counted.

In many cases electors have been appointed who were disqualified by the Constitution; but no vote of an elector has ever been rejected on that ground. In one instance, the electors of a State did not cast their votes for President on the day fixed by law; but their votes were nevertheless counted.

In no instance hitherto has a Congress even proposed to inquire into the election by which the electors were appointed.

It seems to be reserved for this House, with its large majority of professed believers in State sovereignty, to go a thousand bow-shots beyond any of its predecessors and assume the power to revise the elections in any State it pleases.

Now I will go a step further and affirm, although I regret the fact, that under the national Constitution and laws Congress has no authority to contest an election of electors for President, except upon the five grounds I have named; and if it had the authority, the Constitution and laws have made it physically impossible to inaugurate and adjudicate such a contest.

Follow me for a moment, and I believe members of the House will agree with me. Our fathers intended that the election of a President should be a certain and summary proceeding. They required the vote to be taken everywhere on the same day. Then they required that within thirty-four days after the vote was cast the electors themselves should meet and vote for President and Vice-President. Why did they limit it to thirty-four days? If you will read the proceedings of the convention that framed the Constitution of the United States and of the early Congresses you will find that our fathers determined to make the time just as short as it was possible to get in the returns in the different States. And the fact is, that in many of our large States, even with our increased facilities for communication, thirty-four days is so short a time that the official returns are not complete until the very night before the presidential electors must meet. Therefore there is no time, it is physically impossible, to institute and conclude a contest after the appointment of electors and before the day when they must meet and cast their votes. I do not know of a single State in the Union that has provided for such a contest. The action of their returning boards in announcing the majority of votes has always been final. Nor is a contest possible after the electoral college has voted. The electors meet on the first Wednesday of December and ballot for President and Vice-President, and at once sign and seal up the certificate of their votes and deliver the packages to the President of the Senate. For two months and a half no human being has any right to break the seals. During that time no contest can be instituted upon their vote, because the only official evidence of their action is locked under the silence of their seals by the imperial command of the Constitution itself.

If a contest in regard to the appointment of electors cannot be made between the day of the election and the meeting of the electoral college, nor between the day of the meeting of the college and the opening of the certificates, can it be done after the seals are broken? Manifestly not; for two unanswerable reasons. Here also the language of the Constitution and laws of the United States is imperial and peremptory. The law requires that on one day of all the days of the year both Houses of Congress *shall* be in session. That day is the second Wednesday of February. And the law does not require them to be in session on any other day of February. One day they are to be in session to witness the opening of the certificates. Then comes the imperial command of the Constitution—

> The President of the Senate shall * * * open all the certificates and the votes shall then be counted.

"*Then*," "THEN!" Here is no time for a contest in regard to the appointment of electors? If the certificates disclose the fact that there has been no choice, the House shall *immediately* choose the President. In less than three weeks from the day the seals are broken the Congress ceases to exist. The whole proceeding was intended to be brief, summary, decisive. Read the record from beginning to end, and there will be found no time for a contest, and no authority for one if there were time. Review the long line of illustrious statesmen, and find, if you can, even one who before the present year ever claimed that Congress had the power to go beyond these five limitations I have named and question the presidential vote of a State. If we may question the vote in one State, we may question it in all. If we may examine one returning board, we may examine all the officers of elections in all the States. We may open every ballot-box and revise and count the votes of seven million voters. Such a view of the Constitution defeats its own provisions and renders the election of a President by the States absolutely impossible; because it would always lie in the power of one House or the other, by the brute force of numbers, or the power of party spirit, to object and examine and inquire until the arrival of the day when Congress would expire by limitation.

Mr. Speaker, we are dealing with mighty issues. Gentlemen are proposing to seize, and bring to the bar of this House as prisoners, four officers of a State, who are not charged with having violated any clause of our Constitution; who are not charged with having violated any law of the United States; who are not charged with having failed in any point of their duty as defined in our Constitution or laws. But the House proposes to go beyond all this—to invade the clear, unquestioned rights of a State; to drag its officers fourteen hundred miles away from their capital, and bring with them a portion of the public archives of their State, and surrender them to us. These officers have tendered to our committee the free use of their archives to be copied; but they stand on their rights as the lawful custodians of these records of their State; and for that you propose to punish them. If the House can make this demand, we can bring to our bar every officer of every State of the Union; and we can make them bring all the archives of all the States. We can thus cause the State to die by inanition, by holding all its officers prisoners at your bar, and turning over all its archives to the committees of the House.

Now, Mr. Speaker, if the defense I am making be the defense of State rights, then I am for State rights within those limits; I believe I have always been to that extent at least a champion of the rights of the States.

How we swing like a pendulum! Seventeen years ago, in the name of State sovereignty, it was proposed by a great party in this Hall to break the Union in pieces. Seventeen years ago, in the name of State sovereignty, it was declared that a certain portion of our people would never submit to an election that declared Abraham Lincoln President, and now, in defiance of all State rights, it is proposed that these great communities, these thirty-eight sisters that you call sovereign, though I do not, shall be chained to the wheels of this congressional chariot and dragged in fetters to the national Capitol as vassals of the imperial will of—what? A party in the House of Representatives, [applause in the galleries,] not the nation, not the Congress, not the House, but a partisan majority of the House, bent upon the accomplishment of a party purpose.

Now, gentlemen, in the name of our common country, as you revere the glories of its great past, and would preserve all that is worthiest in the possibilities of its great future, I beg you to pause before you commit this fatal assault upon whatever there may be of sovereignty in the thirty-eight States of the Union.

[Here the hammer fell.]

Mr. DAVIS. Before the gentleman from Ohio takes his seat, may I be allowed to ask him a question?

Mr. GARFIELD. I have no objection.

Mr. DAVIS. The gentleman says that within the five limitations which he has named no power whatever can interfere with the States. I desire to ask him why it is that committees have gone to Louisiana, and especially why it is that partisans sent down by President Grant went there? [Laughter and applause.]

Mr. GARFIELD. Now, Mr. Speaker, if the galleries will give their sovereign leave, I will answer. The gentlemen who went down to Louisiana at the request of the governor of Louisiana, made through the President of the United States, went there only as invited witnesses; and on our arrival we were asked by a democratic committee to join them in helping to secure the count of all the votes "actually cast." We answered that we were not there to secure anything, but least of all were we there to direct or influence anybody in Louisiana to violate the laws of the State by counting ballots which the law declared were not votes; that the execution of the laws was the business of the officers of that State, and not ours. Is the gentleman answered?

Mr. DAVIS. Will the gentleman yield to me for a moment?

Mr. GARFIELD. Certainly.

Mr. DAVIS. Why was it——

The SPEAKER *pro tempore*. This is proceeding by unanimous consent.

Mr. DAVIS. They went down there—by what authority did they go there? By what authority did the President invite them there?

Mr. GARFIELD. When the gentleman learns by what authority an American citizen travels anywhere in the United States he pleases he will know the authority by which I went to Louisiana. [Laughter.]

Mr. DAVIS. Why was it four years ago your party threw out the votes of several southern States? [Laughter and applause on the floor and in the galleries.]

Mr. HOAR. I rise to a question of privilege.

The SPEAKER. The gentleman from Massachusetts will state his question of privilege.

Mr. HOAR. It is only within a few months that the practice of interrupting the proceedings of this House by applause, either on the floor or in the galleries, has grown up.

Mr. MILLS. The gentleman is mistaken.

Mr. HOAR. Now, without regard to the question upon which that applause is manifested, I beg leave to call upon the Speaker of the House, before any matters which may excite the applause of members of the House shall present themselves, to enforce rigidly the rule, and to have it understood that any member who unites in such applause is guilty of disorder, and that the galleries will be cleared if it is attempted there. I suggest this to both sides of the House.

The SPEAKER. The suggestion of the gentleman from Massachusetts is very proper. The Chair, however, thinks that the practice has not grown up as he alleges within a few months, but that the practice is an evil which previous Speakers have found it necessary to check and which the present occupant of the chair uniformly, since he has occupied the chair, has checked, and with great respect to the gentleman from Massachusetts and the House he will say that he will continue to check hereafter as he has done in the past.

Mr. MILLS. That was more than was done in the Forty-third Congress, and more than any Speaker offered to do in the Forty-third Congress when these interruptions were continuous.

Mr. BURCHARD, of Illinois. But is it more than any Speaker should do to check it?

Mr. HUBBELL. I ask for the reading of Rule 9.

Mr. HOAR. I will withdraw absolutely the remark that this practice has grown up in the past few months, as we all seem to agree in the desirableness that all manifestations of applause in the galleries should in future be prevented.

Mr. MILLS. The galleries have only changed their opinions in the last two years.

Mr. COX. You ought to have made the point when the applause was on that side of the House.

Mr. HUBBELL. I ask, Mr. Speaker, for the reading of Rule 9.

The Clerk read as follows:

In case of any disturbance or disorderly conduct in the galleries or lobby, the Speaker (or chairman of the Committee of the Whole House) shall have power to order the same to be cleared.—*March* 14, 1794.

The SPEAKER. The Chair is quite aware of the rule. He is also aware of the fact that the applause to-day commenced on that side of the House.

Mr. HOAR. If that is true, it is quite right then that the reproof should come from this side of the House also.

The SPEAKER. The best way is the harmonious way.

Mr. COX. The gentleman ought to have made the point of order when the applause was on his side.

Mr. BROWN, of Kentucky. Mr. Speaker, I believe the suggestion of the gentleman from Massachusetts to be altogether proper. I think it one which should be sustained in earnest by both sides of this House. We have had examples in other times and in other countries of the vicious practice of applause of what was said in legislative bodies. It is pernicious. I think it should be summarily stopped; and I hope the members of this House on either side who respect themselves and the dignity of this presence will join together with not a dissenting voice in having the galleries summarily cleared, if this occurrence shall happen again during this session of Congress.

The SPEAKER. The Chair desires to say in justice to the galleries that sometimes this thing of applause occurs by reason of having the example first set on the floor. [Laughter.] The Chair will hereafter, however, rigidly prevent applause as far as he is physically able, whether upon the floor or in the galleries.

Mr. LAMAR. I have only a word, sir, to say about this matter which has been brought up by the gentleman from Massachusetts, [Mr. HOAR.] I agree with him entirely as to the desirability of order in our proceedings; and I agree with the gentleman from Kentucky [Mr. BROWN] also as to the impropriety of any manifestation of excitement in the galleries or on the part of persons who do not participate in our deliberations. But, Mr. Speaker, I submit, respectfully, there is danger of going too far in this direction. The right of the members of a parliamentary body to manifest their approbation and disapprobation upon the floor in the House by applause or by murmurs of dissent is coeval with the history of Anglican and American institutions. But I think, sir, that while it is proper that order should be observed there may be a pressing of this matter of suppressing and repressing manifestations of concurrence and dissent a little too far.

The SPEAKER. The Chair desires to say that under Rule 2 he is authorized to preserve order and decorum.

Mr. HOAR. I ask leave of the Chair to say one word.

The SPEAKER. The gentleman from Massachusetts is recognized by the Chair.

Mr. HOAR. I agree with the gentleman from Mississippi that the precedents of the English House of Commons are in favor of the practice to which he alludes. Debate is suppressed by coughing, cat-calls, hisses, groanings, and other methods of expressing dislike; and, on the other hand, debate is encouraged by applause in that body. But I believe the uniform American opinion, or nearly so—I ought not to say entirely so—is that it is a disorderly and disgraceful practice which prevails in the English House of Commons, a body in other respects so dignified and so careful of propriety; and it is a practice which our ancestors who founded our Government and their successors down to the present time have practically abandoned. It would not be endured by the gentleman from Mississippi or by any other gentleman on this floor, that he should be interrupted in expressing his opinion to this House in the mode to which members of the British House of Commons are compelled to submit.

Mr. LAMAR. I will just say that I was not referring to their modes of manifestation. Different assemblies have different modes of manifesting their approbation and their dissent. The French Parliament has its mode; the German its; and the Americans manifest their approval by applause and their dissent by indications perhaps more decorous than the practices to which the gentleman from Massachusetts has alluded, but none the less significant and emphatic.

Mr. LYNDE. I hope this will not be taken out of my time.

The SPEAKER. The Chair will not count it against the time of the gentleman from Wisconsin or as against the time allowed for the debate.

Mr. LYNDE. I yield fifteen minutes to the gentleman from New York, [Mr. WOOD.]

Mr. WOOD, of New York. I regret very much that the gentleman from Ohio [Mr. GARFIELD] in closing his remarks upon this resolution should have spoiled what was certainly a very ingenious argument from his stand-point by a mere partisan allusion, in my judgment entirely unnecessary to a proper discussion of this question. I want, sir, in a question of this magnitude, novel in this House and in the halls of legislation in this country, entirely original in its results and character—I want in the discussion of this question no partisan influences or reflections. If possible, sir, I want it determined upon principles higher than those that enter into the conflicts of the day with which we are now surrounded. It is not a mere proposition to hold a witness in contempt. It does not necessarily involve solely those considerations which pertain to the refusal of a witness to answer certain questions. But it does relate to the relations of the Federal Government to a State government, so far as the appointment of presidential electors is concerned. And it is the first time within the history of this Government that this particular question has been raised.

Now I propose, sir, in the few remarks that I shall submit for the consideration of the House, to confine myself very much to the proposition that the relations of the Federal Government to the States with reference to the appointment of electors stand in an entirely different attitude from that of other questions between the States and the Federal Government. Before the adoption of the Constitution Congress had the sole and exclusive power, executive and legislative. We had no President, we had no executive authority until the adoption of the Federal Constitution; and all the powers that the States possess on the question of electing a President are delegated by the Constitution. They are not, so to speak, inherent and original. They were not only delegated by the Constitution, but in the adoption of a Constitution by the States they gave up absolute power over that question under the limitations of the Constitution. Therefore it is not delegated authority, but it is a limited, restricted authority. The States have not the unrestricted power to elect or to appoint the presidential electors. They have power to appoint them subject to certain limitations, qualifications, and restrictions enunciated in the Constitution itself, and it necessarily follows by implication that there devolves upon Congress, and upon Congress alone, the duty to ascertain whether those powers thus delegated and qualified have been executed and performed according to the Constitution.

The gentleman from Ohio [Mr. GARFIELD] has told the House that he admits that there is imposed upon the States a limitation of the exercise of that power to certain considerations and conditions; and he enumerated them as being five in number; and he denied the right of Congress to institute any investigation over any other questions than those particular five to which he specificially referred. In the first place let me say to the gentleman that he would place a limitation upon Congress, whereas the Constitution places the limitations upon the States. There is no limitation upon the power of Congress as to its course of inquiry into the fact whether any State or any individual or any other portion of the Government outside of the Federal Government itself has properly executed its delegated powers under the Constitution. There is nothing in the Constitution to limit the authority of Congress to institute any investigation and ascertain any fact bearing upon that question. And not only that, sir, but I will remind the gentleman that the President of the United States, the head of the executive department of the Government, issued a military order at Philadelphia, on the 10th day of November, to General Angur, in which he required him to proceed to Louisiana and do certain things with reference to the integrity of the election, which was an assumption on the part of the President that there was full authority on the part of the Federal Government to institute an investigation into anything involving the integrity of the returns and canvassing of the vote of a State.

Again, sir, the other branch of Congress—although it is not perhaps strictly parliamentary to refer to it—has recently summoned the governor of Oregon here to answer certain inquiries here as to the recent election in that State. Therefore, with the Executive of the United States and the Senate of the United States on full record to the effect that it is within the full power of the Federal Government to institute searching inquiry into everything relating to the appointment of electors, I cannot conceive that there can be any limitations to our powers in that direction.

I have very hastily, Mr. Speaker, written at my desk certain statements of fact which will sustain the position I now take upon this question. Within fifteen minutes it could not be expected that I could discuss any question of this magnitude, but I will read as a portion of my remarks the points which I have noted down in reference to this matter.

1. The power of the States to appoint electors is a delegated power by the Constitution.

2. The authority to appoint electors is qualified and conditional.

3. The States cannot appoint members of Congress or any person holding an office of trust or profit an elector.

And the electors so appointed must discharge their duties under certain specified rules laid down in the Constitution.

4. A necessary implication is that upon Congress devolves the duty of ascertaining whether all of these rules and conditions have been complied with by the States. The electors report to Congress, the certificates being presented to both Houses in joint session by the President of the Senate.

5. As preparatory to an ascertainment whether in the State of Louisiana all requirements of the Constitution and laws have been complied with and both Houses of Congress have appointed committees of investigation.

6. In the discharge of their duties they are clothed with ample authority to look into and examine anything appertaining to the appointment of electors by that State.

7. Neither the Constitution nor laws place a State government above the power of either House of Congress in any matter relating to the inquiry whether the right to appoint electors has been exercised in accordance with the limitations and qualifications declared in the Constitution.

8. In pursuance of these considerations the returning board of Louisiana cannot withhold any information, papers, or documents necessary to the inquiry.

These are my views. If I had time to elaborate them I feel confident that I should be enabled to establish them conclusively to the satisfaction of the House.

Mr. LYNDE. I now yield fifteen minutes to the gentleman from Ohio, [Mr. LAWRENCE.]

Mr. GARFIELD. I ask the gentleman to allow me to move that the House adjourn. It is near our dinner hour and I hope the gentleman will let us adjourn.

Mr. LYNDE. After the previous question shall have been seconded I am willing that the House shall adjourn.

Mr. LAWRENCE. I offer the amendment which I send to the Clerk's desk as an addition to the resolution reported by the committee.

The SPEAKER. No amendment is now in order, under the order of the House in regard to the debate upon this resolution.

Mr. LAWRENCE. Let it be read for information.

The Clerk read the proposed amendment, as follows:

Unless the said witnesses shall permit the committee to inspect the original papers required to be produced and to have or take copies thereof, in which event no arrest shall be made.

Mr. SPRINGER. I object to that amendment.

The SPEAKER. Objection is not necessary, as an amendment cannot be entertained under the order of the House.

Mr. LAWRENCE. If it be the desire of the House, I shall now make a motion to adjourn.

Mr. LYNDE. I do not yield to the gentleman for a motion to adjourn. I wish to have the previous question seconded, and then I shall have no objection to an adjournment.

Mr. LAWRENCE. I will then proceed. When the report and resolution now before the House were considered in the Committee on the Judiciary this morning I was not present, for reasons which have already been stated. I wish now to say that I dissent from the purpose of the resolution reported by the committee, and I will state very briefly why I do so.

The questions presented for the determination of the House in the resolution now before us are two: First, as to the power of the House to arrest the officers named in the resolution; and second, if we have the power, as to the expediency of exercising it. The question of power may be briefly stated in this form: Has this House the power to arrest State officers for a refusal to take public archives and records from the repository prescribed by law, against their convictions of duty and public interest? That is the question which we are to determine; and it will be perceived at once that it is one of the gravest moment and of the greatest importance as affecting the relations between the National and State Governments.

Have we power to summon the governor of a State and to require

him to bring the archives of his State here to the Capitol in Washington? If we have that power, then we can require him to take them to Alaska, if a committee of Congress were sitting there. Can he take with him the journals of a legislative body while the Legislature is in session; take them away from the proper custody prescribed by law and to the detriment of the public interests of the State? That question is to some extent involved in the resolution now before the House.

I think it is very well understood in this House that I concede to committees of Congress large powers for purposes of investigation. I agree that this House has large powers to enforce the attendance of witnesses and the production of papers, as my speeches and votes in this House abundantly prove. But I do not believe that for any purpose now sought by the investigation of the committee sitting in New Orleans this House has the power to compel the production of the papers asked for in the resolution reported from the Judiciary Committee.

What is the object of the production of these papers? It is not to enlighten Congress with a view to legislation. It is not to enlighten this House and to enable us to determine whether it is expedient to submit to the people an amendment to the Constitution. The investigation does not relate to any duty or act to be performed by the House or by Congress. But as I understand the gentleman from New York [Mr. WOOD] it is to ascertain how the vote of the State of Louisiana has been cast for electors for President and Vice-President, and with a purpose that the two Houses of Congress may decide if the electors were duly appointed and authorized to cast their votes as they did for Rutherford B. Hayes for President.

Now I deny that this House has any power to go into that question for the purpose indicated. The question who were duly appointed electors for President and Vice-President for the State of Louisiana was by law intrusted to the State board of canvassers, and their determination is final and conclusive. Neither this House nor both Houses acting together can go back of the decision of the board of State canvassers to ascertain if they erred in the decision they have announced or otherwise failed to decide correctly as to what electors were duly appointed.

Mr. WILSON, of West Virginia. Will the gentleman allow me a question?

Mr. LAWRENCE. Certainly.

Mr. WILSON, of West Virginia. If it shall appear to the House that the returning board of Louisiana has violated the provisions of their State constitution and their statutes, then does the gentleman say that this Congress has no power to question their action?

Mr. LAWRENCE. This House has no power to change the determination of the State board in their declaration as to the persons duly appointed electors. Congress cannot set aside the determination of the State board of canvassers as to the electors duly appointed. They are the final judges upon that subject. Their judgment is conclusive upon this House and upon Congress. That is the position I take.

Now, sir, I undertake to say that not one single authority, not one, decided by any court, can be produced to controvert the proposition I have stated. On the contrary, every determination by the legislative bodies of this country and by the courts of this country has been to the effect that the decision of a duly authorized canvassing board made in the forms prescribed by law declaring an officer elected vests in him a title to the office, and this decision is final and conclusive until otherwise determined in a court or tribunal authorized to hear a contest or to try again the title to the office. But neither this House nor the two Houses of Congress can entertain any contest or pass upon the title to office vested in the electors for President and Vice-President for Louisiana by the board of canvassers for that State.

Mr. WOOD, of New York. Will the gentleman allow me to ask him a question?

Mr. LAWRENCE. Certainly.

Mr. WOOD, of New York. Does the gentleman include the electoral vote of the State of Oregon?

Mr. LAWRENCE. If you take all the records that will come from Oregon, they will show that the republican electors who cast the vote for that State cast it legally. There were two electors whose election was duly certified. These filled the only vacancy that existed, and the three electors then cast the authorized vote of the State. There was no other duly appointed elector, and all this will sufficiently appear of record.

Mr. TUCKER. Will the gentleman allow me to ask him a question?

Mr. LAWRENCE. Certainly.

Mr. TUCKER. How will the gentleman get the records from Oregon? Does he propose to summon the governor in order to get them?

Mr. LAWRENCE. The records will appear in the certificates that will come with the returns. All will sufficiently appear from the record returned by the lawful electors, and by those who only assumed to act as such, if all be taken together. I hope these interruptions will not come out of my time.

Mr. GARFIELD. If the gentleman will allow me one sentence, I will say it for myself alone. If the fraud in the State of Oregon has been so committed that we have no power to inquire into it without violating the limitations of the Constitution, then I hope Mr. Tilden will be counted in by fraud and installed.

Mr. LAWRENCE. I have no trouble about the Oregon vote; that can be reached without any difficulty, and I will not consume my time in discussing it now. That can be discussed hereafter.

Let me return to the point I was discussing, that the electors declared to be duly appointed by the State canvassers in Louisiana are legal electors and neither this House nor the two Houses can call in question their authority. I will cite a memorable authority from the State of New York, one of the earliest authorities in our history, and it is valuable because it grew up in our early history. On the 20th of April, 1777, New York adopted her first constitution. By that constitution it was provided—

> That the supreme executive power and authority of this State shall be vested in a governor; and that steadily once in every three years, and as often as the seat of government shall become vacant, a wise and discreet freeholder of this State shall be by ballot elected governor, by the freeholders of this State, qualified as before described to elect senators; which elections shall be always held at the times and places of choosing representatives in assembly for each respective county; and that the person who hath the greatest number of votes within the said State shall be the governor thereof.

On the 13th of February, 1787, the Legislature of that State passed an act for regulating elections. By the eleventh section of that act it was provided—

> That a joint committee shall be appointed yearly and every year, to canvass and estimate the votes for governor, lieutenant governor, and senators, or such of them as are then to be chosen; which committee shall consist of twelve members, that is to say, six to be appointed by the senate out of their body, and six to be appointed by the assembly out of their body; and such committee shall be annually appointed by resolutions of each body, respectively, and shall meet at the office of the secretary of this State, on the last Tuesday of May; at which meeting the said joint committee, or a major part of them, or the survivors of them, or the major part of such survivors, shall, on the said day, and on so many days next succeeding thereto as shall be necessary for the purpose, proceed to open the said boxes, one after the other, and the inclosures therein contained, respectively, and canvass and estimate the votes therein contained.

Well, sir, in April, 1792, an election for governor took place in New York. The candidates were Governor Clinton and Chief-Justice Jay. The former was re-elected.

By the then existing laws of New York, which I have read, ballots that were taken in the several counties were, immediately after the election, transmitted to the office of the secretary of state and there kept till the second Tuesday in May, when the board of canvassers were to convene and canvass them.

The board of canvassers was a joint committee of eleven appointed by the senate and house of assembly of New York from themselves, and its duty was to canvass the votes cast for governor, lieutenant-governor, and senators, and to announce the result. The board of canvassers consisted of David Gelston, Thomas Tillotson, Daniel Graham, Melancton Smith, David McCarty, P. V. Courtlandt, Jonathan N. Havens, Samuel Jones, Isaac Roosevelt, Leonard Gansevoort, and Joshua Sands.

The joint committee threw out and destroyed the votes of Clinton, Otsego, and Tioga Counties, thereby electing Clinton governor.

The subject was fully discussed by many prominent men of both parties, among them Rufus King, Stephen Lush, Cornelius Bogart, Aaron Burr, Pierpont Edwards, John Lawrence, Jonathan D. Sergeant, Robert Troup, Edmund Randolph, Asher Miller, and Dudley Baldwin. The greatest interest was felt in the result throughout the United States, and an attempt was made to bring the matter before the New York house of assembly.

The greatest interest was felt in this matter, as I have said, and that body adopted the following preamble and resolution:

> Whereas by the eleventh section of the act for regulating elections it is enacted that all questions which shall arise upon any canvass and estimate, or upon any of the proceedings therein, shall be determined according to the opinion of the major part of the said canvassing committee, and that their judgment and determination shall in all cases be binding and conclusive: Therefore,
>
> *Resolved*, As the sense of this house, that the Legislature cannot annul or make void any of the determinations of the said committee.

Whether this committee acted in accordance with law I do not undertake to say; but the principle announced in this preamble and resolution has been followed in all the States and by all the courts.

It is the doctrine of the courts. McCrary's Law of American Elections, page 275, and sections 81, 82, 84, 373; State *vs.* Steers, 44 Missouri, 223; People *vs.* Van Slyck, 4 Connecticut, 297–323. *Ex parte* Heath, 3 Hill, 47; Morgan *vs.* Quackenbush, 22 Barber, 77; Thompson *vs.* Ewing, 1 Brewster, 77; Attorney-General *vs.* Barstow, 4 Wisconsin, 749.

In some of the States special tribunals are created with power to decide certain contested elections, and in some or all, as to certain officers, the right to an office may be tried on *quo warranto*. When the title to an office is *vested* by the proper certificate of canvassing officers, it can only be divested by a tribunal or court clothed with power to make inquiry back of the result as declared by the canvassing officers. The power to do this is *judicial*. This House has not been clothed with any such power. The two Houses have not been clothed with such power.

If they even had the authority to *count* the votes of the electors, this in the light of the authorities is *ministerial* power—not *judicial*. No special tribunal has yet been created to contest the due appointment of electors, and no court has attempted to do this as to the electors for Louisiana.

[Here the hammer fell.]

Mr. LYNDE. I now move the previous question.

The previous question was seconded and the main question ordered.

Mr LYNDE moved to reconsider the vote by which the main question was ordered; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

LEAVE OF ABSENCE.

Leave of absence was granted in the following cases:

To Mr. ABBOTT, for four days on account of important business.

To Mr. CROUNSE, an extension of his leave of absence for one week.

To Mr. POWELL, for one day on account of important business.

COMMITTEE OF CONFERENCE.

The SPEAKER announced that he had appointed the following members as managers on the part of the House of the conference on the disagreeing votes of the two Houses on the bill (H. R. No. 3741) to amend an act entitled "An act to incorporate the proprietors of the Glenwood Cemetery:" Mr. STEVENSON, Mr. HENDEE, and Mr. HARDENBERGH.

APPOINTMENT ON A COMMITTEE.

The SPEAKER appointed Mr. WAIT to fill a vacancy on the Committee on Public Lands.

THE RECUSANT WITNESS E. W. BARNES.

The SPEAKER laid before the House the following communication:

HOUSE OF REPRESENTATIVES, *January* 16, 1877.

To the honorable Speaker of the House of Representatives:

The undersigned would respectfully represent that he intended the answer he made to the demand made by the Speaker of him when he was last at the bar, to be understood that he was entirely willing to produce all the messages demanded by the committee to the utmost extent of his power; and if allowed an opportunity he would honestly and in good faith use every effort in his power to regain possession of said messages for that purpose. He wishes to repeat that he is now willing so to do if he shall be afforded an opportunity, and that if he should fail he will still be amenable to the action of the House upon a view of all the facts which have occurred or may transpire. And he now respectfully asks the opportunity to make the effort to produce the messages to the committee, which he cannot do while he remains in custody.

Yours,

E. W. BARNES.

Mr. HUNTON. I move that the communication be referred to the Judiciary Committee.

The motion was agreed to.

RECUSANT WITNESS—WILLIAM ORTON.

Mr. HUNTON. I offer the following as a privileged resolution:

Resolved, That the Sergeant-at-Arms be, and he hereby is, authorized and allowed to permit William Orton, a witness now in custody, to return home to New York for consultation with and treatment by his attending physicians, in the company of the Sergeant-at-Arms or his deputy, to return on Friday, the 19th instant, to Washington.

If there is an objection to the resolution I desire to say that the Committee on the Judiciary has possession of three certificates from eminent physicians in New York, in which they state that Mr. Orton is in a condition that requires medical treatment. We therefore think that this privilege ought to be accorded to him.

The resolution was adopted; and then, on motion of Mr. COX, (at five o'clock and twelve minutes p. m.,) the House adjourned.

PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By the SPEAKER: The petition of Caroline M. Egbert, widow of Daniel Egbert, deceased, late medical director in the United States Navy, to the Committee on Invalid Pensions.

By Mr. BAKER, of New York: The petition of citizens of New York, for the repeal of the tax on deposits, circulation, and capital of banks, to the Committee of Ways and Means.

By Mr. BANNING: The petition of Mrs. Laura A. Bartlett, mother of Edward B. Bartlett, deceased, late a private in Company G, Sixty-fourth Regiment Ohio Volunteers, for a pension, to the Committee on Invalid Pensions.

By Mr. CANDLER: The petition of Louisa Walker, of Fulton County, Georgia, for compensation for property taken by the United States Army in 1864, to the Committee on War Claims.

By Mr. COX: Resolution of the Chamber of Commerce of New York, renewing its recommendation and request made in May last, that the Government and Congress in their discretion institute the necessary measures for convening an international monetary conference, to fix the relative values of gold and silver coin, to the Committee on Banking and Currency.

By Mr. CUTLER: The petition of citizens of New Bedford, Massachusetts, for a commission of inquiry concerning the alcoholic liquor traffic, to the Committee of Ways and Means.

By Mr. DAVY: The petition of citizens of Monroe County, New York, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. FOSTER: The petition of William McKelvey and citizens of Huron County, Ohio, that he be granted a pension, to the Committee on Revolutionary Pensions.

By Mr. HARDENBERGH: The petition of J. K. Hickey, for the difference of pay between a first-class fireman and third-class engineer United States Navy, from July 1, 1860, to July 22, 1863, to the Committee on Naval Affairs.

By Mr. HAYMOND: The petition of citizens of Flora, Carroll County, Indiana, asking Congress to enforce the provisions of the act of Congress of July 24, 1866, by the purchase of the telegraph lines of the United States by the General Government, to the Committee on the Post-Office and Post-Roads.

By Mr. HOSKINS: The petition of Rollin Church and John Pierson, for compensation for seventy-three bales of cotton seized by the custom-house officials at New Orleans, in 1862, and sequestered, to the Committee on the Judiciary.

By Mr. HUBBELL: The petition of Charles Secor, and 100 other business men of Manistee, Michigan, for an appropriation of $30,000 for the extension of piers at the entrance of the harbor at Manistee, Michigan, to the Committee on Commerce.

By Mr. LORD: The petition of J. M. Butler, S. S. Lowery, A. J. McIntosh, C. McKinney, and other citizens of the counties of Oneida and Broome, New York, for the repeal of war taxes on banks, both State and national, excepting on circulation, and that the subject of taxation of banks be remitted to the States and Territories as before the war, to the Committee of Ways and Means.

By Mr. LAPHAM: Resolutions of the Boston Board of Trade for the passage of the Senate bill extending the time in the charter of the Northern Pacific Railroad, to the Committee on the Pacific Railroad.

By Mr. MUTCHLER: The petition of citizens of Pennsylvania, for the enforcement of the provisions of the act of Congress of July 24, 1866, relating to the purchase of telegraph lines by the General Government, to the Committee on the Post-Office and Post-Roads.

By Mr. PAYNE: The petition of J. H. Merrill, for compensation for services rendered and moneys advanced by him while acting as sheriff of the court created by the alcalde during the outbreak at San Francisco, California, of the desperadoes called the Hounds in 1849, and for other services rendered the United States, to the Committee on War Claims.

By Mr. RAINEY: The petition of Francis Lynch, of Cheraw, South Carolina, for compensation for supplies furnished General Sherman's command in 1865, to the same committee.

By Mr. JOHN REILLY: The petition of citizens of Bedford County, Pennsylvania, in favor of the removal of the limitation in the pension laws, to the Committee on Invalid Pensions.

IN SENATE.

WEDNESDAY, *January* 17, 1877.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

The Journal of yesterday's proceedings was read and approved.

EXECUTIVE COMMUNICATIONS.

The PRESIDENT *pro tempore* laid before the Senate a letter of the Secretary of War, transmitting for the information of the Committee on Commerce a copy of a letter from Major D. C. Houston, of the Corps of Engineers, suggesting the advisability of a repeal or modification of the "Act to aid in the improvement of the Fox and Wisconsin Rivers," approved March 3, 1875, so far as relates to damage for flowage, particularly flowage from works constructed before the work became the property of the United States in 1872; which was referred to the Committee on Commerce, and ordered to be printed.

He also laid before the Senate a letter of the Secretary of War, transmitting the report of Major G. Weitzel, Corps of Engineers, on the superintendence, management, and repair of the Louisville and Portland Canal for the year ending December 31, 1876; which was referred to the Committee on Commerce, and ordered to be printed.

PETITIONS AND MEMORIALS.

Mr. WHYTE presented the memorial of Allen Dodge, Dorsey Claggett, W. H. Collins, and others, praying for the passage of a law for the protection of fish in the waters of the Potomac within the District of Columbia; which was referred to the Committee on the District of Columbia.

Mr. BOUTWELL presented a petition of J. C. Hoadley and 30 others, citizens of Lawrence, Massachusetts, praying that the questions arising from the late presidential election may be dealt with in a spirit calculated to harmonize conflicting views; which was referred to the select committee to devise a mode to count the electoral votes for President and Vice-President.

Mr. HAMLIN presented a petition of David W. Place, E. D. Eldridge, and other citizens of Rockwell's Mills, New York, asking for a commission of inquiry concerning the alcoholic liquor traffic, also for the prohibition of the manufacture, importation, and sale of alcoholic beverages in the District of Columbia and the Territories; which was referred to the Committee on Finance.

REPORTS OF COMMITTEES.

Mr. CLAYTON, from the Committee on Indian Affairs, to whom was referred the memorial of the chiefs of the confederated Kaskaskia, Peoria, Piankeshaw, and Wea tribes of Indians, praying for the repayment to them of certain sums of money claimed to have been

wrongfully diverted from their trust funds, submitted a report accompanied by a bill (S. No. 1142) to authorize and empower the Secretary of the Interior to adjust and settle the account of the Kaskaskia, Peoria, Piankeshaw, and Wea Indians.

The bill was read twice, and, on motion of Mr. CLAYTON, recommitted to the Committee on Indian Affairs, and the report was ordered to be printed.

Mr. BRUCE, from the Committee on Pensions, to whom was referred the petition of Mary Ann Lynch, orphan child of James Lynch, late private in Company A, Sixty-seventh Regiment New York Volunteers, praying to be granted arrears of pension, reported a bill (S. No. 1143) for the relief of the legal heirs of Ann Lynch; which was read and passed to the second reading.

Mr. MITCHELL, from the Committee on Claims, to whom was referred the petition of Benjamin Holladay, asking to be indemnified for losses to property sustained by Indian depredations while transporting the mails on the overland mail route between the Missouri River and Salt Lake City, Utah Territory, from 1860 to 1866, submitted a report accompanied by a bill (S. No. 1144) referring the claim of Benjamin Holladay to the Court of Claims.

The bill was read and passed to the second reading, and the report was ordered to be printed.

Mr. JONES, of Florida, from the Committee on Claims, to whom was referred the petition of Warren Mitchell, of Kentucky, praying to be refunded the proceeds of seven hundred and thirty bales of cotton seized by officers of the United States at Savannah, Georgia, and covered into the Treasury, submitted a report, accompanied by a bill (S. No. 1145) for the relief of Warren Mitchell.

The bill was read and passed to the second reading, and the report was ordered to be printed.

Mr. WRIGHT, from the Committee on Claims, to whom was recommitted the bill (H. R. No. 429) for the relief of Charles C. Campbell, of Washington County, Virginia, reported it without amendment, and submitted a report thereon; which was ordered to be printed.

Mr. SARGENT. I am instructed by the Committee on Appropriations, to whom was referred the bill (H. R. No. 4251) making appropriations for the consular and diplomatic service of the Government for the year ending June 30, 1878, and for other purposes, to report it with amendments. I give notice that I will call the bill up to-morrow or as soon thereafter as possible.

HOUSE COMPILATION ON ELECTORAL VOTE.

Mr. ANTHONY. The Committee on Printing, to whom was referred the joint resolution (H. R. No. 181) authorizing the Public Printer to bind in cloth the reserve and stitched copies of the House compilation entitled Counting the Electoral Vote, have instructed me to report it with an amendment. The amendment is marked in brackets toward the latter part of the resolution. I ask for the present consideration of the joint resolution.

By unanimous consent, the Senate, as in Committee of the Whole, proceeded to consider the joint resolution.

The joint resolution was reported from the Committee on Printing with an amendment, in line 5, after the word "stitched," to strike out the words "and reserve;" so as to read:

That the Public Printer be authorized and required to bind in cloth, at the earliest time practicable, for the use of the two Houses of Congress, the stitched copies of the House compilation entitled Counting the Electoral Vote, except such copies as are required for distribution to public libraries.

Mr. ANTHONY. The object of the amendment is to preserve the reserved copies of the documents, which are all bound in leather, and not have the edition interrupted by binding in cloth. This document would be stitched without any legislation, and the object of the House is to have it bound, to which there can be no objection; but in applying it to the reserved copies as well as to the copies for distribution, it would put into the reserved copies a number of books bound in cloth, while all the others are bound in leather. I should say that, although this is not a very large appropriation, when it may be the pleasure of the two Houses of Congress to order any additional printing it is necessary to make an appropriation therefor. The appropriation for public printing made at the last session of Congress was manifestly insufficient for the work which the law required and which Congress was certain to order. This I stated at the time, but it was the pleasure of the two Houses of Congress to pass the restricted appropriation. Now, having passed a limited appropriation, Congress goes on and orders work to be done for which there is no money appropriated; and unless the appropriations are made when the work is ordered, Senators should understand and we should all understand that the work cannot be legally performed.

The amendment was agreed to.

The joint resolution was reported to the Senate as amended, and the amendment was concurred in.

It was ordered that the amendment be engrossed and the resolution read the third time.

The joint resolution was read the third time, and passed.

The title was amended so as to read: "A joint resolution authorizing the Public Printer to bind in cloth the stitched copies of the House compilation entitled Counting the Electoral Vote."

BILLS INTRODUCED.

Mr. CAMERON, of Wisconsin, asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1146) for the relief of John H. Russell; which was read twice by its title, referred to the Committee on Public Lands, and ordered to be printed.

Mr. SHERMAN asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1147) for the punishment of persons making or having in possession dies, molds, &c., for manufacturing counterfeit coin; which was read twice by its title.

Mr. SHERMAN. I move the reference of this bill to the Committee on Finance, and that it, together with certain official letters which accompany it, be printed.

The motion was agreed to.

Mr. DORSEY (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1148) for the relief of William H. Adams; which was read twice by its title, and, with the accompanying memorial, referred to the Committee on Claims.

Mr. CHAFFEE asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1149) to authorize the purchase of a site for a public building at Denver, Colorado; which was read twice by its title, referred to the Committee on Public Buildings and Grounds, and ordered to be printed.

Mr. INGALLS (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1150) granting a pension to A. K. Belt; which was read twice by its title, referred to the Committee on Pensions, and ordered to be printed.

Mr. STEVENSON asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1151) granting a pension to Anna Blair Lancaster; which was read twice by its title, referred to the Committee on Pensions, and ordered to be printed.

WITHDRAWAL OF PAPERS.

On motion of Mr. CLAYTON, it was

Ordered, That Black Beaver, a Delaware Indian, have leave to withdraw the papers on file in the Senate in support of his claim, by leaving copies of the same.

EDWIN EBERT.

Mr. COCKRELL. I move that the Senate proceed to the consideration of the bill (H. R. No. 940) for the relief of Edwin Ebert. It is a very small case. The bill has passed the House and was reported from the Committee on Claims in the Senate by the Senator from Wisconsin, [Mr. CAMERON.] All agreed to it in committee; there is no dispute about it.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill. It directs the payment of $110 to Edwin Ebert, late a contract surgeon in the United States Army, as compensation for a horse, his property, lost in the service of the United States at Springfield, Missouri, January 8, 1863.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

HARVEY B. KILBORN.

Mr. INGALLS. There are a few private pension bills on the Calendar, and I will ask the Senate to consider them now.

I move, first, that the Senate proceed to the consideration of the bill (H. R. No. 1850) granting a pension to Harvey B. Kilborn, a private in Company C, Thirtieth Regiment Pennsylvania Militia.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

LOUIS A. M'LAUGHLIN.

Mr. INGALLS. I move that the Senate proceed to the consideration of the bill (H. R. No. 1521) granting a pension to Louis A. McLaughlin.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

GEORGE M'COLLY.

Mr. INGALLS. I move that the Senate proceed to the consideration of the bill (H. R. No. 2242) granting a pension to George McColly.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

NELSON AINSLIE.

Mr. INGALLS. I move that the Senate proceed to the consideration of the bill (H. R. No. 3560) granting a pension to Nelson Ainslie.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

MRS. AMY KING.

Mr. INGALLS. I move that the Senate proceed to the consideration of bill (S. No. 1118) granting a pension to Mrs. Amy King.

The motion was agreed to; and the bill was read the second time and considered as in Committee of the Whole. It provides for placing on the pension-roll the name of Amy King, widow of James King, a soldier of the war of 1812, who enlisted in Captain James Douglas's company of South Carolina militia.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

ROBERT S. TOLAND.

Mr. INGALLS. I now move to take up House bill No. 2842.

The motion was agreed to; and the bill (H. R. No. 2842) granting a pension to Robert S. Toland was considered as in Committee of the Whole.

The bill was reported to the Senate, ordered to a third reading, read the third time, and passed.

MARSILVIA F. WOODARD.

Mr. INGALLS. I now move that the Senate proceed to the consideration of Senate bill No. 1123.

The motion was agreed to; and the bill (S. No. 1123) granting a pension to Marsilvia F. Woodard, mother of George R. Woodard, was read the second time and considered as in Committee of the Whole.

The bill was reported to the Senate, ordered to be engrossed for a third reading, read the third time, and passed.

H. H. MATHIS.

Mr. WRIGHT. I move that the Senate proceed to the consideration of the bill (S. No. 931) for the relief of H. H. Mathis, of Arkansas.

The motion was agreed to; and the bill was read the second time and considered as in Committee of the Whole. It appropriates $6,628.50 in full compensation for twenty-seven bales of cotton of H. H. Mathis, seized by order of Colonel Jacob Fry, commanding United States forces at the post of Trenton, Tennessee, which cotton was taken and placed in the fortifications at that post.

Mr. SHERMAN. Let the report be read.

The Secretary read the following report, submitted by Mr. Caperton, from the Committee on Claims, on the 21st of June, 1876:

The Committee on Claims, to whom was referred the petition of H. H. Mathis, praying compensation for cotton taken and appropriated by United States troops during the late war, have had the same under consideration, and report:

The petitioner represents that in July, 1862, he enlisted as a private in Company F, West Tennessee Volunteer Cavalry, and after serving the full period of his enlistment was honorably discharged; that in December, 1862, while he was serving with his command, at Trenton, Gibson County, Tennessee, there were taken from him twenty-seven bales of cotton, weighing in the aggregate 13,257 pounds, by Frank Traves, first lieutenant and regimental quartermaster Second West Tennessee Cavalry, acting under the order of Colonel Jacob Fry, commanding United States forces at that place, for the purpose of using the same in the fortifications at that point; that soon after the cotton had been thus disposed of, the place was attacked by General N. B. Forrest, who succeeded in capturing it, together with all the stores and shot-proof cotton; that as soon as he was able to do so he applied to the claims commission, a board sitting at Washington City, claiming compensation for his cotton thus taken and used; that the said commission rejected his claim solely upon the ground that "it was not a proper charge against any of the appropriations for the War Department, and that claimant's remedy was before Congress." (See certified transcript of the record of proceedings furnished from the War Department.) Petitioner now claims that he is entitled to be paid for the cotton so taken at the rate of sixty cents per pound.

The proof of petitioner's loyalty is full and satisfactory. In support of his allegation that the cotton was taken to be used in the fortifications he files the receipt of the officer before mentioned, setting forth that it was taken and the purpose for which it was taken. He also proves by several witnesses that the cotton was destroyed by General Forrest after the surrender of the post. The witnesses are shown to be creditable witnesses, and say they were eye-witnesses to the destruction of the cotton.

That the Government is bound to make full compensation to the owner, under such circumstances, seems to have been settled by the case of Mitchell *vs.* Harmony, (13 Howard, page 134,) as well as the case of Anderson, reported from this committee; and it remains only to ascertain the mode or measure by which that compensation shall be fixed. This committee has heretofore held that the market value of the cotton at the time it was seized is to be taken as the measure of compensation.

The evidence of Oppenheimer, Dunaway, and Fuller, in relation to the price of cotton at the time of the impressment, varies somewhat. While Dunaway states the range to have been from 40 to 55 cents, in gold, Oppenheimer puts it at from 50 to 60 cents, and Fuller proves that claimant actually bid and paid for this very cotton the price of 60 cents per pound, in gold.

In addition to this evidence the counsel for petitioner has referred to the price quotations at that time, as taken from the Shipping and Commercial List on file in the Bureau of Statistics, which fixes the market rates between 52 and 68 cents, according to grade. The mean of these extremes is 60 cents, but the committee, in view of the other testimony, are disposed to adopt 50 cents per pound as the price to be allowed.

The receipt given to petitioner places the number of bales taken at twenty-seven, which amounted, according to the sworn statement of the petitioner, in the aggregate to 13,257 pounds, being an average of 491 pounds per bale.

For this quantity, and at the price of 50 cents per pound, the committee think the petitioner should be compensated, and accordingly report the accompanying bill and recommend its passage.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

JACOB SENSENEY.

Mr. WRIGHT. I believe that perhaps the last report that was made by the late Senator Caperton to the Senate from the Committee on Claims was on Senate bill No. 947. I move that the Senate proceed to the consideration of that bill.

The motion was agreed to; and the bill (S. No. 947) for the relief of the estate of Jacob Senseney, of Winchester, Virginia, was read the second time and considered as in Committee of the Whole. It is a direction to the proper accounting officers of the Treasury to settle the claim upon the part of the estate of Jacob Senseney, deceased, for rent of buildings in Winchester, Virginia, and for which a voucher was given, now on file in the Treasury Department, and to allow and pay to E. J. Senseney, surviving executor of Jacob Senseney, deceased, $1,087.50.

The bill was reported to the Senate, ordered to be engrossed for a third reading, read the third time, and passed.

I. M. MICOW.

Mr. SPENCER. I move that the Senate proceed to the consideration of the bill for the relief of I. M. Micow.

The motion was agreed to; and the bill (S. No. 109) for the relief of the estate of I. M. Micow, of the State of Alabama, was considered as in Committee of the Whole.

It is a direction to the proper accounting officers of the Treasury to audit and settle the claims of the estate of I. M. Micow, of the State of Alabama, for rent of buildings accruing after the suppression of hostilities in the late war, and for which a voucher was given, which is now on file in the Treasury Department, and to allow him $685.67, the amount named in the voucher.

The bill was reported to the Senate, ordered to be engrossed for a third reading, read the third time, and passed.

PETERS & REED.

Mr. JOHNSTON. I move that the Senate proceed to the consideration of the bill (H. R. No. 2287) for the relief of Peters & Reed, naval contractors at the Norfolk navy-yard in the year 1860.

Mr. SHERMAN. I have no objection to the bill being taken up, but I shall want the report read. It seems to me that here is a very large amount, and it is an important claim to be considered now. I know that claim was up here not long ago and opposed by some Senators who are probably better informed about it than I am.

Mr. JOHNSTON. It was opposed by the Senator from Massachusetts, [Mr. BOUTWELL.] The claim is all right, I think, and ought to be paid.

Mr. SHERMAN. If the Senator from Massachusetts is here to look after it, all right.

Mr. JOHNSTON. I ask that the report be read.

The PRESIDENT *pro tempore*. It is moved to take up the bill.

The motion was agreed to; and the Senate as in Committee of the Whole resumed the consideration of the bill.

Mr. SHERMAN. Let the report be read.

The Secretary read the report, submitted by Mr. JOHN ROBBINS, from the Committee on Naval Affairs in the House of Representatives on the 25th of February, 1876, which has been heretofore published in the RECORD.

Mr. CRAGIN. This bill has twice passed the House of Representatives, once during the present Congress and once at a former Congress, and has been twice reported by the Committee on Naval Affairs of the Senate favorably. I believe it to be just and proper, although personally I have not examined the case. It went to a subcommittee and they reported it favorably, and the whole committee agreed to that report.

As I understand the case, this was a contract existing just prior to the war; it had not been entirely completed; but by the appropriation bill passed in February, 1861, which would not go into effect until the 1st of July following, an appropriation was made sufficient to pay this identical claim. Before that time arrived the navy-yard at Norfolk had been taken possession of and destroyed by the confederates, and there being no disbursing officer at that point the money was not paid over to these claimants, but was used by the proper bureau for other purposes. I have been informed at the Department that in their belief this is a claim existing against the Government and a proper one, one that should be paid. Such being my belief, I hope the bill will pass.

The bill was reported to the Senate, ordered to a third reading, read the third time, and passed.

MILITARY ROAD IN DAKOTA TERRITORY.

Mr. SPENCER. I move that the Senate proceed to the consideration of the bill (H. R. No. 2653) making appropriation for the improvement and repair of the military road between Springfield and Fort Randall, in the Territory of Dakota, which was reported from the Committee on Military Affairs.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill. It appropriates $2,500, to be expended by and under the direction and authority of the Secretary of War, for the improvement and repair of the military road leading from Sioux City, in the State of Iowa, to Fort Randall, in the Territory of Dakota; the same to be expended between Springfield and Fort Randall.

The bill was reported to the Senate, ordered to a third reading, read the third time, and passed.

THOMAS M. SIMMONS.

Mr. COCKRELL. I move to proceed to the consideration of the bill (S. No. 948) for the relief of Thomas M. Simmons, which was reported from the Committee on Claims unanimously.

The bill was read. It is a direction to the proper accounting officers of the Treasury Department to pay to Thomas M. Simmons $5,994.83, in full payment for the use and occupation of the premises known as the Alabama Press-Yard No. 2 and the Crescent City Press in New Orleans, Louisiana, in the years 1863, 1864, and 1865, by the United States troops, and in full satisfaction of any and all liability of the Government for rent, use, occupation, or damage.

Mr. SHERMAN. I should like to have the report read.

The Secretary read the following report submitted by Mr. COCKRELL from the Committee on Claims on the 28th of June, 1876:

The Committee on Claims, to whom was referred the petition of Thomas M. Simmons, with the accompanying papers, have duly considered the same, and report as follows:

The evidence submitted establishes the loyalty of the claimant, Simmons, and that he was the owner of five-twelfth parts of the Alabama Press Yard No. 2 and the one-half part of the Crescent City Press, situate in New Orleans, Louisiana, from 1861 to 1866, and that John P. Moore was the owner of the other interests; and that the Alabama Press-Yard No. 2 was used and occupied by the United States troops, under proper orders, from February 26, 1863, to May 31, 1865, twenty-seven months and eight days, and that the rental value during this term was $40 74½ per month, amounting to $5,582 97, and claimant's share, five-twelfth parts, amounts to $2,326 24. And that the Crescent City Press was so used and occupied, under proper orders, by the United States troops, from January 21, 1863, to May 31, 1865, twenty-eight months and nine days, and that the rental value was $7,337 17, being $259 25½ per month, and that the claimant's interest was $3,668 59, being the one-half part. The rental value of claimant's interest in all said property for said times was $5,994 83, the amount claimed by him in his petition.

Your committee addressed a letter of inquiry to the Secretary of the Treasury, which was referred to the Secretary of War, who made a full report to your committee, and furnished all the orders and papers in his Department in relation to this claim and the claim of said Moore. Under date January 19, 1864, Major General N. P. Banks, commanding at New Orleans, Louisiana, issued special orders No. 16, as follows, to wit:

[Special Orders No. 16.]

HEADQUARTERS DEPARTMENT OF THE GULF,
New Orleans, January 19, 1864.

* * * * * * *

29. It appearing to these headquarters that there is great difficulty in providing quarters for troops on their arrival here, that abuses, detrimental to the public service and the rights of neutrals and citizens, accrue from the present mode of occupying cotton-presses and other valuable property by detachments of troops, many of whom require instant repose and shelter, the following named officers are hereby appointed a military commission and board of administration: Brigadier-General Richard Arnold, chief of artillery; Lieutenant-Colonel W. S. Abert, assistant inspector general; Captain C. B. Chittenden, assistant quartermaster.

The duties of this board shall be, after careful considerations of military necessities and the economy of military administration, and the rights of citizens and neutrals, to determine, subject to the approval of these headquarters—

First. What property in the city of New Orleans and Algiers shall be exempt from military occupation, and what shall be taken for barracks, stables, and storehouses.

Second. The proper enrollment of the buildings selected, with the order of succession for their occupation as they may from time to time be required, and with a view to the least private annoyance consistent with public interests.

Third. The fixed rent to be paid during occupation by the Government.

Fourth. The alterations and repairs, more or less permanent, required by a true military economy.

Fifth. The proper consolidation of occupation, and the surrender of all buildings not required by military use, specifying the buildings surrendered and the commands to be consolidated in quarters.

By command of Major-General Banks:

GEO. B. DRAKE,
Assistant Adjutant-General.

Under date March 7, 1865, the following order was duly issued, to wit:

[Special Orders No. 63.—Extract.]

HEADQUARTERS DEPARTMENT OF THE GULF,
New Orleans, March 7, 1865.

* * * * * * *

10. Brigadier-General M. Brayman and Lieutenant-Colonel J. G. Chandler are appointed a commission to examine into the validity of all claims against the United States, which may be referred to them from these headquarters, or by Colonel S. P. Holabird, chief quartermaster of the department.

They will keep full records of their proceedings, and will be authorized to summon witnesses and take testimony under oath, from persons in or out of the service, whose testimony may be material.

Office room and fixtures, stationery, and the necessary clerks will be furnished by the chief quartermaster of the department. Weekly reports of business done will be made to these headquarters.

By command of Major-General Hurlbut:

J. C. STONE,
Captain and Assistant Adjutant-General.

The board of administration appointed January 19, 1864, as above, reported May 27, 1864, the occupation of the premises, and estimated the rental value at $400 per month.

The claims commissioners appointed by said Order No. 63, March 7, 1865, made a full report, and found the ownership of the premises in Moore and Simmons, and the occupation and use of the premises for the terms and the monthly rental value as first stated in this report. Their report was dated June 7, 1865.

On July 19, 1865, their report was approved by order of General Canby, and the chief quartermaster was ordered to settle the claim upon the claimants' furnishing evidence of having taken the amnesty oath.

The claimant Moore was paid the rent for his interest in November, 1865, amounting to $6,925.31. The present claimant, Simmons, was not paid, because his evidence of his loyalty was deemed unsatisfactory. Additional and satisfactory evidence of his loyalty has been furnished.

Your committee can see no just reason to refuse the prayer of the claimant, and therefore recommend that his claim be allowed at the sum of $5,994.83, and report the accompanying bill and recommend its passage.

The PRESIDING OFFICER, (Mr. WRIGHT in the chair.) Is there objection to taking up the bill?

Mr. SHERMAN. If a single objection will prevent it, I will object.

The PRESIDING OFFICER. The Senator from Missouri moves that the Senate proceed to the consideration of the bill. The question is on that motion.

The question being put, it was declared that the noes appeared to prevail.

Mr. COCKRELL. I hope the Senate will proceed to the consideration of this bill. I ask for a division. The bill was reported by the Committee on Claims unanimously, and it will take but a moment to dispose of it.

The question being again put, there were, on a division—ayes 20, noes 4; no quorum voting.

Mr. MORTON. Mr. President, I desire to make a statement——

The PRESIDING OFFICER. No business is in order, there being no quorum present.

Mr. INGALLS. By unanimous consent.

Mr. COCKRELL. I ask for a call of the roll.

The PRESIDING OFFICER. The Senator from Missouri moves a call of the Senate.

Mr. SHERMAN. If it is in order now to debate this matter, I will state the reason why this bill ought not to be taken up to-day.

The PRESIDING OFFICER. Debate is not in order now. The Chair will put the question again and ask Senators to vote, as it is believed there is a quorum in the Chamber. The question is on proceeding to the consideration of the bill moved by the Senator from Missouri.

The question being again put, there were, on a division—ayes 24, noes 5; no quorum voting.

The PRESIDING OFFICER. The Senator from Missouri moves a call of the Senate.

Mr. INGALLS. Cannot we have the yeas and nays on this proposition?

The PRESIDING OFFICER. If they are called for.

Mr. INGALLS. I call for the yeas and nays on the motion to take up the bill.

The yeas and nays were ordered; and being taken, resulted—yeas 33, nays 6; as follows:

YEAS—Messrs. Anthony, Bogy, Booth, Boutwell, Bruce, Chaffee, Cockrell, Conover, Cooper, Cragin, Davis, Dawes, Eaton, Ferry, Goldthwaite, Gordon, Ingalls, Johnston, Jones of Florida, Kelley, Kernan, McCreery, Maxey, Paddock, Price, Randolph, Spencer, Teller, Wallace, West, Whyte, Windom and Wright—33.

NAYS—Messrs. Allison, Cameron of Wisconsin, Christiancy, Dorsey, Morton, and Sherman—6.

ABSENT—Messrs. Alcorn, Barnum, Bayard, Blaine, Burnside, Cameron of Pennsylvania, Clayton, Conkling, Dennis, Edmunds, Frelinghuysen, Hamilton, Hamlin, Harvey, Hitchcock, Howe, Jones of Nevada, Key, Logan, McDonald, McMillan, Merrimon, Mitchell, Morrill, Norwood, Oglesby, Patterson, Ransom, Robertson, Sargent, Saulsbury, Sharon, Stevenson, Thurman, Wadleigh, and Withers—36.

The PRESIDING OFFICER. The bill is taken up; but the morning hour has expired, and it is the duty of the Chair to lay before the Senate the unfinished business.

Mr. COCKRELL. I hope the Senate will continue the consideration of the bill just taken up.

The PRESIDING OFFICER. The unfinished business is the bill (H. R. No. 231) for the relief of Robert Erwin.

Mr. WEST. I understand that the Senator having charge of that bill does not desire to press it now.

Mr. GORDON. I was going to remark that the Senator on account of whose absence the bill was postponed is still absent; and I move, therefore, that it be postponed until to-morrow at one o'clock.

The PRESIDING OFFICER. Does the Senator from Georgia move that it be postponed or ask that it be passed over informally?

Mr. GORDON. Let it be passed over informally.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is passed over informally.

Mr. WEST. I ask that the Senate proceed with the consideration of the bill it took up just at the close of the morning hour.

INVESTIGATING COMMITTEES.

Mr. MORTON. I desire, Mr. President, in justice to myself, to exonerate myself from responsibility, to make a statement. The money appropriated by Congress to pay the expenses of investigations to be made by the Committee on Privileges and Elections is exhausted. The investigations are not nearly completed. In a bill sent here by the House a week or two ago an amendment was placed appropriating $25,000 more for the expenses of these investigations. That bill hangs in the House. We have an investigating committee at New Orleans whose investigation is not complete, a very important one; but it cannot go forward without money, it cannot go forward upon credit.

I make this statement for the purpose of exonerating myself from any responsibility in connection with the suspension of these investigations. An amendment was put into the House bill appropriating $25,000 for the expenses of the committee. That went back to the House and there has been hung up for some days.

Mr. SHERMAN. I would ask the Senator if there is no money in the contingent fund.

Mr. MORTON. No, sir.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. GEORGE M. ADAMS, its Clerk, announced that the House had passed the following bills:

A bill (S. No. 685) to place the name of Daniel H. Kelly upon the muster-roll of Company F, Second Tennessee Infantry; and

A bill (S. No. 1040) to authorize sundry allowances to James Atkins, late collector of internal revenue for the fourth district of Georgia, in the settlement of his accounts.

The message also announced that the House had non-concurred in the amendment of the Senate to the bill (H. R. No. 3741) amending "An act incorporating the proprietors of Glenwood Cemetery," asked a conference on the disagreeing votes of the two Houses thereon, and had appointed Mr. ADLAI E. STEVENSON of Illinois, Mr. GEORGE W. HENDEE of Vermont, and Mr. AUGUSTUS A. HARDENBERGH of New Jersey managers at the conference on the part of the House of Representatives.

The message further announced that the House had passed a concurrent resolution for the printing of forty-five hundred copies of

Professor Hayden's annual report of the geological and geographical survey of the Territories for 1875–'76.

The message also announced that the House had passed the following bills; in which it requested the concurrence of the Senate:

A bill (H. R. No. 4437) to remove the political disabilities of Frank S. Armistead, a citizen of West Virginia; and

A bill (H. R. No. 4439) to remove the political disabilities imposed upon John H. Forney, of Calhoun County, Alabama, by the fourteenth amendment of the Constitution of the United States.

GLENWOOD CEMETERY.

The Senate proceeded to conside: its amendment to the bill (H. R. No. 3741) amending an act incorporating the proprietors of Glenwood Cemetery, disagreed to by the House of Representatives; and

On motion of Mr. SHERMAN, it was

Resolved, That the Senate insist upon its amendment to the said bill, disagreed to by the House of Representatives, and agree to the conference asked by the House on the disagreeing votes of the two Houses thereon.

By unanimous consent, it was

Ordered, That the conferees on the part of the Senate be appointed by the President *pro tempore*.

TROOPS AT PETERSBURGH ON ELECTION DAY.

Mr. MORTON. I rise, Mr. President, for the purpose of moving the reconsideration of the resolution passed yesterday referring the message and the resolution in regard to the presence of troops at Petersburgh, in Virginia, to the Committee on the Judiciary. I do that for the purpose of submitting some remarks in answer to the speeches that were made yesterday by the Senators from Virginia.

The PRESIDING OFFICER, (Mr. WRIGHT.) Does the Senator from Louisiana yield for that purpose?

Mr. WEST. Yes, sir.

The PRESIDING OFFICER. The Senator from Indiana moves the reconsideration of the resolution adopted yesterday referring the message of the President of the United States to the Committee on the Judiciary.

Mr. DAVIS. I presume the Senator only enters the motion for the purpose of making remarks. Neither of the Senators from Virginia is now in his seat.

Mr. MORTON. I desire to say what I have to say now.

Mr. DAVIS. I understood the Senator wished to speak on some future day.

Mr. MORTON. No, sir; I wish to speak to-day.

The PRESIDING OFFICER. The question is on the motion of the Senator from Indiana to reconsider.

The motion was agreed to.

The PRESIDING OFFICER. The resolution is reconsidered and is again before the Senate.

The Senate proceeded to consider the following resolution:

Resolved, That the Committee on the Judiciary be instructed to examine whether the construction of the laws touching the elective franchise, promulgated by the Attorney-General in General Orders No. 96, of date September 7, 1876, be correct; and that they report by bill or otherwise.

Mr. MORTON. Mr. President, I profess myself somewhat surprised this morning in reading the CONGRESSIONAL RECORD to find two elaborate speeches made by the Senators from Virginia yesterday, containing a formal indictment of the President of the United States for sending troops to Petersburgh, Virginia, during the last fall.

The President of the United States, upon a request made by the marshal and district attorney of the United States for the eastern district of Virginia, and to carry out the circular which was published by the Attorney-General for the purpose of securing peaceable and fair elections in the Southern States and to execute the acts of Congress, ordered that a captain, lieutenant, and twenty-four men be sent to Petersburgh, Virginia, where they were quartered in the custom-house. They were not near the place of holding the election, were not in the presence of the polls, took no part there whatever, but were simply quartered in the custom-house. For this the President has been formally and strongly indicted by the two distinguished Senators from Virginia; and I think it would not be proper to let this pass without taking some notice of the circumstances under which these troops were sent to Petersburgh, and also calling attention to the law as it was stated by those Senators.

The President, in his message on this subject, uses this language:

> It may be, the presence of twenty-four United States soldiers under the command of a captain and lieutenant, quartered in the custom-house, at Petersburgh, Virginia, on the 7th of November, at a considerable distance from any polling-place, without any interference on their part whatever, and without going near the polls during the election, *may have secured a different result from what would have been obtained if they had not been there*, (to maintain the peace in case of riot,) *on the face of the returns*.

The Senator from Virginia, [Mr. WITHERS,] in the course of his remarks used this language:

> A careful consideration of the message itself will leave us at a loss whether most to admire the perspicuity of its diction, the independence with which it sets at defiance the ordinary rules of grammatical construction, the felicitous innuendo whereby it conveys an insinuation against the character and good name of the people of Virginia as gratuitous as it is slanderous, or the bold avowal of a principle which, it admitted and accepted unchallenged, will with its inevitable and unavoidable corollary, put an end to republican institutions and utterly subvert and destroy the fundamental principles of our Constitution.
>
> Mr. President, the fourth section of the fourth article of the Constitution of the United States conveys all the powers which are granted to the Government of the United States under any circumstances to march their troops into the interior of any State. It is as follows:
>
> "The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and on application of the Legislature, or of the executive, (when the Legislature cannot be convened,) against domestic violence."
>
> It will be thus seen that by the provisions of the Constitution the United States is authorized only in one single instance without qualification to occupy the territory of a State with its armed troops; that is, to repel invasion. On the application of the Legislature, or of the executive when the Legislature is not in session, it is also authorized to march its troops into the territory of the different States.

Mr. President, I entirely dissent from the law as stated by the Senator from Virginia. It is, I think, without any authority or foundation in the Constitution or in the statutes.

Mr. JOHNSTON. I do not know whether the Senator is alluding to my remarks or my colleague's.

Mr. MORTON. Your colleague's just now.

Mr. JOHNSTON. My colleague has been called to the Treasury Department on business for an hour or two, and I prefer that the Senator should wait until his return.

Mr. MORTON. I will say to the Senator that his colleague will have an opportunity to read what I have to say, and as there was some reply made to me yesterday by his colleague who did not wait for my presence, he will excuse me for saying now what I have to say.

The PRESIDING OFFICER. The Senator from Indiana is entitled to the floor and will proceed.

Mr. MORTON. The proposition here is, Mr. President, that the President of the United States cannot send troops to the interior of a State, "march them," in the language of the Senator, into the interior of a State, unless to repel invasion or unless he has been called upon by the governor or by the Legislature formally to suppress domestic violence against the State. That is the proposition, and from that I dissent utterly. The President cannot intervene to suppress domestic violence against a State unless formally called upon as prescribed by the Constitution and laws; but to say that he cannot march troops to the interior of a State or across a State or encamp them where he pleases without thus being called upon or to repel invasion, is entirely without authority. On the contrary, every President of the United States from the foundation of the Government has exercised this power and must continue to exercise this power. To march troops to a point in Virginia, or across Virginia or into or across any other State, is one thing; it may be done in time of peace whenever it is required by health or convenience, or for any other purpose; but to interfere to suppress domestic violence against a State does first require a call made according to the law and the Constitution; so that here are two things commingled that have no application to each other whatever. But the President of the United States has the right to march troops into any State, to have them at any point for the purpose of enabling the officers of the United States to serve or to enforce process, or to enforce the law of the land in regard to the fourteenth amendment; and he has authority directly under the statutes of the United States to have them present at the polls to preserve the peace. I read from section 2002 of the Revised Statutes:

> No military or naval officer, or other person engaged in the civil, military, or naval service of the United States, shall order, bring, keep, or have under his authority or control, any troops or armed men at the place where any general or special election is held in any State, unless it be necessary to repel the armed enemies of the United States, or to keep the peace at the polls.

He is expressly authorized to have them at the polls in the presence of an election if it is necessary for the purpose of keeping the peace; but this was not done in the case referred to. They were not present at the polls; they were not in sight, and they took no part whatever in the conduct of that election. The President of the United States has a right to quarter his troops wherever he pleases so as not to interfere with private or public rights in any State or Territory, in any town or city, and to say that he cannot march them upon "the sacred soil of Virginia" or the sacred soil of any other State or across it without first having been required under the law to interfere to suppress domestic violence or to repel invasion, is entirely without foundation or authority.

So much for that. Now I come to a quotation made in the speech of the Senator from Virginia of the proclamation of the governor of Virginia in regard to this matter. It begins thus:

> Information has just been received, from authentic sources, that a detachment of the United States Army was this day quartered at Petersburgh, with orders to remain until after the elections and to be under the sole direction of Federal officials. The voting-places at Petersburgh are being surrounded with a cordon of bayonets on the eve of the elections.

Of course the executive of a State would not state what he did not believe to be true; but he must have been greatly excited, and his imagination greatly distempered if merely putting twenty-four men into the custom-house, at a distance from the polls, could be the placing of a cordon of bayonets around the voting-places in the city of Petersburgh. But he goes on to say:

> It is provided by the Constitution of the United States that the Government thereof shall protect each of the States, on the application of the Legislature, (or the executive when the Legislature cannot be convened,) against domestic violence.
>
> No domestic violence, no breach of the peace, no molestation of any citizen in the exercise of any right, exists, or is threatened, or apprehended, or likely to arise in this Commonwealth. Perfect peace, order, and security reign throughout all our borders. Every citizen, of whatever race, color, or condition, is protected and will be protected, and will be protected in all his personal and political rights, privileges, and immunities by all the authorities of this State.

Here the governor goes upon the same idea, that there is no power to march troops into Virginia or across Virginia unless the President has been required by the Legislature or by the executive, in accordance with the Constitution and the act of Congress. I have already said all that I need to say in regard to that assumption.

Now, sir, as it has been sought very elaborately to place the President of the United States in the wrong in regard to this matter, and to show an intention on his part to interfere with the freedom of elections, I desire to refer to the President's message and the accompanying documents. While complaint is made about the invasion of State rights and of a purpose to interfere with the freedom of elections upon the part of the President of the United States, the causes which led to that being done which was done are ignored or passed over with very little attention indeed. Now I beg leave to call the attention of the Senate to what it was that led to sending this small body of men to the city of Petersburgh. I ask the Secretary to read the affidavits and accompanying papers sent by the President with his message, beginning on page 8, as I have marked. Read those which I have marked with pencil.

The Secretary read as follows:

Affidavits, &c., relative to the necessity for troops at Petersburgh.

This is to certify that, on the morning of the 25th day of May last, I commenced the issue of republican tickets in the fifth ward, this city, of which I am a resident and qualified voter, at a room provided for that purpose fifteen to twenty rods distant from the polling-place. During the day rumors reached me from various sources that the conservatives, well armed with pistols, stones, and clubs, were organizing and drilling with a view to make an attack upon the premises which I occupied, and secure the books in my possession which contained the republican tickets. These facts I reported to the republican headquarters, and when an opportunity presented itself forwarded a duplicate of each ticket issued to headquarters, each one having attached a coupon showing the name of the party to whom the original ticket was issued. Between the hours of three and four o'clock, as well as I can remember, an organized company of men, armed as above stated, filed in front of the building of which I was the sole occupant, and halted, when one Emmet Richardson came to the door and demanded to know "what in hell I was doing in there?" I replied that I was issuing republican tickets. He said, "Hand me that book," referring to the book which I held in my hand and which contained the republican tickets. I tore one from the book, which I handed him. He said, "I want to see the rest," when I handed him the coupon. The same he tore up and threw on the floor, saying, "God damn it, I want that book," which I refused him. He then went away and joined the company, and the order was given to forward march, the company going up the street a few rods, when, turning around so as to face the building I was in, started upon a run and made an immediate attack upon a few defenseless negroes who were standing around the place from which I had been issuing tickets, with clubs and stones, which they used without the semblance of mercy, besides shooting one man in the face, after having knocked him down with a stone. These men had interfered with no one. I succeeded in getting out of the building at the beginning of the attack and was immediately arrested, carried before the judges of election, (one of whom I recognized as one of the city police,) who committed me to jail for "inciting a riot," without giving me any hearing whatever or taking any testimony for or against me. When brought before his honor the mayor no one appeared against me, and I was discharged.

I hereby further certify that I firmly believe that a large proportion of the republican voters of this city will not go to the polls on the coming election-day unless the Government will furnish them ample protection, by sending troops here for that purpose, as they are fully convinced that their lives are positively endangered by so doing, and that they fear violence and bloodshed.

The above I certify to, as being substantially true and correct.

GEORGE F. MARBLE.

Subscribed and sworn to before me this 12th day of October, 1876, at Petersburgh, Virginia.

J. L. WATERMAN,
United States Commissioner, Eastern District of Virginia.

UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

Personally appeared before me Moses Norman, who made the following statement:

That he is a citizen and voter in the fifth ward of the city of Petersburgh; that on the day of the election, May 25, 1876, he came to the private room occupied by George F. Marble, the republican-ticket distributer at the fifth ward precinct. One of Marble's assistants, Beverly Younger, handed him the tally-book containing the republican tickets. Before he could get out his ticket one Emmet Richardson, one of a democratic gang who attacked the said room, demanded the tally-book of him. He refused to give it up. Some of the gang then called a rally on him, seized him, took the tally-book from him, beat him over the head, and five or six pistols were directed at him. Then Jim Eames grasped him by the arm, and some one in the crowd called on Eames to let go of him. On turning around he saw a man with a pistol directed at him ready to shoot. Jim Eames said, "Don't shoot him; you have got the book now; what do you want to shoot him for?" and Mr. Thomas Williamson, his employer, said, "What do you want to shoot him for? He has done nothing." The man then said, "If you say don't shoot, I won't." Policeman Deaton came up during the melee and commanded the peace, but some answered, "We haven't got the tally-book yet." Upon which he turned his back and left him in the hands of the ruffians.

When the gang gathered around him, under the order to rally, they commenced firing pistols at the colored men standing about the office.

Witness:

his
MOSES + NORMAN.
mark.

Sworn to and subscribed before me this 11th day of October, 1876, at Petersburgh, Virginia.

J. L. WATERMAN,
United States Commissioner Eastern District, Virginia.

UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

Personally appeared before me William White, who was the owner of the shop from which the republicans distributed the tickets on the day of election, (May 25, 1876;) he says.

That he is a resident and voter in the fifth ward of the city of Petersburgh. On the day of election was at a blacksmith-shop, several rods distant from his shop, in which the republican-ticket distributer was stationed, when the riot commenced. The rioters were regularly organized, and were under the command of Jim Eames. They maneuvered and drilled about and around the shop before advancing on it. I saw them seize Moses Norman and attempt to wrest the tally-box from him. I saw —— Stoner fire at and shoot Edward Edwards in the head, who fell, then rose up and ran a short distance and fell again, when he was struck with a rock. Stoner ran up again and kicked him about.

Stoner was never punished for his offense. I do not believe that the colored people will dare to come out and vote unless we have protection.

his
WILLIAM + WHITE.
mark.

Witness:
J. H. VAN AUKEN.

Subscribed and sworn to before me, at Petersburgh, Virginia, this 11th day of October, 1876.

J. L. WATERMAN,
United States Commissioner Eastern District of Virginia.

UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

Daniel R. Butts, fifty-five years of age, resided on the 25th day of May last in the first ward of the city of Petersburg; being duly sworn, deposes and says that, on the above election-day, the 25th day of May aforesaid, he rented a room of his house to the distributer of the republican tickets. During the afternoon word came to the house of this deponent that there was a contemplated raid on the house for the purpose of capturing the republican books, upon which they locked the doors; that soon after a gang of roughs broke in the doors with an ax and three of them entered; one of them, George Hinton, brother of William E. Hinton, democratic candidate for Congress. As they entered they asked of this deponent, "Where are those books?" One of them then went up to this deponent and knocked him down and commenced stamping him with the feet, and all joined in beating and kicking him till they left him for dead, and broke all his furniture to pieces; that no arrests were made, no examination was made, and no one has been punished, and this deponent has not yet recovered from the injuries received on that day.

And this deponent verily believes that the colored republicans in particular will not dare come out on election day without the assurance of protection.

his
DANIEL R. + BUTTS.
mark.

Witness:
P. P. FINIGAN.

Subscribed and sworn to before me, at Petersburgh, Virginia, this 4th day of October, 1876.

J. L. WATERMAN,
United States Commissioner Eastern District of Virginia.

UNITED STATES OF AMERICA,
State of Virginia, ss:

Personally appeared before me, J. L. Waterman, a commissioner in and for the eastern district of Virginia, Edward Edwards, who, being duly sworn, deposes and says that he is a resident voter in the fifth ward of the city of Petersburgh; that on the 25th day of May last, that being the day of election for the municipal officers of the city of Petersburgh, that a company of persons, about twenty-five to thirty in number, who seemed to be under the drill, as captain, of one James Eames, a resident of said ward, having on the day above cited been drilled in a field called Battersea, and within a distance of thirty yards of place of voting, made an attack on this deponent by first striking him with a rock, and before recovering shot this deponent in the head.

This deponent further deposes and says that the said company, commanded as aforesaid, on returning from the place of drill, halted on a bridge in front of where the republicans were distributing the tickets or ballots, when a Emmett Richardson, as lieutenant, and John Gill, as sergeant, came up to the window where the ticket-holder was, and beckoned to the remainder of the company to come on, and gave the order to rally and go for them, meaning the republicans in and around the house; and as they commenced the charge by throwing rocks, one of which struck this deponent as aforesaid, then shot at this deponent twice, the second shot taking effect in the right side of the head and burying itself in the flesh, which felled him to the ground, rendering him insensible, and had to be carried home in a wagon, where he lay in a critical condition for five weeks under the care of a physician, five pieces of bone having been extracted from his skull and latterly the pistol-ball was extracted.

And this deponent further states that one —— Stoner fired the pistol, the bullet of which took effect in the head of this deponent; and this deponent further states that, inasmuch as no criminal proceedings were ever taken against the said Stoner, no republican is safe to come out to vote at any election without protection, and believes they will not come out to vote.

his
EDWARD + EDWARDS.
mark.

Witness:
J. H. VAN AUKEN.

Subscribed and sworn to before me, at Petersburgh, Virginia, this 4th day of October, 1876.

J. L. WATERMAN,
United States Commissioner Eastern District of Virginia.

This 16th day of October, 1876, personally appeared before me, J. L. Waterman, United States commissioner, William Green, who deposes and says he is a resident and voter in the first ward of the city of Petersburgh, State of Virginia; that he was present at the republican ticket-holder's office, in the first ward, on election day, Thursday, May 25, 1876.

That about five o'clock p. m. a raid was made upon the building by a crowd of democratic roughs, who obtained entrance by breaking in the door with an ax, and with loud yells and curses came in and demanded the "books." Mistaking Daniel R. Butts, the tenant of the house, for the ticket-holder, they knocked him off his chair, and beat and stamped him in an unmerciful manner, crying "Kill the d—d nigger." While they were beating him this deponent made his escape through a window with the portion of the book containing the names of those having voted, having torn it apart, and left the other part for them, to throw them off the scent, and thus prevent them from pursuing him until he could get out of harm's way. Upon getting out he saw a policeman standing at the entrance of the alley with a drawn pistol, saying, "Stand back, you d—d black sons of bitches," to those who were attempting to go to the rescue. He returned the next day, and found Mr. Butts lying upon his couch, unable to help himself, and beaten nearly to death; also found all his furniture broken in pieces. The old man did not get about for months. This deponent was compelled to keep hidden for several days subsequent, not daring to sleep at home for over a week on account of threats of violence to his person if they could get hold of him.

For this outrage, perpetrated in broad daylight, with policemen aiding and abetting it, no arrests were ever made, and no one punished. Colored republicans say to this deponent daily that they dare not go to the polls at the November election unless troops are stationed here to guarantee protection to their lives and persons; that they believe, from democratic threats that they hear uttered daily, that the democrats intend to override by force all civil authority, and that no force of United States marshals or deputy marshals will suffice to preserve order and protect the lives of voters, and there is no use in attempting to hold an election without some guarantee of protection.

WM. GREEN.

Subscribed and sworn to before me, at Petersburgh, Virginia, this 10th day of October, 1876.

J. L. WATERMAN,
United States Commissioner, Eastern District of Virginia.

OFFICE UNITED STATES DISTRICT ATTORNEY,
Culpeper, Virginia, September 16, 1876.

SIR: I inclose herein an editorial from the most influential democratic paper south of James River, in Virginia, which speaks for itself. I desire only to say that any intelligent man acquainted with the course of the democratic politicians and strikers in Petersburgh for the last three years will readily understand the force and meaning of the inclosed article. At the last State election held in the city of Petersburgh (for State senators) the present democratic nominee for Congress was counted in by a large majority over his competitor, who was undoubtedly fairly elected by a majority of hundreds. I am, from my knowledge of the character of that and other elections held in Petersburgh, prepared to say that, unless the marshal is furnished with a better and more reliable posse than he will be able to summon to his aid from residents of the city, the election on the 7th of November in that city will be a farce as gigantic as it will be fraudulent. I am not now prepared to express the opinion that the presence of troops to act as the marshal's posse will be essential to the preservation of order and to insure a fair election at other points in the eastern district of Virginia, but of the necessity of their presence to prevent bloodshed and secure a fair election in Petersburgh I think there cannot be a shadow of doubt. I deem it my duty to say so in advance, in the hope that precautions may be taken to prevent the scenes that will occur there if the hands of the marshal are not strengthened by the co-operation of the military.

At the request of the marshal I am now engaged in preparing a statement of the powers and duties of special deputy marshals and supervisors of elections, in which their attention is particularly called to certain provisions of the election law of Virginia, which it is very desirable they should understand and closely follow.

I shall earnestly endeavor to render all the aid in my power toward securing the due execution of the election laws and the prevention of disorder and fraudulent voting.

Very respectfully,

L. L. LEWIS,
United States Attorney.

Hon. ALPHONSO TAFT,
Attorney-General.

UNITED STATES MARSHAL'S OFFICE,
Richmond, Virginia, October 31, 1876.

SIR: I have the honor to state that it is the understanding here that United States attorney for this district, L. L. Lewis, esq., and other official and non-official citizens of Petersburgh, have represented to your Department that troops will be needed to protect the rights of citizens and the United States officials on election day. That opinion is doubtless based on the history of elections in that city for the past two years, which have been anything but orderly. Even in the little municipal election last spring for mayor, &c., the most disgraceful outrages were perpetrated. Troops can do no harm to well-disposed citizens, and in the light of experience I am of opinion that they will be needed. Their presence will be, I think, promotive of good order.

I have appointed many deputy United States marshals, and shall be present on election day, and have requested the presence of the assistant district attorney for this district.

Some apprehensions are expressed as to the condition of Norfolk and Portsmouth; but they are so near to Fortress Monroe that I do not think serious disturbances are likely to arise. The troops at the Gosport navy-yard might be held in requisition for the latter, and the marines for the former in case needed.

In this city no disturbance or disorder is anticipated. Shall advise you if developments are made.

Respectfully,

C. P. RAMSDELL,
United States Marshal.

Hon. ALPHONSO TAFT,
Attorney-General.

UNITED STATES MARSHAL'S OFFICE,
EASTERN DISTRICT OF VIRGINIA,
Petersburgh, October 31, 1876.

SIR: I am this moment in receipt of information from Portsmouth, Virginia, as follows:

Last night a meeting at which Mr. Segar, candidate for Congress in that district on the republican ticket, and Mr. Ball, of Alexandria, attempted to speak, was broken up, and on their going out a regular assault was made on them by the democratic roughs, and Mr. Dezendorf, who attempted to speak in the hall, was beaten, and burned by the powder of a pistol discharged at his head. Segar and Ball were hurried off while Dezendorf's manly defense was occupying the attention of the scoundrels. About twenty pistol shots were fired. Mr. Segar is satisfied that they will not let him be elected if ruffianism and fraud can prevent.

I have appointed deputy marshals in Portsmouth, Norfolk, and in some of the counties of that district. I spoke in Portsmouth about four weeks ago at an open-air meeting. There was some disturbance, but not serious.

I have made a thorough canvass of the fourth or Petersburgh congressional district, traveling between two hundred and three hundred miles, and speaking at the court-house in each of the eleven counties. Deputy marshals have been appointed in each county, and every possible precaution made to preserve the peace and secure the citizens in their rights under the Constitution; but I am prepared to witness and hear of violence in this part of the South. The truth is this:

The white people are generally opposed to colored suffrage, and regard any means justifiable to render that vote nugatory.

Regarding Petersburgh as the most critical locality on day of election, I thought of remaining here unless it be thought advisable for me to be at headquarters in Richmond.

Very respectfully,

C. P. RAMSDELL,
United States Marshal.

Hon. ALPHONSO TAFT.

P. S.—I addressed a communication to you to-day as to troops. The Portsmouth affair only confirms my anticipations.

Mr. MORTON. Mr. President, these representations were made to the President or to the Attorney-General by the marshal of the district and by the district attorney, and were supported by six or seven affidavits, presenting a condition of things at Petersburgh that would have justified the President in sending a much larger detachment of troops there and in taking more stringent measures than he did for the preservation of the peace. On the 25th day of May last, only a few months preceding the presidential election, this bloody riot had taken place in the streets of Petersburgh. Nobody had been punished. Half a dozen republicans had been nearly killed; others were stoned and fired at; but all this is to be ignored, no attention is to be paid to it, and the President is arraigned as having violated the law and the Constitution for having sent twenty-four soldiers there under a captain and a lieutenant simply to preserve the peace at the polls. They did not interfere, did no unlawful, improper, or intrusive act; did their duty quietly, unobtrusively; and no complaint has been made in regard to their action there that day.

Here comes in the trouble, that this violence, these murders so often committed, the attempt to murder on that day at Petersburgh, these outrages and crimes committed in the Southern States, are not regarded as crimes; they are not regarded as any justification or excuse for any attempt on the part of the President to preserve the peace and protect the lives of citizens of the United States. Violence is regarded as a legitimate idea, a legitimate thing. That these things were done is not to be disputed, and yet they are not admitted as furnishing the slightest excuse or justification for what the President has done. A half dozen republicans are brutually assaulted, an attempt is made to break up the election and deprive a large body of men of their rights, and when the President, appealed to by the proper authorities, supported by affidavits, unquestioned evidence, sent a few men there to preserve the peace he is arraigned in the Senate of the United States as a criminal, as having violated the Constitution and law, and, as was said by the Senator, establishing a principle which will be the destruction of this Republic. The Senator from Virginia [Mr. WITHERS] did pay some attention to this evidence and I call the attention of the Senate now to the way in which he disposed of the evidence that I have had read, the communications from the marshal and from the attorney-general. The Senator says:

Appended to these letters of Mr. Ramsdell and Mr. Lewis we find a certain number of affidavits, testifying in the main to violent scenes which are said to have occurred at the municipal election there in May last. Marble, the principal witness, is a custom-house official, whose character, I understand, is not of the best, though I know nothing of him personally, and consequently do not wish to impugn it—

Of course his testimony is disposed of; character said to be none of the best.

The others are, I believe, without exception colored people.

That, of course, disposes of their testimony!

I do not impute to these colored people any desire or design of falsifying any statements which are embodied in these returns; but I do assert that, owing to their ignorance and their credulity, they are entirely at the mercy of any person in whom they have confidence who will represent to them that a paper contains any given statement, and they will attach their signatures to it. Therefore the affidavits of this class of persons are always to be received with many grains of allowance. I have a striking evidence of the fact in the case before me, because I find here that one of the strongest affidavits which are embodied in this report purports to be signed by one William White, a blacksmith, who lived near the scene of the reputed act of violence, and yet this very man has furnished this affidavit:

"This is to certify that I, William White, blacksmith in fifth ward, did not authorize any one to sign my name to the affidavit published in the Washington Republican, nor did I sign it myself, and hope the citizens will not regard it.

his
"WILLIAM + WHITE."
mark.

Whether Mr. White was bull-dozed when he signed the first affidavit or when he signed the latter, we may infer perhaps from some other circumstances:

Witness:
E. M. WILLIAMSON.
JAMES C. BAIN.

This 6th day of November, 1876, personally appeared before me William White, blacksmith in fifth ward of Petersburgh, and made oath to the truth and correctness of the above certificate, witnessed by E. M. Williamson and J. C. Bain, and swore to the answers to the following questions:

Question. Are you afraid to vote the republican ticket on the 7th of November?
Answer. No.
Q. Do you know of any one who is afraid to vote it?
A. No.
Q. Do you think it necessary for any military force to be here for the protection of any citizens in their rights to vote?
A. No.

J. R. QUARLES,
Justice of the Peace.

Now, this very thing upon its face bears the evidence that he had fallen into the hands of his enemies and was compelled to make these statements; but the thing that discredits the whole is that he does not say that the statements in the first affidavit were false. He says so nowhere; and that is all the affidavit that they attack. There are six affidavits besides to which no reference is made, over which no discredit can be thrown, or is thrown, except to say that one of them is said not to have a good character and that the others are colored men. When they come to White's affidavit they say that he did not sign the affidavit, but they did not get him to say that the statements in it were not true. Now I come to the mayor:

And yet it is upon the testimony of this man in part that this action is predicated. I ask also, in this same connection, to rebut the statements embodied in these affidavits, the assertions made by Mr. C. P. Ramsdell and Mr. Lewis, to read the affidavit of the mayor of the city, Mr. W. F. C. Gregory, who was mayor of the city at the time this alleged act of violence occurred, to wit, in 1876. It is as follows:

"I, W. F. C. Gregory, do hereby certify that on the afternoon of the 25th day of May, 1876, while seated in the mayor's office attending to official business Dr. Jorgenson came in and in an excited manner stated that a serious fight was going on at the election precinct in the fifth ward. The captain of police being in my office, I directed him to go at once and attend to the matter. Thinking it however best I entered a carriage and went in person directly to the place, and found no fighting there; but from the testimony heard by me as mayor it appeared that there had been a fight such as occurs in many cities on like occasions."

Of course that disposes of it.

"I, Nathan Stoner was brought before me, as mayor, charged with shooting Edward Edwards; several witnesses were examined, among them A. W. Archer, a justice of the city, who was present at the time of the fight, who put an end to it by commanding the peace. It was in evidence that a pistol was fired by an unknown party, but that the prisoner could not have shot Edwards from the position which he occupied. The physician who examined the wound could not say whether the wound was caused by a pistol-shot or with a brick or some such thing. Stoner was discharged. I have been informed that Edwards soon recovered and is now well.

"I regarded the whole affair as the result of free use of whisky on the election day, and not a premeditated affair.

"Given under my hand this 19th day of December, 1876.

"W. F. C. GREGORY."

Now, Mr. President, any one can see that the statements made by this mayor are no answer to these charges whatever. He says when he got there there was no fight. I suppose the fight was over and the injury had already been inflicted. It is smoothed over, passed over as lightly as possible. This body of testimony has not been impeached, nor has it been affected by what was stated here. The President acted upon the statement of the proper authorities, of the district attorney, of the marshal of the State, supported by six or seven affidavits, showing a bloody outrage, and the very attempt that is made to mitigate that outrage admits, and admits strongly, that it did take place. To prevent the recurrence of a like outrage, and upon being properly requested, the President sent this small body of twenty-four men, who behaved themselves discreetly; and for that he is arraigned as having violated the Constitution. When the time shall come that these outrages are admitted, and not justified, when they are no longer excused or palliated, then they will cease to exist; but when the crime is made to consist in trying to prevent outrages, when it is made a crime to protect citizens of the United States in their lives and in their dearest rights, and the men who inflict these crimes and perpetrate these enormities are excused and ignored, so long as that is done these things will be continued.

Mr. President, so far as the facts are concerned, I give them as they were laid by the President before the Senate; and so far as the law is concerned laid down by the two Senators, I dissent from it utterly. It is not supported by any dictum, it is not supported by any provision of the Constitution or of the statutes. The President in doing what he did had a right to do it, whether he had these affidavits or not. Whether he was called upon by the marshal and the district attorney or not, he had a right to send troops into Virginia and give them summer quarters or winter quarters in Petersburgh, or anywhere else, so that it did not interfere with the rights of private property and with the rights of the people. He had a right to do this thing, with or without this application. But looking at it in the light of the evidence, in the light of the demand made by the proper authorities, we find that the action of the President was entirely justifiable and that there is no ground whatever for this assault upon him.

Mr. JOHNSTON. Mr. President, I desire to say a few words in reply to the Senator from Indiana. If the Senator means to say that I am any apologist for crime or outrage he does me a very great injustice, and I deny the statement positively. If I were satisfied and believed that any outrage had been committed in Petersburgh or Richmond or anywhere in Virginia, I would be as quick and as fierce to denounce it as the Senator himself; but I deny positively that the crimes imputed in the papers he has read were ever committed. The testimony is false, it is manufactured; and because we attempt here to repel what we believe to be a false charge upon our State and upon our people, is it to be imputed to us that we are apologists for crime and outrage? The Senator himself, who is the great receptacle to whom all reports of outrages are directed, to whom information is conveyed of everything that looks like an outrage in the Southern States, had never heard of this affair until the resolution of my colleague was introduced in the Senate and was under discussion early in this session. Mr. Jorgenson came upon the floor and prompted that Senator, and I suppose that was the first information he had in regard to these alleged outrages in May, 1876. If they had existed, if these things had really occurred, the Senator, as the great expounder of these outrages in the South, would have been the very first man to whom they would have been communicated. But the Senator seems to have forgotten what he said on the former occasion. He is very much like Falstaff, who saw so many men in buckram. They grow as the case goes along. In the remarks which he made when prompted by Jorgenson on a former occasion the Senator only referred to three republicans who were damaged on that occasion. Now he makes the declaration that half a dozen republicans were nearly killed. The evidence from which the Senator has read does not show that half a dozen republicans were nearly killed, or that any republicans were nearly killed. Taking all to be true that the Senator has read, it does not support the Senator's extravagant assertion that half a dozen republicans were nearly killed on that occasion. But admitting all that to be true, let us look at these affidavits a little. Let us take William White's affidavit as a specimen. He comes after the alleged date of that affidavit and makes another. The Senator says that White's last affidavit does not dispute the allegation of the first affidavit. He does positively dispute the allegation made in the first affidavit. In the first affidavit he says:

Stoner was never punished for his offense. I do not believe that the colored people will dare to come out and vote unless we have protection.

That is the allegation that he makes in the affidavit read by the Senator from Indiana. In the affidavit of White read by my colleague yesterday he says this:

Question. Are you afraid to vote the republican ticket on the 7th of November?
Answer. No.
Q. Do you know of any one who is afraid to vote it?
A. No.
Q. Do you think it necessary for any military forces to be here for the protection of any citizens in their rights to vote?
A. No.

The Senator says that the man was bull-dozed, or insinuates that he was, when he made this second affidavit. That affidavit was given when these twenty-four troops were in the city of Petersburgh. No republicans could be bull-dozed then. They had not only the twenty-four troops with their officers, but they had two hundred and fifty special deputy marshals to protect the people in their rights, if necessary. The idea that the republicans could be bull-dozed with United States troops in the city and two hundred and fifty special deputy marshals there is absurd. The affidavit must have been voluntary, and it must be taken as true; and the other one which the Senator relied upon was false. If the Senator will take the trouble to analyze these affidavits a little, he will find how much they conflict with one another. They were not got up with that skill which ought to have been used in order to make an impression. The people of Petersburgh looked for the men who made the affidavits, and White was about the only one they could find. They found him, and when found they ascertained from him that the alleged affidavit purporting to be made by him had never been made by him, but that it had been manufactured. I do not care for the present purpose whether it was true or untrue, for if the President is to be influenced in his action in sending troops to a State by manufactured evidence, whether true or false, I submit that it is a great wrong. If White never made the affidavit, and if parties in Petersburgh manufactured in his name an affidavit and sent it to the President as a basis of action on his part, it was a great wrong, a great outrage, and a great violence to our institutions. It was a thing that the President himself should punish if he has been willfully misled in that way. White does swear that he never made the affidavit, and the Senator brings forward and reads an affidavit which the man himself swears he never made. It is a matter of little consequence in that point of view whether it was true or false. If it was false, of course the whole thing goes to the ground. If it was manufactured, if it was forged, if it was got up by parties unknown to White, it goes to the ground likewise. It makes no difference as to the merits of the case. Whether it is supported by false affidavits or manufactured affidavits, equally the case goes to the ground. If Senators will take the trouble to read these affidavits, they will find that the man who got them up did not display the skill he might to have done when he wanted to manufacture affidavits in order to make an impression. If you will read them you will find that they contradict each other expressly; that they give different versions of the same affair; that one man who witnessed certain transactions swears to outrages by a man named Richardson; another man who witnessed the same thing, or swears he witnessed it, says the outrage was committed by Jim Eames. One man swears it was committed on Marble and another man swears that it was not committed on Marble at all, but that it was committed on a man named Moses Norman. These affidavits which thus give different versions of the same transaction are relied upon as proof to sustain the allegations made by the Senator from Indiana.

These affidavits, purporting to be of parties in Petersburgh, are manifestly false, because one deputy United States marshal went into the city of Petersburgh alone, and arrested some six or eight men without help, and took those men through the streets of Petersburgh and brought them before an officer. That was done when there were no United States troops there, when, if violence was premeditated, it could easily have been practiced. This officer walked with half a dozen prisoners, without any guard, through the streets of Petersburgh and carried these prisoners into custody. Yet that is the city in which the Senator says that a man who has been outraged, has been shot and beaten, dare not apply for redress.

I do not propose to dispute for a moment the right of the President to send troops into Virginia. It is not the fact of sending them there that I comment upon, but it is the purpose for which they were sent there that I consider. If the President wants to send a regiment or the whole Army down to Virginia merely to stay and be entertained and to be well treated, I am content. I have no objection to that, and I think he has a right to do it. We should be very glad to have them there. The Senator forgets that the President himself says he did not send them there for the mere purpose of keeping them there, of having them there, but that he sent them there for a specific purpose. He tells what that purpose was, and it is that that we object to; not to the mere presence of troops in the State. The President sent these troops there a few days before the election. Let me read once more what I read yesterday. Here is the order of the President as printed in the RECORD. The Senator talks about our objecting to troops going there merely for the purpose of passing through the State and being in the State. The Senator certainly thinks we have much less knowledge than we ought to have to be in the position we are, if we appear to object to the passage of troops through the State. With this order of the President before his eyes, he overlooks the fact that both my colleague and myself made objection to the purpose for which the troops went there. Here is the order:

EXECUTIVE MANSION,
Washington, November 4, 1876.

To Hon. R. W. HUGHES,
United States District Judge of the Eastern District of Virginia:

Whereas I have reason to believe that offenses are likely to be committed within said judicial district against the provisions of chapter 7, of the title "Crimes," of the Revised Statutes of the United States, you are, therefore, hereby requested and directed to attend at Petersburgh, Virginia, on the 6th, 7th, 8th, 9th, and 10th days of November current for the purposes mentioned in section 1988 of said Revised Statutes.

U. S. GRANT.

The judge was sent there for that purpose. The Army was sent for the same purpose. The objection is that the President sent troops in the State for the purposes indicated in the letter to Judge Hughes that he had reason to believe that offenses were likely to be committed, or had been committed, against chapter 7 of the title "Crimes," and he sent them there for the purpose of executing the laws in that respect. It is in that respect that my colleague and myself insisted that the President had no right to do it under the circumstances that were laid before him. He had been deceived by these identical men on the very occasion to which I referred, in which a United States deputy marshal Caldwell went into Petersburgh alone and arrested election judges. On that identical occasion the same complaints had been made to the President that were made now. Affidavits were then manufactured. Negroes were got to swear that they apprehended violence and had heard that a mob was going to attack the United States property. These affidavits were submitted to the President, but they proved to be wholly without foundation. Nobody in Petersburgh except the men engaged in manufacturing those affidavits ever heard of the intention to do the thing complained of. Caldwell went to the city. He found the city quiet, people engaged in their every-day business, and everything going on peaceably; no riot, no mob, and no talk of a mob or riot. He went into the city alone, arrested the judges of election, and carried them away from the city, and subsequently to that some of the very persons who appeared to have made affidavits came out and said they had never made them. I recollect distinctly one affidavit in which a colored man swore that he had been taken to the custom-house and there had been given a paper done up in an envelope and had been told to take that paper somewhere and swear to it, and he did take it and swear to it, and he never knew what was in the paper at all. That was a specimen of the way in which the affidavits were manufactured.

Now, Mr. President, the only ground upon which these parties, Mr. Lewis—who I do not believe was in that part of the State at all about that period—and Mr. Ramsdell, or any of these people proceeded was the fact that there had been a riot in the city, as they say, nearly six months before. To garrison the city on account of that riot was manifestly improper. The affidavits state that the rioters came out in companies, went into the streets and drilled, went through the performance of drilling in the streets preparatory to making an attack on the polls; went out to a place called Battersea and there drilled. Such a statement is surely improbable. That a company of roughs should, if they desired to make an attack on the ballot-boxes, go into the streets in advance, when it was known United States marshals and commissioners were in the city, and drill, and thus give the public warning of their purpose, is manifestly untrue. Nothing of that sort could have occurred. Why go through the ceremony of drilling? Why go out into the streets and make their men shoulder arms and carry arms, right face and left face, in advance of making an attack on the polling-places? It is manifestly absurd. Nothing of that sort ever could have occurred or ever did occur.

But, Mr. President, when we find that the only thing that these parties claim as a reason for this movement is the fact that there had been an alleged riot six months before, I deny that that was any ground for sending troops to Petersburgh. That there had been a riot there then was certainly no reason why there should be one now. Surely the fact that on one occasion from some cause there had been an outbreak, or a mob, or a riot, was no reason for believing there was going to be one again. The gentlemen who sent these letters ought to have given some reason, not an account of what had occurred but what they believed was going to occur, then based on something they knew or heard, not based on their mere fears and suspicions. Mr. Ramsdell, who writes the very letter we are talking about, is not only marshal, but chairman of the republican committee. He says in his letter, to be found on page 14 of the document:

> I have made a thorough canvass of the fourth or Petersburgh congressional district, traveling between two hundred and three hundred miles and speaking at the court house in each of the eleven counties. Deputy marshals have been appointed in each county, and every possible precaution made to preserve the peace and secure the citizens in their rights under the Constitution; but I am prepared to witness and hear of violence in this part of the South.

He has been in every county, traveled two or three hundred miles, spoken in every county, and yet he does not testify to any violence. He says he had taken the steps necessary to preserve the peace, that he had appointed deputy marshals in all these counties, invested with their great and immense power; and yet the same man who had traveled over the district unmolested and had spoken in it unmolested, who had canvassed every county in the district unmolested, who saw no man in arms, who testifies that he heard no threat, saw no outbreak, saw no violence, that same man says, "Well, send troops to Petersburgh." It is manifest from Ramsdell's own statement that he had no reason to fear any outbreak in Petersburgh, and that the object was not to prevent an outbreak, but for the purpose we have indicated, of having a force there which he thought might overawe the voters.

If there was a question of conflict between the citizens of Petersburgh and twenty-four soldiers and that was all of it, there would have been a very short conflict, of course; but the citizens of Petersburgh respected the twenty-four troops because they were the representatives of the law. It is not the number, it is the threat that such a force implies. It is as much as to say, "Now, these twenty-four men are not sufficient to put down a mob, but at the back of these twenty-four is the whole United States Army." If there had been a mob, a riot, certainly twenty-four men would have been very insufficient to put down four or five thousand; and the mere fact of sending such a small number of men there showed that the parties who got them there that day really knew and believed their presence was not needed to suppress a riot. Could twenty-four men suppress a thousand, if it was a question of mere force? Of course that could not have been the purpose.

Mr. MORTON. Mr. President, so far as any attempt to make this matter personal to myself is concerned, it will utterly fail. The Senator says that I am the great receptacle for charges of this characters. I was not the receptacle of this. It was not sent to me except as it was sent to the Senate by the President of the United States. But I would rather be the receptacle of evidence of outrages of this kind than to be their defender, very much.

Now the Senator says in his speech that he admits that the President had a right to send these troops there; that he and his colleague admit that, but that they do not like the purpose for which the troops were sent. Mr. President, the Senator's speech of yesterday, if I have read it aright, (and it is in the RECORD for everybody to read,) is an argument that the President had no right to do it at all. The Senator has certainly changed his ground right about face.

Mr. JOHNSTON. By no means, sir.

Mr. MORTON. O, yes.

Mr. JOHNSTON. I did not say the President had a right to send them there for that purpose. I say he had not.

The PRESIDING OFFICER. Does the Senator from Indiana yield to the Senator from Virginia?

Mr. MORTON. Certainly.

Mr. JOHNSTON. He had a right to send them to pass through the State and to stay there to be entertained; but I deny, as I did yesterday, that he had a right to send them at the time of the election for the purpose of controlling the election.

Mr. MORTON. My friend will find his memory very much at fault if he will only review his own remarks made yesterday as to the right of the President to send his troops there; he will find that his whole argument went against that right. The argument was that the law itself was unconstitutional, and then he referred to the fourth section of the fourth article of the Constitution, the same section quoted by his colleague, that the United States shall protect each State against invasion, and on the application of the Legislature, or of the executive when the Legislature cannot be convened, against domestic violence, and finally the third article of amendments, "that no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in a manner to be prescribed by law," and he then said:

> Take all these provisions—their purpose, intent, and spirit—and how does section 2002 of the election law agree with them? The duty of keeping the peace in the States belongs to the State and municipal authorities.

And so on the Senator can read through and see the drift of his argument; he will find it all tending in the same direction. His colleague, as I read—and I am glad he is here now and can speak for himself—did argue directly that the President had no right to march these troops into the State. He said:

> Mr. President, the fourth section of the fourth article of the Constitution of the United States conveys all the powers which are granted to the Government of the United States under any circumstances to march their troops into the interior of any State.

That is, the United States cannot march troops into the interior of any State unless the President has been called on to repel invasion or suppress domestic violence. Now the Senator says they do not stand on any such doctrine as that. I can only say that he and his colleague ought to have consulted about their position before coming to an expression. The Senator [Mr. WITHERS] then quoted the fourth section of the fourth article and said:

> It will be thus seen that by the provisions of the Constitution the United States is authorized only in one single instance without qualification to occupy the territory of a State with its armed troops; that is, to repel invasion. On the application of the Legislature, or of the executive when the Legislature is not in session, it is also authorized to march its troops into the territory of the different States.

So that, as I understand, both the Senators did argue that in the absence of a call such as is provided for by the Constitution and the law, the President has no right to march the troops into the interior of a State. But it is enough that the Senator [Mr. JOHNSTON] says now that he does not contend for any such doctrine. He has the right, most undoubtedly, to change his opinion.

Now, Mr. President, the Senator says that he denies positively that these crimes took place in Petersburgh. How can the distinguished Senator do that? He was not there. How does he know they did not take place? Here is the statement of the district attorney saying they did take place; he was satisfied of it.

Mr. JOHNSTON and Mr. WITHERS. He was not there.

Mr. MORTON. He was not there, but he acted on his best information, and so the marshal acted on his best information, and they give it as what they believed. Then here are half a dozen or seven affidavits stating that those things did take place. I see that they got Mr. White to say he did not sign his affidavit as published in the National Republican. I do not know what the affidavit was that was published in the National Republican. It may have been this one, or it may have been another, for it was just as easy to procure him by force or by fraud to make the last statement as it was to make the first; and if I am called upon to say which statement he was bull-dozed into making, I believe it was the last one.

Mr. JOHNSTON. Bull-dozed with the United States troops in the city?

The PRESIDING OFFICER. The rule must be observed, that no Senator can be interrupted without addressing him through the Chair.

Mr. MORTON. The Senator says he denies positively that these things occurred in the face of those affidavits and in the face of the affidavit of the mayor of Petersburgh, who says there was a riot. He says a pistol was fired, but he says when he got there the fight was over. I suppose it was. He says it was not proved that the man whose name is given here fired the pistol, but somebody else fired it, and the testimony was before him. But the man who was shot in the head swears positively who fired the pistol. The mayor admits that a man was shot or wounded, but says he understands he has got well. The mayor admits the difficulty; he smoothes it down; he glosses it over as well as he may; but he admits the existence of the trouble, and those men swear positively to fact after fact, and yet the Senator from Virginia says he denies positively that these things took place. He has a right to do it; I am not going to question his sincerity at all; but that is the difficulty we have with all these southern outrages. They are denied; they are ignored. Here is the testimony piled up mountain high, and thousands and thousands of affidavits taken before competent committees—I see some of them sitting here now—have been taken this year and years before, and yet they are all ignored or positively denied. That is the trouble we have had all the time.

Mr. JOHNSTON. Will the Senator allow me to ask him a question?

Mr. MORTON. Yes, sir.

Mr. JOHNSTON. I understand the Senator to say that White was bull-dozed when he made the last affidavit, that is, the affidavit dated the 6th day of November, 1876. At that time Judge Hughes was holding the United States court in that city; the United States troops were in the city; there were two hundred and fifty special deputy marshals in the city. Now, I ask the Senator if he believes it possible that the democrats bull-dozed a colored man in the city under those circumstances?

Mr. MORTON. I think that is not a very satisfactory answer, because the judge might have been holding a court and there might have been deputy marshals. It is not a very satisfactory answer to what we know is the favorite method of the Ku Klux in doing business, visiting houses at night, going in gangs, killing men, shooting them—not referring particularly now to Petersburgh, but I am speaking of the general habit of the Ku Klux, the way in which they do business—compelling men to do whatever they want them to do to save their lives, and to save their families from danger and their property from destruction. So, if we are to assume that this man was compelled to make one or the other of these affidavits, there is very much more reason to suppose that he was coerced into making the last one, and I believe he was. It is in conflict with the other; in conflict with the testimony of five or six other men. There is the statement of intelligent officers in which, as gentlemen and as public officers, they have called upon the President of the United States to act.

But the Senator read from the letter of Ramsdell, and he gives credit to that part of it that suits him, in which Ramsdell says:

I have made a thorough canvass of the fourth or Petersburgh congressional district, traveling between two hundred and three hundred miles and speaking at the court-house in each of the eleven counties. Deputy marshals have been appointed in each county and every possible precaution made to preserve the peace and secure the citizens in their rights under the Constitution; but I am prepared to witness and hear of violence in this part of the South.

That is the plain reading; but the Senator did not place the emphasis there. He says deputy marshals were appointed in each county. Why? Because of the apprehension of violence. He says:

I am prepared to witness and hear of violence in this part of the South. The truth is this—

And here is where the Senator stopped reading—

The white people are generally opposed to colored suffrage, and regard any means justifiable to render that vote nugatory.

And there comes the whole trouble, Mr. President. He there states what he believes to be the great fact, that they are opposed to colored suffrage, and that they regard any means that would render that vote nugatory as being justifiable.

Regarding Petersburgh as the most critical locality on the day of election, I thought of remaining here unless it be thought advisable for me to be at headquarters in Richmond.

Very respectfully,

C. P. RAMSDELL,
United States Marshal.

And the same officer, writing another letter on the same day, makes use of the following language to Mr. Taft:

I have the honor to state that it is the understanding here that United States attorney for this district, L. L. Lewis, esq., and other official and non-official citizens of Petersburgh, have represented to your Department that troops will be needed to protect the rights of citizens and the United States officials on election-day. That opinion is doubtless based on the history of elections in that city for the past two years, which have been anything but orderly. Even in the little municipal election last spring for mayor, &c.—

The very one I have been referring to—

the most disgraceful outrages were perpetrated. Troops can do no harm to well-disposed citizens, and in the light of experience I am of opinion that they will be needed. Their presence will be, I think, promotive of good order.

I have no doubt their presence was promotive of good order.

I have appointed many deputy United States marshals, and shall be present on election day, and have requested the presence of the assistant district attorney for this district.

Some apprehensions are expressed as to the condition of Norfolk and Portsmouth; but they are so near to Fortress Monroe that I do not think serious disturbances are likely to arise. The troops at the Gosport navy yard might be held in requisition for the latter, and the marines for the former in case needed.

In this city [Richmond] no disturbance or disorder is anticipated. Shall advise you if developments are made.

Respectfully,

C. P. RAMSDELL,
United States Marshal.

So, Mr President, this officer, whose testimony the Senator reads in part, states the whole case very strongly. I have here an article which I will read an extract from; it is from the Virginia Citizen, of October 7, 1876, a republican paper published in Virginia:

It is a well-known fact that gamblers were imported from Richmond in May, 1874, to instruct the "reformers" of this city in the method of stuffing ballot-boxes, and that the city, with a republican majority of 500, was carried by our opponents by over 1,000; that at the congressional election in the fall one of the supervisors was ejected by force from one of the registration rooms; that on election day a deputy United States marshal was assaulted, and that ballot-box stuffing with the "sugar-kiss" ballot was again resorted to.

I have been shown a specimen of these "sugar-kiss" ballots. I am told they were found in great numbers. They were stuffed into a box.

Coming down to the election of 1875 for State senator, when from five hundred to seven hundred independent democrats united with the republicans in supporting Colonel Robert Bolling as an independent candidate for the State senate, the republicans had not a single representative on the board of election judges in any ward of the city, and when the Bolling men applied to the judge of the hustings court for the appointment of one of their friends wherever a vacancy existed, they were refused; that the city authorities refused to appoint any of their friends as special policemen; that the democrats claimed the right at sundown to close the polls, and shut everybody out of the room but the judges themselves.

Is it any wonder that the democrats carried the city by 1,052 majority, notwithstanding the fact that 700 of their voters united with the republicans, who already had a majority? The only measure of safety the Bolling men had was to station one of their men at the polling-place to take the name of each voter as he deposited his vote. Surely this peaceful proceeding was not sufficiently belligerent or incendiary to justify the assaulting, knocking down, beating, and then the arrest of the challenger *after getting possession of his book*, and locking him up in jail, refusing bail, and keeping him there over night, as was done in the case of Bass in the first ward. The other wards were reconnoitered by gangs of roughs; but ascertaining that they would meet with a warm reception at some, while at others the books had been sent away, these challengers were not molested. Such was the feeling created by these high-handed proceedings, which the municipal authorities made no effort to check, that a number of Bolling democrats said "My God, what are we coming to? We ought to have troops here!" It was their ox being gored then.

The Senator speaks of troops being sent to control elections. I can only say that whether it be in Virginia, Louisiana, South Carolina, or Florida, I know of no case of that kind.

Mr. WITHERS. Mr. President, I regret that, important business having called me to one of the Departments this morning, I had not consequently an opportunity of hearing the assault made by the distinguished Senator from Indiana upon the remarks which I had the honor to submit to the Senate yesterday. I hear that his attention was called to the fact that I was not present, but he defended himself for continuing his remarks upon the ground that he was not present yesterday when I addressed the Senate. There is this difference, however. There was a week's notice given by me publicly on the floor of the Senate, notifying the Senate that I proposed to address them yesterday upon the subject of this occupancy of Petersburgh by the military. Therefore the Senator cannot say that he had not notice of my purpose.

It would be impossible for me of course, in the absence of specific knowledge as to the positions taken by the Senator from Indiana, to reply to them to-day; but I will take the earliest occasion to examine them in the RECORD, and to-morrow will ask permission of the Senate to reply to such portions of them as in my opinion require an answer. I have, however, this to say, that I made no statement yesterday which I do not think I am prepared to verify; and I took no position yesterday which I am not prepared to day or at any time to maintain.

As to the quotations from the letters of the United States marshal and chairman of the republican executive committee of Virginia, upon which the Senator appears to rely as containing imputations calculated to damage the fair name and fame of the people of Virginia and of the city of Petersburgh, to wit, that the whole of the white people of Virginia are opposed to negro suffrage and are willing to take any steps to prevent their enjoyment of that right, I deny the statement in its whole length and breadth. I take occasion here to repeat what I have said heretofore on the floor of the Senate in con-

nection with that subject, that while the opposition was wide-spread and almost universal among the white people of Virginia to granting the right of suffrage to the negro population at the time it was given them, because they believed that their intellectual and their moral condition was not such as to enable them intelligently to exercise it, yet, after the amendments to the Constitution were adopted, no man, to my knowledge, within the broad limits of the State expected ever to see that right taken from them. And as the politicians of Virginia, in common with the politicians of the South generally, have usually had some reputation, at least, as men of ordinary sagacity, they realized at once that there were some countervailing advantages that they would enjoy by this investment of that portion of their population with the right of suffrage. They were also fully cognizant of the fact that at a time not very distant in the future, owing to those irrefutable and irrefragable laws which control elections, the colored vote of the South would be cast in accordance with the views of the majority of the white people of the South. That is a fact which only a few more years or a few more months probably will demonstrate to the satisfaction of the whole people of this country. In fact recent events I think have pointed so conclusively to such a result that I already see indications on the part of leading Senators on this floor, notably the Senator from Ohio and the Senator from Indiana, of a latent purpose on the part of the republican party, if in their power, to divest the colored people of this right which has been given them by an amendment to the Constitution. Certainly, if certain measures and resolutions which have been introduced and adopted on this floor have any significance whatever in that direction, they point to the results which I have indicated; and I venture the prediction here to-day that many months or many years will not have elapsed before we shall find the strongest advocates of negro suffrage upon this floor in the ranks of the democratic party and the most formidable assailants of that right in the ranks of the republican party. No, sir; we do not propose that our colored people shall be deprived of the rights with which you have invested them, and if this invention has, like others, returned to plague the inventors, it is a righteous retribution from which they cannot now hope to escape.

Sir, this is the only portion of the speech of the Senator to which I designed replying to-day, because I have heard little of what has passed except his remarks when he was last up, and they were marked not by a broad and statesman-like consideration of the question, but by quibbles and pin-hooking that would be better exhibited in a mayor's court than in the Senate of the United States.

Mr. SHERMAN. The Senator from Virginia has imputed to me in his closing remarks an idea that never entered my head, and that is a desire to deprive the colored people of the right of suffrage. I never thought such a thing. That right is written in the Constitution, and it is and will be the supreme law. Up to this time these colored people have by violence and crime been deprived of the elective franchise; they have been controlled by force and violence. If left to themselves, especially as their minds are enlightened by freedom and education, they will naturally vote the republican ticket. They will naturally vote for that party which gave them liberty, gave them the right to participate in the government of the country, gave them the right to protect their wives and their children from purchase and sale. Their is no doubt about it. The history of the whole South shows that when the negroes are left to their unbiased judgment or their natural instincts, they will vote with that party that secured for them their liberty and their rights; and, sir, experience has shown that in many of the States they have only been induced to vote the democratic ticket by means that would compel white people, and intelligent white people, also to forego their right to a free vote.

No, sir; we do not want to withdraw that right. I assure my honorable friend from Virginia that although we did not expect the scenes that have followed the fifteenth amendment, we would not repeal it. Let it stand as the law. The time will come when these negroes will have the courage and the intelligence and the force and the power to assert the freedom of the ballot-box, and then your crumbling hopes will melt like snow before the melting sun. Give the negro the right to vote unbiased, give him intelligence and education——

Mr. WITHERS. That is all we ask.

Mr. SHERMAN. And we are willing to risk the issue upon his vote

Mr. WITHERS. So are we.

Mr. SHERMAN. All we claim, Mr. President, and all we have said is that the South have subverted his right while taking his franchise for their own benefit. They have wielded his political power and deprived him of his political rights. That is the point, and that is the whole of it. If it is not so, if we are in error about this, there is no trouble. If the white men of the South seek to use the political power conferred upon the negro and vote him against his will, we will resist it by appeal, by every effort that is peaceful and proper; and we will awaken the attention, not only of the people of the South, but of the North, to the necessity of securing to the negro the unbiased freedom of the vote, and then we will risk his vote All we have complained about is that you have not given him that right.

Now, sir, permit me to say a few words only about this matter, in regard to which my friend from Virginia feels very sensitive. I have from the beginning, from the time this subject was first introduced, regarded this as a mole-hill manufactured or endeavored to be elevated into a mountain. What is this whole Virginia case? General Grant, I suppose, had but very little to do with it. All there was of it can be briefly stated. It seems that this military division is under the command of General Hancock, under the general supervision, as a matter of course, of the General-in-chief of the Army, and supremely under the power of the President of the United States. There was a part of a company, composed of twenty-four men, stationed at Fort Foote, which is down the Potomac. Reports were made to the Attorney-General by the marshal of Eastern Virginia that, on account of some violence or tumult or trouble which had occurred some time in May last, there might possibly be, and there was a fear that there would be, a riot or trouble in Petersburgh at the election. The Attorney-General, having received this intelligence through his subordinate officers there, mentioned to General Sherman, the commander of the Army, that there was some fear, some ground of apprehension that they would not have a peaceable election in Petersburgh, and asked that a few troops might be sent there, simply so that if a call should be made in pursuance of the Constitution and laws they might be at hand to preserve the peace. Thereupon General Sherman applies to General Hancock, the commanding officer of the division, and asks him if he has not got a small force of a few men that he can detail for this temporary duty, to be sent down there to preserve the peace in Petersburgh. Now, the State of Virginia is in the United States of America; no doubt of that; and the President of the United States is Commander-in-Chief of the Army of the United States, and for any lawful purpose the President may send, or his General may send, any portion of the troops of the United States anywhere in the United States, and he alone is the judge of the propriety of it, the judge of the evidence on which that order shall be made. Provided the order was legal, he must judge.

Now, my friends seem to dispute. They say President Grant has made a mistake and that this negro man whom they quote here, William White, says it was not necessary to send them there. If this is a question between William White and Ulysses S. Grant, all I can say is that Ulysses S. Grant is made the judge as to where he shall send the Army, provided it is for a lawful and proper purpose, as to preserve the peace at the election.

This application was made to General Sherman. No doubt he consulted the President, perhaps he did not; but probably he did. Here is the simple narrative of what occurred:

HEADQUARTERS ARMY OF THE UNITED STATES,
Washington, D. C., December 11, 1876.

SIR: In compliance with your reference of the 7th instant of the resolution of the Senate calling for a report "whether troops of the United States were stationed in the city of Petersburgh, in the State of Virginia, on the 7th of November, 1876, and, if so, under what authority and for what purpose," I have the honor to report that Company D, Captain Breckinridge, of the Second United States Artillery, was posted at Petersburgh, Virginia, from November 4 to November 13, when it was recalled to its proper station, Fort Foote, Maryland.

To a more complete understanding of the case, I will add that on the 24 of November a gentleman came to me from the Attorney-General, representing that there was reason to apprehend a breach of the peace at Petersburgh, Virginia, and asking a detachment of troops to be sent there. You being then absent—

It seems the Secretary of War was absent—

I saw Judge Taft in person, and he advised that a company of soldiers be sent to Petersburgh, if practicable; and the next day, being in New York City, I saw General Hancock in person, and, after some inquiries as to the troops available, I ordered him to send the above-designated company to Petersburgh, to remain during the election of November 7, and then to return to its post.

I inclose a copy of his orders; also copies of General Orders Nos. 85 and 96, which include all the orders and instructions made to troops serving in districts where disturbances were apprehended.

I have the honor to be, your obedient servant,

W. T. SHERMAN,
General.

Hon. J. D. CAMERON,
Secretary of War.

These innocent United States soldiers went down the river no doubt, were put in the custom-house, quartered there, remained a week, and returned to their post at Fort Foote. This was the invasion of the State of Virginia! This was the invasion upon the rights of the State of Virginia; for that is all there was of it. There was not any intention to stir up an insurrection or any violence, or to produce long speeches in Congress, but simply a small body of troops was sent down there on the, perhaps unfounded, supposition that there was to be a riot and that their presence might prevent a riot or prevent a breach of the peace if they went there.

Mr. MORTON. And no doubt it did.

Mr. SHERMAN. My friend says no doubt it did. They were sent there I believe for a lawful purpose. The very law itself which my friend reads from the statutes of the United States, section 2002, expressly gives the right:

No military or naval officer, or other person engaged in the civil, military, or naval service of the United States, shall order, bring, keep, or have under his authority or control any troops or armed men at the place where any general or special election is held in any State, unless it be necessary to repel the armed enemies of the United States or *to keep the peace at the polls.*

The whole of these papers show that the only object was to prevent any tumult or riot or disturbance at the polls. They did not go near the polls. As General Sherman says and these papers show, they did not go near the polls. They were put in the custom-house, which was built by the United States; they were in quarters there, and they disturbed nobody. They were kindly and hospitably received by the people of Virginia, according to the statements in these papers. They did not arrest anybody; they did not hurt anybody;

and yet that was an invasion of the rights of the State of Virginia, and the two honorable Senators from that State have felt it their duty, in defense of the rights of Virginia against this most gross and unconstitutional outrage on the rights of Virginia, to entertain us a whole day! I must confess I heard both those gentlemen during a portion of yesterday, and I looked over these papers and I thought on the whole it was not necessary to say anything more about it. I assure my friends that if Virginia is never in any danger except from such outrages as these it will be safe for all time to come. I know troops are stationed in Ohio at different points. We have a small detachment stationed at Columbus, and the great anxiety of our people is to have more of them, because it is quite an advantage really to have them.

Mr. WITHERS. Were they sent there to control an election?

Mr. SHERMAN. No, sir.

Mr. WITHERS. That is what we complain of.

Mr. SHERMAN. They were not sent there to control the election. They were sent there simply to preserve the peace. You might say it is an insult to Virginia to have a constable or sheriff.

Mr. WITHERS. Sent by the United States, I think it would be.

Mr. SHERMAN. Virginia is part of the United States just as much as is Ohio. My friend must get over the idea that Virginia is beyond the limits of the United States.

Mr. WITHERS. With the permission of the Senator, as I do not want to be misunderstood, I should like to interrupt him.

Mr. SHERMAN. Certainly.

Mr. WITHERS. I wish to state this position, that the State of Virginia, the government of Virginia, is fully competent to preserve the peace within its borders, and until it shall have evinced its inability to do so or shall have requested aid from the President of the United States according to the provisions laid down in the Constitution, it is improper for the military to be sent to that State, particularly upon the day of an election. Although the President states they were not at the polls, as was the case, the application for them requested that they should be sent there to be present at the polls. The President himself in his message asserts that because they were present near the polls a different result was obtained in that district from any other district in the State.

Mr. SHERMAN. Mr. President, you ought to treat your officers of the Army with a reasonable degree of moderation and a reasonable degree of fairness. The law expressly says that the Army may be used to preserve the peace at the polls. That this was a lawful order I do not think there can be any question. The troops of the United States, Senators might as well understand, can be stationed anywhere in the United States; in Virginia as in Massachusetts; in South Carolina as in Ohio. It is not to be presumed that because troops are sent to a particular place they are intended for an unlawful use, to interfere with the lawful rights of the people of any State or community. They are to be used lawfully wherever they are, and you cannot use officers and soldiers of the Army of the United States for an unlawful purpose. When that is done, bring us a case of the use of the Army for an unlawful purpose and we will join with you in becoming very indignant about it; but until then we must insist that the United States have the supreme right in this country within the limits of the Constitution.

Mr. WITHERS. I do not deny that.

Mr. SHERMAN. The flag of the United States, the Government of the United States, the President of the United States, the Army of the United States, and the courts of the United States extend over every foot of our soil wherever the flag floats. All this idea about State rights interfering with the lawful exercise of power by the United States, I hoped had been buried forever. The United States is the supreme authority in all this broad country; but no officer of the United States has a right to interfere with the lawful rights of the States or the duties of the States. The powers of the United States, not only the legislative power, the judicial power, and the power of the President, but the power of the Army, extend everywhere over the United States, to be used in strict accordance with law. Upon the case made by these gentlemen, with the exception of the extravagant remark made by the Senator from Virginia who was last up, that the Army could not be sent anywhere except to suppress an insurrection or repel an invasion, it seemed to me only an effort on the part of these honorable Senators to repel what might be regarded as an imputation upon the State of Virginia; that is, that the State of Virginia was not able or willing to protect the elective franchise. It may be true that the State of Virginia can in all cases protect peace at the ballot-box and prevent frauds. I am not here to dispute that, although perhaps the Committee of Elections of the House, especially at the last session, furnished some pretty strong evidence that in this very district there was very great wrong and fraud; but I have not to pass upon that question.

Mr. WITHERS. There was no allegation of that kind.

Mr. SHERMAN. But if there was an allegation made by an officer of the United States that there was danger, or fear, or reasonable ground to apprehend a disturbance of the peace at the polls that would prevent the people of Virginia from voting for officers of the United States, as members of Congress or electors of President, and a reasonable ground was laid, then it was the duty of the President to keep his military force in such position as that it could be used; and when he did that he did not invade the right of Virginia any more than the governor of the State of Virginia would invade the rights of a county by sending a company of militia or an officer or a sheriff or anybody else to aid the local authorities in putting down riot or tumult or a disturbance.

Mr. WITHERS. Will the Senator permit me to ask him a question just there?

Mr. SHERMAN. Certainly.

Mr. WITHERS. Does the Senator consider the relations of the county to the State precisely similar to those that the States occupy with regard to the General Government?

Mr. SHERMAN. No, not at all.

Mr. WITHERS. Then your illustration is not a fair one.

Mr. SHERMAN. I think the authority of the United States is of a different kind entirely and a different character, but the authority of the United States is supreme.

Mr. WITHERS. Under the Constitution.

Mr. SHERMAN. Yes, sir.

Mr. WITHERS. Certainly, it is.

Mr. SHERMAN. And the authority of the county officers within their sphere, subject to the judgment of the people, is supreme. The authority of the sheriff, the authority of the constable, as long as the law stands, cannot be interfered with by any one. As a matter of course I do not compare the United States of America to a county; but according to the theory of the honorable gentleman the United States have not as much authority as a county sheriff or a county constable or any local authority.

Mr. WITHERS. The Senator seems to have misunderstood me. I did not design, certainly, to be understood as comparing the position of the United States with that of a county. When the honorable Senator stated that the United States Government possessed the same power to send its troops and its officers into any State that the governor of a State had to send State officers into any county, my inquiry was addressed to the point whether he considers that the States in their relation to the General Government occupy precisely the same relation that counties do to the government of a State.

Mr. SHERMAN. I do not think so. I am frank to say that I think a county is a subordinate municipal government, dependent upon the constitution of the State.

Mr. WITHERS. That is what I supposed.

Mr. SHERMAN. If the Senator should ask me what the constitution of Virginia is as to the counties, I could not tell him.

Mr. WITHERS. It is not necessary.

On the 18th of January Mr. WITHERS, by permission of Mr. BOGY, of Missouri, who was entitled to the floor, made the following announcement:

Mr. President, it will be remembered that I yesterday gave notice that I would endeavor to-day, after an opportunity should have been afforded me, of informing myself of the character of the strictures made upon my speech by the Senator from Indiana, [Mr. MORTON,] to say something in reply. But as the Senator from Missouri is entitled to the floor, and I do not desire to interfere with his purpose of discussing at length the questions connected with the affairs of Louisiana, I will reserve for a future occasion the remarks I intended to submit.

Mr. SHERMAN. I know that in Ohio a county is a mere municipal corporation for the convenience of a certain community. The county organization, however, is protected by the constitution of Ohio. The county in Ohio does not depend at all upon the legislation of the State, but it is regulated and its powers are regulated somewhat by the constitution of the State itself. I regard States, counties, cities, and the Government of the United States as simply subdivisions of the great power of the people of the United States to govern themselves. They use the United States to regulate certain great powers of government; they use the States to regulate other lesser, but highly important, powers of government; they use counties to regulate mere local matters, confined to little regions; and township authorities, and school districts, and wards have still subordinate duties. The great authority is the people of the United States, and all these are but subordinate agencies of theirs. I have no jealousy at all of the powers of the Government of the United States. That is the difference between the schools in which the honorable Senator and I have been reared. I think that the powers of the Government are essential to the liberties of the people of the United States, all of them exercised to their fullest extent sometimes. Sometimes it may be necessary to exercise these powers to their utmost limit, as we had to do during the recent civil war. Those powers are just as essential and necessary to the liberties of the people of this country as the powers of a State. There is no such sanctity in my mind around the powers of the State governments as to make me worship them at the expense of the powers of the Government of the United States. I think that this whole controversy has been magnified, and that a simple order by an officer one week before the election to send twenty-four men down to Petersburgh, an important and thriving city of the State of Virginia, to preserve the peace at the polls, has been converted into a great invasion of the rights of the State of Virginia. I do not think there is anything of it.

Mr. MORTON. I desire simply to state that I made the remarks I did this afternoon because I was here. I have been out of the Senate almost continuously for some days and may not be here again for several days to come; but I had a leisure afternoon, and for that reason de-

sired to say what I did. Certainly I did not want to take any advantage of the absence of the Senator from Virginia, [Mr. WITHERS,] and I knew very well he could read what I had to say.

The Senator imputes to myself and to the Senator from Ohio the purpose of abandoning negro suffrage and becoming its opponents. I am very sure he cannot find any very lively evidence of that fact. I have been struggling for some years to do what I could to secure the enjoyment of that right. The Senator says that the colored people will soon vote the democratic ticket. I think they will when they are compelled to do it by starvation, by violence, and intimidation. That they will willingly vote with those who formerly oppressed them and who but for the accident of war would hold them in slavery to-day, and continue to do so, and against those who made them free and gave them equal rights, I certainly shall not believe until I see it; but that they may be compelled in some States or in localities by various influences to do that is very likely.

The PRESIDING OFFICER. The question is upon the adoption of the resolution.

The resolution was agreed to.

THOMAS M. SIMMONS.

Mr. COCKRELL. I ask now that we finish the consideration of Senate bill No. 948.

The PRESIDING OFFICER. The Senator from Missouri moves that the Senate continue the consideration of the bill temporarily laid aside.

The motion was agreed to; and the bill (S. No. 948) for the relief of Thomas M. Simmons was read the second time and considered as in Committee of the Whole.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

COUNTING OF ELECTORAL VOTES.

Mr. BOGY. If I am in order, I move that the resolution offered by the Senator from Pennsylvania [Mr. WALLACE] some days ago be taken up. The resolution is now on the table, and I desire to reply to the speech made by the Senator from Ohio [Mr. SHERMAN] on Louisiana affairs at the time when the resolution was presented. As it is growing late and I think there is nothing pressing before the body at this time, I should like to say what I intend on that subject to-day.

Mr. FERRY. I should like to make a suggestion to the Senator. Does he desire to go on this afternoon? I had thought of calling up the report of the Committee on Rules and concluding its consideration to-day, which I think we can do. It is now three o'clock, and perhaps it will suit the convenience of the Senator better to postpone his remarks until to-morrow and take up the Louisiana resolution then. I throw this out as a suggestion. I am not disposed to occupy the floor or seek it if the Senator from Missouri desires to make his remarks to-day.

Mr. BOGY. If I can be assured that I shall get the floor to-morrow I am disposed to yield.

Mr. FERRY. The Louisiana resolution might be taken up at the conclusion of to-day's session and left as the unfinished business, so as to come up to-morrow at one o'clock, and then the Senator from Missouri can take the floor. I will yield for that purpose, if we are not through with the rules at the close of to-day's session.

Mr. BOGY. Very well.

RULES OF THE SENATE.

Mr. FERRY. I move that the report of the Committee on Rules be taken from the table for present consideration.

The motion was agreed to.

The PRESIDING OFFICER. The report of the Committee on Rules is before the Senate.

Mr. FERRY. I ask that the first rule be read, as that is one of the rules asked to be reserved by some Senator, I do not now remember by whom. I move that the Senate concur in the first rule. I ask that it be reported.

The Chief Clerk read as follows:

1. The presiding officer having taken the chair and a quorum being present, the Journal of the preceding day shall then be read, and any mistake made in the entries may be corrected. The reading of the Journal shall not be suspended unless by unanimous consent; and when any motion shall be made to amend or correct the same it shall be deemed a privileged question and proceeded with until disposed of by the Senate.

The PRESIDING OFFICER. This rule was reserved, as it was understood, for consideration in the Senate.

Mr. FERRY. In consequence of several Senators having raised the point that this rule is different from the old rule and raises the question of the quorum being dependent on the qualification of members, in order to avoid any issue upon that question I propose to offer as an amendment the language of the old rule. I move to insert after "quorum," at the end of the first line, the words "which shall consist of a majority of the Senators duly chosen and sworn;" so as to make the rule read:

The presiding officer having taken the chair and a quorum (which shall consist of a majority of the Senators duly chosen and sworn) being present, the Journal, &c.

It is simply replacing the language of the old rule.

The amendment was agreed to.

The rule, as amended, was concurred in.

Mr. FERRY. I do not know that there has been any issue in the consideration of these rules except upon the question of compelling the attendance of absentees; and, if there be no other question in the recollection of any Senators present, I ask that the amendments be concurred in in gross save that rule which contains the clause relating to the attendance of Senators, which is the third rule.

Mr. INGALLS. The Senator will pardon me. I have not the rules before me, but I believe objection was made to some rule that made the duty of voting obligatory upon the Vice-President.

Mr. FERRY. That is true. I agreed to reserve that rule at the instance of some Senator; but it escaped my recollection. There was a point on that.

The PRESIDING OFFICER. The proposition is to concur in all the rules except in these two instances mentioned.

The rules, as agreed to by the Senate as in Committee of the Whole, were concurred in, with the exceptions stated.

The PRESIDING OFFICER. The two reserved rules are now before the Senate.

Mr. FERRY. The first one is Rule 3.

The PRESIDING OFFICER. It will be reported.

The Chief Clerk read as follows:

3. No Senator shall absent himself from the service of the Senate without leave of the Senate first obtained. Whenever it shall be ascertained that a quorum is not present, a majority of the Senators present may direct the Sergeant-at-Arms to request, and, when necessary, to compel, the attendance of the absent Senators, which order shall be determined without debate; and, pending its execution, and until a quorum shall be present, no motion, except a motion to adjourn, nor debate, shall be in order.

Mr. WHYTE. I proposed an amendment to this rule when the subject was under consideration before. I think a better amendment than the one which I proposed, which I now withdraw, would be the old rule. The old rule as it stands, it occurs to me, is a far better rule than the rule as proposed by the committee. The Senate has acted under that rule since the 25th day of June, 1798, and I have never known an instance in which the Senate suffered under the operation of that rule, certainly not during my service in the Senate during portions of two terms. It occurs to me that we had better preserve the old land-marks for the governance of the Senate. I hope that the committee will not press this rule as proposed by them now, but will allow us to remain under the rule passed in 1798.

Mr. FERRY. I would suggest to the Senator from Maryland that he would reach his object and test the sense of the Senate by striking out the words "and, when necessary, to compel." That would leave the rule substantially what it was before.

Mr. WHYTE. That was my motion the other day.

Mr. FERRY. That would leave simply the power to request the attendance of absent Senators, the same as the old rule.

Mr. WHYTE. I have no objection. It occurred to me, however, in reading the rule rapidly, that there was a distinction between the new rule and the old rule besides the point of compulsory attendance.

Mr. FERRY. There is very little difference except the question of excuses, which the committee thought best to leave out.

Mr. WHYTE. And the matter of expenses, and so on?

Mr. FERRY. Yes, sir, and expenses.

Mr. WHYTE. Then I am quite content to withdraw the amendment just proposed and offer again the amendment which I before proposed, to strike out the words "and, when necessary, to compel."

The PRESIDING OFFICER. The amendment of the Senator from Maryland will be reported.

The CHIEF CLERK. It is proposed to strike out the words "and, when necessary, to compel."

Mr. HAMLIN. I think when the Senator from Maryland shall have occupied a seat in this body a little longer he will not be able to say what he has uttered this morning. He has told us truthfully that while he has held a seat upon this floor he has seen no inconvenience under the old rule. Such I suppose to be the fact; yet there is no Senator upon this floor who has occupied a term who will not tell that Senator that time after time during a session we have found ourselves without a quorum in consequence of the voluntary withdrawal of Senators from their seats. There ought to be, I frankly admit, that honorary obligation, that high sense of duty upon every Senator, which would restrain him from doing that. I believe I never left my seat for any such purpose; but it is done. If you adopt the amendment submitted by the Senator from Maryland, it is true that you restore the rule to what it was, and to what it has always been; but you will involve yourselves in the difficulty of being obliged to adjourn again and again if you do not have the power to compel the attendance of members.

Mr. INGALLS. The power exists under the Constitution.

Mr. HAMLIN. It exists under the Constitution in the body; but the body must clothe the minority with the mode and manner of exercising it before it can be exercised. It has been the construction of the Constitution that less than a quorum could not exercise any other power than to request the attendance of absentees unless a quorum, a legally constituted body, should have first prescribed the rules under which the power could be exercised by a number less than a quorum. Such, however, has, I believe, always been the rule of the other House. The necessity I suppose would be somewhat commensurate with the number constituting the body. I can well see that

that particular rule might have been earlier adopted there than here; but we know that this body has grown from twenty-six members up to its present number, seventy-six, when we are all here, and we are getting to be quite a body in number. It is designed to avoid the necessity of being compelled to adjourn without a quorum, and that necessity occasioned by the voluntary withdrawal of Senators from their seats. The committee gave to it a very careful consideration, and we were unanimously of the opinion that we should clothe this body with the authority, when it should find itself with a number less than a quorum, to exercise that power which the Constitution has vested in us.

Mr. WEST. Will the Senator permit me to ask him a question right there?

Mr. HAMLIN. Certainly.

Mr. WEST. Is not that power already conferred upon a minority of this body by the Constitution itself, without the necessity of adopting any such rule?

Mr. HAMLIN. I think the Senator was not in his seat when I said that by the construction of the Senate, uniformly adhered to, it has been held that it has not that power until the rule for exercising it shall have been prescribed by a full Senate. The question has been again and again raised here, and the decision of the Chair, I believe, has been uniform that a number less than a quorum cannot arrest and bring here by the Sergeant-at-Arms a member without the express authority to do so having been first granted by the Senate. That has been the construction, and the committee have acted on that. Whether that be a correct construction of the Constitution, I do not undertake to say; but I adopt that construction which has been uniformly the one that has controlled the Senate; and under that view I for one think it is not only wise, but I think it is demanded of us at this time to make our rule effective.

Mr. WHYTE. Mr. President, we have all been taught to have a veneration for the Senate of the United States, and I believe that one of the very reasons why we have venerated this body in the past has been the high sense of honor which has been supposed to govern the actions of those members that composed this body. Speaking for myself, I presume that every other Senator would discharge with perfect fidelity the duty that he owed to his State and to the country by being personally present when that duty called him here. I do not believe any Senator would absent himself from this body to avoid the performance of his public duty; and if there be such a Senator for whom we should be compelled to send the Sergeant-at-Arms to bring him here, I presume he would be tricky enough to hide himself in a spot where the Sergeant-at-Arms could not find him.

I believe in holding Senators to their high responsibility, not by compulsion but by honorable obligation; and I do not believe the time has yet arrived in the Senate of the United States to use compulsory process to force Senators to discharge their duties. If it has come, then I am sorry for the condition of the people of the United States. No, Mr. President, I hope the Senate will not depart from that rule which in 1798 was found to be sufficiently binding upon the honor of Senators, and that this Senate will be content to try the same expedients that our forefathers resorted to to carry on the public business in the Senate of the United States.

Mr. FERRY. I am not disposed to discuss this question much; but at the same time I desire to call the attention of the Senator from Maryland and other Senators to the fact that this body is gradually growing larger and larger; and incident to that fact is another pertinent one to the question at issue, that many Senators in consequence of that feel that they can be away and leave the Senate to a fewer number who are left from time to time to transact the business of the Senate. We have been found repeatedly in a minority, and then attempted, under force of the existing rule, to compel the attendance of sufficient members to enable us to progress in the business of the Senate, but such attempts have generally failed. If official obligation will not bring Senators here, the business of the Senate must progress, and the Senate should adopt some more stringent rule which will bring Senators present, so that the business of the country shall not be arrested. It was with that view the committee thought it prudent not only, but rather imperative, that they should submit this amendment to the Senate in order to avoid the contingency which we frequently find ourselves in when we are anxious to progress with business, and find ourselves without a quorum. I need barely recur to instances to remind Senators of the fact that Senators have risen, when we have been without a quorum, to move the compulsory attendance of absentees, and it was found impossible, under the rule, without giving a day's notice. Finding themselves in that hopeless and helpless condition, the committee have been driven to report this amendment in order to give the Senate the option. This is not compulsory. It is left entirely to the Senate. They can either direct the Sergeant-at-Arms to compel the attendance of Senators, or direct him to request their attendance as now. So the adoption of this rule will not compel the Senate to do just what the rule expresses, but will leave it to exercise its option. It is not left to an option now, for it is unable to compel the attendance of Senators who are absent.

It would seem to me a wise rule that when the absence of a quorum is disclosed those present at that time, when they feel the necessity of attendance, should have the power to enforce the attendance of absentees; otherwise we are left to the next day, and when the next day arrives doubtless a quorum will be present and the necessity will have passed. Senators appear here ready to discharge their duty, remain hour after hour, and sometimes until late at night, and as we shall soon be approaching the close of the session, we shall be compelled to hold our sessions at night, and those Senators who remain to transact the business of the Senate will be compelled to be occupied here from twelve o'clock noon until perhaps twelve o'clock at night, and may then find themselves without a quorum. Perhaps they have been all day engaged upon a bill, and when they come to the final vote they find themselves without a quorum and are compelled to break up until the next morning. Now, it would seem not unwise and surely not unsafe to give the Senate this option under the rule proposed by the committee.

The PRESIDING OFFICER. The question is on the amendment proposed by the Senator from Maryland.

Mr. HAMLIN. Just one word. There can be no controversy between the Senator from Maryland [Mr. WHYTE] and myself in relation to what are the duties and obligations of Senators. I concur in every word he has uttered in relation to those duties and obligations; I feel them as he feels them; but there stands before us the startling fact—because it is a fact within the experience of every Senator in this body—that the provisions in this rule are requisite and necessary to compel an attendance of a quorum in this body. While I do not wish to say anything in the spirit of prophecy, but rather in the light of the past, I do want to say to my friend from Maryland, that before he shall close his term here, so sure as that Senator lives, he will concur with me in the sentiments that I express now. When he shall have found himself involved in a debate and seen a vote of the Senate defeated by the voluntary withdrawal of men to the cloak-room—for it becomes necessary to speak of facts as they are, unpleasant as it may be—so that there is not a quorum voting, and when the vote has been declared see them return to their seats; when he has seen that as often as I have, yea, a tenth part as often as I have myself, I am very sure the Senator will agree with me that it is most appropriate that this language be retained in this rule.

Mr. WITHERS. I would inquire of the Senator from Maine whether in the happening of a contingency such as he has described the rule if adopted in its present form would furnish an adequate remedy. In other words, should such a contingency occur in the conduct of the business of the Senate as to induce a sufficient number of Senators to withdraw and by their absence prevent a quorum and cause the failure of the measure under consideration, I ask whether if we had the power under the rules to compel the attendance of those Senators, it would improve the matter? Would it not, in other words, be another illustration of the old adage that while one man can carry a horse to water, forty men cannot make that horse drink? If there be Senators who have sufficient reasons to induce them in their own minds, to justify them to their own consciences in withdrawing from the body and destroying a quorum, when you arrest and bring them here under the care of the Sergeant-at-Arms what process will you resort to in order to compel them to vote when you have a quorum and got them here?

Mr. HAMLIN. Mr. President, it is utterly impossible for a man to tell precisely what will be the effect of this rule; but the Senator illustrates it by a reference to the horse. I do not know that the horse understands the English language quite as well as we ought to understand it, although a horse is a very intelligent animal and I think he does understand pretty well very much that is said to him; and I think if he could understand a little more of the English language and could be told in so many words that if he would not drink from obstinacy his provender should be withheld from him, it would affect the action of the horse very much. [Laughter.] Now, then, if we apply that same reasoning to the Senator, and say to him "You shall suffer a penalty," and that follows if we see fit, and it becomes in the judgment of the Senate a proper act to do, that he shall be fined any sum within the discretion of the Senate for his misconduct, I only say in reply to the Senator from Virginia that I think it would generally bring us a quorum of members here. Nay, I think if the rule is passed, we shall find its good effect without enforcing it; it will enforce itself. That is my judgment. But I can see, when this body has got to its present number, no reason why we should not have the power the Constitution gives us. I think that the illustrations which have been so often furnished are an admonition to us that, if we act wisely and well, we shall put the power where it may be used when necessary.

Mr. WITHERS. I presume, then, I am to infer from the reply of the Senator from Maine that if the rule be adopted in its present form, it will be necessary for some legislation to be enacted empowering the Senate to either withhold the property of Senators, mulct them with a fine, or subject them to personal imprisonment, or subject them to some other pain or penalty to compel them to do that which they are disinclined to do. I am not prepared to admit that the passage of the rule in its present form would give to the Senate any such power. I do not believe they could rightfully exercise any such power even if the rule be enacted in its present shape.

Mr. INGALLS. Mr. President, my first impression was against the amendment proposed by the Senator from Maryland, because I believed that the power to compel the attendance of members existed in full force by virtue of the Constitution itself. A more minute in-

spection of section 5 of article 1 convinces me, however, that I am mistaken. The language is that—

A majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each House may provide.

It is therefore apparent that this power that is lodged by the Constitution in each House is dormant and inoperative until a majority of each House has prescribed the method of its exercise.

Mr. WITHERS. Exactly.

Mr. INGALLS. Therefore, I am convinced that the Committee on Rules is right in incorporating into the revision that it has submitted a provision for requiring the compulsory attendance of members. I do not myself believe that that power, if confided to the Senate, would ever be improperly exercised. To suppose that would be to impute to the Senate those modes and those methods of action that those Senators who have spoken have been most anxious to avoid. It may become necessary, as the Senator from Maine has said, sometimes to exercise that power; and inasmuch as under the Constitution it is dormant and cannot be exercised until the House has provided for its exercise, it is therefore necessary that we under the rules should render that constitutional power effectual. I shall, therefore, oppose the amendment offered by the Senator from Maryland and vote for the rule as reported by the committee.

The PRESIDING OFFICER. The question is on the amendment proposed by the Senator from Maryland.

Mr. HAMLIN. I think we had better have the yeas and nays on that question.

The yeas and nays were ordered; and being taken, resulted—yeas 14, nays 28; as follows:

YEAS—Messrs. Bogy, Cooper, Davis, Gordon, Johnston, Jones of Florida, Kelly, Kernan, Maxey, Robertson, Stevenson, Wallace, Whyte, and Withers—14.

NAYS—Messrs. Alcorn, Anthony, Booth, Boutwell, Bruce, Cameron of Pennsylvania, Cameron of Wisconsin, Clayton, Conover, Cragin, Dorsey, Eaton, Ferry, Goldthwaite, Hamlin, Ingalls, McCreery, Mitchell, Morrill, Paddock, Patterson, Price, Sargent, Sherman, Spencer, Teller, Windom, and Wright—28.

ABSENT—Messrs. Allison, Barnum, Bayard, Blaine, Burnside, Chaffee, Christiancy, Cockrell, Conkling, Dawes, Dennis, Edmunds, Frelinghuysen, Hamilton, Harvey, Hitchcock, Howe, Jones of Nevada, Key, Logan, McDonald, McMillan, Merrimon, Morton, Norwood, Oglesby, Randolph, Ransom, Saulsbury, Sharon, Thurman, Wadleigh, and West—33.

So the amendment was rejected.

The PRESIDING OFFICER. The question is on concurring in the rule.

Mr. GORDON. I want to move to reconsider the vote which adopted the amendment to Rule 1.

Mr. HAMLIN. Let us dispose of this first.

Mr. GORDON. I thought we were on the final adoption of the rules.

The PRESIDING OFFICER. The question now is on concurring in Rule 3 as it stands.

Mr. GORDON. Very well; I withhold my motion for the present.

Rule 3 was concurred in.

The PRESIDING OFFICER. Another rule was reserved, the Chair thinks.

Mr. FERRY. Rule 19 was reserved.

The Chief Clerk read Rule 19, as follows:

19. When the Senate shall equally be divided, the Vice-President shall, by his vote, determine the question.

Mr. INGALLS. Mr. President, the Constitution says that—

The Vice-President of the United States shall be President of the Senate, but shall have no vote unless they be equally divided.

The Vice-President is not a member of the Senate. He is an independent officer of the Government. He is no more under the control of the Senate than the President of the United States is under the control of the Senate; and we have no authority by any rule or declaration of ours to impose upon him any duty or confer upon him any right that does not exist under and by virtue of the Constitution. It is my opinion that the Senate has no more control over him in the way of compelling him to vote, than it has over the President of the United States to compel him to sign a bill. I should regret to have the Senate do an idle or an ineffectual or a nugatory thing. It is very evident that if we pass this rule and the Vice-President sees fit to disobey it, and under some circumstances that may occur in the case of a tie to refuse to vote, we should place ourselves by the enactment of a provision like this in a very absurd and preposterous attitude. We certainly cannot fine him, we cannot expel him, we cannot incarcerate him, we cannot impeach him. Therefore this rule would in no sense whatever be effectual, and, in my judgment, the Senate ought not to adopt it.

Mr. HAMLIN. Mr. President, I do not call to my mind now a case where there has been an equal division of the body when the presiding officer, where he has been the Vice-President of the United States, has ever neglected or refused to give the casting vote. I do not regard the rule, therefore, as very material. That we have the power to make a rule which shall be as binding upon the officer who presides over us as it is upon ourselves, I can have no earthly doubt; else the Vice-President when he occupies that chair is not obliged to enforce the rules which we make for our own order and observance. I will not run through those rules, but the rules are full of instances where duties are imposed on him. We require him to decide a question of order. By what authority? He shall decide it, we say. It is compulsory upon him. He may call a member to order, or if a member called to order by others, he shall decide questions of order subject to an appeal to the body. I will not take up the time of the Senate, but I think there are many other instances in the rules where we make it mandatory upon the regular presiding officer to do a certain thing. The Constitution gives to him this power. I think we have an equal right in the rules of the body over which he presides, to prescribe rules for him as well as for ourselves; and while we say Senators shall vote we may say the presiding officer shall vote, as much as to say that he shall decide questions of order, or shall do this thing or that other thing which we command him to do all through these rules.

Mr. COCKRELL. I move that the word "equally" be stricken out where it is and placed between the word "be" and "divided." The rule now reads:

When the Senate shall equally be divided.

I move that it be transposed so as to read:

When the Senate shall be equally divided.

Mr. BOUTWELL. If the Senator wishes to have it right, it would be better to say "divided." "Equally" is only as to the nature of the division.

Mr. COCKRELL. I am just following the Constitution, which says "unless they be equally divided."

Mr. BOUTWELL. I will submit to the Constitution.

Mr. COCKRELL. I want it in the language of the Constitution.

Mr. FERRY. I have no particular objection to that; but the Senator will observe, in looking through the rules, that the committee have put the verbs in together. This is simply sandwiching the adverb in between. It expresses the same thing, but it preserves the harmony of construction. Let it pass as it is, notwithstanding the Senator from Missouri has quoted the language of the Constitution. Still I bow submissively to that phraseology and will yield.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Missouri.

The amendment was agreed to.

The PRESIDING OFFICER. The question is on concurring in the rule as thus amended.

A division was called for.

Mr. HAMLIN. We may find ourselves in trouble here. I think we had better let the rule stand as it was before. I do not think there is any very material necessity for the change, while I think we have undoubtedly the power. The word "may" in the Constitution, in my judgment, lawfully is equivalent to "shall," and the word "may" in the rule, I think, is equally powerful. I hope my colleague the chairman of the committee will agree to it.

Mr. FERRY. I shall certainly yield to so experienced a parliamentarian as my distinguished colleague on the committee.

Mr. HAMLIN. I move to amend the rule by striking out "shall" and inserting "may," so as to conform to the old rule.

The amendment was agreed to.

The PRESIDING OFFICER. The question is on concurring in the rule as thus amended.

The rule, as amended, was concurred in.

Mr. FERRY. I believe this covers all the reservations. I desire to make an amendment in Rule 20. In line 3, after the word "may" I move to insert "enter a motion or," so that the rule will apply to entering a motion to reconsider as well as to a motion to reconsider. The point was suggested by the Senator from Louisiana [Mr. WEST] that in the case of entering a motion to reconsider, the rule would not apply. This will make it apply both where a Senator enters the motion and where he makes the motion.

Mr. WEST. That has been the usage heretofore.

Mr. FERRY. That has been the usage heretofore, as the Senator has well said.

The PRESIDING OFFICER. The Senator from Michigan moves to amend Rule 20, line 3, by inserting after the word "may" the words "enter a motion or;" so as to read:

When a question has once been decided by a vote of the Senate, whether that vote be determined by a majority or by two-thirds of the Senate, any Senator voting on that side which prevailed may enter a motion or move for a reconsideration thereof, at any time, on the same day on which the vote was taken, or on either of the next two days of actual session thereafter; and all motions to reconsider shall be decided by a majority of the Senate.

The amendment was agreed to.

Mr. GORDON. I move now to reconsider the vote by which, in Rule 1, these words were inserted:

Which shall consist of a majority of the Senators duly chosen and sworn.

Those words were inserted after the word "quorum" in the first line of Rule 1.

The PRESIDING OFFICER. The question is on the motion to reconsider.

Mr. FERRY. I trust, in order that we may vote intelligently, that the Senator will suggest his object in moving a reconsideration.

Mr. GORDON. My object is to leave the rule just as it was reported by the committee. I am satisfied with the Constitution fixing a quorum to be a majority of the entire body.

Mr. FERRY. I will simply say in that regard that several Senators who are not present expressed their desire to be present and vote in favor of the old rule; and as I stated yesterday that I did not intend to press this question covering that rule in their absence, after

conferring with them they have expressed their views, and with their consent I have called up the rules for conclusion to-day. The language employed by the rule as now agreed to by the Senate is the old rule, and we cannot be far astray in adhering to it, as we have been acting under that rule so long a time.

Mr. GORDON. Will the Senator allow me? He means by the old rule the rule that was adopted in 1864, I presume. He does not mean the rule that had appertained ever since the body was organized till then.

Mr. FERRY. The last rule in 1864, that the Senate shall be composed of Senators duly chosen and sworn, that that shall be the basis on which a majority shall be established to constitute a quorum. The Senator by moving to reconsider I suppose desires to cover all the Senators elected or all the Senators to which the States are entitled.

Mr. GORDON. That is what I mean.

Mr. FERRY. I supposed that was the point. As an illustration, take the case of Louisiana, represented to-day by my friend at my left. She has but one Senator. In that case we should require thirty-nine as a quorum instead of thirty-eight, the whole number being seventy-six with the States fully represented. To-day there are but seventy-five. The object of the Senator from Georgia would be to require the number of thirty-nine as a quorum instead of thirty-eight.

The PRESIDING OFFICER. The question is on the motion to reconsider the vote by which this amendment was adopted to Rule 1.

The question being put, there were on a division—ayes 16, noes 15; no quorum voting.

Mr. FERRY. In justice to the absent Senators with whom I conferred, or some of them, I feel in duty bound to call for the yeas and nays.

Mr. GORDON. I suggest that the reconsideration be permitted by unanimous consent, and then the question can be fully discussed. There will be no trouble, if a majority of the Senate shall be in favor of the amendment, in putting in those words.

Mr. FERRY. There is nothing to prevent the Senator's discussing it now on the motion to reconsider.

Mr. GORDON. The Senate is not here.

The PRESIDING OFFICER. No quorum voting, the yeas and nays are called for.

The yeas and nays were ordered.

Mr. ROBERTSON. I move that the Senate do now adjourn.

Mr. ALLISON. I hope the Senator will withdraw that and let us go into executive session.

Mr. ROBERTSON. I am willing to withdraw it for that purpose.

The PRESIDING OFFICER. The only motion at present allowable, there being no quorum, is a motion to adjourn.

Mr. FERRY. I ask unanimous consent to make a statement. The Senator from Missouri, [Mr. BOGY,] who intended to speak on some question to-day, yielded for the consideration of these rules, and I assured him that before we closed the session of to-day that unfinished business should be called up. I trust that there may be unanimous consent given to the Senator from Missouri to call up the resolution at one o'clock to-morrow, so that he can submit the remarks he intends to make.

The PRESIDING OFFICER. The Senator from South Carolina moves that the Senate adjourn.

Mr. BOGY. I prefer to call up the question now and let it go until to-morrow.

The PRESIDING OFFICER. There is not a quorum present and the Senator from South Carolina has moved that the Senate do now adjourn.

Mr. HAMLIN. We can get a quorum here on the yeas and nays, I think.

The PRESIDING OFFICER. The question is on the motion of the Senator from South Carolina that the Senate do now adjourn.

The motion was not agreed to.

Mr. HAMLIN. Now let us have the yeas and nays on the motion to reconsider.

The PRESIDING OFFICER. The yeas and nays have been ordered.

Mr. WEST. I should like to have the proposition reported.

Mr. WITHERS. It is merely a proposition to reconsider.

Mr. WEST. Let us see what it is.

The PRESIDING OFFICER. The proposition will be read.

The CHIEF CLERK. The first rule was amended by inserting after the word "quorum" the words "which shall consist of a majority of the Senators duly chosen and sworn." The motion is to reconsider the vote adopting that amendment.

The question being taken by yeas and nays, resulted—yeas 21, nays 23; as follows:

YEAS—Messrs. Alcorn, Bogy, Chaffee, Clayton, Cockrell, Cooper, Davis, Eaton, Goldthwaite, Gordon, Ingalls, Johnston, Jones of Florida, Kernan, McCreery, Maxey, Price, Robertson, Wallace, Whyte, and Withers—21.

NAYS—Messrs. Allison, Anthony, Booth, Boutwell, Bruce, Cameron of Pennsylvania, Cameron of Wisconsin, Cragin, Dorsey, Edmunds, Ferry, Frelinghuysen, Hamlin, Mitchell, Morrill, Patterson, Sargent, Sherman, Spencer, Teller, West, Windom, and Wright—23.

ABSENT—Messrs. Barnum, Bayard, Blaine, Burnside, Christiancy, Conkling, Conover, Dawes, Dennis, Hamilton, Harvey, Hitchcock, Howe, Jones of Nevada, Kelly, Key, Logan, McDonald, McMillan, Merrimon, Morton, Norwood, Oglesby, Paddock, Randolph, Ransom, Saulsbury, Sharon, Stevenson, Thurman, and Wadleigh—31.

So the motion was not agreed to.

The PRESIDING OFFICER. The question now is on the adoption of the rules as a whole, unless further amendments be offered.

The rules were adopted.

Mr. FERRY. Now I move that the usual number be printed. We wish to have them for the use of the Senate.

The motion was agreed to.

Mr. FERRY. I call attention to the fact that the new rules are in force, but it will take a day or two to have them printed for us; and I suggest that by common consent they be not considered in force until Monday next. We shall then have them printed before us and indexed so that Senators can understand them. I think that can be done by unanimous consent.

The PRESIDING OFFICER. The Senate has heard the suggestion. The Senator from Michigan now moves that the new rules go into operation on Monday next.

The motion was agreed to.

COUNTING OF ELECTORAL VOTE.

Mr. FERRY. Now, as I promised to do, I call up for the Senator from Missouri [Mr. BOGY] the resolution on which he desires to speak, that it may be the unfinished business.

The PRESIDING OFFICER. That is the resolution offered by the Senator from Pennsylvania [Mr. WALLACE] to instruct the special committee on counting the electoral vote for President and Vice-President to inquire and report upon certain propositions in connection therewith, as the Chair understands. It is moved to proceed to its consideration.

The motion was agreed to.

EXECUTIVE SESSION.

Mr. SPENCER. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After nine minutes spent in executive session the doors were re-opened, and (at four o'clock and fourteen minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

WEDNESDAY, *January* 17, 1877.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of yesterday was read and approved.

OKLAHOMA.

Mr. STONE, by unanimous consent, submitted an amendment in the nature of a substitute to the bill (H. R. No. 3922) to provide for the organization of the Territory of Oklahoma and for the better protection of the Indian tribes therein; which was referred to the Committee on Indian Affairs, and ordered to be printed.

GRASSHOPPER PLAGUE.

Mr. KIDDER, by unanimous consent, introduced a bill (H. R. No. 4442) extending the time of payment for public lands in cases where crops have been injured or destroyed by grasshoppers; which was read a first and second time, referred to the Committee on Public Lands, and ordered to be printed.

DAKOTA TERRITORY.

Mr. KIDDER also, by unanimous consent, introduced a bill (H. R. No. 4443) to amend an act to provide a temporary government for the Territory of Dakota, approved March 2, 1861; which was read a first and second time, referred to the Committee on the Territories, and ordered to be printed.

BLACK HILLS LAND DISTRICT.

Mr. KIDDER also, by unanimous consent, introduced a bill (H. R. No. 4444) to establish a land district in the Black Hills in the Territory of Dakota; which was read a first and second time, referred to the Committee on Public Lands, and ordered to be printed.

SUFFRAGE IN THE DISTRICT OF COLUMBIA.

Mr. WILLARD. I ask unanimous consent to present at this time the petition of the workingmen of the District of Columbia, praying for the right of suffrage in the local government of this District, and I ask that the memorial be read, as it is signed by over two hundred workingmen of the District. They ask that the principle of self-government may be recognized in this District.

The memorial was received and referred to the Committee for the District of Columbia.

The memorial was read, as follows:

To the honorable Senate and House of Representatives of the United States of America, and to the commissioners appointed by Congress to frame a government for the District of Columbia to be reported to Congress at the next session thereof:

We, the undersigned citizens of the United States, residents and tax-payers of the District of Columbia, believing that taxation without representation and suffrage is contrary to the spirit and genius of our institutions, alike unrepublican and undemocratic, respectfully request and pray that your honorable body will in the re-organization of the government for the District of Columbia provide for and enact a law giving to us, and all citizens of said District of legal age, the right of suffrage, so that hereafter they may have a voice in their own local government in

accordance with the principles enunciated in the Constitution of the United States, as your petitioners will ever pray.

WASHINGTON, D. C., *November* 13, 1876.

CAROLINE M. EGBERT.

Mr. CLYMER, by unanimous consent, introduced a bill (H. R. 4445) for the relief of Caroline M. Egbert; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

HARBOR OF REFUGE AT CINCINNATI.

Mr. BANNING submitted the following resolution; which was read, considered, and agreed to:

Resolved, That the Secretary of War be requested to report upon the expediency and utility of constructing a harbor of refuge upon the Ohio River at the mouth of Mill Creek, Cincinnati, Ohio.

RECUSANT WITNESS—E. W. BARNES.

Mr. CAULFIELD. I am instructed by the Committee on the Judiciary, to whom was referred the communication of E. W. Barnes, received by the Speaker yesterday, to report the following resolution.

The Clerk read as follows:

Resolved, That E. W. Barnes be permitted to repair at once to New Orleans, in the custody of a deputy sergeant-at-arms, for the purpose of procuring the telegraphic dispatches heretofore mentioned in the report of the Judiciary Committee of this House, and within ten days bring them before the committee of investigation, at Washington, of which Hon. WILLIAM R. MORRISON is chairman, and abide the further action of this House.

Mr. CAULFIELD demanded the previous question.

The previous question was seconded and the main question ordered; and under the operation thereof the resolution was adopted.

Mr. CAULFIELD moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

GEORGE W. LAWRENCE.

Mr. FLYE. Mr. Speaker, I ask unanimous consent to present the memorial of George W. Lawrence, of Damariscotta, Maine, praying for compensation for extra labor and materials required in the building of certain gunboats for the Government in consequence of changes made in the contract; which was referred to the Committee on Naval Affairs.

TRANSPORTATION OF PETROLEUM ON PASSENGER STEAMERS.

Mr. TURNEY, by unanimous consent, introduced a bill (H. R. No. 4446) to amend section 4472 of the Revised Statutes so far as the same refers to the transportation of petroleum on steamers carrying passengers; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

CHANGES OF REFERENCE.

Mr. CLARK, of Missouri, by unanimous consent, reported back from the Committee on the Post-Office and Post-Roads the following bills and petitions; and they were severally referred to the Committee of Claims:

The bill (H. R. No. 4210) for the relief of Joseph Brown, postmaster of New Castle, Maine;

The bill (H. R. No. 4216) for the relief of the administrator or legal representatives of James T. Johnson, deceased, late of Montgomery County, Mississippi;

The bill (H. R. No. 4215) for the relief of Mrs. Edith F. Ross;

The petition of Rufus M. Hodgkins, postmaster at Cambridgeport, Massachusetts, for re-imbursement for money paid by him to the Government, being the amount stolen from the post-office funds at said town; and

The petition of Samuel R. Atwell, praying the payment of $245 burned in a car.

PRINTING OF TESTIMONY.

Mr. HOUSE. I ask unanimous consent that the committee on the recent election in Louisiana may have printed from time to time the testimony taken before the committee as fast as received from the stenographers engaged in transcribing the same.

Mr. GARFIELD. There is no objection to that.

Mr. COX. I ask the same privilege on behalf of the committee of which I have the honor to be chairman, on alleged fraudulent registration and fraudulent voting in the cities of New York, Philadelphia, Brooklyn, and Jersey City, and also on the post-office matter.

Mr. WILSON, of Iowa. Before leave is given, I desire to have it understood that this does not include the report of the committee.

The SPEAKER. Only the testimony.

Mr. WILSON, of Iowa. Because before the reports are ordered to be printed I desire that there shall be an understanding about the minority reports.

The SPEAKER. Is there objection to the request of the gentleman from Tennessee [Mr. HOUSE] and the request of the gentleman from New York, [Mr. COX?]

There was no objection, and it was ordered accordingly.

B. S. JAMES.

Mr. WALLACE, of South Carolina, by unanimous consent, introduced a bill (H. R. No. 4447) to pay B. S. James money due him for the transportation of the mails over route 5610; which was read a first and second time, referred to the Committee of Claims, and ordered to be printed.

A. W. BURNET.

Mr. WALLACE, of South Carolina, also, by unanimous consent, introduced a bill (H. R. No. 4448) to remove the political disabilities of A. W. Burnet, of South Carolina; which was read a first and second time.

Mr. WALLACE, of South Carolina. I ask that the bill may now be put upon its passage.

The bill was read. It removes from A. W. Burnet, of the State of South Carolina, all the political disabilities imposed by the fourteenth amendment of the Constitution of the United States, by reason of participation in the rebellion.

The bill was ordered to be engrossed and read a third time; and, being engrossed, it was accordingly read the third time, and passed, two-thirds voting in favor thereof.

SETTLERS ON PUBLIC LANDS.

Mr. LANE, by unanimous consent, introduced a bill (H. R. No. 4449) for the protection of settlers on the public lands of the United States; which was read a first and second time, referred to the Committee on Public Lands, and ordered to be printed.

PETITION OF VERMONT VOTERS.

Mr. CHITTENDEN. I ask unanimous consent to present a petition of eight thousand voters from Vermont.

Mr. TOWNSEND, of New York, (in his seat.) I object.

The SPEAKER. Who objects?

Mr. TOWNSEND, of New York. I object.

The SPEAKER. Gentlemen who object must rise in their places to do so.

PAYMENT OF BOUNTY.

Mr. SAMPSON, by unanimous consent, introduced a bill (H. R. No. 4450) authorizing full payment of bounty to certain veteran volunteers; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

HEIRS OF HENRY HOOVER.

Mr. ROBBINS, of Pennsylvania, by unanimous consent, introduced a bill (H. R. No. 4451) to relieve the heirs of Henry Hoover; which was read a first and second time, referred to the Committee on Naval Affairs, and ordered to be printed.

INDIAN APPROPRIATION BILL.

Mr. WELLS, of Missouri, from the Committee on Appropriations, reported a bill (H. R. No. 4452) making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the year ending June 30, 1878, and for other purposes; which was read a first and second time, referred to the Committee of the Whole House on the state of the Union, made a special order therein for to-morrow after the morning hour and from day to day until disposed of, and ordered to be printed.

Mr. WILSON, of Iowa. I reserve all points of order.

THE GRASSHOPPER PLAGUE.

Mr. WELLS, of Missouri, also, by unanimous consent, from the Committee on Appropriations, reported back the memorial of the governors of Missouri, Illinois, Iowa, Kansas, Nebraska, Minnesota, Dakota, and others, praying action on the part of Congress in reference to the grasshopper plague, and moved that the committee be discharged from the further consideration of the same and that it be referred to the Committee on Agriculture.

The motion was agreed to.

COUNT OF ELECTORAL VOTE.

Mr. HARRIS, of Virginia, by unanimous consent, submitted the following resolution; which was read, and referred to the select committee on the privileges, powers, and duties of the House of Representatives in counting the vote for President and Vice-President of the United States:

Whereas it is provided by article 2, section 1, Constitution of the United States, that each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress;

And whereas it is provided in article 12 of the amendments to the Constitution that the person having the greatest number of votes for President shall be President, if such number be a majority of the whole number appointed: Therefore,

Resolved, That the special committee on the powers, duties, and privileges of the House in counting the vote for President and Vice-President be instructed to report what number of electoral votes, in their opinion, is necessary under the Constitution to elect a President and Vice-President.

RECUSANT WITNESSES—RETURNING BOARD OF LOUISIANA.

Mr. TOWNSEND, of New York. I rise, in obedience to the rules of the House and under a recent decision of the Speaker, to call for the regular order of business.

The SPEAKER. The regular order of business being called for the House resumes the consideration of the resolution reported yesterday from the Committee on the Judiciary by the gentleman from Wisconsin, [Mr. LYNDE.]

The resolution is as follows:

Resolved, That the Speaker of this House issue a warrant under his hand and the seal of the House of Representatives, directing the Sergeant-at-Arms of this House, either by himself or his special deputy, to arrest and bring to the bar of the House without delay J. Madison Wells, Thomas C. Anderson, G. Casanave, and Lewis M.

Kenner, to answer for a contempt of the authority of this House and a breach of privilege in refusing to produce to the special committee of which Hon. WILLIAM E. MORRISON is chairman, now sitting in New Orleans, certain papers, in obedience to a *subpœna duces tecum* which was duly served upon them, and to be dealt with as the law under the facts may require.

Mr. LYNDE. I ask unanimous consent that the time allowed for debate be extended one hour, subject to the stipulations that were agreed upon yesterday. I yield for ten minutes to the gentleman from Maryland, [Mr. O'BRIEN.]

Mr. O'BRIEN. The report and resolution pending before the House meet my entire approval and support. The legal propositions of the report are, in my opinion, correctly stated, and supported by a fair construction of the Constitution of the United States. I see nothing in the resolution which is an invasion of the rights of the States as secured by the terms of the Federal compact. I have resolutely, at all times, and to the extent of my ability, defended the rights of the States as reserved in the Constitution of the United States, and do not intend now to allow them be infringed by any act or vote on this important question. When the electors for President and Vice-President are appointed in due conformity to the limitations of the Constitution, and as the Legislature of the State directs, the State is supreme in the matter of their appointment, and the voice of the State must be respected and obeyed. The vote cast by the electors of a State is the solemn act of a State, and if cast as the Constitution requires, and the electors pursue the line of their duty in strict conformity to the law, their election having been duly attested by the certificate of the governor, as required by the act of Congress of 1792, their appointment and vote are binding on the Congress and must be counted. Therefore, Mr. Speaker, I state without reservation that if the electors of Louisiana have been appointed in all respects in the manner in which the Legislature of the State has directed, and if they have pursued strictly the constitutional duty imposed upon them, then their certificate coming before the two Houses of Congress in February next is binding upon that Congress in all respects, as clearly as any legal and constitutional act can bind the parties to it. This is the *prima facie* case.

Having recognized, Mr. Speaker, the fact that within certain limitations each State has entire control over the question of the appointment of its own electors, and it is a right of the State which it is the duty of this House to sustain to the fullest extent, I recognize further that the Constitution requires that the electors appointed by a State as the Legislature may direct shall be qualified electors; that they shall vote upon a certain day; that their certificate, attested by the governor, shall go regularly and in a constitutional manner into the hands of the President of the Senate, and that he, in the presence of both Houses of Congress, shall open that certificate, and, in the language of the Constitution, the vote shall then be counted. Thus, *prima facie*, the certificate of the electors, attested as I have before stated, is binding upon the two Houses of Congress. But, Mr. Speaker, I assert without fear of contradiction, that that certificate is binding upon the two Houses of Congress only if in all respects the limitations and provisions of the Constitution have been entirely complied with.

I know, Mr. Speaker, that no one here will pretend that a certificate, though *prima facie* correct, cannot be examined into and entirely set aside for more than one reason. I assert that if the certificate is one that has been obtained by corruption, that has been obtained by fraud or forgery, if the electors are not qualified according to the Constitution of the United States, if they have not voted in strict pursuance of the limitations of the Constitution, the Congress of the United States, under the Constitution, can inquire into it; and it becomes the duty of Congress to say whether or not in the ascertainment of the vote which is to be counted the vote of the State is in strict conformity and is not vitiated by fraud, if fraud is charged, and whether it should be counted.

Another provision of the Constitution, Mr. Speaker, is that in a certain contingency the House of Representatives, in the name and behalf and by the authority of the American people, shall elect a President. Who is to decide when that contingency may happen? The power which is given to the House I claim includes the right to decide, the right to examine, the right to test the certificates, the right to inquire whether the electors have validly and constitutionally performed their duty, the right to inquire whether they are qualified as the Constitution requires, and further and more importantly the question whether the State has really voted as the certificate represents it to have done; and whether it has been robbed of its high privilege of the appointment of electors by corruption, by forgery, or by fraud.

Now, my friend from Maine [Mr. FRYE] says that public rumor charges that the Louisiana returning board, which it is asserted has the right of canvassing the votes of the State and finally determining the results of the election, has been guilty of fraud. I assert that it is not a public rumor but the universal public sentiment, attested by indubitable proof, sufficient at least to call for the investigation now pending. The House has determined to investigate and has clothed its committee with full power in the premises. Why, Mr. Speaker, question the right of the House or of its committee to make a thorough examination whether fraud has vitiated the vote of the State; whether the constitutional regulations in reference to the election were complied with, and fully and completely whether the returning board has corruptly and fraudulently made a false return of electors for Louisiana? The House and committee having the authority is it not the duty of the committee representing this House to ascertain by all the means of law and by inspection of the original records and papers what the actual vote was? I am aware, Mr. Speaker, that the right of the House is denied. The assertion of power has been denounced vehemently as an invasion of the rights of a State. I would inquire, what constitutes a State? Is it a returning board, with doubtful powers, which has confessedly suppressed the vote of whole parishes and without the least authority of law? Yes, in utter defiance of the law of Louisiana, made corrupt returns. Or shall State rights be defended on some worthier basis, on some higher and more important principle? It is further said that the original records in the custody of the returning board are archives of the State and should not be imperiled, as upon them rests the right of the government of Louisiana and it may be of the United States. This is mere subterfuge. In contests for a seat in Congress the original papers of the State have been produced, even to the ballots cast at the polls. So in contests for State officers the rights of the parties have been vindicated by the production of all the returns.

This question rises higher than any mere contest of the former character. The presidential election may be decided by the vote of Louisiana. This House would have a right to these records to decide the question of the election of one of its members, and yet it is denied that the same power does extend to the election of electors for President and Vice-President. This, to my mind, is untenable, and not worthy of serious argument. In Brightly's Election Cases, page 366, it is laid down that "the true policy to maintain and perpetuate the vote by ballot is found in jealously guarding its purity, in placing no fine-drawn metaphysical obstruction in the way of testing election returns charged as false and fraudulent;" and Judge Cooley, in his work on Constitutional Limitations says: "That back of the *prima facie* case made by the certificate of election, the courts may go, and the determination of the State board may be corrected by those of the district boards, and the latter by the ballots themselves." This seems to me decisive of the right of the House, the highest court of judicature in the country, to make due inquiry and inspection of any records in a case which pertains to the jurisdiction of Congress. I therefore approve the resolution of the committee in requiring the members of the Louisiana returning board to appear at the bar of this House to answer for contempt of the privileges of the House.

[Here the hammer fell.]

Mr. LYNDE. I now yield to the gentleman from Massachusetts [Mr. HOAR] for fifteen minutes.

Mr. HOAR. I do not propose to deal with any of the very interesting public questions which divide the American people by party lines, and which are to be determined, I hope and believe, by constitutional methods during the coming month. I desire to address myself to the simple, narrow question of the constitutional power of this House to require a State to yield up the custody of its archives containing the records of its constitutional and legal action to the authority of either branch of the American Congress.

When I have listened to this report and to the arguments which have been uttered in support of it from the other side of the House, I have been struck with amazement that it should ever have fallen to my lot to defend the rights of an American State against the usurpation of a democratic national House of Representatives. I could not help being reminded of a famous passage in Macaulay which describes the transformations of the political parties in England before the days of the Earl of Chatham. I will ask the Clerk to read the passage I have marked.

The Clerk read as follows:

Dante tells us that he saw, in Malebolge, a strange encounter between a human form and a serpent. The enemies, after cruel wounds inflicted, stood for a time glaring on each other. A cloud surrounded them, and then a wonderful metamorphosis began. Each figure was transfigured into the likeness of its antagonist. The serpent's tail divided itself into two legs; the man's legs intertwined themselves into a tail. The body of the serpent put forth arms; the arms of the man shrank into his body. At length the serpent stood up a man and spake; the man sank down a serpent, and glided hissing away. Something like this was the transformation which, during the reign of George the First, befell the two English parties. Each gradually took the shape and color of its foe, till at length the tory rose up erect the zealot of freedom, and the whig crawled and licked the dust at the feet of power.

Mr. HOAR. Now, whatever words parties in this country may take upon their lips, I am afraid that each party will be found to advocate an extension of the particular authority which it is at the time exercising, and each party will be found to advocate a restrained and curbing of the power which is not at that particular time placed in its hands.

This question, however, seems to me to be a very simple one, and one which is settled by the adjudication of the Supreme Court of the United States in a similar case. Each of these two authorities, State and national, is sovereign and equal in regard to certain subjects. Each of these two authorities, State and national, is paramount within its jurisdiction over every other authority whatsoever.

I, for one, denouncing the heresy which has prevailed and to which the name of "State rights" has been applied, am not afraid of the good old-fashioned term "State sovereignty," which George Washington used in his letter commending the Constitution of the United States to the people for their support.

Now I lay down this proposition, that whatever power the United

States House of Representatives has to compel the authority of a State to take the records of that State and bring them here to be held according to our will and to be dealt with according to our pleasure, the Legislature of a State has that same authority over the United States officials within its jurisdiction.

If you may require the journal clerk of the house of representatives of the State of New York, when in session, to bring the journals of that house here, (which is the claim made on the other side of this House,) you may by this same logic claim that the New York house of representatives has authority to require the sub-treasurer or the collector of customs of the United States in New York City to take all the records of his office to the State-house in Albany, and thereby suspend the operations of that department of the United States at their pleasure.

This precise question and principle has arisen in regard to the taxing power. It was claimed by the republican administration of the United States two years ago that because of the necessities of the Government it had the right to subject the salaries of State officers, judicial, executive, or other, to the income tax. And that question came up before the Supreme Court of the United States; and Mr. Justice Nelson, who, I think, will be accepted even by the honorable gentleman from New York [Mr. WOOD] as good constitutional authority, utters this language which it seems to me is entirely decisive of the present issue:

Two of the great departments of the Government, the executive and legislative, depend upon the exercise of the powers, or upon the people of the States. The Constitution guarantees to the States a republican form of government, and protects each against invasion or domestic violence. Such being the separate and independent condition of the States in our complex system, as recognized by the Constitution, and the existence of which is so indispensable, that, without them, the General Government itself would disappear from the family of nations, it would seem to follow as a reasonable, if not a necessary, consequence that the means and instrumentalities employed for carrying on the operations of their governments, for preserving their existence, and fulfilling the high and responsible duties assigned to them in the Constitution, should be left free and unimpaired, should not be liable to be crippled, much less defeated by the taxing power of another government, which power acknowledges no limits but the will of the legislative body imposing the tax. And more especially those means and instrumentalities which are the creation of their sovereign and reserved rights, one of which is the establishment of the judicial department and the appointment of officers to administer their laws. Without this power, and the exercise of it, we risk nothing in saying that no one of the States under the form of government guaranteed by the Constitution could long preserve its existence.

And he goes on to say:

It is admitted that there is no express provision in the Constitution that prohibits the General Government from taxing the means and instrumentalities of the States, nor is there any prohibiting the States from taxing the means and instrumentalities of that Government. In both cases the exemption rests upon necessary implication and is upheld by the great law of self-preservation; as any government whose means employed in conducting its operations, if subject to the control of another and distinct government, can exist only at the mercy of that government.

Now, Mr. Speaker, does any gentleman believe that you cannot impose upon the salary of a judge of probate (which was the particular case that gave rise to this opinion) an income tax by which, in common with all other citizens of the United States of like ability, he is required to contribute his share to the preservation and support of the National Government, because you are by that measure affecting and crippling an instrumentality of State sovereignty; and will he still claim that you can present yourself to that judge sitting in court and command him to send the dockets and records of the court up to Washington or out of his legal custody and thus have the proceedings of the court stopped or the evidence of the acts of the court removed from the reach of the people who are interested in them?

Mr. BLAND. Does the gentleman hold that a committee of Congress has not the right to compel the production of the ballots and other official papers connected with the contested election of a member of Congress? Have not our committees often counted ballots cast in the different counties of the States?

Mr. HOAR. I have no doubt whatever that the claim implied in the question of the gentleman is correct.

Mr. BLAND. Then we can compel the production of such records?

Mr. HOAR. You can compel the production of records, as the gentleman from Mississippi argued the other day, through the power of tribunals to issue *subpœnæ duces tecum*.

Mr. BLAND. But I speak of the ballots and records of an election. We do compel their production.

Mr. HOAR. I reply that these records which you now seek are not the records for elections for members of Congress.

Mr. BLAND. But certainly the same power exists in the one case as in the other.

Mr. HOAR. I ask the gentleman to hear me a moment. The records now in question are the records of an act which, as was well said yesterday, is the highest act of a sovereign State. They include the record of the elections from which the governor, the Legislature, and nearly every officer of the government of Louisiana derive their title.

Mr. BLAND. But, Mr. Speaker, the position of the gentleman, as I understood, was that we had no power to compel the production of State records. Now he admits that we have such power in some cases; and I do not see the ground of the distinction which he draws.

Mr. HOAR. Either the gentleman has not done me the honor to listen to my argument, or else I have been unfortunate in making myself clear. Nobody doubts that there is such a thing as a *subpœna duces tecum*. Nobody doubts that there is power to compel the production of papers; nobody doubts that there are certain classes of records to which the principle I assert does not apply. But my point is that the records of the election of the governor, Legislature, and State officers of Louisiana, that the records of the election of presidential electors by that State—officers who by the Constitution are to be appointed by the State in such a manner as the Legislature thereof shall direct—are records essential to the preservation of the government and sovereignty of the State itself and that you can no more lay your hands upon those records and take them out of the territory of the State to which they belong, thereby perhaps (carrying the power to its extreme) stopping the entire functions of the State government, than a State Legislature can under like authority lay its hands upon the records of the custom-house or the United States courts or the sub-treasury and stop the functions and proceedings of the United States Government.

[Here the hammer fell.]

Mr. LYNDE. I now yield ten minutes to the gentleman from West Virginia, [Mr. HEREFORD.]

Mr. HEREFORD. Mr. Speaker, the question now under discussion is, as I understand it, when properly confined, within very narrow limits, and for the purpose of showing the precise scope of this question I send to the Clerk's desk and I ask to have read the resolution now pending before the House.

The Clerk read as follows:

Resolved, That the Speaker of this House issue a warrant under his hand and the seal of the House of Representatives, directing the Sergeant-at-Arms of this House, either by himself or his special deputy, to arrest and bring to the bar of the House without delay J. Madison Wells, Thomas C. Anderson, G. Casanave, and Lewis M. Kenner, to answer for a contempt of the authority of this House and a breach of privilege in refusing to produce to the special committee of which Hon. WILLIAM R. MORRISON is chairman, now sitting in New Orleans, certain papers, in obedience to a *subpœna duces tecum* which was duly served upon them, and to be dealt with as the law under the facts may require.

Mr. HEREFORD. The question then before the House is whether these parties should be brought before the bar of this House to show cause why they should not be punished for a contempt of this House of Representatives; a contempt in doing or neglecting to do—what? There is the whole point and the whole object of this resolution. They are to be brought here to answer for their contempt in refusing to produce before our committee sitting at New Orleans, of which WILLIAM R. MORRISON is chairman, certain documents; not to be taken out of the State, as the gentleman from Massachusetts [Mr. HOAR] has said. This House has never yet ordered those papers to be brought from that State. But that committee, a part and parcel of this House, clothed with all the powers of the House so far as this proceeding is concerned, have demanded by *subpœna duces tecum* that these parties should appear before them and bring certain documents—returns, ballots, depositions, and affidavits—that were before them; in other words, bring before the committee the vote of the people of Louisiana. This they refused to do. Those papers are within a stone's-throw of where that committee was sitting. Yet those men refuse to produce those papers; they even refuse to allow an inspection of them.

Why, sir, wherever the common law prevails the right of the people to inspect public records has never been denied until to-day. I read from Greenleaf on Evidence, volume 1, section 471:

First, in regard to the inspection of public documents, it has been admitted from a very early period that the inspection and exemplification of the records of the king's courts is the common right of the subject.

Yet to-day we are told by the gentlemen on the opposite side of the House that a record of a self-constituted returning board shall not be seen by an American citizen! Has it come to this? Where is the authority that any of the gentlemen on the other side have yet produced going to show that we have not a right to inspect those records? No lawyer can rise in his seat on this floor and say that, if a court of competent jurisdiction was in session in the city of New Orleans and that court needed certain public records for the elucidation of any question before that court, it would not have the right, and that it would not be its duty, to issue a *subpœna duces tecum* to bring any and all such records into that court. Any other decision would be a mockery, a cheat, a fraud. No lawyer standing in his place upon this floor can deny that legal proposition.

The only question then is, has the House of Representatives jurisdiction over the subject-matter? That this House has decided, that the Senate has decided, that the House of Representatives and Senate both and singly have the right to inquire into the subject-matter. Having that right, they have all the incidental powers to accomplish that investigation.

But gentlemen on their side are all at once great defenders of State sovereignty. Why is it, I ask, at every stage of this investigation and every other investigation, we are met with obstacles, objections, and doubts? Ah, we have seen for years past that governors can be dethroned. No question, no objection, no protest then comes from the other side. Legislatures can be invaded, disbanded by midnight order of a drunken judge, and yet no protest comes from the other side.

I state it as a proposition, Mr. Speaker, that no gentleman will deny—I have not time to go over all the facts—that this returning board has no legal existence whatever. It was brought into existence and perpetuated by the bayonet; by the same power that disbanded the Legislature of Louisiana.

Well does it become us, imperative is it upon us that we should in-

vestigate any returns made by such a man as J. Madison Wells. I hold in my hand the report of the committee of which Mr. GEORGE F. HOAR was chairman and of which Mr. Foster, of Ohio, and Mr. William Walter Phelps were members; and in that report, on page 3, this same man Wells, the president of the board, it is stated, made an affidavit than intimidation had existed at certain polls in a certain parish, but at the same time it is also stated in that same report that the same man, J. Madison Wells, who swore to intimidation in that parish, was not in the parish on the day of election and swore to facts of which he could have had no personal knowledge. That affidavit was found among those returns when the committee made the parties bring them before it. That affidavit, false as it was, false as it must have been, swearing as J. Madison Wells did about facts of which he could personally have had no knowledge, not being present in the parish on the day of election, was found by the committee among the papers.

We want all these papers for the purpose of showing that the originals have been mutilated. We want the voice of the people to be heard. The voice of the people will and must be heard in deciding this very grave question now before the people. We seek by this investigation the truth. All honest men, all over the land, irrespective of party, want the truth and demand that the voice of the people shall be heard. The right of suffrage is the very life-blood of liberty. It is inseparable from political equality and independence of man, and its honest exercise is alike the safety and glory of popular government.

[Here the hammer fell.]

Mr. LYNDE. I yield now twenty minutes to the gentleman from Massachusetts, [Mr. BANKS.]

Mr. BANKS. Mr. Speaker, it was not my purpose to take part in the debate on this subject, but one or two suggestions which have fallen from gentlemen on the other side of the House, who have directly or indirectly spoken to this question, have induced me to say a few words.

The gentlemen from West Virginia [Mr. HEREFORD] who has just taken his seat cited an authority, as I understood him, in regard to the production of the records of the Supreme Court. It was difficult to understand exactly what he said, on account of the confusion in the House and because of the distance at which I sit from the place from which he spoke. I understood him to cite Mr. Greenleaf as authority for the position that the records of the Supreme Court might be demanded if necessary. I will inquire if that is the gentleman's position?

Mr. HEREFORD. The gentleman from Massachusetts misunderstood me. I said nothing about the records of the Supreme Court. I read the language of Greenleaf himself, who says:

> First, in regard to the inspection of public documents, it has been admitted from a very early period that the inspection and exemplification of the records of the king's court is the common right of the subject.

Mr. BANKS. Very well, Mr. Speaker; I am quite willing to yield my assent to the authority cited or to the statement of that fact by the gentleman from West Virginia without any authority at all. The record of the king's court is the record of its acts, of its decisions or judgments in the cases tried before it. These records do not touch the authority or the existence of the king's court in any way whatever; and if it were true, of which I have no doubt, that the record of these decisions is open to inspection and exemplification, as Greenleaf says it is, that the original records should be taken from the king's courts or the courts of this country, the Supreme Court or any other court, to a distance, and placed in the hands of persons wholly irresponsible for their preservation and return, I doubt whether any court would be required to dispose of their records in that manner. But the "inspection and exemplification" spoken of by Greenleaf is a very different affair. And in neither case could it be considered a proceeding like that to which the House is now called upon to give its assent.

Mr. LAWRENCE. The books do not say the papers may be taken from their custody, but only that inspection shall be allowed and copies taken.

Mr. BANKS. That is undoubtedly the true interpretation of the authority.

Mr. HEREFORD. Now if my friend will allow me——

Mr. BLAND. Let me ask the gentleman from Massachusetts——

Mr. BANKS. I will yield to the gentleman from Mississippi in a moment, but I am now listening to the gentleman from West Virginia.

Mr. HEREFORD. If my friend from Massachusetts will allow me, he will find in the answer which this man Wells and others made to the committee that they refused to allow an inspection of these papers.

Mr. BANKS. I do not understand that to be the fact. On the contrary, I understand that these original documents have been open to the inspection of the committee, and that such an exemplification as that spoken of in the authority cited has never been refused. Of the records of the courts, I understand that they are both the records of the cases tried and the judgments given, and their preservation and destruction would not affect in the slightest degree the authority or the existence of the court itself. They are the mere records of cases decided in the past. And undoubtedly the production either of those records or of copies of those records would be yielded to anybody that had the right to ask for them at any time whatever

Mr. BLAND. Is not that all that is demanded; an inspection of these records?

Mr. BANKS. It is not all. The demand that is made now stands upon entirely different ground, and is wholly irreconcilable with the authority which has been read by the gentleman from West Virginia. The records of the courts when surrendered as a proof of certain facts do not affect, if they are destroyed, the existence or the authority of the court at all; and therefore the citation is of no account whatever in this discussion; and that the proposition of the gentleman from Missouri in his inquiry of my colleague——

Mr. BLAND. Let me state my proposition. If the gentleman will advise his returning board to let us inspect these records it will end all these proceedings, and he knows it, and that side of the House knows it.

Mr. BANKS. I want to make a remark to the gentleman from Missouri [Mr. BLAND] in regard to the inquiry he made of my colleague [Mr. HOAR] as to the evidence to be produced in case of a contested election—I do not know that I understood him exactly, because the confusion and the distance may perhaps have prevented it. But if I understand him correctly he says that in a case of contested election the committee of investigation are entitled to have even the ballots that have been given, and the poll-lists and all other papers connected with the polls, and that, if desired, they must be brought here. Is that the gentleman's position?

Mr. BLAND. No, sir.

Mr. BANKS. What was it, then?

Mr. BLAND. I will state it. The gentleman from Massachusetts [Mr. HOAR] took the position that this House had no power to interfere with the State records and compel their production before a committee of this House. And I say it has been the practice of this House in investigating congressional contests to investigate State records and to have them before the committee, and that is all that is desired here.

Mr. BANKS. In the case of a contested election there is no evidence required or which can be required by the House of Representatives the production of which is not authorized by an express provision of the Constitution. But there is not an instance where any record the loss or destruction of which could in any way affect the authority or existence of the Government has been taken from its original possessors and deposited with irresponsible persons who could give no security for its preservation and return.

Mr. BLAND. If the gentleman's doctrine be correct, we could not investigate any congressional election.

Mr. BANKS. There is no parity between the two cases. It is impossible to institute any just comparison between the records on papers connected with a State election, congressional or otherwise, and the records which are demanded by the resolution now before the House.

Mr. SOUTHARD. Will the gentleman from Massachusetts yield to me for a moment?

The SPEAKER. Does the gentleman from Massachusetts yield?

Mr. BANKS. I will, if it does not come out of my time.

The SPEAKER. If the gentleman yields, it must necessarily come out of his time.

Mr. BANKS. Then I cannot yield.

The SPEAKER. The gentleman from Massachusetts declines to yield and will speak without interruption.

Mr. BANKS. The record demanded by the House in this case is a record upon which the integrity and authority of the government of Louisiana, and possibly of the election of the President of the United States, may depend. The records of courts and the papers connected with an election have no such character. That is my answer to these gentlemen.

What is the record demanded? The original return upon which is based at this moment the government of the State of Louisiana, without which it cannot show an authority for its existence, and the original evidence and proof upon which are to be founded hereafter the election of a President of the United States and the organization of the Government of the United States. That is the record that these gentlemen demand. That is the record that is called for by this resolution. Sir, these gentlemen cannot find in the history of this country a single instance where such a demand has been made; nor can any member justify for one moment the State of Louisiana or its officers in surrendering to irresponsible hands the record upon which their government is based and the Government of the United States may possibly be based hereafter.

Mr. SOUTHARD. If the gentleman will allow me, I will give him an instance.

Mr. BANKS. What is it?

Mr. SOUTHARD. I have here a Senate report of the third session of the Forty-second Congress, made by the Committee on Privileges and Elections of the Senate, consisting of Mr. Carpenter, Mr. MORTON——

Mr. BANKS. Give us what they called for. My time is short.

Mr. SOUTHARD. I was about to give you the names of the committee, the remainder of whom are Messrs. ALCORN, LOGAN, Trumbull, and Hill, of Georgia. This committee, on the 16th day of January, 1873, was ordered to inquire whether there was in Louisiana a State government; and also to the same committee were referred the credentials of Mr. McMillan and Mr. Ray, Senators elected, one by the Kellogg and the other by the McEnery government; and the committee in their investigation summoned to Washington the members

of the Lynch and the Forman (the Kellogg and McEnery) returning boards, and also had all returns and papers of both boards produced before them; all of which is published in the Senate volume of reports to the third session of the Forty-second Congress. [Applause.]

Mr. BANKS. Mr. Speaker, that does not meet the case at all. It is a totally different case.

Mr. HOAR. I move that the galleries be cleared.

The SPEAKER. The noise was not in the galleries, but on the floor.

Mr. HOAR. Then the motion is, that the galleries shall not be exposed to so bad an example on the floor.

The SPEAKER. The Chair desires to state that, so far as he was able to hear, the galleries have not made any infringement of the rules of the House, and that the noise was on the floor; and the Chair hopes he will not again be subjected to criticism by reason of a violation of the rules of the House and his inability to enforce them.

Mr. BANKS. The case cited by the gentleman from Ohio does not meet this question at all. [Laughter.] No, sir! In the case the gentleman has cited the existence of the government of Louisiana was at stake. It was a question as to whether the Government of the United States was to be called upon to recognize or establish one or the other of two rival factions, and of course the evidence upon which the claim of each was based must be produced. There was nothing in it beyond that. But here is a proposition which affects the existence of a recognized and established State government. [Laughter.] And to demand the records upon which that government is based affects the existence of the government itself. There is no such contest here as that referred to in the records of the Senate. There are no rival factions here seeking the recognition of the United States, and no Senators contending for seats. The demand now made is upon a government as perfectly established as that of any State in the Union.

Mr. SOUTHARD. I want to ask the gentleman a question, and I will do it in a word or two.

Mr. BANKS. My time is limited, and I cannot yield. The record that is called for by this resolution and by the gentlemen advocating it is the record of the electoral vote of the State of Louisiana, and includes, of course, that of State officers, and it will be conceded by every man that upon that record may possibly depend the election of the President of the United States. If it be destroyed, the original evidence will have been destroyed upon which that election must rest. Now I want to call the attention of the gentlemen on the other side of the House to one fact which is important in this connection, and that is that the reason assigned for the refusal to comply with the demand of the committee is that the State of Louisiana had surrendered its records to committees of the House before, and had lost them, and therefore they were not inclined again to imperil their records. And the State of Louisiana is justified in that declaration. If this record is surrendered to a committee of this House—I make no impeachment of the integrity of any committee or any member of any committee—it is surrendered to an absolutely irresponsible party. It may be lost by accident, or destroyed by design, and then important records, upon which the existence not only of the State government but of the Government of the United States may depend, will be lost.

Mr. BLAND. Does the gentleman think that a committee of this House would destroy any such document?

The SPEAKER. The gentleman from Missouri is not in order. The gentleman from Massachusetts declines to be interrupted.

Mr. BANKS. I repeat that I cannot yield. I do not impeach or question the integrity of any committee. I say again that the State of Louisiana has given as its reason for refusing to produce the original records in this case that their records were produced before a committee of the House and were not and have not been returned, and that they do not wish to incur that risk again. I understand that to be the case, and I think that this fact justifies the position taken by these officers who have been summoned; and I say, therefore, that it is a perfectly satisfactory answer to the demands of the committee.

The case now presented to the House transcends in importance that referred to by the gentleman from Ohio, [Mr. SOUTHARD,] or the records of courts to which reference has been made by other gentlemen, and no precedents arising from cases of contested elections can affect our judgment in this case; for, if these records are lost or destroyed, and they may be lost by accident or destroyed by design, the most important original evidence that exists as to the organization of the government of Louisiana and of the choice of electors will have been lost, and the manifestations of applause from the galleries and the other side of the House, and that yell which the House heard yesterday, and which has become historic, shows the extent to which some men not connected with this House are willing to go in a matter of this kind.

Now what is demanded? It is demanded to take from the government of Louisiana the very evidence of its foundation upon which its authority ought to be and must be based. In what instance has any government ever been called upon to deliver the muniments of its title and the proofs of its recognized right of existence to anybody not connected with the government itself? What would the State of Massachusetts or any other State say were they called upon to deliver up the records of their Legislature and executive departments, or the documents upon which the existence of these governments depended, to be brought here or carried to other parts of the country? Sir, they would not deliver them. They would refuse to do it absolutely. There is no State in the Union that would not do as Louisiana has done.

Now, what is the reason given for this unprecedented and extraordinary demand? The committee gives a reason. What is it? It is public rumor. Public rumor is to give us authority to take from a sovereign State the very records that identify its character and justify its existence, to be deposited in the hands of a committee, or which may fall into the hands of other persons who may preserve them and may not. Public rumor! This is the only assigned cause of action. Whence does that public rumor spring? From the people who make the demand and the party they represent in this country who may have an interest in the possession of the original evidence of the choice of presidential electors.

Sir, the peace and constitutional duration of the State government of Louisiana depend upon the questions whether these original records are to be preserved or destroyed. The State of Louisiana ought never to surrender them except to superior physical force. We ought never to suffer the State of Louisiana to be deprived of them unless by a power stronger than the Government of the United States.

Mr. LAWRENCE. The records containing the evidence by which the State officers, including members of the State Legislature, hold the title to their respective offices.

Mr. BANKS. Yes, as my friend says, the evidence of the title of State officers to their offices. No public rumor, if it comes from interested parties, can be sufficient ground for a demand of this character. I say again that this demand is without precedent in the history of this country.

I ask gentlemen to look at the condition of the electoral college. Admitting, as is claimed on this side of the House, and as I myself believe, that the House of Representatives has no right whatever to control the votes of the electoral colleges or their action concerning the Presidency, but conceding, if there be a desire on the part of other people to inquire into their proceedings, that there shall be the right to make all the investigations they please, will gentlemen tell this House where the House gets the power to demand the surrender of these records upon which alone the presidential contest is to be decided so far as the State of Louisiana is concerned? Tell us where the House gets the power to demand possession of these documents which, if destroyed, may give the party dominant in this House the control of the Government, and which, if preserved, may deprive them of that power? I want to know if my friend from Wisconsin [Mr. LYNDE] holds that a mere matter of public rumor, of which interested parties are authors and exponents, is a sufficient ground for a demand of this character?

[Here the hammer fell.]

Mr. LYNDE. I now yield to the gentleman from Ohio [Mr. HURD] for five minutes.

Mr. HURD. The exact question which is presented by this discussion for the decision of the House is, has the House of Representatives the power to compel the production before it of the papers called for by one of its investigating committees, which papers are now in the custody of the returning board of the State of Louisiana? This question necessarily involves the other question as to the power of the Congress of the United States to inquire as to the conduct and examine the papers of State officials. When gentlemen on the other side interpose, as an objection to the force of the position which was taken by the gentleman from Wisconsin, [Mr. LYNDE,] that the States have rights which the Congress of the United States cannot interfere with, they simply beg the whole question in the argument. The question is, has the Congress of the United States power to inquire as to the conduct and examine the papers of State officials? And they answer that those officials are officers of the State, and therefore Congress cannot inquire. A more palpable, manifest begging of the question I have never known in a discussion.

The real question is, has the Congress of the United States, or more particularly has this House of Representatives of the Congress of the United States the power to make the investigation which was directed when this Louisiana committee was authorized to be appointed? If it possessed the power to order such an investigation, then necessarily the committee so appointed to investigate must possess the power to complete and effectuate the investigation.

What was the order of the House? It was that this Louisiana committee should "investigate the recent election therein, and the action of the returning or canvassing board in the said State in reference thereto, and to report all the facts essential to an honest return of all the votes received by the electors of the said State for President and Vice-President of the United States." So far as this Forty-fourth Congress is concerned I might rest this argument upon the decision which this House has already rendered upon this question. That resolution, if I recollect aright, was passed by a two-thirds vote. The House having acted, there is, therefore, no need to inquire further. But I will not rest the argument upon that.

I will proceed to show very briefly that under the Constitution of the United States the House of Representatives of the Congress of the United States has the right to pass this resolution and to order this investigation. The Constitution provides that the Legislatures of the several States shall make provision for choosing the electors who shall elect the President and Vice-President of the United States. In another provision the Constitution gives Congress the power to carry out all the

provisions of the Constitution. We have therefore the authority to inquire whether the electors have been chosen by the Legislature of a State or in pursuance of laws enacted by that Legislature.

Again the Constitution of the United States provides that certain persons shall be ineligible to hold the office of elector. The Congress of the United States has the right to inquire whether the persons chosen by the several States are eligible to act as electors.

The Constitution of the United States guarantees to every State a republican form of government, and if a State has not a republican form of government, then it has no right to choose electors for President and Vice-President. The Constitution of the United States therefore gives Congress the power to inquire in this connection whether a State has a republican form of government.

The laws of the United States provide that the electoral colleges shall meet at a certain time and that the election of the electors shall be certified by the executive officers of the several States. The Congress of the United States must inquire whether these electors have met as provided by law and whether the executives of the States have properly certified to their election. In discharging all these duties either House must possess the power to make inquiry for itself.

Again, and finally, the Congress of the United States has the power to count the electoral vote. I will not enter into this discussion now at length, but will simply declare that by all the precedents and all the discussions which have thus far occurred it is conceded that the Congress of the United States may pass a law in relation to counting the electoral vote; and if it can pass a law for that purpose, then either House of the Congress has a right to inquire into all the facts in order to be able to pass the law intelligently.

From these provisions of the Constitution I derive the power of the House of Representatives to make this investigation. In making this investigation witnesses may be subpœnaed from all parts of the country; the power of Congress in that respect is unlimited. And those witnesses may be obliged to produce records, papers, and documents in their possession. That power is unlimited, save as it may be limited by some of the well-ascertained exceptions of the law.

In the present case I submit that the inquiries which were made of this returning board, which it was alleged had certain papers in its possession, were pertinent because it has been charged that the electors have not been chosen in the State of Louisiana as the laws of that State require. By the laws of Louisiana the people of the State choose the electors. It has been charged that in point of fact the returning board of Louisiana has chosen the electors. It was proper, in order that the committee should determine this question, that they should see the official records of the returning board, that they might decide whether it was true that the board had made the election. It has been charged that ineligible electors were voted for in that State; and in order that it might be known whether electors were ineligible or not, it might become necessary that the documents and records in possession of this board should be inspected.

It has been charged that the returning board is a usurpation; that it has changed what was a republican form of government, created by the constitution of the State, into a government not republican in form; that substantially republican government, republican institutions, and republican ideas have been trampled under foot by the powers exercised by this returning board. To know whether they have exercised such powers, to know how they have exercised them, this committee has the right to examine the records that the returning board have made.

It is claimed that there are two chief executive officers in the State of Louisiana and it is understood that two sets of returns have been sent here, signed by two different executives. Questions as to what is the proper authority of the State, questions as to who is the chief executive officer of a State, are questions properly belonging to the jurisdiction of this committee, and to determine which they might find it necessary to examine the documents in the hands of the returning board.

Lastly, it is charged that there has been gross fraud in the State of Louisiana, that the will of the people has been thwarted, that forgeries and perjuries have been committed, that books have been altered and records changed, that documents have been destroyed and false documents substituted in their stead. When you come to determine who shall count the electoral vote and what electoral votes shall be counted, the committee have the right to go into all these inquiries, to bring these papers before them in order that they may see if forgery has been committed as charged. Forgery is poorly proven by a copy; the original paper must be inspected. I say, therefore, that this investigating committee had the power to make all these inquiries and that there was a necessity for making them, because of these charges with which we are familiar and with which the whole country must be familiar.

But this returning board attempt to bring themselves within the exception of the law. They have made answer, it is said, that they are officials of the State of Louisiana, and as such cannot be compelled to give up these documents. I say, in answer to the suggestion of several distinguished gentlemen upon the other side, that I am not fearful of any invasion of State rights upon this proposition. I do not believe that upon the theories of this Government there can be any stronger State-rights democrat upon this floor than I am. But I say that, in the position which declares the Constitution of the United States within its sphere to be supreme, there is nothing inconsistent with the true theory of State rights. The Constitution of the United States, as I have shown, authorizes these investigations. The committee are acting under this power conferred by the Constitution, and in the discharge of their duty they are there in Louisiana. If it be proper and legitimate, under the Constitution of the United States, for the committee to proceed, the constitution of Louisiana cannot interfere; much less can the ministerial officers of the State interfere. In the exercise of a power conferred by the Constitution our committee are there; and the parties called upon, whether they be governors or lieutenant governors, or returning boards, or other State officers, must make return before the committee in response to their subpœna.

But they say that these documents are in their possession as public records. If as public records, then, by the well-established rule from the beginning of civil government until now, the people are interested in public records and have a right to know what those records are. If they are public records of the State of Louisiana and concern the people of the United States, those officers are bound to produce them before the committee. If they were State secrets, if they concerned private affairs relating to the administration of the government there, it might then be another matter. But according to their own showing these are public records; and, if public records, they must be produced in order that the public may be informed.

They say that they hold these papers as officers. I say that they do not hold them as officers. I say that these records and documents are in their hands as individuals. I say that under the law of the State of Louisiana that returning board had no power to count the electoral vote. I do not propose to enter into this argument now, but at another time I shall undertake to demonstrate it to this House. The returning board has no more to do with the electoral returns than has the House of Representatives. If, therefore, these returns are in their possession, they are in their possession as individuals; and as such they must respond to this writ and produce them.

But again, supposing they were in their hands properly as a returning board, their work is done; the electoral vote has been counted; the electors have acted. The laws of the State of Louisiana make no provision for the keeping of these documents, and unless the law makes provision for keeping them, they are not public documents. If they are not public documents then they are in the hands of every individual who may possess them, exactly as these documents are in my hand, to be produced upon proper process before any tribunal that has power to order their production.

Mr. Speaker, this discussion involves not only the power and right of this House; it involves the rights of the people of the country as dependent upon the election in the State of Louisiana. My colleague [Mr. GARFIELD] was, I thought, very unfortunate yesterday in an allusion which he made. He stated that in 1845 frauds had been perpetrated in this very State of Louisiana, by which ("sad and disgraceful," as he declared the act to be) James K. Polk was elected President of the United States. I could not imagine the reason why the gentleman referred to the fraud in Louisiana in 1845, unless as a precedent for the fraud in Louisiana in 1876 and 1877. He said, Mr. Speaker, that the great whig party then yielded to the fraud, acquiesced in the outrage; but I say, Mr. Speaker, that their acquiescence in fraud and outrage is not a precedent to be followed by the democratic party and the people of the country this day. [Applause.]

Mr. LYNDE. I now yield to the gentleman from Pennsylvania [Mr. KELLEY] for ten minutes.

Mr. KELLEY. Mr. Speaker, the question before the House involves legal and constitutional considerations, and offers, in my judgment, no theme for declamation.

Congress is not, as the British Parliament is said to be, omnipotent. Ours is not an imperial Government, but a complex one, in which there are rights and duties pertaining to the States over which Congress has no control. The returning board of Louisiana, so far as the Legislature had devolved functions upon it, (for the constitutionality of the law creating the board has been affirmed by the supreme court, and is therefore unquestioned,) is the State of Louisiana. It is the court of final resort in determining the results of all elections had in that State; and unless Congress can overthrow the sovereignty of each and every State it cannot invade the findings of that board.

Much has been said in derogation of the character of the board. I went to Louisiana before the counting began, with no predilection in its favor. I went reluctantly, and only when urged by adherents of both of the political parties. I was present at its sessions and witnessed the manner in which the board performed its duties. Its sessions were held in public. They were all attended by the numerous counsel of the democratic party and democratic contestants. All proceedings were in the presence of and noted by two skilled phonographers, one chosen by the representatives of the democratic party and the other by the representatives of the republican party, who were also present in person. The proceedings thus noted were published in detail each day and spread before the country.

The consultation of the judges was, as judicial consultations ever are, held in private, and the attempt now making by a committee of this House, in aid of which the power of the House is now solicited, is not to get at the facts of the case which have been thus spread before the country, but is to go into the consultation-room to determine

whether the judges of that court of final resort, representing the sovereignty of the State, arrived at the conclusion to which the papers would bring the members of that committee.

Who elects the President of the United States? The American people? No, if you speak of them as a unit or entirety. The American people, as citizens of the respective States, elect the President; and more than one of our distinguished Presidents have been elected, and their election remained uncontested and undisputed by a soul, who received but a comparatively small minority of the votes of the whole people of the country. Their minority of votes was so distributed as to give them a majority in the electoral college, and that college represented the States in their sovereign capacity.

Only when the sad alternative—and I use this phrase as coming down from the framers of the Constitution—only when the sad alternative occurs that the States failed to make an election, is it permitted to the people of the United States, in their capacity of a political people through their Representatives, to assume the functions of the States and elect a President. They can then only exercise the functions of States because the States have failed to exercise them.

Now the gentleman from Ohio [Mr. HURD] has said it has been charged the election in Louisiana was not fairly conducted; that the electors of Louisiana were not properly chosen. Be it so. These are questions the State must settle, and the State by previous legislation had referred them to the returning board as a court of final jurisdiction, and the decision of that court is conclusive upon this House so long as it respects the rights of the States or the safeguards of the Constitution. Pinckney answered all the gentleman's suggestions in 1800 in the great debate as to who elect the President and who may inquire into alleged frauds or irregularities in the State elections. He said:

> Knowing that it was the intention of the Constitution to make the President completely independent of the Federal Legislature, I well remember it was the object, as it is at present, not only the spirit but the letter of that instrument, to give to Congress no interference in or control over the election of a President. * * *
>
> This right of determining on the manner in which the electors shall vote, the inquiry into the qualifications, and the guards that are necessary to prevent disqualified or improper men voting, and to insure the votes being legally given, rests and is exclusively vested in State Legislatures. If it is necessary to have guards against improper elections of electors and to institute tribunals to inquire into their qualifications, with the State Legislatures, and with them alone, rests the power to institute them, and they must exercise it.

But, sir, as we were reminded by the gentleman from Ohio [Mr. GARFIELD] yesterday, after great deliberation each House matured a bill for determining presidential elections, about which questions might be raised, which failed to become a law because the two Houses could not agree upon certain details; but both Houses agreed upon a provision in their adopted draught of a law which excluded the jurisdiction now claimed for the House to inquire into the number of votes cast for electors. It in express terms excluded from the jurisdiction of the proposed joint committee all such "disputes relative to President and Vice-President of the United States * * * as might relate to the number of votes by which the electors may have been appointed."

Yes, this august tribunal proposed to be created by the great men of that day, who came here fresh from framing the Constitution, was to be carefully prohibited from exercising any of the functions inimical to the sovereignty which the gentleman from Ohio [Mr. HURD] claimed as belonging to a committee of this House.

Where are your doctrines of State rights, if a committee of Congress, disregarding all the provisions of the Constitution, disregarding all the monitions of its framers, may, of its own arbitrary will, invade the consultation-room of the court of final resort established by a State Legislature, and overthrow its election because the facts lead them to a judgment other than that at which that court had arrived.

[Here the hammer fell.]

Mr. LYNDE. I yield ten minutes to the gentleman from Virginia, [Mr. HARRIS.]

Mr. HARRIS, of Virginia. In the few moments allowed me, it cannot be expected that I can enter with any minuteness into a discussion of the legal questions involved in this resolution. But it seems to me that the gentlemen on the other side either do not comprehend, or, comprehending, do not desire to discuss the question before the House. The question before the House is not whether Wells and company shall be brought here or not, as an original question. The question is whether they shall be punished for their contempt in not having gone before the special committee in New Orleans and carried with them, in obedience to the *subpœna duces tecum*, the papers therein called for. To deny that right to the committee is to deny the validity in all cases of the *subpœna duces tecum*.

The *subpœna duces tecum* was intended to reach something which could not be reached by any ordinary subpœna. The records being in the legal custody of another party, you cannot bring them without bringing the party with them to take care of them and protect them. The law contemplates that these records shall be in the custody of a legal party; and hence that the party who holds the custody of those records shall come with them, watch over them, and take care of them, while they are being examined by the parties calling for them; and that, after being examined, they may be returned to their proper and legal custody.

Suppose that in some remote part of the State of Louisiana any circuit court wanted the records of another circuit court or court of appeal, will gentlemen assert that there is no power in that court to compel the clerk, the custodian of the records, to come and bring those records for personal inspection? The question may turn on the validity of the record and can only be tested by the inspection of the record itself. It may turn on the forgery of the record as in this case, which can only be determined by the inspection of the paper. And for the failure to do so, for the failure to come before the committee, and bring these papers and submit them for inspection with their blots, blurs, interlineations, erasures, and changes, and their certificates dated long after the postmarks of the envelope containing them—for this failure it is proposed that they shall be brought to the bar of the House. It was to evade the exhibition of these changes that they proposed to give copies which would not show any of the facts that appeared on the face of the original papers, and thus conceal the fraud which this House and the country demand shall be made to appear to an outraged people and for the enlightenment of this House in the discharge of its important duty.

Sir, if I take the doctrine of my friends on my right, then this power of *subpœna duces tecum* amounts to nothing. These parties having failed to appear, this House is called upon not to bring them here with the records—they are not required to bring the records out of the State; but they are required to come here in person to answer for what is in the nature of a criminal offense in having disobeyed the order and subpœna of this House. It is well known to gentlemen on all sides that where a court has jurisdiction and where any one has violated the law he can be taken across the county line or across the State line, so far as the jurisdiction of the court extends; and as Congress has a jurisdiction co-extensive with the whole country and these parties have failed to appear before this committee, we have the right to bring them here and make them answer for their offense; not for the purpose of bringing those papers with them.

It was refreshing yesterday to hear gentlemen on the other side talk about State rights. My friend from Ohio [Mr. GARFIELD] delivered a eulogy on State rights. I thought, sir, how I had sat with that gentleman here for six years when he had seen State after State in the South overburdened by the pressure of the military power of the Government; when he had seen the military sent from State to State to influence elections with the facility with which the men are moved on a chess-board and no voice came from that gentleman. After all that it was refreshing to find that at this late day he was going to be a States-right man. I was delighted also to hear him quote the authority which even the people down in the South have now ceased to quote—Pinckney, a South Carolina statesman. My friend from Pennsylvania, [Mr. KELLEY,] who has just taken his seat, also intrenched himself behind the opinions of this South Carolina statesman. The gentleman from Massachusetts [Mr. HOAR] has a right to do that. The doctrines of South Carolina had their origin in that gentleman's State. But I deny the right of the gentleman from Ohio [Mr. GARFIELD] and the gentleman from Pennsylvania [Mr. KELLEY] to go to South Carolina for authority. I would say, if it be not coarse to say it, that when they quote Pinckney——

Mr. HOAR. I would ask my friend whether the free-trade doctrines of South Carolina originated in Massachusetts?

Mr. HARRIS, of Virginia. I allude to the secession doctrine of South Carolina, which had its origin in Massachusetts, and not to free-trade notions.

But, Mr. Speaker, I felt like exclaiming, when I heard my friend from Ohio quoting Pinckney, of South Carolina, as authority, "The devil can quote scripture for his purpose;" but it might be regarded coarse to say it; therefore I will not.

The gentleman is politically sick and will seek any doctor in this emergency, but when he gets well he will abandon the doctrine upon which he now relies. Sir, you know the old couplet:

> The devil was sick, the devil a monk would be;
> The devil was well, the devil a monk was he.

I am satisfied that my friend from Ohio is now politically sick, and when his sickness is over he will return to his old doctrine of consolidation.

Mr. Speaker, we want this returning board here. We want them here to answer for their contempt. My friend from Ohio on yesterday spoke of their high and pious virtues, when history tells us this very board while he was sitting there in their presence opened a certificate which contained an affidavit dated one week later than the post-mark on the sealed envelope, and he never opened his lips to condemn them; and the Senator from his State—no, it would not be in order for me to refer to him in that connection—but his colleague from Ohio at New Orleans exclaimed that that was a forgery.

Mr. GARFIELD. What does the gentleman state?

Mr. HARRIS, of Virginia. Unlike the gentleman, I was not in New Orleans to witness the counting of the electoral vote of the State.

Mr. GARFIELD. Well, if the gentleman was not there, why does he make a statement in regard to what occurred there?

Mr. HARRIS, of Virginia. I state that when the clerk of the returning board was called upon to open an envelope duly sealed and postmarked the 18th of November, when that envelope was opened it was found to contain also a protest or affidavit dated on the 25th. Is not that correct, and must not that envelope have been opened and the paper put in after it was received by the returning board?

Mr. GARFIELD. No, sir; if the gentleman will allow me, I will

explain that matter. I was not present, but will state how I understood it from those who were present. One of the returns was brought by the supervisor to the city of New Orleans before he had inclosed it in the envelope and sealed it, it bearing the date when the return was made, and then after he arrived in New Orleans he there prepared his statement of intimidation, dating it in New Orleans of date when he prepared it, and when he had prepared that statement he enveloped it with the return and forwarded it to the board. That is the fact in regard to that matter as I understood it. If the man had intended fraud he certainly would have made the dates correspond, but the two papers dated a week apart were inclosed together at the same time, of course at the date of the last paper, in one envelope. If he had intended fraud this would have been too shallow a mode to perpetrate it.

Mr. HARRIS, of Virginia. Does not the law of Louisiana require that the local returning board shall seal up their statement of the vote cast in their precincts with wax, or wafer, or mucilage?

Mr. GARFIELD. The gentleman is now asking questions as to the law of Louisiana. He just charged forgery.

Mr. HARRIS, of Virginia. I state that the law is that they should seal up their returns at the time of preparing them. Therefore, the envelope in question must have been sealed before it was mailed and the fraud occurred afterward.

[Here the hammer fell.]

Mr. LYNDE. I now yield ten minutes to the gentleman from Iowa, [Mr. KASSON.]

Mr. KASSON. At the expiration of the time given to me yesterday I had called the attention of the House to the fact that neither the committee nor any member of the House who had spoken had prescribed any limitations about the alleged power of the House of Representatives over State officers and State papers. No limitation has been suggested to the power claimed to bring them in evidence before a committee or to punish the officers for contempt for their non-production.

I have been listening to the debate this morning, anxious to learn if any gentleman, a member of the Judiciary Committee, or any member of the other side of the House, would state whether there was any boundary to the power of this House over the testimony to be required of any State officer, or over any State tribunal, for the production of papers at the demand of this House. No such limitation has been stated by any of the advocates of this report.

In looking at the report of the Judiciary Committee I read these words:

> Your committee do not feel called upon at this time to express an opinion upon the question as to whether the action of the returning officers is subject to review by any State or national tribunal.

Thus the committee have stated that they do not express an opinion that we have a right to review the action of the tribunal whose papers you require; and yet they are demanding all the original records and the documents of that tribunal to be brought here before this House by its committee. For what purpose, if not for a review, can that be done or be justified?

I have endeavored in this debate to call the attention of the House to the proper principle involved in the resolution. I have not referred to the transactions of fact in Louisiana, about which differences of opinion exist between the members of this House which are as wide as the poles apart. But I do demand of the lawyers on both sides to consider the principle on which they can base a right to bring this board of State officers here, and to compel them to bring the archives of that State here, taking them out of the jurisdiction of the State, to be held at the will of this House in the possession of the committee or of the House itself.

I denied the right yesterday, and asked for the principle upon which they could invade the State and seize the State officers and archives; and I have had no reply. Is it, then, that the House is unwilling to examine the principle involved? Having started wrong in this investigation, are we to continue wrong to the end?

Your original resolution empowered this committee to examine "into the recent elections in the States" named, not even confining its examination to the election of Federal officers. And under that resolution, which was forced through without opportunity by debate to show that it was a usurpation of power, that committee is authorized to examine into the election of every officer, parish or State, general or local, if they determine to interpret the resolution according to its terms.

Now look at the action under that resolution. The State officers have been required to bring before that committee the consolidated statement and tally-lists. On those very consolidated statements and tally-lists the constitution of the State Legislature of both pretended governments in Louisiana depend; and on them depend the election of all the parish officers of that State. When their law requires the State officers to make these reports so that the Legislature may have access to them, you propose to take the evidence of the title of every officer, whether of the Nicholls legislature or of the Packard legislature, away from the control and jurisdiction of the State.

It is said here that we ought to have the right "to inspect" these papers. They have never been known to refuse the demand for the "inspection" of the original papers. They have been "inspected" by both parties already. Do not gentlemen remember that the committee sent down in the interest of the democratic party had access to the original papers, which were passed down to them when first opened, and which were examined by them at their will? Have the committee of this House been refused the privilege of inspection of those papers? Not at all. It is a transfer of custody which has been refused, and rightly so.

This is a pure and naked demand for the production to an alien jurisdiction of original documents belonging to and required by the State of Louisiana. The resolution proposes to punish these State officers for nothing else than the technical contempt implied in the non-production of these State papers in the rooms of the committee; being claimed as evidence, the committee could have brought them to Washington. They appeared and testified. They offered certified copies of the papers; they have not refused an inspection of the original papers. But now, and under these circumstances, your resolution commands that they be arrested, brought out of their official jurisdiction, and punished in Washington for a contempt in not putting under the control of a committee of this House the archives of the State of Louisiana. This it proposes to do without any act of Congress giving us any right in the premises.

Sir, can the majority of this House of Representatives protect themselves from responsibility for this invasion of the rights of the State of Louisiana by referring to the original error committed by this House in its first resolution, as one gentleman [Mr. HURD] did claim this morning? There are some old lines to the effect that after you have gone wrongly into deep waters "to return were more tedious than go o'er." I fear that members of this House will hereafter find no other defense to their action that the tediousness of retracing wrong steps. I pray them now to consider whether they the have right to seize these papers of a State and bring them to Washington; and whether they have the right to seize also the State officers of Louisiana and bring them to Washington.

A few years hence and the majority in this House may be changed. There may be a government and a governor in Virginia into whose certificates of election that republican House of Congress may desire to inquire. Shall we have the right to take from the city of Richmond its governor and every State officer and all the archives of the State of Virginia and bring them here to Washington pending the organization of a State government in that State? Your principle goes to that extent, and there is no escape from your responsibility for the principle. I trust that gentlemen will yet inquire more seriously whether it is right than they do whether their party demands it.

An eminent member of the democratic party, and he is still an eminent member of that party, once said to me that every act of legislation and of a public officer ought to rest upon a principle; and only in so far as it rested upon correct principle was it worthy of support. The principle at the basis of the action proposed here is that *this House of Congress alone has absolute control over State officers and State papers for the purpose of obtaining evidence touching State elections.* That I still deny to-day, after further inquiry, as I denied yesterday. You may have the right by process of law to compel the production of certified copies of paper relating to matters within your jurisdiction if you provide for it by law, as you have provided by law for copies of judicial proceedings.

Gentlemen ask, have we not the right to inquire, as we have done heretofore, into the election of Congressmen? Yes. Why? Because we are by the Constitution the judges of the election of Representatives in Congress. Has not the Senate the right to inquire into the original action and records concerning the election of Senators? Yes; because the Senate is the judge of the returns and qualifications of its members.

But are we on this floor an electoral college? Are we so constituted as to be a returning board No. 2 to correct the action of returning board No. 1 for state electors and other State officers?

Mr. BLAND. Will the gentleman allow me a question?

Mr. KASSON. Pardon me, I have not time. There is no such thing as a national electoral college. Mark the words, *there is no such thing known to the Constitution as a national electoral college.* There is not even an organized body of which these electors are members outside of their own State. There is no national body that can pass upon their qualifications prior to the exercise and end of their functions. It was never intended that their qualifications or regularity of appointment should be passed upon outside of the State, unless it be in regard to the particular points named in the Federal Constitution as constitutional disqualifications. This attempt on the part of one House of Congress to constitute itself a returning board outside of the Constitution, and after the officers have ceased to exist as such, is a usurpation of power, dangerous to the rights of States and to the future peace and welfare of the American Republic.

[Here the hammer fell.]

The SPEAKER. The time of the gentleman has expired.

Mr. LYNDE. I now yield to the gentleman from Texas [Mr. REAGAN] for ten minutes.

Mr REAGAN. Mr. Speaker, the gentleman from Pennsylvania [Mr. KELLEY] has just told us that this House is not clothed with imperial powers. We might infer from his remarks and from those of his political associates that there was in this country no body which was omnipotent, irresponsible, and imperial, but a Louisiana returning board.

The gentleman from Iowa [Mr. KASSON] warns us against the un-

constitutionality and danger of seizing upon the State officers and State archives of Louisiana and bringing them before this House. The gentleman and others seem to forget that a republican Senate brought the same kind of officers and archives from Louisiana, before their committee here during last Congress, and these gentlemen made no complaint or protest against that. And the republican Senate has at this session brought the governor of Oregon before its committee, and these gentlemen have made no complaint or protest against that.

Mr. KASSON. There was no protest I believe; there was no issue made in either case by the State authorities.

Mr. REAGAN. Mr. Speaker, in the short time allowed me for the discussion of the question before the House, and without opportunity for careful preparation, I shall not be able to make a fair presentation of it.

We are within a few weeks of the time when Congress is required by the Constitution to count the electoral votes for President and Vice-President of the United States and declare the result.

The mode and manner of appointing electors is left by the Constitution to be determined by the States. The question as to who are electors must be determined by Congress.

It is insisted by some of the gentlemen who have spoken on the republican side that the States must and determine who are electors, and that Congress cannot inquire into that question; that, in the language of the gentleman from Ohio, [Mr. LAWRENCE,] the action of the returning board is final and conclusive and this House has no power or authority to change the result. And this view is also sustained by the gentleman from Maine, [Mr. FRYE,] the gentleman from Iowa, [Mr. KASSON,] and the gentleman from Ohio, [Mr. GARFIELD.]

I assume that in accordance with the unbroken line of precedents of ninety years, covering twenty-two elections for President and Vice-President of the United States and the whole period of the constitutional Government of the Union, Congress will count the electoral vote; that it will determine for itself who are electors and entitled to vote; and that for this purpose it will, if necessary, go behind the certificates of election and behind the action of returning boards to ascertain the will of the people as expressed by their votes.

In the election of Mr. Monroe in 1817 Congress went behind the certificate of election, and the acts of the returning officers of the election in the State of Indiana, to determine whether the electoral votes of that State should be counted. In the election of Mr. Monroe in 1821 Congress went behind the certificate of election, and the action of the returning officers of the State of Missouri, to determine whether the electoral votes of that State should be counted. In the election of Mr. Van Buren in 1837 Congress went behind the certificate of election, and the action of the returning officers of the State of Michigan, to determine whether the electoral votes of that State should be counted. And in that election a committee of three on the part of the Senate, consisting of Felix Grundy of Tennessee, Henry Clay of Kentucky, and Silas Wright of New York, in conjunction with a committee of five members of the House of Representatives, by order of the two Houses, went behind the certificates of election and behind the action of the returning officers of the States to ascertain whether electors had been chosen contrary to the prohibition contained in the second section of the second article of the Constitution. And that committee reported that they were "of opinion that the second section of the second article of the Constitution, which declares that 'no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector,' ought to be carried in its whole spirit into rigid execution in order to prevent officers of the General Government from bringing their official power to influence the elections of President and Vice-President of the United States. This provision of the Constitution, it is believed, excludes and disqualifies deputy postmasters from the appointment of electors, and the disqualification relates to the time of the appointments, and that a resignation of the office of the deputy postmaster, after his appointment as elector, would not entitle him to vote as elector under the Constitution." And this opinion of these great Senators may be useful in our present troubles upon other questions than the one I am now considering.

In the election of Mr. Buchanan in 1857 Congress went behind the certificate of election and the action of the returning officers of the State of Wisconsin to determine whether the electoral votes of that State should be counted. In the election of Mr. Lincoln in 1865, Congress, with large republican majorities in both Houses, adopted the twenty-second joint rule for the government of the two Houses in counting the electoral votes for President and Vice-President of the United States, under which, in the election of that year, and in the election of General Grant in 1869, and again in 1873, Congress, upon deliberate consideration, went behind the certificates of election and the action of the returning officers of different States and excluded their electoral votes. And under this joint rule such electoral votes might be and were excluded by the objection of either House without the concurrence of the other. And if the law and facts require it to be done, I take it that the votes of States or of particular electors will be excluded by the objection of either House in this election, as they have been in past elections.

On this question of the right of Congress "to exclude from counting all electoral votes deemed by them illegal," I will read the special message of President Lincoln of February 10, 1865. It is as follows:

To the honorable the Senate and House of Representatives:

The joint resolution entitled "Joint resolution declaring certain States not entitled to representation in the electoral college," has been signed by the Executive in deference to the view of Congress implied in its passage and presentation to him. In his *own* view, however, the two Houses of Congress, convened under the twelfth article of the Constitution, have complete power to exclude from counting all electoral votes deemed by them to be illegal; and it is not *competent* for the Executive to defeat or obstruct that power by a veto, as would be the case if his action were at all essential in the matter. He disclaims all right of the Executive to interfere in any way in the matter of canvassing or counting electoral votes; and he also disclaims that by signing said resolution he has expressed any opinion on the recitals of the preamble or any judgment of his own upon the subject of the resolution.

ABRAHAM LINCOLN.

EXECUTIVE MANSION, *February 8*, 1865.

Our friends on the republican side show a new-born and wonderful zeal for the doctrine of State rights, which they have labored so earnestly for years past to try to render odious. In great kindness and charity, I suggest to them that I know gentlemen in this country who some years back got into very serious trouble on account of their devotion to the doctrine of State rights. But I will express the hope that these gentlemen may be more fortunate. They manifest on this occasion a holy horror at the idea of the Federal Government interfering in elections in the States. And yet it is that party that introduced into the Constitution of the United States in the last few years, for the first time in the history of the Government, provisions in relation to the rights of citizens to vote in the States. It is that party which has in the last few years, for the first time in the history of the Government, passed elaborate acts of Congress to regulate and protect the rights of citizens to vote in the several States. It is that party which provided for and appoints supervisors of elections in the States by the Federal Government. It is that party which, by its Attorney-General, with the sanction of its President and his Cabinet, and with the approval of the republicans of the Senate and this House, appoints an army of deputy marshals, to be paid out of the Federal Treasury, to manage and control elections in the States for the worst of partisan purposes; and who, to this end, were authorized to use the Army of the United States in controlling such elections, without any demand by the States, as provided for in the Constitution, for such troops, and when there was no legitimate necessity for them. It is this party which, through its President, with the sanction of his Cabinet, and with approval of the republican Senators and members and Representatives and of the great body of the party, openly employs the Army of the United States to overthrow lawful civil State governments, formed by the will of the people, and substitutes in their place other governments in the States which have no other authority for their existence than what is derived from military orders and the unlawful and unconstitutional use of the Army; and which openly and notoriously uses the Army of the United States to overawe and intimidate the people and to carry elections, both Federal and State.

This is the party which has so holy a horror now of the interference of the Federal Government with elections in the States; when, too, it is at this very moment using the Army of the United States to keep out of office governors and other State officers, State senators and representatives, and district and county officers in two States, which were elected by the people, and to put into their places by force and fraud those who were defeated by the people.

When these gentlemen tell us that the work of the returning boards, such as that in Louisiana, are conclusive, and cannot be impeached or inquired into even for fraud and for being in violation of law, do they forget that they have been, without objection or protest, trying cases of contested seats of members of this House from that State at every Congress since the disgraceful election laws and infamous returning board of that State had an existence; and that in each case they were going behind the action of this returning board, and treating it, as it ought to be treated, as furnishing by its action a *prima facie* case of election only, which may be rightfully inquired into by this House, and which has been so inquired into by this House, and the action of the Louisiana returning board set aside on different occasions, and the true result of the election by the people announced by this House? It is remarkable that these gentlemen cannot understand a principle which is as old as the law of elections, and firmly established by almost countless precedents, that an election by the people is determined by the votes of the people, and that the returns of the officers of such election are only *prima facie* the evidence of an election, and may always be set aside for fraud or illegality, and the true result announced. Fraud vitiates everything; a solemn deed or the record of the highest court will be annulled, set aside, held for naught, if made or procured by fraud.

The committee in the report under consideration say in substance that public rumor charges fraud in the Louisiana election. It is proposed to investigate this fraud. We know from newspaper reports, and from the statements of both citizens and officers, that a democratic majority of more than 8,000 has been by that returning board converted into a republican majority of more than 3,000. We wish to know just how this was done; and the whole country wishes to know how it was done, and has a right to know how it was done, as it may determine the result of the election of President and Vice-President of the United States.

And yet republican members on this floor—representatives of a part

of the American people—distinguished for their ability and public experience, tell us that even if this returning board has been guilty of fraud and of unlawful conduct, though it may be leprous with fraud, a stench in the nostrils of all honest men, and a hissing and by-word throughout Christendom, still its frauds are so sacred, so inviolable, so beyond the reach of honest men, good morals, and sound principles of law, that it must outweigh the honest votes of more than four millions of freemen, in a Government created, upheld, and perpetuated so far by public opinion, as made known through the lawful votes of the people, as contradistinguished from a government created, upheld, and perpetuated by either force or fraud.

This position is so monstrous that I am persuaded gentlemen who are driven into it by partisan heat or supposed political exigencies will, in after and calmer times, be amazed that they should have avowed such doctrines.

The gentleman from Iowa [Mr. KASSON] and several of his brethren have made or attempted to make the issue that we could not go into the States and seize State officers, acting under State laws, and State records and bring them before this House or its committee, without violating the Constitution and trampling down State rights. I suggest that such an issue is not presented by the report before us, and that therefore we need not discuss or decide it. The duty is devolved on Congress to count the electoral votes for President and Vice-President of the United States. Our authority to do so is derived from the Constitution of the United States. And these are the higher officers of the Government of the United States. They are not State officers. We are not State officers. The only warrant for our action is that Constitution. In the performance of this great duty are we to accept fraudulent and illegal acts of a returning board whose infamy is both national and world-wide, without inquiry, as binding on us? Or are we to inquire for the very truth? The common-sense, natural, reasonable American way is to inquire for the very truth. To do this we must authorize our committee to purge the consciences of the members of that board, and to examine the poll-books, returns, &c., on which their action was based, and whether that action was in accordance with law and is sustained by the facts. That board not only spirited away a democratic majority of over eight thousand and give to their party a majority of over three thousand, but their final and most important action in doing it was in secret. The law of their existence required that the board should be composed of members of all political parties. It should have consisted of five members; but in fact did only have four members, and these were all republicans. They were applied to repeatedly to fill the vacancy by the appointment of a democrat, which they refused to do, under the sham pretense that they were equally divided on the question as to whether they should fill it. It looks like they had determined to perpetrate a great fraud, and resorted to subterfuge and trick to prevent any democrat from witnessing and exposing that fraud.

The gentlemen who take this extraordinary position as to the sanctity and sacredness of the acts of a fraudulent returning board seem to loose their reckoning in many respects. Suppose two returns come from one State—and we are advised that there will be duplicate returns from four or five States in this election—we must use our judgment and discretion, we must determine, decide in each case which is the true and proper return, which contains the true vote of the people and is presented by the proper electors, and with the proper authentication. We must, if necessary, go behind the returns themselves, and behind the action of the returning officers, to determine this. So returns may be made, as in the election of Mr. Van Buren in 1837, of persons who appear to have been elected as electors, but who are ineligible; and we may now as then have to go behind the returns to determine this, and to prevent persons from voting for President and Vice-President who are not permitted by the Constitution to be electors.

But I will not multiply the instances in which, from the very necessity of the case, we may have to go behind the returns and behind the action of returning boards in the discharge of the high duty we owe to the whole people to see honestly and fairly that those elected by them shall be declared by us to have been elected. And no fraud, no illegality, no trick or subterfuge, must stand in the way of common honesty, plain duty, and obedience to law in this respect. We want the truth and the whole truth about this election. This cannot be reached without compelling the witnesses named to testify and to produce their records and books for inspection of the committee. I do not doubt our jurisdiction for this purpose. Surely this great body, clothed with jurisdiction over the subject, has as much power to compel witnesses to testify and to produce papers as a district or county court in one of the States or Territories or of the District of Columbia.

But it is insisted that villainy has invented a contrivance in Louisiana which not only sanctifies fraud and illegality, but binds our consciences, and defies our authority and powers in counting and declaring the result of the electoral vote. It is said the Legislature of that State has clothed the board with judicial powers, and has declared its action binding and final on all elections. I must insist that in common justice and by all law it is only binding and final when it is in accordance with law and is free from fraud. Its action is not and cannot be more binding, final, and conclusive than a decision of the Supreme Court of the United States, and even a judgment of that august tribunal would be set aside and annulled if after it is made it should be found that the court had no jurisdiction of the case, or that its judgment had been obtained by fraud, or had been the result of accident or mistake. The law makes the judgments and decrees of this great court final and conclusive as to the parties to the litigation, and they may be set aside, annulled, for fraud or for want of jurisdiction; but yet we are gravely asked to agree that the doings of this fraudulent returning board, under a law which was designed as a cheat and swindle, has more sanctity than such a judgment or decree. Can folly go further or presumption become more audacious than this?

Mr. LAWRENCE. The gentleman from Texas has alluded to me. I desire to quote in relation to the New York election, to which I referred in my remarks yesterday, the following. Alexander Hamilton wrote to Rufus King, July 25, 1792:

> To rejudge the decision of the canvassers by a convention has to me too much the appearance of reversing the sentence of a court by a legislative decree. *The canvassers had a final authority in all the forms of the Constitution and laws.* A question arose in the execution of their office not absolutely free from difficulty, which they have decided. I am persuaded, wrongly, but *within the power vested in them.* I do not feel it right or expedient to attempt to reverse the decision by any means not known to the Constitution or laws. The precedent may suit us to-day, but to-morrow we may rue its abuse.—*Hamilton's History of the Republic*, volume 5, page 29.

The SPEAKER. The gentleman from Wisconsin [Mr. LYNDE] has now remaining ten minutes of the time allowed by order of the House.

Mr. LYNDE. I yield that time to the gentleman from New York, [Mr. COX.]

Mr. COX. Mr. Speaker, I would not trouble the House again on this question but for the request of my distinguished friend from Wisconsin, [Mr. LYNDE.] I rise to close the debate and to call the previous question. In so far as this matter is a legal proposition, it lies in a nutshell. It has been abundantly, exhaustively discussed. Thus far in the discussion no proposition has yet been made or sustained on the other side which would negative the power of this House to call for records of this peculiar character and have them properly inspected. If a crime like forgery is alleged to have been committed, and the forged paper is in the place where the criminal is to be tried, no lawyer will deny that a *subpœna duces tecum* will reach the original paper. That is the proposition, in effect, which is presented here. That is the object of the process of this House, contumaciously disregarded by the returning board of Louisiana. That this House has plenary power over this object will not be disputed by any one who recognizes the functions of Congress and the mode and means of intelligent legislation and action under the Constitution. Why, sir, has it not been contended on the other side of the House, as in the Kilbourn case at the last session, and notably by the gentleman from Massachusetts, [Mr. HOAR,] that Congress is paramount; that it is a high court of supreme jurisdiction, even to the restraint of persons, as well as in the production of papers? If this be so, then we have the power and the right to pursue this matter where the integrity of an electoral college is concerned. So as to the spoliation of records, the same rule will obtain.

But gentlemen on the other side have misstated the facts. This Louisiana committee have not called, as has been stated, for papers to be brought outside of Louisiana. They have not called for anything except the inspection of these records. Gentlemen say, "O, we tender you copies." But then these very inculpated parties propose that they themselves and no one else shall make the copies! They propose to do the copying when we are investigating the charge of spoliation, fraud, or forgery! That will not do, sir; for the forgery or mutilation of returns or records does not appear in mere transcripts.

Why, Mr. Speaker, this matter of enforcing the production of the records was really concluded when this House resolved to investigate. The right to investigate, which was conceded on both sides, which has been conceded in the Senate—the right to investigate into the election for congressmen or electors includes, *ex necessitate rei*, the right to send for persons and papers. That position cannot be successfully denied. Gentlemen who favored investigation are estopped from denying the right of the House to pursue all the usual modes of investigation. The process of *duces tecum* is one of them; and such process is specially applicable to election records when the examination is directed to that subject.

Why then do gentlemen opposite, professing their great desire for investigation before the American people on this momentous question connected with our Chief Magistracy, on the threshold of its determination by the House, seek at this time to stifle investigation by benumbing or destroying the very agencies to be employed?

It has come directly to this. I do not discuss now the law or the facts; I speak of the *morale*. Here to-day gentlemen on the other side are in the position of choking down the truth. Not that they would just now count one man in and another out; but they estop inquiry at this perilous juncture as to the proper man to be counted in. Do gentlemen desire to anticipate the work of the 14th of February? Do they desire to smother what is indispensable to be known, and known at once? Do they desire to assist in concealment for ulterior purposes?

Thus, sir, this question has its importance, not merely as a question of public law. It is the pivotal question on which the Chief Magistracy depends. On it hang stupendous consequences. Yet we are

met by frivolous debate as to the change of parties on State rights or federalism; and the gentleman from Massachusetts [Mr. HOAR] condescended to intimate that democrats had become federalists, while his side had become devoted to State rights. Sir, we have not come down from the position of State-rights men. We stand within the Constitution, which is the barrier by which the rights of the States are protected. The allusion of my friend from Massachusetts to the fable narrated by Macaulay, of the serpent and the man, whose various parts in a conflict were transformed and interchanged, does not apply, either as analogy or reason, to this proposition. We stand as ever by the rights of the States. We stand by the power of this House to guard the existence of a State. Who would strike down State rights here? Ah! are gentlemen on the other side upholding by their opposition to this measure of coercion the power of the State militia, or of the State courts, or of the State laws and constitution of Louisiana? Are they defending its autonomy, its independence, its freedom, threatened hourly by the federal bayonet, who champion not merely the old federalism, but a federalism intensified and arbitrary, and backed up by the insolence of the military? You would dethrone State rights; we would enthrone them. You have already by your Gatling guns and other forceful means stricken down the State. By the unlawful exercise of Federal power, by your *pronunciamientos*, by your perversion of the muniments of liberty in that State, by defying the Constitution, by stretching forth in the State of Louisiana the velvety gloved hand of power with iron grip underneath it, you have murdered State rights; and you cannot even be allowed to preach the funeral oration. [Laughter and applause.]

Why, Mr. Speaker, when gentlemen on the other side appland State rights, let them go to Louisiana; let them see a stricken State, with the Federal power over its prostrate form. Why, the very sugar-plantations are turned into swamps, and the former habitations of health, plenty, and content are filled with crawling serpents—evidences of ruthless wrong and premature decay. It is no longer the proud State of Louisiana which Jefferson bought and of which the democracy were so proud. It lies in the dust at the feet of fraud and force. As a fable from Macaulay has been sent up to be read as presenting an appropriate analogy in connection with this debate, I ask to have read another story which has more appropriate application. It comes nearer to the point of this debate, if such fabulous allusions be applicable at all. I ask the Clerk to read a passage which is also from Macaulay.

The Clerk read as follows:

> Ariosto tells a pretty story of a fairy, who, by some mysterious law of her nature, was condemned to appear at certain seasons in the form of a foul and poisonous snake. Those who injured her during the period of her disguise were forever excluded from participation in the blessings which she bestowed. But to those who, in spite of her loathsome aspect, pitied and protected her, she afterward revealed herself in the beautiful and celestial form which was natural to her, accompanied their steps, granted all their wishes, filled their houses with wealth, made them happy in love and victorious in war. Such a spirit is liberty. At times she takes the form of a hateful reptile; she grovels, she hisses, she stings. But woe to those who in disgust shall venture to crush her; and happy are those who, having dared to receive her in her degraded and frightful shape, shall at length be rewarded by her in the time of her beauty and glory.

Mr. COX. Mr. Speaker, that fable by Macaulay illustrates the condition of Louisiana. She is condemned for a season to wear the pitiable and loathsome aspect. But woe to those who seek further to crush her, for they crush the beautiful form and spirit of liberty.

I remember well an interview which many years ago, just before the war, I had with General Cass. It was just before he left the Cabinet. He told me that when he had been a citizen of Ohio, residing at Marietta, and when Louisiana belonged to Spain, there was some difficulty about our northern and western produce, even as far up as Pennsylvania, passing down the great rivers and reaching the Gulf or the ocean. The Spaniards had a port of deposit at New Orleans and endeavored to impose ruinous exactions. What was done by the hardy pioneers? Flat-boats were manned with riflemen several thousand strong, to move down the Ohio and Mississippi to fight their way to the Gulf, because Louisiana belonged by the fiat of nature to the United States of America. This adventure was only foiled by the timely transfer of Louisiana to France, and from France to the United States.

Does she belong to us yet? Have we indeed a State there at all, or a double-headed State? Or is it anarchy? No, Mr. Speaker, though she lies prostrate she is still ours. Her rights and honor are ours. She is just as necessary now to the great West, to the North, to the whole country, as she ever was, and she is entitled to have a potential voice in determining for this people who shall be the Chief Executive, and assisting our material and political unity and destiny. Let us not allow that voice to be despised or throttled, but let us carry out by the authority of Congress, the wish and voice of her people, for liberty, for peace, for honesty, for democracy, for Samuel J. Tilden. [Applause.]

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of its clerks, announced the passage of the following House bills without amendments:

An act (H. R. No. 2287) for the relief of Peters & Reed, naval contractors at Norfolk navy-yard in the year 1860;

An act (H. R. No. 2842) granting a pension to Robert S. Toland;

An act (H. R. No. 3500) granting a pension to Nelson Ainslie;

An act (H. R. No. 2653) making an appropriation for the improvement and repair of the military road between Springfield and Fort Randall, in the Territory of Dakota;

An act (H. R. No. 2242) granting a pension to George McColly;

An act (H. R. No. 1521) granting a pension to Louis A. McLaughlin; and

An act (H. R. No. 940) for the relief of Edwin Ebert.

It further announced the passage of the following joint resolution with amendments, in which the concurrence of the House was requested:

A joint resolution (H. R. No. 181) authorizing the Public Printer to bind in cloth the reserved and stitched copies of the House compilation entitled Counting the Electoral Vote.

It further announced the passage of the following bills, in which the concurrence of the House was requested:

An act (S. No. 1123) granting a pension to Marsilvia F. Woodard, mother of George R. Woodard;

An act (S. No. 1118) granting a pension to Mrs. Amy King;

An act (S. No. 949) for the relief of A. M. Garountte, late captain and assistant quartermaster, United States Army;

An act (S. No. 947) for the relief of the estate of Jacob Senseney, of Winchester, Virginia;

An act (S. No. 931) for the relief of H. H. Mathews, of Arkansas; and

An act (S. No. 109) for the relief of the estate of I. M. Micow, of the State of Alabama.

RECUSANT WITNESSES—LOUISIANA RETURNING BOARD.

The SPEAKER. The question now recurs on the adoption of the resolution reported from the Committee on the Judiciary by the gentleman from Wisconsin, [Mr. LYNDE.]

Mr. KASSON demanded the yeas and nays.

The yeas and nays were ordered.

The question was taken; and it was decided in the affirmative—yeas 158, nays 81, not voting 51; as follows:

YEAS—Messrs. Ainsworth, Ashe, Atkins, Bagby, John H. Bagley, jr., Banning, Bell, Bland, Bliss, Blount, Boone, Bradford, Bright, John Young Brown, Buckner, Samuel D. Burchard, Burleigh, Cabell, John H. Caldwell, William P. Caldwell, Campbell, Candler, Carr, Cate, Caulfield, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Cochrane, Collins, Cook, Cowan, Cox, Culberson, Cutler, Davis, De Bolt, Dibrell, Douglas, Durand, Durham, Eden, Ellis, Felton, Field, Finley, Forney, Franklin, Fuller, Gause, Goodin, Gunter, Andrew H. Hamilton, Robert Hamilton, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Haymond, Hereford, Goldsmith W. Hewitt, Holman, Hooker, Hopkins, House, Humphreys, Hurd, Frank Jones, Thomas L. Jones, Kehr, Knott, Lamar, Franklin Landers, George M. Landers, Lane, Le Moyne, Levy, Lewis, Lord, Luttrell, Lynde, Mackey, Maish, McFarland, McMahon, Meade, Metcalfe, Milliken, Mills, Money, Morgan, Mutchler, Neal, New, O'Brien, Odell, John F. Philips, Pierce, Piper, Poppleton, Rea, Reagan, John Reilly, Rice, Riddle, John Robbins, William M. Robbins, Roberts, Savage, Sayler, Scales, Schleicher, Schumaker, Sheakley, Singleton, Slemons, William E. Smith, Southard, Sparks, Stanton, Stenger, Stevenson, Stone, Swann, Tarbox, Terry, Thomas, Thompson, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Waddell, Charles C. B. Walker, Gilbert C. Walker, Walling, Walsh, Ward, Warner, Warren, Watterson, Erastus Wells, Whitthorne, Wigginton, Wike, Alpheus S. Williams, James Williams, Jeremiah N. Williams, Willis, Wilshire, Benjamin Wilson, Fernando Wood, Yeates, and Young—158.

NAYS—Messrs. Adams, George A. Bagley, John H. Baker, William H. Baker, Ballou, Banks, Blair, Bradley, William R. Brown, Horatio C. Burchard, Cannon, Chittenden, Conger, Crapo, Danford, Davy, Denison, Dobbins, Eames, Evans, Five, Fort, Foster, Frye, Garfield, Haralson, Benjamin W. Harris, Hendee, Henderson, Hoge, Hoskins, Hubbell, Hunter, Hyman, Kasson, Kelley, Kimball, Lapham, Lawrence, Leavenworth, Magoon, MacDougall, McDill, Miller, Monroe, Norton, Oliver, O'Neill, Packer, Page, Plaisted, Potter, Pratt, Purman, Rainey, Robinson, Rusk, Sampson, Seelye, Sinnickson, Smalls, A. Herr Smith, Strait, Stowell, Thornburgh, Martin I. Townsend, Tufts, Van Vorhes, Wait, Alexander S. Wallace, John W. Wallace, White, Whitehouse, Whiting, Andrew Williams, Charles G. Williams, William B. Williams, James Wilson, Alan Wood, jr., Woodburn, and Woodworth—81.

NOT VOTING—Messrs. Abbott, Anderson, Bass, Beebe, Blackburn, Cason, Caswell, Chapin, Cronnse, Darrall, Dunnell, Egbert, Faulkner, Freeman, Gibson, Glover, Goode, Hale, Hancock, Hathorn, Hays, Henkle, Abram S. Hewitt, Hill, Hoar, Hunton, Hurlbut, Jenks, Joyce, King, Lynch, McCrary, Morrison, Nash, Payne, Phelps, William A. Phillips, Platt, Powell, James B. Reilly, Miles Ross, Sobieski Ross, Spencer, Springer, Stephens, Teese, Washington Townsend, Waldron, G. Wiley Wells, Wheeler, and Willard—51.

So the resolution was adopted.

During the call of the roll the following announcements were made:

Mr. CABELL. My colleague from Virginia, Mr. HUNTON, is absent on the joint committee of the House and Senate in relation to counting the electoral vote. He desires, if in order, to have his vote recorded in the affirmative.

The SPEAKER. The gentleman must be present in order to have his vote recorded.

Mr. EDEN. My colleague from Illinois, Mr. SPRINGER, is also absent, serving on the joint committee in regard to counting the electoral vote. If present, he would vote "ay."

Mr. KASSON. My colleague from Iowa, Mr. MCCRARY, is absent on the joint committee in relation to counting the electoral vote, sitting by leave of the House. If present, he would vote "no."

Mr. FRYE. The gentleman from Massachusetts, Mr. HOAR, is absent on the same joint committee.

Mr. LEAVENWORTH. My colleague from New York, Mr. HATHORN, is detained by sickness, and my colleague, Mr. PLATT, is absent by leave of the House.

Mr. STRAIT. My colleague from Minnesota, Mr. DUNNELL, is absent by reason of sickness.

Mr. JOHN REILLY. My colleague from Pennsylvania, Mr. JAMES B. REILLY, is absent by leave of the House.

The result of the vote was then announced as above recorded.

Mr. LYNDE moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

ENROLLED BILLS SIGNED.

Mr. HARRIS, of Georgia, from the Committee on Enrolled Bills, reported that they had examined and found truly enrolled bills of the following titles; when the Speaker signed the same:

An act (H. R. No. 767) for the relief of Samuel B. Stauber and others; and

An act (H. R. No. 4155) amending the act of July 28, 1876, entitled "An act for the relief of Kendrick & Avis, Kuner, Zisemann & Zott, Kuner & Zott, all of Saint Louis, Missouri, and Nachtrieb & Co., of Galion, Ohio."

DEFICIENCY APPROPRIATION BILL.

Mr. FOSTER. I am directed by the Committee on Appropriations to report back the bill (H. R. No. 4307) making appropriations to supply certain deficiencies in the contingent fund of the House of Representatives, and for other purposes, with amendments by the Senate. I ask that the report of the committee may be read.

The Clerk read as follows:

The Committee on Appropriations, to whom was referred the bill (H. R. No. 4307) making appropriations to supply certain deficiencies in the contingent fund of the House of Representatives, and for other purposes, together with the amendments of the Senate thereto, having considered the same beg leave to report as follows:

The committee recommend concurrence in the amendments of the Senate numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 15, and 16.

The committee recommend non-concurrence in the amendments numbered 7 and 14.

The committee recommend concurrence in the amendment numbered 12, with an amendment as follows:

Strike out lines 17, 18, 19, and 20, on page 3 of the bill, and insert in lieu thereof the following:

For miscellaneous items, and to defray the actual necessary expenses of the committee making the investigations ordered by direction of the House, and to pay expenses necessarily incurred in connection therewith, $33,000, or so much thereof as may be necessary; $24,456.39 of which shall be exclusively applied to pay fees of witnesses summoned before committees of the House, and other expenses incident to investigations not otherwise provided for. That the members of committees directed to make investigations at points other than the capital shall only be paid their actual and necessary traveling expenses while engaged in the performance of said duties.

The SPEAKER. The amendments in which the committee recommend concurrence will be read *seriatim*.

The Clerk read the amendments in which the committee recommended concurrence, and they were severally concurred in.

The SPEAKER. The Clerk will now read the amendments, numbers 7 and 14, in which the committee recommend non-concurrence.

The amendments were read, and were non-concurred in.

The SPEAKER. The committee recommend concurrence in the twelfth amendment of the Senate with an amendment.

The twelfth amendment of the Senate and the proposed amendment of the Committee on Appropriations were read.

Mr. FORT. I would like to have the gentleman who makes this report give some explanation about the failure to report an appropriation for the contingent expenses of this House.

Mr. FOSTER. The bill as it passed the House provided an appropriation of $21,000 for contingent expenses, $13,000 of which might be used for the purposes of investigation. Since that time the committee is informed officially that it will cost about $60,000 to defray the expenses of the various committees ordered by the present House. Thirty-five thousand dollars of this sum has already been appropriated. There remains yet to be paid on this account, on the account of the expenditures of these committees, about $25,000. The committee, therefore, have increased the appropriation from $21,000 to $33,000 under the impression that a portion, at least $12,000 of the $21,000, might be used for this additional expenditure incurred on account of investigating committees. This will reduce the $21,000 to $8,000; that is to say, if the $21,000 is paid on account of the expenditures of these committees, there will be left in the contingent fund $8,000.

Mr. FORT. What I desire to be informed about is this: How much money will be subject to the order of the Committee of Accounts to pay the contingent expenses which have already accrued?

Mr. FOSTER. About $8,000. That is, to pay all the liabilities of the House on account of previous expenditures for investigations and the ordinary contingent expenses of the House. In other words, the $8,000 is in lieu of the $21,000 that we voted when the bill passed the House originally.

Mr. HOLMAN. As the bill originally passed the House, as my colleague on the committee from Ohio says, the whole amount appropriated for contingent expenses of the House was $21,000, $13,000 of which was to be applied to the payment of witness fees and other expenses in making investigations. It was ascertained afterward that perhaps instead of $13,000 a little over $24,000 would be required, and we added the $8,000 to the ordinary contingent fund, making in round numbers $33,000.

Mr. FORT. But perhaps the whole sum may be swallowed up by those who are now abroad engaged in these investigations, leaving an insufficient sum for the ordinary expenses of the House.

Mr. HOLMAN. Twenty-four thousand five hundred and sixty-six dollars is liable for that purpose, and I understand that within the knowledge of the Clerk there are drafts for less than $3,000 now due, which would be a charge upon the ordinary contingent fund of the House. The contingent fund is a mere bagatelle.

Mr. ROBERTS. The gentleman from Indiana suggests that these matters which have previously passed the Committee of Accounts are mere matters of bagatelle. I desire to call his attention to the kind of bagatelle. [Laughter.]

Mr. HOLMAN. O, no! I hope the gentleman will quote my language aright. I say that the amount of claims upon the contingent fund is a mere bagatelle.

Mr. ROBERTS. I will show the gentleman what bagatelle means in this sense. Already there have passed through the Committee of Accounts, receiving the indorsement of that committee as claims certainly proper to be paid, accounts to the amount of nearly $3,000. That may be a mere bagatelle, but there are other accounts to the amount of upward of $2,000 pending before the committee, many of which, in the opinion of the committee, ought to be paid. And I desire to call the attention of the House to the fact that many accounts of this nature are referred to the Committee of Accounts and passed by that committee and are not paid because the contingent fund is insufficient. The arrangement which the gentleman from Indiana or the Committee on Appropriations have now made is practically a wiping out of the appropriation of $8,000 generously voted by the House when this measure was before it. That is the practical effect of the bill as now reported, and I desire the House to understand it and vote on it knowingly, and if they do so and are satisfied with doing so, I shall be satisfied.

Mr. CLYMER. I am certain that the chairman of the Committee of Accounts is laboring under a misapprehension as to the true condition of affairs under the proposed amendment to this bill. When the bill was originally under consideration the sum of $21,000 was appropriated to meet certain expenses, $13,000 of which was to be appropriated to investigating committees and $8,000 to the contingent expenses of the House. That was the provision of the bill as it passed. The bill went to the Senate and came back here and was referred to the Committee on Appropriations, and it was discovered that $12,000 more would be needed for the expenses of the investigating committees. We have therefore increased the appropriation of $27,000 to $35,000, $25,000 of which is to be applied to the investigating committees, leaving $8,000 for the purposes indicated by the chairman of the Committee of Accounts. And the bill, so far as regards those expenses, will be precisely in the same condition as when it passed in the original.

Mr. ROBERTS. I have not the slightest objection to that if the gentleman will so phrase the bill as that the $8,000 shall be separate and apart from the amount appropriated for investigating committees. If he will so word it that $25,000 shall be appropriated for investigations and the balance of $8,000 shall be for the contingent fund of the House, then I am willing to assent to it.

Mr. CLYMER. The estimate of the expenses which will have to be defrayed for the investigating committees is $60,000. We have already appropriated $35,000 for that, to which we add the $25,000 appropriated in this bill, and which will leave $8,000 from this item for the ordinary contingent expenses of the House, and there are not claims for more than $3,000 now before the Committee of Accounts unpaid. It seems to me that the chairman of the Committee of Accounts will find that the amount appropriated in this bill is an ample fund.

Mr. HOLMAN. I wish to call the attention of the gentleman from Maryland [Mr. ROBERTS] and of the gentleman from Illinois [Mr. FORT] to the fact that the $8,000 appropriated by the bill for the contingent fund of the House remains untouched by this amendment and stands as it was in the original bill.

The only effect of this amendment is to increase the appropriation for the investigating committee from $13,000 to $25,000. I will say a word further. We appropriate $60,000 for the contingent fund of the House for the current year, and there must be some reasonable limit to these ordinary expenditures of the House of Representatives. I hope the gentleman will not insist upon appropriating more than the $8,000.

Mr. FORT. I understand the gentleman still to say that it is estimated that the investigating committees will expend $60,000 and they have an appropriation of that sum. But he does not know but what their expenses will exceed that sum; and, if so, it will use up the entire amount appropriated.

Mr. HOLMAN. If the gentleman is confident that the sum he intends to go to the Committee of Accounts to be distributed by the committee is sufficient, is he willing now to strike out that provision which provides for payments specifically to the superintendent of the folding-room, and will he allow that gentleman to take his chances with others in receiving his pay out of this $8,000? There are other gentlemen interested in getting their pay, and the Committee on Appropriations had been careful to provide specifically for some persons, and if the appropriation is not sufficient to pay them all, then those specific appropriations should be stricken out. There are no specific appropriations except those based on resolutions of the House.

Mr. FORT. Why, then, is a special provision made for the superintendent of the folding-room?

Mr. HOLMAN. He is provided for in the regular appropriation

bill. All the specific appropriations are based upon estimates from the proper officers of the Government. The Committee on Appropriations never appropriates a dollar of money except upon some estimate from some officer of the Government. When the House adopts a resolution for the appointment of a new officer, then a provision has to be made for him in the appropriation bill; but we are informed by the Clerk of the House that he believes that $2,500 will cover all the claims now existing against this fund of $8,000. And he estimates that there may be various other sums chargeable upon the contingent fund of the House.

But I wish to impress upon the gentleman from Illinois [Mr. FORT] these two facts: first, that this bill stands just as it did when it passed the House, except that the amount to be available for the expenses of our investigating committees is increased from $13,000 to $25,000 and upward; secondly, I wish to call the attention of the gentleman from Illinois [Mr. FORT] and also the chairman of the Committee of Accounts [Mr. ROBERTS] to the fact that for years it has not been deemed a sound policy to have any large sum of money appropriated to the contingent fund of either branch of Congress. I remember the time when that was the policy; but I know that it was regarded as a very unwise policy and it has long since been abandoned. Of course gentlemen know that any accounts allowed and found to be proper charges against the contingent fund will be provided for in the regular appropriation bill.

Mr. ROBERTS. I move to amend the pending amendment by adding the following:

Provided, further, That $8,000 of this sum may be used for purposes other than those relating to investigation.

Mr. HOLMAN. I hope that amendment will not be adopted.

Mr. ROBERTS. The remark the gentleman from Indiana [Mr. HOLMAN] has just let fall illustrates his good faith toward the House in regard to this $8,000. If that sum is to be used for purposes outside of investigations, for the various items that come before the Committee of Accounts, then why not provide specifically that it shall be used for those purposes and none other?

I desire to say for the information of the House that, although we have proceeded but a few weeks into this session, there have already been presented to the Committee of Accounts claims which aggregate not less than $5,000, and which must be paid out of this $8,000. I desire to call the attention of the gentleman from Indiana [Mr. HOLMAN] to some items, and if he will suggest that they be abolished, then I will consent to it. For instance, there is quite an account for ice. If the gentleman is prepared to do without ice and will obtain an order to that effect, then there will be no more ice bought hereafter.

Another item is for compiling the interesting book in relation to the electoral count. Then there are other items, which aggregate a very large sum of money. If the House is prepared to assent to these reductions, I certainly have no objection.

A considerable sum is required for the purchase of brooms, another sum is required for the purchase of soap, and still another sum for the washing of towels. Now, if all these matters can be dispensed with, and each individual member be required to purchase his own soap and to bring with him his own towel, I very cheerfully assent to it.

I desire to call the attention of the House to these facts, but I do not like upon every occasion when these little matters of contest arise here to be compelled to bring into the House our dirty linen and have it washed in public. I sincerely trust the amendment I have offered will be adopted.

The SPEAKER. The question is upon the amendment offered by the gentleman from Maryland, [Mr. ROBERTS.]

Mr. HOLMAN. I wish to say a word. I do not understand exactly what the gentleman means by "good faith to the House."

Mr. ROBERTS. My meaning is this——

Mr. HOLMAN. I certainly can be no more interested in the question of economy in the expenditures of this House than the gentleman from Maryland. Indeed, I should think he would be more so, from the example of public trust and confidence in this same field of economy which has been presented to him. I should think that from that example my friend would see the propriety of creating no motive for a raid upon the fund more immediately under his control. The attention of the country was everywhere arrested by the attack of his own committee during the last session of Congress upon these small items of expenditure, and which attracted the attention of the country not so much on account of their magnitude, but as indicating a disposition in small matters to encroach upon the Treasury of the Government. During the last session of Congress the Committee of Accounts obtained a national reputation on account of its severe economy; so much so, that the body of the people having the first opportunity promoted the head of that committee to the highest office in his State.

Now, as to the question of good faith, I have stated that this provision will stand now just as exactly as it did when the bill passed the House, except that the fund available for the expenses of our committees is increased from $13,000 to $25,000, leaving the $8,000 in the exact condition it was in when the bill passed the House.

Mr. ROBERTS. Provided it does not require more than $25,000 to pay the expenses of the investigating committees of this House.

Mr. HOLMAN. The gentleman wants to add a new condition to the bill as it passed the House. I ask him, in the interest of fair, reasonable economy, not to insist upon a large contingent fund of this House, subject to be controlled by simple resolutions of the House. I do not believe that is a good policy. I think that every item which his committee may discover to be a legitimate charge against the Government, unless it is some very simple matter that should be provided for out of a small contingent fund, ought to be a subject of a specific appropriation. And for one, as a member of the Committee on Appropriations, I should very cheerfully concur in the incorporation of specific charges that may be reported by the Committee of Accounts into the proper appropriation bill yet to come before the House. But I trust that he will not embarrass the provision of the bill by this amendment. I will concede that the bill does contain an appropriation of $8,000 as a contingent fund, although the Clerk of the House has informed the committee that he is not aware of demands upon that fund to the extent of more than $5,000.

Mr. ROBERTS. When the bill was last before the House did not the gentleman himself suggest a provision of precisely the same character as that I have presented, in order to make specific the amount to be expended for these investigations; and was not that done simply that the sum so appropriated might not be used for any other purpose?

Mr. HOLMAN. The provision now stands just exactly as it passed the committee, with the exception of an increase of the fund applicable for paying the expenses of these investigations.

Mr. ROBERTS. I desire to say that these matters of accounts have been recurring from time to time; and I believe it is strictly within the line of economy that a proper sum should be placed at the disposal of the Committee of Accounts, the distribution of which will of course be regulated by resolutions which must have the approval of the House, and I assure the gentleman that the Committee of Accounts will give careful and proper consideration to all such resolutions.

Mr. HOLMAN. I think the gentleman from Maryland will learn after further experience that a provision of this kind on such a measure as this is not the wisest policy; that the appropriation of any considerable sum of money at any time for the contingent fund of the House, unless in anticipation of items to be immediately paid, is not wise. But I will not antagonize the views of the gentleman's committee.

Mr. ROBERTS. Let me say one word more. In presenting this amendment I simply carry out that which I believe to be the will of the House as expressed when this bill was last under consideration.

Mr. FOSTER. Mr. Speaker, let us look at this amendment to see what is its effect. It provides that $8,000 of this appropriation may be used for purposes other than those connected with these investigations. Now, it is estimated that it will take $25,000 to pay the expenses of the four investigating committees ordered by this House. It is the estimate of the Clerk of the House that from $5,000 to $10,000 of old warrants for witness fees, which have been hawked about this city for six months and sold at a discount, are outstanding, and these must be unprovided for if this $8,000 is diverted to other purposes. You have allowed witnesses to go and sell their warrants at 25 per cent. discount. I venture to say that when the record is made up, this will prove to be the most extravagant House of Representatives that this country has seen for twenty years. [Laughter.]

Mr. HOLMAN. Now, Mr. Speaker, if my friend from Maryland wants to discuss the subject of good faith, I wish he would ask my friend from Ohio [Mr. FOSTER] why he has not thrown himself across the track of this "extravagant" House of Representatives, which is going to prove itself "the most extravagant of any for twenty years."

Mr. FOSTER. I have been doing so continually.

Mr. HOLMAN. I would like my friend to point out the instance.

Mr. FOSTER. O, I have not time now. We have obtained a little cheap reputation on the lemonade question by going over to the Senate and drinking their lemonade. I do not know anything else in which we have made a saving. [Laughter.]

Mr. HOLMAN. I trust my friend from Ohio will remember that the late chairman of the Committee of Accounts is not now present. [Laughter.]

Mr. FOSTER. I have taken advantage of that.

Mr. HOLMAN. Mr. Speaker, I hold in my hand a letter from the Clerk on the subject of this appropriation. It is not a large item, I admit, but I wish it to be understood. I want to show my friend from Ohio that no vouchers of this House have been hawked about the streets; that every dollar of money which has been authorized by law has been appropriated. The appropriation for the current year was an ample and liberal appropriation, though I admit the amount is lower than what has been usually appropriated; and if the gentleman from Maryland is true to his trust, as I know he will be, the gentleman from Ohio will at the end of this session have to take back some of the utterances he has made to-day.

The Clerk says:

In answer to the written inquiry of your committee of the 15th instant as to amount appropriated during present session for expenses of investigating committees of the House, and the disposition of same, I have the honor to state that the amount appropriated during present session for the purpose named is $35,000, all of which has been paid to the Sergeant-at-Arms of the House in accordance

with the requirements of the act of December 23, 1876, making said appropriation, upon the written order of chairmen of committees, as follows:

Louisiana committee	$16,500
South Carolina committee	8,500
Florida committee	6,000
New York and Philadelphia committee	4,000
Making a total of	35,000

as aforesaid.

* * * * * *

This office has positive knowledge of accounts of this character amounting to $2,500, and it is estimated that an equal amount is outstanding and in the possession of the claimants of which this office has no positive information, making whole amount of outstanding accounts against contingent fund at this time for which no provision has been made reach the probable sum of $5,000.

Now that $5,000 will have to be paid, of course, out of this $8,000; and there are six weeks of this session yet to run. I know that the charge of extravagance could fairly be made against this House if, independently of the expenses for investigation, these mere bagatelles of expenditure should require an appropriation of $8,000.

I know that, and I know my friend from Ohio, if he is in earnest in trying to prevent this House making a bad contrast with its predecessors, will see no such considerable sum of money shall be subject to a simple resolution of the House. I now call for the previous question.

The previous question was seconded and the main question ordered.

Mr. ROBERTS's amendment to the amendment was agreed to, and the amendment, as amended, was concurred in.

Mr. FOSTER moved to reconsider the votes just taken; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

DEFECTIVE ENTRIES OF LAND.

Mr. LAWRENCE. I ask unanimous consent to report back from the Judiciary Committee, with the recommendation that it do pass, the bill (H. R. No. 4315) for the relief of the holders of defective entries of land.

Mr. PAGE. I ask that the bill may be read so we may know what it is.

The bill was read *in extenso*.

Mr. PAGE. I must object unless I can have some explanation of this bill.

Mr. LAWRENCE. I will be glad to explain it.

The SPEAKER. That will bring the bill before the House for action.

Mr. PAGE. Then I must object unconditionally.

ARMY BLANKETS FOR DISTRICT REFORM SCHOOL.

The SPEAKER laid before the House the following message from the President of the United States:

To the House of Representatives:

The joint resolution authorizing the Secretary of War to supply blankets to the Reform School in the District of Columbia is before me.

I am in entire sympathy with the purpose of the resolution, but before taking any action upon it I deem it my duty to submit for your consideration the accompanying letter received from the Secretary of War, embodying a report made in anticipation of the passage of the resolution by the Quartermaster-General of the Army, in which, among other facts, it is stated that "the appropriation for clothing for the Army for this fiscal year is much smaller than usual, and the supply of blankets which it will allow us to purchase is so small that none can properly be spared for other purposes than the supply of the Army.

"If it be thought by Congress worth while to cause the supply of blankets for the institution referred to to be procured through the War Department, it is respectfully suggested that provision to meet the expense be made by special appropriation."

U. S. GRANT.

EXECUTIVE MANSION, *January* 15, 1877.

Mr. STEVENSON. I move that the message and accompanying paper be referred to the Committee on Military Affairs and ordered to be printed.

The motion was agreed to.

VETO MESSAGE.

The SPEAKER also laid before the House the following message from the President of the United States:

The Clerk read as follows:

To the House of Representatives:

For the reasons set forth in the accompanying communication addressed to the Secretary of the Interior by the Commissioner of the General Land Office, I have the honor to return herewith without my signature the bill (H. R. No. 2041) entitled "An act to amend section 2291 of the Revised Statutes of the United States, in relation to proof required in homestead entries."

U. S. GRANT.

EXECUTIVE MANSION, *January* 15, 1877.

The message was referred to the Committee on Public Lands, and ordered to be printed.

LOUISVILLE AND PORTLAND CANAL.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of War, in relation to the management of the Louisville and Portland Canal; which was referred to the Committee on Commerce.

DESTRUCTION OF HALLETT'S POINT REEF, NEW YORK.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of War, transmitting a report on the destruction of the reef at Hallett's Point, Hell Gate; which was referred to the Committee on Commerce.

IMPROVEMENT OF FOX AND WISCONSIN RIVERS.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of War, transmitting a report in relation to the improvement of the Fox and Wisconsin Rivers; which was referred to the Committee on Commerce.

MAJOR S. M. REYNOLDS.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of War, in relation to an appropriation for the relief of Major S. M. Reynolds, late assistant paymaster of the United States Army; which was referred to the Committee on Military Affairs.

A. N. GREELEY, UNITED STATES ARMY.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of War, transmitting a report of the Adjutant-General on the case of Lieutenant A. N. Greeley, Fifth Cavalry; which was referred to the Committee on Military Affairs.

Mr. CONGER. I ask that all those communications referring to rivers and harbors be printed.

There was no objection, and it was ordered accordingly.

RE-IMBURSEMENT OF INDIAN EXPENSES.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of the Interior, recommending an appropriation to re-imburse certain Indian expenses in Oregon; which was referred to the Committee on Military Affairs.

JAMES BROWN.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of the Interior, relative to payment of James Brown, special agent of the Indian Department in Oregon; which was referred to the Committee on Indian Affairs.

BLACK HILLS EXPLORATION.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of the Interior, transmitting maps, plates, &c., of Professor Janney's report of exploration of the Black Hills; which was referred to the Committee on Indian Affairs, and ordered to be printed.

RENT OF WRIGHT'S BUILDING.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of the Interior, transmitting a deficiency estimate for rent of Wright's Building, in use by the Department; which was referred to the Committee on Appropriations.

THE POLITICAL SITUATION.

The SPEAKER also, by unanimous consent, laid before the House resolutions of the citizens of Ohio relative to the political situation; which was referred to the committee on the counting of the electoral votes.

WASHINGTON CITY MEDICAL LIBRARY.

The SPEAKER also, by unanimous consent, laid before the House a petition of the Medical Society of the District of Columbia, asking an appropriation for the benefit of the Medical Library, of the city of Washington; which was referred to the Committee on Appropriations.

WASHINGTON AND GEORGETOWN RAILROAD.

The SPEAKER also, by unanimous consent, laid before the House a letter from the president of the Washington and Georgetown Railroad Company, transmitting the report of the transactions of the company for the year ending December 31, 1876; which was referred to the Committee for the District of Columbia.

RESIGNATION OF A MEMBER.

The SPEAKER. The Chair also communicates to the House a letter addressed to him, which will be read.

The Clerk read as follows:

NEW ORLEANS, *January* 8, 1877.

DEAR SIR: Having this day accepted the position of a justice of the supreme court of Louisiana, I hereby tender my resignation as Representative of the fifth district of Louisiana in the Forty-fourth Congress.

Respectfully and truly, your obedient servant,

WILLIAM B. SPENCER.

Hon. SAMUEL J. RANDALL,
Speaker of the House of Representatives, Washington, D. C.

The letter was ordered to lie on the table.

BURLINGTON AND MISSOURI RIVER RAILROAD BILL.

Mr. McDILL. I presented the other day the petition of Horace Everett and thirteen other citizens of Council Bluffs, Iowa, remonstrating against the passage of the bill known as the Burlington and Missouri River Railroad prorate bill, which was referred to the Committee on the Judiciary. I ask that it may be printed.

There was no objection, and it was so ordered.

LEGISLATIVE, EXECUTIVE, JUDICIAL, ETC., APPROPRIATION BILL.

Mr. HOLMAN. I am directed by the Committee on Appropriations to report a bill making appropriations for the legislative, executive, and judicial expenses of the Government for the year ending June 30, 1878, and for other purposes, and ask that it be referred to the Committee of the Whole House on the state of the Union and made the special order therein for consideration on Friday next, after the morning hour, and from day to day until disposed of.

Mr. WILSON, of Iowa. I reserve all points of order on the bill.

Mr. LUTTRELL. Will that order interfere with private bills?

Mr. HOLMAN. O, yes.

Mr. LUTTRELL. I object. Let the bill be made a special order for Saturday.

Mr. HOLMAN. I see no reason for changing the motion I have made.

The SPEAKER. The Chair thinks the special order cannot be made except by a suspension of the rules. But the House can at any time when the bill has been referred to the Committee of the Whole House on the state of the Union go into Committee of the Whole for the purpose of considering it.

Mr. HOLMAN. I think the rule is very clear that the majority of the House can make an appropriation bill a special order. The gentleman from California [Mr. LUTTRELL] of course will perceive that if the House on Friday prefers disposing of the business on the Private Calendar it will not go into Committee of the Whole on this bill. The whole subject is under the control of the House.

Mr. LUTTRELL. I shall insist on a vote.

Mr. RUSK. Why not object? That stops it.

Mr. LUTTRELL. I do object. There are many bills pending on the Private Calendar, pension bills and others, which ought to be passed.

The SPEAKER. The Chair will read the statement in the Digest relating to special orders:

Special orders are made under a suspension of the rules. [And of course, unless unanimous consent is given for the purpose, can only be made, except in the case of appropriation bills, when a motion to suspend the rules is in order.]

Mr. HOLMAN. I withdraw the bill.

Mr. WILSON, of Iowa. I understand that if an appropriation bill is referred to the Committee of the Whole House on the state of the Union the House can go into committee at any time?

The SPEAKER. At any time.

Mr. WILSON, of Iowa. And when the House gets into committee appropriation bills have the priority.

Mr. BURCHARD, of Illinois. Will not this be a question for the House to decide when a motion is made to go into Committee of the Whole?

The SPEAKER. It is always within the province of the House to decide.

Mr. HOLMAN. I withdraw the bill.

RIGHT TO OPEN AND CLOSE DEBATE.

The SPEAKER. The Chair desires the indulgence of the House for a short time while he submits a few remarks touching a former decision of the Chair.

Some days ago a question of order arose as to the construction to be given to the rules of the House which control debate on a report of a committee. On the one hand it was claimed that under the rules a member reporting a measure from a committee had the right to occupy or control one hour to open debate, and then, if the previous question was sustained, he had the absolute right to an additional hour in closing. In another way of stating it, his last hour could not be shortened except by his own consent, without regard to the time he occupied in opening. The Chair then held that such construction of the rules was not correct, and decided that when a member reporting a measure had occupied an hour in opening, he could not then call the previous question, and if it was sustained, immediately thereafter claim and occupy an additional hour to close. The Chair has been delayed in making this statement, as requested, on the day before indicated because of the absence of members of the Committee on Rules with whom he was desirous to confer, and with whom he has conferred.

The Chair has given the subject the careful consideration that its importance demanded, and after thorough examination of the debates which occurred at the time of the adoption of the rules now numbered 60 and 63, as well as the precedents established since, he finds no occasion to change the decision heretofore made by him. The Chair will now give briefly his reasons for that decision.

Rule 63 reads as follows:

No member shall speak more than once to the same question without leave of the House—*April* 7, 1789—unless he be the mover, proposer, or introducer of the matter pending; in which case he shall be permitted to speak in reply, but not until every member choosing to speak shall have spoken.—*January* 14, 1840.

It appears that this last clause of the present sixty-third rule, adopted January 14, 1840, was intended to *restrict* debate, as indeed it was so stated at the time.

Rules 29 and 30 as existing at the close of the Twenty-fifth Congress were as follows, namely:

RULE 29. No member shall speak more than twice to the same question without leave of the House; nor more than once until every member choosing to speak shall have spoken.

Rule 30. If a question pending be lost by adjournment of the House and revived on the succeeding day, no member who shall have spoken twice on the preceding day shall be permitted to speak without leave.

These rules were merged as amended into what is now the sixty-third rule of the House, in the Twenty-seventh Congress. From the debate it fully appears that it was intended to restrict or curtail debate and that this was rendered necessary by the dilatory debates of preceding Congresses, especially those in the Twenty-sixth Congress.

In the Twenty-seventh, Twenty-eighth, and Twenty-ninth Congresses it appears that this rule was construed and held to prevent any member from speaking more than one hour, except where an amendment had been offered, thereby changing the question, the member entitled to the floor on the pending measure was then entitled to an additional hour. (See House Journal, first session, Twenty-eighth Congress, page 532.)

It was found, however, that this rule was evaded by the practice of offering amendments, and the Committee on Rules, in the first session of the Thirtieth Congress, reported, on the 14th of December, 1847, the following as a substitute for the thirty-third, or hour rule, as it was called, namely:

It shall be in order to entertain a motion when made to limit the time which each member may occupy in debating any question in the House or committee to a period not less than one hour: *Provided*, That where the House has made an order fixing the time for discharging the committee from the further consideration of any bill, or other matter referred to it, (after acting without debate on all amendments pending or that may be offered,) debate by any one member before such order takes effect may be limited to one quarter of an hour, and thereafter the member who reported the measure under consideration from any committee may debate the same for one hour; and any member shall be allowed in committee five minutes to explain the object, nature, and effect of any amendment which he may offer; and all motions made to carry out this rule shall be decided without debate.

And also the following as an alternative proposition:

No member shall occupy more than one hour and a half in debate on any question in the House or in committee; but a member reporting the measure under consideration from a committee may open and close the debate: *Provided*, That where debate is closed by order of the House, any member shall be allowed in committee five minutes to explain any amendment he may offer.

From the debate which took place on the 18th of December, 1847, when the report was considered, it fully appears that the intent was to further limit or restrict debate, and this is confirmed by the amendment of Mr. Pollock to strike out the words "and a half," so as to limit the debate to one hour, which amendment was adopted without division. In the case cited on the 9th instant by the gentleman from Illinois, [Mr. BURCHARD,] the decision by Speaker Cobb, in the first session, Thirty-first Congress, (see House Journal, first session, Thirty-second, Congress, page 1056,) it was decided that the gentleman who reported the then pending measure was entitled to an hour to close the debate after the main question had been ordered to be put.

In that case—the contested-election case of Miller *vs.* Thompson, from Iowa—the report was made by Mr. Strong, who opened the debate, which occupied two days, and then, an amendment having been submitted and several gentlemen having spoken in opposition to the resolutions reported by the committee, the Speaker decided that Mr. Strong was entitled to an hour to close the debate, though the main question had been ordered. In that case every member so desiring had spoken an hour or occupied so much of his hour as he wished. In the present case, the gentleman reporting the measure opened the debate, occupied or controlled the floor for one hour, and then it was claimed, the previous question having been sustained, that he had a right to another hour to close.

The Chair believes that any other construction than the one he has given would tend to destroy the equality of privileges which should exist, and which in fact does exist, between members of the House; and in addition the Chair is of opinion that the ruling will expedite and dispatch the public business, while the contrary course would retard and delay it.

The hour rule was adopted in these interests, and as practiced in the courts it gives to the plaintiff and defendant each the same extent of time, but to the plaintiff the privilege to divide his time so as to have the opportunity to open and close his case.

The Chair might give further reasons in support of his decision; but believing the foregoing to be sufficient, will only refer to a decision made by the Speaker of the last House, [Mr. BLAINE,] which is directly in point, which decision passed unquestioned by the gentlemen who have questioned the correctness of the decision under consideration.

On the 6th of June, 1874, in the first session of the Forty-third Congress, the gentleman from Illinois, [Mr. CANNON,] from the Committee on the Post-Office and Post-Roads, reported back with amendments House bill No. 3414 to provide for the prepayment of postage on printed matter, and for other purposes.

Mr. CANNON took the floor, or in the language of the rule "opened the debate" on the said bill, and after replying to various interrogatories propounded, at the end of the hour demanded the previous question, when the following debate took place:

Mr. HAWLEY, of Connecticut. I want to have it distinctly understood that if the previous question is now ordered there can be no debate and no amendment. Is that so?

The SPEAKER. That would be so.

The previous question was then seconded and the main question ordered; and the bill ordered engrossed, and read the third time.

The question then being on the passage of the bill, unanimous consent was asked for fifteen minutes' additional debate.

The SPEAKER. Is there any objection to allowing fifteen minutes for debate?

Mr. BURCHARD, of Illinois. Has not the gentleman from Illinois [Mr. CANNON] the right to an hour to close debate?

The SPEAKER. The gentleman took his hour before calling the previous question.

Mr. BURCHARD, of Illinois. Did he take the full hour? Has he not a portion of the hour left?

The SPEAKER. The gentleman, if he desires, can move to reconsider the vote by which the previous question was ordered.

The Chair believes that a liberal construction should be allowed in case of general debate having occurred, over a lengthened period, and in such case would rule an hour to close debate by the member

reporting a measure as in case where a bill had been open to amendments; but to give to a member two consecutive hours in debate is, in the opinion of the Chair, at variance with the spirit of the rule, as well as against equity and propriety.

The Committee on Rules have been consulted by the Chair in relation hereto, and are of the opinion, with a single exception, [Mr. BANKS,] that the ruling made by the Chair is the correct one. They have, however, in view, further action, so as to submit to the House an amendment to the rules which will make the present rule plainer by the use of more explicit language in relation thereto.

Mr. BANKS. Is not this decision of the Chair open to the consideration of the House?

The SPEAKER. The Chair thinks so, and the Chair would so desire.

Mr. BANKS. Then if the House now adjourns, the question will come up to-morrow.

The SPEAKER. The Chair so desires. The Chair would state that he made his decision at the time, but was asked, as the gentleman from Massachusetts will remember, to arrest it so as to make further investigation and inquiry. The Chair, however, desires that the fullest time shall be allowed to any gentleman who desires to speak contrary to the decision of the Chair.

Mr. BANKS. The Speaker has made a decision which is now a matter of record, and the House have a right to consider that question and to make such revisal of it as it deems necessary.

COUNTING OF THE PRESIDENTIAL VOTE.

Mr. KNOTT. I rise to a privileged question. I call up the motion to reconsider the vote by which the resolutions reported by the select committee on the privileges, powers, and duties of the House of Representatives in counting the vote for President and Vice-President of the United States was recommitted to that committee.

Mr. HOLMAN. If the gentleman from Kentucky will give way, I will move that the House do now adjourn.

Mr. BUCKNER. I rise to a parliamentary inquiry. Will the consideration of this motion exclude the morning hour to-morrow?

The SPEAKER. The Chair will hold that it comes up as unfinished business.

LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted to Mr. PHILLIPS, of Kansas, for ten days on account of important business.

And then, on motion of Mr. HOLMAN, (at four o'clock and thirty minutes p. m.,) the House adjourned.

PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. CLYMER: The petition of C. B. McKnight and pastors of all the different churches of Reading, Pennsylvania, and of other citizens of said city, that aid be granted to the American Printing-House for the Blind, and the American University for the Blind, to the Committee on Education and Labor.

By Mr. COWAN: The petition of bankers and business men of Holmes County, Ohio, for the repeal of the national tax on deposits, circulation, and capital of banks, to the Committee of Ways and Means.

By Mr. COX: The petition of F. Rives & Co., that an appropriation be made for the purchase by Congress of the stereotype plates and printed copies of the Congressional Globe in the possession of petitioners, to the Committee on Printing.

By Mr. FLYE: The petition of citizens of Waldoborough, Maine, for the repeal of all war taxes on banks, to the Committee on Banking and Currency.

By Mr. HARDENBERGH: Papers relating to the claim of Henry M. Meade, for compensation for unavoidable losses sustained by him in the performance of his duties as paymaster in the United States Navy from 1862 to 1872, to the Committee on Naval Affairs.

By Mr. MACDOUGALL: The petition of 65 citizens of Port Byron, New York, for the transfer of the telegraph lines to the Post-Office Department, to the Committee on the Post-Office and Post-Roads.

Also, the petition of 92 citizens of Clyde, New York, for arrears of pension to be granted disabled soldiers and sailors of which they are now deprived by law, to the Committee on Invalid Pensions.

By Mr. NEAL: The petition of Joseph Blain and 39 other citizens of Pike County, Ohio, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. SMITH, of Pennsylvania: The petition of citizens of Lancaster County, Pennsylvania, that pensions in all cases shall run from the date of the discharge of the soldier, to the Committee on Invalid Pensions.

By Mr. TURNEY: Two petitions signed by 328 citizens of Greene County, Pennsylvania, for the amendment of section 4472 of the Revised Statutes so that crude petroleum can be transported on steamboats carrying passengers, to the Committee on Commerce.

By Mr. WALDRON: The petition of Lewis Christie and 85 other citizens of Oakville, Michigan, and vicinity, for the purchase of telegraph lines by the Government, to the Committee on the Post-Office and Post-Roads.

By Mr. WILLIAMS, of Alabama: The petition of citizens of Alabama, for the establishment of a post-route from Perote, in Bullock County, to Brundidge, in Pike County, Alabama, to the same committee.

IN SENATE.

THURSDAY, *January* 18, 1877.

Prayer by Rev. IRENEUS PRIME, D. D., of New York City.

The Journal of yesterday's proceedings was read and approved.

HOUSE BILLS REFERRED.

The following bills from the House of Representatives were severally read twice by their titles, and referred to the Committee on the Judiciary:

A bill (H. R. No. 4427) to remove the political disabilities of Frank S. Armistead, a citizen of West Virginia; and

A bill (H. R. No. 4439) to remove the political disabilities imposed upon John H. Forney, of Calhoun County, Alabama, by the fourteenth amendment of the Constitution of the United States.

HAYDEN'S SURVEY OF THE TERRITORIES.

The PRESIDENT *pro tempore* laid before the Senate the following concurrent resolution from the House of Representatives; which was referred to the Committee on Printing:

Be it resolved by the House of Representatives, (the Senate concurring therein,) That there be printed 4,500 copies of Professor Hayden's annual report of geological and geographical survey of the Territories for 1875 and 1876; 3,000 copies of which shall be for the use of the House of Representatives, 1,000 copies for the use of the Senate, and 500 copies for the use of the office of the survey.

GLENWOOD CEMETERY.

The PRESIDENT *pro tempore* appointed Mr. SHERMAN, Mr. INGALLS, and Mr. COCKRELL the conferees on the part of the Senate upon the disagreeing votes of the two Houses on the bill (H. R. No. 3741) amending an act incorporating the proprietors of Glenwood Cemetery.

PETITIONS AND MEMORIALS.

Mr. KERNAN presented the petition of James Mackay, a citizen of the State of New York, praying to be indemnified out of the Alabama claims fund awarded at Geneva for certain losses to him occasioned by the destruction of the ship B. F. Hoxie; which was referred to the Committee on the Judiciary.

Mr. JOHNSTON. I present the petition of Francis E. Shepperd, of Virginia, praying for the removal of his political disabilities. A bill has been received from the House of Representatives for the relief of this gentleman and been referred to the Committee on the Judiciary. I move the reference of the petition to that committee.

The motion was agreed to.

Mr. WINDOM presented the petition of M. D. Nickles and 34 other citizens of Minnesota, praying the transfer of the telegraphic business to the superintendency of the Post-Office Department, and for cheaper telegraphic facilities; which was referred to the Committee on Post-Office and Post-Roads.

Mr. WINDOM. I also present the petition of John N. Morrell and 47 others, citizens of Otsego and Elk River, Minnesota, praying the passage of the act allowing pensioners the amount of arrears to which they would be entitled by a removal from the statu es of the unjust limitation which has debarred many from receiving their just dues, and that they shall be entitled to receive in all cases pension from the date of discharge of the soldier. I ask its reference to the Committee on Pensions.

Mr. INGALLS. Let it lie on the table, a bill having already been reported upon that subject.

The PRESIDENT *pro tempore*. The petition will lie on the table, if there be no objection.

Mr. CAMERON, of Wisconsin, presented the petition of L. B. Green and 100 other citizens of Jefferson County, Wisconsin, praying that pensions be paid from the date of the discharge of the soldier; which was ordered to lie on the table.

He also presented a petition of E. Steele, Thomas Leckner, and other citizens of Monroe County, Wisconsin, praying for a general law to prohibit the liquor traffic within the national jurisdiction; which was referred to the Committee on Finance.

Mr. DAWES presented the petition of the Methodist Episcopal church of Highlandville, Massachusetts, signed by the pastor and officers, praying for prohibitory legislation for the District of Columbia and the Territories; the prohibition of the foreign importation of alcoholic liquors; that total abstinence be made a condition of the civil, military, and naval service, and for a constitutional amendment to prohibit the traffic in alcoholic beverages throughout the national domain; which was referred to the Committee on Finance.

Mr. CRAGIN presented the memorial of F. H. Poole and others, mates in the United States Navy, praying that mates in the Navy may be granted a warrant and placed on the same standing and bear the same relation to the service that the other warrant officers of the service do; which was referred to the Committee on Naval Affairs.

Mr. MORRILL presented a petition of Rev. H. R. Nye, H. R. Cone, and other citizens of Brooklyn, New York, asking for the prohibition of the manufacture and sale of alcoholic liquors in the District of Columbia and the Territories; which was referred to the Committee on Finance.

Mr. WALLACE presented five memorials of owners of vessels, merchants, and members of the Board of Steam Navigation of Philadelphia, protesting against the passage of Senate bill No. 1056, for the regulation of steam and sailing vessels; which were referred to the Committee on Finance.

He also presented the petition of Joseph Beale, jr., praying to be restored to the Naval Academy at Annapolis; which was referred to the Committee on Naval Affairs.

He also presented two memorials of citizens and merchants of Philadelphia, praying for an amicable and speedy adjustment of questions growing out of the presidential election; which were referred to the joint select committee to devise a mode for counting the electoral vote for President and Vice-President.

He also presented a petition of S. J. Whitson, Isaac Broomall, and other citizens of Penningtonville, Pennsylvania, praying for the prohibition of the manufacture and sale of alcoholic liquors in the District of Columbia and the Territories; which was referred to the Committee on Finance.

Mr. SPENCER. I present the petition of Henry Brittner, D. M. Davis, R. Collins, and a large number of other citizens of the District of Columbia, praying for the passage of a law to secure the adjustment and payment of certain bills by them filed with the late board of audit or present government of the District of Columbia for damages to th ir property in the improvement of the streets of Washington and Georgetown. I move that this petition be referred to the Committee on the Judiciary, as it has reference to a bill that is before that committee.

The motion was agreed to.

Mr. SPENCER presented a petition of Henry Phase, Stephen Duncan, and other citizens of Geddes, New York, asking for a general law to prohibit the liquor traffic within the national jurisdiction; which was referred to the Committee on Finance.

Mr. JONES, of Florida. I present the petition of William Call, James Earnest Yeonge, Robert B. Hilton, and Robert Bullock, citizens of the State of Florida, who allege that they have been elected by the lawful vote of the State of Florida at the general election held on the 7th day of November last to be electors of the State of Florida to cast the vote of that State for President and Vice-President of the United States, and that the board of State canvassers, contrary to and without authority of law, and in defiance of the statute of the State, fraudulently canvassed the votes, and falsely and fraudulently declared that the petitioners had not received a majority of the lawful votes cast, &c., and praying that objection be made to the counting of any electoral vote of the State of Florida except that cast by the petitioners. I give notice that some day next week I shall submit some remarks on this subject to the Senate. I therefore move that for the present the petition lie upon the table.

The motion was agreed to.

Mr. WRIGHT presented the petition of Henry A. Mead, Robert Wasson, and other citizens of Cuba, New York, asking for the prohibition of the manufacture and sale of alcoholic liquors in the District of Columbia and the Territories; which was referred to the Committee on Finance.

Mr. SARGENT presented the petition of Hiram Mesick, Abraham Lewis, and other citizens of Albany County, New York, asking for a general law to prohibit the liquor traffic within the national jurisdiction; which was referred to the Committee on Finance.

REPORTS OF COMMITTEES.

Mr. SPENCER, from the Committee on Military Affairs, to whom was referred the bill (H. R. No. 2461) for the relief of certain officers of the Third United States Artillery who suffered by fire at Fort Hamilton, New York Harbor, on the 3d of March, 1875, reported it without amendment, and submitted a report thereon; which was ordered to be printed.

Mr. WRIGHT, from the Committee on Claims, to whom was referred the petition of T. Worthington, of Warren County, Ohio, praying compensation for water delivered to the troops at Camp Dennison, Ohio, during the late war, under contract, submitted an adverse report thereon; which was ordered to be printed; and he moved that the claim be rejected: which motion was agreed to.

Mr. INGALLS, from the Committee on Pensions, to whom was referred the petition of Henry B. Woodhouse, a soldier of the war of 1812, praying his restoration to the pension-roll, asked to be discharged from its further consideration; which was agreed to.

He also, from the same committee, to whom was referred the bill (H. R. No. 3575) granting a pension to Eliza A. Blaze, widow of Abner T. Blaze, late a private in Company C, Thirteenth Indiana Cavalry Volunteers, reported it without amendment.

He also, from the same committee, to whom was referred the bill (S. No. 881) for the benefit of Brittania W. Kenyon, reported adversely thereon; and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (H. R. No. 3036) granting a pension to Mary McLain, widow of Charles McLain, late a lieutenant-colonel of the Two hundred and eleventh Pennsylvania Volunteers, reported adversely thereon; and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (H. R. No. 2519) granting a pension to James M. Bailey, reported adversely thereon; and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (S. No. 1106) granting a pension to Sylvester Wilcox, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (H. R. No. 3038) granting a pension to Almon F. Mills, late private Company K, Twenty-ninth Regiment Ohio Volunteers, reported it without amendment and submitted a report thereon; which was ordered to be printed.

He also, from the same committee, to whom was referred the bill (H. R. No. 3581) granting a pension to Minerva Williams and her minor children, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (H. R. No. 3511) granting increased pension to Thomas G. Kingsley, reported it without amendment, and submitted a report thereon; which was ordered to be printed.

Mr. ALLISON. I am directed by the Committee on Pensions to submit an adverse report on the petition of Mrs. Mary Walsh, praying to be allowed a pension on account of services rendered by her late husband, Redmond Walsh, late of Company H, Fourth Massachusetts Cavalry, during the late war. Mrs. Walsh wishes that a certain certificate presented with her petition may be withdrawn. I ask that that order be made.

The PRESIDENT *pro tempore*. Is there objection to the withdrawal of a certain certificate connected with this petition? The Chair hears none.

Mr. ALLISON. I move that the committee be discharged from the further consideration of the petition, and that the report be printed.

The motion was agreed to.

Mr. ALLISON. I am directed by the Committee on Pensions, to whom was referred the bill (S. No. 1063) to increase the pensions of Major Amasa J. Finch and First Lieutenant George W. Fitch, to submit an adverse report upon the application of George W. Fitch and a favorable report upon the claim of Amasa J. Finch. I therefore submit a substitute for the bill granting a pension to Amasa J. Finch, and ask to be discharged from the case of George W. Fitch.

The bill (S. No. 1036) to increase the pensions of Major Amasa J. Finch and First Lieutenant George W. Fitch was postponed indefinitely, and the report was ordered to be printed.

The bill (S. No. 1152) granting a pension to Amasa J. Finch was read and passed to a second reading, and the report was ordered to be printed.

Mr. WITHERS, from the Committee on Pensions, to whom was referred the bill (S. No. 1102) granting a pension to Michael Griffith, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (H. R. No. 3579) granting an increase of pension to Eugene O'Sullivan, late sergeant Company K, Eighteenth Missouri Volunteer Infantry, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

BILLS INTRODUCED.

Mr. BOUTWELL asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1154) granting a pension to Mrs. Fletcher Webster, widow of the late Colonel Fletcher Webster, of the United States Volunteer Army; which was read twice by its title.

Mr. BOUTWELL. I desire to say that the bill proposes to furnish some relief to the widow of Colonel Webster, who was killed on the 30th of August, 1862, just in front of Washington. He was the second and last son of Daniel Webster, the first having lost his life in the war with Mexico. This lady is now sixty-five years of age and in actual distress. I move that the bill be referred to the Committee on Pensions, and I trust that the committee and the Senate will concur in granting this increase of pension. She now receives $30 a month and the bill proposes to give her $50.

The bill was referred to the Committee on Pensions, and ordered to be printed.

Mr. HAMLIN asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1155) to amend section 8 of an act entitled "An act making appropriations for the service of the Post-Office Department for the fiscal year ending June 30, 1877, and for other purposes," approved July 12, 1876, and for other purposes; which was read twice by its title, referred to the Committee on Appropriations, and ordered to be printed.

Mr. CAMERON, of Wisconsin, asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1156) to establish certain post-routes in Wisconsin; which was read twice by its title, referred to the Committee on Post-Offices and Post-Roads, and ordered to be printed.

Mr. SARGENT (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1157) providing for experiments and the purchase of the best movable torpedo by the Navy Department; which was read twice by its title, referred to the Committee on Naval Affairs, and ordered to be printed.

Mr. MORRILL (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1158) for the relief of Francis M. Strong and Thomas Ross; which was read twice by its title, referred to the Committee on Patents, and ordered to be printed.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. GEORGE M. ADAMS, its Clerk, announced that the House had concurred in some and nonconcurred in other amendments of the Senate to the bill (H. R.

No. 4307) making appropriations to supply certain deficiencies in the contingent fund of the House of Representatives, and for other purposes, and had agreed to the twelfth amendment with an amendment; in which it requested the concurrence of the Senate.

The message also announced that the House had passed a bill (H. R. No. 4448) to remove the political disabilities of A. W. Burnet, of South Carolina; in which it requested the concurrence of the Senate.

ENROLLED BILLS SIGNED.

The message further announced that the Speaker of the House had signed the following enrolled bills; and they were thereupon signed by the President *pro tempore:*

A bill (H. R. No. 767) for the relief of Samuel B. Stauber and others; and

A bill (H. R. No. 4155) amending the act of July 28, 1876, entitled "An act for the relief of Kendrick & Avis, Kuner, Zisemann & Zott, all of Saint Louis, Missouri, and Nachtrieb & Co. of Galion, Ohio."

LOUIS PETOSKEY.

Mr. FERRY, (Mr. ALLISON in the chair.) I move that the Senate proceed to the consideration of Senate bill No. 920, reported by the Committee on Public Lands.

The motion was agreed to; and the bill (S. No. 920) to authorize Louis Petoskey, of Michigan, to enter a certain tract of land which embraces his home and improvements, was considered as in Committee of the Whole. It authorizes Louis Petoskey to enter the south half of the northeast quarter of section 5, in township 34 north, of range 5 west, in the district of lands subject to sale at Traverse City, Michigan, upon payment to the receiver of public moneys of the legal price thereof; the tract having been entered under date of April 25, 1854, by Louis Na-ba-no-ge-zhick, which entry was canceled July 26, 1856, because the land had not been proclaimed to be subject to private sale, and the purchase-money refunded to said Na-ba-no-ge-zhick; but prior to the cancellation, Louis Na-ba-no-ge-zhick sold the tract to Petoskey, who has ever since been in possession of the land as an actual settler, having made valuable improvements thereon in ignorance that his alleged title from Na-ba-no-ge-zhick was invalid.

Mr. FERRY. I think the bill explains itself. It has been reported from the Committee on Public Lands. The chairman is away and I have waited some time, but it is necessary that the bill should be passed soon in order to get through the House.

The facts are these: an Indian entered a piece of land and subsequently sold the land to this Petoskey, and the Government, owing to some informality—I think the informality was that it had not been proclaimed for private entry—canceled the entry, but notice was not given to the local office. The money was paid back to the Indian without the knowledge of Petoskey, to whom he had sold the land. Petoskey supposed he had a perfect title to it. He now proposes to pay the Government one dollar and a quarter per acre and receive a perfect title.

Mr. INGALLS. Are there any adverse claims?

Mr. FERRY. Not that I know of.

Mr. INGALLS. I am not informed as to the state of facts upon which this bill is based; but the Senator from Michigan must certainly be aware that all that portion of the bill after line 8 should be stricken out, because it is a declaration of a condition of facts which the Senate cannot know, and by which the Government ought not to be bound. Whether it is right or not, that Petoskey should have permission to enter the land is one question; but the Senator ought not to seek to bind the Government by any declarations like those contained in lines 8 to 19 of the bill, which are simply statements of fact that may or not be true. I move to strike out all the bill after the word "thereof" in line 8.

Mr. FERRY. I have no objection to that. The words are a statement of the facts which appeared before the committee, so that the bill could explain the facts of itself without any other information being necessary.

The PRESIDING OFFICER, (Mr. ALLISON in the chair.) The question is on the amendment of the Senator from Kansas, [Mr. INGALLS.]

The amendment was agreed to.

Mr. WITHERS. Let the bill be reported as it stands amended.

The Chief Clerk read as follows:

That Louis Petoskey, of the State of Michigan, be, and he is hereby, authorized to enter the south half of the northeast quarter of section 5, in township 34 north, of range 5 west, in the district of lands subject to sale at Traverse City, Michigan, upon payment to the receiver of public moneys of the legal price thereof.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

W. S. M'COMB.

Mr. WRIGHT. I move that the Senate proceed to the consideration of Senate bill No. 286.

The motion was agreed to; and the bill (S. No. 286) for the relief of W. S. McComb, of the State of Georgia, was considered as in Committee of the Whole.

The Committee on Military Affairs reported the bill with an amendment to strike out in lines 5 and 6 the words "rent of buildings accruing" and insert "furnishing stable-room for Government animals;" so as to make the bill read:

That the proper accounting officers of the Treasury are hereby authorized and directed to audit and settle the claim of W. S. McComb, of the State of Georgia, "for furnishing stable-room for Government animals," after the suppression of hostilities in the late war, and for which a voucher, now on file in the Treasury Department, was given; and to allow him the sum of $195, the amount named in the said voucher; and an amount sufficient to pay the same is hereby appropriated out of any money not otherwise appropriated by law.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the the third time, and passed.

AMENDMENT OF PENSION LAWS.

Mr. INGALLS. I move the present consideration of the bill (S. No. 36) amending the pension law so as to remove the disability of those who, having participated in the rebellion, have, since its termination, enlisted in the Army of the United States and become disabled.

The motion was agreed to; and the Senate resumed the consideration of the bill.

The PRESIDENT *pro tempore.* The bill will be read as it has been amended when formerly under consideration.

The CHIEF CLERK. The bill, as amended, reads as follows:

Be it enacted, &c., That the law prohibiting the payment of any money on account of pensions to any person, or to the widow, children, or heirs of any deceased person who in any manner engaged in or aided or abetted the late rebellion against the authority of the United States shall not be construed to apply to such persons as afterward voluntarily enlisted in the Army of the United States, and who while in such service incurred disability from a wound or injury received or disease contracted in the line of duty.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

WILLIAM JASPER CORDILL.

Mr. WINDOM. I move that the Senate take up for present consideration Senate bill No. 734.

The motion was agreed to; and the bill (S. No. 734) for the relief of William Jasper Cordill was considered as in Committee of the Whole.

The preamble recites that William Jasper Cordill, of Faribault County, State of Minnesota, did, on or about the 11th of March, 1856, file with the clerk of the court for Fillmore County, in that State, his affidavit and application in proper form for entry under the homestead laws of the United States, of the fractional northwest quarter of section No. 7, of township No. 101, of range No. 26, subject to entry at the district land office at Winnebago City, and did, on the 14th of June, 1866, remove with his family on said land, and did reside thereon for the full period of five years required by the homestead law, and still continues to reside thereon as shown by his proofs now on file in the General Land Office; that he did, in the year 1872, make full proof of his settlement, residence, and cultivation on the tract as a *bona fide* claimant under the homestead law, and applied for his final certificate therefor under homestead application No. 4038, made at Winnebago City, on the 31st of March, 1866, being, as he supposed, his original application filed with the clerk of Fillmore County, and was refused such certificate for the reason that the original application No. 4038, was not, in fact, made by William Jaspar Cordill, but was made by and in the name of his brother, one James W. Cordill; that James W. Cordill and other witnesses all agree that the actual settlement, residence, cultivation, and improvement upon the quarter section were made by William Jasper Cordill, and not by James W. Cordill; and that it is incompetent for the Commissioner of the General Land Office, as he deems, now to correct said mistake, and the parties have failed to show, after repeated effort, to the satisfaction of the Commissioner, how it occurred, there being no papers on file of the date of the original entry in the name or handwriting of William Jasper Cordill, but all the papers appearing under the genuine signature of James W. Cordill.

The bill authorizes the Commissioner of the General Land Office, in his discretion, to permit the final proof of William Jasper Cordill to be filed, and the final certificate to be made in his name, for the entry No. 4038, and to issue patent thereon for the northwest fractional quarter of section No. 7, of township No. 101, of range No. 26, in the district of lands now subject to sale at Worthington, Minnesota, formerly Winnebago City, and late Jackson district, in said State.

Mr. INGALLS. I should like to hear some explanation of this bill.

Mr. WINDOM. The bill was prepared by the Commissioner of the General Land Office and is precisely as sent to the committee by him for the purpose of correcting an omission or error in the original filing. The party has lived upon the land for eleven years, has made large improvements upon it. There are no other claimants, I think, but there is a defect that prevents his getting his title, an omission in the original formalities of the application. It is recommended by the Commissioner of the General Land Office and the bill was prepared by him. I think it can do no harm to any one, and it will give the settler a title to the land on which he has lived.

Mr. INGALLS. I hope the Senator will leave out the preamble and not ask us to vote on a state of facts we know nothing about.

Mr. WINDOM. I have no objection to striking out the preamble. It was prepared by the Commissioner of the General Land Office, and I thought it would save a report and present a full statement of the case on the face of the bill.

The PRESIDENT *pro tempore*. The question of the preamble will be in order after the passage of the bill.

The bill was reported to the Senate, ordered to be engrossed for a third reading, read the third time, and passed.

Mr. INGALLS. Now I move to strike out the preamble.

The motion was agreed to.

ROBERT ERWIN.

Mr. GORDON. I move to proceed to the consideration of House bill No. 231, which had been the unfinished business up to yesterday. I understand from the Senator from Iowa, a member of the Committee on the Judiciary, [Mr. WRIGHT,] that he wishes to offer a substitute. I ask that the bill be called up for that purpose.

The motion was agreed to; and the Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. No. 231) for the relief of Robert Erwin.

Mr. WRIGHT. It will be remembered that this bill was called up a few days since and there accompanied the bill a report of the Committee on the Judiciary adverse to its passage and recommending its indefinite postponement. Since that time I have had a conference with the Treasury Department and am advised that a substitute which was handed me would be entirely satisfactory, and it is believed to be sufficient to protect the interests of the Government and at the same time give to this party his full day in court. I offer now this substitute to the bill. I understand there will be no objection to it on the part of the friends of the bill. In doing so, however, I wish to be allowed to say that I by no means concur in the principle of the bill; but that is a matter I have nothing to do with at present. I offer this substitute and trust it may be adopted.

The PRESIDENT *pro tempore*. The amendment will be read.

The CHIEF CLERK. The amendment is to strike out all after the enacting clause of the bill and insert:

That the Court of Claims may take jurisdiction under the provisions of the act of March 12, 1863, entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States," of the claims of Robert Erwin, of Savannah, Georgia, for property alleged to have been taken from him, which he claims were by accident or mistake of his agent or attorney, and without fault or neglect on his part as is claimed, not filed within the time limited by said act.

The motion was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

ANDREW WILLIAMS.

Mr. KELLY. I move that the Senate proceed to the consideration of the bill (H. R. No. 859) for the benefit of Andrew Williams, of Weakley County, Tennessee.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill.

The preamble recites that there issued from the General Land Office of the United States on the 15th of December, 1859, a patent to B. R. McNabb for the west half of the northwest quarter of section 35, township 36, range 30, in the district of lands then subject to sale at Warsaw, Missouri, containing eighty acres; that on the same day there issued to McNabb a patent for the east half of the same quarter section; that both half quarter sections of land have been sold and conveyed by McNabb to Andrew Williams, now of Weakley County, Tennessee, that McNabb is now dead, and that there had, previous to the date of the issual of the patents, issued to other parties, Nathan Smally and Barnabas Cochran, patents for the identical same land above described, and the parties last named are now in possession thereof, claiming the same under their patents.

The bill directs the Commissioner of Pensions to issue to Andrew Williams two land warrants for eighty acres each, in lieu of land warrants numbered 32716 and 43008, the first of which was issued to Martha McNabb, widow of John W. McNabb, and the latter to Rebecca Skaggs, widow of Charles Skaggs, and which were located upon the land described.

Mr. BOGY. Authority is given to the Commissioner of Pensions to issue these land warrants. It should be the Commissioner of the General Land Office, should it not?

Mr. INGALLS. No; land warrants issue from the Commissioner of Pensions.

Mr. KELLY. The bill was regularly introduced in the House of Representatives directing the Commissioner of the General Land Office to issue these warrants. It was amended, however, in that body by inserting "the Commissioner of Pensions," who is required by law to issue bounty land warrants.

Mr. INGALLS. Let us hear the report.

Mr. KELLY. I will say that these lands were granted prior to the application of Mr. McNabb to two gentlemen named Smally and Cochran. They had initiated pre-emption claims prior to the location of these lands under the warrants from the Commissioner of Pensions, and of course the title failed that was acquired under this location. They have applied to have new warrants issued, so that they may locate lands elsewhere. I will send a letter from the Commissioner of the General Land Office to the desk that will explain the whole matter.

The Secretary read as follows:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., October 9, 1875.

SIR: In reply to your letter of the 17th May last, I have to state that an examination of the records of this office shows your statement with reference to the disposal of the northwest quarter of sections 35, 36, 30, Missouri, to be correct, and patents issued on the following locations and entry, namely:

East half of northwest quarter of said section, Nathan Smalley, pre-emptor per warrant No. 56409, act of 1855.

West half of northwest quarter of said section, Barnabas Cochran, pre-emptor per cash, warrant No. 56230.

East half of northwest quarter of said section, B. R. McNabb, location per warrant No. 32716, act of 1855.

West half of northwest quarter of said section, B. R. McNabb, location per warrant No. 43008, act of 1855.

It appears that the pre-emptions of Messrs. Smalley and Cochran were initiated prior to the locations of McNabb, and as the former were duly approved and patented it follows that their titles are good. Mr. McNabb is advised to surrender his patents to this office for cancellation and receive in return his land warrants for relocation.

Very respectfully,

S. S. BURDETT,
Commissioner.

JOHN T. BIRDSEYE, Esq.,
Nevada, Missouri.

Mr. KELLY. I will state that I have the patents here in my posession which were sent from the House of Representatives with the bill. The amendment proposed by the Committee on Public Lands of the Senate provides that the patents issued under these warrants shall be surrendered to the General Land Office before these new warrants shall be issued; so that the Government is saved. I ask for the reading of the amendment of the Committee on Public Lands.

The Chief Clerk read the amendment reported by the Committee on Public Lands, which was to add to the bill the following proviso:

Provided, That such land warrants shall not be issued to the said Andrew Williams until the patents issued to B. R. McNabb shall be returned to and canceled by the Commissioner of the General Land Office, and that fact be certified by him to the Commissioner of Pensions.

The amendment was agreed to.

Mr. INGALLS. I suggest that the preamble to the bill be omitted.

Mr. KELLY. I have no objection to that, as it will have to go back to the House.

The PRESIDENT *pro tempore*. That question will arise after the passage of the bill.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time, and passed.

The PRESIDENT *pro tempore*. The Senator from Kansas moves to strike out the preamble of the bill.

The motion was agreed to.

DEFICIENCIES IN APPROPRIATIONS.

The PRESIDENT *pro tempore* laid before the Senate the action of the House of Representatives on the amendments to the bill (H. R. No. 4307) making appropriations to supply certain deficiencies in the contingent fund of the House of Representatives, and for other purposes.

Mr. WINDOM. I move that the Senate non-concur in the action of the House and ask for a conference on the disagreeing votes.

The House have concurred in the appropriation of $25,000 asked for the Committee on Privileges and Elections, and have increased their own appropriation $33,000 for a similar purpose. I do not make the motion to non-concur because of any objection to that appropriation; but the House has also non-concurred in two amendments made by the Senate, to wit: one appropriating $40,000 for the transportation of currency required by the Treasury Department, and the second appropriating a small sum for some additional messengers to take care of the galleries, &c. It is on that ground that I ask a non-concurrence, so that there may be a committee of conference, and there will be no difficulty in disposing of the bill.

The PRESIDENT *pro tempore*. The Senator from Minnesota moves that the Senate insist on its amendment disagreed to by the House and non-concur in the amendments of the House to the amendments of the Senate and ask for a committee of conference thereon.

The motion was agreed to.

By unanimous consent, the President *pro tempore* was authorized to appoint the conferees on the part of the Senate, and Mr. WINDOM, Mr. ALLISON, and Mr. WITHERS were appointed.

MANCHESTER SALT-WORKS.

Mr. STEVENSON. I move to take up the bill (S. No. 969) for the relief of those suffering from the destruction of the salt-works near Manchester, Kentucky, pursuant to the orders of Major-General Carlos Buell.

The bill was read for information.

The PRESIDENT *pro tempore*. The morning hour has expired.

COUNTING OF THE ELECTORAL VOTES.

Mr. EDMUNDS. Mr. President, I am directed by the select committee of the Senate——

The PRESIDENT *pro tempore*. The Senator will suspend a moment. It is the duty of the Chair to call up the unfinished business, the morning hour having expired.

Mr. EDMUNDS. I was not aware that there was any unfinished business.

The PRESIDENT *pro tempore*. The unfinished business is the resolution offered by the Senator from Pennsylvania [Mr. WALLACE] to instruct the special committee on counting the electoral vote for President and Vice-President to inquire and report upon certain propositions in connection therewith.

Mr. BOGY. I understand the Senator wishes to make a report from a committee.

Mr. EDMUNDS. Yes, sir.

Mr. BOGY. I will yield with the understanding that when that is disposed of I shall be entitled to the floor.

Mr. EDMUNDS. I am directed, Mr. President, by the select committee raised under the resolution of the Senate on the subject of the counting of the electoral votes, to submit a report in writing, with an accompanying bill. The report is signed, I am happy to say, with great unanimity by the members of both committees, it being a report in form, joint and several, to the two Houses. It is signed by all with one exception.

I give notice to the Senate that we shall desire to take up the bill at the earliest possible day, as time is running very fast; possibly, and I hope indeed, on Saturday, the day after to-morrow; but certainly on Monday, and to press it to a determination in some form steadily from that time forth. I only wish to say in addition that the committee are of opinion that the measure we recommend is not what is called a compromise in any sense of the term, but is a measure of justice in aid of the exercise of constitutional government; and that in no sense will anybody have a just right to say that anyone's opinions or views have been surrendered in any substantial respect. It is not a measure of policy or contrivance, but a measure of constitutional justice for the preservation in peace and order of the Government.

I ask that the report be printed.

Mr. SHERMAN, Mr. INGALLS, Mr. WRIGHT, and others. Let it be read.

The PRESIDENT *pro tempore*. Is there no objection to reading the report? The Chair hears none, and it will be read.

Mr. SHERMAN. I suggest that the bill be read before the reading of the report proceeds.

The PRESIDENT *pro tempore*. The bill will be read.

The bill (S. No. 1153) to provide for and regulate the counting of votes for President and Vice-President and decision of questions arising thereon for the term commencing March 4, A. D. 1877, was read the first time at length, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Senate and House of Representatives shall meet in the Hall of the House of Representatives at the hour of one o'clock p. m. on the first Thursday in February, A. D., 1877; and the President of the Senate shall be their presiding officer. Two tellers shall be previously appointed on the part of the Senate and two on the part of the House of Representatives, to whom shall be handed, as they are opened by the President of the Senate, all the certificates and papers purporting to be certificates of the electoral votes, which certificates and papers shall be opened, presented, and acted upon in the alphabetical order of the States, beginning with the letter A; and said tellers, having then read the same in the presence and hearing of the two Houses, shall make a list of the votes as they shall appear from the said certificates; and the votes having been ascertained and counted as in this act provided, the result of the same shall be delivered to the President of the Senate, who shall thereupon announce the state of the vote, and the names of the persons, if any, elected, which announcement shall be deemed a sufficient declaration of the persons elected President and Vice-President of the United States, and, together with a list of the votes, be entered on the Journals of the two Houses. Upon such reading of any such certificate or paper when there shall be only one return from a State, the President of the Senate shall call for objections, if any. Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one Senator and one member of the House of Representatives before the same shall be received. When all objections so made to any vote or paper from a State shall have been received and read, the Senate shall thereupon withdraw, and such objections shall be submitted to the Senate for its decision; and the Speaker of the House of Representatives shall, in like manner, submit such objections to the House of Representatives for its decision; and no electoral vote or votes from any State from which but one return has been received shall be rejected except by the affirmative vote of the two Houses. When the two Houses have voted, they shall immediately again meet, and the presiding officer shall then announce the decision of the question submitted.

SEC. 2. That if more than one return or paper purporting to be a return from a State shall have been received by the President of the Senate, purporting to be the certificates of electoral votes given at the last preceding election for President and Vice-President in such State, (unless they shall be duplicates of the same return,) all such returns and papers shall be opened by him in the presence of the two Houses when met as aforesaid and read by the tellers, and all such returns and papers shall thereupon be submitted to the judgment and decision, as to which is the true and lawful electoral vote of such State, of a commission constituted as follows, namely:

During the session of each House on the Tuesday next preceding the first Thursday in February, 1877, each House shall, by *viva voce* vote, appoint five of its members, who, with the five associate justices of the Supreme Court of the United States, to be ascertained as hereinafter provided, shall constitute a commission for the decision of all questions upon or in respect of such double returns named in this section.

On the Tuesday next preceding the first Thursday in February, A. D. 1877, or as soon thereafter as may be, the associate justices of the Supreme Court of the United States now assigned to the first, third, eighth, and ninth circuits shall select, in such manner as a majority of them shall deem fit, another of the associate justices of said court, which five persons shall be members of said commission; and the person longest in commission of said five justices shall be the president of said commission. The members of said commission shall respectively take and subscribe the following oath:

"I, ——— ———, do solemnly swear (or affirm, as the case may be) that I will impartially examine and consider all questions submitted to the commission of which I am a member, and a true judgment give thereon, agreeably to the Constitution and the laws; so help me God;" which oath shall be filed with the Secretary of the Senate.

When the commission shall have been thus organized, it shall not be in the power of either House to dissolve the same or to withdraw any of its members; but if any such Senator or member shall die or become physically unable to perform the duties required by this act, the fact of such death or physical inability shall be by said commission, before it shall proceed further, communicated to the Senate or House of Representatives, as the case may be, which body shall immediately and without debate proceed by *viva voce* vote to fill the place so vacated, and the person so appointed shall take and subscribe the oath hereinbefore prescribed, and become a member of said commission; and, in like manner, if any of said justices of the Supreme Court shall die or become physically incapable of performing the duties required by this act, the other of said justices, members of the said commission, shall immediately appoint another justice of said court a member of said commission; and, in such appointments, regard shall be had to the impartiality and freedom from bias sought by the original appointments to said commission, who shall thereupon immediately take and subscribe the oath hereinbefore prescribed, and become a member of said commission to fill the vacancy so occasioned.

All the certificates and papers purporting to be certificates of the electoral votes of each State shall be opened, in the alphabetical order of the States, as provided in section 1 of this act; and when there shall be more than one such certificate or paper, as the certificates and papers from such State shall so be opened, (excepting duplicates of the same return,) they shall be read by the tellers, and thereupon the President of the Senate shall call for objections, if any. Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one Senator and one member of the House of Representatives before the same shall be received. When all such objections so made to any certificate, vote, or paper from a State shall have been received and read, all such certificates, votes, and papers so objected to, and all papers accompanying the same, together with such objections, shall be forthwith submitted to said commission, which shall proceed to consider the same, with the same powers, if any, now possessed for that purpose by the two Houses acting separately or together, and, by a majority of votes, decide whether any and what votes from such State are the votes provided for by the Constitution of the United States, and how many and what persons were duly appointed electors in such State, and may therein take into view such petitions, depositions, and other papers, if any, as shall, by the Constitution and now existing law, be competent and pertinent in such consideration; which decision shall be made in writing, stating briefly the ground thereof, and signed by the members of said commission agreeing therein; whereupon the two Houses shall again meet, and such decision shall be read and entered in the Journal of each House, and the counting of the votes shall proceed in conformity therewith, unless, upon objection made thereto in writing by at least five Senators and five members of the House of Representatives, the two Houses shall separately concur in ordering otherwise; in which case such concurrent order shall govern. No votes or papers from any other State shall be acted upon until the objections previously made to the votes or papers from any State shall have been finally disposed of.

SEC. 3. That while the two Houses shall be in meeting, as provided in this act, no debate shall be allowed and no question shall be put by the presiding officer, except to either house on a motion to withdraw; and he shall have power to preserve order.

SEC. 4. That when the two Houses separate to decide upon an objection that may have been made to the counting of any electoral vote or votes from any State, or upon objection to a report of said commission, or other question arising under this act, each Senator and Representative may speak to such objection or question ten minutes, and not oftener than once; but after such debate shall have lasted two hours, it shall be the duty of each House to put the main question without further debate.

SEC. 5. That at such joint meeting of the two Houses seats shall be provided as follows: For the President of the Senate, the Speaker's chair; for the Speaker, immediately upon his left; the Senators in the body of the hall upon the right of the presiding officer; for the Representatives, in the body of the hall not provided for the Senators; for the tellers, Secretary of the Senate, and Clerk of the House of Representatives, at the Clerk's desk; for the other officers of the two Houses, in front of the Clerk's desk and upon each side of the Speaker's platform. Such joint meeting shall not be dissolved until the count of electoral votes shall be completed and the result declared; and no recess shall be taken unless a question shall have arisen in regard to counting any such votes, or otherwise under this act; in which case it shall be competent for either House, acting separately, in the manner hereinbefore provided, to direct a recess of such House not beyond the next day, Sunday excepted, at the hour of ten o'clock in the forenoon. And while any question is being considered by said commission, either House may proceed with its legislative or other business.

SEC. 6. That nothing in this act shall be held to impair or affect any right now existing under the Constitution and laws to question, by proceeding in the judicial courts of the United States, the right or title of the person who shall be declared elected or who shall claim to be President or Vice-President of the United States, if any such right exists.

SEC. 7. The said commission shall make its own rules, keep a record of its proceedings, and shall have power to employ such persons as may be necessary for the transaction of its business and the execution of its powers.

Mr. EDMUNDS. I should like to have the bill read the second time by its title now.

The bill was read the second time by its title.

The Chief Clerk read the report, as follows:

The committees of the Senate and House of Representatives appointed under the following several resolutions—

HOUSE RESOLUTION.

"Whereas there are differences of opinion as to the proper mode of counting the electoral votes for President and Vice-President, and as to the manner of determining questions that may arise as to the legality and validity of returns made of such votes by the several States;

"And whereas it is of the utmost importance that all differences of opinion and all doubt and uncertainty upon these questions should be removed, to the end therefore that the votes may be counted and the result declared by a tribunal whose authority none can question and whose decision all will accept as final: Therefore,

"*Resolved*, That a committee of seven members of this House be appointed by the Speaker, to act in conjunction with any similar committee that may be appointed by the Senate, to prepare and report without delay such a measure, either legislative or constitutional, as may, in their judgment, be best calculated to accomplish the desired end, and that said committee have leave to report at any time."

SENATE RESOLUTION.

"*Resolved*, That the message of the House of Representatives on the subject of the presidential election be referred to a select committee of seven Senators, with power to prepare and report, without unnecessary delay, such a measure either of a legislative or other character, as may, in their judgment, be best calculated to accomplish the lawful counting of the electoral votes, and best disposition of all questions connected therewith, and the due declaration of the result; and that said committee have power to confer and act with the committee of the House of Representatives named in said message, and to report by bill or otherwise"—

beg leave to report to their respective Houses that they have considered the subject named in said resolutions, and have had full and free conference with each other thereon, and now report the accompanying bill and recommend its passage. The substance of the bill embraces—

First. Provisions for the meeting of the two Houses, as required by the Constitution, and the general course of proceeding, and the declaration of the result.

Second. Provisions for the disposition of questions arising in respect of States from which only one set of certificates has been received; that each House shall consider the question and shall only decide against a vote by concurrent, affirmative action.

Third. Provisions for so-called double returns from a State; that such conflicting returns and papers shall be submitted to the consideration of a commission, composed of equal numbers of members of the Senate and of the House of Representatives and of the Supreme Court of the United States; that this commission shall be organized and sworn and have power to consider and decide, according to the Constitution and law, what is the constitutional vote of the State in question; and that such decision shall govern the disposition of the subject, unless both Houses shall determine otherwise.

Fourth. It is provided that the act shall not affect either way the question of the right of resort to the judicial courts of the United States by the persons concerned as claimants to the offices in question.

We have applied the utmost practicable study and deliberation to the subject, and believe that the bill now reported is the best attainable disposition of the difficult problems and disputed theories arising out of the late election. It must be obvious to every person conversant with the history of the country and with the formation and interpretation of the Constitution that a wide diversity of views and opinions touching the subject, not wholly coincident with the bias or wishes of the members of political parties, would naturally exist. We have in this state of things chosen, therefore, not to deal with abstract questions, save so far as they are necessarily involved in the legislation proposed. It is, of course, plain that the report of the bill implies that in our opinion legislation may be had on the subject in accordance with the Constitution, but we think that the law proposed is inconsistent with few of the principal theories upon the subject. The Constitution requires that the electoral votes shall be counted on a particular occasion. All will agree that the votes named in the Constitution are the constitutional votes of the States, and not other; and when they have been found and identified, there is nothing left to be disputed or decided; all the rest is the mere clerical work of summing up the numbers, which being done, the Constitution itself declares the consequence.

This bill, then, is only directed to ascertaining, for the purpose and in aid of the counting, what are the constitutional votes of the respective States; and, whatever jurisdiction exists for such purpose, the bill only regulates the method of exercising it. The Constitution, our great instrument and security for liberty and order, speaks in the amplest language for all such cases, in whatever aspect they may be presented. It declares that the Congress shall have power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States or in any department or officer thereof." The committee therefore think that the law proposed cannot be justly assailed as unconstitutional by any one, and for this reason we think it unnecessary, whatever may be our individual views, to discuss any of the theories referred to. Our fidelity to the Constitution is observed when we find that the law we recommend is consistent with that instrument.

The matter then being a proper subject for legislation, the fitness of the means proposed becomes the next subject for consideration. Upon this we beg leave to submit a few brief observations.

In all just governments both public and private rights must be defined and determined by the law. This is essential to the very idea of such a government, and is the characteristic distinction between free and despotic systems. However important it may be, whether one citizen or another shall be the Chief Magistrate for a prescribed period, upon just theories of civil institutions, it is of far greater moment that the will of the people, lawfully expressed in the choice of that officer, shall be ascertained and carried into effect in a lawful way. It is true that in every operation of a government of laws, from the most trival to the most important, there will always be the possibility that the result reached will not be the true one. The executive officer may not wisely perform his duty, the courts may not truly declare the law, and the legislative body may not enact the best laws; but, in either case, to resist the act of the Executive, the courts, or the Legislature, acting constitutionally and lawfully within their sphere, would be to set up anarchy in the place of government. We think, then, that to provide a clear and lawful means of performing a great and necessary function of government, in a time of much public dispute, is of far greater importance than the particular advantage that any man or party may in the course of events possibly obtain. But we have still endeavored to provide such lawful agencies of decision in the present case as shall be the most fair and impartial possible under the circumstances. Each of the branches of the Legislature and the judiciary is represented in the tribunal in equal proportions. The composition of the judicial part of the commission looks to a selection from different parts of the Republic, while it is thought to be free from any preponderance of supposable bias; and the addition of the necessary constituent part of the whole commission, in order to obtain an uneven number, is left to an agency the farthest removed from prejudice of any existing attainable one. It would be difficult, if not impossible, we think, to establish a tribunal that could be less the subject of party criticism than such a one. The principle of its constitution is so absolutely fair that we are unable to perceive how the most extreme partisan can assail it, unless he prefers to embark his wishes upon the stormy sea of unregulated procedure, hot disputes, and dangerous results, that can neither be measured nor defined, rather than upon the fixed and regular course of law, that insures peace and the order of society, whatever party may be disappointed in its hopes.

The unfortunate circumstance that no provision had been made on the subject before the election has greatly added to the difficulties of the committees in dealing with it, inasmuch as many of the people of the country, members of the respective political parties, will perhaps look with jealousy upon any measure that seems to involve even the possibility of the defeat of their wishes; but it has also led the committees to feel that their members are bound by the highest duty, in such a case, to let no bias of party feeling stand in the way of a just, equal, and peaceful measure for extricating the question from the embarrassments that at present surround it.

In conclusion, we respectfully beg leave to impress upon Congress the necessity of a speedy determination upon this subject. It is impossible to estimate the material loss that the country daily sustains from the existing state of uncertainty. It directly and powerfully tends to unsettle and paralyze business, to weaken public and private credit, and to create apprehensions in the minds of the people that disturb the peaceful tenor of their ways and mar their happiness. It does far more; it tends to bring republican institutions into discredit, and to create doubts of the success of our form of government, and of the perpetuity of the Republic. All considerations of interest, of patriotism, and of justice unite in demanding of the law-making power a measure that will bring peace and prosperity to the country, and show that our republican institutions are equal to any emergency. And in this connection we cannot refrain from the expression of our satisfaction that your committees, composed of equal numbers of opposing parties, have fortunately been able to do what has been attempted in vain heretofore, almost unanimously agree upon a plan considered by them all to be just, wise, and efficient. We accordingly recommend the proposed act to the patriotic and just judgment of Congress.

GEO. F. EDMUNDS,
FRED'K T. FRELINGHUYSEN,
ROSCOE CONKLING,
A. G. THURMAN,
T. F. BAYARD,
M. W. RANSOM,
Senate Committee.

H. B. PAYNE,
EPPA HUNTON,
ABRAM S. HEWITT,
WILLIAM M. SPRINGER,
GEO. W. McCRARY,
GEO. F. HOAR,
GEORGE WILLARD,
House Committee.

The PRESIDENT *pro tempore*. The report will be printed under the rule. The bill will lie on the table and be printed.

Mr. EDMUNDS. I should like to have the bill printed not only in the regular way but printed in the report as a part of the document.

The PRESIDENT *pro tempore*. To be embodied with the report?

Mr. EDMUNDS. To be appended to the end of the report.

The PRESIDENT *pro tempore*. It will be so ordered, if there be no objection.

PRESIDENTIAL APPROVALS.

A message from the President of the United States, by Mr. U. S. GRANT, jr., his Secretary, announced that the President of the United States had, on the 16th instant, approved and signed the following enrolled bills:

An act (S. No. 752) authorizing the recorder of the District of Columbia to appoint an assistant with certain powers;

An act (S. No. 526) to amend section 1036 of the Revised Statutes relating to the District of Columbia;

An act (S. No. 739) to amend section 5457 of the Revised Statutes of the United States relating to counterfeiting; and

An act (S. No. 408) for the relief of Assistant Surgeon Thomas F. Azpell, United States Army.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. GEORGE M. ADAMS, its Clerk, announced that the House insisted on its disagreement to the amendments of the Senate numbered 604 and 605 to the bill (H. R. No. 3528) establishing post-roads, agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. JOHN B. CLARK, jr., of Missouri, Mr. LUCIEN L. AINSWORTH of Iowa, and Mr. SAMUEL F. MILLER of New York, managers at the conference on the part of the House of Representatives.

The message also announced that the House had passed a bill (H. R. No. 1016) for the relief of Virginia E. White, of Ohio County, West Virginia; in which it requested the concurrence of the Senate.

ENROLLED BILLS SIGNED.

The message further announced that the Speaker of the House had signed the following enrolled bills; and they were thereupon signed by the President *pro tempore*:

A bill (H. R. No. 1521) granting a pension to Louis A. McLaughlin;

A bill (H. R. No. 3500) granting a pension to Nelson Anslie;

A bill (H. R. No. 2242) granting a pension to George McColly;

A bill (H. R. No. 2842) granting a pension to Robert S. Toland;

A bill (H. R. No. 2287) for the relief of Peters & Reed, naval contractors at Norfolk navy-yard in the year 1860;

A bill (H. R. No. 940) for the relief of Edwin Ebert; and

A bill (H. R. No. 2353) making appropriation for the improvement and repair of the military road between Springfield and Fort Randall, in the Territory of Dakota.

COUNTING THE ELECTORAL VOTE.

The PRESIDENT *pro tempore*. The resolution of the Senator from Pennsylvania [Mr. WALLACE] to instruct the special committee on counting the electoral vote for President and Vice-President to inquire and report upon certain propositions in connection therewith is before the Senate, on which the Senator from Missouri [Mr. BOGY] is entitled to the floor.

Mr. BOGY. Mr. President——

Mr. WITHERS. With the consent of the Senator from Missouri, I wish to make a statement. It will be remembered that yesterday I gave notice that I would endeavor to-day, after having had an opportunity to inform myself of the character of the speech made in response to my speech the day before by the Senator from Indiana, [Mr. MORTON,] to reply to the same. Such was my purpose, but finding that the Senator from Missouri [Mr. BOGY] has by previous notice a right to the floor to-day, I will reserve my reply to the remarks of the Senator from Indiana for some future occasion.

Mr. BOGY. Mr. President, a few days since I stated to the Senate that I should be prepared in a short time to prove from the testimony taken in the Louisiana case that the charges of fraud and intimidation on the part of the democrats were false. I am now prepared to redeem that pledge. The State of Louisiana and its internal affairs have been subjects of discussion in Congress for several years, and what was only of local interest at first has now become national. I say national because it may be that the vote cast in that State at the election held on the 7th of November last for President and Vice-President of the United States may determine who were elected to these two offices. But while the subject is national it is nevertheless true that the citizens of that State are infinitely more interested in its final settlement than any other. With them every thing is involved: their material prosperity, their political independence as one of the States of this Union, their right to self-government, and finally their good name. As I said on a former occasion, if they are the bad men represented by the Senator from Ohio [Mr. SHERMAN] in the speech he made in this body a few days ago, they have retrograded in the scale of civilization, and are unworthy of the respect and esteem of the good citizens of the other States of the Union.

I have tried with great labor to study the question and to examine in the truth of these charges made against this people in this high place. This task is no easy one; the labor is indeed vast; the testimony in which you are to get to the truth or falsity of the charges fills two large volumes of one thousand pages each. Yet I think I shall be able to show from this evidence that these charges are not true and these efforts to destroy the character of the citizens of this State—to destroy its autonomy as one of the States of the Union and to place its entire government under military rule—is a vile conspiracy hatched several years ago, and which from the beginning has been with a fiendish persistency successfully maintained. It was and is a conspiracy to rob them of all their rights, both political and material; a double robbery, which has been up to this time a complete success; so much so that a region, formerly the abode of peace, wealth, prosperity, and the highest civilization, is now reduced to a constant condition of turmoil, discontent, poverty, and nearly absolute annihilation of society itself. Such is the condition of Louisiana to-day, and which has been brought about by this vile conspiracy! While this was only local and confined to that State alone, the people of the United States, singular as it may appear, took but little interest in their sad condition; while their appeal to their fellow-citizens of the other States was loud and continuous for years, yet there was no response to that manly voice and no echo to their long wail of suffering and sorrow; but this local plague-spot has now spread, and what was formerly local has now become general and affects all the other States. It becomes a question of interest for the entire country to know how Louisiana voted at the last presidential election, as it may be that this vote will decide the contest. This is truly fortunate for this State, and it is my sincere hope it may be the beginning of the end of their long agony.

This subject is perhaps the most important which has ever occupied the attention of the Senate. I regret my inability to do it justice. It would require the eloquence of a Cicero to place in proper light before the world the oppressions, the robberies, and the varied and crushing tyrannies which for years have been inflicted on the inhabitants of this State. The burning words of the great Roman orator when giving an account before the Roman senate of the robberies, oppressions, and cruelties of Verres in Sicily are familiar to everybody. Yet I venture to say that the outrages and cruelties and robberies and oppressions of every kind committed in this State by the conspirators who have held sway over it for years are infinitely greater—more numerous in kind and greater in degree. The Roman senate listened to the appeal of the great orator, and the vile propretor was recalled and Sicily thereby restored again to peace and prosperity. Shall it be said that at this day the American Senate will turn a deaf ear to the appeals made in behalf of the people of one of our sister-States? I hope not. I believe that, when the facts are placed before the country, as they will now be by the various reports of committees sent there recently, a feeling of indignation will manifest itself, strong enough to right the wrong and to do justice to this people, and that this body will lend a willing ear to me and others while placing before it the true condition of affairs in that State. To embrace this whole subject in one speech is an impossibility. I shall therefore be compelled to confine my remarks to but a few of the most salient points, leaving it to others to complete the work. And so that I may be as brief as possible I will confine myself to try and establish four propositions:

First. That according to the law of 1872, by which the returning board was created, this board as now organized is not legal.

Second. That it has no jurisdiction of the question of the election of electors.

Third. That it has no jurisdiction in any case of intimidation or other wrong-doing, said to have taken place at the time of registration or on the day of election, unless the third, twenty-sixth, and forty-third sections of the law are complied with.

Fourth. I will prove from the evidence taken and published that these sections were entirely disregarded, and under this same head I will also prove from the same evidence that there was no intimidation or violence at the registration or the election, but that on the contrary, the election was peaceable, quiet, and free, and if there was any intimidation or violence practiced it was by republicans on democrats.

The law creating this board, in the second section, provides:

SEC. 2. That five persons, to be elected by the Senate from all political parties, shall be the returning officers for all elections in the State, a majority of whom shall constitute a quorum, and have power to make the returns of all elections. In case of any vacancy by death, resignation, or otherwise, by either of the board, then the vacancy shall be filled by the residue of the board of returning officers.

It will be seen that this board is to consist of five persons, to be taken from all political parties. It is, however, at this time and has for a long time been constituted but of four persons, two of whom are white men and two are colored, and are all republicans. It would seem that the bare reading of the law and the statement of this fact are arguments enough to sustain my first proposition. If power is given to five persons to do a certain thing, it is certainly not given to four. But if in addition to this these five are to possess certain qualifications or characteristics, it certainly cannot be that four, not having these qualifications or characteristics, can exercise the powers conferred on the five who are required to possess these qualifications. There certainly was an important object to be accomplished which required that the members of this board should belong to different political parties. This object is perfectly plain, and of the greatest importance. That the intent of this law was to bestow the great power conferred by it on five men of different political parties is too plain to doubt, but to make this plainer, it will be seen that it was made the duty of the board to fill any and all vacancies which might occur, no matter from what cause. The Senator from Ohio [Mr. SHERMAN] said the other day that the necessity of five members was not considered important, and for this reason no demand was made to fill this vacancy by the democratic party. This statement of the Senator is not sustained by the evidence, but on the contrary the proof is positive that the demand was made, and made with urgency, but the application was refused, the president, Mr. Wells, saying the remaining members could not agree on any one.

Mr. SHERMAN. I did not say that the democratic party did not demand the filling of the vacancy. The Senator must have misapprehended what I said. The democrats did demand several times that this vacancy should be filled and they named a gentleman.

Mr. BOGY. My recollection is that the statement was that this was considered to be of no importance, and it being so considered no demand was made to fill that vacancy by the democratic party.

Mr. SHERMAN. I certainly did not say that. I said the legal effect was not changed whether they had filled it or not. The legal power of the board was the same. In fact four years before, when the law was the same, the democrats had only three on the board, and there were no others. In point of fact the democrats not only complained of a failure to fill the vacancy but did demand that it should be filled. I certainly could not have said anything to the contrary of that.

Mr. BOGY. My recollection—of course I only state from recollection—is that he said it was considered to be of no importance and being of no importance no demand had been made by the democrats to fill the vacancy. If I am wrong in this, it will give me great pleasure to be corrected. In 1875 a committee was appointed by a republican House of Representatives to go to Louisiana to examine and report as to the election which had lately taken place in that State. On this committee were three eminent republicans, indeed among the most eminent of that party, and one of whom has since been the candidate of that party for Vice-President. These men were GEORGE F. HOAR, W. A. WHEELER, and W. P. FRYE. I here give an extract from their report made to the House:

The so-called canvass made by the returning board in the interest of Kellogg seems to us to have no validity, and is entitled to no respect *whatever*. * * * And your committee think the law as to the constitution of the board was not complied with. * * * We are constrained to declare that the action of the returning board on the whole was abitrary, unjust, and in our opinion illegal.

I therefore conclude that I have established my first point, namely, that this board as presently organized is absolutely illegal, and all its doings, judgments, and decisions are utterly null and void.

I will now read the third section of the law which gives jurisdiction to the board:

SEC. 3. *Be it further enacted, &c.*, That in such canvass and compilation the returning officers shall observe the following order: They shall compile first the statements from all polls or voting-places at which there shall have been a fair, free, and peaceable registration and election. Whenever, from any poll or voting-place, there shall be received the statement—

I call the attention of Senators to those words—

Whenever, from any poll or voting-place, there shall be received the statement of any supervisor of registration, or commissioner of election, in form as required by section 26 of this act, on affidavit of three or more citizens, of any riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences, which prevented, or tended to prevent, a fair, free, and peaceable vote of all qualified electors entitled to vote at such poll or voting-place, such returning officers shall not canvass, count, or compile the statements of votes from such poll or voting-place until the statements from all other polls or voting-places shall have been canvassed and compiled. The returning officers shall then proceed to investigate the statements—

Mark this language—

The returning officers shall then proceed to investigate the statements of riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences at any such poll or voting-place; and if from the evidence of such statement they shall be convinced that such riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences did not materially interfere with the purity and freedom of the election at such poll or voting-place, or did not prevent a sufficient number of qualified voters thereat from registering or voting to materially change the result of the election, then, and not otherwise, said returning officers shall canvass and compile the vote of such poll or voting-place with

those previously canvassed and compiled; but if said returning officers shall not be fully satisfied therof, it shall be their duty to examine further testimony in regard thereto, and to this end they shall have power to send for persons and papers.

That is, if a statement has been filed they may go on and get further testimony; but the statement must be filed before that can be done.

If, after such examination, the said returning officers shall be convinced that said riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences did materially interfere with the purity and freedom of the election at such poll or voting place, or did prevent a sufficient number of the qualified electors thereat from registering and voting to materially change the result of the election, then the said returning officers shall not canvass or compile the statement of the votes of such poll or voting-place, but shall exclude it from their returns: *Provided*, That any person interested in said election by reason of being a candidate for office shall be allowed a hearing before said returning officers upon making application within the time allowed for the forwarding of the returns of said election.

Mr. President, I desire to call the attention of the Senate to this third section.

Mr. SHERMAN. If my friend will allow me, I will state that I have, with my friend from Kentucky, [Mr. STEVENSON,] looked over what I said; and I did not deny that the democratic party claimed that the vacancy ought to be filled. I said that if I had been on the board I would certainly have been willing to put on any democrat. I contended that the legal effect was not changed by the failure to fill the vacancy.

Mr. BOGY. I do not remember the words and I am willing to accept the correction made by the Senator.

Mr. SHERMAN. If you will look at the RECORD, you will see that I said so expressly; not only that, but I quoted Mr. Zacharie's demand that a democrat should be appointed.

Mr. BOGY. If I am wrong the Senator's correction will be in my speech, and he will have the benefit of it. I have no desire to place him in the wrong.

Mr. President, having read the third section, I desire to call the attention of the Senate to this fact, and there is no way of getting over it: The returning board in Louisiana has jurisdiction only if the foundation be laid for that jurisdiction by the return of th statements of riot or wrong-doing on the day of the election, or at the time of registration made by a supervisor of the election, or a commissioner of the election, who makes that report or statement through the supervisor. There is no way of getting over it. They have no right to take any testimony whatever unless the foundation be laid in accordance with the requirement of this third section. But, sir, to make that thing still stronger, if it is possible that it can be made stronger, I will read the twenty-sixth section.

SEC. 26. *Be it further enacted, &c.*, That any parish, precinct, ward, city, or town in which, during the time of registration, or revision of registration, or on any day of election, there shall be any riot, tumult, acts of violence, intimidation and disturbance, bribery or corrupt influences at any place within said parish, or at or near any poll or voting-place, or place of registration or revision of registration, which riot, tumult, acts of violence, intimidation and disturbance, bribery or corrupt influences shall prevent, or tend to prevent, a fair, free, peaceable, and full vote of all the qualified electors of said parish, precinct, ward, city, or town, it shall be the duty of the commissioners of election, if such riot, tumult, acts of violence, intimidation and disturbance, bribery or corrupt influences occur on the day of election, or of the supervisor of registration of the parish, if they occur during the time of registration or revision of registration, to make in duplicate and under oath a clear and full statement of all the facts relating thereto, and of the effect produced by such riot, tumult, acts of violence, intimidation and disturbance, bribery or corrupt influences in preventing a fair, free, peaceable, and full registration or election, and of the number of qualified electors deterred by such riots, tumult, acts of violence, intimidation and disturbance, bribery or corrupt influences from registering or voting, which statement shall also be corroborated under oath by three respectable citizens, qualified electors of the parish. When such statement is made by a commissioner of election or supervisor of registration, he shall forward it in duplicate to the supervisor of registration of the parish; if in the city of New Orleans, to the secretary of state, one copy of which, if made to the supervisor of registration, shall be forwarded by him to the returning officers provided for in section 2 of this act when he makes the returns of election in his parish. His copy of said statement shall be so annexed to his returns of election, by paste, wax, or some adhesive substance, that the same can be kept together, and the other copy the supervisor of registration shall deliver to the clerk of the court of his parish for the use of the district attorney.

Mr. President, can language be plainer? First, in the third section you have the jurisdiction of the board. In the twenty-sixth section the duty of the officer of the election, whether supervisor or commissioner of election, is specified; that in the event of any of these wrong-doings occurring, either on the day of election or at the time of registration, it shall be his duty to make a return by way of a statement of all these facts; and not only that, but the mode of making the return is specified so that there shall be no room for fraud. This same return must be attached by some kind of adhesive substance to the return of the votes or the registration, so that it will be an impossibility in the city of New Orleans to open those returns when they get there and introduce false statements, as was done, as I shall show, in perhaps every case. Sir, human language cannot be plainer. It is impossible. It is made the duty of these officers, and the mode of executing that duty is also prescribed. But again, the forty-third section is also of the same character.

SEC. 43. *Be it further enacted, &c.*, That immediately upon the close of the polls on the day of election, the commissioners of the election at each poll or voting-place shall proceed to count the votes, as provided in section 13 of this act, and after they shall have so counted the votes and made a list of the names of all the persons voted for, and the offices for which they were voted for, and the number of votes received by each, the number of ballots contained in the box, and the number rejected, and the reasons therefor, duplicates of such lists shall be made out, signed, and sworn to by the commissioners of election of each poll, and such duplicate lists shall be delivered, one to the supervisor of registration of the parish, and one to the clerk of the district court of the parish, and in the parish of Orleans to the secretary of state, by one or all of said commissioners in person, within twenty-four hours after the closing of the polls. It shall be the duty of the supervisors of registration, within twenty-four hours after the receipt of all the returns for the different polling places, to consolidate such returns, to be certified as correct by the clerk of the district court, and forward the consolidated returns, with the originals received by him, to the returning officers provided for in section 2 of this act, the said report and returns to be inclosed in an envelope of strong paper or cloth, securely sealed, and forwarded by mail. He shall forward a copy of any statement as to violence or disturbance, bribery, or corruption, or other offenses specified in section 26 of this act, if any there be, together with all memoranda and tally lists used in making the count and statement of the votes.

Mr. President, the third section, the twenty-sixth section, and the forty-third section all provide for one and the same thing; that is, if any intimidation or wrong-doing occur on the day of election, it must be returned to the board in New Orleans by one of the officers designated in these sections, and the time is specified when this return must be made. It must be made within twenty-four hours: first, the parish officers have twenty-four hours to make their returns to the parish clerk, and he within twenty-four hours thereafter must forward these returns as made to him in the mode prescribed by law, by mail, to the city of New Orleans.

It will be seen that according to these sections the board has no power to institute any complaint against any poll *ex officio* or of its own motion. It has no right to refuse to count a solitary vote *returned to it by the parish officer, unless a legal foundation has been laid by the returns of the supervisor of the parish where the vote was cast, or by one of the commissioners of election reporting through such supervisor.* The necessity of a compliance with these sections of this law has been propounded by me to the Senator from Ohio more than once, and he has failed or refused to give an answer. He makes an apology for this admitted non-compliance by saying that these supervisors or commissioners were afraid to do so for fear of assassination. Even if the apology was true in fact, a necessity for this compliance would not be relieved; a compliance would still be necessary; but, besides the fact that this apology is simply absurd, it is not founded in truth, for there can be no more danger in a supervisor making a return of intimidation occurring on the day of election than in saying the same thing in the shape of an affidavit made in the city of New Orleans. He is as much exposed to assassination in one case as in the other. I repeat, it is absurd—shamefully absurd; and the necessity of resorting to this kind of argument is proof that my construction of the law is correct. Indeed nowhere or by any one of any standing has it ever been denied that these sections had to be complied with. But so as to leave no doubt as to the construction of these sections, I will again quote from the report of Messrs. HOAR, WHEELER, and FRYE, made on the 23d February, 1875. They say:

That the returning board has no right to *do anything* except to canvass and compile the returns which were lawfully made to them by local officers, except in cases where they are accompanied by the certificate of the supervisor or commissioner provided in the third section. In such cases the last sentence of that section shows that it was expected that they would ordinarily exercise the grave and delicate duty of investigating charges of riot, tumult, bribery, or corruption on a hearing of the parties interested in the office. It never could have been meant that this board, of its own motion, sitting in New Orleans, at a distance from the place of voting, and without notice, could decide the rights of persons claiming to be elected. There is no more dangerous form of self-delusion than that which induces men in high places of public trust to violate law, to redress or prevent what they deem public wrongs.

This, sir, is an extract from the report of this committee. Who can doubt its perfect correctness? The law is plain—no ambiguity, no obscurity—not to understand it shows a singular perversity. There is no excuse even to be found in stupidity, for there stands the exposition in language that even the most ignorant can understand it.

It is therefore plain that this board has no jurisdiction to reject the returns from any voting-place on account of intimidation, riot, acts of violence, or any other act of wrong-doing unless the foundation is first laid by a return of that fact as required by this law. I say now, without the fear of successful contradiction, that in no case of the rejected parishes of Ouachita, East and West Feliciana, Baton Rouge, and Morehouse were such returns made as required by the law. This being so, the rejection of the votes of these parishes was utterly unauthorized, and is a simple act of infamous tyranny, against which all men who value the ballot should unite in reprobating. But I will not rest contented with merely denying the fact that no such returns were made. I will now undertake to show from the evidence taken by the democratic counsel who appeared before the board that the election in all these parishes was free, fair, and peaceable, excepting such acts of violence as were perpetrated by republicans against democrats.

Mr. SHERMAN. Before the Senator goes further, I will ask him whether I am correct in supposing that he alleges that no returns of intimidation from the bull-dozed parishes were filed, or does he simply say that no returns were filed within twenty-four hours?

Mr. BOGY. I say there were no returns in compliance with the terms of the law.

Mr. SHERMAN. Does the Senator base that on the fact that they were not made within twenty-four hours?

Mr. BOGY. I say there were no returns made from the parishes in accordance with that law. If any appear, whether made within twenty-four or forty-eight hours afterward, they were not from the parishes. If any returns are found, they were made in New Orleans many days after the election. I am prepared to show that.

Mr. SHERMAN. That is what I want to get at; whether the Senator bases his argument on the fact that they were not made within twenty-four hours, because I will confess they were not made within twenty-four hours. If he claims that they were not made, I will show him the actual returns.

Mr. BOGY. The Senator admits, and I am glad of the admission, that there were no returns made within twenty-four hours.

Mr. SHERMAN. I do not think the law requires that. I stated that point fully; I argued that fully. The Senator says I never contradicted that point. I did. I took up two columns of the RECORD on that point. I took up that very point. I do not know that my friend was present at the time.

Mr. BOGY. I was present and paid great attention to the Senator's speech. As I understood him to say, and as I understand him now from a careful reading of his speech, he ignored the necessity of a compliance with this law, not only with regard to the twenty-four hours of time, but the necessity of making the return from the parish even within a reasonable time or any time after the election. I admit returns appear to be made in the city of New Orleans when it was an impossibility to make a return without breaking the seals of the envelope, and which was itself a violation of law, as no one can have the right to break the seal but the returning board to whom it is directed.

Mr. SHERMAN. That is the very point. What was to prevent the officer carrying his copy of the returns to New Orleans and there attaching either outside or inside the return of intimidation?

Mr. BOGY. Because the law says he shall not do it.

Mr. SHERMAN. That is the question.

Mr. BOGY. There is no question about it. The law says he shall put his return under one envelope with the returns of the election; that he shall attach that return by wax or other adhesive matter. There is no room for doubt; the law prescribes that he shall make it within twenty-four hours, and not only that, but that he shall attach it to the returns of the votes, and states how he shall do it. This was not done in one single instance in any of these parishes, as I shall undertake to prove at the proper time.

I had intended to say something at length as regards the jurisdiction of this board over the election of electors, this being my third proposition, but as my remarks will necessarily be much longer than I desire, I shall be compelled to abandon it for the present by merely saying that on this question I have no doubt the election law of 1872 does not in words and was not intended to cover the electors. The law of 1868, revived in 1870, covers the case of electors, and under this law the electors were voted for at the last election, and not under the law of 1872.

I will now proceed to establish my fourth and last proposition. I bespeak the patience of my hearers, as the largest part of what I shall say will be the evidence taken by the democratic counsel under the ruling of the board. I will at the outset call attention to this most important fact which distinguishes this evidence from that taken by the republican side. Our, or the evidence taken by the democratic side, was taken in the different parishes where the elections were held, and is generally the testimony of the leading men of the parish, men of standing and character and formerly of wealth, or the testimony of the officers of the Army of the United States stationed in those parishes, or the testimony of the supervisors or commissioners of elections, who are generally, if not all, republicans; or the testimony of the clerks of the different parishes in which elections were held. Thus making a mass of testimony which is perfectly overwhelming. While, on the other side, the testimony was taken in New Orleans, miles away from where the election took place, and is composed of affidavits taken in the custom-house of men generally unknown, the vagabonds, loafers, and wharf-rats always found in large cities, men willing to swear to anything for money; that class of men who are restrained from doing wrong only by the strong arm of the law. And these affidavits prepared by a class of men equally as abandoned, and because more intelligent only more guilty. It is upon this testimony that this case is to be tried by the high tribunal of the people of the United States.

Sixty-nine polls were rejected in twenty-two parishes, as will be seen by the following statement:

Official compiled returns of an election held in the ——, State of Louisiana, on the 7th day of November, A. D. 1876, under a writ of election, dated September 16, A. D. 1876, ordering same, and pursuant to the provisions of act No. 98, to regulate the conduct and to maintain the freedom and purity of elections; to prescribe the mode of making returns thereof; to provide for the election of returning officers, and defining their powers and duties; to prescribe the mode of entering on the rolls of the senate and house of representatives; and to enforce article 103 of the constitution, approved November 20, A. D. 1872, to wit:

		Presidential electors.															
		Wm. P. Kellogg.	J. H. Burch.	Peter Joseph.	L. A. Sheldon.	Morris Marks.	A. B. Levissee.	O. H. Brewster.	Oscar Joffrion.	John McEnery.	R. C. Wickliffe.	L. St. Martin.	F. Pochè.	A. De Blanc.	W. A. Seay.	R. G. Cobb.	K. A. Goss.
12	Baton Rouge, East	4	4	4	4	4	4	4	4	162	162	162	162	162	162	162	162
14	Do	6	6	6	6	6	6	6	6	144	144	144	144	144	144	144	144
2	Franklin	28	28	28	28	28	28	28	28	74	74	74	74	74	74	74	74
1	De Soto	49	49	49	49	49	49	49	49	210	210	210	210	210	210	210	210
3	Do	53	53	53	53	53	53	53	53	125	125	125	125	125	125	125	125
5	Do	69	69	69	69	69	69	69	69	153	153	153	153	153	153	153	153
7	Do	10	10	10	10	10	10	10	10	150	150	150	150	150	150	150	150
8	Do	.....	.....	.....	.....	.....	.....	.....	.....	54	54	54	54	54	54	54	54
1	Caldwell	74	74	74	74	74	74	74	74	141	141	141	137	141	141	141	141
1	Bossier	49	49	49	49	49	49	49	49	108	108	108	108	108	108	108	108
3	Do	29	29	29	29	29	29	29	29	172	172	172	172	172	172	172	172
1	Morehouse	101	101	100	100	100	100	99	99	174	174	174	174	174	174	174	174
2	Do	4	4	4	4	4	4	4	4	69	69	69	69	69	69	69	69
3	Do	4	4	4	4	4	4	4	4	25	25	25	25	25	25	25	25
5	Morehouse	140	140	140	140	140	140	140	140	269	269	269	269	269	269	269	269
6	Do	39	39	39	39	39	39	39	39	203	203	203	203	203	203	203	203
7	Do	34	36	37	36	37	37	37	37	97	97	96	96	96	96	96	96
8	Do	33	33	33	33	33	33	33	33	148	149	149	149	149	149	149	149
1	Ouachita	11	11	11	11	11	11	11	11	340	340	340	340	340	340	340	340
3	Do	2	2	2	2	2	2	2	2	345	345	345	345	345	345	345	345
8	Do	31	31	31	31	31	31	31	31	206	207	207	207	207	207	207	207
9	Do	2	2	2	2	2	2	2	2	96	96	96	96	96	96	96	96
10	Do	.....	.....	.....	.....	.....	.....	.....	.....	70	70	70	70	70	70	70	70
11	Do	.....	.....	.....	.....	.....	.....	.....	.....	159	159	159	159	159	159	159	159
12	Do	2	2	2	2	2	2	2	2	301	303	301	302	302	302	302	302
1	Richland	.....	.....	.....	.....	.....	.....	.....	.....	202	208	208	208	208	208	208	208
3	Do	75	75	75	75	75	75	75	75	151	151	151	151	151	151	151	171
4	Do	67	66	67	67	67	67	67	67	245	245	245	245	245	245	245	245
5	Do	15	15	15	15	15	15	15	15	172	172	172	172	172	172	172	172
5	Natchitoches	2	2	2	2	2	2	2	2	150	150	150	150	150	150	150	150
6	Do	5	5	5	5	5	5	5	5	193	193	193	193	193	193	193	193
2	West Feliciana	35	35	35	35	35	35	35	35	102	102	102	102	102	102	102	102
3	Do	33	33	33	33	33	33	34	33	89	89	89	89	89	89	89	89
4	Do	80	80	80	80	80	80	80	80	140	139	140	140	140	140	140	140
5	Do	3	3	3	3	3	3	3	3	235	235	235	235	235	235	235	235
9	Do	2	2	2	2	2	2	2	2	122	121	122	122	122	122	122	122
10	Do	1	1	1	1	1	1	1	1	322	322	322	322	322	322	322	322
1	Webster	73	73	73	73	73	73	73	73	185	185	185	185	185	185	185	185
5	Do	121	121	121	121	121	121	121	121	251	251	251	251	251	251	251	251
1	Vernon	.....	.....	.....	.....	.....	.....	.....	.....	116	116	116	116	116	116	116	116
7	Do	.....	.....	.....	.....	.....	.....	.....	.....	26	26	26	26	26	26	26	26
10	Do	.....	.....	.....	.....	.....	.....	.....	.....	37	37	37	37	37	37	37	37
5	Catahoula	8	8	8	8	8	8	8	8	36	36	36	36	36	36	35	36
15	Do	12	12	12	12	12	12	12	12	61	61	61	61	61	61	57	61
7	Saint Charles	9	9	9	9	9	9	9	9	33	33	33	33	33	33	33	33
9	Saint Landry	38	38	38	38	38	38	38	38	120	120	120	120	120	120	120	120

Official compiled returns of an election held in the ——, State of Louisiana, on the 7th day of November, A. D. 1876, &c.—Continued.

		Presidential electors.															
		Wm. P. Kellogg.	J. H. Burch.	Peter Joseph.	L. A. Sheldon.	Morris Marks.	A. B. Levissee.	O. H. Brewster.	Oscar Joffrion.	John McEnery.	R. C. Wickliffe.	L. St. Martin.	F. Poché.	A. De Blanc.	W. A. Seay.	R. G. Cobb.	K. A. Goss.
3	Tangipahoa	.....	.....	.....	.....	.....	.....	.....	.....	76	76	76	76	76	76	76	76
2	La Fayette	4	4	4	4	4	4	4	4	83	83	83	83	83	83	83	83
3	Claiborne	.....	.....	.....	.....	.....	.....	.....	.....	184	184	184	184	184	184	184	184
4	Iberia	11	11	11	11	11	11	11	11	322	322	322	322	322	322	322	322
2	Livingstone	.....	.....	.....	.....	.....	.....	.....	.....	109	109	109	108	108	109	109	109
3	Do	.....	.....	.....	.....	.....	.....	.....	.....	110	110	110	110	110	110	110	110
4	Do	.....	.....	.....	.....	.....	.....	.....	.....	87	87	87	86	87	87	87	87
8	Do	.....	.....	.....	.....	.....	.....	.....	.....	72	72	72	72	72	72	72	72
1	East Feliciana	.....	.....	.....	.....	.....	.....	.....	.....	235	245	235	235	235	235	235	235
2	Do	.....	.....	.....	.....	.....	.....	.....	.....	92	92	92	92	92	92	92	92
3	Do	.....	.....	.....	.....	.....	.....	.....	.....	397	398	398	398	398	398	398	397
4	Do	.....	.....	.....	.....	.....	.....	.....	.....	135	135	135	135	135	135	135	134
5	Do	.....	.....	.....	.....	.....	.....	.....	.....	474	474	474	474	474	474	474	475
6	Do	.....	.....	.....	.....	.....	.....	.....	.....	124	124	124	124	124	124	124	124
7	Do	.....	.....	.....	.....	.....	.....	.....	.....	161	161	161	161	161	161	161	161
8	Do	.....	.....	.....	.....	.....	.....	.....	.....	118	118	118	118	118	118	118	118
1	Grant	364	365	365	365	365	365	365	365	123	123	123	123	123	122	106	123
2	Do	10	8	8	8	8	8	7	8	23	25	25	20	24	25	20	25
3	Do	21	21	21	21	21	21	21	21	50	50	50	50	50	50	48	50
4	Do	.....	.....	.....	.....	.....	.....	.....	.....	70	70	70	70	70	70	70	70
5	Do	.....	.....	.....	.....	.....	.....	.....	.....	26	26	26	26	26	26	26	26
6	Do	.....	.....	.....	.....	.....	.....	.....	.....	51	51	51	51	51	51	50	51
7	Do	.....	.....	.....	.....	.....	.....	.....	.....	175	175	175	175	175	175	175	175
	Total	1,763	1,763	1,764	1,763	1,764	1,764	1,762	1,763	10,280	10,293	10,291	10,280	10,289	10,291	10,261	10,288

CERTIFICATE.

I hereby certify that the above is a correct statement of the number of polls and total number of votes rejected by the board in the several parishes.

CHAS. S. ABELL,
Secretary Board of Returning Officers, State of Louisiana.

NEW ORLEANS, *December* 19, 1876.

A true copy:

ROBT B. LYONS,
Secretary Senate Committee.

NEW ORLEANS, *December* 20, 1876.

I have carefully examined each one, and when I read portions of the testimony taken as to each parish it will be easily understood that I can only read a part; I regret to say but a small part of this voluminous testimony, the whole of which is in a book on our table that contains upward of one thousand pages. I will read a part of the testimony for the parish of West Feliciana, being one of the parishes rejected. The testimony as to this parish will be found to begin at page 982. I read, first, the certificate of Charles J. Howell, clerk of the district court of that parish. I call the attention of the Senate to the fact that he is the clerk of the court of the parish, with whom the law requires the statement to be filed. He certifies that no statement of intimidation or wrong-doing of any kind was filed by Supervisor Weber in this parish.

THE STATE OF LOUISIANA,
Parish of West Feliciana:

I, Charles J. Howell, clerk of the district court of the seventh judicial district of the State of Louisiana, in and for the parish of West Feliciana aforesaid, do hereby certify that to the statements of votes polled November 7, A. D. 1876, filed in my office from the polls held at Saint Francisville for ward No. 7 and wards Nos. 8 and 12, those held in wards Nos. 2, 3, 4, 5, and 6, in their respective wards, two polls held in ward No. 7, to wit, at Tunica and the Belleview plantation, (Acklen's,) and in wards Nos. 9 and 10, or any other ward or voting-place in the parish, no affidavits, statements, or protests of any kind whatever were made or attached by the commissioners of election, or either of them, or by Desire A. Weber, supervisor of registration, or by three citizens, or any citizen or person of the said wards or parish; and further certify that no affidavits, protests, or statements of any kind were attached or filed, or offered to be filed or attached, in connection with said statement of votes of commissioners, by the said commissioners of election, Desire A. Weber, supervisor of registration of this parish, or any other officer or person or persons, under section 2 of act No. 98, acts of 1872; that no affidavits, protests, or statements, in writing or otherwise, in regard to the election of the 7th day of November, A. D. 1876, and the one hundred and first of the Independence of the United States of America, or the registration previous thereto, was even presented for filing or filed by any officer, or person or persons, candidate or candidates for office, or any officer of election, up to the date of the signing thereof.

Given under my official signature and seal of office this the 20th day of November, A. D. 1876, at the town of Saint Francisville, in the parish of West Feliciana, State of Louisiana.

CHARLES J. HOWELL,
Clerk of the District Court of the Seventh Judicial District of the State of Louisiana in and for the Parish of West Feliciana.

It is well to draw the attention of the Senate to the fact that this is the certificate of the clerk of that parish, an official document, in which he states that no statement, no affidavit, nothing of the kind was filed with him in relation to any wrong-doings in that parish—nothing whatsoever at any time. Now, I will read the testimony of several colored men:

STATE OF LOUISIANA,
Parish of West Feliciana:

Personally appeared before me, the undersigned authority, the persons whose signatures are hereby affixed, (colored,) who, being duly sworn, depose and say that they voted the democratic ticket at the third-ward precinct, at the general election, November 7, 1876; that they voted the said ticket voluntarily, without fear or intimidation of any kind, or any inducement in the way of reward; that they know of no intimidation practiced upon any voters in order to induce them to vote the democratic ticket.

his
WILLIAM + AUSTAN.
mark.
his
JEM + WILLIAM.
mark.

Sworn to and subscribed before me this 24th day of November, 1876.

CORNELIUS JOHNSON,
Justice of the Peace, Third Ward.

THE STATE OF LOUISIANA,
Parish of West Feliciana:

Personally appeared before me, the undersigned authority, the persons whose genuine signatures are affixed hereto, and each, after being sworn, deposed and said: I am a citizen of this parish, and have resided here many years. I was present and voted on the 7th November, at ward No. 4 precinct. There was no disturbance or intimidation of any kind. There was the usual amount of electioneering, but it was entirely legitimate, and every person, white and colored, exercised his right of suffrage without force, let, or hinderance. The colored people, especially, crowded the polls of their own accord and voted as they pleased. I saw no one with arms at the polls, or in going to or returning therefrom; nor have I heard that any armed man, or men of any kind, prevented colored voters from going to the polls on that day. Peace and good order prevailed and the election passed off quietly. The State peace officers and United States supervisors of both parties and a United States marshal were present, and not an arrest was made, and no complaint was made to them by any person.

his
JOHN + DAVIS.
mark.
his
LEWIS + HARDY.
mark.

Sworn to and subscribed before me this 18th day of November, A. D. 1876.

W. S. D. HAMILTON,
Justice of the Peace, Fourth Ward.

STATE OF LOUISIANA,
Parish of West Feliciana:

Personally appeared before the undersigned authority the persons whose genuine signatures are affixed hereto, and each, after being sworn, deposes and says: I am a citizen of this parish, and have resided here many years. I was present and voted on the 7th of November, at ward No. 4 precinct. There was no disturbance or intimidation of any kind. There was the usual amount of electioneering, but it was entirely legitimate, and every person, white and colored, exercised his right of suffrage without force, let, or hinderance. The colored people, especially, crowded the polls of their own accord and voted as they pleased. I saw no one with arms at the

polls, in going to or returning therefrom, nor have I heard that any armed man, or men of any kind, prevented colored voters from going to the polls. On that day peace and good order prevailed, and the election passed off quietly. The State peace officers and United States supervisors of both parties and a United States marshal were present, and not an arrest was made, and no complaint was made to them by any person.

ELIS BROWN.
W. S. HAMITLON.
his
NED + FARRIS.
mark.
DOUGLAS M. HAMILTON.
his
LEWIS + RAGLING.
mark.

Witness:
WM. B. BARRON,
Late United States Supervisor of Election for the Parish of West Feliciana.

Sworn to and subscribed before me this 14th November, A. D. 1876.
W. S. HAMILTON,
Justice of the Peace, Fourth Ward.

The same character of testimony with that which has been read from page 982 to 1007. Of course all that cannot be read here at this time, but all prove the same thing, that the election was quiet, peaceable, and orderly throughout this parish.

I will now read from testimony taken in the parish of Franklin, found on page 644:

Interrogatories to be propounded to H. T. Earle, H. Block, and I. G. Hawkes, the answers to which are to be used before the board of returning officers, in the matter of the contest of Franklin Parish:

Interrogatory 1. What is your name, occupation, and residence?

Interrogatory 2. Where were you during the registration and revision of registration during the present year, 1876?

Interrogatory 3. If you state you were in Franklin Parish during the time alluded to in the second interrogatory, how was the registration conducted? State whether every man had full and free opportunity to register and whether the registration in said parish was full or not. If not, why?

Interrogatory 4. Where were you on the day of election, to wit, November 7, 1876?

Interrogatory 5. If you state that you were in the parish of Franklin, state also whether said election was conducted peacefully and fairly or not. State fully as to how all parties acted on said day, and whether or not any political disturbance occurred in Franklin Parish on said day, and state your means of knowing.

Interrogatory 6. Was not the election in Franklin full, free, fair, and peaceable?

Interrogatory 7. Does it not come within your knowledge that the conservative party did everything in their power to preserve quiet, peace, and order during the registration and election?

Interrogatory 8. State anything further you may know touching the matter herein inquired of, and give full particulars.

Answers of H. T. Earle to interrogatories-in-chief.

To interrogatory 1. My name is H. T. Earle. I am clerk of the court, and reside in Franklin Parish, Louisiana.

To interrogatory 2. I was in the parish of Franklin, and, from the 20th September, 1876, up to November 9, I was present with the supervisor of registration, except occasional absences.

To interrogatory 3. The registration was conducted fairly when I was present, except in one instance the supervisor refused to register a colored man on the ground that he did not think he was of age, the party being willing to make the proper affidavit. The registration-books were open from the 28th August to the 28th October, and every man had an opportunity to register that desired to do so, if no legal objections prevented him, with the exception of the case above referred to. The registration was the largest ever made in the parish.

To interrogatory 4. I was in the town of Winnsborough, ward No. 7, and poll 7.

To interrogatory 5. I have stated where I was in my answer to the fourth interrogatory. The election was conducted peacefully and fairly, and all parties, on said day, conducted themselves peaceably, and there was no political disturbance at the polls nor any in the parish that I am aware of. My means of knowing that there was no political disturbances on the day of election are from the commissioners of election and citizens of the parish in each voting-precinct, who stated the facts to me, and from affidavits made by citizens of various wards to that effect.

To interrogatory 6. The election in Franklin Parish was full, free, fair, and peaceable, so far as I know.

To interrogatory 7. It is within my knowledge that the democratic party, during the registration and election, counseled peace and quiet, and all the leading citizens so declared themselves.

To interrogatary 8. I was United States supervisor of registration for Franklin Parish; was present at the registration from the 20th September to 28th October, except occasional absences. I have stated how the registration was conducted, and every man registered that wished to do so, except as before stated. I was informed by some of the planters that there was some of their people, colored, that would not register, although requested to do so by them, as they cared nothing about voting.

H. T. EARLE.

Sworn to and subscribed before me this 1st day of December, 1876.
WM. H. HOLMES,
Second Justice of the Peace, Parish of Orleans.

The man whose testimony has just been read was United States supervisor of the parish, and you have heard his testimony. I have read the testimony of the clerk that no certificate had been filed as required by the law; the testimony of the supervisor that the election throughout the parish was peaceable, quiet, and without any violence; and yet this was one of the parishes rejected by the returning board. The same character of evidence will be found from page 640 to 647, which I will not detain the Senate by reading.

The same thing as to the parish of De Soto, beginning on page 298:

Before me, the undersigned authority, came and appeared E. W. Sutherlin, witness to whom annexed interrogatories are propounded, who, after having been duly sworn, deposes thereto as follows, namely:

To interrogatory 1. My name is E. W. Sutherlin; I reside at Mansfield, in the parish of De Soto; have resided in said parish since the year 1852, the time of my birth, and was at home, in said parish, on the day of the late election, on November 7, 1876, and was not absent from said parish at any time for two months prior to said election. I am a practicing attorney at law.

To interrogatory 2. I am familiar with the conduct of the registration and election in said parish during the late political campaign, having been born and raised in said parish and resided there all my life, and having practiced my profession therein for the last three years, and in a professional way having had an interest in a large portion of the criminal and civil list in the courts of said parish during that time, and having canvassed the parish as a public speaker in the interest of the democratic and conservative party in the campaign of 1874 and also in the campaign of 1876, visiting every ward and neighborhood during the campaign, and having taken a great deal of interest in public affairs, and being acquainted with nearly everybody in said parish furnished my means of information. I am able to say, from my own personal knowledge, that during said campaign, and at said election and subsequent thereto, there did not exist any intimidation, fraud, or violence on the part of members of the democratic-conservative party toward members of the republican party in said parish. Said registration and election were free, fair, and peaceable in said parish. The number of voters registered in said parish was larger, to the best of deponent s information, than the number of persons registered at any previous election, and the number of votes polled at said election was larger, to best of deponent s information, than was ever polled at any previous election in said parish. The number of republican votes polled in said parish at the said election was about 895, and much larger than ever before polled for that party in said election at any previous election. Deponent made many public speeches in said parish during said campaign, and always advocated peace and conciliation. Deponent heard many public speeches made during said campaign by members of both political parties in said parish, but never heard a speech of any other character made during said time; said registration and election was fair and peaceable. The whole campaign was of eminent harmony and conciliation. Deponent has heard of attempts on the part of colored republicans to influence co ored democrats by means of social and religious ostracism, but can't say of his own knowledge to what extent it prevailed and with what effect. Deponent does not know nor has he heard of a single instance of abuse, intimidation, or threats on the part of the democrats towards republicans on account of political opinions; nor does he know nor has he heard of a single instance of violence during said campaign of one party toward the other on account of politics. Deponent never in his life saw the people of said parish, both white and black, more peaceable and quiet and law-abiding than they were during said campaign, at said election, and subsequent thereto; that during said campaign there were several public joint discussions of political questions in said parish, in which members of both political parties took part. Deponent himself, in several instances, participated as public speaker at such joint discussions, and nothing, so far as deponent knows, ever occurred at such meetings to mar the harmony or disturb the quietude of each occasion; leading members of both parties were perfectly satisfied with the manner in which the election and registration had been conducted, and so expressed themselves to deponent.

Among the leading republicans of said parish who made this admission to deponent were J. J. Johnson, J. M. Coste, W. F. Talbert, Jerry Hardy, D. S. Tyler, and many others. Deponent never heard any one of any political party charge that there had been any fraud, violence, or intimidation used or resorted to in said parish to influence, except as above stated, nor did he ever hear that any such charge had been made until he arrived in this city, about ten or twelve days ago. Deponent never witnessed the manifestation of any disposition on the part of the democrats to in any manner interfere with the political or legal rights of the republicans, or to hereafter, or obstruct them in the free and unrestrained exercise thereof. Deponent never heard of the existence of any such disposition on the part of the democrats until he arrived in this city, as aforesaid. If such had existed, deponent would certainly have heard of it. Deposition to special interrogatory, namely, Deponent says I am acquainted with C. L. Ferguson, who was the supervisor of registration for said parish for said election. Deponent was at Mansfield, poll No. 4, on the 7th of November, the day of said election, and that C. L. Ferguson was also present at said polling place on the day of said election. Deponent did hear C. L. Ferguson admit that so far as he knew said registration and election was free, fair, and peaceable; said admission was made by said Ferguson in the office of the clerk of district court of said parish, at the court-house in said town, on the 7th of November, 1876, in the presence of William C. Reynolds, W. P. Hall, deponent, and many others, immediately after the closing of the polls at said polling place, when and where C. L. Ferguson and many leading republicans and democrats signed a written statement to that effect, which statement is hereto annexed and marked "A," for reference to support the verity of the deposition. Deponent also annexed a sworn statement made by said Ferguson on the 10th of November, 1876, before W. C. Reynolds, clerk, and marked "B." Deponent also heard C. L. Ferguson say to him on or about the 15th November, 1876, in presence of Larkin Matthews, a colored man, when they three were traveling together in the stage from Mansfield to Shreveport, that said registration and election in said parish was peaceable and fair, and such as he liked to see.

E. W. SUTHERLIN.

Sworn to and subscribed to before me this 1st December, 1876.
EMMET D. CRAIG,
Commissioner United States Circuit Court, Parish of Louisiana.

I, the undersigned, do most solemnly swear that the election, so far as my knowledge is concerned, was conducted fairly and honestly; that no intimidation or other unfairness was used to influence said election.

C. L. FERGUSON.

Sworn to and subscribed before me this 10th November, 1876.
[SEAL.]
W. C. REYNOLDS,
Clerk District Court, De Soto Parish, Louisiana.

Mr. Ferguson was the supervisor of that parish. At page 310 there is very long testimony which I will not read, but it is of the same character, and extends from that page to page 327. I will turn now to East Feliciana, page 439.

To J. W. PATTON,
Chairman Democratic State Central Committee:

The subscribed, for themselves and other citizens of the parish of East Feliciana, make the following statement, and ask the assistance of your committee for any relief that can be obtained.

Since Saturday the 7th instant, (October,) the office of the supervisor of registration for this parish has been closed, and a large number of our citizens have been and will be deprived of any opportunity to register and vote at the approaching election.

Since the 14th instant James E. Anderson, the supervisor of registration for the parish, has been absent, having on the 13th turned over to the clerk of the court the books of his office, announcing that he had resigned, and on the following day taken his departure for the city of New Orleans.

He alleged that he was driven from the parish and that he left the same because while there he was in fear of his life; that this fear was induced by an attempt at assassination by some unknown persons lying in ambush on the road from Jackson to Clinton, on the night of the 7th instant.

On that night he left Jackson in a buggy with one John Pilant (a republican) and arrived in Clinton on foot alone, exhibiting a coat riddled with bullets, and making complaint as aforesaid.

A careful judicial investigation developed circumstances that proved the whole story about the ambuscade false; the shots upon the road and the bullet-riddled coat parts of a poorly contrived scheme to give color to a plot which must have been previously concocted, in order to throw upon our people the odium and burden of having attempted the assassination of a republican supervisor of registration and of preventing him from performing the duties of his office. The more recent con-

fession of Pilant established the fact that Mr. Anderson himself fired the shot by which his coat was injured, and that other shots were fired by a friendly accomplice.

During the whole of the stay of Mr. Anderson in this parish (he had never entered it before his appointment) he was never threatened, assaulted, or intimidated, although he became at times, while under the influence of strong liquors, turbulent, quarrelsome, and insulting. It was the anxious desire of the whole of the people of this parish that the registration of voters should be completed and the election held fully, fairly, and peaceably, and every citizen has given his utmost endeavors to that end.

After the retirement of Mr. Anderson two of the citizens of this parish waited upon the executive of the State and requested he should appoint his successor at once, in order that the registration of the voters of the parish might continue.

After two interviews they were informed that Mr. Anderson would be immediately sent back for that purpose. This was on the 16th instant. We are now at the 20th, with only two more days within which this registration may be completed, and yet Mr. Anderson has not been sent back, nor is there any one here to perform his duties. It would seem the purpose of the administration to prevent the full registration of the voters of this parish, and the course pursued by it, with the attending circumstances, seem to indicate a determination to deprive the people of the right and privilege of holding an election on the 7th of next month.

The absence of the supervisor of registration under the pretext we have set forth has already accomplished the first wrong against our people, and the failure to remove and appoint another supervisor or to designate some parish officer to discharge the duties of this absent supervisor, under section 36 of the registration act No. 155, of 1874, must have been with a design of accomplishing its necessary consequences. We can but presume that the absence of this supervisor will continue, and that the executive will continue to fail and refuse to make the necessary appointment, and that consequently there will be no appointment of commissioners of election, and that it will be said that no legal election has been held in this parish.

We beg that you will take such steps as may be necessary to insure us the exercise of the highest and most sacred right of the citizen.

Very respectfully, your obedient servants,

T. B. LYONS.
O. P. LANGWORTHY.
JNO. G. LANIER.
D. J. WEDGE.
J. G. KILBOURNE.
C. McVEA.

We can give you one hundred signatures of the best men in our parish corroborating this document, if you desire.

D. J. W.

THE STATE OF LOUISIANA,
Parish of Orleans:

Personally came and appeared before me, the undersigned authority, Jessie Harrison, a citizen of East Feliciana and State aforesaid, who deposes and says that on the 21st day of November, 1876, in the city of New Orleans, said State, Henry Smith and E. L. Weber, the latter a senator of Louisiana, came to him, deponent, to prevail upon deponent to go before a republican committee and testify that intimidation of the colored voters was practiced by the democratic party in East Feliciana, before and on the day of election held there on the 7th November, 1876; that the republican party was on its last legs and needed such testimony as that of deponent; that the evidence of deponent was worth more to the republican party than that of one hundred white men. Further deposes and says that at the earnest solicitations of said Weber and Smith that the deponent went to the custom-house on the 21st day of November, 1876, and was introduced to S. B. Packard, and that T. H. Hubborn remarked to him, deponent, that it was not becoming for Packard to offer him, deponent, anything in the shape of a bribe to procure evidence to prove intimidation had been resorted to in East Feliciana by the democratic party to influence the colored vote, but that any arrangement made by him, Hubborn, would be binding on Packard. Further deposes and says that the said Hubborn did, then and there, tell him, deponent, that if he, deponent, would testify before the republican committee that intimidation had been resorted to by the democratic party to influence the colored vote, that he, the said Hubborn, would secure me, deponent, a position worth from $75 to $ 00 per month, or, that if he, deponent, would refrain from giving any testimony detrimental to the republican party before a committee of democrats, that the same position would be secured him; that said conversation occurred in the custom-house, in an office on the left of the main entrance on Canal street, on the second floor; that said conversation was in full hearing of S. B. Packard, republican candidate for governor, in so far as the offer to give deponent the position if he would testify as requested, but toward the latter part of the conversation said Packard turned away and walked off.

Further deposes and says that he, deponent, joined the democratic party of his own free will and accord, and that he, deponent, canvassed the parish as a public speaker in the interest of the democratic party, and that in no instance did he, deponent, witness any intimidation of the colored voters by the democrats, but to the contrary, saw efforts made by the republicans to prevent the colored voters from voting the democratic ticket.

Further deposes and says that he, deponent, and his democratic white friends, assured them, the colored voters, that they could vote as they pleased.

Further deposes and says that a more peaceable election never took place in the parish of East Feliciana as the one held on the 7th November, 1876.

his
JESSIE + HARRISON.
mark.

Witnesses:
J. M. DOYLE,
O. P. LANGWORTHY.

Sworn to and subscribed before me the 24th day of November, 1876.

WM. H. HOLMES,
Second Justice Peace, Parish of Orleans, Louisiana.

I will state, so as to make this complete, that Weber, spoken of in this affidavit, offered to bribe this man. After failing to do this he then filed a protest against the receiving of the vote of that parish, which protest was made and filed in New Orleans, and the vote was accordingly rejected. This so-called protest is not even dated, and does not state it was made in New Orleans; but this is the fact.

To Hon. J. Madison Wells, President, and the Returning Officers for the State of Louisiana:

GENTLEMEN: As a candidate for State senator from the twelfth senatorial district of Louisiana, composed of the parishes of East Feliciana, West Feliciana, and Point Coupee, and thereby interested in the result of the general election held November 7, 1876, I hereby protest against the count of votes cast in the several polls in the said parish of East Feliciana, on the grounds and for the reasons stated in the statements of the supervisor of registration of said parish, together with accompanying documents.

Very respectfully,

E. L. WEBER,
Candidate for State Senator, Twelfth Senatorial District, Louisiana.

On this protest, filed by this man Weber, the vote of this parish was rejected. He states that he bases his protest on the statement of the supervisor. I will now prove by the clerk of the parish that no statement was filed in the parish in accordance with the law by the supervisor:

THE STATE OF LOUISIANA,
Parish of East Feliciana, Clerk's Office:

I, John S. Lanier, clerk of court of said parish, do hereby certify that no statement or copy of any statement made by any commissioner of election or supervisor of registration, or any other person, of any riot, tumult, or acts of violence, intimidation or disturbance, bribery or corrupt influences, at any place within said parish, or at or near any poll or voting-place or place of registration, during, at, or before, or after the general election held on Tuesday the 7th day of November, 1876, has been delivered to me, the clerk of court of said parish, or filed in my office by any supervisor of registration, commissioner of election, or any other person whatever. Nor has any statement or copy of statement been delivered to me or filed in my office by any supervisor of registration, commissioner of election, or any other person, of any such riots, tumult, acts of violence, intimidation and disturbance, bribery or corrupt influences, at any place within said parish, or at or near any poll or voting-place or place of registration or revision of registration. And I do hereby further certify that no notice or protest, or any complaint of any riot, intimidation, tumult, violence, disturbance, bribery or corrupt influences at any poll or place of registration, or at any other place in said parish, has been delivered to me or filed in my office up to this date.

Given under my official signature and seal of office, at Clinton, said parish, this 20th of November, 1876.

[SEAL.] JOHN S. LANIER,
Clerk of Court.

The vote of this parish, about which so much has been said, was rejected; and yet here is the proof made by the clerk of the parish that no statement was ever filed of any wrong-doing in that parish on the day of election, not only within the twenty-four hours, as insisted upon by the Senator from Ohio, but at any time. At no time was there a statement filed as required by law, and yet the vote of that parish was rejected. Affidavits signed and sworn to by from two to three hundred persons are in the book, and made by the leading men of the parish.

The disturbances and subsequent lawlessness in the parish of East Feliciana have their commencement in the late part of the summer of 1875. At that time there was no political excitement, and no election held or to be held.

In the part of the parish bordering East Baton Rouge and West Feliciana, bands of men, not in any regular organization, but squads in different localities, collected together and attempted to put a stop to the sale of cotton in the seed, which had grown to be a serious matter even to both planters and merchants who supplied them.

There was no law in our State that could reach the evil. An attempt to pass such law had failed. These squads or bands of men went around and first warned the traffickers to cease the business; as the season advanced the evil commenced again, and the lawlessness first took the shape of burning the shops engaged in the trade. A number were so burned, more in East Baton Rouge and West Feliciana.

These bands increased; stealing generally, and especially hogs and cattle, was next endeavored to be stopped in like manner. A spirit of general lawlessness then prevailed during the fall and winter of 1875, but it was wholly unconnected with any political election or movement.

The stores burned in nearly all instances belonged to white men and democrats. I know of instances in which they did not. White men suffered alike with colored. A number of white men were ordered to leave the parish because accused of stealing. These men were connected with the democratic party. The negroes were often caught and punished for theft. This lawlessness and these bands of men, attempting to right wrongs which did exist, had their apologist because the State government was imbecile and inefficient. The courts were not held, and excuses were made that evils such as existed had to be corrected. Men began under these circumstances to vent their personal spite, and in some instances on both whites and blacks alike. The well-disposed people wanted the lawlessness checked, and yet it was still justified by some, as there was no other remedy for many of the evils.

At the commencement of the present year, 1876, the conservative people of the parish of themselves and unaided by the State government appealed to all classes to cease this state of things. A more conservative feeling was aroused, and acts of violence became less frequent. It was not until spring had passed that any election excitement commenced. At the primary election, held early in July, the conservative element as it was understood prevailed. The canvass was immediately opened, and the candidates advocated a union with the colored voters, and to cooperate with them. This was opposed by some, but joint clubs white and colored openly advocated and were formed everywhere. The appeal to the colored element was to help us change the government, and return to a better order of things. The colored leaders, after the nomination of General Nicholls, joined us willingly. The white radical leaders did not number three all told. They had no influence with the colored people. The canvass soon showed the people were one way. Numbers who were reluctant and would probably prefer to remain republicans had they had any leadership went with the mass. It was soon seen there was to be no republican opposition. They put no ticket forward in the parish. The supervisor and white leaders made overtures to divide the offices and put a Congressman and a member of the Legislature in the field and make a joint ticket; in that way all overtures were rejected. They had but one meeting, that a failure as far as securing any following. It was uninterrupted; both Judge Lyons and the writer spoke at the meeting, two colored radicals answering us. The supervisor of the parish left, and many colored and white, a majority colored men, were denied registration. The republicans placed no ticket in the field, had no tickets distributed at the polling-places, refused to vote when tickets were obtained for them. It was charged openly a week before the election at one of our largest meetings that their plan was to abstain from voting, and to get the colored men to remain away. Not a single disturbance occurred on the day of election. Not a single commissioner at the polls has reported one. It was as peaceable a day as ever passed. No armed bodies save the three detachments of United States troops were in the parish. Their troops were in easy distance of every poll. No act to hinder or disturb registration occurred, save the act of the supervisor, who left and deprived 400, mostly colored, from getting their proper papers. During the time of registration, seventy-seven days before the election, no violence occurred, save a little instance of outrage I heard had been reported, which act resulted in the defeat of a candidate on the democratic ticket, who was accused with being connected with it, both white and colored voting against him.

The year 1875, in which the lawlessness was in vogue, was not election year. There was no political excitement. The man Gair of whom so much has been said, who was taken from a sheriff's posse, had been beaten by his party in 1874, many white conservatives voting for him. He was killed in October, 1875, and was accused of being accessory in poisoning a physician. This act was never connected with politics until it became necessary for it to be used as a political outrage. The

supervisor of registration himself, when I insisted on his return to our parish more than a week previous to the election, gave as a reason for not complying that the intention was not to count our vote.

CHARLES McVEA.

STATE OF LOUISIANA,
Parish of East Feliciana:

Personally appeared before the undersigned authority L. Baynes Morgan, of ward No. 5, said parish, who, being sworn, says that he was United States supervisor of said ward, appointed by Federal court, and officiated as such at the election held on the 7th of November last; that the election was perfectly peaceable and quiet; that there was no intimidation whatever; that two colored men, to wit, Samuel Lee and Aaron Dawson, remarked in presence of witness that they could not vote because they could not get regular republican tickets; witness told them that he was United States supervisor; that they had a right to vote as they pleased and would be protected in so doing; and he offered to write their tickets for them; Samuel Lee afterward voted the democratic ticket and Aaron Dawson refused to vote in spite of assurances of witness.

S. B. MORGAN.

Sworn to and subscribed before me this November 17, 1876.
[SEAL.] JOHN S. LANIER,
Clerk of Court.

It will be remembered that the Senator from Ohio made a great point about this parish because no republican votes were cast in it. The reasons are given at length in this testimony why there were no republican votes. The republicans, finding that the parish would be carried by the democrats by a large majority because a large number of colored men had signified their intention to vote the democratic ticket, adopted the plan not to vote at all so that they might lay the foundation for the rejection of the entire vote of the parish. The vote was rejected, although the clerk of the parish proves that no statement was filed with him as required by the law. In addition to this I have before me the testimony of one hundred and thirty odd persons, going from page 456 to page 643, of the same character, proving that peace, quiet, and good order prevailed at the election; that there never was an election held in any portion of the United States where more peace and quiet prevailed, and the reason why no republican votes were cast in that parish is because they found out they were to be outvoted by the democrats, and adopted as a policy that which is well explained in the testimony of the gentleman which has been read. They put no ticket in the field.

What becomes of the point made by the Senator from Ohio in this parish in which he attempted to show fraud, intimidation, and violence to such an extent that the republicans in the parish did not dare to vote? Here is proof overwhelming that they were asked to vote but they had no candidate in the parish and wanted none because they knew that the parish was democratic; and it was a plan laid at that time, a conspiracy to throw out that vote, and it was accordingly thrown out.

I will now read the testimony from East Baton Rouge, page 143 and 340:

General HERRON, (of Baton Rouge.) Two of the boxes returned by two of the commissioners; although they were returned to the supervisor, the vote did not appear upon this consolidated statement, from the fact that the statement, tally-sheets, &c., were sealed up in the box, but the duplicate originals of the returns were filed in the clerk's office. It is only an error on the part of the supervisor in both cases, and it should have been his duty to supply the missing polls. That error was only found out after the supervisor had left Baton Rouge for New Orleans. Hence the request from us that these boxes should be brought here for the purpose of being opened by the board and the returns from those polls taken from them, and included in the consolidated report before this board. I understood that, as it appears from this consolidated statement, seven boxes have been omitted, and these boxes have been placed in the keeping of the deputy clerk and the United States supervisor. It seems to me that justice demands that these boxes should be opened and the returns from these different polls compiled in accordance with law.

* * * * * * *

Governor WELLS. The board has already decided that they will not receive any returns except from the supervisors of registration. The court has said that the returning board should not receive any returns except from the properly constituted officers, and they tried to compel this board to receive returns from other parties by mandamus. The court said that the board had no authority to receive them except through the proper sources, therefore the case is settled. The board cannot accept any returns except those from the supervisor of registration. If there are returns forwarded to this board by any other persons, or even by the commissioners, and if they have been declared to be informal by the supervisor of registration, the board have a right to reject them. They must go through the supervisor of registration; that has been settled by the courts. That should be the ruling of the board, and there is no use to go over the question again.

Yet in the face of this decision, in other cases the board did receive and open the boxes from republican parishes. This was on application of a committee of gentlemen who came down from East Feliciana for that purpose; stating that the commissioner of election had fraudulently locked up the tally-sheets in the boxes where the votes were and the supervisor withheld them and would not deliver them in the city of New Orleans, and in truth they were not delivered. An application was made to send to get the original vote, which was denied, while in other cases where it suited the republican side it was allowed.

BATON ROUGE, *November* 16, 1876

GENTLEMEN: In compliance with your request of this morning, I take pleasure to furnish you the following account of my personal observations of the manner in which the election was conducted here on the 7th instant, and how the canvass of the votes has been conducted since.

I was present on the morning of election day when a report was made to my commanding officer, Lieutenant Charles Brooks, of a difficulty about appointment of commissioners at the Murphy school-house poll, and I accompanied him to a conference between leaders of both political parties. I saw and bear witness to the fact that the representatives of the democratic party did all in their power to make a fair arrangement of the matter possible. Before a conclusion was arrived at I proceeded with Dr. Dupré, democrat, and C. Le Sage, republican, to the third ward polling-place, to investigate a report made by one Shields, (colored,) who stated that he had been roughly handled, and ejected from the room where the ballot-box was located by one Duncan, although he, Shields, was a United States deputy marshal.

We rode out there (six miles from the city) at a very rapid gait. While *en route* Le Sage stated that upon the least sign of intimidation, he would, as supervisor, close the polls. To such a proceeding Dr. Dupré objected, as Le Sage had accompanied us simply in his private character as a representative of the republican party. Upon my remarking that such a course was not expected when Colonel Brooks directed me to investigate the facts jointly with him, Le Sage, and Dr. Dupré, and that I would, if necessary, remain and see peace kept there until I could get further instructions by sending back a mounted orderly I had with me, Le Sage abandoned the idea. Upon our arrival at the polls, I found everything perfectly peaceable. Excepting Le Sage, who carried a pistol, and my orderly, I saw no armed men there. There were no arms in the house where the ballot-box was located. All persons present were sober and orderly. After careful investigation particularly among colored men present, and after hearing the statement of the republican commissioner, whom I saw alone, I became satisfied that the story of the negro Shields was false. On the opening of the poll he had entered the room where the ballot-box was located, and was removed therefrom by order of the commissioners, (who were enforcing the rule, that one voter should at any time be within thirty feet of the box,) by one Duncan, who was acting officially, as supervisor or constable. Upon asserting that he (Shields) was a deputy marshal, he was requested by the republican commissioner and Duncan to return, and assured that he should not be molested, but left nevertheless, stating that he was going to the barracks to report them and send the military after them. I was treated by all present with the utmost courtesy. No one attempted to prevent a free and full investigation, nor could I perceive any displeasure on account of my calling aside colored men and examining them alone. Le Sage assured me himself that he was convinced Shields had made an utterly false report. In returning and going, I watched closely all roads in sight, and I failed to see any pickets anywhere. Every colored man I met assured me that he had not been molested going to or coming from town. I was particularly struck with the friendly feeling that existed among the whites and negroes gathered near the polls, and the republican commissioner assured me he apprehended no trouble. Upon inquiry he further told me that as most of the supporters of the republican ticket had been ordered by their leaders to town to vote, but few republican votes would be cast there. Upon returning to town I was met by stories (told by radical politicians) that an express had heralded our coming to the men at the third ward, that a man had been shot there, &c. The gait at which I rode going to the the place made the former impossible, and I could not find the wounded man, who was said to be in town, in spite of my making diligent inquiry. I have seen an article in the New Orleans Republican of the 15th instant relative to affairs in the third ward, and I am free to say that the statement therein made is utterly false, to the best of my knowledge. After returning from the country and reporting to my commanding officer, I visited frequently every voting-place in the city. Everywhere voting was quietly progressing. Excepting attempts to coax black men to vote the democratic ticket, no attempt was made to influence their action. I failed to see any ground for the complaint made to me repeatedly by republican politicians that it was dangerous for a man to vote the republican ticket. The utmost care appeared to have been taken to preserve the peace, and the authority of the United States was nowhere questioned. On the contrary, when it became necessary to confer with civil powers, they showed the utmost willingness to do what was correct and fair. Upon a complaint being made by Deputy Marshal McAlpin that he was annoyed in the performance of his duty near the court-house voting place by the city police stationed about there, they were at once withdrawn by order of the mayor, and when, by some misunderstanding of orders, they again went into the hall, the mayor and chief of police went in person and superintended their removal.

One thing was quite apparent, the democratic side worked hard, by all fair means, to induce colored men to vote their ticket, while but little effort to the same end was perceptible on the part of their opponents. I remained near the different polls until late at night and convinced myself by actual observation that the count was progressing fairly, and that no danger need be feared of any interference by unauthorized parties. About one a. m., on the morning of the 8th, I was called from my bed and directed by my commanding officer to go to the court-house and see what action was required to protect the deputy marshal and officers of election there, it having been reported to him that they were in danger of being interfered with. Upon arriving there I found the deputy marshal, McAlpin, quite excited. I told him he need not fear anything. Upon this he remarked that a crowd could come in and kill him before any aid could be had from the garrison; that he had heard parties say in the yard "their majority here won't do them much good," (referring to republican votes cast there.) Beyond this and the fact that some members of the democratic party had been there to witness the count, I could find no reason for his fears. To assure him, however, I requested the chief of police to station some men near to prevent the approach of unauthorized parties, and he complied promptly by detailing picked men for that duty. I myself remained until after four a. m., when I left, sending a sergeant to take my place; he, in turn, was relieved by nine a. m. Neither myself nor the non-commissioned officers on duty could see any, even the most remote, cause for uneasiness on the score of the safety of the election officers or ballots. The count was peaceably completed at the other places in town. I, again, by order, was present during the greater part of the time while Mr. Clover was compiling the returns made by local commissioners. He was treated with perfect courtesy by all men of the democratic party who had business with him. They made every effort to comply with his directions, and, in spite of very impolite treatment they received at the hands of some of Mr. Clover's subordinates, (I was present when this occurred several times,) they kept their tempers and acted very fair, indeed.

While on this duty I saw the only real case of intimidation which has come to my personal notice since I have been in Baton Rouge. Mr. Guy Samuels, a native of Virginia, and now a planter near Port Hudson, was approached by a negro, when outside of the court-house, where he, Samuels, had been on duty in connection with election matters in his ward. The negro used the most abusive language imaginable. Mr. Samuels assured him that any fears on account of political opinions or actions he might have were groundless, and invited him to come and gather his crop, offering him a place to sleep in his own dwelling while there, and promised to protect him. All this had no effect, and the negro continued his threats and abuse, his manner showing that he relied on my presence there for impunity from the punishment at Mr. Samuel's hands he rightly deserved. While on duty guarding Mr. Clover and the deputy marshal against apprehended dangers I was always unarmed. At no time was there, as far as I could perceive, any necessity for my presence. I am convinced now that under any ordinary circumstances my uniform as United States officer is sufficient protection against any violence, in performing any duty, such as assisting a marshal in making an arrest, or the like.

I have above given simply a statement of what I saw myself. I have purposely avoided making any remarks on the conduct of the officers sent here to conduct the election, although it appeared strange to me that they should be on the most intimate terms with leaders and candidates for office on the republican side, and consult with them often in the course of their official labors. The following facts should, however, be well known.

While on duty at the court-house, I was approached in a very confidential manner by one Baranco, colored, who had, if my memory is correct, acted in some capacity at the engine-house poll, and who claims to be a deputy United States marshal. He informed me that they (the radicals) had fixed the democrats by locking up tally-sheets and other papers in the ballot-boxes in places where a democratic ma-

jority was cast. I was also informed later by Mr. Clover that he had completed his returns so far as he could under instructions, excepting some remarks he kept in his head, which he would add after he got safely in the city, (New Orleans.)

That the statement I have here made may be correctly judged, I will state that I have never been an active partisan of any political party. I have been in the United States Army continuously since 1856, and a reference to my testimony given before a congressional committee in New Orleans in 1875, with a letter published in the appendix to their report, will show that I have always pleaded for the rights of the negro.

Going back a short time, when the canvass was in full blast, I attended a democratic meeting held here, followed by a barbecue. I there noticed that the negroes were fully impressed with the arguments there advocated; that they liked and believed the promises made to them regarding schools and other privileges. I have been assured by several negroes that they voted the democratic ticket because they were satisfied their master's (employer's) interests were their own, and because they did not like men put on the republican ticket.

Many more reasons were given me in detail for similar action (turning democrat) by negroes who approached me confidentially asking advice how they should vote at the approaching election.

Giving you my free consent to use this statement in any manner you desire, I am, gentlemen, your obedient servant,

WM. GERLACH,
Second Lieutenant Fifth Infantry, United States Army.

Hon. L. PASTREMSKI, *Mayor*, Dr. J. W. DUPRÉ, *City*.

Sworn to and subscribed before.

F. A. NEPHLER,
Justice of the Peace.

NOVEMBER 17, 1876.

W. G. SAMUEL, being duly sworn, deposes and says:

To first interrogatory. I reside in the fifth ward, parish of East Baton Rouge; I am thirty-five years of age, and a planter.

To second interrogatory. I have been a democrat ever since I became of age.

To third interrogatory. I was United States supervisor at poll No. 1, ward 5, in said parish, on election day, November 7, 1876. The election at said precinct was fairly and quietly conducted and all parties expressed themselves satisfied; all had a fair and full opportunity to cast their votes for any candidates. There was no disturbance of any description and no armed men were present so far as I know. I think twenty republican tickets were cast at said poll, and many were voted openly.

To fourth interrogatory. I heard no threats or abuse against persons so voting the republican ticket, and know of no intimidation of such votes.

To fifth interrogatory. I know of many colored men in said precinct who voted the democratic ticket, and the reason given by these, so far as I heard same, was that they wanted to establish a more and a better government. There was no compulsion in the case whatever.

To sixth interrogatory. I have carefully read the answer of Dr. J. W. Dupré to this interrogatory, and adopt the same as my answer hereunto.

To seventh interrogatory. F. A. Clover was the supervisor of registration for said parish; he was not a resident of said parish. I never saw him till he came in with the returns, and do not know when he came or left.

To eighth interrogatory. I have heard of L. C. Lesage frequently; he is a resident of said parish. I have no personal acquaintance with him, but do know his general reputation for truth and veracity to be bad, so bad that I could not believe him under oath.

To ninth interrogatory. I have not.

To tenth interrogatory. I do not.

To eleventh interrogatory. I know of no such armed bodies of men patrolling the parish, and do not believe there were such.

To twelfth interrogatory. I know of no such occurrences, and do not believe there were such.

To thirteenth interrogatory. I do not, and never heard of any, and would have been sure to have heard of such occurrences, had there been such.

To fourteenth interrogatory. I have made such examination, and am confident that the statements were known to be false when made.

To fifteenth interrogatory. I knew nothing of it except from hearsay.

To sixteenth, seventeenth, eighteenth, nineteenth interrogatories. I have carefully examined the answers of Dr. J. W. Dupre to the interrogatories, and adopt the same as my own, except as to any matters personal to said affiant.

To twentieth interrogatory. On the day of election I heard one Jones, a deputy United States marshal on duty at my poll, say to the colored people that unless they voted the republican ticket they would be hunted down with negro dogs; he got so boisterous that Mr. Janney, a candidate for the Legislature on the democratic ticket, reproved him therefor.

To twenty-first interrogatory. I do not know said parties.

W. G. SAMUEL.

Sworn and subscribed before me this 29th November, 1876.

WM. H. HOLMES,
Second Justice of the Peace, Parish of Orleans, Louisiana.

The man who gives this testimony was supervisor of the parish of East Baton Rouge. That parish played quite a conspicuous part in this contest. I have read enough to show in what way the election was carried there. It was peaceable, quiet, and orderly. I have read the report of Lieutenant Gerlach, an officer of the United States Army, giving all the details. I could read much more testimony and answers to interrogatories propounded to other parties, extending over many pages of this book. I have read enough to show I think to anybody who is disposed to be satisfied on unquestionable evidence, that the election in East Baton Rouge was fairly conducted; that there was no intimidation, no violence, nothing done of an irregular character, and furthermore I have shown that no statement from that parish was made in accordance with the law.

I read now from Grant Parish, the testimony as to which begins on page 648:

COLFAX, *September* 29, 1876.

DEAR SIR: Inclosed you will find my oath of office as United States supervisor of election, parish of Grant. I have but little knowledge of my duties except what I learn from newspaper extracts. Please forward instructions, blanks, &c.

What can be done with parties illegally registered, (minors, for instance;) by what proceeding and before what authority should they be taken; justice of the peace, parish or district judge, or United States commissioner? Who is D. A. Ward, our imported supervisor? He promises very fair, but does not comply; goes to different points, but goes at such times and such places with such limited notices as tail to get the people out in democratic localities. He has refused to register voters of foreign birth whose parents were naturalized while the applicants were minors, because they could not produce their parents' papers. Can such parties vote by affidavit before United States commissioner? If yea, send me blank form, &c.

What steps can we take to remove Ward, if any? When making circuit through parish, he promised to stop at certain points; swears he did do so; but, fact is, he only stopped and breakfasted, and left before any one arrived, (seven a. m.;) would not wait for hands in the field to come to house, say half mile, who had been sent for. Let me hear from you soon.

Yours, truly,

W. L. RICHARDSON.

Major E. A. BURKE.

Respectfully referred to W. R. Whitaker, esq. Please prepare a reply at your leisure.

ED. BURKE, *Chairman.*

NEW ORLEANS, *October* 6, 1876.

GRANT PARISH, LA., *October* 6, 1876.

DEAR SIR: Immediate steps should be taken to prevent further frauds being committed by the supervisor of registration, one D. T. Ward, a former roper in of the New Orleans snake show at the foot of Canal street. It is well known here that he has registered a large number of negroes not eighteen years of age, and it is evident he intends committing other frauds, since he positively refuses to permit W. L. Richardson, regularly commissioned United States supervisor of election, to examine his books until ten days after the election has taken place. We are determined to do nothing that could be construed into intimidation, therefore we appeal to you for advice. Has a United States supervisor of election a right to examine registration books, and what course must be pursued to enforce this right? On the 28th day of September last the registrar closed his office at or about eleven a. m., proceeded about three quarters of a mile therefrom to a radical barbecue, and it was only after repeated efforts I succeeded in getting him to return at four p. m. to his office to register two white men.

Appended you will find a list of his notices, showing that he spent but nine days in the pine hills or white part of the parish, and three of these were consumed in traveling. It is a known fact that the white voters largely outnumber the black, though this fellow is spending all of his time in ward 1, entirely a negro ward. Heretofore the supervisors have spent not more than twelve days in this ward, using the balance of the time in going from place to place to give the whites an opportunity to register. The negroes are all congregated on plantations in ward 1, the farthest not twelve miles distant from Colfax, whereas the whites are scattered over a large territory, in the hills. Please reply by Durfee.

Respectfully,

THOMAS HICKMAN.

Colonel PATTON.

ROOMS EXECUTIVE COMMITTEE,
New Orleans, October 10, 1876.

Respectfully referred to the committee on registration with request to give the matter immediate attention and reply to this communication.

LOUIS BUSH, *Chairman.*

COLFAX, *October* 13, 1876.

DEAR SIR: Yours of 4th instant to A. L. Grow, esq., chairman our committee, relative to my appointment as Unietd States supervisor, is before me. I forwarded my oath of office some ten days ago; hope it has been received before this time. I have accomplished very little as yet. D. A. Ward, our supervisor, is so insulting that I cannot talk to him. He refuses to give or permit me to make a list of registration, and continues to make such use of books as to prevent me from getting copy; keeps them in private room at his office, and no chance for me to write without interfering in his pretended business. I will try, however, to get the list. Whole number now, including erasures, 1,260; he says about twenty white majority. As soon as I can get list will compare and report.

Ward says he is chief of election in this parish and will do as he pleases; says he can have as many or as few polling places as he pleases; says he is not bound to put one in each justice of the peace ward; says he can make the erasure from registration-book after 28th instant, two or three days before election, &c. He is now making out accounts for fees, incidental expenses, and has his bill and clerks already approved by Kellogg, &c.

What can I do in event he refuses to put boxes in each justice of the peace ward or at such place as most convenient, &c.; also what shall I do in event he makes erasures after legal time for closing book, namely, October 28?

You say some instructions will be published in Democrat, commencing on 6th instant, and then continue till after election, &c. Please send me a copy at this place, (Colfax.) I am a subscriber to Weekly Democrat, but my paper goes to Montgomery, where I live. I shall remain at this point (Colfax) until after the election, and all communications relative to my duties as United States supervisor of elections, campaign papers, &c., should be sent here.

I do not like appearances in our parish (Grant) much, though we will give the ticket a majority if we get a fair chance and have fair count.

Respectfully,

W. L. RICHARDSON.

Major E. A. BURKE.

NEW ORLEANS, *October* 23, 1876.

DEAR SIR: Please consider the points presented within, and see if this election notice conforms to the law as defined in act No. 98 of 1872 and October 7, 1875.

This ward is crooked, and I would ask you to read the letter carefully and see whether he is in violation of the law.

Respectfully,

E. A. BURKE,
Chairman Committee.

W. R. WHITAKER, Esq.

Interrogatories for democratic-conservative candidates, in the matter of Grant Parish, on W. L. Richardson, E. A. Burke, Frank McGloin, witnesses.

Interrogatory 1. What is your name and age, and where do you reside?

Interrogatory 2. Do you know anything of the election held in said parish, November 7, 1876? If so, state how it was held; whether it was full, fair, and peaceable.

Interrogatory 3. Do you know anything of registration and its conduct? If so, what?

Interrogatory 4. Do you know anything of the peace of said parish during election or previous? If so, what do you know?

Interrogatory 5. Do you know anything of intimidation or threats; and, if so, what, and by whom?

Interrogatory 6. Do you know anything of the departure of the supervisor of registration; and, if so, when did he leave, why did he leave, and what was done by you in relation thereto?

Interrogatory 7. Do you know anything of the political affairs in said parish previous to or at said election?

F. C. ZACHARIE,
E. A. BURKE,
H. C. BROWN,
CHAS. CAVANAC,
H. M. SPOFFORD,
J. R. ALEX. GAUTHREAUX,
FRANK McGLOIN,
Of Counsel.

FRANK MCGLOIN, sworn, doth make answer to the interrogatories to him propounded in this matter, as follows:

To the first. My name is Frank McGloin; my age thirty; my residence, New Orleans.

To the second. I do not, except from hearsay.

To the third. I do not, except from hearsay.

To the fourth. I visited said parish in October, 1876, twice; first about the 8th or 9th. I passed through the parish from Cotile to Montgomery. I was there again on October 16, 1876, at the democratic barbecue. I saw every appearance of peace and quiet. I saw the best and kindliest relations between whites and blacks. At our barbecue I saw numbers of colored men, who listened attentively to the speaking, showing, some of them, marked evidence of concurrence and approval. I met negroes who openly avowed their democracy. The only intimidations I witnessed in Grant Parish were at the hands of republicans, exercised against colored democrats, who had been sent there under my protection. These colored men were threatened with arrest, and I had to hurry out of the parish until I could perfect arrangements to guarantee their safety.

To the fifth. No further than what is embodied above.

To the sixth. Nothing, except from hearsay.

To the seventh. Nothing further than which I have stated in my answer to the fourth.

FRANK McGLOIN.

Sworn to and subscribed before me this 1st day of December, 1876, at 4 p. m.

W. T. HOUSTON,
First Justice of the Peace for the Parish of Orleans.

Answers to interrogatories propounded to E. A. Burke, for the democratic and conservative candidates in the matter of Grant Parish.

First. My name is E. A. Burke; age thirty-five years; reside in New Orleans.

Second. I know by correspondence of the registrar of election in Grant Parish. I have been convinced by my correspondents, by assurances of citizens of said parish, and by the statement of the supervisor of registration, D. A. Ward, on the 14th day of November; said Ward stated to me that he arrived in Grant Parish on the morning of November 7; that the election was fair, full, and peaceable; and he gave me a certificate to that effect, a copy of which I attach hereto and make a part hereof.

Third and fourth. Answered above.

Fifth. No.

Sixth. The supervisor of registration of Grant Parish left the parish before the close of registration, ostensibly to get ballot-boxes, actually for the purpose of adjusting some private affairs in New Orleans; so informed me here on or about the 2d of November. He stated to me that he was not driven from the parish, and assured me of his intention to return and hold the election, and was not at all apprehensive of any danger. I believe that said supervisor was in the parish of Grant, upper portion ward 6, on election day, and was informed by him that he left there on the night of election. Mr. Ward informed me, November 14, that polling-places had been designated by public advertisement and commissioners appointed, and that he was called away upon important business, but would make his returns in due season.

Seventh. Answered above.

E. A. BURKE.

Sworn to and subscribed before me at New Orleans on the 1st of December, 1876.

EMMETT D. CRAIG,
Commissioner of United States Circuit Court, District of Louisiana.

Answers of W. L. Richardson to interrogatories propounded by the democratic-conservative candidates in the matter of contest of the election in the parish of Grant, Louisiana, on the 7th November, 1876.

Answer to first interrogatory. My name is Wilson Lyon Richardson; my age is about forty-three years; my residence is in the town of Montgomery, parish of Grant, State of Louisiana.

Answer to second interrogatory. The election in Grant Parish, November 7, 1876, was full, fair, free, and peaceable, both parties polling a larger vote than at any election ever held in the parish since its organization, (1869;) it was a common expression of leading men in both parties that they had never witnessed a more peaceable and fair election anywhere; the State supervisor of registration, D. A. Ward, left the parish without any known cause; the election was held by the commissioners indicated by the supervisor, D. A. Ward, at the several poll or voting places established by him prior to his departure.

Answer to third interrogatory. The registration was quite full, though the democrats were put to considerable inconveniences. I know of but one or two applicants unquestionably entitled to registration that were rejected; these are democrats. Some 30 or 40 republicans registered that are believed to be under twenty-one years of age; these men, however, were permitted to vote, except one (Mr. Vance) who refused to swear to his age before the commissioners. I feel confident that there are not more than 60 or 70 unregistered voters in the parish legally entitled to registration. Of the number registered at least three fourths, if not four-fifths, are democrats, the majority of whom would have registered if the supervisor had remained until October 20. The total registration numbers 1,286; of this number 58 were erased by Ward, the supervisor, consisting of 46 whites and 12 colored; this leaves 1,225 still on the registration books, which preponderates 50 in favor of the whites. There now remains on the books some 50 or 60 names, nearly all republicans, (colored,) that should be erased, they having died or removed from the parish. The supervisor told me he would attend to them on the 28th of October. None of these colored men who had removed appeared or attempted to vote in the parish on the 7th of November, 1876; neither the whites.

Answer to fourth interrogatory. The people in the parish of Grant were profoundly peaceable during the entire registration and election. The political parties had some confusion among themselves, but a far better feeling existed and does now exist between the parties or races than has ever been the case heretofore since the organization of the parish.

Answer to fifth interrogatory. I know of no intimidation of any kind, and feel fully aware that none existed; indeed, none would have been permitted among the democrats. If any could have existed at all it was confined to the colored republicans toward the colored democrats; but I do not believe any existed then, for if such had been the case I certainly would have heard of it.

Answer to sixth interrogatory. I know nothing about the supervisor leaving the parish except that he did leave on the 20th day of October. I heard he left Colfax on that day, and I have not seen him since. As to the causes why he left I can only conjecture. That from what I heard he had said, from what he telegraphed he had left for, and from letters which I saw from him to Jenks in Colfax, written after he left, that he, Ward, had only but one object: that of preventing the count of or recognition of the half-expressed will of the majority of the voters of the parish. I did nothing on account of his leaving except to report the same to Major E. A. Burke, chairman of democratic committee on registration and election, and to assure the people composing both parties that it was the privilege and duty of every law-abiding American citizen to vote and to do so according to the honest dictate of his own conscience, and that law, equity, and justice would accord them a fair count by the returning officers of the State, and to make a joint written request with S. C. Curry, republican United States supervisor of election, to the commissioners of election to proceed with their duties and to hold the election in all respects as prescribed by law. I am and was the democratic United States supervisor of election in Grant Parish, and we signed the aforesaid request officially.

Answer to seventh interrogatory. At the election in Grant Parish on November 7, 1876, and for some twelve months preceding, the people of both parties have been exceedingly quiet and peaceable. A very kindly and friendly feeling existed between both parties and both races, and which I have already fully stated above in fourth answer. Prior to that time the political affairs of the parish is of historic record, and not necessary for me to describe or try to answer further, except at each poll two of the commissioners represented the republican party and one the democratic party.

W. L. RICHARDSON.

Sworn to and subscribed before me at the city of New Orleans, Louisiana, this December 1, 1876, at three p. m.

W. T. HOUSTON,
Justice of the Peace for the Parish of Orleans.

I call the attention of the Senate again to the fact that Grant Parish is also one of those rejected by the returning board. I have read the testimony of the supervisor of the parish.

I read now from La Fayette Parish, beginning on page 654.

STATE OF LOUISIANA,
Parish of La Fayette:

I, August Monnier, clerk of court for the parish of La Fayette, do hereby certify that the election returns from all the polls or voting places in said parish, of the election held on the 7th day of November, 1876, have been deposited with me in my office, as required by law; and I furthermore certify that no declaration or statement of any riot, tumult, acts of violence, intimidation, and disturbance, bribery or corrupt influences at any place within said parish, or at or near any poll or voting-place, or place of registration or revision of registration, has been made or filed with me, when or since the aforesaid election returns were deposited with me by any of the commissioners of election, at any of the polls or voting-places of said parish, or by any supervisors of registration in said parish, or by any other person, such as is contemplated by the twenty-sixth section of act No. 98 of the Legislature, entitled "An act to regulate the conduct and to maintain the freedom and purity of elections; to prescribe the mode of making returns thereof; to provide for the election of returning officers, and defining their powers and duties; to prescribe the mode of entering on the rolls of the senate and house of representatives, and to enforce article 103 of the constitution," approved November 20, 1872.

Given under my hand and the seal of court, at my office, in the town of Vermillionville, this 21st day of November, 1876, anno Domini.

[SEAL.] A. MONNIER,
Clerk Sixteenth Judicial District Court.

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In the matter of the affidavits and protest from the parish of La Fayette.

Statement of facts and argument on behalf of the democratic-conservative party.

The State census of 1875 shows the total population of La Fayette Parish to be: The vote of 1874 was, democratic, 976; republican, 530—total, 1,506. The registered vote of 1876 is, white, 1,380; colored, 939—total, 2,319. The vote polled was, republican, 660; democratic, 1,159.

These figures show an increase of above 20 per cent. in the republican vote of the parish. The republican increase is considerably above the democratic. What becomes of intimidation affidavits?

It is a well-known fact that the election returns from La Fayette Parish were in the city of New Orleans on the night of the 15th November, 1876. Counsel are informed, and herewith file, and make it a part of this argument, the affidavit of John Clegg, that returns were made up, the compiler's and clerk's statement was compiled and sworn to before the clerk of the parish of La Fayette, on the 15th instant.

On Monday the 20th November, 1876, the election returns were seen in this city by John Clegg, who had, acting as clerk for the supervisor, made the compilation —— and the compiled statement when seen by Clegg, on the 20th November, showed for the Tilden electors, 1,157, and for the Hayes electors, 661 votes. Upon that compiled statement, sworn to by the supervisor before leaving La Fayette Parish, and seen by Clegg on the 20th November, there appeared no protests of any kind; and there were no protests or grounds of complaint accompanying the returns.

On Tuesday, 21st November, J. A. Veazey, supervisor of registration, declared repeatedly that he had filed the returns; that he had the receipt of the clerk of returning officers; that he had filed no protests or complaints; that he had no reason to file any, and would not file any protest or complaint.

On Wednesday the 22d November, Supervisor Veazey returns to his home in the parish with above declarations upon his lips.

On the 24th November the board say, "La Fayette Parish returns not yet filed."

On the 25th November, Supervisor Veazey re-appears in New Orleans. La Fayette Parish returns come to light on the 27th November, are opened by this board; and the fact that there were any grounds of complaint or protests was not made known to counsel until late in the afternoon of that day, Wednesday, 27th November.

It then appears that the supervisor has made a new compilation of votes, filed a new consolidated statement, unlike, in fact, totally different from, the one filed in the office of the clerk of court for La Fayette Parish, and it appears from statements made when knowledge of frauds and complaints, that there are republican witnesses already in this city, and a contest prepared for by republicans even before the minutes of the returning board show the receipt of the returns.

Interrogatories are served upon democratic counsel on the 30th of November, and this board declares no new testimony will be received after four o'clock on the 1st of December.

Now, with the utmost expedition, it would require five days to send for and bring here witnesses from La Fayette Parish; and to produce rebutting testimony by four o'clock on the 1st of December is a physical impossibility. We are required to summon and take the testimony of witnesses residing two days' travel distant in the short space of twenty-four hours.

Can the board receive and act upon returns of election of this character? And will it adhere to a ruling or order which works such manifest injury and injustice? A blunderingly packed record, the *ex parte* affidavits of willing witnesses, a ruling of the board denying the right to produce rebutting testimony, the remarkably late date at which these charges are brought forward, and the perfect knowledge of facts contained in the record by arrangements before it sees the (?)

* * * * * * *

STATE OF LOUISIANA,
Parish of La Fayette:

Before me, the undersigned authority, personally came and appeared Isham S. Brown, a resident of La Fayette Parish, who, being duly sworn, declares and says that he was present at the election of the 7th of November, 1876, at poll No. 1, ward No. 2; there was no fraud or intimidation or threats of any kind from one party toward another. So far as I could see or learn, the said election was conducted in all respects in accordance with law; that he never witnessed a more peaceable or fairer election; affiant is now fifty-one years old, and, although defeated at that box, he nevertheless affirms the fairness of the election held November 7, 1876, at poll 1, ward 2, La Fayette Parish.

I. S. BROWN.

Sworn to and subscribed before me this 28th day of November, 1876.

A. MONNIER,
Clerk Sixteenth Judicial Court.

STATE OF LOUISIANA,
Parish of La Fayette:

Before me, the undersigned authority, personally came and appeared Alexander Billand, who, being duly sworn, declares and says: I was a commissioner of election at poll No. 1, ward 1, of the parish of La Fayette, on the 7th of November, A. D. 1876; I was appointed as such commissioner by J. A. Veazey, supervisor of registration of La Fayette Parish. I was present at the above-named poll on the day of election from the opening of the same until it was closed, and until the votes were counted; there was no intimidation or threats of any kind from any party toward another. So far as I could see and learn, the said election was conducted in all respects in accordance with the law, and was full, fair, and peaceable.

ALEX. BILLAND.

Sworn and subscribed to before me this 28th day of November, A. D. 1876.

H. M. BAILEY,
Justice of the Peace, Third Ward, La Fayette Parish.

Mr. McCREERY. Unless the Senator from Missouri desires to conclude his remarks this evening, I move that the Senate do now adjourn.

Mr. BOGY. I will yield.

Mr. BOOTH. I hope the Senator from Kentucky will withdraw his motion so that we may have a short executive session.

Mr. McCREERY. I yield for that purpose.

PRINTING OF ELECTORAL REPORT.

Mr. ANTHONY. I should like an opportunity to offer a resolution to print the report which has been made to-day. I am instructed by the Committee on Printing to report this resolution and ask its present consideration:

Resolved, That 10,000 additional copies of the report of the committee on counting the electoral votes be printed for the use of the Senate.

Mr. WITHERS. Is that the report read to-day?

Mr. ANTHONY. The report read to-day.

Mr. COCKRELL. And the bill is to be part of it?

Mr. ANTHONY. The bill is part of the report. It will cost about $400.

The resolution was considered by unanimous consent, and agreed to.

HOUSE BILL REFERRED.

The bill (H. R. No. 1016) for the relief of Virginia E. White, of Ohio County, West Virginia, was read twice by its title, and referred to the Committee on Finance.

EXECUTIVE SESSION.

Mr. BOOTH. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After nine minutes spent in executive session the doors were re-opened, and (at four o'clock and nineteen minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

THURSDAY, *January* 18, 1877.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of yesterday was read and approved.

COUNTING OF THE ELECTORAL VOTES.

Mr. WOODWORTH, by unanimous consent, introduced a bill (H. R. No. 4453) to prescribe the manner in which the electoral vote for President and Vice-President shall be counted; which was read a first and second time, referred to the select committee on the counting of the electoral vote, and ordered to be printed.

VIRGINIA E. WHITE.

Mr. WILSON, of West Virginia. I ask unanimous consent that the Committee of the Whole on the Private Calendar be discharged from the further consideration of the bill (H. R. No. 1016) for the relief of Virginia E. White, of Ohio County, West Virginia. And if I am allowed to make a statement for a moment, I think there will be no objection to its passage.

The SPEAKER. The bill must be read.

Mr. WILSON, of West Virginia. It is simply to refund to the widow of a man a tax erroneously imposed upon him, and it has been reported favorably twice.

Mr. HALE. I reserve all points of order on the bill until it is read.

The Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and required to pay, out of any money in the Treasury not otherwise appropriated, to Virginia E. White, widow and executrix of Andrew White, deceased, who was administrator with the will annexed of Daniel Steenrod, deceased, $1,250, with interest thereon from the 12th day of May, 1865; said sum being the amount of tax erroneously and improperly assessed on income of the estate of Daniel Steenrod, deceased, and paid by the said Andrew White as the administrator of said estate, and since his death recovered of the said Virginia E. White as the executrix of said Andrew White by the residuary legatees of the said Daniel Steenrod.

Mr. HALE. I withdraw all objection.

Mr. COCHRANE. I desire to say that the bill as read is not the bill which came from the Committee of Claims. I believe that the provisions of the bill now read give interest. The report of the committee simply gives an allowance of $1,250.

Mr. WILSON, of West Virginia. The committee report an amendment to the bill, striking out the interest. The committee recommended that the bill be amended by striking out the words "with interest thereon from the 12th day of May, 1865."

The SPEAKER. The Chair will state that the bill as reported by the committee and which the Chair holds in his hand does not, for some reason, contain that amendment.

Mr. COCHRANE. Well, it did contain the amendment, for I think I reported the amendment to it. The gentleman from West Virginia on behalf of this claimant does not ask any interest.

The SPEAKER. The Chair does not doubt that the amendment was intended to be reported, but in some manner it has been omitted, and the Chair will therefore submit the amendment to the House.

Mr. WILSON, of West Virginia. I move to strike out the words "with interest thereon from the 12th day of May, 1865."

The amendment was agreed to.

The bill, as amended, was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. WILSON, of West Virginia, moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

COUNTING THE ELECTORAL VOTE.

Mr. KNOTT. I call for the regular order.

The SPEAKER. The regular order of business is the unfinished business, being the motion to reconsider the vote by which the report of the committee to ascertain and report what are the privileges, powers, and duties of the House of Representatives in counting the votes for President and Vice-President of the United States.

The Clerk read the resolutions, as follows:

Resolved, First. That the Constitution of the United States does not confer upon the President of the Senate the power to examine and ascertain the votes to be counted as the electoral votes for President and Vice-President of the United States.

Second. That the only power which the Constitution of the United States confers upon the President of the Senate in respect to the electoral votes for President and Vice-President of the United States is to receive the sealed lists transmitted to him by the several electoral colleges, to keep the same safely, and to open all the certificates or those purporting to be such in the presence of the Senate and the House of Representatives.

Third. That the Constitution of the United States does confer upon the Senate and the House of Representatives the power to examine and ascertain the votes to be counted as the electoral votes.

Fourth. That in the execution of their power in respect to the counting of the electoral vote the House of Representatives is at least equal with the Senate.

Fifth. That in the counting of the electoral votes, no vote can be counted against the judgment and determination of the House of Representatives.

Sixth. That the committee have leave to sit again and report hereafter further matter for the consideration of the House.

Mr. WILSON, of Iowa. I raise the question of consideration at this time in reference to the resolution just read. I think it would be better to wait until we hear from the joint committee upon this subject. There is a broad principle on which we act, that a majority of this House is not compelled to hear debate upon anything they do not want to hear. A proposition is made here to proceed to the consideration of a question that is debatable. It is competent under the rule for a member to raise the question of consideration even upon a report that contains a question of privilege, and that is what the gentleman from Kentucky [Mr. KNOTT] now calls up. It occurs to me this morning that it is better for us to hear from the joint committee, if they have a proposition to bring into the House; otherwise we will first decide the question and then get the evidence on this important question.

The SPEAKER. The Chair would like to make a suggestion to the gentleman from Iowa [Mr. WILSON] which perhaps may induce him to waive his point; that is, that this question comes up now as unfinished business.

Mr. WILSON, of Iowa. It could not come up in that way. If I recollect aright, and I think the RECORD will bear me out, on yesterday the gentleman from Kentucky [Mr. KNOTT] called up the motion to reconsider. Then would have been the time for me to have raised the question of consideration. But there is one question of higher privilege than the question of consideration, and that is the motion to adjourn, which was then made by the gentleman from Indiana, [Mr. HOLMAN,] shutting me out of the right at that time to raise the question of consideration.

The SPEAKER. The motion to reconsider is of high privilege.

Mr. WILSON, of Iowa. It is next to the motion to adjourn. When the motion to reconsider was called up, then a motion to adjourn was made, which shut me out from raising the question of consideration. This is the earliest moment in which I could raise that question. Of course it is for the majority of the House to settle whether they will consider the question.

The SPEAKER. The Chair is disposed to leave it to the majority. Yet the Chair thinks the RECORD would show that the gentleman from Kentucky [Mr. KNOTT] was on the floor and recognized, and without proceeding to debate yielded for a motion to adjourn. That has been the usual practice with members for the purpose of being entitled to the floor when the consideration of the unfinished business is again resumed.

Mr. WILSON, of Iowa. It would have been utterly impossible for me to raise the question of consideration yesterday, pending the motion to adjourn. It must be in the power of the House to raise that question at some time. I could not possibly have done it last night, because the motion to adjourn was of higher privilege and shut me out.

The SPEAKER. The gentleman will recollect that the RECORD shows that this matter comes over from yesterday as unfinished business. And after the consideration of a question has been entered upon, the gentleman will not certainly insist that he has the right to raise the question of consideration.

Mr. WILSON, of Iowa. O, but it was not debated at all; it was not even stated to the House by the Chair. The gentleman from Kentucky merely rose and called up the motion to reconsider, and without debating at all the motion to adjourn was made.

The SPEAKER. The Chair does not think there is any occasion for disagreement. The Chair will ask the Clerk to read from the RECORD.

The Clerk read as follows:

Mr. KNOTT. I rise to a privileged question. I call up the motion to reconsider the vote by which the resolution reported by the select committee on the privileges, powers, and duties of the House of Representatives in counting the vote for President and Vice-President of the United States was recommitted to that committee.

Mr. HOLMAN. If the gentleman from Kentucky will give way, I will move that the House do now adjourn.

Mr. BUCKNER. I rise to a parliamentary inquiry. Will the consideration of this motion exclude the morning hour to-morrow?

The SPEAKER. The Chair will hold that it comes up as unfinished business.

Mr. HALE. Will the Chair allow me——

Mr. WILSON, of Iowa. I have made my point; I do not wish to consume time by debating it further.

Mr. KNOTT. I desire to know whether I have the floor.

The SPEAKER. The gentleman from Iowa [Mr. WILSON] had the right to the floor upon a parliamentary inquiry looking to a point of order. The gentleman is now off the floor, and the Chair recognizes the gentleman from Kentucky, [Mr. KNOTT.]

Mr. WILSON, of Iowa. The Chair must rule upon my point: I do not withdraw the point which I raised. I merely said when I took my seat that I did not wish to press my point by further debate. The point I distinctly made is this: that it must be within the power of a member to raise the question of consideration on every debatable proposition. I have raised that question in this case at the earliest moment when I could obtain the floor for that purpose, and it is now for the Chair to decide.

Mr. HALE. A word or two on this point of order simply. This motion to reconsider the vote by which a report was recommitted to a committee is an authorized and customary mode of bringing the matter again before the House, a privilege of which the gentleman from Kentucky [Mr. KNOTT] very properly availed himself. That gentleman now seeks to bring up the subject, and claims the floor upon it, I presume, for the purpose of debating it. I take it that there can be no question but what that at some time the question of consideration may properly be raised, as it was this morning by the gentleman from Iowa, [Mr. WILSON.] Whether or not before that question is submitted to the House the gentleman from Kentucky, [Mr. KNOTT,] being upon the floor, has the right to use his hour in debating it, is a question for the Chair to decide. But surely, as it seems to me, the Chair cannot hold that upon bringing this matter before the House the question of consideration cannot be raised, either to be submitted to the House now or when the gentleman from Kentucky shall have occupied his hour. Otherwise this might be a method of preventing the House from saying whether or not it will consider the subject. And upon this point I wish to ask the gentleman from Kentucky whether he wishes now at this stage to precipitate the House to a vote upon this very important question when it is understood, I believe, that another committee having in hand all this subject and its results is ready to report. Does the gentleman from Kentucky wish to push this matter to a vote of the House, or (if he is willing to answer, I ask him courteously) does he only intend to use his hour in debating the question without forcing the House to a vote? which I think would not be a good thing to do. With the report of the other committee now in readiness, which is understood to exhaust this whole subject, (I do not say more ably than the report now before us,) I appeal to the gentleman whether he intends to push the House to a vote upon this question?

Mr. KNOTT. I supposed when I yielded to the gentleman from Indiana yesterday for a motion to adjourn that I would be entitled to the floor this morning in my own right, especially as the point was directly brought to the attention of the House by the question of the gentleman from Missouri, [Mr. BUCKNER,] and I supposed that I would be entitled to an hour to-day. In reply to the gentleman from Maine, [Mr. HALE,] I desire to say that I do not intend to ask the House to vote upon these resolutions now. I do not intend after I shall have said what I have to say on the subject to ask the House to take any course whatever, but to leave the matter entirely in their hands. If they should desire to come to a vote instantly, or to postpone the question, or to take any other action, I shall have no objection. I have never intimated that I intended to precipitate a vote, but, on the contrary, have said to every gentleman who has addressed me on this subject that it was my desire to have the fullest discussion and the most mature deliberation upon every question that should be presented by the committee on the privileges and powers of the House.

Mr. WILSON, of Iowa. I want to call the attention of the Chair to a precedent which he can take into consideration before finally deciding this question. I recollect that at the last session, when the gentleman from Wisconsin [Mr. LYNDE] had a matter relative to patents before the House, the gentleman from Ohio [Mr. SAYLER] being then our Speaker *pro tempore*, it was postponed to a certain day, when my colleague [Mr. SAMPSON] called up the motion to reconsider. The question of consideration was then raised on him, and he was denied the right to speak by a majority of the House.

Before taking my seat I wish to say that it is no part of my intention to cut off the remarks of the gentleman from Kentucky—I always like to hear him speak—but I do not want this subject gone into at large before the general committee of the two Houses shall have reported.

Mr. HALE. Is there any objection to allowing the question of consideration to lie over, the point being reserved, until the gentleman from Kentucky has occupied his hour?

The SPEAKER. In the opinion of the Chair that could hardly be done. The Chair is very clear in the belief that at some time a member has the right to raise the question of consideration; nothing is more clear to the mind of the Speaker than that. The only question is whether the gentleman from Iowa has raised this point at the proper time. The Manual reads:

When any motion or proposition is made, the question "Will the House now consider it?" shall not be put, unless it is demanded by some member, or is deemed necessary by the Speaker.—*Rule* 41. And it is competent for a member to raise the question of consideration upon a report, even though a question of privilege is involved in the report. But after a question has been stated, and its discussion commenced, it is too late to raise the question of consideration.

This question, therefore, turns upon the matter of fact whether the gentleman from Iowa is in time in raising the question of consideration this morning, the resolutions having been called up yesterday. But the Chair recognizes also the fact that when the resolutions then came before the House a higher question was immediately raised, which was not by the rules debatable, that is, a motion to adjourn. If the gentleman from Iowa now states that yesterday he wished to raise the question of consideration, the Chair will entertain it.

Mr. WILSON, of Iowa. I would have been out of order if I had raised it yesterday. That is the reason I did not do it.

The SPEAKER. Let us dispose of this one point before the Chair is asked to decide whether the gentleman would have been out of order yesterday.

Mr. WILSON, of Iowa. O, yes; I was watching yesterday and intending to raise the question.

The SPEAKER. The question is, Will the House consider this subject at this time?

Mr. HALE. Will not unanimous consent be given that the question of consideration shall remain pending until the gentleman from Kentucky has occupied his hour, he having reported the resolutions and not having spoken upon them?

The SPEAKER. The Chair would not like to have that disposition made of the question.

Mr. O'BRIEN. I should object to it anyhow.

The SPEAKER. Now is the proper time to determine the question.

Mr. HALE. Then the question arises whether the House will agree to consider now this resolution as reported from the committee.

The SPEAKER. The Chair understands the gentleman from Iowa to state that he was watching on yesterday to raise the question of consideration, but was cut off by a motion to adjourn, the highest privileged motion which could then be entertained, and that was not debatable. Therefore the Chair feels bound after that statement to submit to the House to-day the question of consideration.

Mr. HALE. I ask the Chair to state distinctly what the question before the House is. Perhaps he will allow me to suggest that the resolutions be again read, so it may be seen by every member here and may be seen elsewhere what it is that the House is asked to do; what it is that the House is asked to consider in the face of what is coming upon us from another source.

The SPEAKER. That is not a point of order. The question now is, will the House consider the resolution reported from the committee on the privileges, powers, and duties of the House of Representatives in counting the vote for President and Vice-President of the United States?

Mr. HALE. Will the Chair have the resolutions again read? because when they were first read our attention was not specifically called to this matter.

The resolutions were again read.

Mr. HALE. I rise to a parliamentary inquiry. Would a motion now be in order to postpone this subject for one week? I desire that because I wish the report of the other committee to come in first so we may consider it all at once.

The SPEAKER. The Chair thinks the question is one of consideration.

Mr. HALE. But intervening, is not a motion to postpone a modification of the idea of consideration? It legitimately leads from that.

Mr. KNOTT. I rise to a question of order and insist that the question shall be put.

The SPEAKER. The Chair is very clear that the question before

the House, as the Chair has already stated, is the question of consideration. The result which the Chair seems to desire can be reached by voting down the motion to consider the resolutions now before the House.

Mr. HALE. I am sincere in my desire for a postponement.

The SPEAKER. Not for a moment does the Chair doubt the gentleman's sincerity. The question before the House is, will the House proceed to the consideration of the resolutions reported from the committee on the privileges, powers, and duties of the House of Representatives in counting the vote for President and Vice-President of the United States? on which the gentleman from Kentucky [Mr. KNOTT] is entitled to the floor.

The House divided; and there were—ayes 122, noes 72.

Mr. HALE. Let us have the yeas and nays.

The yeas and nays were ordered.

The question was taken; and it was decided in the affirmative—yeas 141, nays 81, not voting 67; as follows:

YEAS—Messrs. Ainsworth, Anderson, Ashe, Atkins, Bagby, John H. Bagley, jr., Banning, Bland, Bliss, Blount, Bradford, Bright, John Young Brown, Buckner, Samuel D. Burchard, Cabell, John H. Caldwell, William P. Caldwell, Campbell, Carr, Cate, Caulfield, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Cochrane, Collins, Cook, Cowan, Cox, Culberson, Cutler, Davis, De Bolt, Dibrell, Douglas, Durham, Eden, Ellis, Felton, Field, Finley, Forney, Franklin, Fuller, Gause, Goode, Gunter, Andrew H. Hamilton, Robert Hamilton, Henry R. Harris, Harrison, Hartridge, Harizell, Hatcher, Haymond, Henkle, Goldsmith W. Hewitt, Holman, Hooker, Hopkins, House, Humphreys, Hunton, Hurd, Frank Jones, Thomas L. Jones, Knott, Lamar, Franklin Landers, George M. Landers, Le Moyne, Levy, Lewis, Lord, Luttrell, Lynde, Mackey, Maish, McFarland, McMahon, Metcalfe, Milliken, Mills, Money, Morgan, Mutchler, Neal, New, O'Brien, Odell, John F. Philips, Piper, Poppleton, Powell, Rea, Reagan, John Reilly, Rice, Riddle, John Robbins, William M. Robbins, Roberts, Savage, Scales, Schumaker, Sheakley, Singleton, William E. Smith, Southard, Sparks, Springer, Stanton, Stevenson, Stone, Swann, Tarbox, Terry, Thomas, Thompson, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Waddell, Charles C. B. Walker, Gilbert C. Walker, Walling, Warner, Warren, Erastus Wells, Whitthorne, Wigginton, Wike, James Williams, Jeremiah N. Williams, Wilshire, Benjamin Wilson, Fernando Wood, and Yeates—141.

NAYS—Messrs. Adams, George A. Bagley, John H. Baker, William H. Baker, Ballou, Blair, Bradley, William R. Brown, Horatio C. Burchard, Burleigh, Candler, Cannon, Caswell, Chittenden, Conger, Danford, Davy, Denison, Dobbins, Eames, Evans, Flye, Fort, Frye, Garfield, Hale, Haralson, Hardenbergh, Benjamin W. Harris, Hendee, Henderson, Hoar, Hoge, Hoskins, Hubbell, Hunter, Hurlbut, Joyce, Kehr, Kimball, Lapham, Lawrence, Leavenworth, Lynch, MacDougall, McDill, Miller, Monroe, Norton, Oliver, O'Neill, Packer, Pierce, Plaisted, Potter, Pratt, Purman, Rainey, Robinson, Sampson, Seelye, Sinnickson, Smalls, A. Herr Smith, Strait, Thornburgh, Martin I. Townsend, Tufts, Van Vorhes, Wait, Waldron, Alexander S. Wallace, John W. Wallace, White, Whiting, Andrew Williams, Charles G. Williams, William B. Williams, James Wilson, Alan Wood, jr., and Woodworth—81.

NOT VOTING—Messrs. Abbott, Banks, Bass, Beebe, Bell, Blackburn, Boone, Cason, Chapin, Crapo, Cronnse, Darrall, Dunnell, Durand, Egbert, Faulkner, Foster, Freeman, Gibson, Glover, Goodin, Hancock, John T. Harris, Hathorn, Hays, Hereford, Abram S. Hewitt, Hill, Hyman, Jenks, Kasson, Kelley, King, Lane, Magoon, McCrary, Meade, Morrison, Nash, Page, Payne, Phelps, William A. Phillips, Platt, James B. Reilly, Miles Ross, Sobieski Ross, Rusk, Sayler, Schleicher, Simmons, Stenger, Stephens, Stowell, Terse, Washington Townsend, Walsh, Ward, Watterson, G. Wiley Wells, Wheeler, Whitehouse, Willard, Alpheus S. Williams, Willis, Woodburn, and Young—67.

So the House decided to consider the question.

During the vote,

Mr. CLARK, of Missouri, stated that his colleague, Mr. GLOVER, who was detained at home on account of sickness, would, if present, vote in the affirmative.

Mr. CABELL stated that his colleague, Mr. HARRIS, of Virginia, was unavoidably detained from the session of the House this morning, and had paired with some gentleman on the other side.

Mr. FOSTER, of Ohio, stated that he was paired with the gentleman from Virginia, Mr. HARRIS, who would vote in the affirmative on this question, while he himself would vote in the negative.

Mr. BROWN, of Kentucky, stated that his colleague, Mr. BOONE, was detained from the House by sickness.

Mr. SPRINGER, Mr. HUNTON, and Mr. HOAR stated that they were not within the bar before the last name on the roll was called, but as they were absent in the service of the House they asked, by unanimous consent, leave to have their votes recorded.

There was no objection, and it was ordered accordingly.

Mr. CLARK, of Missouri, moved to dispense with the reading of the roll-call.

There was no objection, and it was ordered accordingly.

The vote was then announced as above recorded.

The SPEAKER. The House has resolved to consider the resolutions reported by the gentleman from Kentucky [Mr. KNOTT] on the privileges, powers, and duties of the House of Representatives in counting the vote for President and Vice-President of the United States, and on that question the gentleman from Kentucky [Mr. KNOTT] is entitled to the floor.

Mr. KNOTT. Mr. Speaker, whoever has carefully examined the proceedings of the convention which framed the Federal Constitution has doubtless been impressed by the fact that the proper method of electing the President and Vice-President of the United States was one of the most perplexing, as it was certainly one of the most momentous questions that challenged the attention or appealed to the patriotism of that illustrious assemblage. Called upon to provide for the periodic selection of a chief executive magistrate for a great and growing union of republics, together with one upon whom his high functions might devolve in certain contingencies, they appreciated the importance of devising a mode that should be the least liable to the disasterous effects of foreign influence, domestic turbulence, or political intrigue and corruption, while at the same time securing to the will of the people its legitimate influence in the choice of those to whom their most important interests were to be confided.

They were warned, however, by the uniform experience of nations, both ancient and modern, that it might frequently be difficult to secure a perfectly fair and peaceable popular election, especially if circumstances should arise involving a variety of conflicting interests presenting in their turn the strongest allurements to corrupt ambition, and exciting the fiercest appeals to passion and prejudice; besides considering it safer, as well as more in harmony with the general plan of the Union, to avoid that complete consolidation of the Government which, at least so far as it concerned the executive department, would be the immediate and necessary effect of submitting the choice of President and Vice-President to a direct vote of the people as a single community.

Accordingly, sir, after having considered a variety of plans, the convention finally adopted the method which has been substantially pursued since the organization of the Government, as the one best calculated to arrive as nearly as possible at a direct expression of the popular will with the least hazard of extraneous interference or domestic disturbance, while at the same time preserving as far as practicable the autonomy and equality of the several States. And, sir, so general was the approbation with which this plan was received, that while the friends of the new government regarded it with the most exalted satisfaction, as combining all the advantages that it could be desirable to unite, it was almost the only new feature in the system that escaped the severe animadversion of its opponents. The author of the sixty-seventh number of the Federalist, in a very elevated tone of enthusiasm, expressed the opinion that this "process of election affords a moral certainty that the office of President would never fall to the lot of any man who was not endowed in an eminent degree with the requisite qualifications. Talents," said he, "for low intrigue and the little arts of popularity may alone suffice to elevate a man to the first honors of a single State; but it will require other talents and a very different kind of merit to establish him in the esteem and confidence of the whole Union, or so considerable a portion of it as would be necessary to make him a successful candidate for the distinguished office of President of the United States. It will not be too strong to say that there will be a constant probability of seeing the station filled by characters pre-eminent for ability and virtue."

If this opinion has not been verified by subsequent experience, if indeed when read in the light of impartial, inexorable history it should seem to be the bitterest, cruelest irony that ever fell from the pen of man, it is perhaps to be attributed not so much to any intrinsic defect in the system as to a want of that constant jealousy, that untiring, unremitting, sleepless vigilance with which a free people should maintain their own rights and protect their own interests if they would perpetuate their liberties. For, sir, after all it is true, as was remarked by one of the most profound and thoughtful of all the distinguished commentators upon American jurisprudence, after summing up with consummate felicity the arguments in favor of our present electoral system, that—

> There is no other mode of appointing the Chief Magistrate, under all the circumstances peculiar to our political condition, which unites in itself so many unalloyed advantages.

Yet the same illustrious author, fifty years ago, predicted that—

> If ever the tranquillity of this nation is to be disturbed, or its liberties endangered by a struggle for power, it will be upon this very subject of the choice of a President. This—

Said he—

> is the question that is eventually to test the goodness and try the strength of the Constitution; and if we shall be able for half a century hereafter to continue to elect a Chief Magistrate of the Union with discretion, moderation, and integrity, we shall undoubtedly stamp the highest value on our national character, and recommend our republican institutions, if not to the imitation, yet certainly to the esteem and admiration of the more enlightened part of mankind.

How far the results of our presidential elections during the half century which has just elapsed may have commended our institutions to the admiration and esteem of mankind it is perhaps unnecessary to inquire, though it may reasonably be assumed, that no considerable number of intelligent foreigners have been struck blind by the dazzling splendor of the prudence, moderation, or integrity of those most immediately engaged in such transactions. But, sir, just fifty years have passed since this mournful prophecy was penned, and there is not one of us who does not feel and know that we stand face to face with its fulfillment. There is not one of us who does not feel that the people of this country are treading upon the thin and treacherous crust of a smoldering volcano whose first convulsive throes have already shaken this continent from its center to its circumference. Look around you, sir! Behold the appalling prostration of every variety of active enterprise. See the stagnation in all our useful industries, and the daily loss of millions to the business interests of our country; capital comparatively idle, and thousands of honest, stalwart, sturdy laborers wandering from door to door, not begging food for their starving families, but imploring leave to earn it by honest toil, to return weary and dispirited to their bleak hearth-stones, where their helpless wives and little ones are confronted by the gaunt grinning specters of misery and famine. Why is this so, sir? Why is it that the people of this country from one end of it to the other are looking to our action here with an ag-

ony of solicitude such as was never felt among mortal men before? Sir, it is because the hour which is to test the strength and try the goodness of our Constitution has come. It is because there is a deep and wide-spread apprehension, an apprehension pervading all classes everywhere, that under some mysterious species of political legerdemain the provisions of the Federal Constitution in relation to the election of President and Vice-President are to be transformed into a miserable delusive sham, a monstrous masterpiece of deception and fraud; that the choice which the American people have made of their chief executive officers by over a quarter of a million majority at the polls is liable to be defeated by the machinations of a handful of political buccaneers assisted by the authorities of the Federal Government here at the capital.

Whether that apprehension is well or ill founded I will not pause here to inquire, nor will I undertake to predict at this moment what will be the ultimate effect which any action that may be taken by this Congress in relation to the electoral votes for President and Vice-President will have upon the destinies of this country. What that may be God in His infinite wisdom only knows, as He in His infinite mercy has ordained and will direct the cause. I only know that as a member of this House, as one of the Representatives of the grandest people that ever dwelt beneath the sun, I, in common with every gentleman around me, have a high and solemn duty to perform in determining the true result of the recent presidential electon; and that if I should neglect or refuse to *ascertain* that duty as far as I may have the capacity, or hesitate to perform it faithfully and fearlessly as I honestly understand it, I would regard myself as a traitor and a coward, deserving the detestation and scorn of the generous and confiding constituency which sent me here.

I would, therefore, invite gentlemen to a consideration of that duty through the calm clear medium of dispassionate reason, and would in the outset ask their attention to certain premises drawn directly from the Constitution, and about which I presume there can be no possible dispute, as I will state them in the exact language of that instrument.

First. The Constitution of the United States provides that no person except a natural-born citizen, or a citizen of the United States at the time of the adoption of the Constitution, shall be eligible to the office of President of the United States; and that no person shall be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States; and that no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Now it is certainly possible that all, or at least a majority of all the electors appointed, might cast their votes for a person for President or Vice-President who was not a natural-born citizen, and it is by no means improbable that a majority of all the electors appointed might cast their votes for one who although a natural-born citizen had not attained to the age of thirty-five years, or who had not resided fourteen years within the United States. Yet, sir, there is not a sane man on the continent who, in view of the plain constitutional provisions I have mentioned, would pretend for a moment that a solitary one of these votes would have a particle more force or virtue than if the ballots had been cast for the man in the moon, or the Tycoon of Japan. And why? Simply because the Constitution declares such persons ineligible; that is, as utterly incapable of receiving the votes as if they had no physical existence whatever.

But again: The Constitution further provides that—

> Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

And in view of *this* provision it is perfectly manifest that if a number of persons within a given State, equal to the whole number of Senators and Representatives to which such State might be entitled, should get together and assume to cast the electoral vote of that State without having been appointed electors by the State, or in the manner directed by the Legislature, or if the Legislature had totally failed to prescribe any manner of appointing electors whatever, every solitary one of such pretended votes would be as absolutely null and void as so many pieces of blank paper. And so, if a person claiming to have been appointed an elector in any given State, who at the time of his supposed appointment was a Senator or Representative in Congress or held an office of profit or trust under the United States, should assume to vote as such elector, the act and the pretended vote would be utterly null and void, simply because a person under such circumstances has no more constitutional power to cast an electoral vote for President or Vice-President than if he had never been born.

And again, sir, the Constitution provides that—

> The electors shall meet in their respective States and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each; which lists they shall sign and certify, and transmit sealed to the seat of Government of the United States, directed to the President of the Senate.

Now, sir, supposing that the electors of a given State were all perfectly eligible at the time of their appointment, and that they were really appointed by the State in strict conformity with the manner directed by the Legislature thereof, yet that they met outside of the State, or failed to vote by ballot, or failed to designate in distinct ballots the persons voted for as President and Vice-President, or failed to make distinct lists of the persons voted for as President and Vice-President, or failed to sign or certify such lists, or to transmit them sealed, or directed them to the Speaker of the House, the Secretary of the Senate, the President of the United States, or any other officer or person than the President of the Senate, who would pretend that their votes would be valid for any purpose whatever?

It will not do, sir, to say that these provisions are merely directory. There is nothing in the Constitution of the United States anywhere which can be said to be merely directory. It would be insulting to the memory of the sages who framed that Constitution and degrading to the dignity of that instrument to suppose that they descended to prescribe mere advisory directions in unessential matters which might be obeyed or totally disregarded at pleasure, instead of laying down fixed and unvarying rules by which all persons charged with the performance of any function under the Constitution should shape their actions and regulate their conduct therein. Where the Constitution, which is the supreme law of the land, fixes the time and prescribes the mode in which a particular thing shall be done, there is no power on earth authorized to say it may be done at another time and in a different mode than those prescribed.

Now, sir, from what I have already quoted verbatim from the Constitution, it is as absolutely certain as that two and two make four that what is pretended to be or purports to be an electoral vote for President or Vice-President of the United States may be absolutely null and void for any one of three causes: First, the ineligibility or want of capacity of the person voted for to receive such vote, growing out of his nativity, his want of proper age, or his lack of residency in the United States for the requisite length of time; second, the lack of constitutional authority in the person pretending to give the vote, either because he was not appointed by the State, or because no mode for the appointment of electors had been prescribed by the Legislature of the State, or because the supposed appointment was not made in the manner directed by the Legislature of the State, or because the person assuming to vote as an elector was a Senator or Representative in Congress or held an office of trust or profit under the United States at the time of his pretended appointment; and, third, because the vote was not given at the place or in the manner or certified as prescribed by the Constitution of the United States. And if such pretended votes *are* void, it must follow as the irresistible logical conclusion that they cannot have the effect to elect the person for whom they may be cast, either as President or Vice-President, any more than if they had been left entirely blank.

But again, sir. The Constitution further provides that "the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President;" and, moreover, that "The person having the highest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list the Senate shall choose a Vice-President."

So, sir, it is evident that there must be some competent authority somewhere to examine and verify the lists purporting to have been sent up as the electoral vote, then to decide upon the validity of each vote thereon, next to ascertain for whom each valid vote was given, and finally to enumerate arithmetically the votes constitutionally cast for each, in order to ascertain, first, who has been elected President and who Vice-President, and, second, if no one has been elected President, that the fact may be known, and the names of the three highest on the list ascertained, in order that the House may proceed at once to the election of a President as the Constitution directs, and third, if no person has been elected Vice-President, that the facts may be ascertained which will authorize and enable the Senate to perform its constitutional duty of electing a person to that office.

If these conclusions are correct, sir, (and I think there can be no question as to their logical accuracy,) it becomes a matter of vital importance to understand upon whom the Constitution has devolved these tremendous powers; for they are all involved necessarily in the power to count, as it must be determined *what* shall be counted before the mere act of counting can be done, and, as the authority to perform those preliminary functions preparatory to the actual enumeration of the votes is conferred upon no one else, it must be exercised by the persons by whom or under whose supervision the enumeration is made. Who are those persons?

This question, sir, has recently occupied a larger space in the public mind and has excited a greater degree of popular solicitude perhaps than any other that has ever occupied the attention of the American people, and quite naturally a variety of suggestions has been made as to its proper solution. Among the more prominent of these is the opinion, which has been so zealously advocated of late, that all of the grave and important powers I have enumerated, if, indeed, they reside anywhere, are vested in the President of the Senate; not, to be sure, in direct and positive terms, but by implication

from the following words in the twelfth amendment to the Constitution:

The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted.

From this view the committee, in the resolutions under consideration, have expressed a positive and unqualified dissent, in which for one, sir, I most heartily concur. What new light arising out of existing circumstances may have developed this recently conceived opinion or what new principle hitherto unknown among the long-established and clearly defined canons of legal interpretation may be invoked to sustain it, I am totally unable to say; for certainly, sir, it is warranted neither by the language of the text, the reason, or spirit of the provision, nor the practical construction which has uniformly been given to it from the organization of the Government to the present time.

I need not call the attention of the learned gentlemen I see around me, sir, to the first, and perhaps the most familiar, of all the rules of legal construction, a rule laid down in the earliest dawn of enlightened jurisprudence, and reiterated by Coke, and Blackstone, and Vattel, and Domat, and every other judicial writer or jurist worthy of consideration who has ever had occasion to advert to the subject, the plain, undisputed rule alike of law and of common reason, that in the interpretation of any statutory provision, or any other written instrument whatever, recourse must be had in the first instance to the words which have been employed, and that those words must be taken in their plain, ordinary, and most obvious sense, unless there is something lurking in the context which absolutely forbids it. Nor need I insist, sir, that, of all the written instruments with which the American statesman has any concern whatever, this rule should apply with the greatest force in the interpretation of the Constitution of the United States, emanating as it did from the sublimest galaxy of intellectual greatness that ever shed its effulgence upon the annals of mankind, and reflecting the associated wisdom of the grandest assemblage of patriotic statesmen that ever met upon the earth; men of thought, men of culture, men who understood thoroughly the use and force of language, men engaged in laying down great fundamental rules intended to define the duties and limit the powers of a mighty Government, in all its departments, through all the cycles of coming time. Here, sir, if anywhere in written language, we should expect to find precision of thought and accuracy of expression.

What then is the plain, natural, common-sense import of this language, "The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted?" It certainly does declare in express terms that the President of the Senate shall open the certificates, and open *all* of them, and that he shall open them in the presence of the Senate and House of Representatives; but does it say in so many words that he shall count the votes even if nothing more were implied in the word "count" than merely to enumerate those upon each list and declare the sum? No one will pretend that it does. Then, if the framers of the Constitution had intended that he should count them, why did they not say so? They could have done so, and that in terms so plain that the simplest child could have understood it. Had it been the intention of the framers of the Constitution that the President should not only open the certificates but count the votes in the presence of the Senate and House of Representatives, they could have expressed that intention with equal elegance, by a very slight alteration in the arrangement of the identical words they did employ, and that too so clearly that "the wayfaring man, though a fool, shall not err therein." They could and would have said, "The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and then count the votes." And had they done so there could have been no earthly doubt as to what they meant. But, sir, they did not choose to do so; and the irresistible conclusion must be that they did not intend to confer upon the President of the Senate any such tremendous powers as have recently been and are still being claimed for him, unless there is something in the context clearly indicating that intent or unless some such overpowering reason can be found in the very purpose and spirit of the provision as will show that such power belongs to him by inevitable implication.

Now, sir, examine the context with a microscope if you will, and you will find nothing which confers any more power upon the President of the Senate to count the electoral vote than upon the Sergeant-at-Arms or the Doorkeeper. The whole thing is embraced in the single sentence I have quoted. Let us see therefore if there is anything in the *reason* or *spirit* of the provision which can have the effect to give him that power.

That there was a manifest propriety, a sound and sufficient reason, for the requirement that the lists of electoral votes should be transmitted to the President of the Senate in preference to any one else no one can deny, because in the first place it was necessary that some one person should be the repository of the lists that should come up from the several States, from the time they should respectively reach the seat of Government until they should be opened; and his high position would be the best guarantee of their safe-keeping and security from alteration until that time; and, secondly, because his attitude as presiding officer of the Senate naturally suggested him as the proper person to lay them before the Senate and House when they should meet to see them opened, and that it would be eminently proper that in discharging that duty he should *know* that he was opening the identical certificates sent up, which he could *not* know unless he had received them and kept them all the time in his own possession. There was an obvious propriety too in his being required to open *all* the certificates, for, however exalted might be his official position, he might, in case of two or more returns being sent up from the same State, be influenced by partisan zeal or tempted by personal ambition to withhold the very certificate which contained the true vote of the State. It was quite proper also that he should be required to open them in the presence of the Senate and House of Representatives, provided those bodies were to have any control over them or any function to perform in respect to them after they were opened; but such a requirement was certainly a vain and unnecessary thing if it was intended that they should sit idly by like a gang of poor retainers at a rich man's feast while the President of the Senate should count the electoral votes according to his sovereign will and pleasure. But, sir, while abundant reasons can be assigned for all these provisions, can any one say why the President of the Senate of all others should count the electoral votes for President and Vice-President and declare who has been elected to either of those high offices? Is there anything, either in his official position or the general nature of his functions, that would point *him* out as peculiarly fitted for the discharge of that high duty to the exclusion of all other persons whatever? On the contrary, sir, permit me to inquire if there are not grave reasons why this duty should not be committed to any one man, and especially to the very man who, as our past history shows, may of all others have the deepest and most direct interest in the result of the count?

I have not the time, sir, even if I had the inclination, to enter into an examination of the precedents with the view of showing that this novel doctrine that the President of the Senate has the power to count the electoral votes and declare the result is directly at variance with the settled practice of the Government, but I may be permitted to say, what nobody will deny, that it is utterly at war with the construction which the Republican party themselves put upon this very provision of the Constitution twelve years ago, when they had absolute control of every department of the Government, including both Houses of Congress, and which they continued to practice as well as preach so long as they rode upon the flood-tide of success. Why the twenty-second joint rule is not just as fair and just as constitutional now as it was twelve years ago, or eight years ago, or even four years ago, and why there has been such a radical revolution in the opinion of certain republican leaders as to the constitutional mode of procedure in such cases, I confess I do not know.

Perhaps they can give some good reason for their wonderful exhibition of political gymnastics. I don't know. Perhaps they may only say, as the gentleman from Virginia [Mr. HARRIS] said yesterday:

> The devil was sick, the devil a monk would be;
> The devil was well, the devil a monk was he.

In view, therefore, Mr. Speaker, of the plain language of the Constitution and of the absolute certainty that no reasonable or necessary implications can be deduced from that language by which it can be claimed that the President of the Senate has any other authority in respect of the electoral votes, except such as is therein expressly conferred upon him, it seems to me that the inevitable, irresistible, logical conclusion from the premises is aptly expressed in the language of the resolutions reported by the committee, that the sole power devolved by the Constitution of the United States upon the President of the Senate in respect to the electoral votes for President and Vice-President of the United States is to receive the sealed lists of votes which may be transmitted to him, keep them safely, and open all the certificates in the presence of the Senate and House of Representatives. There, sir, his functions cease. Whatever he might do beyond that would be a bold usurpation of authority and a plain violation of the Constitution. But, Mr. Speaker, the committee have laid down another proposition in the resolutions under consideration which is, in my judgment, utterly irrefragable; and that is that the power to count the electoral votes *is* conferred by the Constitution upon the Senate and House of Representatives. I admit that this power is not expressed in so many words; but, sir, it arises by a necessary and irresistible implication out of a power which *is* conferred and is an indispensable incident to certain duties which are enjoined upon them respectively by the expressed words of the Constitution.

Now, let us recur to the language of the twelfth amendment and see if this is not so. It provides that—

> The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. * * * The person having the greatest number of votes for Vice-President shall be the Vice-President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list the Senate shall choose the Vice-President.

Now, sir, it will not be denied that the clauses I have just read expressly enjoin upon the Senate and House of Representatives respectively the duty of electing a President or Vice-President in the event that no person has received a majority of all the electors appointed, and limit the choice to three particular persons in the one case and to two in the other. When the contingency occurs the House, upon whom

the duty devolves, must proceed to make the choice. But all will admit that somebody must determine when that contingency has happened, and as no other power is designated in the Constitution to judge for them they must necessarily judge for themselves when it has occurred. In order to come to a judgement, however, as to whether the contingency has arisen, they must necessarily determine a variety of preliminary questions. That is, in order to know whether any one candidate has received a majority of the whole number of electors appointed, they must first ascertain how many have been appointed; but whether any or all of those purporting to be electors have been appointed or not depends upon several other questions: first, whether they were eligible or capable of being appointed at the time of their alleged appointment; second, whether the State Legislature had directed the manner in which the appointment should be made; and, third, whether they have been actually appointed in the manner directed by the Legislature. All these questions, in the absence of any other authority to determine them, must be determined by the Senate and House of Representatives themselves in order to arrive at the whole number of electors appointed. Having determined that fact, the next step must be to ascertain whether any candidate has received a majority of that number. That would depend, first, upon whether the person appearing to have received the votes of a majority of all the legally appointed electors was eligible or capable of receiving them or not; as whether he was a natural-born citizen, or had attained to the age of thirty-five years, or had been fourteen years a resident within the United States; second, whether the votes appearing to have been cast by legally appointed and competent electors for the person appearing to have received a majority were actually cast, and the lists thereof made out, signed, and certified within the State at the time and in the manner prescribed by the Constitution of the United States and the laws made in pursuance thereof; and these questions they must in like manner determine for themselves, as no one else has been designated in the Constitution to do it for them. In a word, sir, the power to elect in the contingency provided for carries with it by a necessary and unavoidable implication the power to judge and determine what votes are valid and legally cast, and to count such as may be so adjudged, in order to ascertain and determine whether the power of election can be constitutionally exercised.

I will not now undertake to discuss the particular mode in which the two Houses should exercise their power of counting the electoral votes or the method in which they should discharge the duties incident thereto; but, sir, in whatever manner they may choose to do so the House of Representatives is at least the equal of the Senate; equal in power, equal in dignity, and equally entitled to the consideration of the several departments of the Government and of the people, and in no event can anything be counted as an electoral vote for President contrary to its deliberately expressed judgment. "What, sir," you may say, "can the House reject the vote of a sovereign State? Impossible! It would be revolutionary!" Certainly, sir, it would be revolutionary for the House or for the House and Senate combined to reject the vote of a sovereign State, and whoever would consent to such a proposition ought to be scourged through the world at a cart's-tail, with the evidence of his infamy branded upon his forehead, an object of loathing and contempt and scorn to all honest men everywhere. Sir, I can conceive of but one other character who would more justly deserve the universal execration of mankind, and that is the man who would consent to the perpetration of such a shameless outrage upon a sovereign State as the counting of an illegal, invalid, forged, or fraudulent ballot as the electoral vote of that State, no matter by whom fabricated or by what criminal device it may have been placed among the genuine votes of the States. No, sir, no power on earth can legally reject any valid electoral vote. It would be worse than treason to do so, but it would be equally criminal to count *as* an electoral vote a fraudulent or void thing. Mark you, sir, it is *votes* that the States must send here—genuine, valid votes! If we ask them for bread, shall they give us a stone? If the Constitution asks of the State of Louisiana eight fishes, shall Mr. Kellogg send eight rattlesnakes to sting it to death?

But, sir, it may be asked if Congress or either House in determining these questions can possibly go behind the "great seal" of a State. When our eyes once rest upon the talismanic impression of that potential instrument, are we not at once as powerless as if we had looked upon the head of Medusa or been stricken by the blasting glance of the basilisk? It may sometimes be a difficult and arduous undertaking, sir, to get behind a great seal; as much so, perhaps, as it was formerly to double the Cape of Good Hope; but, if gentlemen will examine the Constitution of the United States and the proceedings of the convention by which it was framed, I apprehend they will find but little difficulty in getting at a fraudulent or invalid electoral vote, even though it may be concealed behind a "great seal." If they will examine the proceedings of the convention they will find that it was moved and seconded to insert after the word "transmit" the words "under the seal of the State;" so the clause would read: "And they shall make a list of all the persons voted for and of the number of votes for each; which list they shall sign and certify and transmit *under the seal of the State* to the seat of Government, directed to the President of the Senate;" which motion to insert, it seems, was negatived without a call of the yeas and nays. No, Mr. Speaker, "the fathers," as they are now reverently and affectionately styled whenever an outrage is about to be perpetrated against the Constitution which they have given us, may have labored under the delusion that "No man worthy of the office of President would be willing to hold it if counted or placed there by fraud" and they may have believed that the devil could cite Scripture for his purpose, but they were not so deeply skilled in the art and mystery of counting votes as to fully understand how valuable the Army and Navy might be as auxiliary in the performance of that difficult feat now familiarly known as "a fair count." Had they been thoroughly enlightened on that point, sir, they would undoubtedly have made provision for stripping the frontiers and crowding the capital with soldiers whenever the electoral vote for President and Vice-President should be counted. The Constitution would never have left their hands, sir, without a provision that the President of the United States should see to it that on every such occasion not less than thirteen batteries of artillery should be placed within easy cannon-shot of the Senate and House of Representatives. Ignorant and unsuspecting as they were, it never even occurred to them that the picture of a nest of pelicans or any other outrage upon the fine arts should be more potent as an instrument of evidence than the testimony of a thousand living witnesses. Consequently you will find, sir, upon consulting the Constitution that the only rule which they prescribed for authenticating the electoral vote of any State was that the electors should sign and certify the lists of votes which they should transmit sealed to the seat of Government of the United States, directed to the President of the Senate, leaving it to the Senate and House of Representatives, upon whom the duty of counting the votes should devolve, to enlighten their own consciences, and inform their own judgments as to their validity by such legal means of proof as to them should seem expedient and satisfactory under the circumstances. Supposing that the Senate and House of Representatives would discharge the grave duties committed to them honestly, fairly, and in conformity to the obligation of the oaths they had taken, they deemed it best to circumscribe their action by no inflexible rules as to the nature and extent of the evidence by which they should be governed.

It is true, sir, that by an act of Congress passed in 1792 it was attempted to be made the duty of the executive of each State to cause three lists of the names of the electors of such State to be made and certified and delivered to the electors, on or before the day on which they are required to meet and cast their votes; yet a very little reflection is sufficient to show that that provision is utterly nugatory; for, even if it be admitted that Congress can by law impose any duty on the governor of a State, or whether it can or not, it will certainly not be contended that this Congress can by a mere statute circumscribe or impair the constitutional powers of any Congress which may come after it.

Now, sir, a few words in relation to the second resolution offered by the minority of the committee, and I will have done. That resolution is in the following words:

Resolved, Second, That in the absence of legislative provision on the subject, or authoritative direction from the Senate and House of Representatives, the President of the Senate upon opening the certificates declares and counts the electoral votes for President and Vice President of the United States.

This, in effect, if not in terms, declares that the President of the Senate is invested with power and authority not only to open the certificates, but to decide what are and what are not the votes to be counted; to reject what in his judgment may be invalid, enumerate the balance, and declare the result; but that he may be divested of that authority by act of Congress, or perhaps a joint rule or concurrent resolution of the two Houses.

Now, if he is really invested with this tremendous power, he must derive it directly or by unavoidable implication from the Constitution of the United States. If he does derive it from the Constitution, either expressly or impliedly, it is his right to exercise it in defiance of any act of Congress that may be passed; and Congress has no more constitutional authority to strip him of it than they have to take the command of the Army and Navy from the President or to regulate the descent of the crown of Russia. If they have, then Congress by virtue of that same authority may strip every department of the last vestige of its constitutional power and totally subvert and revolutionize the Government by a simple statutory enactment. If gentlemen can defend such a doctrine in the face of the country, I congratulate myself and the rest of the American people that they now have the opportunity to do so, for, if the two Houses of Congress are thus absolute, it is high time we should know it. And there is another thing which I would like for the gentlemen to explain in support of this resolution. They will agree with me that no power can be *implied* from the Constitution except in aid of some power which has been expressly granted. We all admit, too, that the power to open the certificates in the presence of the Senate and House of Representatives *is* expressly granted by the Constitution to the President of the Senate. Now, what I wish to have explained is this: *How can the power to count the votes aid the President of the Senate in the execution of his power to open the certificates?* When these difficulties are cleared out of the way it will be time enough to consider the propriety of assenting to the propositions embraced in the resolution.

I am conscious, sir, that in the limited time I have had I have been merely able to touch the surface of the grave questions presented for the consideration of the American Congress in relation to the election of President and Vice-President. Other gentlemen will doubtless explore them more thoroughly. Thanking the House, therefore

for the courteous attention it has given me. I have simply to add that, in my judgment, any attempt on the part of any man or body of men, whether executive, legislative, or ministerial, to coerce this House to count or consent to the count of a thing as an electoral vote which, in its judgment, is false, or fraudulent, or void, or to throw out of the count any which in its judgment is genuine and valid, to any wise interfere with the peaceful and orderly exercise of any of its functions in relation to the electoral votes, in accordance with its own judgment, would be totally subversive of our constitutional government, and, if accompanied by armed and organized force, that such attempt would be treason.

Before Mr. KNOTT had concluded his speech his hour expired.

Mr. FRYE. I ask that by unanimous consent the time of the gentleman from Kentucky be extended.

There was no objection, and Mr. KNOTT'S time having been extended indefinitely, he resumed, and concluded his remarks, as printed above.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of its clerks, informed the House that the Senate insisted upon its amendments to the bill (H. R. No. 3741) amending the act incorporating the proprietors of Glenwood Cemetery, disagreed to by the House of Representatives, agreed to the conference asked for by the House on the disagreeing votes of the two Houses thereon, and had appointed Mr. SHERMAN, Mr. INGALLS, and Mr. COCKRELL as conferees on the part of the Senate.

The message further announced that the Senate had passed, with amendments in which the concurrence of the House was requested, bills of the House of the following titles:

The bill (H. R. No. 231) for the relief of Robert Erwin; and

The bill (H. R. No. 859) for the benefit of Andrew Williams, of Weakley County, Tennessee.

The message further announced that the Senate had passed without amendment the bill (H. R. No. 1850) granting a pension to Harvey B. Kilbourn, private in Company C, Thirtieth Regiment Pennsylvania Militia.

The message further announced that the Senate had passed bills of the following titles; in which the concurrence of the House was requested:

A bill (S. No. 948) for the relief of Thomas M. Simmons;

A bill (S. No. 920) to authorize Louis Petoskey, of Michigan, to enter a certain tract of land which embraces his house and improvements;

A bill (S. No. 734) for the relief of William Jasper Cordell;

A bill (S. No. 286) for the relief of W. S. McComb, of the State of Georgia; and

A bill (S. No. 36) amending the pension law so as to remove the disability of those who, having participated in the rebellion, have, since its termination, enlisted in the Army of the United States and become disabled.

COUNTING THE ELECTORAL VOTE.

Mr. KNOTT. I ask that the motion to reconsider the vote recommitting these resolutions be sustained, in order that my friend the gentleman from Illinois [Mr. BURCHARD] may have an opportunity to present his resolutions on the part of the minority in a regular manner.

The question being put, the motion to reconsider was agreed to.

Mr. KNOTT. I now withdraw the motion to recommit.

Mr. BURCHARD, of Illinois. On behalf of the minority of the committee I offer as a substitute for the resolutions reported by the majority of the committee the resolutions which I send to the desk.

The Clerk read as follows:

Resolved, First, That it is the power and duty of the House, conjointly with the Senate, to provide by law or other constitutional method a mode for fairly and truly ascertaining and properly counting the electoral vote of each State, so as to give effect to the choice of each State in the election of President and Vice-President.

Resolved, Second, That in the absence of legislative provision on the subject or authoritative direction from the Senate and House of Representatives, the President of the Senate, upon opening the certificates, declares and counts the electoral votes for President and Vice-President of the United States.

Mr. PAYNE. I ask the gentleman from Illinois to yield to me that I may make a privileged report.

Mr. BURCHARD, of Illinois. I yield to the gentleman.

Mr. PAYNE. I am instructed by the select committee appointed to act in conjunction with a similar committee of the Senate to prepare and report "a proper mode of counting the electoral votes for President and Vice-President, and of determining questions that may arise as to the legality and validity of returns made of such votes by the several States," to submit a joint report of the Senate and House committees; and also a bill, which I will ask the Clerk to read.

It will be observed that the report is signed by every member of the House committee and by six of the seven members of the Senate committee.

The Clerk read the report, as follows:

The committees of the Senate and House of Representatives appointed under the following several resolutions—

HOUSE RESOLUTION.

"Whereas there are differences of opinion as to the proper mode of counting the electoral votes for President and Vice-President, and as to the manner of determining questions that may arise as to the legality and validity of returns made of such votes by the several States;

"And whereas it is of the utmost importance that all differences of opinion and all doubt and uncertainty upon these questions should be removed, to the end therefore that the votes may be counted and the result declared by a tribunal whose authority none can question and whose decision all will accept as final: Therefore,

"*Resolved*, That a committee of seven members of this House be appointed by the Speaker, to act in conjunction with any similar committee that may be appointed by the Senate, to prepare and report without delay such a measure, either legislative or constitutional, as may, in their judgment, be best calculated to accomplish the desired end, and that said committee have leave to report at any time."

SENATE RESOLUTION.

"*Resolved*, That the message of the House of Representatives on the subject of the presidential election be referred to a select committee of seven Senators, with power to prepare and report, without unnecessary delay, such a measure, either of a legislative or other character, as may, in their judgment, be best calculated to accomplish the lawful counting of the electoral votes, and best disposition of all questions connected therewith, and the due declaration of the result; and that said committee have power to confer and act with the committee of the House of Representatives named in said message, and to report by bill or otherwise"—

beg leave to report to their respective Houses that they have considered the subject named in said resolutions, and have had full and free conference with each other thereon, and now report the accompanying bill and recommend its passage. The substance of the bill embraces—

First. Provisions for the meeting of the two Houses, as required by the Constitution, and the general course of proceeding, and the declaration of the result.

Second. Provisions for the disposition of questions arising in respect of States from which only one set of certificates has been received; that each House shall consider the question and shall only decide against a vote by concurrent, affirmative action.

Third. Provisions for so-called double returns from a State; that such conflicting returns and papers shall be submitted to the consideration of a commission, composed of equal numbers of members of the Senate and of the House of Representatives and of the Supreme Court of the United States; that this commission shall be organized and sworn and have power to consider and decide, according to the Constitution and law, what is the constitutional vote of the State in question; and that such decision shall govern the disposition of the subject, unless both Houses shall determine otherwise.

Fourth. It is provided that the act shall not affect either way the question of the right of resort to the judicial courts of the United States by the persons concerned as claimants to the offices in question.

We have applied the utmost practicable study and deliberation to the subject, and believe that the bill now reported is the best attainable disposition of the difficult problems and disputed theories arising out of the late election. It must be obvious to every person conversant with the history of the country and with the formation and interpretation of the Constitution that a wide diversity of views and opinions touching the subject, not wholly coincident with the bias or wishes of the members of political parties, would naturally exist. We have in this state of things chosen, therefore, not to deal with abstract questions, save so far as they are necessarily involved in the legislation proposed. It is, of course, plain that the report of the bill implies that in our opinion legislation may be had on the subject in accordance with the Constitution, but we think that the law proposed is inconsistent with few of the principal theories upon the subject. The Constitution requires that the electoral votes shall be counted on a particular occasion. All will agree that the votes named in the Constitution are the constitutional votes of the States, and not other; and when they have been found and identified, there is nothing left to be disputed or decided; all the rest is the mere clerical work of summing up the numbers, which being done, the Constitution itself declares the consequence.

This bill, then, is only directed to ascertaining, for the purpose and in aid of the counting, what are the constitutional votes of the respective States; and, whatever jurisdiction exists for such purpose, the bill only regulates the method of exercising it. The Constitution, our great instrument and security for liberty and order, speaks in the amplest language for all such cases, in whatever aspect they may be presented. It declares that the Congress shall have power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States or in any department or officer thereof." The committee therefore think that the law proposed cannot be justly assailed as unconstitutional by any one, and for this reason we think it unnecessary, whatever may be our individual views, to discuss any of the theories referred to. Our fidelity to the Constitution is observed when we find that the law we recommend is consistent with that instrument.

The matter then being a proper subject for legislation, the fitness of the means proposed becomes the next subject for consideration. Upon this we beg leave to submit a few brief observations.

In all just governments both public and private rights must be defined and determined by the law. This is essential to the very idea of such a government, and is the characteristic distinction between free and despotic systems. However important it may be, whether one citizen or another shall be the Chief Magistrate for a prescribed period, upon just theories of civil institutions, it is of far greater moment that the will of the people, lawfully expressed in the choice of that officer, shall be ascertained and carried into effect in a lawful way. It is true that in every operation of a government of laws, from the most trivial to the most important, there will always be the possibility that the result reached will not be the true one. The executive officer may not wisely perform his duty, the courts may not truly declare the law, and the legislative body may not enact the best laws; but, in either case, to resist the act of the Executive, the courts, or the Legislature, acting constitutionally and lawfully within their sphere, would be to set up anarchy in the place of government. We think, then, that to provide a clear and lawful means of performing a great and necessary function of government, in a time of much public dispute, is of far greater importance than the particular advantage that any man or party may in the course of events possibly obtain. But we have still endeavored to provide such lawful agencies of decision in the present case as shall be the most fair and impartial possible under the circumstances. Each of the branches of the Legislature and the judiciary is represented in the tribunal in equal proportions. The composition of the judicial part of the commission looks to a selection from different parts of the Republic, while it is thought to be free from any preponderance of supposable bias; and the addition of the necessary constituent part of the whole commission, in order to obtain an uneven number, is left to an agency the farthest removed from prejudice of any existing attainable one. It would be difficult, if not impossible, we think, to establish a tribunal that could be less the subject of party criticism than such a one. The principle of its constitution is so absolutely fair that we are unable to perceive how the most extreme partisan can assail it, unless he prefers to embark his wishes upon the stormy sea of unregulated procedure, hot disputes, and dangerous results, that can neither be measured nor defined, rather than upon the fixed and regular course of law, that insures peace and the order of society, whatever party may be disappointed in its hopes.

The unfortunate circumstance that no provision had been made on the subject before the election has greatly added to the difficulties of the committees in dealing with it, inasmuch as many of the people of the country, members of the respective political parties, will perhaps look with jealousy upon any measure that seems to involve even the possibility of the defeat of their wishes; but it has also led the committees to feel that their members are bound by the highest duty, in such a case, to let no bias of party feeling stand in the way of a just, equal, and peaceful measure for extricating the question from the embarrassments that at present surround it.

In conclusion, we respectfully beg leave to impress upon Congress the necessity of a speedy determination upon this subject. It is impossible to estimate the material loss that the country daily sustains from the existing state of uncertainty. It directly and powerfully tends to unsettle and paralyze business, to weaken public and private credit, and to create apprehensions in the minds of the people that disturb the peaceful tenor of their ways and mar their happiness. It does far more: it tends to bring republican institutions into discredit, and to create doubts of the success of our form of government, and of the perpetuity of the Republic. All considerations of interest, of patriotism, and of justice unite in demanding of the law-making power a measure that will bring peace and prosperity to the country, and show that our republican institutions are equal to any emergency. And in this connection we cannot refrain from the expression of our satisfaction that your committees, composed of equal numbers of opposing parties, have fortunately been able to do what has been attempted in vain heretofore, almost unanimously agree upon a plan considered by them all to be just, wise, and efficient. We accordingly recommend the proposed act to the patriotic and just judgment of Congress.

H. B. PAYNE,
EPPA HUNTON,
ABRAM S. HEWITT,
WILLIAM M. SPRINGER,
GEO. W. McCRARY,
GEO. F. HOAR,
GEORGE WILLARD,
House Committee.

GEO. F. EDMUNDS,
FREDK T. FRELINGHUYSEN,
ROSCOE CONKLING,
A. G. THURMAN,
T. F. BAYARD,
M. W. RANSOM,
Senate Committee.

The bill reported by the committee (H. R. No. 4454) to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877, was received and read a first and second time.

The bill was read, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Senate and House of Representatives shall meet in the Hall of the House of Representatives at the hour of one o'clock p. m., on the first Thursday in February, A. D. 1877; and the President of the Senate shall be their presiding officer. Two tellers shall be previously appointed on the part of the Senate, and two on the part of the House of Representatives, to whom shall be handed, as they are opened by the President of the Senate, all the certificates, and papers purporting to be certificates, of the electoral votes, which certificates and papers shall be opened, presented, and acted upon in the alphabetical order of the States, beginning with the letter A; and said tellers having then read the same in the presence and hearing of the two Houses, shall make a list of the votes as they shall appear from the said certificates; and the votes having been ascertained and counted as in this act provided, the result of the same shall be delivered to the President of the Senate, who shall thereupon announce the state of the vote, and the names of the persons, if any, elected, which announcement shall be deemed a sufficient declaration of the persons elected President and Vice-President of the United States, and, together with a list of the votes, be entered on the Journals of the two Houses. Upon such reading of any such certificate or paper when there shall be only one return from a State, the President of the Senate shall call for objections, if any. Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one Senator and one member of the House of Representatives before the same shall be received. When all objections so made to any vote or paper from a State shall have been received and read, the Senate shall thereupon withdraw, and such objections shall be submitted to the Senate for its decision; and the Speaker of the House of Representatives shall, in like manner, submit such objections to the House of Representatives for its decision; and no electoral vote or votes from any State from which but one return has been received shall be rejected except by the affirmative vote of the two Houses. When the two Houses have voted, they shall immediately again meet, and the presiding officer shall then announce the decision of the question submitted.

SEC. 2. That if more than one return, or paper purporting to be a return from a State, shall have been received by the President of the Senate, purporting to be the certificates of electoral votes given at the last preceding election for President and Vice-President in such State, (unless they shall be duplicates of the same return,) all such returns and papers shall be opened by him in the presence of the two Houses when act as aforesaid, and read by the tellers, and all such returns and papers shall thereupon be submitted to the judgment and decision as to which is the true and lawful electoral vote of such State, of a commission constituted as follows, namely:

During the session of each House on the Tuesday next preceding the first Thursday in February, 1877, each House shall, by *viva voce* vote, appoint five of its members, who with the five associate justices of the Supreme Court of the United States, to be ascertained as hereinafter provided, shall constitute a commission for the decision of all questions upon or in respect of such double returns named in this section.

On the Tuesday preceding the first Thursday in February, A. D. 1877, or as soon thereafter as may be, the associate justices of the Supreme Court of the United States now assigned to the first, third, eighth, and ninth circuits shall select, in such manner as a majority of them shall deem fit, another of the associate justices of said court, which five persons shall be members of said commission; and the person longest in commission of said five justices shall be the presi'ent of said commission. The members of said commission shall respectively take and subscribe the following oath:

"I, ——— ———, do solemnly swear (or affirm, as the case may be,) that I will impartially examine and consider all questions submitted to the commission of which I am a member, and a true judgment give thereon, agreeably to the Constitution and the laws: so help me God;" which oath shall be filed with the Secretary of the Senate.

When the commission shall have been thus organized, it shall not be in the power of either House to dissolve the same, or to withdraw any of its members; but if any such Senator or Member shall die or become physically unable to perform the duties required by this act, the fact of such death or physical inability shall be by said commission, before it shall proceed further, communicated to the Senate or House of Representatives, as the case may be, which body shall immediately and without debate proceed by *viva voce* vote to fill the place so vacated, and the person so appointed shall take and subscribe the oath hereinbefore prescribed, and become a member of said commission; and, in like manner, if any of said justices of the Supreme Court shall die or become physically incapable of performing the duties required by this act, the other of said justices, members of the said commission, shall immediately appoint another justice of said court a member of said commission, and, in such appointments, regard shall be had to the impartiality and freedom from bias sought by the original appointments to said commission, who shall thereupon immediately take and subscribe the oath hereinbefore prescribed, and become a member of said commission to fill the vacancy so occasioned.

All the certificates and papers purporting to be certificates of the electoral votes of each State shall be opened, in the alphabetical order of the States, as provided in section 1 of this act; and when there shall be more than one such certificate or paper, as the certificates and papers from such State shall so be opened, (excepting duplicates of the same return,) they shall be read by the tellers, and thereupon the President of the Senate shall call for objections, if any. Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one Senator and one member of the House of Representatives before the same shall be received. When all such objections so made to any certificate, vote, or paper from a State shall have been received and read, all such certificates, votes, and papers so objected to, and all papers accompanying the same, together with such objections, shall be forthwith submitted to said commission, which shall proceed to consider the same, with the same powers, if any, now possessed for that purpose by the two Houses acting separately or together, and, by a majority of votes, decide whether any and what votes from such State are the votes provided for by the Constitution of the United States, and how many and what persons were duly appointed electors in such State, and may therein take into view such petitions, depositions, and other papers, if any, as shall, by the Constitution and now existing law, be competent and pertinent in such consideration; which decision shall be made in writing, stating briefly the ground thereof, and signed by the members of said commission agreeing therein; whereupon the two Houses shall again meet, and such decision shall be read and entered in the Journal of each House, and the counting of the votes shall proceed in conformity therewith, unless, upon objection made thereto in writing by at least five Senators and five members of the House of Representatives, the two Houses shall separately concur in ordering otherwise, in which case such concurrent order shall govern. No votes or papers from any other State shall be acted upon until the objections previously made to the votes or papers from any State shall have been finally disposed of.

SEC. 3. That while the two Houses shall be in meeting, as provided in this act, no debate shall be allowed and no question shall be put by the presiding officer, except to either House on a motion to withdraw; and he shall have power to preserve order.

SEC. 4. That when the two Houses separate to decide upon an objection that may have been made to the counting of any electoral vote or votes from any State, or upon objection to a report of said commission, or other question arising under this act, each Senator and Representative may speak to such objection or question ten minutes, and not oftener than once; but after such debate shall have lasted two hours, it shall be the duty of each House to put the main question without further debate.

SEC. 5. That at such joint meeting of the two Houses seats shall be provided as follows: For the President of the Senate, the Speaker's chair; for the Speaker, immediately upon his left; the Senators in the body of the Hall upon the right of the presiding officer; for the Representatives, in the body of the Hall not provided for the Senators; for the tellers, Secretary of the Senate, and Clerk of the House of Representatives, at the Clerk's desk; for the other officers of the two Houses, in front of the Clerk's desk and upon each side of the Speaker's platform. Such joint meeting shall not be dissolved until the count of electoral votes shall be completed and the result declared; and no recess shall be taken unless a question shall have arisen in regard to counting any such votes, or otherwise under this act, in which case it shall be competent for either House, acting separately, in the manner hereinbefore provided, to direct a recess of such House not beyond the next day, Sunday excepted, at the hour of ten o'clock in the forenoon. And while any question is being considered by said commission, either House may proceed with its legislative or other business.

SEC. 6. That nothing in this act shall be held to impair or affect any right now existing under the Constitution and laws to question, by proceeding in the judicial courts of the United States, the right or title of the person who shall be declared elected, or who shall claim to be President or Vice-President of the United States, if any such right exists.

SEC. 7. That said commission shall make its own rules, keep a record of its proceedings, and shall have power to employ such persons as may be necessary for the transaction of its business and the execution of its powers.

Mr. PAYNE. I move that the bill be printed and recommitted.

I desire to call the attention of the House to one feature of this bill. It changes the time of the joint convention to count the electoral vote, making it two weeks earlier than under the present law. The present law provides that the joint meeting of the two Houses shall be on the second Wednesday of February. In order to give more time to the tribunal to pass upon the questions that may be submitted to it, the committee have changed that time to the 1st day of February, two weeks from to-day. In order, therefore, that the bill may pass both Houses and go to the President in time, it is necessary that it should be brought very early to the attention of the House. Without making a motion at this time, I desire to say on behalf of the committee that I will hereafter submit a motion to make the bill a special order for consideration on an early day.

The SPEAKER. The Chair desires to state that if the motion to print and recommit should prevail the same privilege would still attach to the committee to call up their report at any time.

Mr. PAYNE. I move the previous question on the recommittal of the bill.

Mr. THORNBURGH. I desire to make a suggestion to the gentleman from Ohio.

Mr. PAYNE. I would remind the gentleman that I only hold the floor by the courtesy of the gentleman from Illinois, [Mr. BURCHARD.]

Mr. THORNBURGH. I merely wish to suggest that the ordinary number of copies would not be sufficient. If the House would give unanimous consent——

Mr. HOAR. That can be done afterward.

The previous question was seconded and the main question ordered; and under the operation thereof the motion was agreed to, and the bill was ordered to be printed and recommitted.

Mr. PAYNE moved to reconsider the vote by which the bill was recommitted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

Mr. PAYNE. I now ask unanimous consent that I may make a motion to print an additional number of copies of the report and bill.

There was no objection.

Mr. PAYNE. I move that five thousand extra copies be printed.
The motion was agreed to.

COMMITTEE OF CONFERENCE.

The SPEAKER announced the appointment of the following as the conferees on the part of the House in the conference upon the disagreeing votes of the two Houses upon House bill No. 3628, to establish certain post-roads; Mr. CLARK of Missouri, Mr. AINSWORTH, and Mr. MILLER.

ENROLLED BILLS SIGNED.

Mr. HARRIS, of Georgia, from the Committee on Enrolled Bills, reported that they had examined and found truly enrolled bills of the following titles; when the Speaker signed the same:

An act (H. R. No. 940) for the relief of Edwin Ebert;
An act (H. R. No. 1521) granting a pension to Louis A. McLaughlin;
An act (H. R. No. 2242) granting a pension to George McColly;
An act (H. R. No. 2287) for the relief of Peters & Reed, naval contractors at Norfolk navy-yard in the year 1860;
An act (H. R. No. 3653) making appropriation for the improvement and repair of the military road between Springfield and Fort Randall in the Territory of Dakota;
An act (H. R. No. 2842) granting a pension to Robert S. Toland; and
An act (H. R. No. 3500) granting a pension to Nelson Ainslie.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of its clerks, informed the House that the Senate insisted upon its amendments disagreed to by the House, and disagreed to the amendment of the House to Senate amendment No. 12 to the bill (H. R. No. 4307) making appropriations to supply certain deficiencies in the contingent fund of the House of Representatives, and requested a conference upon the disagreeing votes of the two Houses thereon, and had appointed as the conferees on the part of the Senate Mr. WINDOM, Mr. ALLISON, and Mr. WITHERS.

COUNTING THE ELECTORAL VOTE.

The House resumed the consideration of the report of the special committee on the rights and privileges of the House in relation to the counting the electoral vote.

The SPEAKER. Upon this subject the gentleman from Illinois [Mr. BURCHARD] is entitled to the floor.

Mr. COOK. If the gentleman will yield, I will submit a motion that the House now adjourn.

Mr. BURCHARD, of Illinois. Will this subject come up to-morrow as unfinished business, in case the House shall now adjourn?

The SPEAKER. It will.

Mr. BURCHARD, of Illinois. Then, if it be the desire of the House, I will yield for that motion.

Mr. KASSON. If the gentlemen do not wish to go on with the discussion of this subject, then I would ask unanimous consent that it be laid aside, so that we can have a morning hour.

The SPEAKER. The difficulty in the consideration of any business at this time is the confusion now prevailing in the Hall. The Chair will direct the officers of the House to assist in preserving order. [After a pause.] The gentleman from Illinois is entitled to the floor.

Mr. BURCHARD, of Illinois. I agree with the sentiment expressed by the chairman of the select committee [Mr. KNOTT] at the opening of his remarks. A grave and important duty devolves upon the House of Representatives in regard to the counting of the electoral votes. It is now by the resolutions of the majority brought to the consideration of its constitutional powers and the denial of the powers of others in ascertaining the result of the election for President and Vice-President of the United States. The resolutions of the majority assert for the House an almost unlimited power in the disposition of the questions that may arise upon the reception or count of the electoral votes forwarded to the President of the Senate.

The gentleman from Kentucky in his able argument insists that, as the Constitution disqualifies certain persons from being electors, therefore the power is not only vested in Congress to legislate upon the subject, but, as the resolutions which he sustains unqualifiedly assert, the power is vested in the House to decide upon the qualifications of the electors, and also to examine whether a State has properly exercised its functions and duties in the appointment of its electors, and reject any vote the House sees fit. That involves the great constitutional question whether the Congress, whether the Federal Government, has the right to review the proceedings of a State in the election or appointment of any of its officers.

The gentleman claims that, because the Constitution provides in the article relating to the qualifications of electors who shall not be appointed electors, therefore this House of Congress can reject the votes of any electors it may deem to be disqualified. If that be true, then the same must be true of other clauses of the Constitution which impose limitations upon the right of a citizen of a State to exercise a State office.

Article 6 provides that Senators and Representatives in Congress, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support the Constitution of the United States. That would give the right to Congress, according to the argument of the gentleman, whenever the acts of an officer of a State are presented here before the House, to inquire into the collateral question whether or not that officer was disqualified by reason of not having taken the oath so prescribed.

Article 14 of the amendments to the Constitution provides, among other things, that no person shall hold an office in a State who, having previously taken an oath to support the Constitution of the United States, shall have engaged in insurrection. The doctrine of the gentleman is that you can question collaterally the authority of an officer of a State to perform the functions and duties imposed upon him by virtue of the constitution and laws of the State. Now, I deny that to be the law. I hold that under the provisions of the Constitution itself you are bound to accept the acts of the duly-constituted authorities of the State when they are verified as required by the laws of the United States and of the State.

It seems to me that such a position would render futile section 1 of article 4 of the Constitution, which provides that "full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be approved, and the effect thereof."

Congress has made that general law in regard to the verification of the acts of States and of the officers of the States under State authority. By the law of 1792 Congress has provided the manner in which the act of a State in the appointment of electors shall be verified. And I claim that there is no power under the Constitution to go behind these acts of a State which are verified under the Constitution and under the law.

The words of the Constitution in regard to the counting of the electoral votes are few. They are simply that "the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted."

These are the words of the Constitution. So far as they express directly what is to be done they are unambiguous. So far as they declare how and by whom it shall be done they are not clear, and have received different interpretations by the wisest statesmen regardless of party, from the early days of the Republic until the present time. The commentators on the Constitution, those great authorities whom lawyers refer to, have expressed themselves with care, if not without hesitancy, as to the meaning of this portion of the Constitution.

Chancellor Kent, in his learned treatise, says of this claim—

The Constitution does not expressly declare *by whom* the votes are to be counted and the result declared. In the case of questionable votes and a closely contested election this power may be all important, and I presume, in the absence of all legislative provision on the subject, the President of the Senate counts the votes and determines the result, and that the two Houses are present only as spectators, to witness the fairness and accuracy of the transaction, and to act only if no choice be made by the electors.

The certificates are required to be opened in the presence of both Houses and the votes then counted. By whom counted? If by the President of the Senate, the Constitution does not expressly say so. If by Congress, why did it not say so? If the omission was intentional, as may be reasonably presumed, the apparent explanation is that it was intended to leave the mode and persons or tribunal to be provided by law, if it should seem best to Congress to make such provision.

I agree with the gentleman from Kentucky that words of an instrument are to be taken in their plain and obvious meaning, but believe it to be a well-known principle of legal construction that, when the language is uncertain, indefinite, or ambiguous, it is proper and necessary to seek for the true meaning of the Constitution by inquiring how its framers and those who adopted it understood its provisions.

"The votes shall then be counted." In these few words is summed up the whole direction of the Constitution as to *how* and *by whom* the count itself is to be made. How shall we ascertain and understand the meaning of the Constitution and what its framers intended, unless, following the language of a learned commentator on the Constitution, we seek for light by inquiring what was the understanding of the framers of the Constitution themselves. To the propriety of such a course I call the attention of the House. Story on the Constitution, volume 1, section 408, says. I will ask the Clerk to read the portion I have marked.

The Clerk read as follows:

But after all a most unexceptionable source of collateral interpretation is from the practical exposition of the Government itself in its various departments upon particular questions discussed and settled upon their own and single merits. These approach nearer in their own nature to judicial exposition and for the same general recommendation that belongs to the latter.

Mr. BURCHARD, of Illinois. Let us refer to the action of the framers of the Constitution. If we examine the history of the article in the Constitution relating to the Executive, by reference to the journal of the convention, we find that it appeared first as a resolution for the appointment of an Executive. Some of these resolutions were referred to a committee. Mr. Brearley, on the 4th of September, from a committee of eleven, who had been considering the subject, reported back an article in relation to the Executive that contains substantially the draught of this article as it appears in the Constitution at the time it was adopted and as subsequently amended. In regard to the count itself, after having in the previous section provided how the electors should cast their ballots, and that they should make lists, and that these should be transmitted to the seat of the General Government directed to the President of the Senate, it provided in section 7 that—

The President of the Senate shall, in that House, open all the certificates, and the votes shall be then and there counted.

On the 6th of September this article came up for consideration before the convention; and it was moved, among other amendments, that the words "in the presence of the Senate and House of Representatives" should be inserted after the word "counted;" and this was sustained by the vote of six States voting "ay" against four voting "no;" so that the clause read—

The President of the Senate shall, in that House, open all the certificates, and the votes shall be then and there counted in the presence of the Senate and House of Representatives.

The limitation here was that they should be counted in the presence of the Senate and House of Representatives. I put it to every gentleman whether the language here used, together with the amendment providing that the count should be in the presence of these two bodies, does not exclude the idea that they themselves are to make the count? If they were to count it would be necessary that they should be present in order to do so; but if the vote were to be counted by the President of the Senate or by some person under his direction or by any other authority provided by Congress, then the limitation is proper; and the language means that the counting should be done by the President of the Senate, by persons that he should name, or by tellers or any commission or any one else expressly authorized by law to count in the presence of these two bodies. And there is no vote of the convention, no word in the debates, no language anywhere expressed by any proposition submitted to the convention that changes or modifies this action of the convention.

Subsequently, on the 9th of September, all these matters were referred to a committee of revision consisting of five members, who were appointed by ballot. This committee consisted of Mr. Johnson, Mr. Hamilton, Mr. G. Morris, Mr. Madison, and Mr. King. On the 12th of September, the third day afterward, this committee submitted the draught of the Constitution, which was adopted and signed. It appears that this committee, or the committee of eleven, changed the form so as to make the expression more concise and elegant than the manner in which the proposition had been presented and adopted. But there was no vote of the convention in regard to the change; and there seems to have been no idea on the part of the committee on revision, or the convention itself, that they were doing anything to change the vote of the convention.

Now, one day afterward, this committee, whose names I have given, introduced a resolution stating their opinion in regard to the count of this very vote, which I submit. It is as follows:

Resolved, That it is the opinion of this convention that as soon as the conventions of nine States shall have ratified this Constitution the United States in Congress assembled should fix a day on which electors should be appointed by the States which shall have ratified the same, and a day on which the electors should assemble to vote for the President, and the time and place for commencing proceedings under this Constitution. That after such publication, the electors should be appointed and the Senators and Representatives elected. That the electors should meet on the day fixed for the election of the President, and should transmit their votes, certified, signed, sealed, and directed, as the Constitution requires, to the Secretary of the United States in Congress assembled; that the Senators and Representatives should convene at the time and place assigned; that *the Senators should appoint a President of the Senate, for the sole purpose of receiving, opening, and counting the votes for President*; and that after he shall be chosen, the Congress, together with the President, should, without delay, proceed to execute this Constitution.

That resolution declares it to be the opinion of this convention that as soon as the conventions of nine States had ratified, &c., electors should be appointed; that the electors should meet and transmit their votes to the Secretary of the United States in Congress assembled; that Senators and Representatives should convene; that the Senators should appoint a President of the Senate for the sole purpose of receiving, opening, and counting the votes for President, and that after he should be chosen, the Congress, together with the President, should without delay proceed to execute this Constitution. That resolution was passed by the convention, and accompanies its proceedings.

Now, the propositions submitted to the House, both by the majority and the minority, present this question: In the absence of any legislation, in the absence of any direction from the two Houses of Congress, if they have authority to make such direction, how is the vote to be counted? We say that it is to be counted just as the members of the convention expressed their opinion that it should be counted. They said, when Congress should assemble and the count was to be made, it being impossible under the Constitution that, prior to the election of a President, any law could be passed by which the counting could be provided for, it devolved *ex necessitate* on the President of the Senate to receive the certificates, to open them, and to count the vote. That was the expressed opinion of the framers of the Constitution in regard to the duty to be performed in the emergency that now presents itself to Congress. What shall be done and what powers has the House in the execution of its duty in case no law is passed or no direction given that has the authority to bind the House or bind the officer in making the count? That is the identical question which was passed upon by the convention and is to be passed upon by this House in voting upon the resolutions here presented.

Now, it cannot be said that the reason of this recommendation of the convention was because the Constitution at the time contemplated would not be in force. The Constitution must have been ratified before even the electors could be chosen. The two Houses must assemble and a constitutional quorum must be in attendance before they could be present at the count. But the Constitution being in force, the two Houses having assembled and proceeded in accordance with that resolution, the question that presented itself to the framers of the Constitution was who, under that instrument, in the absence of legislation, is to count the vote? And they said in unmistakable language who, as they understood, was to count and declare the vote; and that was the President of the Senate.

Now, I desire to refer briefly to the action of Congress on the occasion of the first and the succeeding counts. I hold that the four counts which were conducted prior to the re-adoption of this provision in the twelfth article of the amendments—that those four, public, open, well-understood exercises of the power by Congress and by the President of the Senate in regard to receiving, opening, counting, and declaring the vote, became, according to a principle of construction thoroughly established in the courts, a part of the Constitution itself, and must be held to have been recognized and adopted by the people as the true method in re-adopting in the same language this provision.

What were the proceedings in connection with this first count? Examine them. Did Congress jointly or separately undertake to reject a single vote. No, in no instance. Look at the proceedings at the first count, as shown by the Journals. The Senate Journal states:

April 6, 1789.

The Senate proceeded by ballot to the choice of a President for the sole purpose of opening and counting the votes for President of the United States.

John Langdon, esq., was elected.

Ordered, That Mr. Ellsworth inform the House of Representatives that a quorum of the Senate is formed; that a President is elected for the sole purpose of opening the certificates and counting the votes of the electors of the several States in the choice of a President and Vice-President of the United States; and that the Senate is now ready, in the Senate Chamber, to proceed in the presence of the House to discharge that duty; and that the Senate have appointed one of their members to sit at the clerk's table to *make a list of the votes as they shall be declared*; submitting it to the wisdom of the House to appoint one or more of their members for the like purpose.

On the same day Mr. Ellsworth subsequently reported that he had delivered the message. Then

Mr. Boudinot, from the House of Representatives, communicated the following verbal message to the Senate:

"Mr. PRESIDENT: I am directed by the House of Representatives to inform the Senate that the House is ready forthwith to meet the Senate to attend the opening and counting of the votes of the electors of the President and Vice-President of the United States."

And he withdrew.

The Speaker and the House of Representatives attended in the Senate Chamber for the purpose expressed in the message delivered by Mr. Ellsworth; and after some time withdrew.

The Senate then proceeded by ballot to the choice of a President of their body *pro tempore*. John Langdon, esq., was duly elected.

The President elected for the purpose of counting the votes declared to the Senate that the Senate and House of Representatives had met, and that he, in their presence, had opened and counted the votes of the electors for President and Vice-President of the United States, which were as follows.

In view of these proceedings no wonder a distinguished Senator whose political opinions are in accord with the majority of this House felt compelled to acknowledge that—

Certainly it must be admitted that, looking at that record alone, it would seem as if the idea at the commencement of the Government was that the President of the Senate was not only to open but that he was to count the votes.

The resolution of the House in regard to attending the count was:

Resolved, That Mr. Speaker, attended by the House, do now withdraw to the Senate Chamber for the purpose expressed in the message from the Senate; and that Mr. Parker and Mr. Heister be appointed on the part of this House to sit at the Clerk's table with the member of the Senate and make a list of the votes as the same shall be declared.

After the count the House returned to its own Hall, and Messrs. Parker and Heister "delivered in at the Clerk's table a list of the votes of the electors of the several States in a choice of a President and Vice-President of the United States, as the same were declared by the President of the Senate in the presence of the Senate and of the House;" which was ordered to be entered on the House Journal.

The proceedings in the three succeeding counts were substantially the same as at the first. Tellers were appointed by each House "*to make lists of the votes as they shall be declared*."

The notifications of readiness to attend specified the purpose to be "to attend the opening and counting the votes for President and Vice-President of the United States, as the Constitution provides."

What was the extent of the power which each House claimed and exercised? It was simply to arrange for a time and place of meeting and for appointment of tellers to sit at the Clerk's desk and take a list of the votes as they should be declared, and the making of a record of the result. That is all they did. They had a right to do that; it was their duty to do it. Because under the provision of the Constitution that, in case no one has a majority of the votes, it shall then become the duty of the House and the Senate respectively to exercise certain powers conferred upon them by the Constitution, the Houses of Congress have the right to be present, and, being present, can appoint certain of its members or its clerks or other persons "to make lists of the votes as they are declared." They did exercise that right, and that is the extent to which they went during the first four counts of the electoral votes. Go through them, examine carefully all the proceedings of Congress, look at the requests for the appointment of committees, see the authority under which those committees were appointed, the resolutions reported by the committees and adopted by the House, and you will find in no case did it exercise or claim to exercise any other power. In fact all that Congress claimed was to designate the place where and the time when

the two Houses should meet and agree that they would be present to see the certificates opened and the votes counted. That was the extent of all their resolutions.

Now, if there is any doubt as to this action, whether the members of the First Congress, or the Second, or Third, or Fourth Congresses rightly understood the intention of the framers of the Constitution, that doubt is removed when we find that there were members of the constitutional convention which framed the very Constitution under which we are acting, who were members of the Senate and House of Representatives at the time when these votes were first counted. In the First Congress there were fifteen members of the constitutional convention who as members of the Senate or House were present at the time when the electoral votes were first counted, namely: In the Senate, John Langdon, William S. Johnson, Oliver Ellsworth, William Paterson, Robert Morris, George Read, Richard Basset, Pierce Butler, and William Few. In the House, Nicholas Gilman, Roger Sherman, George Clymer, Daniel Carroll, James Madison, jr., and Abraham Baldwin. Nearly all of them were present at the counting of the electoral votes, and tacitly assented to the proceedings and count.

In the Second Congress there were twelve members of that constitutional convention present, and in the Third and Fourth six members of that constitutional convention. Will gentlemen of the present day say that the men who helped frame the Constitution of the United States, the very men most prominent in that constitutional convention, did not understand what the Constitution meant and did not know what they intended in adopting its provisions? Would they not have risen in their places and protested with all the vehemence they could that the count was not being conducted in accordance with the provisions of the Constitution? It seems to me the conclusion is irresistible that the manner in which this count was then conducted under the resolution of the constitutional convention and under the resolutions of Congress immediately afterward is the extent of the power that it was deemed, by the members of the convention itself and by the first Congresses after the adoption of the Constitution, this House had the right to exercise.

It cannot be claimed that because in the first meeting of Congress under the Constitution, and subsequently until the present time, tellers have been appointed, therefore Congress took control of the count. What is the duty of a teller? It is merely the ministerial duty of enumerating. In this House no teller has power to say what vote shall be counted. That power never has been exercised by a teller. If it is believed that a person not authorized to vote is passing between the tellers, the question is submitted to the presiding officer or the person having charge of the count, and there is no appeal from his decision, which is final and peremptory, subject merely to the right of the bodies, after he has disposed of the question, to act upon and criticise, and, if they deem proper, to censure the officer who makes that decision.

But until the count is concluded and the declaration of the count made, the tellers have no authority to stop the proceedings or to interfere with the count. All that the two Houses authorized to be done was that tellers should be appointed who should sit at the Clerk's desk and make lists of the votes as they are declared.

But there is another remarkable circumstance. The committee to devise a method for notifying the President as to the result of the count, and to certify to him his election, prepared a form. There were three members of the constitutional convention who were members of the committee which drafted that form of notification, namely, Mr. Patterson, Mr. Johnson, and Mr. Ellsworth. They devised a form which was signed by John Langdon, the president appointed under the resolution to count the vote, in which he certified that he had opened the certificates and counted the votes. Congress directed him to certify that he had opened the certificates and counted the votes, and he did make such a certificate and signed it. John Langdon, who had been a member of the constitutional convention himself, certified that *he had opened the certificates and counted the votes.* The form of the certificate, carefully prepared by the committee and reported as a form, was passed upon by the Senate and approved and entered upon the Journal, as follows:

> Be it known, that the Senate and House of Representatives of the United States of America, being convened in the city and State of New York, the sixth day of April, in the year of our Lord one thousand seven hundred and eighty-nine, the underwritten, appointed *President of the Senate* for the sole purpose of receiving, opening, and counting the votes of the electors, *did*, in the presence of the said Senate and House of Representatives, *open* all the certificates and *count all the votes* of the electors for a President and for a Vice-President; by which it appears that George Washington, esquire, was unanimously elected, agreeably to the Constitution, to the office of President of the United States of America.
>
> In testimony whereof I have hereunto set my hand and seal.
>
> JOHN LANGDON.

John Adams, too, is supposed to have known something about the Constitution. He was Vice President and presiding officer to count the vote, and he signed a certificate in 1797, acting then as Vice-President and as President of the Senate, that he had opened the certificates and counted the votes.

Thomas Jefferson, the father of the democracy as it is claimed—and I am astonished that those who claim to be his children should deny and go back upon his early teachings in regard to the rights of the States—Thomas Jefferson in 1801 signed a certificate in which he stated—

> That * * * on the second Wednesday of February, A. D. 1801, the underwritten, Vice-President of the United States and President of the Senate, did, in the presence of the said Senate and House of Representatives, open all the certificates and count all the votes of the electors for President. * * *
>
> In witness whereof, I have hereunto set my hand and seal this 18th day of February, 1801.
>
> THOMAS JEFFERSON.

Did not these men understand what the Constitution meant in regard to the duty of the President of the Senate? Did not the people, after these public declarations had been made and had been spread upon the Journals of the Senate and were known to the world—did not the people know that the framers of the Constitution had interpreted its provisions in this manner and that the power in reference to counting and certifying the electoral votes had been exercised in this way? Did not they know—did not the people know what had been done and claimed? And will it be said they did not adopt the interpretation given by these public men to the provisions of the Constitution relating to the count of the electoral votes and did not intend that in any case it should be exercised by the President of the Senate? It seems to me the conviction must be irresistible that, in the absence of all legislation or authorized concurrent direction from the two legislative bodies required to be present, he must count or cause to be counted the electoral votes.

I do not deny the power of Congress to legislate upon the subject. I believe that it is not only the power of Congress, but the duty of Congress. It did legislate upon the subject in 1792, but it did not in my judgment go to the extent which Congress ought to have gone in providing a method by which the count should be carried on and the result ascertained and declared.

I might fortify my own opinions by reference to the opinions of distinguished statesmen who were members of the democratic party, who, before any practical question arose in the last and in prior Congresses, have avowed their convictions that the President of the Senate was the proper person to count the electoral vote, some of them even claiming that there is no power in Congress to take it away from the President of the Senate. But I do not care to refer to the opinions of others. I desire that this question should be met and, if it is to be discussed in the House, discussed upon its merits as a great constitutional question, to be calmly, carefully, and impartially investigated, each man acting upon the resolutions presented, in view of the oath that he takes as a Representative to discharge his duty. In the examination that I have made of this question I have endeavored to keep that in view, and not to give effect to my convictions as a partisan or with a view to the effect it may have upon the pending count.

I believe that under the provision of law that gives the power to Congress by legislation to carry into effect any power that is conferred upon the United States, or any Department, or upon Congress, under that power there is ample authority to legislate and to direct how the count shall be made. The only question that is now stirring the House, that presents itself, is, if we make no provision, what can we do? Can we as a House stand back and defiantly assert our right to reject any vote? That is the doctrine that is presented; that this House, with no constitutional power except only that given it by virtue of the Constitution, has the right to pass, of its own motion, upon the action of a State; that it is not to be governed by the certificates of the State officers; that it is not to be governed by their action; that it can go behind that; and there are committees of this House that insist that they have the right to go behind the action of the State authorities, and to purge every poll in the United States and to investigate the proceedings of political parties prior to the election and investigate every poll and what was done, and claim that that is within the powers of the Constitution, asserting for this House a greater power than the constituent French Assembly asserted for itself during the days of the French revolution.

I am glad that calmer thoughts and better feelings are prevailing, as I think, in regard to the duty of Congress at this time, and that this question is to be met in more of a conciliatory spirit, giving to each side and to each gentleman credit for honesty in their convictions, feeling that above all things there can be no emergency that will arise to justify a resort to strife, to threats, and to violence. Such a time ought not and can never come, I believe, in the history of this American Government. I have faith enough in republican institutions, in the genuine democracy, and in the intelligence of the people, to believe that you can trust the people, and I hope their Representatives, to respect the forms of law and to permit the peaceful solution of political questions by the proper tribunals; and that it is idle, that it is worse than idle, it is wicked, it is unpatriotic, to talk, as I am glad to say but few have talked upon this floor, about what may come and what will be done in case of an emergency that may, in their opinion, arise.

I might reply to some remarks that I have heard made in discussion here but I do not know whether it is necessary. The distinguished gentleman from New York [Mr. WOOD] now acting chairman of the Committee of Ways and Means, in his speech defining the exercise of the powers of the States in the electoral vote, claims that this is a delegated power, delegated by the Constitution, as if it were a power existing somewhere before the Constitution was adopted. If so, where? What is really meant by "delegated by the Constitution?" Did the Constitution of itself delegate anything, any more than a deed conveys property? When duly executed by some person, the party signing the deed makes the grant and not the deed which evidences it. The

powers conferred by the Constitution come from the States; that is, the people constituting the States.

Every power created or delegated contained in the Constitution was a power conferred by the people or the States, and did not emanate from the Constitution itself. Why, the State-rights party in the days of the adoption of the Constitution were so tenacious of this right that they would not adopt the Constitution unless it should be accompanied by amendments; or at least in their conventions adopting the Constitution they submitted the first eleven articles of amendment, one of which provided that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. There was no power that Congress held, no rights which it held by virtue of charters or grants from the Crown; but all power conferred, defined, limited, or implied in the Constitution was granted by the States, and the people of the States, and not by the Constitution itself. The Constitution was the written expression of the grant, and hence it is idle to say that this is a power conferred upon the States, unless the gentleman means that the people acting through their State conventions gave to the States as corporate existences the right to appoint the electors; and if that is his meaning, I deny his conclusion that the power is therefore limited, for the fifth article of amendments to the Constitution does not limit the powers created or delegated to the States, but only the powers granted to the Federal Government.

Now, Mr. Speaker, it appears to me that the doctrine asserted in the fifth resolution is utterly subversive of the reserved rights of the States.

There is no redress from this illegal assumption if the result of such a partial count is final and conclusive. It places a veto power in the House of Representatives upon the choice of the duly appointed officers of the State authorized to elect the President and Vice-President of the United States. It declares that the House, by a bare majority, acting upon the opinion, whim, caprice, or partisan bias of its members, can invalidate the votes duly given by presidential electors and certified according to law. It claims the right to the House to question and set aside the appointment as well as the votes of electors and in effect itself appoint the electors.

I now yield the remainder of my time to my colleague upon my right, [Mr. HURLBUT.]

Mr. HURLBUT. I move that the House now adjourn.

Mr. FOSTER. Will the gentleman yield to me to make a privileged motion?

Mr. HURLBUT. If it is a privileged motion.

DEFICIENCY BILL.

Mr. FOSTER. I move that the House grant the request of the Senate for a committee of conference upon the disagreeing votes of the two Houses upon the bill (H. R. No. 4307) making appropriations to supply certain deficiencies in the contingent fund of the House of Representatives, and for other purposes.

The motion was agreed to.

The Speaker announced as the conferees on the part of the House Mr. FOSTER, Mr. HOLMAN, and Mr. BLOUNT.

EXTENSION OF CAPITOL GROUNDS.

Mr. HOLMAN. I ask unanimous consent to have taken from the Speaker's table and referred to the Committee on Public Buildings and Grounds Senate bill No. 1113, to authorize the taking of certain parcels of land for the public use at the intersection of Pennsylvania and Maryland avenues, on the west front of the Capitol Square.

There being no objection, the bill was taken from the Speaker's table, read a first and second time, and referred to the Committee on Public Buildings and Grounds.

ROBERT ERWIN.

Mr. HARTRIDGE. I ask unanimous consent to have taken from the Speaker's table House bill No. 231, which has been returned from the Senate with an amendment, for the purpose of moving a concurrence in the amendment.

No objection was made, and the bill (H. R. No. 231) for the relief of Robert Erwin was taken from the Speaker's table.

The amendment of the Senate was to strike out all after the enacting clause, and to insert in lieu thereof the following:

That the Court of Claims may take jurisdiction under the provisions of the act of March 12, 1863, entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States," of the claims of Robert Erwin, of Savannah, Georgia, for property alleged to have been taken from him, which claims were by accident or mistake of his agent or attorney, and without fault or neglect on his part, as is claimed, not filed within the time limited by said act.

The amendment of the Senate was concurred in.

Mr. HARTRIDGE moved to reconsider the vote by which the amendment of the Senate was concurred in; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

RIVER AND HARBOR IMPROVEMENT.

The SPEAKER, by unanimous consent, laid before the House a letter from the Secretary of War, transmitting the report of the Chief of Engineers, under section 3, of the river and harbor act of August 14, 1876; which was referred to the Committee on Commerce.

MAJOR JUSTUS M'KINSTRY.

The SPEAKER also laid before the House a letter from the Secretary of War, relative to a report of the court-martial of Major Justus McKinstry; which was referred to the Committee on Military Affairs.

Mr. STONE moved that the communication just referred be printed.

The motion was agreed to.

ENROLLED BILLS SIGNED.

Mr. HARRIS, of Georgia, from the Committee on Enrolled Bills, reported that they had examined and found truly enrolled bills of the following titles; when the Speaker signed the same:

An act (S. No. 685) to place the name of Daniel H. Kelly upon the muster-roll of Company F, Second Tennessee Infantry; and

An act (S. No. 1040) to authorize sundry allowances to James Atkins, late collector of internal revenue for the fourth district of Georgia, in the settlement of his accounts.

ORDER OF BUSINESS.

Mr. WILSON, of Iowa. I call for the regular order.

The SPEAKER. The regular order is the motion of the gentleman from Illinois [Mr. HURLBUT] that the House now adjourn.

Mr. HURLBUT. The gentleman from New York [Mr. WILLIS] desires to take the floor in his own right upon the report of the select committee of the rights and privileges of the House. I will withdraw my motion to adjourn and yield to him for that purpose.

Mr. WILLIS. I am willing to yield for a motion to adjourn.

Mr. HURLBUT. Then I make that motion.

The motion was agreed to; and accordingly (at three o'clock and thirty-five minutes p. m.) the House adjourned.

PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. BANNING: The petition of Ann Gregory, widow of Charles N. Gregory, of Washington, District of Columbia, that the Secretary of the Treasury be directed to refund to her the sum of $1,500, the amount of money paid by her late husband for certain real estate purchased from the United States at a confiscation sale in Alexandria, Virginia, which sale has been declared void by the Supreme Court of the United States, to the Committee on the Judiciary.

By Mr. CUTLER: Protest of citizens of Roxbury Township, Mercer County, New Jersey, against the assumption of the President of the Senate of the power of determining who has been elected President of the United States, to the committee on counting the electoral vote.

By Mr. KIDDER: The petition of Thomas Faloon and 230 other citizens of Dakota Territory, that pre-emptors may have their filings changed to homesteads, and credit given them of the time they have resided on the land as pre-emptors, to the Committee on Public Lands.

By Mr. THORNBURGH: The petition of S. E. Rankin, and others, of Tennessee, that pensioners be paid from the date of their discharge from the Army, to the Committee on Invalid Pensions.

By Mr. TURNEY: The petition of citizens of Westmoreland County, Pennsylvania, for the enforcement of the provisions of the act of Congress of July 24, 1866, relating to the purchase of telegraph lines by the General Government, to the Committee on the Post-Office and Post-Roads.

Also, the petition of citizens of Fayette County, Pennsylvania, of similar import, to the same committee.

By Mr. WILLIAMS, of Delaware: The petition of citizens of Milford, Delaware, of similar import, to the same committee.

IN SENATE.

FRIDAY, *January* 19, 1877.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

The Journal of yesterday's proceedings was read and approved.

HOUSE BILL REFERRED.

The bill (H. R. No. 4448) to remove the political disabilities of A. W. Burnet, of South Carolina, was read twice by its title and referred to the Committee on the Judiciary.

CREDENTIALS.

Mr. HAMLIN presented the credentials of JAMES G. BLAINE, elected by the Legislature of the State of Maine a Senator from that State to fill the vacancy occasioned by the resignation of Lot M. Morrill; which were read and ordered to be filed.

He also presented the credentials of JAMES G. BLAINE, elected by the Legislature of the State of Maine a Senator from that State for the term beginning March 4, 1877; which were read and ordered to be filed.

PETITIONS AND MEMORIALS.

Mr. CAMERON, of Pennsylvania. I am requested by the governor of the State of Pennsylvania to present to the Senate certain resolutions passed by the Legislature of Pennsylvania and I ask that the

resolutions be read. The resolutions were ordered to lie on the table and were read, as follows:

Whereas the tranquillity of the country has been disturbed and its business prosperity imperiled by the extraordinary difficulty of ascertaining, in the nearly balanced vote, what has been the result of the late election for the electors of President and Vice-President;

And whereas to allay any excitement that may endanger the public peace and precipitate upon the people the calamities of civil war, from which they have been lately delivered, it seems fit and proper that the Legislatures of the States whose prerogatives and vital interests are involved in the issue should declare and emphasize those principles embodied in the national Constitution by which the decision of the pending question can alone be safely and lawfully reached:

Resolved by the senate, (the house of representatives concurring,) That the will of the people in electing a President and Vice-President of the United States can only be expressed in the manner prescribed by the Constitution, and the persons having the majority of the votes of the electors appointed by the States of the Union in the manner prescribed by the Legislatures thereof must be, by the force of the Constitution and laws, declared President and Vice-President respectively, and must be on the 4th of March inaugurated, and thereafterward duly respected as such.

Second. That all factious opposition, and all threats of violence, designed or intended to prevent or imperil the declaration and confirmation of the constitutional election of the President and Vice-President, are unpatriotic in spirit, dangerous and revolutionary in tendency, and merit and should receive the condemnation of an outraged and indignant people.

Third. That the lists which the duly appointed electors of the States respectively are required by the Constitution of the United States to make of the persons voted for as President and Vice-President, and the number of votes for each, and which are to be by the electors certified and transmitted by them sealed to the President of the Senate, and which certificates are to be opened by him in the presence of the two Houses of Congress, and counted, are the constitutional evidence of the votes cast for President and Vice-President.

Fourth. That under the Constitution the persons having the majority of all the votes actually cast by the duly appointed electors of the States, respectively, are, by force of the Constitution and laws, the President and Vice-President from and after the beginning of their term of office, and any attempt to defeat the election of a President or of a Vice-President by either House of Congress upon the pretext that certain persons duly certified to be the electors of any State were not such electors, or by throwing out or refusing to count the legally certified votes of any State, or by impeding the counting of the electoral vote to ascertain the result, or for any other cause than that provided for in the Constitution, when no person has a majority of votes of the electors duly appointed, will be a proceeding fraught with danger to the public peace, perilous to the stability of our Government, and exposing our nation to contempt in the general opinion of mankind.

Resolved, That our Senators in Congress be instructed and our Representatives requested to let their action on this question conform to the spirit of this declaration.

Resolved, That the governor be requested to have a copy of this preamble and resolutions forwarded to each of our Senators and Representatives in Congress as early as convenient.

The foregoing preamble and resolutions have passed the Legislature.

THOS. B. COCHRAN,
Clerk of the Senate.
WM. C. SHURLOCK,
Clerk of the House of Representatives.

JANUARY 16, 1877.

Mr. SHERMAN presented a petition of a large number of citizens of Ohio, praying the passage of the act allowing pensioners the amount of arrears to which they would be entitled by a removal from the statutes of the unjust limitation which has debarred many from receiving their just dues, and that they shall be entitled to receive in all cases pension from the date of discharge of the soldier; which was ordered to lie on the table.

Mr. SHERMAN. I also present the petition of Levi & Co., of Cincinnati, Ohio, praying the repeal of the law imposing a tax on the circulation, deposits, and capital of banks, stating that it affects them injuriously and affects the public as well injuriously. I move its reference to the Committee on Finance.

The motion was agreed to.

Mr. COOPER presented the petition of the Louisville conference, the petition of the East Texas conference, the petition of the North Georgia conference, the petition of the South Carolina conference, the petition of the Virginia conference, the petition of the Memphis conference, the petition of the North Mississippi conference, the petition of the Alabama conference, the petition of the North Alabama conference, and the petition of the Mississippi conference, praying for settlement and payment of the claim of the Southern Methodist Publishing House; which were referred to the Committee on Claims.

Mr. MERRIMON presented a resolution of the Legislature of North Carolina, in favor of amending the laws relating to currency, so as to prohibit national banks from taking more than 8 per cent. interest; which was referred to the Committee on Finance.

He also presented a petition of the Good Templars of North Carolina, officially signed, praying for prohibitory legislation for the District of Columbia and the Territories; the prohibition of the foreign importation of alcoholic liquors; that total abstinence be made a condition of the civil, military, and naval service, and for a constitutional amendment to prohibit the traffic in alcoholic beverages throughout the national domain; which was referred to the Committe on Finance.

Mr. JONES, of Florida, presented the petition of Lucius A. Hardee, of Honeymoon, Florida, praying the appointment of a committee to examine his method of effectually destroying the locust or grasshopper of the West by concussion, and also to examine into the history, nature, and habits of the grasshopper and suggest some means of their destruction; which was referred to the Committee on Agriculture.

Mr. BOGY presented a petition of citizens of Missouri, praying an amendment of the pension laws, so as to allow arrearages of pensions; which was ordered to lie on the table.

Mr. CONKLING. I present petitions numerously signed by citizens of New York, praying legislation restricting and preventing in the Territories and the District of Columbia, the sale of alcoholic drinks as a beverage. Such petitions, I believe, have gone heretofore to the Committee on Finance. I move the reference of these to that committee.

The motion was agreed to.

He also presented the petition of James C. Jewett, of the city of New York, praying to be indemnified, out of the unappropriated moneys of the Geneva award, for losses sustained by the depredations of the confederate vessels Florida and Alabama; which was referred to the Committee on the Judiciary.

He also presented a petition of citizens of the State of New York, praying the passage of an act granting pensions from the date of the discharge of the soldier, and for payment of arrears now due; which was ordered to lie on the table.

Mr. EDMUNDS presented a resolution of the Legislature of Vermont, in favor of the repeal of the bankrupt law; which was referred to the Committee on the Judiciary.

Mr. BOUTWELL presented the petition of William King and others of Monson, Massachusetts, praying for the passage of a bill granting arrears of pension to Charlotte Brooks; which was referred to the Committee on Pensions.

Mr. BRUCE presented the petition of D. R. Avery, and other citizens of North Collins, New York, praying for a general law to prohibit the liquor traffic within the national jurisdiction; which was referred to the Committee on Finance.

REPORTS OF COMMITTEES.

Mr. WRIGHT, from the Committee on Claims, to whom was referred the bill (S. No. 231) for the relief of Heartt, Waite & Dodge, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

Mr. SPENCER, from the Committee on the District of Columbia, to whom was referred the petition of O. S. B. Wall and others, citizens of the District of Columbia, praying a grant of public land for the purpose of endowing a home for the indigent poor of the District of Columbia, asked to be discharged from its further consideration, and that it be referred to the Committee on Public Lands; which was agreed to.

He also, from the same committee, to whom was referred the bill (H. R. No. 4202) to amend the charter of the Mutual Fire-Insurance Company of the District of Columbia, reported adversely thereon, and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (H. R. No. 4041) to prevent depredations upon property in the District of Columbia, reported it without amendment.

Mr. DORSEY, from the Committee on the District of Columbia, to whom was referred the bill (H. R. No. 3558) to provide for the settlement of tax-lien certificates erroneously issued by the late authorities of the District of Columbia, reported it without amendment.

He also, from the same committee, to whom was referred a memorial of citizens of the District of Columbia asking the passage of an act authorizing and empowering the board of audit of the District of Columbia to receive and adjust claims for damages to property occasioned by the change of the grade of Pennsylvania avenue provided for by the act of July 8, 1870, asked to be discharged from its further consideration; which was agreed to.

Mr. BRUCE, from the Committee on Pensions, to whom was referred the bill (H. R. No. 3499) granting a pension to William Buckley, private Company C, Fiftieth Ohio Volunteers, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (H. R. No. 2702) granting a pension to Bridget T. Hopper, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

Mr. WEST, from the Committee on Railroads, to whom was referred the bill (S. No. 1134) to create a sinking fund for the liquidation of the Government bonds advanced to the Central Pacific Railroad Company of California, and the Western Pacific Railroad Company, and to the Union Pacific Railroad Company, under and in pursuance of the act of Congress entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and the acts amending the same or supplemental thereto, and for the settlement of the claims of the Government on account of said bonds, reported it with amendments.

BILLS INTRODUCED.

Mr. SARGENT asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1159) authorizing the sale and private entry of certain tracts of land within the limits of Salt Lake City, Utah Territory; which was read twice by its title, and, together with the accompanying memorial, referred to the Committee on Public Lands.

Mr. SPENCER (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1160) for the relief of Thomas H. Bradley; which was read twice by its title, referred to the Committee on Military Affairs, and ordered to be printed.

Mr. WINDOM asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1161) for the relief of Nathan Butler, of Min-

nesota; which was read twice by its title, referred to the Committee on Indian Affairs, and ordered to be printed.

Mr. DORSEY asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1162) providing for funding certificates of the board of audit; which was read twice by its title, referred to the Committee on the District of Columbia, and ordered to be printed.

Mr. PADDOCK asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1163) for the relief of settlers on the public lands under the pre-emption laws; which was read twice by its title, referred to the Committee on Public Lands, and ordered to be printed.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. GEORGE M. ADAMS, its Clerk, announced that the House insisted upon its disagreement to the seventh and eighth amendments of the Senate to the bill (H. R. No. 4307) making appropriations to supply certain deficiencies in the contingent fund of the House of Representatives, and for other purposes; that it insisted upon its amendment to the twelfth amendment of the Senate to the said bill; that it agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. CHARLES FOSTER of Ohio, Mr. WILLIAM S. HOLMAN of Indiana, and Mr. JAMES H. BLOUNT of Georgia managers at the conference on the part of the House.

The message also announced that the House had agreed to the amendment of the Senate to the bill (H. R. No. 231) for the relief of Robert Erwin.

ENROLLED BILLS SIGNED.

The message further announced that the Speaker of the House had signed the following enrolled bills; and they were thereupon signed by the President *pro tempore*:

A bill (S. No. 685) to place the name of Daniel H. Kelly upon the muster-roll of Company F, Second Tennessee Infantry; and

A bill (S. No. 1040) to authorize sundry allowances to James Atkins, late collector of internal revenue for the fourth district of Georgia, in the settlement of his accounts.

CONSULAR AND DIPLOMATIC BILL.

Mr. SARGENT. If there be no further morning business, I move that the Senate proceed to the consideration of the bill (H. R. No. 4251) making appropriations for the consular and diplomatic service of the Government for the year ending June 30, 1878, and for other purposes.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill.

Mr. SARGENT. Before the amendments reported by the Committee on Appropriations are considered, I will make a few general remarks as to the difference between this bill and the bill which was passed by agreement between the two Houses at the last session. The changes are very few. Substantially it is the bill passed at the last session. There are two additions made to the amount of appropriations by the House of Representatives; one for contingent expenses of foreign intercourse proper, to the amount of $10,000, and one for the relief of American seamen, to the extent of $10,000, making in all $20,000 in addition. The Committee on Appropriations have examined into these items of expenditure and think that these additions are judicious. Therefore, they recommend the House bill in that respect.

The reductions in this bill are in the salaries of consuls, vice-consuls, &c., $32,600. This, however, is not really a deduction from the appropriation of last year's bill, but in the footing made last year of the appropriations necessary to pay the salaries of consuls, vice-consuls, &c., an error of $32,600 was made in the haste of the close of the session. This was understood by myself immediately after the passage of the bill and its signature by the President, and I sent information to the State Department of this error, and of the real intention of Congress in the passage of the bill; and the amount of $32,600 of the appropriation made was not expended. Consequently we appropriate as much for next year by this bill as will be expended this year, under last session's bill.

The House has reduced upon the item of the Spanish claims commission $3,512.50, which the Senate committee consider injurious, and when we reach that item which the committee propose to amend, I will more particularly explain the reasons for the amendment we propose.

Ten thousand dollars reduction is made in the item of expenses for the execution of the neutrality act. As the expenditure for a number of years past has been less than $10,000 per annum on this account, it is thought perhaps $10,000 will be possibly sufficient for the coming year. If, however, there should be a Fenian war or if there should be a general European war, which is threatened, the amount of $10,000 will not be sufficient; but Congress will probably meet in time to make another appropriation if a contingency shall arise.

The item of compensation to consular and diplomatic officers, $25,000, appropriated last year to pay the expenses of the transit home of persons whose offices were abolished, is not repeated this year. This makes, therefore, a reduction of $25,000 in the apparent appropriation, but it is unnecessary because it was for a temporary purpose which has now been accomplished.

For clerks to consulates a reduction of $600 is made, to which the Senate committee take no exception.

With these explanations, I ask that the bill be read and that action be taken on the amendments as they are reached.

The PRESIDENT *pro tempore*. Is there objection to the suggestion? The Chair hears none.

Mr. ANTHONY. I should like to ask the Senator who has the bill in charge if there is any legislation in the bill as it comes from the House.

Mr. SARGENT. Not a line of legislation in the bill as it comes from the House of Representatives.

Mr. ANTHONY. We have now adopted a rule which goes into force on Monday that we will not put legislation on appropriation bills, which I think is a very proper rule. If we are not to permit ourselves to put any legislation on such bills, I think we ought to establish the principle *in limine* that we will not accept legislation from the other House on these bills. We ought to stand on a perfect equality with the other House in that respect.

Mr. SARGENT. There is no legislation on this bill or I should have called the attention of the Senate to it. I do not know that it is necessary to read this bill through at length. There are only one or two changes. I suggest that the Clerk read only the amendments. The first one is on page 8, line 162.

The PRESIDENT *pro tempore*. The Chair hears no objection, and only the amendments reported will be read.

Mr. STEVENSON. Has the bill been read at all?

The PRESIDENT *pro tempore*. It has not been read through in committee.

Mr. STEVENSON. Does not the Senator want the bill read?

Mr. SARGENT. With the exception of those parts I point out, it is a literal reproduction of the bill which passed both Houses and was signed by the President last year. I have no objection to its being read at length except the time consumed.

The PRESIDENT *pro tempore*. If there be no objection, only the portions of the bill proposed to be amended will be read.

The Chief Clerk read the first amendment of the Committee on Appropriations, which was in line 162 to strike out "Algiers."

Mr. SARGENT. Algiers is stricken out because the consulate there was abolished sometime since and there is no necessity for it. It was probably put in by an oversight in the House. It is not in the estimates. If it remain, it will be necessary to increase the appropriation $1,500 for a useless consulate.

The amendment was agreed to.

The next amendment proposed by the Committee on Appropriations was on page 12, line 265, after the word "commissioner," to strike out "$3,000" and insert "$4,000;" in the same line, after the word "counsel," to strike out "$3,000" and insert "$4,000;" in line 266, after "secretary," to strike out "$900" and insert "$912.50;" and in line 268, after the words "contingent expenses," to strike out "$500" and insert "$1,000;" and in line 269 to strike out "$7,700" and insert "$10,212.50," so as to make the clause read:

For salaries and expenses of the United States and Spanish claims commission, namely: For commissioner, $4,000; for counsel, $4,000; for secretary, $912.50; for messenger, $300; for contingent expenses, $1,000; making in all the sum of $10,212.50.

Mr. SARGENT. The salary of the commissioner is not fixed by law; it has been fixed heretofore by appropriations; and in the bill of last year it was fixed at $4,500, and the salary of the counsel was fixed at the same amount. The House has in this bill reduced these by $1,500. There are some forty cases yet undetermined before the Spanish claims commission and some of them of considerable difficulty. No commissioner fit to pass upon cases of that kind, who would give the necessary labor to the work, and no counsel in ordinary practice would consent to work for $3,000 a year. The committee have not proposed to put the compensation back to $4,500, but to consent to a reduction of $500, fixing the compensation at $4,000.

I should like to say with reference to this commission that the time when it shall expire is not fixed by law; it still has the amount of unfinished business before it to which I have referred, and this commission is very useful to the Government of the United States in this way; and perhaps it should be continued; it is worth all it costs, for this reason: Persons who, some twenty years ago, or a less or greater period of time, came over to the United States, and obtained certificates of naturalization, perhaps remained long enough to get those certificates, not intending, however, to really become citizens of the United States, returned to Spain, and every month or two, as exigencies have arisen since that time, have sworn in various forms that they were Spanish citizens. A difficulty arises between us and Spain, as sometimes happens, involving our affairs in the island of Cuba, and these persons, being treated as Spanish subjects, produce their papers and at once insist that they are citizens of the United States. If their demands are not acceded to they come to the State Department and make their complaints of a miscellaneous character. The Secretary of State has been accustomed to send these persons at once to this commission. They either refuse to go there, and therefore show the hollowness of their pretensions, or if they go there that hollowness is soon discovered and the Government saves a very large amount of expense and an immense amount of annoyance. For that reason I think the policy of the law is well which seems to continue this commission, at any rate for some time longer. The House proposes that it shall continue through the next year, and the salaries we propose are not too much.

The same bill reduces the amount of compensation of the secretary by $12.50, which is hardly worth a difference between the two Houses were it not for the fact that $912.50 is just one-half the amount al-

lowed to the secretary, the other half being paid by Spain, and we ought to pay as much as Spain does; and this is the amount which it was agreed upon between the two Governments should be paid. The House probably did not understand that circumstance, and made it a round sum of $900, which is the pay of a female clerk in one of the Departments here. But understanding, as probably will be explained in conference, that this $912.50 is one-half the amount of what was agreed upon to be paid by the two Governments, there will be no difficulty in their admitting the propriety of the balance of the appropriation.

The contingent expenses are reduced by the House from $1,000 to $500. The estimates are $1,500. I am informed by the Secretary of State that $500 will scarcely pay for the amount of translation that is necessary; and we save the amount of rent this year because we have moved this commission into the new State Department building, and several other expenses are saved.

With these moderate additions, we think the bill cannot be much improved.

The amendment was agreed to.

The PRESIDENT *pro tempore*. There are no other amendments reported.

The bill was reported to the Senate as amended, and the amendments made as in Committee of the Whole were concurred in.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

PRESIDENTIAL APPROVALS.

A message from the President of the United States, by Mr. C. C. SNIFFEN, one of his secretaries, announced that the President had this day approved and signed the following acts:

An act (S. No. 678) for the relief of Ephraim P. Abbott; and

An act (S. No. 453) to authorize the Vancouver Water Company to lay water-pipes through the Fort Vancouver military reservation.

PROPOSED ADJOURNMENT TO MONDAY.

Mr. WHYTE. I move that when the Senate adjourn to-day it be to meet on Monday next.

Mr. EDMUNDS. I ask for the yeas and nays on that motion.

Mr. WHYTE. I withdraw the motion, if there is any objection to it.

Mr. EDMUNDS. I wish to state to my friend from Maryland that the bill reported by the select committee, if it becomes a law, will have the first act to be done under it done on a week from Tuesday next, and therefore it is in my opinion essential that we should take up the bill to-morrow and proceed with its consideration, so that by next Tuesday we shall be able to take a final vote upon it and either destroy it by manly blows or pass it by a vote, and not smother it to death by evasion or postponement. It is essential therefore, and it is right to all sides of the question, that that bill should be taken up to-morrow and considered, and that its consideration should continue from day to day until we shall finally dispose of it one way or the other. I hope, therefore, that the Senate will not adjourn over, but will sit to-morrow.

The PRESIDENT *pro tempore*. The motion is withdrawn.

Mr. STEVENSON. I hope the Senator from Vermont will not call up the bill till Monday, and I will tell him the reason why. A great deal is to be done by private conference among Senators, by close examination, and I think that giving us Saturday for that purpose will effect more than probably would be accomplished by debate. I throw out the suggestion to him. Of course, I have no feeling about it. I concur with him that the earliest moment we get at the debate the better; but I suggest for his consideration that by examination and private intercourse with each other to-morrow we shall be able to come to a conclusion sooner.

Mr. EDMUNDS. In the present state of public emergency, I do not think I should do my duty if I assented to that suggestion. There are the mornings and the evenings for private conference and consultation. But this bill is a bill of great importance. It is either a good measure of safety and law for the country or it is an unconstitutional and bad measure; but that it affects great interests everybody will agree. Therefore it appears to me, inasmuch as if it is to be a law it must be a law speedily, that we ought to take it up at the earliest moment to-morrow and proceed to consider it and get as far with it as we can to-morrow—of course it will involve debate, and it ought to involve debate—so that we may be able to terminate it one way or the other at an early day next week.

Mr. WHYTE. I was under the impression that the Senator from Vermont did not propose to call up the bill until Monday, and therefore I made the proposition to enable Senators to prepare for the discussion of the bill between now and Monday. But inasmuch as the Senator now states that he will call it up to-morrow, I withdraw the motion I made, and shall vote against it if made by any other Senator.

COUNTING THE ELECTORAL VOTE.

The PRESIDENT *pro tempore*. The morning hour having expired, the Senate resumes the consideration of the unfinished business of yesterday, which is the resolution of the Senator from Pennsylvania [Mr. WALLACE] to instruct the special committee on counting the electoral vote for President and Vice-President to inquire and report upon certain propositions in connection therewith, on which the Senator from Missouri [Mr. BOGY] is entitled to the floor.

Mr. BOGY. Mr. President, I will now read the testimony from Morehouse Parish, beginning on page 705 of this volume of evidence:

STATE OF LOUISIANA,
Parish of Morehouse:

I, James M. Turpin, clerk of the fourteenth district court, in and for said parish and State, do hereby certify that no statement or protest of the commissioners of election, or of any one of them, or of the supervisor of election or other person, relative to the election held in said parish on the 7th of the present month under the provisions of section 26 of act approved November 20, 1872, has been filed in my office or been delivered to me as clerk of said court up to present date.

Given under my hand and seal of office, at Bastrop, Louisiana, on this 20th of November, A. D. 1876.

[SEAL.] JAS. M. TURPIN,
Clerk Fourteenth District Court.

STATE OF LOUISIANA,
Parish of Morehouse:

I have just seen a dispatch from Governor W. Pitt Kellogg to Mr. Chandler, bearing date New Orleans, November 6, and published in the New York Herald on the 7th instant, which dispatch, as far as it refers to the parish of Morehouse, is untrue in the following particulars: This parish at the time referred to in said dispatch was not patrolled by White Leagues or other persons, re-enforced by armed bodies from Arkansas and Mississippi, within my knowledge. I heard of no such, and the dispatch in this particular is incorrect. There has been no republicans murdered in this parish during this campaign on account of their politics that I know of. The colored voters were not prohibited from going to or returning from the parish site on the day of election nor previous thereto, that I ever heard of. On the day of election a large number of voters residing in different wards of this parish voted at the poll established at Bastrop, the parish site, without molestation or hinderance, so far as I know or could see. I never heard of the roads leading to Bastrop being picketed. I am the sheriff of the parish of Morehouse, and I have never been unable to execute any warrant of arrest that was placed in my hands, in any case where I could find the parties.

I was present at the poll located at Bastrop on the 7th of November, and the election at said poll was conducted peaceably and quietly, and every elector, both white and colored, voted for the men of their choice, so far as I know.

GEORGE A. PETIRKIN,
Sheriff Parish Morehouse.

I have just read the dispatch referred to herein, and I have read the above and foregoing statement of George A. Petirkin, sheriff of Morehouse, and I cheerfully concur and indorse said statement. I am a resident of Morehouse Parish, and parish attorney for said parish, and a republican, and vote the republican ticket. George A. Petirkin is likewise a republican.

FRANK VAUGHEN,
Parish Attorney pro tempore.

Sworn to and subscribed to before me this 13th day November, 1876.

A. L. BUSSEY,
Deputy Clerk, Fourteenth District

STATE OF LOUISIANA,
Parish of Morehouse:

I, L. R. Stark, do solemnly swear that I am a resident of ward No. 5, said parish; that I voted in said ward at the recent election on the 7th instant; that the election in said ward was a free, fair, and peaceable one; that previous the election the parish was not patrolled by the White League, re-enforced by armed bodies from Arkansas or elsewhere, and that the only armed bodies in the parish on or previous to the election were United States troops; that the republican leaders in said parish were not driven away or murdered previous to said election, or on the day thereof; that no republican voters, within my knowledge or that I heard of, were intercepted by White League pickets or other persons and prevented from going to the parish seat or other place in the parish to vote; that none were prevented from voting by being cruelly beaten or otherwise maltreated; that I saw nothing on the day of the election or previous thereto that was calculated to intimidate any voter or to hinder a free election; that the reported dispatch of Governor Kellogg to Hon. Z. Chandler, as far as relates to the parish of Morehouse, is utterly false in every particular.

L. R. STARK, M. D.,
United States Marshal's Posse

Sworn to and subscribed before me this 11th day of November, A. D. 1876.

W. H. SUMMERLIN,
Justice Peace of Fifth Ward.

Mr. PADDOCK. Mr. President, it is some time since the Senator from Missouri commenced to read the book from which he is now reading, and I have almost forgotten what the book is. I should be glad to be informed what it is.

Mr. BOGY. The evidence taken in New Orleans before the returning board. I am surprised the Senator did not know this without my telling him.

Mr. PADDOCK. It is too great a tax on the memory.

Mr. BOGY. You mean to say for your memory. I regret it is so feeble; that is your misfortune.

THE STATE OF LOUISIANA,
Parish of Orleans:

Personally came and appeared before me, W. T. Houston, a justice of the peace, duly commissioned, Samuel W. Riley, a resident of the fourth ward, parish of Morehouse, who, being duly sworn, deposes under oath that he was, in August, 1875, appointed tax-collector for the parish of Morehouse, and that since that date he has been constantly in the parish of Morehouse, and, having been a member of and voting with the republican party of the parish of Morehouse, that he has never known of any improper treatment to himself or republicans of the parish of Morehouse on account of their political faith, and that he has always felt free to go to any part of said parish, and verily believes that no member of the republican party has been in any danger of bodily harm or political proscription on account of his political opinions. He further swears that he has never known of any violence or threats made to any colored man on account of his color or political opinions by any member of the democratic-conservative party of said parish during the time of registration or on the day of election; that on the 7th day of November, A. D. 1876, he was during the entire day at the fourth ward precinct, which is in the town of Bastrop, at the court-house in the parish of Morehouse, and that he was appointed by the supervisor of registration as one of the five to be present and see that the polling of votes and counting of the same was done as directed by the law; and he does here declare that he saw nor heard anything to intimidate any man from voting just as he wished. He has never known of any armed or military organizations in the parish of Morehouse during the registration of voters in the said parish or on the day of election. He further declares that he has never known of any colored republicans discharged from labor and employment or the stopping of the issue of rations to colored republicans on account of their being members of the republican

party. He further declares that he never knew of any of the roads or approaches to the voting precincts being picketed to prevent republican voters from coming to the polls and from casting their votes according to their own free will.

SAM'L W. REILEY,
Ex-Tax-Collector, Morehouse Parish.

I will now proceed to read the testimony taken in the parish of Natchitoches:

The witness, David Pierson, being first duly sworn by the undersigned authority, did depose and say as follows:

To first interrogatory he answers and says: My name is David Pierson. I reside in the town of Natchitoches, parish of Natchitoches, Louisiana. Am a lawyer by profession.

To second interrogatory he answers and says: I was in Natchitoches Parish the greater part of the time from the 15th September to the 7th November, 1876. Visited almost every ward in the parish during the canvass, and watched closely the conduct both of the registration and election. On the part of the democratic-conservative party there was no intimidation, violence, threats, disturbances, tumults, or other wrongful or ill practices, or frauds concerning said election; no acts, or attempts at acts, to prevent a free, full, fair, and peaceable election. It was the policy of the conservatives, concurred in by the entire rank and file of their party, not only to give no cause of complaint as to the fairness of the election, but to prevent the slightest pretext for a contest so far as the conduct of the democrats was concerned. I attended mass-meetings in various places throughout the parish, which were largely attended by both white and colored citizens, republicans and democrats, and in no instance was there any disturbance or tumult, or other means of intimidation; but, on the contrary, the best of feeling prevailed and freest expression of opinion indulged in. I also attended large republican meetings, at which every democrat, white or colored, demeaned themselves properly and peaceably. Registration offices were opened by the republican supervisor in the various wards of the parish, affording every opportunity to the republicans to obtain their certificates of registration, and in many cases giving preference to the republicans in the location of the offices. There was no disturbance that I am aware of; certainly none complained of at any registration-office in said parish, nor was there any effort on the part of the democrats to hinder, or prevent, or delay registration. If there were any persons who did not register or vote, it was their own fault, so far as the conduct of the conservatives was concerned. In the matter of the election, two out of three commissioners were designated by the supervisor from among the republicans in all the wards that were thought to be republican or to have a republican majority. There was also United States supervisors at each and every poll, as also constables of election. Every precaution provided for in the law, as well as dictated by prudence, was adopted and taken to insure a peaceable and fair election, and the free and voluntary exercise by everybody without regard to race or color or political bias of the right of franchise. I was present at one of the largest polls during the entire day of election, to wit, the polls at Natchitoches, Nos. 1 and 2, of ward 12, at which there was not the slightest ground for complaint against the —— and act of the conservatives; not a broil, disturbance, threat, act of violence, or other wrongful act on the part of the democrats that I know of or heard of. From the close of the polls on the 7th November I was almost constantly about the court house, where the supervisor had his headquarters, and to which place the commissioners brought the boxes and returns for two days; saw the returns of election come in and delivered to this supervisor; heard the commissioners and officers of each poll speak freely of the manner in which the election was conducted at the precincts, and in no instance heard of any complaints against the democrats or that there had been any intimidation, violence, or fraud at any poll. A large crowd of people, white and black, democrats and republicans, were assembled about the supervisor's office at the court-house for two or three days subsequent to the election, and it seemed to be invariably conceded that there had been no cause for protest or complaint, so far as the conduct of the conservatives was concerned. I was present much of the time in which Mr. Russ, the supervisor, was engaged in making up his consolidated statement. He was assisted by the clerks and United States supervisor for the parish, and forwarded the same when completed, without a protest on the part of any one; and I am convinced that had there been any just ground for complaint or protest against the democrats that said officer would have remarked it upon the consolidated statement of votes. On the part of the republicans—colored republicans against colored democrats—there was, as is asserted, a great deal of abuse, threats, and intimidation. From public rumor, information derived from reliable parties throughout the parish, I am constrained to believe that there existed a wide-spread determination among colored republicans of that parish to prevent any colored man from voting the democratic ticket, even if they had to resort to violence to accomplish their designs. In several well defined and atrocious cases, as I am informed and believe, colored men and voters were actually assaulted and greatly injured, even after the election had passed, on account of their having voted the democratic ticket; others were denied religious membership; others ostracized, and others were threatened with death before and after the election.

To the third interrogatory he answers and says: Wards 5 and 6 in said parish, or what is generally known as Hill wards, having a large white population and but few colored. The vote of these wards has been almost solidly democratic at all former elections, the colored voters residing there voting voluntarily with their white neighbors or employers, except a few that reside near the town of Natchitoches, who usually vote at the latter precinct. From my knowledge of the character of the citizens of these wards and the political sentiments of the voters, white and black, the blacks having at every election voted with the democrats, I am satisfied there was a fair, free, and peaceable election in said wards on the 7th November last. Had there been violence or intimidation I should have heard of it. I know of none nor have heard of any; the commissioners of election report none.

To the fourth interrogatory he answers and says: I know of nothing further that I can now call to mind.

D. PIERSON.

Sworn to and subscribed before me this 1st December, 1876.

STATE OF LOUISIANA,
Parish of Natchitoches:

I hereby certify that there has not been filed in the clerk's office of the parish of Natchitoches by the supervisor of registration, any commissioner of election, or any other person, any protest, affidavit, certificate, or statement regarding or relating to any riot, tumults, acts of violence, intimidation, disturbance, bribery, or corrupt influences at any place in the parish of Natchitoches, or at or near any poll, or voting-place, or place of registration or revision of registration, preventing or tending to prevent a fair, free, peaceable, and full vote of all the qualified electors of said parish, or any precinct, ward, city, or town in said parish, at the election recently held on the 7th day of November, 1876, or during the registration or the revision of the registration which preceded said election; that I have entire charge of said clerk's office, and I know positively that no said document is or has been on file therein.

Given under my hand and seal of office on the 20th day of November, 1876.

JNO. A. BARLOW,
Deputy Clerk, District Court.

I now go to the parish of Ouachita, the testimony as to which begins of page 773:

STATE OF LOUISIANA,
Parish of Ouachita:

Before me, the undersigned authority, personally appeared John W. Scarborough, who, being duly sworn, deposes under oath that he is a duly registered and qualified voter of the parish of Ouachita, said State; that he voted in said parish, at poll No. 8, ward No. 4, at the recent election, on the 7th day of November, 1876; that the election at said poll was fair, free, and peaceable one, as much so as I have ever seen at any election in my life. I have been living in this State for thirty-nine years, and in the parish of Ouachita nearly all of that time. I was at the poll in ward No. 8 when it was opened, and remained until it closed. I saw republican colored men vote the republican ticket freely, and without any molestation of any kind. I likewise saw numbers of colored men who had heretofore been republicans vote the democratic ticket. They did so freely, and of their own free accord. Many of them had before joined the democratic clubs, organized in my ward and in the Bayou Siard ward. There was no coercion of colored men to join democratic clubs organized in my ward—none whatever. They joined them freely, and of their own accord, in the two wards above referred to, and generally throughout the parish of Ouachita, so far as my knowledge extends. There was no connection between the clubs and the companies formed in the parish for home protection. At a large barbecue given in my ward, about eight days before the election, there was as many as between eighty and ninety colored men joined the club of my ward, residents of the ward. I know this, because I was secretary of the club. We told these colored men not to join our club if they did not intend to vote with us; and they joined the club, expecting and intending to vote the democratic ticket, and the majority of them did so of their own free will. There was no compulsion by any one, and not a disturbance at the poll, and not an angry word spoken that I heard or heard of. The best of feeling prevailed between blacks and whites on that day as previously, and still exists.

This feeling I am satisfied would always exist if not for republican leaders, who seek to utilize the colored voters for their own aggrandizement, and in order to do so inflame their minds to array them against the whites. I am satisfied from their tactics in Ouachita Parish that the leaders would be willing to provoke bloodshed to accomplish their political purposes. It is my firm conviction, and it is the general impression of the white people of my parish, that the programme of the republican leaders was to bring on race conflicts, out of which to make political capital and influence the election. They were jealous of our influence over the colored voters, which was daily growing more potent, and promised to give us a large majority of the votes of the parish. In my own experience I have an instance which I believe to be the result of the teaching or tactics of the republican leaders. While I was quietly riding along the road I was insulted by a negro man who was in a wagon with a number of other negroes. The language was pointed and insulting, and given without any provocation on my part. I have heard of other similar instances in the parish. The conduct of the whites was very forbearing and conciliatory, our object and desire being to have no disturbances or race issues. We were in the minority and wanted no bloodshed or commotions of any kind, and acted and advised in the interest of peace. In the affidavit of Frank B. Johnson, a colored man living in my ward, and who had voluntarily joined our club, I see he swears that "John Scarborough also remarked to me and some other republican voters that if we voted the radical ticket that they would make it so hot for us that we could not live here, and that if we were starving to death he would neither employ or give us a mouthful to eat." I pronounce this a falsehood. I never spoke to him until after he had voted and was standing near a fire in front of the school-house. I knew he had voted the republican ticket by the color of it, and went to where he was standing outside of the house and said to him, in substance, "Frank, I am sorry to see you have gone back on us by voting the republican ticket after having joined the democratic club, as I thought in good faith; and, after deceiving us in this way, so far as I am concerned, I would not employ you or feed you if you were starving."

There could have been no intimidation, as what I said was after he had voted, and at the time there were only three white men present when he voted (also at the time of making my remarks) besides the commissioners of election, and he was himself in company with eight or ten colored men who had voted the republican ticket. I never attempted to intimidate him that day or any time previous, and I scarcely knew him when I saw him. I see also that one J. R. Hall, a white man, states in his affidavit that he was intimidated in my ward when affidavits were being taken as to the character of the election and the freedom of those who voted the democratic ticket. There could be no intimidation after the election, and as to the making of the affidavits, I know of my own knowledge that of all of those taken in my ward are given by colored and white men, freely and voluntarily, and many of them were anxious to give them. I was present when they were being taken and heard nor saw anything to intimidate any one or induce them to give affidavits. I will state further that this man Hall was the justice of the peace before whom the affidavits were taken, and he was requested to state freely to each one the nature of the affidavits desired, and he did so, and they were required to understand fully the nature and purport of what they were signing. They were read to every one of them, and in turn they were asked if they understood them before they were signed. I believe that no one signed without fully understanding what he was signing, and we desired none to sign unless they did know. Some of these colored men who gave their affidavits were indignant at the idea that they were intimidated to vote the democratic ticket. I will state further that this man Hall stated publicly, after the nomination of republican State ticket, that he would not support it, and subsequently joined the democratic club of my ward.

This same affiant states that on Saturday previous to the election he went to Monroe, and on his return saw Captain McLeod employing his men to picket the road leading to Monroe. I will state of my own knowledge that no pickets were stationed on the roads on Saturday. There were pickets placed on the roads on Sunday, and this was done, as I know, at the request of leading citizens to prevent armed bodies of men from visiting Monroe to create disturbance, which was anticipated, and that the picketing was done entirely in the interest of peace and good order, and no unarmed man was prevented from going to town. The reasons for apprehending trouble by armed colored men visiting Monroe was the fact that reliable information had been obtained to the effect that the leading republicans had advised the colored men to go to Monroe days before the election from all parts of the parish, and the rumors were that they were to go there armed; subsequently to this a number of arms were found secreted in two different places in the town of Monroe, and which I have every reason to believe were placed there for the use of colored men. None of this picketing was done with the view of intimidation or for purposes of preventing a free and fair election, but solely, as I know, in the interest of peace and order. This same affiant (Hall) further states that a leading republican was afraid to vote at poll 8, and did not, and that it was because two democrats were keeping a tally-sheet near the polling-places. This was done by the democratic party for ascertaining the vote of each poll in advance of the count of the commissioners, and this they knew from the color of the tickets deposited by each voter in the boxes. It was never intended to intimidate any voter, nor did it have any such effect, so far as my personal knowledge extends. There was but one republican at that poll who did not vote, and he was told repeatedly by the best citizens he ought to vote, and that he could not say that he was intimidated, for he was at perfect liberty to vote just as he pleased. Numbers of others had voted the republican ticket at this poll, and there was nothing to prevent or deter him from doing so had he desired it, but his reply was that he had left his registration-papers at home. I positively assert that this man was not intimidated or hindered in the right of suffrage, and no other man on that day, notwithstanding this affiant swears "the like influence kept many republicans from voting."

In regard to the guns which same affiant (Hall) says were brought into the room soon after the closing of the polls, I will state that the commissioners of election requested a special deputy sheriff who was present to get some three or four citizens to go home and get their guns and escort the commissioners with the boxes to Monroe. Several volunteered to do so, who procured their guns and came in for that purpose, and did go with them, or at least I saw them start on the way. I will state further, that there was not a gun on the ground that day, except those brought there under the circumstances above stated, and not a pistol, that I saw. As an evidence that there was no intimidation, I will further state that Judge Baker, who is a republican, was at the poll during the day and freely moved about among the voters electioneering for republicans as we were for the democratic ticket, and as the result many republican tickets were polled. The same affiant mentions the shooting and killing of various colored republicans, and among them the shooting of H. W. Burwell, Spencer Dickerson, and William Lewis, and makes them appear as political; I will state the man who did the shooting, whose name is Hathaway, came to my plantation a short time previous, and one of the lessors on the place hired him to pick cotton. On Saturday, the day of the shooting, he went to Monroe and received pay for the cotton he had picked and got crazy drunk, as is well known, and on his way home, in a wagon with the party who was employing him, he did the wanton and vicious shooting, which was done indiscriminately, and the result was the wounding of these three colored men. Two of these colored men were noted democrats, to wit, Spencer Dickerson and William Lewis. The shooting had no political significance whatever, as it is well known to the affiant Hall and every one else cognizant of the facts. A member of our club who had been to town and heard the facts came and reported the same to the club, which was at the time holding its meeting, and the entire club immediately dispersed to their homes, procured their guns, and went in pursuit of Hathaway. He saw us approaching in the dusk of the evening and made his escape to the woods. We picketed the roads and surrounded the place where we supposed he was secreted and remained all night, and the next day about twelve o'clock we succeeded in capturing him in a dense thicket, after having sent for more men to assist us. We conducted him to Monroe and delivered him to sheriff of the parish, and he is now securely lodged in jail. On the way to town the negroes on the plantations shouted "five hundred votes for the democrats," and otherwise applauded our actions.

All these facts are likewise well known to the affiant Hall, as I am aware, notwithstanding his overlooking them in his zeal to work up acts of intimidation and violence for political effect. Since the election I have repeatedly heard the affiant Hall say that the election was quiet, peaceable, free, and fair, and that he had voted the ticket of his choice without intimidation of any sort. He stated this just before leaving Ouachita Parish to come to New Orleans. In regard to the various affidavits made in relation to the killing of republicans in Ouachita Parish, I will state that none of them were, as far as I know, the result of political principles or for political purposes. It is well known by the best citizens of my parish, as well as myself, that B. H. Dinkgrave had many personal enemies, and some very bitter, and of which fact he was himself well aware. Some years previous to his death he had killed one John C. Winnberly, and his family always considered it an unwarrantable killing, and Dinkgrave himself was uneasy in regard to the matter. Citizens have heard him say that he was apprehensive that he might be hurt in consequence of it; and this was the general impression in the community. I have no idea that his death had anything to do with politics, and our citizens are generally of this impression, except those anxious to make political capital out of his death. In regard to James Jackson, who was killed on his wagon loaded with wood, referred to in affidavits as a political matter, it is a well-conceded fact that he was killed in consequence of a family matter in a difficulty, or as a result of a difficulty, with another colored man, and no one in the community ever charged this death to politics. I am a planter in the parish of Ouachita, of long residence, and well known; my relations with the colored people have been of the kindliest character, and my counsel and efforts have been in the interest of peace and good order.

JOHN W. SCARBOROUGH.

Sworn to and subscribed before me this 27th November, 1876.

W. T. HOUSTON,
First Justice of the Peace for the Parish of Orleans.

MONROE, *17th November*, A. D. 1876.

STATE OF LOUISIANA,
Parish of Ouachita:

I, Julius Ennemoser, clerk of the fourteenth judicial district court in and for said parish and State, do hereby certify that under the twenty-sixth section of the act of the General Assembly of Louisiana, numbered 98, and approved 20th November, 1872, and published on page 15 of the acts of the General Assembly of Louisiana for 1873, and entitled 'An act to regulate the conduct and to maintain the freedom and purity of elections; to prescribe the mode of making returns thereof; to provide for the election of returning officers and defining their powers and duties; to prescribe the mode of entering on the rolls of the senate and house of representatives, and to enforce article 103 of the constitution;" which said section 26 of said act is as follows.

Having already once read the twenty-sixth section of the act, it need not be here repeated.

Neither the supervisor of registration of said parish of Ouachita nor of any election held in said parish on Tuesday, the 7th of November, A. D. 1876, for presidential electors, State, parish, and ward officers, member of Congress fifth congressional district, State senator eighteenth senatorial district, members of the State house of representatives, and district judge and district attorney for the fourteenth judicial district, has filed or caused to be filed with me, or in my office, any sworn or other statement, as required by said section 26, in the manner therein provided, that there was any riot, tumult, acts of violence, intimidation, and disturbance, bribery, or corrupt influences, at any place within said parish, or at any or near any poll or voting place, or place of registration, or revision of registration, or that any such act or acts prevented a fair, free, peaceable, and full registration and election, or that any qualified elector of said parish was deterred from registering or voting.

Witness my official signature and seal of office this 17th day of November, A. D. 1876.

[SEAL.] JULIUS ENNEMOSER,
Clerk of the Fourteenth Judicial District Court, Parish of Ouachita.

STATE OF LOUISIANA,
Parish of Orleans:

Before me personally came Charles Tidwell, who, being sworn, deposes and says he is sixty-one years old; plants on the island in Ouachita. He moved there from Wilcox County, Alabama, in 1872. I know the woman Eliza Pinkston, she, with the exception of two years, having lived with me ever since she was a child. She has always been a bad girl and woman; she has been in trouble ever since I knew her, and when I left Alabama I had to leave her because she was in jail for some misconduct. She has never had a regular husband, but has had several children. Her first child she threw away in a patch of briers when it was an infant; it was lost about twenty-four hours, when she said somebody had stolen it, when some one found it where she placed it; said child is now on my place, and is about ten years old. Her second child, it has always been said, was destroyed by her at or about its birth; it disappeared mysteriously at any rate. She came out to Louisiana with some hands of Colonel Morrison's, and in all was about two years away from me. While on Morrison's place in Morehouse, she was prosecuted for a violent assault and battery on an old colored woman; she was acquitted for want of witness, but afterward the old woman died from the injuries. She told me herself that she had beaten her and smothered her. She came back to my place about 1st August, 1875, from Morehouse. She picked cotton on my place last season, and when she went off an old colored woman called "Aunt Rose," between sixty and seventy years of age, went with her to a mill out in Union Parish. The old woman got bedridden, and it has been rumored commonly through the country that the old woman was beaten to death by Eliza, though I will do her the justice to say that she denied it to me when I charged her with it.

Eliza is one of the most turbulent, cruel, vindictive creatures I ever saw. She is terribly obscene and vulgar in her talk—say profane—and curses worse than any one I ever saw in any matter she had any feeling in. I know no one else who knows her well would believe a word she said; she is a notorious liar. She took up some time since with a man named Henry Pinkston, the one who was killed on my place on the night of 4th November, 1876. About 1st of August she came with Henry to my place to pick cotton. He had recently before had a terrible fight with one Aleck Brooks, at Ouachita City, where Brooks was crippled by him, one hand being partially disabled. It was notorious through the country, for it was said to be a terrible fight. Henry and Eliza picked cotton for me this fall, and this man Brooks, also. Eliza and Brooks got into a quarrel in the field, and Henry was brought into it, but nothing serious there occurred, Brooks saying, as I learned at the time, that he would not fight Henry a fair fight, but would fix him yet. Eliza knew that I knew these things, and all about her. On Friday before the election there was a radical meeting at Saint James chapel, near my place, and Eliza and Henry were there. She got terribly excited over the speech of a colored man—cursed and abused him out loud, and begged for a pistol, saying she "would shoot the damned son of a bitch out of the wagon if anybody would give her a pistol." Henry, so far, as I know, was not an active partisan. On the morning of the 5th of November, (Sunday,) I was awakened about five in the morning by Eliza knocking at my door. She stated she had been shot and Henry killed. She lived about three-fourths of a mile from my house. I got up, and she then told me that Brooks and his crowd had been to her house and killed Henry and nearly killed her. I told her as soon as it was light I would go down and see about it. After talking a little while, she said to me if it was not Brooks's gang she knew it was the radical negroes on the Boher and Pace places, and some from over the river. Mr. Harald, (John,) who lives in the house with me, heard these facts of these statements. When the second was made no one was present but myself. The afternoon of the same day she again said, in my presence and that of Sire Packs and E. J. Armstrong, that there were fifteen or twenty men came there, but she did not know any of them.

I sent for Dr. Helmich and had her wounds attended to; she was up pretty much all the time after the wounding, going about readily whenever she pleased.

A little negro on my place found the body of the child in the lake, about one hundred and fifty paces from the house she occupied, two or three days after Henry's death. I, being notified, went down; took the body out of the water; there was no wounds upon it, and it evidently had been drowned.

I went down to Monroe on Monday the 6th, and I reported the whole matter to the coroner. I buried the body, but the coroner did not come; I mean Henry's body. It is not a fact that the body was mutilated in any other manner than the shots through the head and body. Mr. William Packs, one of the persons charged by Eliza with killing Henry and wounding her, died and was buried, to my personal knowledge, about the 1st of September last.

I have no idea that Eliza ever saw James Logan in her life. I know Eliza well and her character for truth and veracity, and do not hesitate to say that she is utterly unworthy of credit in any statement she makes, whether under oath or otherwise.

C. M. TIDWELL.

Sworn to and subscribed before me this 28th November, 1876.

W. T. HOUSTON,
First Justice of the Peace for the Parish of Orleans.

* * * * * * *

STATE OF LOUISIANA,
Parish of Orleans:

Personally appeared Fr. Endom, who, being duly sworn, deposes under oath that he is a duly registered and qualified voter of the parish of Ouachita. I am mayor of the city of Monroe, and for the last two years and six months; been living in Monroe for the last eighteen years. Knew Dr. B. H. Dinkgrave personally, and in my opinion he was not killed on account of his politics; some five or six years ago he shot and killed a man by the name of John Winnberly. Said Winnberly had brothers living in Ouachita Parish and in Texas. He also arrested a party from Richland Parish some years ago, by the name of Adams, on the affidavit of a negro woman, charging said Adams with the killing of Judge Crawford and Arthur Harris on their way from Columbia to Winnsborough. Adams was discharged afterward, but swore vengeance against Dinkgrave. The killing of James Jackson, who came one morning in the outskirts of the city limits lying dead on his wagon loaded with wood, was attributed to some family quarrels. Information I received that same morning that he, having left a wife on one place and married another who had grown sons, who did not approve of said marriage; that he did not treat his wife to the satisfaction of her sons. Further reports were he sold his wood too cheap, and the other colored settlers in his neighborhood were dissatisfied with him on that account; that no positive proof was obtained. As soon as notified I went to the spot where the ox-team and loaded wagon had stopped. I found the body lying on the top of the wagon. I immediately dispatched mounted police to the spot where the deed was reported to have been committed, in search of the party who was suspected of committing the deed, but they returned after some time without arresting any person.

The clubs of the democratic party and rifle companies were two distinct organizations. I did belong to the democratic club, but was not a member of the rifle club in the city of Monroe or any other portion of the parish.

The companies were organized, as I understand, for the preservation of peace and good order of the city of Monroe and the parish.

The day after the killing of Dr. Dinkgrave news came to the city of Monroe that a large body of armed negroes from the island and the parish of Morehouse were coming to plunder and burn the city. Immediate alarm was given and a large number of white citizens went to the island in order to check the movements of the negroes and keep them from coming to the city of Monroe.

It was reported that an order had been issued to the negroes through the country for them to come to the city of Monroe armed. This order was said to have been issued by one George B. Hamlet, negro sheriff of the parish of Ouachita and candidate for State senator for the parishes of Ouachita and Caldwell.

No republican meeting ever held in the city of Monroe has ever been interfered with by the democratic citizens of Monroe.

About the same time reports came in that houses of white citizens down the river had been shot into at night by negroes. I then myself, in company with Judge R. W. Richardson and F. P. Stubbs, called upon Judge Robert Ray, a leading republican in our parish, and requested him to go at once and investigate the shooting into the houses of the white citizens above referred to, and induce the negroes to abstain from their unlawful acts, thereby preventing a collision between the races and bring the guilty parties to justice.

He readily and willingly complied with our request, thereby restoring peace and good order in that section of the parish.

About ten days after the election, news came to me from several parties that a

large number of fire-arms were collected and secreted within the corporate limits of the city of Monroe by negroes, but I did not pay much attention to the report; that in order to satisfy myself on the subject I went to see Mr. Ennemoser and inquired of him if he knew anything about the fire-arms reported to be secreted in the city, which he denied to me of knowing anything about, and I rested easy on the subject until the Sunday before the election a considerable number of armed and unarmed negroes came within the city limits, and congregated at the house of one Anthony Overton, which movement on their part created considerable excitement in the city among the residents. I was myself out that night with about twenty special policemen, and watched their movements. About two o'clock in the morning I came across about fifteen armed men, (negroes,) having posted themselves on the open road, within the corporate limits of the city. I asked what their demonstration meant. They told me that it was reported to them that this was to be their last night. I asked them for their author, but they refused to give any. I told them to go to their houses, and I would see that none of them would be harmed. I was out the whole night myself, and I saw nothing to justify their movements.

On the following day I issued a proclamation, annexed in my other affidavit, ordering all armed bodies to disperse and go home. Copies of my proclamation were distributed among all the citizens of Monroe, white and colored. About noon of the same day, a negro by the name of ——, with Harrison Bell, handed me on the street of the city of Monroe five of my proclamations written on the back of them, "Hell and damnation, we want no peace," with threatening language written on the back also. In order to prevent riot and bloodshed, I went to the house of Anthony Overton to learn, if I could, who had written the insulting language on the back of the proclamations, but did not learn from him or any of the others present at his house who did the writing.

I then read aloud to the negroes present, several hundred in number, my proclamation. A good many of them obeyed the proclamation, and a large number of them paid no attention to it, and were then requested by George B. Hamlet to stay and not obey the proclamation. I did not hear him tell them so, but was informed that he did so.

My proclamation was not issued for any political purpose, but to preserve the peace and good order of the city of Monroe.

Seeing that the armed bodies of men would not disperse after having notice and time to do so, I called upon Lieutenant-Colonel Hale, commanding United States troops at Monroe, and requested him to accompany me to Monroe to assist me in making search for the arms and assist me in preserving the peace, which request he readily complied with. After searching several houses, reports came to me where the arms were concealed. Myself and Colonel Hale went to the spot, to wit, the house of one Virald Moore, on whose premises we found a number of fire-arms concealed in outhouses and covered up by matting and old lumber. Said fire-arms were taken possession of by Colonel Hale, at my request, and a guard placed over them by him. The guns were returned to the owners (negroes) the day after the election. Since my arrival here in this city I received information from home that another lot of arms, to wit, one hundred and ten guns, were found on the same premises, concealed in an empty cistern, which, in my belief, were to be used to intimidate the democratic voters of Monroe, white and colored, as threats of violence had been reported to me to that effect as coming from the parties in possession of said arms, notwithstanding the night before the election had passed off peaceably and quietly.

On the day of election there was perfect peace and quiet in the city of Monroe, with the exception of one colored man arrested for having on his person a pistol, I having made ample provisions to preserve the peace by appointing a large number of special policemen, which enabled me to preserve the peace and order of the day. I appointed none but democrats on my police from the fact that the United States deputy marshals and deputy sheriffs were all republicans, and most of them were unreliable and objectionable to all good, law-abiding citizens.

I further state that all citizens who conducted themselves with propriety were equally respected in our parish, regardless of their political affiliations and sentiments.

FR. ENDOM.

Sworn to and subscribed before me this 27th November, 1876.

[SEAL.] W. T. HOUSTON,

First Justice of the Peace for the Parish of Orleans.

Mr. President, I will read now the testimony from the parish of Tangipahoa, beginning on page 977:

STATE OF LOUISIANA,

Parish of Tangipahoa, Sixth Judicial District Court:

I, Dan. T. Setton, chief deputy clerk of the sixth judicial district court of the parish of Tangipahoa, State of Louisiana, (N. A. Sanders, clerk, being absent on account of sickness in family,) do hereby certify that there has been no protest whatsoever filed up to date in my office, under act 98, section 26 of the acts of 1872, for any reasons or causes whatsoever mentioned in said section 26.

Sworn under my official signature and the impress of my seal of office, this the 23d day of November, 1876.

DAN. T. SETTON,

Chief Deputy Clerk of the Sixth Judicial District Court of Louisiana, Parish of Tangipahoa.

I will now read from the testimony from the parish of Claiborne, page 271:

Answers of J. S. Young to cross-interrogatories.

First cross-interrogatory. I was frequently out of the ward in which I resided, and in various parts of the parish at times, for some time prior to the 7th of November last, and visited the Hainsville ward, which is ward 3, the Summerville ward, which is ward 1. I did not know or hear of any merchants in Homer stating that they would not furnish provisions or supplies to such colored men as voted the republican ticket at the general election. Such expressions may have been used; but, if so, they were undoubtedly the exception and not the rule.

Second cross-interrogatory. There never was, at any time during the canvass, any democratic rifle-clubs. There were democratic clubs, but they never held secret meetings, nor had they any arms whatever, nor did they contemplate anything except the most peaceable persuasion, by reason and argument. It was from the beginning the earnest purpose of the democratic leaders, in truth and in fact, to have nothing of a nature to force or intimidate any one.

J. S. YOUNG.

Sworn to and acknowledged before me this 30th November, 1876, at New Orleans, Louisiana.

EMMET D. CRAIG,

Commissioner United States Circuit Court, District of Louisiana.

* * * * * * *

Answers of R. R. Morgan to interrogatories propounded by candidates of the democratic party.

Answer to interrogatory 1. My name is R. R. Morgan; am forty-seven years old, and reside in the parish of Claiborne.

Answer to interrogatory 2. Was in Homer, Claiborne Parish, on the day of the last election, and had resided in said parish for the year previous and for five years.

Answer to interrogatory 3. I do know the character of the election in my parish, and the same was quiet and peaceable and fair.

Answer to interrogatory 4. There was no disturbance, tumult, bribing, or intimidation that day.

Answer to interrogatory 5. The condition of my parish previous to the election and during the campaign was quiet and peaceable.

Answer to interrogatory 6. I know of no bull-dozers or any kindred organization in my parish.

Answer to interrogatory 7. The republican party during the campaign had lost its leading white men by their going over to the democracy, and had no head or leadership.

Answer to interrogatory 8. The relations of whites and blacks toward each other in that parish have been amicable and peaceable.

Answer to interrogatory 9. I am satisfied that as many colored men voted the democratic ticket as did the republican, if not more, and that without any improper influences.

Answer to interrogatory 10. All the republicans that I have heard speak of the election there have invariably admitted that it was fair.

Answer to interrogatory 11. I know nothing of the arrest of Osberry Billiord or Willis Walker.

R. R. MORGAN.

Sworn to and acknowledged before me, at New Orleans, the 30th November, 1876.

EMMET D. CRAIG,

Commissioner United States Circuit Court, District of Louisiana.

Answers of J. S. Young to interrogatories for democratic-conservative candidates.

Answer 1. My name is J. S. Young; am fifty-two years old, and reside in the parish of Claiborne, and have for over twenty years.

Answer 2. I was in Homer, said parish, on the day of November 7, being the day of the last general election in the State of Louisiana, and had been for thirty years previous living in said parish, and have traversed the parish generally during that time.

Answer 3. I do know the character of the election in said parish; it was fair, quiet, and peaceable.

Answer 4. There was no disturbance, nor tumults, intimidation, nor bribery that affiant knew or heard of on the day of the election, nor at any time previous during the supervision of registration.

Answer 5. The condition of Claiborne Parish during the campaign was undoubtedly peaceable, and the canvass was conducted with the most gratifying feelings between both political parties, so much so that never during twenty years' experience there have I seen a canvass or an election in which the feeling was more amicable. So far as I know, saw, or heard, any voter could have voted or spoken without insult or molestation during the canvass. Indeed such was the fair and amicable manner in which the canvass was conducted, that Mr. Packard, Colonel Wharton, and General H. J. Campbell all expressed themselves gratified, when they entered the canvass, at the perfect good feeling and fairness that was apparent, and articles to that effect appeared in the New Orleans Republican, when giving account of the progress of the canvass.

Answer 6. I know of no such organization as bull-dozers, or regulators, or any such kind of organizations having any existence in said parish during the entire canvass, nor indeed at any time whatever, and I am satisfied I should have known it if any such organization existed.

Answer 7. The republican party during the campaign was in a disorganized condition. W. I. Blackburn, its main leader, had declared he would not support the ticket, because he wanted honest and economical government, and his paper, which was the official organ of that party, took open ground to that effect, and Blackburn himself made speeches to the same effect to several large assemblies. The other leading republicans there, almost without exception, took the same ground. So completely was this disorganized condition prevalent that the colored men there, fully one-third if not one-half of them, voluntarily took part in the preliminary election of the democratic party some months prior to the general election, and identified themselves fully with the democratic party; this, too, when there was no excitement as to party candidates, and when, in order to come forward and participate, every one had to pledge himself, or consider himself pledged, to support the nominees. The relations of white and colored voters, and of the two races generally, are of the most amicable kind in said parish.

Answer 9. I am satisfied, from what I saw and heard, that more colored men voted the democratic ticket than the republican, and so far as I know, did so freely and without any improper influence.

Answer 10. I have heard many colored men expressing themselves as highly pleased that they could say that they voted the republican ticket as freely as the democratic, and that they had done so; and I also heard white republicans say things to the same effect. The supervisor of registration himself, I. E. Scott, used expressions of satisfaction that all things had gone so fair, and probably both before and since the election.

Answer 11. I was present at the polls acting as deputy United States supervisor when Asberry Billiard and Willis Walker were arrested on the day of election, and in each case, upon consultations with I. E. Scott, supervisor of registration, and being convinced that, though attempting to vote upon the original registration-papers when duplicates had been issued to them, that they intended no fraud, I had them released after only a few minutes' confinement, and they had every opportunity to vote as they pleased, and I am satisfied they could not have been intimidated, for the exact state of the case was kindly explained to them both. In conclusion I will merely state that no fairer election was ever held in Claiborne Parish, nor ever will be; and I am satisfied that nine-tenths of the republicans in that parish would freely testify to the same state of facts. There is no ostracism or bitterness there as a rule against any one, white or black, simply because he may be a republican.

J. S. YOUNG.

Sworn to and subscribed before me this 30th day of November, 1876, at New Orleans.

EMMET D. CRAIG,

Commissioner United States Circuit Court, District of Louisiana.

I will now read the testimony from the parish of Bossier, page 235:

To F. A. WOOLFLEY, Esq.,

Chief Supervisor of Election for District of Louisiana:

The undersigned, appointed United States supervisor of election for the parish of Bossier, submits the following report in regard to the election held on the 7th instant. The undersigned was at Bellevue, the parish site, on day of election, and saw no disorder of any character, except some boisterous demonstrations by large squads of colored voters as they rode into town. So far as I have been able to learn, there was no violence at any of the polls in the parish; but I have heard that there was considerable intimidation by threats made by colored republicans against persons of their own race and color, whom the former thought were inclined to vote any other than the straight republican ticket, and I believe the information imparted to me on the subject to be true. The returns and boxes from all the polling-places in the parish, except poll 3, (Red Land,) were received after the time prescribed by law, and the returns were in many respects irregular. Some of the returns were not signed or sworn to by the commissioners, nor were the boxes and returns delivered by the commissioners.

I have also been informed and believe that these irregularities were known to T. H. Hutton, State supervisor for this parish, and that he was requested to note them upon his consolidated returns under the head of remarks, and he refused to do so except as to one polling-place, at which there was a democratic majority. I

further state that said Hutton told me that he would not complete his returns until the 17th instant, and that he completed them this day, and left town before I could get to speak to him upon my coming to town from my home, six miles distant.

W. G. BURT,
United States Supervisor for Bossier Parish.

* * * * * * *

STATE OF LOUISIANA,
Parish of Bossier:

Before the undersigned, legal authorities, this day personally appeared G. B. Abercrombie, who, after being sworn, states: I am clerk of the district court for the Bossier Parish, and have been continuously since before the late election; that there are three ballot-boxes, namely: box from ward 2, Benton; box from ward 8, Canes's Landing; and box from ward 5, Niner's school-house, that did not come into my possession, as clerk of the district court, until Friday, the 10th of November, 1876, after the election on Tuesday; that on Friday the 10th instant, B. F. Fort brought and handed me the box from ward 2, Benton, about 10 o'clock a. m., without the key to the same. The tally-sheet, poll-book, and official list of voters he handed me loosely, rolled together. Fort came from his residence with the box; no one else was with Fort when he brought me the box. The box from ward 8, Canes s Landing, was handed me by A. J. Smith, who was not a commissioner. The box from ward 5 I receipted for to T. D. Williams. All this was on Friday. In no case did more than one person come with the box.

G. B. ABERCROMBIE.

Sworn to and subscribed before me this 13th November, 1876.

W. D. STAYTON,
Recorder and ex-officio Notary Public.

I will now read the testimony from the parish of Richland, page 937:

STATE OF LOUISIANA,
Parish of Richland:

Personally appeared before me, the undersigned justice of the peace, in and for the fourth ward of the parish of Richland, and State of Louisiana George Harrison, a colored voter of said parish, who testifies that prior to the election of 1876 that he has always voted republican; that during the fall of 1876 he joined the democratic club at Alto, Louisiana, and that he of his own free will voted the democratic ticket openly and above board; that on Monday night, before the election, Mr. Frank Mose, candidate for clerk of the district court, together with eight or ten other men, all of whom I think were colored men, and called me out and endeavored to get me to vote the republican ticket. This was the only crowd of men that I saw passing through the country on said night; and that on the next I proceeded quietly to Alto, voted the democratic ticket, together with some hundred other colored voters, all of whom exercised free and unobstructed recess to either ticket they pleased; that I heard Mr. H. F. Vickers call upon colored voters to come up and vote, that he would protect any colored man in voting the republican or democratic ticket, and requested them to use their choice.

GEORGE HARRISON.

Sworn to before me on the 20th day of November, 1876, Alto, Louisiana.

W. H. CARKEET,
Justice of the Peace, Fourth Ward.

* * * * * * *

STATE OF LOUISIANA,
Parish of Richland:

Personally appeared before me, the undersigned authority, A. Dyson, J. T. Stokes, Frank Hatch, and Gabe Roberts, who, being duly sworn according to law, deposeth and swear that, at the election held in the above-written parish, on the 7th day of November, 1876, for President of the United States, members of Congress, governor of Louisiana, and other officers, both national, State, district, parish, and ward, was perfect, fair, and free; that no person was intimidated by the democrats or conservatives, and that every person voted as he wished.

The above affidavit is applicable to ward No. 5 at Red Mouth.

A. DYSON,
United States Supervisor.
J. T. STOKES, *Commissioner.*
GABE ROBERTS, *Commissioner.*
F. HATCH, *Commissioner.*

Sworn to and subscribed before me this 10th day November, A. D. 1876.

J. NEWT. PITTS,
Clerk Fourteenth District.

I will read the testimony from the parish of Livington, page 681:

PARISH OF LIVINGSTON.
State of Louisiana:

NOVEMBER 8, 1876.

I the undersigned, deputy United States marshal in and for the parish aforesaid, do hereby certify that I was in attendance at poll No. 4, in said parish, during the whole day of election, November 7, 1876, and that everything was conducted in a quiet and orderly manner and with strict accordance with law, and that there was no riot or disturbance of any kind; that there was no intimidation or attempt to intimidate, of any voter, and that every one was allowed to vote according to their own inclination

URSIN DESOUNGE,
United States Deputy Marshal.

STATE OF LOUISIANA } Murder.
vs.
ALEXANDER W. KINCHER. }

The above case was transferred from Livingston Parish to the first district court, parish of Orleans, and on May 14, 1874, was transferred from the first district court to the superior criminal court, parish of Orleans. Order and motion transferring papers to the parish of Livington, March 5, 1875.

I certify the above to be true and correct.

JOHN FITZPATRICK,
Clerk Superior Criminal Court for the Parish of Orleans.

OCTOBER 17, 1876.

I read this certificate from the clerk of this parish to show that this man Kincher is now under indictment for murder, and it was upon his affidavit that the entire vote for the parish was thrown out. I doubt if he is worse than most of the other witnesses. I have not time to comment.

STATE OF LOUISIANA.
Parish of Orleans:

In the matter of contest for the parish of Livingston.

W. DUNCAN, being sworn, says, in answer to interrogatory 1:

I reside in Amite City, parish of Tangipahoa; my age is forty-two years; my occupation an attorney at law.

To the second interrogatory. I was in the parish of Livingston about three weeks before the election; went nearly all over it. Was in every ward in the parish except two, and talked with people in every ward, both white and colored; and, from what I saw and heard, believe the election has been free, fair, and peaceable. Heard of no disturbance, intimidation, threat, or violence of any kind on account of political opinions. Every one seemed to express their political opinions freely and publicly. Some democrats were voting for republican candidates and some republicans were voting for democratic candidates, and, from my observation and from what I could learn, I was satisfied that Livingston Parish would give a large majority for the democratic party.

Answer to third interrogatory. The condition of the parish previous to the election, and for the past fifteen or twenty years, was peaceable and quiet. The people, as a general thing, are good citizens, and law-abiding, orderly, and well behaved, honest, and industrious. Know nothing of political trickery. I lived in the perish for twenty-five years, and am well acquainted with the people, and live now in Tangipahoa, the adjoining parish. Livingston has always given a large democratic majority; in fact, it was once called the land of democracy.

WM. DUNCAN.

Sworn to and subscribed before me the 2d day of December, 1876.

WM. H. HOLMES,
Second Justice of the Peace, Parish of Orleans.

I now read the testimony from the parish of Webster, page 912:

Clerk's office, eighteenth judicial district, Minden, Louisiana.

STATE OF LOUISIANA,
Parish of Webster:

I hereby certify that no protests under article 26, election law, No. 98, of 1872, have been filed in my office by any party up to this 20th day of November, A. D. 1876.

In witness whereof I have hereunto set my official signature and affixed the seal of my office, at Minden, Webster Parish, Louisiana, this 20th November, A. D. 1876.

[SEAL.] F. M. TURNER,
Clerk of District Court, Eighteenth Judicial District, Webster Parish, Louisiana.

Personally came and appeared before me W. B. Morrow, who, after being duly sworn, testifies and states as follows: I am a brother of J. T. Morrow, supervisor of registration for Webster Parish, and live in the same house with him. On 9th November, 1876, two days after the election, my said brother, J. T. Morrow, and G. W. Morrow, (also my brother, and candidate for recorder,) requested me to use my influence with prominent democrats to obtain their consent to the following proposition: That J. T. Morrow, as supervisor of registration, would sign the election returns as compiled by clerk of court and United States Supervisor W. D. McDonald, provided he be permitted to change the figures only so as to show that G. W. Morrow was elected recorder. I saw leading democrats, as requested, on same day, but met with no encouragement. On evening of 10th November I was sent by my two brothers aforesaid to Mr. T. B. Neal to solicit him to use his influence to secure the consent of prominent democrats to the above proposition. Mr. Neal told me that he would consent to consider the proposition, and requested me to bring it in writing from my brothers, J. T. and G. W. Morrow. I delivered Mr. Neal's message to them. They declined to commit this proposition to writing, but again sent me to Mr. Neal, requesting further a personal interview. Mr. Neal consented, and went out of the back door of his store with me, and I carried him to the back of Captain Ben. Wade's store, where my two brothers above mentioned were waiting. I left the three in consultation. Did not hear any of their conversation.

WILSON B. MORROW.

Sworn to and subscribed before me on the 13th November, 1876.

S. F. GOODE,
Justice of the Peace, Ward 4, Parish of Webster, Louisiana.

The testimony from the parish of Catahoula, page 262:

STATE OF LOUISIANA,
Parish of Catahoula:

Personally came and appeared before me, R. E. Yancey, a registered voter residing in ward 12, being duly sworn, deposes and says that he was United States supervisor for poll No. 12, Catahoula Parish, at the general election, November 7, 1876; that he was present at poll No. 12 from the opening of the polls till the close of the polls at the general election held November 7, 1876; that all was fair, free, and peaceable at said poll; that there was no intimidation, threats, or bribery used at or around said poll to influence voters. Deponent further says that he was present and witnessed the counting of the ballots, the keeping of the tally-sheets, till the box was locked and sealed; that the tickets were called off, the tallies were kept only by regularly authorized commissioners. Deponent further says that the campaign by the democrats and conservatives in Catahoula Parish was free from intimidation, &c., so far as he knows.

R. E. YANCEY,
Supervisor of Poll No. 12.

Sworn to and subscribed to before me this 25th day of November, 1876.

C. C. DUKE,
Clerk Twelfth District Court.

* * * * * * * *

STATE OF LOUISIANA,
Parish of Orleans:

Before me, the undersigned authority, personally came and appeared Frank Johnson, a colored man, who, after having been duly sworn, says: That he is a citizen of the parish of Catahoula, in said State; that he was vice-president of the democratic club of said parish called "wide-awake;" that he, with his club, consisting of thirty members, all colored, voted the democratic-conservative ticket, State and national, at the election held on the 7th instant; that there was a very large colored club at Harrisonburgh, in said parish, which he visited, and that he has been informed and believes its members voted the straight democratic ticket; that he is satisfied that one hundred and fifty colored men in the parish aforesaid voted that ticket.

Affiant further says that the colored men voting the democratic ticket did so freely; that he has no knowledge of any intimidation having been practiced or attempted by white or colored democrats toward colored or white republicans; that the colored democrats were intimidated in every way possible; he was the pastor of the colored Baptist missionary church on Little River, and as soon as he joined the democratic club and expressed his determination to vote the democratic ticket he was turned out of his church; that the republican party managers of that parish sent messengers around to the colored people about a month before the election, and got up as many of the colored voters' certificates of registration as they could, and held them until just before the election; during the interval many of those persons informed affiant that they wanted to join his club, and would do so but for fear if they did they would lose their certificates that were in the hands of the republicans.

Affiant further states that the women of his race were advised by leading republicans to abandon their husbands if they voted the democratic ticket, and many of them threatened to do so.

FRANK JOHNSON.

Sworn to and subscribed to before me, at New Orleans, this 29th November, 1876.

EMMET D. CRAIG,
Commissioner United States Circuit Court, District of Louisiana.

* * * * * * * *

STATE OF LOUISIANA,
Parish of Catahoula:

Before me, the undersigned authority, personally came and appeared Frank A. Jones, of this parish, to me well known, who, after having been by me duly sworn, deposes and says that he is a registered voter of said parish and State, and resides in ward No. 8 of the parish of Catahoula; that he was present at the polling-place established in said ward, on the 7th day of November, 1876, and remained at said polling-place from about seven o'clock a. m. until the close of the poll; that during the said time, namely, from seven o'clock in the morning until the close of the polls, the conduct of the colored republicans present was violent in the extreme, and such as to intimidate any timid colored man from voting anything except a republican ticket; that threats were loudly made against any colored democrat, first, of social ostracism, and secondly, of expulsion from all religious societies, and the effect of such threats and intimidation was, as affiant believes, to prevent many colored men from voting the democratic ticket, as they had previously expressed their determination to do. Affiant further declares that one of the officers of said ward, namely, Miley White, constable, was loudest in his threats and denunciations of those who voted the democratic ticket.

Affiant further testifies that, after the closing of the polls, the votes were not called out by any commissioner of election, and a part of the time while the votes were being counted no commissioners at all were present, and they were, as affiant believes, in bed and asleep.

FRANK A. JONES.

Sworn to and subscribed before me this 13th day of November, A. D. 1876.
C. C. DUKE,
Clerk Twelfth District Court.

The testimony from the parish of Saint Charles, page 913:

STATE OF LOUISIANA,
Parish of Saint Charles:

Personally appeared Hicks L. Young, who, being duly sworn, deposes under oath that he is a duly registered and qualified voter of the parish of Saint Charles, Louisiana; that he was duly appointed United States supervisor of election for poll No. 7, fourth ward, parish of Saint Charles, at Boutte Station; that in said capacity he attended at said poll on the 7th day of November, 1876; that after the time for opening the polls on that day Charles Wise, commissioner of election for said poll, finding that the other two commissioners did not put in an appearance at the appointed time, swore in two citizens, and, obtaining the ballot-box from the constable, opened a poll in accordance with law; that near two hours thereafter the two other commissioners opened another poll, depositing ballots in an empty candle-box in a church; that at said last-mentioned poll there were no democratic representatives; constable, custodian of the box, remained at the first poll, where affiant also attended, considering it the only legal poll.

H. L. YOUNG.

Sworn to and subscribed before me this 19th day of November, 1876.
EDMOND ROBERTS,
Justice of the Peace, Fourth Ward.

* * * * * * *

STATE OF LOUISIANA,
Parish of Saint Charles:

Personally appeared Charles A. Price, who, being duly sworn, deposes under oath that he lives in the parish of Saint Charles, Louisiana; that his rights as a voter under the law have been interfered with, in casting his vote according to his own free will, in the following manner and under the circumstances and by the persons whose names are hereinafter set forth; that affiant lives in the parish of Saint Charles for three years past; is a laborer; that during the last canvass in this parish affiant had made up his mind and declared his intentions to support the democratic ticket in part; that at a meeting of the colored club in his ward affiant was requested to address the club by a vote of the members present; that, because he expressed political views contrary to the opinions of some present, some of them, led on by Jerry Thornton and Clem Collin, two candidates (colored) on the republican ticket and at that time holding the offices of justice of the peace and coroner, forcibly dragged affiant from the speaker's stand, and a row was only prevented by the tax-collector taking affiant away from the mob, who were incensed against him for being a democrat and taking part with democrats; that a short time afterward there was a republican mass-meeting at Hahnville, which I attended; while there I was attacked by Jerry Thornton and Clem Collin above mentioned, surrounded by their friends, and horsewhipped in the public streets, denounced as a damned democratic son of a bitch; escaping from the crowd, I mounted my horse and rode off toward home; Thornton and Collins, coming soon after in pursuit, overtook me at the place of Mr. Louis Ransom. Jerry Thornton rode in the yard after me, but was ordered out by Mr. Norbert Ransom. Both Thornton and Collon then waited outside for me, saying that I had better sleep there if I wanted to keep safe from them, that they intended to fix me, or drive me out of the parish on account of politics. After waiting some time I determined to make an attempt to reach home, and rode off. After going a little distance the two rode up, one on each side, and one put a pistol to my head while the other whipped me with a horsewhip. I tried to ride away from them, but one of them held my bridle and continued to beat and threaten me for about two miles, until they were tired. I could make no resistance, as they were armed and I was not. When they left me they told me that they would either make a good sound republican out of me or drive me out of the parish.

As a consequence of this treatment, and being in daily fear of their threats, I neither voted nor registered, and took no further part in politics. Up to that time I had a strong support in my ward among the colored people, but they were demoralized and frightened off by what had happened, and either took no part or else voted the republican ticket.

CHARLES A. PRICE.

Sworn to and subscribed before me this 20th November, 1876.
[SEAL.] G. ESPINOLA,
Clerk of Court.

I have read, Mr. President, as much of this testimony as I deem it necessary on this occasion. I think I have read enough to show that the action of the returning board was not only not authorized, because the returns of statements of the fact of intimidation were not made so as to give it jurisdiction, but even if it had jurisdiction the evidence is ample to establish the fact that the election had been fair and free, and without any of the acts of violence enumerated in the law; yet, sir, on this condition of facts before that board, it rejected votes enough to wipe out a majority of 8,957 given to the Tilden electors and to give to the Hayes electors an apparent majority of 4,712, a change of upward of 13,000 votes. This is a most startling fact, and one which should not be overlooked by the people of the United States. Here is where I say this question is no longer of a local character, but truly national. Can it be that the people of this country will submit to such a degrading and humiliating attempt not only to deprive the people of Louisiana of their votes, but to impose on the nation a President not elected?

I ask, will the people submit to this? If they do, we may say farewell to all free elections in this country. This would be but the beginning, and no one can tell where the end will be. Our safety no less than our duty is to prevent this infamous attempt. In addition to this, it is due to the people of Louisiana that they should be vindicated. For years they have been held up before the country as assassins and murderers and violators of law in every way, when, in fact, these people have patiently borne the most horrid system of oppression ever inflicted on any people. The oppression of Poland by Russia is nothing to what has been imposed on them. The history of the world, in my estimation, nowhere affords a parallel to it. For this vile oppression had no limit, it reached everywhere and to everything, no right was respected, but everything was trampled and crushed to the earth. The effort made by the citizens of that State to carry the last election was worthy of free Americans, they appealed to the ballot-box and succeeded in electing their governor, the members of the Legislature, and gave a majority to the presidential electors. And all this is to be wiped out by a returning board, acting without law and in direct opposition to the facts, as fully established by the evidence which I have read to-day. I said this was a conspiracy; I say so now. Can it succeed? I know the effort will be made to sustain it; but my appeal is to the virtue and intelligence of the nation.

I said in the beginning of my speech that the oppressions, cruelties, and tyrannies imposed on the people of Sicilly by Verres, and which at the time brought forth the indignation of the Roman senate and of the Roman world, and transmitted his name to after ages as one of the monsters of mankind and a disgrace to our race, do not compare in the least to the atrocities of every kind and character which for years have been inflicted on the people of Louisiana; all that the human mind can conceive in the shape of cruelty and oppression has been imposed on them with an iron will which has never relented.

I will read what I am informed by telegram received yesterday is perfectly true, namely:

NEW ORLEANS, *January* 6.

The radical senate has passed a jury bill designed to disfranchise, so its supporters say, one-half or two-thirds of the people of this State. The bill authorizes the attorney-general, and district attorneys and other prosecuting officers of the State, to challenge jurors in cases for certain causes. Kellogg's rump house shoved through another appropriation bill to-day giving $22,000 for stationery and blanks used in registration, and another giving about $100,000 to the returning board for their services, also several to pay smaller amounts to negro women claiming to be martyrs of bull-dozers, making the total appropriations to date half a million of dollars.

Other bills have been introduced amending the charters of all towns in the State that at the last election selected and elected democratic municipal officers, and also one amending the charter of this city in order to take the administration of city affairs out of the hands of democrats, and their bill creating the superior civil court, now signed and promulgated, puts every dollar's worth of taxable property into the hands of the judges of that court.

Thus destroying all political rights and all power of protection whatever against the infamous conspirators who by the bayonet are forced on this people.

A governor not elected by them is forced on them, and he one of the most infamous of mankind.

A Legislature not elected by them, but forced on them, and kept in power by the bayonets of the Army of the United States, and composed of the most degraded and corrupt men found in the State.

A judiciary forced on them composed of corrupt, venal, and ignorant men, the head of which has been pronounced by the Supreme Court of the United States to be corrupt and venal.

A system of assessment giving to the assessor a percentage on the amount assessed, thus holding out to him the inducement of the highest valuation, and from whose decision there is no appeal.

A rate of taxation based on this extraordinary valuation of over 6 per cent., thus virtually confiscating all the property in this State; and this was undoubtedly the object and purpose of the law.

A returning board claiming and exercising absolute control over all elections and from whose decision there is no appeal. The way this board has proceeded renders all elections a mere farce. It can make whom it pleases governor of the State, all the members of both houses of the Legislature, and the electors for President and Vice-President of the United States. A more complete contrivance to defeat the will of the people, and to keep forever any party in power, cannot be imagined.

A more perfect engine of unmitigated despotism never has existed before, infinitely worse than the old star chamber of England, which Macaulay said was and would forever remain a blot on English history.

We see at this time in that State two governments; that is, two governors, two legislatures, and a double judiciary, and a double set of officers in the city of New Orleans and throughout the State. One of these governments is elected by the people by a majority of near ten thousand, and is sustained by a still larger majority, and backed by the most respectable, the most intelligent, all the men of property in the city and State. Indeed in the large city of New Orleans it can be safely said that this government is sustained by nine-tenths of the entire population of both races and the entire wealth of the city. It can be safely said also, that at this time this government is upheld by the people of most every parish, and if it were permitted to remain in power the peace and prosperity of the State would inevitably be secured.

On the other hand, we have a governor and Legislature and judiciary forced on the people by the omnipotent power of a returning board, acting outside of the law, in violation of every principle of self-government, and upheld by the Army of the United States. The governor, a known peculator and carpet-bagger, abhorred by all the good people of the State of both races; a Legislature corrupt, venal, and ignorant; a judiciary at whose head sets a chief-justice pronounced by the Supreme Court of the United States to be corrupt and venal. This is a plain and unvarnished statement of the condition of affairs in that State at this time. And yet under this horrid condition of affairs the people there are peaceable and law-abiding, and all they ask of the Federal Government is to be let alone. They thus give the best guarantee of their good disposition and ability to discharge all the duties which may devolve on them. Yet in this Chamber there are men determined that this will not be allowed; but, on the contrary, in violation of all rights known to our American system, they are to be wiped out and a government not of their choice forced on them. This, I say, is a conspiracy long since hatched in New Orleans, and the actors are determined to carry their point regardless of consequences, and which may lead to a terrible and bloody conflict. I ask Senators to pause and reflect. I ask the President of the United States to pause also, and not to forget that he is the Chief Executive of the entire people and not of a party.

But, Mr. President, what do we see in the public press. The President, with all these facts known to all the world, and of course to him, shows a disposition to again use the Army of the United States to uphold the government created by the returning board, and in that way perpetuate this condition of anarchy in that State. In his letter to General Augur, the commanding officer there, he uses this singular language. He says:

It has been the policy of the Administration to take no part in the settlement of the question of rightful government in the State of Louisiana.

From my place as a Senator I entreat the President to carry out this declartion in good faith, and the trouble, confusion, and anarchy which have reigned there for years will immediately stop, and peace will at once assume full sway, the thieves and robbers kept in office by the Army will leave immediately; prosperity as of old will bless that land; property and liberty will be duly protected; the colored man will be justly maintained in all his rights and be a participant in the common blessing. The reason why this has not been so heretofore is because the policy of the Administratron has been to interfere all the time and for years in the settlement of the affairs of Louisiana. Carry out the policy now indicated by the President of non-interference, and at once peace, prosperity, quiet, contentment, and all the blessings of good government will follow, not only in Louisiana but in South Carolina.

Mr. President, I have done.

Mr. SHERMAN. Mr. President, I shall detain the Senate but a few minutes, and only to reply to some new points, if indeed there are any, in the remarks made by the Senator from Missouri. Indeed, he has not only repeated what he said before, but he has stated once or twice that these points have not been answered. So far as the legal questions that he presented yesterday to the Senate are concerned, every one of them, I think, was fully answered by me some days ago. I think the Senator himself, if he will look over my remarks in the RECORD of the following day, will find that on the 14th of December, 1876, as printed on page 18 of the RECORD of the 15th, I took up every point of a legal character that he has made and replied to it. All the points that he has made, and many others besides, were made by Mr. Trumbull, Governor Palmer, and others in their paper, and every one of them was answered by me; whether successfully or not is for the Senate to say.

He again repeats what was said about the vacancy. I regret that the returning board did not fill the vacancy. I openly regretted it. So far as my opinion could influence them to do it, I was decidedly in favor of their filling it; but the reasons why it was not filled were stated by both Mr. Wells and Mr. Anderson publicly and are published in the proceedings of the board, I read them when I spoke before and do not care to read them again, I think they made a mistake in not filling up the board. The terms of the law do not require them to fill the board with a democrat. The spirit of the law does. The law required that the senate of the State should appoint men on that returning board composed of different political parties; and when the senate constituted that board they did put on it men of all political parties; the conservative party, the democratic party, and the republican party were all represented on the board. The law does not require the board, in filling vacancies, to observe that provision about the diversities of political opinion, but the spirit of the law does, and it seems to me that they ought to have appointed a democrat. No man, however, can contend that, because they failed to fill that vacancy, the majority of the board, still intact in their existence, had not the power to perform all the duties prescribed for the board. A quorum of the board consisted of a majority, and a majority could proceed to act and perform all the duties. It requires as large a number to make a quorum of four as of five; so that practically it would make no difference; but there was a disagreement between the *personnel* of that board as to how the vacancy should be filled, and so it remained unfilled.

Another point the Senator says I did not answer; but I did; it was answered fully. He says that it is necessary, in order to give the returning board jurisdiction, that within twenty-four hours after the consolidated returns are made up there should be attached to them the formal protest and affidavits. That is not the language of the law; that is not the spirit of the law; and no party in Louisiana acted upon that construction of the law, neither the democratic nor the republican party, and that is shown by the record.

Mr. BOGY. Will the Senator permit me to make a remark here?

Mr. SHERMAN. Yes, sir.

Mr. BOGY. I do say the proof is abundant that the democratic party made that point and insisted upon it before the returning board. The argument is published in the very volume on the Senator's table. They insisted upon that point, and not only recently but in 1874.

Mr. SHERMAN. Please refer me to the page. My friend and I do not intend to mislead the Senate; but here is the point: The democratic attorneys did insist that to give the returning officers jurisdiction there should be a protest—and that was the controversy in 1874—and that that protest should be attached to the return sometime before the returning officers acted upon it.

It is true that was the decision made by the committee of the House; but that is not the point; and I will correct the Senator in another particular in a moment. The question I have to deal with now is whether that formal protest and these affidavits must be attached to the returns within twenty-four hours after they are made. I say the language of the law, of the twenty-sixth section of the act referred to so often, does not contain such a provision at all. The twenty-sixth section does not apply to attaching protests and affidavits; but it only requires that within twenty-four hours what is called the consolidated return should be made out. I will now read all the provisions of the law in regard to the formal protest when a protest is made setting out intimidation, &c.

When such statement is made by a commissioner of election or a supervisor of registration, he shall forward it in duplicate to the supervisor of registration of the parish, if in the city of New Orleans, to the secretary of state, one copy of which, if made to the supervisor of registration, shall be forwarded by him to the returning officers provided for in section 2 of this act, when he makes the returns of election in his parish.

This protest and formal allegation of intimidation must accompany the papers and must appear with the papers at the time of the action of the returning board; but, in another section of the act, entirely distinct, in another part of the law, the forty-third section, the consolidated return is required to be made up within twenty-four hours. It would be perfectly competent, therefore, after the consolidated return had been made up within twenty-four hours, at any time before the action of the returning officers, to attach to that formal return the protest and the affidavits.

The Senator said that the protests were not made in any of these disputed cases. All that I say now on this point is set out in the remarks I made on December 15 more fully than I state it now. I devoted nearly a column to giving the language of the law in reply to the statement made by Governor Palmer and his associates, and I will say that that construction has been acted upon by both political parties in Louisiana; that is, that the consolidated return must be made up within twenty-four hours, but that the formal protest and affidavits to give jurisdiction to the returning board might be attached to those returns at any time before the actual opening of the returns in the city of New Orleans by the returning officers.

The Senator then said that there was not a single return of this kind from any of the bull-dozed parishes. I was amazed when I heard my friend say that. I suppose what he meant to say was that there was not a single return attached within twenty-four hours after the returns came into the office of the parish officer. That is so. But when he said that there were no formal returns, no protests and affidavits attached to those returns, he simply fell into an error as I will now point out. The bull-dozed parishes are five in number. He will find on page 186 as to West Feliciana the formal return at the very beginning of the testimony. Here is the protest:

I, D. A. Weber, the undersigned, being supervisor of registration in and for the parish of West Feliciana and State of Louisiana, do on this 14th day of November, 1876, make this my protest against counting the votes in the following-named polling places, and for the reasons stated below, to wit.

Then he goes on to give the formal protest and giving the causes in the different wards. To that is attached quite a number of affidavits to bring the case within the language of the law. So much as to West Feliciana. There is afterward a sworn affidavit by the same officer showing the truth of these charges. The same kind of allegations are made by the supervisor of elections. There are two officers, one the supervisor of registration and the other the supervisor of elections.

Now, in regard to East Feliciana, my friend if he will look to page 223 will find there the formal protest, in the most formal language possible, signed by James E. Anderson, covering a page of printed matter, in which he says:

James E. Anderson, supervisor of registration for the parish of East Feliciana, under oath declares and states that he was the supervisor of registration in and for the said parish of East Feliciana during the registration or revision of registration held preceding the general election which was held on the 7th day of November, 1876, and that he was present in said parish during the time of said registration or revision of registration and of the said election with the exception of a period of about nineteen days, in the month of October and November, during which last-named period he was unable to remain in said parish and to exercise his functions as supervisor therein by reason of the insecurity of his life.

Then he goes on with a whole page setting out the particulars of intimidation which he alleges to have existed in that parish. He was the officer charged to make this return, and he concludes that there was not a fair election in that parish; and this is supported by the affidavits of several persons according to the language of the law. There is number two of the bull-dozed parishes where this formal affidavit and protest were made.

Now let us look at the next. On page 258 he will find the formal protest in regard to East Baton Rouge. Here is another formal protest.

STATE OF LOUISIANA,
Parish of Orleans:

F. A. Clover, being duly sworn, states that he was appointed supervisor of registration in and for the parish of East Baton Rouge, in the State of Louisiana, during the time of registration and revision of registration held last preceding and preparatory to the last election, held the 7th day of November, 1876; that as such supervisor of registration he conducted said registration and revision of registration from the 28th day of August to the 28th day of October, 1876, inclusive; that during the said time of registration and revision of registration there were riot, tumult, acts of violence, intimidation, and bribery, and corrupt influences at and near the several places of registration and revision of registration in said parish, which said riot and tumult, acts of violence, intimidation, disturbance, and corrupt influences did tend to prevent, and did prevent, a fair, free, peaceable, and full vote of all the qualified electors of said parish; that by reason of said riot, tumult, acts of violence, intimidation, disturbances, and corrupt influences, the election held in said parish on the 7th day of November, 1876, was not a fair, free, full, and peaceable vote of all the qualified electors of said parish.

Following the language of the law. Then he goes on and gives the details in the different wards of this intimidation in the very language and according to the express provisions of the law—as formal a document as could be prepared by any member of the Senate; and that also is supported by the affidavits required by the law.

Thus I have given three of the bull-dozed parishes. Now in regard to Ouachita, not to detain the Senate too long, I will refer to pages 23 and 24, where there is a condensed statement of the allegations as to Ouachita:

A statement made in due form of law by the proper officer accompanies the return of the election for the parish of Ouachita, reciting, *inter alia*, that from the 16th of October last to the 7th of November, the day of election, during the period of registration and revision of registration, tumult, acts of violence, intimidation, disturbance, and corrupt influence, which tended to prevent a fair and free election by all the qualified voters of said parish, prevailed. A variety of testimony supporting such statement is found with the return.

Then it goes on afterward: "The supervisors of registration established certain polls," &c.; then it sets out in full this protest, with all the different wards in which the intimidation prevailed. Here was again a formal protest. So as to Morehouse Parish, which is the only remaining parish of the bull-dozed parishes, for there were but five. You find on page 441 a formal protest from that parish. Here it is signed by F. M. Grant, supervisor of registration of the parish of Morehouse:

UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans.

This day personally came and appeared before me F. A. Woolfley, commissioner United States circuit court, district of Louisiana, duly commissioned and qualified, who being duly sworn, on oath deposes and says: That he is a citizen of the State of Louisiana, and a resident of the town of Bastrop, in the parish of Morehouse. That he is the legally appointed and qualified supervisor of registration of the said parish of Morehouse, and has been such continuously from and inclusive of the 28th day of August last past; that he entered upon the discharge of his official duties as such supervisor of registration upon the 28th day of August last past, and continued to perform the same during the whole period of registration and revision of registration to the present time, according to law and such lawful instructions as he has from time to time received from proper authority, to wit, the State registrar of voters.

Then he goes on and sets out the acts of intimidation and of alleged intimidation, and this is signed by F. M. Grant, supervisor of registration for the parish of Morehouse. That is accompanied by a number of affidavits, according to the express provisions of the law.

Neither the Senator nor myself is a resident of the State of Louisiana. Here are five distinct formal protests and notices accompanied by the official proof; and yet my friend says there was no protest from either of these bull-dozed parishes. They are all printed here and have been spread before the country; and not only that, but in order that there may be no question about it, that these protests were brought to the attention of the returning officers, the Senator will find in his own volume that he has brought here, that these protests were read to the returning officers in our presence and were the subject of frequent conversation and conversational debate in the presence of the visitors on both sides. He will find them as to West Feliciana on page 60 of their own stenographic report, as to West Feliciana on page 62, as to Ouachita on page 63, as to Morehouse on page 79, and as to East Baton Rouge on page 55. In our stenographic report he will find the same documents in the pages where these protests were read in the presence of all the persons assembled there to witness the count; and upon these protests, in the nature of a declaration, all the subsequent testimony was founded.

How my friend could have fallen into that error, I do not know. He was not there at the time. But that these protests were read, that they were actually filed and printed, there can be no doubt. It is true that my friend claims that they ought to have been filed within twenty-four hours. There is no ground for that; at least that was not the construction put upon it by those people. They, it is true, demanded that a formal protest should be made and that it should be attached to the return in some way, and as to one protest there was a controversy. As to the protest in De Soto, about which so much has been said, it was apparent and proved clearly enough that the supervisor brought the sealed package to New Orleans and there opened it. He need not have done it; he might have attached the paper to the very returns without opening them; but he chose to open them and there insert affidavits of a later date than the time the package purported to have been sealed. As soon as I saw that and the attention of the visitors was called to it, we said at once "that paper has been opened and tampered with"——

Mr. BOGY. That was a clerical error, according to Mr. Stoughton.

Mr. SHERMAN. No; there is where the Senator does injustice. Did not the Senator hear the Senator from New York correct that? Mr. Stoughton never said such a thing there in the world, and your own record shows it. The Senator was not there. There can be no desire on the part of the Senator from Missouri to do a distinguished citizen of the United States harm. I say to you that no man in New Orleans ever heard Mr. Stoughton make that remark. I was sitting by his side. Mr. Stoughton has denied it; I deny it; everybody there denies it, and the record of the statements made at the time shows that no such remark was made. The published reports in this very document show that the remark of Mr. Stoughton was very different. And yet my friend is so distorted by his feeling in regard to this matter that he would even do injustice to a distinguished and able lawyer, picking up a chance and false telegram published in the Northern States, rather than believe the testimony of his own stenographer.

I have shown you that the Senator is mistaken in regard to the formality of these proceedings. Now, what is this that has been read to you for two days? My friend talked about *ex parte* affidavits. There is a place here—I will call his attention to it—from page 456 to 643 of the document from which he has read, there is a mass of what are called "hickory affidavits," every one *in hæc verba*, covering nearly two hundred pages of printed matter. I will read you one of them, and they are all alike. Remember this was not evidence, as I will show you, before the returning board, but it is the evidence that is now printed at the expense of Congress. I will read but one of these affidavits, that of Wade Hampton—not the one in South Carolina, but another man, a colored man in Louisiana.

THE STATE OF LOUISIANA,
Parish of East Feliciana:

I, Wade Hampton, of ward No. 8, said parish, do solemnly swear that I was present at the polls in said parish during the election held November 7, 1876, and that the election was fair and peaceable, and I know of no one having been intimidated or threatened in the casting his vote, but every voter was apparently eager and anxious to vote, and did so voluntarily; and that I voted the only parish ticket out, and the democratic State and national ticket freely and voluntarily, and under no constraint, fear, or intimidation.

his
WADE + HAMPTON.
mark.

Sworn to and subscribed before me this —— day of November, 1876.
[SEAL.] H. M. POOLE.
Deputy Clerk.

This was in East Feliciana, a parish where there were three colored voters to one white voter, where in every previous election there was a large republican majority; where the evidence as printed shows an absolute state of terror that is so clear that no man can doubt it; and where in consequence of that terror there was not one single republican vote cast in the whole parish; and yet here are over two hundred pages of affidavits in the very same form, printed—I saw them, perhaps the Senator saw them—not signed, but marked by these negro people, and these were brought in there, and are printed now at the public expense here. The testimony as to this parish showed acts of murder, violence, and intimidation so disgraceful that I do not care to repeat them. I read some of it the other day; and this is the rebuttal.

In these one thousand pages, that it took nearly a month to produce before the Senate, there are five hundred and forty-one printed pages of just such informal affidavits as I have now read; much of the rest is made up of official documents. Under the rules adopted by the returning officers, no *ex parte* affidavits were allowed except those affidavits provided for by the law attached to and made part of the formal protest. The rest of the testimony taken on behalf of the republican electors consisted of depositions taken in due form. The affidavits were attached to the returns, and among the rules of the returning officers adopted by the board was this:

9. No *ex parte* affidavits or statements shall be received in evidence except as a basis to show that such fraud, intimidation, or other illegal practice, had at some poll, requires investigation; but the returns and affidavits authorized by law, made by officers of election or in verification of statements as required by law, shall be received in evidence as *prima facie*.

Those that the law required; namely, the affidavits attached to the protest of the officers should be received as *prima facie* evidence to give the returning officers jurisdiction; but if they then pursued their inquiry and took testimony, they had to take it in strict accordance with the law of Louisiana, and it was so done. The Senator says that all this was before the returning officers; but it was in plain violation of their rules, and could not have been received by them as evidence. But what if it was? Any impartial man may take this mass of one thousand pages and he will find that, with slight exceptions, it does not impair in the least or conflict with the testimony that I read

to you the other day. With the exception of here and there a witness, especially one who testifies to the bad character of Eliza Pinkston, and probably one or two other witnesses whose testimony was read, who say that the murder of Dinkgrave was not a political murder, it does not reach the allegations made and presented to you the other day in scarcely a single respect. He read from parishes that were not controverted. He read about parishes as to which there is no evidence in the book from which I quoted.

Mr. BOGY. I read from no parish except rejected parishes or those in which polls were rejected.

Mr. SHERMAN. The Senator read from two parishes that I do not see anything at all about, Bossier and Webster.

Mr. BOGY. Polls were thrown out both in Bossier and Webster.

Mr. SHERMAN. Here a witness come up and says that, so far as he knows, in a particular ward or particular place there was no intimidation. With the exception of five parishes, where the bull-dozing or intimidation extended to the whole parish, there was no allegation that intimidation extended over a whole parish, but only that it existed in a particular ward or particular polling-place. There the particular precinct may have been rejected upon sufficient proof of intimidation, and all the rest of the people of that parish might swear that there was a free and fair election. Take this testimony now, and I say to you that any person who will examine it carefully and compare it side by side with that in the book I read from will see that there is no substantial conflict in this with the mass of testimony I read to you the other day. People testify to what they hear, to what they think; they did not see this; they did not see that. They all concur that on the day of election there was no intimidation. So do the witnesses called by the republican side, that on the day of the election in many places there was silence like that of the grave; there was no necessity of intimidation on the day of election. There was one man attacked and supposed to be killed on the morning of the election in Onachita because he had a ballot-box in his hand and was going to hold an election at Logtown. He was killed, as was supposed, but by some miracle he was alive again. That is Ben. James. Nobody questioned or controverted his testimony. He was shot on the morning of the election and the ballot-box taken from him and the ballots burned, and there was no election held in Logtown at all by reason of that intimidation. These specific allegations of crimes, offenses, intimidation, are not met at all by this mass of *ex parte* affidavits to which we have listened yesterday and to-day.

From what has been read here in all this mass of testimony, what is there that affects the testimony of General Brooks, of Clayton Hale, of officers of the Army and officers of the election, of men who were wounded, and the specific cases of killing. You might pile mountain-high until the pile rose to the Dome of the Capitol statements that men did not see a thing or did not know a thing, or that so far as they saw was all peaceable and quiet; but if you are met on the other hand by affirmative proof of cases without number of intimidation, such proof as that is no answer. No, sir; I say the case made by me the other day is not impaired in the least.

My friend in his closing remarks talks about the injury to the people of Louisiana. He speaks of Packard as the most infamous of mankind. Sir, Packard is a man of character and standing. He has lived there for years. What is the charge against him? What has he done? Has he murdered or robbed?

Mr. BOGY. Robbed for years and done nothing else in that State.

Mr. SHERMAN. Nobody will say that of him in Louisiana. I heard your friends the democrats speak of Packard in the very highest terms.

Mr. BOGY. His character in New Orleans is that of an infamous robber. [Applause in the galleries.]

Mr. SHERMAN. Mr. President, I do not believe that could be said in New Orleans. Yes, sir, these galleries may shout their applause; but I say that when the charge is made that Mr. Packard is a man of that character it is wrong.

Mr. EDMUNDS. Mr. President, I rise to order. I move that the Sergeant-at-Arms be directed to arrest the persons who have committed this disorder and clear the galleries at once.

The PRESIDING OFFICER, (Mr. MCCREERY in the chair.) Those in favor of the motion——

Mr. ALCORN. I would suggest to the honorable Senator that this portion of the galleries [pointing to the galleries on the left of the chair] did not participate in the applause at all, and I ask him to modify the motion so as to clear the galleries in which the disorder occurred.

Mr. SHERMAN. I hope the Senator will withdraw the motion.

Mr. EDMUNDS. I will not withdraw it. This thing must be stopped.

Mr. SHERMAN. I have gone through one scene of this kind in 1861 when I was treated in the same way by the same class of people.

Mr. EDMUNDS. I propose to assert the proprieties of this Chamber, and I insist on the motion.

Mr. ALCORN. Will the Senator allow me my interpellation to his motion? The portion of the galleries to which I pointed was entirely quiet.

Mr. EDMUNDS. If that be certain, I will agree to that.

Mr. ALCORN. I am sure of it. Occupied as it is by ladies, I am sure they were quiet.

Mr. EDMUNDS. I move that the Sergeant-at-Arms clear those portions of the galleries from which the disturbance proceeded and let him arrest every person who was concerned in it.

Mr. WHYTE. He cannot do that.

Mr. EDMUNDS. Let him bring them here, and we will tell whether they are guilty or not.

The PRESIDING OFFICER. The question is on the motion of the Senator from Vermont.

The motion was agreed to.

The PRESIDING OFFICER. The Sergeant-at-Arms will proceed to clear the galleries on the right of the chair.

The galleries referred to were cleared.

The PRESIDING OFFICER. The Senator from Ohio will proceed.

Mr. SHERMAN. Mr. President, I regret very much that any citizen has been inconvenienced. I have no doubt a great many people have been turned out of the galleries who took no part in this violation of our rules, but I hope that this will convince the galleries that the Senate of the United States must not be interrupted in the ordinary course of its proceedings by applause or such scenes as we have had here. In the last few days in both Houses it has more or less occurred. We must maintain the order and decorum of debate. If we are to have crowds of people here interfering with our debates, with our ordinary proceedings, we do not know what will be the result. While I am sorry for those that have been inconvenienced without any fault on their part, I trust that it will be a lesson to all that when they come to the galleries of the Senate they should at least give us the benefit of silence and patience and listen to us without any applause or manifestations of any kind.

Mr. President, I did not know Mr. Packard very well, and I never saw him until I went to New Orleans. I have heard from Senators from Maine, I have heard from members of Congress from Maine that he is a man of very high character. My friend over the way [Mr. HAMLIN] has known him, and I heard people in Louisiana speak of him. When a Senator of the United States feels himself at liberty to stand up and arraign a governor of a State as the most infamous of mankind——

Mr. BOGY. Not a governor.

Mr. SHERMAN. Well, when a Senator arraigns a man who has held his position, as the most infamous of mankind, he abuses the privileges of the Senate of the United States. I say that very distinctly and emphatically.

Now, Mr. President, in regard to the supreme court, many of the judges of the supreme court of Louisiana, some of them at least are native-born citizens of Louisiana, men whose appearance and conduct impressed me very highly and very favorably; and yet that whole court is denounced because, forsooth, the chief-justice, Ludeling, bid off in connection with eight or nine or more democrats, leading prominent citizens of Louisiana and of New Orleans now, a railroad for the interest of common stockholders; and because the conduct of those people were arraigned by the Supreme Court of the United States the supreme court of Louisiana is denounced as infamous, as the most corrupt in this country. It seems to me that was a great abuse of the privileges of the Senate. I read only the other day in a paper in Louisiana the reply of this same chief-justice when he singled out from the crowd around him leading prominent citizens of the democratic persuasion in New Orleans who were his partners in bidding off that railroad; that he acted simply as trustee, and there was no infamy attached to him or to them. But because, forsooth, they chose to throw mud and spite at these officers because they are republicans, the same spirit that led those gangs of ruffians at night to negro cabins would seek to degrade these men in high official position and stamp their names, in the presence of the Senate of the United States, with infamy.

Sir, I said a moment ago that we had gone through this scene once before. I remember in 1856 when as a member of the other House of Congress I was sent on a mission to inquire into the conduct of the border ruffians of Missouri. When the motion was made to make that inquiry it was alleged on the part of the citizens of Kansas that wholesale intimidation, wholesale ballot-box stuffing, wholesale election frauds had been committed in that Territory, by which they were entirely deprived of the elective franchise. I heard that denied by members from Missouri; I heard that denied by democrats in the same wholesale way that these denials are made now; and one of those Missouri members was put on a committee sent out there to investigate into the matter. I was one of the committee. We went out there and we found that our very colleague who denied that these atrocities existed had been over there with a gang of one hundred and eighty men and made a speech to them on the day of the election when these Missourians voted there at one of the feeble precincts of Kansas. I heard another gentleman from that State also deny that any border ruffians had gone over from Missouri into Kansas, when I myself saw armed, equipped, in full force, one hundred men march over into Kansas, and heard soon after of the outrages that they committed; and yet the Delegate from Kansas, living in Missouri at the time, denied these atrocities when they were proven by living witnesses, and now they are a part of the established history of the country. Who does not know now that these atrocities were committed in Kansas by which a feeble Territory was ridden down by border ruffians who had no right there? Now these facts are known to all the world. And, sir, from the blood shed on the soil of Kansas there rose a republican State that is now able to defend itself; and my only hope is that these kindred outrages upon the poor negroes

of Louisiana may give rise to a public feeling in that State which will not only defend them, but enable them and their successors hereafter, and their children in future ages, to maintain their rights against all lawless violence. No, sir, you cannot deny these things. They exist there.

They talk about the oppression of the people of Louisiana; they talk about the taxes. Well, sir, if I can believe the official documents which were shown me there, the oppression does not exist at all to the extent that is said. Undoubtedly by the results of the war, by the disturbance of their labor, the natural and inevitable results of the rebellion, the taking up of arms against the just authority of the United States, property is deranged, and property has gone down greatly in value, in consequence of the war and in consequence of the emancipation of the slaves; but they ought not to complain of the natural and legitimate results of their own conduct.

But to come back, Mr. President, I say now that the case made by me the other day is not materially shaken by any testimony that has been read by the Senator from Missouri. It is true that a doubt may be created whether or not Eliza Pinkston told a true story. I have never said anything more about that than that I believed, not from the testimony of Eliza Pinkston, but from the testimony of the other witnesses who corroborated her, that her testimony was true. It is now admitted and conceded and proven by a number of witnesses that on the very night in question one of these rifle companies did maraud in that very neighborhood and did whip, scourge, and injure people. Is it likely that Ben Brooks, or whatever his name is, a single man, and who now lives there among those people, would have gone off to kill Henry Pinkston and wound his wife and kill his child? Does anybody believe that? Did any one there believe it? I do not think so. The evidence will still remain and the impression will still exist, although it is not material to this case, that the same men who committed the violence in the neighborhood around committed this violence on Henry Pinkston; but whether they did or not makes no difference to this issue. Drive Henry Pinkston out of the case and you have murder after murder, violence after violence, and wrong after wrong in that same neighborhood proven beyond question or controversy. Suppose it to be true that Dinkgrave was killed by somebody who wanted to revenge a private wrong on account of a private quarrel; it is equally true that the negroes thought that the killing of Dinkgrave was a political murder to deprive them of their chief leader, and they rose for the first time in the parish of Ouachita, showed the spirit of freemen by arousing and organizing to some extent, but gradually disbanded again, feeble as they are. They thought that the killing of Dinkgrave was a political murder, and the other murders there are not controverted. You may sap here and there, pick here and there a flaw as to a single outrage, but the mass of outrages still stands undisturbed, uncontradicted, unshaken by even *ex parte* testimony.

Mr. President, I do not want to proceed with this matter further. I simply want to stand by the verdict of history; and I say to you that, notwithstanding the denial that has been made by the honorable Senator from Missouri, notwithstanding all this controversy, these facts are recorded in the history of Louisiana like the massacre at Colfax, like the massacre of over two hundred men in Mechanics' Institute, like all these other outrages that have been named and so often described by my eloquent friend from Indiana [Mr. MORTON] they stand recorded in history. Those that I have depicted, about which I heard the testimony taken, will stand also admitted and conceded facts in the history of that State.

Now, sir, the Senator says that because of these outrages a majority of six or seven or eight thousand, I believe he said, was overturned. They claim in this book 6,549 exactly. These are the figures certified by Mr. Zacharie and his friends. John McEnery received, according to their figures, 83,723. William Pitt Kellogg, 77,174, making a majority of 6,549 as they claim. If we can believe the testimony of the witnesses, in these five bull-dozed parishes alone there was a change of over 8,000 votes. That this testimony is substantially true, I believe, as true as history. But who can decide between the honorable Senator and me? He and I have given our story, perhaps taking a party view of it; and who is to decide the matter? The law of Louisiana. That law provides a set of officers who shall decide this question. They have decided it. They have decided according to the law of Louisiana. They met openly, publicly, in the light of day. They saw the whole of this testimony on both sides, whatever it is. They were citizens of Louisiana legally appointed to do this very duty and to pass judgment on these very facts. They have decided them. Their decision is in writing, made under their oaths, with every temptation to them to decide the other way. Their return has been made; the officers elected according to their return have exercised their duty; and now you attack the rights of the State of Louisiana thus ascertained according to the law of Louisiana. You would throw these to the wind because, forsooth, they endanger the election of Samuel J. Tilden.

Not only did these returning officers act legally within the strict limit of the authority conferred upon them by law, but they acted upon a weight of testimony that was overwhelming and justified them in throwing out all the votes they threw out. They did not do it in gross; they did not do it in the lump; they did it in detail by parishes; two parishes thrown out altogether; in other cases polling precincts and wards rejected. They have acted and made their return. Now you want to make another returning board out of the House of Representatives, or out of the Senate, or out of both, far removed from the scene of operations, not familiar with the history of the times, not familiar with the scenes of outrage, not familiar with the weight of the testimony; and you propose to make a returning board at this distance to pass in review what has been done. You propose to trample down the rights of the people of Louisiana, which were ascertained according to the laws of Louisiana, for the purpose of giving force and effect to the violence, tumult, and murder that prevailed before the election. That is what you propose to do. No, it will not do, my friend. This is a government of law, to be governed not only by law, but according to the forms of law; and although this returning board may have erred here and there in regard to particular polling-places and precincts, even admit that that be possible, supposing the statements read by the Senator from Missouri have made some impression on your mind, to show you that perhaps these people have given too great force and effect to the testimony before them; suppose they have erred, are you, without any information without any law to justify you, without any authority, to review their decision here a thousand miles away? There is the question. According to law that vote is recorded; you cannot reverse it; and it is rightly recorded. The only purpose and object of my speech the other day was to show you, by reading the testimony of living witnesses, not merely colored people, who are conceded to be ignorant, cannot read and cannot write many of them—it is their misfortune—but by the testimony of witnesses of the very highest character, undisputed and uncontroverted, that tumult, disorder, violence, and intimidation did prevail over a number of parishes and polling-places in Louisiana sufficient to change the result. In forty-one parishes there was a peaceful, orderly election. In those forty-one parishes there was an increased republican majority. In the five bull-dozed parishes the republican majority was swept away, and an overwhelming democratic majority substituted. In these other parishes, where intimidation prevailed to a greater or less degree, our majority has been largely lessened or swept away; but in all those parishes, or the great body of them, where there was a fair election, we gained rather than lost; we have an increased majority rather than a diminished majority. Why was it if there was no intimidation, why was it if this intimidation did not affect the result, that in the parishes where there was conceded to be a fair election the republicans gained, while in all the parishes where intimidation prevailed they lost? The logic of the facts is as conclusive as the testimony of witnesses. This result was brought about by the intimidation prevailing to a greater or less degree in those parishes.

Mr. BOGY. Mr. President, I am happy to believe that this case is coming to something like what the lawyers call a definite issue. The Senator from Ohio admits that the law creating the returning board, and which is embraced within the three sections, the third, twenty-sixth, and forty-third, has not been complied with, unless the making of affidavits in the city of New Orleans, many weeks after the election, be a compliance. He says that before the board no one raised an objection to the receiving of evidence of intimidation or wrongdoing in the parishes because a statement of that fact had not accompanied the return of the election. I tell the Senator from Ohio that the democratic counsel continually insisted that the law was plain, and that it was not within the power of that board to receive any testimony unless the foundation had been laid by a return at the proper time. I will read the sections of the law, and hope the Senators will give me their attention for a moment, because it is so plain that I am astonished that a gentleman of the acknowledged ability of the Senator from Ohio should undertake to give a different construction to this law. The forty-third section says:

> It shall be the duty of the supervisors of registration, within twenty four hours after the receipt of all the returns for the different polling-places, to consolidate such returns to be certified as correct by the clerk of the district court, and forward the consolidated returns with the originals received by him to the returning officers provided for in section 2 of this act, the said report and returns to be inclosed in an envelope of strong paper or cloth, securely sealed, and forwarded by mail. He shall forward a copy of any statement as to violence or disturbance, bribery, or corruption, or other offenses specified in section 26 of this act.

With this law before him the Senator from Ohio contends that a return made from a parish can be opened in the city of New Orleans, and in that return be introduced a statement made weeks after the election. The question is too plain to be discussed. What does the twenty-sixth section say? The twenty-sixth section reads:

> When such statement is made by a commissioner of election or a supervisor of registration, he shall forward it in duplicate to the supervisor of registration of the parish, if in the city of New Orleans, to the secretary of state, one copy of which, if made to the supervisor of registration, shall be forwarded by him to the returning officers provided for in section 2 of this act, when he makes the returns of election in his parish. His copy of said statement shall be so annexed to his returns of elections by paste, wax, or some adhesive substance, that the same can be kept together.

Now, does not the law require that when the return of the election in a parish is made, if there has been any intimidation or violence of any description whatever occurring on the day of the election or at the time of registration, the fact shall be embraced in a statement which shall accompany the return of the election? There is the point. He only reads a part of the law. He says it does not require it within twenty-four hours; but whether it requires it within twenty-four or forty-eight hours, let that be as it may, it has to accompany the return of the election and be sent by mail. In this case, without excep-

tion from what he called the bull-dozed parishes, the returns were not sent by mail, but taken to New Orleans by the supervisors, kept in their pockets for days. In one case it was plainly proven that it had been opened and a certificate put in, the seal of course had been broken to do it; but in every case they were opened by these men in New Orleans before they were handed over to the returning board and false certificates introduced in them. This I again say is in direct and plain contradiction to the law, as found in the third, twenty-sixth, and forty-third sections.

My point and the point made by the democrats of Louisiana was this, that a statement of intimidation or violence had to accompany the return of the election, and unless it was so made, the board had no jurisdiction. No one in New Orleans of standing denies that to be the law; no lawyer of standing there denies this. I was there myself a short time and talked with many leading men, and none denied that to be the law. The committee sent by the House of Representatives one year ago in their report, an extract from which I read to the Senate yesterday, say it is the law, and when that board in 1874 under the same law returned a Legislature as elected without having regard to this portion of the law, they said it was illegal. Therefore I say all the testimony presented to that board taken in New Orleans was illegal, and their decision utterly and absolutely void.

The Senator mentions the returns of Weber from West Feliciana, of Anderson from East Feliciana, of Clover from East Baton Rouge, of a man by the name of Ward from Grant. I read testimony yesterday and to-day showing that this man Weber was an infamous man, a rascal, and a dog of low degree; and that after the election he had stated, not to one person, but to many, before he went down to New Orleans, where he was bribed to lie that the election had been fair and without any violence whatever. Anderson! There are no words that can convey a correct idea of his meanness. He is the fellow that shot himself to make it appear that his life was in danger from democrats. It is proven that he shot through his own clothes, trying to bull-doze himself. It is positively proven that this Anderson had perpetrated upon himself the assault which he said had been done by democrats. Clover! I proved yesterday by the testimony of more than one witness that this fellow admitted that the election was fair, peaceable, and quiet. But like his associates in crime he goes to New Orleans, and after he is there some ten or fifteen days new light breaks on him, and he makes an affidavit of intimidation. A fellow by the name of Ward is sent to Grant Parish as supervisor of registration of the entire parish. This fellow keeps a snake-show on the levee in New Orleans, and it was proven by testimony read by me to-day that this snake-show man only registered such persons as suited him in the different precincts of this parish. A fellow who keeps a snake-show on the levee of New Orleans is selected by the governor of Louisiana to go to one of the parishes of that State to do this important work. This alone shows the means employed to insult and mortify the citizens of that State, and a willingness to use the vilest instruments to effect the predetermined purpose to cheat the people out of their votes. Who can for a moment entertain a doubt of the purpose in sending such a man to perform this duty? And the proof shows that he did as was expected by his employers.

These men, one and all, have been proven to be unworthy of belief—Weber, Anderson, Clover, Ward—by the testimony of respectable men. But, sir, in each of the bull-dozed parishes I read the certificate of the clerk of the parish, not an *ex parte* affidavit, but the certificate of the clerk of the parish, that no statement of intimidation had been filed and that the election in each one had been peaceable and quiet. In East Feliciana, about which the Senator from Ohio talks so much to-day, as he did the other day, and says there was so much intimidation that the republicans dared not vote, this was fully explained by me yesterday. I read testimony showing that the republicans, finding a great change in the colored vote of that parish and that the colored men had determined to vote the democratic ticket, agreed among themselves not to vote. They had no candidate in the parish. I proved by testimony taken in the parish that there was perfect peace and quiet pervading it all the time, and the reasons the republicans did not vote was because they would not do so. The fact that they did not vote was a trick, worthy of the fellows who have for some time held sway in that State. I regret that such mean tricks can find friends and supporters anywhere.

I admire the Senator's courage when he holds on to the skirts of Eliza Pinkston, but I cannot say I commend his good taste; for if there is a woman whose skirts I would not hold to, it certainly would be Eliza Pinkston's. Who is Eliza Pinkston? In his former speech he held her up here as worthy of credit, as a woman who had been persecuted, an innocent, virtuous mother, who had lost her child, and been cruelly treated by the democratic regulators. Although he yet stands up for her, yet he does not do so as confidently as formerly. Although her character does not now stand quite as high as at first, they nevertheless insist she was bull-dozed by some democratic club. I read the proof from the man who formerly owned her; I read other testimony showing that all this thing was a quarrel among colored people themselves. When she first came to New Orleans her story was believed by no one, and it was only after some days that the Kelloggs, Packards, and others found out it could be manufactured into a most sensational election story and great capital got out of it. Well, it has run its day, and now I believe the Senator from Ohio is the only one who believes in this story.

I have no doubt murders have occurred in different parishes, as is the case elsewhere, but they have been multiplied tenfold; some of them occurred a year ago; some two years since. I read abundant testimony to show that these crimes were not political, but grew out of the peculiar condition of society there, and also instigated by the bad men who now control the State, and fostered by a government which not only did not afford protection to life or property, but abetted crime and protected the perpetrators of crime.

We must not forget that there is in Louisiana a large colored population suddenly emancipated. They are brought in conflict with the white race, and a feeling of hatred encouraged by Kellogg & Co., and, as a matter of course, more or less violence is the natural consequence. But the proof is that these conflicts are very seldom political.

The Senator from Ohio has a happy talent to give a new life to ancient animosities. He goes back to that old quarrel called the Kansas excitement of 1856, and says that the story of that day has been stamped upon the pages of history as the truth. I deny it. The story, or rather stories, of that day are believed but by few people of this day. Every impartial man now well understands how these stories were fabricated to inflame the public mind and in that way to create, as these lies did create, the anti-slavery excitement which in time swept over the land; but the old lies are now not believed and the pages of history will not be encumbered with such stuff. I have read testimony enough in the Senate for two days to show conclusively that the people of Louisiana are a law-abiding people; that the last election held in that State was peaceable, quiet, and orderly; that there was no intimidation, violence, or wrong-doing at any of the precincts in any of the parishes, and that those parishes which were rejected, the list of which I gave, were perfectly orderly and quiet and in no instance was there any proof otherwise, excepting proof gotten up in the city of New Orleans from *ex parte* affidavits and presented to the returning board in violation of law.

The Senator says the affidavits in the testimony I have read are *ex parte*. Some of them are; but most of them are answers to interrogatories propounded, as he says, under the law of Louisiana. Open the book containing the testimony on his side where you please and you will see that most of them made their mark. Nine-tenths of it is composed of the affidavits of men taken in New Orleans not known, men who could be got to swear to anything for money, while the testimony which I have read was taken in the parishes where the election took place, in many cases of men who were officers of the parishes, or of men who were long residents, in other cases of the supervisors of election or the clerks of the parishes, all men of standing and character, and this testimony taken at home, given by men who had a right to know and did know what had transpired at their homes.

Now he says the testimony which I have read only shows that persons had not observed that anything wrong had transpired. It is not so, sir. The testimony is positive that the election was peaceable and quiet.

To show that the Senator from Ohio has not made himself acquainted with this case he all the time uses the words "formal protest." There is no such word in that law. There is no "formal protest" recognized or known in it; but he persistently calls it however a formal protest made in the city of New Orleans and read by the returning board. Of course these formal protests, as he calls them, were made in the city of New Orleans and in very good form, beyond a doubt, and sworn to by such infamous fellows as Weber, and Anderson, and Clover, and this snake-showman, Ward, all in first-rate form, beyond a doubt, but all made outside of the law or the authority of the law, and in direct conflict with it.

Sixty-nine polls were rejected in twenty-two parishes. I read the list yesterday. It will appear as part of my speech when published; in this I give the number of votes rejected at each poll, and from what parish, and as regards every one of them I made it my duty yesterday and to-day to detain the Senate, very much against my wish, to place before it testimony showing that the election had been fair, peaceable, and quiet.

The Senator says, however, that this testimony was not in evidence before the board. I presume in one respect this statement is correct, but it was presented to the board, filed with it, and copied from its archives; but I have no doubt that that board did not look upon it as evidence. I have no doubt that the statement of the Senator in that respect is correct, and I am surprised he admits it. Why did not the board consider it, while it gave full effect to the testimony taken in New Orleans of unknown men, who generally could know nothing as to what had transpired in these distant parishes. It was filed, and is there yet, and ought to have been received as evidence, but I am sorry to say it was not.

Mr. President, this will at last be the turning-point in this case; and it is not within the ability of the Senator from Ohio to change that fact. The law is imperative that the statement of intimidation, or violence, or any wrong-doing occurring on the day of the election, at the polls, has to be incorporated in a paper called a statement and returned with the vote of that parish. If that be the law, as I say it is, as the House committee sent down there one year ago said it was, and as every lawyer of standing in New Orleans says it is, then all the testimony taken by the returning board in New Orleans was outside of the law, and is a nullity.

But the Senator says that in this country we cannot maintain government unless we observe law. That is true. But what is law? The existence of an institution like this returning board is a contradiction of all our idea of law. To give to four men the power to say who has or who has not been elected; to decide this in secret and without any appeal; and to call that law! Why, it is an abuse of terms to call such a monstrosity law. It is tyranny and oppression, and such tyranny and oppression as ought not to be upheld by any body, particularly in this country.

The Senator seems to take me to task for saying that Packard is infamous. I do say that he is one of the most infamous of mankind. I said it before and I say it now, and I am not aware that I am abusing my privilege. Why is he infamous? Any man who by force and fraud, as he is doing, will try to impose himself upon a community as the governor of that community is infamous; he is a tyrant. I repeat what I said before, that he is an infamous man, and the proof sustains me in what I say. I say the same thing with regard to the judiciary. Why? Because the Supreme Court of the United States have passed upon this Ludeling. It is true he denies it. The Senator from Ohio believes his denial, but does not believe the decision of the Supreme Court of the United States. He read a statement the other day, which I saw also in the papers, in which this man Ludeling says it is all false. Of course it is false in his estimation; but who are we to believe, the man charged with a criminal offense or the Supreme Court of the United States? And I also say that men are infamous who will take judgeships under the conditions that exist in New Orleans to-day. The so-called rump legislature, in session there without a quorum, is passing laws doing away with former judges and creating new courts, and upholding those new judges in power at the point of the bayonet. I say that men who will accept judicial stations under such circumstances make themselves infamous, and when they get upon the bench their decisions will be corrupt and venal.

I am not speaking without facts before me. The whole government in Louisiana, as I said in the speech which I made to-day, is a vile conspiracy to destroy that people, and to rob them of their property; a vile conspiracy which neither the spirit of the age or of this people ought to permit. Every man who is an officer under the local government at New Orleans is already rich or being enriched every day, from Kellogg down; yet these fellows pretend to be offended when they are called infamous. Sir, it is a duty I owe to myself and to the position I occupy, to state what I honestly believe, that these men are rogues and rascals, and until a public opinion in this country is created of a wholesome character which will openly expose these robbers and call them by their right names, you will be governed by rogues and infamous men as is now the case not only in Louisiana but elsewhere.

Mr. President, this long debate is approaching an end. I am heartily glad of it, but I am also glad that it has taken place. It has placed before this country the horrid condition of Louisiana; and the people of the United States will now examine into it, will read the testimony which will be found in my speech, and I am convinced it will open the eyes of many.

As I said to-day, upward of two thousand years ago, Verres, the propretor in Sicily, was guilty of rapacity and robbery and murder. When Cicero arraigned him before the Roman senate it aroused the indignation of the old Romans, and Verres was recalled and punished. That great old Roman senate, although under the pagan dispensation, called back the infamous propretor and punished him, and the history we read of the crimes of this man does not compare with that of the crimes committed in Louisiana; tyranny of every description that the human mind can conceive; courts forced upon them; legislatures forced upon them; incompetent men put into office; a system of assessment, the invention of a fiendish cunning, giving to the assessor a percentage upon the valuation he affixes, and from which there is no appeal! And this the Senator calls law. What is law but a rule of right? Yes, sir; a rule of right. In Louisiana it is a rule of wrong, inspired by bad men to accomplish wrong ends. That is not law. It may be on the statute-book, but it is a desecration of the sacred word "law," which should be a rule of right and made to protect the right and shield the innocent, and not to rob.

Gentlemen may say what they please; thank God the day has passed when you can impose on this people any further these horrid stories that have been related in this Chamber for years as to the bad character and conduct not only of the people of Louisiana but of all the Southern States. They are like the stories gotten up many years ago in England by Titus Oates, fabrications; one lie piled upon another; one man more infamous than another springing up every day and adding a pile of additional lies. Sir, there is no more disposition to commit murder in the South than there is in the North. The men there are as much law-abiding and are as much under the sway of Christian influence as they are in any portion of the North.

But, sir, the conflict there arises from the fact that you have forced upon those people a foreign government, composed of bad men who go there to rob and to steal; and that they may rob and steal they must necessarily violate every principle of justice and of right. The time has come when those people will be vindicated, and this condition of affairs there cannot be bull-dozed any longer. The returning board can stand no more. It has made its last return; and even that return will not stand. The people of the United States are not going to submit that these four men, without character or reputation, shall make a President for the whole United States. Can it be possible that the people of this country will permit Wells, Anderson, Casanave, and Kenner, two white and two colored men, to make a President of the United States? The thing is too absurd to talk about; and yet this is called law. A more complete system of oppression and of tyranny and robbery cannot be devised by the wit of man than has been devised to enslave and rob Louisiana.

Mr. SHERMAN. Mr. President, I congratulate the Senate at least that my friend from Missouri has made some advance in information. He stated emphatically in his speech, repeating it twice over, and it will be found reported in the stenographic notes, that there was no protest from either of the five bull-dozed parishes. I put it to him, "Do you mean that there was no protest at all, or no protest within twenty-four hours?"

Mr. BOGY. There is no such word as "protest" in the law, to begin with. The law calls it a "statement." The Senator is not familiar with the law.

Mr. SHERMAN. The Senator stated to the Senate that there was no such statement made from any of the bull-dozed parishes. I call it a protest. I put the question to him "Does the Senator mean no statement, or does he mean simply no statement within twenty-four hours," and he repeated the remark in its broadest sense. Now I have read him, in every one of those cases the full, formal, authentic statement, as formal as he could draw himself, and what does he reply? He does not say "I overlooked these affidavits; I beg pardon for leading the Senate into an error which I fell into myself, for I had not read these affidavits;" not at all, but he says the men that made these statements are rascals, thieves, liars, scoundrels! That is not argument. I have given the exact fact, and the record will show it. How can we answer logically such arguments? I endeavored to relieve the honorable Senator from Missouri by telling him "If you differ as to what is a legal statement, let us have the difference about the law stated; do you claim that the statement must be made within twenty-four hours? I say there is no such provision." The Senator would not accept that, but he said again, repeating it over two or three times, that there were no statements from either of the five bull-dozed parishes. Here they are. Now when he has found that in that particular at least he was wrong, he says these men are rascals, showing that he knew all about them, that he knew that they were the supervisors, that they made the protest, because he goes on to tell us one man is a thief, another man a liar, another man shot himself, and so on; he goes off into collateral matters.

Mr. President, that is not the way, it seems to me, to discuss such a matter. The truth is those protests were filed by the officers, as they believed according to law. They were carried down by these officers, and they testify to it themselves. They were carried down by these officers, were delivered, and there they attached their formal protest and affidavit to them, in some cases by sealing-wax according to the language of the law. They did it in New Orleans. I claim that that is legal; he denies it; but he denied first that there were statements. Now he says that the men who made them are rascals. I do not know whether they are or not. I am not prepared to say that every republican in Louisiana is a rascal. I know that in the northern States where I live we have good democrats.

Mr. BOGY. I think there are some honest men among the republicans there.

Mr. SHERMAN. I doubt very much if there was any honest republican who voted the republican ticket in Louisiana whether he would be honest in the eye of my friend, he is so discolored by his feeling. Did I show any such feeling? Did I not speak kindly of Nicholls and all these other gentlemen? I came in contact with many of them and was highly pleased with them. These men are not bad men; and Packard, who is denounced here as the worst man in the country, is a sober, orderly Maine man. My honorable friend from Maine says he has known him for years and he is spoken of very kindly. Indeed I heard democrats say if they were to have a republican governor at all they would rather have Packard than any one else. Yet he is the worst man in the whole country according to the Senator; and Judge Ludeling, the statement about whom made by the Supreme Court is referred to, is arraigned. Why arraign Judge Ludeling and stamp his name with infamy here in the Senate? I do not care anything about him; he to me is but a man like any other citizen; but what is the case? The Supreme Court of the United States in a railroad case denounced the purchase of a certain railroad as a fraud, said that the effect of the purchase was a fraud. Ludeling, acting for himself and sixteen or eighteen other corporators of that railroad, bid it off for some nominal sum; $30,000 perhaps. The Supreme Court said that was a fraud. He, acting for himself and as attorney for others, bid off at a nominal rate a railroad that had been dismantled, broken up, according to his statement, and which was not worth more than that. I know nothing about the facts. In the presence of his associates who were democrats, the other day before the Senate committee in New Orleans, he said this man and that man, pointing them out, leading men around there, leading democrats, had been associated with him in the transaction. Ludeling's statement was that there was not a rail, there was not a building, there was not a depot belonging to this railroad company; and he, buying for himself and others, bid it off. The Supreme Court characterized the purchase as a fraud. It was not so regarded by him nor by the

others who made this purchase; and if he is to be denounced, why not denounce all the other men concerned? Why were they not all guilty? Why single out Ludeling as a rascal? Why do you not denounce all the persons engaged in the purchase as rascals, thieves, &c.?

Mr. President, there are other judges of that supreme court of Louisiana who would adorn any tribunal. There was one who told me he was a native of the State and had always lived there, and, so far as I heard, he was spoken of as a man of the highest character. I do not now recall his name with certainty, but I think it was Morgan. Ludeling is a native of that region.

Mr. WEST. Judge Morgan is not now a judge of the supreme court.

Mr. SHERMAN. He was?

Mr. WEST. Yes.

Mr. SHERMAN. He was until recently a judge of the supreme court of Louisiana. All these men are men of high character and standing. To arraign all these people in this way, it seems to me, is very wrong, and the Senator will regret it. The truth is that so much is my friend imbittered in relation to matters down there that he has fallen into the common error of supposing that every republican is a rascal and a thief. If you want to compare the record and conduct and character of republicans and democrats over this broad country of ours, we could make the comparison very easily. The truth is the few white republicans comparatively in Louisiana deserve credit for courage, for honor in many cases. I do not know but that there are some rascals among them, and there are some rascals among the democrats, I imagine; but they have stood by the rights of the humble and the lowly, by the poor negro who has been armed with political rights. They have stood by them while these men have endeavored to oppress him and deprive him of those rights. There are good men down South; there are native-born citizens there who swore to those outrages, and among the rest a man named Hammond, who told a plain, straight story, who said that he was now cultivating the land that he had owned before the war and employing the very men who had been his slaves before the war. He testified to these same enormities.

It is not in this way that you can discredit these witnesses. So far as I could judge, they swore to the truth. Among them were officers of the Army of the highest standing. My friend has not called General Brooks a liar or a thief or a scoundrel. The other day my friend abused one of the returning board as keeping a doggery or grocery. The truth is that he keeps an eating-house. If all the men in the democratic party in the city of New York who keep a doggery or an eating-house or anything of that kind were turned out as rascals and thieves and scoundrels, I am afraid that the democratic majority would fade away; and not only so there, but in a great many other places. It will not do to make such tests. We have been told of a man who keeps a snake show. I hardly know what that is. He shows big snakes, I suppose.

Mr. BOGY. No; little snakes.

Mr. SHERMAN. Because he keeps snakes and little snakes at that, therefore he is a rascal! Did my friend see the snakes? Somebody said he kept snakes. In that way witnesses are discredited. One man kept a doggery or eating-house, and therefore he could not act. Another man was an undertaker and he could not be respectable. Because he buried the dead that was not a creditable business. Nobody can be respectable except he is a democrat and in favor of hunting poor negroes in their cabins. These "regulators" can come up and testify and there is nothing to their discredit. O, no, they are gentlemen! Mr. President, that mode of discrediting witnesses will not answer even in Missouri, even in Saint Louis, where they have a large, flourishing, growing population and a fine city. Men may pursue humble avocations; they may have been slaves and may be ignorant; they may not be able to read or write; but in many cases they can tell God's truth without error as plainly and as well as anybody else. And often it is that the most ignorant witness is the most honest witness. We have often heard it said that the poorest witness in the world is a lawyer, whose acuteness and intellect and culture and education sometimes make him ramble all over the field instead of telling squarely a plain, straight story. It has often been said that a lawyer is the poorest witness because he scatters and goes over the field too much.

Sir, these men are not to be discredited in that way, nor the supreme court of Louisiana, nor Governor Packard; and even that poor fellow who shows snakes may be an honest, good man, or he may be a dishonest rascal; but he is not dishonest simply because he shows snakes or because he is a republican, because he is a governor or because he is a judge of the supreme court of Louisiana. That kind of argument will not do in the Senate of the United States.

How does my friend now with all his long array of facts meet the fact that in East Feliciana there was no republican vote? How does he meet all the outrages that were almost numberless in the testimony that I have read? Calling men to say that they did not see it, that they were not present, negative testimony of that kind, amounts to nothing; but that is the way we have been answered throughout. Whenever we bring forward a witness there is nothing read out of that book to contradict the witness, but he is a thief, he shows snakes, he is a rascal, the worst man in the country! That is the way they are "whistled down the wind." It will not do, sir. The sad facts are recorded in imperishable history and they cannot be erased by such arguments as these. The Senator may say that his speech will be read. Let it be read and I am perfectly willing to let the record that I have presented, which was nothing but the testimony of living witnesses, stand with it; let the two go together and let honest men read them, and I have no doubt what will be their judgment as to the condition of affairs in Louisiana.

Mr. BOGY. Mr. President, the Senator from Ohio has often tried that on me before, to put in my mouth words and arguments which I have not used. I did not deny but that statements or, as he calls them, protests had been filed in regard to the so-called bull-dozed parishes. I made no such denial. I denied that they were sent from the parishes in accordance with the requirements of law. I did not deny that, as he calls them, protests were filed before the returning board, but I said those protests which the law calls "statements" were made in New Orleans after the election in violation of law. I do deny that not in one of these parishes were they sent as required by the law. That is my denial, and he well understands me. I do not deny but that in his book of testimony these statements appear and in good form. I admit they are formally written, but written and made when and where the law did not authorize them to be made. That is what I said.

Now, sir, a word with regard to this man Ludeling; here is what the Supreme Court says:

> Horne was persuaded by Ludeling, and without any communication with his constituents, to enter into an agreement, which was made on the 2d of February, 1868, one day before the sale. The material part of this agreement was that Gordon—
>
> A republican—,
>
> Ludeling—
>
> A republican—
>
> Baker—
>
> A republican—
>
> Stubbs—
>
> A republican—
>
> Waddell—
>
> I do not know his politics—
>
> and John Ray—
>
> A republican, I know, because he was formerly in my State—
>
> of the first part, and Horne, of the second part, *for himself and friends*, should clinch their funds to buy the property of the Vicksburgh, Shreveport and Texas Railroad Company, advertised for sale on the morrow, in partnership, and, if the property should be bought by them, that the party of the first part should own two-thirds and the party of the second part should own one-third. The agreement reveals apprehension that the sale might be stopped by injunction or declared null and void. It was signed "John T. Ludeling, for himself and friends," and "J. U. Horne, for himself and friends," and it is proved that when it was entered into Ludeling was informed of Horne's mission and of the plan he was instructed to carry out.
>
> It is impossible to characterize this agreement as anything else than fraudulent. Its obvious purpose was to remove competition at the sale. It was a flagrant breach of trust on the part of Horne and it was a fraud in Ludeling, with knowledge of the trust Horne had undertaken, to persuade him to violate his instructions and sacrifice the interests of his constituents, himself becoming a party to the violation.—*Jackson vs. Ludeling*, 21 *Wallace Reports*, pages 628 and 629.

And in that way he stole the railroad. A man who has been so held up by the Supreme Court of the United States is not fit to be the chief-justice of this State of Louisiana or any other State. It will not do to say that Ludeling denies this thing. Of course he does; but can anybody believe that the Supreme Court of the United States would put such things down in their decision unless the proof had been beyond all possibility of doubt? We know how prudent and careful they are; we know that they will not hold up a man to the world to be a rogue or a fraud unless the proof is conclusive and beyond all doubt. The Supreme Court has passed on him—and I submit to this decision—and I am compelled to believe him to be a rascal, however much he may deny it or the Senator from Ohio. I was therefore justified in saying at the outset that this man is infamous and unworthy of being chief-justice of a State. I will tell the Senator that he does me injustice when he says that I am disposed to look upon men as unworthy who are keepers of saloons and eating-houses. I said nothing of this kind. All men have my highest regard who are honest, regardless what may be their calling. As on the other hand, I do not care how high a man may stand officially, if he is a rogue and I am called upon to pass on him, I will say "*he is a rogue.*"

Mr. MORTON. I regretted, Mr. President, to hear what the Senator from Missouri said in regard to Governor Packard, of Louisiana; and I speak of this with the more freedom because Mr. Packard, so far as I know, is not my friend, and I am under no possible personal or political obligation to him. But I have been somewhat conversant with the affairs of Louisiana for several years past and think I know what is the character of Governor Packard, of that State, not only as a politician, but a man in society and in business. I have never before heard Governor Packard accused of being a man of bad character. I have understood that democrats there as well as republicans regarded him as a substantial, honest man, a man of good character; and in all the jobs we heard spoken of as having been got up in Louisiana the last few years I never heard it stated that Governor Packard was concerned or interested in any of them. I believe that he is a man of good character; and I heard with regret the Senator from

Missouri say here that he was a man of infamous character and an infamous public robber.

But, Mr. President, it comes in illustration of what has occurred so often in the South in the last few years, and is now being practiced, and that is that every leading white republican almost is assailed, his character is covered with obloquy and shame; and here is a fair illustration. A man who, I believe, has been elected governor of Louisiana, who has long been the United States marshal for that State, a man of good character, is denounced in the Senate of the United States as being an infamous public robber. Why, Mr. President, what are we to think of the opinions of the Senator from Missouri? I am not going to call his sincerity in question; I have no personal issue with him; but what are we to think of his opinions, of the justice of his views in regard to anything, or in regard to anybody, when he can stand up here and make this broad, sweeping statement against Governor Packard? And the Senator says here that the people of Louisiana, as shown by their history, have been a law-abiding people. He denies the truth of these statements in regard to the outrages, the murders, and the violence that have taken place in that State for some years back. He says the testimony is false and perjured and is not entitled to credit. Why, sir, have we got to that period in the world's history that human testimony is to be entirely discredited, that there is no such thing as truth, and that vast bodies of men can be found from year to year, without interest, without inducement, without anything to gain by it, who will be found to swear falsely and take perjury to their souls, and before the law?

Why, Mr. President, in 1866 a massacre took place at the Mechanics' Institute in the city of New Orleans. A body of men had assembled as a constitutional convention to propose amendments to the constitution of the State. It was peaceable, and, as they believed, was assembled in accordance with law. They had a right to be there; they molested nobody; but an attack was made upon them at the hour of noon, and in large part by the police of the city; an attack that was connived at, and in part engaged in, by prominent politicians; and in less than thirty minutes nearly two hundred men were killed and wounded in cold blood. The matter was examined by a committee of the House of Representatives. Nearly one hundred depositions were taken of men of all parties, white and black, men who had no inducement under God's heaven to swear to lies; and such fearful lies as they would have been, if their statements had not been true. You cannot read that narrative to-day without your blood curdling; horrible in its atrocity and inhumanity.

Then you come down two years later after Louisiana had been reconstructed. An election was held there in the month of May, under the auspices of an officer of the United States Army and under the protection of the United States Army. At that election in May the republican party carried the State by 16,000 majority, nearly 17,000. Then this protection was withdrawn; the State government started out, and an election was held in November following for President and for some State officers. Some ninety days before that election in November, societies were organized in the State of Louisiana and great violence was committed. A committee sent down next winter took nearly two hundred depositions, and by them it was proven that within sixty days before the November election in 1868 more than two thousand men were killed and wounded for political purposes. Some of the most terrible slaughters ever known were committed there. There were about two hundred men killed at one time and in one place. These facts were established by many scores of witnesses having no connection with each other, having no possible interest, no earthly inducement to testify to these atrocious perjuries, such as they would have been if these stories were not true. There you find the evidence in the result that, whereas the republicans carried Louisiana by 16,000 in May, the democrats carried it by 40,000 in November; and in parishes where the republicans had hundreds and even thousands of votes in May, General Grant did not get a vote in November, or got five votes or a very small number of votes. Such changes can only be accounted for by violence. Men are not converted unanimously; you cannot find a whole neighborhood converted to democracy or to republicanism in a moment or in a day. Political changes do go on sometimes; men change from one side to the other; but never in the world have I known a case where every man in a county or parish has gone over from one party to the other. Such things never occur unless the conversions are made as Mohammed made conversions, by the sword.

Then coming down to 1873, passing by the individual acts of violence in the mean time that have been abundantly proven from time to time, you find the Colfax massacre; nearly or quite one hundred colored men killed in cold blood; one of the most terrible narratives that have been written in modern times; and, if you will just refer to the trials in the circuit court of the United States at New Orleans, you will find that the judge of the court in one of those trials in giving his charge to the jury made a recital of the facts, which was conceded to be true by the counsel on both sides, and in which he described that horrible massacre in terms that I cannot repeat; giving to it a description and a character conceded to be correct by the counsel on both sides, making it one of the most terrible things in our history.

Passing down a little later we come to the Coushatta massacre, which has been established by evidence. I might refer to other transactions on the Red River, saying nothing about the riots in the city of New Orleans that have occurred from time to time and have been abundantly established by evidence. And yet we are told that this is all perjury, it is all false; that the people of Louisiana have been a law-abiding people, and that republicans, by perjury, and by fraud, by larceny, and every kind of crime, have sought to obtain the power.

Now I want to call the attention of the Senator from Missouri to a witness that he cannot discredit in that way, and that is in reference to this last election. I will just take a single case as shown by the record and I should like to hear how that is to be explained. I will take the parish of East Feliciana as shown at the last election. The registration of East Feliciana stood in 1876 as follows: colored 2,127; white 1,004. At the election before this, in 1874, East Feliciana gave 847 democratic votes and 1,688 republican votes. At this last presidential election East Feliciana gave 1,740 democratic votes and not one republican vote. There is a paper witness, established by the record, that cannot be met by the general charge of perjury and misrepresentation. In this single parish not one republican vote was returned. How was that brought about? Was it brought about by conversion, by democratic arguments, by men voluntarily changing their minds? O, no! nobody believes that. A result like that cannot be produced by any other means than intimidation and violence, and it was a complete result. There were others approaching it; not quite so complete in their character, but others approached it. There you find evidence that cannot be put down by saying "it is all manufactured testimony."

You may take the returns in Mississippi and you will find the same kind of evidence. I can take the returns of the last election in Mississippi and I think refer to four counties in which in 1875 there were over four thousand republican votes, bad as that election was, and yet at this last election Hayes got less than twenty-five votes in those four counties. I can take, I think, counties in Georgia, and several of them, if my memory is not at fault at least half a dozen, in which Hayes did not get a vote in 1876; and I can take counties in Alabama upon the official returns and there find that Hayes either got no vote at all or a very small vote, where the evidence was abundant that there were hundreds and thousands of republicans. Sir, this kind of evidence cannot be put away by saying "It is all perjury, it is all manufactured, the work of carpet-baggers and scalawags, and the ignorant negroes who are made to sign what they do not understand or know anything about."

I did not intend, Mr. President, to have adverted to this matter this afternoon; but the remarks of the Senator from Missouri in regard to Mr. Packard seemed to me to be such a common and complete illustration of the course that is pursued toward southern republicans that I must be forgiven for having intruded thus long.

Mr. EDMUNDS. Mr. President——

Mr. BOGY. One word in reply.

Mr. EDMUNDS. Mr. President, this discussion has gone on *pro* and *con* here all day long, and I think we ought to be allowed to adjourn.

Mr. BOGY. Just one remark.

Mr. EDMUNDS. There has been no personal reflection on my friend from Missouri. If there was I should certainly yield to him; but as it has been merely fair debate, I do not feel called on to allow it to go on longer.

Mr. BOGY. I wish but a minute of time.

Mr. WINDOM. I should like to make a conference report.

Mr. BOGY. I will not occupy more than a moment. I only want to explain this thing about East Feliciana.

Mr. EDMUNDS. You can explain it to-morrow. I move that the Senate proceed to the consideration of executive business.

Mr. WINDOM. Will the Senator withdraw the motion for a moment?

Mr. EDMUNDS. Yes, sir, if the Senator will renew it.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. GEORGE M. ADAMS, its Clerk, announced that the House had passed the joint resolution (S. R. No. 4) authorizing Captain Temple and Lieutenant-Commander Whiting, of the Navy, to accept a decoration from the King of the Hawaiian Islands.

The message also announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the bill (H. R. No. 4307) making appropriations to supply certain deficiencies in the contingent fund of the House of Representatives, and for other purposes.

The message also announced that the House had passed a bill (H. R. No. 2234) for the relief of Henry Simons, late private in Company D, Fourth Regiment Iowa Infantry Volunteers; in which it requested the concurrence of the Senate.

DEFICIENCIES IN APPROPRIATIONS.

Mr. WINDOM submitted the following report:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. No. 4307) making appropriations to supply certain deficiencies in the contingent fund of the House of Representatives, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment numbered 14, and agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the amendment numbered 12, and agree to the same.

That the House recede from its disagreement to the amendment numbered 7, and

agree to the same amended as follows: Strike out all of said amendment after the word "of," in line 3 and insert in lieu thereof the following: "$1,200 per annum, $1,264.17," and the Senate agree to the same.

WM. WINDOM,
W. B. ALLISON,
R. E. WITHERS,
Managers on the part of the Senate.
CHAS. FOSTER,
WM. S. HOLMAN,
J. H. BLOUNT,
Managers on the part of the House.

The report was concurred in.

HOUSE BILL REFERRED.

The bill (H. R. No. 2234) for the relief of Henry Simons, late private in Company D, Fourth Regiment Iowa Infantry Volunteers, was read twice by its title, and referred to the Committee on Military Affairs.

EXECUTIVE SESSION.

Mr. WINDOM. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After six minutes spent in executive session the doors were re-opened, and (at four o'clock and forty minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

FRIDAY, *January* 19, 1877.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of yesterday was read and approved.

AMENDMENT OF REVISED STATUTES.

Mr. O'BRIEN, by unanimous consent, introduced a bill (H. R. No. 4455) to amend section 3515 of the Revised Statutes of the United States, and for other purposes; which was read a first and second time, referred to the Committee on Coinage, Weights, and Measures, and ordered to be printed.

SHIP-CANAL AT HEAD OF LAKE GEORGE, FLORIDA.

Mr. FINLEY, by unanimous consent, introduced a bill (H. R. No. 4456) to authorize William A. Dormer and others to construct a ship-canal at the head of Lake George, Florida; which was read a first and second time, referred to the Committee on Railways and Canals, and ordered to be printed.

J. A. WITMER.

Mr. JOHN REILLY, by unanimous consent, introduced a bill (H. R. No. 4457) granting a pension to J. A. Witmer, late of Third Pennsylvania Volunteer Cavalry; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

SYVERT A. ANDERSON.

Mr. DUNNELL, by unanimous consent, introduced a bill (H. R. No. 4458) granting a pension to Syvert A. Anderson, Company B, Fifteenth Regiment, Wisconsin Volunteers; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

CHARLES POOL.

Mr. DUNNELL also, by unanimous consent, introduced a bill (H. R. No. 4459) granting a pension to Charles Pool, Sixth Regiment Virginia Volunteers; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

GEORGE W. HARD.

Mr. DUNNELL also, by unanimous consent, introduced a bill (H. R. No. 4460) granting a pension to George W. Hard, private in Company A, Sixth Regiment Minnesota Volunteers; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

SUFFRAGE FOR WOMEN.

The SPEAKER. The Chair is apprised that gentlemen from many States of the Union desire to present this morning petitions asking a constitutional amendment prohibiting the several States from disfranchising citizens on account of sex. The Chair asks unanimous consent that such petitions may be presented now. The Chair hears no objection.

Mr. KASSON presented a petition from Janet Strong, R. J. Andrews, N. R. Allen, and others—226 men and 449 women—675 citizens of the State of Iowa, asking for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex; which was referred to the Committee on the Judiciary.

Mr. KASSON. These petitions are all alike in form, I suggest that one of them be read. It occupies but four lines in print.

The Clerk read as follows:

To the Senate and House of Representatives in Congress assembled:

The undersigned citizens of the United States, residents of the State of Iowa, earnestly pray your honorable bodies to adopt measures for so amending the Constitution as to prohibit the several States from disfranchising United States citizens on account of sex.

Mr. HOAR. I desire to inform the gentleman from Iowa [Mr. KASSON] that the Committee on the Judiciary have already agreed to report a bill providing for the admission of women to practice in the Supreme Court of the United States.

Mr. KASSON. That is a different subject-matter.

Mr. BANKS presented a petition of Mrs. A. G. Riddle, R. J. Meigs, Frederick Douglass, Mary F. Foster, and others—310 men and 438 women—748 citizens of the District of Columbia, asking for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex; which was referred to the Committee on the Judiciary.

Mr. LYNDE presented a petition of similar import from Lavinia Goodell, Mathilde Franceske Anneke, Carl Doerflinger, and others—213 men and 264 women—477 citizens of the State of Wisconsin; which was referred to the Committee on the Judiciary.

Mr. LAWRENCE presented a petition of similar import from Sara Langdon Williams, Richard Mott, and others—403 men and 425 women—828 citizens of the State of Ohio; which was referred to the Committee on the Judiciary.

Mr. CLARK, of Missouri, presented a petition of similar import from Phœbe W. Couzzens, Mary L. Fordham, James S. Watts, and others—132 men and 106 women—238 citizens of the State of Missouri; which was referred to the Committee on the Judiciary.

Mr. JONES, of New Hampshire, presented a petition of similar import from Caroline H. Barr, Elizabeth S. Preston, E. A. Barrett, and others—7 men and 15 women—22 citizens of the State of New Hampshire; which was referred to the Committee on the Judiciary.

Mr. COX presented a petition of similar import from Lillie Devereaux Blake, Matilda Joslyn Gage, Mrs. E. P. Miller, M. D., and others—370 men and 487 women—857 citizens of the State of New York; which was referred to the Committee on the Judiciary.

Mr. HENDEE presented a petition of similar import from Sarah M. Lynde, S. H. Edwards, and others—3 men and 7 women—10 citizens of the State of Vermont; which was referred to the Committee on the Judiciary.

Mr. LUTTRELL presented a petition of similar import from Elizabeth Schenck, Mrs. C. C. Calhoun, and others—94 women and 108 men—202 citizens of the State of California; which was referred to the Committee on the Judiciary.

Mr. STRAIT presented a petition of similar import from Sarah Burger Stearns, Susan C. Burger, and others—37 men and 25 women—62 citizens of the State of Minnesota; which was referred to the Committee on the Judiciary.

Mr. WARNER presented a petition of similar import from Rev. Olympia Brown, R. N. Bushnell, and others—41 men and 23 women—64 citizens of the State of Connecticut; which was referred to the Committee on the Judiciary.

Mr. BROWN, of Kansas, presented a petition of similar import from Elsie Stewart, J. D. McClure, Lucy B. Armstrong, and others—90 men and 109 women—199 citizens of the State of Kansas; which was referred to the Committee on the Judiciary.

Mr. HAMILTON, of New Jersey, presented the petition of Lucinda B. Chandler, Sara H. Hurn, Charles Butler, and others—66 men and 136 women—202 citizens of the State of New Jersey, asking for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex; which was referred to the Committee on the Judiciary.

Mr. HOAR, by unanimous consent, presented the petition of Julie B. Hunt, E. S. Hammond, A. P. Lillie, and others—76 men and 127 women—203 citizens of the State of Massachusetts, asking for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex; which was referred to the Committee on the Judiciary.

Mr. HALE, by unanimous consent, presented the petition of Lucy A. Snow, O. S. Hix, and others—52 men and 76 women—128 citizens of the State of Maine, asking for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex; which was referred to the Committee on the Judiciary.

Mr. HOLMAN, by unanimous consent, presented the petition of Edward S. Pope, Jesse W. Weill, Mrs. J. H. Parker and others—43 men and 35 women—78 citizens of the State of Indiana, asking for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex; which was referred to the Committee on the Judiciary.

Mr. SPRINGER. Mr. Speaker, a similar petition to those already presented has been left at the desk of my colleague [Mr. MORRISON] who is absent from the city on the business of the House, and there being no objection I will present it in his behalf.

There was no objection.

Mr. SPRINGER, by unanimous consent, presented the petition of Clara Lyon Peters, Hannah Coffee, L. F. Sawyer, and others—240 men and 339 women—579 citizens of the State of Illinois, asking for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex; which was referred to the Committee on the Judiciary.

Mr. LAPHAM, by unanimous consent, presented the petition of Henry R. Selden, Helen M. Loder, Mary A. Calkins, Mary S. Anthony, and others—216 men and 385 women—601 citizens of the State of New York, asking for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex; which was referred to the Committee on the Judiciary.

Mr. MORGAN, by unanimous consent, presented the petition of Annie R. Irwin, Charlotte Curtis, Virginia W. Mason, and others—62 men and 88 women—150 citizens of the State of Missouri, asking for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex; which was referred to the Committee on the Judiciary.

Mr. KNOTT, by unanimous consent, presented the petition of Ann L. Quinby, Warren Smith, and 96 other citizens—35 men and 61 women—asking a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex; which was referred to the Committee on the Judiciary.

Mr. FENN, by unanimous consent, presented the petition of Alida C. Avery, N. W. Smith, and others—15 men and 12 women—27 citizens of the State of Colorado, asking for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex; which was referred to the Committee on the Judiciary.

REPEAL OF WAR TAXES UPON BANKS.

Mr. CONGER, by unanimous consent, presented the petition of W. L. Bancroft, Henry Howard, and 118 citizens of Saint Clair County, Michigan, praying for the repeal of the war taxes upon banks and banking capital in the United States; which was referred to the Committee on Banking and Currency.

CHEAP TELEGRAPHING.

Mr. WAIT, by unanimous consent, presented the petition of C. Hunt and 73 others, citizens of Connecticut, asking for cheap telegraphing; which was referred to the Committee on the Post-Office and Post-Roads.

MR. ORTON DISCHARGED FROM CUSTODY.

Mr HUNTON. I am directed by the Committee on the Judiciary to report to the House the following resolution.

The Clerk read as follows:

Resolved, That William Orton, now held in custody by the Sergeant-at-Arms of this House, be discharged from said custody.

Mr. HUNTON. I ask to have the report of the committee which accompanies that resolution read for the information of the House. It is very short.

The Clerk read as follows:

That they find from the proof before them that at the time and since the service of the subpœna upon him the condition of Mr. Orton's health has been such that it would have probably imperiled his life or at least postponed his recovery, to have made the journey to the city of New Orleans when he was requested to appear; and that for that reason he should not be held in contempt for failing to make his personal appearance at the time and place designated.

It further appears that at the time of the service of the subpœna upon him, and since, Mr Orton has not had actual possession of the dispatches demanded with the present capacity to produce them so as to bring him within the rule laid down by Lord Ellenborough in Amey *vs.* Long, 9 East, 473, indorsed by the House in the recent matter of E. W. Barnes. They therefore recommend that said Orton be discharged from custody.

Mr. HUNTON. I now demand the previous question on the adoption of the resolution.

The previous question was seconded and the main question ordered; and under the operation thereof the resolution was adopted.

Mr. HUNTON moved to reconsider the vote by which the resolution was adopted; and also moved to lay the motion to reconsider on the table.

The latter motion was agreed to.

RIVAL GOVERNMENTS IN LOUISIANA.

Mr. ELLIS. I ask unanimous consent to offer for reference to the Committee on the Judiciary a resolution, asking from the President all information in regard to the rival governments in Louisiana.

Mr. HURLBUT. Not to be brought back on a motion to reconsider.

The SPEAKER. Under the rules, anything that comes in by unanimous consent cannot be brought back on a motion to reconsider.

There being no objection, the resolution was referred to the Committee on the Judiciary.

PORTNER & RICKER.

Mr. BLISS, by unanimous consent, introduced a bill (H. R. No. 4461) for the relief of Portner & Ricker, of Alexandria, Virginia; which was read a first and second time, referred to the Committee of Ways and Means, and ordered to be printed.

COURTS IN ARKANSAS AND OTHER STATES.

Mr. McCRARY, by unanimous consent, from the Committee on the Judiciary, reported back the bill (S. No. 155) to amend sections 533, 556, 571, and 572 of the Revised Statutes of the United States relating to courts in Arkansas and other States, with a House amendment, and moved that the House recede from its amendment.

The motion was agreed to.

Mr. McCRARY moved to reconsider the vote by which the House receded from its amendment to the bill; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

JOHN W. L. MATLOCK.

Mr. LANDERS, of Indiana, by unanimous consent, introduced a bill (H. R. No. 4462) to refund to John W. L. Matlock, of Indianapolis, Indiana, the sum of $754.55, wrongfully collected from him by the collector of internal revenue of Clark County, Indiana, March 24, 1865, with interest on the same from that date; which was read a first and second time, referred to the Committee of Ways and Means, and ordered to be printed.

PAY OF CLERK OF COMMITTEE.

Mr. DOUGLAS, by unanimous consent, submitted the following resolution; which was read and referred to the Committee on Appropriations:

Resolved, That the Committee on Appropriations inquire into the propriety of paying the salary to the clerk of the Select Committee to Investigate the Freedman's Savings and Trust Company at the same rate of pay and in the same manner as other committee-clerks of this House.

ELIZABETH CARSON.

Mr. JOHN REILLY, by unanimous consent, from the Committee on Military Affairs, reported back the bill (S. No. 973) for the relief of Elizabeth Carson; and the committee was discharged from the further consideration of the same, and it was referred to the Committee on War Claims, not to be brought back on a motion to reconsider.

JOHN MILLER.

Mr. WATTERSON, by unanimous consent, introduced a bill (H. R. No. 4463) for the relief of John Miller, of Bourbon County, Kentucky; which was read a first and second time, referred to the Committee on War Claims, and ordered to be printed.

JOHN S. LOGAN AND W. L. SHADWICK.

Mr. BRIGHT, by unanimous consent, from the Committee of Claims, reported back the bill (S. No. 890) for the relief of John S. Logan and W. L. Shadwick; and the committee was discharged from the further consideration of the same, and it was referred to the Committee on War Claims, not to be brought back on a motion to reconsider.

DANIEL LEWIS.

Mr. CLYMER, by unanimous consent, submitted a resolution authorizing the payment of Daniel Lewis for services rendered in the Doorkeeper's department; which was referred to the Committee on Accounts.

CONSTITUTIONAL AMENDMENTS—WOMAN SUFFRAGE.

Mr. EAMES, by unanimous consent, presented the petition of Catharine Cornell Knowles, John C. Nichols, and others—56 men and 70 women—126 citizens of the State of Rhode Island, asking for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex; which was referred to the Committee on the Judiciary.

A. P. FRICK.

Mr. SMITH, of Pennsylvania, by unanimous consent, introduced a bill (H. R. No. 4464) to authorize the President of the United States to appoint A. P. Frick an assistant surgeon in the United States Army; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

JACKSON T. SORRELLS.

Mr. VANCE of North Carolina, by unanimous consent, introduced a bill (H. R. No. 4465) for the relief of Jackson T. Sorrells, of North Carolina; which was read a first and second time, referred to the Committee on War Claims, and ordered to be printed.

FEES OF ATTORNEYS AND CLAIM AGENTS.

Mr. BAGBY, from the Committee on Invalid Pensions, reported a bill (H. R. No. 4466) to regulate the fees of attorneys and claim agents in certain cases and to amend sections 4768, 4785, and 4786 of the Revised Statutes; which was read a first and second time, recommitted to the Committee on Invalid Pensions, and ordered to be printed.

THEODORE TEED.

Mr. HUNTON, by unanimous consent introduced a bill (H. R. No. 4467) for the relief of Theodore Teed; which was read a first and second time, referred to the Committee on the Judiciary, and ordered to be printed.

ORDER OF BUSINESS.

Mr. PAGE. I call for the regular order.

The SPEAKER. The regular order being called, the morning hour begins at twenty minutes to one o'clock, and the business of the morning hour, this being Friday, is the call of committees for reports of a private nature.

WILLIAM TABB.

Mr. WILSON, of Iowa, from the Committee on War Claims, reported a bill (H. R. No. 4468) for the relief of William Tabb, of Spot-

sylvania, Virginia; which was read a first and second time, referred to the Committee of the Whole on the Private Calendar, and, with the accompanying report, ordered to be printed.

PRIVATE LAND CLAIMS IN NEW MEXICO.

Mr. JOYCE, from the Committee on Private Land Claims, reported back, with a favorable recommendation, the bill (H. R. No. 3112) to confirm a private land claim in the Territory of New Mexico; which was referred to the Committee of the Whole on the Private Calendar, and the accompanying report ordered to be printed.

Mr. JOYCE also, from the same committee, reported a bill (H. R. No. 4469) to confirm private land claims in the Territory of New Mexico; which was read a first and second time, referred to the Committee of the Whole on the Private Calendar, and, with the accompanying report, ordered to be printed.

CHARLES E. HEDGES.

Mr. BOONE. I am directed by the Committee on Indian Affairs to report back, with a favorable recommendation, Senate bill No. 294, for the relief of Charles E. Hedges. I ask that this bill may be put upon its passage at this time.

The SPEAKER. The bill will be read, after which objections will be in order.

The bill directs the Secretary of the Treasury to pay to Charles E. Hedges $11,329, in full payment for supplies furnished by him to the Yankton Indians, at the request of the United States Indian agent, to prevent starvation among said Indians during the winter of 1866 and 1867, as found by the Interior Department and reported to Congress January 17, 1871, said sum to be re-imbursed to the Treasury of the United States out of annuities due and to become due to said Indians.

Mr. ATKINS. That bill makes an appropriation. Is it not required by the rule that it should receive its first consideration in Committee of the Whole?

The SPEAKER. Does the gentleman make that point of order?

Mr. ATKINS. I do.

The SPEAKER. The Chair sustains the point of order.

The bill was accordingly referred to the Committe of the Whole on the Private Calendar.

JOHN W. SKILES.

Mr. BANNING, from the Committee on Military Affairs, reported back the bill (H. R. No. 4111) for the relief of John W. Skiles, and moved that the committee be discharged from its further consideration, and that it be referred to the Committee on War Claims.

The motion was agreed to.

ADVERSE REPORTS.

Mr. JOHN REILLY, from the Committee on Military Affairs, reported adversely upon the following; which were laid upon the table, and the accompanying reports ordered to be printed:

A bill (H. R. No. 2795) for an appropriation to repair the military bridge over the Big Sioux River, near Sioux City, in the State of Iowa; and

A joint resolution (H. R. No. 17) to correct the Army records and registry of Lieutenant George D. Hill.

DISPOSITION OF UNITED STATES TROOPS.

Mr. JOHN REILLY. I am directed by the Committee on Military Affairs to report for consideration and adoption at this time the resolution which I send to the Clerk's desk.

The Clerk read as follows:

Resolved, That the Committee on Military Affairs be, and they are hereby, directed to inquire and report to this House what, if any, removals are now being made of arms and munitions of war from arsenals in one section of the country to another; the object and reason thereof; the present strength and location of the troops of the United States Army; what changes, if any, have been made within the last sixty days of those troops; how many, if any, have been withdrawn from the frontier; also if the frontier is left with a sufficient number of troops for its protection; the number of troops located in and around Washington; the object of collecting troops here; by whose order the changes of location of the troops and munitions of war have been and are being made; and that the committee have power to send for persons and papers.

Mr. HURLBUT. I rise to a point of order.

The SPEAKER. The gentleman will state his point of order.

Mr. HURLBUT. My point of order is that during the call of committees for reports of a private nature this resolution is not in order.

The SPEAKER. The Chair sustains the point of order, and the resolution is not before the House.

WILLIAM A. RUCKER.

Mr. THORNBURGH, from the Committee on Military Affairs, reported a bill (H. R. No. 4470) for the relief of William A. Rucker, late second lieutenant Company B, Third Regiment North Carolina Volunteers; which was read a first and second time, referred to the Committee of the Whole on the Private Calendar, and, with the accompanying report, ordered to be printed.

ADVERSE REPORTS.

Mr. THORNBURGH. I am directed by the Committee on Military Affairs, to whom were referred sundry petitions and also a bill, to report them back and ask that the committee be discharged from their further consideration, and that they be laid upon the table, provision having been made in other bills for the purpose:

Accordingly the committee were discharged from the further consideration of the following, and they were laid on the table:

A bill (S. No. 1008) to increase the efficiency of the cavalry force in the suppression of Sioux Indian hostilities; and

Sundry petitions for the passage of a soldiers' bounty-land law.

Mr. STRAIT, from the Committee on Military Affairs, reported back adversely the following resolutions, bills, petitions, &c.; which were severally laid on the table, and the accompanying reports ordered to be printed:

Resolution relative to ordering troops from Fort Union to Colfax, New Mexico;

A bill (H. R. No. 4353) for the relief of Peter D. Ranke, late private of Company C, Fourteenth Regiment Pennsylvania Cavalry Volunteers;

Petition of T. Worthington, late colonel Forty-sixth Ohio Infantry Volunteers, for investigation into the charges on which he was dismissed the volunteer service;

Petition of William K. Griffith, for additional bounty;

Claim of John S. Horner, one of the heirs of Dr. Gustavus B. Horner, of the revolutionary war;

A bill (H. R. No. 412) for the relief of Charles Edwards;

A bill (H. R. No. 2574) for the relief of Louisa G. Chandler;

A bill (H. R. No. 2995) for the relief of Mrs. Mary J. Eddy;

A bill (H. R. No. 2413) for the relief of Rufus Ross;

A bill (H. R. No. 3153) for the relief of Joseph W. Parish;

A bill (H. R. No. 1262) for the relief of Mary A. Silvey;

A bill (H. R. No. 159) for the relief of Samuel J. Hanway;

A bill (H. R. No. 3554) for the relief of William L. Lenan, late first lieutenant, Company B, Thirty-eighth Indiana Volunteers;

A bill (H. R. No. 2085) for the relief of Samuel Coday;

A bill (H. R. No. 3647) to remove the charge of desertion against Harman Colley;

A bill (H. R. No. 4225) for the relief of Peter W. Taylor, late lieutenant-colonel Fortieth Regiment Ohio Volunteer Cavalry;

A bill (H. R. No. 2538) for the relief of John Bowles, late lieutenant-colonel Seventy-ninth Regiment United States Colored Troops;

Petition of Robert K. Byrd, late colonel First Regiment Tennessee Infantry Volunteers, asking pay for a horse lost in the service;

A bill (H. R. No. 1732) for the relief of John Chandler; and

A petition of Charles Upson, with proposed amendment, concerning the law affecting the organization of the Army.

HENRY SIMONS.

Mr. STRAIT, from the same committee, reported back, with a recommendation that it pass, the bill (H. R. No. 2234) for the relief of Henry Simons, late private in Company D, Fourth Regiment Iowa Infantry Volunteers.

The bill was read. It authorizes and directs the Secretary of the Treasury to pay, out of any money not otherwise appropriated, to Henry Simons, late private in Company D, Fourth Regiment Iowa Infantry Volunteers, $100 as bounty due for enlistment under the proclamation of the President of May 3, 1861, and the orders from the War Department issued in pursuance thereof, he having subsequently been honorably discharged.

The bill was ordered to be engrossed and read a third time; and it was accordingly read the third time, and passed.

Mr. STRAIT moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

RICHARD H. BIRMINGHAM.

Mr. COOK, from the same committee, reported back the petition of Richard H. Birmingham, for bounty, and moved that the committee be discharged from its further consideration, and that it be referred to the Committee on Invalid Pensions.

The motion was agreed to.

ADVERSE REPORTS.

Mr. COOK also, from the same committee, reported back adversely the following bills; which were severally laid on the table, and the accompanying reports ordered to be printed:

A bill (H. R. No. 759) for the relief of William Shelton and Wiley Gasnell;

A bill (H. R. No. 213) to fix the brevet and real rank of officers of the regular and volunteer Army, and for other purposes;

A bill (H. R. No. 70) for the relief of Jacob Dice, of Fountain County, Indiana; and

A bill (H. R. No. 4256) for the relief of A. W. Greely, Fifth Cavalry.

DR. GEORGE M'COY.

Mr. BANNING, from the same committee, reported back the petition of Dr. George McCoy, acting assistant surgeon United States Army, for a pension, on account of disability incurred in the line of his duty, and moved that the committee be discharged from its further consideration and that it be referred to the Committee on Invalid Pensions.

The motion was agreed to.

LEGAL REPRESENTATIVES OF JOHN W. GALL.

Mr. JOHN REILLY, from the same committee, reported back adversely a bill of the following title; which, with an amendment of

the Senate thereto, was laid on the table, and the accompanying report ordered to be printed:

A bill (H. R. No. 262) for the relief of the legal representatives of John W. Gall, deceased, late of Company A, One hundred and thirtieth Regiment Illinois Volunteers.

DAHLGREN CLAIM.

Mr. LEWIS, from the Committee on Naval Affairs, reported as a substitute for House bill No. 975 a bill (H. R. No. 4471) authorizing the settlement of the claim of the estate of the late Rear-Admiral John A. Dahlgren; which was read a first and second time, referred to the Committee of the Whole on the Private Calendar, and, with the accompanying report, ordered to be printed.

FREDERICK R. SMITH.

Mr. WILLIS, from the same committee, reported back a bill (H. R. No. 4336) for the relief of Frederick R. Smith, with the recommendation that it do pass; and the same was referred to the Committee of the Whole on the Private Calendar, and, with the accompanying report, ordered to be printed.

WILLIAM H. CORNELL.

Mr. WILLIS also, from the same comittee, reported back adversely a bill (H. R. No. 2222) for the relief of William H. Cornell, late acting third assistant engineer of the United States steamer Winnebago; and the same was laid on the table, and the accompanying report ordered to be printed.

ADVERSE REPORTS.

Mr. BURLEIGH, from the same committee, reported back adversely in the following cases; which were laid on the table:

A bill (H. R. No. 2553) for the relief of Rufus P. Tryon, surgeon United States Navy;

A bill (H. R. No. 3234) to restore William J. Montgomery, late first assistant engineer United States Navy, to the active list of the Navy;

A bill (H. R. No. 1829) for the relief of Alexander H. Wallis, George Russell, and Henry Russell;

A bill (H. R. No. 2578) to require the construction of paymasters' offices on all naval vessels; and

The memorial of J. W. Gardner, passed assistant engineer in the United States Navy, praying that his pay in his present grade may commence at the time the vacancy occurs to which he was promoted.

NAVAL OFFICERS ALLOWED TO ACCEPT DECORATIONS.

Mr. BURLEIGH also, from the same committee, reported back a joint resolution (S. R. No. 4) authorizing Captain Temple and Lieutenant Commander Whiting, of the Navy, to accept a decoration from the King of the Hawaiian Islands, with the recommendation that it do pass.

The joint resolution authorizes Captain William G. Temple and Lieutenant-Commander William H. Whiting, of the United States Navy, to accept the cross of officers of the Order of Kamehameha I, conferred upon them by the King of the Hawaiian Islands as evidence of His Majesty's appreciation of those officers in connection with his visit to Washington, District of Columbia.

Mr. BURLEIGH demanded the previous question.

Mr. KASSON. May I ask whether this involves a title or not; whether in accepting this cross of officers of the Order of King Kamehameha they also accept titles? If it does involve the acceptance of a title, I cannot support the bill.

Mr. BURLEIGH. It is merely, as I understand, a medal of honor.

The House divided; and there were—ayes 31, noes 12; no quorum voting.

Mr. BLAND demanded tellers.

Tellers were ordered; and Mr. BURLEIGH and Mr. BLAND were appointed.

The House again divided: and the tellers reported—ayes 92, noes 60.

So the previous question was seconded.

The main question was ordered to be now put; and under the operation thereof the joint resolution was ordered to a third reading, and it was accordingly read the third time.

Mr. BUCKNER. I should like to ask what active services these officers of the Navy did to this King of the Hawaiian Islands?

The SPEAKER. Debate is not in order.

Mr. O'BRIEN demanded the yeas and nays on the passage of the joint resolution.

The House divided; and there were—ayes 21, noes 125.

So (one-fifth of those present not having voted in the affirmative,) the yeas and nays were not ordered.

Mr. BLAND demanded a division on the passage of the joint resolution.

The House divided; and there were—ayes 108, noes 42.

So the joint resolution was passed.

Mr. BURLEIGH moved to reconsider the vote by which the joint resolution was adopted, and also moved that the motion to reconsider be laid on the table.

Mr. HOLMAN. This is so ridiculous a proposition that I must demand the yeas and nays on the motion to lay upon the table, so we may have a record.

The yeas and nays were ordered.

The question was taken; and it was decided in the affirmative—yeas 112, nays 106, not voting 71; as follows:

YEAS—Messrs. Adams, Bagby, William H. Baker, Banks, Bliss, Bradley, Burleigh, Carr, Caswell, Conger, Cox, Crapo, Davis, Davy, Denison, Dibrell, Dobbins, Dunnell, Durham, Eames, Eden, Evans, Flye, Fort, Franklin, Frye, Garfield, Gause, Goode, Goodin, Gunter, Hale, Hancock, Benjamin W. Harris, Haymond, Hendee, Henderson, Hoar, Hoge, Hooker, Hoskins, Hubbell, Hunter, Hyman, Frank Jones, Joyce, Kehr, Kimball, Lamar, Franklin Landers, George M. Landers, Lapham, Lawrence, Leavenworth, Levy, Luttrell, Mackey, Magoon, MacDougall, McDill, McFarland, Meade, Miller, Morgan, Neal, Odell, O'Neill, Pierce, Plaisted, Platt, Powell, Pratt, Purman, Rainey, Reagan, John Reilly, John Robbins, Roberts, Robinson, Rusk, Sampson, Schumaker, Sheakley, Singleton, Sinnickson, Slemons, Smalls, A. Herr Smith, Stanton, Strait, Stenger, Stevenson, Stone, Terry, Thompson, Throckmorton, Martin I. Townsend, Turney, Van Vorhes, Robert B. Vance, Waldron, Charles C. B. Walker, Gilbert C. Walker, Erastus Wells, Whitthorne, Wike, William B. Williams, Willis, Wilshire, James Wilson, Fernando Wood, and Yeates—112.

NAYS—Messrs. Ainsworth, Ashe, Ballou, Bell, Blair, Bland, Blount, Boone, Bradford, Bright, John Young Brown, William R. Brown, Buckner, Horatio C. Burchard, Samuel D. Burchard, Cabell, John H. Caldwell, William P. Caldwell, Campbell, Candler, Cannon, Cate, Caulfield, Chapin, Chittenden, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Cochrane, Collins, Cook, Cowan, Culberson, Cutler, De Bolt, Douglas, Felton, Finley, Forney, Andrew H. Hamilton, Robert Hamilton, Henry R. Harris, Harrison, Hartridge, Hartzell, Hatcher, Henkle, Abram S. Hewitt, Goldsmith W. Hewitt, Holman, Hopkins, Humphreys, Hunton, Hurlbut, Thomas L. Jones, Kasson, Kelley, Knott, Le Moyne, Lynde, Maish, McMahon, Metcalfe, Milliken, Mills, Mutchler, New, O'Brien, Oliver, Packer, John F. Philips, Piper, Poppleton, Potter, Rea, Rice, Riddle, William M. Robbins, Savage, Scales, Schleicher, Seelye, William E. Smith, Southard, Sparks, Springer, Tarbox, Thomas, Thornburgh, Tucker, Tufts, John L. Vance, Waddell, Wait, John W. Wallace, Walsh, Warner, Warren, Watterson, Willard, Alpheus S. Williams, Charles G. Williams, Jeremiah N. Williams, Benjamin Wilson, Alan Wood, jr., Woodworth, and Young—106.

NOT VOTING—Messrs. Abbott, Anderson, Atkins, George A. Bagley, John H. Bagley, jr., John H. Baker, Banning, Bass, Beebe, Blackburn, Cason, Clymer, Crounse, Danford, Darrall, Durand, Egbert, Ellis, Faulkner, Field, Foster, Freeman, Fuller, Gibson, Glover, Haralson, Hardenbergh, John T. Harris, Hathorn, Hays, Hereford, Hill, House, Hurd, Jenks, King, Lane, Lewis, Lord, Lynch, McCrary, Money, Monroe, Morrison, Nash, Norton, Page, Payne, Phelps, William A. Phillips, James B. Reilly, Miles Ross, Sobieski Ross, Sayler, Stephens, Stowell, Swann, Teese, Washington Townsend, Alexander S. Wallace, Walling, Ward, G. Wiley Wells, Wheeler, White, Whitehouse, Whiting, Wigginton, Andrew Williams, James Williams, and Woodburn—71.

So the motion to reconsider was laid on the table.

During the roll-call,

Mr. WELLS, of Missouri, stated that his colleague, Mr. GLOVER, was confined to his room by sickness.

The result of the vote was then announced as above recorded.

MESSAGE FROM THE PRESIDENT.

A message, in writing, from the President of the United States was communicated to the House by Mr. SNIFFEN, one of his secretaries, who further announced that the President had approved and signed bills of the following titles:

A bill (H. R. No. 4281) to amend an act entitled "An act authorizing the repavement of Pennsylvania avenue," and the act amendatory thereof;

An act (H. R. No. 4120) making appropriations for the payment of invalid and other pensioners of the United States for the year ending June 30, 1878; and

An act (H. R. No. 1237) for the relief of Benjamin F. Reynolds.

ORDER OF BUSINESS.

Mr. BRIGHT and Mr. WELLS addressed the chair.

The SPEAKER. The gentleman from Tennessee.

Mr. BRIGHT. I move that the House resolve itself into Committee of the Whole on the Private Calendar.

The SPEAKER. For what purpose does the gentleman from Missouri rise?

Mr. WELLS, of Missouri. I desire to move that the House resolve itself into Committe of the Whole House on the state of the Union, to consider the Indian appropriation bill.

CONSTITUTIONAL AMENDMENT—WOMAN SUFFRAGE.

Mr. KELLEY. Pending those motions, I ask unanimous consent to present the petition of Caroline S. Broomall and others—249 men and 314 women—563 citizens of the State of Pennsylvania, asking for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex, for reference to the Committee on the Judiciary.

There was no objection, and the petition was referred to the Committee on the Judiciary.

Mr. W. B. WILLIAMS. I ask unanimous consent to present the petition of C. U. Church and others—181 men and 248 women—429 citizens of the State of Michigan, asking for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex, for reference to the Committee on the Judiciary.

There was no objection, and the petition was referred to the Committee on the Judiciary.

RECUSANT WITNESSES—J. MADISON WELLS AND THOMAS C. ANDERSON.

Mr. LYNDE. The Sergeant-at-Arms is ready to present at the bar the witnesses arraigned for contempt of the authority of the House in refusing to obey a subpœna of the Louisiana committee.

The SERGEANT-AT-ARMS, (JOHN G. THOMPSON, esq.,) appeared at the bar and said:

Mr. Speaker, in obedience to the orders of the House, I have arrested and have now at the bar of the House the witnesses J. Madison Wells and Thomas C. Anderson, of Louisiana.

The SPEAKER. The Sergeant-at-Arms reports that he has now at the bar of the House J. Madison Wells and Thomas C. Anderson,

of Louisiana, who, by a resolution of the House of the 17th of January, were ordered to be brought to its bar.

It is the duty of the Chair, Mr. Wells, to ask you what excuse you have to offer for your failure to appear before a committee of this House sitting in the city of New Orleans, Louisiana, on the 12th day of December, 1876, and to produce before the said committee certain books and papers called for in the *subpœna duces tecum* duly served upon you. It is also the duty of the Chair, Mr. Anderson, to ask you what excuse you have to offer for your failure to appear before a committee of this House sitting in the city of New Orleans, Louisiana, on the 12th day of December, 1876, and to produce before said committee certain books and papers called for in the *subpœna duces tecum* duly served upon you?

J. MADISON WELLS, (a witness.) I would ask the indulgence of the House until the other members of the board reach here, that we may make our answer together, remaining in the custody of the Sergeant-at-Arms until they arrive.

The SPEAKER. The witness J. Madison Wells asks further time to make his answer, until the arrival of the two remaining members of the returning board.

Mr. LYNDE. Before any action is taken by the House, I would ask that the other witness may answer the interrogatory propounded by the Speaker.

THOMAS C. ANDERSON, (a witness.) I make the same answer as J. Madison Wells, and make the same request.

Mr. LYNDE. I offer the resolution which I send to the desk, and on it call the previous question.

Resolved, That the report of the Louisiana investigating committee in relation to the refusal of J. Madison Wells and Thomas C. Anderson to obey a *supœna duces tecum*, and the answer of said witnesses just made at the bar of the House, be referred to the Judiciary Committee with instructions to report upon the same at as early a day as practicable; and the said J. Madison Wells and Thomas C. Anderson in the mean time to remain in the custody of the Sergeant-at-Arms of the House.

Mr. HOAR. I ask the gentleman from Wisconsin to permit me to make a suggestion before he insists on the demand for the previous question.

Mr. LYNDE. I yield to the gentleman from Massachusetts.

Mr. HOAR. As I understand it, the witnesses desire to make a further answer concerning the action of the board of which they are members when the other members of that board, who are expected daily in Washington, arrive. The resolution refers the report of the committee and this answer to a committee of this House with directions to report thereon as early as practicable; the result of which is to refer to the Judiciary Committee the case, when the witnesses at the bar have not made their answer, but desire time to make it. I suggest to my friend from Wisconsin, therefore, that he should add to his resolution the words "together with such further answer as the witnesses may hereafter be permitted to make."

Mr. LYNDE. I think that is a proper subject for consideration by the Committee on the Judiciary, and I therefore prefer that the resolution should be adopted as presented to the House.

Mr. HOAR. The witnesses have made no answer; they have made a request for time to answer. This resolution refers to the Committee on the Judiciary the "answer" of the witnesses, and directs that committee to report upon it. There is no difference in principle, I presume, between the gentleman from Wisconsin [Mr. LYNDE] and myself.

Mr. LYNDE. I am willing to modify the resolution by striking out the word "answer" and inserting the word "request."

Mr. HOAR. Very well; that will be sufficient.

The SPEAKER. If no objection be made, the resolution will be modified as suggested.

No objection was made, and the resolution was modified accordingly.

The previous question was seconded and the main question ordered; and under the operation thereof the resolution, as modified, was adopted.

Mr. LYNDE moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of its clerks, informed the House that the Senate had passed with amendments, in which the concurrence of the House was requested, a bill of the following title:

A bill (H. R. No. 4251) making appropriations for the consular and diplomatic service of the Government for the year ending June 30, 1878, and for other purposes.

ORDER OF BUSINESS.

Mr. BRIGHT. I call for the regular order.

The SPEAKER. The regular order being called for, the Chair will state the question before the House. The gentleman from Tennessee [Mr. BRIGHT] moves that the House now resolve itself into Committee of the Whole on the Private Calendar. Pending that motion the gentleman from Missouri [Mr. WELLS] moves that the House resolve itself into Committee of the Whole on the state of the Union, for the purpose of considering the Indian appropriation bill. This being Friday, and private-bill day, the question will first be taken upon the motion of the gentleman from Tennessee, [Mr. BRIGHT,] that motion taking precedence on private-bill day.

Mr. BUCKNER. Pending that motion, I ask that all debate in Committee of the Whole upon the pending bill, being the bill for the relief of the mission of Saint James, in Washington Territory, shall be limited to fifteen minutes.

The motion to limit debate was agreed to.

The question was then taken upon the motion of Mr. BRIGHT; and upon a division there were—ayes 111, noes 37.

So the motion was agreed to.

The House accordingly resolved itself into Committee of the Whole on the Private Calendar, Mr. MILLIKEN in the chair.

MISSION OF SAINT JAMES, WASHINGTON TERRITORY.

The CHAIRMAN. The Clerk will now report the bill pending when the committee rose on Friday last, being the bill (H. R. No. 820) for the relief of the mission of Saint James, in Washington Territory, reported, with amendments, from the Committee on Private Land Claims.

The Clerk read as follows:

Whereas Congress, in the act entitled "An act to establish the territorial government of Oregon," passed on the 14th of August, 1848, provided "that the title to the land, not exceeding six hundred and forty acres, now occupied as missionary stations among the Indian tribes in said Territory, together with the improvements thereon, be confirmed and established in the several religious societies to which said missionary societies respectively belong," and by the act entitled "An act to establish the territorial government of Washington," passed on the 2d of March, 1853, provided "that the title to the land, not exceeding six hundred and forty acres, now occupied as missionary stations among the Indian tribes in said Territory, or that may have been so occupied as missionary stations prior to the passage of the act establishing the territorial government of Oregon, together with the improvements thereon, be, and is hereby, confirmed and established to the several religious societies to which said missionary societies respectively belong;"

And whereas the honorable Secretary of the Interior, by his official and final decision, under date of January 29, 1872, after taking cognizance of the testimony and law in the case, acknowledges that a Catholic mission, called the mission of Saint James, existed at Vancouver, Territory of Washington, on the 14th of August, 1848, within the meaning and provision of the aforesaid acts, and that the said mission is entitled to whatever quantity of land these acts are intended to grant;

And whereas the intention of the aforesaid acts is to grant to each missionary station among the Indian tribes in Oregon and Washington Territories on the 14th of August, 1848, and 2d of March, 1853, respectively, the quantity of six hundred and forty acres of the public lands of the United States, where this quantity can be found in compact form, so as to include the mission improvements, or so much of said land as can be found, not to exceed six hundred and forty acres;

And whereas by order of the Commissioner of the General Land Office, dated September 29, 1859, a survey of said claim was made, and a plat thereof, dated December, 1861, approved by the surveyor-general of Washington Territory, was forwarded, and is now on file in the General Land Office of the Department of the Interior, such survey placing the mission improvements as near the center of the claim as possible, and interfering with no prior legal rights: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it is hereby made the duty of the Secretary of the Interior, within two months after the passage of this act, to cause a patent to be issued for the claim of the Saint James mission of Washington Territory, in accordance with the aforesaid plat of survey, dated in December, 1861.

The amendments were to strike out the third paragraph of the preamble, and to add to the bill the following:

Provided, That nothing in this act shall operate in any way to affect, impair, or defeat any adverse claim to the land described in said patent, or to any part thereof; *And provided further*, That the United States shall have the right to remove therefrom any property, buildings, or fixtures it may have thereon.

The CHAIRMAN. By order of the House, all debate upon this bill has been limited to fifteen minutes.

Mr. JACOBS. As this bill appertains to Washington Territory, I would like to be heard for a short time in answer to some arguments made by the gentleman from Missouri [Mr. BUCKNER] when this bill was last under consideration in Committee of the Whole. I stated on Friday last that this bill covered a portion of a very important military reservation upon the Pacific coast, the most important military reservation north of San Francisco. It was intimated by the gentleman from Missouri, if not expressly stated by him, that this military reservation had been vacated. I send to the Clerk's desk a letter from the Secretary of War and ask the Clerk to read the portions I have marked.

Mr. BUCKNER. The gentleman is mistaken in saying that I said this reservation had been vacated. What I said was that the rights of the United States could not prevail against the claims of this mission.

Mr. JACOBS. I ask the Clerk to read the paper I have sent to his desk.

The Clerk read as follows:

WAR DEPARTMENT,
Washington, D. C., January 17, 1877.

SIR: In reply to your letter of the 15th instant, in regard to the Fort Vancouver military reservation, in Washington Territory, and the Saint James Catholic mission claim, I have the honor to inform you that the reservation is still occupied as a military station, and is at present the regimental headquarters of the Twenty-first Infantry, and companies D, E, H, and I of said regiment are stationed there.

The reservation was intended for six companies, and embraces six hundred and forty acres, fronting twelve hundred yards on the Columbia River, and extending back about a mile and a half. It is regarded as one of the most important military posts on the Pacific coast, and was valued by the late General Canby at not less than $1,000,000.

* * * * * * *

I inclose copy of the opinion of Assistant Attorney-General W. H. Smith, dated January 29, 1872, on the claim to certain lands in Washington Territory by the Roman Catholic mission of Saint James, copy of the letter of the Attorney-General approving said opinion, and copy of the letter of the Secretary of the Interior to the Commissioner of the General Land Office directing him to carry into effect the views set forth in the opinion.

The possessory rights of the Hudson Bay Company covered all the land at Fort Vancouver and vicinity claimed by the mission, and hence the Saint James mission

could not have any title to the land even if it were an existing mission under the act of 14th August, 1848, as the possessory rights were secured by treaty, and only waived in the case of the United States military reservation.

Lord Lyons (in his letter, inclosed in letter of the Secretary of State to the Secretary of War, dated May 19, 1859) says: "The unfounded character of this claim appears from documents of which copies have been laid before Her Majesty's government. * * * Her Majesty's government are confident that the Government of the United States will give no countenance to this unreasonable pretension on the part of the Roman Catholic mission."

On the 23d of May, 1853, Peter Skeen Ogden, on the part of the Hudson Bay Company, notified the surveyor-general of Oregon that no such mission (as the Saint James mission) ever existed at Fort Vancouver; that the Catholic church there was sustained in part by the Hudson Bay Company for their servants. "Its clergy have resided here at the sufferance only and by the permission of the company; have always been paid by the company £50 per annum."

The Hudson Bay Company's title and possessory rights were adjudicated by the British and American joint commission under the treaty of July 1, 1864.

Under section 7 of the act of September 27, 1850, no claim could attach to land selected for a military post, or within one mile thereof.

Your attention is invited to the decision of the Supreme Court in the case of Lounsdale *et al. vs.* Parrish, (21 Howard, 290:) "Congress passed no law in any wise affecting the title to land in Oregon till September 27, 1850."

Very respectfully, your obedient servant,

J. D. CAMERON,
Secretary of War.

Hon. O. JACOBS,
House of Representatives.

Mr. JACOBS. I stated on Friday last that the construction uniformly given to the proviso in the organic act of Oregon and Washington Territory by the courts of Oregon and of Washington Territory was that these mission claims, of which many existed, were entitled——

Mr. BUCKNER. I desire to claim the floor. I yielded to the gentleman only for the purpose of having a paper read, and I object to his occupying all the time allowed for debate.

Mr. JACOBS. I will merely make a statement, and then I will send to the Clerk's desk another paper to be read.

Mr. FORT. I fear the gentleman from Missouri [Mr. BUCKNER] has made too short a limit of time. I am surprised that he should have proposed, on his own motion, to limit debate and then refuse to allow any other gentleman to be heard.

The CHAIRMAN. That cannot be helped in Committee of the Whole.

Mr. FORT. When the proper time comes I will move that the committee rise in order to extend the time for debate.

Mr. JACOBS. I would like to conclude my statement, which is that the uniform decisions of the courts of Oregon and Washington Territory, and of the Department in Washington, are to the effect that these missions are entitled to no more land than they actually need for mission purposes. I send to the Clerk's desk, and ask him to read, an opinion of the Attorney-General of the United States, given at the time, and also a paper in connection with it showing the decision of the Department, which opinion and decision are in harmony with the statement which I made on Friday last.

Mr. BUCKNER. If there is any time left I desire to send to the Clerk's desk to be read the report of the Commissioner of the Land Office in 1859, as to the rights of these missions.

The CHAIRMAN. The Chair would ask the gentleman upon what terms he yielded to the gentleman from Washington Territory?

Mr. BUCKNER. I yielded to him to have a document read.

The CHAIRMAN. All that he desires to be read has not yet been read. The Clerk will now read the remaining paper sent up by the gentleman from Washington Territory.

The Clerk read as follows:

DEPARTMENT OF JUSTICE,
Washington, D. C., January 29, 1872.

SIR: I have carefully considered the case presented by the claim of the Roman Catholic mission of Saint James at Vancouver, Washington Territory, for six hundred and forty acres of land, coming up to your office upon appeal from a decision of the Commissioner of the General Land Office, of November 10, 1862, adverse to the said mission, and referred to me by you for my advice. I herewith submit my views upon the several questions of law and facts involved.

* * * * * * *

From the facts stated substantially above the mission station at Vancouver now claim under the proviso quoted six hundred and forty acres of land, including improvements thereon. The claim of the mission is opposed by three different interests, as follows:

First. The military authorities, in charge of the United States military reserve at Vancouver, a portion of which is covered by the claim of the mission.

The record shows that in 1849 the military authorities, then in Oregon, with the consent and at the request of the Hudson Bay Company established a reserve at Vancouver.

For this purpose a written agreement was entered into between Peter Skeen Ogden, on the part of the company, and Rufus Ingalls, on the part of the United States, by which the company agreed to allow the United States to take post there and put up such buildings and occupy such vacant lands as might be necessary.

In consequence of this agreement troops were stationed at this point. In May, 1850, by order of General P. F. Smith, under directions from the War Department, Colonel W. W. Loring, United States Army, declared a reserve of four miles square.

On the 20th of October, 1853, in consequence of the passage of the act of February 14th of that year, the reserve was reduced by order of the War Department to six hundred and forty acres.

On this reserve the Government erected very valuable improvements, estimated at from $200,000 to $1,000,000.

Second. The widow and heirs-at-law of Amos M. Short, who claims under the act of September 27, 1850, (9 stat., 498, sec. 4,) six hundred and forty acres of land, partly covered by the claim of the mission.

It is shown that as early as 1844 or 1845 Short made repeated efforts to obtain a permanent settlement on the land now claimed by his widow and heirs; that he was twice driven off by the agents of the Hudson Bay Company, and was once ejected, under legal process, by one Ettinger; that he finally obtained a settlement which he maintained until his death in 1853; and that his family have, since his death, continuously resided on the tract.

Third. The citizens of the town of Vancouver, who claim under the town site act of 1844 (5 stat., 657) the right to enter a certain tract of land situated between the claim of Short on the west and the military reservation on the east, and included within the claim of the mission.

It is shown that at an early day this tract, having been excluded by the order of the War Department referred to from the reserve, and being to the east of the Short claim, was settled upon and occupied by a number of persons, who commenced to build a town, and that there were, in 1862, some three hundred persons on the tract, which, at that time, had been surveyed into blocks and lots.

* * * * * * *

Proceeding now to the case under consideration, I am of opinion that the proviso in the first section of the act of 1848 conferred an immediate vested right upon all societies then within its provisions; "That the title to the land * * * be confirmed and established" is the language. Here is a confirmation of title, immediately, operating *proprio vigore* for the benefit of all who should at that date be within its provisions. This construction of the law is the one adopted by Attorney-General Bates in his opinion of May 27, 1864 by the Commissioner of the General Land Office in his instructions to the Surveyor General, by Secretary Harlan in his review of Attorney-General Bates's opinion; and, so far as I know, it has never been anywhere seriously questioned. The only real questions are, therefore, first, who are within its provisions and, second, what is confirmed?

First, occupancy as a missionary station among the Indians at the date of the passage of the act to the qualification prescribed.

Whenever it is found that any religious society had, at the date of the act, a *missionary station* among any of the Indian tribes in said Territory, such society has conclusively shown a vested right, as of that date, under the proviso. As to what constitutes a "missionary station" among the Indian tribes, I shall say more in another place.

Second. What is confirmed to a religious society, shown to be within the limits of the proviso? In my opinion, only the land actually occupied as a mission, and which was with reasonable clearness set forth by specific boundaries, together with all improvements thereon, the amount in no case to exceed six hundred and forty acres. This is contrary to the view heretofore entertained by the Commissioner of the General Land Office, who in his instructions to the surveyor-general of Oregon of August 18, 1853, said, "Such provision (referring to the proviso) is understood to grant six hundred and forty acres to each separate and distinct missionary station referred to."

The words of the proviso are, "*now occupied as missionary stations.*" As nothing appears to show that the word "occupied" is here used in any other than its generally received and popular signification, which is that of possession, this meaning should be given it. This possession, like any possession, must be demonstrated in some way by recognized boundaries. I would not be understood to say that in every case where land is claimed under this proviso the claimants should be obliged to show an actual corporeal possession of all the land claimed by such evidence as having it inclosed, cultivating it, building upon it, or the like; but in my opinion there must be something to show, with reasonable certainty, the amount really claimed at the date of the act.

There must be such an assertion of the claim as would be notice to any other person attempting to gain possession. An inclosure would of course be the best evidence; but I think such inferior evidence as the marking out of this claim by stakes, or blazed trees, or the common reputation among the settlers and Indians, as to its bounds would be sufficient.

For the charitable purpose of the proviso, I would give the language a most liberal construction; but I know of no rule so liberal as to hold land "occupied" which has never been included in any inclosure nor in any asserted claim, and upon which no improvements have ever been made. I am unable to see how Commissioner Wilson reached the conclusion contained in his instructions to the surveyor-general. It is, in my opinion, an erroneous construction of the proviso; and as the question is now for the first time presented to the Department as an independent proposition, and as the claim under consideration is the first of these mission claims to be finally determined, so far as departmental action is concerned, I recommend that you give the proviso the construction I have laid down. Now to apply this construction of the law to the case under consideration.

On the 14th day of August, 1848, the date of the passage of the act, the mission of Saint James was in *actual possession* of a small piece of land, upon which had been erected a church in which the priests there stationed held religious worship. The mission at that day had never asserted any claim whatever, had no inclosure, and was therefore only in the occupancy of the land covered by the church edifice and such land as was appendant to it. This it occupied, in my opinion, as a missionary station among the Indians.

The society to which said mission belongs has, therefore, a vested title, under the act of 1848, to the land upon which the church edifice stands and as much appurtenant thereto as at the date of the passage of the act was within the inclosure, or used for church purposes.

DEPARTMENT OF JUSTICE,
Washington, March 2, 1872.

SIR: I herewith return the opinion of Assistant Attorney General Smith upon the claim of the Roman Catholic mission of Saint James for six hundred and forty acres of land at Vancouver, in Washington Territory.

I have not examined the questions of fact discussed and decided by him, and upon them therefore express no opinion. But I have examined and approve his views to the effect that the Land Department of the Government has jurisdiction to determine whether or not the said Catholic mission has acquired title to six hundred and forty acres or any other quantity of land at Vancouver, in Washington Territory, under and by virtue of section 1, of the act of August 14, 1868, entitled "An act to establish the territorial government of Oregon."

What effect the decision is to have if judicially questioned, the courts will decide for themselves.

Very respectfully,

GEO. H. WILLIAMS,
Attorney-General.

Hon. COLUMBUS DELANO,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., March 11, 1872.

SIR: I transmit herewith a copy of the opinion of Hon. Walter H. Smith, Assistant Attorney-General, of 29th January last, on the claim of the Roman Catholic mission of Saint James to certain lands in the Vancouver district, Washington Territory, under the act of 14th August, 1848. (9 Statutes, 323.)

I also transmit a copy of a letter on the subject, addressed to the Department on the 2d instant, by Hon. G. H. Williams, Attorney-General, to whom the opinion of the Assistant Attorney-General was submitted. I fully concur in the views set forth in the opinion, and you will give the necessary orders to carry them into effect.

The papers accompanying your letter of 18th April last are herewith returned.

I am, sir, very respectfully, your obedient servant,

B. R. COWEN,
Acting Secretary.

Hon. WILLIS DRUMMOND,
Commissioner General Land Office.

Before the reading of the foregoing was concluded,

Mr. BRIGHT. I rise to a point of order. The House limited debate on this question to fifteen minutes, and that time, I understand, has expired. I understand from several gentlemen that they desire further discussion of the subject; and therefore, if it be agreeable, I will move that the committee rise with the view of extending the time for debate one-half hour, fifteen minutes on each side.

Mr. LAWRENCE. I think it very doubtful whether half an hour is sufficient. I understand that this bill involves property in which the United States has a large interest, property worth perhaps a million of dollars, and which will probably be taken away by this bill.

Mr. O'BRIEN. I rise to a point of order. I submit that the Committee of the Whole has not the power to extend the time for debate.

Mr. BRIGHT. There is no proposition that the committee shall make such an extension. I move that the committee rise in order that the House may extend the time.

The motion was agreed to.

The committee accordingly rose; and Mr. WILSON, of Iowa, having taken the chair as Speaker *pro tempore*, Mr. MILLIKEN reported that the Committee of the Whole on the Private Calendar had had under consideration the bill (H. R. No. 820) for the relief of the mission of Saint James, in Washington Territory, and had come to no resolution thereon.

Mr. BRIGHT. I move that when the House shall again resolve itself into Committee of the Whole on the Private Calendar debate on the pending bill (H. R. No. 820) be limited to one-half hour, fifteen minutes on each side.

The motion was agreed to.

Mr. ELKINS. I move that all debate in Committee of the Whole on the bill (H. R. No. 344) to confirm certain private land claims in the Territory of New Mexico be limited to one hour and a half.

The motion was agreed to.

Mr. BRIGHT. I move that the House again resolve itself into the Committee of the Whole on the Private Calendar.

The motion was agreed to.

The House accordingly resolved itself into Committee of the Whole on the Private Calendar, (Mr. MILLIKEN in the chair,) and resumed the consideration of the bill (H. R. No. 820) for the relief of the mission of Saint James, in Washington Territory.

Mr. JACOBS. I ask the Clerk to continue the reading, in which he was interrupted by the rising of the Committee of the Whole.

The Clerk resumed and concluded the reading of the document as already given.

Mr. JACOBS. In addition to what appears by the papers which have been read, I simply wish to state a few facts that ought to be taken into consideration in passing on this question. In the first place a portion of this land to the extent of one hundred and sixty acres has already been patented to the city of Vancouver. Another tract of one hundred and sixty acres is claimed by some heirs under the donation law for Oregon and Washington Territory. The city of Vancouver, containing from fifteen hundred to eighteen hundred inhabitants, is upon this land. Now, if I understand the gentleman from Missouri correctly, he says that the only object of this bill is to obtain a trial of the title to this land. But what will be the effect of the bill? Immediately upon its passage, these citizens of Vancouver who have purchased this land from the city or from the Short heirs will have to pay rent to this mission. Notwithstanding the fact that after a long, tedious, and exhaustive litigation, continued for years in the Land Department of the Government, the decisions have all been against this mission, it is now proposed that the Congress of the United States shall turn round and give to this defeated party a patent to the property. What would this mission have thought if they had been the successful party and the Congress of the United States had undertaken after all the litigation to give the patent to the opposite party?

Mr. BUCKNER. Will the gentleman allow me just one question?

Mr. JACOBS. No, sir; not if it is to be taken out of my time.

Furthermore, as I have before stated, the Government of the United States has established upon this land a military reservation which the Secretary of War says is worth $1,000,000. It is proposed now to give to this mission the title to this military reservation. The whole property proposed to be given to the mission under this patent is worth at least $2,000,000. In view of these facts I ask whether the Congress of the United States is prepared to pass this bill, especially when the decisions of the Land Department, as I have already remarked, have been uniformly in opposition to the claim of the mission?

I maintain that there is no necessity for the passage of the bill in order that the mission may test the title to the property. A patent for one hundred and sixty acres of this land has already been issued by the Government; and if the only object is to test the validity of the title, the mission can commence suit in the courts of the Territory and have that question passed upon.

Furthermore, this was a legislative grant; and it is not necessary that a patent should issue from the Government. Such has been the opinion of the Attorneys-General of the United States, and also, I believe, the construction of the courts. All that it was necessary for the mission to do, if their construction of the law be correct, was to furnish their proof in the local land office. The act of 1848, under which they claim, gives them a legislative title; and all that was necessary was for them to furnish their proof, and afterward they could institute a suit in the courts to test the validity of their title. Now, this is about all I desire to say on the matter.

The gentleman from Missouri [Mr. BUCKNER] intimated, in the remarks which he made last Friday, that possibly I was connected with some of these parties as their attorney. I have never had anything to do with this case as attorney, neither with the Short heirs nor the city of Vancouver.

Mr. BUCKNER. Mr. Chairman, in the first place I want to say that the gentleman from Washington Territory is incorrect when he supposes I meant to insinuate he was acting as the agent of anybody or any party. I presumed he was doing what he supposed was his duty in reference to the interest of the country, as well as in reference to his constituents.

This bill has been twice reported upon favorably by two committees of this House, one in the Forty-third Congress and one in this Congress. The gentleman from Iowa [Mr. PRATT] in the last Congress reported from the Committee on Private Land Claims, with the unanimous recommendation of the members of that committee, a bill in favor of the rights of this mission to this six hundred and forty acres of land, and that too after one of the most exhaustive and learned arguments by the attorneys of the parties representing the various interests involved. The Committee on Private Land Claims at this session made a similar report after the matter was thoroughly investigated. They reported this bill so as to present all these questions to Congress as to the right to this land.

It is said there is a large amount of land, two or three million dollars' worth of land, involved. Grant that to be true, and I know not whether it is true or false, but this bill proposes to take the land from no human being unless the courts so decide. This bill does not provide that any right shall be affected except the mere transfer of the right of the United States. In other words, it is equivalent merely to a quitclaim deed from the United States, and nothing more.

The gentleman says that a patent has been issued by the Land Office during the last few years to the town of Vancouver. That patent expressly recognizes the right of the Saint James mission, and I undertake to say there has been no decision on this question, except that opinion of Mr. Smith, and in reference to that opinion every member of the Committee on Private Land Claims held that it was not only not law, but the object was to prevent these parties getting their rights.

Now, in every other case, certainly in the case of the mission at the Dalles in Oregon, certainly in one or two other cases of Lutheran and Presbyterian missions, the Government of the United States has given to these missions their lands.

Mr. LUTTRELL. In every one of them.

Mr. BUCKNER. But the Catholic mission is located here, and the real question at the bottom of all this is whether you are going to make a discrimination against the Catholic Church. If they have no right, all that is asked is let them go into the courts and the courts, I presume, will decide correctly.

The gentleman talks of the rights of the United States. No one pretends the Government of the United States has any rights in the matter if the mission is entitled to the land. That is a question which it is proposed to have settled in the courts. No member of the committee supposed, no one pretended to set up any right on the part of the Government of the United States, because the reservation was made subject to the rights of these parties.

I send to the Clerk's desk to be read, Mr. Chairman, an extract from the report of Commissioner Wilson on this very question—a gentleman not only a most faithful officer of the Government, but who is regarded as a fine lawyer—when he settled the question as to the rights of these missions.

The Clerk read as follows:

> The rights of the United States fully ceased and determined on the 14th August, 1848. The tract was subject then to the *possessory rights* of the Hudson Bay Company, for the treaty said those *rights should be respected*. Those rights continued by their license until May, 1859, and when that incubus was removed, by the extinction of those rights, it left the grant to the mission of Saint James full, ample, and complete, now entitled to enjoy the same in all its parts, with the right to ask for and receive from the United States a deed of confirmation or patent so soon as the lands could be surveyed.
>
> The papers on file show that the mission notification was on file before any claims were asserted to contiguous lands. It is the oldest claim. Its recognition is coeval with the organization of Oregon, and was a positive grant more than two years before any American settler could acquire an interest in or title to *unoccupied public lands*. The mission had been used since the winter of 1838. It is not my province to comment upon the wisdom or policy of such a law, and it is a matter of regret that private interests may by such decision apparently suffer; but the law making grants to missions is so clear and positive, the evidence so direct and long continuing, bringing this station or mission within the purview of the law, that there is but one duty to perform: confirm to the mission six hundred and forty acres of land, in accordance with said grant, and as shown by the accompanying plat and field-notes of the official survey.

Mr. BUCKNER. Mr. Chairman, I said on last Friday that the Government of the United States had recognized the rights of every other mission in this Territory except this, and this only partially. The Government so far recognized the right of the mission at Dalles that when there was a United States reservation placed upon that land the Government paid $23,000 to the mission as payment for the land taken up for that reservation, the Government thereby recognizing the right of the mission to that property. Nor do the papers which the gentleman read here from Mr. Smith, and the late Commissioner of the

General Land Office, affect the right to some of the property at this mission. They have issued patents, in point of fact, to a quarter of an acre, or one acre, merely covering the ground upon which the mission buildings are located, thereby recognizing the existence of the mission; and the question to be determined was whether the mission extended beyond the mere personal, actual occupancy of ground for buildings, or whether it included six hundred and forty acres, the same granted to every other mission, and which Mr. Wilson, the Commissioner of the General Land Office, decided that this mission was entitled to.

This bill cannot affect the rights of anybody save the rights of the United States; and nobody has ever pretended that the United States ever have put up any claim there. And there is no pretense but the United States did either grant the property to these citizens who are now claiming and are represented by my friend from Washington Territory [Mr. JACOBS] or to the Saint James mission; and this bill is for the purpose of letting these parties assert their rights to this land in the courts of the country. Here the patent is authorized to be issued. The effect of that patent is merely to grant a quit-claim deed on the part of the Government, and leave for the decision of the courts the question as to whether they or Vancouver or Short's heirs are entitled to this land.

But the gentleman from Washington Territory says that there is no necessity for any action of the Government in order to give these parties a right in court. I say that, so far as concerns the land that has been severed from the public domain and surveyed under the decision of the late Commissioner, that is enough; but that only gives them a half acre of ground—the ground covered by their church and school-building—cutting off the orchard and much of the land proved to have been occupied for the last twenty-five or thirty years by this mission.

I understood the gentleman from Washington Territory to say that until the land is severed from the public domain by a survey no man can go into court and have any status there; that in order to this the Government must sever private land from the public domain. But while this may be the case under a legislative grant, the question is whether that grant contained six hundred and forty acres, or half an acre, or a quarter of an acre; and the object of the bill is to enable the courts to decide that, and nothing more. That I undertake to say, and the gentleman does not deny it. But I intended to ask him the question whether the Vancouver patent did not save the rights of the Saint James mission? Will the gentleman answer?

Mr. JACOBS. I am not able to say.

Mr. BUCKNER. I know it as a fact that when the patents were issued to the inhabitants of Vancouver those patents expressly, in so many words, preserved the right of this mission, and they get nothing as against it. But how are they in a condition to sue, provided they are entitled, as I believe and as the committee of both Houses unanimously believe, provided they are entitled to an amount of land not exceeding six hundred and forty acres, to be laid off as Mr. Wilson instructed the surveyor-general? How can they assert anything beyond the half acre given by this patent? It is utterly impossible. And yet when they assert this claim, they have no rights against anybody having a better title. If these Vancouver parties have a right to this one million or two millions of dollars' worth of property, let them have it, but let them have it by a judgment of the court. And this bill enables them to have it decided by a court; and so it is with the Short heirs.

There is another claim, what is called the donation claim, in which the Short heirs have a right. If they are entitled to it as against this mission, by the judgment of the courts this bill enables this question to come before them and to be decided.

Mr. LUTTRELL. Will the gentleman yield to me for a question?

Mr. BUCKNER. Yes, sir.

Mr. LUTTRELL. Have they not proposed to cut off even the cemetery from this mission?

Mr. BUCKNER. Certainly. The patent given to the mission, and which was a recognition of the existence of that mission as far back as 1838, actually cuts off everything except the buildings—the church and school-house; it cuts off their orchard, their burial ground, and all their farm which they had been occupying almost from 1838 to the present time. That is the effect of it.

Now we do not say that there shall be an absolute patent. We do not pretend to settle the question who is entitled to this land. But we do say the only way by which this question can be settled is to put it in the courts. The gentleman from Washington Territory says it may be settled otherwise. There is no doubt it may be settled in this way. I do not know, I have never heard, and I do not believe now that there is any way by which the right of the Saint James mission can ever be settled by any adjudication of a court until this land is severed and a quit-claim given by the Government to these parties. And the effect of not passing this bill is absolutely to deny their right to go into court and have the question passed upon whether they are entitled to six hundred and forty acres or only half an acre. That will be the effect of your action on this bill.

I hope there will be no dispute about this. I will read the provision of the bill by which, as I say, this is nothing in the world but a quit-claim deed on the part of the General Government. If the Government has any claim that is valuable they will, as in the case of the Dalles mission, pay us the value. But the land was patented prior to the military reservation being established. Now, this bill does not deal in any doubtful words. Its language says that these parties represented here are willing that this question shall be presented to the courts. This is the language of the proviso:

Provided, That nothing in this act shall operate in any way to affect, impair, or defeat any adverse claim to the land described in said patent or to any part thereof: *And provided further*, That the United States shall have the right to remove therefrom any property, buildings, or fixtures it may have thereon.

Now, I say that there is certainly some respect due to two committees of this House, composed of twenty-two men, all of them lawyers, I believe, who have investigated this subject. It was investigated during the last Congress; and after a very exhaustive argument some gentlemen, who had taken up the opinion that this mission was entitled to only a quarter of an acre of land, or just enough to hold their buildings, came to the conclusion that they were entitled to six hundred and forty acres. That is my deliberate judgment. I have no more doubt, as a question of law, about the right of this Saint James mission to six hundred and forty acres of land than I have that I am standing here. But in order to obviate the objection made to our deciding this question by this bill, it is in point of fact remitted to the courts, and it is left to them to determine whether Fort Vancouver reservation is entitled to six hundred and forty acres of land, or whether the Short heirs are entitled to six hundred and forty acres, or whether this mission of Saint James is entitled to that amount of land.

Mr. MAGOON. Will the gentleman allow me to ask him a question?

Mr. BUCKNER. Certainly.

Mr. MAGOON. From what committee was this bill reported?

Mr. BUCKNER. From the Committee on Private Land Claims.

Mr. MAGOON. Is there any minority report?

Mr. BUCKNER. No, and there was none in the last Congress when a bill was reported much stronger than this, because it gave to the mission the absolute right to six hundred and forty acres of land.

Mr. MAGOON. Is this a unanimous report of the committee?

Mr. BUCKNER. It is. It is not only reported unanimously now, but it was unanimously reported by the committee of the last Congress.

Mr. CONGER. What was the date of the law giving to missions generally six hundred and forty acres each?

Mr. BUCKNER. It was the law of 1848 establishing the Territory of Oregon. I will read the provision under which these missions were allowed six hundred and forty acres each:

That the title to the land, not exceeding six hundred and forty acres, now occupied as missionary stations among the Indian tribes in said Territory, together with the improvements thereon, be confirmed and established in the several religious societies to which said missionary stations respectively belong.

The committee have construed the term "improvements" as intended to locate the mission, and not to affect the quantity of land given to each mission. That has been the uniform construction of all acts of Congress on that subject. When, for instance, the law gives to settlers one hundred and sixty acres of land, in such a law the term "improvements" is commonly used. Now to the mind of every gentleman at all acquainted with the laws of Congress on that subject and the history of the action of the Department under those laws, the word "improvements" is understood to designate the *locum quo* of the land given. In this case the land is not to exceed six hundred and forty acres, but you cannot confine it to the actual amount which you may happen to have *possessio pedis*, or under foot, that you have your foot upon.

This matter was fully investigated under the instructions of the commission of the land office in 1860, under the direction of Commissioner Wilson, to ascertain whether this mission had a station, when the station began, to what extent the mission occupied it, and what was the character of the improvements upon it. All these matters were investigated when a land office was first opened in the Territory of Washington. The decision which I have had read by the Clerk was the result of the action of the commission of the land office on the report which was then made to it. Until the Land Office here took a different view within the last two or three years, there never was any doubt upon the subject; it was held that this mission was entitled to six hundred and forty acres. It is admitted by the opponents of this bill that there was a mission at this place, and they proposed to give the mission one-half of one-quarter of an acre, just enough to contain their church and building. Now I say to this Committee of the Whole, and I am sure that every lawyer who has examined the subject will say the same thing, that this mission is entitled to every part of the six hundred and forty acres, provided their possessions extend to that much, and it has been shown that they have occupied far more than that amount.

Mr. FORT. How did it come that Attorney-General Bates was called upon to make a decision upon this subject?

Mr. BUCKNER. Attorney-General Bates decided that this was a legislative grant, and there is no doubt about that. The difficulty is that you have not severed the land, and hence the Government has to act by its surveyor in order to designate how much land there is. I have no doubt that this is a legislative grant by the Government of the United States. That, however, is not the question. The question is how much land did the Government give? And this bill provides that that question shall be settled by the courts.

Mr. LUTTRELL. And the only point at issue is whether the courts shall settle the amount?

Mr. BUCKNER. That is the only question this bill undertakes to settle; we leave it to the courts. I see my friend from Iowa here, Judge PRATT. In the last Congress he reported to the House a bill which gave absolutely the six hundred and forty acres, according to the construction of Commissioner Wilson.

The CHAIRMAN. The time allotted by the order of the House for debate upon this bill has expired.

Mr. BUCKNER. I ask, then, that the committee now proceed to vote.

Mr. JACOBS. I move to strike out the enacting clause of the bill.

The question was taken upon the motion to strike out the enacting clause; and upon a division there were—ayes 27, noes 62.

Mr. JACOBS. No quorum has voted, and I ask that tellers be appointed.

Tellers were ordered; and Mr. BUCKNER and Mr. TOWNSEND of New York were appointed.

The committee again divided; and the tellers reported that there were—ayes 51, noes 87.

No further count being called for, the motion to strike out the enacting clause was not agreed to.

The amendments reported by the committee were read, as follows:

Strike from the preamble the following:

Whereas the intention of the aforesaid acts is to grant to each missionary station among the Indian tribes in Oregon and Washington Territories on the 14th of August, 1848, and 3d of March, 1853, respectively, the quantity of six hundred and forty acres of the public lands of the United States, where this quantity can be found in compact form, so as to include the mission improvements, or so much of said land as can be found, not to exceed six hundred and forty acres; and.

Add to the bill the following:

Provided, That nothing in this act shall operate in any way to affect, impair, or defeat any adverse claim to the land described in said patent, or to any part thereof: *And provided further*, That the United States shall have the right to remove therefrom any property, buildings, or fixtures it may have thereon.

Mr. HOLMAN. I move to amend by adding to the bill the following, to come before the proviso just read.

Or for such part of said land as the Secretary of the Interior may find that said society is entitled to upon a review of all the facts which have been or shall be submitted to him in connection with the said grant.

I ask that the bill be read with the amendment, so as to show its connection.

The Clerk read as follows:

Be it enacted, &c., That it is hereby made the duty of the Secretary of the Interior, within two months after the passage of this act, to cause a patent to be issued for the claim of the Saint James mission of Washington Territory, in accordance with the aforesaid plat of survey, dated in December, 1861; or for such part of said land as the Secretary of the Interior may find that said society is entitled to upon a review of all the facts which have been or shall be submitted to him in connection with the said grant.

Mr. BUCKNER. That will defeat the whole object of the bill; it brings up again the very difficulty we want to cure.

Mr. HOLMAN. It provides for a proper tribunal to decide the case; that is all.

Mr. BRIGHT. I call for the regular order. Debate is exhausted.

Mr. HOLMAN. I ask that the amendments of the committee be read.

The bill, as proposed to be amended, was again read.

Mr. O'BRIEN. I think there is some mistake. What has just been read, as I understand, is the substitute reported by the committee. The only amendment pending is that of the gentleman from Indiana, [Mr. HOLMAN.]

The CHAIRMAN. The amendments just read are those reported by the committee.

Mr. O'BRIEN. But they are in the nature of an original bill, and require no vote of the Committee of the Whole.

The CHAIRMAN. Whether reported as a substitute or as separate amendments, they have to be voted on.

Mr. HOLMAN. I submit as a question of order, that the substitute being before the committee for amendment, the amendment I have submitted is to be voted on in the first instance and then the question will be whether the substitute (amended or not amended, as the case may be) shall be adopted.

I desire to add to the amendment I have already submitted the following words:

Or the society may institute a suit in the United States district court for the district of Washington against the United States and all other parties concerned, to determine its interest and right in the said land.

The question being taken on the amendment of Mr. HOLMAN, as modified, there were—ayes 10, noes 47.

Mr. HOLMAN. No quorum has voted; but I will waive that point if it be understood that a vote may be had on my amendment in the House.

Mr. O'BRIEN. There is no objection to that.

Mr. BUCKNER. I have no objection to the bill being reported with that understanding.

The CHAIRMAN. The amendment of the gentleman from Indiana [Mr. HOLMAN] is not agreed to.

The question being taken on the amendments reported as a substitute by the Committee on Public Lands, they were agreed to.

Mr. HOLMAN. Of course it is understood that when the bill as amended by the committee has been reported to the House, my amendment shall be submitted to a vote.

Mr. BUCKNER. I have no objection to that. I move that the committee rise and report the bill as amended to the House.

The motion was agreed to.

The committee accordingly rose; and Mr. WILSON, of Iowa, having taken the chair as Speaker *pro tempore*, Mr. MILLIKEN reported that the Committee of the Whole on the Private Calendar, having had under consideration the bill (H. R. No. 820) for the relief of the mission of Saint James, in Washington Territory, had directed him to report the same with certain amendments, and with a recommendation that it be passed as amended.

CONTINGENT FUND OF THE HOUSE.

Mr. FOSTER submitted the following report:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. No. 4370) making appropriations to supply certain deficiencies in the contingent fund of the House of Representatives, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment numbered 11, and agree to the same;

That the Senate recede from its disagreement to the amendment numbered 12, and agree to the same;

That the House recede from its disagreement to the amendment numbered 7, and agree to the same, amended as follows:

Strike out all of said amendment after the word "of," in line 3, and insert in lieu thereof the following: "$1,200 per annum, $1,861.17."

And the Senate agree to the same.

CHARLES FOSTER,
WILLIAM S. HOLMAN,
J. H. BLOUNT,
Managers on the part of the House.
WILLIAM WINDOM,
W. B. ALLISON,
R. E. WITHERS,
Managers on the part of the Senate.

The report was adopted.

Mr. FOSTER moved to reconsider the vote by which the report was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

MISSION OF SAINT JAMES, WASHINGTON TERRITORY.

The SPEAKER *pro tempore*, (Mr. WILSON, of Iowa, in the chair.) The question now recurs on the bill (H. R. No. 820) for the relief of the mission of Saint James, Washington Territory, reported from the Committee of the Whole on the Private Calendar, with an amendment in the nature of a substitute.

Mr. BUCKNER. I demand the previous question.

Mr. HOLMAN. It was the understanding, when the committee rose and consent was given to report this bill to the House with the recommendation that it do pass, that I should have an opportunity to present my amendment. I did not insist on my objection that no quorum had voted, on the understanding that I should have an opportunity to have a vote on my amendment in the House.

Mr. BUCKNER. I do not object to that, as that was the understanding, but after the gentleman submits his amendment I demand the previous question.

Mr. HOLMAN. I ask to make a change in my amendment.

Mr. BUCKNER. The understanding was that the gentleman should present his amendment as it was offered in the committee, and not another amendment.

Mr. HOLMAN. I merely desire to perfect my amendment, and I hope the gentleman will abide by the understanding of the House.

Mr. BUCKNER. I am willing to abide by the understanding of the House, and I ask that the gentleman's amendment be read.

Mr. HOLMAN. I trust the gentleman from Missouri will allow me to perfect the phraseology of my amendment. I wish to add to the amendment as it was offered in the committee these words:

Or the said society may institute a suit in the district court of the United States for the Territory of Washington against the United States and all other persons concerned, to determine its rights in said land; and jurisdiction is conferred upon said court for the full determination thereof.

Mr. BUCKNER. I do not see the propriety of any such amendment. The object is evidently to defeat the bill.

The SPEAKER *pro tempore*. Does the gentleman from Missouri yield to that amendment?

Mr. BUCKNER. I do not object to allowing the gentleman to change the phraseology of his amendment.

Mr. HOLMAN. I now ask the Clerk to read the whole amendment as it now stands before the House.

The Clerk read as follows:

Or for such part of said land as the Secretary of the Interior may find that said society is entitled to upon a review of all the facts which have been or shall be submitted to him in connection with the said grant; or the said society may institute a suit in the district court of the United States for the Territory of Washington against the United States and all other persons concerned, to determine its rights in said land; and jurisdiction is conferred on said court for a full determination thereof.

Mr. WHITE. That is entirely satisfactory.

Mr. BUCKNER. The object is to defeat the bill, and I hope it will be voted down.

Mr. JACOBS. There is no objection to that amendment.

Mr. BUCKNER. I insist on the demand for the previous question.

The previous question was seconded and the main question ordered.

The House divided; and there were—ayes 48, noes 67.

Mr. SAVAGE demanded the yeas and nays.

The House divided; and there were ayes 18; not a sufficient number.

Mr. WHITE demanded tellers on the yeas and nays.

Tellers were not ordered.

So the amendment was rejected.

The question next recurred on the substitute reported from the Committee of the Whole House.

The House divided; and there were—ayes 72, noes 39; no quorum voting.

The Speaker *pro tempore* appointed Mr. HOLMAN and Mr. BUCKNER as tellers.

The House again divided; and the tellers reported—ayes 124, noes 17.

So the substitute was adopted.

The bill, as amended, was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time.

Mr. HOLMAN demanded the yeas and nays on the passage of the bill.

The yeas and nays were ordered.

The question was taken; and it was decided in the affirmative—yeas 129, nays 65, not voting 95; as follows:

YEAS—Messrs. Ainsworth, Ashe, Atkins, John H. Bagley jr., Bland, Blount, Boone, Bradford, Bright, John Young Brown, Buckner, Samuel D. Burchard, Burleigh, Cabell, John H. Caldwell, William P. Caldwell, Campbell, Candler, Cannon, Cate, Caulfield, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Cochrane, Collins, Conger, Cook, Cowan, Davis, De Bolt, Dibrell, Douglas, Durham, Eden, Ellis, Felton, Finley, Forney, Fort, Franklin, Gause, Goode, Goodin, Gunter, Robert Hamilton, Hancock, Henry R. Harris, Harrison, Hartridge, Hartzell, Hatcher, Haymond, Henkle, Abram S. Hewitt, Goldsmith W. Hewitt, Hopkins, House, Humphreys, Hunton, Thomas L. Jones, Joyce, Kehr, Knott, Lamar, Franklin Landers, George M. Landers, Lapham, Le Moyne, Levy, Lewis, Luttrell, Mackey, Magoon, Milliken, Mills, Morgan, Mutchler, New, O'Brien, Odell, Payne, Piper, Powell, Rainey, Rea, Reagan, John Reilly, Rice, Riddle, John Robbins, William M. Robbins, Roberts, Sampson, Scales, Schleicher, Schumaker, Sheakley, Slemons, William E. Smith, Southard, Sparks, Springer, Stanton, Stenger, Stone, Tarbox, Terry, Thomas, Thompson, Throckmorton, Martin I. Townsend, Tucker, Turney, John L. Vance, Robert B. Vance, Waddell, Gilbert C. Walker, Walsh, Warner, Watterson, Erastus Wells, Whitthorne, Wike, Alpheus S. Williams, Jeremiah N. Williams, Willis, Wilshire, Benjamin Wilson, and Yeates—129.

NAYS—Messrs. John H. Baker, William H. Baker, Bell, Blair, Bradley, William R. Brown, Horatio C. Burchard, Caswell, Clymer, Crapo, Cutler, Danford, Denison, Dobbins, Donnell, Evans, Flye, Frye, Hale, Andrew H. Hamilton, Benjamin W. Harris, Hendee, Henderson, Hoge, Holman, Hoskins, Hubbell, Hunter, Hurlbut, Hyman, Frank Jones, Kasson, Kelley, Kimball, Leavenworth, MacDougall, McCrary, Monroe, Nash, Norton, Oliver, O'Neill, Page, Pierce, Plaisted, Poppleton, Potter, Robinson, Sinnickson, Smalls, A. Herr Smith, Strait, Stowell, Thornburgh, Tufts, Waldron, Alexander S. Wallace, John W. Wallace, G. Wiley Wells, White, Andrew Williams, Charles G. Williams, William B. Williams, James Wilson, and Alan Wood, jr.—65.

NOT VOTING—Messrs. Abbott, Adams, Anderson, Bagby, George A. Bagley, Ballou, Banks, Banning, Bass, Beebe, Blackburn, Bliss, Carr, Cason, Chapin, Chittenden, Cox, Crounse, Culberson, Darrall, Davy, Durand, Eames, Egbert, Faulkner, Field, Foster, Freeman, Fuller, Garfield, Gibson, Glover, Haralson, Hardenbergh, John T. Harris, Hathorn, Hays, Hereford, Hill, Hoar, Hooker, Hurd, Jenks, King, Lane, Lawrence, Lord, Lynch, Lynde, Maish, McDill, McFarland, McMahon, Meade, Metcalfe, Miller, Money, Morrison, Neal, Packer, Phelps, John F. Philips, William A. Phillips, Platt, Pratt, Purman, James B. Reilly, Miles Ross, Sobieski Ross, Rusk, Savage, Sayler, Seelye, Singleton, Stephens, Stevenson, Swann, Teese, Washington Townsend, Van Vorhes, Wait, Charles C. B. Walker, Walling, Ward, Warren, Wheeler, Whitehouse, Whiting, Wigginton, Willard, James Williams, Fernando Wood, Woodburn, Woodworth, and Young—95.

So the bill was passed.

Mr. BUCKNER moved to reconsider the vote by which the bill was passed, and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

LEGISLATIVE, ETC., APPROPRIATION BILL.

Mr. HOLMAN, from the Committee on Appropriations, reported a bill (H. R. No. 4472) making appropriations for the legislative, executive, and judicial expenses of the Government for the year ending June 30, 1878, and for other purposes; which was read a first and second time, referred to the Committee of the Whole on the state of Union, made a special order therein for Tuesday next after the morning hour, and from day to day thereafter until disposed of, and ordered to be printed.

Mr. KASSON. I reserve all points of order on the bill.

ENROLLED BILLS SIGNED.

Mr. HARRIS, of Georgia, from the Committee on Enrolled Bills, reported that the committee had examined and found duly enrolled bills of the following titles; when the Speaker signed the same:

An act (H. R. No. 231) for the relief of Robert Erwin; and

An act (H. R. No. 1850) granting a pension to Harvey B. Kilborn, private in Company C, Thirtieth Regiment Pennsylvania Militia.

PROVISIONAL GOVERNMENT OF THE DISTRICT.

The SPEAKER. The Chair lays before the House a message from the President of the United States.

The Clerk read as follows:

To the House of Representatives:

At the request of the Attorney-General, I have the honor to transmit herewith a report in answer to the resolutions of the House adopted on the 1st of August, 1876, relative to certain matters occurring in the administration of the provisional government of the District of Columbia, and chiefly affecting the commissioners and the late board of audit.

U. S. GRANT.

EXECUTIVE MANSION, *January* 19, 1877.

The message and accompanying papers were referred to the Committee for the District of Columbia, and ordered to be printed.

ROCKLAND, MAINE.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of the Treasury, recommending that Rockland, Maine, be made a port of delivery, which was referred to the Committee on Commerce.

LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted as follows:

To Mr. WILLIAMS, of Delaware, till Monday on account of important business;

To Mr. ODELL, till Wednesday next.

LEWIS PETOSKEY.

On motion of Mr. BRADLEY, by unanimous consent, the bill (S. No. 920) to authorize Lewis Petoskey, of Michigan, to enter a certain tract of land which embraces his home and improvements was taken from the Speaker's table, read a first and second time, ordered to be printed, and, with the accompanying papers, referred to the Committee on Public Lands.

COUNT OF THE ELECTORAL VOTE.

Mr. A. S. WILLIAMS. I ask unanimous consent to present and have read a petition from the Detroit Board of Trade, touching the count of the electoral vote for President and Vice-President.

Mr. TOWNSEND, of New York. I object.

NATHANIEL S. CLARKE.

Mr. WILSON, of West Virginia, by unanimous consent, submitted the following resolution; which was read and referred to the Committee of Accounts:

Resolved, That the Clerk of this House be, and he is hereby, directed to pay to Nathaniel S. Clarke, out of the contingent fund, $100 per month for services rendered by him as messenger to this House since the first Monday of December, 1876, and that he be paid at the same rate for such services as he may render in the same capacity during the residue of this session.

Mr. PAGE. I move that the House do now adjourn.

The motion was agreed to; and accordingly (at four o'clock and twenty-five minutes p. m.) the House adjourned.

PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. J. H. BAGLEY: The petition of Charles M. Thomas and others, of Kingston, New York, that pensioners be paid from the date of their discharge from the Army, to the Committee on Invalid Pensions.

By Mr. BLAIR: The petition of citizens of Cambridge City, Indiana, for a commission of inquiry concerning the alcoholic liquor traffic, to the Committee on the Judiciary.

By Mr. BURLEIGH: The petition of Samuel L. Paine, late a private in the Ninth Regiment Maine Infantry, for a pension, to the Committee on Invalid Pensions.

By Mr. COX: The petition of Jonas R. Levy, that the Secretary of State be directed to return to him the title deeds and other documents belonging to him and others he represents, turned over to the State Department by the Mexican commission, to the Committee on Foreign Affairs.

By Mr. CRAPO: The petition of Caroline S. Webster, widow of Colonel Fletcher Webster, for an increase of pension, to the Committee on Invalid Pensions.

Also, the petition of S. W. Hall and others, of Marion, Massachusetts, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. CUTLER: The petition of citizens of Woodbridge, New Jersey, of similar import, to the same committee.

Also, the petition of the Friends' Temperance Union of New York, signed by its officers, for the passage of the Senate bill providing for a commission of inquiry concerning the alcoholic liquor traffic, to the Committee of Ways and Means.

By Mr. FINLEY: The petition of citizens of Florida, for authority to construct a ship-canal at the head of Lake George, Florida, to the Committee on Railways and Canals.

By Mr. HUBBELL: The petition of Israel Frost and 40 other citizens of Oxford County, Michigan, for the enforcement of the provisions of the act of July 24, 1866, providing for the purchase of telegraph lines by the General Government, to the Committee on the Post-Office and Post-Roads.

By Mr. HUNTON: The petition of the heirs of Jacob Dehaven, to refund the money advanced by said Dehaven to carry on the Revolutionary War, to the Committee on Revolutionary Pensions.

By Mr. KASSON: The petition of citizens of Iowa, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. LAPHAM: The petition of citizens of New York, of similar import, to the same committee.

Also, the petition of citizens of New York, that pensioners be paid from the date of their discharge from the Army, to the Committee on Invalid Pensions.

By Mr. LUTTRELL: The petition of P. O. Shattuck, and 50 others, of California, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. O'NEILL: Preamble and resolutions of the Legislature of Pennsylvania, recommending their Represenatives and instructing their Senators to adhere to the constitutional provisions in declaring who has been elected President and Vice-President of the United States, to the committee on counting the electoral vote.

By Mr. SHEAKLEY: The petition of citizens of Crawford County, Pennsylvania, for the removal of limitations in the pension laws, to the Committee on Invalid Pensions.

By Mr. STEPHENS, of Georgia: The petition of John Bohn, for compensation for services rendered as a laborer on the public grounds, to the Committee on Public Buildings and Grounds.

By Mr. VANCE, of North Carolina: The petition of J. T. Sorrells, of Asheville, North Carolina, that he be paid $223.50 for property taken by the United States Army, to the Committee on War Claims.

By Mr. WALLING: The petition of H. T. Gooley and 24 others, of New Holland, Ohio, for the enforcement of the act of July 24, 1866, relating to the purchase of telegraph lines by the General Government, to the Committee on the Post-Office and Post-Roads.

IN SENATE.

SATURDAY, *January* 20, 1877.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

The Journal of yesterday's proceedings was read and approved.

EXECUTIVE COMMUNICATION.

The PRESIDENT *pro tempore* laid before the Senate a letter from the Secretary of the Navy, transmitting, in compliance with a resolution of the Senate of the 15th instant, information relative to the use by the Government of any machine or machines for making bullets or molding shells, patented by W. H. Ward; which was ordered to lie on the table and be printed.

CREDENTIALS.

Mr. MORTON presented the credentials of William Pitt Kellogg, elected by the Legislature of the State of Louisiana a Senator from that State for the term beginning March 4, 1877; which were read and ordered to be filed.

PETITIONS AND MEMORIALS.

Mr. SARGENT. I present the petition of Elizabeth Schenck, Mrs. C. C. Calhoun, and others—94 men and 108 women—being 202 citizens of the State of California, praying for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex.

It is imperatively necessary in a republic that every adult person of sound mind and innocent before the law should have the right to express opinions upon public affairs. The State is entitled to the benefit of such counsel; the individual has a natural right to give it and needs it for personal protection. Such opinion can only be effectively expressed through the ballot. To deny the ballot to one-half of the people of the United States, who are recognized as citizens by the Constitution, is an injury to the country if those excluded have at least the average virtue and intelligence of the voting class. I claim that the women of the United States are the equals in intelligence and the superiors in virtue and good intention to the men, and that their influence at the polls would purify elections and give us a better class of public officials. The State would therefore be benefited by their votes.

It cannot be insisted that women do not need the ballot for self-protection while laws exist in so many States putting them under disabilities as to property, inheritance, business, and even the custody of their children.

This movement grows year by year. It has passed the period of ridicule, both in this country and in England. Earnest men and women, of the highest character, are devoted to the still further application of the principle that there shall not be taxation without representation. Already women vote in two Territories of the United States. In some of the States they vote for the election of school boards. Kansas and Michigan have recently submitted constitutional amendments to their people giving the right of suffrage to women, and one-third of the voters cast their ballots for it—men only voting. Such a result would have been extraordinary ten or five years ago. Colorado has required the question to be submitted in its new constitution.

But the advocates of this measure should not be left to the Herculean labor of applying to the States in detail. The colored man would never have had a vote, left to that process. Congress should fairly submit the question to the people, as is its custom in such matters; and the people can be safely trusted to decide it rightly.

I move the reference of the petition to the Committee on Privileges and Elections.

The motion was agreed to.

Mr. McCREERY. At the request of a fair lady of varied acquirements and of acknowledged capacity, I present the petition of 30 men and 66 women, citizens of Kentucky, praying for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising citizens of the United States on account of sex. I move its reference to the Committee on Privileges and Elections.

The motion was agreed to.

Mr. HAMLIN. I present a petition signed by 78 men and 70 women of the State of Maine, being similar in its import, I believe word for word, with those presented by the Senator from California and the Senator from Kentucky. I move that it be referred to the Committee on Privileges and Elections.

The motion was agreed to.

Mr. SHERMAN. I present the petition of Sarah Langdon Williams, Richard Mott, and others—403 men and 425 women—828 citizens of the State of Ohio, praying for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex. I move its reference to the Committee on Privileges and Elections.

The motion was agreed to.

Mr. THURMAN. I have been requested to present a similar petition from 90 men and 109 women of the State of Kansas. I will say, looking at this petition, that all the signatures appear to be in the same handwriting; but I infer from the indorsements on the back that it is a copy of an original petition which has been presented in the House of Representatives. As the lady who sent this to me is a lady of character, integrity, and varied acquirements, I have no doubt that this is an honest petition, and I move that it be referred to the Committee on Privileges and Elections.

The motion was agreed to.

Mr. SARGENT. I understand it to be a fact that the petition presented by the Senator is a copy of an original petition yesterday presented in the House of Representatives.

Mr. THURMAN. So I understand. I also present a petition praying for an amendment to the pension laws. The petition is signed very numerously by citizens of Marion County, Ohio, most of whom were officers and soldiers in the late war. I move its reference to the Committee on Pensions.

The motion was agreed to.

Mr. DAWES. I present the petition of Julie B. Hunt, E. S. Hammond, A. P. Lillie, and others—76 men and 127 women—203 citizens of the State of Massachusetts, praying for a sixteenth amendment to the Constitution of the United States, prohibiting the several States from disfranchising United States citizens on account of sex. This, as the Senator from Ohio [Mr. THURMAN] observed of the paper presented by him, is upon its face a copy, and I make the same inference that the Senator from Ohio did, that it is a copy of a petition or attached to another petition which has been presented in the other branch. I desire to say in reference to it that the subject-matter of this petition is engaging the attention of both political parties in my own State to some extent, and that the members of both political parties are committing themselves to it. I think the better way would be to pass upon its merits rather than to give it the go-by in any other way. I move its reference to the Committee on Privileges and Elections.

The motion was agreed to.

Mr. DAWES presented the petition of Lucinda Hervey, a pensioner, praying that for the peculiar reasons set forth her pension may, by special act, be made to date back to the time of injury received; which was referred to the Committee on Pensions.

Mr. DAWES. I also desire to present the petition of W. H. Dunbar and many other citizens and soldiers in the late war, praying for legislation to remedy what they deem to be, and in which I agree with them, the unjust limitations upon the pension laws. I ask that it be referred to the Committee on Pensions.

Mr. INGALLS. The Committee on Pensions have reported a bill relating to the subject, and I suggest that the petition lie on the table.

The PRESIDENT *pro tempore*. The petition will lie on the table, a bill being upon the Calendar upon the subject.

Mr. CHRISTIANCY. I present the petition of C. W. Church, Adell M. Garrigues, Catharine X. Odin, Margaret Hinman, and others—181 men and 248 women—429 citizens of the State of Michigan, asking for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex. I move its reference to the Committee on Privileges and Elections.

The motion was agreed to.

Mr. MORRILL. I present the petition of 3 men and 7 women of Guilford Center, citizens of the State of Vermont, including Sarah M. Lynde and S. H. Edwards, praying for a sixteenth amendment to the Constitution prohibiting the several States from disfranchising citizens of the United States on account of sex. This purports to be a copy for the Senate; I suppose the original has been presented in the other House. I move its reference to the Committee on Privileges and Elections.

The motion was agreed to.

Mr. WINDOM. I present the petition of Sarah Burger Stearns, Susan C. Burger, 37 men and 25 women, 62 in all, citizens of Minnesota, praying for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex. I move its reference to the Committee on Privileges and Elections.

The motion was agreed to.

Mr. MITCHELL. I present the petition of Lucinda F. Proebstel,

Sarah J. Riggs, E. P. Henderson, and others—204 men and 280 women—484 citizens of the State of Oregon, praying for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex. I move its reference to the Committee on Privileges and Elections.

The motion was agreed to.

Mr. MITCHELL presented the petition of George A. Eades, late collector of customs at Sitka, Alaska, praying that he be allowed a credit for moneys lost on the steamer George S. Wright, shipwrecked on the Pacific coast; which was referred to the Committee on Claims.

Mr. FRELINGHUYSEN. I present the petition of Lucinda B. Chandler, Sarah H. Hurn, Charles Butler, and others—66 men and 136 women—being 202 citizens of the State of New Jersey, praying for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex. I move its reference to the Committee on Privileges and Elections.

The motion was agreed to.

Mr. WRIGHT. Expressing my very great pleasure that the ladies of the country are being heard from this morning upon this all-important question, I regret very much that I have not a petition of a similar character; but I have a petition from some gentlemen who want to be relieved from some burdens in the way of taxation. I present a petition signed by Samuel Merrill and some 40 other citizens of Iowa, praying that the taxation upon bank circulation and deposits may be removed. I move its reference to the Committee on Finance.

The motion was agreed to.

Mr. COCKRELL. I have the peculiar pleasure and honor of presenting a petition from 105 beautiful, intelligent, and accomplished ladies of Missouri, and 132 men, making 238 citizens of the great State of Missouri, praying for a sixteenth amendment to the Constitution of the United States, prohibiting the several States from disfranchising United States citizens on account of their sex. I move its reference to the Committee on Privileges and Elections.

The motion was agreed to.

Mr. CAMERON, of Pennsylvania. At the request of Mrs. Sara J. Spencer, president of the Women's Franchise Association of the District of Columbia, I am requested to present the petition of Caroline S. Broomall, Adelaide Thompson, Cornelia H. Scarborough, and others—249 men and 314 women—563 in all, citizens of the State of Pennsylvania, praying for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex. I present this petition with pleasure, of course, but I will suggest to the ladies, as all these petitions have been apparently gotten up by the same hand, that it would be better and it would have saved a great deal of time in the Senate if they had made up one petition and send it to one Senator. I would have taken great pleasure in presenting it, and it would have saved the necessity of presenting fifteen or twenty like those presented to-day. I move the reference of this petition to the Committee on Privileges and Elections.

The motion was agreed to.

Mr. KERNAN. By request, I present the petition of the New York State Temperance Society—J. N. Stearns, president, J. H. Bronson, secretary—praying prohibitory legislation for the District of Columbia and the Territories; the prohibition of the foreign importation of alcoholic liquors; that total abstinence be made a condition of the civil, military, and naval service; and for a constitutional amendment to prohibit the traffic in alcoholic beverages throughout the national domain. I move its reference to the Committee on Finance.

The motion was agreed to.

Mr. KERNAN presented the petition of Norman S. Mills, Orson Richmond, and other citizens of Rockwells, New York, praying for a commission of inquiry concerning the alcoholic liquor traffic; also for the prohibition of the manufacture, importation, and sale of alcoholic beverages in the District of Columbia and the Territories; which was referred to the Committee on Finance.

Mr. KERNAN. I also present what I believe to be a copy of a petition presented in the House of Representatives, signed by Lillie Devereaux Blake, Matilda Joslyn Gage, Mrs. E. P. Miller, M. D., and others—being 370 men and 487 women—857 citizens of the State of New York, praying for a sixteenth amendment to the Constitution of the United States, prohibiting the several States from disfranchising United States citizens on account of sex. I move its reference to the Committee on Privileges and Elections.

The motion was agreed to.

Mr. FRELINGHUYSEN presesented the petition of Carlos Morgan, A. Ames, and other citizens of Queensbury, New York, praying for a general law to prohibit the liquor traffic within the national jurisdiction; which was referred to the Committee on Finance.

Mr. ALLISON. I present the petition of Janet Strong, R. J. Andrews, N. R. Allen, and others—226 men and 449 women—675 citizens of the State of Iowa, praying for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex. This is a copy for the Senate of the original, which has been presented to the House of Representatives. I move that it be referred to the Committee on Privileges and Elections.

Mr. ROBERTSON presented the petition of William Butler, of South Carolina, praying the removal of his political disabilities; which was referred to the Committee on the Judiciary.

He also presented the petition of Francis Lynch, of Cheraw, South Carolina, praying compensation for subsistence stores furnished the United States Army in 1865; which was referred to the Committee on Claims.

Mr. BOGY presented the petition of Annie R. Irvine, Charlotte Curtis, Virginia W. Mason, and others—62 men and 88 women—150 citizens of the State of Missouri, praying for a sixteenth amendment to the Constitution of the United States, prohibiting the several States from disfranchising United States citizens on account of sex; which was referred to the Committee on Privileges and Elections.

He also presented the memorial of the duly authorized delegation of the Creek or Muscogee Nation of Indians, praying for relief to the orphans of the Creek Nation under the treaty with that tribe of 1832; which was referred to the Committee on Indian Affairs.

Mr. CONKLING. I present a memorial signed by many highly respectable citizens of the State of New York, remonstrating against the passage of Senate bill No. 1056, entitled "A bill concerning commerce and navigation and the regulation of steam-vessels and sailing vessels." I move its reference to the Committee on Commerce.

The motion was agreed to.

Mr. MORTON presented the petition of Edward S. Pope, Jesse W. Weill, Mrs. J. H. Parker, and others—43 men and 35 women—78 citizens of the State of Indiana, praying for a sixteenth amendment to the Constitution of the United States, prohibiting the several States from disfranchising United States citizens on account of sex; which was referred to the Committee on Privileges and Elections.

Mr. SHERMAN. I present quite a number of petitions from citizens of Ohio, asking for a repeal of the unjust limitation debarring pensioners from receiving their just dues and that they may be entitled to receive in all cases pensions from the date of discharge. I move that the petition lie on the table.

The motion was agreed to.

Mr. SARGENT presented the petition of L. G. Martin and George N. Lamphere, praying for compensation for additional services in the office of the Secretary of the Treasury; which was referred to the Committee on Appropriations.

Mr. SARGENT. I also present the petition of the California Powder Works of San Francisco, the Giant Powder Company of San Francisco, E. J. Du Pont and De Mours & Co.'s Powder Company of Wilmington, Delaware, and the Hazzard Powder Company of Hazzardville, Connecticut, praying for the passage of the bill which I introduced yesterday and had sent to the Committee on Public Lands, authorizing them to purchase certain land belonging to the United States, within the corporate limits of the city of Salt Lake. The reasons for it are set out at length in their petition, and it is accompanied by a map. I will state that, on such examination as I have been able to give the subject, I think it is a case where legislation should be had, and I favor it. I move the reference of the petition to the Committee on Public Lands.

The motion was agreed to.

Mr. MORRILL. I have received from the State of New York, I take it from a pension agent, several petitions, signed by citizens in all parts of the country, asking for a change in the statutes which seem to limit pensioners to pensions from the date of their application. Instead of that, these petitioners pray that it may be amended so that they may receive pensions from the time of their injuries. I move that the petitions lie on the table, as I understand there is a bill pending on the subject.

The motion was agreed to.

Mr. MORRILL. I also present the petition of Morris P. Titus, a citizen of Vermont; the petition of David Bryant, of Post Mills, Vermont; the petition of Hiram D. Monroe, of Town Line, New York, all received from the same source, praying for an amendment to the fifteenth section of the act to revise, and consolidate, and amend the laws relating to pensions, extending the time of limitation for obtaining arrears. I move that these petitions lie on the table.

The motion was agreed to.

Mr. JOHNSTON. I present the petition of J. L. M. Curry, of Virginia, praying for the removal of his political disabilities. The petition is in the form of a letter addressed to me; but it is substantially an application for the removal of his disabilities. A bill passed the House at the Forty-second Congress and was reported by the Senate committee for this purpose, but was not acted upon. I move that this petition be referred to the Committee on the Judiciary.

The motion was agreed to.

Mr. MORRILL presented a resolution of the Legislature of Vermont, in favor of such legislation as will bring about a gradual and early return to specie payments; which was ordered to lie on the table.

Mr. INGALLS presented a concurrent resolution of the Legislature of Kansas, instructing their Senators and requesting their Representatives to oppose any legislation changing the provisions of the act relating to the sale of the Osage ceded lands; which was referred to the Committee on Public Lands.

Mr. SPENCER presented the petition of Mrs. A. G. Riddle, R. J. Meigs, Fred. Douglass, Mary F. Foster, and others—310 men, and 438 women—748 citizens of the District of Columbia, praying for a sixteenth amendment to the Constitution of the United States, prohibiting the several States from disfranchising United States citizens on account of sex; which was referred to the Committee on Privileges and Elections.

REPORTS OF COMMITTEES.

Mr. WRIGHT. I am instructed by the Committee on Claims, to whom was referred the bill (S. No. 717) for the relief of Nelson Taylor, of Alexandria, Louisiana, to report the same back and recommend its indefinite postponement.

Mr. WEST. I should like to have that bill go on the Calendar. I do not know anything about it, but I should like to have an opportunity to look into it.

The PRESIDENT *pro tempore*. If there be no objection, the bill will be placed on the Calendar and the report will be printed. The Chair hears none.

BILLS INTRODUCED.

Mr. CHAFFEE asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1164) for the relief of the heirs of Anthony Schwörer; which was read twice by its title, referred to the Committee on Claims, and ordered to be printed.

Mr. WALLACE (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No 1165) for the relief of Henry G. Healy; which was read twice by its title, referred to the Committee on Military Affairs, and ordered to be printed.

Mr. KERNAN (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1166) to provide for the further rdistribution of the moneys received under the Geneva award; which was read twice by its title, referred to the Committee on the Judiciary, and ordered to be printed.

Mr. MORTON. I beg leave to introduce a bill, which I do by request. I am not myself acquainted with the details of the bill, but I present it at the request of very respectable and intelligent gentlemen. I ask to have it read and referred to the Committee on the District of Columbia.

By unanimous consent, leave was granted to introduce a bill (S. No. 1167) to incorporate the Rand Gas-light Company of the District of Columbia; which was read twice by its title, referred to the Committee on the District of Columbia, and ordered to be printed.

INDIAN SCHOOL FUNDS.

Mr. DORSEY submitted the following resolution; which was considered by unanimous consent, and agreed to:

Resolved, That the Committee on Indian Affairs inquire whether there is any reason to believe that any portion of the school fund of the five tribes inhabiting the Indian Territory has been diverted to other uses, and whether any debts have been incurred by said tribes, and what legislation is necessary on this subject.

ORDER IN THE GALLERIES.

Mr. SHERMAN. I submit the following resolution:

Resolved, That the Sergeant-at-Arms is hereby instructed to arrest, without further order, any person who by applause or dissent in the gallery shall disturb the order of the Senate, and hold him subject to the order of the Senate.

I will state that this is a copy of the rule adopted by the Senate unanimously in 1866 at a time of some excitement, and it was posted up and operated much more effectually than the order for clearing the galleries. A motion to clear the galleries does injustice sometimes to ten persons while excluding the one engaged in a disturbance. This rule after being adopted was in force several years and operated very well. I ask the present consideration of the resolution.

Mr. THURMAN. I do not know whether I shall be opposed to that resolution or not; but I should like to think about it a little. There is no one more opposed than I am to any such manifestations of applause or dissent in the gallery. I have so often expressed myself to that effect that it is not necessary for me to do so again. But arresting persons when you may sometimes arrest innocent persons, too, is a somewhat serious business. I think the resolution proposed had better go to the Committee on Rules or lie over until to-morrow.

Mr. SHERMAN. I will state to my colleague that in 1860 substantially the same rule was adopted by the Senate; and in 1866 when such scenes as occurred here yesterday were common this rule was adopted and was found to work very well. The Sergeant-at-Arms did what it seems to me he ought to do without a rule—station his officers around and whenever there was an apparent sign of applause or the like a simple suggestion put an end to it. As a matter of course, the galleries are changing every day and what has been done to-day may not be known to those who come to our galleries afterward. A simple sign of applause will be followed up at once, and so disturb the order of the Senate.

As a matter of course, I have no objection to the resolution lying over; but this rule was practiced upon for four years since my colleague has been a member of the Senate. It was adopted in 1866, and for several years afterward cards were posted around the corridors giving notice to everybody that it was the order of the Senate. In fact I think it is now a standing order of the Senate because on its face it was to continue for all time, though probably it was dropped by there being no occasion to enforce it. I have no objection to the resolution going over until to-morrow when I will call it up.

The PRESIDENT *pro tempore*. The resolution will lie over.

LOUIS ROSE.

Mr. SARGENT. I move that the Senate proceed to the consideration of the bill (S. No. 1034) for the relief of Louis Rose.

The motion was agreed to; and the bill was read the second time, and considered as in Committee of the Whole.

The bill provides that all claim of title of the United States to blocks 93 and 94 in the city of San Diego, California, as designated and described on the map made by Charles H. Poole, in or about the year 1856, for the authorities of the city, (being blocks numbered 54 and 56 on the map made in or about the year 1849 by Cave J. Couts, lieutenant United States Army,) is quitclaimed and released to Louis Rose, the equitable owner of those blocks.

Mr. SARGENT. The bill was reported by the Senator from Ohio [Mr. THURMAN] with the unanimous assent of the Committee on Private Land Claims. The report is of considerable length. The case is a very clear one. I suppose he can condense in a brief space any explanation that is desired. It is a case, as I understand, where the United States took certain property without compensation, never made any improvement upon it, never used it since, and has no use for it now; and this proposition is simply to give it back to the person from whom it was taken, who has a clear title except for this cloud by the United States. There is no public or private reason why it should be retained by the United States.

The bill was reported to the Senate, ordered to be engrossed for a third reading, read the third time, and passed.

TROOPS AT PETERSBURGH ON ELECTION DAY.

Mr. WITHERS. If there be no further morning business, I would ask the indulgence of the Senate for a few moments to take up for consideration the message of the President of the United States in reference to the occupancy of Petersburgh, Virginia, by the military in order that I may submit the remarks I proposed to submit in reply to the Senator from Indiana [Mr. MORTON] the other day.

The PRESIDENT *pro tempore*. Is there objection to the present consideration of that message? The Chair hears none, and it is before the Senate.

Mr. WITHERS. Mr. President, I shall be very brief in what I have to say in regard to this matter. Upon reading the report of the speech of the Senator from Indiana the other day, I find that the principal point to which he addressed his remarks was the view that he alleges I entertain of the power of the General Government to occupy the States of this Union, at its discretion, by any portion of the Army of the United States. I do not suppose it is necessary for me to defend myself at all from the effort which was made by the Senator to commit me to the proposition, which I never entertained or designed to express, of denying the power of the President to move any portion of the troops through the States at any time, within the line of duty. That proposition may have had some color of right from the rather loose expressions incident to a discussion without the use of a written speech; but the very expressions which I used and the whole line and tenor of my argument were addressed to the point, not that the Government had no power to send troops through the States, but that it had not power to occupy the territory of a State by the military without the consent of the State government and on application of the State authorities.

I dissent entirely from the doctrine so broadly laid down by the Senator from Indiana [Mr. MORTON] and the Senator from Ohio, [Mr. SHERMAN,] that the Government of the United States has the right, the legal and constitutional right, to occupy with the Army of the United States any of the States of this Union at its pleasure. I do not believe that any such power is granted by the Constitution. On the contrary, I believe it is in direct opposition both to the letter and spirit of that instrument.

We all know that the fourth section of the fourth article of the Constitution specifies the conditions on which the Government of the United States can send troops to or occupy in a military sense any of the States of this Union. And in support of this position I rely not alone on the language of the Constitution, but on the adjudications by the Supreme Court of the United States of the different articles of the Constitution connected with this subject.

It is, I presume, an established and admitted fact that the tenth article of the amendments to the Constitution, wherein it is stated that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people, is accepted as the doctrine by which we are to be controlled in the consideration of this and all other constitutional questions involving the relative powers of the General Government and of the States. I will quote in this connection the opinion of the Supreme Court of the United States, and the unanimous opinion of that court, as pronounced in the case of Collector *vs.* Day, found in Wallace's Reports, volume 14, page 112. The Supreme Court of the United States there declares:

> It is a familiar rule of construction of the Constitution of the Union, that the sovereign powers vested in the State governments by their respective constitutions remain unaltered and unimpaired, except so far as they were granted to the Government of the United States. That the intention of the framers of the Constitution in this respect might not be misunderstood this rule of interpretation is expressly declared in the tenth article of amendments, namely, "the powers not delegated to the United States are reserved to the states respectively, or to the people." The Government of the United States, therefore, can claim no powers which are not granted to it by the Constitution, and the powers actually granted must be such as are expressly given, or given by necessary implication.

Now I would ask the Senator from Indiana to point to that clause of the Constitution which gives to the General Government this power of entering upon and occupying with its Army any portion of the territory of a State. I do not think he can find any such clause. I am fully aware of the fact that this instrument, among the powers

which are given to Congress, enumerates these: "to raise and support armies," "to provide and maintain a navy," and "to make rules for the government and regulation of the land and naval forces," and if the Constitution were silent in every other regard, I would admit that by necessary implication to the carrying out of the powers hereby granted, the Government would have the right to place its troops at any point within the broad limits of this nation whenever caprice, inclination, or judgment might render it desirable. But, sir, we are not left to implication, because the Constitution itself expressly provides the means of furnishing a place of abode and accommodation for its Army. If there were not a specific provision of the Constitution the argument would be a good one that we had the right to infer the power from the power to raise armies, because the power to create and raise an army involves of necessity the power of supporting and providing for the accommodation of that army; but we find that this same instrument prescribes the mode in which this Army and this Navy shall be provided with accommodations. It is found in the seventeenth paragraph of the eighth section of the first article:

> The Congress shall have power—
> To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings;—and
> To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers, &c.

There is a clause of the Constitution itself providing quarters for the accommodation of its Army and its Navy. In those localities they have acquired and assert supreme and exclusive jurisdiction; and it is to these points that it was designed by the framers of the Constitution that the military force of the Government should be restricted except when absent on necessary and legal duty.

Now, sir, my position is this: That the Constitution having prescribed the places which should be provided for the accommodation of the Army, having in addition prescribed that the Government should have no power to intervene with its Army in the affairs of a State except in two specified condition of things, neither of which is alleged to have existed in this instance, the President of the United States transcended his constitutional powers in occupying with his Army a portion of the State of Virginia when the conditions required by the Constitution for such occupancy did not exist. My friend from Missouri [Mr. BOGY] suggests that under the broad construction given by the Senator from Ohio and the Senator from Indiana, the President could concentrate the whole Army here in Washington at his pleasure. He has much greater power to do that than he had to commit the act of which I complain, because the District of Columbia is under the control of Congress and the Government of the United States by special cession. He may have here the power, and he has a color of legal authority which does not exist in the other case at all.

Sir, we may be old-fashioned and it may be that we are deserving of the censure which is impliedly cast upon us in attempting here to enunciate the doctrine that the States have any rights. But when we know that the Constitution of the United States itself sustains us, when we know that we have the decision of the Supreme Court of the United States to sustain us in the position which we take, wherein it asserts in the broadest terms that all the powers not granted by the Constitution to the United States are reserved by the States or the people—when we have these it will take more than the dogmatic utterances of either of the Senators to convince me that our position is as untenable as they would have you believe.

With regard to the incidents of the affair in Petersburgh, upon which the Senator from Indiana commented and from which he so largely quoted, I have very little to say. Because when I find that a Senator of the distinguished ability which characterizes the Senator from Indiana is driven by the arguments of my colleague to assert that the affidavit of White read by me denying in the broadest terms that he had ever signed the pretended affidavit certifying to acts of violence in Petersburgh in May last, or to the necessity of having troops there to enable the colored people to vote, acted under compulsion—when he is forced to the avowal of a belief that this witness was bull-dozed or intimidated into giving this testimony, at the time and under the circumstances existing, I submit that argument is exhausted. At a time when the Army of the United States was in the city in which it was given, when a special session of the United States court was then being held there, for the special purpose of protecting all persons in the enjoyment of their rights; and when an array of two or three hundred deputy marshals of the United States were swarming all over the city, that at such a time if this bull-dozing and terrorism could be exercised, it seems to me it would be exceedingly difficult for the Senator to find any occasion where it would not be possible.

I leave this whole matter with this statement of the condition of affairs at that place and time, and of the belief of the Senator from Indiana. Of course, he is entitled to his own belief. No person can question his right to believe what he pleases.

I do not wish to occupy the attention of the Senate this morning because I know it is designed to be appropriated to the consideration of a very important matter; but before I sit down I will merely allude to a point made by the Senator from Ohio, who, with his characteristic adroitness, sought to shift the issue from the question of the credibility of the witnesses or of the forgery of the testimony upon which this action was taken, to a mere difference of opinion between this man William White and President Grant as to the propriety of the occupancy of Petersburgh by the military on the day of election. The true point at issue was as to the credibility of the testimony upon which this action was based; and I have submitted proof to my mind conclusive—not so conclusive, perhaps, to the mind of the Senator—that a portion at least of the evidence on which this action was taken consisted of certificates that were forged, not *bona fide* certificates, and the question then being whether these forged certificates, presented thus in an *ex parte* manner, without any opportunity afforded the mayor or citizens to present rebutting evidence, were sufficient to justify the action taken in the case. The Senator from Ohio seems to think it was merely a difference of opinion between the witness White and the President of the United States.

Now, Mr. President, in conclusion of this whole matter, I will repeat to some extent the declaration I made the other day, that it was not the number of troops, it was not the allegation that they committed any wrongful act while in the city of Petersburgh, that caused my remonstrance or that induced me to invite the attention of the Senate to this particular case, but it was the principle which it involved, the broad assertion of the right on the part of the President of the United States to send the Army of the United States to any portion of this country that in his discretion he might deem necessary at any election to supervise and control it, if it was his will and pleasure to do so. That right I believed dangerous to the liberties of the country. That is a right which I am not willing to concede to him; and it makes not one particle of difference to me whether the occupant of the presidential chair be a republican or a democrat, it is a power which if conceded is dangerous to the liberties of the people, and, if acquiesced in generally by the people, can result in but one thing, and that is the destruction of freedom in this Government and the establishment of a military despotism upon its ruins. Such is my opinion, and therefore I maintain the positions which I asserted.

Mr. MORTON. Mr. President, but a word. I stated the position of the Senator from Virginia the other day as I understood it from reading his speech. I now will state his position this morning as I understand him to define it; and that is that the President of the United States, as Commander-in-Chief of the Army, has no right to have troops in any State of this Union temporarily or permanently, unless that place be a "fort, magazine, arsenal, or dock-yard;" that the Army of the United States must be confined, and must live and have its being entirely in a fort, a magazine, an arsenal, or a dock-yard. If I do not state the position of the distinguished Senator correctly, I want him to correct me.

Mr. WITHERS. Permanent occupancy in a military sense.

Mr. MORTON. I do not know what the Senator means by "permanent." If he means by "permanent" staying from year to year, then this occupation of the custom-house at Petersburgh would not be permanent and would not be within his proposition, would not be within his argument, and therefore would not be censurable. The occupation of the custom-house at Petersburgh was but for a few days, perhaps a week or ten days; but that was such an occupation as to make it illegal, says the Senator, and therefore the Army of the United States can stay nowhere in the bounds of a State except it be in a fort, an arsenal, a magazine, or a dock-yard.

I understand that the President of the United States has a right to quarter the troops in any State anywhere in time of peace, not saying anything about a time of war, so that private rights are not invaded.

The PRESIDENT *pro tempore*. The morning hour has expired.

Mr. EDMUNDS. I hope the Senator will be permitted to finish what he has to say.

Mr. MORTON. I shall finish what I have to say in a few minutes.

The PRESIDENT *pro tempore*. If there be no objection, the Senator from Indiana will proceed.

Mr. MORTON. The third article of amendments to the Constitution provides:

> No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

That is a limitation in the Constitution. The inference is that they may be quartered anywhere in time of peace except in a house. The Army of the United States could hardly be organized, it could hardly be maintained, it would be of but very little use if it was to live and have its being and must remain all the time in a fort, arsenal, magazine, or dock-yard.

I hardly think it is necessary, Mr. President, to pursue the argument.

Mr. WITHERS. I rise only to say a word. I shall not consume two minutes in reply to the Senator from Indiana, because silence might leave me in a false position. I have stated distinctly, and I did state in my original speech, that the law of elections gave some color of right, some color of law to this occupancy; and the great object to which my remarks were addressed was to secure the attention of the Committee on the Judiciary to this subject and to the abuses which were clearly incident to such construction of the law as was placed by the Attorney-General in his circular of instructions. I should state in this connection that in my opinion the construction given to that law by the Attorney-General would make the law itself.

if properly susceptible of that construction, contravene the provisions of the Constitution.

I have never denied the right of soldiers to pass *in transitu* through any portion of the country when on duty. The passage of the Constitution read by the Senator, it does not seem to me, is fairly susceptible of the deduction which he draws from it; but, on the contrary, it sustains my position; for the Constitution expressly says the troops shall not be quartered in a house without consent of the owner, and it also says that private property shall not be taken for public use, &c. I think I have a much greater right to infer from that article of the Constitution that the protection being thus thrown around private rights, the soldiers of the United States have no right to occupy any portion of the territory of a State, but are restricted to the Territory of the United States, except, of course, with consent. Now, what I complain of in Petersburgh is that troops were sent there not in accordance with the Constitution, but under the color of this election law, the construction of which, I believe, was an erroneous one; and that they were sent there for the purpose of controlling and influencing the election; that their presence there did thus influence the election; and I endeavored to deduce from these facts the inference that the power which was thus claimed and exercised was one dangerous to the liberties of the country. That was all.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. GEORGE M. ADAMS, its Clerk, announced that the House had receded from its amendment to the bill (S. No. 155) to amend sections 533, 556, 571, and 572 of the Revised Statutes of the United States relating to courts in Arkansas and other States.

ENROLLED BILLS SIGNED.

The message also announced that the Speaker of the House had signed the following enrolled bills; and they were thereupon signed by the President *pro tempore*:

A bill (H. R. No. 231) for the relief of Robert Erwin; and

A bill (H. R. No. 1850) granting a pension to Harvey B. Kilbourn, private in Company C, Thirtieth Regiment Pennsylvania Militia.

THE ALABAMA CLAIMS.

The PRESIDENT *pro tempore* laid before the Senate a message from the President of the United States, communicating a report from the Secretary of State, with accompanying papers, relating to the court of commissioners of Alabama claims; which was ordered to lie on the table and be printed.

COUNTING OF THE ELECTORAL VOTES.

Mr. EDMUNDS. Mr. President——

The PRESIDENT *pro tempore*. The Chair will lay the unfinished business before the Senate, being the resolution offered by the Senator from Pennsylvania [Mr. WALLACE] to instruct the special committee on counting the electoral vote for President and Vice-President to inquire and report upon certain propositions in connection therewith.

Mr. EDMUNDS. I move to postpone the present and all prior orders and take up Senate bill No. 1153, touching the counting of the electoral vote.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill (S. No. 1153) to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877, which is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Senate and House of Representatives shall meet in the Hall of the House of Representatives, at the hour of one o'clock p. m., on the first Thursday in February, A. D. 1877; and the President of the Senate shall be their presiding officer. Two tellers shall be previously appointed on the part of the Senate and two on the part of the House of Representatives, to whom shall be handed, as they are opened by the President of the Senate, all the certificates, and papers purporting to be certificates, of the electoral votes, which certificates and papers shall be opened, presented, and acted upon in the alphabetical order of the States, beginning with the letter A; and said tellers, having then read the same in the presence and hearing of the two Houses, shall make a list of the votes as they shall appear from the said certificates; and the votes having been ascertained and counted as in this act provided, the result of the same shall be delivered to the President of the Senate, who shall thereupon announce the state of the vote, and the names of the persons, if any, elected, which announcement shall be deemed a sufficient declaration of the persons elected President and Vice-President of the United States, and, together with a list of the votes, be entered on the Journals of the two Houses. Upon such reading of any such certificate or paper when there shall be only one return from a State, the President of the Senate shall call for objections, if any. Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one Senator and one Member of the House of Representatives before the same shall be received. When all objections so made to any vote or paper from a State shall have been received and read, the Senate shall thereupon withdraw, and such objections shall be submitted to the Senate for its decision; and the Speaker of the House of Representatives shall, in like manner, submit such objections to the House of Representatives for its decision; and no electoral vote or votes from any State from which but one return has been received shall be rejected except by the affirmative vote of the two Houses. When the two Houses have voted, they shall immediately again meet, and the presiding officer shall then announce the decision of the question submitted.

SEC. 2. That if more than one return or paper purporting to be a return from a State shall have been received by the President of the Senate, purporting to be the certificates of electoral votes given at the last preceding election for President and Vice-President in such State, (unless they shall be duplicates of the same return,) all such returns and papers shall be opened by him in the presence of the two Houses when met as aforesaid and read by the tellers, and all such returns and papers shall thereupon be submitted to the judgment and decision, as to which is the true and lawful electoral vote of such State, of a commission constituted as follows, namely:

During the session of each House on the Tuesday next preceding the first Thursday in February, 1877, each House shall, by *viva voce* vote, appoint five of its members, who, with the five associate justices of the Supreme Court of the United States, to be ascertained as hereinafter provided, shall constitute a commission for the decision of all questions upon or in respect of such double returns named in this section.

On the Tuesday next preceding the first Thursday in February, A. D. 1877, or as soon thereafter as may be, the associate justices of the Supreme Court of the United States now assigned to the first, third, eighth, and ninth circuits shall select, in such manner as a majority of them shall deem fit, another of the associate justices of said court, which five persons shall be members of said commission, and the person longest in commission of said five justices shall be president of said commission. The members of said commission shall respectively take and subscribe the following oath:

"I, ——— ———, do solemnly swear (or affirm, as the case may be) that I will impartially examine consider all questions submitted to the commission of which I am a member, and a true judgment give thereon, agreeably to the Constitution and the laws: so help me God;" which oath shall be filed with the Secretary of the Senate.

When the commission shall have been thus organized, it shall not be in the power of either House to dissolve the same, or to withdraw any of its members; but if any such Senator or member shall die or become physically unable to perform the duties required by this act, the fact of such death or physical inability shall be by said commission, before it shall proceed further, communicated to the Senate or House of Representatives, as the case may be, which body shall immediately and without debate proceed by *viva voce* vote to fill the place so vacated, and the person so appointed shall take and subscribe the oath hereinbefore prescribed, and become a member of said commission; and, in like manner, if any of said justices of the Supreme Court shall die or become physically incapable of performing the duties required by this act, the other of said justices, members of the said commission, shall immediately appoint another justice of said court a member of said commission; and, in such appointments, regard shall be had to the impartiality and freedom from bias sought by the original appointments to said commission, who shall thereupon immediately take and subscribe the oath hereinbefore prescribed, and become a member of said commission to fill the vacancy so occasioned.

All the certificates and papers purporting to be certificates of the electoral votes of each State shall be opened, in the alphabetical order of the States, as provided in section 1 of this act; and when there shall be more than one such certificate or paper, as the certificates and papers from such State shall so be opened, (excepting duplicates of the same return,) they shall be read by the tellers, and thereupon the President of the Senate shall call for objections, if any. Every objection shall be made in writing and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one Senator and one member of the House of Representatives before the same shall be received. When all such objections so made to any certificate, vote, or paper from a State shall have been received and read, all such certificates, votes, and papers so objected to, and all papers accompanying the same, together with such objections, shall be forthwith submitted to said commission, which shall proceed to consider the same, with the same powers, if any, now possessed for that purpose by the two Houses acting separately or together, and, by a majority of votes, decide whether any and what votes from such State are the votes provided for by the Constitution of the United States, and how many and what persons were duly appointed electors in such State, and may therein take into view such petitions, depositions, and other papers, if any, as shall, by the Constitution and now existing law, be competent and pertinent in such consideration; which decision shall be made in writing, stating briefly the ground thereof, and signed by the members of said commission agreeing thereto; whereupon the two Houses shall again meet, and such decision shall be read and entered in the Journal of each House, and the counting of the votes shall proceed in conformity therewith, unless upon objection made thereto in writing by at least five Senators and five members of the House of Representatives, the two Houses shall separately concur in ordering otherwise, in which case such concurrent order shall govern. No votes or papers from any other State shall be acted upon until the objections previously made to the votes or papers from any State shall have been finally disposed of.

SEC. 3. That while the two Houses shall be in meeting, as provided in this act, no debate shall be allowed and no question shall be put by the presiding officer, except to either House on a motion to withdraw; and he shall have power to preserve order.

SEC. 4. That when the two Houses separate to decide upon an objection that may have been made to the counting of any electoral vote or votes from any State, or upon objection to a report of said commission, or other question arising under this act, each Senator and Representative may speak to such objection or question ten minutes, and not oftener than once; but after such debate shall have lasted two hours, it shall be the duty of each House to put the main question without further debate.

SEC. 5. That at such joint meeting of the two Houses, seats shall be provided as follows: For the President of the Senate, the Speaker's chair; for the Speaker, immediately upon his left; the Senators in the body of the Hall upon the right of the presiding officer; for the Representatives, in the body of the Hall not provided for the Senators; for the tellers, Secretary of the Senate, and Clerk of the House of Representatives, at the Clerk's desk; for the other officers of the two Houses, in front of the Clerk's desk and upon each side of the Speaker's platform. Such joint meeting shall not be dissolved until the count of electoral votes shall be completed and the result declared; and no recess shall be taken unless a question shall have arisen in regard to counting any such votes, or otherwise under this act, in which case it shall be competent for either House, acting separately, in the manner hereinbefore provided, to direct a recess of such House not beyond the next day, Sunday excepted, at the hour of ten o'clock in the forenoon. And while any question is being considered by said commission, either House may proceed with its legislative or other business.

SEC. 6. That nothing in this act shall be held to impair or affect any right now existing under the Constitution and laws to question, by proceeding in the judicial courts of the United States, the right or title of the person who shall be declared elected, or who shall claim to be President or Vice-President of the United States, if any such right exists.

SEC. 7. That said commission shall make its own rules, keep a record of its proceedings, and shall have power to employ such persons as may be necessary for the transaction of its business and the execution of its powers.

Mr. EDMUNDS. Mr. President, as a fitting commencement of the consideration of this bill, I ask the Secretary to read the twelfth article of the amendments to the Constitution of the United States, which the bill proposes to execute.

The Secretary read as follows:

The electors shall meet in their respective States and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each; which lists

they shall sign and certify, and transmit, sealed, to the seat of Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the 4th day of March, next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice President shall be the Vice-President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.

Mr. EDMUNDS. Under this article of the Constitution, Mr. President, some eight or ten millions of the citizens of the United States, authorized by the laws to select a chief magistrate in the way prescribed in this article, have endeavored to execute that duty; and by a very evenly balanced number of voices, when you take them as a whole, they are understood to have expressed their preference for two different persons, representing opposing policies of legislation and of government, greater or less in principle, and greater or less in degree, that it is not necessary for me to refer to. And the contest has been so close, when measured by the constitutional standard of voting by States for electors, that it becomes a matter of serious dispute, either rightly or wrongly, between these five millions of voting citizens upon one side and five millions upon another—I express it merely in round numbers for convenience—which of their respective candidates has been constitutionally elected. And without any provision of law for the execution of what remains to be done under the Constitution in ascertaining what person has received the highest number of electoral votes being a majority of the whole, we are brought face to face with the question of what means are left for deciding the dispute. Undoubtedly a large proportion of the people of the United States on either side of the question sincerely believe that their candidate has been elected, and sincerely believe that if it be not so finally ascertained a great wrong will have been done, not only to their personal rights and wishes but to the cause of constitutional government.

In this state of things, if nothing is to be done, if the Constitution does not now point clearly the way we are to tread so that right-minded men of all parties shall understand it alike, whichever of these candidates obtains the actual possession of executive power will necessarily be looked upon by the friends of the other as a usurper; and if there is any one duty greater than another imposed upon those who have the final execution of what remains to be done in their hands, it is that of, if possible, providing some means that when they are accomplished, no matter what may be the result, all men will say have been taken in the due course of law, and so that all just men will say, whether their wishes are attained or are disappointed, "it is right," just as just men in the administration of justice who look upon the causes that they or their neighbors have tried and determined in a constitutional and lawful way may feel from day to day that a jury in this case or a judge in the other has not decided rightly; yet they would defend with all their power the judgment that they believed to be wrong, because without that civil institutions cannot exist.

So then, Mr. President, it has appeared to us who have been charged with this most onerous and responsible and unpleasant duty that if the Constitution authorized us to lay down a line of procedure that should be clear and definite in itself, and should lead to any result—and I use the words with deliberation—that should lead to any result, no matter which one, through the calm and orderly progress of the administration of law and through the calm and orderly judgment of a tribunal bound by the most solemn obligations to decide according to the Constitution and the law, it would be a beneficent act for the Republic, and, if on the other hand we should fail to do this, our posterity under this form or some other form of government (no man can tell which) would feel that we had failed in the hour of great need in performing a plain duty.

This, then, Mr. President, is the situation; and under this state of things the committee with almost absolute unanimity have reported this bill. Opposing political opinions, opposing political educations, warm wishes, partisan feelings, have subsided on both sides, and what all of us, of all opinions, educations, wishes, and feelings, solemnly unite in reporting to you as a just and upright and lawful way, we recommend to your consideration. What is it that we recommend? I will state:

The first section of this bill provides in the first part of it for the simple ceremony of the necessary union of the two Houses, or meeting, to state it more exactly, on the occasion of determining who has the highest number of votes of the electors for President and Vice-President of the United States. It then proceeds to provide for the cases in which only one set of papers or returns, as they are called, shall have appeared; and in respect of those cases it provides, substantially, and I do not know but literally, what the bill introduced by my honorable friend from Indiana [Mr. MORTON] a year ago, and which passed the Senate, although it was brought back on a motion to reconsider, provided, that no return from a State, about which a question should arise, there being only one return, should be left out of the count unless the two Houses should separately agree that it ought to be left out. The principle upon which that goes is one that is not perfectly satisfactory to my mind, although I do not know that it would have any special stress in the particular emergency which we are now called upon to confront. I only speak of this as my own individual idea, that the first section is not perfectly logical. My own individual opinion would have been that any question about such a paper ought to have been referred to this same tribunal, I use that phrase for convenience, and that it should take the same fate as any other. I need not, however, go into the discussion of that, because I have concurred in leaving it as it stands, and, as we knew, it had been found acceptable to a considerable majority of the Senate; but, as I say, this criticism, if it be one, so far as I know, has no practical application to the present matter that we have to decide. The principle of it I understand to have been, from the discussions of last year and from the discussions in committee, that, if the case were so doubtful that the members of the two Houses acting under such solemn responsibilities could not agree that the paper was not the constitutional vote of the State, the presumption should go in favor of the State.

Then we come to the second section, which covers the difficulties that we have to encounter in the present condition of affairs. The second section provides that, if more than one return or paper purporting to be a return from a State shall have been received by the President of the Senate, purporting to be the certificate of the electoral votes given at the last election, all those returns shall be opened by the President of the Senate, just as the Constitution says in terms that all the certificates shall be opened by him in the presence of the two Houses. They shall be read by the tellers, which the bill provides for the appointment of, according to the universal practice from the foundation of the Government, only, I believe almost always hitherto one teller has been appointed on the part of the Senate and two on the part of the House of Representatives, and this bill provides that there shall be two tellers, an equal number, appointed by each House. Having been read by the tellers, the bill then proceeds to declare that all these double, disputed papers "shall thereupon be submitted to the judgment and decision, as to which is the true and lawful electoral vote of such State, of a commission." You will observe, Mr. President, precisely the question that is to be sent to this tribunal for its consideration. It is to inquire which of the papers of the conflicting ones is the paper that the Constitution calls for; that is, the electoral vote of a State in the Union, as the Constitution says, as it need scarcely have said, but some language must have been employed. It is the constitutional vote of the State, the voice of the State in the manner prescribed by its Legislature in the selection of electors who have voted for President that is to be sought for; and it is the person who has the highest number of those votes—I am not now quoting the language of the Constitution, but what everybody understands it to mean—who is to be the President. Therefore this tribunal, or commission, as it is styled in the bill more accurately, is called upon to determine one single question between two conflicting papers purporting to be the constitutional certificates, and that is, they are to determine which of them is in conformity with the Constitution and which of them is not. It then provides for the appointment of the commission, its method of selection; and I shall have something more to say upon the subject of what they are to decide when I come to a later part of the bill which again refers to what they are to do.

The bill then comes to the selection of the commission. It provides that each House on the Tuesday preceding the first Thursday in February—which changes the day for this occasion to an earlier period than that fixed by the general law, which is the second Wednesday in February—on the Tuesday preceding that day, which I believe in this case is the 30th of January, each House shall by a *viva voce* vote, the open, public, and solemn personal choice of every member of each House—no secrecy of the ballot; no private combination that must not at last openly display itself; but just as the solemn judgments that we give upon the yeas and nays upon public measures, just as the solemn judgments of courts are given, with all present and each knowing what the opinion of the other is—we are called upon by our own sworn duty to the Constitution and to the law to exercise a personal, a public, a responsible duty in selecting five members in each House to compose a part of this commission. Nobody probably would criticise the propriety of this mode of selection, if you are to say that the commission is to be composed at all of members of either House, for the whole world is to know how each individual Senator and how each individual member of the House of Representatives has performed his responsible duty in the selection of a person who is to become the sworn judge in as great a dispute as probably ever existed in the world under the law.

These ten Senators and members of the House of Representatives selected in that way, with five of the associate justices of the Supreme Court of the United States, are to compose a commission of fifteen. The judges of the Supreme Court of the United States, as we all know, are composed now of nine persons; and in order that there might be a certain symmetry of equipoise, of relation, it was thought, after much consideration by the committee, that it was advisable to take an equal

number of Senators and an equal number of members of the House of Representatives and an equal number of the persons composing the justices of the Supreme Court to form this commission. So five came naturally to be the number referred to. If it had been thought wise to have made the total number of the commission less, nine for instance as had been suggested, then there would have been three Senators and three members of the House of Representatives and three judges of the Supreme Court; but it appeared to us, after much consideration, that fifteen was, on the whole, the best number, so large as to produce every variety of intellectual capacity and learning and as to produce confidence against any possible attempt that might be made—scarcely conceivable, to be sure—to unduly influence any one or two or three of this whole number by any of the motives that sometimes, as we know in the history of the world, have been led to influence people who are called upon to discharge high trusts, and at the same time to leave the commission so limited in numbers as that it should be capable of prompt, effective consultation, and deliberate and orderly procedure and decision.

Then the next step was to ascertain in what manner these five gentlemen out of the nine—all, of course, pre-eminent in legal learning and in legal experience; all, of course, pre-eminent in their knowledge and study of the Constitution and the laws of our country; all, of course, equal in that deep respect which they receive from the people of every part of the Union, as in every part of it and for every part of it they daily administer law—should be selected. Of course it was a difficult task, because to select a particular five by name might seem to imply that there was some reason personal or other that the other particular part, four, should not be selected. And so, in analogy to what has always been a wise custom in this good Government of ours, it appeared to us that a distribution of these gentlemen to the various parts of the Republic would be a just reason for particular selections. So one named, the justice of the first circuit, comes from the far-off borders of New England, the northeastern part of the country; another, the justice of the third circuit, has his residence and exercises his judicial functions in the center of the great commercial populations of our Union; a third, he who administers justice in the eighth circuit, has his home and residence in the great Northwest; and the fourth, the justice of the ninth circuit, has had his habitation and has administered justice for many years (except, of course, when attending here and administering justice in the Supreme Court) on what has been said to be the golden slope, that great far-off portion of our Republic so rapidly growing in wealth and in everything that makes the material prosperity of a self-governing people. We name them to compose four. Then there was the odd number to be obtained; and in order to guard against prejudice—and I beg Senators to observe my words—to guard against prejudice in the minds of these ten millions of active voters in what has taken place, not to guard against prejudice in judges, not to guard against prejudice in Senators or Members, but to do that wise and wholesome thing, to leave no fault-finder in the country a right to complain, we say these four men shall choose the fifth from among their own associate numbers. In the intense criticisms that have been made upon this bill, in the very few days that it has been known, by the extreme upholders of party wishes upon both sides, I have never observed any criticisms upon the absolute fairness and justice of such a mode, provided we could get over the constitutional objections that these newspaper writers and intense politicians seem so suddenly to have discovered and with which no doubt they are so very familiar.

That then composes a commission of fifteen persons to whom these double returns are to be referred. The bill provides, as we think with great fitness, that the oldest of these associate justices in commission—the venerable Judge Clifford it will be if the bill should pass—shall be the president of it; and it then provides what also I hope that partisans as well as Senators and Representatives will carefully consider, that—

> The members of said commission shall respectively take and subscribe the following oath:
>
> I, ——— ———, do solemnly swear (or affirm, as the case may be) that I will impartially examine and consider all questions submitted to the commission of which I am a member, and a true judgment give thereon, agreeably to the Constitution and the laws: so help me God.

No more partisan, no more friend, no more opponent, no more enemy, but the solemn judgment of the judge. It appeared to us, Mr. President, that, so far as human institutions can provide for justice under the law, to impose upon five of ourselves, five of the gentlemen of the House of Representatives, and five of these eminent persons in the judicial branch to whom I have referred, that obligation, which each willingly and affirmatively takes, would be to dismiss, with us even, with all the warmth of our wishes, every consideration that should either cloud our intellects or warp our judgments; for what this commission is to decide is not a policy; it is not a future; it is only to pass upon the irrevocable past and to say, as an intellectual answer to the question under the Constitution and the law, and in no other sense and in no other way, what has taken place according to the Constitution, and not what ought to take place or what they could have wished should take place. I repeat, sir, that if there be any value left in the institutions of civil government under law, this is the last and final hope that such institutions can have. There is no human agency, there is nothing short of the overruling providence of the Almighty, that can furnish a juster test of human rights than this.

Having thus constituted the tribunal, we have committed to them this duty: After providing for cases of vacancy, &c., that I need not take your time to speak of, we have committed to them this duty: Objections having been made to these double returns or either of them, in writing, in a formal way, stating the ground of them and without argument, this commission "shall proceed to consider the same, with the same powers, if any, now possessed for that purpose by the two Houses acting separately or together, and, by a majority of votes, decide whether any and what votes from such State are the votes provided for by the Constitution of the United States."

That is what they are to decide upon these papers, to ascertain which of the conflicting claimants, as you may say, to the right to have exercised a voice in this election is the constitutional organ of the State. Is not that exactly what the Constitution requires should be ascertained by somebody and in some way? Of course every one will agree that it is, that it is the sole question in a case of dispute, and that no other is conceivable. Whatever constitutional voice a State in this Union has sent to you the Constitution declares shall have its weight, without the right of anybody to impugn or to disregard it. So, as I say, the sole question under the Constitution is, what is the constitutional vote of the State? and so, what is the paper, if any, of the two presented that speaks the constitutional voice of that State according to the methods prescribed by the Constitution itself?

Then it proceeds to say "and how many and what persons were duly appointed electors in such State." This was necessary because in a certain event, of no person having a majority of all the electors appointed, the House of Representatives is called upon by the Constitution to exercise the function of electing the President of the United States. And so it was thought necessary that this tribunal having these papers before it should make a distinct report upon the number of electors that had been lawfully appointed. Of course the words "what persons" would have meant exactly the same without the other words, because, if they decided for one of the two double returns rather than the other, the paper itself would show which were the persons who were named in it. But, as a mere matter of convenience of phraseology, the language is in.

Then it provides, what has been greatly criticised upon both sides of the partisan view of the subject—if I may use that phrase without offense to anybody, and I think I may, for I am a partisan myself—then it provides what has been the subject of criticism, and equally intense, as far as I have observed, from both points of view. Those who wish one of the candidates elected condemn it because it grants too much; those who wish another of the candidates elected condemn it in equally fierce terms because it grants too little; it holds aloft the scale of justice in absolute equipoise and gives nothing to either. What does it say?

> And may therein—

That is, in the decision which is committed to them as to what is the constitutional vote of a State—

> take into view such petitions, depositions, and other papers, if any, as shall, by the Constitution and now existing law, be competent and pertinent in such consideration.

There is one party in this country, five millions of these voters to whom I have referred, who desire (I do not say think it can be done, but who desire) that this commission, if created, shall descend below the action of the State authorities and ascertain how many votes were given for this man and that man and the other, with a view, of course, to the success, as they suppose, of their own candidate, if that were done. The other five millions, treating them as a mass, in the same way desire that the law shall be so that they cannot descend behind the action of the authorities of a State, be that action right or wrong, lawful or unlawful. In that state of opposition of claim, what is the simple and obvious principle, not merely of justice and fair play, but of constitutional law, that would apply to such a case?

The election of the President of the United States for the next four years took place on the first Wednesday in December; that is, upon the supposition that some one had a majority of all the electors appointed, taking that for granted; and the simplest provisions of the law, as it appeared to me and to us all to be, should be those that provided that that dispute touching that election which took place on the first Wednesday in December should be decided by the law as it was on the first Wednesday in December; and if by the law as it was on the first Wednesday in December, (and of course it is the same now,) as we say "now existing law," the candidate of one party, his rights measured by that law, is entitled to the office, he ought to have it. This would be a strange republic of law indeed, if after, according to one law, the candidate of one party had been elected, the Congress of the United States or anybody else should make a new law by force of which the candidate of some other party got elected. Of course it would be an outrage upon the principles of government. So that we felt perfectly free, not only free but more than free, we felt it to be our bounden duty, that no right should be affected in respect of the candidates of either of these great parties by the law that we pass, and that the right of A or B to this great office must be determined by the law as it stands on the date of the passage of this act. All that we designed this act to do, and all that it does do, is to provide merely the method, by regular steps of lawful procedure, of

ascertaining what the law and the fact was on that first Wednesday in December, 1876.

It has been said by some that this commission, if this law passes, having the powers of the two Houses conferred upon them, may go behind the returns, as the common phrase is. Well, if the two Houses now possess the constitutional power to do that thing, they also possessed it on the first Wednesday in December, and we have only changed the method in the first instance of taking that step. If the two Houses, by the Constitution of the United States, on the first Wednesday in December and now, have no constitutional right to overhaul the action of a sovereign State in its selection under the Constitution of its electors, then this commission has no right to do it.

Now what are we to do? Some say that the two Houses, or any tribunal that is to pass upon a dispute, have the right to go to the bottom, to disregard the action of State authorities, to say that they have exceeded their jurisdiction, or, acting within it, that they have not rightly and purely exercised it. Others say exactly the reverse, and that it would be a far greater injury to the Republic that Congress should assume the power of overhauling the action of States than it would be that once or twice or a dozen times, by the unjust action of the authorities of some State, one President rather than another, should be elected. So each side would desire that this law should be framed to meet its particular views, the one side to have it say in explicit terms "You shall have authority that this act gives to you, because the act gives it to you, to go down and inquire." The other would be glad to have it say in explicit terms "You shall not go down and inquire, whether the law before you authorized any one to go down and inquire or not." What could we do? We could do that just, that simple thing, we thought, that we have done, and that is to say that this presidential election must be settled, and settled only upon the Constitution and the principles of law as they existed when it took place.

Who is to decide what they were when it took place? Exactly the tribunal that must decide everything in the end—whatever tribunal the Constitution and the law constitutes for the purpose of such a decision. This law constitutes a tribunal to decide that very thing, among others. In other words, it is commanded to decide what is the constitutional vote of a State; and in doing that it may take into view any evidence of any kind that the Constitution and the law as it is now makes appropriate to that subject, and not any other. Can anything be more just than that? Would it not be a departure from every principle of justice and of constitutional procedure to do anything else? There we leave it. It must be left somewhere, and it can be left nowhere under ordinary principles of government except in the court (if I may call it a court for the purposes of this illustration) that is bound to decide upon the cause. If you are to leave it to the two Houses, as the bill that passed this body less than a year ago did, without any limitation whatever, with as wide a jurisdiction as it was possible to exist, what have you then? You have large bodies of men, and we all know that, just in proportion as you have large bodies of men, you have a departure, when they are acting together, from that personal sense of individual responsibility to decide according to your intellect and judgment rather than to act with the swift current of warm debate and warm feeling; and you commit the right of these persons in this great contest and controversy, therefore, to a tribunal that is much less likely to be governed by the principles of constitutional law than it is by the feeling and intensity of party wishes and party bias.

Then we require that the decision made by this commission—thus under a special oath to follow the Constitution and the law, and nothing else, and in deciding these rights to follow the law as it is now, for the bill gives them no new law; it only creates them to decide upon the old—shall be reported to the two Houses in writing; and that judgment of theirs shall stand unless the two Houses, acting under the authority of this act, shall separately concur in making another disposition of the subject.

I need not refer, Mr. President, to further details of the bill touching the presidency of the joint meeting nor the mere ceremonious part of the affair about debate and so on. There is this other provision in it, however, that I ought to call attention to:

> That nothing in this act shall be held to impair or affect any right now existing under the Constitution and laws to question, by proceeding in the judicial courts of the United States, the right or title of the person who shall be declared elected or who shall claim to be President or Vice-President of the United States, if any such right exists.

We endeavored to be so careful to injure no man's rights under the Constitution, even in the courts of law afterwards, by any declaration that might be made pursuant to this bill of who is President, as to provide, with the universal assent of all the gentlemen, as I have said, of all parties, that after all this has been gone through with, and we have found who, apparently, and so far as our executive or ministerial or quasi-judicial functions may go, is the President of the United States, if there be now under the Constitution and the laws the right of a true President to question the title of an untrue one, a false one, that right shall still exist unprejudiced by any inference that might be drawn from the passage of this bill and the action under it.

That, sir, is what the committee propose. The next question is—and I had not intended to take so much of your time in the opening explanation of this matter—whether this bill is warranted by the Constitution of the United States. If the Constitution of the United States authorizes any legislation at all in order to guide or regulate the ascertainment of what is the constitutional vote of a State, then I take it nobody will deny probably that this bill is constitutional. But if, as has been contended by some gentlemen, the Constitution has committed the right of deciding who is to be the President of the United States, in the fact that it has committed the right of deciding what is the constitutional vote of a State, to some one or more persons or bodies, then it is said that this bill withdraws that right of decision from that person or body and thereby invades the Constitution that it is on its face designed to promote and to execute. If that be true, it is a fatal objection to the bill. If it be not true, then there is the more reason why the law should provide for a course of proceeding and the ascertainment of the result that the Constitution has not specifically pointed out the steps to reach.

Now I will consider for a few minutes the pretension—and I do not use that term to offend anybody but as a short one—the pretension that this great and most responsible power is devolved upon whoever occupies the chair that you have so happily and so honorably filled for so long a time. I dare say we could all agree that if the Constitution has reposed this deciding power in that chair, we could not wish for a better judge to fill the place; but if it has not reposed it in the occupant of your chair, sir, then no matter how eminent or how learned the gentleman may be who fills it, no matter how completely he may command the respect and confidence of all the people of the United States of all parties, it would be equally an invasion of the best rights of constitutional government if he were to exercise it at all.

The Constitution declares that the electors of the several States who are recognized as officers, functionaries, just as clearly and with just as great importance as it does yours or ours, "shall seal up and certify and transmit to the seat of the Government of the United States, directed to the President of the Senate, the certificates of the votes which shall have been given for President." Then it declares that—

> The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted.

You will perceive, Mr. President, that if the makers of this Constitution had designed to repose in the President of the Senate the power to decide what was a vote and to determine its disposition, as they had taken pains in every other part of the Constitution in the clearest language to say what the Senate might and might not do, what its powers should be and those of the House of Representatives, as they had taken pains in the clearest way, and with the minutest carefulness of language, to say what powers the President of the United States should exercise, and what powers should not be exercised by any authority, and when in respect of the judicial branch they had also, with the same industrious diligence in conferring delegated powers, carefully enumerated every power of the judiciary, how unfortunate it was, had they designed to confer that power upon that Chair, that they had not used the two words that would have enabled them to say so. It would have saved a vast deal of dispute, and we can scarcely imagine it possible that a body of men, who in every respect had been so critically exact in the devolution of the functions and the powers of this Government, should have remained by mere accident so strangely silent upon perhaps the most important part for the perpetuity of the Republic in peace of any one of the powers that the Constitution created or bestowed.

I say, sir, that it staggers human credulity that if that body of men had designed to turn the President of the Senate into a judge in the most critical of all cases for the well-being of the Republic and in a case where it was foreseen and even known that he himself would be at first and perhaps often afterward, as it happened, the very man who was to profit or to lose by his decision—it staggers human credulity that if they had intended to repose such a deciding power in that Chair, they should not have said so.

But, after all, we must be governed by what the Constitution does say, and I admit if you can imply from it fairly and clearly that the power to open a certificate implies the power to determine upon the legal nature of its contents when it is opened, then the President of the Senate must have that power, because the power is delegated to him, and to no one else, to open all the certificates. It then proceeds to say that the votes shall be counted which are disclosed by the opening of the certificates. It does not say they shall be counted by him. If it had been intended that they should be counted by him, two words would have said so, and two very short words at that. But if it had said they should be counted by him, we should have been a great ways yet from that fundamental and prior question as to what is the legal nature of the thing that he is to enumerate, to count, not to decide. The judge in a tribunal decides; the clerk counts.

The language, then, as everybody agrees, does not say that the President of the Senate shall have the power to count even in the arithmetical sense of the term; much less does it say that he shall have power to decide anything. It says that he shall open all the certificates. Now, suppose we go back a little and inquire, does that imply it? I suppose everybody will admit that the power to open does not necessarily imply a power to count because it is not necessary to count in order to open and an implied power only arises when it is necessary that the so-called implied power should be exercised in order to the performance of the power that is given. The

power that is given by the words of the Constitution is the power to "open." Now, the power to count is not essential to the power to open. You can open without counting. If the language had been reversed and it had said that the President of the Senate should count these votes, the certificates being sent to him, of course the implication would have arisen that he must open the certificates because he could not count them until he did open them; but it happens that the language is exactly the other way: he shall open and then the counting shall take place, without stating by whom in terms. Those who contend that it is an implied power from the authority to open, must show in inevitable logic that the power to do the first thing being granted, it necessarily follows that the power to do the second thing is covered by implication; in short, the power to do one thing implies the power to do two. I have not been able to see that that was a very clearly logical proposition. Plainly it is not.

Then let us go back a step and come to where I think the fundamental question really lies. The President of the Senate is to "open all the certificates." It may be said, and it must be said, that he is not authorized to open anything that is not a certificate. The Constitution only commands him to open "certificates;" and so it is argued he must decide, therefore, which is a certificate and his decision must be binding because the Constitution has reposed in him the power to open certificates and nothing else. How long would that stand the test of examination? The same article in the Constitution says, that he is to open what the electors send to him. On that same line of argument you extend the right to decide right back to the elector. You say the elector then in this Constitution, by the very same argument, is to decide what is the certificate, or if you go forward where do you find yourself? You find the very next clause is that if there is a failure of anybody to get a majority of all the votes the House of Representatives shall elect. On the same argument you are bound to say, and you cannot avoid it, nobody can, that the House of Representatives is the sole and exclusive judge of when the contingency has occurred that entitles it to act; and if one of these candidates had received three fourths of the votes, and you, sir, under this claim of power in the Constitution, had decided that he had and that they were all valid votes and that he was the President, the House could retire into its own Hall, and on the very same language of the Constitution turn around and say "By the same authority we decide," on the same reasoning exactly, "that nobody has got a majority, and we will elect our President." Then if you would follow it a little further in the same line, it says that in case of a failure to elect the Vice-President shall be President, somebody comes immediately in and says, "I am the Vice-President; everybody admits that I am elected; I decide under this power of the Constitution that the contingency has occurred when I am to act as President; I say to the man that the President of the Senate has appointed or declared elected, 'Go your way; you are not President.' I say to the man that the House of Representatives has elected, somebody else, 'Depart.' The same Constitution that you live by also gives me the last chance at this, and I send you all away, and I am President, because I must determine whether the contingency has happened whether I am to act or not." And then you might come back the next day, Mr. President, to carry it clear through, and say that they were both disabled, unable to perform their duties, and you would act as President, and that is conclusive!

Sir, to borrow a phrase from my learned friend from Ohio, [Mr. THURMAN,] "that won't do." [Laughter.] To do an act which the Constitution commands is one thing; to decide a dispute is an entirely different thing. Whatever the Constitution commands you are to do. Whatever the Constitution commands the Executive, he is to do. Whatever the Constitution authorizes to be decided, the judiciary or some other tribunal fixed by law or by the Constitution itself is to decide. Those are the only three ways in which government can express itself. So that whatever you are to do, whatever the claims at the other end of the Capitol may be that they have a right to do, whatever the Vice-President may say that he has a right to do under the Constitution when the President has not been elected, whatever you, the President of the Senate, have a right to do when both of them are unable to perform the duties of their office, there still remains behind it all in the very essence of government the necessity of having a power that binds you all at the same time to determine when and under what circumstances each of you shall bring your forces into play; and as the Constitution has not fixed that tribunal, it has declared that Congress shall pass every law which shall carry into execution every power that is vested anywhere in the Government.

The question may be asked, why did not the Constitution say so, then? It did not say so because after having defined the range of powers and their nature for every department of the Government, commanded what should be done, it left, as all constitutions in all civilized governments everywhere have done and must do forever, to the law-making power from time to time to carry all these great powers into effect by the regular measure of legislative procedure. I can scarcely state that so well—I am sure I cannot—as it is stated by the Supreme Court of the United States itself more than sixty years ago when, just as now and just as always in governments, there arise great disputes touching the powers of Government. This was a question of State rights, of the right of the Supreme Court of the United States to disregard and set aside the judgment of the supreme court of the great State of Virginia; and when arguments similar to those that I have been putting forward as what might be suggested against this bill and about the language of the Constitution were made, the court answered them in this way:

> The Constitution, unavoidably, deals in general language. It did not suit the purposes of the people, in framing this great charter of our liberties, to provide for minute specifications of its powers, or to declare the means by which those powers should be carried into execution—

Mark the words, Mr. President—

> or to declare the means by which those powers should be carried into execution. It was foreseen that this would be a perilous and difficult, if not impracticable task. The instrument was not intended to provide merely for the exigencies of a few years, but was to endure through a long lapse of ages, the events of which were locked up in the inscrutable purposes of Providence. It could not be foreseen what new changes and modifications of power might be indispensable to effectuate the general objects of the charter; and restrictions and specifications, which at the present might seem salutary, might, in the end, prove the overthrow of the system itself. Hence its powers are expressed in general terms, leaving to the Legislature, from time to time, to adopt its own means to effectuate legitimate objects, and to mold and model the exercise of its powers, as its own wisdom and the public interests should require.—*Martin vs. Hunter's Lessee*, 1 *Wheaton*, 326.

If there is any one principle of constitutional law that is settled as deep as the foundations of the Government itself, it is that which I have just read. There is scarcely one, in fact I only remember one provision of the Constitution of the United States that has been said to execute itself, and for which it was not necessary or proper that there should not be the provisions of legislation to carry it into effect and to regulate the methods and manners by which results should be arrived at. I believe it was said in the case of Prigg *vs.* The Commonwealth of Pennsylvania, on the subject of fugitive slaves, that as the Constitution recognized a slave as property and as the fugitive clause in the Constitution gave the master the right to his property if it should have escaped from him, that clause in the Constitution did execute itself so far as the right of the master was concerned to recapture his property anywhere he could find it, if he could do so without violence and without a breach of the peace. That was put upon the ground that it was simply a recognition of the right of property, just as at the common law, as under the laws of most of the States, no doubt, a man would be entitled, if he could do it without violence or a breach of the peace, to recapture his children or his wife who were illegally detained from him. But beyond that I say I know of no instance in this wide variety of powers, legislative, executive, and judicial, anywhere, where there is not the fit necessity for legislative action to regulate and carry on the great objects of the exertion of the powers that are not by implication but expressly vested in some one of the departments of the Government; and even in that case to which I have alluded, where the court said that the Constitution did execute itself, they nevertheless held that that also was the proper subject of legislative action of Congress and that Congress might regulate, as it had regulated, the manner in which and the means by which the owner of the slave should assert his right to his property. The President of the United States, by the express language of the Constitution, is the Commander-in-Chief of the armies and navies of the Republic; and yet from the beginning until now, without question by anybody as to the constitutional propriety of such legislation, the manner in which and the means by which he shall exercise the power of Commander-in-Chief of the Army has been regulated by law. The Constitution of the United States vests judicial powers in one Supreme Court and in such inferior courts as Congress from time to time may establish; and yet one of the very first acts that the Congress under this Constitution ever passed was an act that regulated and guided and controlled from top to bottom the exercise of those powers that were clearly and expressly delegated to the judicial branch; and no man ever suspected that Congress was exceeding its power in providing by law for the means and the ways of the performance of the great judicial functions—those which, least of all, it would be safe for a republic should be unduly meddled with.

So, Mr. President, it does appear to us, without my enlarging upon this branch of the discussion, and for the very few reasons that I have so feebly stated, that the idea that this bill can be assailed as an unconstitutional measure, even if you say that the Constitution has vested the power of performing the executive or ministerial function of counting the votes which the Constitution says the person having the greatest number of shall be President, is not at all maintainable. You have only done in this bill what in respect to every other branch of the Government, and for all time, year by year, you have been daily doing with the acceptance of everybody. It only provides for ascertaining in a regular and lawful way what is the subject upon which this executive function of counting the vote, finding out who has the highest number, rests. It might be contended with considerable force, even if the duty, as far as I have heard it claimed for you, Mr. President, rested in that chair, that we have only furnished you the means of justly performing that duty; and that would be true, unless it should be contended that the Constitution had reposed in you the functions of Congress and of the judiciary to hear, try, and determine all questions of law and fact once for all, as in a given case whether you should be President of the United States or not. If the pretension goes as far as that, of course this bill is against it. But if it only goes to the point that you are to exercise a commanded ministerial duty of counting a vote, then upon the principles that I have stated it would be entirely competent, and the absolute duty of Congress, to provide you a means of

finding out what is the vote that you are to count, and compelling you, as it does courts, presidents, everybody, to follow the judgment of whatever tribunal should have ascertained that fact for you, because it is only an act which you are to do, not a decision that you are to render.

But, as I have said, I only intended on this occasion to explain in as brief a way as I could exactly what the bill is and in a general way the grounds upon which it rests. The illustrations that might be still further made to show that this deciding power of which I am speaking does not rest with you, and as I think to show equally that it does not rest with either House of Congress until Congress provides a law that allows it to rest there, are so numerous that the whole day might be spent upon them.

There is one other topic which I will only just allude to at this present time, which of course bears upon it, and that is, what is called the contemporaneous construction of the Constitution in such cases. It has been said by many persons, and it appears to be largely believed, if you can take the statements of newspapers, that for a great many years the occupant of your chair has, with the acquiescence of everybody, so construed the Constitution; and so it is implied that that must be the true construction of the Constitution in the present case, because for so many years or until a few years back, fifteen or twenty or whatever the time may be, it had always been done. If that were true, it would be entitled to weight in the consideration of this question, perhaps to great weight; but a material inquiry, as it is with all cases of precedent, is to know whether it is true to begin with.

Now I deny emphatically that that is the history of the practice under the Constitution; and when I say that I do not mean to say that the President of the Senate has not counted the votes in the arithmetical sense, although I suppose as a matter of fact that from the time of John Langdon to Schuyler Colfax the President of the Senate never counted one of them. I will take it for granted that as a matter of law he did do the enumeration, although I suppose as a matter of truth in every instance the tellers who sat at the Clerk's desk did all the counting. What did take place for the first forty years of the Republic? There never was an instance in which a paper coming from a State under its great seal and certified by its governor as to who had been elected electors, or the certificate of the electors themselves as to how they had voted, was ever drawn into question; and the thing that the President of the Senate had to deal with was exactly the sort of thing that you had to deal with when yesterday you laid before us, under the great seal of the State of Maine, the credentials of a Senator, a public act of that great State in a condition of peace and order, with only one government or pretended government, with only one seal, and with the universal acquiescence of all parties, although it is full of parties. The reign of law had produced a result and there was nothing for you to decide, if you had the power of decision; all that you had was to do; for the act of 1866 says that the governor of the State shall certify to the President of the Senate who has been elected. Suppose you were to assume on such a set of papers as that that you had the right to decide whether that was the certificate of the governor—and the Constitution says pretty much the same thing in this case—would you ever think of doing such a thing? I rather think not.

But that is a little off what I was saying about the precedents. On the first occasion when, in the language of the suggestion of the constitutional convention in order to put the Government into force, the electors were recommended to send their certificates, not to the President of the Senate as the Constitution in explicit terms says, but to the Secretary of the United States, and that the Senate, not yet having a Vice-President, not yet having a constitutional President, for the Constitution says that the Vice-President shall be the President of the Senate and it is only in his absence that a President *pro tempore* is to be appointed, a President of the Senate should be appointed for the sole purpose of opening and counting, as the words are, the electoral votes. What did it mean? Is there anybody who hears me who believes that that constitutional convention by those words intended to command the President of the Senate elected for the sole purpose of counting to enter into or have a right to enter into an inquiry as to what States had ratified the Constitution, which inquiry should bind anybody? Suppose the Senate differed with Mr. John Langdon, suppose he had said when the papers all came in "There is one from Rhode Island," that had not yet ratified the Constitution, as we know historically; suppose there was a vote from Rhode Island for somebody and Mr. Langdon had undertaken to say, "Certainly, I take the vote of Rhode Island, she is in the Union," do you suppose there was a single Senator present who, as the saying is, would have submitted to it for a moment? The Constitution said that the votes should be counted. The constitutional convention asked the Senate, as it did, to appoint him for the purpose of counting the votes. It did not appoint him for the purpose of judging votes. If it had, it would have said so. That was the first instance.

But if you are to give the language its broadest possible interpretation, fill it with all the hopes and wishes of the five millions of people who wish as I do, what would you find? You would find that on that very day each House of Congress by a resolution of its own provided for the manner in which he should pronounce that result, and commanded him in what form he should make it known to the persons whom they said he should send information to that they had been elected, and he obeyed the command. If he had this independent power that is talked about vested in him by the Constitution as being the supreme judge only in the presence of indifferent witnesses who have no more right to interfere than a witness in court has with the proceeding of the judge, would they have done that? I do not think that the idea ever entered their heads. And as you sweep along down through the course of time of cases when there was no contest or dispute, but the merely formal reading and counting of papers, it is of very little consequence to inquire whether the President of the Senate read and counted them, or whether the tellers read and counted them, or whether nobody read and counted them, so that you got at what everybody knew beforehand was the result. But whenever and on the first occasion that any question arose as to what was the constitutional vote of a State, either arising from ineligibility or other question about its electors or from the condition of the State itself, (which is exactly the same thing, for there the question is, is it the vote of a State, and that involves not only the eligibility of the elector, the day of the meeting, or the existence of the State, or the pursuit of the State law—it involves one as much as the other,) you find that the President of the Senate never hinted on the face of the earth that he had such a power, and that each House in the absence of legislation assumed—I think there is great doubt about the correctness of their assumption—but they did assume, either by the expression of their judgment or by the dictates of their command, to determine what should be done.

So, then, Mr. President, it cannot be maintained that this bill is unconstitutional upon the ground that it takes away from the President of the Senate or the House of Representatives a power which the Constitution has vested in them free from limit, and free from guide, and free from regulation, to be exercised according to their own opinion of what may be the public propriety of the occasion.

Having said so much, Mr. President, for the present I dismiss the subject, in the hope that the Senate will carefully consider whether it is wise, by stimulating doubts in their own minds, or by allowing their wishes to outrun their judgment, to send this Republic on the first Thursday in February, or the second Wednesday in that month, like the mountains that the poet has spoken of that were

> Toppling evermore
> Into seas without a shore,

or whether it is better that in the fair course of equal law a dispute shall be justly settled.

Mr. WRIGHT. I move that the Senate now adjourn.

Mr. CONKLING. I ask the Senator to withdraw that motion, if he will, and let me move that the Senate proceed to the consideration of executive business.

Mr. WRIGHT. Very well.

Mr. CONKLING. I make that motion.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After fifteen minutes spent in executive session the doors were re-opened, and (at two o'clock and fifty-five minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

SATURDAY, *January* 20, 1877.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of yesterday was read and approved.

J. M. MICOW.

On motion of Mr. WILLIAMS, of Alabama, by unanimous consent, the bill (S. No. 109) for the relief of the estate of J. M. Micow, of the State of Alabama, was taken from the Speaker's table, read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

REVISION OF THE LAWS.

Mr. DURHAM, by unanimous consent, from the Committee on the Revision of the Laws, reported back the bill (H. R. No. 3156) to perfect the revision of the statutes of the United States, with amendments by the Senate, and moved that the House non-concur in the Senate amendments and request a committee of conference on the disagreeing votes of the two Houses.

The motion was agreed to.

Mr. DURHAM moved to reconsider the vote by which the House non-concurred in the Senate amendments and requested a committee of conference; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

RESUMPTION OF SPECIE PAYMENTS.

Mr. HENDEE, by unanimous consent, presented a joint resolution of the Legislature of the State of Vermont, asking for an early resumption of specie payments; which was referred to the Committee on Banking and Currency, and ordered to be printed.

Mr. HENDEE. I ask that, by unanimous consent, the joint resolution may be printed in the RECORD.

There was no objection. The joint resolution is as follows:

A joint resolution for an early resumption of specie payments.

Whereas the act of Congress which made greenbacks a legal tender in place of coin was cheerfully submitted to as a measure of necessity, to preserve the national life:

And whereas eleven years have elapsed since the close of the war, which have been years of extravagance and great indebtedness, both public and private, promoted in a large measure by our irredeemable paper currency: Therefore,

Resolved by the senate and house of representatives, That the present time, when business is depressed, while the values of all kinds of commodities are low and large amounts of currency are lying idle, while the balance of trade is in our favor and large amounts of gold are flowing into our country from foreign countries, presents a favorable opportunity for the adoption of measures leading to the resumption of specie payments. That we respectfully instruct our Senators and request our Representatives in Congress to use all honorable means to procure the enactment of such laws at the next session, as, by a gradual reduction of the currency, a gradual accumulation of gold in the United States Treasury and in the national banks, and a strict economy in the administration of public affairs, will make practicable a sure, easy, and permanent resumption of specie payments by the 1st day of January, 1879.

Resolved, That his excellency the governor be requested to transmit to each of the Senators and Representatives in Congress from this State a copy of the foregoing preamble and resolution.

REDFIELD PROCTOR,
President of the Senate.
JOHN W. STEWART,
Speaker of the House of Representatives.

STATE OF VERMONT,
Office of Secretary of State:

I, George Nichols, secretary of state of the State of Vermont, hereby certify that the foregoing is a true copy of a joint resolution adopted by the General Assembly, at its biennial session, A. D. 1876.

In testimony whereof I have hereunto set my hand and affixed the seal of this office, at Montpelier, this 28th day of November, A. D. 1876.

[SEAL.] GEORGE NICHOLS,
Secretary of State.

CONSTITUTIONAL AMENDMENT—WOMAN SUFFRAGE.

Mr. LANE, by unanimous consent, presented a petition of Lucinda F. Proebstel, Sara J. Riggs, E. P. Henderson, and others—204 men and 280 women—citizens of the State of Oregon, asking for a sixteenth amendment of the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex; which was referred to the Committee on the Judiciary.

WITHDRAWAL OF PAPERS.

Mr. WAIT. I ask unanimous consent to withdraw from the files of the Committee of Claims the papers in the case of Edward H. Wilson, for reference to the Court of Claims.

The SPEAKER. Has an adverse report been made in that case?

Mr. WAIT. There has been no adverse report.

The SPEAKER. Then, if there be no objection, leave will be granted for the withdrawal of the papers, copies being left.

No objection was made, and the leave was granted.

DESTITUTE POOR OF THE DISTRICT OF COLUMBIA.

Mr. SINGLETON, by unanimous consent, introduced a bill (H. R. No. 4473) for the relief of the destitute poor of the District of Columbia; which was read a first and second time, referred to the Committee for the District of Columbia, and ordered to be printed.

DARIUS B. RANDALL.

Mr. FENN, by unanimous consent, introduced a bill (H. R. No. 4474) for the payment of Darius B. Randall for certain improvements relinquished by him to the United States for the use of the Nez Percé Indians; which was read a first and second time, referred to the Committee on Indian Affairs, and ordered to be printed.

WITHDRAWAL OF PAPERS.

Mr. WILLIS. On behalf of the Committee on Naval Affairs, I ask leave to withdraw from the files of the committee the memorial of Rear-Admiral R. N. Stembel, United States Navy.

No objection was made, and the leave was granted.

REMOVAL OF POLITICAL DISABILITIES.

Mr. HARTRIDGE, by unanimous consent, introduced a bill (H. R. No. 4475) removing the political disabilities of Joel S. Kennard, of Savannah, Georgia; which was read a first and second time.

Mr. HARTRIDGE. I will state that the bill is accompanied by the usual petition.

Mr. HURLBUT. I ask for the reading of the petition.

The Clerk read the petition, as follows:

To the honorable the Senate and House of Representatives of the United States:

The petition of Joel S. Kennard, of Savannah, Georgia, respectfully shows that he was an officer in the Navy of the United States; that on the 22d day of April, in the year 1861, he resigned his commission in said Navy, and entered into the service of the late Confederate States, whereby he incurred the political disabilities prescribed by the fourteenth amendment to the Constitution of the United States; which disabilities he prays may be removed by your honorable bodies; and your petitioner will ever pray, &c.

J. S. KENNARD.

SAVANNAH, GEORGIA, *January* 15, 1877.

The bill was then ordered to be engrossed and read a third time; and it was accordingly read the third time, and passed, two-thirds voting in favor thereof.

STENOGRAPHER FOR THE UNITED STATES COURTS FOR CALIFORNIA.

Mr. McCRARY, by unanimous consent, from the Committee on the Judiciary, reported, as a substitute for the bill (H. R. No. 4236) to provide for the appointment of an official short-hand reporter for the United States courts in and for the district of California, a bill (H. R. No. 4476) to provide for the appointment of an official short-hand reporter for the United States courts in and for the district of California; which was read a first and second time. The bill reported as a substitute was read, as follows:

A bill to provide for the appointment of an official short hand reporter for the United States courts in and for the district of California.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the circuit justice of the ninth judicial circuit of the United States in and for the district of California shall have authority to appoint a short hand reporter for the circuit court of said district, whose duty it shall be, under the direction of the court, to take in short-hand writing full notes of the oral testimony and other proceedings upon trials of issues of fact in said court, in any case in which both parties request it; and he shall file such notes with the clerk of the court. And such reports, when written out in long-hand, shall be deemed to be *prima facie* a correct record of any proofs or proceedings so taken, after being authenticated by the certificate of said reporter.

SEC. 2. That the official reporter of the circuit court in and for the district of California shall be, *ex officio*, the short-hand reporter of the district court of said district. But should his services be required in both courts at the same time or should it be necessary for the dispatch of business, he may, with the consent of the circuit and district judges, employ an assistant to aid him in the discharge of his duties.

SEC. 3. That the official reporter so appointed shall be skilled in the practice of his art, shall be an officer of the court, and hold office during good behavior and so long as he efficiently discharges the duties of his office. Before entering upon his official duties he shall take and subscribe the oath prescribed by section 1750 of the Revised Statutes of the United States and also an oath to faithfully perform the duties of his office, which oath shall be filed as required by section 1759 of the Revised Statutes.

SEC. 4. That the same fees which are now allowed by law to reporters of the district courts of said State in San Francisco shall be paid to the reporter appointed by this act, and shall be paid by the parties and be chargeable in like manner.

Mr. HOLMAN. It is not too late, I believe, to make the point of order upon that bill.

The SPEAKER. The Chair thinks the point of order comes too late.

Mr. HOLMAN. Well after this I call for the regular order.

Mr. McCRARY. Allow me to say to the gentleman from Indiana for his information especially, that the bill provides for the employment of a reporter only in cases where both parties request it, and the fees are to be paid by the parties, and not by the Government.

Mr. HOLMAN. There is no objection to that.

Mr. LUTTRELL. This bill meets the approval of those interested in legal proceedings on the Pacific coast.

The bill was ordered to be engrossed and read a third time; and it was accordingly read the third time, and passed.

Mr. McCRARY moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

PERSONAL EXPLANATION.

Mr. COCHRANE. I rise to a question of privilege.

The SPEAKER. The gentleman will state it.

Mr. COCHRANE. I desire to make a correction of the RECORD of Thursday last. The gentleman from West Virginia [Mr. WILSON] asked unanimous consent to take up and consider the bill H. R. No. 1016, which bill was reported by myself as a member of the Committee of Claims. It was discovered that the bill which was reported by the committee, and which contained the amendment "Strike out the words, 'with interest thereon from the 12th day of May, 1865,'" was not at the Clerk's desk, some one having substituted a bill without such amendment. Now, it appears from the RECORD that the Speaker made the following statement:

The Chair does not doubt that the amendment was intended to be reported, but in some manner it has been omitted, and the Chair will therefore submit the amendment to the House.

In point of fact the amendment was reported, but the bill reported by the committee was mislaid or lost.

The SPEAKER. The Chair desires to say that his statement at the time was correct. Subsequently the actual bill which the committee reported was found, and the amendment found accompanying it; and the bill was engrossed from that bill subsequently found, and not from the bill read to the House.

Mr. COCHRANE. I did not desire the RECORD to show that there had been any neglect on the part of the committee, for there was no such neglect.

The SPEAKER. The Chair is further informed by the Clerk that the matter appears on the Journal correctly.

GREAT AND LITTLE OSAGE INDIANS.

Mr. GOODIN by unanimous consent, introduced a bill (H. R. No. 4477) to amend an act entitled "An act to confirm to the Great and Little Osage Indians a reservation in the Indian Territory," approved June 15, 1872; which was read a first and second time, referred to the Committee on Indian Affairs, and ordered to be printed.

DENNIS M'CARTY.

Mr. GOODIN also, by unanimous consent, introduced a bill (H. R. No. 4478) granting arrears of pension to Dennis McCarty, late a private Company D, First Regiment Virginia Volunteers, in the Mexican war; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

ARCTIC DISCOVERIES.

Mr. LYNDE, by unanimous consent, presented the following preamble and resolutions; which were read and referred to the Committee on Appropriations:

CHAMBER OF COMMERCE,
Milwaukee, January 13, 1877.

Whereas this chamber has been and is now interested in matters of scientific interest, and has by its action largely aided and forwarded the inception and perfecting of the present Signal Service of the United States, as applied to commerce and navigation;

And whereas this chamber is desirous of expressing its interest in and good will toward all measures calculated to forward and extend scientific explorations and experiments which may have even an indirect bearing upon such subject: Therefore,

Be it resolved, That we cordially approve of the proposed appropriation of $50,000 by the General Government to aid in the establishment of a temporary colony, for the purpose of exploration and scientific research, at or near the eighty-first degree of north latitude, under the direction of the President of the United States and with the advice and counsel of the National Academy of Science, to carry into effect such detailed observations in the sciences of meteorology, botany, geology, and climatology, together with the perfecting of the geography of unknown regions extending to the north pole, as may increase the sum of human knowledge, redound to the credit of the United States, and sustain the reputation and honor of our country already won through the labors of De Haven, Kane, Hays, Hall, and other eminent explorers in the northern polar seas.

Resolved, That the secretary be instructed to transmit to our Senators and Representatives in Congress a copy of the foregoing preamble and resolutions, and to respectfully request their careful consideration of the same.

The foregoing preamble and resolutions were introduced at a meeting of the Chamber of Commerce of Milwaukee, January 13, 1877, and unanimously adopted.

N. VANKIRK, *President*.
[SEAL.] W. J. LANGSON, *Secretary*.

MESSAGE FROM THE PRESIDENT.

A message, in writing, from the President of the United States was communicated to the House by Mr. GRANT, his Private Secretary.

JAMES C. SWASICK.

Mr. COWAN, by unanimous consent, introduced a bill (H. R. No. 4479) granting a pension to James C. Swasick, of Ohio; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

ORDER OF BUSINESS.

Mr. HOLMAN. I call for the regular order.

The SPEAKER. The regular order of business is the report of the select committee on the rights, duties, and privileges of the House in counting the electoral vote, and the resolutions which were reported from that committee by the gentleman from Kentucky [Mr. KNOTT.]

Mr. WELLS, of Missouri. I move that the rules be suspended and that the House now resolve itself into Committee of the Whole on the state of the Union for the purpose of considering the Indian appropriation bill.

The SPEAKER. The Chair would rule that the unfinished business is first in order. The Chair, however, would entertain a motion to lay aside the unfinished business, and, should that motion prevail, then the motion of the gentleman from Missouri [Mr. WELLS] would be in order even before the morning hour.

Mr. KASSON. I would ask the gentleman if he is not willing to let us have a morning hour, and then to make his motion immediately after the close of the morning hour? We have not had a morning hour for several days, and if we can have one at this time the House might be able to dispose of some committee business.

Mr. KNOTT. The gentleman from New York, [Mr. WILLIS,] I believe, is entitled to the floor on the regular order.

Mr. HOLMAN. Does the Chair hold that a motion go into Committee of the Whole on an appropriation bill is now in order?

The SPEAKER. The Chair holds that the unfinished business first comes up after the reading of the Journal; but it is competent, if any gentleman can secure the floor with the consent of the gentleman entitled to the floor on the unfinished business, to move to lay the regular order of business aside. And then the motion to go into Committee of the Whole on an appropriation bill will be in order even before the morning hour.

Mr. WILLIS. I have not yielded the floor for any motion to be made.

Mr. HOLMAN. Then I would raise the question of the further consideration of this proposition at this time.

The SPEAKER. The Chair would entertain that motion, if the gentleman can obtain the floor for that purpose, for it ought to be within the power of the majority of the House to regulate its business.

Mr. KNOTT. If the gentleman from New York [Mr. WILLIS] is entitled to the floor, can he be taken from it for the purpose of entertaining such a motion?

The SPEAKER. The Chair is informed—and if he is misinformed of course he will be corrected—that the gentleman from Illinois [Mr. BURCHARD] did not use all his hour, but yielded twenty minutes of it to his colleague, [Mr. HURLBUT,] who waived the use of it at the time. The present occupant of the chair was not in the chair at that time.

Mr. HURLBUT. The facts of the case are these: My colleague [Mr. BURCHARD] yielded to me the remainder of his time. I did not desire to use it then, but preferred that some gentleman on the other side should first speak, as I proposed to antagonize these resolutions. I therefore yielded the floor in order that the gentleman from New York [Mr. WILLIS] might take it.

The SPEAKER. Then the Chair would think the gentleman from New York entitled to the remaining time of the gentleman from Indiana.

Mr. WILLIS. I speak in my own right and am entitled to my full hour.

Mr. HURLBUT. The understanding was that whatever time I chose to use might be used at a later stage of the debate.

The SPEAKER. Then, in other words, by unanimous consent, an arrangement was made that the twenty minutes of the gentleman from Illinois, instead of being immediately used, should be used at the end of the time of the gentleman from New York. The Chair will rule, however, that, while the gentleman will be entitled to his time, it will be competent afterward for the House to determine whether it will proceed with the unfinished business.

Mr. WILLIS. May I inquire of the Speaker whether by this arrangement I am deprived of forty minutes of my time?

Mr. O'BRIEN. The understanding the other evening was that twenty minutes belonging to the gentleman from Illinois [Mr. BURCHARD] were given to the gentleman from Illinois, [Mr. HURLBUT,] who waived his right entirely.

The SPEAKER. The Chair does not understand that he waived it entirely.

Mr. O'BRIEN. He waived it entirely: he gave up his right; and the gentleman from New York took the floor in his own right and is entitled to an hour. That was the understanding.

Mr. PAGE. Is it not in order now to call for the morning hour, and let this discussion come up after the morning hour?

Mr. O'BRIEN. The gentleman from Illinois did not claim his time; he gave it up entirely, as I understand.

Mr. WELLS, of Missouri. Does the Chair refuse to entertain the motion to postpone the special order for the purpose of going into Committee of the Whole?

The SPEAKER. On the contrary, the Chair is trying to reach some way by which amicably that motion can be entertained. The Chair believes that a majority of the House has the power to regulate its own business and the manner of its proceedings.

Mr. WILSON, of Iowa. If the gentleman from New York insists on proceeding, the motion to postpone would not be a privileged one until he yields the floor.

The SPEAKER. That is what the Chair thinks.

Mr. WILSON, of Iowa. I think the Chair is correct.

Mr. HALE. Then we can get at the question at the end of the hour.

Mr. WILLIS. I wish to inquire before I proceed whether I am confined to twenty minutes or whether I have a full hour?

The SPEAKER. In view of the statement made by the gentleman from Maryland, [Mr. O'BRIEN,] the Chair would rule that the gentleman has his hour.

Mr. HOLMAN. At the end of the hour of the gentleman from New York the question of further consideration, as I understand, can be raised.

The SPEAKER. The Chair has so ruled, and would hold that the question of consideration could be raised now but for the fact that the gentleman from New York is on the floor and does not yield for that purpose.

COUNTING THE ELECTORAL VOTE.

The House resumed, as the unfinished business, the consideration of the following report of the committee to ascertain and report what are the privileges, powers, and duties of the House of Representatives in counting the votes for President and Vice-President of the United States:

Resolved, First. That the Constitution of the United States does not confer upon the President of the Senate the power to examine and ascertain the votes to be counted as the electoral votes for President and Vice-President of the United States.

Second. That the only power which the Constitution of the United States confers upon the President of the Senate in respect to the electoral votes for President and Vice-President of the United States is to receive the sealed lists transmitted to him by the several electoral colleges, to keep the same safely, and to open all the certificates or those purporting to be such in the presence of the Senate and the House of Representatives.

Third. That the Constitution of the United States does confer upon the Senate and the House of Representatives the power to examine and ascertain the votes to be counted as the electoral votes.

Fourth. That in the execution of their power in respect to the counting of the electoral vote the House of Representatives is at least equal with the Senate.

Fifth. That in the counting of the electoral votes, no vote can be counted against the judgment and determination of the House of Representatives.

Sixth. That the committee have leave to sit again and report hereafter further matter for the consideration of the House.

The pending question was upon the adoption of the following substitute, submitted by Mr. BURCHARD, of Illinois, on behalf of the minority of the committee:

Resolved, First. That it is the power and duty of the House, conjointly with the Senate, to provide by law or other constitutional method a mode for fairly and truly ascertaining and properly counting the electoral vote for each State so as to give effect to the choice of each State in the election of President and Vice-President.

Resolved, Second. That in the absence of legislative provision on the subject or authoritative direction from the Senate and House of Representatives, the President of the Senate, upon opening the certificates, declares and counts the electoral votes for President and Vice-President of the United States.

Mr. WILLIS. Mr. Speaker, we have but recently emerged from a contest in which forty millions of intelligent, self-reliant people en-

gaged with honest zeal, in obedience to the forms and requirements of law, to determine who for the four ensuing years should be Chief Magistrate of the Republic.

The Constitution contemplates, the spirit of our institutions requires that such determination shall be the free, unhampered choice of the people, expressed by a majority of electors.

We have universal suffrage. No man is denied the elective franchise. No man is exempt from the responsibility which its exercise imposes. How imposing and sublime! A mighty people, respecting conscience and manhood, participating in choice of rulers. This spectacle mankind have witnessed all through our history, first with distrust, then with envy, and finally with an admiration so intense that in our centennial year all the nations vied with each other in yielding us unqualified praise and homage. I know not the man who was base enough to breathe the thought that the last election would be exceptional in our experience; that when the election was concluded the result would not be acknowledged, business resumed, and partisan hates and prejudices buried as heretofore; for no one believed a Cæsar or a Napoleon breathed our free air. No one supposed that even Grantism could have Mexicanized freemen. No one supposed a people who had proclaimed their independence in 1776, and afterward extorted it from a monarchy, then the most formidable on earth; who in a later struggle had vindicated their right to independence by compelling the respect of the same power; who, yet more recently still, in a supreme struggle for national life had overmastered a rebellion more fierce, more resolute than was ever before confronted, surely have not in the brief period of eight years become so poisoned and infected by bad government as to unlearn all their past, forget all their traditions, all the wise maxims and blessed memories which, like brilliants of the Orient, glitter in almost every chapter of our history.

TILDEN'S ELECTION CONCEDED.

The morning after election day almost every newspaper in the land contained the intelligence that Samuel J. Tilden was the President-elect of the United States. Democratic editorials abounded with exultant expressions of joy, hope, and thanksgiving. Republican editorials were crowded with philosophic reflections counseling acquiescence and submission. All, save basest partisans, indulged in a sigh of relief that the ordeal was over. American securities became buoyant and advanced in value. Confidence sprang into life. Joy and prosperity were, seemingly, just ahead.

A CONSPIRACY.

But, gentlemen, when unprincipled party leaders recovered from the shock of their defeat they conjured up a fiend in their hearts. Audacious assertions that Tilden had been defeated were made and persisted in. Though the people disbelieved, apprehension and distrust came and with them a period of gloom and depression which veils us in the black darkness of night. The people seized the meaning of these reckless assertions. They knew by sad experience that the authors of them were men wholly wanting in scruples, wholly strangers to honor. They knew instinctively that a conspiracy was determined upon involving the overthrow of popular government by the inauguration of a defeated candidate as President. They know it to-day, and ere long those plotters will realize the existence of a power before which their conspiracy will break away as do unstable dams when overridden by a flood—a people terribly in earnest to avenge their wrongs.

They who but a few weeks before declared that the South was a solid unit for Tilden and Hendricks now vociferously proclaim that South Carolina, Florida, and Louisiana have voted for Hayes.

Why South Carolina, Florida, and Louisiana? Palpably because they cast just enough votes to give Hayes and Wheeler a majority of one in the electoral college.

Does any man, knowing the conspirators, familiar with their methods and their desperation, doubt that, had it been necessary for their purpose, they would have insisted just as emphatically that North Carolina or Mississippi, or both, had voted the same way?

But those two States were sufficient for the end in view; they abounded in apt agencies, in men who could escape righteous retribution only by a continuance of this administration in power. Election laws were in force there, enacted for the express purpose of perpetuating their authority. Returning boards were there whose crimes, already exposed and denounced by honest men of all parties, by the voice of honorable committees appointed by both Houses of Congress, were such as to give assurance to their masters that they were equal to any infamy; even to that infamy which towers above all others, as does the giant peak above the surrounding earth: the murder of American liberty. They had a Chief Magistrate already practiced in assaults upon the rights of his countrymen, who had already caused every honest cheek to blush with shame and every honest heart to throb with madness by the use of bayonet and cannon in suppressing the voice of the people. Could not the men who had perpetrated the foul crime against Louisiana in 1874 perpetrate anew the same crime in 1876? So they, instigators of this conspiracy, believed, and so they trusted not vainly.

Armies were hurriedly forwarded to the States in question, with orders to sustain the criminal returning boards and uphold the tottering wretches who misgovern and oppress their peoples; sent sometimes on a plea of suppressing domestic violence, as in Louisiana, where no violence occurred; sometimes, as in Florida, without any pretext whatever, where no justification is even claimed; sometimes, as in South Carolina, for the pretended reason that the National Government had been called upon to secure to the people a republican form of government. Where no outbreak had occurred, the Army has—shame—a shame human lips cannot express—upon its officers—overthrown republican government by stamping upon the mandates of its highest courts.

O, how American manhood is debased, how American soldiership is sullied by the example of a Ruger! Unhappy Republic, when the defenders of its people become their oppressors! This is no novel experience. Strange these soldiers have such poor memories! After Sheridan had by his cold-blooded, heartless crime against the people of Louisiana oppressed the people with sadness and shame, provoking a feeling of wrathful resentment in the heart of every honest man, democrat or republican, the President in his annual message denounced the wrong and declared its commission to be without his authority.

He evidently had learned a lesson from Cæsar Borgia, who, after conquering Romagna, appointed Ramiro d'Orco as governor and gave him limitless authority. He oppressed the people by his baseness and cruelty; when Cæsar Borgia, who had instigated all, intent only upon his schemes, with a view of escaping the reproaches which were justly his due, caused Ramiro to be massacred in the market-place, before the eyes of all the people.

Our President did not massacre Sheridan, nor even cashier him, but he did not hesitate to do that which to a soldier of honor should be deemed a punishment more disgraceful than death. He made him the scorn of his countrymen.

In Ruger he found another Ramiro, and soon poor Ruger will be abandoned and disowned; at least so soon as the purposes of the Executive or of his party can be subserved thereby.

The President then, to resume the narrative, issued an order, in language which justly inspired the whole people with pride and confidence, insisting that a fair count should be had and called upon certain gentlemen to proceed to New Orleans and elsewhere, and supervise the action of the returning board.

The President assumed the boards were dishonest, or wherefore have them watched? Why shoot arrows at the stars?

Then, indeed, very many believed that the President, a man who had carved through hostile legions a pathway to victory; whose brow had been laureled with glory by a grateful people; who had been honored, even as he who was first in war, first in peace, and first in the hearts of his countrymen, by a re-election as Chief Magistrate, would in the hour of supreme peril have a proper consciousness of duty, and once more place his countrymen under an obligation which would cause him to be glorified in remembrance by after-generations. They dared, in a moment when hope was in the ascendant, to be oblivious of his political offenses and to think that he might agreeably disappoint the country by asserting an honorable manhood as he did so unexpectedly before when he vetoed what was known as the inflation bill. By satisfying a hope so just the President could have climbed upon the heights of Olympus. He chose rather to descend.

The committee then sent to those States, as I have remarked, refused to confer with political opponents who were there in the interest of justice; they encouraged the returning boards in their work of infamy; they gave the plotters to understand that the military arms of the Government was behind them and would sustain them in any crime they might commit against a bleeding and oppressed people; they entered into conclave with conspirators, and so well assured were they of the result already agreed upon that weeks before any adjudication upon the returns was had, and when they showed *prima facie* an acknowledged majority for Tilden electors, telegraphed over the North that a given number of parishes would be thrown out sufficient to secure the electoral votes of those States for Hayes. What I have said everybody knows to be true; every step taken by this election board, either through the Administration or its agents, gives indubitable proof of a conspiracy to overthrow popular government.

NO SUBMISSION TO WRONG.

Now, let it be understood, when I say the American people will never submit to the overthrow of self-government by conspirators.

There lives not an honest, patriotic citizen, democrat or republican, but would, if he could, suffer death a hundred times rather than behold the wreck of liberty, wrought by a scoundrelly returning board, upheld and spurred on by unworthy rulers. Such a conspiracy under the auspices of a Cæsar or a Napoleon might be borne, but submission to a conspiracy under the auspices of a returning board composed of scalawags and Federal officers would imply a moral degradation disgraceful even in a South American republic. Anglo-Saxon manhood will never fall to such a depth in the world's scorn and contempt.

This conspiracy has exposed the nation to a peril mightier than any it has ever encountered. It has aiders and abettors in every branch of the Government. Foreign war means expenditure of blood and treasure and the glory and shame consequent upon victory or defeat. Rebellion meant a Union saved or a divided Republic; in either case liberty would not perish. To-day we are staggered by an unhallowed attempt to blight and destroy, utterly and forever, the divine right of the people to govern themselves. How to avert

this peril, how to rescue this people from a destiny the contemplation of which curdles the blood and palsies the lips is the fearful problem to be solved, wisely, if at all, by the sworn Representatives, not of a party, but of a people.

THE DUTY OF CONGRESS.

If we fall not far short of our obligations, the toils will be speedily broken; the chains forged by conspirators will melt in the hot wrath of the people; it is our especial province to right every wrong, to pursue every fraud, until a just result is reached and self-government made triumphant. Some gentlemen seem to doubt our power, and to regard with nonchalance the fraudulent manipulation of canvassers and returning boards, because they are State officers, subject only to State laws, beyond the reach of Federal interference or Federal authority. Such a shallow pretense cannot stand alone or be supported for an instant! It only occurs to them as a convenience, as a dodge. It is belied by their own acts!

Why did Federal troops proceed to the State of South Carolina and there, under the direction of an unprincipled and insignificant man by the name of Dennis, interfere with the organization of a State Legislature and give moral support to Chamberlain and his confederates?

Why was a Federal judge dispatched there to spit upon the mandates of the highest State court and to give impunity to the men who were in contempt for a disregard of its orders?

Why were troops hurried to Florida to overawe democrats and encourage fraud? Why were United States bayonets and cannon put at the service of unconscionable partisans; and why were they sheltered by United States authority?

Why were partisans commissioned to go to Louisiana and elsewhere, on the plea of securing an honest count and in consummating a conspiracy?

Why all these things? I inquire if those counts were State matters, with which the people had nothing to do?

This reasoning was not employed until villainy had done its worst, until the popular result in three States had been reversed by Federal interference, Federal intimidation, and Federal support. Now you want to profit by the fraud, it becomes necessary to abandon old tactics. You say a wrong done by the Federal Government, the Federal Government cannot undo.

To the winds with such false logic. You may urge the troops were sent to secure a republican form of Government. If no republican form of government existed in these States, assuredly they could not participate in that sovereign duty which implies a free exercise of choice on the part of electors, the election of President and Vice-President of the United States, and it follows their votes cannot be counted. If republican government was not overthrown, the Army had no business there, the rights of the people were invaded and trampled upon without possible justification.

In any case, the result of the elections in those States would not have been reversed but for the interposition of Federal authority. What has been done by Federal authority will be undone by Federal authority.

The President is a mere agent of the people; the Constitution and laws made pursuant thereto are together the letter of his authority.

What he has done in the South is outside of the Constitution, is in defiance of the Constitution, and must be disowned and made of no effect by us. The product of this unconstitutional interference is, the people of the United States have had their will nullified and their sovereignty usurped. Some justify the conduct of the Executive by the assumption that those States are naturally republican.

THE FREEDMEN.

Distinguished party leaders have asserted that they will never permit the electoral vote of a State where negroes are in a majority to be counted for Tilden and Hendricks. The same men who assert this to-day before the election endeavored to rekindle the furious hates of a struggle ten years ago well ended, by the cry of a solid South.

Gentlemen, this will not do. Ten years of misrule and oppression have brought starvation and sorrow to the freedmen!

Wherever republican rule has obtained, chaos still presides—social order and security are unknown.

Wherever virtue and intelligence have dominated over carpet-bag rule, business has revived and peace reigns.

The colored men have been robbed of their earnings by fraudulent savings-banks; they have been stuffed with lying promises; they have been deceived until deception no longer availeth.

The negroes are intelligent beings. Why wonder, then, that they are undeceived? Why wonder that they prefer peace rather than tumult; plenty rather than want; honest democrats rather than dishonest republicans; their old friends and masters rather than adventurers, who have proved to them devouring vultures.

Gentlemen, no man in this country detested slavery more than I; no man welcomed the proclamation of emancipation more than I; and therefore do I, for humanity's sake, protest against the attempt to bind the black man with chains more galling than those which, by God's providence, were snapped asunder in war.

The colored men understand all this; they are turning away with a sense of loathsomeness from their deceivers, and when the arm of Federal power is withheld, under the auspices of a benigner rule, they will overthrow the last vestige of carpet-bag rule on this continent.

Mr. Speaker, let us brush aside these questions, which are incidental, but not vital, which bear upon the equities, but not the law of the case.

LOUISIANA.

As to Florida and South Carolina, though their electoral votes in fairness should, I believe, be counted for Tilden, I confess myself not sufficiently familiar with the facts to intelligently present a proper course of conduct for us to pursue toward those States.

But as to Louisiana, there an issue is fairly presented. Tilden and Hendricks electors had a certain honest majority of over 8,000. A returning board has arbitrarily set aside that majority and given certificates to Hayes and Wheeler electors. Was such action legal? If not legal what is the remedy and how to be applied?

Mr. Speaker, assuming that the returning board is possessed of powers sovereign and unappealable, as is claimed by the visiting committee and also by gentlemen in this House; that it can, at will, reverse majorities, set popular opinion at defiance, and actually determine the choice of President and Vice-President, I think that no one will have the hardihood to dispute that the exercise of such terrible powers should be confined within strictly defined limits; the law granting it this authority should be strictly construed. One step outside the law and this acts are *ultra vires*, inconsequential and void.

ILLEGAL CONSTITUTION OF THE RETURNING BOARD.

I maintain that the returning board is illegally constituted; the essence of the law is that it should be unpartisan; the letter of the law requires it should consist of members belonging to both political parties. This is a needful presumption. In every State where there is an approach to fairness, election officers are unpartisan; generally speaking, they are equally divided between the parties.

Section 2, law No. 98, 1872, provides:

That five persons to be elected by the senate from all political parties shall be the returning officers for all elections in the State—and further—in case of any vacancy, such vacancy shall be filled by the residue of the board of returning officers.

The board is unanimously republican. Though there was a vacancy, yet the remainder of the board disregarded the law and violated their oaths by refusing to fill the vacancy and select a democrat.

There is no principle of law which can be invoked to legalize this board. Its constitution is wholly unlawful and defeats the very purpose of the act: a fair canvass and compilation. It of necessity precludes all fairness, and in consequence all of its acts are illegal, and we are bound out of respect to the people of that State to disregard them altogether.

In New York the law provides that inspectors be appointed from both political parties. Imagine that provision disregarded and all the inspectors appointed democrats. Would their acts command obedience or respect? Would they be in any sense binding? No, sir; and furthermore the people of New York would not for an instant tolerate such a gross and unwarrantable subversion of their rights.

This election law, construed by legal rules and maxims, means an unpartisan scrutiny and compilation of returns; construed by gentlemen on the other side, it means that it is a republican machine, made to order to keep that party eternally in power.

I insist that laws in Louisiana must be construed by the same maxims as laws elsewhere, subject to the same presumptions; and in that view the Louisiana returning board is an illegal body, whose judgment should command no respect and whose findings are simply atrocious.

ILLEGAL ACTION OF RETURNING BOARD.

But further, Mr. Speaker, supposing the law had been complied with touching the requirement that it should comprise members of both political parties, let us ascertain whether any validity can attach to its declarations reversing a popular majority in favor of Tilden electors exceeding eight thousand votes. It claims under section 3 of the act of 1872 that it has the right to reject and exclude votes from the compilation of returns, when—

After examination, provided the said returning officers shall be convinced that said riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences did materially interfere with the purity and freedom of the election at such poll or voting place, or did prevent a sufficient number of the qualified electors thereat from registering and voting to materially change the result of the election, then the said returning officers shall not canvass or compile the statement of the votes of such poll or voting-place, but shall exclude it from their returns: *Provided*, That any person interested in said election by reason of being a candidate for office shall be allowed a hearing before said returning officers upon making application within the time allowed for the forwarding of the returns of said election.

But preliminarily it is declared, in the same statute, that such action can be had only *in hac verba*, we say—

Whenever from any poll or voting place there shall be received a statement of any supervisor of registration or commissioner of election, in form as required by section 26 of this act, an affidavit of three or more citizens, of any riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences, which prevented or tended to prevent a fair, free, and peaceable vote, not otherwise.

Now, sir, here is a prerogative given to five men to review, and, under certain circumstances, reverse, the result of a popular election; a prerogative which has never been exercised in a government professedly democratic, outside of the South under military rule, except under Napoleon III, when he concluded to overthrow the French re-

public and seize the reins of absolute power. Every fair-minded man will concur with me that when such a power is exercised it should be in literal and rigid compliance with the letter of the statute and with every condition therein expressed. I charge here, an examination of the case as presented by the visiting committee, in the interest of the returning board, will bear out the charge, that no foundation was in any case laid which gave legal justification for throwing out the vote of any one parish. Here is what the statute says upon the subject:

SEC. 26. *Be it further enacted, &c.*, That in any parish, precinct, ward, city, or town in which, during the time of registration or revision of registration, or on any day of election, there shall be any riot, tumult, acts of violence, intimidation, and disturbance, bribery or corrupt influences at any place within said parish, or at or near any poll or voting-place or place of registration, or revision of registration, which riot, tumult, acts of violence, intimidation, and disturbance, bribery, or corrupt influences shall prevent, or tend to prevent, a fair, free, peaceable, and full vote of all the qualified electors of said parish, precinct, ward, city, or town, it shall be the duty of the commissioners of election, if such riot, tumult, acts of violence, intimidation, and disturbance, bribery, or corrupt influences occur on the day of election, or of the supervision of registration of the parish, if they occur during the time of registration or revision of registration, to make in duplicate and under oath a clear and full statement of all the facts relating thereto, and of the effect produced by such riot, tumult, acts of violence, intimidation, and disturbance, bribery, or corrupt influences in preventing a fair, free, peaceable, and full registration or election, and of the number of qualified electors deterred by such riots, tumult, acts of violence, intimidation, and disturbance, bribery or corrupt influences from registering or voting, which statement shall also be corroborated under oath by three respectable citizens, qualified electors of the parish. When such statement is made by a commissioner of election or a supervisor of registration, he shall forward it in duplicate to the supervisor of registration of the parish, if in the city of New Orleans, to the secretary of state, one copy of which, if made to the supervisor of registration, shall be forwarded by him to the returning officers provided for in section 2 of this act, when he makes the returns of election in his parish. His copy of said statement shall be so annexed to his returns of elections by paste, wax, or some adhesive substance, that the same can be kept together, and the other copy the supervisor of registration shall deliver to the clerk of the court of his parish for the use of the district attorney.

SEC. 43. *Be it further enacted, &c.*, That immediately upon the close of the polls on the day of election the commissioners of the election at each poll or voting-place shall proceed to count the votes as provided in section 13 of this act, and after they shall have so counted the votes and made a list of the names of all the persons voted for, and the offices for which they were voted for, and the number of votes received by each, the number of ballots contained in the box, and the number rejected, and the reasons therefor, duplicates of such lists shall be made out, signed, and sworn to by the commissioners of election of each poll, and such duplicate lists shall be delivered, one to the supervisor of registration of the parish, and one to the clerk of the district court of the parish, and in the parish of Orleans to the secretary of state, by one or all of said commissioners in person, within twenty-four hours after the closing of the polls.

It shall be the duty of the supervisors of registration, within twenty-four hours after the receipt of all the returns for the different polling-places, to consolidate such returns to be certified as correct by the clerk of the district court, and forward the consolidated returns with the originals received by him to the returning officers provided for in section 2 of this act, the said report and returns to be inclosed in an envelope of strong paper or cloth, securely sealed, and forwarded by mail. He shall forward a copy of any statement as to violence or disturbance, bribery or corruption, or other offenses specified in section 26 of this act, if any there be, together with all memoranda and tally-lists used in making the count and statement of the votes.

I challenge, sir, any gentleman on the other side to point out a solitary case where the law was complied with by the returning board as provided by sections 26 and 43. I challenge any reference to the case, as presented by the supporters of Mr. Hayes, which will show compliance. You say, while condemning by implication the law and the conduct of the returning board thereunder, this is a legal result: it is an unappealable judgment. You insist upon the law, the letter of the law. Well, you shall have it, but you will find it gall-wood. We cannot impugn you as you do proceed; proceed, therefore, until you are as fond of law as Shylock was when, in his despair, he exclaimed, "Give me the bare principal and let me go."

This is the same returning board precisely which had an engagement and performed in 1874; and here is what the honorable committee, among whom was the distinguished member from Maine [Mr. FRYE] who eulogized with ecstatic phrase as the paragon of every human excellence J. Madison Wells, said in relation to their conduct in a case precisely similar, in their report made February 23, 1875:

> We are constrained to declare that the action of the returning board, on the whole, was arbitrary, unjust, and in our opinion illegal.

Also:

> Upon this statute we are all clearly of opinion that the returning board has no right to do anything except to canvass and compile the returns which were lawfully made to them by local officers, except in cases where they were accompanied by the certificates of the supervisor or commissioner provided in the third section. In such cases the last sentence of that section shows that it was expected that they would ordinarily exercise the grave and delicate duty of investigating charges of riot, tumult, bribery, or corruption on a hearing of the parties interested in the office. It never could have been meant that this board, of its own motion, sitting in New Orleans, at a distance from the place of voting, and without notice, could decide the right of persons claiming to be elected.
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> * * * * * * *
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> There is no more dangerous form of self-delusion than that which induces men in high places of public trust to violate law, to redress or prevent what they deem public wrongs.

In all of which I heartily concur.

I appeal now to those honorable witnesses to abate naught in their zeal for fair play; to frankly repeat to their deluded followers "that they are constrained to declare the action of the returning board was arbitrary, unjust, and in their opinion illegal." Yield your party fealty "to your love of truth and your reverence for the sacred right of the people to govern themselves." The country will then forget and forgive the eulogy on J. Madison Wells, and my honorable friend from Maine can console himself with the reflection that, after all, the president of the returning board was not born in the pine woods of his native State.

REQUIREMENTS OF THE LAW.

Now, sir, the law is explicit; it requires by the terms of section 25 that the statement should constitute a part of the return itself, containing all the facts upon which the charge is predicated and the effect of the violence or intimidation charged; the protests and statements must be attached by wax, paste, or other adhesive substance; and section 43 of the same statute requires such protests and statements to be sent in with returns within twenty-four hours after their reception by the supervisor of registration. These provisions are certainly plain enough. All the election machinery was in the hands of the republicans, republican supervisors and assistant supervisors of election, republican constables in charge of the boxes.

As a rule all the sheriffs, judges, and district attorneys were republicans, and the commissioners of election were appointees of the supervisors. The law gave these officials power to make summary arrests; to disarm all electors; to close places where intoxicating liquors were sold; it required complaints to be forwarded by the registration officers from time to time, if any intimidation was resorted to which interfered with the registration, to be completed by terms of the statute ten days before the election; and if the story of Kellogg and his allies is to be believed, in all the parishes in controversy the republicans vastly outnumbered the democrats, and there, too, was the United States Army, which bull-dozers never ventured to resist, ready to aid when called upon in the enforcement of the election laws. Therefore there is no room for excuses and pretexts that the laws could not be enforced.

If statements were not forwarded pursuant to law, the sole responsibility is upon republican officials, who had ample power, and certainly were not wanting in disposition. And yet there has not been, there was not made, a single complaint that registration was interfered with or that violence occurred at any poll, in the manner prescribed by law. No statements were made in duplicate or otherwise, and attached by wax, paste, or other adhesive material, to the election returns as provided by law, and consequently, under the law, there were no returns which the returning board had a right to investigate or go behind.

No gentleman who has examined the statute will controvert this, that the intent of the law was that the statements as to intimidation or interference either with registration or election should be made out contemporaneously with the returns; that the supervisor and commissioners of election should act without concert or consultation, so that the officers of one voting-precinct would at the time be ignorant of what had occurred in any other voting-precinct. It required all statements to be made up and forwarded before the result in the State could be known or even conjectured. And yet not in a single instance were complaints made out at the time and in the manner specified in the law, and therefore the returning board never possessed the jurisdiction claimed to reject the returns of any parish; they violated their oaths when they did so. They could truthfully confess themselves, as Medea did:

> Our lips are sworn, but our minds are unsworn.

They wholly ignored both the letter and the intent of the law; they permitted the returns to remain in the hands of supervisors up to the very hour of the count still open and unsealed, to be filled with affidavits yet unwritten; they kept matters in abeyance until the precise majority of Tilden and Hendricks electors, to wit, 8,957, was known.

Then the returning board and their advisors, whose bitter and relentless partisanship was never disguised, counseled together, surveyed the field, and ascertained precisely what was required to be done, how many voters would have to be disfranchised that the Hayes and Wheeler electors might be counted in. They gravely contemplated the mode by which the mischief was to be wrought. They knew the extent to which the Chief Magistrate could be relied upon. They were schooled in precisely the same villainies they found it now necessary to practice and repeat. They boldly set to work. How they did the work, and with what result, although well known, I am about to relate.

As they began, disregarding the law, so they continued unto the end. Their chief work they did in secret. True, they invited committees from the North of five each, representing both parties, to attend their meeting; but whenever a point was considered involving the disfranchisement of a parish, they at once went into executive session, and there four republicans, so called, whose souls were reeking with partisan hate and selfishness, devilishly contrived to cheat the people of Louisiana, and so adjudicate upon the returns as to annihilate an honest majority of over 8,000 for Tilden, and give to Hayes a pretended majority of more than 4,000.

And upon what proof? None whatever but by rejecting votes upon *ex parte* affidavits, drawn up generally in New Orleans by office-holders, which ignorant negroes were induced to sign with a cross. Of course these persons could not read the affidavits, and the language was certainly not their own, and very generally such as they could not understand. The candidates interested had no fair opportunity to be heard; cross-examination was rarely allowed. None of the methods for the investigation of truth which have been found neces-

sary by experience and have the sanction of immemorial usage were employed.

The all-sufficient, self-righteous judges of the returning board could dispense with these appliances. They assumed the right to shape the destiny of a Republic, to settle a question involving the rights of forty millions of people, on *ex parte* affidavits, full of opinions and conjectures, without any legal force or effect, signed generally with crosses, by parties ignorant of their contents; for there is no proof to the effect that they were even read to the affiants. What mockery of justice! And yet the decrees of this court are proclaimed by republican statesmen as infallible!

Fortunate judges, who rejoice in such eulogies, bestowed upon them while living, and that, too, by men who in 1874, after due reflection, characterized action entirely similar, as "arbitrary, unjust, and, in their opinion, illegal." Two years of Grantism has enlightened their understanding and heightened their moral perception!

Verily, the people were right when they declared by a popular majority, which even the frauds of South Carolina, Florida, and Louisiana have not extinguished, that Tilden and reform had become a necessity which could no longer be deferred without danger to the Republic.

Mr. Speaker, it happened, also, that supervisors of election withheld returns, and the returning board declined sending for them; and why? Because no moneys had been appropriated for such purpose; it was determined to put the confederate House of Representatives to the blush by zeal for retrenchment; the cost required was seventy-five cents. Wonderful economy! Gentlemen, we are surpassed! But in such cases it invariably happened that the returns showed a heavy democratic majority! How sublime, such economy! How disinterested such virtue! And yet, my distinguished friend from Maine omitted to mention all this in his remarkable eulogy on the character of J. Madison Wells.

I have succeeded, gentlemen, in establishing beyond the reach of controversy these propositions:

First. That the returning board is illegally constituted in that all its members belong to the republican party, contrary to section 2, act of 1872.

Second. That, waiving the illegal constitution of the board, it had no right to reject the votes of any parish or to examine into the legality of the votes of any parish, unless a statement had been made by supervisor or commissioner of election and attached to the election return and forwarded within twenty-four hours after their reception, supported by testimony of three witnesses, to the effect that intimidation and violence had been resorted to to such an extent as to materially affect the result of the election.

Third. That the returning board illegally assumed jurisdiction of the disputed parishes without warrant of law, proceeded upon illegal and unauthorized protests, based on fabricated *ex parte* affidavits, refused interested candidates a fair hearing, and in so doing committed a crime without parallel in its bold infamy.

Admitting all contained in the affidavits, permitting every allegation affecting the integrity of the democratic party in the State of Louisiana to stand, these propositions remain uncontroverted, and gentlemen on the other side have neither the ingenuity nor the audacity to gainsay or deny them. All we ask is that the judgment of a republican House of Representatives, solemnly pronounced after due investigation and reflection, be entered anew. The democratic party accepts it as their judgment and deems the matter *res adjudicata*.

CONDITION OF LOUISIANA AND THE CAUSES.

In parts of Louisiana society is in a deplorable condition. Republican rule in that State has well-nigh brought upon the people the blight of death. Oppression and extravagance have yielded a harvest of crime. Lawless bands roam throughout her borders. White men and black men have yielded to the contagion. Murders are frequent, but I refuse to believe they have a political significance. If so, why were the proofs withheld before elections when it was known of all men that the Administration yearned for a pretext upon which troops might be sent to that State and interfere.

All reputable citizens there desired peace, and they recognized the fact that their only safety consisted in a peaceable election, while the only hope of Kellogg and Packard depended upon riot, murder, and confusion.

Probably restraints were sometimes imposed upon voters; they are in every State more or less; but the election law of 1872 provided a penalty. If such penalties were not enforced the criminality belongs to republican officials and is due to a neglect on their part of sworn duties. Restraints, however, have, as the proof stands, been more frequently imposed upon democrats than upon republicans.

All the crimes, all the disorders, all the woes which afflict Louisiana proceed from a vicious government, conducted by adventurers and thieves, sustained by ignorance. The only remedy is a change of rulers, to the end that the virtue, intelligence, and manhood of the State can come to the fore-front and control the government as in Georgia, Alabama, Mississippi, and Arkansas, where the people are rejoicing in social security and a revival of business prosperity.

Let me present briefly a purely legal reason why the action of the returning board should be set aside and declared null and void.

FACTS CONFERRING JURISDICTION UPON RETURNING BOARD CANNOT BE PRESUMED, AND MUST BE AFFIRMATIVELY SHOWN.

This returning board is not a court of general or original jurisdiction; it is not even a court; but a commission of special, limited jurisdiction; no facts giving it jurisdiction, can be presumed. The maxim "*Omnia præsumuntur rite esse acta*" does not apply. As is said by Judge Holroyd in Rex *vs.* All Saints, 1 Mass. & Ryl, 688:

> All the facts which show the jurisdiction must be stated, and they must also be proved.

In a court of general jurisdiction, power and authority shall be intended, but inferior or limited courts are bound affirmatively to show jurisdiction. So, too, in summary proceedings, and more especially in proceedings before a commission authorized to act in special matters, where certain requirements have to be complied with, and then only in a certain mode, as in the case of the Louisiana returning board; which requirements and mode are distinctly and specifically set forth in the statute, whereby the returning board was itself created.

This doctrine prevails, and this rule is enforced in all civilized countries, as uniform decisions, made from time to time through the centuries, clearly attest.

To dispel all doubt upon the question as to whether the action of the returning board is null and void, I will state this proposition, the terms of which are such as to cover precisely the subject-matter of controversy:

> In all cases in the courts, and especially in courts of inferior jurisdiction, where the authority to proceed is conferred by statute and where the manner of obtaining jurisdiction is provided by the statute, the mode of proceeding is mandatory and must be strictly complied with or the proceeding will be utterly void.

This proposition is lucidly discussed and laid down with emphasis in numerous cases found in Potter's Dwarris on Statutes, page 224, edition of 1871; Corwin *vs.* Merritt, 3 Barbour, 341; Harrington *vs.* The People, 6 Barbour, 607; The People *vs.* Common Council of Brooklyn, 22 Barbour, 405; Bloom *vs.* Burdick, 1 Hill, 130; People *vs.* Schermerhorn, 19 Barbour, 541; and many others of like import.

The returning board did not possess general jurisdiction, even over the subject of elections; its functions were prescribed specially and limited by the terms of act No. 98, 1872, bound up with laws of 1873, page 15. It was bound to count and compile all votes found in the returns, as provided by section 2 of the act of 1872, save as provided in sections 3, 26, and 43.

In view, then, of the legal proposition stated, sustained uniformly by authorities, it will require some audacity in endeavoring to justify the action of the returning board in rejecting votes honestly cast sufficient in number to convert a Tilden majority of more than 8,000 into a Hayes majority of more than 4,000.

FORMER TREATMENT OF RETURNING BOARD BY CONGRESS.

This unspeakable infamy will never be indorsed by an American Congress. It is unfair to assume that the Senate, any more than the House, will disregard in this respect the voice of the people, not of of Louisiana alone but of the whole country. In 1873 the perjured certificate of Kellogg, certifying a list of presidential electors, was indignantly disregarded and ignored. In 1874 and 1875 his fraudulent senatorial certificates were contemptuously spurned. Why should not a certificate stained with perjury and fraud yet more devilish not meet the same fate in 1877?

I am not among those who believe that the sworn representatives of the people, for the selfish purpose of inaugurating a member of a certain party as President, will in a crisis like the present, while the safety of the nation is jeopardized, cancel their declarations and their votes, made and given when partisan feeling was absent and their judgment disinterested.

I have supreme faith in the House, in the Senate, in the people, most of all in the people, who, if all else fails, will, let what will betide, see to it that the President of their choice is inaugurated on the 5th of March.

POWER OF CONGRESS TO COUNT AND DETERMINE VALIDITY OF ELECTORAL VOTES.

As to the question on whom devolves the duty of counting the electoral vote and correcting wrong, fraud, or illegality, I apprehend there are few who are perplexed with doubt or uncertainty. The Constitution is fully adequate and sufficiently explicit for the purpose of settling it satisfactorily. The clause governing this duty is in these words, found in section 1 of article 2 in the Constitution:

> The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted.

The specific duty of the President of the Senate is defined, "he shall, in the presence of the Senate and House of Representatives, open all the certificates." Nothing beyond. Even the exercise of this power is subject to congressional inspection, supervision, and direction.

Mark the language, "in the presence of the Senate and House," not of the members of both Houses, but clearly both Houses, must meet together and be present at the opening of the certificates, with all their officers, complete in organization, with clerks, sergeant-at-arms, and all appurtenances necessary, ready to act severally in legislative capacities. Both Houses must appear and be present, not the members of both Houses. The direction amounts to an absolute mandate. The President of the Senate has no right to open the certificates unless in such presence.

"And the votes shall then be counted." How and by whom? As Congress shall enact or direct.

POWER OF CONGRESS TO LEGISLATE.

There will not be found on this floor or elsewhere anybody possessed of honesty and intelligence who will seriously dispute the right or the power of Congress to prescribe the mode whereby the President of the Senate shall perform his duty in the premises, or the manner in which the vote shall be counted and declared, subject to constitutional provisions. Were not such right and power inherent in and a necessary incident of the provision in question, all dispute would be absolutely disposed of by the last clause of section 8, article 1, of the Constitution, that Congress shall have power "to make all laws which shall be necessary and proper in carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

That there remains an open question regarding this electoral count, is not a fault to be imputed to the Constitution or to the unwisdom of its authors. It is due wholly to the failure of the National Legislature to act. The advocates of all theories coincide in the judgment that this power to legislate on this subject exists. Every bill offered affecting this duty or power recognizes the right; the rules of interpretation are unheeded, the constitutional text is unequivocal and ample. Every joint resolution touching this question, either introduced or passed, affirms the existence of the power.

The proposition that Congress has express power to legislate is out of the domain of discussion.

If this proposition be true, it follows logically and necessarily that its exercise is dependent on the concurrent action of the two Houses in their distinctive, separate capacities.

If Congress has the right to constitute an agency to count the vote, it certainly has the right, the original right and power as the source of all authority, to exercise it within itself, and in the absence of legislative provision, the power resides nowhere else save in Congress.

As Chief-Justice Marshall declared in Cohens *vs.* Virginia, 6 Wheaton, 418:

> The safest rule of interpretation will be found to look into the nature and objects of the particular powers, duties, and rights with all the lights and aids of contemporaneous history, and give to the words of each just such operation and force, consistent with their legitimate meaning, as may fairly secure and attain the ends proposed.

This power is expressed in clear phrase. The object was that each State in itself should, in such manner as the Legislature thereof might direct, choose presidential electors in number equal to the number of Senators and Representatives.

The duty of ascertaining whether electors have been chosen pursuant to the State laws and the national Constitution is in Congress. There is no other department of Government, there is no other functionary, endowed with such power. That the States have a right to choose electors as their Legislatures direct, subject to constitutional restrictions, is a proposition universally accepted. But who is to determine whether the State laws have been obeyed? Who is to determine whether the will of the people has been regarded? Where there are two sets of electors who is to determine which set is valid?

If the postmasters or other officials holding positions of profit and trust under the United States contrary to the constitutional provision have been furnished with certificates certifying to their choice as electors, who is to enforce the prohibition and pronounce their election null and void?

If questions arise as to whether in certain cases vacancies have occurred or whether vacancies have been filled, who is to adjudicate? Congress, and Congress alone; and how: by concurrent action; not in joint convention, but by separate bodies, organized and acting in distinctive capacities.

POWER OF CONGRESS TO COUNT ESTABLISHED BY CUSTOM.

If there was in the Constitution a *casus omissus*, as there is not, it would still follow that the duty and power of counting would belong to Congress; for the reason that custom and usage in every election since the foundation of the Constitution has invariably recognized such to be the law. Electoral votes have without exception been counted by the tellers of the two Houses save in the first election, when there was no contest. By unanimous consent and concurrent action on the part of both Houses, John Langdon was appointed President of the Senate for the sole purpose of opening certificates and counting the votes. This is not an adverse precedent. The power of the President of the Senate was born of the concurrent action of the two Houses. The rights of the two Houses have always been insisted upon, and whenever any of the questions affecting the legality of any votes have arisen, they have been discussed and decided respectively in and by both Houses; and where there has been want of concurrence, votes have been rejected and in no instance counted.

Though, as the honorable gentleman from Illinois [Mr. BURCHARD] remarked in his argument, Chancellor Kent did, in his Commentaries, declare:

> The Constitution does not expressly declare by whom the votes are to be counted and the result declared. In the case of questionable votes and a closely contested election this power may be all important, and I presume, in the absence of all legislative provision on the subject, the President of the Senate counts the votes and determines the result, and that the two Houses are present only as spectators, to witness the fairness and accuracy of the transaction, and to act only if no choice be made by the electors.

This mere supposition was subsequently nullified by the learned author himself, who in the same treatise distinctly holds that Congress has power to legislate upon the subject.

The same honorable member attached great consequence to the fact that this certificate, to wit:

> That * * * on the second Wednesday of February, A. D. 1801, the undersigned, Vice-President of the United States and President of the Senate, did, in the presence of the said Senate and House of Representatives, open all the certificates and count all the votes of the electors for President. * * *
>
> In witness whereof, I have hereunto set my hand and seal this 18th day of February, 1801.
>
> THOMAS JEFFERSON.

was signed respectively by Vice-President Adams and Vice-President Jefferson; but such certificates weigh nothing because directly contradicted by the Journals of both Houses, and can weigh nothing against the evident sense of two Houses as indicated by their uniform action.

The country now confronts a crisis the most momentous that has occurred since the birth of our Government. Partisanship is wrought to a pitch of fury. The wisest and most prudent of our citizens deem the occasion fraught with supreme peril. In the Senate, the republican party has a majority. In the House, the democratic party has a majority. If fealty to party is stronger than love for country revolution is nigh.

Now, where can be found the man, acting as a trustee for the people, in sworn service, who will assert the monstrous purpose to set aside precedent, to ignore contemporaneous exposition, to strike down land-marks, and resort to innovation? May the lips which utter such treason be blistered. The very earth such a man tramples on, he profanes.

Is a republic less tolerable than a monarchy? In England, without a written constitution, liberty is safe, because the people tolerate the invasion of no custom which has the sanction of age, of wisdom, and of experience. Even the Magna Charta is but a collection of maxims born of custom.

Now, sir, suppose the Constitution silent, the two Houses, by virtue of an unwritten law, which has been accepted and acted upon by all political parties, will exercise absolute control in determining upon the validity and legality of all votes; of ascertaining whether any are vitiated by fraud or for other cause, and finally in declaring who is the duly elected President of the United States, provided there shall have been a President elected, and, if not, then to proceed with the election in the mode which the Constitution has provided.

Mr. Speaker, that I may not be misapprehended, I insist that, aside from the rule which custom has sanctioned, aside from the interpretation contemporaneous with the Constitution, the express letter, the plain text of the Constitution invests Congress with the power to count votes and adjudicate upon their legality. But beyond the reasons already urged there is yet another, which, if any doubt or perplexity remained, would effectually determine the question.

IN EMERGENCY, HOUSE TO ELECT—HOUSE JUDGE OF THE EMERGENCY.

The Constitution declares, in the article which relates to the counting of votes, that in the event of no election in the college the House shall at once proceed to ballot for a President and the Senate for a Vice-President. Who is to be judge of the emergency or when it arises? *Ex rei necessitate*, as well as by every principle of known law, the House and the Senate; the agencies to act in the emergency, the House as to the President and the Senate as to the Vice-President; and for the stronger reason that the Constitution requires the emergency to be met at once, which implies an uninterrupted procedure from the beginning to the end of the count. Congress, by the very terms of this constitutional section, is absolute arbiter, under whose watchful eye the whole transaction of counting and determining is to be conducted; and then, if in its conduct the emergency in question arises, it shall forthwith remedy the failure to elect by balloting respectively for President and Vice-President.

Mr. Speaker, to argue this question further is vain business. It is indisputably the fact, and for all practical purposes conceded, that the function of the President of the Senate is confined to opening all the electoral certificates; that counting them devolves on Congress. Reaching this goal, the rest of the way is easy. What is the effect if the power is in Congress?

By reason of the premises already laid down, no positive thing can be done in the count without concurrent action to act. Each House must decide alike, and each House must decide that either the Tilden or Hayes electors have a majority of the votes cast in the electoral college, or no conclusion will be reached. Every thing done in and about the counting of the votes, the examination of certificates, the determining the legality of the votes, whether they are vitiated by fraud or not, are affirmative acts.

Where two bodies have discretion and power to do or not to do, a failure to concur defeats all action. Two judges having jurisdiction to decide, failing to agree, certify to the disagreement, and no judicial result is arrived at. So in this case, if the Houses disagree, no count takes place, and, as Henry Clay said in 1821, "If one House would say the votes ought to be counted and the other that they ought not, then the votes would be lost altogether." So the joint rule of 1865 provided; so have all proposed laws provided, including the law of 1800, which passed both Houses of Congress when many

members of the convention which framed the Constitution were members of both Houses. So did Senator MORTON (in the Senate, March 24, 1876) declare, when a question as to the very case which now arises as to Louisiana was propounded by Senator WHYTE, in these words:

I think the precise contingency mentioned by the Senator from Maryland may happen by the vote of a State being lost, the two Houses not being able to decide, but that is the precise contingency which the Constitution has provided for when it declares that unless some one person shall have a majority of all the electors appointed the House shall immediately proceed to elect by States.

THE ESSENCE OF AN ELECTION THE TRUE EXPRESSION OF THE POPULAR WILL.

Mr. Speaker, more important than all other considerations is this: The essence of an election is that the people shall choose the President, that their voice, as expressed by a majority of electors lawfully chosen by the several States, shall be potential and conclusive.

Unhappy day for this Republic when technicality shall be permitted to thwart this great purpose; when the people's will shall be defeated by a quibble.

The consent of the governed is the soul of our Government; when that consent is disregarded, liberty is gone, the life of our institutions become extinct, the shadow and form of a republic alone remains.

Take the case of Oregon. Though Watts was ineligible and Cronin, in my judgment, according to strict law made an elector, shall his vote be counted? I would scorn myself as the basest of partisans, unworthy of my seat in this Hall, did I contend for such a doctrine.

The people are the real sovereigns. The people of Oregon in their sovereign capacity have declared their preference for Hayes and Wheeler, and they are entitled by the law of eternal justice to have that declaration made effective by having three votes cast in the electoral college for Hayes and Wheeler.

It has happened heretofore in this country that an elector by reason of sudden sickness was unable to attend the electoral college, and the vote was lost to the State. I refer to Kentucky in the sixth presidential election. Suppose the election depended upon the counting of that one vote, should it have been counted? Yes; its rejection would have defeated the sovereignty of the people and the intent of the Constitution.

In Wisconsin it occurred in 1856 that a furious snow-storm prevented the meeting of the electoral college on the day fixed by law. If the presidential contest had hinged upon the vote of that State, what fair-minded man was there who would not have been insulted by a proposition to reject such vote?

I might enumerate other cases, actual and hypothetical, where if form and technicality were alone to be regarded, all republicanism would be at an end on this continent.

And now, supposing fraud has been resorted to in the procuring of certificates in such wise that popular majorities have been reversed, is there no power here to undo the fraud and permit the people who suffered from it to have their great wrong redressed? He must indeed despise reason and hate justice with a bitter hate who will question this power or the right to exercise it by Congress.

In Oregon, in Louisiana, in any State where the popular will would be defeated, either by fraud or technicality if votes were counted, legally certified on their face, we have the power—it is our duty to go behind returns—to tear down all barriers which interpose between the people and their rightful choice.

Any plan, any joint resolution or statute proposed having in contemplation this just end, I will support with zeal and sincerity. But never will I assent to any proposition making the solution of the electoral controversy depend on chance, nor will I favor the submission of the question to a body outside of Congress. It would involve a delegation of power forbidden by the clear text of the Constitution. The labor is ours and we will perform it faithfully to the end.

THIS ARGUMENT BASED ON CONCEDED FACTS.

Mr. Speaker, the argument I have made is predicated on a statement of facts universally conceded; it has no reference to what has been developed before investigating committees in South Carolina, Florida, and Louisiana; it has no reference to the unauthorized and unconstitutional interference by the United States forces and United States judges, which would make it immeasurably stronger; it assumes all that has been stated by the supporters of Hayes and Wheeler as true; it deals with the record they have made up. And it shows logically and conclusively that the vote of Louisiana should be counted for Samuel J. Tilden; that the returning board, even waiving its illegal composition, acquired no jurisdiction to reject the votes of parishes which, if counted, would have defeated the Hayes electors by more than 8,000 votes; that either the Senate or the House have the power, in default of concurrence, to reject the votes of that State, or, if concurring, to count them for Tilden and Hendricks; that if the vote of Louisiana be rejected neither Tilden nor Hayes has a majority in the electoral college, in which event it is the constitutional duty of the House to proceed immediately to elect the President and the Senate the Vice-President. So far as relates to the Presidency, the popular will would be effective in either alternative.

Not now, as in 1800, when Jefferson and Burr received each a majority, to wit, 73 electoral votes, and John Adams 65, does there exist the possibility which Madison deplored, of a minority candidate being elected by the House. We are not threatened by what he termed a usurpation—a surreptitious intrusion; Tilden electors have a popular majority of more than a quarter of a million in the whole country, and the House of Representatives have a majority in harmony with the popular majority.

LET THE CONSPIRACY BE ABANDONED.

Gentlemen, dismiss all thought of further prosecuting a conspiracy against the people, forego your plans of insisting that the President of the Senate shall count the vote, or that a decision shall be delayed until after the 4th of March; abandon any project which will result in an interregnum, and meanwhile expose the country to the terrors of revolution and blast with ruin the industries of the land, by one grand sacrifice suffer your ambitions, your plans, your prejudices, your hates, to be lost in a devotion to country which is as much beyond party as is the religion of Christ beyond the creeds of the heathen.

Do not suppose you will profit by the conspiracy. Whether it fails or wins it will be the same to you. You will find all the comfort you are entitled to in the words Addison causes Sempronius to speak when urged to wrong:

> Know, villains, when such paltry slaves presume
> To mix in treason, if the plot succeeds
> They're thrown neglected by, but if it fails
> They're sure to die like dogs.

No trifling can be borne. Depart from precedents, trample on the Constitution, you defy the will of forty millions of freemen; you proclaim revolution.

Why, a crime of such tremendous magnitude as that contemplated has not been committed in the world's histoy. It might be tolerated were it of temporary consequence, but it involves the destruction of all confidence, all hope. If a party can prolong its authority for four years, why not for forty years? Why not for all time? If the people will submit to such an outrage this year, why will they not submit to it four years hence?

It is an idle supposition to expect a people who quietly permit their voice to be disregarded and their will overthrown will have the manhood and the patriotism to resist a usurpation after four years of acquiescence.

We are to-day standing face to face with a monster peril which must be met now if ever. The conspirators who threaten with rebellion our laws and liberties are criminals indescribably base; but infinitely more guilty will we be if by indifference, neglect, or cowardice we permit the success of the conspiracy. We shall have no excuse to urge. We have the power; what we need is the inclination to use it. The Constitution of our fathers is all-sufficient; wise precedents all along our history light our pathway.

Public opinion, burning with indignation at the commission of unequaled frauds, is urging us to be firm and constant. If we waver or betray, may Omnipotence crush with the thunderbolts of His wrath the walls of this Capitol, for they are hallowed by memories too sacred to survive such awful sacrilege!

May every wretch who shall by act of omission or commission contribute to the foul deed be buried beneath the wreck, that the world may know how Heaven is affronted by the guilt of perjury and treason! Again, I say, I do not recognize in the near future a resort to revolution, to violence, or to civil war.

There is not, there cannot be within the Chambers of this Capitol Senator or Representative who will forswear himself and stand accursed before men and angels by attempting to enthrone a usurpation.

In this solemn transaction oaths will be regarded, traditions respected, obedience to the forms and requirements of law insisted upon, and the full glory of our Republic attained by a result which will exemplify the excellence of our Constitution and the wisdom of our fathers.

The sovereign prerogative, the exalted duty of vindicating the right of the people to govern themselves, is ours. That prerogative, God helping us, we will assert; that duty we will piously perform. If we fail we will blacken our souls with cowardice, perjury, treason; we will permit and connive at the most unhallowed conspiracy ever planned against liberty and civilization. We will summon from the depths of hell the red demon war, and unchain his furies over this fair land.

But, Mr. Speaker, let us have a clear and accurate sense of what our duty is and resolutely determine to do it. All will then be well. We will cause the centennial year to surpass in glory all other years, for we will secure all through the coming ages a Government based upon the law of equal freedom. Despite the corruptions of our latter years, the reign of vice and profligacy which has poisoned as the blight of death; despite false notions of government, false sense of duty and responsibility engendered by war, there is a reserve force of virtue in this land; there is a moral consciousness in the minds of our people which will evoke from chaos a reign of peace, purity, and plenty. These are times

> That give mankind occasion to exert
> Their hidden strength and throw out into practice
> Virtues, which lie concealed
> In the smooth seasons and the calms of life.

Mr. SEELYE obtained the floor.

Mr. HOLMAN. I ask the gentleman from Massachusetts to yield to me in order that I may move that the rules be suspended and the House resolve itself into Committee of the Whole on the state of the Union, so my colleague on the Committee of Way and Means [Mr.

WELLS] may proceed with the consideration of the Indian appropriation bill. This will facilitate business very much.

Mr. SEELYE. I have no desire to speak except for the sake of addressing the House, but I certainly could not ask their attention if they wish to give it to anything else. I am certainly willing to yield the floor for the House to decide upon the question of the gentleman from Indiana, [Mr. HOLMAN,] on condition that I retain the floor on this question when the discussion is resumed.

The SPEAKER. The gentleman from Massachusetts will be entitled to the floor whenever the unfinished business comes up again. It will be necessary to lay aside the unfinished business to keep it in direct line of discussion.

Mr. HOLMAN. I wish to present a question of order. I wish to call the attention of the House to what I understand to be the rule, although I may be mistaken. It is this: Rule 145 provides—

> No standing rule or order of the House shall be rescinded or changed without one day's notice being given of the motion therefor.
>
> * * * * * * *
>
> By Rule 104 a *majority may, at any time*, suspend the rules for the purpose of going into Committee of the Whole on the state of the Union, and also for closing debate therein; and by Rule 119 to make any of the general appropriation bills a special order. These are exceptions to this rule.

I submit, Mr. Speaker, that the rule contemplates in the case of an appropriation bill the importance of going into Committee of the Whole and the necessity of the Chair recognizing the right to make that motion. It contemplates, in my judgment, that it may be entertained by the Chair at any time. Indeed, the compiler of these rules puts the words "majority" and "may at any time" in italics, as indicating the force of those words that the majority may at any time suspend the rules and go into Committee of the Whole on the state of the Union. I make the point that under the rules it is in order at any time to move to go into Committee of the Whole on the state of the Union on an appropriation bill.

The SPEAKER. The Chair thinks it competent for the House at any time to regulate the conduct of business, and whenever any gentleman can be recognized for that purpose, then it is in order to make the motion provided for in Rule 104.

Mr. HOLMAN. The Chair now recognizes the gentleman from Massachusetts, [Mr. SEELYE?]

The SPEAKER. But the Chair thinks that a gentleman cannot be taken off the floor by any other member for the purpose of making the motion provided for in that rule.

Mr. HOLMAN. But if the gentleman voluntarily yields for that motion?

The SPEAKER. Undoubtedly he may do so.

Mr. SEELYE. I hope the gentleman from Indiana does not understand me as raising any objection to his proposition.

Mr. HOLMAN. No, sir.

Mr. BURCHARD, of Illinois. It is quite unnecessary to raise the question of order at present.

The SPEAKER. If the pending business be laid aside, the Chair will recognize the gentleman from Missouri [Mr. WELLS] to make the motion indicated.

Mr. WELLS, of Missouri. I rise to move that the House now resolve itself into Committee of the Whole for the purpose of considering the Indian appropriation bill.

Mr. WILSON, of Iowa. Before the question of order is left, I desire to call the attention of the gentleman from Indiana to this statement on page 207 of the Digest:

> It is not in order to move a suspension of the rules while the House is acting under a suspension of the rules, unless connected with the business immediately before the House; nor while considering a special order, it having been made under a suspension of the rules, unless connected with the consideration of such special order.

The SPEAKER. The gentleman from Iowa is undoubtedly right in suggesting that the pending business should be laid aside before the gentleman from Missouri can make his motion. The Chair suggested the propriety of laying aside the unfinished business for the present.

Mr. WILSON, of Iowa. I read the statement in the Digest in reply to the gentleman from Indiana.

Mr. HOLMAN. I wish it to be understood I do not yield the point I have made.

The SPEAKER. The Chair inclines to adhere to the judgment he gave an hour ago upon this point.

Mr. HOLMAN. The Chair holds then that when the House is proceeding under a suspension of the rules made on Monday, a motion to suspend the rules to go into Committee of the Whole could not be entertained.

The SPEAKER. The Chair believes this, that where the House is acting under a suspension of the rules it is not competent for the House to again suspend the rules; in other words, to duplicate the suspension of the rules.

Mr. HOLMAN. That is undoubtedly the rule as to the same motion; that is to say, a motion for the suspension of the rules by a two-thirds vote. But the very use of these words "may at any time" all through the rules as to going into Committee of the Whole on the state of the Union with a view to consider appropriation bills, is undoubtedly for the purpose of meeting this case. If a motion is made on Monday to suspend the rules to consider a given business, certainly no other motion to suspend the rules is in order until that is disposed of. But perhaps on the same day, I think on the same day, a motion under Rule 104 may be entertained; for it only requires a majority vote to proceed to the consideration of business in Committee of the Whole. But if there is any difficulty on that point——

The SPEAKER. The gentleman from Indiana [Mr. HOLMAN] must see what confusion it would create in the public business, if the House, while acting under a suspension of the rules, were to proceed to the consideration of other business. If it were to entertain another motion before the disposition of that business to again suspend the rules and go to something else, the business would get into inextricable difficulty.

Mr. HOLMAN. Allow me to suggest, Mr. Speaker——

Mr. BRIGHT. I rise to a point of order. I submit that this debate is entirely out of order, there being no question before the House involving any necessity for it.

Mr. HOLMAN. I move to lay aside the present business that the gentleman from Missouri [Mr. WELLS] may make the motion he has indicated.

The SPEAKER. If that be agreed to the Chair will recognize the gentleman from Massachusetts [Mr. SEELYE] when the unfinished business again comes up.

Mr. SEELYE. Will the Chair permit me to inquire when in regular order, provided the motion now pending before the House is assented to, this unfinished business would again come up?

The SPEAKER. Immediately after the disposition of the bill that the gentleman from Missouri now proposes to bring up. The business on which the gentleman from Massachusetts has been recognized continues right along as unfinished business.

Mr. SEELYE. Will it come up on Monday?

The SPEAKER. It will come up to-day after the Indian appropriation bill is disposed of, if that bill shall be disposed of to-day.

Mr. SEELYE. And if not to-day, will it come up on Monday?

The SPEAKER. On Tuesday.

Mr. SEELYE. It would pass over Monday?

Mr. HOAR. Allow me to inquire of the Chair if it would not come up on Monday after the morning hour, subject, however——

The SPEAKER. Subject to any one being taken off the floor by a motion to suspend the rules.

Mr. HOAR. Not subject to any one being taken off the floor by motion to suspend the rules provided the gentleman on the floor at the time, in other words, provided my colleague, [Mr. SEELYE,] after the call of the States on the expiration of the morning hour on Monday, should be recognized to proceed with his remarks. Then no motion to suspend the rules could be made while he holds the floor.

The SPEAKER. The Chair thinks that on Monday a motion to suspend the rules, which requires a two-thirds vote, has preference of even a motion to suspend the rules which only requires a majority to go into Committee of the Whole on an appropriation bill.

Mr. COX. Suppose the Chair should recognize the gentleman from Massachusetts, could any member then take him off the floor to make that motion to suspend the rules after the expiration of the morning hour on Monday?

Mr. WILSON, of Iowa. Certainly not; because he is speaking under a suspension of the rules.

The SPEAKER. He is speaking already under a suspension of the rules, and that is the point the Chair stated a moment ago, that a motion to suspend the rules having prevailed and business having come before the House under that suspension, it is not open for any one to make a motion to suspend the rules again.

Mr. COX. The Chair is clearly right in that.

The SPEAKER. The Chair would say that the easy way to dispose of the matter is for the gentleman from Massachusetts [Mr. SEELYE] to take the assurance of the Chair that when this business is finished he will again be recognized.

Mr. SEELYE. I have no hesitation in taking that assurance. My only inquiry is as to when the matter will be likely to come up again, and whether its coming up on Monday would depend upon my taking the floor.

The SPEAKER. The impression of the Chair is that it would be interfered with on Monday, and that the gentleman had better conclude that it will come up on Tuesday.

Mr. HOAR. Is it not competent for the House now by unanimous consent to order that it shall come up on Monday after the morning hour?

The SPEAKER. The House can do anything by unanimous consent. The Chair, however, is inclined, upon first thought, to doubt whether the House on Saturday can by unanimous consent waive a proceeding on Monday, provided that proceeding shall be under a suspension of the rules.

Mr. HURLBUT. Is not this the case: if the motion prevails to postpone the pending matter, so long as the House is in Committee of the Whole, when the House goes out of Committee of the Whole the gentleman from Massachusetts will have the floor?

The SPEAKER. The Chair has so decided, and the question is upon the motion of the gentleman from Indiana that the House resolve itself into Committee of the Whole on the state of the Union.

Mr. WELLS, of Missouri. Pending that motion, I move that all general debate upon the Indian appropriation bill be limited to two hours.

The motion to limit debate was agreed to.

Mr. PAYNE. Before the House goes into Committee of the Whole, I desire to give notice that I shall move on Tuesday, immediately after the reading of the Journal, that the report of the joint committee on the counting of the electoral votes for President and Vice-President shall be made a special order for that day and Wednesday, with evening sessions.

The SPEAKER. The Chair desires to inform the gentleman from Ohio that he would be bound, notwithstanding this notice, to recognize the gentleman from Massachusetts [Mr. SEELYE] on that day after the morning hour.

Mr. BURCHARD, of Illinois. I desire the question to be taken upon the motion to go into Committee of the Whole, so that the House may have an opportunity to vote between going into Committee of the Whole or allowing the gentleman from Massachusetts to proceed.

Mr. HOLMAN. I suggest to the gentleman that there is an immediate necessity for the passage of this bill now.

Mr. WILSON, of Iowa. Before the House votes on the motion to go into Committee of the Whole, I desire to know how much time is to be allowed for general debate.

Mr. HOLMAN. I understand that two hours are allowed for general debate.

Mr. WILSON, of Iowa. That is, debate on political questions?

Mr. HOLMAN. The gentleman from Missouri [Mr. WELLS] can answer that question better than I can.

Mr. WILSON, of Iowa. I want to make the point that it is not fair to take the gentleman from Massachusetts off the floor and go into Committee of the Whole and have general debate.

Mr. HOLMAN. I quite agree with the gentleman in that.

Mr. WILSON, of Iowa. There is a rule of the House upon the subject under which I shall raise a point of order the moment any gentleman attempts to speak upon questions not connected with the bill itself.

Mr. BURCHARD, of Illinois. I hope the gentleman from Massachusetts will be permitted to proceed.

The SPEAKER. The sense of the House can be tested.

Mr. HOLMAN. Allow me to suggest to the gentleman from Iowa that I understand the gentleman from Missouri [Mr. WELLS] is compelled, by order of the House, to allow a couple of hours for general debate upon this bill, and if those two hours are not occupied now it is quite clear that we cannot get through the bill as speedily as it ought to be done.

Mr. BURCHARD, of Illinois. I do not see the necessity.

Mr. DURHAM. Is it in order to move an amendment to the motion to close debate so as to limit it to one hour?

The SPEAKER. The House has already decided to give two hours to general debate.

The question was taken on Mr. HOLMAN's motion; and on a division there were—ayes 60, noes 51.

Mr. TOWNSEND, of New York. I call for the yeas and nays.

Mr. HOLMAN. Yes, if gentlemen opposite do not wish to go on with the appropriation bills, let us have a record on the subject.

Mr. KASSON. We can reconsider the vote by which the motion to allow two hours for debate was agreed to.

Mr. WELLS, of Missouri. I trust not.

Mr. KASSON. That is the point of difficulty. We have no objection to going on with the appropriation bills, but if general debate is to go on, then certainly the gentleman from Massachusetts [Mr. SEELYE] should be allowed to proceed.

Mr. HOLMAN. The gentleman knows that there have to be two hours for general debate on the bill, and the question is whether that debate shall take place to-day so that we may proceed with the bill and pass it Tuesday.

Mr. KASSON. I do not know that any general debate is necessary on this appropriation bill, although I do know that it is necessary to pass the bill promptly.

Mr. HOLMAN. I should be perfectly willing to proceed with the immediate consideration of the bill itself.

Mr. WELLS, of Missouri. It has been customary always to allow some general debate on the appropriation bills.

Mr. SEELYE. May I be allowed to make the request that the gentleman from New York [Mr. TOWNSEND] will withdraw his call for the yeas and nays and let the vote stand as it has already been announced?

Mr. TOWNSEND, of New York. In compliance with the wish of the gentleman from Massachusetts, I withdraw the call for the yeas and nays.

So the motion of Mr. HOLMAN was agreed to.

INDIAN APPROPRIATION BILL.

The House accordingly resolved itself into Committee of the Whole on the state of the Union, (Mr. HATCHER in the chair,) and proceeded to the consideration of the special order, being the bill (H. R. No. 4452) making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June 30, 1878, and for other purposes.

Mr. WELLS, of Missouri. I move to dispense with the first reading of the bill.

The motion was agreed to.

Mr. WILSON, of Iowa. Before the debate commences and while I do not know who is going to speak, I want to have the hundred and fourteenth rule, which controls the discussion of a special order in Committee of the Whole, read.

The Clerk read the rule, as follows:

114. In Committee of the Whole on the state of the Union, the bills shall be taken up and disposed of in their order on the Calendar; but when objection is made to the consideration of a bill, a majority of the committee shall decide, without debate, whether it shall be taken up and disposed of, or laid aside: provided, that general appropriation bills, and, in time of war, bills for raising men or money, and bills concerning a treaty of peace, shall be preferred to all other bills, at the discretion of the committee; and when demanded by any member, the question shall first be put in regard to them; and all debate on special orders shall be confined strictly to the measure under consideration.

Mr. WELLS, of Missouri. I have no means of knowing what the gentleman desires to speak upon.

Mr. WILSON, of Iowa. I do not know who is going to speak, but I will insist that the rules shall be observed. You took the gentleman from Massachusetts [Mr. SEELYE] off the floor in order to go into Committee of the Whole upon an appropriation bill, and I will object to any political debate.

Mr. HOLMAN. It has already been decided by the House that there shall be two hours for general debate.

Mr. WILSON, of Iowa. Yes, under the rule; and I have asked that the rule upon the subject be read.

Mr. WILSHIRE then proceeded to address the committee, but, after a few sentences, was interrupted by

Mr. WILSON, of Iowa, who said: I rise to a point of order.

The CHAIRMAN. The gentleman will state his point of order.

Mr. WILSON, of Iowa. I did not know who was going to speak, and I am glad that I raised the question when I did. Personally I feel kindly toward the gentleman now on the floor, [Mr. WILSHIRE.] But we were told that it was necessary to go on with the consideration of the appropriation bills; the gentleman from Indiana [Mr. HOLMAN] insisted that the public service demanded it. Yet it seems we are to have a speech similar to the one which we expected from the gentleman from Massachusetts, [Mr. SEELYE,] who was taken from the floor. I ask the Chair to rule upon the point I have raised under the rule which I have required to be read.

Mr. HOLMAN. I suggest that the practice has been so uniform heretofore, in regard to general debate on these appropriation bills, that the strict severity of the rule should not now be enforced. I trust that it will not be pressed by the gentleman from Iowa [Mr. WILSON] upon this bill; we are to have only two hours' debate.

Mr. COX. I raise the point that it is too late for the gentleman from Iowa [Mr. WILSON] now to make his point upon the gentleman from Arkansas, [Mr. WILSHIRE.]

Mr. WILSON, of Iowa. Is it too late to make the point, as soon as I learn what the gentleman is to speak about? I did make the point before he spoke a word.

Mr. COX. Let me say that it is altogether probable that the gentleman from Arkansas will speak directly to the bill before he gets through.

Mr. WILSHIRE. I desire to say for the information of the gentleman from Iowa [Mr. WILSON] that it is quite probable that before I conclude I shall have something to say about Indian affairs.

Mr. WILSON, of Iowa. The rule directs that debate upon a special order shall be confined strictly to the subject under consideration.

Mr. WILSHIRE. I do not understand that the rule puts in the mouth of any gentleman the words he shall employ in conveying his ideas to this committee.

Mr. KASSON. I think the practice heretofore has been that the Chair, on the reading of the rule, should state to the gentleman about to address the committee the fact that such a rule exists, and then it is left to the discretion of that gentleman to apply his remarks to the bill under consideration. I think that has been the practice heretofore, and I suggest to my colleague [Mr. WILSON] that it is not easy for the Chair to prescribe the form of speech.

The CHAIRMAN. The attention of the Chair having been called to the rule, the Chair is bound to enforce it, and to say to the gentleman from Arkansas that under the rule he must confine his remarks to the subject of the bill under consideration.

Mr. HOLMAN. I trust the gentleman from Iowa [Mr. WILSON] will waive his point of order for the present, inasmuch as it has not been customary to enforce the rule strictly on these appropriation bills. I trust, however, the rule will be enforced hereafter, but I ask the gentleman to waive his point for the present.

Mr. WILSON, of Iowa. I have considered this matter very carefully. I have no objection to the gentleman from Arkansas [Mr. WILSHIRE] having his remarks printed in the RECORD, if he so desires. But in consideration of the way in which this matter has come up, the urgent request of my friend from Indiana [Mr. HOLMAN] that the House should proceed immediately to the consideration of the Indian appropriation bill, and the further fact that the gentleman from Massachusetts [Mr. SEELYE] was taken from the floor for that purpose, I cannot see how, with any degree of consistency, I can refrain from insisting upon the strict application of the rule.

Mr. COX. How can the gentleman from Iowa [Mr. WILSON] tell what will be the drift of the speech of my friend from Arkansas, [Mr. WILSHIRE?] He is now speaking as it were *in limine* upon the Presidential election. For all that we know he may comprehend all races and conditions of men in his consideration of that question. If his

mind is as comprehensive as I think it is, he will wind up by including the red man. I hope that the gentleman from Arkansas, after the admonition of the Chair, will be allowed to proceed in order.

Mr. WELLS, of Missouri. The gentleman from Arkansas applied to me for a little time when this bill should come up, saying that he would soon be obliged to leave for his home in Arkansas on account of sickness in his family, and he was anxious to submit some remarks to the House. I trust that, under the circumstances, the gentleman from Iowa will withdraw his objection.

Mr. WILSON, of Iowa. If the gentleman from Arkansas wishes to submit his remarks at this time because he is obliged to leave for his home on account of sickness in his family, I will for the present withdraw my point of order. But I give notice that I will insist upon it and not waive it upon the next gentleman who undertakes to address the committee.

Mr. WILSHIRE then resumed and concluded his remarks, which were as follows:

Mr. Chairman, I am under great obligation to the gentleman from Missouri [Mr. WELLS] for this opportunity of presenting a few remarks on the state of the Union.

Sir, I had not thought at the beginning of this session of intruding any remarks of mine upon the attention of the members of this House. But the present situation of the country is such that it is the imperative duty of every Representative to contribute what he can to a peaceful solution.

In the determination of the grave questions presented by the various complications growing out of the late presidential election the defects of the national Constitution and laws are daily becoming more apparent and the peace and happiness of our people becoming more and more endangered.

These questions not only engage the serious attention of the people of the whole country, of all political parties, but involve the life of the Republic. Grave responsibilities now rest upon the representatives of the people in this Congress, responsibilities that I hope and believe are duly appreciated by all. If so, then some plan can and must be adopted by which these questions may be justly settled without impairing the great principles of our republican institutions.

The primary question, and one that seems to me to attract the most immediate attention, is, who were chosen President and Vice-President at the late election? The secondary question involved, and the one of greater magnitude than any that ever has arisen, or that ever can arise in this Government, is, shall we, in the settlement of the first, establish a precedent, not only inconsistent with, but one that must inevitably, sooner or later, sap the foundation of our republican system by consuming its most vital element, that of the "right of the people to rule?"

In my humble opinion a correct and just settlement of the question of which of the two candidates was elected must be upon the basis of religiously observing and preserving this great right. If we do so, then human rights and personal liberty are assured facts in this country; do otherwise, and the second century of the Republic will witness its downfall.

Sir, to understand my position correctly, I will go back to the foundation of free government and republican institutions, as I understand them. I am not one of those who believe in a higher-law doctrine, as understood in political circles a few years ago, but I do believe that there are rights of the people resting upon great fundamental principles of natural law, that rise in their majesty and power above constitutions and legislative enactments, or the action of the authorities under either, when those rights are assailed or attempted to be impaired. Among those rights is that of choosing those who are to exercise the powers they have delegated to their representatives or servants, without any restraint in elections, or hinderance by officers or returning boards. This right is the chief corner-stone upon which rests all there is of our boasted American liberty.

This doctrine was fully announced by the patriotic founders of the Republic in the Declaration of Independence, in which, among other things, it is declared that—

> All men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.

It is to secure and protect those rights that written constitutions are made, not to defeat or in the least impair them. Indeed those rights are inherent in the people; they are incapable of being divested of them, either by their own consent or the will of others. As an inseperable incident to these natural rights is the well-recognized doctrine that the people are the source of power, and must be permitted to choose their public servants. This is manifest from the declaration that the just powers of government are derived "from the consent of the governed."

Nor, sir, am I one of those who would detract from the Constitution of the United States the least of that high veneration we have all been taught to entertain for it; but I may be permitted to say that it must not be regarded as the charter of our liberties or the origin of private rights. In support of this view of the Constitution, and the rights of the people which I regard as paramount to it, I send to the Clerk's desk and ask to have read an argument of the late Attorney-General, Mr. Bates, made as far back as 1851, long before the causes arose that have recently excited the passions of men in this country; which argument I find incorporated in the very admirable work of Judge Cooley on Constitutional Limitations.

The Clerk read as follows:

> What is a constitution, and what are its objects?
>
> It is easier to tell what it is not than what it is. It is not the beginning of a community, nor the origin of private rights; it is not the foundation of law, nor the incipient state of government; it is not the cause but the consequence of personal freedom; it grants no rights to the people, but is the creature of their power, the instrument of their convenience. Designed for their protection in the enjoyment of the rights and powers which they possessed before the constitution was made, it is but the frame-work of the political government, and necessarily based upon the pre-existing laws, rights, habits, and modes of thought. There is nothing primitive in it; it is all derived from a known source. It presupposes an organized society, law, order, property, personal freedom, a love of political liberty, and enough of cultivated intelligence to know how to guard it against the encroachments of tyranny.
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> A written constitution is in every instance a limitation upon the powers of government in the hands of agents; for there never was a written republican constitution which delegated to functionaries all the latent powers which lie dormant in every nation, and are boundless in extent and incapable of definition.

Mr. WILSHIRE. Mr. Chairman, this definition of a written constitution is sound in principle, correct in theory, and comprehensive in practice; it demands the admiration of all, and challenges successful contradiction by any. Because the Constitution declares and guards individual rights, it does not follow that those rights owe their origin to it. Judge Cooley, in discussing the powers conferred by constitutions, says:

> These instruments measure the powers of the rulers, but do not measure the rights of the governed.

Sir, with my understanding of the natural and inherent rights and powers of the people in this country, and the powers delegated by them under the Constitution for governmental purposes, I am constrained to the belief that there are great natural rights that the people have not surrendered, nor indeed can they, among which is the right to rule. It must be borne in mind that before we had a constitution there were usages, customs, maxims, habits of life, modes of thought, and methods of regulating communities—the precepts which have come from the revolutions which have overturned tyrannies, the sentiments of manly independence and self-control that threw off the yoke of monarchical oppression. If all these be not recognized as forming a guide for the interpretation of the Constitution and the rights of the people under it, then all there is left of our governmental charter is but a lifeless skeleton; the great principles of free government would be crushed out, and the living, breathing spirit which supplies the interpretation of the words of the Constitution would be utterly lost and gone.

Mr. Justice Story well said that "constitutional freedom means something more than liberty permitted." It consists in the civil and political rights which were known to exist, and which are absolutely guaranteed, assured, and guarded by the Constitution in one's liberty as a man and a citizen; his right to vote, his right to hold office, his right to worship God according to the dictates of his own conscience, and his equality with all others who are his fellow-citizens. They are great, natural, and inalienable rights, and imperishable.

Mr. Webster, the great constitutional lawyer, said that "written constitutions sanctify and confirm great principles, but the latter are prior in existence to the former." The establishment of our free institutions is the gradual work of time and experience, resulting from a more thorough understanding of the natural and inherent rights of man, and not the immediate result of our written Constitution. Experiments in representative government both in England and the American Colonies finally led to the establishment of our more perfect system of securing and preserving the well-recognized pre-existing rights, affirmed in the Declaration of Independence as sacred, imperishable, and inalienable.

For the full and complete enjoyment of our natural rights under the Constitution, the most important duty devolving upon us is that of voting at elections for the selection of our public servants.

Elections, in the manner they are held for that purpose in this country, are but forms prescribed under the Constitution for the exercise of a great natural right, which, in man, in a state of nature, was the right to rule and protect himself, his liberty, and his property, but which in the aggregation of many people, as in this country, under a republican form of government, is the right to choose those who are to obey their will and execute their commands. So the natural right of the citizen and his duty to participate in the selection of public officers are reciprocal, the latter being inseparable from as growing out of the former. This leads to the conclusion that the rights of the citizen to vote at such elections and have his vote returned and truly counted is one that cannot be denied or defeated by any construction of the Constitution or laws of the country, or by the action of election officers or canvassing boards; and, when that right is attempted to be defeated by the action of any authority, such action must be treated as a nullity in the determination of that election, and the will of the voter recognized and regarded. This is the logical conclusion to be drawn from the theory of our Government.

Two questions are to be determined: First, what should the representatives of the people do in so great an emergency to produce a just and peaceful settlement of the questions presented? Second, how shall that be done? The former can be more easily answered than the latter.

It is the first time in the history of the Government that such questions have arisen. So we have but little, if any, light in the way of

precedent to guide us. The modes formerly adopted do not now seem to be acceptable to the dominant party in the other branch of this Congress. To my mind the thing to be done is for the representatives of the people in both Houses of Congress to first, by all possible means that are just and fair, ascertain the true state of facts relating to the elections held in those States now called in question, and then, like patriots, forgetting party spirit, agree on some plan that comports with the genius of our institutions, and not violate the Constitution that will commend itself to the intelligence of the country.

The language of the Constitution, conferring the power on the President of the Senate, in the presence of the Senate and House of Representatives, to open the certificates or returns does not confer on that officer the power to count the votes or to determine the important questions that may arise prior to the count. It is insisted by some that the Constitution by implication does confer that power. I cannot concur in that view, for the reasons, first, that such a power vested in one person, over whose action in so doing, according to that theory, there would be no control and from which there could be no appeal, *except to arms*, however wrongfully or arbitrarily he might exercise the power, does not comport with the well-recognized checks and balances running through our whole system of Government. Second, because the constitutional requirement that the President of the Senate shall, in the presence of the Senate and House, "open all the certificates" clearly implies that the votes "shall then be counted" by the two Houses in joint assembly, and not by the President of the Senate. There are stronger grounds in reason for the latter implication than for the former, because the requirement that the two Houses should be present means that it was for some purpose: There seem to be but two purposes requiring their presence: one to pass upon all questions of the returns and their right to be counted that might arise; the other to count the votes, when it is ascertained by them what votes are to be counted.

This seems to me to be the most reasonable and harmonious construction of that clause of the Constitution. Any other would render meaningless, idle, and nugatory the requirement that both Houses should be present. This view is not repugnant to the power and duty conferred upon the President of the Senate. The universally recognized rule of construction and applicable in this case is:

That *effect is to be given, if possible, to the whole instrument* and to every section and clause. If different portions seem to conflict, the court must harmonize them, if practicable, and lean in favor of a construction which will render every word operative rather than one which may make some idle and nugatory.

The Constitution, construed by this rule, would undoubtedly deny the right of the President of the Senate to do more than open the returns in the presence of both Houses and leave the determination of all other questions to the two Houses.

It seems quite clear that it has always been understood by preceding Congresses that the power to count the votes for President and Vice-President, and determine all questions growing out of that count or in any way relating to it, belonged to the two Houses. We find that in the determination of Washington's second election this power was recognized.

Mr. Chairman, that has been the uniform practice heretofore, as shown by all the precedents. Up to and including the count of the electoral vote in the year 1805 the two Houses met for that purpose in the Senate Chamber, since then in the Hall of the House of Representatives.

The most important question presented for determination in the present case seems to be what is the proper tribunal to determine the votes to be counted. It will be seen by reference to the digest of the proceedings of the two Houses, made by Mr. McDonald, the present Chief Clerk of the Senate, that there have been five instances where questions of this sort have arisen and been decided by the agreement of the two Houses in all cases where the votes objected to were counted. Notable among those cases is that of the vote of the State of Indiana in 1817. The determination of that question elicited considerable and able discussion, and with very few exceptions it was held or maintained that the Constitution requiring the two Houses to assemble in joint session for the purpose of causing the votes for President and Vice-President to be counted imposed upon the two Houses the performance of the highest duty that could devolve on a public body, namely, to ascertain who had been elected *by the people* to administer their national affairs.

The mere operation of counting the votes, after it is determined what votes shall be counted, it must be conceded, is of little importance, when it must be done in the presence of the two bodies, and it makes little difference whether it be done by the President of the Senate or by tellers appointed by both Houses. The material question is, does the President of the Senate possess the sole power of deciding, where there are conflicting returns, which shall be counted or whether either shall be counted, and deciding whether returns presented are legally sufficient; or shall such questions be determined by the two Houses, when assembled in obedience to the command of the Constitution? True it is that the Constitution is silent on the subject, but it is quite as silent so far as the power of the President of the Senate is concerned. The two Houses being called upon to be present and, as I insist, enumerate the votes or cause the same to be done, they must of necessity possess the power of deciding what are votes and what votes are to be counted. Any other construction of the Constitution would render the provisionn requiring the presence of the two Houses nugatory and meaningless.

Heretofore in the history of this Government there have never been raised questions so grave, commanding the earnest consideration and impartial judgment of Congress and the people, as those now presented and which must be decided. Similar ones have arisen in the past, but in no instance did their determination decide the election, as will probably be the result in the present case. Therefore we are brought face to face with the issue presented and must decide it.

Up to the present time the only questions presented and disposed of were whether the votes of particular States should be counted, and in every instance in cases where the decision either way would not change the result. The present case is quite different in the effect of a decision, as well as the nature of the questions to be decided; for the determination of them will decide who was elected President, and we must not only say what votes may be counted, but will have to decide in some instances which of two returns from the same State are the true ones, if any be counted. Heretofore, when similar questions were presented, and when they could have been settled and some permanent rule established to govern in the future without being followed by consequences so serious as those now threatening, these questions were ingeniously avoided, or, in the language of a distinguished gentleman, "given the go-by."

It is unfortunate that some plan, either by legislation or constitutional amendment, had not been adopted at a time when no violent or serious results could have followed. But it was not done; and it now becomes the duty of Congress, at least for the purpose of determining the election of the next Chief Magistrate, to do so; and I most earnestly hope and confidently believe that there is enough of the patriotic fire that animated the hearts of our revolutionary ancestors remaining in the two Houses of Congress to rise in such an emergency above partisan feeling or personal ambition, and agree upon some fair and just plan for the settlement of the difficult questions presented.

The absence of any mode being prescribed by the express declaration of the Constitution or by statute leads to many and serious difficulties. I will call attention to a few that are presented to my mind:

The notion that it is the prerogative of the President of the Senate to decide, in the last resort, what are the lawful electoral votes that shall be counted is not to my mind entitled to respectful consideration. He is to open the certificates, or certified lists, sent to him by the electors; but that he shall count the vote is not said, and, if it was, no greater power would thereby belong to him than would belong to the Secretary of the Senate and tellers if the Constitution provided that the certified lists should be transmitted sealed to the seat of Government, directed to the Secretary of the Senate; that the Secretary of the Senate should, in the presence of the Senate and House, open all the certificates, and that the votes should then be counted, without saying by whom or with the addition of the words "by tellers."

The Constitution makes a man not a natural-born citizen of the United States ineligible to the office of President, as it does one not thirty-five years of age or who has not been fourteen years a resident within the United States.

By the twelfth article of amendment to the Constitution, the *person* having the greatest number of votes for President shall be President, if such number be a majority of the whole number of electors appointed, and if *no person* have such majority then the House is to elect.

Suppose, now, that when the two Houses come together and the votes are to be counted, it is discovered, by any means, that one of the *persons* voted for is not a natural-born citizen, or is not thirty-five years of age, or has not resided fourteen years in the United States, are the votes given for him to be counted? Clearly not, for the purpose of finding him elected or of making him President. Suppose his ineligibility is not made known until the votes have been counted and he is found to have the majority required by the Constitution. He cannot be President. There must necessarily be power *somewhere* to decide that he is not elected President. There must be jurisdiction somewhere then to inquire into and determine the fact that disqualifies. If each House is to inquire and adjudicate separately and independently of the other, then they are two co-equal tribunals, and if one decides him eligible and elected and the other decides him not so, nothing is settled, nothing finally decided. One adjudication cannot prevail over the other, they being of equal weight. They reciprocally annul each other, and there being no arbiter between them, the Constitution becomes an ignominious failure.

By the Constitution, the *person* having the required majority is to be President; and if no *person* have that, the House of Representatives is to elect. A person not eligible is not a person within the meaning of these provisions. The words "qualified," "competent," or "eligible" are well understood; for otherwise it might be necessary to declare a woman elected President—a woman is certainly a "person."

Again, by the Constitution, if none have a majority of the whole number of electors appointed, the House is *immediately* to choose one of three receiving the highest number of votes for President. If one of these be found ineligible, must not the other, if there be but two, or one of the others, if there be more than two, be at once chosen? The House could not choose the ineligible person, and therefore it must have the right, if no other mode is provided by law, to ascertain and determine the ineligibility, to inquire in regard to it and decide in the last resort.

If no person have a majority the House is to choose from the three highest on the list, if there be so many. Suppose there were four, and the one who has the majority required is proven ineligible. To have a right to vote for the fourth, or lowest, the House is by the Constitution forbidden to consider the vote for the person ineligible, and therefore must necessarily have the power to decide for itself whether he is ineligible. If he is, the fourth has the right to be one of the persons between whom it is to choose, and to be President if he obtain the votes of a majority of the States.

It is not necessary to inquire as to the result, or the course to be adopted, if only two having been voted for the one having the required majority was found ineligible. Neither provision of the Constitution seems to cover such a case, as there cannot be two persons, excluding the person ineligible, between whom to choose; and the person eligible has not a majority of the votes "of the whole number of electors appointed."

Suppose, again, that four persons were voted for, and no one has the required majority; the House is limited to the persons having the highest number of votes, not exceeding three from whom to choose. One, then, is to be excluded. Which? The one having the lowest vote? Who, then, is to decide which of the four received the lowest vote? Clearly, the House.

Suppose, also, it was contended that the electors of one State, who voted for the person having the highest number of votes, were not the lawful electors of the State, but only made to appear so by fraudulent action on the part of a returning board, or by a certificate fraudulently caused to be given by the executive of a State? And suppose there were two executives, each claiming to be lawfully in office, certifying to different lists of electors; and that one set had voted for one person and the other set for another, and the question who had the highest or lowest vote must depend on the question which were lawful electors, and this on the question who was lawfully governor?

It is perfectly evident to my mind that to determine whether A or B must be excluded as having the lowest vote, the House must determine what are *legal* votes of the given State, unless there be some mode prescribed *by law* for determining this elsewhere or otherwise. If upon any such question the Senate is to decide separately and the House separately, there is a dead-lock between them and the Constitution does not cover the case. Must the House surrender to the Senate and substitute the Senate's judgment for its own? If so, then it will be idle for the House to consider the question at all. If the power to decide belongs to the Senate alone, the House can proceed to elect only when the Senate permits it by deciding that it has the right to do so. But no word in the Constitution sets the Senate above the House in this matter.

If the House should decide that Tilden and Hendricks have a lawful majority of all the lawful electoral votes cast, and the Senate decides that Hayes and Wheeler have it, and there is no arbiter to decide between them, the result is anarchy. Such an emergency as that can be met only by affirmative legislation or by amending the Constitution.

If there were three candidates for each office, and the House, rejecting the votes of one or more States, which if counted would give A the majority for President and M the majority for Vice-President, should declare that no one had the required majority, and thereupon elect F President; and the Senate should decide that A and M were elected, and should therefore recognize M as Vice-President, declining to proceed to an election, it is clear that one or the other would hold his office by usurpation and the Constitution is proven an abortion.

The Constitution contemplates no delay. The votes are to be opened in the presence of the two Houses and "*then*" to be counted; all matters of detail in regard to counting the votes are left to be prescribed by law. If there be found to be no choice, the House is *immediately* to choose the President by ballot. Either there can be no contest there in regard to the votes from any State, or the eligibility of any elector, the validity of any certificate, or any contest that may arise must be settled by the Senate and House. It is ridiculous to suppose that such powers are intrusted to the President of the Senate, even if he is to count as well as open the votes; to count is simply to enumerate, a purely ministerial duty.

It has always been a high and solemn duty, hitherto neglected by Congress, to provide by law for the due exercise by itself of this high jurisdiction. This House owes it now to the people to insist upon the enactment of such a law, or by proposing a suitable amendment of the Constitution, that republican government may not become contemptible. By the bill reported by the joint committee, the two Houses do not part with their constitutional powers, but prescribe a mode of their exercise in this great emergency, the importance of which cannot be too keenly felt.

In the last resort, it being determined that no person is elected, the House, having to elect, must determine its own jurisdiction.

It may be insisted that the questions that may arise in regard to the election and qualification of electors of a State must be settled in some way provided by the *law of the State*; that without the certificate caused to be given by the executive no list of votes certified by persons as electors can be regarded, and that the certificate in due form accompany the certificate of votes; these *must be* counted.

Suppose, then, that the Senate decides, as a matter of law, that the certificate caused to be given by the executive is conclusive and cannot be impeached, and the House decides that it is not conclusive and can be impeached. There is a dead-lock; neither opinion can lawfully prevail over the other; no tribunal can decide which is right. The Constitution dies of paralysis; as fraud vitiates everything into which it enters, even the most solemn judgments, it would be a most lame and impotent conclusion to hold that either the Senate or House must not only look patiently on and see a State cheated out of its votes, but even become a party to the fraud.

Suppose, again, that the ineligibility of one elector was not known until his vote was being counted; certainly the question whether it should be counted could be raised, and the Senate might decide that it could not and the House that it could. Suppose that it were alleged that the list of votes had been tampered with, or a forged list substituted, would this not raise an issue to be in some way determined? And when and how would it be determined, if each House would have the right to pass upon it separately and independently? If they find differently on the *facts*, all is at sea again.

There should long ago have been provision made by law for all these contingencies. To live under a system of government by which questions on which the legitimacy of magistrates and the peace of the country depends are to be submitted for decision to two bodies or tribunals at the same time, when if they disagree there can be no decision, no final settlement would be intolerable. A system or device like that would be discreditable to a less Christian and civilized people than ours.

The two Houses are not dummies, defenseless against frauds that shrewd rascals may perpetrate; bound to permit their tellers to count any votes that are clothed with a *prima facie* semblance of authority and legality without regard to their legality or truthfulness.

Sir, questions growing out of the late election *have* already *arisen that must be settled* or worse will come of them. Questions will continually arise which must be decided, if possible, without appeal to arms.

If no law be enacted on the subject and the Senate insists, to the end, that no vote shall be rejected unless by concurrent vote of each House, the House, in accordance with the well and long-recognized usage of both Houses heretofore, will insist that the vote of one House shall reject. If the matter stands thus until the two Houses meet to count the votes, with the question in dispute whether the former usages and rules of the two Houses are in force or should be observed, each body will of course adhere to its own views, and everything must come to a dead halt. There will be two Houses blocking each other's way, and the wit and ingenuity of man will not there be able to find a peaceful solution of the difficulty. There will be an end of constitutional government and anarchy will rule in its place; and yet we have fancied that we were wise enough to govern ourselves, and magnify the Constitution.

The Constitution provides that the Senators shall be chosen by the *Legislature* of each State. It will be remembered that when Mr. Harlan, of Iowa, was decided not to have been legally elected, Mr. Benjamin argued that no one could be legally Senator unless elected by a majority of each house of the Legislature voting by itself, and as the Legislature must elect *as a Legislature*, there was force in the argument. But by an act of Congress, after a vote taken in each house of a Legislature for Senator, if no one has a majority of votes of both, the two houses *must* meet in joint assembly and a majority of individual votes of members of both houses elect; so that one *can* be elected Senator without obtaining a single vote in the upper and smaller body of the State Legislature. As the Senators now in office were all, or many of them, elected in this manner, they will hardly venture to say that they were not chosen by the Legislatures or that the mode was not a fair one, and refuse to resort to it in another case where it would be equally fair, and where it offers the means of having fairly decided all questions that arise, and decided finally and peaceably.

It is unfortunate that a law upon this subject has to be enacted when it must apply to a case already arisen; but if it be wise and necessary, just and fair, for all cases that have arisen, or that may arise, and will avoid dead-locks and anarchy, it is of little moment that one party *may*, just now, win and another lose by it. Let the people see that the Senate and House are not likely to come together breast to breast, like two locomotives meeting each other, and that whatever questions may arise will be settled by a majority of their votes, and there will come up from them a universal voice of approval; there will be a universal sense of relief, a feeling of gladness all over the land. It is not the quarrel that disturbs the country, but that there is no lawful and feasible way to settle the quarrel. The people know that makeshifts will not do it, and that procrastination in this matter will only lead to further complications and more serious consequences.

The true object of both Houses should be, and I hope will be, in the exercise of their constitutional powers, to ascertain which, if either, of the candidates for President and Vice-President were elected by the *votes* of the *people*, fairly polled, honestly and fairly counted and returned, and honestly and legally canvassed and certified.

To accomplish this end, should the bill reported by the joint committee fail to become a law, it would seem that it would be right and just that a rule should be established requiring the two Houses in joint session to settle all such questions, and upon the question of wholly rejecting the votes of a State, or of substituting other votes for those *prima facie* entitled to be counted, the rejection or substitu-

tion should not be adjudged by a mere majority of the members of the two Houses in joint session, but by a vote of at least three-fifths of the members of the two Houses present and voting. This requirement would, it seems to me, free the mode of adjudication of its partisan objections, and secure a more just and satisfactory settlement of such questions.

The separate powers of the House are defined by the Constitution. It possesses the powers of the House of Commons of England in that it may censure the government, pass a vote of want of confidence, and compel acquiescence in its will by President and Senate by threatening to stop supplies. It only has to call into exercise its constitutional powers to at once curb the Senate in offensively asserting a superiority over it.

Mr. Chairman, the Constitution will not stand the strain of another civil war; it is almost *in articulo mortis* now. A dead-lock such as I have described is death to constitutional liberty, and another power than that of the Constitution becomes sovereign. Let us see how early that may come.

Suppose nothing is done by Congress in the matter and the Senate demands that the House shall, when the time arrives for counting the votes, repair to the Senate Chamber. The House declines. The Senate, in its dignity, refuses to go to the Hall of the House of Representatives. The votes then cannot constitutionally be counted. But the Senate alone, or its President, counts them without right; and the House acts as if no one were elected and elects a President, equally without right, because forsooth the electors *have* elected some one. A most alarming condition of public affairs would exist.

Suppose again that difficulty over, and the President of the Senate and the Speaker of the House presiding; so soon as a question of any sort comes up to be decided by them and they disagree, who is to settle it?

If the Senate is to give its opinion and decision, and the House its opinion and decision, they will probably disagree; and here is the same difficulty. The bill under consideration is intended to provide against such a contingency; yet I believe the plan I propose of deciding such questions finally should by the two Houses in joint session, and, to reject or exclude votes, require a three-fifths vote of the joint assembly.

As before remarked, the questions that will arise are legal and constitutional questions, requiring for their solution the exercise of judicial powers. If to decide them two *bodies* of men, one large and the other small, have equal voices and can only decide by agreeing, the process is not judicial in its nature. There cannot be two judges, the Senate and the House acting separately.

A decision pronounces the conclusions to which *individual* intellect comes upon the law and the facts, and a final decision is that in which the larger number of the individual intellects concur.

The opinion of a Senator, because a Senator, is not entitled to five times the weight to which it would be entitled if he were a member of the House. Each Senator and Representative in the determination of the questions at issue is invested with judicial functions, and each is the equal of the other in this great tribunal. The decision of the right then *must* be according to the majority of individual opinions; but it may, and I think ought to be agreed and enacted that, upon certain most grave questions, the majority shall be of three-fifths, or less or more as may be thought best. It is my deliberate opinion that such a mode would satisfy all sober and just men everywhere.

The silence of the Constitution on the subject of determining such important questions does not argue that Congress has not the power to prescribe some mode by which such questions may be decided.

As before remarked, the power conferred on the President of the Senate, in the presence of the two Houses to open all the certificates, ends upon the performance of that duty by him; and from that moment his powers are no greater than those of any member of either House. The language that "the votes shall then be counted," clearly implies that they should be counted by the two Houses, or in such manner as the two Houses should direct. The power to count the votes carries with it all powers incidental to its proper exercise.

The power to determine what votes shall be counted is a judicial one, and the two Houses are perfectly competent to make all needful rules for a just and complete exercise of it. It will not be seriously contended that the exercise of such power by the two Houses is forbidden by the Constitution. Then, if it be not forbidden, and we find that it can be exercised by them without repugnance to the power granted to the President of the Senate to "open all the certificates," it is competent for the two Houses to adopt the mode I have suggested, or any other mode that will be effective and accomplish the much-desired end—a just and fair settlement, and the preservation of peace and tranquillity.

A similar question to those now presented arose in 1821 on the right of the State of Missouri to have her electoral votes counted. To avoid the question as to the right of that State to have her votes counted, the joint committee of the two Houses, appointed to consider and report a mode of procedure for the count of the electoral votes—it appearing that the counting of the votes of Missouri either way would not change the result—reported a hypothetical resolution.

During the discussion on the adoption of that resolution, Mr. Clay, a member of the House, in the course of his remarks said, I send to the Clerk's desk to be read.

The Clerk read as follows:

Mr. Clay said "he would merely observe that the difficulty is before us; that we must decide it when the two Houses meet or avoid it by previous arrangement. The committee, being morally certain that the question would arise on the vote in joint meeting, thought it best, as he had before stated, to give it the go-by in this. Suppose this resolution not adopted, the President of the Senate will proceed to open and count the votes, and would the House allow that officer, singly and alone, thus virtually to decide the question of the legality of the votes? If not, how then were they to proceed? Was it to be settled by the decision of the two Houses conjointly or by the two Houses separately? One House would say the votes ought to be counted and the other that they ought not, and then the votes would be lost altogether."

Mr. WILSHIRE. Presenting the very difficulty that I have endeavored to point out. Again in the course of that debate, Mr. Clay said "there was no mode pointed out in the Constitution of settling litigated questions arising in the discharge of this duty; it was a *casus omissus;* and thought it would be proper, either by some act of derivative legislation or by an amendment of the Constitution itself to supply the defect."

The idea that the President of the Senate possessed the power to determine litigated questions growing out of the count of electoral votes has never before now been asserted or claimed; on the contrary, the proceedings of the two Houses, from 1793 to the present time, show that, in every such instance, the power to decide rested with the two Houses. The uniform practice has been for the two Houses, for that purpose, to pass joint resolutions, in each case, prescribing where the two Houses should meet and providing for the appointment of tellers to receive from the President of the Senate the votes as the certificates were opened by him and handed to them, who made a list of the votes as they were declared; and in all cases of objection to the count of any vote or votes by any member of either House, the question arising on the objection has been determined by the two Houses, and in *all* cases requiring the concurrence of both Houses to entitle the vote objected to to be counted. In 1865, this time-honored custom was crystallized into the form of what has been known as the twenty-second joint rule, by the terms of which the persistent objection of either House would reject the vote of a State. I will now call attention to what will be regarded by the republican side of this House, as good authority.

In determining the election of 1864 for President and Vice-President, Congress passed a joint resolution declaring that certain States, naming them, were in rebellion, and that no valid election of electors for President and Vice-President was held in them, and that those States were not entitled to representation in the electoral college, &c. That joint resolution was presented to President Lincoln for his executive approval, which was approved by him and returned to the two Houses with a message, from which I ask to have read the following extract:

The Clerk read as follows:

To the honorable the Senate and House of Representatives:

The joint resolution entitled "joint resolution declaring certain States not entitled to representation in the electoral college," has been signed by the Executive in deference to the view of Congress implied in its passage and presentation to him. In his own view, however, the two Houses of Congress, convened under the twelfth article of the Constitution, have complete power to exclude from counting all electoral votes deemed by them to be illegal, and it is not competent for the Executive to defeat or obstruct that power by a veto.

Mr. WILSHIRE. By that executive message of Mr. Lincoln, whose honesty, ability, and patriotic devotion to the Constitution and laws none will now question, the doctrine that the determination of all questions like those, of what are legal returns and what votes should be counted, belongs to the two Houses was distinctly recognized and officially announced.

Mr. Chairman, in conclusion I will say that neither will this House nor the people tolerate such an usurpation of power by any one person, however high in authority he may be, as that of assuming to determine alone those grave questions, except by the authority and under the direction of the two Houses of Congress.

Sir, the gravity of the questions pending not only call upon Congress to perform one of its most important duties, but are engaging the serious attention of the people of the whole country, and not of one section or class only. The people of the North and the South, the East and the West, the white man and the colored man, the rich and the poor man, the capitalist and the laborer, and producer and the consumer, are all alike interested in and affected by them, and all demanding a just and fair determination of who were elected President and Vice-President at the late election by the *votes* of the *people;* and they will and ought to demand that the will of the people, as expressed by their ballots, shall not be defeated, either by judges of election, returning or canvassing boards, governors' certificates, or the usurpation of power by the President of the Senate.

It is a universally recognized doctrine that, in all contested elections depending for their determination upon majorities, the power to determine will always examine the ballots to ascertain which of the contestants were the choice of the people. The questions before us are in the nature of a contested election; they, in their determination, reach back and appeal to those great natural and inherent rights of man, that existed prior to the Constitution or the creation of returning boards and rise pre-eminently above either when invaded.

Sir, the apparent calm with which the whole people are now looking on, awaiting our action, evidences to my mind their fixed determination to demand at our hands a settlement of those questions upon

the eternal principles of liberty and human rights that this Government was established to maintain, and they will accept nothing less from us.

It may be said that in three of the States, whose votes will be called in question there was intimidation by violence and otherwise. It will not be claimed that any system of elections can be devised so perfect as to absolutely prevent all fraud. I suppose there never was a popular election at which there was not more or less wrong committed. All that human ingenuity can do is to prevent wrongs or fraud in elections as far as possible.

But why has there been intimidation, if any, in those States? Sir, every man who has been much in the Southern States since reconstruction, who will be frank enough to admit it, knows that it has been because the people of those States were not permitted to govern themselves as in the Northern States; that through disfranchisement or the unwarranted use of the Army the free voice of the people has been hushed, liberty imprisoned, and republican institutions virtually assassinated. Even now, in the State of South Carolina, I am informed by members of the committee of this House to investigate the late election in that State that, in order for its peaceful citizens or even high officials to see the governor or attend the supreme court, they must pass the outer door through a guard of militia and the hall through files of armed United States soldiers. What a commentary on republican government! What an insult to the memory of our patriotic fathers! Oppression and misrule stalked abroad in the land. What would not the people in the most favored of the Northern States do under similar circumstances, I ask? They would at once seize and fling the authors of such oppression into the ocean as did the early patriots' British tea.

In the Southern States where the management of their local concerns is entirely in the hands of the people, there are no such cries of force and intimidation. I will instance my own State, Arkansas. It is well known to every gentleman on this floor that before the adoption of the present constitution, which placed the power to govern in the hands of the people, the same as in the Northern States, there were continually complaints of fraud, violence, and intimidation in elections, and murders, for opinion's sake. Since then no more is heard of such things. The people of that State are as quiet, orderly, law-abiding as any in the Union, and the civil and political rights of all classes and color there are as cheerfully accorded and as thoroughly guarded and protected as in any State. This I understand to be the case in all the other Southern States where the people are not robbed of their rights to govern themselves.

Then, sir, the conclusion is irresistible that the causes for any violence or intimidations that may have been committed are attributable entirely to the false, wrong, and contemptible policy of the National Government, pursued in reference to those States, in sustaining a minority against the expressed will of a majority of the people, by the abuse of executive patronage, and the unwarranted use of the Army. Such practices are the legitimate outgrowth of a disregard of those great fundamental rights of man. The people, who have been realizing the effect, have discovered the cause, and, if I mistake them not, are determined to apply the remedy, by religiously enforcing the complete recognition of those great rights.

Unless some plan shall be agreed upon by which these troublesome questions can be lawfully and peaceably adjusted upon the well-understood principles of a representative democracy, anarchy and revolution will follow the failure, and the Constitution will be swallowed up. That expression, I hope, will not be misunderstood. Nothing I would deprecate more than war, and I know that I express the sentiments of the people of the State I in part represent when I say that they want peace and not war, and I feel confident that is the feeling of the people of the whole South. But, sir, while that is true so far as I am concerned, and I believe so far as those I represent are concerned, rather than consent to a surrender of the great right of the ballot, freed from fraud, or force, or defeat by canvassing boards or governor's certificates, I would not only accept but cheerfully invite war with all its horrors.

But I apprehend no such danger. I have too much confidence in the good sense and patriotism of the people's representatives not to believe that some plan will be adopted by which the questions will be settled without doing violence to the fundamental principles of free government.

Let any plan be adopted by the two Houses for the exercise of their constitutional powers in this behalf, that will insure the full force of the voice of the people and the white winged angel of peace will continue to hover over us, insuring perpetuity to the Government, and happiness and contentment to the people.

Mr. WELLS, of Missouri. I now yield one-half hour to the gentleman from Massachusetts, [Mr. TARBOX.]

Mr. TARBOX proceeded to address the committee in remarks given hereafter, but at the end of his first sentence was interrupted by

Mr. WILSON, of Iowa, who said: I raise the same point of order that I did on the gentleman from Arkansas, [Mr. WILSHIRE,] that he must speak to the bill under consideration.

The CHAIRMAN. The gentleman has not yet indicated the line of his remarks.

Mr. WILSON, of Iowa. Well, I will raise the point in due time.

The CHAIRMAN. The gentleman from Massachusetts will proceed in order.

Mr. TARBOX. Mr. Chairman, I suppose that upon the question whether we are to have a country or not depends the question whether the representatives of the people shall in the exercise of their constitutional powers make appropriations for carrying on the Government of the country.

Mr. WILSON, of Iowa. If that remark is in reply to my point of order, I desire to say that the bill now being considered has been made a special order under a suspension of the rules.

The CHAIRMAN. The gentleman has not yet said enough to indicate the character of his remarks.

Mr. CLYMER. It will be impossible for the Chair to determine the question as to the pertinency of the gentleman's remarks until he has heard what the gentleman has to say.

Mr. MILLS. I make the point of order that the rule which the gentleman from Iowa invokes is merely directory to members, and is like the rule which requires every member to vote, but which the Chair has repeatedly decided he has no power to enforce. This rule in regard to latitude of debate is simply a suggestion to the member speaking; and it is a question for him whether he will adhere to it or not. I suggest that it is calling on the Chair to take a very grave responsibility if he is to decide whether the gentleman is speaking directly on the question before the House. The subject immediately under consideration is capable, of course, of being considered from many points of view; and I think it would be very difficult for the Chair to say when the gentleman's remarks are foreign to the question and when they are not. The rule, I submit, was never intended to be enforced by the Chair.

The CHAIRMAN. The Chair has called the attention of the gentleman from Massachusetts to the point that has been raised, and would request him to speak in order.

Mr. TARBOX. Mr. Chairman, I have a most conscientious wish to respect the rules of the House. Certainly I do not desire to transcend the rules as I understand them from the usage here. But in my brief experience in this body I have always observed that when the House is in the Committee of the Whole on a subject of this character, the largest latitude is permitted to debate; and I would ask the gentleman from Iowa to concede to me the grace which has never been refused to him.

Mr. WILSON, of Iowa. The gentleman is not now arguing the point of order; but in this connection I will say that on our side we consider the proceedings of this afternoon as a gross violation of good faith. The gentleman's colleague [Mr. SEELYE] had the floor. He was requested by the gentleman from Indiana [Mr. HOLMAN] in charge of this appropriation bill to let the House go into the Committee of the Whole upon the bill. He consented with the understanding that there was to be *bona fide* consideration.

Now, if the question of the electoral count is to be discussed it occurs to me that it is unfair and unmanly to take the floor away from the gentleman from Massachusetts [Mr. SEELYE] and give it to other gentlemen. We have had three speeches from the majority side of the House and there has been no reply. That is my point, and that is the reason of the feeling I have about this matter. Apart from this point I am very far from intending to offer any discourtesy to the gentleman from Massachusetts, [Mr. TARBOX.]

Mr. O'BRIEN. I was in hearty accord with the gentleman from Iowa [Mr. WILSON] in regard to his point of order when made some three-quarters of an hour ago; and I then sustained him to the extent of my ability, believing that he was right. But as he withdrew the point of order and has allowed this debate to run for three-quarters of an hour, I submit that it is now too late for him to renew the point.

Mr. WILSON, of Iowa. Not at all. I withdrew the point of order because of the plea made by the gentleman from Arkansas or by others on his behalf that on account of sickness in his family he desired to leave for his home and wanted to submit his remarks before going away. The question now is whether it is to be the universal principle to treat the rules in this way.

Mr. MILLS, [to Mr. WILSON, of Iowa.] We will let your side speak two or three hours after this is through.

Mr. WILSON, of Iowa. That does not often happen.

Mr. TOWNSEND, of New York. We have had a regular run of speeches all on one side.

Mr. WILSON, of Iowa. I believe that the Chair ought to put to a gentleman who starts out to make a prepared speech, as I presume this is, whether it bears upon the subject under consideration. If the gentleman says it does, the Chair must take his word of course; but if not, it is the duty of the Chair to rule him out.

The CHAIRMAN. The Chair cannot anticipate what the gentleman is going to say. All that the Chair can do is to call the attention of the gentleman to the rule with the admonition that it has been invoked.

Mr. WILSON, of Iowa. Then the honorable Chairman concedes that if the gentleman does not confine himself to the special order it is his duty to call him to order.

Several MEMBERS. How can he know?

Mr. WILSON, of Iowa. There are some things that members of Congress do not know, [laughter,] but there are some things they are supposed to know.

Mr. COX. As there is a point of order raised here, I desire to say one word. My friend from Iowa charges this side of the House with

a gross violation of faith in taking off the floor our distinguished friend from Massachusetts, [Mr. SEELYE.] Now the gentleman from Massachusetts yielded the floor, and he yielded to two hours for debate upon the bill. This side of the House did not know the nature or character of the debate for the two hours which was already promised. I do not know but what it was definitively to be upon the Indian appropriation bill. But two hours were yielded. There was no lack of faith on this side, and any member of the House with ordinary ingenuity, as has been always illustrated here, can make connection between the Indian bill and appropriations out of the United States Treasury and the general safety of the country. And no man can make a point of order that will hold water. It is like pouring water into a sieve: you cannot possibly hold it. These points of order when made heretofore have always been overruled. All that can be done is what the Chair has done, to admonish the gentleman from Massachusetts to keep if he can within the Indian bill. [Laughter.]

Mr. WILSON, of Iowa. What a spectacle is here presented, a former Speaker of the House indicating the way in which the rules of the House can be violated.

Mr. MILLS. I hope the House will come to order.

Mr. TARBOX proceeded with two or three more sentences of his speech.

Mr. WILSON, of Iowa. I raise the point that the gentleman is not speaking to the pending question at all.

The CHAIRMAN. The gentleman will state his point of order.

Mr. WILSON, of Iowa. The gentleman has proceeded far enough to indicate that he is not speaking to the Indian appropriation bill.

Mr. O'BRIEN. Give him time and he will get to Indian affairs. [Laughter.]

Mr. WILSON, of Iowa. I am not disposed to treat this matter as one of levity. It is a rule of the House, and I wish it enforced. The gentleman from Massachusetts is not speaking to the question under consideration, and I call him to order.

The CHAIRMAN. The Chair will submit the question to the House whether the gentleman from Massachusetts is in order or not.

Mr. WILSON, of Iowa. I beg the Chair's pardon. He cannot submit whether the gentleman from Massachusetts shall be allowed to proceed or not out of order. If he does not take the responsibility to decide the question he can submit it to the committee. I ask then that the title of the bill be read.

Mr. WOOD, of New York. Let me suggest to the gentleman from Iowa that in the discussion of an appropriation bill everything pertaining to the nature of the Government necessarily may be discussed as pertinent to the question of appropriating money out of the United States Treasury.

Mr. WILSON, of Iowa. But this is a special order and the rules limit debate to the special order.

Mr. WOOD, of New York. This is the first time any gentleman has taken any other view than when in Committee of the Whole on the state of the Union on a general appropriation bill the largest latitude of debate should be allowed.

Mr. WILSON, of Iowa. But this is a special order, and the rules are that you must confine all discussion to it.

Mr. WOOD, of New York. The House has allowed general discussion for two hours.

Mr. WILSON, of Iowa. But it should be confined to this subject.

Mr. WOOD, of New York. But that general debate implies we shall have general discussion, and finally the gentleman from Massachusetts may reach a conclusion affecting appropriations under this general appropriation bill.

Mr. WILSON, of Iowa. I ask to have the Chair decide the question of order which I have put to him.

The CHAIRMAN. The Chair has already stated that he cannot decide whether the gentleman from Massachusetts will or not connect what he is now saying with the pending appropriation bill, and he therefore will permit the gentleman from Massachusetts to proceed.

Mr. TARBOX proceeded for a minute or two longer.

Mr. WILSON, of Iowa. Now, Mr. Chairman, I rise to the point of order that the gentleman's remarks are not upon the pending special order. If the Chair is disposed to let this go on, very well; but I ask the decision of the Chair upon the point that the gentleman from Massachusetts is not speaking to the pending bill, and does not intend to speak to the question under discussion.

Mr. BANKS. I should like to say a word on this point of order, if the gentleman from Iowa will permit me.

Mr. WILSON, of Iowa. Certainly.

Mr. BANKS. I do not think my colleague who has the floor should be deprived of it on account of any understanding between my colleague from another part of the State and the chairman of the Committee on Appropriations. Whatever mistake there may have been, it should not be charged to my colleague, who is entitled to the floor.

On the question of order I think the Chair is perfectly right. I understand him to say that he does not as yet so far understand the argument of my colleague as will enable him to decide my colleague will not bring his argument within the pending question. [Laughter.] It must be apparent to every member of the House that a member is not required to put so much force and vigor and convincing argument into his speech as will satisfy every member of the House upon the point which he is speaking to. [Laughter.] Now my friend from Iowa does not see the point in these remarks. [Laughter.] Because he does not see the point it does not follow that the point is not within the rule. For myself, I do see the point.

Mr. WHITE. I rise to a point of order.

The CHAIRMAN. Only one point at a time can be entertained.

Mr. BANKS. I think my colleague is in order, and I hope he will be allowed to speak, even though we should not be satisfied as to the point he is coming to.

Mr. HOAR. State the point.

Mr. BANKS. I will. As I understand this is a bill appropriating money for the support of the Indian service, the Clerk will please read the title of the bill.

The CHAIRMAN. The title of the bill will be read.

The Clerk read as follows:

A bill making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June 30, 1878, and for other purposes.

Mr. BANKS. Now, Mr. Chairman, I understand what is the purpose of this bill. I think I understand the argument of my colleague [Mr. TARBOX] up to this point. He has been speaking of the importance of a just and proper settlement of the presidential election and the selection of the proper presidential candidate. I do not think you know, Mr. Chairman, I do not know myself, but he intends to propose that the settlement of the presidential question shall be referred to the several chiefs of the Indian tribes—[great laughter]—and, if so, he is in perfect order, in better order, I say, than I have known any other member of the House to be in for a long time. I hope the chairman will permit my colleague to go on until he comes to a point when we can see, every one of us, that he is speaking pertinently to the bill under consideration. [Laughter.]

Mr. WILSON, of Iowa. Before I rose the last time to make the point of order, I was satisfied, as the gentleman's time had nearly expired, that he was not to speak at all to the bill under consideration.

Mr. COX. I desire to raise the point of order that all this does not come out of the time of the gentleman from Massachusetts.

Mr. WILSON, of Iowa. Of course not; everybody knows that. I want to reply to the point made by the gentleman from Massachusetts, [Mr. BANKS.] When we go into Committee of the Whole on the state of the Union for the consideration of the general orders which are in Committee of the Whole, a member can speak on any subject he chooses. It is his right to do so. But Rule 114 explicitly states that when we go into Committee of the Whole on a special order members shall confine themselves strictly to that order. Now, the question at issue is: is that a rule or not, or will we defy that rule or not? That is the question.

I do not want to advert again to the manner by which the floor was taken from this side of the House and given to the other. I have spoken on that subject. But I want to know now from the Chair, and finally, whether that rule is to be enforced or not.

The CHAIRMAN. Will the gentleman from Iowa [Mr. WILSON] state whether the Chair can do otherwise than call the attention of the gentleman from Massachusetts [Mr. TARBOX] to the rule and ask that he confine himself within the rule, the Chair not being able to anticipate in what manner that gentleman will connect his present remarks with the question before the committee?

Mr. WILSON, of Iowa. There might be some doubt, Mr. Chairman, if the gentleman rose to speak extemporaneously; but when he rises with a printed speech, I believe the question should be put to his honor whether that speech is pertinent to the question before the committee. That is what I think.

Mr. COX. O, that makes no difference.

Mr. BANKS. I make a motion which I think is in order at this stage of the proceeding. I move that my colleague [Mr. TARBOX] who is on the floor be allowed to proceed in order.

Mr. COX. The point of order has not been sustained.

Mr. BANKS. I ask that the motion I have made be submitted to the committee.

Mr. COX. The gentleman cannot make that motion until the point of order has been sustained.

Mr. BANKS. Certainly it can be submitted now.

The CHAIRMAN. The Chair will call the attention of the gentleman from Massachusetts [Mr. TARBOX] to the one hundred and fourteenth rule and requests him to proceed in order.

Mr. HOSKINS. I submit to the Chair whether as a matter of fact the words in the title of the bill "and for other purposes" are not sufficiently broad to make gentleman's remarks in order.

The CHAIRMAN. The gentleman from Massachusetts will proceed.

Mr. TARBOX then resumed and concluded his remarks, which were as follows:

Mr. Chairman, if ever in the life of the nation a time especially is when moderation, a scrupulous sense of justice, and a patriotic temper should rule the popular heart and judgment and in the public councils, such a time is now. The country is moved to its depths with loyal apprehension both for the high interests of public order and the yet higher interests of the public honor and liberties. The subject of concern is the disputed title to the Presidency, and the body of the controversy regards the electoral votes of the States of South Carolina, Florida, and Louisiana, in each and all of which the authorities

or persons in possession of the State government accredit the republican electors who, in form of law, have certified their votes for the republican candidates. If these certificates are admitted in the count by Congress, the presidential republican candidates are apparently chosen by a majority of one vote in the electoral college, provided the whole vote of Oregon shall be counted for that side. And yet it is the superior judgment of the country, and by no means a wholly partisan one, that the democratic candidates who received a quarter of a million majority of the popular suffrages are also, in an honest administration of the law, clearly entitled to a majority of the electoral vote, and so to the presidential offices. How vitally important the just determination of this controversy is to domestic content and the permanence of republican institutions is measurable only by the heights and depths of the love and loyalty the true citizen bears to the Republic. The investiture in the chief magisterial office of a claimant whose fair title to it is denied by the honest belief of the major part of his countrymen over whom he assumes to rule would include in its disastrous consequences the withdrawal of the respect due and cheerfully accorded by the people to their chosen rulers, and, worse omen, the loss of faith in the ballot as the infallible oracle of the public will and the sovereign arbiter of political disputes. The possibility of an event so inauspicious challenges the solicitude of all to whom the Republic is dear, and signally of those who, in official place, legislative, judicial, or executive, are called to deal with the matter in any form.

This, sir, is no partisan statement of the public situation. It is the common expression of wise and honorable men whose interest in state affairs is unselfish, except that they are nobly covetous of the honor of the country and the common prosperity. The sentiment of this class of citizens is worthily voiced in a recent utterance by one of the most distinguished orators of the New England pulpit; a man, no more eminent as a divine than as a citizen, who carries a conscience into politics. In his Thanksgiving-day discourse to his congregation, James Freeman Clarke, of Boston, speaking of the late election and its disputed result, in connection with our national perils, says:

> The result now depends on the vote of three Southern States, and the danger is that these votes when returned will be believed to be fraudulent and false; and that the will of the nation is to be nullified by a few men in South Carolina or Louisiana. That is the great danger now. * * * The highest crime that can be committed in this country is that against the purity of elections; it strikes at the very root of national life. That is what we are in danger of now. I myself am a republican. I have been so from the beginning; since the republican party was formed I have never voted any other ticket. I was a free-soiler before that, and a member of the liberty party before that; but I would a thousand times rather have the republican party defeated by an honest vote than successful by a fraudulent one. As the Southern States, on whose vote the matter now depends, are in the hands of republicans, the danger is that a fraud will be permitted by the party to which I myself belong. I therefore wish to enter my earnest protest against any success so obtained. *The chief danger*, I am obliged to say, *is of a fraudulent electoral return by the republicans of Louisiana*. The danger is from them, because the men now in power there *have already committed the same crime.*
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> Let us fervently pray that when Congress meets the question of the next President may be settled beyond any doubt; but if any doubt then exists, let the whole people, let the honest men of both parties see to it that, after the fullest and most careful investigation, perfect justice be done. There must be power somewhere to do this according to law. It would be a very dangerous claim that the decision of who shall be our next President should depend on the Executive and the military force at his command. *A presidential election decided by military power would virtually be the end of the Republic.*
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> There is another very serious danger at the present time to our republican institutions; it is the growing practice of sending United States troops into States at the request of one party to protect them against some supposed danger from the other. If an insurrection actually exists in a State the President should assist the executive to suppress it. But it was never intended that United States troops should be sent to assist one party in a State that took possession of the government to the exclusion of the other. It was never intended that they should stand at the door of a legislative hall to decide who should be admitted and who excluded. What was intended in the Constitution for a rare medicine in extreme cases has become our daily food. * * * As a republican, I protest against such interference by the executive power of the United States to decide by military force between rival candidates for the governorship of a State. It is a dangerous thing when the Executive undertakes to decide judicial or legislative questions, or to enforce its decisions by armed troops.
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Preceding the election the discussion concerned the comparative merits and qualifications of the candidates as statesmen and as representatives of political organizations, principles, and objects. That debate is closed, sir. The merits of men or of parties are no longer in issue. The question is not who the people should have chosen for their rulers, but who as matter of fact they have chosen. There is no tribunal under the throne of Heaven to revise the judgment of the American people in the selection of the instruments and agents of their sovereignty. Our proper debate is as much graver than the debate which preceded the ballot of the 7th of November as the permanent government is greater than its temporary administration. Our institutions can endure the burden of even a corrupt and licentious administration and not be utterly crushed out. *That* we have proven. But the induction into power of rulers who hold not title by fair and legal election is the overthrow of free government. The constitutional right of duly chosen Presidents to rule is a thousandfold more sacred than the pretended divine right of kings. And, sir, it is the people in their original capacity, and never Congress, surely never the Executive, and only in one contingency the House of Representatives as the most reliable exponent of popular opinion, by whom Presidents are legally elected and clothed with the right to govern within ordained limits. Every free instinct, every in-bred feeling of veneration for the principles of the Constitution, every precept of our political education, every maxim of constitutional liberty, rise in revolt against the suggestions we hear put forth of a compromise of the question by agreements between party chiefs, and that in case of disputed legitimacy between contesting claimants of the presidential office the country shall abide the decision of the present Executive, thereby enabling him in effect to name his successor. As though it were permissible for the Executive to exercise judicial or legislative powers, or for the will of the people to be ignored and Presidents made and unmade by a post-election political intrigue! If aught of outrage could recall the fathers to the scenes of their earthly achievements, proposals so monstrous would surely cause their statues to break their marble trance and from their pedestals thunder anew in the deafened ear of the nation the essential truths of civil freedom they taught while their mighty spirits dwelt in the flesh.

Hitherto, Mr. Chairman, in our national elections no question of doubt has arisen that the popular judgment was fairly taken, and hence a uniform and complete submission in the declared result by victors and vanquished alike. This has often and justly been the theme of proud reflection to the dignity of our institutions and the credit of the national character. How chances it that now, in a season that should be most auspicious for peace and a satisfied and congratulatory sentiment in the land, as we recount the triumphs that grace a century of national existence, we behold the mortifying and unwonted spectacle of a country in passionate quarrel over a presidential election, months after the votes have been cast? It is not that the people are less loyal to the ballot-box, or less submissive to its decisions. The cause of the unhappy tumult, sir, is the suspicion, well-nigh if not quite conviction, widely entertained by the people that an attempt has been organized and is now urged on, in a selfish partisan interest, to falsify and reverse the true popular verdict by a dishonest and arbitrary use of the election machinery in the three mentioned States, and by the consummation of the fraud in the count by Congress; and certain notorious incidents and the course of events, all consistent with a corrupt design and conspiracy, have combined to confirm suspicion into belief. On the day next after the election, when the honest intelligence of the country accepted the success of the democrats as an undoubted result, the chairman of the republican national committee proclaimed a republican victory by one electoral vote. This assumed the appointment of republican electors in all the States of South Carolina, Florida, and Louisiana. No information as to the actual voting in either of those States was then at hand to indicate the result, and the general expectation was that all or a majority of them would vote democratic. What, then, was the secret of the republican chairman's boastful confidence in opposition to the general sense? Was it not his knowledge that the election machinery of those States was in the absolute control of men devoid of integrity and reckless of methods in the pursuit of political ends; whose private reputation and public acts were a sufficient assurance that they could be relied on to execute any baseness the partisan crisis asked for? The harnessed lightning was invoked to aid. Telegraphic messages from the republican national committee to republican State officials and party managers in South Carolina, Florida, and Louisiana emphasized the "grave importance" of the electoral vote of those States and exhorted a "most careful supervision" of the count, return, and canvass of the votes. A plan was incubated to ambush and capture North Carolina, by conspiracy with its pliant executive, if necessary to success. All this on the day after election. The pretense of guarding against possible democratic frauds is the thinnest of transparent disguises. The votes had been cast, counted, declared, and the returns were in republican custody for official canvass by republican boards, and the election at every poll had been held under the supervision of republican officials. Chairman Chandler and his colleagues knew their men. It was enough to suggest the "grave importance" of the matter to men so quick of moral perception as Chamberlain, Stearns, and Kellogg, and with the material support of "money and troops" the "most careful supervision" was not difficult. The answer was prompt and to the purpose. In sense, if not in precise terms, it ran thus between the lines: "We hold the fort! Who has the majority of votes we know not. But the invincible, the omnipotent returning boards are our garrison, and all the powers of the ballot-box shall not prevail against us." Chandler, the less of that illustrious surname, with other expert craftsmen, were sent to aid in "holding the fort." Federal troops, too, were mustered for the same valiant service. The chairman of the republican national committee seems to have combined in his own most sovereign person the powers of both the Interior and War Bureaus of the Government, and even of the Commander-in-Chief. He could promise Governor Stearns the use of the Army of his own warrant, without consultation with the Secretary of War or the President. In the conduct of his political campaign he has in effect been permitted the use of more power than vests in any official under the Constitution.

The intervention of the President in these affairs; the manner and outcome of it; the selection by the Executive, without official warrant and for no legitimate official object, of unofficial persons of no peculiar weight in the country, and all having a lively political interest in the result of the election, to visit New Orleans as sort of embassadors of the Executive; the investing the correspondence of these persons and *ex parte* testimony with an official dignity, and sending it formally to Congress as though it were the report of authorized agents of the Government acting under the responsibility and in the exercise of

legal functions; impresses me as a most singular episode of our public history and, if not a gross impertinence, at least an executive indecorum most unworthy of imitation. Had the President been originally in the suggested plot he could not have more artfully employed his station to facilitate its operations. Was it the motive of the President in this action to establish such an inquisition over the proceedings of the returning board as that its honorable and fair conduct should be avouched by a weight of impartial testimony the country would be content with, and so the title to the Presidency be cloudless in its occupant if perchance the vote of Louisiana should decide between the respective claimants? If so the President was unhappy in his instruments. He should have selected men whose names were synonymous to the country of highest judicial temper and incorruptible probity, and representatives of each of the rival political interests. The men the President chose were all of one side of politics, and the steadiest of partisans of that side, chiefly known to the country for distinguished fidelity to the political interests of that side; chiefly too (and I mean no personal disrespect) men whose pursuit was politics and public employment, and whose thrift in that pursuit was largely contingent on the continued ascendency of the political organization to which they owed their present prominence in affairs, to which they looked for future preferment, and which must surrender its scepter of rule unless the vote of Louisiana could be scored in its favor. Did the President suppose the people of the United States would give heed to the opinion of judges so strongly prejudiced by their political sympathies and with so tempting a stake in the issue? Well, sir, as we know from the familiar history of these events, other gentlemen went to Louisiana by invitation of the democratic national committee. The democrats had cause to have representatives there, for, even in the law's defiance, they were forbidden all representation on the election board of returns, and had weightiest reason to fear a denial of justice by its arbitrary action; a fear abundantly justified by irrefragable testimonies spread on the records of Congress by republican witnesses constrained by honor and conscience, to which men of honorable strain are nobly subject, to testify the truth though it hurt their political interests. What of the men who acted upon the invitation of the democrats? They were men of unsullied public reputation, honorably known as prominent actors in the events of a great political epoch of our history. Not one holds a public office. Only one can fairly be classed as a partisan democrat. The others were eminent republican leaders when that party was in its best estate and in its counsels confessed the leadership of Lincoln, Chase, Seward, Sumner, Adams, and their compeers in character and capacity. They did not view the situation through an atmosphere of old political predilections or friendly prejudices toward southern men and affairs. These gentlemen were there to learn the truth and establish it to public satisfaction. They invited the President's agents to co-operate in the object. The invitation was declined. Can anybody hesitate in opinion of the reason for the declination? A criminal lawyer never defended his guilty client with more obstinate evasion of the fatal evidence than the President's select commission exhibit in their partisan report on the Louisiana election.

Mr. Chairman, the cause that depends upon a successful defense of the integrity of the Louisiana returning board is desperate, lost! That body has a reputation which no interested indorsement by partisans, who take profit from its venality, can dignify or rescue from contempt. Its character is legible in the record it has made. Of Madison Wells, the chairman, General Sheridan, in 1867, wrote officially to the Secretary of War:

> I say now unequivocally that Governor Wells is a political trickster and a dishonest man; * * * his conduct has been as sinuous as the mark left in the dust by the movements of a snake.

Again, in 1868, Sheridan wrote to General Grant:

> He has not one friend who is an honest man.

I commend this opinion of Sheridan to the reflection of such as confide in his judgment. For myself I frankly own I give little weight to it. But the opinion of the soldier, formed under no inducement to misjudge, is a fair off-set, with a margin left, to the opinion of the politician given under violent temptation to exalt charity at the expense of justice. I trust, sir, to other evidence not obnoxious to suspicion of malice or interest. The majority report on Louisiana affairs submitted to the last House by a committee of its most distinguished members of both political parties is characterized by a judicial temper that weightily commends it to credit. The House and the country are familiar with its substance. Inasmuch as the late election and canvass were managed by the same men who manipulated the election and canvass of 1874, some of the findings of the report are singularly pertinent. I quote from the statement signed by Messrs. FOSTER and Phelps, republicans, and Potter and Marshall, democrats, the majority of the committee:

> The registration was incorrect and exceeded the true colored vote. The registration was wholly in the hands of the Kellogg officials, with whom a republican committee, with United States Marshal Packard at their head, co-operated. In only three parishes did the republican supervisors of registration make any complaint of unfair or insufficient registration. On the other hand, very great complaint was made by the conservatives, who specified, *with proof*, fifty-two hundred cases of *conceded* false registration in New Orleans alone.

The Marshal Packard here referred to, who "co-operated" in the fraudulent registration, was the republican candidate for governor in the late election, and neither he nor his associates have lost their cunning or got grace since 1874. Further, on this point, the committee state:

> The registration of the colored voters *exceeded* by 4,000 the total number of colored adult males returned by the census, while the registration of the white voters was 10,000 *less*.

Upon the subject of intimidation the committee say:

> Of course in so large a State it would be impossible there should be no instances of refusal to employ or of intimidation. Such occur in every State. But the evidence certainly indicates no general intimidation of colored voters, and that such intimidation as did exist in the State was rather in the interest of the republicans than of the conservatives. The United States marshals, whose chief was chairman of the republican State committee, armed in some cases with blank warrants and aided by Federal troops, made constant arrests before election, but not afterward. The oversight of the election and of the returns was in the hands of Governor Kellogg's officials.

Here we have Marshal Packard, after fixing the false registration, carrying on an intimidation campaign by the lawless use of the Federal court process, backed by Federal troops. The conclusions of the committee are stated thus:

> We hold, therefore, that in November, 1874, the people of the State of Louisiana did have a free, peaceable, and full registration and election, in which a clear conservative majority was elected to the lower house of the Legislature, of which majority the conservatives were deprived by the unjust, illegal, and arbitrary action of the returning board. We understand the committee to be unanimous in finding the fact that the action of the returning board has defeated the will of the people as expressed by them at the polls on the 3d of November, 1874. The people then elected to the lower house of their Legislature a majority of conservative members; a portion of the conservative members thus elected were refused their certificates. This is an act of great injustice to the individuals, of gravest danger to the State and free government, and ought to be immediately corrected by any power competent to correct it.

A significant item of testimony is to the effect that the board sought to exculpate its conduct in throwing out the vote of one democratic parish by exhibiting an affidavit of Wells, the now chairman of the board, certifying to intimidation in that parish; and when Wells was requested to appear and substantiate his affidavit he refused to do so. Thus, as the committee finds, it results: that the Kellogg-Packard-Wells politicians, controlling the State government, the courts, and the Army, used these agencies to make a false registry of voters and systematically to intimidate their opponents, and then, beaten at the polls in spite of all, coined false charges of intimidation against democrats, and by the "arbitrary, unjust, and illegal" use of the returning-board powers reversed the result of the election. Sir, the stake these political gamblers, with loaded dice, played for then with such audacity of moral recklessness was the control of a State Legislature. Have they practiced the like desperate official perfidy now, when the stake is so much higher, and when a great political party, accustomed to power and loath to relinquish it, seems willing to profit by the crime and shelter and reward the perpetrators? Ay! millions of true men believe it, and clouds of witnesses rise up to testify to it.

Originally President Grant invited his agents to go to Louisiana and see that a fair count was had "of the votes actually cast." At that time the republicans claimed to have the State by the actual poll; no claim of intimidation yet. For days the republicans held firmly to their claim, but gave no figures and were very secret. The democrats claimed the State by a large majority and published the figures of their returns. Then was heard the charge of intimidation, but confined to five specified parishes. More days elapsed and then it came to be known that the exclusion of the votes of the alleged "bulldozed" parishes would still leave the democrats a sufficient majority. Here was an unlooked-for dilemma. The garment had been cut too small! But necessity was again the mother of invention. The conspirators were equal to the emergency; their knavish genius mounted with occasion. Fresh charges of intimidation, involving theretofore unchallenged polls, were set up. The law required, in order to clothe the board with jurisdiction, that the charges of intimidation, sustained by affidavit, should be made within twenty-four hours subsequent to the closing of the polls and accompany the returns of the commissioners. But that was ignored. Affidavits were fabricated, and in one and probably more instances corruptly smuggled into the sealed packages of returns in the custody of the board. Some of these affidavits were made in New Orleans as late as the 25th of November, when the board was engaged in its canvass. To effect its object, to count in the republican electors, State officers, and Congressmen, the board found it needful to eliminate from the canvass the votes polled in the whole or parts of seventeen parishes or counties. It did it with a bad heroism, fairly rivaling its former exploits in the same field. I suppose it a conceded fact that the rejected ballots were legally cast by qualified voters, and they numbered upward of fifteen thousand. The illegality of the action of the board in rejecting from their compilation, on the pretext of intimidation, votes of polls the returns from which were unaccompanied by charges and affidavits of intimidation, as the statute prescribes, is affirmed by the unanimous opinion of the committee of the last House, of which my distinguished colleague [Mr. HOAR] was chairman, and the republican vice-presidential candidate [Mr. WHEELER] was a member. The board repeats in 1876 the usurpation the committee convicts it of in 1874. Will those who condemned it then uphold it now, bribed by a share of its spoils? Excuse is sought to be made for the unlawful acts of the board in 1874, that they may have erred in good faith through an honest mistake as to their rightful powers, and so are not proven morally corrupt. Sir, that judgment may commend itself to the charitable, but the mantle is not broad enough to cover the sin from the eyes

of the well-judging. The law is too plain for intelligent men to innocently err therein. But if the plea of ignorance may avail to extenuate their fault and save them from moral obloquy in 1874, it is worthless to justify or excuse their repetition of the same crime in 1876, when the illegal and wrongful character of their conduct had been made clear to the commonest apprehension.

Under the law of its creation, Mr. Speaker, the returning board, when constituted for the discharge of its duties, was to consist of five members, of different political parties, vacancies that might occur after its original constitution to be filled by the remaining members. It was, in fact, composed in this canvass of but four members, all republicans, with one vacant seat, which it obstinately neglected, though much entreated, to fill. Was the board, so imperfectly constituted, legally qualified to act at all? Be that as it may, the refusal to obey the clear mandate of the law and fill the vacancy with a democrat fully confirms the distrust universally felt by honest men in the integrity of the board. Were the purposes of the members fair and honest, they could not object to a democrat in their official company; but, if they meditated the wrong they are charged with, his presence in their secret councils would be inconvenient and undesirable.

One fact, Mr. Chairman, is incontestable: of the votes legally cast by the qualified voters of Louisiana at the election of the 7th of November as returned by the commissioners of election, a large majority were given for the Tilden electors. This majority is counted by thousands exclusive of all polls void by legal informalities. Upon what plea, then, is it sought to justify the setting aside of the chosen of the majority of qualified citizens who exercised their right of suffrage in conformity to law, and giving credentials of election to candidates who received a minority of the legal votes? For, argue however speciously, that is what the returning board has done. Well, sir, the reason assigned is that certain voters were frightened from the exercise of their right of franchise, and therefore, as some through fear did not vote, the lawfully cast votes of others should be null. Now, Mr. Chairman, if it can be shown that such a state of affairs existed in considerable portions of Louisiana as that the fair sense of its people was not taken, then let us pronounce the late election ineffective and invalid, on the ground it was not full and free. But there is neither reason nor safety in the proposition that a qualified voter who legally casts his vote shall be disfranchised because some other voter, for any cause, fails to exercise his right. To purge the ballot-box of illegal ballots, when possible, is competent to the proper authority, but to throw out a portion of legal ballots and certify the rest as the collected sense of a people of a State is a monstrous usurpation. Sir, I protest that the appointment of presidential electors is the act of the majority of the whole body of the qualified voters of a State who exercise their franchise right, and that, if in fifteen parishes of Louisiana the people were denied the free expression of their will and excluded from all voice in the election, then the election is invalidated as completely as though the same condition prevailed throughout the entire State.

Suffrage, sir, in its perfect estate is where the suffragists give their votes without thought of personal interest, fear, or favor, solely with intelligent concern for the common weal. But where is this ideal suffrage realized? Nowhere. In every contested election, in every State, the arts of intimidation, inducements of gain, threats of harm, and (by the lawless-minded in communities where the public authorities are imbecile to maintain order) violence and outrages are used to control voters through their self-interest, cupidity, ambitions, and fears. I doubt if there is a single poll in the Union wholly virgin of these influences. They are the most powerful where the voting population is the least enlightened and the local government the least capable. Deplore the fact as we may, it is nevertheless the inevitable incident of our system of universal suffrage. And doubtless, in my mind, these evils exist in rankest luxuriance in the State of Louisiana; not that the body of the people there are ill-disposed to law and order and the refinements and philanthropies of civilized life, but due, sir, to the utter imbecility of the government to enforce the authority of the laws and keep the public peace. Crime is unpunished and thrives on immunity; the courts and officers of the law give no protection to life, limb, or property; and society to save itself from utter anarchy submits to the irresponsible charge of vigilance committees and bands of regulators. Three thousand murders, they tell us, within a decade, and not a murderer brought to justice! What a government must that be under whose rule such things are possible; how unworthy of respect, how fruitful of disorder.

Now, Mr. Chairman, the election of the 7th of November in Louisiana was held under these conditions: The registration of voters was made by republican officials, and therefore no advantage was given to democrats in the registry lists; the officers who had charge of the ballot-boxes were all Kellogg's appointees; the republicans had at their command for the preservation of order and the protection of the ballot the police power of the State, the processes and instruments of the courts, both State and Federal, and close at hand, ready at need, the military forces of the United States. The election at every poll was peaceable and without any demonstration of violence. With all these advantages in their favor the republicans were beaten in the State by thousands of votes, as shown by the returns of their own officers of election. Intimidation, was there? Probably. But, as in 1874, the republicans did the most of it and profited the most by it. They had all the insignia of power, the possession of authority, dignified by the presence of Federal troops, to impress the fancy and constrain the homage of an ignorant and superstitious race of people, bred in servitude and accustomed to submit to authority. Add to this the despotic clanship rule maintained by the colored population over their class and the sum of democratic intimidation is readily seen to be vastly overbalanced by the intimidation practiced in the interest of the republicans. But, sir, it is profitless to attempt to balance these accounts. Elections are not so to be decided. The ballot-box alone speaks the public will. And if its decisions are not to be accepted as authoritative and final, popular elections are a delusion and republican government a snare. Mr. Chairman, the committee of the last House fully admitted the great evils the unfortunate people of Louisiana suffer from the gross maladministration of their public affairs. But, say the committee, "the ballot, not violence or assassination, is the peaceful remedy." Yes, indeed; while the ballot-box retains its unshackeled majesty. But, sir, how can a people defend their liberties, how redress public grievances, when the ballot-box itself is in bondage and its solemn judgments are overthrown by the arbitrary will of a cabal of men themselves the authors and profiters of the very abuses the people seek to reform? On the same page on which the committee write the sentiment I have quoted they record, as if in satire, their judgment that the returning board had by its "arbitrary, unjust, and illegal" action defeated the will of the people of the State as expressed at the polls.

As respects Louisiana in the electoral count we have not the case of a State in the full enjoyment of its right of self-government, with its seats of official trust filled by agents of its free election, for whose acts the people ought in law and sound political ethics to be held responsible. We have no need to take out the limits of the power of Congress to go behind the certificate of competent State authority in this matter. No such competent authority existed, unless McEnery had it. Those who had possession of her great seal had no right to its official use. Nobody of intelligence, I believe, now contends that Kellogg was in possession of the governor's office by legal title. The Senate Committee on Privileges and Elections, in their elaborate investigation and report of the matter, decided that Kellogg certainly had no legal claim, that McEnery, if any one, was *de jure* governor and would have been peaceably installed in the office but for the illegal intervention of a Federal judge supported by Federal bayonets. The House committee unanimously concur in the opinion. Since, then, all governments derive their just powers from the consent of the governed, and since the Kellogg government was neither created nor existed by the act or consent of the people of Louisiana, it had no just powers. This must be true, or the Declaration of Independence is a lie and Washington was both rebel and traitor. The people submitted to it under the compulsion of superior force. But submission is not consent. They would long since have overthrown it, and would to-day overthrow it, but for the misapplied power of the Federal Goverment, which set up the usurpation by fraud and maintained it by force. Of this usurpation the returning board is a part. Neither the governor in possession nor the board were the qualified stewards of the authority of the State, nor has the act of the one or the seal of the other any character of legal sacredness. The Senate refuses Mr. Pinchback his seat, though his certificate of election is in due form under the seal of the State, because of the illegal constitution of the body that elected him. Why may not Congress go behind the formal certificate and inquire if the electors who assume to vote for President and Vice-President are qualified by due election and eligibility under the Constitution to discharge the office? And, suppose, upon full consideration of the law and the testimony, it appears to a clear demonstration that the Tilden electors in Louisiana were fairly elected and by willful fraud or legal error the Hayes electors were certified as elected and formed and acted as an electoral college, is there no power of remedy left us, and must full effect and validity be given to their action? Take, also, the Florida case. The republican canvassers of that State—worthy fellows of the Louisiana ilk—by similar illegal warrant stole the State government offices and the congressional seats. That plunder they have been obliged to relinquish to the rightful owners. Should it appear on investigation that they also stole the electoral college, is there no power anywhere to compel them to disgorge that too?

Mr. Chairman, I affect no skill to resolve nice problems of constitutional construction, and I wish to speak with due modesty. I reverence established legal forms, which I recognize as the body of liberty, without which its spirit is but riotous license in human affairs. But it seems to me incredible, in the case supposed, that no method is admissible by which, consistent with essential forms of law, the wrong may be redressed to the extent at least of a rejection of the false return. The consummation of so gross an outrage upon the purity of elections would shock the moral sense of the country and seriously disturb public confidence in the sufficiency of an elective system incapable of its own defense in a vital part. This question, sir, is not the exclusive property of the lawyers. The "plain people" are capable of an intelligent opinion upon it, and, in the end, are jury and judge.

The Constitution provides that the certificates showing the action of the State electoral colleges shall be severally sealed, transmitted to the President of the Senate, and by him kept until he opens them in the presence of the two Houses. Is not the obvious and only object of this provision to designate a safe and convenient custody of the certificates until they are brought within the inspection and con-

trol of Congress, with the inviolate seal testifying to their identity and that they have not been tampered with? When he has opened them his constitutional function is discharged. His specifically enumerated duties are to receive, to keep, to open. By what canon of interpretation can a power beyond the enumerated ones be conferred by implication? Suppose the constitutional provision, otherwise identical in terms, had named some other person or official as custodian, for instance the Secretary of State, as well might have been, would it be contended that he, by virtue of his expressly enumerated authority, was also to count the votes, adjudicate any contest, and make proclamation of the result? I apprehend not. And yet, I cannot imagine how the otherwise official character of the custodian can enlarge or qualify in the least the powers conferred. Were the matter in doubt, the invariable usage of the Government should settle the question decisively against the claim of right in the President of the Senate to count the votes. It has uniformly been done by the two Houses, by their selected agents. Whatever declaration of the result the President of the Senate makes, he does as the mouth-piece of the joint assembly, and the declaration is simply the statement of a fact the two Houses have ascertained. Obviously, sir, some authority must make the count. If not the President of the Senate, then who? Not the Senate alone or in conjunction with its President; not the House alone; but the Congress. It is an affirmative act and requires the concurrence of both branches as fully as a legislative act does. Congress has hitherto asserted not merely its right to count the votes, but has construed its powers in the count itself. In the count of the presidential vote of 1872 the vote of Louisiana was excluded by the concurrent action of both Houses, while the objection of the Senate alone sufficed to exclude the vote of Arkansas, though the House voted to admit it. But, it is objected, this was done under the twenty-second joint rule, which is no longer in force. Well, sir, a constitutional grant cannot be enlarged or abridged by any less solemn ordinance than a constitutional amendment. The rule was a mere piece of parliamentary mechanism contrived for the orderly and decorous performance of a power which existed independently of it; it could not add to or subtract from the measure of constitutional authority; and if under the rule the power resided in either branch of Congress by its negative voice to exclude a vote, that power existed as potentially before the adoption of the rule and survives in full vigor its abrogation. Whether the rule is in force for the regulation of the intercourse of the two Houses I do not esteem of great importance; but its value for our present purpose consists in that it was a legislative interpretation of the Constitution. By its adoption and practical assertion in three presidential elections, Congress has determined and adjudged, and affirmed and re-affirmed its judgment, that the count of the votes of the electoral colleges is by Congress, not by the President of the Senate or by that officer in conjunction with the Senate, and that the assent of both Houses as independent bodies is requisite, and the objection of either House is effectual to reject any disputed vote. Further, sir, this interpretation was made when the political complexion of Congress was overwhelmingly republican, and under no temptation of a partisan exigency to falsely construe the law. We may therefore fairly conclude it embodied the conscientious judgment of the able lawyers and statesmen who sanctioned it. No serious doubt of its correctness seems to have arisen until the reversal of the partisan majority in the House of Representatives. Where precedents conflict, the later are superior in weight of authority; but here is no conflict; the chain of precedent stretching back to the foundation of the Government is unbroken in a single link. Publicists and lawyers have developed divergent views as to the true constitutional construction and the boundaries of power, but the practice of the Government has been invariable. Always the two Houses, by concurrent action, have set up and managed the machinery of the count. Whatever the function is, ministerial or judicial, the Congress has assumed and executed it. In all cases of controverted votes that have arisen, those anterior to equally with those under the joint rule, the Congress took jurisdiction as of obvious right and without challenge, and in each instance the determination of the matter was made by the two Houses, each acting in its separate capacity as a unit of authority. Not only has the President of the Senate never asserted the right in himself, and always disclaimed it when the question arose, but the uniform practice, utterly inconsistent with such a right, is an absolute denial of it. If, as is contended by some, the Constitution is guilty of a *casus omissus* in the matter of the count, so that the duty to count devolves on no one, it is only the law-making power can supply the omission, and that has been accomplished by eighty years of Government usage, thereby acquiring the force and validity of law. I do not think Congress, had it the power, should abdicate its proper authority in favor of any anomalous tribunal unknown to the Constitution. Certainly not now, when the composition of such a tribunal must be governed by sinister calculations of partisan chances and interest, rather than by a conscientious regard for righteous results. Far better, it seems to me, to settle the present contest by the established precedents which have settled former like contests, and leave provision for future exigencies, if any be needed, to be made in a time of political tranquillity when selfish interests and partisan passions shall not be present to mar right counsel.

Now, sir, why not follow the trodden path, accept the construction and act upon the precedent? The time is not seasonable for a revision of the matter. The judicial temper is ruffled by the political storm, and the atmosphere is not serene enough for clear vision. If democrats are content to adopt the law of the republican precedent, with what show of consistency, or grace, or integrity can republicans object? The law, in my judgment, is right; its acceptance is expedient. It will pacify the political situation, disarm public discontent, and avert all possible danger to the peace of the country. Of one matter, Mr. Speaker, I hope we shall be scrupulously careful, as of a special trust. The House of Representatives, nearest to the people in the Federal order by election and by the nature of its responsibilities, owes it to its own dignity and to the people to guard and assert its rightful prerogatives. Let us, sir, wisely know our rights and duties and fearlessly perform the one and maintain the other; patient to counsel, but dauntless in conviction.

Both of the national committees of the rival political organizations, by their chairmen, have published bulletins to the country announcing the election of their respective candidates: and one of these chairmen, a Cabinet officer, with an air that breathes of threat, as of one who speaks by authority, proclaims that his candidate will be put in office. If this merely signifies confidence in the final result, it is well; but if it means insubordination to the constitutional authority which is to adjudge the result, it is ill. The authoritative decision of the presidential succession is not rendered yet, nor will it be until the united voices of the two Houses of Congress shall announce the election of one or the other candidate, or until in default of a choice by the electoral colleges an election shall be made by the House of Representatives, as the Constitution provides. Whoever that elect may be, whether Mr. Tilden or Mr. Hayes, he will be our lawful President, and the American people will take heed that he comes into the full possession and enjoyment of his right.

A majority of a quarter of a million of the voters of the country, and a million majority of the voters of the white race, have given their suffrages for Mr. Tilden. He is the popular choice for President. If Mr. Hayes shall be elevated to the Presidency over him, it will be the first instance in our history of a minority candidate preferred over the choice of the majority. And yet, sir, if that is the legitimate event of the electoral method, and Mr. Hayes is constitutionally elected, the people will freely recognize his right, for they are loyal subjects of the law. But they demand that the determination of the election shall be made by the authority within whose constitutional domain the dispute lies. They insist that the question is legislative and judicial, and that the executive department in no contingency can have a right to intervene. They will not submit to the military arbiter. They will not consent to a civil government that holds its tenure of authority by the grace of any martial power such as now makes its muster and lifts its front about the national Capitol. They want peace, but that peace which consists with justice and the dignity of a free form of government.

We hear forebodings and even menaces of public violence in the fullness of these events. Sir, who is to make the war? It certainly is not within the contemplation of the majority of this House. We have no arsenal but the Constitution, no weapons save the ones it arms us with. There is no power we claim, no act we propose, that is novel or unsanctioned by use. The entire scripture of our prerogative is written by the republican pen in the fresh records of public history. Our battle is waged under the identical standards of law our opponents have set up. Will they desert their flag? The people represented by the majority here, relying on the law and their right, have no occasion or desire for revolutionary resorts, and if any attempt is made to set up a revolution they will unite with all good patriots to put it down. They, sir, do not make revolution who abide by accepted interpretations of law and pursue the methods approved by usage. The revolutionists are they who in political crises insist upon the overthrow of established determinations of lawful prerogative and usages of government, and seek to set up a new authority by usurpation and force. We propose no revolution, and will consent to none. Nor will the people submit to one.

I share in no apprehension of war or its semblance. To admit its possibility is to doubt the public spirit, judgment, and integrity of the men in charge of the several departments of Government, and, what is more difficult yet to a lover and disciple of the Republic, to doubt the rectitude and power of the enlightened and robust public opinion of the country, before whose majesty the strongest partisan must subject his purpose. But while so confident of peace and the capacity of lawful agencies to conduct the nation safely through its difficulties, I enter an indignant dissent from the doctrine—unworthy of citizens and freemen; fit only for subjects and serfs—of peace at any cost. Public order is much; the public liberties are more. So thought and felt the fathers who fought a seven years' war to maintain their right to be governed by laws of their own ordination and by rulers of their choice. So think and feel their worthy descendants and inheritors of their blood-bought estate to-day, who celebrate their renown and inherit their virtues and free spirit. The American people, sir, do not forget the caution of wisest lips of patriotic counsel, that "eternal vigilance is the price of liberty," and they also bear in faithful and brave hearts the knowledge that the safety of their liberties lies in their constant readiness to defend them to the last extremity of resistance to aggression. They will not betray the free instincts of their race, nor shame the proud memories and traditions of their great history.

Mr. Chairman, the remarks I have submitted were meditated before the report of the joint committee on the subject of the electoral count was made; and I wish to add that while the views I have expressed are my convictions of the proper treatment of the situation by this body of representatives of the people in the execution of its constitutional trust, I do not wish to be understood as antagonizing the measure which that committee submits as the best product of their wisdom. It comes to us with a sanction of ability and patriotism that compels great deference. It appeals strongly to the anxious hope of the country for peace and order. I reserve an expression of opinion upon it until further discussion of its provisions.

Mr. CHITTENDEN. If I have made a fair count, two hundred and one of the two hundred and ninety-two members of this body have studied law, leaving ninety-one to represent all other professions, including the immediate Representatives of the colored race. It is not until very recently, Mr. Chairman, that I have discovered that the occupant of the chair is not a lawyer, and I hope there is no great impropriety in my making mention of this for the encouragement of the other ninety lay members of this House. It is not my intention, Mr. Chairman, in the few observations I have to make to disparage the great profession. On the contrary, I bow to it with reverence and respect; but, Mr. Chairman, I do not doubt that the legal members of this House are entirely competent and equipped to discuss the great constitutional questions which now agitate the country, including the status of the Louisiana returning board and the horrible conspiracy which my colleague, Mr. WILLIS, this morning so vividly revealed to us on this side of the House.

I say I have no doubt that the legal members of this body are fully prepared to discuss these questions to the end of the session of the century without coming to any practical conclusions thereon. It is the easiest and most natural thing in the world that lawyers should love to discuss such questions and become intensely interested in them, and the people are within certain limitations necessarily and always interested in them. God forbid I should here or elsewhere undervalue these discussions within proper limitations. But I say, Mr. Chairman, that the people of this country at this hour do not enjoy these eternal diatribes, for reasons which may occur to any gentleman who will take the trouble to consider the true condition of the country. Scourged by war and debt, sunk to the deepest pit of commercial and political demoralization, by reason of a genuine conspiracy, which culminated in the wickedest rebellion in all history, to which my friend did not allude, the people of this country cry today for wise and temperate counsels, for patriotic and practical statesmanship to lift them from a horrible pit to a better national life.

I wish to say to my colleague, who addressed the House in a very elaborate speech this morning, that if I understand the popular thought and heart of the country, the priceless boon which the people craved in those hours and days of supreme peril, now in my judgment happily passed forever, were voices of genius and patriotism, which, ringing through these halls, should be heard in every hamlet and city in the land, speaking light and peace to the dark currents of party spirit.

Sir, let us not deceive ourselves. The people thank God for the report of the joint committee made the day before yesterday. The mass of the people will confirm that report with a unanimity which has scarcely been matched since the election of Washington to the Presidency in 1789. The spirit and conclusion of that report will, unless I am entirely mistaken in regard to the popular sense, sweep and control the popular judgment of the people of this country as fire driven by the wind sweeps and burns the browned and parched prairies of the West in autumn. I hope, Mr. Speaker, that the voice of the people will be listened to. I hope that the cry of the people from the North, and from the South, from the East and from the West, for better politics will be listened to. It must be listened to, or our institutions are gone. We have descended as far as we can go. We have to look upward, to act upward, not in the spirit of partisans. I say it without any disrespect—not in the uncharitable spirit my good friend and colleague [Mr. WILLIS] manifested this morning, in broadly intimating that the party of this side of the House and all who believe as I do in the election of Hayes and Wheeler are conspirators. Let us have done with all such stuff. Let all hard words be dropped. We have had partisanship enough. The people of the country will not be misled by such nonsense. They think and act, and will expect and compel us to act, on principles of eternal justice in regard to this matter, now soon to be settled.

Mr. Chairman, I rejoice to believe that we are now upon the edge of a new revelation, that we are at the day-break of better times. I think that the intelligence and patriotism of the people rule the hour and that every man who dares to stand here in his place and speak the words or make the motions of a partisan will be reproved. It should be so; it must be so. God grant that this House shall have the wisdom, shall have the patriotism to dispose of this question and to dispose of it in the manner proposed by this joint committee. Let us not forget that the people who framed our Constitution never dreamed of four millions of slaves being suddenly liberated and enfranchised; they never dreamed of such a contingency as we have been compelled to grapple with. We have been drifting here without chart and without compass, so to speak. No man will claim that there is anything in the committee or anything in the laws which provides for such an exigency as has now come upon the country.

Corrupt elections are no new thing under the sun. From the time of the consular republic of Rome to the last election in New Orleans, it has been so. Everybody knows that corrupt elections are as old as the history of republics. Why, then, all this howling about corrupt elections at the South? Was there no such thing ever heard of before? My colleague knows perfectly well that never on the face of the earth, since the name of republic was heard, have there been more shamefully corrupt elections than he and I have both submitted to in the State and city of New York. Every attempt to make the American people or the world believe that there was anything exceptional in the corruptions which have happened in this last presidential election, when made by an intelligent man, is insincere and unruthful, and designed to mislead.

Now a word further and I will stop, for I have already said a great deal more than I intended to do when I rose. I wish to be understood. I believe that the latest elections in at least three of the Southern States were an absolute farce. I do not think there is any other word to express it. I believe that must be the final conclusion of every fair-minded man. I believe that the leaders of both parties did all they could to carry their tickets, and the result was what I have stated, and according to the forms of law Hayes and Wheeler have been elected President and Vice-President of the United States. And I claim and sincerely believe that all the advantages of fair consideration are in favor of their inauguration; the cheating on both sides having been so absolutely universal that it is impossible for anybody to determine where the real truth lies. I venture to say that there is not a candid gentleman on either side of the House who sitting by my fireside will not admit most if not all that I claim.

Well, now, sir, it is worse than boy's play; it is a crime for us to threaten to tear this country to pieces or to mar or to destroy its material interests under such a condition of things for either party. I moreover wish to confess myself, according to the doctrines preached by my colleague this morning, a conspirator. I am a conspirator, if his conspiracy exists, and while I do not court anything disreputable, I think I can stand his indictment. If I understood him, he included among the conspirators those who believe that the President of the Senate has a right to count the electoral vote in case of need. But I am not going into that question; it is happily now in abeyance, and I am not disposed to prolong the discussion in regard to it for one moment to-day.

But I wish to say this much about it: if any dozen members of this House were to meet together to-night to frame a rule of action for every morning of this year, we should probably conform our action to-morrow morning, especially if it referred to an important matter, to the strict meaning of the rule adopted over night. Nobody will deny that. And it will forever remain in the archives of the Government that the framers of the Constitution, when they came to interpret their own words in regard to counting the electoral vote for the first time, elected a President of the Senate, there being no Vice-President, for the sole purpose of counting the vote, and it was in that way that the first President was elected. I think the framers of the rule knew better what they meant by it than we know. It is nearly or quite certain that their proceedings in the first instance were in strict harmony with their purposes in the language employed. That, however, is a question that can never be settled.

[Here the hammer fell.]

The CHAIRMAN. The time of the gentleman has expired.

Mr. HOLMAN. I ask that the bill be now read by paragraphs for amendment.

Mr. MILLS. I move that the committee now rise, in order that the gentleman from Massachusetts [Mr. SEELYE] may have an opportunity this afternoon to make his speech. I think it is but fair and right, after so many speeches have been made by others, that he should now have the privilege of addressing the House.

Mr. HOLMAN. Of course, if he desires to do so now.

Mr. BURCHARD, of Illinois. Of course not.

Mr. SEELYE. I certainly do not wish to address the House at this time.

Mr. MILLS. Then I withdraw my motion.

The Clerk then proceeded to read the bill by paragraphs for amendment, and read the following:

OSAGES.

For interest on $60,120, at 5 per cent. per annum, being value of fifty-four sections of land set apart by treaty of June 2, 1825, for educational purposes, per Senate resolution of January 9, 1838, $3,456.

For interest on $300,000, at 5 per cent. per annum, to be paid semi-annually, in money or such articles as the Secretary having jurisdiction of Indian affairs may direct, as per first article treaty of September 29, 1865, $15,000.

Mr. WELLS, of Missouri. I rise to amend by inserting after the paragraph just read that which I send to the Clerk's desk.

The Clerk read as follows:

That the Commissioner of Indian Affairs is hereby authorized to expend for the subsistence and civilization of the Osage Indians, out of funds belonging to them now in the Treasury of the United States, $100,000, of which amount not over one-fifth shall be paid to the said Indians *per capita*.

The amendment was agreed to.

The Clerk read the following in relation to the Pawnees:

For this amount, or so much thereof as may be necessary, for teachers and fuel, books and stationery, for schools, $3,000.

Mr. WELLS, of Missouri. I move to amend by inserting after the paragraph just read that which I send to the Clerk's desk.

The Clerk read as follows:

That so much of the appropriation under the third article of the treaty with the Pawnee Indians of September 24, 1859, made in the act of August 15, 1876, appropriating for the Indian service for the year ending June 30, 1877, as provides for the support of two manual labor schools for the Pawnees, as remains unexpended, is hereby made available for the building of a school-house at the Pawnee agency; and so much of the act aforenamed as provides for the supervision of the Cherokee schools by the superintendent of common schools of North Carolina, and payment of salary to him for the service, is hereby repealed.

The amendment was agreed to.

Mr. TOWNSEND, of New York. I move that the committee now rise.

Mr. HOLMAN. I hope the gentleman from New York [Mr. TOWNSEND] will permit us to proceed with this bill at least until five o'clock.

Mr. TOWNSEND, of New York. This is Saturday afternoon, and we must prepare for the Sabbath. We have heard a great many good speeches to-day, and I hope the committee will now rise.

Mr. HOLMAN. I hope the gentleman will not insist on that motion.

Mr. TOWNSEND, of New York. I want to prepare for the Sabbath.

Mr. HOLMAN. It is very necessary that we should get on with these bills.

Mr. MILLS. There is a portion of this bill upon which I desire to be heard. As there are documents and papers which I wish to use in my remarks, and as those documents are at my room, I hope the committee will now rise, and that the gentleman from Indiana [Mr. HOLMAN] will not insist upon completing the consideration of this bill this evening.

Mr. HOLMAN. I desire to say that it is going to be exceedingly difficult to have these appropriation bills prepared and got before this House and before the Senate in time for final passage during the present session of Congress.

Mr. TOWNSEND, of New York. I will yield to the wishes of the gentleman from Indiana, who I know is engaged in service upon these appropriation bills, the passage of which are very important to the Government.

Mr. HOAR. I would suggest to the gentleman from New York [Mr. TOWNSEND] that the best way to prepare for the Sabbath is to obey the commandment, six days shalt thou labor and do all thy work. [Laughter.]

Mr. TOWNSEND, of New York. As we have spent most of this day in doing nothing whatever but listen to partisan speeches, I think we have already violated the command so much that we should prepare for repentance. [Laughter.]

Mr. WELLS, of Missouri. We have been doing so well for the last half hour that I hope we will be allowed to proceed with the bill.

Mr. HOLMAN. I understand that the motion of the gentleman from New York [Mr. TOWNSEND] is withdrawn.

The CHAIRMAN. The motion is withdrawn, and the Clerk will proceed with the reading of the bill by paragraphs for amendment.

The Clerk resumed the reading of the bill.

Mr. MILLS. It is now near five o'clock, and I move that the committee rise.

Mr. HOLMAN. Let us go on till five o'clock.

Mr. MILLS. Will the gentleman agree that when the paragraphs relating to the Sioux are reached they may be passed over, to be considered when the committee shall again sit?

Mr. HOLMAN. Yes, we agree to that.

The Clerk again resumed the reading.

Mr. DURHAM. I move that the committee rise. We cannot get through to night anyhow.

Mr. HOLMAN. I trust that the gentleman will allow us to continue till five o'clock.

Mr. DURHAM. I want to go home.

Mr. HOLMAN. I hope that the gentleman will not insist on his motion.

Mr. DURHAM. I do insist upon it.

The motion was agreed to.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. HATCHER reported that the Committee of the Whole on the state of the Union had had under consideration the bill (H. R. No. 4452) making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June 30, 1878, and for other purposes, and had come to no resolution thereon.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of its clerks, informed the House that the Senate had agreed to the report of the committee of conference on the disagreeing votes of the two Houses upon the bill (H. R. No. 4307) making appropriations to supply certain deficiencies in the contingent fund of the House of Representatives, and for other purposes.

The message further announced that the Senate had passed, and requested the concurrence of the House in a bill of the following title:

A bill (S. No. 1034) for the relief of Louis Rose.

COMMISSIONERS OF ALABAMA CLAIMS.

The SPEAKER laid before the House a message from the President of the United States, transmitting, with accompanying papers, a report from the Secretary of State relating to the court of commissioners of Alabama claims; which was referred to the Committee on the Judiciary, and ordered to be printed.

CONTRACTS BY WAR DEPARTMENT BUREAUS.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of War, transmitting a statement of contracts made by the bureaus of the War Department for the year 1876; which was referred to the Committee on Appropriations.

JAMES T. LEARY.

The SPEAKER also laid before the House a letter from the Secretary of War, transmitting a report of the Adjutant-General on the bill (H. R. No. 1746) for the restoration to the retired list of James T. Leary, late of the United States Army; which was referred to the Committee on Military Affairs.

PRESIDIO RESERVATION, CALIFORNIA.

The SPEAKER also laid before the House a letter from the Secretary of War, transmitting a report relative to the bill (H. R. No. 1301) authorizing the use of a portion of the Presidio reservation, California; which was referred to the Committee on Military Affairs.

FORT UNION MILITARY RESERVATION, NEW MEXICO.

The SPEAKER also laid before the House a letter from the Secretary of War, transmitting a report of the Adjutant-General on the bill (H. R. No. 4304) to secure title to Fort Union military reservation in New Mexico; which was referred to the Committee on Military Affairs.

PAY OF ACTING PAYMASTER.

The Speaker also laid before the House a letter from the Secretary of War, transmitting a report of the Adjutant-General in reference to the pay of brigadier-general for the office of Paymaster-General; which was referred to the Committee on Military Affairs.

JAMES B. EADS.

The Speaker also laid before the House a letter from the Secretary of War, transmitting, in conformity to the river and harbor act of March, 1875, a settlement in favor of James B. Eads; which was referred to the Committee on Appropriations.

EMPLOYÉS IN WAR DEPARTMENT.

The SPEAKER also laid before the House a letter from the Secretary of War, transmitting the reports of clerks and employés in the War Department during the year 1876; which was referred to the Committee on Appropriations.

PAPERS IN THE INTERIOR DEPARTMENT.

The SPEAKER also laid before the House a letter from the Secretary of the Interior, recommending the enactment of a law to provide for the furnishing of papers on file in that Department; which was referred to the Committee on the Judiciary.

JACOB F. RUTH.

Mr. SMITH, of Pennsylvania, by unanimous consent, introduced a bill (H. R. No. 4480) granting a pension to Jacob F. Ruth, late a private in Company I, Fifth Regiment Pennsylvania Heavy Artillery Volunteers; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

WITHDRAWAL OF PAPERS.

Mr. SAVAGE, by unanimous consent, obtained leave for the withdrawal from the files of the House of the papers in relation to the claim of Amanda Stokes, no adverse report having been presented.

ARREARS OF PENSIONS.

Mr. REA, by unanimous consent, presented a petition of 72 citizens of Buchanan and Andrew Counties, in the State of Missouri, asking for the passage of an act allowing pensioners the arrears to which they would be entitled by a removal of restrictions and to allow pensions from date of discharge; which was referred to the Committee on Invalid Pensions, and ordered to be printed in the RECORD, as follows:

We, the undersigned, do most earnestly urge upon Congress the passage of the act allowing pensioners the amount of arrears to which they would be entitled by a removal from the statutes of the unjust limitation which has debarred them from receiving their just dues, and that they shall be entitled to receive in all cases pensions from date of discharge of the soldier; that a limitation act of the kind in force is unjust and that the representatives of the people had no right to take advantage of the accidents and incidents which have occurred in many ways, to prevent those who have made the most extreme sacrifice for the country from receiving the full measure of justice to which they are equitably entitled.

Mr. HOLMAN. I move that the House now adjourn.

The motion was agreed to; and accordingly (at four o'clock and fifty-five minutes p. m.) the House adjourned.

PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. BANNING: The petition of Herman Levi & Co., of Cincinnati, Ohio, for the repeal of the bank-tax law, to the Committee on Banking and Currency.

By Mr. BLAND: The petition of citizens of Missouri, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. CANNON, of Illinois: The petition of B. J. McMullen and other citizens of Illinois, that arrearages of pension be allowed pen-

sioners from the date of their discharge from the Army, to the Committee on Invalid Pensions.

By Mr. CAULFIELD: The petition of the Chicago Historical Society, for the purchase by the Government of the papers of the General Count de Rochambeau, the commander of the French forces in the revolutionary struggle for national independence, to the Committee on the Library.

By Mr. COX: The petition of Robert Fenwick, that aid be given by Congress to the public schools of Washington, District of Columbia, to the Committee for the District of Columbia.

By Mr. CUTLER: The protest of citizens of New Vernon, New Jersey, against the assumption by the President of the Senate of the power of counting the electoral votes, to the committee on counting the electoral votes.

Also, the protest of citizens of Green Village, New Jersey, of similar import, to the same committee.

By Mr. FORNEY: The petition of A. C. Copeland and other citizens of De Kalb County, Alabama, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. FRYE: The petition of Ann F. Greely, William O. McDonald, and others—78 men and 70 women—148 citizens of Maine, for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex, to the Committee on the Judiciary.

By Mr. GOODIN: Papers relating to the claim of Dennis McCarthy for arrears of pension, to the Committee on Invalid Pensions.

By Mr. KASSON: The petition of citizens of Iowa, for the removal of the excessive taxation on banks, to the Committee on Banking and Currency.

By Mr. PLAISTED: The petition of Harlan P. Sargent and 39 citizens of Brewer, Maine, for the purchase by the United States of telegraph lines for postal, military, and other purposes, to the Committee on the Post-Office and Post-Roads.

By Mr. POWELL: The petition of R. R. Little and 30 other citizens of Tunkhannock, Wyoming County, Pennsylvania, for the adoption of measures for the amicable adjustment of the present political difficulties, to the committee on counting the electoral votes.

Also, the petition of Thaddeus W. Hunter and 149 others, that pensioners be allowed arrears of pension from the date of their discharge from the Army, to the Committee on Invalid Pensions.

By Mr. TURNEY: The petition of citizens of Greene County, Pennsylvania, for the enforcement of the provisions of the act of July 24, 1866, relating to the purchase of telegraph lines by the General Government, to the Committee on the Post-Office and Post-Roads.

By Mr. VANCE, of Ohio: The petition of Smith Partingale and 41 others, that pensioners be allowed arrears of pension from the date of their discharge from the Army, to the Committee on Invalid Pensions.

By Mr. WALSH: The petition of Rev. Thomas Scott Bacon, that Congress refuse to recognize the pretended State government of the usurpers in Louisiana; that such wrongs to the people of Louisiana may be prevented in the future as have been perpetrated in the past by civil and military officers of the United States; that the perpetrators of past wrongs who may be reached by impeachment may be punished; and that the newly-elected President may be installed and maintained as such in spite of any fraud or force which may be used to prevent it, to the Committee on the Judiciary.

By Mr. A. S. WILLIAMS: Resolutions of the Board of Trade of Detroit, Michigan, composed of members of both political parties, and representing the business interests of that city, communicated by telegraph, expressing satisfaction with the report of the joint committee on counting the electoral vote for President and Vice-President of the United States, and declaring that it receives the support of the commercial classes without regard to party, to the select committee on the privileges, powers, and duties of the House of Representatives in counting the electoral vote.

Also, the petition of Joseph Lovanger and 60 other citizens of Brownstown, Michigan, that pensioners be allowed arrears of pensions from the date of their discharge from the Army, to the Committee on Invalid Pensions.

By Mr. WILSON, of Iowa: The petition of H. T. Bassett and others, of Blairstown, Iowa, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

IN SENATE.

MONDAY, *January* 22, 1877.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

The Journal of the proceedings of Saturday last was read and approved.

CREDENTIALS.

The PRESIDENT *pro tempore* laid before the Senate the following certificate; which was read and ordered to be filed:

STATE OF NEW HAMPSHIRE,
Executive Department.

To all to whom these presents shall come, greeting:

Know ye, that Edward H. Rollins, of Concord, New Hampshire, was, by the concurrent votes of the two houses of the Legislature of this State, on the 20th day of June, 1876, duly elected, in conformity to the provisions of the Constitution and laws of the United States and the State of New Hampshire, a Senator to represent the State of New Hampshire in the Senate of the United States for the term of six years, commencing on the 4th day of March in the year of our Lord 1877, and on the 21st day of said June, at twelve o'clock m., the members of the said two houses being convened in joint assembly, and the journal of each house being then read, and the said Edward H. Rollins having been found to have received a majority of the votes in each house, was declared duly elected Senator as aforesaid.

Witness his excellency Person C. Cheney, governor of New Hampshire, and our seal hereunto affixed at Concord, this 14th day of July, in the year of our Lord 1876, and of the Independence of the United States of America the one hundred and first.

P. C. CHENEY, *Governor.*

By his excellency the governor.

B. F. PRESCOTT,
Secretary of State.

EXECUTIVE COMMUNICATION.

The PRESIDENT *pro tempore* laid before the Senate a letter of the Secretary of War, transmitting, in compliance with a resolution of the Senate of the 19th instant, a copy of a report of Lieutenant-Colonel Q. A. Gillmore, Corps of Engineers, on a water line of transportation from the mouth of Saint Mary's River to the Gulf of Mexico; which was ordered to lie on the table and be printed.

PETITIONS AND MEMORIALS.

The PRESIDENT *pro tempore* presented the following communication; which was read and ordered to lie on the table:

CHICAGO, ILLINOIS, *January* 22, 1877.

Hon. T. W. FERRY,
President of the Senate, Washington:

I am instructed to communicate to you, and to respectfully request that you will lay before the Senate the following, adopted by this board on Saturday last, to wit:

Resolved, That the Board of Trade of the City of Chicago, representing largely the commercial and manufacturing interests of the Northwest, and without distinction of political parties, heartily approves the report of the joint congressional committee for the final determination of all questions as to the late election of presidential electors and the counting of their votes.

By order of the board.

CHAS. RANDOLPH, *Secretary.*

The PRESIDENT *pro tempore* presented a memorial of the General Assembly of Colorado, in favor of an appropriation by Congress for the establishment of a military wagon-road from White River agency, Summit County, to Hot Sulphur Springs, Grand County; which was referred to the Committee on Military Affairs.

Mr. WINDOM. I present a memorial of a large number of soldiers of the Mexican war, respectfully calling the attention of the Federal Government to the fact that as one of the results of their service in connection with the regular and volunteer Army we acquired the golden State of California and the Territory of New Mexico and settled the boundary of Texas, and that some further recognition of such service is due the few survivors of that war after a lapse of twenty-seven years. They therefore "petition your honorable body that we may be placed upon the pension-rolls of our country." I move that the petition be referred to the Committee on Pensions.

The motion was agreed to.

Mr. CHAFFEE presented the petition of Alida C. Avery, N. W. Smith, and others—15 men and 12 women—27 citizens of the State of Colorado, praying for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex; which was referred to the Committee on Privileges and Elections.

Mr. WRIGHT. I am requested to present the petition of O. W. Garrison and a large number of citizens of Iowa Falls, Iowa, complaining of the unjust limitations of the present law touching pensions, and praying for relief. As the subject has been reported upon, I suggest that the petition lie on the table.

The PRESIDENT *pro tempore*. The petition will lie on the table.

Mr. CAMERON, of Wisconsin, presented the petition of Lavinia Goodell, Mathilde Franceske Anneke, Carl Doerflinger, and others—213 men and 264 women—477 citizens of the State of Wisconsin, praying for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex; which was referred to the Committee on Privileges and Elections.

Mr. KERNAN presented the petition of Jesse Howell, of New York, a sea-faring man, praying compensation out of the fund known as the Geneva award for loss and damages sustained by him by the destruction of an American vessel of which he was an officer by the confederate cruiser Florida; which was referred to the Committee on the Judiciary.

Mr. BURNSIDE presented the petition of Catharine Cornell Knowles, John C. Nichols, and others—56 men and 70 women—126 citizens of the State of Rhode Island, praying for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex; which was referred to the Committee on Privileges and Elections.

Mr. SHERMAN presented two petitions of citizens of Ohio, praying the modification of the pension laws so as to allow pensioners to receive pensions from the date of discharge of the soldier; which were ordered to lie on the table.

Mr. ALLISON. I present a petition signed by a large number of citizens of Iowa, praying for an amendment to the pension laws allowing pensioners the amount of arrears to which they would be entitled by a removal from the statutes of the unjust limitation which

has debarred many from receiving their just dues, and that they shall be entitled to receive in all cases pension from the date of the discharge of the soldier. Inasmuch as a bill has been reported, I move that the petition lie upon the table.

The motion was agreed to.

Mr. JOHNSTON presented a petition of numerous citizens of Virginia, praying for an amicable adjustment of the questions arising out of the late presidential election; which was ordered to lie on the table.

Mr. MAXEY presented the petition of a large number of citizens of Lamar County, Texas, praying the passage of such law as shall enforce the passage of the act approved July 24, 1866, entitled "An act to aid in the construction of telegraph lines, and to secure to the Government the use of the same for postal, military, and other purposes;" which was referred to the Committee on Post-Offices and Post-Roads.

Mr. CRAGIN presented the petition of Caroline H. Barr, Elizabeth S. Preston, E. A. Barrett, and others—7 men and 15 women—22 citizens of the State of New Hampshire, praying for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex; which was referred to the Committee on Privileges and Elections.

Mr. CRAGIN. I present the memorial of 50 citizens of the city of Manchester, New Hampshire, praying that the limitation clause, so called, of the pension act be repealed, and for the passage of a law authorizing the payment of pensions in all cases to date from the time of the soldier's discharge. I believe a bill has been reported upon that subject; I therefore move that the memorial lie on the table.

The motion was agreed to.

Mr. BOUTWELL presented the petition of Eben Shute and others, citizens of Massachusetts, praying an amendment to the pension laws so as to allow arrears of pensions; which was ordered to lie on the table.

He also presented the petition of H. Hosford and 51 other citizens of Massachusetts, in favor of the passage of the bill providing for the settlement of questions arising from the recent presidential election; which was ordered to lie on the table.

REPORTS OF COMMITTEES.

Mr. WRIGHT, from the Committee on Claims, to whom was referred the bill (S. No. 587) for the relief of Jacob Theirer, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

BILLS INTRODUCED.

Mr. CAMERON, of Pennsylvania, asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1168) to provide for the distribution of the awards made under the convention between the United States and the republic of Mexico, concluded the 4th day of July, 1868; which was read twice by its title, and referred to the Committee on the Judiciary.

Mr. COCKRELL asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1169) granting a pension to Mrs. Apoline A. Blair, widow of the late Major-General Francis P. Blair, jr., deceased; which was read twice by its title, and referred to the Committee on Pensions.

Mr. WINDOM asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1170) for the relief of E. F. Wenckebach; which was read twice by its title, and, with the accompanying petition, referred to the Committee on Military Affairs.

He also asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1171) to provide for furnishing copies of papers on file at the Interior Department and the bureaus thereof; which was read twice by its title.

Mr. WINDOM. I hardly know to which committee the bill should be referred, as it covers several bureaus represented by different committees.

The PRESIDENT *pro tempore*. The Chair would suggest the Committee to Examine the Several Branches of the Civil Service.

Mr. WINDOM. As the bill was sent by the Secretary of the Interior to the Committee on Appropriations, I would ask to have it referred to that committee, but I have no choice about the matter.

The PRESIDENT *pro tempore*. The bill will be referred to the Committee on Appropriations, if there be no objection.

Mr. MERRIMON. I ask unanimous consent to introduce a bill, and I should like to say a word or two in explanation of its purpose. Some practical experience, together with my general observation in the Senate, satisfies me that the practice which has now become very common, of sending committees composed of Senators abroad, especially while Congress is in session, to take testimony and gather information for the use of the Senate, is unwise if not vicious. It virtually, in many instances, deprives many of the States of part of their just representation. Lately, for more than a month, the State of Wisconsin was without representation at a time of great moment, when grave questions involving the perpetuity of the country were under consideration. In that case a State was absolutely deprived of representation. Twelve States for more than a month, and some of them at this time, have been deprived of part of their representation, one-half their representation, half their voice, in this body. In addition to that, such service while the Congress is in session goes very far to unfit a Senator for business when he shall return to the Senate. He loses the course of business; he loses the history of the measures before the Senate and in Congress; he is behind in that practical information that he ought to have about every measure in order to enable him to do efficient service. When he returns he must catch up with business, study the questions anew, while all the Senators who have remained at their places have become entirely familiar with them. This is not wise or fair to the Senator sent abroad or to the country.

In addition to that, it involves a vast expenditure of money which is unnecessary in my judgment. This service might be done in another way, through commissions, quite as well as, indeed I venture to say better than, it can be done by committees composed of Senators. My recent experience on a committee sent to the State of South Carolina has satisfied me that a commissioner, or two commissioners, could have taken the testimony more advantageously to the Senate and to the country than the committee of Senators did. We were entire strangers to that community; we did not know the various localities from which witnesses were called; we knew nothing of the witnesses; we were unfamiliar with what they were testifying to; we knew nothing of the history of the controversies there which it was very essential to know when taking testimony, in order to arrive at the truth. A commissioner or commissioners need not be subject to this disadvantage, especially if he or they were allowed to call to their aid counsel familiar with the witnesses, the localities, and controversies and subjects to be examined.

I merely make these remarks in order to call the attention of the Senate to the character and what I consider the importance of the bill which I now desire to introduce and have referred to the Committee on the Judiciary.

At the proper time, in the course of the morning hour, I propose to introduce a resolution declaring that it is not within the lawful power of the Senate to send a committee composed of Senators abroad to take testimony, or to gather information for any purpose, while the Senate is in session. I wish to test the judgment of the Senate on this subject.

By unanimous consent, leave was granted to introduce a bill (S. No. 1172) providing for taking testimony and collecting information to be used by Congress; which was read twice by its title, and referred to the Committee on the Judiciary.

Mr. CONOVER asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1173) for the relief of Frederick R. Smith; which was read twice by its title, and referred to the Committee on Naval Affairs.

Mr. BOGY (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1174) to organize the Territory of Oklahoma and for the better protection of the Indians therein, and for other purposes; which was read twice by its title, and referred to the Committee on Indian Affairs.

BUILDING FOR CENTENNIAL EXHIBITS.

Mr. MORRILL submitted the following resolution; which was considered by unanimous consent, and agreed to:

Resolved, That all that portion of the President's message in relation to providing a suitable building for the permanent accommodation of the Government exhibits at the centennial exhibition, and of the very large donations to the Government by many other nations of valuable contributions, be referred to the Committee on Public Buildings and Grounds, with instructions to report thereon by bill or otherwise.

COMMITTEE SERVICE.

Mr. MERRIMON submitted the following resolution; which was referred to the Committee on the Judiciary:

Resolved, That it is not within the lawful authority of the Senate to charge committees composed of Senators with duties to be performed away from the Capitol while the Senate is in session.

REPORT OF DISTRICT BOARD OF HEALTH.

Mr. SHERMAN submitted the following concurrent resolution; which was referred to the Committee on Printing:

Resolved by the Senate, (the House of Representatives concurring,) That 1,000 extra copies of the report of the board of health of the District of Columbia for the year 1876 be printed for use and distribution by said board.

M'GREGOR WESTERN RAILROAD.

Mr. WRIGHT. I ask that the Senate proceed to the consideration of the bill (H. R. No. 4168) to amend section 1 of the act of May 12, 1864, for a grant of lands to the State of Iowa to aid in the construction of a railroad in said State.

The PRESIDENT *pro tempore*. Is there objection to the present consideration of the bill?

Mr. WEST. What committee reported the bill?

The PRESIDENT *pro tempore*. The Committee on Public Lands.

Mr. WEST. If we cannot have any explanation of it until after it is taken up, I shall not object.

By unanimous consent, the Senate, as in Committee of the Whole, proceeded to consider the bill.

Mr. WRIGHT. There are certain amendments to this bill that do not change at all its purport or meaning that I propose to offer, and have the concurrence and approval of the acting chairman of the Committee on Public Lands. They seem to be necessary in order to avoid all possible misconstruction of its language. I do not regard them as changes at all. I offer this as the first amendment to the bill——

Mr. WEST. I would ask the Senator from Iowa whether there is any report in the case?

Mr. WRIGHT. There is no report. The Senator from Louisiana, he will allow me to say, was not in when I explained the bill the other morning.

Mr. WEST. I am sorry I was not here.

Mr. WRIGHT. As the law stands now, there is provision made for two roads, one from Sioux City running to the northern line of the State of Iowa; the other from McGregor running west, and the law provides that the road running from McGregor west shall strike the other road in the county of O'Brien. It has so occurred that in the construction of the road from Sioux City north, it only touches the northwest corner of O'Brien County; and hence the road from McGregor in order to strike that road in O'Brien County must be diverted to the north, whereas it is proposed that it shall strike it immediately west of that county and keep on the forty-third parallel.

The first amendment is to come in at the top of the second page and omitting the last word "to" on the first page. After the word "company," in line 3, I move to strike out the words "to which the State of Iowa has made, or may hereafter make, the grant of the lands applicable to the completion of said road."

And in lieu thereof insert the words:

Which now is or hereafter may be by the laws of the State of Iowa entitled to complete said road and receive the lands granted for and applicable to the same.

The amendment was agreed to.

Mr. WRIGHT. I now offer this amendment: after the word "line" in line 9 page 2 to insert "as now constructed;" so as to read:

Intersect said road leading from Sioux City to the Minnesota State line, as now constructed, at a point outside and west of the said county of O'Brien.

The amendment was agreed to.

Mr. WRIGHT. I offer this amendment: after the word "act" in line 16 to insert "of Congress or of the State of Iowa;" so as to read:

Provided, That nothing herein contained shall be construed to in any manner change the grant of land made to either of said roads by said act of May 12, 1864, or any other act of Congress or of the State of Iowa, or to increase or change the lands taken under said grant.

The amendment was agreed to.

Mr. WRIGHT. I offer this amendment: in line 19 after the word "settler" to insert "or any other railroad company;" so as to read:

And provided further, That this act shall not be so construed as to change or affect the rights of any homestead or pre-emption settler, or any other railroad company, nor to extend the time for the completion of said McGregor Western Railroad.

The amendment was agreed to.

Mr. INGALLS. This is a bill of very considerable importance, and involves the consideration of one or two questions in regard to the rights of homestead and pre-emption settlers to which the attention of the Senate has not yet been called.

This is, as I understand it, a railroad that is built by a grant of land for a certain number of miles upon either side. The bill proposes to change the terminus of the road, and of course changes its route. It must change its route if it changes its terminus. Under the operation of the laws that grant lands to railroad companies, the reserved sections for homestead and pre-emption become what is known as double-minimum lands; that is to say, if taken by a pre-emption settler he is compelled to pay two dollars and a half an acre, if taken by a homestead settler he obtains but eighty acres instead of one hundred and sixty that he would be authorized to obtain under the provisions of the homestead law in lands not within railroad limits.

The Senator from Iowa in his statement the other day said that this bill carefully guarded the rights of homestead and pre-emption settlers, but he will observe that if by the change of route of this railroad any homestead or pre-emption settlers who have taken double-minimum lands are thrown outside of the railroad limits, their rights are not protected. In other words, they are put in precisely the same category as homestead and pre-emption settlers in lands not within railroad limits, but they have paid two dollars and a half an acre for their land if they are pre-emption settlers, or have obtained but eighty acres if they are homestead settlers. In order to obviate that difficulty, and I suppose the Senator will see that it should be obviated, I propose the following amendment to the bill.

The PRESIDENT *pro tempore*. Is it offered as an additional section?

Mr. INGALLS. No; I move to strike out the proviso after the word "further" in line 17, and insert in place of that what I have sent to the desk and ask to have read.

The CHIEF CLERK. The words proposed to be stricken out are as follows:

That this act shall not be so construed as to change or affect the rights of any homestead or pre-emption settler, or any other railroad company, nor to extend the time for the completion of said McGregor Western Railroad; it being the sole and true intent and meaning of this act to give consent to the change of the western terminus of said road as herein declared.

In lieu of these words it is proposed to insert:

In all cases where settlers upon public lands under the provisions of the pre-emption laws of the United States shall have paid double-minimum prices by reason of their location within said railroad route, which route shall be so changed by the location of said road herein provided for as to exclude said lands from the limits within which double minimum price is to be charged, the excess above $1.25 per acre shall be refunded to the persons paying the same, or his legal representatives. And that settlers under the homestead laws who by reason of such withdrawal and subsequent change have received but eighty acres of land shall be entitled to eighty acres additional, to be selected from any of the public lands of the United States open to settlement or pre-emption at the minimum price.

Mr. WRIGHT. I am sure that my friend from Kansas does not propose this as an amendment to strike out what he proposes and insert what he has sent to the Chair.

Mr. INGALLS. That is my intention.

Mr. WRIGHT. I shall oppose it, and shall oppose it as an amendment even if the language sought to be stricken out is retained. He proposes to strike this out, whereas we propose in a mere local matter to make provision that there shall be no further extension of the time for the completion of this railroad. He proposes to strike that out.

Mr. INGALLS. No.

Mr. WRIGHT. I understand that he proposes to strike out all of the last proviso.

Mr. INGALLS. I propose to strike out the portion of the bill from lines 17 to 23, inclusive, after the word "further."

Mr. WRIGHT. That is what I understand.

Mr. INGALLS. And the object of that proviso, if I understand the Senator from Iowa, is simply to protect the rights of homestead and pre-emption settlers.

Mr. WRIGHT. More than that, because it expressly provides "nor to extend the time for the completion of said McGregor Western Railroad."

Mr. INGALLS. So far as that language is concerned, I have no objection to its being retained.

Mr. WRIGHT. The Senator proposes to strike it all out.

Mr. INGALLS. I did not observe that clause there with regard to the time of the completion of the road, and of course I do not desire to interfere with that one way or the other. My object is to have a definition of the rights of the homestead and pre-emption settlers within these railroad limits; and if by the change contemplated by this bill men who have paid two dollars and a half an acre for land, or have obtained but eighty acres of land, are thrown outside the railroad limits, that then they shall be placed in the same category as other settlers on the public lands are.

Mr. WRIGHT. I trust that the amendment proposed by the Senator from Kansas will not be agreed to by the Senate, especially in the form in which it is now proposed, for his proposition is to strike out all the last proviso and insert what he has sent to the desk.

Mr. INGALLS. I will modify that by including the clause to which the Senator has referred.

Mr. WRIGHT. How the amendment would stand then I should like to have reported from the desk.

The PRESIDENT *pro tempore*. The amendment will be reported as modified.

The CHIEF CLERK. It is proposed to insert after the word "grant," in line 17, the following proviso:

And provided, That in all cases where settlers upon public lands under the provisions of the pre-emption laws of the United States shall have paid double minimum price by reason of their location within any designated railroad route, which route shall be so changed by the location of said road herein provided for as to exclude said lands from the limits within which double minimum price is to be charged, the excess above $1.25 per acre shall be refunded to the person so paying the same, or his legal representatives. And that settlers under the homestead laws who, by reason of such withdrawal and subsequent change, have received but eighty acres of land shall be entitled to eighty acres additional, to be selected from any of the public lands of the United States open to settlement or pre-emption at the minimum price.

The PRESIDENT *pro tempore*. The words mentioned by the Senator from Iowa are retained in the bill by this amendment.

Mr. WRIGHT. Do I understand that that does not strike out anything, but leaves the bill as it is, with this as an additional proviso? This bill was reported by the Committee on Public Lands after full consideration of all its terms and provisions. It is purely and simply a local bill. The Legislature of the State of Iowa has asked Congress to authorize a change in the western terminus of this road running from McGregor, and that alone. It will make a change of the road of a very few miles. When the law was originally passed it was contemplated that the road to the northern line of Iowa would run through the center of O'Brien County. It turns out that it runs through the northwest township. Now, to strike that road in O'Brien County it must diverge some twenty miles from the forty-third parallel. This bill authorizes them to continue the road so as to strike it west of O'Brien County within a few miles beyond its western line. It expressly saves the rights of all settlers. It expressly provides that nothing herein contained shall be construed to extend the time for the completion of the road and that nothing herein contained shall be so construed as to change the subsidy that has been given to the road; it shall remain the same as it has now been selected, it being said in the last clause of the bill:

It being the sole and true intent and meaning of this act to give consent to the change of the western terminus of said road as herein declared.

That is the sole object and purpose of the bill. The Senator from Kansas proposes to put upon this bill a section, general in its character with reference to all railroad grants where there is a change of route.

Mr. INGALLS. No, sir.

Mr. WRIGHT. I understand the amendment to provide expressly that, where there shall be a change of route, then the rule that he introduces shall be applicable to the rights of settlers.

Mr. INGALLS. It is confined exclusively to this act, by its terms. Let the amendment be again reported.

The PRESIDENT *pro tempore*. The amendment will be read.

The Chief Clerk again read the amendment.

Mr. WRIGHT. I have no doubt that this amendment introduces a most pernicious rule; but as I am exceedingly anxious to get this bill out of the way before the expiration of the morning hour, I propose not to make any further resistance to the amendment as I understand it now, and let the bill go back to the House and be settled finally by subsequent proceedings.

Mr. ALLISON. I desire to say one word in reference to the amendment of the Senator from Kansas. I do not think that amendment has any application whatever to this bill, although it may be a correct principle to adopt. The original act provided for land grants to two railways, one beginning at Sioux City and extending in a northeasterly direction to the city of Saint Paul, the other beginning on the Mississippi River and extending directly west on the line of the forty-third parallel; and the two were to meet in O'Brien County. When these two lines were made they did not meet in O'Brien County as a matter of fact, and the Sioux City and Saint Paul railway is completed. Their line is fixed. The other railroad is not completed. In order to make a crossing of that railway, as provided by the act of 1864, they are compelled in fact to cross west of O'Brien County or divert their line too far from the forty-third parallel or from a direct east-and-west line.

The bill as it stands now does not change the route of the McGregor Western Railway in any sense; therefore the amendment proposed by the Senator from Kansas does not affect, as I understand, the land granted in this act. It involves a new principle with reference to land grants, and in that respect it may be of value to him as a precedent applying to some other railways in Kansas or some other portion of the country. The amendment proposed by him will be quoted hereafter possibly as a precedent set by this Congress with reference to the rights of pre-emptors and homestead settlers. I do not know that it is wrong; I think it is right; it appears to me to be so, but it has no application to this bill, and I trust it will not be adopted without some previous examination by the Committee on Public Lands or other committee of the Senate.

Mr. WINDOM. If I understand the last clause of the amendment, I am opposed to it. I think it introduces a new principle entirely, and that is to allow parties who have received eighty acres under the homestead law to make up their deficiency anywhere else in the United States. I know of no case in which we have allowed that to be done. If we have allowed them to make up deficiencies at all, it has been within the limits of the grant to the road; but this gives them a wandering commission to go anywhere in the United States. I think it would be a very pernicious principle if we should adopt it. I may have misunderstood the amendment.

Mr. SARGENT. Is an amendment to the amendment in order?

The PRESIDENT *pro tempore*. It is.

Mr. SARGENT. I propose the following amendment to the amendment of the Senator from Kansas: After the words "United States," in the next to the last line of the amendment, I move to insert "within said State;" so as to read:

That settlers under the homestead laws who, by reason of such withdrawal and subsequent change, have received but eighty acres of land shall be entitled to eighty acres additional, to be selected from any of the public lands of the United States within said States, open to settlement or pre-emption, at the minimum price.

Mr. INGALLS. I accept the amendment. Does the Senator from Iowa [Mr. WRIGHT] object to the amendment as amended?

Mr. WRIGHT. I think the amendment is entirely out of place. I regard it as vicious in principle, as I understand it, as applied to such a bill as this. I therefore trust the amendment will be voted down and that we shall have the bill as reported by the committee.

Mr. INGALLS. I understood the Senator from Iowa to say that under the circumstances he was willing that the amendment should be made to the bill, and that, as amended, it might go to a committee of conference for further consideration; but, as he now asks the Senate to vote down my amendment and says that the principle involved is new and vicious and one that ought not to be adopted, I beg leave to submit a few remarks to the Senate in regard to what has been said by him and by his colleague.

The law under which this road was endowed was approved on the 12th of May, 1864. The second section of the act provides—

SEC. 2. *And be it further enacted*, That the sections and parts of sections of land which by such grant shall remain to the United States within ten miles on each side of said roads shall not be sold for less than double the minimum price of public lands when sold, nor shall any of said lands become subject to sale at private entry until the same shall have been first offered at public sale to the highest bidder at or above the minimum price as aforesaid: *Provided*, That actual *bona fide* settlers under the pre-emption laws of the United States may, after due proof of settlement, improvement, and occupation, as now provided by law, purchase the same at the increased minimum price—

And that is at $2.50 per acre—

And provided also, That settlers under the provisions of the homestead law who comply with the terms and requirements of said act shall be entitled to patents for an amount not exceeding eighty acres each, anything in this act to the contrary notwithstanding.

Under this act, it is undoubtedly true that a large number of pre-emption settlers have taken land at $2.50 an acre. It is undoubtedly true that numerous homestead settlers have taken lands, have obtained a patent to but eighty acres, when, if they had been outside of these railroad limits, pre-emptors would have been compelled to pay but $1.25 an acre and homesteaders would have had one hundred and sixty acres of land. Now, the Senator from Iowa comes in and asks Congress to change the terminus and, therefore, the route of this road.

Mr. WRIGHT. Will the Senator allow me to interrupt him?

Mr. INGALLS. Yes, sir.

Mr. WRIGHT. It is a matter of a great deal more importance to my people to have this bill through, even with this amendment upon it, than it is to have it delayed. I therefore ask that, unless there be some objection, the amendment be concurred in and let it go to the House and have it by a committee of conference settled. Let that be done unless there be some objection on the part of other Senators to the amendment.

Mr. INGALLS. That is all I desire, to have the amendment adopted.

Mr. WRIGHT. I want to have the bill disposed of, as it is a matter of vital importance to us locally that we shall have some work on this road the present year. We cannot without it.

Mr. WINDOM. I have no objection to the proposition with the amendment offered by the Senator from California, which has been agreed to.

The PRESIDENT *pro tempore*. That has been accepted. The question is on the amendment of the Senator from Kansas, as amended.

The amendment was agreed to.

Mr. MORRILL. I move to insert after the word "grant," in line 17, "nor to give said railroads any claim upon the United States to be re-imbursed for lands which may have been pre-empted or purchased or occupied by settlers under the homestead acts of Congress.

Mr. WRIGHT. I have no objection to that.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

PRESIDENTIAL APPROVAL.

A message from the President of the United States, by Mr. U. S. GRANT, jr., his Secretary, announced that the President had on the 20th instant approved and signed the act (S. No. 842) authorizing the commissioners of the District of Columbia to remove the jail on Judiciary Square to grounds near the Washington Asylum for the use of the District.

JOHN E. CATLETT.

Mr. CAMERON, of Wisconsin. I move to take up Senate bill No. 807.

The motion was agreed to; and the bill (S. No. 807) for the relief of John E. Catlett, of Hannibal, Missouri, was considered as in Committee of the Whole. It provides for the payment to John E. Catlett, of Hannibal, Missouri, of $400, for money expended and services rendered in the detection, arrest, and conviction of Edward W. Wise, for manufacturing and passing counterfeit fractional currency.

The Committee on Claims proposed to amend the bill, in line 16, by reducing the amount appropriated from $400 to $300.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. GEORGE M. ADAMS, its Clerk, announced that the House had passed the following bills; in which it requested the concurrence of the Senate:

A bill (H. R. No. 4475) removing the political disabilities of Joel S. Kennard, of Savannah, Georgia;

A bill (H. R. No. 820) for the relief of the mission of Saint James, in Washington Territory; and

A bill (H. R. No 4476) to provide for the appointment of an official short-hand reporter for the United States courts in and for the district of California.

ENROLLED BILL SIGNED.

The message also announced that the Speaker of the House had signed the enrolled bill (H. R. No. 4307) making appropriations to supply certain deficiencies in the contingent fund of the House of Representatives, and for other purposes; and it was thereupon signed by the President *pro tempore*.

ALMON F. MILLS.

Mr. INGALLS. I ask consent to pass a few pension bills. I move to take up House bill No. 3038.

The motion was agreed to; and the bill (H. R. No. 3038) granting a pension to Almon F. Mills, late private Company K, Twenty-ninth Regiment Ohio Volunteers, was considered as in Committee of the Whole.

The bill was reported to the Senate, ordered to a third reading, read the third time, and passed.

AMASA J. FINCH.

Mr. INGALLS. I move the present consideration of Senate bill No. 1152.

The motion was agreed to; and the bill (S. No. 1152) granting a pension to Amasa J. Finch was read the second time and considered as in Committee of the Whole.

The Secretary of the Interior is directed by the bill to place on the pension-roll, subject to the provisions and limitations of the pension laws, the name of Amasa J. Finch, at the rate of $18.75 per month.

The bill was reported to the Senate, ordered to be engrossed for a third reading, read the third time, and passed.

THOMAS G. KINGSLEY.

Mr. INGALLS. I move the consideration of House bill No. 3511.

The motion was agreed to; and the bill (H. R. No. 3511) granting increased pension to Thomas G. Kingsley was considered as in Committee of the Whole. It provides for an increase of pension to Thomas G. Kingsley, formerly colonel of the Twenty-sixth Connecticut Volunteers, equal to the special rate provided for the loss of both eyes or both feet or hands.

The bill was reported to the Senate, ordered to a third reading, read the third time, and passed.

ELIZA A. BLAZE.

Mr. INGALLS. I move the present consideration of House bill No. 3575.

The motion was agreed to; and the bill (H. R. No. 3575) granting a pension to Eliza A. Blaze, widow of Abner T. Blaze, late a private in Company C, Thirteenth Indiana Cavalry Volunteers, was considered as in Committee of the Whole.

The bill was reported to the Senate, ordered to a third reading, read the third time, and passed.

BENJAMIN AND D. W. FENTON.

Mr. CAMERON, of Wisconsin. I move the present consideration of Senate bill No. 855.

The motion was agreed to; and the bill (S. No. 855) making an appropriation to pay the claim of Benjamin Fenton and D. W. Fenton, was read the second time and considered as in Committee of the Whole. It appropriates $958.32 in full payment, satisfaction, and discharge of the claim of Benjamin Fenton and D. W. Fenton, for rent of lot No. 59 of the Memphis navy-yard, in Memphis, Tennessee, while the same was occupied by the United States.

Mr. EDMUNDS. Let us hear the report read in that case.

The Secretary read the following report submitted by Mr. CAMERON, of Wisconsin, from the Committee on Claims, on the 20th of May, 1876:

The Committee on Claims, to whom was referred the petition of Fenton & Brother, of Memphis, Tennessee, praying compensation for the use and occupation of lot No. 59 of the Memphis navy-yard from June 6, 1862, to August 20, 1866, submit the following report:

By an act of Congress approved August 15, 1854, the United States ceded all the grounds and appurtenances thereunto belonging, known as the Memphis navy-yard, in Shelby County, Tennessee, to the mayor and aldermen of the city of Memphis.

In the year 1857 the city of Memphis mortgaged the property to secure a debt of $350,000; and to raise the money to pay interest on said debt laid off the grounds into lots and leased it to various parties.

The property for which rent is demanded is known and designated as lot 59.

On the 17th day of January, 1857, lot 59 was leased by the city of Memphis to Charles Richmond for thirty years. On the 19th day of June, 1858, Richmond assigned the lease to Walt. C. Bradford. On the 1st day of October, 1859, Bradford assigned the lease to claimants.

Claimants entered into possession of the premises under their lease, and while occupying them were dispossessed by the United States authorities in June, 1862, and the occupation of the buildings for storage and hospital purposes was continued by United States authorities until the 30th day of September, 1868.

The entire navy-yard having been taken possession of by United States authorities soon after the occupation of the city of Memphis, repeated applications were made by the city of Memphis, through its solicitor and mayor, to the President, Secretary of War, and other officers of the Government, during the years 1866 and 1867, for the restoration of the property.

The Quartermaster-General, to whom the application was finally referred, reported that the property, having been used for the manufacture of arms and ammunition for the confederate military authorities, was captured by the United States and held for its use as a lawful prize of war.

Secretary Stanton transmitted all the papers to the Attorney-General in October, 1866, and requested his opinion as to whether the property should be considered as captured, and as to what disposition of the property should be made by the War Department under existing laws.

The Attorney-General returned the papers with the opinion that the case did not present any of the legal elements that constitute a case of capture, and that the property should be restored to the city.

By order of the Secretary of War the application for restoration was then referred to Major-General Thomas, with instructions to turn over the property to the city authorities, with an accompanying suggestion, that in consideration of the relinquishment of the property in question to the city, it might feel disposed to entertain favorably a proposition to relinquish all claims for back rent.

Upon this point, as well as upon that of providing quarters for troops then occupying the premises, General Thomas was instructed to obtain the best terms possible.

On the 3d day of September, 1868, General Swords leased from the mayor so much of the navy-yard grounds and buildings as would answer for the accommodation of the troops, and was informed by the mayor that he was not authorized to make any arrangement as to the back rent of the lessees.

It appears that claimants paid to the city of Memphis the rents and taxes on said property during the entire period of occupancy by the United States authorities, and made many applications during the years 1866-'67-'68 to different officers of the Government for the restoration thereof, and were refused on the ground that it was required by the Government as a military storehouse.

In reply to an application made by claimants during the summer of 1868, to Captain Parkinson, quartermaster at Memphis, for the restoration, they were advised by General Thomas that the Government would turn over the property only on condition that they (claimants) would relinquish all right to claim for rent and damages.

On the 18th day of August, 1868, Messrs. Wilson & Beard, attorneys for claimants, addressed a communication to Mr. W. B. Miller, of Louisville, Kentucky, authorizing him to say to General Thomas that if the Government relinquished claimants' property within the next month that their clients (Messrs. Fenton) would relinquish all claims against the Government for back rent.

The property was turned over to Fenton & Brother on the 30th day of September, 1868, who executed the following release:

"The building in the navy-yard having been turned over to us to-day, we, as lawful agents of Messrs. Fenton & Co., hereby relinquish all claims for back rent of said building on account of the use and occupancy of the same by the Government.

"WILSON & BEARD,
"*Attorneys for Fenton & Brother.*"

The property for which rent is claimed does not appear to have been used in any manner to support the rebellion, but in the manufacture of cotton-seed oil, and was seized on account of adjoining property, belonging to the city, being used for the manufacture of arms and ammunition for the confederate authorities.

The title has not been divested out of the city of Memphis by any proceeding in court under the act of August 6, 1861; on the contrary, the property was all restored to the city during the year 1865, upon the advice of the Attorney-General.

The claimants applied to the Secretary of War for the payment of their claim for rent of said lot 59 from June 6, 1862, when it was first occupied by the United States, to September 30, 1868, on which last-mentioned day it was surrendered by the United States to the claimants. It was submitted by the Secretary of War to the proper accounting officer, the third auditor, who held that so much of the claim as originated prior to the 20th day of August, 1866, could not be considered by him, for the reason that the act which became a law on the 21st day of February, 1867, prohibited the settlement of claims growing out of the occupation of or injury to real estate, when such claims originated during the war of the rebellion, and in a State or part of a State which had been by the proclamation of the President dated July 1, 1862, declared to be in insurrection. But the accounting officer further held that claimants were entitled to a fair compensation for rent of lot from August 20, 1866, to the date of the surrender of the lot, September 30, 1868.

The Third Auditor held that the waiver by claimants of back rent, on condition of the surrender of possession, had no legal force. In this we concur. If there was any just reason why the property should not be given up, then it was wrong to give it up on such condition; but if it was just to give it up, the officers had no right to exact any burdensome condition, and any waiver made under such circumstances would be without consideration and of no legal effect.

The accounting officer having held that claimants were entitled to reasonable rent from August 20, 1866, (the date of the termination of the war as fixed by the Supreme Court of the United States,) to September 30, 1868, the date the premises were surrendered, the amount was fixed upon the report of Quartermaster Ekin at $2,500 per annum, and the claimants have accordingly been paid the sum of $5,271.78. The balance of the claim—that is, the claim for rent from June 6, 1862, to August 20, 1866—was rejected, and Congress is now asked to pay this rejected claim. Is the Government liable for this rejected claim?

Benjamin Fenton, one of the claimants, is now and during the late civil war was a resident of Memphis, and D. W. Fenton, the other claimant, was then and still is a resident of New York.

It is not claimed that the Government agreed with the claimants to make compensation for the use of the premises.

In the view which your committee takes of this claim it becomes important to inquire, "when did the rebellion begin and end?"

Acts of hostility by the insurgents occurred at periods so various and of such different degrees of importance and in parts of the country so remote from each other, both at the commencement and close of the late civil war, that it would be difficult, if not impossible, to say at what precise day it began or terminated. It is necessary, therefore, to refer to some public act of the political departments of the Government to fix the dates; and, for obvious reasons, those of the executive department, which may be and in fact was, at the commencement of hostilities, obliged to act during the recess of Congress, must be taken.

The Supreme Court, in the case of The Protector, (12 Wallace, 700,) holds that the proclamation of intended blockade by the President fixes and determines the date of the commencement of the war, and the proclamation that the war had closed fixes the date of the termination of the war. But the war did not begin or close at the same time in all the States. There were two proclamations of intended blockade: the first of the 19th of April, 1861; the second of April 27, 1861. The State of Tennessee was not embraced in either proclamation declaring a blockade. On the 16th of August, 1861, the President, by proclamation, declared the inhabitants of Tennessee and other States "in a state of insurrection against the United States." (12 Statutes at Large, 1262.) We think that the date of this proclamation may be deemed to fix the date of the commencement of the war in Tennessee. There were two proclamations declaring that the war had closed: one issued on the 2d of April, 1866, embracing the State of Tennessee and all the other insurgent States except Texas, and the other, issued on the 20th of August, 1866, embracing the State of Texas.

We will, then, as the Supreme Court has decided, take the dates of these proclamations as ascertaining the commencement and the close of the war in the States mentioned in them. Applying this rule to the claim we are now considering, we find that the war began in Tennessee August 16, 1861, and ended on the 2d day of April, 1866.

We do not rely upon the said act of February 21, 1867, herein referred to.

The laws governing the case may be stated as follows, that is to say, where an army occupies and garrisons a town in an enemy's country in time of war the occupation of such buildings as are necessary to the use of the army and those depending upon them, with all the costs and damages, is an incident of war for which the Government is in no sense responsible. An army cannot hold a city without occupying some portion of it; and if they do so, that is one of the incidents of war, and gives no contract, expressed or implied, against the government of the occupying army.

We adhere to the rule laid down by this committee in the case of James Glover, reported ——— ——, 1876, and hold that, in law, during a state of war, it makes no difference whether the owners of this property were loyal or disloyal, nor whether they resided in a loyal or in an insurgent State—that the *situs* of the property governs.

The claimants have been paid for rent of the premises since August 20, 1866, on the assumption that the war ended on that day. We have seen that the Supreme Court, in the case of The Protector, 12 Wallace, 700, held that the war terminated in Tennessee on the 2d of April, 1866.

We think claimants are entitled to be paid rent from April 2, 1866, the date of the end of the war in Tennessee, to August 20, 1866, at the rate of $2,500 per annum.

We therefore herewith report a bill appropriating the sum of $958.32 in full payment and satisfaction of the claimants' said claim, and we recommend that the same do pass.

Mr. EDMUNDS. Is that report made by the Senator from Wisconsin?

Mr. CAMERON, of Wisconsin. Yes, sir. The bill simply provides for the payment of rent from the 2d of April, 1866, to the 20th of August, 1866, during which time the property was in the actual occupation of the United States, as the Supreme Court has held that the war termi-

nated in Tennessee on the 2d of April, 1866. We reject the claim for rent during the war, and only allow rent during the time the property was in fact occupied after the cessation of the war in the State of Tennessee.

Mr. EDMUNDS. Was possession demanded before that time?

Mr. CAMERON, of Wisconsin. Yes, sir.

The bill was reported to the Senate, ordered to be engrossed for a third reading, read the third time, and passed.

COUNTING OF THE ELECTORAL VOTES.

The PRESIDENT *pro tempore*. The morning hour has expired. The unfinished business is the bill (S. No. 1153) to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877, which is before the Senate as in Committee of the Whole.

Mr. MORTON. Mr. President, as the member of the committee who did not agree to this bill, I have thought it proper that I should make a brief statement of the grounds on which I did not concur with my colleagues; but I am not well this morning and am unable to speak as I should desire. Still, as the bill is about to come to a vote apparently, I will very briefly state the reasons why I could not give my assent to its being reported.

This bill is presented for the consideration of Congress under very peculiar circumstances. The Congress of the United States is scarcely left free for its consideration. We are aware that there is great uneasiness in the public mind throughout the country; apprehensions are entertained of violence, of revolutionary action on the part of the House of Representatives, of some course being taken that may result in disturbing the peace of the country. A member of Congress has said in a speech in this city that 100,000 men would be here on the 14th of February to witness the counting of the votes. That may be regarded as an extravagant utterance; but it is one of very many of the kind that come up to us from different parts of the country; so that the business interests of the country have become alarmed, and there is a disposition to take almost any measure that may be proposed that will give assurance of peace without very much regard to the character of the measure.

I do not think I am at all out of the way when I say that this bill is a literal product of "the Mississippi plan;" that the shadow of intimidation has entered this Chamber, and that in proposing this bill, and in the consideration of it, members of the Senate and of the House are acting under the apprehension of violence, of some great revolutionary act that will threaten the safety and continuance of our institutions. I do not myself believe in the reality of this danger. I believe that this sort of talk is intended for a purpose, and I very much fear that it will accomplish that purpose. The real danger that we are in results from weakness, results from timidity, results from not daring to stand up to do our whole duty as we understand it.

It is said by geologists that there was a period in the history of the earth's crust when there were skull-less vertebrates; and it would seem now that we have come to that period when there are vertebrateless skulls. The thing to do is to do what is right, and to do it fearlessly. For one, I am not afraid that, if this vote shall be counted as it was for the first seventy-two years in the history of our Government, there will be any revolution; I believe that any one who attempts it will be utterly destroyed.

I regard this bill, Mr. President, as a compromise. It will take its place alongside of the compromise of 1820, and the compromise of 1850. By the compromise of 1820, all the territory south of 36° 30′ was given over to slavery; and, when the time came to settle the territory north of that line, the compromise was destroyed. By the compromise of 1850 the institution of slavery got the immediate benefit of the fugitive-slave law, which gave it such prestige, power, and confidence as made it aspire to the complete conquest of the country.

I believe that Rutherford B. Hayes has been elected President of the United States; he has been elected under the forms of law and according to law, and that he is elected in the hearts of the people; and I believe that if he should be counted in, as eighteen Presidents were successively counted in from the beginning of this Government, he would be inaugurated and there would be no violence and no revolution.

There have been upon this question a great many loose opinions given from time to time on the first impression, without examination, and perhaps most Senators have indulged in them, so that very few can entirely claim to be consistent. I have indulged in them myself. But within the last few weeks this question has been presented as a case in hand, not simply as a matter speculative, something to come in the future; and there has been a flood of light poured upon it such as had never been before; many new things have been discovered, many things have been said, and we have the counsel of the best legal minds all over the country.

I brought forward a bill some two years ago, which was afterward reported by the Committee on Privileges and Elections, for the purpose of having a law for the counting of the electoral vote. I did not claim that that bill was perfect. It was not in view of any contingency or case. It, however, was in one respect a safe bill, and that is, leaving out of view who should count the vote, whether the President of the Senate or the two Houses, it contained no word by which the two Houses could be authorized to go behind the returns of a State, to go behind the decision made by the returning officers of the State appointed by the State for that purpose; and the bill of 1800, if I remember correctly, expressly provided that the two Houses should not go behind the returns so far as to count the votes for electors. I am not an advocate for State sovereignty; I never have been; but I have been a consistent advocate of State rights as I am now. The Constitution of the United States confers upon the States the power to appoint electors in such way as the Legislatures of the States may prescribe. This is the absolute right of each State. The mode of appointment is left to the Legislature of the State. The determination as to who have been appointed is left entirely to the State.

Should Congress assume to determine who have been appointed so far as to go behind the action of the officers of the State appointed by the laws of the State for that purpose, Congress would absorb to itself the entire power, would become a grand returning board, without limit and without restraint. The very moment we undertake to go behind the determination of the officers of the State as to the result of a State election and to count and determine the result for ourselves, that moment we establish a revolution which ultimately will be the end of presidential elections. I am not now referring to the certificate of the governor, which is prescribed not by State laws but prescribed by the act of Congress; but I am referring to that determination of the result of elections as prescribed by the laws of the States. The States have the right to appoint electors; the Legislature has the right to prescribe the method; and the evidence as to the appointment, as to who has been appointed, is left to the States as absolutely and as completely as the appointment itself.

I listened to the very able speech of the Senator from Vermont [Mr. EDMUNDS] on Saturday last with great interest. If I understood him correctly he assumed that there was no provision of the Constitution that executes itself except one, and that is in regard to the recovery of fugitives from labor, fugitive slaves; that the rest of the provisions of the Constitution are not self-executing, but require legislation to carry them into operation. He made a distinction, I believe, which is correct, that there are two classes of powers conferred by the Constitution. Where a power is conferred directly upon any department of the Government by the Constitution, that power cannot be taken from that department; that power cannot be delegated; but where the Constitution simply imposes a duty, but does not vest any particular department with the performance of that duty, then Congress may by law determine who shall discharge that duty.

If I understood the Senator aright, he took the ground that the counting of the votes was a duty imposed by the Constitution, but that the Constitution had not located it, had not said who should do it. He denied that the duty was imposed upon the President of the Senate. He said the President of the Senate was directed to open all the certificates, but he was not directed to count them. He was directed to open them "and the votes shall then be counted." The power and duty to count were not located in the two Houses; the Constitution did not say that any more than it said the President of the Senate should count them. It said the votes should then be counted. Assuming, for the sake of the argument, his position to be true that there is nothing in the Constitution, any part of it, that indicates that the President of the Senate shall count the votes as well as open them; assuming it to be true that the Constitution simply imposes a duty to count the votes, but does not say by whom the duty shall be performed, and therefore that Congress is left free to impose the performance of that duty upon a commission and upon any person it sees proper to put in that situation, his position would be tenable. The Senator in applying that to this case made use of the following language:

> But, as I have said, I only intended on this occasion to explain in as brief a way as I could exactly what the bill is and in a general way the grounds upon which it rests. The illustrations that might be still further made to show that this deciding power of which I am speaking does not rest with you, and as I think to show equally that it does not rest with either House of Congress until Congress provides a law that allows it to rest there, are so numerous that the whole day might be spent upon them.

The position of the Senator is that the Constitution created the duty to count the votes, but did not locate the power or duty anywhere, and that Congress, under the general power to pass all laws necessary and proper to carry into execution the powers given to any department or to the Government of the United States, may by law devolve that duty upon a commission or upon any person. If I do not state his position correctly, I hope he will correct me.

Mr. EDMUNDS. Mr. President, if the Senator wishes me to correct him now, he states a part of my position correctly, but he only states half of it; but I will take the opportunity to correct him, so as not to disturb him, afterward.

Mr. MORTON. Well, Mr. President, I am stating the Senator's position correctly and fully as I understand it, and I understand this position of his to be necessary to another part of his argument, because if the power to count the votes, which I believe he expressly disclaims, is lodged in the two Houses by the Constitution and is not a general power to be executed by law, then this power must be exercised by the two Houses only and cannot be delegated; whereas if it is simply a duty imposed to count the vote then Congress may locate that duty wherever it sees proper by law. The position of the Senator is that neither the President of the Senate is vested with this power nor are the two Houses of Congress, that neither can exercise it in the absence of a law passed for that purpose; and this brings us

then to a very great fact which is that for eighty-four years Presidents were counted in and inaugurated without any authority in point of law by any person. The President of the Senate had no power to do it because there was no law authorizing him to do it. The two Houses had no power to do it because there was no law authorizing them to do it. It was a part of the Constitution which had not been carried into operation by legislation. Now, sir, is it true that for eighty-four years Presidents were counted in and inaugurated without authority of law? That would be a very great discovery if it were true. It would show that the men who made the Constitution did not understand it. I believe that they thought the first President and all succeeding Presidents were counted in and inaugurated according to law. They may have been mistaken. Their opportunities for knowing what the Constitution is were not so good as ours, I suppose. They undoubtedly believed that the votes were properly counted for George Washington, John Adams, Thomas Jefferson, and so on.

I believe that this power is vested somewhere, located somewhere, that if it does not belong to the President of the Senate it belongs to the two Houses. It is in one place or the other. But whatever may be the location, in theory, that the two Houses cannot exercise this power without legislation I think is correct. I think the Senator from Vermont occupies a sound position in that respect; and whatever we may say about the power of Congress to legislate, and conceding that, as I have done heretofore and have presented bills to this Chamber upon that hypothesis heretofore, yet that in the absence of legislation the President of the Senate must count the votes, that this results not from any theory but results from necessity to prevent a dead lock, to prevent the Government from coming to a stand-still, that until legislation has been had under which the vote can be counted by the two Houses or providing some tribunal for it the President of the Senate must count the vote, and the vote was counted for seventy-two years upon that theory. If that theory was not correct, then it was unlawfully counted without authority and for three quarters of a century this Government proceeded illegally. Chancellor Kent stated the law on this subject as I think it has been generally understood in Congress and out of it until very recently:

> The President of the Senate, on the second Wednesday in February succeeding every meeting of the electors, in the presence of both Houses of Congress, opens all the certificates, and the votes are then to be counted. The Constitution does not expressly declare by whom the votes are to be counted and the result declared. In the case of questionable votes, and a closely contested election, this power may be all important; and I presume, in the absence of all legislative provision on the subject, that the President of the Senate counts the votes, and determines the result, and that the two Houses are present only as spectators, to witness the fairness and accuracy of the transaction, and to act only if no choice be made by the electors.

Now, conceding as Chancellor Kent seems to do, that there may be legislation on the subject, a doctrine to which I have subscribed, yet in the absence of legislation the President of the Senate must count the votes to prevent the Government coming to a halt, and he has counted the votes for eighty-four years, at least for seventy-two, from 1789 until the time of the adoption of the twenty-second joint rule. I do not intend now to go into an argument as to the right of the President of the Senate to count this vote against the powers of Congress. I am simply stating what I have heretofore understood to be the general doctrine, that in the absence of legislation the President of the Senate must count this vote; that if now we fail to agree upon a bill we should simply leave this question where it has been left for eighty-four years; and that the President of the Senate in counting this vote would be guilty of no greater usurpation than he has been guilty of for three-quarters of a century.

We are discussing this bill in the presence of a case. We are discussing it in the presence of an actual condition of things. I shall be anxious to have a fair bill adopted. I was exceedingly anxious to agree with the committee in the recommendation of a fair proposition; but when we are preparing a bill in the presence of a case made up, ready to be tried, the papers all signed and in due order, I insist that it shall be a fair bill under which the condition of things shall not be unfairly changed.

As I said before I believe Rutherford B. Hayes is elected President, elected upon the papers, elected under every form of law; that he ought to be inaugurated, and that he must be inaugurated unless a bill shall be passed which shall allow him to be counted out in defiance of the well-settled principles of law. I am not well enough, Mr. President, to go into this question to-day as I should like to do.

I wish to say a few words in regard to this bill. If the power to count this vote is vested in the two Houses, and is not in the President of the Senate, then the duty must be performed by the two Houses: it cannot be delegated. This was the precise point, as I understood it, of the argument of the Senator from Vermont, because, if he were to admit that the power is vested in the two Houses under the Constitution, he would be compelled to admit, good lawyer as he is, that that power cannot be delegated; but by placing it as a floating power, that is located nowhere until it is located by an act of Congress, then Congress would have the right to deposit this power with a commission.

The commission created is a mixed commission, partly inside and partly outside, five Senators, five Representatives, and five judges. The judges are taken, not because they are judges, not because they are members of the Supreme Court, but because they are men of eminent character who happen to occupy that position. Four of them are chosen by circuits. The Senator from Vermont hardly did himself justice on Saturday when he argued that they were chosen by circuits on account of geographical distribution. They were chosen by circuits, as I understand it, not because of geographical distribution, but because of the political antecedents of the men who preside in those circuits. When the bill, instead of naming the judges, names the circuits, it presents a harmless little sham that deceives nobody.

Four judges are taken by the bill because of their political antecedents, two on each side. In other words, the four judges are selected upon political grounds, equally divided, it is said, in order to make the bill a fair one. Nevertheless, selection is made in the Supreme Court on political grounds. If we are to deal with the Supreme Court—and I confess I looked upon that proposition with more favor than the other—I thought we ought to have taken the whole court, and not admit by any form of provision that we believed politics entered into the court; not divide it up on political grounds; not assume that the duties of that court are liable to be influenced by their political prepossessions, but take the whole court as a court. I thought that the least objectionable. It is true the other day, when there was a constitutional amendment here referring this matter to the Supreme Court, I voted against it; but I did so chiefly because it re-enacted the electoral college and re-enacted an election of President by the House of Representatives by States. But if we are to take an outside tribunal it seemed to me to be far better that we should take the court and take it as a court, take all the judges, and not pick around among them to get an equal number on political grounds. I thought that was a blow at the court and would do it more injury than any course that could be taken. They are to take a fifth. Four judges are to select a fifth.

Here is a very grave question presented, right at the threshold: What is the character of these commissioners? Are they officers? They are sworn; the very highest duty is imposed upon them, the decision of the greatest case that can arise under our institutions. If they are officers, are they not to be appointed as other officers under the Constitution of the United States are appointed? Can we take four men by name and authorize them to appoint the fifth and submit to this court thus organized this great case? Is it not a court to all intents and purposes? You call it a commission, but names are nothing. It is a court invested with the very highest jurisdiction to decide both law and fact, expressly charged with deciding the question, What are the powers of each or of both Houses of Congress? and expressly charged with finding the fact as to who have been elected electors for President of the United States. If it is a court, should it not be appointed as the Constitution requires other courts to be, and if these men are public officers, should they not be appointed as officers of the United States are required to be appointed? This is a contrivance, to use the very mildest words, a contrivance, a patched-up thing, five Representatives, five Senators, four judges first, and they to choose a fifth, and thus this tribunal is to be created that is to make a President of the United States. There are no analogies for it in our Constitution or in our laws or in our history. We have no tribunals made up in that way.

If we were to make this tribunal exclusively in the two Houses, make it consist of Representatives and Senators entirely, and stop there, the question would then arise, can we do it? If the decision of this question belongs to the two Houses, can you leave it to a few members of these two Houses and agree to be bound by their decision? Can you pass a law in that way? Can you by joint resolution or by bill authorize a conference committee to pass a law and to make it binding unless it is reversed by a majority of both Houses. Committees are but facilities of Congress, and their action amounts to nothing unless ratified by Congress. The decision of a conference committee amounts to nothing in point of law until after both Houses shall have confirmed its action; but here you create a commission partly of Senators, partly of Members, and partly of the judges of the Supreme Court, and you provide that the finding of that commission shall be valid unless reversed by a majority of both Houses. Here is a clear delegation of power. If it were provided that the finding of that commission should not be valid until confirmed by both Houses of Congress, there would be no delegation of power. You could just as well provide that it shall be binding unless reversed by two-thirds of each House, or you could provide that it should be absolutely binding and that there shall be no appeal at all. Here you create a court and you give an appeal from this court not to a higher court known to the Constitution of the United States, but you give an appeal to the Congress of the United States, provided that if the appeal shall be sustained by both Houses concurrently the decision of the court below shall be reversed. I will say one word further in regard to the bill.

It is a fundamental principle of law, in connection with the election of a President, in preserving and defining the rights of the States, that the action of the States shall be received unquestioned by the Congress of the United States, or by that power, whatever it may be, that shall count the vote; and any authority conferred upon this commission, or that might be conferred by an act of Congress upon the President of the Senate or any other agency selected to go behind the returning board of a State and count the votes, would be, in my judgment, a gross violation of the spirit and letter of the Constitution, revolution, and the end of presidential elections under our system.

I wish briefly to call the attention of the members of the Senate to this bill. I speak of the jurisdictional part, that part conferring jurisdiction upon this commission, and it is the vital part of the bill. We need not deceive ourselves for a moment about this business. We know that both parties are looking intently to that question and at that particular point. We may affect to be oblivious of it here, but we understand that the decision of this presidential question depends absolutely upon that question, for if the principle shall stand that the action of the State authorities, those that are appointed to count the votes and to say by State laws who are elected, Rutherford B. Hayes is elected and Mr. Tilden cannot be counted in except by overturning that principle. It is all in that, and the able lawyers of the democratic party on this floor and everywhere understand that just as well as we do. I call attention to that part of this bill which gives the jurisdiction to this tribunal:

Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one Senator and one Member of the House of Representatives before the same shall be received. When all such objections so made to any certificate, vote, or paper from a State shall have been received and read, all such certificates, votes, and papers so objected to, and all papers accompanying the same, together with such objections, shall be forthwith submitted to said commission, which shall proceed to consider the same, with the same powers, if any, now possessed for that purpose by the two Houses acting separately or together—

I may here remark that the bill proceeds upon a theory different from that of the Senator from Vermont in his argument. He assumes that the Constitution does not locate this power anywhere, but that it is to be located by law, while this bill goes upon the hypothesis that this power is located in the two Houses and that this commission shall have what the two Houses have, more or less—

which shall proceed to consider the same, with the same powers, if any, now possessed for that purpose by the two Houses acting separately or together, and, by a majority of votes, decide whether any and what votes from such State are the votes provided for by the Constitution of the United States, and how many and what persons were duly appointed electors in such State, and may therein take into view such petitions, depositions, and other papers, if any, as shall, by the Constitution and now existing law, be competent and pertinent in such consideration.

First, they are required to find what were the constitutional votes of a State. They are required to do a thing there which in my opinion the Constitution does not authorize, whether the power to count the votes be vested in the President of the Senate or in the two Houses. They are required to find, for example, under that provision whether the electors were eligible or ineligible as to their qualifications, while I maintain there is no time or place under the Constitution when the votes are counted for an inquiry of that kind. The duty is short and simple. The President of the Senate shall open the certificates in the presence of the two Houses and the votes shall then be counted. There is but one thing to do and that is to count the votes. There is no time, there is no place to try the question of the eligibility of the electors.

Suppose it should be said, if you please, that the President himself, the candidate, is not a citizen of the United States; that he is not eligible to be elected, and that that charge should be made when the votes are counted. The candidate takes issue; he says he is a citizen; was born in this country, or he says he is thirty-five years old. That may be denied. An issue of fact arises. Can you try that issue then? Will you count him out because you say he is not thirty-five years old when he says he is? You cannot try that question of fact then. Will you count him out because it is said he was not born in the United States? He says that he was; that there are those living who were present and can prove it. If that issue is made you cannot possibly try it at that time. And so with regard to electors. If they suggest that an elector was not eligible, that he was postmaster, if you please, he may deny the fact; he may insist that he had resigned before that time, and his resignation had been accepted. Is there any time or place there to try the issue of fact, whether he was eligible or not; whether he was postmaster or not; whether he was qualified or not to become an elector? No, Mr. President, whoever may count the votes, there is no time or place when you count the votes to try that question.

The two Houses are to come together. The President of the Senate is to open all the certificates. That does not mean every kind of certificate that may be placed in his possession. It does not mean any paper that may purport to be a certificate, but he is to open all the certificates from the electors of the several States and the votes shall then be counted, the votes in those certificates, be they good, bad, or indifferent, be they for an alien, or be they for a citizen of the United States. At that time and at that place there is but one thing to do, and that is to count the votes. It may be said that the candidate is not qualified to be elected; it may be said that the elector was not qualified to be an elector, but you cannot try that issue of fact then and there; there is but one thing to do, that is to count the votes. The President of the Senate has his duty, and that is to open the certificate that comes from the electors of the States. He is not bound to open certificates from pretended authority, from outsiders, from persons unknown officially. I am going on a little further, Mr. President.

This bill requires this commission to find the facts, whether these electors were duly appointed. We will just put the word "elected" instead of "appointed," for in this connection it means the same thing. They are required to find were these electors duly appointed? They are not required to find whether they have been duly certified by the State authorities as having been elected. No, sir; but they are required to find the fact were they duly appointed or elected? If it had said that this commission shall find how many electors there were, and whether they were duly certified as having been elected by the State authorities or the returning board created for that purpose, we could understand that; but they are required to find the fact as to who was elected, and thus, as I apprehend this bill, they are required to go behind the returns from the States. If it was intended that they should find who had been certified by the States as having been appointed or elected, that would be simple and easily understood; but the bill quietly and innocently requires the commission to find the fact as to who was duly elected. Then it provides that for that purpose they—

May therein take into view such petitions, depositions, and other papers, if any, as shall, by the Constitution and now existing law, be competent and pertinent in such consideration.

In finding the fact as to who was duly elected, they are authorized to take into consideration petitions, unsworn evidence, depositions, papers of all kinds, reports, everything that may be put in for the information of Congress. If these things are not to be considered in determining who has been elected, then the reference is useless. If this commission is to be controlled by the State authorities, by those who have been certified as elected by the returning officers of the several States, then they have no occasion to look at these petitions, memorials, and reports. The bill invites them to look at these papers, invites them for a purpose, and there can be no use in looking at them if the other principle of law is to be observed, that they are to be governed by the returns made by the officers of the several States.

Now, Mr. President, I think I do the intelligence of these distinguished democratic Senators but justice when I say that they would not go for this bill except that it gave them a chance for the only thing that can count Mr. Tilden in, and that is, to go behind the returns. Outside of that he has no chance, no possible hope; and that these distinguished and eminent lawyers go for a bill which at the very beginning cuts off and shuts out this their only hope, I must be excused for saying that I do not believe it.

Mr. President, I am not able to proceed any further to-day.

SWEARING IN OF A SENATOR.

Mr. HAMLIN. I ask the Senate to suspend its action upon the bill for a moment that the oath of office may be administered to my colleague-elect [Mr. BLAINE] whose credentials I a few days ago presented for the term he has lately been filling under executive appointment. He was not in his seat in the morning hour, but is now present and ready to take the oath of office.

The PRESIDENT *pro tempore*. The Senator-elect from Maine will please present himself to be sworn.

Mr. BLAINE advanced to the desk, and the oaths prescribed by law having been administered to him, he took his seat in the Senate.

COUNTING OF THE ELECTORAL VOTES.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. No. 1153) to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877.

Mr. FRELINGHUYSEN. Mr. President, may I ask the attention of the Senate while as briefly as possible I give some of my views on the subject involved in the pending bill?

Appointed as one of the committee in reference to counting the electoral vote and having to the best of my ability discharged that responsible duty, I feel an obligation not to remain entirely silent.

While many of the reflecting and patriotic people of this country are interested, yes, deeply interested in several matters growing out of this subject, I believe there is one consideration with them which is paramount to all others. They are interested that their respective candidates for the Presidency shall be successful. They are interested that the true dignity and proper deportment of the Republic in the exercise of its elective franchise shall be maintained. They are interested that no precedent shall now be set which in each recurring election shall lead the lust of power to resort to force and fraud to attain its ends. They are interested that the peace of society shall not be disturbed. But paramount to all these considerations is their intense anxiety that the Senate and House of Representatives—the great Legislature of the nation—rising above all party and selfish considerations, shall at this critical period do exactly right.

This legislative body is the controlling Government of the country. It fixes its policy; it shapes its destinies. Legislation for the right may be denounced when it conflicts with partisan zeal or interests, and its promoters may be ostracized; but right, like

> Truth crushed to earth shall rise again:
> The eternal years of God are hers;
> But Error, wounded, writhes with pain,
> And dies among his worshipers.

It is not necessarily that party that secures the Presidency, not that party which secures a political triumph, but it is that party which is most devoted to the right and to the truest interests of the country that is now to be victorious.

Mr. President, the earliest commentators on the Constitution predicted that our greatest peril would be in the succession of the Presidency, and it seems as if every conceivable circumstance had com-

bined to enhance that peril. The momentous question, whether the Administration, with its vast patronage reaching to every village in the land, is to change hands is to be decided by one vote out of 369—185 to 184. The currents of party feeling are strong, dashing against the foundations of our institutions, and the waters are bitter. The people have but recently ingrafted colored suffrage on our Constitution, and many men of influence are in heart opposed to the provision, and extremely, unreasonably, and unjustly reluctant that that vote shall determine the Presidency. States that are believed to have a large political majority for one party have sent returns in favor of the other. In four States double returns have been sent to the President of the Senate by persons who claim to represent the true government of the respective States. Honest men of each of the two great parties believe that they are about to be defrauded out of their rights, while myriads of office-holders and office-seekers strive to intensify the excited feeling. And amid all this complication the law—such a condition of affairs not having been contemplated—is undefined, yes, is chaotic, and what is still worse at such a time, the political majority in one House differs from that in the other.

It may be that it would be heroic statesmanship for the one party to claim that the power to count the vote is with the President of the Senate and for the other party to claim that the approval of both Houses of Congress must be had before a vote shall be counted, but I do not think so. I do not think so, first, because neither proposition in my opinion is true, and because, assuming that antagonistic position necessarily brings discredit and dishonor on the Republic. If there ever was a time when the representatives of the people should rise above passion, and prejudice, and party feeling, and with true courage and patriotism avert the threatened evil to our country, this is that time. The duties of a faithful Senator are always responsible, but in confronting this question we touch the point of the highest duty.

Events of interest, opportunities for usefulness frequently occur to public men, but it is seldom that they have an opportunity in a time of marked political hazard of promoting a measure so calculated in my opinion to check a disastrous current of events and to give a new and happy turn to public affairs. We must at all events, sir, do our duty if we can discover it, even though it be at a personal sacrifice.

Mr. Justice Story, in speaking of the Senate, uses this language:

> There are particular moments in public affairs when the people, stimulated by some irregular passion or some illicit advantage, or misled by the artful representations of intrusted men, may call for measures which they themselves will afterwards be most ready to lament and condemn. In these critical moments how salutary will be the interference of a body of respectable citizens, chosen without reference to the exciting cause, to check the misguided course of public opinion and to suspend the blow until reason, justice, and truth can regain their authority over the public mind.

Sir, I believe that the complication which now seems somewhat to imperil the quiet propriety of the Government will be adjusted by Congress and accepted by the people. And then our nation—its energies and conscious strength having been developed by the war; its habits of frugality and economy having been inculcated and fixed by the recent financial depression; the capability of the people for self-government and the stability of our institutions having been demonstrated by a quiet and peaceful solution of existing embarrassments—then our nation will enter upon a career of progress and prosperity that has in history few parallels.

And now, sir, let me call the attention of the Senate to what, in my opinion, is the present condition of the law relative to counting the electoral vote. It is essential that we know what the existing law is before we can determine whether remedial legislation is required.

Mr. President, this measure seems to meet with more opposition from republicans than from democrats. My opinion is that I am a republican, and while I would seek no unfair advantage over the opposing party, I would be the last man to sacrifice in the slightest degree the interests of that party of liberty which has so bravely and so grandly stood by the nation in its hour of peril. Some republicans say with emphasis that we must stand by the constitutional method of counting the vote, and that they will agree to nothing else. That is right, sir.

What is the constitutional method of counting the vote? From 1865 to 1875, ten years, when both Houses were republican, the method, I do not say the constitutional method, of counting the vote was this: When the vote of a State was called, if it was objected to, the two Houses separated, and if they both agreed, the vote was counted; but if they differed the vote was not counted. Either House could reject it. By a bill which passed the republican Senate last session by a large vote, but did not reach the House, we have an enactment in these words:

> That if more than one return shall be received by the President of the Senate from a State, purporting to be the certificates of electoral votes given at the last preceding election for President and Vice-President in such State, all such returns shall be opened by him in the presence of the two Houses when assembled to count the votes; and that return, and that only from such State shall be counted which the two Houses acting separately shall decide to be the true and valid return.

When that bill was before the Senate, knowing that it was our constitutional duty to give effect to and not to suppress the will of the people, I was extremely anxious to have an amendment adopted which should provide that where the two Houses disagreed as to counting the vote of a State it should be referred to the President of the Senate, the Speaker of the House, and the Chief-Justice of the Supreme Court of the United States to decide which of the two votes should be received. Twenty republican Senators voted with me, but the amendment was lost. The measure now before us carries out the principle of that amendment. Instead of the subject being referred to the President of the Senate, it is referred to five Senators; instead of to the Speaker of the House, it is to five Representatives; instead of to the Chief-Justice, it is to five justices of the Supreme Court. I thought the amendment necessary for the good of the country before the election, and the election, I assure you, has not changed my opinion.

Mr. President, those who object to this measure I think will see at once that under the practice of the republican Senate and House for ten years, or under the bill that passed the Senate at the last session, there would be a sorry prospect of having the House agree that the vote of Louisiana, Florida, or South Carolina should be counted; and if they were rejected, the Senate very possibly might retaliate as to other States and thus the will of the people, whatever that will may be found on investigation to be, would be entirely defeated.

I agree that the method practiced by the two Houses for ten years, and provided for in the bill as it passed the Senate last year, is not the constitutional method of counting the vote; but with these precedents against the republican party, amounting well-nigh to an estoppel, I think it but just to say that the democracy of Congress have acted with entire fairness in agreeing that where there is but a single return from a State the vote shall be counted unless both Houses reject it, and in joining with us in establishing a tribunal so just and equal that the veriest caviler cannot point out in it any inequality, which tribunal shall decide in case there is a double return from a State which of the two shall be counted, subject to the right of both Houses still to reject the return that has thus been decided to be the true one.

But, sir, it is insisted that the constitutional method is for the President of the Senate to count the votes. That position we will consider presently, remarking here that if the power to count the votes is by the Constitution either expressly or impliedly reposed in the President of the Senate, it is a little difficult to understand how so many of us have under our oaths for ten years, and most emphatically at the last session, declared that the power under the Constitution was not with the President of the Senate; for how could we have conferred that power upon the two Houses of Congress if the Constitution reposed it with the President of the Senate?

By whom under the law as it stands is the electoral vote for President and Vice-President to be counted? The familiar provision of the Constitution is that the electors of the several States—

> Shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each; which lists they shall sign and certify, and transmit sealed to the seat of Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted.

In answer to the question who is to count the votes? I reply that if the controlling word in the short sentence "and the votes shall then be counted," is the word "counted," and if that word "counted" is taken to mean only enumeration or arithmetical computation, the votes are to be and may be said always to have been counted by the President of the Senate. The votes are under the Constitution in his custody. As a matter of practice, since the origin of the Government, he has handed the votes to tellers of the Senate and of the House in the presence of the two Houses. The tellers made the tally, the list, and then handed the result to the President of the Senate, and he has announced it. Although the computation of votes is in fact made by the tellers I call this process (using the word "count" as simply meaning enumeration) a counting by the President of the Senate, for the reason that for a long period after the origin of our Government, for some thirty-six years, the President of the Senate, as directed by the joint resolution of the two Houses, made and signed a certificate which was transmitted to the President of the United States and by him sent to the person who had been elected; and such certificates termed this process I have described a counting by the President of the Senate. The form of the certificate is this:

> Be it known that the Senate and House of Representatives of the United States of America, being convened in the city of Philadelphia on the second Wednesday of February, in the year of our Lord 1797, the undersigned, Vice-President of the United States and President of the Senate, did, in the presence of said Senate and House of Representatives, open all the certificates and count all the votes of the electors for a President and Vice-President, by which it appears that Thomas Jefferson, esq., was duly elected, agreeably to the Constitution, Vice-President of the United States of America.

And, sir, the practice of simply counting the votes has not been changed; and I take it that, using the word "counted" to mean "enumerated," none will dispute that the President of the Senate counts the votes; but in the short sentence "and the votes shall then be counted" there is another more important word even than "counted;" it is the word "votes;" votes are to be counted. Who is to adjudicate what are votes? is the question at issue. The measure before us provides that if there is one return from a State, it shall be counted, unless both Houses reject it; and where there are two returns the vote shall not, as heretofore, be lost by either House so declaring, but that it shall be referred to a fair commission, to advise which is the true vote, and that the vote which it says is the true one shall stand

in the same position as does the vote of a State from which there is but a single return to be counted, unless both Houses reject it.

If it be true that this power of adjudicating what is a vote to be counted is by the Constitution reposed in the President of the Senate, the bill under consideration is of course unconstitutional. But it would be a wonderful power to repose in one man. Suppose that during the recent war the President of the Senate had said, "I hold that the Union cannot be dissolved, and I therefore recognize as true votes those returned from the Southern States," is it true that under the Constitution the Senate and the Representatives of the people must quietly have witnessed that proceeding? Or if, by a few more political changes or by some casualty between this and the second Wednesday in February, this Senate should change its political character and then elect a new President in political accord with it, is it true that he should have the power to reject Louisiana, Florida, and South Carolina, and to admit Oregon? I think not. The word "counted" clearly signifies adjudicated as well as enumerated.

What we seek to know is: first, who is to determine, when there is only one return from a State and that is objected to, whether it shall be counted, or if the President of the Senate or if one House so decides, or whether the return must have the approval of both Houses. Secondly, we seek to know, under existing laws, if the House says one certificate and the Senate says the other certificate is the true one, how is the question which vote shall be counted to be decided or is the vote to be lost? I will never agree to any provision by which the vote of a State is lost, for in this chaos of law there is one thing certain, one duty clearly imposed by the Constitution. It says that "the vote shall be counted." We are under obligation to ascertain which is the true vote and are derelict if we do not legislate to that end.

But, Mr. President, before undertaking to give more fully my views as to who shall decide what are votes to be counted, it is important to consider the limit and range of questions to be decided. If the Constitution reposes the duty of determining what are votes to be counted in the President of the Senate, he has no greater power than Congress would have if the duty was reposed there, and the commission provided for by the pending bill would have a more restricted power than Congress, for by the provisions of the bill the commission has no jurisdiction where there is not a double return. When that is the case the commission has, in the language of the bill, "the same powers, if any, now possessed for that purpose by the two Houses of Congress acting separately or together." If then we ascertain the limits of the power of Congress in adjudicating what are votes to be counted, if the power is with it, we have the limit to the power, by whomsoever it is to be exercised.

I submit, sir, that if the power is with Congress to determine what are votes to be counted, it can only give effect to such objections as are sustained by an inspection of the papers, the returns, and the certificates, and by facts of which judicial notice can be taken, and have no right to go back of the returns further than I have stated. I submit that this is undoubtedly so from the following considerations:

The Constitution of the United States has carefully and expressly conferred on the States, as such, the function of choosing the President. It provides that each State, large or small, shall have two votes in the choice, and the number of additional votes is to be according to population.

The language of the Constitution is:

> Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in Congress.

The electors are State officers, deriving under and by virtue of the Constitution of the United States their power from the State; and that power is exercised and terminated within the State. This provision of the Constitution was not carelessly adopted. The framers of that instrument first decided that the President should be chosen by Congress, but after full debate and mature deliberation they saw the evils of placing one co-ordinate branch of Government under the control of another—the executive under the control of the legislative branch—and they then determined that, except to prevent a failure to elect, (and in that event the House, voting by States, should choose a President)—the framers of the Constitution, I say, determined that with the exception stated Congress should have nothing to do with making the choice of a President.

And still more thoroughly to separate Congress from the procedure of electing the President, the framers of the Constitution provided that no Senator or Representative should even be an elector. Knowing that if Senators or Representatives were electors the choice of a President would not be so thoroughly divorced from the Federal Government, and knowing that Senators or Representatives acting as electors might be tempted so to cast their votes as to throw the choice of a President, by reason of a failure of the electoral college to elect, upon Congress, the direction or mandate is issued to the States that Senators and Representatives must not be electors; and still further to secure the States in the exercise of this duty of choosing a President from any Federal influence, the Constitution provides that—

> No person holding an office of trust or profit under the United States shall be appointed an elector.

It would be an anomaly indeed if after the Constitution carefully excluded Congress from intermeddling in any manner with the election of the President by the States, further than to ascertain who the State said it had voted for, and to that end guarding every point of danger, that yet Congress possessed the right to go behind the duly authenticated papers sent up by the States, determine upon the fairness of the conduct of the inspectors, judges, and the canvassing and returning boards of the State, decide whether this parish should have been counted and that one rejected, and, in fact, turn itself into a grand returning board of the nation to examine, if it pleased, eight or ten million of votes and adjudicate which of two citizens had in the several States a majority.

If Congress has that power, it can by the exercise of its discretion—no, by the exercise of its uncontrolled will—make the votes elect for President whom it sees proper, or cast it upon Congress to elect when it sees fit; and thus Congress, and not the States, chooses the President. It is no answer to this view to say that we cannot assume that Congress will abuse its powers. The very possession by Congress of the power to go back of the returns sent up by the States without any abuse of the power is inconsistent with the provision that the election of the President is devolved upon the States.

The Constitution directs that the State shall appoint the electors "in such manner as the Legislature may direct." The State is to decide whether the elector is chosen according to its laws and to see to it that its officers do their duty. This is committed to the State just as it is committed to the General Government to determine whether collectors of customs, postmasters, marshals, and attorneys do their duty; and the General Government has no more right to question the decision of the State in the one case than the State has to question the decision of the General Government in the other.

I can conceive of nothing more at variance with the Constitution than that Congress should go into an investigation whether each of the three hundred and sixty-nine presidential electors fairly received a higher vote than his competitor; and, as the election turns on one electoral vote, and as the substantial inquiry is not the propriety of the procedure to elect, but is whether the electors were fairly elected, anything short of such a full inquiry would be of no avail.

Equally absurd in my opinion is it for Congress to investigate whether the three hundred and sixty-nine electors were all eligible—whether one was not a postmaster and another a commissioner, and another a district attorney of the United States. The provision of the Constitution that "no person holding an office of trust or profit under the United States shall be appointed an elector" is a mandate to the State, and it is confided to the State to enforce it. The State no doubt before the duty of the office is performed could by *quo warranto* or injunction prevent and restrain the ineligible person from acting, but which duty when performed even the State can no more vacate or set aside than you can set aside the judgment of a court because the judge was not of the constitutional age, or invalidate an act of Congress because it was passed by the vote of a Senator who was not thirty years old.

No, Mr. President, whether the power to determine which are votes to be counted is reposed with the President of the Senate, with Congress, or shall by the law in question be conferred upon the commission, either one of the three must take as true what the State, on whom the Constitution of the United States devolves the function of appointing presidential electors, says in that regard is true.

If it be said that to accept the returns from the State as conclusive might be to accept great frauds and to obtain a result founded on fraud, my answer is, then change the law; but while the appointment of electors is conferred upon the States you must accept the conclusions of the States. A judgment of a State court may be a great violation of right, but yet it must be enforced in every other State of the Union where the record is sent. A conviction may wrong the innocent, but yet the record of that conviction is conclusive all over the nation.

If the system is wrong change it, but while it stands it must be respected. Congress cannot be a grand returning board to investigate millions of votes, and the authenticated returns from the States are infinitely more likely to approximate to the truth than any investigation by Congress. What Senator of either party has not quietly smiled at the idea that what A B or C D testified to having seen or heard in Louisiana should constitute evidence upon which we should gravely adjudicate whether the one or the other of the two great political parties of the nation should come to power.

Further, sir, the provisions of the Constitution are in other respects inconsistent with the idea that Congress shall look back of the certificate, returns, and papers sent up by the State, to find out who has been elected an elector.

The Constitution provides that the electors shall give their votes by ballot. That imports secrecy. It provides again that the lists of their votes shall be transmitted sealed (secrecy again) to the President of the Senate, and that he shall first open them when the two Houses meet in joint convention, as it is called, to count the votes. So if the provisions and intent of the Constitution should be carried out, no one would know until the two Houses assembled in Joint Convention what had been the action of the electoral college.

By the Constitution the votes as soon as the certificates are opened are, without any delay, to be counted. It says the votes shall then be counted, and I believe there never has been an instance that after the process has commenced there has been any adjournment of the Joint Convention.

Now how in contemplation of the Constitution are the two Houses to go into an investigation back of the certificates, returns, and accompanying papers to canvass it may be millions of votes, to ascertain whether this elector or that had a greater number of votes than his competitor, or to investigate as to the eligibility of three hundred and sixty-nine electors? Then, too, the Constitution provides that no person except a natural-born citizen of the United States who is thirty-five years old, and who has been fourteen years a resident within the United States, shall be eligible to the office of President of the United States. How is Congress, when the count has commenced, to investigate and ascertain whether the person voted for was born this or the other side of the Canada line; whether he is thirty-four years and six months old or thirty-five years old, or whether his residence out of the United States was such that he had resided here only thirteen years and six months and not fourteen years?

No, the count must go on, and leave it to judicial or congressional proceedings afterward to vindicate the Constitution. And if from the very nature of the procedure provided by the Constitution the joint convention cannot stop to investigate the qualifications of the person voted for as President, surely it cannot investigate the qualifications or the eligibility of three hundred and sixty-nine electors, and for still stronger reasons cannot stop to canvass the millions of votes cast to find out who has been elected President.

And again, sir, the very nature of the tribunal that is to count the votes (assuming that it is either the two Houses of Congress or the President of the Senate) precludes the idea that there can be any investigation back of the certificates, returns, and acompanying papers.

The tribunal consists of nearly four hundred members. They are not one consolidated body but two distinct Houses, each of which must retire and vote separately on every question. They convene while Congress is in session a fortnight before the President is to be inaugurated. There is no time to bring witnesses from remote parts of the country or to examine them or to read documents or hear extended arguments.

If errors may be committed by the returning and canvassing boards of the State, let me say that you augment the probability of error a thousand-fold by having the joint convention of Congress assume the duty of reviewing and reversing the conclusions those boards have rendered.

No, sir; Congress can only take notice of such objections as appear on the returns, or such of which judicial notice can be taken, and the commission proposed has in the language of the act "the same powers, if any, now possessed for that purpose"—that is, for the purpose of determining the objection to a vote—"now possessed for that purpose by the two Houses acting separately or together."

Whether Congress or the commission can go back of the certificate, returns, and accompanying papers is one of the questions referred by the act to the commission. And I am entirely willing to abide by the decision of the fifteen sworn members of that commission. I have confidence in the truth.

It may be said that if this doctrine of not going behind the returns is true there was no necessity of taking testimony in Louisiana. I do not think there was the least necessity for so doing, excepting for the purpose of satisfying the public that no injustice had been done, or to give the Executive such information as he might require to decide which of the two governments he should recognize.

Again it may be said that if Congress is not to go back of the papers sent up it cannot adjudicate whether the law of Louisiana under which parishes were rejected because of intimidation was or was not in violation of the constitution of Louisiana, and therefore void, and so the rejection of the vote unlawful. I do hold, sir, that Congress is not a tribunal to decide the constitutionality of State laws; certainly not without parties, pleadings, evidence, counsel, or time for argument and deliberation.

But the constitution of Louisiana or of any other State has nothing to do with the electoral vote. Most powers enumerated in the Constitution are such as are conferred by the people of the States on the General Government; but there are some few powers conferred by the aggregated people of all the States, speaking through the Constitution, upon the States themselves.

Thus the Constitution confers upon each State the right to have here two Senators; that right comes from and depends on the Constitution of the United States alone. The Constitution of the United States provides that those Senators shall be chosen by the Legislature of the State. Suppose the constitution of Louisiana or of any other State ordained that the Senators of the United States for that State should be elected directly by the votes of the people, and the Legislature itself proceeded in despite of the constitution of the State to elect two Senators; no one will pretend that the election by the Legislature would be invalid because in violation of the State constitution. The action of the Legislature is not by virtue of the State constitution but by force of the Constitution of the United States, which is the paramount law.

So, too, the Constitution of the United States says that "each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors," &c. The whole power that the Legislature has to direct the manner in which electors shall be appointed it gets from the Constitution of the United States, and the discretion of the Legislature is absolute and uncontrolled by the State constitution. The Constitution of the United States did not repose in the convention which framed the constitution of Louisiana the right to fix the manner in which electors should be elected, but reposed that right in the Legislature of Louisiana, and if that Legislature sees proper to say that in the election of electors there shall be a returning board which shall have the power to reject the vote of a parish where intimidation and violence prevents a free election, of which that board is to judge, that legislation is valid and constitutional so long as it does not violate the Constitution of the United States, from which source alone the Legislature derives its power to legislate on that subject. So I do not see that there is any constitutional question to come before Congress or before the commission in that regard.

Again, it may be suggested that if Congress or the commission in their adjudications cannot go back of the returns, that the true state of the vote in Oregon cannot be disclosed.

In the first place, let me say that I do not believe that five democrats, drawn promiscuously, can be found who would take advantage of so gross an impropriety as the Oregon transaction. They will not be the five appointed on the commission. But further, let me say that if Mr. Hayes, because of our standing by the law in refusing to agree that Congress may usurp the power of making the President by canvassing the number of votes given to the several electors, is to be defeated, then we must submit to that great misfortune, but the people will appreciate it, and the result will be that that party which (with all respect to the democracy) I believe has a policy best calculated to advance the interests of the country will be in power for the next generation.

But as I understand the condition of the returns from Oregon, from rumor and the press, there is no necessity of going behind the returns to get at the truth. I understand that Cartwright, Odell, and Cronin have the governor's certificate. I understand that it appears by the return made by Cartwright and Odell, as well as by the return made by Cronin, that there was a vacancy; that fact, then, cannot be disputed; true, Cronin says there were two vacancies. He admits there was one. Cartwright and Odell say there was one. Cartwright and Odell filled the vacancy and three votes are registered for Governor Hayes. Cronin filled the two vacancies he claimed, and two votes are cast for Governor Hayes and one for Governor Tilden. And the only question is whether two or one constitutes a majority and a quorum of a college consisting of three members. Reserving the right to change my opinion, I think two and not one is a majority of three.

But with all these limitations as to the subjects that may be adjudicated while the count is being made, and with all the restrictions as to the nature of the evidence to be relied on, it still is true that there are questions which must be adjudged while the count is being made, such as the questions whether the State is in such relations with the National Government as entitles it to have its vote; whether the State had been duly admitted to the Union; if it appeared by the return of electors that the vote was not cast on the day fixed by law, whether that vitiated the vote; if a State had notoriously given its vote for one candidate and by sheer accident the list of votes had such a heading as to give it for another, whether it could or could not be counted. But these are all questions arising where there is but one return from a State, and with which the proposed commission has nothing to do.

The bill before us says the votes from the State shall be counted unless rejected by both Houses of Congress. Is not this right, or does it belong to the President of the Senate to decide whether the vote shall or shall not be counted?

The Constitution does not give him in words any such power; the enunciation of his powers stops short of this. When it said the certificates should be opened by the President of the Senate, and stated that the votes should then be counted, why did it not add "by him?" No Senator, no prudent citizen would to-day change the Constitution by adding the words "by him." It would be a tremendous power for one man to possess. If he has the power he could set at defiance both Houses of Congress and make President whom he pleased. The President of the Senate has never, though several cases have arisen, exercised or asserted any such power. Since 1817 both branches of Congress have claimed and exercised the power of adjudicating what votes should be counted. In 1865 a joint rule asserted it. At the last session a majority of the republican Senate by adopting a bill claimed this power to be in Congress. I believe the pending bill is right in saying that the vote shall be counted unless both Houses reject it.

There is another case of greater difficulty growing out of factions that have sprung up since and in consequence of the recent war in several of the States: it is the case of double returns being forwarded to the President of the Senate, each signed by different persons claiming to represent the true government. Who shall decide which return is to be recognized? Not the President of the Senate, for the reasons already given. It is clear that the votes which both Houses recognize shall be counted, but if the Senate says one return is the true one and the House says the other is the true one, is the vote to be lost? No; that would be a violation of the rights of the States, and besides the Constitution says the "votes shall be counted."

It is just here that the pressing necessity for an impartial tribunal, such as the pending bill provides for, arises; and the only question that tribunal or commission would according to my view have for adjudication would be which of the two asserted State governments is the true government of the State and which is its return; and those

questions could be settled by the commission by taking judicial notice of notorious facts, by the papers, and perhaps testimony as to some single fact.

If the bill does not become a law and the House says one return from a State is the true one and the Senate says the other is the true one, what is to be done on the second Wednesday of February next? This is an important inquiry. All the President of the Senate could do would be to lay all the returns before the joint convention stated and tabulated in every form and then to adjourn the joint convention.

It is certain that, as but two citizens have been voted for, and as the States have all appointed electors, and as the number of electors is an uneven number, being three hundred and sixty-nine, it is certain, I say, that one of the two citizens voted for has been elected, and no case exists that casts the election of a President on the House of Representatives, for it is only, in the language of the Constitution, where "no person has a majority of the whole number of electors appointed" that the House of Representatives chooses the President; and for the same reason no case exists where the President of the Senate could act as President of the United States.

But how, if this bill does not pass, is it to be determined which of the two citizens voted for has been elected? It may ultimately be by adjudication in proceedings instituted by means of a writ of *quo warranto* in the supreme court of the District of Columbia and by an appeal to the Supreme Court of the United States. And this exciting question, if the pending bill does not pass, may be immediately determined by the outgoing President, by reason of the necessity that rests on him to place the Government in the hands of some one, the necessity of handing over the archives of the Government, the Treasury, the Army, the Navy, to some one to take care and charge of them. In the absence of law he may be driven to determine, for the purposes stated, who has the majority of the 369 votes.

It seems to me, sir, that every consideration of prudence, propriety, and patriotism demands that we establish an entirley impartial tribunal to settle this vexed question. Neither party should seek any thing that is not fair. The pending bill secures to each party what is fair.

Sir, we have thus far been disappointed in the centennial of American liberty. We had hoped that it would be a sabbath of rest from party bickerings and sectional animosities. We had hoped that it would have been spent as a jubilee in reviewing our past history, considering what it had cost and what it was worth—contemplating our vast resources and our capabilities for usefulness to the world. We have been thus far disappointed. The people have been financially straitened, and the political skies have been somber and angry; but is there not a brighter vision to dawn upon us?

Sir, the present complication is very strange and far beyond that which could have been anticipated by any human foresight. I watched the progress of events in the several States, hoping that the result in one after the other would decidedly settle who was elected and relieve our institutions from the strain that is upon them.

And now let me ask, should we not gather a lesson of wisdom from this peculiar complication of events? And what is that lesson? Sir, if all the patriots of the land were assembled in an extended plain with the hills for walls and the heavens for a canopy to ask the God of nations for a boon, for what would we ask? It would not be for wealth, dominion, or empire; but I think it would be that our country might be delivered from the baneful consequences of party strife, that the time and energy, the money and the talent that is now expended and exhausted by millions of freemen against millions of freemen might be devoted to developing the resources of our country and elevating the condition our countrymen. That the freedmen of our land might make moral and intellectual progress; be taught to love and adorn their homes and educate their children; that all sections of the country might be blended in harmonious fellowship—

> And sovereign law, that state's collected will,
> O'er thrones and globes elate,
> Sit empress, crowning good, repressing ill.

And are we not brought to this crisis that we may receive that boon? Are we not by the present situation taught that millions of citizens cannot, even in party politics, overcome millions of freeman, but that, moderating our partisanship, we should unite to promote our country's truest welfare, place the best men in power, stand up for the highest public virtue, and thus advance the glory of the nation? I believe, sir, that is the lesson we should now learn. And if we could now adjust our present difficulties and then gather the wisdom the present complications are calculated to teach, this would be a more prosperous and a more happy nation.

The PRESIDING OFFICER, (Mr. INGALLS in the chair.) If there be no amendment proposed the bill will be reported to the Senate.

The bill was reported to the Senate without amendment.

Mr. MITCHELL. I move that the Senate do now adjourn.

Mr. EDMUNDS. I hope not.

Mr. SPENCER. I suggest that we proceed to the consideration of executive business.

Mr. EDMUNDS. It is only a quarter past three.

The PRESIDING OFFICER. Does the Senator from Oregon insist upon his motion?

Mr. MITCHELL. Yes, sir.

The PRESIDING OFFICER. The Senator from Oregon moves that the Senate adjourn.

The motion was not agreed to.

The PRESIDING OFFICER. The bill is open to amendment in the Senate.

Mr. SHERMAN. Mr. President, I have no desire to-day to address the Senate. Indeed I desire to hear the members composing the committee on this subject before I venture to express my own views to the Senate. I think the question is of such transcendent importance that a vote ought not to be pressed except in a reasonable time, so as to bring the matter to a conclusion during the present week, so that if the bill is to pass it can pass in time before the first act is to be performed under its operation. I think, therefore, the Senate ought to be content with the arguments that have been made to-day; and I move that we now proceed to the consideration of executive business.

Mr. EDMUNDS. If the Senator will withdraw that motion a moment that I may say a word in reply to him, I will renew it, if he desires, or yield to somebody else who will.

Mr. SHERMAN. Certainly.

Mr. EDMUNDS. If this bill is to pass, the first act to be done under it will be required to be done on the 30th day of January. This day is the 22d. The 30th is eight days from to-day.

Mr. CONKLING. A week from to-morrow.

Mr. EDMUNDS. A week from Tuesday, to-morrow. Now, I do not care whether the debate proceeds to-day or to-morrow; but I appeal to every Senator who desires to dispose of this question in a right way, whether it be to pass the bill or not to pass it, that this matter must be disposed of to-morrow finally one way or the other. If my honorable friend from Ohio is not ready to go on to-day, and with the fair notice that I feel obliged to give, I being in charge of the bill, that I shall feel it to be my duty to insist upon the Senate disposing of the question to-morrow—no matter if we do give a night to our country; it will not hurt us—I shall have no objection to having an executive session or adjourning now; but the Senate will see if there are many to speak that it might run it quite a way into the night to finish it to-morrow. But if you do not pass the bill to-morrow, and it is to pass, if it should pass on Wednesday and go to the House of Representatives on Thursday, then, as we understand by the rules of both Houses—that I think I am not out of the way in referring to—it would take, if anybody insisted upon it, three days, for the first, second, and third reading of the bill, to go through with it there; and then the President of the United States should have a reasonable time to consider whether he ought to sign it or ought not to sign it. Therefore, my friend from Ohio can readily perceive that after all the debate that has been had upon this subject at the last session of Congress, or the bill of the Senator from Indiana, [Mr. MORTON,] now on your files, and which once passed the Senate——

Mr. CONKLING. Twice.

Mr. EDMUNDS. Which twice passed the Senate, my friend from New York says, and I believe with the vote of the Senator from Ohio, [Mr. SHERMAN]—but it is quite immaterial whether with his vote or with mine—the subject has been so thoroughly debated in all its aspects in a general way that it is not unreasonable, as the subject is not a new one, considering the present situation of affairs, that we should be somewhat prompt—I do not say hasty, but deliberately prompt—in disposing of the subject in one way or another. If the Senator from Ohio prefers not to go on to-night, but to go on to-morrow, after this statement that I have made and the notice that I have given that I shall ask both the friends and the opponents of the measure to dispose of it to-morrow one way or the other, I shall not oppose his moving an executive session.

Mr. SHERMAN. There is no occasion and there is no propriety for haste in the debate on this bill, and in asking the vote of the Senate on it to-morrow. This is a bill to which every Senator ought to devote more than one or two days' passing deliberation. It took an able committee of both Houses of Congress three or four weeks to frame it. It is entirely novel in our whole political history. It presents questions of the gravest importance that can be presented by any committee or at any time. Both Houses will debate this question. The debate will not cease to-morrow. The other House, according to the order as I am informed already established, will take up the bill. Both Houses should debate it. There is no haste about it. Many Senators who have participated in framing this bill have not yet expressed their opinions and stated the reasons which have led them to their conclusion. They no doubt will take their own time to do so. I think my honorable friend from Vermont would do best for the public service, best for the interests of a great people, best for the order and dignity of the Senate and the good of our common constituents, not to hurry this matter. Two arguments have been made to-day, one on each side. They have been listened to with unusual attention. It seems to me that these arguments might well now be considered.

I am informed since I made the motion that a Senator is prepared, if the Senate really feel disposed to go further this afternoon, to speak. If so, I will at once give way to him; but if he prefers to take up the subject to-morrow morning after he has considered the arguments already made, and thinks it is better to do so, and if this debate is to go on until Thursday or Friday, there can be no harm done.

I assure the Senator from Vermont, so far as I am concerned, that within this week I am perfectly willing to have a vote, and within ample time to submit the case to the President, who will no doubt already be considering the bill, and in ample time to perform the first act under the bill, which I believe is on next Tuesday, is it not?

Mr. CONKLING. Yes, sir.

Mr. SHERMAN. I think it is due to the magnitude of the question that nothing like a dilatory motion, nothing like a captious opposition, nothing like even the ordinary opposition to an ordinary bill should be offered; but in due time, with deliberation, we should take the vote on this bill; there ought to be time for thought and reflection and debate. To-morrow probably is not the time. I will now give way if any Senator is ready to go on. I am perfectly willing to stay and hear any argument on the bill. I am not prepared to go on myself, but if any Senator is prepared I will give way to him, and if not, I shall insist upon my motion.

Mr. EDMUNDS. Mr. President, I wish to say one word in reply to my honorable friend from Ohio.

The PRESIDING OFFICER. Does the Senator from Ohio withdraw his motion.

Mr. SHERMAN. Certainly, for the purpose of hearing the Senator.

Mr. EDMUNDS. My honorable friend from Ohio made use of one expression in which I think he did not display his usual accuracy. He said that this bill was perfectly novel in its character.

Mr. SHERMAN. In several of its provisions, I meant.

Mr. EDMUNDS. It is only seventy-six years, as my friend from Ohio must well recollect as well as I do, that a bill involving exactly these principles passed the Senate of the United States, which provided that disputes of this character should be decided preliminarily, and I believe I may say finally—which goes much further than this bill does—by a body of men not composed entirely of the members of the two Houses. Certainly, then, my friend is a little mistaken in saying that we are startling the country with a novelty. The men who came very near to the time of the formation of the Constitution, many of whom participated in its formation, seem to have thought that it was the proper subject of legislation, and that the Constitution had not reposed it in a particular official, but that it was the subject of lawful regulation; and as a proper, lawful regulation, the Senate of the United States of that day—perhaps not so wise as we are, because it had not had the time to be so wise as we are; it had not had so long a history of the Republic before it—thought that it was within the competence and within the duty of Congress to provide, not for deciding arithmetic, but for deciding doubts and disputes respecting the character of what purported to be the certificates of electoral votes. But that is apart from what I wish to say. I only mention that in reply to the suggestion of my friend from Ohio that this is a novelty.

So I repeat, Mr. President, that you have before you a bill that is not startling for novelty, is not startling for methods, but it is only startling as it is looked upon by partisans on either side; no, I will not say partisans, but with views on either side as it may affect my wishes and those of my friend from Ohio and the wishes of other gentlemen who are supposed to be rather different from ourselves as to particular results. That is all there is about this bill that is startling; that it does not propose that either side shall enter into a race of mere athletic diligence, to see which can get first possession of the White House. That is all there is to it, and to settle in an orderly way how that is to be found out. So, then, there is no reason, as there might be some on some occasions, for assuming that here is a new proposition that nobody has ever thought of before, that is brought fresh upon the arena of the deliberative Assembly of the Republic.

My honorable friend from Ohio has discussed the principles of this very bill and within twelve months; and his views, as usual, have been stated with clearness and great force and great weight, and, as far as I can appreciate them, they are entirely in favor of the principle of this bill. So then we have not a novelty; we do not require so much time to deliberate in respect of principle as we otherwise might. But here we are drifting day by day toward the inevitable hour, as the law now stands, when we shall either have a regulated orderly course of procedure that the law, the benign instrument of the public will, has fixed, or we shall have no man can say what.

Hence it seems to me, Mr. President, that I am not unduly asking the Senate of the United States not to adjourn or go to the consideration of executive business at half past three o'clock in the afternoon, but that it should proceed with diligence, not with haste, to consider and dispose of this question. If any Senator desires to speak now, very well; but I repeat that I shall ask the judgment of the Senate to-morrow whether it ought to suffer this matter to be longer delayed.

Mr. SHERMAN. Mr. President, when I said this was a novel proposition I said what everybody in this country knows is perfectly true. So far as my knowledge of the history of this country goes, I know of no case where a measure containing provisions similar to this has been proposed in a law, certainly not in the act to which I suppose the Senator refers, of 1800 or 1801. Here is a blending of two distinct departments of the Government.

Mr. EDMUNDS. That was in the bill of 1800.

Mr. SHERMAN. Not in this form at all. Here is a proposition to ignore and deny all power on the part of the President of the Senate, who, by well-considered opinions of the ablest lawyers of this land, and by the expression I think of the opinion of the honorable Senator himself, can in a certain case decide upon the count of the vote. This power is denied. The power of the two Houses to some extent is denied. The two Houses are balanced with an evenly poised plan, so that they become nullities, and the whole of this great question as to who shall be President of the United States is transferred from the electoral college composed of men chosen under the laws of the States to a tribunal carefully selected, four of whom are named as if their names were printed on this bill, and the other is left to the uncertainty of doubt or chance.

It is to the consideration of a proposition like this, before the public mind has been directed to it, that we are called, and we are asked to deliberate and decide upon it hastily. I think we ought not to do so. There is no occasion for it, and I trust the Senate will not hurry any one into an argument of this matter until he is prepared to present his own views, supported if possible by lessons drawn from our history, or drawn from books, that it may be necessary to examine The gentlemen who have examined this matter in the committee having had three or four weeks of ample preparation, with a careful comparison of views between each other, with a careful examination of each other's views, and the study of the case, have the advantage no doubt; but we who have not had that advantage, and who have been engaged in the ordinary pursuits of the Senate, certainly have not yet become prepared to look into this subject, debate it, decide it for ourselves and for our constituents in the same manner as the gentlemen who served on this committee. I hope and expect to hear from each of them in his own good time his views and the reasons that have led him to concur in the bill presented to us, so that in the light of all the information, all the knowledge that this committee have gathered together, we may then exercise our duty to pass upon this subject for ourselves and our constituents.

Mr. THURMAN. Mr. President, one remark fell from my colleague that induces me to say a word. He intimates that the other members of the committee ought to be heard from. I submit to him that they have been heard from; that on Thursday of last week they presented their written report accompanying this bill; that on Saturday the chairman of the committee delivered an elaborate speech in favor of the bill; that to-day another speech has been made by a member of the committee supporting the bill; and that but one very brief speech has been made on the other side. Now it seems to me that while acknowledging the duty which the committee owe to the Senate to give to the Senate all the possible light that their studies and reflection can enable them to give, there is some duty also due not only to the committee but to those who favor this bill, from those who oppose it; that it is time now for those who oppose this bill to state upon what grounds they oppose it.

I am sure there is no disposition on the part of any member of this committee to assume such infallibility of judgment as to ask that the Senate shall take his work without question. I am quite sure that in the three weeks of deliberation of that committee there was enough of humility displayed, and not one particle of improper self-esteem, to warrant me in saying that the committee will be very glad that their work shall be criticised as strictly and completely and thoroughly as any Senator may see fit to criticise it. But I do submit that it is time that we should hear from those who are opposed to the bill. Then, if some one who is opposed to the bill will speak, now that the floor is open to be taken by him, some other member of the committee or some other supporter of the bill will be ready to reply.

Mr. BAYARD. Mr. President, two facts are very apparent to the Senate: first, the admitted gravity and importance of this measure, in both of which it can be scarcely said that it is second to any brought before the Congress of the United States; and, next, the necessity for diligence in the consideration of the question. The time fixed at which this bill, if it ever is to become a law, is to operate, is measured now by days, and not by weeks. Therefore, just in proportion to the gravity and importance of the measure comes the duty to decide upon it. In that aspect, while I concede the general views that I hold upon this measure to have been represented in the report to which I appended my signature, yet, at the same time, I have felt that upon such a subject there was something due from every man to this country, or to that portion of his countrymen to whom he was known, that he should give reason for the faith that was in him. That is why I propose, not to enlighten the Senate, but to justify myself in a grave emergency in my country's history, by stating in as short and direct terms as I could why it was I thought that the bill should become the law of the land. But while I felt that was a duty, yet I considered it secondary to the other fact of not by a desire to express my views retarding even for an hour the passage of the bill, should it be the pleasure of the Senate now to consider it. Therefore it was that rather than delay the passage of the bill to-night, if a vote could be reached upon it to-night, I should have sat in silence and permitted the bill so to be voted on, because my object is its passage, believing it to be just and really essential for the welfare of this country. But it does seem to me that those opposed to it should now show cause why this bill should not be a law. We have reached that point of the debate when their reasons should be given. As my friend from Ohio who sits near me [Mr. THURMAN] says, the reasons for the bill and the bill itself, intelligible upon its face, have been in the Senate now the greater part of a week. It was discussed

with clearness and thoroughness and ability by the chairman of the committee on Saturday, in the presence of a full and, I am glad to say, most attentive Senate. It has been discussed to-day by the only member of the committee of either branch of Congress who withheld from it, for reasons no doubt good and satisfactory to himself, his signature and approval. He has given us to-day some of the reasons that moved him to that course, although he has also signified that, owing to indisposition, he is unable to complete his speech at this time.

Now, Mr. President, while I am desirous to be heard upon this bill I will most gladly defer altogether or to some other occasion the opportunity to express my views upon this all-important topic rather than that my speech should delay the action of the Senate upon it. If the bill is to go over and to go over because no gentleman here on the floor who desires to oppose its passage is ready to say a word against it, that will have to be decided by the pleasure of the Senate. I would not feel at liberty to ask the Senate to continue this discussion on my account. I hope, therefore, that the suggestion made by the honorable Senator from Vermont who has this bill in charge, that it may be taken up to-morrow and that if possible it may be disposed of to-morrow so far as this body is concerned, will meet the approval of the Senate, and that those who desire no delay and are willing to have the test of the Senate's sense on this subject, no matter which way they may vote, as well as those who desire the success of this measure, may do all that they can to carry the suggestion made by the honorable Senator from Vermont.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment.

Mr. SHERMAN. I now renew my motion that the Senate proceed to the consideration of executive business.

The question being put the motion was declared not to be agreed to.

Mr. SHERMAN. I call for a division.

Mr. EDMUNDS. Let the bill be read a third time with the understanding——

Mr. SHERMAN. The bill has been reported to the Senate, and it may be necessary to offer amendments.

Mr. EDMUNDS. It is a good time to offer them now.

Mr. SHERMAN. It is not a fair time. I am not prepared to offer amendments now. If the Senate of the United States under the lead of the Senator from Vermont wants to carry this bill, without popular understanding, while the voice of the people and the consideration of the people is given to it all over this broad country of ours, without a debate, in a manner unusual in the Senate of the United States, let it be done; but I state that I desire myself in due time to say something about this bill and shall desire perhaps to offer amendments to it. The Senator wishes to place it beyond the reach of amendment. Certainly it cannot be the desire to prevent a test of the Senate on questions of amendments. I do not want to be forced into this debate, nor is it a pleasure to have this done.

Mr. EDMUNDS. Mr. President, the Senator from Ohio acts a good deal to me as I once read in a story somewhere of some sailors in a boat that were drifting down stream toward some very rough water, and one cried out "Put the oar out on this side;" another said "No, that will not do, it ought to be put out on the other side;" and they kept on debating as to which way they should shift their oars until the boat went over the cataract. Now if my friend from Ohio is fond of that species of navigation, I am not. I wish to repeat to him that there is no disposition on the part of this committee or on my part to hurry this measure while popular opinion is considering it at all; but there is a disposition that this measure shall be fairly carried or fairly defeated and not left to drift to suit anybody's convenience until its value, good or bad, is entirely lost.

And let me tell my honorable friend from Ohio that it is a part of the duty of this Senate to legislate upon its own opinion, and not upon the popular opinion. I think I have heard him say something of the same character before now, when the elections have gone against us in particular districts and parts of the country. I always believed it to be a true saying that our duty is to legislate upon our own judgment. If we are to wait for popular opinion and appoint a committee or get certain newspapers to inquire what the popular opinion is before we either say yes or no to this measure, we shall wait a good while. My friend and I might differ as much upon that subject as it is said he and the Senator from Missouri [Mr. BOGY] do about what the state of things in Louisiana is. We cannot do the thing that way. We have got to do it upon our responsible judgments, the very judgments that the Constitution of the United States has committed to us and commanded us under oath to perform, whether this measure first is what the Constitution authorizes, and second whether it is expedient for the public interests. There is no other question in it.

Now I wish to repeat what I said before, because it cannot be repeated too often, that nobody is surprised about this measure. We are exceedingly shy of coming to a discussion of it, it appears.

Mr. SHERMAN. So it appears.

Mr. EDMUNDS. So it appears. My honorable friend from Ohio, who was not a bit slow eleven months ago, has now suddenly discovered that there is great difficulty, and that it is a very novel subject and all that sort of thing. It is not novel, Mr. President, and when my honorable friend says that we are to cut off amendments, let me ask why are not amendments ready? The bill has been before the Senate for many, many days, and every day that is devoted to delay is a day devoted to adversity, no matter whether that adversity comes by the passage or by the defeat of the measure. Every day that is devoted to delay, I repeat, is devoted to adversity. According to the customs of this body, seventy-five or seventy-six gentlemen, all equally capable of illuminating this subject and every other one, might spend a year in high debate here; and if we did not stop debate by patience or by diligence, we should be as far from a decision as we are now. The honorable Senator, therefore, has no right to say that I or any other member of this committee desire to press this measure unduly. We have not shown the least disposition in the world to do so; but there will be an important responsibility upon somebody's shoulders, not to popular opinion but to truth and to justice, if we do not make progress; and that progress, in my opinion, will be made unless a majority of this body determine that it ought not to be made, and then they will be responsible for it. That is all I have to say. I do not wish to hurry anybody, but at some time, and at a very speedy time, this measure must either pass or fail. It will not die in its tracks, neither going forward nor going back.

Mr. MORTON. Mr. President, the Senator from Ohio [Mr. SHERMAN] expressed his desire that this bill should go over until to-morrow. He desires to speak upon it himself, but is not ready to-night. I think other gentlemen wish to speak, but there seems to be a desire to force this bill through to-night—a very important measure.

Mr. EDMUNDS. My friend is mistaken about that. I said only that I wished to have it disposed of to-morrow. He should not say it is desired to force it through to-night.

Mr. MORTON. The Senator wants to have it read a third time and put into a peculiar attitude. No, Mr. President, this bill ought to be fairly discussed. It may seem very clear to some Senators; it may seem not so clear to others; but the idea is that we are to be forced now to take this bill, good or bad, under the apprehension of war! Adversity, we are told, is in store for us. We are to legislate here under terror. Some unseen, indescribable danger is hanging over us. We must put this bill through at once and we must disregard public opinion to do this. I do not believe in this danger. I know there have been threats of war and violence, and I know there has been an effort made to terrorize the country. We have been told we are to be overrun here by armed men; we are to have these corridors and halls and galleries filled with armed men; and we must make haste to legislate to avoid this danger. We are to be bull-dozed into the adoption of a bill that nobody wants. I do not believe there are half a dozen republicans on this floor who would want this bill if their judgments were to be consulted and if they were not under the influence of apprehension.

As far as I am concerned, I am not apprehensive of danger. I think the danger is to come from our own weakness and our own apprehensions. This is a very important measure, and there ought to be full time to discuss it. The idea is to force the vote to-morrow, that this bill must be disposed of so that some action can be had by to-morrow week, as if that was the last day, the very crack of doom. The law as it now stands provides for the counting of the votes on the 14th of February, but it must be anticipated two weeks; and if that is not done, adversity is to come upon us, something terrible is to happen!

Mr. EDMUNDS. Mr. President, I admit that I am afraid. I am just so much of a coward as to be afraid to do wrong, and I hope I am brave enough not to be afraid to do right. Nobody has spoken of fears about these one hundred thousand men. They do not seem to exist in the imagination of anybody but my friend from Indiana. I have not even thought of them, so far as I remember, except in a very jocose connection, which it is not proper within the proprieties of this Chamber that I should refer to, that was stated in the newspapers. So the statement of the Senator from Indiana that anybody is to oppose this measure or vote for it on the ground of intimidation—a favorite phrase of my friend from Indiana and one in which I largely sympathize in the application that he usually makes of it—is only a part of his imagination. The true courage that belongs to an American Senator is the courage to follow the deliberate judgment upon the Constitution that my honorable friend has expressed and that the Senator from Ohio has expressed and that so many others have expressed when there was nothing to gain by the expression of their judgment, and that is, not to maintain the attitude that, because by the accident of politics we may be supposed to have a chance of gaining by having you, sir, in the Chair to decide this question, we will reverse now all that we have said before and insist upon that. Sir, truth and constitutional principle are two of those things that do not change according to men's wishes from day to day. They stand. And when this committee follow the opinions of my honorable friend from Indiana and my honorable friend from Ohio and many other gentlemen in now providing in a great emergency exactly that legislation in principle which they have before defined as being within the Constitution, and set aside that procedure which they seem now disposed to maintain, the propriety of which they had before condemned, I do not think we ought to be accused of cowardice. We ought rather to be thought as paying a devoted and respectful homage to the judgments of great statesmen, pronounced at a time when no bias of wish could influence their opinions. That is our attitude, and it is no other.

But the event for which this legislation is to provide is coming rapidly upon us. There is no disposition to press any gentleman; but there should be, and there must be, and there is, a disposition to be diligent.

Now, after all that has been said, if the honorable Senator from Ohio is not ready to go on to-day, in view of what has been said about finishing this matter to-morrow, I shall be perfectly willing that the honorable Senator from Ohio shall take the floor and yield it for an executive session or an adjournment. I have no disposition at all to press anybody; but the end of this thing being present, if Senators prefer to squeeze it into to-morrow, very good, if they are not ready to go on to-day, and the Senate can determine to-morrow whether it will stay and finish it or whether it will not. I do not wish to press anybody, but I do not intend to have the thing slumped, as the common expression is, by having it go on from day to day with one or two speeches and so on until the 4th of March. Now if it is agreeable to my honorable friend from Ohio who wishes to speak, I will myself move that the Senate proceed to the consideration of executive business. I make that motion, Mr. President.

Mr. CAMERON, of Pennsylvania. Before the motion is put, if the Senator will allow me, I desire to say a word.

The PRESIDING OFFICER. Does the Senator from Vermont withdraw his motion?

Mr. EDMUNDS. I do so for a moment, or, if people prefer to go on now, entirely.

Mr. CAMERON, of Pennsylvania. I see no necessity for going on with this measure now. The country is not prepared for it, I am sure. While I have the greatest deference to everything that is said by the great Senator from Vermont, I cannot agree with him in his desire to push this bill forward. To my mind it is wrong, and if the vote comes now I shall vote against the bill. Perhaps I may be convinced so as to change my mind. I look upon it now as a democratic measure, a measure in the interest of Mr. Tilden, to elect Mr. Tilden. I am a plain-spoken man and say what I think. I desire to hear the democrats give their opinions upon this subject. Let them tell us of the faith which is in themselves; I will listen to them with great attention, and after that I will decide how I ought to vote, and will vote according to my decision. I have a prejudice, probably because I am an old man, against all compromises.

Mr. EDMUNDS. So have I.

Mr. CAMERON, of Pennsylvania. Every compromise of the Constitution in this country has been destructive of the interests of the country and destructive of the party which was flattered by the minority to make the compromise. That greatest of all our statesmen, Henry Clay, was destroyed by his first compromise on the Missouri question.

Mr. EDMUNDS. How was he destroyed?

Mr. CAMERON, of Pennsylvania. He was destroyed because he never received the support of the country for that office which was the grand object of his ambition.

Mr. EDMUNDS. There are a good many destroyed people in this Chamber now. [Laughter.]

Mr. CAMERON, of Pennsylvania. That may be so; but I trust that the Senator from Vermont will not place himself in that condition, because I love him. Look at the case of Webster. He yielded to the temporizing policy of compromise in his speech of March 7, 1850, and he never after retained his hold on the popular heart. So of Douglas, who brought forward his compromise in the Kansas-Nebraska bill under the delusive title of "popular sovereignty." Compromise destroyed them all. Here we have a committee most wisely or by accident—I think wisely—containing four of the greatest men in the Senate of the republican party, and three of them have voted to gratify their political opponents.

That, I suppose, is plain talk, but I mean it. I do not believe to-day, if the vote be taken, there will be three members of the democratic party who will vote in opposition to this bill. I am a plain man and I like to tell the truth. There is no danger, to my mind, of the Republic now. It has overcome every difficulty which has been presented to it and has always come out of the contest stronger than it was before. To my mind the Constitution has provided for every exigency that arises in deciding this contest; and I am for standing by the Constitution and not compromising it away.

What is the difference whether there is only a majority of one or whether there is a majority of twenty-one? The people of this country, when they are convinced that the majority is in favor of a particular candidate, will acquiesce in the result. Those who talk and bluster about fighting do not mean to fight. A brave man never brags about his courage, while the coward is very apt to talk about what he will do in a certain contingency, believing that that contigency will never occur to put his self-declared valor to the test.

One of the greatest objections, in my judgment, to this bill is making members of the Supreme Court of the United States, which hitherto has been above all party, partisans. The bill begins by taking five members of the Senate, three of whom, a majority, are to be republicans, and five members of the House, three of whom, a majority, are to be democrats, and then selects four of the judges, two of whom are democrats, or believed to be, and two of whom are republicans, and leaves them the right to select a fifth who virtually makes the decision. You start out with the idea that you have made a political court and you are trying by trick or by law to cheat the other party. If these gentlemen are to act according to their political bias, will they not each try to get the fifth on their side? Of course they will; and from the day you bring in that court as a tribunal to decide who shall fill the high office of President of this country, from that day every member of that court becomes a politician, and all the sanctity of his office will be gone. I cannot imagine that the people of this country will ever agree that it shall be taken from the high place it occupies now, down to party politics, that every man shall be a candidate for every place. How soon will it be after that court shall have decided who is President, before every member of that court will be asking for places for his sons, and his sons-in-law, and his cousins, and his other relations? Will not the offices be sought by them? They are but men, and will act like other men when you once take from them the dignity which the Constitution and the high position they have held has given to them. I want them to be pure for all time to come. Several times in my life prominent men on that bench have been unfortunately afflicted with the desire to become President. One of them especially, for whom I had great regard and who was a very great man, destroyed his usefulness by trying until he died to be President of the United States. He was as great a man as there is on the bench now, as great as any man you will probably put there. Why should we put this temptation before the men holding that high place?

I at present am opposed to it. I will listen, though, with great attention to every member of the democratic party upon the other side of the House who will give us his views. I think the republicans unfortunately for our side have been placed here with all this responsibility upon them, and I think in the goodness of their hearts and their great fears of the country being destroyed they have given way a little to our democratic friends.

The PRESIDING OFFICER. Shall the bill be engrossed for a third reading?

Mr. EDMUNDS. Mr. President, out of consideration for the wishes of the Senator from Ohio, I move that the Senate proceed to the consideration of executive business; but I give notice at the same time that I shall ask the Senate to finish this bill to-morrow.

The PRESIDING OFFICER. The question is on the motion of the Senator from Vermont.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After nine minutes spent in executive session the doors were re-opened, and (at four o'clock and fifteen minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

MONDAY, *January* 22, 1877.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of Saturday last was read and approved.

FRENCH SPOLIATION CLAIMS.

Mr. O'BRIEN. Mr. Speaker, I ask unanimous consent to present the petition of John T. Pickett and Joseph J. Stewart, attorneys for the heirs of James H. Causten and others, asking that the unappropriated balance of the Geneva award be devoted to the payment of the French spoliation claims.

Several MEMBERS demanded the regular order of business.

Mr. O'BRIEN. Then I will present this petition under the rules and have it referred to the Judiciary Committee.

The SPEAKER. That can be done under the rules.

INDIAN APPROPRIATION BILL.

Mr. HOLMAN. I ask, by unanimous consent, after the call of States and Territories for bills and joint resolutions for reference has been gone through with, that the House will then go into the Committee of the Whole on the state of the Union for the purpose of finishing at once the Indian appropriation bill. It will facilitate the public business and will not take up more than an hour of the time of the House.

Mr. THORNBURGH and others demanded the regular order of business.

ENROLLED BILL.

Mr. HARRIS, of Georgia, from the Committee on Enrolled Bills, reported that they had examined and found truly enrolled an act (H. R. No. 4307) making appropriations to supply deficiencies in the contingent fund of the House of Representatives, and for other purposes; when the Speaker signed the same.

MORNING HOUR.

The SPEAKER. The regular order being called for, the morning hour commences at seventeen minutes after twelve o'clock, and this being Monday, the first business in order is the call of States and Territories, beginning with the State of Wisconsin, where the call rested at the conclusion of the morning hour on Monday last, for the introduction of bills and joint resolutions for reference to their appropriate committees, not to be brought back on motions to reconsider. Under this call memorials and resolutions of State and territorial Legislatures may be presented for reference and printing.

SETTLERS ON PUBLIC LANDS.

Mr. STRAIT introduced a bill (H. R. No. 4481) for the relief of settlers on the public lands; which was read a first and second time, referred to the Committee on Public Lands, and ordered to be printed.

IMMIGRATION, ETC.

Mr. STRAIT also introduced a bill (H. R. No. 4482) making an appropriation for the preparation of a report on immigration and public lands; which was read a first and second time, referred to the Committee on Printing, and ordered to be printed.

EXEMPLIFIED COPIES—LAND OFFICE.

Mr. GOODIN introduced a bill (H. R. No. 4483) to authorize the money received by the General Land Office for exemplified copies to be used for the employment of clerical labor; which was read a first and second time, referred to the Committee on Public Lands, and ordered to be printed.

E. F. WENCKEBACH.

Mr. KIDDER introduced a bill (H. R. No. 4484) for the relief of E. F. Wenckebach; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

STREET PAVING, ETC., WASHINGTON AND GEORGETOWN.

Mr. HALE introduced a bill (H. R. No. 4485) to regulate street paving and repairs in Washington and Georgetown, District of Columbia; which was read a first and second time.

Mr. HALE. I ask for the reading of the bill *in extenso*.

The Clerk proceeded with the reading of the bill.

Mr. HOLMAN. I feel justified, Mr. Speaker, in again asking unanimous consent of the House, instead of consuming the time in the reading of all bills introduced for reference, that, after the States and Territories shall have been called through for the introduction of bills and joint resolutions for reference, the House shall then resolve itself into Committee of the Whole on the state of the Union, to go on with the Indian appropriation bill.

The SPEAKER. The gentleman from Maine introduced a bill for reference and demanded its reading, which he had a right to do, and the Clerk is proceeding with the bill.

Mr. HOLMAN. I presume the gentleman's object is to consume the morning hour.

The SPEAKER. The Chair cannot look into the motives of members, and the Clerk will therefore proceed with the reading of the bill.

Mr. HALE. I have no objection whatever after the States and Territories have been called for the introduction of bills and joint resolutions for reference, to unanimous consent being given to go into Committee of the Whole on the state of the Union.

Mr. HOLMAN. I ask that unanimous consent shall be given immediately after the introduction of bills and joint resolutions to go into Committee of the Whole to take up the Indian appropriation bill.

Mr. HALE. I have no objection to that proposition, that is, as soon as the first call for bills and joint resolutions has been gone through, that then the House shall go into Committee of the Whole.

Mr. HOLMAN. It will only take half an hour, in my judgment, to finish the Indian appropriation bill.

Mr. HALE. I do not object to the morning hour being terminated as soon as the States and Territories have been called through for bills and joint resolutions for reference.

The SPEAKER. In other words, the proposition is to cut off the introduction of House resolutions on the second call.

Mr. HOLMAN. Certainly.

Mr. BANNING. Then I object.

Mr. HOLMAN. I hope the gentleman will withdraw his objection, as my object is to make available the time which otherwise would be consumed in the reading of these bills.

The SPEAKER. The Clerk will proceed with the reading of the bill.

The Clerk then finished the reading of the bill.

The bill was referred to the Committee for the District of Columbia, and ordered to be printed.

CONTESTED ELECTIONS FOR THE PRESIDENCY, ETC.

Mr. FRYE introduced a bill (H. R. No. 4486) to establish a court for the trial of contested elections for the offices of President and Vice-President of the United States; which was read a first and second time.

Mr. FRYE asked that the bill be read through.

The bill was read *in extenso*, referred to the Committee on the Judiciary, and ordered to be printed.

FISHERIES.

Mr. JOYCE presented the following joint resolution of the Legislature of the State of Vermont, relative to fisheries in waters within the jurisdiction, in part, of different States and the British Provinces; which was referred to the Committee on the Judiciary, and ordered to be printed.

Whereas, under existing provisions of law and treaty, there is no adequate means of preventing or punishing the wrongful destruction of fish in the waters partly within the jurisdiction of the several States and the British Provinces of North America, by reason of which great injury is done to an important branch of industry, commerce, and food supply of the United States: Therefore,

Resolved by the senate and house of representatives, That our Senators be instructed and our Representatives in Congress be requested to use all proper efforts to the end of preserving and protecting such fisheries and the interests of the United States in the same.

REDFIELD PROCTOR,
President of the Senate.
JOHN W. STEWART,
Speaker of the House of Representatives.

BANKRUPT LAW.

Mr. JOYCE also presented the following joint resolution of the Legislature of the State of Vermont, in relation to the bankrupt law of the United States; which was referred to the Committee on the Judiciary, and ordered to be printed.

Resolved by the senate and house of representatives, That our Senators in Congress be instructed and our Representatives requested to use their votes and influence for the repeal of the act of Congress known as the general bankrupt law of the United States.

JOHN W. STEWART
Speaker of the House of Representatives.
REDFIELD PROCTOR,
President of the Senate.

DONATION OF CONDEMNED ORDNANCE.

Mr. CRAPO introduced a bill (H. R. No. 4487) donating condemned ordnance to Post No. 1, Grand Army of the Republic, New Bedford, Massachusetts; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

THOMAS A. WESTON.

Mr. SEELYE introduced a bill (H. R. No. 4488) to confirm the term for the period of seventeen years from the date of its original grant of the patent of Thomas A. Weston, No. 67470, granted August 6, 1867, re-issue No. 4791, July 9, 1872; which was read a first and second time, referred to the Committee on Patents, and ordered to be printed.

RECEIVERS OF NATIONAL BANKS.

Mr. WARNER introduced a bill (H. R. No. 4489) amending the act entitled "An act authorizing the appointment of receivers of national banks, and for other purposes;" which was read a first and second time.

Mr. WARNER. I ask that the bill may be referred to the Committee on the Judiciary.

Mr. COX. I think that the bill to which this is an amendment came from the Committee on Banking and Currency; but I have no objection to the reference suggested.

The bill was referred to the Committee on the Judiciary, and ordered to be printed.

TELEGRAPHIC COMMUNICATION BETWEEN AMERICA AND EUROPE.

Mr. WOOD, of New York, (by request,) introduced a bill (H. R. No. 4490) to encourage and promote telegraphic communication between America and Europe; which was read a first and second time, referred to the Committee on Foreign Affairs, and ordered to be printed.

SURETIES OF ROBERT H. LANE.

Mr. WOOD, of New York, also (by request) introduced a bill (H. R. No. 4491) for the relief of the sureties on the official bond of Robert H. Lane, late collector of internal revenue, second district of Texas; which was read a first and second time, referred to the Committee of Ways and Means, and ordered to be printed.

SECOND JUDICIAL DISTRICT, NEW YORK.

Mr. HEWITT, of New York. By request of a large number of the members of the bar of the city of New York, ratified by the action of the Bar Association of that city, I introduce for reference a bill to amend chapter 6, title 53, of the Revised Statutes of the United States, and to provide for the appointment of associate justices of the second judicial district of New York.

The bill (H. R. No. 4492) was received, read a first and second time, referred to the Committee on the Judiciary, and ordered to be printed.

CLERKS OF UNITED STATES COURTS.

Mr. WILLIS introduced a bill (H. R. No. 4493) in relation to clerks, deputy clerks, and assistant clerks of the United States courts; which was read a first and second time, referred to the Committee on the Judiciary, and ordered to be printed.

PUBLICATION AND SALE OF PUBLIC DOCUMENTS.

Mr. LEAVENWORTH introduced a bill (H. R. No. 4494) to provide for the publication, distribution, and sale of public documents; which was read a first and second time, referred to the Committee on Printing, and ordered to be printed.

HENRY G. HEALY.

Mr. MACKEY (by request) introduced a bill (H. R. No. 4495) for the relief of Henry G. Healy, late lieutenant-colonel of the Sixty-fifth Regiment of New York Volunteers; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

COUNTING THE ELECTORAL VOTE.

Mr. FREEMAN. The governor of Pennsylvania has transmitted to me a series of resolutions adopted by the Legislature of that State in relation to a peaceful settlement of the pending difficulties in relation to the counting of the electoral vote. I ask that the resolutions may be read, printed in the RECORD, and referred to the select committee on counting the electoral vote.

The resolutions were read, referred to the select committee on counting the electoral vote, and ordered to be printed in the RECORD. They are as follows:

Whereas the tranquillity of the country has been disturbed and its business prosperity imperiled by the extraordinary difficulty of ascertaining in the nearly

balanced vote what has been the result of the late election for the electors of President and Vice-President;

And whereas to allay any excitement that may endanger the public peace and precipitate upon the people the calamities of civil war, from which they have been lately delivered, it seems fit and proper that the Legislatures of the States whose prerogatives and vital interests are involved in the issue should declare and emphasize those principles embodied in the national Constitution by which the decision of the pending question can alone be safely and lawfully reached:

Resolved by the senate, (the house of representatives concurring,) That the will of the people in electing a President and Vice-President of the United States can only be expressed in the manner prescribed by the Constitution, and the persons having the majority of the votes of the electors appointed by the States of the Union in the manner prescribed by the Legislatures thereof must be by the force of the Constitution and laws declared President and Vice-President respectively, and must be on the 4th of March inaugurated, and thereafterward duly respected as such.

Second. That all factious opposition, and all threats of violence designed or intended to prevent or imperil the declaration and confirmation of the constitutional election of the President and Vice-President, are unpatriotic in spirit, dangerous and revolutionary in tendency, and merit and should receive the condemnation of an outraged and indignant people.

Third. That the lists which the duly appointed electors of the States respectively are required by the Constitution of the United States to make of the persons voted for as President and Vice-President, and the number of votes for each, and which are to be by the electors certified and transmitted by them sealed to the President of the Senate, and which certificates are to be opened by him in the presence of the two Houses of Congress, and counted, are the constitutional evidence of the votes cast for President and Vice-President.

Fourth. That under the Constitution the persons having the majority of all the votes actually cast by the duly appointed electors of the States, respectively, are by force of the Constitution and laws the President and Vice-President from and after the beginning of their term of office, and any attempt to defeat the election of a President or of a Vice-President by either House of Congress upon the pretext that certain persons duly certified to be the electors of any State were not such electors, or by throwing out or refusing to count the legally certified votes of any State, or by impeding the counting of the electoral vote to ascertain the result, or for any other cause than that provided for in the Constitution, when no person has a majority of votes of the electors duly appointed, will be a proceeding fraught with danger to the public peace, perilous to the stability of our Government, and exposing our nation to contempt in the general opinion of mankind.

Resolved, That our Senators in Congress be instructed and our Representatives requested to let their action on this question conform to the spirit of this declaration.

Resolved, That the governor be requested to have a copy of this preamble and resolutions forwarded to each of our Senators and Representatives in Congress as early as convenient.

The foregoing preamble and resolutions have passed the Legislature.

THOS. B. COCHRAN,
Clerk of the Senate.
WM. C. SHURLOCK,
Clerk of the House of Representatives.

JANUARY 16, 1877.

Mr. WOOD, of Pennsylvania, introduced a bill (H. R. No. 4496) amendatory of the act entitled "An act fixing the amount of United States notes, providing for a redistribution of national-bank currency, and for other purposes," approved June 20, 1874; which was read a first and second time.

Mr. WOOD, of Pennsylvania. I ask that the bill may be read.

The bill was read at length, was referred to the Committee on Banking and Currency, and ordered to be printed.

IMPORT DUTIES ON SALTS OF QUININE.

Mr. HENKLE introduced a bill (H. R. No. 4497) to abolish all import duties on salts of quinine; which was read a first and second time, referred to the Committee of Ways and Means, and ordered to be printed.

E. H. LIVELY.

Mr. GOODE introduced a bill (H. R. No. 4498) for the relief of E. H. Lively, postmaster at Williamsburgh, Virginia; which was read a first and second time, referred to the Committee of Claims, and ordered to be printed.

ORDER OF BUSINESS.

Mr. HALE. Has the morning hour expired?

The SPEAKER. It has.

Mr. HALE. I move that the rules be suspended and the resolution which I send to the desk be adopted.

Mr. WILLIS. I ask the gentleman to yield to me for a moment. I rise to make a personal explanation.

The SPEAKER. The gentleman from New York [Mr. WILLIS] desires to make a personal explanation. Is there objection?

There was no objection.

PERSONAL EXPLANATION.

Mr. WILLIS. I ask the Clerk to read the passage I have marked in an editorial of the New York Herald, published yesterday, Sunday, January 21st.

The Clerk read as follows:

DEMOCRATIC LUNACY.

Mr. WILLIS, of this city, and Mr. TARBOX, of Massachusetts, have won for themselves the unenviable distinction of being the first members of the House of Representatives to raise a voice against the joint committee's plan for counting the electoral vote.

Mr. WILLIS. That is enough; stop there.

Mr. RUSK. Let us have the rest read.

Mr. WILLIS. After I get through.

The title of that editorial is a misnomer. It should have been "journalistic lunacy." The paragraph so far as relates to me is wholly untrue. No word uttered by me on Saturday could be construed in opposition to the bill reported by the joint committee on the electoral count. I did repel with all the energy I could command the monstrous assumption that the President of the Senate could count the electoral votes. I did unveil a conspiracy which aimed at the overthrow of popular government and the inauguration of the defeated candidate as President. I did insist that the power to count the votes resides in Congress by virtue of the text of the Constitution itself, and also by uninterrupted usage since the foundation of the Government. I did declare that I would oppose any measure making the electoral vote to depend upon chance; also, that I would oppose any delegation of power to a body outside of Congress, which is forbidden by the clear text of the Constitution. But I believe that the bill reported by this joint committee combats no proposition that I urged. I deem it an act sublime in disinterestedness, in patriotism, and statesmanship; a sure voucher that the Republic will endure through the ages, and I shall support it with sincerity and zeal.

PAY OF A MEMBER OF CONGRESS.

Mr. HALE, by unanimous consent, submitted the following resolution; which was read, considered, and (two-thirds voting in favor thereof) agreed to:

Resolved, That the rules be suspended so that it shall be in order when the legislative, executive, and judicial appropriation bill is being considered to submit the following amendment, to wit:

To pay to JOHN Y. BROWN the pay and mileage of a member of the Fortieth Congress, less the sum of $2,500 heretofore paid him.

ORDER OF BUSINESS.

Mr. MILLS. I desire to introduce a bill.

The SPEAKER. The Chair would state that there are quite a number of gentlemen who desire to refer bills, and he would suggest to the House the propriety, as call of the roll of States for the introduction of bills was not completed either to-day or last Monday, that gentlemen have the privilege of introducing bills under the rule by unanimous consent. The Chair hears no objection.

DEBTS DUE IN SOUTHERN STATES.

Mr. MILLS introduced a bill (H. R. No. 4499) to authorize and provide for the payment of all debts contracted by the Government in certain States, therein named, since the close of the war; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

SHIP-CHANNEL IN GALVESTON BAY, TEXAS.

Mr. MILLS also introduced a bill (H. R. No. 4500) making appropriations to continue the work on the ship-channel in Galveston Bay, Texas; which was read a first and second time, referred to the Committe on Commerce, and ordered to be printed.

LAW PROFESSOR AT THE MILITARY ACADEMY.

Mr. SAYLER introduced a bill (H. R. No. 4501) for the appointment of a professor of law at the United States Military Academy at West Point; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

CATALOGUE OF THE NATIONAL MEDICAL LIBRARY.

Mr. SAYLER also introduced a joint resolution (H. R. No. 185) authorizing the printing and binding of the catalogue of the National Medical Library under the direction of the Surgeon-General United States Army; which was read a first and second time, referred to the Committee on Printing, and ordered to be printed.

CIVIL SERVICE.

Mr. RICE introduced a bill (H. R. No. 4502) to reform the civil service of the United States; which was read a first and second time, referred to the Committee of Ways and Means, and ordered to be printed.

CHARLES HEWITT.

Mr. WALSH introduced a bill (H. R. No. 4503) granting a pension to Charles Hewitt; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

LANDS SOLD FOR DIRECT TAXES.

Mr. YOUNG introduced a bill (H. R. No. 4504) to provide for and regulate the manner of redeeming lands sold for non-payment of direct taxes; which was read a first and second time, referred to the Committee on Private Land Claims, and ordered to be printed.

IMPROVEMENT OF RIVERS IN MISSISSIPPI.

Mr. MONEY introduced a bill (H. R. No. 4505) for the improvement of the navigation of the Yazoo River, the Tallahatchee, and the Coldwater Rivers; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

DANIEL SMITH.

Mr. DAVIS introduced a bill (H. R. No. 4506) granting a pension to Daniel Smith, a soldier of the war of 1812; which was read a first and second time, referred to the Committee on Revolutionary Pensions, and ordered to be printed.

DOVEY PACE.

Mr. VANCE, of North Carolina, introduced a bill (H. R. No. 4507) granting a pension to Dovey Pace, widow of Stephen Pace; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

THOMAS H. BRADLEY.

Mr. GLOVER introduced a bill (H. R. No. 4508) for the relief of

Thomas H. Bradley; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

EASTERN BAND OF CHEROKEE INDIANS.

Mr. GLOVER also introduced a bill (H. R. No. 4509) to repeal an act entitled "An act to authorize the Commissioner of Indian Affairs to receive lands in payment of judgments to the eastern band of Cherokee Indians;" which was read a first and second time, referred to the Committee on Indian Affairs, and ordered to be printed.

RED RIVER RAFT.

Mr. LEVY introduced a bill (H. R. No. 4510) making appropriation for closing the bayou opposite the Raft in Red River and Mack's Bayou; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

CAPITAL MUTUAL GAS-LIGHT COMPANY OF DISTRICT OF COLUMBIA.

Mr. LEVY also introduced a bill (H. R. No. 4511) to incorporate the Capital Mutual Gas-light Company of the city of Washington; which was read a first and second time, referred to the Committee for the District of Columbia, and ordered to be printed.

REVISION OF THE STATUTES OF THE UNITED STATES.

Mr. HARDENBERGH introduced a bill (H. R. No. 4512) to correct the revision of the statutes of the United States; which was read a first and second time, referred to the Committee on the Revision of the Laws, and ordered to be printed.

IMPROVEMENT OF THE CHATTAHOOCHEE RIVER.

Mr. HARRIS, of Georgia, introduced a bill (H. R. No. 4513) making an appropriation for continuing the improvement of the Chattahoochee River, in the State of Georgia; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

BOARD OF HEALTH, DISTRICT OF COLUMBIA.

Mr. WILLARD introduced a concurrent resolution directing the printing of 1,000 extra copies of the report of the board of health of the District of Columbia; which was read, and referred to the Committee on Printing.

PALAIS ROYAL HOTEL, DISTRICT OF COLUMBIA.

Mr. WELLS, of Missouri, introduced a bill (H. R. No. 4514) to incorporate the Palais Royal Hotel of District of Columbia; which was read a first and second time, referred to the Committee for the District of Columbia, and ordered to be printed.

JANE D. COTTON.

Mr. AINSWORTH introduced a bill (H. R. No. 4515) granting a pension to Jane D. Cotton; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

BENJAMIN F. RUNYON.

Mr. DUNNELL introduced a bill (H. R. No. 4516) granting a pension to Benjamin F. Runyon; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

WESTERN CHEROKEES.

Mr. WILSHIRE introduced a bill (H. R. No. 4517) to refer the claim of the Western Cherokees or "old settlers" against the Government of the United States to a board of commissioners for adjustment and final settlement; which was read a first and second time, referred to the Committee on Indian Affairs, and ordered to be printed.

MRS. SARAH J. CHIPMAN.

Mr. PRATT introduced a bill (H. R. No. 4518) to grant a pension to Mrs. Sarah J. Chipman; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

ADOLPH NIMITZ.

Mr. SMALLS introduced a bill (H. R. No. 4519) to re-imburse Adolph Nimitz, trustee for Meta Nimitz, his wife, for losses sustained at Beaufort, South Carolina, November 8, 1861; which was read a first and second time, referred to the Committee on War Claims, and ordered to be printed.

FIRE AT MADISON BARRACKS, NEW YORK.

Mr. HOGE introduced a bill (H. R. No. 4520) for the relief of officers of the United States Army who suffered loss by fire at Madison Barracks, New York, November 6, 1876; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

CHARLOTTE F. CLARK.

Mr. FORT introduced a bill (H. R. No. 4521) granting a pension to Charlotte F. Clark, widow of Bela T. Clark, late captain Company D, Forty-second Regiment Illinois Volunteer Infantry; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

MELCHI GROVE.

Mr. FORT also introduced a bill (H. R. No. 4522) granting a pension to Melchi Grove, first lieutenant Company E, Eighty-sixth Regiment Illinois Volunteer Infantry; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

JOSEPH WHITEHEAD.

Mr. GUNTER introduced a bill (H. R. No. 4523) for the relief of Joseph Whitehead; which was read a first and second time, referred to the Committee of Claims, and ordered to be printed.

MARCELLUS A. WILLIAMS.

Mr. FINLEY introduced a bill (H. R. No. 4524) for the relief of Marcellus A. Williams, of Florida; which was read a first and second time, referred to the Committee on Expenditures in the Interior Department, and ordered to be printed.

MATTHIAS PABST.

Mr. SCHLEICHER introduced a bill (H. R. No. 4525) for the relief of Matthias Pabst; which was read a first and second time, referred to the Committee for the District of Columbia, and ordered to be printed.

TROOPS IN THE DISTRICT OF COLUMBIA.

Mr. CAULFIELD introduced a bill (H. R. No. 4526) to regulate the disposition of troops in the District of Columbia; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

BONNET CREVASSE, MISSISSIPPI RIVER.

Mr. HOOKER introduced a bill (H. R. No. 4527) to protect the States of Mississippi and Louisiana and the sea-coast of Mississippi from the inundations of the Mississippi River through the Bonnet Crevasse; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

UNITED STATES ARMY.

Mr. THROCKMORTON moved to suspend the rules and adopt the following resolution:

Resolved, That the Committee on Military Affairs be, and is hereby, directed to inquire and report to this House the present strength, location, and occupation of the troops of the United States Army; how many are now being used upon the Indian and Mexican frontier, and what troops, if any, have been withdrawn therefrom, and if the safety of the frontier does not demand that all the troops withdrawn should be replaced; how many are now located in and around Washington; when the troops were ordered to Washington; the nature of their orders; by whom made, and the purpose for which they are or have been ordered here; the amount paid for transportation of troops since July last; by whom and to whom paid. Said committee are hereby authorized to send for persons and papers.

The question being taken on the motion to suspend the rules, there were—ayes 109, noes 73, less than two-thirds voting in the affirmative.

Mr. THROCKMORTON. I call for the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 142, nays 87, not voting 60; as follows:

YEAS—Messrs. Abbott, Ainsworth, Anderson, Ashe, Atkins, Bagby, John H. Bagley, jr., Banning, Bell, Blackburn, Bland, Blount, Boone, Bradford, Bright, John Young Brown, Samuel D. Burchard, Cabell, John H. Caldwell, William P. Caldwell, Campbell, Candler, Cate, Caulfield, John B. Clark, jr., of Missouri, Clymer, Cochrane, Cook, Cowan, Cox, Culberson, Cutler, Davis, De Bolt, Dibrell, Douglas, Eden, Ellis, Felton, Finley, Forney, Franklin, Fuller, Gause, Glover, Goode, Goodin, Gunter, Andrew H. Hamilton, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, Harrison, Hartridge, Hartzell, Hatcher, Haymond, Henkle, Abram S. Hewitt, Holman, Hooker, Hopkins, House, Humphreys, Hunton, Kehr, Knott, Lamar, Franklin Landers, George M. Landers, Lane, Levy, Lewis, Luttrell, Mackey, Maish, McFarland, McMahon, Metcalfe, Milliken, Mills, Money, Morgan, Mutchler, Neal, New, O'Brien, Payne, Phelps, John F. Philips, Piper, Poppleton, Powell, Rea, Reagan, Rice, Riddle, John Robbins, William M. Robbins, Roberts, Savage, Sayler, Scales, Schleicher, Sheakley, Singleton, Slemons, William E. Smith, Southard, Sparks, Springer, Stanton, Stenger, Stevenson, Swann, Tarbox, Teese, Terry, Thompson, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Waddell, Charles C. B. Walker, Walling, Walsh, Warner, Watterson, Erastus Wells, Whitthorne, Wike, Alpheus S. Williams, Jere N. Williams, Willis, Wilshire, Benjamin Wilson, Fernando Wood, Yeates, and Young—142.

NAYS—Messrs. Adams, George A. Bagley, John H. Baker, William H. Baker, Ballou, Banks, Blair, Bradley, William R. Brown, Horatio C. Burchard, Burleigh, Cannon, Carr, Chittenden, Conger, Crapo, Crounse, Danford, Davy, Denison, Dobbins, Dunnell, Eames, Evans, Flye, Fort, Foster, Freeman, Frye, Garfield, Hale, Haralson, Benjamin W. Harris, Hathorn, Hendee, Henderson, Hoar, Hoge, Hoskins, Hubbell, Hunter, Hurlbut, Hyman, Joyce, Kasson, Kelley, Kimball, Lapham, Lawrence, Leavenworth, Lynch, Magoon, MacDougall, McDill, Miller, Monroe, Nash, Norton, Oliver, Page, Pierce, Plaisted, Potter, Pratt, Rainey, Robinson, Rusk, Sampson, Seelye, Sinnickson, Smalls, A. Herr Smith, Strait, Stowell, Thornburgh, Martin I. Townsend, Tufts, Van Vorhes, Wait, Waldron, John W. Wallace, Whiting, Charles G. Williams, William B. Williams, James Wilson, Alan Wood, jr., and Woodworth—87.

NOT VOTING—Messrs. Bass, Beebe, Bliss, Buckner, Cason, Caswell, Chapin, John B. Clarke of Kentucky, Collins, Darrall, Durand, Durham, Egbert, Faulkner, Field, Gibson, John T. Harris, Hays, Hereford, Goldsmith W. Hewitt, Hill, Hurd, Jenks, Frank Jones, Thomas L. Jones, King, Le Moyne, Lord, Lynde, McCrary, Meade, Morrison, Odell, O'Neill, Packer, William A. Phillips, Platt, Purman, John Reilly, James B. Reilly, Miles Ross, Sobieski Ross, Schumaker, Stephens, Stone, Thomas, Washington Townsend, Gilbert C. Walker, Alexander S. Wallace, Ward, Warren, G. Wiley Wells, Wheeler, White, Whitehouse, Wigginton, Willard, Andrew Williams, James Williams, and Woodburn—60.

So (two-thirds not voting in favor thereof) the rules were not suspended.

During the roll-call the following announcements were made:

Mr. ELLIS. My colleague, Mr. GIBSON, is detained from the House on account of sickness.

Mr. JOHN REILLY. I am paired off with my colleague, Mr. O'NEILL, on all political questions; and deeming this question of that nature I refrain from voting.

Mr. WALLACE, of South Carolina. On this question I am paired with the gentleman from California, Mr. WIGGINTON.

The result of the vote was announced as above stated.

CHOCTAW INDIANS.

Mr. SEELYE. I submit the following resolution:

Resolved, That the rules be suspended so as to discharge the Committee of the Whole House on the state of the Union from the further consideration of the bill (H. R. No. 3798) for the relief of the Choctaw Indians and bring the same before the House for consideration at this time.

May I have unanimous consent simply to state the object of this bill?

The SPEAKER. If there be no objection, the gentleman will proceed. The Chair hears no objection.

Mr. SEELYE. The bill which this resolution proposes to consider provides simply that the Choctaw Nation may have permission to bring suit for their claim before the Court of Claims. If the bill can be brought up for consideration, I think but a few moments will be required to pass it.

Mr. FORT. Is this debate proceeding by unanimous consent?

The SPEAKER. The gentleman from Massachusetts asked unanimous consent (which was given) to make a brief statement in reference to the subject. The question is on suspending the rules.

Mr. FORT. Unanimous consent ought to be given for debate on the other side.

The SPEAKER. This is a motion to suspend the rules and consider the bill, not to pass it by this vote.

Mr. PAGE. Does the gentleman from Massachusetts propose to allow the proposition to be debated?

Mr. HOLMAN. I hope the resolution will be again read.

The resolution was again read.

Mr. HOLMAN. Will the gentleman from Massachusetts explain what consideration he proposes that this bill shall receive—how long a consideration?

Mr. SEELYE. Of course I propose to leave that entirely to the House. I do not suppose that any lengthy consideration is necessary or would be desirable. It is a simple matter and can be explained in a very few minutes. The House can judge very readily whether the bill is proper or not.

Mr. HOLMAN. This subject is, of course, very well understood by members of the House. Time and again during a great many years past the subject has been before Congress for consideration and the claim has been uniformly rejected, as it was recently rejected by the Interior Department.

Mr. WILSHIRE. I rise to a point of order. I submit that the motion to suspend the rules is not debatable.

The SPEAKER. The Chair sustains the point of order.

Mr. HOLMAN. If the effect of this suspension of the rules will be to pass the bill, I hope it will not be agreed to.

The House divided; and there were—ayes 101, noes 48.

Mr. HOLMAN. This is so important a measure that I demand the yeas and nays on the motion to suspend the rules.

The yeas and nays were ordered.

The question was taken; and it was decided in the negative—yeas 141, nays 74, not voting 74; as follows:

YEAS—Messrs. Abbott, Adams, Ainsworth, Anderson, Ashe, Bagby, George A. Bagley, John H. Bagley, jr., William H. Baker, Ballou, Banning, Bland, Boone, Bradley, William R. Brown, Burleigh, Campbell, Cate, Chittenden, Conger, Cook, Cowan, Crapo, Davy, Dibrell, Dobbins, Dunnell, Eames, Ellis, Evans, Finley, Flye, Franklin, Freeman, Frye, Fuller, Garfield, Gause, Goode, Goodin, Gunter, Hancock, Haralson, Benjamin W. Harris, Henry R. Harris, Harrison, Hartzell, Hathorn, Haymond, Hendee, Abram S. Hewitt, Hoar, Hoge, Hooker, Hopkins, Hubbell, Hunter, Hurd, Hurlbut, Hyman, Joyce, Kasson, Kelley, Lamar, Franklin Landers, George M. Landers, Lane, Le Moyne, Levy, Lord, Luttrell, Lynch, MacDougall, McDill, McFarland, Meade, Metcalfe, Miller, Milliken, Mills, Money, Morgan, Mutchler, Nash, Norton, Oliver, Payne, Phelps, Pierce, Poppleton, Pratt, Purman, Rainey, Rea, John Reilly, Rice, Riddle, John Robbins, William M. Robbins, Robinson, Sayler, Scales, Schleicher, Seelye, Sheakley, Singleton, Slemons, Smalls, Southard, Stanton, Strait, Stowell, Tarbox, Thompson, Throckmorton, Martin I. Townsend, Tufts, VanVorhes, John L. Vance, Robert B. Vance, Waddell, Wait, Charles C. B. Walker, Alexander S. Wallace, Walling, Walsh, Ward, Warner, Warren, Watterson, White, Whiting, Whitthorne, Wike, Alpheus S. Williams, Wilshire, Benjamin Wilson, James Wilson, Alan Wood, jr., Woodworth, and Young—141.

NAYS—Messrs. Atkins, John H. Baker, Blount, Bradford, John Young Brown, Horatio C. Burchard, Samuel D. Burchard, Cabell, John H. Caldwell, William P. Caldwell, Candler, Cannon, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Cochrane, Cox, Cutler, Danford, Davis, De Bolt, Douglas, Felton, Forney, Fort, Glover, Hale, Andrew H. Hamilton, Robert Hamilton, Hardenbergh, Hartridge, Hatcher, Henderson, Holman, Hoskins, Humphreys, Hunton, Kehr, Kimball, Lawrence, Leavenworth, Mackey, Magoon, Maish, McMahon, Monroe, Morrison, Neal, New, O'Brien, Page, John F. Philips, Piper, Potter, Powell, Reagan, Roberts, Sampson, Savage, A. Herr Smith, William E. Smith, Sparks, Stenger, Stevenson, Swann, Tesse, Terry, Tucker, Turney, Waldron, Erastus Wells, Charles G. Williams, Jere N. Williams, and Yeates—74.

NOT VOTING—Messrs. Banks, Bass, Beebe, Bell, Blackburn, Blair, Bliss, Bright, Buckner, Carr, Cason, Caswell, Caulfield, Chapin, Collins, Crounse, Culberson, Darrall, Denison, Durand, Durham, Eden, Egbert, Faulkner, Field, Foster, Gibson, John T. Harris, Hays, Henkle, Hereford, Goldsmith W. Hewitt, Hill, House, Jenks, Frank Jones, Thomas L. Jones, King, Knott, Lapham, Lewis, Lynde, McCrary, Odell, O'Neill, Packer, William A. Phillips, Plaisted, Platt, James B. Reilly, Miles Ross, Sobieski Ross, Rusk, Schumaker, Sinnickson, Springer, Stephens, Stone, Thomas, Thornburgh, Washington Townsend, Gilbert C. Walker, John W. Wallace, G. Wiley Wells, Wheeler, Whitehouse, Wigginton, Willard, Andrew Williams, James Williams, William B. Williams, Willis, Fernando Wood, and Woodburn—74.

So (two-thirds not having voted in favor thereof) the rules were not suspended.

MESSAGE FROM THE PRESIDENT.

During the roll-call a message, in writing, was received from the President of the United States by his Private Secretary, Mr. U. S. GRANT, Jr.

The message further announced that the President had approved and signed January 20, 1877, an act (H. R. No. 2287) for the relief of Peters & Reed, naval contractors at the Norfolk navy-yard in the year 1860.

ASKING LEAVE TO VOTE.

Mr. DENISON. Mr. Speaker, I was not within the bar before the last name on the roll was called, but I should like to have my vote recorded.

Mr. FORT. I should like to accommodate the gentleman, but under the circumstances I must object.

Mr. CAULFIELD. I was absent from the House engaged in committee-room on public business when my name was called, and ask leave to vote.

The SPEAKER. The gentleman from Illinois was not present before the last name on the roll was called, and asks leave to vote. Is there objection? The Chair puts this question distinctly because the vote is very close.

Mr. KELLEY. Will the Chair permit me to ask whether the rule is not now, at any time when the roll was called, at the beginning, or while it was proceeding; and whether that does not bring the member within the rule?

The SPEAKER. The rule does not read so, and the Chair is obliged to conform to the language of the rule.

Mr. KELLEY. It has always been so considered.

The SPEAKER. The Chair begs leave to differ from the gentleman.

Mr. HOAR. I ask the Clerk to read the rule.

The Clerk read as follows:

29. No member shall vote on any question in the event of which he is immediately and particularly interested, or in any case where he was not within the bar of the House when the question was put.—*April* 17, 1789. When the roll-call is completed, the Speaker shall state that any member offering to vote does so upon the assurance that he was within the bar before the last name on the roll was called.—*March* 19, 1869. *Provided, however*, That any member who was absent by leave of the House may vote at any time before the result is announced.—*March* 2, 1865. It is not in order for the Speaker to entertain any request for a member to change his vote on any question after the result shall have been declared, nor shall any member be allowed to record his vote on any question if he was not present when such vote was taken.—*May* 27, 1870.

Mr. KELLEY. With due deference to the opinion and memory of the Speaker, I beg leave to suggest that any member who was present when the question was put, or before the last name was called, has the clear right to vote. And during my now somewhat extended career, such has been the uniform ruling. I have frequently been in the House when the question was put, gone out during the progress of the call, and returned and voted under the rule; and I have seen hundreds of others do the same thing.

The SPEAKER. The gentleman may have had that permission given to him if he was on a committee that had leave to sit during the sessions of the House.

Mr. HOAR. Does the Chair believe that a rule which states that a member who was within the bar before the last name on the roll was called shall vote, cannot vote if he were in the House before it was called?

The SPEAKER. If the gentleman did not respond to his name when it was called, the practice as well as the wording of the rule is that he must give assurance on the request of the Speaker that he was within the bar before the last name on the roll was called, before he can vote. That is the rule and so the Chair decides.

Mr. HOAR. There was a misunderstanding of the ruling of the Chair. It was understood that the member must be here when the last name on the roll was called.

Mr. KELLEY. Such was my understanding of the ruling of the Chair.

The SPEAKER. The Chair made no such ruling.

Mr. CAULFIELD. I will state, Mr. Speaker, that I was not within the bar at the beginning or end of the roll-call; that I was absent on the Judiciary Committee to ascertain how I should vote on a pending measure before that committee, and I now ask leave to have my vote recorded.

Mr. FORT. Will the Chair allow me to state the reason why I object?

The SPEAKER. The gentleman objects, and that is sufficient.

Mr. CAULFIELD. Does the gentleman object?

Mr. FORT. I have objected to others, and of course must object in this case.

Mr. CAULFIELD. I will then state, Mr. Speaker, that I was absent on the business of the House.

Mr. LAPHAM. I was not present at the close of the roll-call, having been called to the Senate on important business. I ask unanimous consent that I may vote.

Mr. SAVAGE. I object.

The result of the vote was then announced as above recorded.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of its clerks, informed the House that the Senate had passed, without amendment, bills of the House of the following titles:

The bill (H. R. No. 3575) granting a pension to Eliza A. Blaze, widow of Abner T. Blaze, late a private in Company C, Thirteenth Indiana Cavalry Volunteers;

The bill (H. R. No. 3511) granting increased pension to Thomas G. Kingsley; and

The bill (H. R. No. 3038) granting a pension to Almon F. Mills, late a private in Company K, Twenty-ninth Regiment Ohio Volunteers.

The message further announced that the Senate had passed, with amendments in which the concurrence of the House was requested, the bill (H. R. No. 4168) to amend section 1 of the act of May 12, 1864, for a grant of land to the State of Iowa, to aid in the construction of a railroad in said State.

The message further announced that the Senate had passed bills of the following titles; in which the concurrence of the House was requested:

A bill (S. No. 1152) granting a pension to Amaza J. Finch;

A bill (S. No. 855) making an appropriation to pay the claim of Benjamin Fenton and D. W. Fenton; and

A bill (S. No. 807) for the relief of John E. Catlett, of Hannibal, Missouri.

CLAIMS FOR WAR LOSSES.

Mr. HUNTER. I move that the rules be suspended, and that the joint resolution which I send to the desk be passed.

The Clerk read as follows:

A joint resolution proposing an amendment to the Constitution of the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of each House concurring therein,) That the following article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three-fourths of said Legislatures, shall be valid as a part of the Constitution, namely:

"ARTICLE XVI.

"No claim shall ever hereafter be allowed or paid by the United States, in the shape of damages or otherwise, for any kind of property, real or personal, used, consumed, injured, or destroyed by United States troops, or by or through any officers, civil or military, acting under or by authority of the United States, or from any other cause whatever, during the suppression of the late rebellion in any of the States that were in rebellion against the Government of the United States; or, for any property used, consumed, injured, or destroyed, as aforesaid, during such rebellion outside of said States that were in rebellion, and which belonged to persons residing within such States that were in rebellion, unless the property at the time it was so used, consumed, injured, or destroyed, belonged to persons who were during all the time of such rebellion loyal to the Government of the United States and gave neither aid nor encouragement to the enemy."

The question being taken on a division by sound, the Speaker said that he was in doubt whether two-thirds had voted in the affirmative.

Mr. HUNTER. I call for the yeas and nays.

The yeas and nays were ordered.

Mr. WADDELL. I ask that the resolution may be again reported.

The resolution was again read.

Mr. REAGAN. Is that debatable?

The SPEAKER. It is not. The motion is to suspend the rules and pass the joint resolution, and on that question the yeas and nays have been ordered.

Mr. EDEN. I would like to ask the gentleman from Indiana [Mr. HUNTER] a question.

Mr. PAGE. I demand the regular order.

Mr. HUNTER. I object to debate.

Mr. EDEN. I do not want to debate, but to ask a question.

The SPEAKER. The Chair thinks that that would be in the nature of debate.

The question was taken; and there were—yeas 125, nays 71, not voting 93; as follows:

YEAS—Messrs. Adams, Anderson, Bagby, George A. Bagley, John H. Bagley, jr., John H. Baker, William H. Baker, Ballou, Banks, Bell, Bradley, William R. Brown, Horatio C. Burchard, Burleigh, Cannon, Caswell, Clymer, Cochrane, Conger, Crapo, Cronnse, Cutler, Danford, Davy, Denison, Dobbins, Dunnell, Durand, Eames, Evans, Flye, Fort, Foster, Freeman, Frye, Fuller, Garfield, Goodin, Hale, Andrew H. Hamilton, Hardenbergh, Benjamin W. Harris, Harrison, Hartzell, Hendee, Henderson, Abram S. Hewitt, Hoar, Hoge, Holman, Hopkins, Hoskins, Hubbell, Humphreys, Hunter, Hurlbut, Hyman, Joyce, Kasson, Kehr, Kimball, Lapham, Leavenworth, Luttrell, Magoon, MacDougall, McCrary, McDill, McMahon, Metcalfe, Monroe, Morgan, Neal, New, Norton, Oliver, Page, Phelps, Pierce, Piper, Plaisted, Poppleton, Potter, Powell, Pratt, Rice, John Robbins, Robinson, Rusk, Sampson, Savage, Seelye, Sinnickson, A. Herr Smith, Sparks, Springer, Stenger, Stevenson, Stowell, Strait, Tarbox, Teese, Thompson, Thornburgh, Martin I. Townsend, Tufts, Turney, Van Vorhes, John L. Vance, Wait, Waldron, John W. Wallace Ward, Warner, White, Whiting, Wike, Willard, Alpheus S. Williams, Charles G. Williams, William B. Williams, Willis, James Wilson, Alan Wood, jr., and Woodworth—125.

NAYS—Messrs. Ainsworth, Ashe, Atkins, Blackburn, Bland, Blount, Boone, Bradford, Bright, John Young Brown, Samuel D. Burchard, Cabell, John H. Caldwell, William P. Caldwell, Candler, Cate, Caulfield, John B. Clarke of Kentucky, Cook, Culberson, Davis, Dibrell, Douglas, Eden, Ellis, Felton, Finley, Forney, Franklin, Glover, Goode, Gunter, Robert Hamilton, Hancock, Henry R. Harris, Hartridge, Hatcher, Henkle, Hooker, Hunton, Thomas L. Jones, Knott, Lamar, Lynch, Milliken, Mills, O'Brien, John F. Philips, Rainey, Reagan, Riddle, William M. Robbins, Scales, Singleton, Slemons, Smalls, William E. Smith, Southard, Swann, Terry, Throckmorton, Tucker, Robert B. Vance, Waddell, Erastus Wells, G. Wiley Wells, Whitthorne, Jere N. Williams, Wilshire, Fernando Wood, and Yeates—71.

NOT VOTING—Messrs. Abbott, Banning, Bass, Beebe, Blair, Bliss, Buckner, Campbell, Carr, Cason, Chapin, Chittenden, John B. Clark, jr., of Missouri, Collins, Cowan, Cox, Darrall, De Bolt, Durham, Egbert, Faulkner, Field, Gause, Gibson, Haralson, John T. Harris, Hathorn, Haymond, Hays, Hereford, Goldsmith W. Hewitt, Hill, House, Hurd, Jenks, Frank Jones, Kelley, King, Franklin Landers, George M. Landers, Lane, Lawrence, Le Moyne, Levy, Lewis, Lord, Lynde, Mackey, Maish, McFarland, Meade, Miller, Money, Morrison, Mutchler, Nash, Odell, O'Neill, Packer, Payne, William A. Phillips, Platt, Purman, Rea, John Reilly, James B. Reilly, Roberts, Miles Ross, Sobieski Ross, Salyer, Schleicher, Schumaker, Sheakley, Stanton, Stephens, Stone, Thomas, Washington Townsend, Charles C. B. Walker, Gilbert C. Walker, Alexander S. Wallace, Walling, Walsh, Warren, Watterson, Wheeler, Whitehouse, Wigginton, Andrew Williams, James Williams, Benjamin Wilson, Woodburn, and Young—93.

So (two-thirds not having voted in favor thereof) the rules were not suspended.

ORDER OF BUSINESS.

Mr. ASHE. I rise to make a motion to suspend the rules.

Mr. WELLS, of Missouri. I move that the House do now adjourn.

Mr. HOLMAN. I trust the gentleman from Missouri, [Mr. WELLS,] instead of moving to adjourn, will move that the House go into Committee of the Whole on the Indian appropriation bill.

Mr. ASHE. I ask the gentleman from Missouri not to insist on his motion until I have obtained the sense of the House on the motion to suspend the rules.

The SPEAKER. The gentleman from Missouri [Mr. WELLS] moves that the House do now adjourn.

Mr. HOLMAN. I trust the gentleman will change that motion to let us proceed to the consideration of the Indian appropriation bill.

The SPEAKER. If the gentleman from Missouri changes his motion the Chair will recognize the gentleman from North Carolina, [Mr. ASHE.] The Chair would state to the gentleman from Indiana that, having recognized the gentleman from North Carolina for a motion to suspend the rules, he is compelled to recognize the gentleman from Missouri to make the motion to adjourn, which is not debatable. But the gentleman from Indiana can see that it would be unjust to the gentleman from North Carolina if under those circumstances the Chair were to recognize the gentleman from Missouri to make another motion.

Mr. HOLMAN. That is manifest; but in the interest of public business I hope the gentleman from Missouri will withdraw his motion to adjourn and renew it after the gentleman from North Carolina has been heard.

Mr. WELLS, of Missouri. I withdraw for the present the motion to adjourn.

REFUND TO NORTH CAROLINA.

Mr. ASHE. I have not occupied the time of the House very much, and I do not expect to trouble it much more up to the 4th of March. But I desire the action of the House on a bill in which my State is deeply interested, which has been reported by the Committee of Claims favorably and which now stands on the Calendar. I move that the rules be suspended and that the Committee of the Whole House on the state of the Union be discharged from the further consideration of the bill (H. R. No. 1146) to refund to the State of North Carolina certain moneys therein named, and that it be brought before the House for action at this time.

The SPEAKER. The gentleman from North Carolina [Mr. ASHE] moves to suspend the rules for the purpose of considering this bill, it being a motion to discharge the Committee of the Whole on the state of the Union from the further consideration of the bill.

The bill was read.

Mr. ASHE. I now ask that the report be read.

Mr. HURLBUT. I object to the reading of the report; it is not necessary; we have heard the bill read. It is in the nature of debate.

Mr. HOAR. I rise to a parliamentary inquiry; is not this a motion to suspend the rules?

The SPEAKER. It is a motion to suspend the rules and pass the bill.

Mr. ASHE. I ask that the report be read.

The SPEAKER. The gentleman from Illinois objected to the reading.

Mr. YEATES. I rise to a parliamentary inquiry. I want to ask if this report is a unanimous one?

The SPEAKER. That is not a point of order.

Mr. YEATES. I did not rise to a point of order, but I wished to make a parliamentary inquiry. I want to be informed whether this report is unanimous?

The SPEAKER. That is hardly a parliamentary inquiry, but the Chair will try to find out that fact for the information of the gentleman from North Carolina, if there be no objection.

Mr. PAGE. I object.

Mr. YEATES. Well, I will state that I am informed that it is a unanimous report. [Laughter.]

The question was taken on Mr. ASHE's motion; and on a division there were—ayes 76, noes 79.

So (two-thirds not voting in favor thereof) the rules were not suspended.

Mr. ASHE. I ask unanimous consent that the report accompanying the bill may be read. I am sure if the House could hear the report they would pass the bill.

Mr. HOSKINS, Mr. HURLBUT, and other members objected.

Mr. KNOTT. I move that the House do now adjourn.

The SPEAKER. Pending that motion the Chair desires to lay before the House a communication from the President of the United States.

Mr. HOLMAN. I hope the gentleman from Kentucky will not press his motion. There is ample time to dispose of the Indian appropriation bill this evening, and it is very important that the bill should pass.

EMPLOYMENT OF TROOPS IN SOUTHERN STATES.

The SPEAKER. The gentleman from Kentucky has waived his

motion until the message from the President can be read, and the Clerk will now read that message.

The Clerk read the message, as follows:

To the House of Representatives:

On the 9th day of December, 1876, the following resolution of the House of Representatives was received, namely:

"*Resolved*, That the President be requested, if not incompatible with the public interest, to transmit to this House copies of any and all orders or directions emanating from him or from either of the Executive Departments of the Government to any military commander or civil officer, with reference to the service of the Army, or any portion thereof, in the States of Virginia, South Carolina, Louisiana, and Florida, since the 1st of August last, together with reports by telegraph or otherwise from either or any of said military commanders or civil officers."

It was immediately or soon thereafter referred to the Secretary of War and the Attorney-General, the custodians of all retained copies of "orders or directions" given by the executive department of the Government covered by the above inquiry, together with all information upon which such "orders or directions" were given.

The information, it will be observed, is voluminous, and, with the limited clerical force in the Department of Justice, has consumed the time up to the present. Many of the communications accompanying this have been already made public in connection with messages heretofore sent to Congress. This class of information includes the important documents received from the governor of South Carolina, and sent to Congress with my message on the subject of the Hamburgh massacre; also the documents accompanying my response to the resolution of the House of Representatives in regard to the soldiers stationed at Petersburgh.

There have also come to me and to the Department of Justice, from time to time, other earnest written communications from persons holding public trusts and from others residing in the South, some of which I append hereto as bearing upon the precarious condition of the public peace in those States. These communications I have reason to regard as made by respectable and responsible men. Many of them deprecate the publication of their names as involving danger to them personally.

The reports heretofore made by committees of Congress of the results of their inquiries in Mississippi and in Louisiana, and the newspapers of several States recommending "the Mississippi plan," have also furnished important data for estimating the danger to the public peace and order in those States.

It is enough to say that these different kinds and sources of evidence have left no doubt whatever in my mind that intimidation has been used, and actual violence, to an extent requiring the aid of the United States Government, where it was practicable to furnish such aid, in South Carolina, in Florida, and in Louisiana, as well as in Mississippi, in Alabama, and in Georgia.

The troops of the United States have been but sparingly used, and in no case so as to interfere with the free exercise of the right of suffrage. Very few troops were available for the purpose of preventing or suppressing the violence and intimidation existing in the States above named. In no case, except that of South Carolina, was the number of soldiers in any State increased in anticipation of the election, saving that twenty-four men and an officer were sent from Fort Foote to Petersburgh, Virginia, where disturbances were threatened prior to the election.

No troops were stationed at the voting-places. In Florida and in Louisiana, respectively, the small number of soldiers already in the said States were stationed at such points in each State as were most threatened with violence, where they might be available as a posse for the officer whose duty it was to preserve the peace and prevent intimidation of voters. Such a disposition of the troops seemed to me reasonable and justified by law and precedent, while its omission would have been inconsistent with the constitutional duty of the President of the United States "to take care that the laws be faithfully executed." The statute expressly forbids the bringing of troops to the polls, "except where it is necessary to keep the peace," implying that to keep the peace it may be done. But this even, so far as I am advised, has not in any case been done. The stationing of a company or part of a company in the vicinity, where they would be available to prevent riot, has been the only use made of troops prior to and at the time of the elections. Where so stationed, they could be called in an emergency requiring it by a marshal or deputy marshal as a posse to aid in suppressing unlawful violence. The evidence which has come to me has left me no ground to doubt that if there had been more military force available it would have been my duty to have disposed of it in several States with a view to the prevention of the violence and intimidation which have undoubtedly contributed to the defeat of the election law in Mississippi, Alabama, and Georgia, as well as in South Carolina, Louisiana, and Florida.

By article 4, section 4, of the Constitution, "The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and on application of the Legislature, or of the executive, (when the Legislature cannot be convened,) against domestic violence."

By act of Congress (R. S. U. S., sections 1034-'5,) the President, in case of "insurrection in any State," or of "unlawful obstruction to the enforcement of the laws of the United States by the ordinary course of judicial proceedings," or whenever "domestic violence in any State so obstructs the execution of the laws thereof and of the United States as to deprive any portion of the people of such State" of their civil or political rights, is authorized to employ such parts of the land and naval forces as he may deem necessary to enforce the execution of the laws and preserve the peace, and sustain the authority of the State and of the United States. Acting under this title (69) of the Revised Statutes, United States, I accompanied the sending of troops to South Carolina with a proclamation such as is therein prescribed.

The President is also authorized by act of Congress "to employ such part of the land or naval forces of the United States" * * * "as shall be necessary to prevent the violation and to enforce the due execution of the provisions" of title 24 of the Revised Statutes of the United States, for the protection of the civil rights of citizens, among which is the provision against conspiracies "to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote from giving his support or advocacy in a legal manner toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of Congress of the United States." (United States Revised Statutes, 1989.)

In cases falling under this title, I have not considered it necessary to issue a proclamation to precede or accompany the employment of such part of the Army as seemed to be necessary.

In case of insurrection against a State government or against the Government of the United States, a proclamation is appropriate. But in keeping the peace of the United States at an election at which members of Congress are elected, no such call from the State or proclamation by the President is prescribed by statute or required by precedent.

In the case of South Carolina, insurrection and domestic violence against the State government were clearly shown, and the application of the governor founded thereon was duly presented, and I could not deny his constitutional request without abandoning my duty as the Executive of the National Government.

The companies stationed in the other States have been employed to secure the better execution of the laws of the United States and to preserve the peace of the United States.

After the election had been had, and where violence was apprehended by which the returns from the counties and precincts might be destroyed, troops were ordered to the State of Florida, and those already in Louisiana were ordered to the points in greatest danger of violence.

I have not employed troops on slight occasions, nor in any case where it has not been necessary to the enforcement of the laws of the United States. In this I have been guided by the Constitution and the laws which have been enacted and the precedents which have been formed under it.

It has been necessary to employ troops occasionally to overcome resistance to the internal-revenue laws from the time of the resistance to the collection of the whisky tax in Pennsylvania, under Washington, to the present time.

In 1854, when it was apprehended that resistance would be made in Boston to the seizure and return to his master of a fugitive slave, the troops there stationed were employed to enforce the master's right under the Constitution, and troops stationed at New York were ordered to be in readiness to go to Boston if it should prove to be necessary.

In 1859, when John Brown, with a small number of men, made his attack upon Harper's Ferry, the President ordered United States troops to assist in the apprehension and suppression of him and his party without a formal call of the Legislature or governor of Virginia and without proclamation of the President.

Without citing further instances in which the Executive has exercised his power as Commander of the Army and Navy to prevent or suppress resistance to the laws of the United States or where he has exercised like authority in obedience to a call from a State to suppress insurrection, I desire to assure both Congress and the country that it has been my purpose to administer the executive powers of the Government fairly, and in no instance to disregard or transcend the limits of the Constitution.

U. S. GRANT.

EXECUTIVE MANSION, *January* 22, 1877.

Mr. WOOD, of New York. Mr. Speaker, I offer the following resolution, upon which I demand the previous question, in connection with this message:

Resolved, That the message of the President, and the accompanying documents, in answer to the resolution of the House, calling for copies of all dispatches, orders, &c., relating to the use of troops in the States of Virginia, South Carolina, Louisiana, and Florida since the 1st August last, be referred to a select committee of eleven members, with instructions to report whether there has been any exercise of authority not warranted by the Constitution and laws of the United States in the use of the troops in the States referred to within the period stated, for which the President is justly responsible; with power to send for persons and papers, to administer oaths, and to report at any time.

Mr. KASSON. I make the point of order that the resolution is not in order except under a motion to suspend the rules.

The SPEAKER. What is not in order?

Mr. KASSON. This resolution.

The SPEAKER. In what particular?

Mr. KASSON. Simply because it changes the rule, and on this day that is not in order as an original resolution.

Mr. HOLMAN. There is no rule bearing upon the subject.

The SPEAKER. The Chair reads from the Digest. The Constitution of the United States provides that the President shall from time to time communicate to Congress, &c.; and

All messages from the President are in writing, and are sent to the House by his Private Secretary. * * * Whenever taken up messages from the President are always read *in extenso*, the House never, as in the case of other communications, dispensing with the reading of the same.

Mr. HALE. I take it that the objection is to the motion of the gentleman from New York, [Mr. WOOD,] who seeks now to create a new committee. Now, by what authority has he the floor, objection being made the moment the resolution was read, to bring that matter before the House? Of course these messages from the President are always received and read and take the natural course. But that a member can take advantage of that and introduce a motion that shall raise a new committee, is certainly an innovation. Now what right has the gentleman from New York to introduce this resolution?

The SPEAKER. The Chair, in accordance with the uniform practice, places before the House a message from the President of the United States. That message is read. The gentleman who introduced the resolution upon which that message was based is uniformly recognized, as the Chair well remembers, to make the motion to print and refer.

Mr. HALE. Yes; but to refer it to some ordinary committee of the House.

The SPEAKER. The Chair thinks that the motion can be to refer the message either to a standing committee or to a special committee, and the motion to refer to a standing committee would have preference.

Mr. HALE. May any gentleman who has introduced a resolution of this kind, when the message in answer to it comes back to the House, take the floor and offer a resolution creating a new committee, just the same as he might take the floor to submit a motion to refer it to a standing committee of the House?

The SPEAKER. That would be a reference of the message. The Chair thinks it would be in order to move to refer this communication either to a standing committee or to a special committee. It is respectful to do so, and so far as the Chair recollects, it is the ordinary mode in reference to such communications. The Chair will listen to any gentleman who will indicate any instance when a different course of procedure was adopted.

Mr. KASSON. I beg the Chair to allow me to call his attention to this fact: the proposed resolution would not only create a new committee, but it would also give to that special committee powers to send for persons and papers. It therefore would constitute a new committee organization, differing from all the committees now existing under the rules. My point of order is that, even admitting that a motion to refer is in order to-day and may be carried by a majority vote, it is not in order to do anything for which the rules do not provide.

The SPEAKER. Then the Chair understands the gentleman from

Iowa [Mr. KASSON] to object to that portion of the resolution which proposes to give authority to this select committee to send for persons and papers.

Mr. KASSON. I object to that part of it, and I also raise the point that upon Monday no order can be taken except under a suspension of the rules. I agree with the Chair that it has often been the case that a message of the President has been referred to one of the ordinary standing committees without opposition; and to that no one would object in this case.

The SPEAKER. The Chair would call the attention of the gentleman to Rule 43:

> When a resolution shall be offered, or a motion made, to refer any subject, and different committees shall be proposed, the question shall be taken in the following order:
> The Committee of the Whole House on the state of the Union; the Committee of the Whole House; a standing committee; a select committee.

Mr. KASSON. There is no question about the ordinary mode of procedure in the case of a reference. But this is an extraordinary mode of reference, as the Chair will see by reference to the resolution.

The SPEAKER. It is not extraordinary, because it is the last mode of reference mentioned in the rule to which the Chair has just referred. But the Chair would like to have any gentleman state if during his experience he recollects any procedure different from the one now indicated, in the case of a message.

Mr. KASSON. I recollect no case where a message has been referred to a select committee with all these special powers on a Monday, except under a suspension of the rules. As the Chair is aware and I think, as far as the Chair can recollect, a President's message is referred to some committee having jurisdiction of the subject involved in the message, referred in the ordinary way, and without objection. But this resolution proposes the creation of a new committee, with powers not conferred by the rules on any ordinary standing committee of the House. Those powers certainly are not within any provision of the existing rules.

The SPEAKER. Rule 43 clearly provides for a reference, and provides that the question shall be first taken upon referring to a Committee of the Whole on the state of the Union, then to the Committee of the Whole House, then to a standing committee, and lastly to a select committee.

Mr. KASSON. If the Chair will permit me——

The SPEAKER. Certainly.

Mr. KASSON. Ordinary bills introduced into this House for reference are treated just as messages from the President. We have this morning been introducing bills and they have been referred to their appropriate committees. The present ruling of the Chair would authorize any member when he introduces a bill to move its reference to a select committee, leaving to any other member only the right to call for the question first upon its reference to a standing committee.

The SPEAKER. That has been frequently done.

Mr. KASSON. Not on Monday.

The SPEAKER. That choice has been given on Monday in regard to standing committees.

Mr. KASSON. Yes, with regard to standing committees; or if there be a select committee already appointed it could be referred to that committee. But this resolution proposes to provide for something which is not now provided for by the rules.

Mr. BANKS. A part of this resolution is clearly not in order now, that part which proposes to give to this select committee, if appointed, the right to report at any time; that portion of the resolution is certainly not in order. I agree with the Chair that it is competent for the House to order a select committee, if it thinks proper to do so, but it is not competent for the House, without a suspension of the rules, to give to any committee leave to report a particular subject at any time, because that would supersede all other business before the House.

The SPEAKER. The Chair sustains the point of order that the part of the resolution to which the gentleman refers is not in order.

Mr. WOOD, of New York. I will modify the resolution by striking out that part.

Mr. KASSON. And also the part giving these extraordinary powers to the proposed committee.

Mr. WILSON, of Iowa. Rule 74 tells us what shall be the committees of the House. And after a select committee has been raised under a suspension of the rules, and a proposition of reference is brought before the House, Rule 43 indicates in what order the question shall be taken upon the question of reference. While there may be some doubt whether the resolution of the gentleman from New York [Mr. WOOD] to raise a select committee is now in order, I think there can be no doubt at all that it requires a suspension of the rules to give to that committee extraordinary powers, such as the power to send for persons and papers, to give those powers either to a standing committee or to a new committee about to be raised.

The SPEAKER. Does the Chair understand the gentleman to say that it is not now in order to move to refer this message to a special committee?

Mr. WILSON, of Iowa. I think it would require a suspension of the rules at this time to create a special committee. But if a special committee is already in existence, having been authorized under a suspension of the rules, and it is proposed to refer a particular subject to that committee, the question would then come before the House as laid down in Rule 43, upon the reference of the subject first to a Committee of the Whole House, next to a standing committee, and then to the select committee already appointed.

The SPEAKER. This message comes before the House by consent of the House. Rule 43 clearly provides that motions for the reference of any matter shall be put in such order as therein stated: first, to the Committee of the Whole House on the state of the Union; secondly, to the Committee of the Whole House; thirdly, to a standing committee; fourthly, to a select committee. Now, the Chair sustains the point of order made by the gentleman from Massachusetts, [Mr. BANKS,] that to give this committee the right to report at any time can only be reached by a suspension of the rules. But the Chair thinks that it is competent for the House without such a suspension to make a reference to a select committee, and to say what shall be the powers of that committee.

Mr. HOAR. I desire to inquire whether the ruling of the Chair upon the point raised by the gentleman from Massachusetts does not embrace also the power to send for persons and papers? Is it not true that neither the power to report at any time nor the power to send for persons and papers can be given except by a suspension of the rules?

Mr. KASSON. It is in the nature of a special order.

The SPEAKER. The Chair would state that the point of order raised by the gentleman from Massachusetts was simply as to the right to report at any time, and that point the Chair sustained.

Mr. KASSON. The Chair will remember that I raised the other point as to conferring extra powers.

The SPEAKER. The Chair understood the gentleman from Iowa as making that point, and in deciding it would remark that it has frequently happened in the House that standing committees have, by a majority vote, been authorized to send for persons and papers. The Chair therefore thinks it is competent to embrace in this proposition of reference such a power in regard to a select committee.

Mr. MONROE. I beg to ask a question for the sake of information. Does not the resolution or motion before the House include two propositions: one for reference and the other to constitute a new committee to which the matter shall be referred? These two propositions are quite distinct. I submit that the ordinary motion of reference as made in the House under the rules implies the existence of the committee to which it is proposed that the matter shall be referred. A proposition to constitute a new committee is a different proposition altogether. As I understand Rule 43 and as I remember the practice under it, the different kinds of committees named are supposed to be committees already in existence.

The SPEAKER. A select commitee might not be already in existence.

Mr. MONROE. But there are select committees in existence, and, according to my recollection of the rule and the practice under it, the power to refer to a select committee has regard to committees which have already been constituted. But the proposition to constitute a new committee is a different thing altogether. A simple motion to refer to a select committee is no doubt in order; but it must have reference to a committee already in existence. A proposition to appoint a new committee, it seems to me, can only be adopted under a suspension of the rules.

The SPEAKER. The language of the rule is general—"a select committee." It is not confined to committees already created.

Mr. MONROE. We have a dozen select committees already, to any one of which the matter may be referred.

The SPEAKER. Under parliamentary rule, a select committee expires at the end of a session of Congress; the appointment does not run through two sessions, as is the case with other committees, yet it has been uniformly held that the reference of any matter to a select committee that has expired has the effect to revive that committee, which is substantially the same as the creation of a new committee. The Chair rules that the resolution is in order.

Mr. KASSON. Including the new powers?

Mr. WOOD, of New York. I demand the previous question.

Mr. KASSON. Then I move to suspend the rules for the purpose of adopting the resolution which I send to the desk.

Mr. WOOD, of New York. I do not yield to the gentleman.

Mr. KASSON. My motion I submit is, according to the rulings heretofore, a privileged one, which has the effect even to take a gentleman from the floor.

Mr. WOOD, of New York. I have the floor on my motion. The gentleman from Iowa knows better than to suppose that he can take me from the floor in this way. I have demanded the previous question.

The SPEAKER. The gentleman from New York demands the previous question.

Mr. KASSON. The Speaker has always ruled that a resolution requiring a suspension of the rules and a two-thirds vote takes priority on Monday over any other proposition, and will even take from the floor a gentleman who is advocating another proposition.

Mr. WOOD, of New York. That certainly does not apply to the reference of a President's message, which stands upon privileged ground. All these questions of order which gentlemen have raised upon the other side are frivolous, and not appropriate to this particular proposition. It has always been held without dispute that when a President's message is before the House it has the right to make a

disposition of that message as a privileged question, upon grounds appertaining to the dignity and character of the quarter from which it emanates.

Mr. KASSON. That point I dispute.

Mr. WOOD, of New York. It will be conceded that I would have the right to move the reference of the communication to the Committee on Military Affairs. The only difference in this case is that I move to refer it to a select committee, and if in addition I propose to instruct the committee to make specific inquiry as to the facts alleged, it is clearly an appropriate part of such a motion.

Mr. HOAR. Mr. Speaker, I differ with some of my friends on the republican side of the House in regard to one question which has just been raised. I understand that it is within the power of any member to move to refer anything either to a general committee or to a committee created for the purpose, and that whenever a motion of reference is made it is in order for the member making the motion to move for the creation of a select committee to which the subject shall be referred.

But I do not understand that the rule is as stated by the honorable gentleman from New York. On the contrary, the President's message in the ordinary course of our rules takes its place on the Speaker's table, and can never be taken up, even to be read——

Mr. WOOD, of New York, rose.

Mr. HOAR. I will answer the gentleman's question in a moment if he will permit me to finish my sentence. And that message can never be taken up to be read without going to the Speaker's table, except by unanimous consent, unless the House shall proceed in order with the consideration of the business on the Speaker's table. The statement of Barclay in his Digest is this:

All messages from the President are in writing, and are sent to the House by his Private Secretary, or such other person as he may delegate, and, as in the case of messages from the Senate, are announced at the door by the Doorkeeper and handed to the Speaker, who places them upon his table, to be taken up whenever the House, under the fifty-fourth rule, shall go to the business thereon. In the case of the annual message, however, it is usually taken up, by unanimous consent, as soon as received.

Now, the House consented, by not objecting, to take up this message, and it is that point to which I wish to call attention, that it is before the House for reference; like any other business before the House for reference, it must give place on Monday to a motion to suspend the rules. The gentleman from New York, instead of moving its reference, might have taken the floor for an hour and he might have been followed by other gentlemen. All that proceeding is regulated by the rule. Of course, if the motion to suspend the rules be voted down, this matter is immediately revived again. The gentleman does not lose the actual advantage of position, because here he is with his motion before the House, and the House is to take up his motion and deal with it just as soon as the motion to suspend the rules is out of the way.

The SPEAKER. The Chair desires to state to the gentleman from Massachusetts that he agrees fully with him as to the effect of the fifty-fourth rule. Before presenting this message, the Chair examined Rule 54, to see whether, under the terms of that rule, this message could be reached and read in any other way than by unanimous consent. He stated, therefore, that he asked unanimous consent to place before the House a message from the President of the United States.

The gentleman from Massachusetts will remember, too, that special orders are made under suspension of the rules. Unanimous consent, when given, is equivalent, according to various decisions heretofore made, to a suspension of the rules.

Mr. HOAR. No unanimous consent has been given, except to the presentation of the message and that it should be read.

The SPEAKER. The message is before the House therefore, in obedience to the unanimous consent of the House. That waived any right any member of the House had under Rule 54.

The Chair desires to read further as to the point raised by the gentleman from Iowa, that he has the right to take the gentleman from New York [Mr. WOOD] off the floor by his motion to suspend the rules. That is the point now before the House. The Manual, page 207, states many cases when the motion to suspend the rules cannot be made. If the previous question were seconded and the main question ordered and the previous question were in operation, it will appear that the motion of the gentleman from Iowa could not be entertained.

The Chair reads further from the Manual, so the whole case may fully appear:

It is not in order to move a suspension of the rules while the House is acting under a suspension of the rules—*Congressional Globe*, 2, 27, pages 58, 142; 1, 31, page 1225—unless connected with the business immediately before the House—*Journal*, 2, 36, page 212—nor while considering a special order, it having been made under a suspension of the rules—*Congressional Globe*, 2, 29, pages 401, 439—(unless connected with the consideration of such special order;) nor while the previous question is operating.—(*Journal*, 2, 33, page 564.)

Pending a motion to suspend the rules, so as to take an immediate vote on a proposition, a motion for a recess is not in order.—(*Journal*, 2, 39, pages 572, 573.) This decision of the Speaker was sustained on appeal by the very decisive vote, by yeas and nays, of yeas 173, nays 4; and would seem to have settled the question that, pending a similar motion, dilatory motions, such as had been previously tolerated, would not be entertained hereafter.

Pending a motion to suspend the rules, the Speaker may entertain one motion that the House do now adjourn; but after the result thereon is announced, he shall not entertain any other dilatory motion till the vote is taken on suspension.—(*Rule* 161.)

Mr. KASSON. If the Chair will recollect the facts, he will find on Monday it has been uniformly held that a motion to suspend the rules, requiring two-thirds, takes precedence of even a motion to suspend the rules which requires a majority, as in the case of going into Committee of the Whole on the state of the Union.

That has been, so far as I know, the uniform ruling for Monday; that these are privileged motions and will take any other motion out of consideration of the House.

Mr. WILSON, of Iowa. Unless the House is already acting under a suspension of the rules.

Mr. KASSON. Yes; with that saving clause.

Mr. WOOD, of New York. There are two difficulties in the way of my friend from Iowa. The Speaker can dispose of the question of order. But I want to set the gentleman right as to two matters of fact. Where unanimous consent has been given to present a message of the President of the United States, pending the disposition of that question a motion to suspend the rules is clearly out of order.

Mr. KASSON. Allow me to answer that before the gentleman goes to the other point. The answer to that is: No unanimous consent was given for the introduction of a resolution on the subject. It was only to lay before the House the President's message; and allow me to add, at the usual time when the Speaker merely makes such announcements to the House pending a motion to adjourn, and when the House is not prepared to expect that laying the communication before the House will be followed by a motion for consideration of any kind——

Mr. WOOD, of New York. The gentleman must be aware of the fact that a message from the President of the United States is always disposed of before any other business.

Mr. KASSON. Not necessarily.

Mr. WOOD, of New York. And that it is proper and necessary to move its reference.

Mr. KASSON. On the contrary, without unanimous consent the message should have lain on the Speaker's table until at the suggestion of the Speaker or of some member the House agreed to go to the consideration of business on the Speaker's table.

Mr. WOOD, of New York. But in this case, although the rule requires this business to go to the Speaker's table, and a motion to go to business on the Speaker's table calls it up in order, yet, where the Speaker presents these communications by unanimous consent to the House, the rule requiring such a communication to go to the Speaker's table is thereby waived; and when it is presented to the House, the only question that can come before the House is what disposition can be made of it.

Mr. KASSON. It is disposed of when it is still left on the Speaker's table.

Mr. WOOD, of New York. I demand the previous question on the adoption of my resolution as modified.

Mr. KASSON. I first ask the decision of the Chair on the point of order raised. I will remind the Chair what are the facts. I take the floor to offer a resolution for a suspension of the rules, which requires a two-thirds vote; and I remind the Chair that he, himself, as his predecessors have done, has always given preference to that kind of motion to suspend the rules, over even a motion to suspend the rules to go into Committee of the Whole on appropriation bills. On Monday he recognizes, owing to the character of the business of that day, a motion to suspend the rules requiring a two-thirds vote in preference to any other motion; as to-day, when the gentleman from Missouri [Mr. WELLS] sought to suspend the rules to go into Committee of the Whole on an appropriation bill other gentlemen were recognized for motions which required a two-thirds vote, in preference. And such has been the uniform ruling.

Mr. GARFIELD. Will the Speaker allow me to call his attention to page 207 of the Digest, where are stated all the cases in which it is not in order on Monday to move to suspend the rules:

It is not in order to move a suspension of the rules while the House is acting under a suspension of the rules, unless connected with the business immediately before the House, nor while considering a special order, it having been made under a suspension of the rules, [unless connected with the consideration of such special order,] nor while the previous question is operating.

Now there are three conditions under which it is not in order on Monday to move to suspend the rules. None of those three conditions now exist. We are not acting under a suspension of the rules. We are not acting under upon a special order made so by a suspension of the rules. We are not under the pendency of the previous question. And those are the only conditions named in the rules in which it is not in order to move a suspension of the rules. The gentleman from Iowa [Mr. KASSON] has moved to suspend the rules, and none of those three exceptional conditions exist His motion must clearly be in order.

The SPEAKER. The Chair has carefully in the brief time allowed him considered this subject, and is of opinion that it is competent for the gentleman from Iowa to take off the floor the gentleman from New York when he makes a motion to suspend the rules for a higher privilege. But the Chair will state to the gentleman from New York that the business on which he submitted a motion being introduced into the House, remains as unfinished business till the next session of the House, when it cannot be interfered with by a suspension of the rules.

Mr. BANKS. I think the decision of the Chair is right, except in the phraseology in which it is stated.

The SPEAKER. The Chair will correct his phraseology if the gentleman from Massachusetts will point out that it requires correction.

Mr. BANKS. I desire it to be corrected as a matter of precedent. The gentleman from New York has not now the floor. He made his motion and has taken his seat; and that gives the gentleman from Iowa his right as stated, a right to move to suspend the rules.

Mr. WOOD, of New York. I wish to correct the gentleman from Massachusetts in his statement of facts. I have not taken my seat.

The SPEAKER. The Chair thinks the gentleman from New York yielded nothing.

Mr. BANKS. The gentleman from New York certainly took his seat. At any rate, whenever the Chair submitted the motion the motion to suspend the rules was in order.

The SPEAKER. The Chair so rules on Monday.

Mr. KASSON. In order that the Chair may not misunderstand the history of this matter, I will state that I rose immediately upon hearing the resolution read for information and objected to its introduction, and then the point of order was made by the gentleman from Massachusetts, [Mr. BANKS.] The Chair sustained the point of order raised by the gentleman from Massachusetts, and I was not aware that the resolution had been re-introduced as amended.

The SPEAKER. The chair sustained that point of order, and then the gentleman from New York [Mr. WOOD] withdrew that part of the resolution.

Mr. KASSON. It was not offered again, to my knowledge, but if it is pending, then I will offer the resolution under my right.

Mr. COX. I wish to inquire whether, if the House adjourns now, this matter will come up to-morrow as unfinished business?

The SPEAKER. The Chair thinks it would.

Mr. WILSON, of Iowa. Not unless the previous question is sustained upon it.

Mr. HALE. How could it be, unless the previous question was sustained upon it?

Mr. GARFIELD. It will come up as unfinished business on Monday next.

The SPEAKER. In reference to the points suggested by the gentleman from Iowa, the Chair desires to read under the head of "Unfinished Business" upon page 227 of the Digest:

> The consideration of the unfinished business in which the House may be engaged at an adjournment shall be resumed as soon as the Journal of the next day is read, and at the same time each day thereafter until disposed of; and if, from any cause, other business shall intervene, it shall be resumed as soon as such other business is disposed of. And the consideration of all other unfinished business shall be resumed whenever the class of business to which it belongs shall be in order under the rules.

Now the Chair rules that it was competent for the gentleman on to-day to make a motion of a higher privilege, and that is to suspend the rules by a two-thirds vote, but as soon as that motion was disposed of then this matter comes up as the unfinished business immediately after that motion is disposed of.

Mr. WILSON, of Iowa. I do not desire to impeach that, but I would call the attention of the Chair to the last clause of the paragraph which he has just read:

> And the consideration of all other unfinished business shall be resumed whenever the class of business to which it belongs shall be in order under the rules.—*Rule 56.*

The SPEAKER. The gentleman from Iowa will see that under such construction of the rule as he indicates there never could or would be any reference made or disposition made of this executive message. A motion of higher privilege having been exhausted, which was to suspend the rules on Monday, then the gentleman from New York was recognized in his right to move the previous question.

Mr. WILSON, of Iowa. Yes, if somebody else does not also move to suspend the rules.

The SPEAKER. The Chair has already stated that it is in the power of members by continuously making motions to suspend the rules to keep the gentleman off the floor on to-day, but that this will come up as unfinished business then, and the Chair is bound to recognize the gentleman from New York to demand the previous question. Otherwise the business before the House, which in this case is the President's message, would never have any reference, which would be disrespectful and contrary to practice.

Mr. KASSON. I offer the resolution as reported by the Judiciary Committee through its chairman.

Mr. COX. Is it in order to move to adjourn now?

The SPEAKER. It is.

Mr. COX. Then I make that motion.

The motion was agreed to.

And accordingly (at four o'clock and ten minutes p. m.) the House adjourned.

PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By the SPEAKER: Resolutions of the Board of Trade of Chicago, communicated by telegraph, indorsing the report of the joint committee on counting the electoral vote, to the joint committee on counting the electoral vote for President and Vice-President.

By Mr. ADAMS: The petition of C. P. Williams and others, bankers, of Albany, New York, for relief from burdensome taxation, to the Committee of Ways and Means.

By Mr. BLAIR: The petition of T. A. Gleason and 68 others, citizens of Cornish, New Hampshire, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. BURLEIGH: The petition of O. M. and D. W. Nash and 25 others, of Portland, Maine, for the repeal of the excessive tax imposed on national banks, to the Committee on Banking and Currency.

By Mr. CALDWELL, of Tennessee: The petition of citizens of Tennessee, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. CUTLER: Protest of citizens of Hawthorne, NewJersey, against the assumption by the President of the Senate of the power of counting the electoral vote, to the committee on counting the electoral vote.

Also, the petition of W. W. James, J. M. Barker, and other citizens, of Bristol, Tennessee, for a commission of inquiry concerning the alcoholic liquor traffic, to the Committee of Ways and Means.

By Mr. CRAPO: The petition of Benjamin Reiply, for the payment of awards made in his favor by the United States and Mexican mixed claims commission, to the Committee on Foreign Affairs.

By Mr. FINLEY: The petition of citizens of Saint Augustine, Florida, for an appropriation for cleaning out the harbor at Saint Augustine, and for the construction of a mole or wharf for the use of the Government, to the Committee on Commerce.

By Mr. FREEMAN: The petition of Barbara Arrison, that the act of February 14, 1871, granting pensions to the soldiers of the war of 1812, or their widows, be extended so as to include the widows of all the soldiers of said war regardless of the date of marriage, to the Committee on Invalid Pensions.

By Mr. GOODIN: The petition of citizens of Kansas, for the enforcement of the act of July 24, 1866, by appropriate legislation, to the Committee on the Post-Office and Post-Roads.

By Mr. HENKLE: The petition of William L. Riley, for compensation for work done on the grounds of the Smithsonian Institution, to the Committee on Appropriations.

Also the petition of 2,586 citizens of the District of Columbia, for the passage of an act continuing the public schools of the District of Columbia for the full scholastic year of ten months, to the Committee for the District of Columbia.

By Mr. KIDDER: The petition of E. S. Wenckebach, late captain Twenty-second Infantry, United States Army, to be restored to his rank and position in the Army, to the Committee on Military Affairs.

By Mr. KIMBALL: Memorial of Constantine Connerwaif, of Green Bay, Wisconsin, for compensation for military services rendered the government of Mexico, to the Committee of Claims.

Also, the petition of D. R. Bean and 54 citizens of Wisconsin, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

Also, the petition of D. W. Woodward and 48 citizens of Wisconsin, of similar import, to the same committee.

By Mr. LUTTRELL: The petition of Phineas Banning and others, of Los Angeles, California, for the passage of the bill (S. No. 805) relating to indemnity lands, to the Committee on Public Lands.

Also, the petition of A. W. Potts and others, of Los Angeles, California, exposing an alleged attempt at fraud on members of Congress for the purpose of defeating Senate bill No. 805 and House bill No. 3664, and asking for the passage of said bills, to the same committee.

By Mr. MACKEY: The petition of citizens of Renovo, Clinton County, Pennsylvania, for an amicable adjustment of all questions arising from the late presidential election, to the committee on counting the electoral vote.

By Mr. MILLER: The petition of citizens of Hancock, Delaware County, New York, and of citizens of Susquehanna County, Pennsylvania, that the law be so amended as to allow pensioners to receive in all cases pensions from the date of discharge, to the Committee on Invalid Pensions.

By Mr. MONROE: The petition of H. S. Deisem and 16 other citizens of Ohio, of similar import, to the same committee.

Also, the petition of Hon. E. N. Sill and 29 other citizens of Summit County, Ohio, for the removal of the tax upon deposits, circulation, and capital of banks, to the Committee on Banking and Currency.

By Mr. O'BRIEN: The petition of John T. Pickett and Joseph J. Stewart, attorney for the heirs of James H. Causten and others, that the unappropriated balance of the Geneva award be devoted to the payment of the French spoliation claims, to the Committee on the Judiciary.

By Mr. PAYNE: The petition of the officers of the Ohio National Bank of Cleveland, Ohio, for relief from excessive taxation, to the Committee on Banking and Currency.

By Mr. POTTER: The petition of Albert Armes and 32 citizens of Kendall, Michigan, for the purchase and control by the Government of all telegraph lines in the United States, to the Committee on the Post-Office and Post-roads.

By Mr. JOHN REILLY: The petition of citizens of Bedford County, Pennsylvania, of similar import, to the same committee.

By Mr. RUSK: The petition of citizens of Jackson County, Wisconsin, of similar import, to the same committee.

By Mr. SEELYE: The petition of Clemens Grove church, Marshall

County, Iowa, for a commission of inquiry concerning the alcoholic liquor traffic, to the Committee of Ways and Means.

Also, the petition of the Massachusetts Medical Society, for an appropriation to print the new catalogue of the library of the Surgeon-General's Office, to the Committee on the Public Printing.

By Mr. SINNICKSON: The petition of William Orr and other citizens of New Jersey, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. SLEMONS: The petition of J. W. Barnett and other citizens of Arkansas, of similar import, to the same committee.

By Mr. VANCE, of North Carolina: The petition of J. M. Stepp and other citizens of North Carolina, of similar import, to the same committee.

Also, a letter from the Commissioner of Pensions, concerning the petition of Dovey Pace for arrears of pension, to the Committee on Invalid Pensions.

By Mr. WALSH: The petition of Conrad Dulfer and other soldiers of the late war, to change the law so as to allow pensioners to receive pensions from the date of their discharge, to the same committee.

By Mr. WIGGINTON: The petition of A. J. Gillette and 62 others, for a post-route to connect the China post-office on route 46135 with the Temescal post-office, San Bernardino County, California, to the Committee on the Post-Office and Post-Roads.

Also, the petition of F. M. Stone and 110 others, for a post-route from Soledad via Peach Tree and Slacks Cañon to Imusdale, Monterey County, California, to the same committee.

By Mr. WILSHIRE: The petition of William A. Britton, of Arkansas, to be paid $2,000.74 compensation for repairs made by him while United States marshal, upon a building used as a jail by the United States authorities, to the Committee on the Judiciary.

IN SENATE.

TUESDAY, *January* 23, 1877.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

The Journal of yesterday's proceedings was read and approved.

HOUSE BILLS REFERRED.

The bill (H. R. No. 820) for the relief of the mission of Saint James, in Washington Territory, was read twice by its title, and referred to the Committee on Public Lands.

The following bills from the House of Representatives were severally read twice by their titles, and referred to the Committee on the Judiciary:

A bill (H. R. No. 4475) removing the political disabilities of Joel S. Kennard, of Savannah, Georgia; and

A bill (H. R. No. 4476) to provide for the appointment of an official short-hand reporter for the United States courts in and for the district of California.

EXECUTIVE COMMUNICATION.

The PRESIDENT *pro tempore* laid before the Senate a letter of the Secretary of the Treasury, inviting attention to the terms of the act approved March 3, 1875, and recommending an appropriation of money in lieu of bonds to be paid to Captain J. B. Eads, on account of the construction of jetties, &c., to maintain the channel between the South Pass of the Mississippi River and the Gulf of Mexico; which was referred to the Committee on Appropriations, and ordered to be printed.

PETITIONS AND MEMORIALS.

The PRESIDENT *pro tempore* presented a petition of H. Luhre and 25 other citizens of Lavernia, Texas, praying that telegraphic business be transferred to the superintendence of the Post-Office Department and for cheaper telegraphic facilities; which was referred to the Committee on Post-Offices and Post-Roads.

Mr. PADDOCK presented a petition of citizens of Fremont, Nebraska, praying for the repeal of the law imposing a tax on the deposits, circulation, and capital of banks; which was referred to the Committee on Finance.

Mr. WITHERS presented the petition of Mrs. Jane Dulany, widow of the late Colonel William Dulany, praying to be allowed arrears of pension; which was referred to the Committee on Pensions.

Mr. WALLACE presented a memorial of A. E. Borie, John Welsh, John C. Bullitt, and other leading citizens of Philadelphia, without distinction of party, praying for the passage of the electoral-count bill; which was ordered to lie on the table.

He also presented the petition of George Shiras, jr., John H. Shoenberger, John B. Guthrie, Malcolm Hay, Thomas M. Marshall, and other leading citizens of Pittsburgh, Pennsylvania, without distinction of party, praying for the passage of the electoral-count bill; which was ordered to lie on the table.

He also presented the petition of leading citizens of Wyoming County, Pennsylvania, praying for an amicable adjustment of presidential difficulties; which was ordered to lie on the table.

Mr. COCKRELL. I hold in my hand the proceedings of a meeting of the Merchants' Exchange of the city of Saint Louis, held yesterday, January 22, 1877, at which were introduced a preamble and resolutions by Ex-Lieutenant-Governor E. O. Stanard, of that State, and which passed the meeting with but one dissenting voice. The Merchants' Exchange of Saint Louis is composed of over two thousand members, embracing in that membership men of capital, men of intelligence, men of patriotism and devotion to their country, men who control the commercial interests of the great Mississippi Valley, men who belong to all the different political organizations known in our country. I will read the preamble and resolutions:

Whereas the Merchants Exchange of Saint Louis, an organization for strictly commercial purposes, embracing a membership of nearly two thousand, engaged in nearly all the commercial and financial pursuits of this trade center, have viewed with solicitude and alarm the recent political complications of the country and felt their disastrous effects on her commerce and on that of our city;

And whereas we rejoice at the results of the deliberations of the joint committee of the Senate and House of Representatives, and believe the plan reported by them to be the best available one for the solution of our presidential complications: Therefore,

Be it resolved, That we approve of the provisions of the bill reported to Congress by said joint committee and urge upon our Senators and Members of the House of Representatives a hearty support of the same.

I move that the memorial lie upon the table.

The motion was agreed to.

Mr. BURNSIDE presented the petition of J. B. Taylor, D. W. Kelsey, and other citizens of Manlius, Onondaga County, New York, praying for a general law to prohibit the liquor traffic within the national domain; which was referred to the Committee on Finance.

Mr. RANDOLPH. I present thirteen petitions of citizens of New Jersey, praying for the passage of some bill by which the present presidential contest shall be justly and promptly decided. I may say with reference to these petitioners that they consist of members of both political parties; that they represent all the interests that New Jersey has; that they are citizens of high standing, and that their prayer should be promptly and reasonably considered. I move that the petitions lie upon the table.

The motion was agreed to.

Mr. ALCORN presented a memorial of the executive committee of the Mexican war veterans of the State of Mississippi in favor of the passage of a law granting pensions to the soldiers of the Mexican war to date from the time of their enlistment; which was referred to the Committee on Pensions.

Mr. WINDOM presented a petition of citizens of Minnesota, praying that the telegraphic business may be transferred to the superintendence of the Post-Office Department and for cheaper telegraphic facilities; which was referred to the Committee on Post-Offices and Post-Roads.

Mr. WADLEIGH presented the petition of Osborn Stanley, Pleasant Coppock, and other citizens of Ohio, praying for the prohibition of the manufacture and sale of alcoholic liquors in the District of Columbia and the Territories; which was referred to the Committee on Finance.

Mr. KERNAN presented the petition of William and William H. Lewis, praying for an extension of their letters-patent for photographic plate-holder; which was referred to the Committee on Patents.

Mr. INGALLS presented the petition of H. M. Metcalf, Thomas Prunty, W. Rucker, and numerous other citizens of Nemaha County, Kansas, praying for the passage of a law to enforce the provisions of the act of Congress of July 24, 1866, relating to the purchase by the Government of all the telegraph lines, property, and effects of any and all companies acting under the provisions of said act; which was referred to the Committee on Post-Offices and Post-Roads.

Mr. EDMUNDS presented the petition of Clara Lyon Peters, Hannah Coffee, L. F. Sawyer, and others—240 men and 339 women—579 citizens of the State of Illinois, praying for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex; which was referred to the Committee on Privileges and Elections.

REPORTS OF COMMITTEES.

Mr. SPENCER, from the Committee on Military Affairs, to whom was referred the bill (H. R. No. 4258) to provide for the payment for certain improvements on lands now embraced in the military reservation of Fort Cameron in the Territory of Utah, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the petition of Leopold Kaspeles, late of Company E, Fifty-seventh Regiment Massachusetts Volunteers, praying for the passage of a law granting him a balance of bounty claimed to be due him upon his discharge from the United States service, submitted an adverse report thereon; which was ordered to be printed, and the committee discharged from the further consideration of the petition.

He also, from the same committee, to whom was referred the bill (H. R. No. 2606) for the relief of Catherine Harris, reported it without amendment and submitted a report thereon; which was ordered to be printed.

He also, from the same committee, to whom was referred the petition of Peter P. G. Hall, of Pennsylvania, paymaster of the United States Army, praying that he may be refunded money he was obliged to pay in consequence of the embezzlement of a clerk, submitted a report thereon accompanied by a bill (S. No. 1175) granting relief to Major P. P. G. Hall, a paymaster of the United States Army.

The bill was read twice by its title, and the report was ordered to be printed.

BILLS INTRODUCED.

Mr. KERNAN (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1176) authorizing William Lewis and William H. Lewis to make application to the Commissioner of Patents for the extension of their patents for new and useful photographic plate-holders; which was read twice by its title, and referred to the Committee on Patents.

Mr. KERNAN. At the request of a citizen of the State of New York, I ask leave to introduce a bill relating to the revision of the statutes. I have not examined it myself.

By unanimous consent, leave was granted to introduce a bill (S. No. 1177) to correct the revision of the statutes of the United States; which was read twice by its title, and referred to the Committee on the Revision of the Laws of the United States.

Mr. WITHERS asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1178) granting a pension to Francis A. Liebschutz, late of Company K, Ninth Kansas Cavalry, brevet first lieutenant United States Volunteers; which was read twice by its title, and referred to the Committee on Military Affairs.

Mr. SPENCER asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1179) providing for the care and punishment of vagrants, drunkards, idlers, and for other purposes; which was read twice by its title.

Mr. SPENCER. I desire to state that this bill was sent to me by the commissioners of the District of Columbia. I move that it be referred to the Committee on the District of Columbia.

The motion was agreed to.

Mr. CHAFFEE asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1180) to authorize the President to restore Samuel M. Robbins to his former rank in the Army; which was read twice by its title, and referred to the Committee on Military Affairs.

Mr. BARNUM asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1181) for the relief of Thomas A. Weston; which was read twice by its title, and referred to the Committee on Patents.

Mr. WRIGHT (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1182) for the relief of the Louisville Transfer Company of Louisville, Kentucky, and the Cincinnati Transfer Company of Cincinnati, Ohio; which was read twice by its title, and referred to the Committee on Claims.

Mr. INGALLS asked, and by unanimon sconsent obtained, leave to introduce a bill (S. No. 1183) granting a pension to Harriet Moss; which was read twice by its title, and referred to the Committee on Pensions.

OFFICERS OF THIRD ARTILLERY.

Mr. COCKRELL. If the morning business is through, I move that the Senate proceed to the consideration of the bill (H. R. No. 2461) for the relief of certain officers of the Third United States Artillery who suffered by fire at Fort Hamilton, New York Harbor, on the 3d of March, 1875.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill. It authorizes the proper accounting officers of the Treasury to settle with the first lieutenants of the Third United States Artillery who lost their personal effects by fire at Fort Hamilton, New York Harbor, on the 3d of March, 1875, at a sum not to exceed $600 each.

Mr. WITHERS. I should like to hear the report read in that case. The bill seems to contain a point that I think objectionable.

Mr. SPENCER. There are two reports, a Senate report and a House report.

The PRESIDENT *pro tempore*. The report of the committee will be read.

The Secretary read the following report, submitted by Mr. SPENCER, from the Committee on Military Affairs, January 18:

It appears that a fire originated from a defective flue in one of the casemates of Fort Hamilton, New York Harbor, March 3, 1875; that owing to the necessity for the services of all the officers and men of the garrison in removing a large quantity of powder from a casemate near the fire, all their private quarters in the casemates, and their effects therein, were neglected and allowed to be destroyed.

It seems to be just that these officers should be re-imbursed for their losses; but this should not pass into precedent, so as to prevent Congress from deciding any other analogous case entirely on its own merits. The committee therefore recommend the passage of the accompanying House bill, (H. R. No. 2461.)

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

PROTECTION OF PROPERTY IN THE DISTRICT.

Mr. SPENCER. I move that the Senate proceed to the consideration of the bill (H. R. No. 4041) to prevent depredations upon property in the District of Columbia.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill. It provides that every person who, in the District of Columbia, shall willfully and without color of right enter into any occupied or unoccupied dwelling-house or other building, the property of another, and shall cut, break, or tear from its place any gas-pipe, water-pipe, door-bell, or other fixture therein; or who shall, in such dwelling-house or other building, cut, break, or tear down any wall, or part of a wall, or door, with intent to cut, break, or tear from its place any pipe or fixture therein, shall, for the first offense, be fined not more than $200 and be imprisoned in the District jail not less than two months or more than one year, and for any subsequent offense shall be imprisoned in the penitentiary for not less than one year or more than three years.

Mr. EDMUNDS. I should like to have the Senator in charge of the bill state what is the present punishment for that offense.

Mr. SPENCER. There is a letter from the attorney of the District which states the necessity of the bill.

Mr. EDMUNDS. I should like to hear it read.

Mr. SPENCER. There is no law at all by which they can be punished.

Mr. EDMUNDS. No law to punish breaking into a house and stealing gas-pipes!

Mr. SPENCER. I ask that the letter be reported which is with the bill.

The PRESIDENT *pro tempore*. The letter will be sent for.

Mr. SPENCER. The letter accompanies the bill in the shape of a report. [A pause.] I think there will be no objection to the bill and it is unnecessary to wait for the letter of the attorney of the District.

Mr. WHYTE. I should think that the bill ought to go to the Committee on the Judiciary. This is an important bill, relating to the exercise of criminal jurisdiction in the District. It is evidently a bill such as in some of the States is passed for the purpose of punishing persons guilty of maliciously destroying property, and it ought to be prepared with proper care under the Judiciary Committee. I hope, therefore, it will be referred to the Committee on the Judiciary.

Mr. SPENCER. I wish to state that this bill has passed the House of Representatives, having been drawn by the attorney of the District of Columbia and been recommended by the District commissioners. There is a letter showing the necessity of it from the attorney of the District, Mr. Birney, which states that there is no law punishing such offenses, but that the crime is only a trespass.

Mr. WHYTE. I have no doubt the bill was drawn by the attorney for the District, but it ought to be submitted to the Judiciary Committee, which has charge of such matters. It being a bill to punish for crime, the crime ought to be defined with judicial exactness. Therefore I hope it will be referred to the Judiciary Committee that they may first pass upon it before we adopt it as a law.

Mr. SPENCER. I ask that the letter of the attorney be read.

The PRESIDENT *pro tempore*. The letter will be read.

The Chief Clerk read as follows:

ATTORNEY'S OFFICE, DISTRICT OF COLUMBIA,
Washington, January 12, 1877.

GENTLEMEN: The bill No. 4041 House of Representatives, passed January 6, 1877, is necessary for the protection of fixtures in the houses in this District. The business of stripping houses, unoccupied for the moment, of the water-pipes, gas-pipes, and fixtures, bells, stop-cocks, range-castings, bath-tub linings, has been so steadily prosecuted in this District as to have depreciated the value of house property. A house can hardly be left over night without a guard. The depredators have frequently escaped through technicalities of the law against larceny.

I trust that the bill will have your recommendation.

Very respectfully,

W. BIRNEY,
Attorney, District of Columbia.

Mr. EDMUNDS. Let us hear the bill read again.

The Chief Clerk read the bill.

Mr. WHYTE. One of the most material words in the State statute is left out, "maliciously." A man may do that ignorantly, may commit that offense without any malice, and yet be punished for it. He may go in under a misapprehension, ordered by the owner to go in and tear down a pipe or alter some of the water-fixtures; and though the party so ordered may innocently do it, yet under the provisions of the bill, the word "maliciously" being left out, he may be punished for it.

Mr. SPENCER. I move to amend by inserting the words "willfully and maliciously" to meet the objection.

The amendment was agreed to.

Mr. WHYTE. Now I move that the bill be referred to the Committee on the Judiciary. It has been manifested now that it is not a proper bill to pass without fair examination. I move that it be referred to the Committe on the Judiciary.

Mr. DAWES. I hope that motion will prevail, I think if for no other reason, that the minimum of the penalty should be stricken out. I do not know what the policy of the law in the District of Columbia is; but it has come to be the policy in the States of late, and a very wise policy, I think, that the minimum of such punishment should be stricken out. I can conceive of the offense being committed under circumstances that would make that minimum penalty very severe. I hope, therefore, that the motion of the Senator from Maryland will prevail, and that among other things the minimum of the penalty will be stricken out.

The PRESIDENT *pro tempore*. It is moved to refer the bill to the Committee on the Judiciary.

The motion was agreed to.

COUNTING OF THE ELECTORAL VOTES.

The PRESIDENT *pro tempore*. If there be no further morning business the morning hour has expired, and the Chair will call up the unfinished business, which is the bill (S. No. 1153) to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877.

Mr. SHERMAN. Mr. President, when the committee was appointed by both Houses to take into consideration the count of the electoral vote, I expected as a matter of course, in case that committee agreed, to vote for its report. I have a high respect for the committee, for its members and its organization; and I supposed that any bill that it would be likely to agree upon and report would receive my hearty concurrence. And, sir, it is a painful thing to me to dissent from gentlemen whose opinion I esteem so highly; but, after the brief consideration I have had an opportunity to give to this bill, it becomes my duty.

I appreciate the honorable motives which led them to make this report, but it is equally my duty to act upon my judgment on the responsibilities of my position and to dissent from them if in my judgment they have fallen into error.

I know that when there is a strong pressure, a patriotic motive for an agreement in a committee of gentlemen who go over a subject of this kind, they may lose sight of objections which may influence the minds of others. Therefore in dissenting and, as I shall, criticising the work of this committee, I must in the outset express for the committee, their motives, and their purposes my sincere respect.

The bill before us is a bill to decide a case. It is not a general law, applicable to all time and for all similar occasions. It is designed to settle a case now made up and pending in your archives. Nor is it a bill to confer jurisdiction on an existing court to decide cases to arise. It is a bill to create a court to decide a case already made up. No one would propose this bill as a permanent measure of legislation. There are provisions in it that are incompatible with the conditions of a permanent law; and therefore it is a bill to constitute a court to try a cause already made up. It demands therefore the utmost scrutiny. Legislators in framing such a law must necessarily know the facts and the legal principles involved in the case to be tried. I could quote you from elementary authors to show you that such laws are of evil example, often resorted to in State Legislatures to accomplish corrupt purposes for private ends. No such pretense is claimed here; but the very nature of this bill compels us, in the exercise of our sworn duty, to examine it with care and scrutiny to ascertain whether or not the court that is created for this particular case can be justified by the general principles which govern our legislation.

This case turns upon a few brief words in the Constitution. In article 12 of the amendments to the Constitution are these words:

> The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted.

It must be observed that the only persons whose presence is provided for by the Constitution are the President of the Senate, the Senate, and the House of Representatives. This clause has been the subject of much debate of late years. I have here a volume printed by order of the House, and laid upon our tables, containing a great variety of opinions upon this subject expressed by many Senators here present, and by other Senators who have preceded us, from the foundation of the Government. The questions that have been discussed usually are four: First, shall the President of the Senate count the vote; second, can either House admit or exclude a vote; third, can both Houses concurring do so; fourth, can the Vice-President decide, if the two Houses disagree.

Upon these questions the opinions of most of the Senators present have already been given. This bill presents other questions quite distinct from those I have mentioned which it seems to me are of a more grave and serious character, some of them presented for the first time.

The committee have reported a bill which contains four propositions:

First. That the Vice-President has nothing to do with counting the votes except to preside and to state questions;

Second. That one House cannot reject a vote;

Third. That the two Houses by concurring votes may do so;

Fourth. That the grand commission organized by the bill shall decide all questions as to the vote of any State where there are two returns, and their decision shall be final unless overruled by the concurrence of both Houses.

I believe I have fairly stated these four propositions as contained in the bill. Now let us examine them in the reverse of the order in which they are mentioned:

First, as to the grand commission.

It is composed of five members of the Senate and five members of the House carefully organized so as to neutralize each other. It was known by this committee that one House was of one party, and the other House of the other; and, although it is not plainly printed on the face of the bill, yet I suppose every member of the committee will assent to it, that they looked to it that the commission so far as members of the Senate and House are concerned would be composed of an equal number from each political party: three democrats in the House, and two republicans; three republicans in the Senate, and two democrats. There is no provision of that kind, and yet it would be the natural inference from the ordinary mode of organizing committees; so that the members on the part of the House and the Senate neutralize each other. They are opposed to each other by political instincts in deciding questions involved in a political election. I do not say that they may not rise above all their party predilections and decide according to the law; but they are so organized with a view to neutralize each other, and leave the whole responsibility of this grave decision to stand upon the other members of the tribunal. To avoid any advantage the bill is so framed that each House will carefully watch the other until the commission is organized. Until then the right is reserved to either House to withdraw a member until the commission is organized, and then "hands off;" neither House has any power over the *personnel* of this commission.

The rest of the commission is to be composed of five judges to be selected in the manner I now read from the bill:

> On the Tuesday next preceding the first Thursday in February, A. D. 1877, or as soon thereafter as may be, the associate justices of the Supreme Court of the United States now assigned to the first, third, eighth, and ninth circuits, shall select, in such manner as a majority of them shall deem fit, another of the associate justices of said court, which five persons shall be members of said commission.

Four of those judges are named. Their names might as well have been printed in this paper; but that is not material, because they are defined by circuits as now organized by law. The Senator from Vermont, [Mr. EDMUNDS,] I believe, in his opening remarks, named these persons. He also alluded to the fact that they were well distributed throughout the United States, but it is plain upon the face of this bill that their geographical distribution had but little to do with their selection. If members were to be selected to represent geographical districts, it is not possible that the great State of New York and all that vast region lying between the Allegheny Mountains and the Mississippi River would be excluded from representation. No, sir; one in New England, one in Pennsylvania, one in Iowa, and one on the Pacific coast are selected by name really, so that there is nothing in this selection to represent geographical portions of the country. They were selected for their political opinions, and this we must concede in the outset.

The fifth controlling member is to be selected how? In such a manner as the majority of the four shall deem fit. Shall it be by a vote? Shall it be by ballot? Shall it be by *viva voce*? It may be by either, or it may be by lot, by chance, by a game of cards, by a throwing of the dice, by any of the forms of chance known to gamblers. We have introduced into this great commission, as the means of selecting the controlling member—the fifteenth member—the element of blind chance to decide this presidential election.

Sir, there are some other features about this game that make it very singular. From whom shall this umpire be chosen? In the first place the Chief-Justice is carefully excluded by the language of the bill. I do not know why this should be so. No doubt the committee had good reasons for it, but I do not know any nor have I heard of any. The choice, then, must fall upon one of the four associate justices not named. This one, who is to elect the President, must be selected by four judges; two from each party, and whom it is known will not agree, and these four grave judges must in some quiet game select and name the arbiter in whose hands will rest all the powers of the Senate and the House and of the States and the people in the selection of a President of the United States. Sir, I do not like the scheme. The popular mind will condemn it. I do not say that if the choice were between this mode of organization and civil war I might not be willing to resort to it; but as I will endeavor to show hereafter there is no such alternative, thanks be to God.

Mr. President, what will be the effect at once upon the Supreme Court when the members of that court are analyzed and scrutinized, held up and dissected before the face of the American people as to their tendencies, their political opinions, their personal affinities? Then all these men, the sacred judges of the highest court of the United States, instead of being, as now, removed by their long appointment and high character from political strife, instead of being set apart in dignified retirement to hold the scales of justice even and to represent all the power of one department of this Government, will be dragged into the political arena, their characters, their affinities, their associations, and their politics discussed and canvassed in the public press and in every cluster of political schemers. What will be the effect? Will not the profound respect with which we are wont to regard this high tribunal and each judge composing it be lowered, and this great conservative element of our system be weakened. It may be that we must seize upon this horn of the altar, this sacred branch of our Government, to rescue us from some great and perilous difficulty, but it seems to me it ought to be reserved for such a contingency, and not be called in to count an electoral vote already cast, every paper of which is in your urn and in your possession.

Mr. President, it must be remembered that this tribunal is not organized under the judicial clauses of the Constitution. There is no trouble in organizing a court under the judicial authority to try this very case. Article 3 provides that—

> The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.
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> * * * * * * *
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> The judicial power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority.

It is not pretended that this court is organized under this article of the Constitution, because if the court was so organized there would be no question that their appointment must be made by the President of the United States. A new tribunal may be made by Congress to try this very case. Tested by the judiciary article this tri-

bunal would be plainly unconstitutional, but it is organized under the general authority of Congress to pass laws necessary to carry into execution any of the powers granted by the Constitution. It is based, by the Senator from Vermont, [Mr. EDMUNDS,] upon that residuary clause which enables Congress to provide machinery to carry into execution existing powers. The Supreme Court is thus divided and its judicial duties postponed not to perform other judicial acts but to share in a political act—that of counting in the presence of the Senate and House of Representatives the electoral votes. This commission is organized, not as a judicial court under the judicial power, but as a political tribunal to witness a count, and to do whatever is necessary as a witness to that count.

Mr. President, the origin of this bill, so far as I can find in the records, is justly and properly traceable to my friend from Vermont. In one of the debates that occurred a year or two ago he shadowed this very proposition, but then the Supreme Court was not brought into the scheme. I find in debate that the Senator from Vermont especially pointed out very clearly on a former occasion that a case might be made on a disputed presidential election to be carried first to the circuit court of the United States and then, by appeal, to the Supreme Court of the United States. No doubt that could be done. Any person claiming to have been elected to the office of President, or any other office, might in the ordinary assertion of his right by judicial process carry his case, if the law so permitted, to the Supreme Court of the United States. There could be no difficulty whatever in providing a law which would authorize something in the nature of a political decision to be made here *prima facie*, to be re-examined by a summary proceeding and finally decided by the Supreme Court of the United States. There is no trouble in providing such a remedy as that. The honorable Senator from Vermont is better able to frame such a provision because he has himself suggested it in one or two of the speeches made in previous debates.

Mr. CONKLING. When the Senator says "proceeding here," does he mean a proceeding of Congress in the first instance?

Mr. SHERMAN. I think that a power semi-judicial might be conferred by law upon the presiding officer in the process of the count, which would give the basis of an appeal to the Supreme Court of the United States; but I may be mistaken about that. At all events another court might be interposed.

Mr. EDMUNDS. If I do not disturb the Senator by interruption, the Supreme Court have decided over and over again, so that it is now the settled law, that nothing can go to them for review except a decision of a judicial court in a case. So it would be out of the question to provide an appeal from the Vice-President or from anybody else in these Chambers to that court.

Mr. SHERMAN. That may be so; and if so it would be necessary to interpose a decision of a subordinate court, as for instance an authority might be conferred upon the supreme court of this District, exercising the powers and jurisdiction of a circuit court of the United States, and an appeal might be taken by a summary process to the Supreme Court of the United States. There is no trouble in that. It has been done in other cases involving public rights where an immediate or prompt decision was required.

Now, Mr. President, I come to examine whether the commission thus organized by this bill is in violation of the Constitution of the United States. I will read section 2, clause 2, of article 2. In defining the powers of the President, it provides:

> He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and, by and with the advise and consent of the Senate, shall appoint embassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of Departments.

Five judges of the Supreme Court are taken by this bill to perform transcendent official duties. Are they officers of the United States? Is it necessary that their appointment should be made by the President by and with the advice and consent of the Senate? Has Congress power to appoint an officer, and thus violate and ignore the right of the President to appoint and the right of the Senate to confirm? Do you say that these are not officers, or being officers now, judges of the Supreme Court, they can be required to perform this ministerial duty? Why, sir, heretofore when officers of that high tribunal have been appointed to perform other official functions they have been nominated by the President and confirmed by the Senate. Such was the case of Chief-Justice Jay, who, while Chief-Justice of the United States, was appointed minister plenipotentiary and envoy extraordinary to England; and his name was sent to the Senate and it was confirmed as such, although he was exercising another office.

And so, if any officer of the Government undertakes to perform the duties of another office, he must be appointed to that office by the President and must be confirmed by the Senate; and yet this bill takes five of the judges of the Supreme Court of the United States, without such appointment, and transfers them to perform the highest official functions. It may be that I am wrong about this matter, and that this duty thus put upon these judges is an official duty, but I do not think so. These judges are not required to do this duty under any provision of the Constitution of the United States or any law giving jurisdiction. Their judicial authority is determined by the third article of the Constitution, and is defined by law. But this is a duty to be performed under the twelfth article of amendments, not of a judicial character. They are here appointed as officers to perform a ministerial duty. When thus appointed they must be appointed by the President and confirmed by the Senate. The judges of the Supreme Court in this commission are not acting as a court, are not constituted under existing law. They are men composing a new tribunal. They can only be appointed to such commission by the President, and by and with the advice and consent of the Senate.

If on the other hand it is claimed that this function is an inferior office, or a temporary office or the like and may fall within the power of appointment by the courts of law or the heads of Departments, the bill is equally unconstitutional, because this bill makes no provision whatever for their appointment by the head of a Department, or by a court of law. It is not the Supreme Court that selects this tribunal of five. Perhaps if they were regarded in the light of inferior officers, the power to appoint and select them might be conferred upon the court itself; but this power is not conferred upon the court. Four of them are taken by name and the fifth one is taken practically by lot, and the court as a court have no part or lot in the selection.

Now, as to what is an officer and as to whether these gentlemen when they take upon themselves the performance of this duty are officers, the committee no doubt have made up their minds. One trouble I am laboring under in this case is that the committee did not give us more fully than they have as yet their view of all these questions of law. They may have examined them; they may have answered them and may be able to remove these difficulties in the minds of the Senators, but they have not done it. Yesterday it seemed as if there was a disposition to force the bill through while members, not so well informed as they, were groping in darkness to satisfy their scruples on the subject.

As to who is an officer, I have a case here from my own State that arose under our constitution which provided that the election or appointment of all officers and the filling of all vacancies not otherwise provided for by the constitution was to be made in such manner as might be directed by law, "but no appointing power shall be exercised by the General Assembly except as prescribed in this constitution and in the election of United States Senators; and in those cases the votes shall be taken *viva voce*."

The Legislature of Ohio undertook to devise an ingenious mode of appointing the officers of the benevolent institutions so as to make them perpetual, first designating them by the Legislature indirectly and then allowing them to fill up the succession from time to time. The question came up before the supreme court as to the power of the General Assembly to thus practically appoint officers. These were mere administrators of charity, who received no pay. The question came before the supreme court, and I will read a brief extract from the decision as to what constitutes an officer, and whether even these comparatively insignificant managers of hospitals were officers within the meaning of the law.

Mr. THURMAN. What volume and page?

Mr. SHERMAN. Seventh Ohio State reports, page 556:

> The phrase "appointing power," as here used, is one of no ambiguous signification. When employed in reference to matters pertaining to government or to the distribution of the powers of government it means the power of appointment to office, the power to select and indicate by individuals to hold office and to discharge the duties and exercise the powers of officers. No man can possibly mistake its meaning in this respect, especially as office and the appointment and election of officers constitute the whole and the manifest subject-matter of this section of the constitution.
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> What is an office? Among lexicographers, Webster defines the word to signify "a special duty, trust, or charge, conferred by authority and for a public purpose."
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> * * * * * * * * *
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> If we accept either or both of these definitions as substantially correct, it is clear to our minds that if these statutes are held valid these defendants are officers. Theirs is a public duty, charge, and trust, conferred by public authority, for public purposes of a very weighty and important character. Their duties, their charge, and trust are not transient, occasional, or incidental, but durable, permanent, and continuous.

Again:

> It is true, the General Assembly seems to have carefully avoided giving to the defendants any official name or designation.

Just as is done in this case.

> But surely this is immaterial to the question. The official or unofficial character of the defendants is to be determined, not by their name, nor by the presence or absence of an official designation, but by the nature of the functions devolved upon them. If the General Assembly had in terms enacted "that a board of commissioners of the appointing power, to consist of three members, be and is hereby constituted, and that William Kennon, Asahel Medbery, and William B. Caldwell be and hereby are respectively appointed to the office of member of such board"—

then it would be clear that they were officers.

> But it is said, the acts referred to prescribe no oath of office, and it is thence inferred that the defendants cannot be officers.

But in this case there is an oath prescribed.

> Again, it is said, that no fees, salary, or other compensation, is annexed to the discharge of the duties devolved by statute upon these defendants. That is true; and it is also true that compensation to them hereafter is nowhere by these statutes prohibited or precluded.
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> * * * * * * * * *
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> That compensation or emolument is a usual incident to office, is well known; but that it is a necessary element in the constitution of an office, is not true.—*Ohio State Reports, The State ex rel. Attorney-General vs. Kennon et al.*, pages 556, 557, 558, 559.

These men thus required to perform comparatively unimportant duties in the State of Ohio under the constitution of that State, which denied to the General Assembly the power to appoint an officer no more strongly than the power is denied to the Congress of the United States, it was held were officers, and could not be appointed except in the way provided by the constitution of the State.

Now these judges are to exercise the very highest functions of office: they are to make a President. Judged by the ordinary motives that rule and govern mankind, the fifteenth man has the power to make a President, if he will use the powers conferred on him by one construction of this bill. I say that under these circumstances the members of this commission are officers under the law and the Constitution, and before they can be called upon to exercise their official functions they must be appointed in the mode prescribed by the Constitution.

But, sir, this bill is objectionable in another respect. It undertakes to delegate a power conferred upon Congress or upon either House to a commission. Its members are to take an oath in a prescribed form and cannot be disturbed by Congress or by either branch during the existence of the commission. They are to exercise the same powers possessed by either House, which include the power to send for persons and papers, to examine witnesses, and administer oaths. Their judgment is final unless reversed by the concurrent action of both Houses. This is a plain attempt by Congress to delegate its powers. Sir, it is an axiom of the law that legislative powers cannot be delegated. This general principle is laid down in Cooley's Constitutional Limitations, from which I will read a single extract:

> One of the settled maxims in constitutional law is that the power conferred upon the Legislature to make laws cannot be delegated by that department to any other body or authority. Where the sovereign power of the State has located the authority, there it must remain; and by the constitutional agency alone the laws must be made until the constitution itself is changed. The power to whose judgment, wisdom, and patriotism this high prerogative has been intrusted cannot relieve itself of the responsibility by choosing other agencies upon which the powers shall be devolved, nor can it substitute the judgment, wisdom, and patriotism of any other body for those to which alone the people have seen fit to confide this sovereign trust.

And in a note I find these general principles laid down:

> These are the bounds which the trust that is put in them by the society, and the law of God and nature, have set to the legislative power of every commonwealth, in all forms of government:
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> First. They are to govern by promulgated established laws, not to be varied in particular cases, but to have one rule for rich and poor, for the favorite at court and the countryman at plow.

And yet this bill violates the first fundamental principle, which limits legislative power. This law does apply to a case past, concluded, ended, and now a special law is to be made to try that particular case by a special tribunal. I will read another passage:

> Fourthly. The legislative neither must nor can transfer the power of making laws to anybody else, or place it anywhere but where the people have.—*Locke on Civil Government*, section 142.

That legislative power cannot be delegated a large number of cases are quoted to show, and it is a familiar principle of law. If legislative power or the power to make laws cannot be delegated by either House of Congress, how can this power, which they claim gives them the authority to reject the vote of States, gives them the control over a presidential election, be delegated? This power, it is true, is merely a power drawn by inference from the duty to be present at a count; but however conferred, if it exists at all, it cannot be delegated. Sir, if there is slumbering in these few words "in the presence of the Senate and House of Representatives" this enormous power to undo the work of the States and the people, and to revise and reverse their decision in the election of electors, then surely this power cannot be delegated to a packed tribunal.

There is another feature of this bill which seems to violate the Constitution, certainly to violate the spirit of it. The members of the Senate who are taken to form a part of this commission are not merely our instruments to inquire for us at our pleasure and our will, to be discharged at any moment; they are not merely our instruments, our agents, to take depositions and to examine bills, and to report to us amendments; but this bill makes them officers independent for the time being, while they are discharging their public duty, of either House of Congress.

Article 1, section 6, clause 2, of the Constitution provides that no Senator or Representative shall, during the time for which he was elected, be appointed to any civil office which has been created during such time. Here is an official trust of the highest character, not to be likened to an ordinary committee of this body, conferred upon members of this Congress. It is a commission uniting three branches of the Government, the Senate, the House of Representatives, and the Supreme Court, having the power to decide and not to be overruled by either House. They cannot be overruled by their own House. The Senators to whom we delegate this power have our power beyond our control. They are not our agents any longer; they are our superiors until this work is ended. I say they cannot be delegated to perform this enormous trust when that very trust has been created by the Congress of which they are still members and by their votes and participation.

If the appointment to such an office created during the term for which these members were elected does not fall within the strict prohibition of the Constitution, it certainly falls within the spirit of it. The duty they are called on to perform is not the mere ordinary duty which is transferred for a moment only to our committee, and which may be withdrawn at any time—for at any moment a motion can be made to withdraw any subject from any committee or to disband the committee and disorganize it. They are our creatures; but when we create this commission by law we delegate all our powers, whatever they are, over the electoral vote as the Senate of the United States to these five men, and those powers cannot be withdrawn. It may be that this power will not be abused; but if it is we stand helpless in the presence of our own creation unless the House will concur in a remedy.

Now, sir, I say it is against the spirit and policy of the Constitution to thus by our own law create such enormous powers and enormous duties, and invest them in our own members, placing them beyond our control; and it is an implied violation of that provision of the Constitution which prohibits a member of Congress from holding any office or being appointed to any office the salary of which has been raised during his term of service, or which has been created during his term.

Mr. President, I said yesterday that the judicial feature of this bill was novel. My honorable friend from Vermont, to whom I always defer as being very accurate, took issue with me at once. I will read what occurred between us yesterday:

> Mr. EDMUNDS. My honorable friend from Ohio made use of one expression in which I think he did not display his usual accuracy. He said that this bill was perfectly novel in its character.
>
> Mr. SHERMAN. In several of its provisions, I meant.
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> Mr. EDMUNDS. It is only seventy-six years, as my friend from Ohio must well recollect as well as I do, that a bill involving exactly these principles passed the Senate of the United States, which provided that disputes of this character should be decided preliminarily, and I believe I may say finally—which goes much further than this bill does—by a body of men not composed entirely of the members of the two Houses.

Here my friend—and I did not contradict him at the moment, although I felt quite sure he was wrong—said that the Senate of the United States had once passed a bill that allowed members of the Supreme Court to participate in such a commission. I turned to the record and I found that he was mistaken. It is true that a committee recommended the passage of such a bill, but that feature was stricken out in the Senate and never proposed again and never heard of again in the House and abandoned. The whole history of this is contained in the book I have before me. I have the bill as it was reported from the committee. Section 1 provides—

> It shall be the duty of the Senate and House of Representatives of the United States to choose, by ballot, in each House, six members thereof, and the twelve persons thus chosen, together with the Chief-Justice of the United States, or if he is absent from the seat of Government, or unable to attend, then with the next senior judge of the Supreme Court of the United States who is present and able to attend, shall form a grand committee, and shall have power to examine, and finally to decide, all disputes relating to the election of President and Vice-President of the United States.

That was the grand committee then proposed by the Senate committee, but the Senate struck out that feature which mingled the the Chief-Justice or one of the justices with this tribunal, and the bill as it passed the Senate contained these words:

> It shall be the duty of the Senate and House of Representatives to choose, by ballot, in each House, six members thereof. The Senate, immediately after this choice, shall nominate, by ballot, three of its members, and transmit their names to the House of Representatives, who shall, by ballot, choose one of the three, and the thirteen persons thus chosen shall form a grand committee, and shall have power to examine and finally to decide disputes relative to election of President and Vice-President of the United States as is hereinafter limited and prescribed.

So that the Senate there, at the very foundation of our Government, in 1800, seventy-six years ago, when this proposition was made by a committee, struck it out, and the bill went to the House, and no man in the House proposed to restore it. The House it is true adopted a different plan; they reduced the number of the committee and refused to allow the Senate to designate the presiding officer, but left the committee eight, giving each House an equal number, thus leaving them to choose their own presiding officer; so that it is entirely novel in our whole history to introduce the Supreme Court into this wholly political machine. My friend was in error, therefore, when he said the bill as reported passed the Senate, for in this particular it was amended and changed.

Mr. President, it is well known from the history of that bill that it fell by a difference on amendments between the two Houses. The question of the Chief-Justice was eliminated from it by the Senate, and never subsequently was brought into controversy. There were other controversies between the two Houses, and the bill fell. This was followed by the great historical event, when a portion of the people of the United States endeavored to thwart the will of the people in the election of Thomas Jefferson as President of the United States. By a provision of the Constitution as it then stood, the President and Vice-President were both voted for without designating which was to be President. The friends of Burr took advantage of that, well knowing that the people intended Jefferson to be President and Burr to be Vice-President, to try and make Burr President, and thus thwart the popular will. That was defeated; but the very conspiracy to which Burr lent himself led to the tragic fate which darkened a most brilliant life; and that name which in revolutionary history was honored, which in the early history of our country was among the most brilliant, was stricken from the roll of honor, and now is mentioned only second in infamy to that of Arnold. This controversy was the beginning of his downfall. Mark what followed. As soon as this

controversy was ended by the election of Jefferson, at once they commenced to agitate a change in the Constitution so as to cure this defect in the original draught and to require the people to designate whom they wanted as President and whom as Vice-President. Remember, at this time the debate was fresh in the minds of all in which Mr. Pinckney made his famous speech from which I will hereafter read a portion. In this controversy the provision of the original Constitution for the election of a President, every word of it, was made the subject of debate; and in 1803 after the election was over a proposition was made in Congress to change the Constitution and after full consideration was adopted, and the twelfth amendment was passed and ratified by the States.

Was there any change then made in that provision which provided the mode of counting the vote? They changed the mode of designating the officer, but the same language in the old provision for counting the vote was carried into the new, and the words are in the new as in the old, that the presiding officer shall open the papers and in the presence of the Senate and House of Representative the vote shall be counted. If they thought that there was any danger lurking in these few simple words, would they not have provided against it? Surely they would; and if they wanted to graft into our body-politic the system of combining the Senate and House and Supreme Court into a grand high commission, as proposed three years before, do you not suppose they would have said so by fit words when proposing this twelfth amendment, only three years after the proposition was made? They were content with it as it was. And there the words stood; there they have stood to this day; and now the attempt is made to change all this, to seize the occasion of a close vote to manufacture a court to try a case already made, to change the old and simple habit of our fathers, under words twice repeated in the Constitution, readopted after fourteen years of trial, and acted on from that day to this by the common consent of all. And, sir, so it stood until the fatal troubles which grew out of our civil war. In 1865, when the condition of some of the Southern States was still uncertain and it was still disputed whether they had been restored to their old relations in the Union, then it was that Congress, without consideration, upon the report of the Judiciary Committee, without debate, adopted the twenty-second joint rule, which we have finally got rid of, thank God.

Mr. President, I do not know, perhaps my friend from Vermont can tell me, whether since 1800, when the Senate struck out the provision about the Chief-Justice, any proposition has been pending in either House to mingle the Supreme Court with the electoral count.

Mr. EDMUNDS. May I ask the Senator if he did not vote ten months ago himself exactly for that proposition, to make the Chief-Justice one of the commission?

Mr. SHERMAN. I do not remember.

Mr. EDMUNDS. He had better look at the record and see if he did.

Mr. SHERMAN. Will my friend point it out? In my judgment it was wrong if I did. I will here say to my honorable friend that if he will look over that book—it is a thing I very rarely do to quote the opinions of members in former debates—he will find that probably other people have changed their opinions as well as myself on important questions, as we sometimes do, and as I think a wise man often does.

Mr. EDMUNDS. I hope my honorable friend will pardon me for the interruption. I did not mean to accuse him of any inconsistency; but he said he had not known of the bringing in of the judicial branch at all since that time; and in order to correct the history of it I merely wished to call his attention to that important circumstance.

Mr. SHERMAN. I have no objection to the interruption. I am not as familiar with the votes on this question as my friend from Vermont, and therefore when I said I did not know of any proposition to renew the mingling of the Chief-Justice with this court I turned to my friend on my right [Mr. MORTON] to inquire if any was made, and my friend informed me that I was mistaken, and therefore I am. My colleague says I did not vote for it. So I was right, but if I am on trial I will refer that case to the joint commission. [Laughter.]

There is another notable thing, that when my friend from Vermont first gave birth here to this idea of a grand commission, which he said was drawn from the practice in his own State, he did not then propose to incorporate the Supreme Court or any part of it in his grand high commission. He said—I am not prepared to give dates; the book is not so printed that I can——

Mr. ALLISON. Eighteen hundred and seventy-three, I guess.

Mr. SHERMAN. Probably it was. It is page 482 of this compilation:

> That is, on each occasion of a presidential election the appointment of a committee to be named in each House, to be, if you please, equal in number, who should form a single and consolidated committee, the members of which, thus selected and appointed, would presumably be among the purest and best and most skillful in law and in politics of the members of the two Houses; that that body of people should be sworn to take the returns when they are opened by the Vice-President of the United States and canvass them, canvass them under the sanction of the Constitution and the law; that they should apply to them the same impartial considerations that they would be bound to apply to them had the Constitution declared that those eight persons should form a court who should finally determine every question.

He here develops the very idea that is contained in this bill. But there was no provision then for taking one-half of the Supreme Court of the United States to decide between two political bodies.

Mr. President, suppose these judges should refuse to perform their duty, how could you compel them? I do not say that men so eminent as they would refuse to comply with any request made by the Senate and House of Representatives; but you are dealing with parties over whom you have no control. You appoint them to a troublesome and painful duty without defining exactly their powers. What if they should decline? Then your scheme is at an end.

But, sir, suppose the commission organized and in full operation, what are they to do? When Florida is reached will they take the formal, official paper of Governor Stearns and the vote of the republican electors certified by him, or will they find out what the last decision of the last court in Florida held, or will they open the budget of my friend from California, [Mr. SARGENT,] who comes back here with ever so many volumes of testimony not yet printed? What are these men to do? No one can tell. What will they do in the case of Louisiana? Will they take the certified returns of Mr. Kellogg, who has been acknowedged now for years to be the governor of that State, and of the electors certified by him to have been elected according to the returns of the returning officers, and take that vote as final and conclusive, or will they open up the whole case and examine into the bull-dozed parishes to see whether or not the returning officers exercised their duty fairly? If so, you would have to call my friend from Missouri [Mr. BOGY] and myself—it seems we differ in opinion—and then you will have to call my friend from Wisconsin, [Mr. HOWE,] just returned from a more careful and critical examination, with two or three or four volumes of unprinted testimony. What are you to do? Is their jurisdiction limited or defined? Let us look at the bill. Here is this jurisdiction of this tribunal:

> Which shall proceed to consider the same with the same powers, if any, now possessed for that purpose by the two Houses acting separately or together, and by a majority of votes decide whether any and what votes from such State are the votes provided for by the Constitution of the United States, and how many and what persons were duly appointed electors in such State, and may therein take into view such petitions, depositions, and other papers, if any, as shall, by the Constitution and now existing law, be competent and pertinent in such consideration.

Here you not only give them the right to do anything that either House may do; you invest them with all the powers which Congress can give them, and then you leave them to decide whether they will exercise any of these powers, or whether Congress can exercise any of these powers, and there is no appeal to either House from their decision. I want to know what is the construction this committee put upon the powers of the commission? Are they confined to the legal returns? Are they bound to take the votes of the electors as certified by the legal officers of these States? If not, the question is open. Why did not this committee in their report tell us what is their construction of this law? The grand commission are not only residuary legatees, but they are sole legatees, and they are sole judges of the extent of the bequest. My friend from New Jersey [Mr. FRELINGHUYSEN] made a very good speech yesterday. And, if that is the doctrine upon which this board are to act, I might be converted perhaps, although I think not. But what does my colleague [Mr. THURMAN] say? What does the honorable Senator from Delaware [Mr. BAYARD] say? What is their opinion of the powers and extent of the powers of this commission? When I hear them, perhaps I can tell better. I once had charge of a bill where the friends of it did not agree upon the meaning of a certain provision; but the courts were open in that case to decide it. But now the courts, and we ourselves, are foreclosed. That was denounced as a sham, a fraud, a cheat, simply because the friends of the measure could not tell exactly what construction to put upon it, or what construction the courts would put upon it. If that was a sham, what is this, when the question of these powers and the nature of the powers and the construction of the law is to be referred to a committee composed of three different and somewhat antagonistic elements?

Why, sir, are we to vote for this as a mode of counting the votes of States according to the laws of the States, or are we to vote for it as a scheme to permit the fifteenth member selected by lot to choose a President of the United States? Because that is it. If they count according to the legal vote returned, every man knows who is elected President without the appointment of this commission. If they are allowed to open the returns and go back of them and to inquire into the testimony of what occurred in the three or four disputed States, God only knows what will be the result. It will depend upon the die, the chance, the lot that will be cast when the fifth judge is named by his four associates. Sir, I do not believe we ought to vote for such a proposition. The committee have agreed upon the words of this bill, and I commend their agreement. They have labored faithfully and honestly, actuated by high motives and patriotic motives no doubt; but they have not agreed on the meaning of the bill.

Mr. THURMAN. Why do you say that?

Mr. SHERMAN. Because I say you have referred to this tribunal the whole question.

Mr. THURMAN. Then the meaning of the bill is clear.

Mr. SHERMAN. Can you tell me how they will decide?

Mr. THURMAN. No. If I could, I should not vote for the bill.

Mr. SHERMAN. That shows that my criticism of this bill is perfectly correct. My colleague, no doubt, in construing the extent of the powers conferred on this commission, will give one view of it and my friend from New Jersey give the other. Perhaps if we could hear all these gentlemen tell us the inside meaning of these mysterious phrases, this jurisdictional clause, we might know how to vote better.

Mr. THURMAN. Will my colleague allow me a moment?

Mr. SHERMAN. Yes, sir.

Mr. THURMAN. Does he mean that the Senator from New Jersey and I are in antagonism on the point on which we are really not antagonistic? However much antagonism there might be between us, if we had the decision of this case or if we were so unfortunate as to be members of this commission, the Senator from New Jersey and every member of this committee will tell my colleague that this bill sends to that commission the decision of the questions of law as well as of fact, and there is no obscurity in the bill. How they will decide them no mortal man can tell.

Mr. SHERMAN. No, sir; that will depend upon the lot in the office of the Supreme Court of the United States, in the choice of the fifth judge, in all probability, though it may not. There is the trouble; and we are asked to vote for this bill, which substitutes this chance for the votes of electors elected according to the laws of the States and returned upon the oaths of their office.

Mr. President, I will not press this matter further. Suppose this tribunal organized and at work, what assurance have you that they will or can complete it? You have a trial of thirty-eight cases, for there may be ineligible electors in many States, and if they decide that they can go into the eligibility of the electors, as a matter of course they may inquire into each in every State, although I suppose these inquiries would be decided by the two Houses, there not being two returns. When a State is called its vote must be settled before the next certificate is opened. That is another provision of this bill. When you have reached Florida, for instance, there you must stop and the high joint commission or the high commission take the case; they go into their room in secret conclave. How much have we heard lately about secret conclaves? Here the Constitution provides for an open scene and invites as witnesses the whole people of the United States.

At any moment that the touch-stone of this controversy comes, Florida being the first State reached, they go into their Chamber; there they debate and decide; and that is the end of it. Suppose that within the last two or three weeks, or a week even, the case of Florida, where the number of votes is comparatively small, is made up; but it takes some time. If they decide in one way, as a matter of course they will have to read this testimony, some of which has not been printed. But suppose they get along to the State of Louisiana and there the question comes up. Suppose they should decide there that they can go behind the returns. When can they decide that question; when can they read these papers? Although these judges are great men, high in official position, and the Senators and members who will be chosen to perform this duty will be among the best of our respective bodies, yet they must read, they must study, they must eat, they must sleep; and they cannot read the papers as a judge would have to read them in one view of the aspect of this controversy between now and the 4th day of March. While this process is going on, while they are finding out about the bull-dozing in Louisiana and examining into this or that matter about Louisiana, the votes of great States are uncounted. New York, Ohio, Pennsylvania, and other States still stand in the urn awaiting their turn to be counted. Suppose that the excitement should grow stronger and stronger. Suppose that Florida were decided in one way and Louisiana the same and the case hung upon Cronin and Grover's trick. The excitement increases. The people are eager and anxious about what is going on in that room, because these cases must be decided and the vote of every State must be recorded before the final result is reached. You will have our people in a fever of excitement. In all human probability this controversy will be prolonged and delayed, and the whole may end without result from the very magnitude or immensity of the machinery set at work.

This very bill provides the machinery of delay. It authorizes this tribunal to pass rules and regulations. It authorizes a limited debate of two hours on every question that is raised in either the Senate or the House. The Senate may object, and it must then retire, and there are two hours allowed for debate. The House may object, and we retire to allow them to deliberate, and thus two hours may be wasted in debate on every question that is raised. The opportunity for delay endangers the final result of the count.

Mr. President, I have no doubt that the members of this commission will endeavor to do their full duty; but you impose upon them a duty which they cannot perform in one view of the possible construction they may give to their powers—duties which they cannot perform in the mode provided for within the time, before the 4th of March. What is the result of all this? You have substituted this cumbrous machinery for the simple process of a count twenty-two times repeated since the foundation of the Government. You provide this machinery now when the vote has been cast and the people have elected a President. You provide this machinery under the implied power drawn from your presence as witnesses to this count, and not from any express grant of the Constitution. You set this vast machinery in motion which may defeat the very count to secure which it is provided, and solely because you are witnesses to it. You have transferred to another tribunal your power, whatever it is, and you are helpless in their hand, because until they decide you can neither withdraw them from that duty nor hasten nor hurry them; you can do nothing except to repeal this law. You take from the one man selected by the Constitution as the custodian of these papers and substitute an unnamed man to be selected by lot, to have all his powers and all the powers of the Senate and House combined. You fear the power of one man who has to perform a duty in the open day with every gaze upon him, under the solemnity of an oath as sacred as these men take, in the presence of the Senate and the House and the assembled galleries. Every act that he does is watched with scrutinizing eye. You will not allow one man that power to open and count this vote in your presence, but you will select an unseen tribunal, the governing power of which is selected by chance, to do this same deed in secret conclave. You select a college of cardinals to elect a President.

You devise a guillotine to which you may be the first victim. You renounce the open, solemn spectacle of a man in the face of the world doing an act, in favor of a secret conclave of commissioners sitting in secret and deciding without appeal. You prohibit the purely ministerial count of the electors of the States and substitute a secret inquisition of undefined power so organized that the defection of one man may change a presidential election.

Suppose the high commission finish the case referred to them, and reject the vote of a State or of an elector of a State, then it deprives the State of its vote. Where is the clause of the Constitution that confers that power upon anybody? The Constitution declares that these electors shall be elected according to the laws of the State, and the certificate of an officer of the State is made by your law the evidence upon which all official acts depend. Again, your bill expressly provides that the Senate and House of Representatives may exclude the vote of a State. Here is that provision:

> And no electoral vote or votes from any State from which but one return has been received shall be rejected except by the affirmative vote of the two Houses.

That as a matter of course is equal to an affirmance that by the affirmative vote of the two Houses an electoral vote might be rejected. Another provision allows by a negative pregnant the two Houses by a concurring vote to exclude the vote of a State.

> The two Houses shall separately concur in ordering otherwise, in which case such concurrent order shall govern.

This provides expressly that the two Houses by concurring or agreeing may reject the electoral vote of a State. If such a power exists in Congress, then this concurrent vote must be submitted to the President for his approval. I repeat that this bill provides in two separate clauses that by the concurring votes of the two Houses the votes of a State or a single vote from a State may be excluded. Here is the provision of the Constitution:

> Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Here is the expressed provision of the Constitution, that a concurrent vote of the two Houses on every occasion where they have the power to pass such a vote, except on a question of adjournment, shall be submitted to the President for his approval, and if vetoed by him shall be returned. Is this a concurrent vote in the language of the Constitution? If not, why not? Surely it was not the intention to give the President a veto on the election of his rival or successor; and yet if a concurrent vote of the two Houses may do it, that vote must be submitted to the President for approval. This shows the absurdity of the proposition upon which this bill rests. This power to reject a vote by a concurrent vote is drawn by inference from the presence of the Senate and House of Representatives. If you have it you must share it with the President. I do not believe you have that power, though from the necessity of the case the two Houses may say whether the vote opened in their presence is or is not the vote of a State entitled to representation.

Now, Mr. President, I come to the conclusion of my remarks, and I submit to the Senate whether it is not better to count the vote as it has been counted heretofore. The vote must be counted. The counting of a vote is ministerial, but it is to some extent probably judicial. It has been counted, as I said before, twenty-two times. Why should it not be counted again in the same way? All the grounds upon which this bill is now sought to be defended were answered once by a member who shared in framing the Constitution, great in his day as any man in this presence. In the first speech which he made on this subject of undertaking by law to regulate the count, he anticipated all the arguments which have been made in this body. I will read to you some brief extracts from the speech of Mr. Pinckney in 1800, when the first bill was under consideration:

> Mr Charles Pinckney, of South Carolina, thought it a very dangerous practice to endeavor to amend the Constitution by making laws for the purpose. * * * He remembered very well that in the Federal convention great care was used to provide for the election of the President of the United States independently of Congress; to take the business as far as possible out of their hands. The votes are to be given by electors appointed for that express purpose, the electors are to be appointed by each State, and the whole direction as to the manner of their appointment is given to the State Legislatures. Nothing was more clear to him than that Congress had no right to meddle with it at all; as the whole was intrusted to the State Legislatures, they must make provision for all questions arising on the occasion.
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> Mr. Abraham Baldwin, of Georgia, is reported at greater length than any other speaker. The gist of his remarks was in his last sentence. His own opinion was that the provisions on this subject were already sufficient; that all the difficulties which had been suggested were as safely left to the decision of the assemblies of

electors as of any body of men that could be devised; and that the members of the Senate and House of Representatives, when met together in one room, should receive the act of the electors as they would the act of any other constitutional branch of the Government, to judge only of its authentication, and then to proceed to count the votes, as directed in the second article of the Constitution.

I will also read another paragraph from Mr. Pinckney at a later stage of the debate:

Mr. Pinckney, on the necessity of guarding against violations of the Constitution, such as had been suggested by friends of the bill, said: "If the bill is not passed, we are to depend, as we have hitherto done, on the attachment of the States and the good sense and integrity of their executives."

That is precisely our situation now—

That the Constitution makes this dependence necessary, and as we have never yet been disappointed, we are to hope we never shall. But surely its friends never could have considered the extent and danger of giving to this committee, or even to Congress, the right to decide on double returns, or they must immediately have seen the extreme impropriety of attempting it. It is, in short, nothing less than holding out to the minority in all the States a temptation to dispute every election, and to always bring forward double returns. In every State where the election is strongly contested there will, of course, be a minority. It will be easily known by the measures of Congress to which candidate the majority of that body inclines and whose friends will compose the committee that are to be thus packed and selected. If the minority in a particular State find that the candidate they have unsuccessfully supported is the favorite one with the majority of Congress or their committees, they will easily discover the means of raising objections to the validity of the return of the electors, insist that they themselves are elected, proceed to the length of meeting and voting, and transmit to Congress a double return.

And so he goes on, answering one by one the very arguments which are now made upon which to base this bill. It must be remembered that three years after these arguments were uttered the law-makers of the country had before them this very provision of the Constitution to redraft and redraw. This was in 1801; and three years afterward, in 1803, when they drafted and made the twelfth amendment of the Constitution, they used the very same words, so far as this subject was concerned, as were in the original draught of the Constitution, showing that they were entirely satisfied with those words. I might quote from this book the opinions of several Senators now present in harmony with Mr. Pinckney, but I will not do that; because upon a question of this kind every man ought to weigh and give the best result of his mature judgment. I have no doubt that my own opinions expressed in this book may be different from those which I now entertain, and so with nearly every one who has spoken. The contrary opinion grew out of the twenty-third rule and the anomalous condition of several States after the war. But for that twenty-third rule this question would not have been before us. It is high time that the extreme powers claimed by Congress and by either House to reject electoral votes should be renounced rather than affirmed, as in this bill. We are not now presented, as we were in 1865, with seven or eight States whose condition was absolutely disputed, whether in or out of the Union. We are rid of the twenty-third joint rule. Why not, then, return to the ancient ways of our fathers? The only law necessary is to make the way easy, plain, and summary of transferring a legal dispute about a presidential election from the ministerial court over which you preside in our presence to the Supreme Court of the United States as the final arbiter of this and all other disputes. Then every head will bow and every patriot will assent to their decision. A summary proceeding could be provided to carry such a cause rapidly from the open count here in the Senate Chamber to the Supreme Court of the United States to decide these questions.

Mr. STEVENSON. Will the Senator allow me to ask him a question?

Mr. SHERMAN. Certainly.

Mr. STEVENSON. The Senator said this was to be a secret conclave with closed doors. Will he point out to me the part of the bill which makes that provision?

Mr. SHERMAN. With open or closed doors at their will.

Mr. STEVENSON. You said in secret session, and I have not found that in the bill.

Mr. SHERMAN. The last section of the bill provides:

That said commission shall make its own rules, keep a record of its proceedings, and shall have power to employ such persons as may be necessary, &c.

Its whole manner of proceeding is left to them. They may make it secret and may travel all over the world for their jurisdiction. The trouble is that their powers are unlimited. I heartily approve of one feature of the bill, that neither House can reject the electoral vote of a State; that would be simply organized revolution; but I cannot agree to the broad proposition that the two Houses may by a concurrent vote reject the electoral vote of a State. Such a concurrent vote except on questions of adjournment is clearly void unless presented to the President of the United States, and it is not fairly implied by the language of the twelfth amendment. I believe the effect of the bill, however laudable and patriotic the motive of the committee which reported it, in creating a commission composed in equal parts of the Supreme Court, the Senate, and the House of Representatives, will be bad and an evil example, and will do more harm than good; and I believe it to be unconstitutional.

But it is said that the country is in peril. Will you do nothing to save the country? Yes. I will obey the law; I will cheerfully and heartily acquiesce in the result of the election; I will attend and witness the electoral count conducted in the same manner that it has been conducted from 1789 to 1865. I expect to see the vote of every State and the electors of every State duly counted and recorded and duly certified to by the officers conceded on all hands to be the legal and only officers in the State in which they certified on the first Wednesday of December last, when the votes were cast. I expect to see the vote of every elector who received a majority of legal votes cast counted and recorded for Governor Hayes or Governor Tilden. I will make no technical exception that would defeat the will of the people of any State expressed and defined according to their own law. What more can you ask? Must we yield to menaces and threats? Must we hurriedly patch up laws novel in their provisions, unconstitutional as I believe, connecting in an unseemly way the different departments of the Government, introducing into the sacred urn of our electoral system the blind goddess of chance, and all this to try a case already made up? No, no, gentlemen. I do not believe the American people will break up this Government of ours because the attempt in Louisiana to intimidate her own voters was defeated by her own laws. Nor do I believe they will grieve because the trick of Cronin and Grover in Oregon, well paid for, was defeated by being overdone. If Tilden is elected let him by all means enjoy the honors of the office. If Hayes is elected you should be willing to aid him in an administration of purity, of honor, and of conciliation. I would not be the cause of shedding the blood of a single human being to secure the election of either, and I would not yield one inch of the right of either to the threat of lawless violence.

Mr. CONKLING. Mr. President, before reaching the details of this measure or its advantages or wisdom, we must make sure of the power, in some mode, to subject the verification and count of electoral votes to the action of the two Houses, or to the law-making power. A study of the question years ago, convinced me of the right and therefore the duty of the two Houses, to ascertain and verify electoral votes and declare the true result of presidential elections, or else by an exertion of the law-making power to declare how these acts shall be done. My present judgment does not rest however wholly on preconceived opinions. Some weeks ago, when the inquiry came to be invested with unprecedented importance, I reviewed carefully every act and proceeding in our history bearing upon it, and, without the aid then of compilations made since, every utterance in regard to it to be found in books.

A distinction may be drawn between the power of the Senate and the House themselves to execute this duty directly by force of the Constitution alone, and the power of Congress by law to direct it to be done in any way other than strictly and literally by the two Houses. It is not my purpose at this moment to explore this distinction, nor to inquire how far, or whether at all, the Constitution inculcates the exact mode or form in which the two Houses, or Congress, shall execute the twelfth article. If the function and duty there commanded be within the province of the two Houses, or if the Constitution leaves to the law-making power the right to declare the mode by which presidential elections shall be verified, the proposed bill is competent, as I may attempt hereafter to show. If the two Houses are themselves by the Constitution commanded to count the votes, the bill executes the Constitution. If, however, the true meaning of article 12 merely commands the votes to be counted, without declaring by whom they shall be counted, then Congress, the repository of "all legislative powers," is directed how to proceed by the concluding words of section 8, article 1. It is there ordained that—

The Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, *and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.*

But if the power in question is deposited by the Constitution, and is not deposited with the two Houses, neither the bill on the table nor any bill, rule, or plan seeking to draw the count of electoral votes, or their examination, within the jurisdiction of the two Houses or of Congress, is of the slightest efficacy or validity. If, by the Constitution, the Senate and House are only spectators of the count, there is an end of the matter as to them and as to each of them. Any action by either House, is then sheer intrusion—any statute proposing action, is null, and an attempt to violate the Constitution by usurping powers it withholds. If the power to ascertain and count is vested in the President of the Senate, perhaps the form of his proceeding—for example whether he shall take up the States alphabetically or otherwise in opening certificates, might be prescribed by law. But any act or rule to strip him of the power or of any part of the power reposed in him by the Constitution, would be plainly void. The Constitution declares that the President of the United States shall be Commander-in-Chief of the Army and Navy. A statute declaring the Secretary of State, or any body save only the President alone, Commander-in-Chief, or putting any one in partnership with him as Commander-in-Chief, would be null. Nor does it alter the case if the Constitution vests power by implication rather than by express words. It matters not what words are employed, whether they be palpably explicit, or so general or few that resort must be had to construction to ascertain their force and meaning. Whenever a power is by the Constitution, in any form of words whatever, deposited with an officer or department, there it is, and there it must remain as long as the Constitution remains unaltered.

It has never been seriously contended, at least never until of late, it never was seriously contended until we had "a case on hand," if I may borrow a phrase from a distinguished Senator, that this power belongs to one House alone, or to one House more than to the other. Most of those who challenge the competency of a bill dealing with

the subject, maintain that the power resides in the President of the Senate. If then the bill before the Senate executes the Constitution whether the twelfth article requires the count to be by the two Houses literally, or only requires that Congress shall cause it to be made, it cannot trench on the Constitution unless the President of the Senate is endowed with the power to conduct and determine the count.

This question I propose to examine by the text of the Constitution, aided by the settled rules of construction, by the opinions of the most illustrious men of four generations, and by the practice and acquiescence of the nation and of all departments of the Government for eighty-seven years.

The President of the Senate is clearly the person to whom the electors are to transmit, in a sealed packet, the certificate of their own appointment, and of the ballots they cast—he is clearly the person who is to keep these packets, and keep them inviolate, till the day comes when the law says that Congress shall be in session, the certificates shall be opened, the votes counted, "and the persons who shall fill the offices of President and Vice-President ascertained and declared agreeably to the Constitution."

How the President of the Senate, rather than some other person or officer, came to be selected as the custodian of these sealed packets, we are not left to conjecture. The history of the formation of the Constitution informs us. The selection was made in a draught or plan afterward disapproved in its chief feature. By that plan it was proposed to give to the Senate alone the choice of the President in case of a failure by the electors to choose him. An incident, and a natural incident of this arrangement, was to commit the custody of the certificates to the presiding officer of the body which was to elect the President if none was found to have been chosen. This proposal was rejected, and the power to choose the President in case none had been chosen by the electors of the States, was conferred on the House of Representatives. Other changes were made, but the original draught served throughout as the basis of action. Alterations were made in it, but without discarding it totally and beginning anew, just as alterations are usually made in a bill by amendments, one at a time, instead of rejecting the whole bill in gross, and substituting a new one for it.

One of the details not thus altered, was the designation of him who should receive and keep, and be responsible for till they were needed, and then produce, the electoral certificates.

With or without this ray of light falling on the few words whose meaning we must learn, one thing will probably be admitted by all. It will not be denied that had any other officer been denoted as the President of the Senate is, his duty, power, and prerogative, would be exactly the same. Had the President of the United States, or the Secretary of State, or the Speaker of the House, or the Secretary of the Senate, or the Clerk of the House, been the officer named, in either case the same words would confer on him the same power and impose the same duty now reposed in the President of the Senate—neither more or less.

This brings me to the language of Article Twelve of the Constitution.

It is there declared that the electors shall meet in their respective States, and, within certain restrictions, vote for President and Vice-President, and that they shall make and certify a statement of their proceedings and transmit it sealed to the seat of Government directed to the President of the Senate. The contents were to be a secret. The purpose was to commit to the unpledged discretion of the electors, they being relied on as a body of sagacious unbiased men, the absolute selection of a Chief Magistrate choosing from the whole body of the people. In aid of this purpose they were required to vote by ballot so that even bystanders might not know how an elector voted, or for whom votes were given. To secure and continue secrecy, the votes were to be enveloped under seal, that curiosity might not pry into them, or fraud, alter or destroy them, till they were disclosed to the whole nation. A responsible and trustworthy custodian was essential to their inviolate preservation. The modern practice of parties has overturned the idea of unpledged electors, and now electors represent particular candidates nominated in advance; the Constitution however remains, and knowing its purpose, the confidence reposed in this regard in the President of the Senate would not be belittling to the highest functionary on earth. An act of 1792, re-enacted in 1874 as part of the Revised Statutes, amplifies and defines the duties of the electors, and among other things requires them to annex to the certificates of their proceedings the evidence of their own appointments.

Pursuing the Constitution, we find these words following those already referred to:

> The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted.

A familiar maxim of construction is, that meaning and effect must be given, as far as may be, to every word. This is true of the most trifling agreement between men. It must be at least as true of a frame of government laboriously devised and meant to stand as an eternal wedlock between peoples and states. The first words we meet here are "in the presence of the Senate and House of Representatives." The consequence attached to these words may be somewhat inferred from occurrences in the First and Second Congresses, in which sat eighteen of the thirty-nine men who framed the Constitution. By an act of Congress they required that on the day when the persons shall be ascertained and declared who shall fill the offices of President and Vice-President "the Congress shall be in session." Perhaps the first question which arises is for what was the Congress thus twice required to be in session? Obviously for some act, or, that its members may be spectators—they could hardly be witnesses of such an act in any reasonable sense if the act is to be done exclusively by one person. If the President of the Senate alone, is empowered to determine what shall be counted, and to count, and adjudge the result, it is not easy to see how the two Houses can in any just and effectual sense witness and verify the truth of that he does. They can hear what the officer says if he chooses to say anything, but nothing requires him to speak a word. No declaration even at the end, is required by the Constitution. The whole proceeding may be in silence. But if the custodian of the certificates, after they are opened, chooses to state their contents or effect, and this be all, the whole transaction is his. He takes up a paper in his seat and peruses it as he would peruse a letter. The Senators and Representatives see him from the body of the Hall, but they no more see or know the signatures or seals or words or figures appearing on the paper, than if they gazed at the spectacle from the galleries, or saw it as a concourse sees the oath of office administered to the President on the eastern portico of the Capitol. If the President of the Senate announces that no one has a majority, the House must either accept the statement, though it may be believed erroneous, and proceed to an election, or the House must disregard the statement and refuse to proceed. The Constitution plainly states the hinge whereon the action of the House must turn. Saying nothing about what any one shall say or declare, article 12, dealing with the fundamental fact, ordains that if no one has in truth received a majority of all the votes, and of all the electors appointed, the House of Representatives shall immediately choose the President. The fact proved by the votes, is made the sole criterion, and whether it was intended that the House should act on what the President of the Senate might say about the fact, or on what the House itself might know or believe about the fact, is an inquiry I commend to those who suppose that only one person, and he not connected with the House, is authorized to examine the votes and determine their validity and effect. If the members of either House suspected forgery or error, as matter of right they could take no proceeding relating to the count, and if the act of the President of the Senate is effectual and binding, it would afterward be too late. It must, however, be admitted notwithstanding all this, that these words in and of themselves may be satisfied by supposing that the two Houses, consisting now of about four hundred members, are required to be present with their officers merely to behold a pageant, to see and be seen, as spectators of an occasion wherein they can act no part.

The text proceeds. The President of the Senate shall "open all the certificates." There is no room for construction here. This is a plain grant of power to do a certain simple thing, and a direction to do it. Now the language changes. "The President of the Senate" is dropped; he disappears, and nowhere re-appears: "And the votes shall then be counted." That is, a count of the votes shall then take place; a count of the votes shall then be had. "The votes shall then be counted." By whom? By him? As two Senators have inquired, why was it not said "by him?" How easy to add these two little words, "by him!" The men who drafted this solemn instrument, masters of language as most of them were, were so fastidious in taste, so scrupulous in the execution of their work, so determined that words should become exact vehicles of thought, that they appointed a committee on style in order that every syllable might do its needed office. How, Mr. President, would men only ordinarily instructed in the English language have expressed themselves had they intended that the President of the Senate should count the votes? "The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certi icates and count the votes," are the words which ninety and nine men in a hundred would naturally have written or spoken. Had they said "the President of the Senate shall count the votes" simply, that would have been plain. Why? Because no man can count or examine the contents of a sealed packet without opening it, and there implication would have made all plain. So had they said "open and count the votes." But no, he "shall open all the certificates, and the votes shall *then* be counted." Why "then?" If the President of the Senate was to open and count, if it was to be one act at one time in one place by one person, all parts of the act must of necessity be "then," must they not? Why bring in the word "then?" But why change the current of the sentence, and why use twice as many words as were necessary or natural, when the effect of doing so would be to bewilder, if not mislead, the reader? The Constitution is terse, sententious, a model of comprehensive brevity. You scan it in vain for another instance of a phrase so loose and needlessly wordy, if indeed the intent was to say that the person who was to open the certificates should also count.

In the first instance these words "in the presence of the Senate and House of Representatives" were proposed not before the word "counted" but after the word "counted;" so that it would have stood and it did stand "the votes shall then be counted in the presence of the Senate and House of Representatives." In the earlier considerations of the convention the words so standing were accepted more than once. At length the provision was referred to the committee on style, and I beg to inquire for what purpose? To change the meaning of those who

by little accretions of concurrence had built up step by step with patience and care a great fabric of government, destined as they believed to stand so strong and last so long? Was the purpose of the committee on style and of those who trusted the committee, to take liberties with substance, and to change the essence as it had been agreed to? O, no, but to define the meaning more sharply, to project it more distinctly and unmistakbly before the minds of those who in a far future would appeal to this instrument as the testament and revelation of free institutions. When the committee reported these words to the consideration of the convention for final and perfected action, they stood as they stand now "in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted." Was it ever, in all the scrutiny which those words underwent, proposed to use such words as would commit the power compressed into the word "count," to the President of the Senate? Were any of the forms I have suggested or other forms clearly denoting that, ever proposed at all? No, sir; but on the contrary, after all this care, and painstaking, the words as we see them were adopted, as the last, most deliberate, consummate act of the constitutional convention.

If we thoughtfully read these words, and the change they introduce into the sentence, several intents appear in dropping the President of the Senate and employing the present phrase "the votes shall then be counted." What "votes?" Not all votes. "All the certificates" are to be opened, but not all votes are to be counted. "*The* votes" are to "be counted." What votes? The constitutional, valid, true votes; not six votes from Oregon although six appear; not necessarily the three votes certified by the governor of Oregon although he is the certifying officer by the act of 1792 and the only certifying officer known to the national laws; but the three honest votes, if there are three. These three, and only these, are to be counted. Counting and ascertaining becomes substantial, and we see reasons for so making it, if we recur only to the exclusions provided by the Constitution. The honorable Senator from Indiana said yesterday that the President of the Senate—I borrow his phrase—is to count everything "good, bad, and indifferent." Mr. President I dissent from this position. The act of 1792 already referred to declares, speaking of the proceedings in question:

> That Congress shall be in session * * * and the said certificates, or so many of them as shall have been received, shall then be opened, the votes counted, and *the persons who shall fill the offices of President and Vice-President ascertained and declared, agreeably to the Constitution.*

The Constitution names five instances in which no majority of votes shall work the ascertainment to fill the office of President of the United States. Was it designed that votes cast for one dead should be counted, and that he should fill with an aching void the office of President of the United States? Would that be "agreeable" to the Constitution? Was it designed that votes forged should be counted; votes, not certified or certified by an usurper, counted blindly and without inquiry? Was it designed, if lying on our table be a record denouncing against a convict on impeachment perpetual exclusion from every office of profit, emolument, or trust, that votes cast for him should be counted and made effectual, and this, because although not good, such votes might be "bad or indifferent?" No, Mr. President. Should the State of Massachusetts send here an electoral certificate on which should appear as the first two electors the names of my honored friends the Senators from Massachusetts, and if then should follow as electors the name of every Representative from Massachusetts, designating them respectively as Senators and Representatives, I should read in the Constitution that "no Senator or Representative" shall be or shall even be "appointed an elector," and I should say those votes, although they might be "bad" or "indifferent," were not to be held good until they were at least considered. "Agreeably to the Constitution" some heed must be given to its plain and absolute prohibitions, and "bad" votes, that is to say forbidden votes, are not of course or by main force to be counted as if they were "good" votes, which is to say legal and constitutional votes.

But, it has been said that the power of the President of the Senate, though not expressed in the Constitution, may be implied from that which is expressed. It has been whispered that the President of the Senate may, in a closet or a corner, a month in advance, adjudge, determine, and conclude the electoral count by refusing to receive any certificate except that which he chooses in the end to count. That is, he may decide that he will receive two certificates from Oregon, that being a large if not a populous State, but that one each must suffice for all the other States, and so he would take but one. The existing President of the Senate, discharging as he habitually does, with conscience and propriety, the duties resting on him, has already, I am informed, received contesting certificates from the three or four States from which they come. I have heard no one say aloud that having received them, it will be his duty or prerogative to suppress or conceal any of them; and therefore I proceed to consider whether by implication he has the power to judge between them, to determine what shall become of them, and what is their legal import and quality.

The doctrine of implication stretched to cover the ground here involved, may be said to derive implication from implication, or rather to rait implication on implication. The argument seems to be first, that because the President of the Senate is the custodian of the certificates and directed to open them, it may be implied that he has power afterward to count the votes they contain; and then from that implied power it may be implied that he has the power to determine what shall be counted; and then from this second implied power may be implied the power to decide and affirm the effect of the count he has made, and of the votes he has held valid.

The argument in favor of the authority of the President of the Senate certainly deserves respectful consideration. It has found no voice in this debate. It is a position against which, if I mistake not, every member of this body on both sides, save four, stands on his oath recorded. I repeat it has found no voice in this debate; but I receive it respectfully as a suggestion which I must weigh carefully, because beyond these walls the thought has been advanced by those whose words and opinions are entitled to be weighed.

The doctrine of implication or implied powers as long and unchangably known to the law, may thus be stated: When power is given to do a thing, permission is implied to employ the means to do it. Whatever is essential to the full and complete execution or enjoyment of a thing granted, is deemed to be granted also. Experience abounds in illustration of this species of intendment. A spot of ground is granted in the midst of a great field. It is implied that the grantee has granted to him also a right to pass over the intervening ground to get to his possession. When the Constitution empowers Congress to coin money, to borrow money, to establish post-offices and post-roads, power is implied to resort to the needed ways and means, and thus, to authorize banks, and mints, the acquirement of real estate, and the like. This is the doctrine of the old Supreme Court with Marshall at its head, in McCulloch *vs.* Maryland, in Weston *vs.* The City of Charleston; and in many noted cases since. When the Constitution authorizes the President on the call of a governor or Legislature to employ troops upon the happening of a certain contingency, the power is implied in him to inquire and determine whether that contingency has arisen. So said the Supreme Court in the case of Mott *vs.* Martin.

But the terminus and boundaries of this doctrine, are as certain as legal bounds can be. Whatever is essential or conveniently conducive to, or fairly in aid of a granted power, may be implied or inferred; but nothing more. Here is the end, in reason, and in law

Implication operates in favor of the right to do an act minor to and involved in something beyond which is expressly authorized. Power to do a limited and defined thing, does not ordinarily work power to do a greater thing—the greater contains the less, not the less the greater. Power to do an act of one species or nature, does not work by implication power to do a separate act of a different species or nature, particularly an act of more exalted nature, not essential to the act expressly authorized. Power to do a ministerial act does not imply power to act judicially. Authority to act as custodian of papers, does not confer license to exercise transcendent powers of sovereignty, or of supreme ultimate political and public determination. Express authority to do a given thing never implies power to do anything whatever after the act authorized is completely done and ended. The certificates must be opened before their contents can be examined or passed upon—they must be opened before counting their contents can begin: how then can power to judge and ascertain afterward, be inferred from power to produce and open beforehand? How can the latter be incident to the former? Breaking the seals is merely prefatory to a wholly different proceeding.

A clerk of a court, or the presiding justice, is made the recipient and custodian of papers—he is to keep them untouched and sealed till a certain day, and then he is to carry them into court and open them. Would a statute declaring that the papers should then be acted on, or should then undergo examination, or that facts of which they were evidential should then be found, mean that the clerk, or the one justice, and not the court, was to act on the papers, or pass upon them, or find the facts from them, and would his power to do any or all of these things be implied from the fact of his being the custodian of the packet?

If, in the instance supposed, the sheriff were the custodian, and the contents of the packet were warrants and summons, and the statute declared that these writs should then be served, how should we know who was to serve them? The appropriateness of the sheriff for such a purpose would suggest him as the proper person, but this is not all. We should know it was the sheriff who should act, because the law declares that the sheriff shall serve all such writs.

But in the case supposed if the statute said "and the validity and effect of the writs shall then be passed upon," should we infer that the sheriff was to pass upon them, and this because the law made him their custodian? We should know the court was to do this, merely because the function is judicial and the court is a judicial body and so authorized by law.

Apply the rule to the matter before us. We know too well the nature of the possible inquiries involved. Committees have gone far and wide to conduct them. My distinguished friend from Wisconsin [Mr. HOWE] has pained us by his absence for weeks, because deputed by the Senate to tarry in a distant State. Many other Senators have done the like. The framers of the Constitution knew and pondered the sort of problems which might arise for solution: they have left us evidence that they were not unmindful of some of the questions which now confront us.

My inquiry at this point is whether the President of the Senate is so equipped for settling disputed questions of fact, is so endowed with facilities for resolving problems like these, that reason and intendment point to him alone as the tribunal to decide?

The person having the largest number of votes, of valid, legal votes, be it a majority, is to be the President. The question is, who "shall fill the office of President?" The Constitution has named, as I said, at least five cases in which, although a majority of votes be given for a candidate, he shall not fill the office of President. No person shall fill the office of President unless he be a native-born citizen; no person shall fill the office of President unless he has attained the age of five and thirty years; no person shall fill the office of President unless he has been fourteen years a resident of the country; no person shall fill the office of President chosen by the votes of electors in the State wherein he resides who voted also for another person in the same State for Vice-President; no person shall fill the office of President who, having been impeached by the grand inquest of the nation, has been branded by the votes of two-thirds of this body and immutably disqualified. The certificates may be forgeries, the pretended electors may not be the true electors, he who assumes as governor to certify the electors may not be the governor at all.

These and other questions may arise; still higher and larger questions may arise. Has the President of the Senate power to send for persons and papers; to compel the surrender of telegrams, and imprison witnesses if they will not give them up? Who has that power? Who had it when the Constitution was made? Was there any body who familiarly in both hemispheres had wielded such power? Yes, sir, the British Parliament for ages had possessed and exercised the power to judge of the election, qualifications, and returns of officials. The State Legislatures on this continent had done the same thing. Joint meetings of two legislative houses had long been common. It had been customary for the Lords and Commons to assemble in joint conference, and their rules relative to such meetings, more than two centuries old, stand I believe even to this day. So, after our Constitution was adopted it was customary for the Senate and House to meet and sit together to receive the message or speech of the President of the United States. The two houses of State Legislatures, from the beginning, have assembled together; they do so still, not only to elect regents of universities, not only to choose Senators in Congress, but to see opened, to canvass, to ascertain, to determine the count of votes and the results of elections. The honorable Senator from Ohio sits before me [Mr. THURMAN] and seeing him reminds me of an ancient custom in his State. As early perhaps as 1802 the State of Ohio had I think in its fundamental law substantially the words of our Constitution "the presiding officer shall open the certificates in the presence of the two houses and the votes shall then be counted." Was this the provision?

Mr. THURMAN. Pretty nearly.

Mr. CONKLING. I ask the Senator from Ohio to correct me if I am wrong in saying that even at that early day and always during the maintenance of that constitution, it was the settled and uncontested understanding that the presiding officer merely opened the certificates, and that the two houses of the Legislature of Ohio together proceeded to count or canvass the votes. Am I right in that?

Mr. THURMAN. That is right as to the governor.

Mr. EDMUNDS. The chief magistrate.

Mr. CONKLING. The chief magistrate of the State. I ask then whether it can be doubted that the men who employed the words "and the votes shall then be counted" knew of a tribunal or body having powers and faculties adequate to the conduct of such a proceeding?

It has been said that the count is a mere addition of units; that nothing is needed to count except common honesty and common sense. I do not understand the word to be so employed in the Constitution. Counting may be of different kinds. To count my fingers is a purely ministerial act and very simple. To count a pile of papers is a ministerial act. To count bank-notes in which there may be counterfeits; and separate the true from the false, is more than a ministerial act, it requires judgment; it involves faculty. To "open all the certificates" is a ministerial act; as my honorable friend from Vermont [Mr. EDMUNDS] suggests, as a porter might open a bale of goods. It is purely a ministerial act. But to count the votes, is something more. Why? "All the certificates" are to be opened; but not all votes are to be counted. The valid, constitutional votes, and no other votes, are to counted; and he who counts them, with his fan in his hand, must winnow the wheat from the chaff, if there be chaff. If New York sends 45 votes as electoral votes, they are not all to be counted, because New York is entitled to only 35 electoral votes. They are to be sorted, the bad and indifferent are to be separated from the good, and only the 35 true constitutional votes are to be counted; because they who were intruders or ignorantly added their names to the roll, did an act unauthorized, and therefore void. If the certificate of Massachusetts should by accident or fraud show that her votes were cast for the democratic candidates, the world knows that Massachusetts voted for the republican nominees, and, therefore, the certificate is not to be blindly counted, or counted at all without inquiry and verification. If electoral votes are cast for Julius Cæsar—or for Harry the Eighth, or a British subject—they are not to be counted without inquiry.

An illustration of the difference between these two kinds of counting, may be found in an incident of the last examination of electoral votes. In 1873, four electors of the State of Georgia voted for Horace Greeley. What was the objection to that? Why should they not vote for one of the most eminent members of one of the largest professions? What was the difficulty? Was there any doubt that the electors were appointed? No, sir. Was there objection to their election? No, sir. Was not Georgia a State in the Union? Had not every propriety and mandate been observed? Yes, sir. But a Representative from the State of Massachusetts rose in the meeting of the two Houses and said:

I object to the count of those votes; I object because it is announced that Mr. Greeley was buried on the day on which those votes were cast.

Let me be more explicit with the Senate in stating the process of the member who made the objection. Legally dissected, his statement was this: "The certificate is blameless on its face; there is a State behind it; these four men were legal electors; but the newspapers have announced that Mr. Greeley was buried on the day the votes were cast: nobody has said he was buried alive, therefore it may be concluded, and the Houses may act upon it as a fact, that Mr. Greeley was not alive when the ballots were given." The two Houses separated. In this House, the honorable Senator from Vermont [Mr. EDMUNDS] proposed a resolution declaring that these four votes should not be counted. The Senator from Ohio before me [Mr. THURMAN] moved to amend by striking out the word "not," which amendment prevailed. I then moved an amendment, to add to the resolution, which then declared that those four undoubted votes for Mr. Greeley should be counted, words declaring the function of the two Houses in counting the votes to be ministerial as distinguished from the effect of that count or of those votes. Recently it has been stated that by this proposed amendment I had expressed the opinion that counting any votes, in any sense within the power of the two Houses, is purely ministerial! O, no, sir, I offered the amendment to have it appear that when the Senate said votes for a dead man should be counted, the Senate meant merely that being the votes of legal electors they should be enumerated, and announced, not that they should in legal effect be counted so that had there been a majority of votes for one dead it would follow that the Houses would ascertain and declare that a dead man should "fill the office of President of the United States." While these proceedings were progressing in this Chamber, the House considered the four Georgia votes also. The House said the vote should not be counted at all in any sense, and so they were ignored and rejected. I refer to this to distinguish between counting the chairs in the Senate Chamber, and doing that which is involved in the constitutional direction touching the electoral votes.

The word "count" does not govern so much as the words "the votes," the question always being what are "the votes" in the sense of the Constitution and of truth. The power which makes this determination is not technically judicial. Why? Because the question does not arise in a judicial proceeding. It is quasi judicial. It is the power to judge; it is the power to decide mixed questions of law and fact; it is the power, by judgment, to affirm truth and fact. The power to judge whether a bill shall pass or not, is not technically judicial; neither is it ministerial.

The power to pass on the validity and effect of electoral votes, is political: Yes, it is political; its exercise may involve the very highest attributes of sovereignty. When Colorado is reached, suppose a Member or Senator rises and says "I object to the votes of Colorado, because she is not a State in the Union." In the case of Colorado there is no doubt; but the question is the same as if she were shrouded in doubt. The question is, shall her vote be counted. The objection is that she is not a State in the Union, and the count or refusal to count her vote, is the only response to the objection. No higher political question can be solved or asked. Is she a State in law and in fact? Mr. President, nations have fought over that question for centuries. A State to-morrow may stand under the uplifted banners of revolt; she may pass an ordinance of secession, prostrate all the forms of government, make treaties with foreign nations, seize the forts, arsenals, post-offices, custom-houses, dock-yards, and ships of the nation, and march an army into sister States. Shall her vote be counted? It is no answer to say, the law-making power may fix her status in advance. If her certificate is here, the question is, shall her votes be counted; and he who has the power to decide that question may decide it as he lists. The law-making power may have acted, or may have had no time to act, and what may be the force and effect of its action if it has acted, is only a factor in the open question.

Mr. EDMUNDS. An indeterminate one at that, on this theory.

Mr. CONKLING. Yes, an indeterminate one of course. A minority, but a considerable minority of the Law Committee of the House of Representatives is said to have reported that Colorado is not a State, that she is inchoate, inconsummate as a member of the Union, her statehood being in the chrysalis. Suppose, armed with this report, a member of the House objects to the count of Colorado's vote. The law-making power has acted, but the very question would be what is the force and effect of that action; and the Senator from Vermont may well say the action is indeterminate. If the Constitution reposes in you, sir, the prerogative and duty of determining what votes shall be counted, who are the members of the sisterhood of States by whom the Chief Magistrate is to be elected, whether you might weakly lean upon the opinion of somebody else or not, I will not consider; but you and you alone at first and at last are to solve the question. Indeed, if I were to accept what was said by the Senator from Ohio [Mr. SHERMAN] this morning, I should begin to doubt myself whether my friends from Colorado are members of the Senate. I understood the Senator from Ohio to argue that the two Houses by law cannot

enact in advance that on the happening of a certain contingency, a certain legal verity and conclusion shall become established. He stated that expressly, if I understood him aright. If that be true, awkward indeed would be the dilemma of Colorado. Congress, by an enabling act, authorized the then Territory of Colorado to assume statehood, the act declaring in advance that upon the happening of certain contingencies and proclamation thereof by the President of the United States, she should become crowned with statehood, with like force and effect as if she stood full-grown and proclaimed before the adoption of the act. The President has made that proclamation, evidential of that contingency; and the act of Congress, speaking afresh when the condition is complied with, Colorado is as complete in her rights as a member of the Union, as is the proudest or the most ancient State in all the sisterhood. But the Senator from Ohio disputes the doctrine by which she is here, and in so doing he confronts and combats the Supreme Court. That court long ago held in the embargo cases that such legislation in advance, incomplete, inconclusive, and inoperative, until the happening of an external contingency, is competent, and becomes effectual when the contingency occurs.

Mr. EDMUNDS. According to the judgment of the President of the United States.

Mr. CONKLING. And as my friend reminds me, the contingency resting on the action and judgment of the President of the United States.

But, Mr. President, I wander from the purpose. I had alluded to the proportions of questions lying within the power to decide whether electoral votes or alleged electoral votes shall or shall not be counted and made efficacious. I now maintain that the scope and vastness of this power, and of the questions and possibilities it may involve, are the measure of the certainty and clearness with which it must be conferred. Loose intendments will not do. Loose intendments may suffice for paltry uses; but in the last quarter of the nineteenth century loose intendments will not satisfy forty-five million free people that such supremacy resides in one functionary who may be made today by one majority of the votes in this single Chamber, and unmade to-morrow by the change of a single vote.

Do reason, and the fitness of things suggest that our fathers meant the President of the Senate should be the one man, even if there were to be one man, to decide whether alleged irregularity or fraud should vitiate the vote of a State, and turn the scale in the choice of Chief Magistrate of the Republic? Is such power so suited to one man, rather than to the American people in Congress assembled, that wisdom will extract it from words which drop him and turn away from him? The Constitution, speaking to you, Mr. President, commands you in the presence of the States and of the people to produce and open all the certificates, and at that moment it turns its back on you. Will reason from such words, even if they be doubtful words, extract such transcendent prerogative, and repose it with him who is likely to sit as the sole judge in his own case?

Six times already, has the President of the Senate been one of the presidential candidates for or against whom the count was to be made. Was this not foreseen by the framers of the Constitution? The very men who drafted it proceeded in seven years to make the President of the Senate their own successful presidential candidate. And so, we are asked to believe that our fathers intended to make one individual the sole judge in his own case, though divine law and civilized jurisprudence had declared since the morning of time that no man should ever be judge in his own case, not even if other judges sat with him. In 1800 the authors of the Constitution, creating a committee of fifteen to do what the commission now proposed is to do, provided jealously that no candidate, and no man of kin to a candidate should be of the committee. The other day we had under consideration a constitutional amendment committing to nine judges holding their commissions for life, and as independent of parties and factions as is the monarch of the skies, the count of presidential votes, and it was there bluntly provided that not one of them should ever be eligible as a presidential candidate until after the lapse of years. This is the modern standard of safeguard against self-interest. Yet we are asked to believe that our fathers, trained men, the victims of abuses under other systems, and profoundly jealous as their words and acts show they were of the weakness the ambition and the greed of man, deposited absolute power with a single individual to decide for himself and for the nation whether he should mount the highest pinnacle of American if not of human ambition. They imposed no disability, or even interval of probation, on this one judge, but straightway they made him the party also with their own hands! Such a judge we are invited to believe, they so intrenched, that in the presence of the whole nation, because in law every State and every citizen is present, he might by fraud or error undo the nation's will and the nation's right, and the nation must bow mute and helpless before wrong and usurpation. The courts of New Jersey, in accord with courts the world over, have lately said that no act of legislation can make a man judge in his own case, whether he sits alone or with other judges.

But we are warned that if the Houses have this power, they may baffle a count. They may throw out one State and another State until no majority of all the electors appointed remains. No doubt this is possible. Every page of the Constitution presents instances in which the two Houses, or one House alone, may defeat the Government. One House may refuse to pass appropriation bills, or tax bills, or army bills in war. The States may refuse to appoint electors or may appoint ineligible electors. The electors may refuse to vote or may vote for ineligible candidates. The President of the Senate may refuse to receive certificates, or refuse to open them, or refuse even to produce them. The governor of the State may refuse to certify or he may certify falsely. The Houses may refuse to attend, and so on. It all proves nothing. The answer Jefferson gave, "the Government rests on the consent of the governed." So must every free government rest while it stands at all, and whenever representatives and States and people forsake the government and leave it to languish and die, it will go down, as other governments have gone, to the sepulcher of blasted nationalities and buried epochs.

Is a majority less to be trusted than one man? A bare majority of one House may select a President of the Senate for the express, but secret purpose, of deciding a count and deciding it in a particular way. Is such a creature of an hour, doing the bidding of a bare majority of one House, more trustworthy than a majority of both Houses acting in the open light of day? Is the decision of one Senator in the case of Oregon, which decision might make him for one year or four years President of the United States, a stronger anchor for the nation than the decision of both Houses of Congress including that Senator, aided by the proposed tribunal in which five judges of the highest court must sit?

Mr. EDMUNDS. In a Republic.

Mr. CONKLING. Yes, and in this Republic, the only considerable experiment of free government extant on the globe—an experiment which, should it fail, would turn the clock of ages far back on the dial.

If the Constitution ordains this one-man power, let every man bow to it, mystery though it be. But I do not so read, I cannot so read. The canons of construction, the letter and spirit of the Constitution, reason, all revolt against a conclusion so puerile and so perilous. Prudence points with warning hand to a day when parties in the Senate may be reversed, and when new majorities may set up presiding officers to wield licentious power under a baneful precedent established now.

Thus far I have been indicating my own reasoning on the words employed. Let me now ascend to better reasoning. Let us inquire what has been done by illustrious men, sworn as we are sworn, to execute the Constitution. Let us survey the action of all the generations, and parties, and officials, who have proceeded under article 12, and also the action going before the Constitution and setting it in motion.

Reference has often been made to a resolution adopted by the constitutional convention in 1787. It has been cited as if it defined or construed the power we now consider. On the 17th of September, 1787, the constitutional convention adopted two resolutions. They were transmitted to the Congress of the Confederation. The Congress a few days afterward, on the 28th of September, accepted the report without acting upon it otherwise. These accompanying documents, and others, were sent to the States with the Constitution, and the Constitution was propounded to be ratified or rejected. One resolution recommended that the Senate should appoint a President for the sole purpose of opening and counting the electoral votes. Some observations may be made on this resolution in addition to those which fell from the Senator from Vermont.

In the first place the whole proceeding antedated the Constitution; it was before it was ratified; it was before it was proposed. Geologists would say it was prehistoric. It was a prefatory, or provisional proceeding. In the language of the resolution, "proceedings were to be commenced under the said Constitution." The ship was to be launched, and the launch might be by the sails or the machinery of the vessel, or by external and imparted force. It might be, as the French would say, by an impulsion; and those who made the launch chose so to make it. The resolution did not profess to define or construe any clause in the Constitution. It merely designated an occasion, and referred to the objects of that occasion. It did not even profess to conform to the modes which the Constitution would bring in. The Constitution directed that the electors should send their certificates to the President of the Senate. This resolution suggested that they should be sent to the Secretary of the United States. Who was he? He was the Clerk of the old Continental Congress. They had but one House and had a clerk, and this was the man. The resolution did not even propose that the counting should take place in the presence of the two Houses.

How did the Senate regard the action thus suggested.

George Washington had been unanimously chosen President. Every elector had voted for him. The electors themselves had been appointed with unanimity. Everybody from the beginning knew it would be so; it was matter of course. John Adams had been overwhelmingly elected Vice-President. To ascertain, the election, was a substantial and solemn proceeding, only as it is substantial and solemn for the Secretary of State to announce the Fourth of July, or a holiday.

The time "to commence proceedings," according to the suggestion of the resolution, was March 4, 1789. Ten States had ratified the Constitution. A quorum of the Senate was 11. No quorum came to the seat of Government till April 6. Then no Senator was sworn in; it was January 3, 1790, before the oath of office was taken. Till then, there was no Senate and no Senator, but only Senators-elect. Ten months before they were sworn in as Senators, and on the 6th of April, 1789, eleven of those who afterward became Senators, proceeded

to start the Government, and impart life and motion to the Constitution.

They passed an order. Here it is:

Ordered, That Mr. Ellsworth inform the House of Representatives that a quorum of the Senate is to-morrow met, that a President is elected for the sole purpose of opening the certificates and counting the votes of the electors of the several States in the choice of a President and Vice-President of the United States; and that the Senate is now ready, in the Senate Chamber, to proceed in the presence of the House to discharge that duty; and that the Senate have appointed one of their members to sit at the Clerk's table to make a list of the votes as they shall be declared; submitting it to the wisdom of the House to appoint one or more of their members for the like purpose—who reported that he had delivered the message.

Had this order stopped midway, it might more plausibly be said to be a prescription or definition or expression of functions and powers. Even then I should deny that it was so; even then I should hold it merely to designate an occasion and purpose, not to determine or explain the part to be acted by each actor in the details of the transaction to take place. Let me illustrate my meaning: Suppose at the last session before the trial of an impeachment began, the Senate had adopted a resolution in these words "Ordered that Mr. Morrill be appointed President of the Senate for the sole purpose of trying the pending impeachment. Would such an order have implied that the President of the Senate so appointed was alone to conduct and determine the trial? Certainly not. Why not? Because the Constitution does not so ordain. The Constitution states how much, and what he shall do, and therefore he could do no more, and it would be violent to suppose that the body adopting the order meant him to do anything save only that committed exclusively to him by law.

The governor of a State by order or proclamation appoints a particular judge to hold court for the sole purpose of trying an indictment for murder against A B. We do not understand such a proclamation to mean that the judge so appointed is himself alone to conduct the trial and decide the case. So, had the order of the Senate in question stopped with saying that John Langdon was elected solely for one purpose, I should understand it to mean that he was elected to act the part legally incumbent on him in the execution of that purpose, whatever it might be. I should understand the meaning and effect to be that he was not elected President of the Senate permanently, or generally, but that he was elected for one occasion only, or as lawyers would say *pro hac vice*.

But unfortunately, fatally I think, for the argument I am combating, the resolution does not stop with declaring that John Langdon was chosen only for a single purpose or occasion; it proceeds, "and that the Senate is now ready in the Senate Chamber to proceed in the presence of the House *to discharge that duty*." The Senate is ready to discharge that duty. What duty? Manifestly to count the votes, along with the House.

Mr. SARGENT. Why not "then open the certificates?"

Mr. CONKLING. I thought I had assigned the reason. Because the Constitution declared who should open the certificates, and it declared that the President of the Senate should do it. In the distribution of duties, it reposed the duty to receive and open the certificates, in the President of the Senate. It expressly gave this duty to him as his share and function in the transaction, and having done so, it abstained from giving him any other share or function. The Senate therefore in speaking of the duty reposed in itself and the House, did not speak of another duty expressly reposed in somebody else.

There is I think only one escape from this construction of the resolution and proceeding. We may escape it by saying that the proceeding being to inaugurate the Constitution, those who conducted it did not deem the Constitution yet operative, and therefore did not govern themselves by its mandates. If this be so, of course the argument sought from the occasion, favoring the power of the President of the Senate, falls to the ground.

The resolution proceeds further:

And that the Senate have appointed one of their members to sit at the Clerk's table, to make a list of the votes as they shall be declared—

And "declared" here I take it means "read" or "reported" or "announced."

submitting it to the wisdom of the House to appoint one or more of their members for the like purpose—

What did the House do? The House appointed a teller, and resolved that it would attend—

for the purpose expressed in the message delivered by Mr. Ellsworth.

I ask again what was that purpose? The House did attend. The tellers appointed by the two Houses made the enumeration of the votes. The Houses then separated. What next occurred? Mr. Madison came to the Senate to say that the House had directed him to inform the Senate that the House had agreed that the election should be certified or notified—now mark—"by such persons and in such manner as the Senate shall be pleased to direct." If the Constitution ordained that the President of the Senate should certify and declare the result, what had the House to do with it? What had the House to depute or concede to the Senate? What power could the Senate receive from the House? What could the Senate say or do in the matter, if the power and duty was lodged in the presiding officer? The Senate apparently thought however that it had everything to do with the affair after the House intrusted its part in it to the Senate.

A committee was appointed to prepare the certificates of election. One of the committee was Mr. Ellsworth and he had sat in the constitutional convention. The committee drew the certificate, and every word of it, and the President of the Senate was directed to sign it, and he did sign it. He signed it not of his own motion, or because authorized by the Constitution, but by the command of the Senate speaking for both Houses, and he signed it as the organ and mouthpiece of the two Houses.

The certificate recites that he who signed it had counted the votes. No doubt he counted them in the sense of arithmetic. Probably each of the other ten Senators did the like, the tellers surely did, but whatever they or the presiding officer did, was done by the assent and authority—nay by the command of the Houses. Had either teller been selected to sign the certificate, could he not have signed it with equal truth? Had the committee been directed to sign the certificate, would it not have been equally true as to those who signed it having counted the votes?

But now it is said that the certificate implies and proves that the President of the Senate exercised the power, and the sole power to judge and determine what should be counted.

It is said, and truly, that afterward for many years the certificates used were in this ancient form. So they were. I ask the Senate to inquire whether they meant, or were intended to mean, that he who signed them had exercised the power to judge and determine.—I turn to 1805. Aaron Burr was President of the Senate. In his bad eminence as depicted by the Senator from Ohio, he was clear-headed and intrepid, and was never charged with being diffident of prerogative or distrustful of himself.

I ask the Senate to hear what Aaron Burr said when the electoral certificates were to be opened.

Mr. MORTON. From what does the Senator read?

Mr. CONKLING. I read from the compilation on page 36:

Mr. Burr stated that pursuant to law there had been transmitted to him several packets, which, from the indorsements upon them, appeared to be the votes of the electors of a President and Vice-President; that the returns forwarded by mail as well as the duplicates sent by special messengers had been received by him in due time.

From this point, observe his words. He was addressing the Senators and Representatives.

You will now proceed, gentlemen, said he, to count the votes as the Constitution and laws direct, adding that, perceiving no cause for preference in the order of opening the returns, he would pursue a geographical arrangement.

Turn now to the certificate of this count on the next page, page 37. There is the ancient form copied, "the undersigned certifies that he has counted the votes," although fresh on his lips were the words, preserved in the same record, that the Constitution committed it to the representatives of the States and the representatives of the people to conduct the count, and beside these words, is the attested fact that the count was actually conducted by the two Houses through their tellers. Turn to the proceedings in 1817. Indiana had entered the Union. Indiana was a State. Her Senators sat here, and in the House of Representatives sat William Hendricks, the ancestor of one of the recent candidates for Vice-President. Mr. Taylor from the State of New York when her certificate was read, rose and said "I object to that vote." It was alleged that Indiana less observant of right and truth than she is now, had cast out her shoe over certain territory not her own; that she had overreached and taken something from a sister-State; some other irregularities were laid at her door, and her votes were objected to. What occurred? Did the President of the Senate assume to determine? No, sir. Mr. Varnum, a Representative from New York,—and there was no twenty-second joint rule then,—Mr. Varnum moved that the Houses separate to decide whether the votes should be counted or not. The two Houses did separate; they did debate; they did consider. Nobody suggested that the President of the Senate had anything in the world to do with it; but yet in 1817, as usual, we find the certificate identical throughout with the earliest one. The tellers made the enumeration; the two Houses conducted the count; the President of the Senate did nothing, except what he was commanded to do; the two Houses prescribed the form of the certificate; they directed him to sign it and he did sign it, and the certificate stated that he counted the votes. No doubt he did in the arithmetical sense; he heard the tabulation read; he looked at it; he was convinced of the correctness of the enumeration; he announced it to the Houses. Again, see what John Adams stated on the 3d of February, 1797. Committees had been appointed, as they always were from 1793, beforehand, for what? "To ascertain and report the mode in which the electoral vote should be examined"—a bald usurpation, if the President of the Senate had the right to examine—they had reported directing the President of the Senate, to do certain things, one of which was on receiving the count from the tellers to declare the result. When Mr. Adams came to perform his duty, speaking on his oath, and speaking that the nation might hear, what did he say? That he derived his power from the Constitution, that the Constitution conferred on him this high prerogative? O, no, sir:

In obedience to the Constitution and law of the United States and to the commands of both Houses of Congress expressed in their resolution passed at the present session, I now declare, et cetera.

At this point, as well as at any time, I may refer to a remark of Chancellor Kent, read yesterday by the Senator from Indiana, as if it were authority against the pending bill. This remark fell from

the lips of the chancellor in one of the earlier addresses he made to college students. These lectures, when they began, were not designed as chapters of a law-book. Their author did not then know, that they were to be the germ of commentaries, which, growing in exactness and care, were to increase into one of the most famous and copious repositories of the law. They were designed originally to beguile the heaviness of unwonted and unwelcome leisure. The chancellor had left the bench at sixty, the constitutional limit; and as he says in some touching words which preface the earlier editions, he dreaded the heaviness of hours unemployed. He went into the Columbia Law School and held discourse mingled of history and jurisprudence, generalized and elementary dissertations designed to impart outlined instruction to beginners in the study of the law. I think I must have borrowed some of his words. Yes he says that "They are of that elementary kind which is not only essential to every person who pursues the science of the law as a practical profession, but is deemed useful and ornamental to gentlemen in every pursuit." Thus speaking to young men of affluence who were laying the foundations of culture at large, we observe that the language he employs is naturally inconclusive and regardless of judicial precision. What does he say:

In the case of questionable votes and a closely contested election, this power may be all important.

That is, the power to count. I stop a moment to remind those who think that the count is mere arithmetic, of the condemnation of such a view involved in these words.

In the case of questionable votes and a closely contested election, this power may be all important.

I submit that if everything, good, bad, and indifferent, is as we have been told to be counted, as the multiplication table is said, there would be no "questionable votes," nor would the power to count, be "all important," or important at all. The sentence continues:

And I presume, in the absence of all legislative provision on the subject that the President of the Senate counts the votes and determines the result, and that the two Houses are present only as spectators to witness the fairness and accuracy of the transaction, and to act only if no choice be made by the electors.

These words suggest three observations.

"I presume." I need not ask lawyers whether that is the deliberate and considered phrase of a great magistrate long accustomed to weigh questions in exact scales and to pronounce distinctly and definitely his judgment upon them? "I presume" is not the language of judicial conclusiveness or exactness. O no.

Mr. EDMUNDS. It is a guess.

Mr. CONKLING. A guess, yes a guess—a pardonable form of speech when we remember the nature and object of the discourse. We next find these words: "In the absence of all legislative provision." Will any man who stands on the opinion of Chancellor Kent, after hearing these words, deny the power of the Houses to legislate? Or, to put the equivalent of the inquiry, will any man pretend in the face of these words that Chancellor Kent believed that the Constitution deposits with the President of the Senate this power?

If the Constitution in any way vests the power with the President of the Senate, that is the be-all and end-all of the matter: no legislative provision could touch it. If the chancellor believed the Constitution so provided, nothing could be more absurd than the words "in the absence of all legislative provision;" surely he knew that no legislative provision in such a case could have any more effect than the wind.

But again:

I presume in the absence of all legislative provision on the subject, that the President of the Senate counts the votes.

Yes, historically or in the sense of narrative he does; before these words were uttered by the chancellor nearly fifty years ago, historically and in the sense of narrative and in every sense essential to the truth of the statement, he did. So you, Mr. President, do a great many things, as your predecessors have done, by the acquiescence and command of the Houses. You appoint committees, not only of conference, but other committees. A standing rule of the Senate says the Senate shall appoint committees by ballot, does it not? But yet the President of the Senate appoints committees. How? He does it by the acquiescence of the body, as the organ of the body under the sanction of the body, just as he formerly signed the certificates to which I have referred.

In these instances the officer does not act in virtue of any right or power which inheres in him, independent of the Senate and its action conferring it.

The words of Chancellor Kent clearly indicate that in his opinion the examination of the electoral votes is within the law-making province. I beg to call attention to the view of the meaning of this passage from Kent, taken by others who are held in pleasant and respectful memory. In 1865 a warm debate over this clause of the Constitution occurred in the Senate. These words of Chancellor Kent were read, and Jacob Collamer of Vermont made some observations upon them. He said:

Nobody supposed that the Vice-President could exclude them.

That is, questioned votes—

But I was about to say that I never heard it doubted before that such a contingency, as might well happen because of the manner in which the constitutional provision was framed, could be provided for by legislation. Chancellor Kent, in the first volume of his Commentaries says

And then he quotes. Mr. Collamer resumes.

He admits that it is in the power of Congress to legislate, and doubts only whether in the absence of legislation there exists any department of the Government or any officer of the Government vested with power to count the votes and declare the result; and in relation to that he is only able to bring himself to state by way of opinion that he presumes the President of the Senate is to count the votes and declare the result. But he presumes that only in the absence of legislation. Legislation on the subject, therefore, according to the high authority of this distinguished jurist, is admissible, and of course within the power of Congress.

My eye falls here, Mr. President, on words uttered by your predecessor, Jacob M. Howard of Michigan, then a Senator, whose attainments as a lawyer were recognized by all who knew him, who was one of the leaders of the republican party, and who believed, and as you believe and as I believe in that party, in its usefulness and its mission, and in its record, resplendent as it is beyond any other in arduous and illustrious achievements. Mr. Howard said:

I confess I do not doubt the power of Congress, should they see fit, to authorize the President of the Senate to count the votes after he has opened the certificates; but in the absence of such a statutory provision I certainly could not concur in the "presumption" of Chancellor Kent, that the President of the Senate would have the right to count the votes and declare the result. It is impossible for me to concur in this intimation of that very distinguished authority. I should on the contrary, hold, in the absence of an act of Congress, that the duty of counting the votes devolved on the two Houses of Congress thus assembled.

Mr. President, I have paused at the resolution of 1787 and the proceeding of 1789, at the form of certificate then and long afterward used, and at the remark of Chancellor Kent, because these make up the trio of authorities usually cited of late to support the theory that the President of the Senate is appointed by the Constitution to conduct the electoral count.

I come now to review the practice of the nation for eighty-three years—from 1793 to 1877.

Until 1869, beginning in 1793, as often as electoral votes were to be counted, committees were raised by each House in advance to ascertain and report the mode in which the votes should be examined. The committees reported how the proceeding should be conducted, the report was adopted by each House, and one thing always provided for, was the appointment of tellers by each House.

The right of the Houses thus asserted, was never questioned. No President of the Senate, no member of either House, ever interposed a challenge. When the day to open the certificates arrived, the two Houses directed the proceeding throughout. The tellers counted. Every question which arose was referred to the Houses. The Houses framed the certificate; they directed it to be signed. He who signed it was the organ and representative of the two Houses.

Mr. EDMUNDS. Mr. President, on account of the indisposition of my honorable friend from New York, who is not physically able to continue his speech at this present time, I move that the Senate proceed to the consideration of executive business; and in making that motion I venture again to express the hope that we shall be able to-morrow certainly to finish this bill if it is to be finished at all.

Mr. BOUTWELL. I ask the Senator from Vermont to withdraw his motion that I may get a minute of the time of the Senate upon the bill for the revision of the laws. I ask that the Senate insist on the amendment to agree to the conference asked by the House.

The PRESIDENT *pro tempore*. Does the Senator from Vermont withdraw his motion for that purpose?

Mr. EDMUNDS. Yes, sir.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. GEORGE M. ADAMS, its Clerk, announced that the House had disagreed to the amendments of the Senate to the bill (H. R. No. 3156) to perfect the revision of the statutes of the United States, and asked a conference with the Senate on the disagreeing votes of the two Houses thereon.

REVISION OF THE LAWS.

The PRESIDENT *pro tempore* laid before the Senate the action of the House of Representatives on the bill (H. R. No. 3156) to perfect the revision of the statutes of the United States, returned from the House with a message of non-concurrence and a request for a conference.

Mr. BOUTWELL. I move that the Senate insist and agree to the conference.

The motion was agreed to.

By unanimous consent, the President *pro tempore* was authorized to appoint the committee; and Mr. BOUTWELL, Mr. CHRISTIANCY, and Mr. WALLACE were appointed.

HOUR OF MEETING.

On motion by Mr. EDMUNDS, it was

Ordered, That when the Senate adjourn, it be until to-morrow at eleven o'clock.

EXECUTIVE SESSION.

The PRESIDENT *pro tempore*. The Senator from Vermont [Mr. EDMUNDS] moves that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After nine minutes spent in executive session, the doors were re-opened, and (at four o'clock and thirty-five minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

TUESDAY, *January* 23, 1877.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of yesterday was read.

CORRECTION OF THE JOURNAL.

The SPEAKER. The Chair desires to state to the House that he wishes to modify, in fact to change, his language of yesterday in one particular.

Mr. HOAR. I rise to a question which I believe I ought to state before the Chair addresses the House with regard to the correction, however, if the Chair will give me the same rights after he has made his statement, I shall be satisfied.

The SPEAKER. Certainly; the Chair is in that line himself. The Chair desires to modify, in fact to change, the statement made yesterday at the close of the session, that the resolution of the gentleman from New York [Mr. WOOD] would come up to-day as unfinished business.

Upon careful examination and after reflection, the Chair thinks that in that respect he was in error. He thinks that the gentleman from Kentucky [Mr. KNOTT] waived his motion to adjourn; otherwise the gentleman from Iowa [Mr. KASSON] would not have had the right to move a suspension of the rules. The motion to adjourn having been waived—that is to say, not having been insisted upon—the Chair then recognized the gentleman from Iowa [Mr. KASSON] to move a suspension of the rules, which motion in effect took the gentleman from New York [Mr. WOOD] off the floor. The message not having been subsequently disposed of, in the opinion of the Chair, it must be restored to the place where it was before it was read, that is, to the Speaker's table.

Mr. HOAR. The point to which I arose and upon which I proposed to address the Chair, was this: the intimation of the Chair yesterday, and to which the Chair has just referred, was not a ruling, strictly speaking, upon a question of parliamentary law; it was a statement of the Chair as to what would be the order of business the next day. Of course, the Chair could make a ruling upon that question only when the question should arise. It seems to me therefore not a correct practice to insert in the Journal as a ruling of the Chair a mere statement of the Chair of what would be his ruling in the future.

The suggestion that I desire to make, therefore, is that, as a record of the remarks of the Chair is preserved for the use of the House and for himself by our RECORD of debates, it is not proper to journalize the answer of the Chair to a parliamentary inquiry as to what will be the order of business at some future time. I would therefore suggest that that portion should be stricken from the Journal.

The SPEAKER. The Chair agrees with the gentleman from Massachusetts [Mr. HOAR] that no remarks of the Chair should go upon the Journal, that only the rulings of the Chair should be entered upon the Journal. The modification suggested will be made in that respect.

The Chair desires to state further that of course he does not this morning change any ruling that he made yesterday, but he wishes to modify, as he has done, the record in the Journal of the language of the Chair as to what would be the unfinished business this morning.

The Chair now rules that the unfinished business this morning is the report of the select committee upon the powers and privileges and duties of the House in regard to the electoral count, and that upon that question the gentleman from Massachusetts [Mr. SEELYE] is entitled to the floor.

Mr. WOOD, of New York. I have no wish to antagonize the Chair with reference to his decision upon this question. I presume that the Chair has since yesterday given the whole subject careful consideration and has come to the conclusion he has announced. I will merely say that in my judgment, I may err in that, after unanimous consent has been given by the House to the Chair to present a paper, of whatever character it may be, and after that paper has been read and is in possession of the House, and a member of the House takes the floor and submits a motion to refer that paper, it is very difficult to put it back again upon the Speaker's table unless the House shall so direct.

The SPEAKER. The Chair quite agrees with the gentleman from New York in his position with regard to any other day except Monday. But yesterday being Monday, the gentleman from New York [Mr. WOOD] was taken from the floor in the manner provided for by the rule, by a motion of higher privilege than the one submitted by him.

Mr. WOOD, of New York. I desire now to give notice that at the earliest practicable moment I will move to proceed to the consideration of business upon the Speaker's table, for the purpose of reaching and disposing of the President's message in question.

The SPEAKER. In answer to that the Chair would say that after the morning hour of to-day, or, if there be no morning hour to-day, then on any day when there is a morning hour, the Chair will recognize the gentleman from New York [Mr. WOOD] to submit that motion.

Mr. KASSON. A single word, if the Chair pleases, in order that the House may not be taken unawares. The Speaker observes that it has been the practice of the Chair, at the close of the day's session, and just before adjournment, when the House is not expecting any except merely formal action, to ask leave to lay certain papers before the House, and no member ever thinks of objecting to such a request by the Chair. If, however, a motion for the consideration of business on the Speaker's table is made in the regular way, at the close of the morning hour, then the whole House would be advised and prepared for any form of resolution that might be submitted. But the Chair will perceive that to hold the House strictly bound by that unanimous consent which is always granted at the request of the Chair, if it should turn out that there was some one on the floor prepared to submit an extraordinary motion, the House may be caught on almost any occasion without any preparation for action upon such a motion. Therefore I do not think it wise that the Chair should ask to entertain any but the most ordinary motion after such unanimous consent has been given to him. It is for that reason I call attention to the matter.

The SPEAKER. The Chair would state, in reply to the gentleman from Iowa, [Mr. KASSON,] that Rule 54 in effect is an obsolete rule. It has become a matter of unbroken practice that business upon the Speaker's table, at least so far as messages from the President and other executive communications are concerned, is not disposed of as provided in Rule 54, certainly not within the experience of the present occupant of the chair. On the contrary, it has been the practice for the occupant of the chair to dispose of messages and executive communications in just the same manner in which the present occupant of the chair disposed of them on yesterday. The gentleman from Iowa [Mr. KASSON] suggested yesterday, in substance, that he did not recollect any such action as this being taken on a Monday. The Chair has not had an opportunity to look very far back, but he finds that on January 25, 1875, which was a Monday, the same action took place as on yesterday, in regard to a communication concerning the alluvial basin of the Mississippi River.

Mr. KASSON. The same action?

The SPEAKER. The same as on yesterday.

Mr. KASSON. Was the question an ordinary motion of reference?

The SPEAKER. The Chair on a Monday asked unanimous consent, pending a waiver of a motion to adjourn, to lay before the House a communication from the President. But that is immaterial, except that the Chair desires——

Mr. KASSON. I only wish the Chair to state whether the motion in that case included any extraordinary action or extraordinary powers.

The SPEAKER. The Chair does not know whether it did; he thinks perhaps it did not; but that brings up another point, as to the extraordinary powers proposed to be conferred in this case by the resolution of the gentleman from New York, [Mr. WOOD.] The Chair ruled yesterday that that part of the resolution of the gentleman from New York was in order; and if the question should arise again and his ruling should be questioned, he will give at length his reasons for that ruling.

Mr. KASSON. The only desire I had this morning was to call the attention of the Chair to the fact that it would really be necessary to make some reservation in cases of this kind where unanimous consent is given only for ordinary reference, unless the Chair would call the special attention of the House to any matter involving more than the ordinary routine of reference. If there were an understanding that the Chair would do so, the interests of the House in granting unanimous consent in these cases would be thoroughly protected.

The SPEAKER. The Chair would much prefer that it should be distinctly understood that Rule 54 is to be adhered to or else that the unbroken practice as it has heretofore prevailed in the House shall continue. The Chair does not wish to obtrude business upon the House. But since the present occupant of the chair has been a member Rule 54 has never been observed in these respects, but communications of the character under consideration yesterday have been referred upon being laid before the House by unanimous consent.

Mr. KASSON. Undoubtedly by general consent the rule has been waived.

The SPEAKER. And in the opinion of the Chair the practice has tended directly to the expedition of business. If there were not some ready means of this kind for clearing the Speaker's table of these communications, not only would the House in many cases remain for an indefinite time uninformed upon subjects on which it had asked information, but these communications would be piled up to such an extent upon the Speaker's table as to make it impossible perhaps to keep them in the order of their reception.

Mr. KASSON. I do not wish the Chair to understand me as objecting to the practice. I only desire that under this practice, when sanctioned by unanimous consent upon the request of the Chair, we shall not be suddenly met by any extraordinary resolution offered from the floor.

The SPEAKER. The Chair so understands. He was only raising the question whether it was the desire of the House that Rule 54 should be considered as prescribing the right method of disposing of these messages. Unless there is further objection, the Journal, as modified, will be approved.

Mr. HARTZELL. I rise to make a correction in the RECORD.

The SPEAKER. Heretofore it has been ruled that the correction of the RECORD is not a privileged question; but since the reporters

have become, in the fullest sense, officers of the House, the Chair is inclined to believe that the correction of the RECORD is, equally with the correction of the Journal, a privileged question. He therefore recognizes the gentleman to make such a correction.

Mr. HARTZELL. The RECORD reports me as not voting on the call of the yeas and nays upon the adoption of the resolution introduced by the gentleman from Massachusetts, [Mr. SEELYE.] I was present and voted "yea" on that resolution.

The SPEAKER. The correction will be made, and the Journal, in which the same error occurs, will also be corrected.

The Journal, as corrected, was approved.

NAVAL POLICY OF THE UNITED STATES.

Mr. WHITTHORNE. By order of the House, on the 10th instant, the bill (H. R. No. 4389) to authorize the formation of a mixed commission to inquire and report as to the future naval policy of the United States was made a special order for this day. I ask unanimous consent that this order be postponed for one week, to retain the same powers and privileges which it would have to-day.

Mr. O'BRIEN. I object, unless it is understood that the bill, when it comes up in regular order, shall be open for amendment.

Mr. WHITTHORNE. That was the understanding when the order was made.

The SPEAKER. There being no objection, the order asked by the gentleman from Tennessee will be made.

THE ELECTORAL VOTE.

Mr. PIERCE. I ask unanimous consent to present a memorial of merchants of Boston, praying for the adoption of the proposed plan reported by the joint committee for counting the electoral vote. As this paper is very brief, I ask that it be read.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

Mr. TOWNSEND, of New York. I object.

Mr. PIERCE. I hope the country will take notice that the gentleman from New York objects to everything of this kind.

Mr. TOWNSEND, of New York. I hope so too. I am acting in the view of the country.

UNITED STATES AND MEXICAN COMMISSION.

Mr. SWANN. I am directed by the Committee on Foreign Affairs to present a communication from the Secretary of State, touching the commission under the convention between the United States and Mexico of July 4, 1868. I ask unanimous consent that the communication be recommitted and ordered to be printed.

The SPEAKER. The communication will be read.

The Clerk read as follows:

DEPARTMENT OF STATE,
Washington, January 19, 1877.

SIR: I have the honor to invite the attention of your honorable committee to the necessity of making provision for and carrying into effect the awards made by the commission under the convention between the United States and Mexico of July 4, 1868.

The commission has closed its labors, and awards have been made against Mexico in favor of citizens of the United States to the amount of $4,125,622.20.

Awards were made against the United States in favor of the citizens of Mexico to the amount $150,498.41.

By the terms of the treaty, the first payment on account by the Government against which the larger amount has been awarded is payable on or before the last day of this month.

A very recent dispatch from our minister in Mexico states he has assurances from the gentleman in charge of the foreign office that the payment will be made.

An appropriation by Congress will be necessary for the payment of the amount of the awards against the United States, which sum, by the terms of the treaty, is to be deducted from the awards against Mexico, and from the amount to be paid by Mexico.

Provision should also be made for the distribution among the several parties entitled of the money as it may be received, and also for the re-imbursement to the United States of the amount paid by the United States toward the joint expenses of the commission, and which by the terms of the treaty is to be deducted from the awards. This sum amounts to $114,943.74 paid by the United States, Mexico having paid $63,789.72 of such joint expenses, the total expenses chargeable to the joint commission under the provision of the treaty having been $178,738.46, being less than 5 per cent. on the whole amount of the awards.

The amount chargeable to the joint commission as above does not constitute the whole amount paid by the United States, as each government bore the expenses of its respective agent and of its clerical force, and expenses of translation, &c.

I inclose herewith a copy of the final account between the two governments, and of the protocol signed on the 14th day of December last; and also a draught of a bill entitled "An act to provide for the distribution of the awards made under the convention between the United States of America and the republic of Mexico, concluded on the 4th day of July, 1868," which I venture to submit to the consideration of your honorable committee.

I have the honor to be, sir, your obedient servant,

HAMILTON FISH.

Hon. THOMAS SWANN,
Chairman of the Committee on Foreign Affairs.

Mr. SWANN. I move that communication from the Secretary of State, together with the accompanying documents, be printed and recommitted to the Committee on Foreign Affairs.

The SPEAKER. Not to be brought back by motion to reconsider.

The motion was agreed to.

IMPROVEMENT OF SOUTH PASS OF MISSISSIPPI RIVER.

Mr. WELLS, of Missouri, by unanimous consent, from the Committee on Appropriations, reported back a communication from the Secretary of War in reference to the settlement in favor of J. B. Eads for the improvement of the South Pass of the Mississippi River, and moved that, together with the accompanying papers, it be ordered to be printed and recommitted.

The motion was agreed to.

JOINT COMMITTEE ELECTORAL BILL.

Mr. WELLS, of Missouri. Mr. Speaker, I ask unanimous consent to present at this time a memorial in favor of the passage of the bill reported by the joint committee of the two Houses for counting the electoral vote, and ask that it be read and spread upon the record.

Mr. TOWNSEND, of New York. I object.

Mr. WILLIS. Let it appear that the republicans object.

Mr. TOWNSEND, of New York. Yes; you are the man who charged a conspiracy against republicans.

Mr. WILLIS. Yes, and you are one of the conspirators.

Mr. TOWNSEND, of New York. As well might Julian the apostate make charges against Christianity.

The SPEAKER. This discussion is all out of order.

GEORGE C. ELLISON, CHIEF ENGINEER OF THE HOUSE OF REPRESENTATIVES.

Mr. WILLIS. I ask unanimous consent to introduce the following resolution for reference to the Committee of Accounts.

The Clerk read as follows:

Resolved, That the Clerk of the House pay, and is hereby authorized and directed to pay, out of the contingent fund, to George C. Ellison, chief engineer of the House of Representatives, to indemnify him for moneys expended by him and incurred by him in and about certain legal proceedings in defending the title and retaining the possession of certain property belonging to the National Government in his custody as an officer of the House.

Mr. HOLMAN. As I understand it, this is a resolution introduced simply for reference to the Committee of Accounts.

Mr. WILLIS. That is all.

There was no objection; and the resolution was received and referred to the Committee of Accounts.

MR. C. W. BUTTZ SWORN IN.

Mr. HARRIS, of Virginia. Mr. Speaker, I rise to a question of privilege, and present a report from the Committee of Elections in the case of C. W. Buttz, from the Second Congressional District of South Carolina, and ask that the report and accompanying resolution be read.

The Clerk read as follows:

The Committee of Elections, to whom was referred the case of C. W. Buttz, under a resolution of the House, report:

That the said C. W. Buttz having produced before said committee what purports to be a certificate of election for the unexpired term in the Forty-fourth Congress from the second congressional district of South Carolina, and having produced and filed before said committee the certificate under seal of the supreme court of South Carolina, showing that said Buttz did receive a majority of the votes cast at the election held to fill the vacancy in said second congressional district of South Carolina, without deciding upon the validity of said first-named certificate, are of the opinion that said Buttz is entitled *prima facie* to a seat in the Forty-fourth Congress from said congressional district, and would recommend the adoption of the following resolution:

Resolved, That C. W. Buttz has a *prima facie* title to a seat in this House as a member of the Forty-fourth Congress from the second congressional district of South Carolina for the unexpired term.

Mr. HARRIS, of Virginia. I demand the previous question on the adoption of the resolution.

The previous question was seconded and the main question ordered; and under the operation thereof the resolution was adopted.

Mr. HARRIS, of Virginia, moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

Mr. HARRIS, of Virginia. Mr. Buttz is present in the House, and I ask that he be sworn in.

Mr. BUTTZ, accompanied by his colleague, Mr. HOGE, appeared in front of the Speaker's desk, and was duly qualified by taking the customary oath.

PRIVILEGES, ETC., OF THE HOUSE IN COUNTING THE ELECTORAL VOTES.

Mr. HOLMAN. I demand the regular order of business.

The SPEAKER. The House resumes the consideration of the report submitted by the gentleman from Kentucky, [Mr. KNOTT,] from the select committee on the privileges, powers, and duties of the House of Representatives in counting the vote for President and Vice-President of the United States; and the gentleman from Massachusetts [Mr. SEELYE] is entitled to the floor.

Mr. SEELYE. Before proceeding, Mr. Speaker, I ask that the resolutions reported from the committee be read.

The Clerk read as follows:

Resolved, First. That the Constitution of the United States does not confer upon the President of the Senate the power to examine and ascertain the votes to be counted as the electoral votes for President and Vice-President of the United States.

Second. That the only power which the Constitution of the United States confers upon the President of the Senate in respect to the electoral votes for President and Vice-President of the United States is to receive the sealed lists transmitted to him by the several electoral colleges, to keep the same safely, and to open all the certificates or those purporting to be such in the presence of the Senate and the House of Representatives.

Third. That the Constitution of the United States does confer upon the Senate and the House of Representatives the power to examine and ascertain the votes to be counted as the electoral votes.

Fourth. That in the execution of their power in respect to the counting of the electoral vote the House of Representatives is at least equal with the Senate.

Fifth. That in the counting of the electoral votes, no vote can be counted against the judgment and determination of the House of Representatives.

Mr. SEELYE. Mr. Speaker, the resolutions offered by the committee are several, but the question underlying them all is single, and is, in my judgment, one of the gravest which this Congress is likely to consider. Simply stated, that question is whether one branch of Congress can be the sole judge of the lawfulness of rejecting what purports to be an electoral vote; and this, stripped of all its guises and seen in its naked issue, is the question, whether a single branch of Congress, which, in a certain contingency, is to elect the President or the Vice-President of the United States, has authority to decide without the concurrence and against the judgment of the other House whether the contingency which confers upon it this great power and high responsibility has come. In other words, has the House of Representatives the right to make the opportunity which puts the election of the President of the United States in its own power? This is the single issue of all these resolutions, which four members of the committee reporting them affirm and three deny. If it be a right at all, it is a constitutional right, and it becomes this House before clothing itself with these solemn functions to consider well whether the Constitution has left at our option so sacred an investiture.

It would be impertinent for me, Mr. Speaker, in this presence, as well as impossible, to discuss this subject as a constitutional lawyer; neither is this necessary. I shall therefore leave the more purely legal aspects of the question to my distinguished associates and confine myself to some general considerations, determinative of the result, which it may not be improper for me to present, in which, however, I shall not presume to instruct the members of this House, but only to remind them, and that briefly, of what may be as familiar to them as to myself.

There are some things quite apparent, even to a superficial student of our constitutional history, and which a profounder study only makes more clear. The care with which the framers of our Constitution sought to guard the independence—each in its sphere—of the three co-ordinate functions of the Government, is not only admitted by every student, but admired by every statesman. Indeed, there is hardly any one feature of the Constitution more prominent, and certainly there is no one more carefully elaborated, than the clear discrimination with which it marks out the legislative, the executive, and the judicial powers and duties respectively; and in reading the debates in the convention by which the Constitution was formed, I think what impresses one more forcibly than anything else is the solicitude exercised that these three departments of the Government should be in the fullest sense co-ordinate with each other, and subordinate only to the Constitution and the will of the people. We therefore undermine the very ground-work of the Constitution when we give to either one of these three powers any absolute control over either of the others. It is true these three departments are not and cannot be absolutely independent of each other. But their dependence is reciprocal, each yielding as much as it receives. They are not sticks of a fagot, but branches of a tree. Their relation is organic, and their dependence an interdependence. The eye cannot say unto the hand, I have no need of thee; nor again, the head to the feet, I have no need of you. But this interdependence does not make one the creature of another and cannot transfer to one the privileges, the powers, or the duties which belong to another.

While all this is apparent as a general truth, nothing can be plainer, as a particular point, than that the framers of our Constitution did not intend that Congress should have anything to do with determining who should be President, except in the improbable and rare contingency that the people should fail to determine it themselves. In reading the debates of the convention of 1787, we find constantly recognized what Mr. Gouverneur Morris called "the indispensable necessity of making the Executive independent of the Legislature," and also what Mr. Pierce Butler called "the sure prevalence of cabal, faction, and violence," if the election of the Executive were put in the hands of the Legislature. It was because of this very danger that the election of President was put just as far from the reach of Congress as was possible, and was conferred upon electors, to be chosen in each State "in such manner as the Legislature thereof may direct." And with the same wise caution it was provided that the electoral votes, when cast, should be confided to the custody of an officer who, though in cases of necessity he might belong to and be chosen from one branch of the legislative power, would in general, as Vice-President of the United States, be beyond legislative control. It is this officer who is to open, in the presence of the Senate and the House of Representatives, the electoral votes; but—

It never was intended—

said Mr. Charles Pinckney, who, if any man could speak with authority on this point—

nor could it have been safe in the Constitution to have given to Congress thus assembled in convention the right to object to any vote, or even to question whether they were constitutionally or properly given. This right of determining on the manner in which the electors shall vote, the inquiry into the qualifications, and the guards that are necessary to prevent disqualified or improper men voting and to insure the votes being legally given, rests and is exclusively vested in the State Legislatures. If it is necessary to have guards against improper elections of electors and to institute tribunals to inquire into their qualifications, with the State Legislatures, and with them alone, rests the power to institute them, and they must exercise it. To give to Congress, even when assembled in convention, a right to reject or admit the votes of States, would have been so gross and dangerous an absurdity as the framers of the Constitution never could have been guilty of. How could they expect that in deciding on the election of a President, particularly where such election was strongly contested, party spirit would not prevail and govern every decision? Did they not know how easy it was to raise objections against the votes of particular elections, and that in determining upon these it was more than probable the members would recollect their *sides*, their favorite candidate, and sometimes their own interests? Or must they not have supposed that in putting the ultimate and final decision of the electors in Congress, who were to decide irrevocably and without appeal, they would render the President their creature and prevent his assuming and exercising that independence in the performance of his duties upon which the safety and honor of the Government must forever rest?

It is also Mr. Pinckney's language, "that no power or authority is given to Congress, even when both Houses are assembled in convention, further than to open and to count the votes and declare who are President and Vice-President, if an election has been made;" "that so far from appointing committees to receive memorials or petitions respecting the election or decide upon it, or so far from having any right to delegate an authority on this subject, Congress shall not themselves, even when in convention, have the smallest power to decide on a single vote."

Is it not therefore a libel upon the letter and an entire reversal of the spirit of the Constitution to affirm that either House may insist that its own view of the informality or illegality of the electoral votes cast, or of the condition of things in the State where they were cast, is to prevail against the clear face of the votes themselves and against the pronounced judgment of the other House? This doctrine seems to me, Mr. Speaker, to be both monstrous and revolutionary. I have no better words to express the view in which I think it should be held than those used in the Senate by the distinguished and accomplished Senator from Delaware [Mr. BAYARD] March 13, 1876, when he pronounced this very doctrine "an utter usurpation, utterly without warrant in the Constitution, dangerous in the extreme, and threatening to overthrow that spirit of popular government which all over underlies the frame-work of our system."

Such a doctrine destroys the restraints with which the Congress is so carefully hedged by the Constitution; it subverts the independence which the Constitution is so careful to confer upon the Executive; of two powers of the Government originally intended to be co-ordinate it gives the opportunity for the one to be made the creature of the other, and therefore the very groundwork and frame-work of the Government itself has been changed. How long then will our other institutions be likely to remain as they are? How long before the eagerness of a party or the exigencies of an administration fertile in expedients and facile in their exercise, as we know these to be, will contrive on any occasion reasons for discarding the vote of a State, and how long before the exceptions to this rule shall become the rule itself, and the election of President and Vice-President by the people of these United States has become a thing of the past forever? These are far from being impossible contingencies. Human nature is always engaged in throwing away its privileges. Neither nations nor individual men, neither institutions nor laws, neither arts nor literatures nor civilizations nor sciences have ever shown themselves incapable of deterioration, have ever, in fact, shown themselves capable of maintaining their advancement save as they are held thereto by some outside power. Retrogression is much easier and much more frequent in this world than progress, and we cannot afford to throw away any of our safeguards.

I know we are told that by this very doctrine as embodied in the so-called twenty-second joint rule the counting of the electoral votes in the last three presidential elections has been controlled, and in the admiration which men of democratic antecedents have for this specimen of republican administration, I almost find prefigured some of the millennial glories where the lion shall eat straw like the ox; but I care not what party contrived the measure, nor what party proposes to continue it, the doctrine is foreign to our Constitution, it may be fatal to our liberties, and every party ought to denounce it. I am neither surprised nor displeased that the mischief which now threatens us from the application of this very doctrine comes down upon the pate of the party which first brought it into play, and I shall be no more surprised than displeased at the same mischief coming irreversibly in its turn upon the pate of whatever party shall decide to uphold it. For in this world God reigns, much as our conduct ignores the fact, and therefore justice and retribution are no figments of fancy, but supreme realities to whose sway nations and parties as well as individual men must in the long run yield.

But how have we come upon a theory so different from what was held by the framers of and the early actors under our Constitution? How is it that it has become so easy for persons at the present day to argue that Congress has any power over these electoral votes, power even to count them, power to reject them, power to go behind them and inquire into the conditions under which they were cast? And how is it that persons on this floor, constitutional lawyers and students, can gravely contend not only that Congress has the right, in concurrent action of both branches, to go back of the returns which a State has sent here, but that a single branch of Congress can do this, and that either House has the right by itself alone to reject a duly returned electoral vote? I think the answer to this question, Mr. Speaker, is clear, but I do not find it wholly in partisan prejudice or passion, potent as these forces might be to produce such a result at the present time. I find it rather in that tendency of all constitutional governments whereby the legislative power is constantly encroaching upon the executive and judicial powers, and which, though undoubtedly to a certain degree compatible with liberty, is liable to the same excesses and the same dangers as when the throne or the

judgment-seat has shaken off the restraints of law. Indeed, I sometimes think that the ease with which legislation may assume for itself not only the enactment but the interpretation and the enforcement of law is one of the greatest dangers with which our modern state is threatened. It is at least one of the most prominent facts of our modern civilization. In France the executive is made dependent for his election upon the legislature. In Great Britain the executive has become practically merged in the legislature and has ceased to be a co-ordinate factor of the government. The House of Commons is practically the executive as much as it is the legislative power of the British realm. In our own country the dissension between Congress and President Johnson has shown clearly enough that when Congress chooses it has the President in its power. Like illustrations, in our own history and elsewhere, of the encroachments of the legislative upon the judicial power will occur to every one. Now, when the law-making power becomes the only power, finding in its own voice the only interpreter of its decrees, and in its own arm their only executioner, it matters not whether this law-making power is vested in an assembly or an autocrat, it becomes in either case a despotism. And I think that an assembly, with nothing to control it, is a much more dangerous tyrant than an autocrat, for there is a certain sense of responsibility to an unseen tribunal, a certain sense of that law which, as Sophocles says in the Antigone, is not of to-day or of yesterday, and no man can tell whence it came or when it came, a certain sense of divine justice, which a single will invested with high power is quite likely in some degree to feel, and which an assembly of many wills may be quite as likely to disregard. The reason for this is found in the fact that responsibility always individualizes a man, it belongs to him in his single personality, and, unless carefully guarded, association with others for common ends is more likely to weaken an individual's sense of responsibility than to strengthen it. Hence there is danger to our future liberty and our future law in this steady stride of our modern life toward the supremacy of the Legislature. And I call upon gentlemen here to pause in this movement, to pause at least sufficiently to ponder its tendencies and its perils, and to pause long and ponder well before taking the step, so easily forborne but so difficult to retrace, committing us to that interpretation of the Constitution which, carried to its legitimate results, may at any time make the President of the United States the creature and the tool of the House of Representatives.

If I read it right, Mr. Speaker, the vital element of our Constitution as a whole and which shapes it in all its parts is that the sovereignty of these United States is not found in the legislative or in the executive or in the judicial branch of the Government, singly or all combined, but in the will of the people of these United States, of which the Constitution is only the expression, and by which it is expected that the Congress, the President, and the courts shall ultimately all be controlled. But we may make a great mistake respecting this will of the people if we do not remember that it is the will of the people of the States; of States bound indeed in a Federal Union and growing from generation to generation into a more perfectly organized national life, but possessing, each in its sphere and under the limitations which the Constitution provides, its own way of expressing the will of its people. And that way must be guarded, not merely because the Constitution requires it, but because it is equally requisite for the life of the individual State and for the very existence of the nation itself. I think no thoughtful person, looking at the prospective growth of this country and noting the divergent interests already prominent in our national life, and certain to grow with our growth, will expect a body so vast and so various as ours must soon become to be kept together—I will not say kept in strength and vigor—by any centralized government, whatever its fleets and armies or power of any sort might be. Destroy among us the principle of local self-government, obliterate State prerogatives and State distinctions, and the nation, which has grown out of the States and which lives and flourishes only as they give it nourishment and strength, dies like a tree severed from its vivifying roots. And just so far as we encroach unduly upon these State prerogatives and hamper, either by congressional legislation or by executive interference, that local self-government which is our original Anglo-Saxon birthright and which has been from the first our choicest American privilege, we have not increased the strength of the body by thus absorbing the strength of its members; rather does the body itself grow weak as they become weakened, as it is itself destroyed when they are destroyed. I would be most careful, therefore, in these most momentous inquiries now pressing upon our attention, not to forget that the sovereign authority to which in a presidential election we are to bow is not simply the will of the American people taken as a whole, but the will of the people of these United States, singly and separately expressed, each State expressing it in its own way, each with all the rights of any to regulate the forms and procedure under which its election shall be held, and all the States entitled to claim, in the fullest and most literal sense, the privilege guaranteed in Section 1, Article II, of the Constitution to each State, that it shall appoint its presidential electors "in such manner as the Legislature thereof may direct." If we do not like the way adopted, each State has still the right to adopt its own way, with which no other State has the right to interfere, and which the Representatives of all the other States are to accept unquestioningly. We cannot change by act of Congress either the way in which a State has cast its vote or the way in which that State has chosen to verify and return its vote. If the methods which a State adopts are obnoxious to us and we wish to change them, there is only one way in which it can lawfully be done; the way which shows the radical difference between a constitutional government and a despotism in that under the one reforms are sought by amendment and under the other by revolution.

If this were the proper time I should like to speak of the way in which the late election was, in some localities, conducted, though I fear my words would give no salve to any sore from which either party in that contest is now suffering. Amid the confused and conflicting testimony now crowding upon us from contending committees of the Senate and this House, majorities and minorities of either House and, so far as yet appears, of all the committees contradicting each other, the only fact, as yet, which stands out clear and beyond dispute is that in certain quarters during the late election both parties—leaders and led—acted just as wrongfully as they could, restrained by no conscience, by no sense of honor or rectitude, by nothing but the sheer impossibility of doing worse. This, in my judgment, is far from being true of the country at large. I doubt if any similar occasion ever presented so grand an exhibition of the self-possession of a great people as did our late election, taken as a whole. It was preceded, doubtless, by heated discussions, wherein passion often took the place of argument, and partisanship increased the prejudices behind which it was intrenched, but it was attended in the main by such calmness, such self-control, such decorum, such dignity that an American may be pardoned for pride as he points at it. Honestly and intelligently, in most localities, were cast those potent instruments

> That come down as still
> As snow-flakes fall upon the sod;
> But execute a freeman's will
> As lightning does the will of God.

But this ought not to blind us to the fact indisputably proved, that in certain quarters the whole procedure of the election was a shame and disgrace, amply justifying well nigh all the charges which either party makes upon the other. This at least is clear, whatever else may be in doubt, and when representatives of the two parties on this floor indulge in their criminations and recriminations on this point, it is only the old story of the pot and the kettle, the charge, by whichever side begun, being perfectly met by the rejoinder. I admit the chicanery, the corruption, the cruelty put forth in certain quarters on either side to control the late election. No honest man in his senses can deny these. But a wrong only grows to greater wrongs if we seek to right it save in a righteous way. And these violations of law which we now deplore will only multiply themselves hereafter, finding in fresh occasions increased incentives, if we undertake to treat them after any other method than what the Constitution and the laws prescribe.

Mr. Speaker, the question who is to be President of the United States for the next four years is a very ephemeral one. We ourselves may wonder, before even that time has ended, that it should now have given us such concern. But the question how the President shall be chosen and declared, the question of the rights of the States and the duties of Congress concerning the Chief Executive, the question whether the Constitution and the laws shall be maintained in their original spirit until they shall have been amended, these are questions of permanent power. They stretch their hands through the coming time and lay their grasp on generations yet to be. But we shall never answer them as we should till we rise above the low view which simply seeks to discover which one of two parties has the right to the Presidency. Properly considered, the question of the Presidency is not so much a question of rights or possessions or privileges, but of obligation. It is not what a certain man or a certain party may claim, but what claim is righteously laid upon him and upon them by the solemn voice of the sovereign will of the people of these United States. The Presidency of this people, of these States, is not a great dignity to be enjoyed so much as it is a high and sacred trust to be administered; and if we can only look upon it in this light, as we should, it ceases to be a prize for which we are contending, and which a man or a party may claim as his or theirs, but is seen to be a post of sacred duty, from which it behooves neither the man nor the party to shrink, and for which it behooves neither the man nor the party to strive. If we could only rise to this high plane of contemplation and put beneath a patriot's feet the clouds which are ever over a partisan's head, the darkness would be gone and the sunlight would be all around us. Then should we show that these institutions of our fathers have not become the inheritance of unworthy sons, but are to be transmitted from us as they have been received from them, with their luster undimmed, their strength unabated, themselves the joy of coming generations.

I hope the reality of this picture is already assured by the action of the joint committee of the Senate and the House of Representatives, to whose report we so lately listened, a report so thoughtful, so sagacious, and of a patriotism so lofty and so pure, that, if it could be ratified by this Congress with the unanimity with which it has been reported by the committee, I think it would shed a glory over the opening year of the second century of our Independence which not even any year of the first century could excel. This report justifies the action of the minority of the committee on the privileges, powers, and duties of the House in counting the electoral votes, and renders

the resolutions reported by the majority nugatory. I cannot believe that this House will refuse its ratification. I wish we could tell the world unanimously that the same great and free people who so lately showed themselves so great by leaving to peaceful arbitration a threatening international dispute have in the dissensions which now divide them shown themselves still greater by ceasing all disputes about their rights in order that they might learn and yield to their obligations. I know of nothing great which such a people might not do, and nothing glorious which they might not become. Such a deed would bind us in a union closer than before, and would justify, as nothing in our history has yet done, the expectation—sometimes seeming like a dream—that the sun which this morning gathered his pavilion from the mists which rose around Mount Katahdin, and which to-night shall draw the curtains of his setting from the clouds which veil the Golden Gate, shall through the coming centuries look down upon this broad land and see the many States and the teeming hosts who people them still as now *e pluribus unum*, one law of justice over all, and the same liberty of love enjoyed by all.

MESSAGE FROM THE PRESIDENT.

A message, in writing, from the President of the United States was communicated to the House by Mr. U. S. GRANT, jr., one of his secretaries.

PRIVILEGES, ETC., OF THE HOUSE IN COUNTING THE ELECTORAL VOTE.

Mr. SEELYE. I yield the remainder of my time to the gentleman from Wisconsin, [Mr. WILLIAMS.]

The SPEAKER. The gentleman from Massachusetts [Mr. SEELYE] has twenty minutes of his hour remaining.

Mr. WILLIAMS, of Wisconsin. I understood that I was also to have twenty minutes of the time of the gentleman from Illinois, [Mr. BURCHARD.]

The SPEAKER. The understanding of the Chair was that the gentleman from Illinois [Mr. BURCHARD] had yielded the twenty minutes remaining of his hour to his colleague, [Mr. HURLBUT.]

Mr. BURCHARD, of Illinois. I understand that my colleague [Mr. HURLBUT] has yielded his time to the gentleman from Wisconsin.

The SPEAKER. Then it is the understanding of the Chair that the gentleman from Wisconsin [Mr. WILLIAMS] will have forty minutes in all.

Mr. WILLIAMS, of Wisconsin. Mr. Speaker, the line of remark which I had laid out for myself to pursue upon this question went clear of all partisan feelings or personal allusions. Least of all did I expect to notice formally anything which might have been said on the other side of the Chamber. But, sir, it seems that gentlemen there regard no constitutional argument quite complete which is not freely interlarded with charges of conspiracy, foul and dark, against the leaders of the republican party; and when anathemas in this direction are exhausted, there stands the ever-convenient returning board of Louisiana, upon whose devoted head imprecations may be piled with impunity. I think, sir, that this mode of argument reached its climax in this Chamber when the gentleman from New York, [Mr. WILLIS,] on Saturday last, indulged in a vein of remark which I now pause to notice, and my motive for so doing will presently appear. I quote a few detached sentences from his speech as specimen bricks of the whole structure. He said:

> We have universal suffrage. No man is denied the elective franchise. No man is exempt from the responsibility which its exercise imposes.

He proceeds:

> But, gentlemen, when unprincipled party leaders recovered from the shock of their defeat they conjured up a fiend in their hearts.
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> They had a Chief Magistrate already practiced in assaults upon the rights of his countrymen, who had already caused every honest cheek to blush with shame and every honest heart to throb with madness by the use of bayonet and cannon in suppressing the voice of the people. * * * O, how American manhood is debased, how American soldiership is sullied by the example of a Ruger! Unhappy Republic, when the defenders of its people become their oppressors!

He said, speaking of the President:

> He evidently had learned a lesson from Cæsar Borgia, who, after conquering Romagna, appointed Ramiro d'Orco as governor and gave him limitless authority. He oppressed the people by his baseness and cruelty; when Cæsar Borgia, who had instigated all, intent only upon his schemes, with a view of escaping the reproaches which were justly his due, caused Ramiro to be massacred in the market-place, before the eyes of all the people.
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> * * * * * * *
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> In Ruger he found another Ramiro.

I bear the gentleman from New York no feeling of unkindness or disrespect. But, Mr. Speaker, may I inquire in all seriousness, is this the language of a statesman or the ravings of a maniac? [Laughter.] General Thomas H. Ruger is my own townsman. His residence is in my own city. There his father, brothers, and family reside, and there I have known him almost from boyhood. Knowing him as I do, knowing his sterling qualities as a gentleman, his bravery as a soldier, his standing in the Army, and his devotion to his country, while I might owe an apology to him for turning aside to dignify with notice an assault so unjust and uncalled-for as this, I will never sit quietly in my seat here and fail to characterize it as I think it deserves. What is the historical parallel which the gentleman from New York has so flippantly brought forward?

Who was Cæsar Borgia, with whom he so gaily compares the Chief Magistrate of the United States? An Italian by birth, of Spanish extraction, with the hot blood of the one and the savage cruelty of the other. He ravaged with fire and slaughter the papal states, beheaded petty sovereigns, poisoned Pope and cardinals, and caused his own brother to be slain, whose body was found in the Tiber with nine stiletto-stabs in the breast. He besieged Sinigaglia with his Swiss mercenaries and enacted such scenes of treachery and inhuman cruelty as have no parallel in pagan or Christian history, if you except the horrid massacre of Fort Pillow and the hellish murders of Hamburgh.

What, sir, has the President of the United States done that he should be compared to a monster like this? And what has General Ruger done that he should be styled a Ramiro, who was selected by the tyrant for his baseness and cruelty and was drawn and quartered in the market-place in the presence of all the people? Why, sir, when a lawless and angry mob had invaded the State-house in New Orleans, trampled the statutes of the State under foot, ignored the clear right of the clerk of the house of representatives to call that body to order, and, in defiance of all law and all authority, was determined to install itself as the Legislature of the State—it was then when human passions were seething like a caldron and it was apparent that if no interference was had in all human probability within the space of twenty minutes' time that State-house would be drenched in blood, and perhaps the Crescent City itself given to the flames, that the President of the United States, both in wisdom and in mercy, stretched forth the hand of power to save the shedding of human blood!

And for that act, sir, he is denounced on this floor as a Cæsar Borgia! And when, in Columbia, South Carolina, the members of the rifle clubs were straining at the leash and thirsting for blood, when in five minutes' more time the steps of that State-house would undoubtedly have been made slippery with human gore, and General Ruger in very mercy put forth just power enough to prevent it, he is denominated by the gentleman from New York [Mr. WILLIS] as the Ramiro, a Cæsar Borgia selected to execute his hellish intents!

But, sir, I will not believe that the gentleman from New York could have intended his language in its full scope and meaning. If I thought he did, if I thought any gentleman on this floor was wild enough and reckless enough to use language like that deliberately, I do not know how I could characterize it as it would deserve. Why, sir, to compare General Thomas H. Ruger, with his modest deportment, undaunted courage, and conscientious fidelity to duty, with any man who could deliberately utter language like that would be like comparing heaven to a brick-yard. [Laughter.] But I stand here to defend the gentleman from New York from any such imputation. He never could have used the language naturally. He might have had some pardonable vanity, begetting a desire to give his speech touch and tone by some quotation from the mediæval classics. Some rhythm in the words may have betrayed him; he may have used them in the sense which I once heard of a very devoted but somewhat illiterate gentleman doing, who when addressing the Throne of Grace commenced "Great and abominible Lord," &c., and when called to order and reprimanded for his language he said, "I meant no blasphemy; I only thought the word had a sort of a heavenly sound about it." [Laughter.]

Mr. Speaker, here and hereafter may we not call a truce to all this vein of remark. I stand not here to defend Ulysses S. Grant, President of the United States. I have criticised some of the minor details of his Administration as freely and fully as any one, but upon its great measures, his financial plans, his foreign policy, his merciful and wise treatment of the Southern States of this Republic, and the deathless record of his military fame, he needs no defender, for he is his own best defender. And I tell the gentleman from New York in all kindness that in these things he will remain unharmed and unscathed by any who, choosing to leave the republican party, intrench themselves within the ranks of its enemy, and from democratic ramparts shoot poisoned arrows which fall pointless at his feet.

Again I say, in common decency and in the name of manhood and the honor of our country, a truce to this abuse of its Chief Magistrate; criticise his public acts if you will, but spare these personal assaults. Why, sir, he had hardly been seated in the executive chair when his daughter, then a mere child traveling in Europe, was paraded and criticised in the public prints; his two boys at college were assailed and maligned, and both wife and children were rudely brought out from the retiracy of home and dragged before the public gaze. It was a safe, if not a manly thing to do. You might strike him in his tenderest feelings, outrage him in the dearest and most sacred relations of life, he could not reply; no man occupying his position could do that. But I tell the gentleman from New York, and all others who follow in his wake, that this country will remember its defenders, and that he may quote Cæsar Borgia, and Ramiro to his dying day, but the names of Grant and Ruger are emblazoned in gratitude and in glory on the escutcheons of this Republic and there they will remain when their traducers are gone and shall have been forgotten. [Applause.]

Now, sir, this has become a very queer constitutional discussion [Laughter.] For one I regret that it has seemed necessary. I say to the gentleman from New York, I cherish no ill-will toward him; on the contrary, I have rather admired his genial ways. If he should feel hard toward me, as this is a period of compromise, I tender him in that spirit the story I once heard of the bovine and the fool. It

was said that the former seeing the latter trespassing upon his domain pursued him to the center of the field, when to his utter astonishment his supposed non-resistant victim turned upon him, and seizing him, with sled-stake in hand, belabored his sides until, his bovine majesty bellowing at every bound, his assailant exclaimed: "Who began it? who began it? who began it?" [Great laughter.]

Sir, I gladly return from this unpleasant digression to pursue the line of remarks I had originally intended.

Mr. Speaker, the peril which the leading statesmen of this country have predicted might arise whenever the time should come that one electoral vote would decide a presidential contest has fallen upon us at last, and found us unprepared.

The danger of revolution, which Mr. Seward said "must be seen to arise from the possibility that injustice may occur in cases where the law has not provided with sufficient care for ascertaining the will of the people," is the danger which confronts us to-day.

For more than half a century eminent men in both Houses of Congress have pointed out the danger and dwelt upon the necessity for providing against it; yet up to this very hour the question has been met only to be evaded, and has been dodged when it should have been decided.

Sir, may we not at least hope that the venerated wisdom of the fathers and the sleepless vigilance of our predecessors here shall not be quoted upon us this time, while in the midst of partisan heat, with vast interests clamoring for the mastery, and human passions raging like a sea, we diligently seek some reasonable interpretation of that clause of the Constitution which was born in vagueness and left in uncertainty?

Mr. Speaker, if there was ever a time when the soul of the patriot and the mind of the statesman should rise above all partisan considerations, that time is in the Forty-fourth Congress and in the second session of its life.

Webster said that a question well stated was half argued. While none of us may hope to emulate his great powers of generalization and statement, yet the humblest of us may act upon the hint and determine, as well as we can, the real question in dispute. That clause of the Constitution which forms at once the cause of the difficulty and affords the only means of relief reads as follows:

> The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted.

Counted by whom? By the President of the Senate? By the two Houses of Congress? By the President and two Houses combined? Or by some independent person or body to be designated by law?

Two things are certain: whoever shall perform the act, the thing to be done is to "count;" only that, and nothing more; and the time and place is then *and there;* either by or in the presence of the President of the Senate and the two Houses of Congress. There is but one time, one occasion, in which the counting is to be done, and it must be disposed of in some summary manner; because if no person "have a majority of the whole number of electors appointed," then from the three persons having the highest numbers the House of Representatives shall "immediately," under the mandate of the Constitution, choose by ballot the President.

Again, the thing to be done is a ministerial, not a judicial act. To *count* is to identify and enumerate, not to *choose.* This like every other rational act of the human mind may require an exercise of the judgment, yet the act itself is nevertheless ministerial. All power in the premises must be derived from the single word "count." It is the alpha and omega of the grant. The question is not whether the State has done right or wrong, but, Is this its certificate, and are these the genuine votes to be counted? These inquiries are matters of identification, not foreign to the process of counting, but necessary to it. The "counters" in yon Treasury building identify and count the bills before them, selecting the good and rejecting the bad. This requires trained skill and judgment, but the act is ministerial. The tellers who stand in front of the Clerk's desk to take the sense of this House on any given proposition identify and count its members, as distinguished from others who might pass between them. This requires a certain exercise of the judgment, yet no one would claim that the act was judicial. The ministerial officer who holds the process of a court identifies and arrests, at his peril, only persons named in the writ. This may, and oftentimes does, require the most cautious exercise of the judicial faculties, involving the weighing of testimony in all its various shades and phases. He is nevertheless a ministerial, not a judicial officer.

In thus stating the thing to be done, and the time, place, and manner in which it is to be done, we but round the circle and meet again the real question in dispute, by whom is the counting to be done?

Whoever, either in or out of Congress, maintains that this question has been settled beyond all cavil or doubt, either upon precedent or authority, has evidently examined it in no spirit of candor, or, what is more likely, has not examined it at all.

Men of great eminence and of all parties have expressed themselves with reserve in regard to it, and in honest difference of opinion, without reference to political questions or partisan results.

One class maintain that the Constitution by clear implication confers upon the President of the Senate the power to count the votes, as much so as "to open all the certificates." Another class claim that the power to open all the certificates, being express, negatives the intendment of any further grant by implication, and the power to count votes clearly rests in the two Houses of Congress; while a third class maintain that the power is given in general terms to the Government of the United States, or to some officer or Department thereof, and that it is the duty of Congress, under section 8 of article 1 of the Constitution, to "make all laws which shall be necessary and proper for carrying" it into execution.

Now while Congress may make all necessary and proper laws for carrying such a power into execution, it can make no law to take from an officer or department of the Government a power which the Constitution has vested in such officer or department; and to claim that it may do so in this case would be to beg the whole question; so that logically the first fact to be determined is, has this power been vested either in the President of the Senate or the two Houses of Congress?

Let us consider the question in the adverse order. It is claimed by many that the power to count the electoral vote is so clearly vested in the two Houses of Congress that to argue to the contrary is semi-revolutionary; and some go so far as to assert that any attempt to put in practice a different rule would justify the interposition of armed force to prevent it; while others contend that where there is doubt the more reasonable, safer, and better rule should prevail, which is to allow the two Houses to make the count.

Finally, it is maintained that from the organization of the Government to the present hour no President of the Senate, as a matter of fact, has either claimed or exercised the right to count the votes; but has opened the certificates and handed them to the tellers appointed by the respective Houses, who have made the count and ascertained the result, and that, so uniform and unbroken has been this practice, any attempt to change it now would justify the marching upon the capital of thousands and hundreds of thousands of unarmed men, thereby securing a calm, dignified, and proper construction of constitutional law.

Mr. Speaker, inasmuch as these men are to come unarmed, may we not venture to inquire whether there be not another side to this question? And if we may, then in prosecuting the inquiry let us remember that we are not seeking to determine what the framers of the Constitution should have done or what in our opinions would have been wiser if they had done it, but *what,* as a matter of fact, *did they do.* Sir, there is certainly one thing they did not do. They did not frame a Constitution for the purpose of electing Rutherford B. Hayes, Samuel J. Tilden, or any other mortal man in particular President of the United States.

There are certain other things which they might have done but which they did not do. They might have provided for the election of the President by the people direct, by the State Legislatures, or by the two Houses of Congress; but they did not do it. These various plans were duly considered, all giving away at last to the appointment of electors in the several States and the election of the President by them. These held certificates of their appointments from the executive authorities of the State, and, meeting on a day designated by law, cast their votes for President and Vice-President, and, certifying their action to the President of the Senate, he, on another day fixed by law, in the presence of the two Houses of Congress, opened the certificates, the votes were counted, and the result declared. Neither House of Congress was to have anything to do with the election of the President or Vice-President except in one contingency. Then why were they required to be present at the counting of the votes if they were to take no part in the proceedings? The fact that they are to act "immediately" in case of a failure to elect would require them to be present.

But, sir, I think there is another and all-sufficient reason why they should be present. Picture to yourself the President of the Senate on the day when the result of a presidential election was to be ascertained going into his retiring-room or away to his own residence, and there, with no witness present, with no one to molest or make afraid, opening the certificates, counting the votes, determining the result, and perhaps manipulating the figures to accomodate his own wishes or views. Would that comport with the dignity and importance of an event which was to change the executive head of a great nation? No, sir; the framers of the Constitution saw that this was not a thing to be done in a corner; and they required it to be done with dignity and decorum, in the presence of the great legislative bodies of the nation.

And right in this connection let me allude to another thing. It has been said that the President of the Senate has never in fact counted the votes because the two Houses have appointed tellers; and they have tabulated the figures and ascertained the result. Now, sir, picture to yourself again the Senate and House of Representatives convened in this Chamber, the President of the Senate occupying the chair in which you now sit; the certificates and votes are on the desk before him, and he with pencil and paper in hand is engaged in opening the certificates and figuring out the result; while three hundred and sixty-eight men gathered around the Clerk's desk to witness the accuracy of the count. Mark you, sir, I say nothing now of the one hundred thousand unarmed men crowding these galleries and corridors, and looking through these glazed doors "as through a glass darkly" to see that there be no "fraud in the hat." Is it not a sufficient answer to all this to say that if the two Houses are present in the capacity of witnesses, the tellers which they appoint are the eyes through which they see and inspect the fairness and accuracy of

the count, and as such are indispensable to the performance of such duty at all?

Another thing. If we apply to the President of the Senate the technical and strict rule of construction that the granting of a power, in express terms, precludes the intendment of any further grant by implication, then the Constitution expressly requiring the two Houses of Congress to be present at the opening and counting of the votes, if it intended that they should do anything more, why did it not say so in plain words? The adding of the two simple words "by them" would have made all express and plain, in which case the provision would have read: "The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted *by them*."

Are we to be told, sir, that the framers of the Constitution were deeply impressed with the dangers which would beset a presidential election; that it would prove the heaviest strain upon the system they were establishing, and that they never could have intended to confer so important a trust upon any one man; and then, that they left it all in uncertainty and peril for the want of the use of two simple words? But it is said that the power is so vast and dangerous that both reason and common sense forbid the idea of any such individual trust.

Why, sir, to hear people talk, one would sometimes suppose that power had actually changed its *nature* in this country, and that under our system of distribution, checks, and balances, there was no longer plenary power anywhere, nor danger from its arbitrary abuse. On the contrary, what is the fact? Take the executive, legislative, and judicial departments of the Government, and how often does it occur that the will of a single individual may decide questions of transcendent importance. The opinion of one judge in a court of last resort, the casting of a single vote in either of these Houses, may involve the destiny of the nation itself; and yet, within the scope of its jurisdiction, what power on earth can control its exercise? Take from the holders of official trusts the restraints of self-respect, reverence for law, regard for public opinion, and your depositaries of power become so many magazines of danger; remove from the executive head of this nation these restraints, and he wields a power more vast and despotic than the Czar of all the Russias.

It is said that in the division of responsibility there is safety. Sir, as a rule of infallibility, I deny it. Men in masses will do things collectively which as individuals they would never venture upon. Hamilton said:

> In all very numerous assemblies of whatever characters composed, passion never fails to wrest the scepter from reason. Had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob.

Individual responsibility brings steadiness and care, and the awful penalties of betrayal hold men true to duty.

What have we just seen in this country? From the hour of sunset on the 7th day of November last until on the 6th day of December following when the votes were cast by electors for President and Vice-President there were one hundred and eighty-five men in this country each one of which held in his individual hand the power to make a President of the United States. These men were selected from widely separated localities, from all ranks and classes of the people; some of them were humble, some of them possibly ignorant, many of them poor, and yet for a period of thirty-four days, with the smiles of fortune, the blandishments of power, the advantages of gain, and the rewards of office dancing before their eyes, each one stood true to his manhood and true to his trust. Sir, there is in that simple fact, and in the stern public opinion which stands back of it and demands it, more promise for the perpetuity of this nation than from all the "embattled troops with flowing banners" which could be crowded within the confines of any one of the States of this Republic. These may be necessary; and if so I would see them used without hesitation. The sovereignty of this nation has been assailed once and the people are in no mood to see it trifled with again; but, that is indispensable, or there is nothing left to fight for; and shall we now be told that some eminent man, sitting perhaps in the very chair in which you sit to day, shall in defiance of all right dare to betray his high trust, and outrage the sense of justice of forty millions of people?

Mr. Speaker, if the plain reading of this clause of the Constitution taking the words in their ordinary sense, and an examination of the whole instrument, still leaves the meaning in doubt, then contemporary constructions become a legitimate method of interpretation.

Judge Cooley, in his work on constitutional limitations, says:

> Where there has been a practical construction which has been acquiesced in for a considerable period considerations in favor of adhering to this construction sometimes present themselves to the courts with a plausibility and force which it is not easy to resist. Indeed, where a particular construction has been generally accepted as correct, and especially when this has occurred *contemporaneously with the adoption of the Constitution, and by those who had opportunity to understand the intention of the instrument*, it is not to be denied that a strong presumption exists that the construction *rightly interprets the instrument*.

Now, sir, we have all become familiar with the fact that on the 28th of September, 1787, when the constitutional convention had completed its labors and was about to send the result down for ratification by the various State Legislatures, there went with it this memorable resolution, signed by George Washington, president of the convention:

> *Resolved*, That it is the opinion of this convention that as soon as the conventions of nine States shall have ratified this Constitution the United States in Congress assembled should fix a day on which electors should be appointed by the States which shall have ratified the same, and a day on which the electors should assemble to vote for the President, and the time and place for commencing proceedings under this Constitution. That after such publication, the electors should be appointed and the Senators and Representatives elected. That the electors should meet on the day fixed for the election of the President, and should transmit their votes certified, signed, sealed, and directed, as the Constitution requires, to the Secretary of the United States in Congress assembled; that the Senators and Representatives should convene at the time and place assigned; that the Senators should appoint a President of the Senate *for the sole purpose of receiving, opening, and counting the votes for President*; and that after he shall be chosen, the Congress, together with the President, should without delay, proceed to execute this Constitution.

It is said that this carries no weight because it proposes a mere temporary expedient for putting the new Government in motion; that it was necessary for the Senate to appoint a President to preside over it in advance of the election of the Vice-President being determined, because it was necessary, under the Constitution, for the presiding officer of that body to "open all the certificates." But does not the argument prove too much?

If the Senate and House of Representatives were to count the votes, these two bodies were already elected and in being. It was in their presence that the votes were to be counted and they were as competent to count them then and there as they ever could be. If the resolution had read "that the Senators should appoint a President of the Senate for the *sole* purpose of *receiving and opening the* votes," how plain all else would have been? There was a necessity for this, but there was and could be no necessity to appoint anybody to *count* the votes, because, if the Senate and House of Representatives were to do it, they were present, ready and competent to perform that duty. But the fact that a President of the Senate was appointed for the "sole" purpose of doing that *very thing* not only negatives, but utterly forbids all presumption that the two Houses of Congress were to do it.

Any pretense that the phraseology of the resolution was an oversight or mere inadvertence is overthrown by the following found in the opening proceeding of the Senate, showing how that body understood it:

> APRIL 6, 1789.
>
> The Senate proceeded by ballot to the choice of a President for the sole purpose of *opening and counting* the votes for President of the United States.
>
> John Langdon, esq., was elected.
>
> *Ordered*, That Mr. Ellsworth inform the House of Representatives that a quorum of the Senate is formed; that a President is elected for the sole purpose of opening the certificates and *counting the votes* of the electors of the several States in the choice of a President and Vice-President of the United States; and that the Senate is now ready, in the Senate Chamber, to proceed in the presence of the House to discharge that duty; and that the Senate have appointed one of their members to sit at the Clerk's table to make a list of the votes as they shall be *declared*; submitting it to the wisdom of the House to appoint one or more of their members for the like purpose; who reported that he had delivered the message.

The House responded as follows:

> Mr. Boudinot, from the House of Representatives, communicated the following verbal message to the Senate:
>
> Mr. President, I am directed by the House of Representatives to inform the Senate that the House is ready forthwith to meet the Senate to *attend* the opening and counting of the votes of the electors of the President and Vice-President of the United States.

The votes having been counted and the two Houses having returned to their respective Chambers, the following occurred, as appears by the Journal:

> Mr. Madison, from the House of Representatives, thus addressed the Senate:
>
> Mr. President, I am directed by the House of Representatives to inform the Senate that the House have agreed that the notifications of the election of the President and of the Vice-President of the United States should be made by such persons and in such manner as the Senate shall be pleased to direct.
>
> And he withdrew.
>
> Whereupon the Senate appointed Charles Thompson, esq., to notify George Washington, esq., of his election to the office of President of the United States of America, and Mr. Sylvanus Bourne to notify John Adams, esq., of his election to the office of Vice-President of the said United States.
>
> Ordered that Mr. Patterson, Mr. Lee, Mr. Ellsworth, be a committee to prepare the certificates of the election of the President and of the Vice President of the United States, and to prepare letters to George Washington, esq., and to John Adams, esq., to accompany the said certificates respectively.
>
> The following is the form of the certificates reported, adopted, and dispatched:
>
> "Be it known, that the Senate and House of Representatives of the United States of America, being convened in the city and State of New York, the sixth day of April, in the year of our Lord one thousand seven hundred and eighty-nine, the underwritten, appointed President of the Senate for the sole purpose of *receiving, opening, and counting the votes* of the electors, did, in the presence of the said Senate and House of Representatives, *open all the certificates and count all the votes* of the electors for a President and for a Vice-President; by which it appears that George Washington, esq., was unanimously elected, agreeably to the Constitution, to the office of President of the United States of America.
>
> "In testimony whereof I have hereunto set my hand and seal.
>
> "JOHN LANGDON."
>
> A similar certificate, substituting the word "Vice-President" for that of "President," and the word "duly" for "unanimously," was prepared for Mr. Adams. These certificates, accompanied by appropriate letters from Mr. Langdon, President of the Senate, were dispatched, by special messengers appointed by the Senate for that purpose, to General Washington and Mr. Adams.

Now, sir, were the members of this Senate men who could understand what they were doing, or what had been done by the two Houses? Turn to your Constitution and you will find that John Langdon, of New Hampshire, who says he "counted all the votes," and who subscribed this certificate, was the very first man who signed the Constitution of the United States. There were ten members of that Senate, and six of them had been members of the constitutional convention. Who was Oliver Ellsworth, who carried the first message from the Senate to the House of Representatives? A member of the constitutional convention, a member of that Senate, and the

third Chief-Justice of the United States. Who was James Madison, who brought the return message from the House of Representatives? And who was Robert Morris? Did these men understand the use and meaning of language, and the force and effect of precedents?

Do you think when this certificate was received by George Washington, with his love of precise terms and accurate methods, that so gross a blunder could have escaped his attention and failed to elicit from him even so much as a comment? He had devoted his life to the resistance of tyranny and the usurpation of power. Would he sit quietly by and in the very first act of the new government see one man usurp to himself a power so important as this, one which was intended to be vested in the two Houses of Congress? It is said that the absence of debate at that time takes from these precedents their weight as authority. Why, sir, the absence of discussion, of question, or of doubt it seems to me amounts almost to a demonstration that the power was taken for granted; and that the idea that any one but the President of the Senate was to count the votes had never entered into the brain of mortal man.

Sir, I have not the time, nor is it necessary to give all the details of the nine successive counts of the electoral votes; but let us see how the Vice-Presidents and various Congresses understood the matter.

At the second counting of the votes, which occurred on the 13th of February, 1793, John Adams presided as Vice-President. One teller was appointed on the part of the Senate, and two on the part of the the House. Their duties were defined by resolution to be, "to make a list of the votes as they shall be *declared*." This was done, the result ascertained and handed to the President of the Senate, "who announced the state of the vote and the persons elected." Washington was re-elected unanimously, and Adams by plurality. Washington was notified of his election by a committee appointed from the two Houses; and Adams, having presided and announced the result, required no notification.

The third count occurred on the 8th of February, 1797, at which John Adams again presided as President of the Senate, and John Adams was elected President and Thomas Jefferson Vice-President.

Adams being present could easily be notified of his election, but Jefferson being absent the mode of notifying him became a matter of significant action. The counting was done on the 8th of February, 1797. On the 9th the committee of the two Houses appointed to ascertain and report a mode of examining the votes for President and Vice-President of the United States, and of notifying the persons elected of their election, reported the following:

Resolved, That the Secretary of the Senate be directed to give, by letter, to the Vice-President elect, a notification of his election.

On motion, it was agreed to insert President of the Senate instead of the Secretary; and

On motion, it was agreed to reconsider the resolution, and to recommit the report from the joint committee.

Mr. Sedgwick reported, from the joint committee last mentioned, that the committee on the part of the House of Representatives considered themselves discharged from their commission.

The Senate then asked for a committee of conference, which was granted by the House, and the committee appointed on the following day. The result of this conference was that the House of Representatives assented that the Vice-President be notified as the Senate might direct. A resolution was accordingly offered in the Senate that he be notified by the President of the United States in such manner as he should judge proper. This was voted down. The matter was then referred to a select committee of three, and the following form of a certificate was finally reported and adopted, and the Vice-President directed to sign the same:

Be it known that the Senate and House of Representatives of the United States of America, being convened in the city of Philadelphia, on the second Wednesday of February, in the year of our Lord 1797, the underwritten, Vice-President of the United States and President of the Senate, did, in the *presence of the said Senate and House of Representatives, open all the certificates and count all the votes* of the electors for a President and for a Vice-President; by which it appears that Thomas Jefferson, esq., was duly elected, agreeably to the Constitution, Vice-President of the United States of America.

In witness whereof, I have hereunto set my hand and seal, this 10th day of February, 1797.

JOHN ADAMS.

Now, sir, did John Adams, the "underwritten Vice-President of the United States," who signed and sent that certificate to Thomas Jefferson, know whether he had "opened all the certificates and counted all the votes?" Or did he certify to it regardless of the truth? It will not do to say that it was a mere formal matter this time, for it had been a subject of action and discussion in the two Houses on three successive days, and the form of the certificate was the very thing under discussion.

The fourth count, had on February 11, 1801, resulted in a tie between Thomas Jefferson and Aaron Burr. The election was thrown into the House of Representatives, but who counted the votes? The certificate signed by Thomas Jefferson notifying Aaron Burr of his election as Vice-President contains the following:

Be it known, that, the Senate and House of Representatives of the United States of America being convened at the city of Washington on the second Wednesday of February, A. D. 1801, the underwritten, Vice-President of the United States and President of the Senate, did, in the presence of the said Senate and House of Representatives, *open all the certificates and count all the votes of the electors* for President; whereupon it appeared, &c.

In witness whereof I have hereunto set my hand and seal, this 18th day of February, 1801.

THOMAS JEFFERSON.

Now did Thomas Jefferson, when he signed that certificate, know what he had done, or did the Senate, which passed the resolution directing him to sign the certificate stating that he had "counted all the votes," suppose that that was something which they, in connection with the House of Representatives, had just done themselves? There is another fact which renders the form of this certificate all the more significant. Only a year before the subject had been up in both Houses of Congress, had been freely discussed, and resulted in the passage of a bill through this self-same Senate, providing for the appointment of a grand committee to count the electoral votes, which bill was defeated in the House. Could any inference be plainer than that, in the absence of all legislation upon the subject, this Senate and Mr. Jefferson understood that it was not only the duty of the President of the Senate to count the votes, but that he had done that very thing.

At the fifth count, held on February 13, 1805, Thomas Jefferson was re-elected President and George Clinton elected Vice-President. Jefferson, being in Washington, was notified of his election by a committee of the two Houses; and under a resolution of the Senate the same form of certificate was directed to be signed by the Vice-President and sent to Mr. Clinton, which read:

Be it known that, the Senate and House of Representatives being convened in the city of Washington, * * * the *underwritten, Vice-President* of the United States and *President of the Senate*, did, in the *presence* of the Senate and House of Representatives, open all the certificates and *count all the votes*. * * *

In witness whereof I have hereunto set my hand and seal, this 14th day of February, 1805.

AARON BURR.

The sixth count occurred on the 8th of February, 1809, when James Madison was elected President and George Clinton Vice-President. The same form of certificate was again employed, reciting that—

The undersigned, President of the Senate *pro tempore*, did in the presence, &c., open all the certificates and count all the votes, &c. In witness whereof I have hereunto set my hand and caused the seal of the Senate to be affixed, this —— day of February, 1809.

This was signed by John Milledge, of Georgia.

Will it be claimed that this, too, happened through inadvertence? Why, sir, it was at this very time that petitions were sent to the House of Representatives from various towns in Massachusetts, remonstrating against the mode in which electors had been elected in that State. These memorials were discussed in the House on the 2d and 6th of February. Mr. Randolph expressed the opinion in the debate that "the electors were as much the judges of their own qualifications" as either House of Congress was of the election of its own members; and he said it appeared to him "as competent to the people of any part of this country to prefer a petition to the electoral colleges to set aside the returns of any members of Congress as to prefer petitions to this House to set aside the qualification of electors."

A resolution was offered in the House sending the memorials to the Senate and asking joint action on its part.

Mr. Jackson said he "hoped it would operate on the House to induce them to consider the propriety of providing some mode of hereafter distinguishing between legal or illegal or surreptitious elections."

Mr. Ransom was "opposed to the resolution. The Constitution having provided that each State shall choose electors in such manner as the Legislature should direct, why might not the House 'as well interfere in the election of Senators?'"

The resolution passed the House. The memorials were sent to the Senate on the next day and were laid on the table there. And just two days thereafter a resolution passed that body, directing the above form of certificate, which required that the *seal of the Senate* be attached thereto. And on the following day in the House, when a motion was made to amend the Journal so as to show why one elector from Kentucky had not cast his vote, it was stated by members, "if it was intended to fix a precedent to govern future proceedings it ought to be done *with great deliberation*." And the motion was voted down, receiving but 20 affirmative votes. And yet we are asked to believe that the Senate, right in the midst of these discussions, went on making certificate of facts and affixing its seal, without so much as giving a thought to form, substance, or future effect of the precedent.

The seventh count, had on the 10th day of February, 1813, resulted in the election of James Madison and Elbridge Gerry. And again, by direction of the Senate, "the underwritten, President of the Senate *pro tempore*," certified that he did "open all the certificates and *count all the votes*," affixed the seal of the Senate thereto, and sent the same to Elbridge Gerry to notify him of his election. This was signed by Joseph B. Varnum, of Massachusetts.

On the eighth count, February 10, 1817, James Monroe and Daniel D. Tompkins were elected; and again the same form of certificate, reciting that the underwritten, President of the Senate *pro tempore*, did "open all the certificates and *count all the votes*," was directed to be made by a resolution of the Senate. Signed by John Gailliard, of South Carolina.

On the ninth count, February 14, 1821, James Monroe and Daniel D. Tompkins were elected. It was on this occasion that a long debate took place in regard to the electoral vote of Missouri, in which Mr. Clay, Mr. Randolph, and others took part, Mr. Clay contending that it was the duty of the two Houses to count the votes, but that, as the vote of Missouri could not affect the result, he proposed that the mat-

ter be reserved and the result stated as it would be, both with and without the vote of Missouri. This was done, against the strenuous objection of Mr. Randolph, and while he was drawing a resolution declaring that the vote of Missouri should be counted the convention of the two Houses adjourned amid great disorder. The President was notified of his election by a committee from the two Houses, and he was requested to notify the Vice-President of his election.

On the tenth count, February 25, 1825, the election was again thrown into the House. John Quincy Adams was elected President by the House of Representatives and John C. Calhoun Vice-President by a majority of the electors. And again by direction of the Senate, certified to John C. Calhoun that he, as President *pro tempore* of the Senate, had opened all the certificates and "*counted all* the votes." Signed by John Gaillard, of South Carolina.

Thus out of ten counts, covering a period of forty years, the Senate has eight times directed its presiding officer to certify that he had "opened all the certificates *and counted all the votes*" and always with the assent and acquiescence of the House of Representatives. I know it will be claimed that in each instance the two Houses appointed tellers to tabulate the votes and ascertain the result, but do not wish to repeat what I have already said upon that subject. If this clerical work of the tellers would be *indispensable*, whether the two Houses or the President of the Senate counted the votes, then their appointment carries no significance; but the final certificate of the Senate does. It is to the final judgment, the signature of the judge, the seal of the court, that we look to see what has been done in the case; and, sir, if there ever could be such a thing as legislative construction it seems to me these eight several findings of the Senate are entitled to great consideration.

They have passed under the eye of the following illustrious men, and under the hand and seal of most of them: George Washington, John Langdon, Oliver Ellsworth, James Madison, Robert Morris, John Adams, Thomas Jefferson, Aaron Burr, George Clinton, Elbridge Gerry, James Monroe, Daniel D. Tompkins, and John C. Calhoun.

And under the rule laid down by Judge Cooley, that "where a particular construction has been generally accepted as correct, and especially when this has occurred contemporaneously with the adoption of the Constitution, and by those who have opportunity to understand the intention of the instrument," what importance is to be attached to such construction? It seems to me, sir, that at least it points out the course to be pursued in the counting of the electoral vote, in the absence of all legislation upon the subject. I do not ignore the fact that eminent men all the way down have contended that the power to count the vote was vested in the two Houses of Congress, while others equally as eminent have insisted that it was vested in the President of the Senate.

In this condition of doubt, what should be done in view of our present situation? I have believed from the first, Mr. Speaker, that the two systems should be blended, allowing the President of the Senate to decide all disputed points in the first instance, with the right of appeal to the two Houses of Congress; if they concur in overruling his decision, it is to be rejected, if not, it is to stand as final. This plan would insure a prompt and certain decision of the case, and by parties already present. Under it the vote of no State could be rejected without the concurrence of both Houses of Congress, and the objection that where the President of the Senate was himself a candidate he might recklessly and arbitrarily count himself in would be removed. In fact, all the objections that so important a matter should be left to the arbitrary will of one man would be swept away.

But it is said that it is impossible to adopt any such rule now, because partisan interests and partisan feeling will prevent it. Well, sir, if we are to enact only such legislation as partisan interests or partisan feeling shall dictate, we might as well abandon the attempt first as last. Still I shall be glad if any plan can be devised upon which we can all agree. In the present critical posture of public affairs we should go to the utmost verge of conciliation to agree upon a remedy. But in seeking such remedy it may be better that we bear the "ills we have than fly to others that we know not of."

The Supreme Court having power only to determine judicial questions, and this not being a judicial question, I do not think we have any power under the Constitution to confer jurisdiction upon that court to decide it. The propriety of calling in any of the judges of that court to aid in deciding the question where their decision is not to be final, but is to be revised by the two Houses of Congress, in which they cannot be present either to explain or defend their action, is a matter for grave and thoughtful consideration.

With what wondrous force do the words of Webster come back to us to-day! He said:

> One great object of written constitutions is to keep the departments of government as distinct as possible, and for this purpose to impose restraints designed to have that effect.
>
> The judiciary—
>
> He said—
>
> is composed of few persons, and those not such as mix habitually in the pursuits and objects which most engage public men. They are not or never should be political men. They have often unpleasant duties to perform and their conduct is often liable to be canvassed and censured where their reasons for it are not known or cannot be understood.

Add to this the fact that the plan is but an evasion of the plain spirit of the Constitution, which would confine that court and all its members to the exercise of judicial functions only, and the further fact that judges as individuals would thus become committed in advance and by modes extra-judicial upon scores of questions liable to come before them as members of the court, and you have the matter before you in all its gravity.

Sir, I should be glad to see my way clear to the support of the bill reported by the joint committee of the two Houses. But believing that under a certain very possible construction it would embark us upon a shoreless sea of doubt, without chart or compass to guide our course, while I realize the gravity of the situation and the great responsibility now resting upon us, and while I accord to the framers and supporters of that bill the purest and most patriotic motives, I am not prepared to say that I can sustain it by my vote.

But suppose all plans fail? Then, sir, I believe that from the very necessity of the case, in the absence of all legislation upon the subject, we are thrown back upon that doctrine, so often quoted, of Chancellor Kent, one of the most eminent publicists and jurists of America.

The opinion was given in moments of calmness, with no excitement to bias or warp the judgment. It was born out of the clear brain and in the pure atmosphere of a great judicial mind. It reads:

> The Constitution does not express by whom the votes are to be counted and the result declared. In the case of questionable votes and a closely contested election, this power may be important; and I presume, in the absence of all legislative provision on the subject, that the President of the Senate counts the votes, and determines the result, and that the Houses are present only as spectators to witness the fairness and accuracy of the transaction, and to act only if no choice be made by the electors. The House of Representatives, in such case, are to choose immediately, which, I presume, may be while the two Houses are together, though they may vote after they have retired, for the Constitution holds their choice to be valid if made before the 4th day of March following.

Sir, upon that doctrine as a last resort, when all else shall fail, I for one am prepared to stand. Believing, as I believe my existence, that, so far as a free choice has been permitted, Rutherford B. Hayes and William A. Wheeler have been chosen President and Vice-President of the United States by the American people, under the forms of law and the sanction of the Constitution, while I would yield much to reasonable appeal I would yield nothing to threat or bluster.

Standing upon the fact that the rules governing the election were well settled, that the legal methods for ascertaining the result were fully understood and were accepted in advance by both parties and the election held under them without protest, there is no reason for a departure from them now, unless indeed it can be shown that some fraud has been committed which shocks the moral sense of mankind.

That there has been one such fraud attempted admits of no dispute. As if seen by the eye of prophecy, it has been so well described only nine months ago by one entitled to rank as one of the prominent leaders of the democratic party that I borrow his language here. On the 13th of March last a distinguished democrat [Mr. BAYARD] said:

> It is very true that when the time shall come that the governor of a State, or any considerable number of persons, claiming any authority, shall certify a false certificate of a false claim of election in a State to affect the choice of the people of the United States of their Chief Magistrate, and there shall not be in both Houses of Congress a sentiment of honor and integrity that shall make such plans impossible of success, then the body-politic will be sick indeed, and will begin to despair of this experiment of men to govern themselves.

Sir, I am happy to believe that the distinguished gentleman who uttered these sentiments has said nor done nothing since inconsistent therewith. But the telegraph informs us that on the 23d of December last Governor Grover, one of the authors and finishers of the Oregon fraud, was serenaded at the Cosmopolitan Hotel in San Francisco, and I believe salves of democratic artillery greeted his departure from that city to the national capital, and here, we are told, he has been received and feted, if not openly defended, in high democratic circles. I am glad to believe however that many eminent democrats regard this whole matter only with horror and disgust.

Sir, show us that the much-berated returning board of Louisiana has been guilty of anything so indecent, so brazen, so monstrous as that, and I care not for law, precedent, or authority, outraged justice will rise and spurn it from its presence with contempt.

And if Rutherford B. Hayes would accept the Presidency of the United States, secured through instrumentalities like these, I for one should regret the day when I cast my humble ballot for him to fill that office.

No, sir. Let us cast all these things behind us, and, meeting the gravity of the occasion, as we entertain fixed opinions of our own, so let us tolerate them in others; and when the supreme moment for decision arrives let us summon all our patriotism, all our statesmanship, and all our manhood, to solve it as free-born American citizens should. But let us have no more of threats or violence, for "Whosoever shall fall upon that stone shall be broken; but on whomsoever it will fall, it will grind him to powder."

Mr. TUCKER obtained the floor.

Mr. WILLIS. I move that the gentleman from Wisconsin [Mr. WILLIAMS] have the right to print the rest of his speech, and also have the right to revise and correct the whole of it.

The SPEAKER. The gentleman from New York is not in order, as the Chair recognizes the gentleman from Virginia, [Mr. TUCKER.]

Mr. TUCKER. Mr. Speaker, in advocacy of the resolutions reported by the committee, I shall deduce the true interpretation of the twelfth amendment of the Constitution, from a consideration of the whole instrument and the nature of the Federal system it created; from the

obvious meaning of the terms employed; from the history of their adoption; from the authority of the constitution-making power itself, and from the practice of the Government, settled by well-defined precedents.

The Federal system of the Union, by which the States, with their distinct Governments, exercise the powers not delegated to the United States by the Constitution nor prohibited by it to the States, and are united in co-operative action in the organization of the Federal Government, through their legislatures and their people, can be preserved only by securing the independence of the general and State governments in the exercise of their distinct powers and in the integrity of their separate organisms. To a certain extent, the dependence of the Federal Government on the States is such that it cannot endure if they should decline to elect Senators or to appoint electors for President. Its organism depends upon the faithful performance of these State functions under the Constitution.

And this appears also partially in the election of members of the House of Representatives; for suffrage is regulated by the constitutions of the States; and the times, places, and manner of holding elections for Senators and Representatives are regulated by State laws; but lest these should injuriously affect the integrity of the Federal organism, these regulations may be made or altered by Congress, except as to the place of electing Senators.

This power, thus vested in Congress to make and alter State laws, is a *self-protective* power. It exists in and is essential to every vital organism in creation, and is equally necessary in all artificial organisms or bodies corporate or politic. It is true it is not complete against the perverse refusal of a State Legislature to elect Senators, but it is effectually so as to Representatives, and has been so practically even as to Senators.

But one complete protection the Federal Government has against a lawless or fraudulent purpose on the part of any State to put into either House of Congress a member not constitutionally eligible or not legally and fairly elected. It consists in the right of each House to be "the judge of the election, returns, and qualifications of its own members." (Constitution of the United States, article 1, section 5.)

This self-protective power in the Federal organism against the illegal, unconstitutional, or fraudulent action of the agents of a State in respect to those it is entitled to choose as its Senators or Representatives is absolutely essential to the constitutional integrity of Congress, without which it might be destroyed or be materially embarrassed in the efficiency of its action.

On the other hand, the State governments, in their respective organisms, are independent of the General Government and can in no respect be controlled by it, except that the form of their governments is guaranteed by the United States to be republican.

A striking evidence of the same important principle is to be found in the protection each has in the exercise of their respective powers from any interference by the other. Thus, while the States may not impair the power of the United States to borrow money or to pay salaries to their officers and the like, the same limit is placed by judicial construction upon the power of Congress in respect to the powers of the States and the salaries of State officers. (McCullough *vs.* State of Maryland, 4 Wheat., 316; Weston *vs.* City of Charleston, 2 Peters, 449; Dobbins *vs.* Commissioners, &c., 16 Peters, 435; Banks *vs.* Mayo, 7 Wall., 24, and many others; also Buffington *vs.* Day, 11 Wall., 113.)

Thus the Constitution has wisely furnished to each of these governmental organisms, the Federal and State, in our wonderfully framed federative system, a self-protection against the inimical action of the other, and the true friend of the system will sedulously guard each from invasion. While, therefore, the Legislatures of the States and their constitutional voters are the constituents of the Federal Legislature, each House of Congress is clothed with a quasi-judicial power which secures its constitutional integrity either from the unlawful or fraudulent action of the Legislatures or of the people or of the officers of the States. The States elect under their own laws Senators and Representatives, but the Senate and House of Representatives are respectively the judges whether the State laws have been strictly and fairly executed in these elections. The power of judgment in the Houses of Congress protects them from improper and lawless action by officials of the States.

The frame-work of the Constitution and the debates in the convention of 1787 fully sustain the position that the framers of that great instrument purposely and with great care made provision that, while the rights of the States should be substantially secured in the character of their delegates in both Houses of Congress, the purity and efficiency of each of these bodies should be preserved through the agency of its own self-protective powers; for it must be observed that, while it is essential to the preservation of the local and exclusive interests of each State that the Federal authority should not intrude upon it, it is equally important that as each State through its delegates in Congress does affect the general interests of all its sister-States these should have the prerogative to guard themselves against a member of either House whom the Constitution has not made eligible or who comes with a certificate tainted with illegality or fraud. To defend each in its local polity from the control of the other States and of the Federal Government is essential, but it is no less important to prevent any one State or its official agents from governing at its will the rights and interests of all the others.

When, with this preliminary view, we come to consider the constitution of the chief executive office of the Union we are therefore prepared to expect the presence of a like self-protective provision in the Federal organism, and the more so when we regard the large powers for good or evil and the important duties of the President. To suppose that no such device has been provided or so to construe the terms of the Constitution as to conclude there was none would be to cast a serious reflection on the wisdom of its authors and to bring incalculable mischief upon the country.

The articles of the Constitution relative to the Executive power will now be considered.

In the analysis of these articles it will be noted:

First. That each State appoints as many electors as the whole number of Senators and Representatives it is entitled to in the Congress. *The State* appoints.

Second. The *manner* of appointment is as the *Legislature* of the State may direct.

Third. No one can be appointed an elector if he be a Senator, Representative, or person holding an office of trust or profit under the United States.

Fourth. Congress may determine the time of choosing electors and the day on which they shall give their votes, which day shall be the same throughout the United States. This is all the power which *Congress* has in the election.

Fifth. The elector cannot vote for two persons for the two offices, who are inhabitants of the same State with himself.

Sixth. No person is eligible to the offices of President and Vice-President who is not a natural-born citizen or a citizen at the time of the adoption of the Constitution, nor who is not thirty-five years of age, and has not been fourteen years a resident of the United States.

Seventh. The electors are to meet in their respective States, to vote by ballot for persons as President and Vice-President, and to transmit sealed and directed to the President of the Senate the lists of their votes signed and certified by them.

Eighth. In the opening and counting of votes and in the subsequent stages of the elective procedure, the President of the Senate and the Senate and House of Representatives have functions to perform which are at the present time most important to be defined and are the subjects of this discussion.

Before proceeding to discuss this question it may be well to call attention to two prominent points. Unless in the powers vested in the President of the Senate, or in the two Houses, some guard is found against State action, either fraudulent or violative of its own laws, or contrary to the Federal Constitution, the election of the Federal Executive is absolutely under State control, and may be decided by the unconstitutional, illegal, or fraudulent action of State officials, and the Executive of the whole Union may be elected by the malfeasance of some one officer in one State. Such a result is so contrary to the genius of the Constitution and to the provisions made (and already referred to) for the protection of the legislative department against like action, that it should not be considered a legitimate conclusion from a fair construction of its terms, unless clearly so intended.

Another point is this: Wherever else the power of decision may be reposed, it is clear, that it was not deemed safe to intrust it to the incumbent of the presidential office. To leave to him the determination of an election in which he may be a candidate, and to suppose it would be safe to intrust it to him, was so foreign to the thoughts of the framers of the Constitution, that his name is not even mentioned in any of the clauses concerning the presidential election. They knew too well, what history had taught by many examples, how often in the arbitration of right the sword had been thrown into the scale, and popular elections had been overthrown by the arbitrary domination of the military power in the hands of the Executive.

RELATIVE POWERS OF PRESIDENT OF SENATE AND TWO HOUSES.

Let us now proceed to determine the relative powers and duties of the President of the Senate and of the two Houses of Congress in the determination of the election of President and Vice-President.

The language of the Constitution is this:

> The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted.

This is as it stood in the original Constitution. In the twelfth amendment it is unchanged. This amendment was proposed after the celebrated contest of 1801 between Jefferson and Burr, and was adopted in 1804. This fact is persuasive to the conclusion that the proposers of the amendment thought the language of the above clause was a sufficient guard to the Federal Government from any schemes, illegal or fraudulent, by State officials against the purity and legality of the presidential election.

HISTORICAL REVIEW OF THE CLAUSE.

The history of the adoption of this clause will aid in its construction, and will enable me, by the inductive method, to ascertain the purpose of its framers, as manifested in the several stages of its growth to its final form.

No part of the Constitution gave to its authors so much trouble, or excited more diversity of opinion, than the mode of electing a President. It is the great difficulty in democratic institutions. History has shown that he who dispenses an enormous patronage, as the source

of honors and emoluments, has ever gathered about him such influences antagonistic to the interests of the mass of the people, that in a popular election the parasites of the Executive will by their official power as well as by their votes present a fearful force against the defenders of the popular liberties; and when the sword is united with the purse, intimidation will extort from the fears of the electors what corrupt appeals to their selfishness may have failed to seduce them to yield. Many men of the constitutional era dreaded the ultimate fate of free institutions from this union of patronage with the military power in the hands of a President, and that he would finally command his own continuance in office or dictate his successor.

These apprehensions suggested a variety of propositions by which the evils might be averted.

By Mr. Randolph's original proposition, the President was to be elected by the "National Legislature." (2 Mad. Pap., 732, 733.) It was adopted by a vote of eight States to two, (*ibid*, 770,) and afterward unanimously. (*Ibid*, 1124.) In two days it was changed to an election by electors to be appointed by State Legislatures, (*ibid*, 1150,) and in four days thereafter it was restored to an election by the National Legislature, and so stood until it was moved to make the election by *joint* ballot, which passed, (*ibid*, 1419,) though much objected to by the small States who feared their being outvoted by the large States.

Mr. Morris proposed an election by electors to be chosen by the people of the several States. It was rejected. (3 Mad. Papers, 1421.) After all the propositions had been refered to a committee, a report was made in which a mode was proposed, which after many modifications and great debate resulted in that finally adopted. After directing that the votes of electors should be transmitted to the President of the Senate, the reported proposal proceeds thus:

> The President of the Senate shall in *that House* open all the certificates; and the votes shall be *then* and *there* counted.—*Journal of Convention*, page 324.

The requisition that the President should receive a majority of the votes of the electors, and if no person receive a *majority, that* then the *Senate* should elect a President from the five highest on the list, gave rise to an apprehension that there would rarely be an election by the electors, and the Senate would thus ordinarily elect. George Mason of Virginia, the author of the first bill of rights and first written constitution of a free commonwealth in America, both adopted on the 29th of June, 1776, said that—

> Nineteen times in twenty, the President would be chosen by the Senate—*an improper body for the purpose.*—*Madison Papers*, page 1430.

So also Mr. Charles Pinckney. Mr. Wilson, (afterward a judge of the Supreme Court,) preferred the ultimate election, on failure of one by electors, by the National Legislature, not by the Senate; and so Mr. Randolph. (*Ibid*, page 1492.)

Mr. Pinckney subsequently objected to the Senate as the elective body, because the President would "combine with the Senate against the House of Representatives." This view was also pressed by Mr. Mason, who said it fixed "an aristocracy worse than absolute monarchy;" and again by Mr. Wilson, who said "the President will not be the man of the people, but the minion of the Senate," and that the Senate could so contrive as to secure the election of President by themselves. Mr. Hamilton expressed the same opinion.

After much discussion, it was suggested by Mr. Williamson that the election (in case of failure to elect by electors) be made by the Legislature, (that is, Congress,) voting by States. Mr. Sherman suggested, as preferable, the following:

> The House of Representatives shall immediately choose by ballot one of them for President, the members from each State having one vote.—3 *Madison Papers*, pages 1510, 1511.

Colonel Mason liked the other mode best, as lessening the aristocratic influence of the Senate. (3 Madison papers, page 1511.)

This passed by a vote of ten States to one.

On the same day, the words in the clause first above cited "in that House" seem to have been stricken out; and the words "in the presence of the Senate and House of Representatives" were inserted after the word "counted." But these words were tacitly transposed, so that the clause read thus:

> The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted.—*Journal of Congress*, page 337.

Now, compare the clause as it thus stands with the clause as originally reported, and we will readily see the revolution effected by the change of a few words.

First. The certificates are no longer required to be opened "in that House;" that is, the Senate.

Second. The votes are not to be counted "then and *there;*" that is, in the Senate.

Third. By the amendment to put the words "in the presence" &c., after the word "counted," the clause would have read:

> The President of the Senate shall open all the certificates, and the votes shall then be counted in the presence of the Senate and the House of Representatives.

This might have left room for the inference that the opener of the certificates was to be the counter of the votes; but the change was made so as to require the opening to be in the presence of the two Houses, and then the counting as a distinct act was to follow.

Fourth. In the original as in the substituted clause, the change of phrase in the first and second branches is significant. "The President shall open the certificates," and not "shall then count the votes," but "the votes shall then be counted"—not by him. Now it is impossible to avoid the conclusion that he is not to be the counter when the active form of the verb "open" in the first branch of the sentence is changed to the passive in the second branch as to the verb "count;" and when the passive verb "count" following "votes" as its nominative is not followed by the words "by him" as expressive of his being the instrument for counting the votes. If language can convey or exclude meaning, it would seem that this conveys the idea of a counting by some other than the President of the Senate, and positively excludes him as an actor in the count. Five words, "and then count the votes," would have made him the counter; but the use of the seven, "and the votes shall then be counted," clearly excludes such a conclusion.

But it is of more consequence to take a broader view, leaving this verbal criticism, however powerful it may be, in getting at the real meaning of those who used the language.

If the idea of throwing the election of the Executive into the hands of the State authorities without any revisory power in the Federal Government over the results of the election had been propounded, it could not have escaped the attention of the members of the convention that the person to fill the executive chair might be selected by State action contrary to the Constitution and to its own laws, and in fraud of the other States. Accordingly we find, when it was proposed that all the electors should meet together and *decide finally without any reference to the Senate*, and that they should "meet at the seat of the General Government," it received only one vote. (3 Mad. Papers, 1509.) This showed that it was not intended that the electoral body should pass finally upon the validity of the powers of its members, as they might thus palm upon the country one who was neither fairly nor legally elected; but it was designed to bring their right to act and vote under some Federal supervision, whereby the accession to the office of the Chief Magistrate would not depend upon the wicked or illegal designs of officials in any of the States. And it needs no argument to show that, if there was a proper repugnance to such a general meeting of all the electors at the seat of government to decide finally upon the election, there would be a deeper opposition to permitting a few electors in a distant State so to decide finally on their title to cast the State vote, with no self-protective power through the Federal Government to the other States whose rights might be so deeply affected by the vote of that State.

Hence it was determined, in order that these things should not be done in a corner where fraud or illegality might defeat the will of all the States, that the certificates were to be sent to the President of the Senate and opened in the presence of the legislative guardians of the Federal Executive.

Besides, when the convention first proposed taking the elective power from Congress and giving it to the States, it required the return of the certificates to be made to that body to which it confided the elective function in the contingency of its being found, on counting the electoral votes, that there had been no election. It vested the primary right of election in the electoral colleges, with a contingent elective right in the Senate, limited on the event of their failure to make an election. It would have been folly to leave to the colleges a final decision as to whether the contingency had arisen on which that elective right resulted to the Senate. Their action was required to be laid before the Senate in order that the Senate, and it alone, should decide whether the event had happened upon which the Constitution devolved the elective duty upon it. To have left it to the electors to decide would have been too absurd to be conceived in the minds of the Constitution-makers.

This proposed article of the Constitution therefore required the direction of the certificates to the President of the Senate, and the counting there, for a double purpose: first, to protect the executive chair from an intruder through the unchecked and arbitrary action of the States or of a single State, or of the officers illegally or fraudulently speaking for the State, and, secondly, to assure to the Senate its constitutional function of election when the contingency on which it depended in its judgment arose. *Its* judgment, not the judgment of any other body, could decide upon its prerogative and duty. To have trusted it elsewhere would have made the Senate dependent on another in respect of its constitutional and independent duty.

When therefore the certificates were transmitted and opened, it becomes proper to inquire what powers and duties were expected to attach to the Senate and its President respectively in regard to them. Did the convention propose the Senate or its President as the determinant authority as to these votes?

When this clause was originally proposed, the convention had not decided to make the Vice-President President of the Senate. It did so after this clause had been amended and was finally adopted. Hence we are to interpret the purpose of this clause without reference to the office of Vice-President or as being affected by its dignity. The power this clause granted was to the President of the Senate as such, and not because the Vice-President was *afterward* made *ex officio* its President. The power was conferred by reason of his presiding in the Senate—attached to that official function—whether performed by a Vice-President or a President *pro tempore* of the Senate.

But who is the President of the Senate? Either the Vice-President, an alien to the body, put upon it as its presiding officer by the

Constitution, or one elected by itself to act under its rules, and executing, but in submission to, them.

Now could it have been intended that such a one, either an alien to it or its creature, was intended to debar the Senate of its duty at his will and shut its voice from protest against his illegal or fraudulent miscount? In the face of the proclaimed fears of the senatorial oligarchy, so patent in the debates, was it intended to exaggerate these by vesting the final determining power in one man, and he perhaps interested as Vice-President, either to continue in office or to succeed to the Presidency, or in another man who was a mere creature of the denounced oligarchy?

It cannot, then, be contended that as the clause originally stood it was designed to make the Vice-President or President of the Senate the final arbiter to count or reject the electoral votes of the States. He opens the certificates, and his functions cease. He is the medium through which the papers reach their destination. He opens them, not as an independent officer, but as President of the Senate, because they are directed to him. He is the custodian of them for the Senate, and when opened "in that House," it was intended that they should come into its custody and under its control, and to be counted under its order, for *there, it* is the master, and not he, whether he be Vice-President or its President *pro tempore*. The direction of the paper to a presiding officer of any body, to be opened by him in its session and there counted, puts the control of the paper in its hands and takes it from him and gives the count and its results to its supreme decision, excluding him entirely except as its minister. Any other construction would place either House of Congress at the feet of its own presiding officer, elected by it, or, worse than this, at the feet of the Vice-President, not a member of the body and not elected by it nor subject to it, and would make the mere organ through which it communicates with the outer world its master, and not the subject of its supreme will. Like the senses by which man is cognizant of the outer world, and which are his servants, and not his masters, the President of the Senate must submit to its order and yield unquestioning obedience to its mandates.

Any other view of the functions of the President of the Senate conflicts with the obvious meaning of the language of the clause. If he was to be the arbiter, not as presiding officer of the Senate, but as an officer distinct from that body, why was he required to open the certificates *in that House*? Why were the votes to be counted *then* and *there*? They were sent to him because he presided in the Senate, which was intended to count them in its House, where it sat and he presided. Now I put it to any rational man, can there be any higher evidence afforded of the subordination of the man to the body than in designating him, not as Vice-President, or in any other way than as President of the Senate, subject to whose rules alone could he exercise any function, and of which he was the servant, and over whose members he could exercise no authority except under its regulations? To suppose such a man was intended to have the power of an autocrat in a House where he was a servant, and to be a supreme arbiter where he was subordinate, is the extremity of delusion.

Again, if his illegal or fraudulent act was final, what function had the sitting Senate but to witness his wickedness? What motive can be assigned for its presence unless we attribute to it the power of prevention, as incident to and consequent upon the detection of illegality and fraud? Either his count was conclusive or it was not. If conclusive, what sense was there in having a Senate to see what it could not control, to detect a wrong it could not prevent? If not conclusive, then it was because his action was placed under the control of and subject to be avoided by the Senate as the real guardian of the integrity of the election; and if this be true, then the function of the President of the Senate is purely ministerial, and that of the Senate was supremely controlling and directory. He was intended to be its servant, not its master, in this matter, and the Senate was designed to be the supreme determinant arbiter upon the facts as developed by the certificates coming through him as its medium, and to it, as the real body to count the electoral vote, to decide upon the result, and to assume, if the constitutional contingency arose, the resulting prerogative and duty of electing the President. The creature of the Senate's appointment cannot be made the master of its will, nor deny to his creator its ultimate power of election, by his edict against its own decision. Such a conclusion is against the fair construction of the language of the clause, contrary to all the analogies of the Constitution, at variance with the tone of the debates in the convention, and an assumption for the "one-man power" of a prerogative against the will of the representatives of the States in the Senate too irrational and monstrous to be attributed to the Federal convention.

Nor is the hypothesis of a concurrent power in the President of the Senate with the Senate more rational. For while, if they agreed, no question could arise of relative authority, yet suppose they disagreed; suppose he said "count," and the Senate said no, which would prevail? The decision of the creature or his creator? If his prevailed, then the Senate's presence would avail only to echo his will, and never to oppose it. If its decision prevailed, then his power would be nugatory; being needless when he assented and impotent in dissent. If the powers of the two were intended to be equal, then the Constitution would have left a conflict without an arbiter.

I have dwelt thus long upon the true construction of the clause as it originally stood in order to see clearly the mind of the convention in suggesting it, and to trace the same general purpose into the clause as it was finally adopted; for if I have shown the presiding officer had no power to count except as the minister of the Senate, it cannot be claimed he has greater power under the clause as it now stands, when this House is brought in as a new element in the problem of related powers.

It is obvious that a jealousy of the power of the Senate existed in the minds of many of the ablest men in the convention. A majority of the Senate, in 1787, might represent but one-third of the people of the country; in 1876, but one-fifth. To give the ultimate elective power in a presidential contest to the Senate, and the decision of when this elective prerogative resulted to it, would have been to lend weight to the influence of an oligarchy against the popular will expressed through the electoral colleges. And this view was, as we have seen, urged with great emphasis in the debates of the convention.

After much discussion, as already shown, the convention, with remarkable unanimity, (Delaware alone voting in the negative,) adopted the plan of giving the ultimate election of President to this House, as the representative of the people of the States, instead of to the Senate as the representative of the States through their Legislatures. At the same time it left to the Senate the ultimate election of Vice-President, which was dependent, originally, on a much more remote contingency than that on which the power of the House depended for electing the President.

On the same day that this radical change was made, and obviously as a part of the same line of thought, the opening of the certificates and the counting of the electoral votes in the Senate was changed into an opening of them "in the presence of the Senate and the House of Representatives," and a provision that the votes be then counted.

Now, it is very clear that the function of guardianship of the election, which was assigned by the original proposition to the Senate alone, was by this change confided to the House of Representatives in concurrence with the Senate. The function of the Senate, which was exclusive under the former, was made concurrent and equal with that of the House under the clause as adopted. If, therefore, the reasoning already pursued be sound, by which the supreme control of the count was regarded as intended to be vested in the Senate, and not in its President, under the first form of the clause, it will with increased force conduct to the conclusion that under the clause finally adopted the powers of that officer are excluded in favor of the guardianship confided to the Senate and the House of Representatives.

And not only so, but this conclusion is enforced by another consideration. There might be a plausible pretense that the President of the Senate, usually elected by it, might have some power for the exclusion of the prerogative of the Senate, over which he presided; but no such pretense would avail in his favor against the prerogatives of that House by whom he is not elected, over whose procedure he has no control, and with whose organization he has no privity. If, therefore, the President of the Senate, as its servant, was intended to be subject to its mastery, under the first proposition, *a fortiori* he can claim no controlling power against this House, whose servant he is not, and to whose proceedings he is an utter stranger. Such a claim against this House by the presiding officer of the Senate is so absurd that its assertion would be a flagrant usurpation.

But another view is most important. The Senate in the original proposition had the supreme control over its President for another reason, that the decision of the contingency upon which its resulting elective prerogative depended would otherwise have been in the power not of itself, as it should be, but in that of its own creature, or of the Vice-President, most probably interested in the result. The same argument, and with stronger force, applies to the House under the clause as finally adopted. The resultant elective power as to the President is in this House. It is to be present at the opening and counting, not only as a co-guardian with the Senate of the election, but to decide when the contingency arises for assuming the high function to which the Constitution calls it in electing a President. The Senate is to be present to decide when the occasion arises for it to assume the duty of electing the Vice-President. The idea that this elective prerogative of the Senate is at the determining will of its presiding officer is absurd; but how much more so that upon the pivot of the arbitrary *dictum* of this mere creature of the Senate the elective prerogative and duty of *this* House should turn; that it should be denied its constitutional power by his edict, and that before his judgment the House should abdicate its power and decline to do its duty under the Constitution; that an alien to its procedure, appointed by another body, should give law to this House and control its own sense of duty; and, in fine, that this House, based on the will of the whole people, should be controlled in its constitutional power by the fiat, not of the oligarchy of the Senate, but of the creature of that oligarchy, is too preposterous to be believed as having been within the purpose of the wise men who framed our Constitution.

And this view becomes the stronger when we consider that the elective prerogative of the Senate was dependent on a contingency so much more remote than that of the House under the original Constitution and prior to the twelfth amendment. The House elected the President when two persons had a majority of the electors and an equal vote, or when no person had such majority. The Senate elected the Vice-President only when two persons had equal votes in a contest for the Vice-Presidency; for it was a strange principle in the original Constitution that, as no person was voted for by the electors as

President or as Vice-President, the person voted for who had a majority of all electors appointed, and the highest vote, was President, and he who had the next highest vote of the electors, *though not a majority* of the electors appointed, was Vice-President. And thus it happened that John Adams was the first Vice-President, though not receiving a majority of the electors appointed.

Now, the argument from these provisions is this: If the President of the Senate could not exclude the elective power of the Senate as to Vice-President, depending on so remote a contingency, *a fortiori* he could not do so as to the House in respect of its election of the President, depending upon contingencies so proximate and probable.

These views seem to be conclusive against any determinant power of the President of the Senate under the Constitution in the matter of the electoral votes or of any function in respect thereto, except to receive and open the certificates sent to him, and through him to the Senate and House of Representatives; and that any other act he may perform is purely ministerial, and under the supervision and subject to the control and direction of the two Houses of Congress, in whose presence by the Constitution he must open the certificates and cannot do so elsewhere.

POWERS OF THE HOUSES.

Thus much being concluded, we approach the next important inquiry: What are the powers and duties of the two Houses, respectively and conjointly, in regard to the presidential election, and in what manner must they act?

My first proposition is that the functions of the two Houses are not merely ministerial, but are protective; and therefore must be in their nature quasi judicial, in the same sense in which all powers are which require discretion in the decision of questions of legal right arising on a given state of facts.

This may be established from several considerations.

First. If there was no room for controversy, if the mere question of adding up numbers and deciding whether the result was equal to a majority of the number, three hundred and sixty-nine, if the paper presented proved itself and the electors returned as voting were *de jure* entitled to vote, if the persons voted for were *de jure* eligible, if the conductors of the election and of the returning process were infallible and immaculate, then it might be conceded that the President of the Senate or a banker's clerk might do the duty of declaring the election of President.

But the convention knew full well that none of these hypotheses were or could be true. It did not even trust the President of the Senate to break the sealed certificates save in a presence where he could not perpetrate a fraud. It did not think it enough to guard this important ceremonial by a present Senate without a present House of Representatives. It debarred certain persons from being electors, and limited their field of selection by leaving the door of eligibility to the Presidency only partially open. It well knew that laws were violated by corrupt and interested men in conducting elections and making returns thereof, and that under color of law frauds might vitiate the results. From these evils it had provided a self-protective power in the organization of each of these same Houses whom it summoned to be present at the moment when the election of the Chief Magistrate was to be decided. Are we to presume that at this supreme crisis in national affairs the convention meant to leave the result to these hazards with no other guards than lookers on, who could witness, but with no capacity to protest or to prevent a fraud or illegality patent to everybody, including themselves; that if an incompetent elector voted, or an ineligible person received a majority of votes, or the State law for the election and returns was flagrantly violated, or was stained by such frauds as excited the most indignant abhorrence, there was no cure and no relief?

These considerations exclude the conclusion that no remedy for these evils was intended. And it is, as already intimated, clear that the framers of the Constitution did use language which was intended by them to furnish such a remedy, because, after the experience of the contest in 1801, which threatened the very existence of the Union, the same language is re-adopted in the twelfth amendment as was used in the original Constitution, a fact only consistent with the idea that it was believed in 1804 that those words justified the practice prior to that time and sanctioned the precedents which had recognized this remedial power, as will be hereafter shown. In other words, the adoption of the same language in the amendment of 1804, after its construction in the precedents prior to that date, gives a constitutional sanction to the interpretation of the language involved in these precedents.

Second. Without going into detail, it is clear that the addition of the presence of the House of Representatives, after the jealousy which had been expressed of the Senate, can only be explained upon the ground that it had some active function to perform, and not merely the passive function of witnessing what it could in no wise control. If it was intended to be an inactive spectator, there could be no benefit in requiring its presence in conjunction with the Senate, which, *ex hypothesi*, was to be as passive and inefficient as itself.

Third. But the language is full and express. The original proposition, while perhaps conveying the same idea as that finally adopted, is less striking and impressive. "The President of the Senate shall *in that House* open," &c., is not so strong as that he "shall, *in the presence* of the Senate and the House of Representatives, open," &c.

That word "presence" imports more than the being in the same room. It means radically (*præ and ens*,) "being before one." It indicates in all legal procedure a supervision by a present superior, one prompt and ready to control, to guard, to aid, and to defend. Everything done in the presence of a court is under its protection and control; even the presence of a witness to a testator, or of a testator to the witnesses of his will, is intended as a guard, protection, and defense against any imbecility or mistake in the act, or fraud in its procurement.

In that sublime appeal of the leader of the Hebrew exodus to the God of Israel, the same sense is found: "If thy presence go not with me, carry us not up hence!" This did not refer to the omnipresence of the Deity, but it meant presence in the sense of the divine superintendence, providence, direction, and care. It meant that wondrous pillar, the manifestation of Jehovah's presence: the shadow of his wings by day, the light of his face by night; whose majestic movement guided their march, and when and where the cloud abode there and there was the signal for their rest. But, whether moving or abiding, ever the divine symbol of supreme law enforced by resistless power!

It may be then taken, that the use of this word in this clause means an active, living, vital, controlling, and directing supervision of the whole procedure. If it does not mean this, it means no more than the casual or curious presence of by-standers, or of the crowd in the galleries. It cannot be that the word finds its satisfactory interpretation in the capacity of either House to witness a mistake it cannot correct, an illegality it cannot forbid, a wrong it cannot rectify, a fraud it cannot frustrate. Suppose the President of the Senate should miscount, (if by hypothesis he were to do the counting,) or should open false or illegal certificates; or produce those forged by himself; or propose to count ineligible electors; or to declare an unconstitutional vote of electors; or an ineligible candidate elected, must each House witness these things in mute submission? Or suppose the certificate on its face shows illegality, must it be accepted as valid? Or suppose on opening it a paper is found dated after it purports to have been sealed, is there to be no relief? If none, then the constitutional convocation of the two Houses is a mockery, and only compels them to give their countenance to lawlessness, and the sanction of their silent and acquiescent presence to fraud and wrong. Upon such a construction the majesty of the presence of the two Houses invoked by the Constitution becomes a solemn farce, a dumb show, an empty pageant, a miserable mummery.

Such a conclusion cannot be sound. A fair and just interpretation of the word gives full power to the Houses to control the count, to protect the people's voice from illegal or fraudulent schemes, and to act as the constitutional guardians of the executive office from the designs and machinations of wicked men. For the instant you give to the word "presence" the sense of any supervisory guardianship, it embraces all needed power to defeat fraud and prevent illegality. The wedge of power once admitted suffices to rive asunder all the outer covering of inward rottenness and lawlessness.

4. But this will further appear from the phrase, "and the votes shall then be counted." Let this clause be analyzed.

First. The *votes*. What is a vote? It is the voice of one devoted to a purpose. It is therefore the true, the unfeigned declaration of choice. Whose votes? The context answers, the votes of the electors. But who are they? A, B, and C claim to be, but so do D, E, and F. Which shall be counted? Or suppose only A, B, and C claim, and A is ineligible, that is, cannot give a vote; or suppose they voted *viva voce* and not by ballot. Must they be counted? Or suppose they met in Washington, and not in their State, or fail to sign and certify and seal, or are appointed otherwise than the State Legislature directs, must the count be made?

In each one of these cases the questions confront some determinant power, who is to count the votes; which are the votes? and who are the electors? Unless there be such a power the procedure balks at the start, and breaks down. If there be no such power in the President of the Senate, as has been shown, it must be in the Senate and House, or the Constitution is and has ever been a failure in declaring that votes shall be counted and providing no one to count them. The conclusion is inevitable that the two Houses are to count, and must determine what shall be counted as votes and what shall not be counted.

Second. When the certificates are opened by the President, the clause declares that *then* the count begins. They are opened before the Houses for what? That *then* they may be counted; and can be counted by none except the Houses, or those whom they may appoint as ministers for the purpose.

Third. "Counted." This word by many seems to mean merely the mechanical process of numeration. But this is far from satisfying the whole constitutional meaning. By the Constitution the President must be elected by the votes of electors, appointed in the several States, and casting their votes in a legal manner, and certifying and returning them in the mode prescribed by the Constitution. The President who has a majority of *such votes* is *duly elected*; but if declared elected by the pretended votes of electors, or by the votes of pretended electors, the declaration is false, and the election void, and the office will be filled by a usurper.

The votes shall be *counted*. You cannot count anything but the votes of the electors. Electors do not vote at all who vote contrary to law. The Houses cannot, dare not, in view of sworn duty, count as an elect-

oral vote a vote claimed to be cast, but never cast, or of one cast contrary to law, or the vote of an elector not legally elected or ineligible.

Therefore, the significance of the word "counted" is greater than mere enumeration. Count (Latin, *computo;* French, *compter,*) means, as a learned etymologist tells me, *to clear up,* (implying scrutiny,) or as the dictionary says, "to reckon, to estimate, to weigh, to value." In counting money the idea is involved of discriminating between the spurious and the genuine, the light and full weights. And wherever it is applied to things which are not all necessarily alike, numeration, as the meaning of counting, must be supplemented by that of determining the character of the thing to be counted. Even the child in counting the marbles with which he plays must discriminate between what are and what are not properly included within the term.

This broader sense is found in many passages in that "well of English undefiled," the King James translation of the Bible. Saint Paul says, after enumerating his advantages as a descendant of Abraham, "What things were said to me I count but loss," &c.; "I count them but dung," &c.; "I count not myself to have attained," &c. In all these and like passages the notion of mere enumeration, proper for the counting of like things, is lost in the larger meaning of a discriminating estimate of unlike things, whereby one thing may in moral weight overbalance a thousand lesser things.

Thus it appears that the terms of the clause fairly interpreted lead to the conclusion that the votes must be counted by the Houses, and with such discretion, discrimination, and judgment that the result of a constitutional election of President shall be assured.

Conclusive as these views seem to be, there is one other that should be here prominently noted, though it has been referred to previously.

One great reason for the guardianship of the presidential office by the two Houses of Congress, as we have seen, was because each had a resulting elective power in case of a failure of election by the colleges of electors. This power, limited upon such a contingency, might be defeated were it not guarded by the House entitled to it and charged with the duty of its exercise. It would be contrary to all good government, as well as against all legal analogy, to exclude the holder of such a resultant power from a guardianship of the procedure on which it depended, or to leave to every other than itself the decision whether or not the contingency had occurred calling for its exercise.

The "presence" of each House, therefore, in the full sense which has been attached to that word, and the power to "count," in the sense of discriminating what ought and ought not to be counted, is essential to the contingent resultant elective right of each in case an election by electors fails; that is, of the House of Representatives to elect the President, and of the Senate to elect the Vice-President.

Thus much has been said in advocacy of the prerogative *power* of the two Houses. But we may advance to another position. The Houses have not only the power, but it is their constitutional *duty,* not a matter of option, but one of obligation, and not to be evaded, to take care that the procedure in the election of President shall be constitutional, according to the laws, State and Federal, and the true and fair expression of the will of the States. The powers of guardianship are reposed as a trust to be executed to the end for which they were granted; and the constitutional integrity of the executive department must be defended from all illegal and fraudulent attempts to palm upon the country an intruder, whose usurpation of the office under such auspices is as perilous to the peace as it would be destructive of the rights of a free people.

ARE THE HOUSES EQUAL IN POWER.

The power and the duty of the two Houses being fixed, the question next arises, are they equal in power?

That the two Houses were intended to be constituted co-equal and co-ordinate guardians of the legality and fairness of the election can admit of no doubt. If the clause as it now stands had been that first proposed, this conclusion would result from the mention of both, without a hint of a purpose to give to either a paramount power, or superior dignity to the other. Their constitutional relations to this high duty are those of equal authority and influence.

But this becomes the more conclusive in view of the historic facts already referred to. The jealousy of the influence of the Senate, as the representative of equal States, with no regard to relative population, suggested the summons of the House, as the representative of the States according to their population; and as, in the electoral colleges, the two elements thus manifested in the separate branches of the legislative department were incorporated into the elective body, so it was decided to have both present, with that quasi-judicial authority by which the election was to be determined and declared. To have given to either a paramount authority over the other would have defeated the purpose to combine the separate voice of each in the judgment upon the election, and would have made the amendment by which the presence of the House as well as of the Senate was required a meaningless device.

But if either was intended to be paramount, which was it? Which one has the Constitution made the superior? The one whose sole presence was unsatisfactory or that whose presence was required in order to quiet the jealousies engendered by the proposed single power of the Senate? If the Senate was designed to overrule the voice of the House, brought in from some supposed need of its presence, why invoke its presence at all? And if the House was to override the will of the Senate, why was its presence retained despite the superadded requirement of the presence of the House?

These questions admit of but one rational answer. The Senate and the House are in this solemn arbitration of equal weight in authority and honor.

HOW MUST THE HOUSES ACT?

This being established, we advance to the question, How must these Houses execute these powers? Must they act through their separate organisms or merge these into a new and single organism? Must each House utter its separate voice, or by a union of the members of the two make one body to speak the will of the conjoined Houses, constituted one for this object?

Many considerations conduce to the conclusion of the separate action of the Houses.

First. The language indicates separateness, with no hint of conjunction. If it had been required to be done "in the presence of Congress," there might have been some reason to argue for a joint act; though, as the constitutional definition of Congress is that it is a department "which shall consist of a Senate and House of Representatives," (C. U. S., article I, section I,) that argument would be fully avoided. But when the clause and its history concur in indicating a convocation of two bodies, in their nature, constitution, and rules of action wholly distinct; when the reason is that principle so deeply seated in our system of educing all its unity out of the concurrent majorities of separate bodies, rather than from a unification of separate bodies to bring out an enforced and false harmony; and when this conversion of the two into one would destroy the double guardianship of two co-equal protectors of law and right, and make a *single* sentinel, in whom the senatorial equality of the States would be lost in the overwhelming influence of the more numerous representatives by the House of the popular majority, we think it is too clear for doubt that the two Houses must act through their separate organizations in their judgment upon the presidential election.

Second. When it was at one time proposed to elect the President by "ballot of the Legislature" (that is, by Congress) it was so obviously intended to be by the separate action of the two Houses that a member of the Convention proposed to prefix the word "joint" before the word "ballot," in order to bring about the merger of the two in their elective procedure. It was objected to because "depriving the *States* represented in the *Senate* of the *negative intended them in that House.*" It was at first adopted. (3 Madison Papers, 1417-'9.) But subsequently it was rejected by a vote of eight States to two. (Id., 1498.) Now, if the generic word "Legislature" (Congress) so clearly imported the separate action of the two Houses that the express word "joint" was needed to convert the distinct action of the two into a single act of one body made out of the two, *a fortiori,* it is clear that the mention of the two Houses by name cannot import, but excludes, the idea of the joint action of the two as one body.

Third. There is another reason, which will be more dwelt upon hereafter, that, as the resultant elective prerogative of the two Houses respectively was a strong motive for the presence of each to guard its own distinct right from being affected by the decision of the result of the action by the electoral colleges, that motive demanded that the decision should be made by the separate bodies, and not by one body, constituted by a merger of the two.

Fourth. One other reason may be stated. In the whole history of procedure by the two Houses under this clause both have always acted separately, and at no time has the merger of the two in one been adopted as the constitutional mode of their action.

It is then certain that the two Houses must act separately in their arbitrament of this presidential election.

MUST THE HOUSES CONCUR IN COUNTING OR IN REJECTING A VOTE?

This being settled, another question arises. The two Houses will either agree in judgment or differ. If they agree, unity between the two arbitrators leaves no room for controversy. It is as if there was but one.

But suppose they differ. If two equal powers diverge in judgment, that of neither can prevail, else they are not equal.

How then is the point in judgment decided? We answer, the affirmative proposition submitted is lost and the negative prevails. This is obvious, and is sustained by numberless analogies, which will occur to every one.

It is then obvious that the solution of our difficulty depends upon the nature of the question in issue. Whatever is proposed to be done cannot be done unless both of the equal arbitrators agree, and it will only be done when both concur.

What then is the question submitted to the two Houses? The proximate question is this: Who is elected the President and Vice-President?

The Constitution answers the question in these words: "The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed," &c.

The Houses must determine what person has the greatest number of votes and he shall be President. What votes? Of electors. Who are the electors? The Constitution answers, those whom "Each State shall appoint, in such manner as the Legislature thereof may direct," so as he be neither a "Senator or Representative, or person holding an office of trust or profit under the United States." How

and where shall these electors, so appointed, vote? The Constitution answers, by ballot, and in the meeting in their respective States. How shall the vote of these electors be signified? The Constitution answers, by distinct lists made by them of the persons voted for, of the number for each, which lists shall be signed, certified, and transmitted by them, sealed, to the seat of Government of the United States, directed to the President of the Senate. How do they come to the knowledge of the two Houses? The Constitution answers, "The President of the Senate shall, in the presence of the Senate and the House of Representatives, open all the certificates and the votes shall then be counted."

These are the steps by which the votes of the States come under the cognizance of the august presence of the two Houses, to be by them counted.

We have already shown that this counting by the two Houses is not mere enumeration, but is a discriminating estimation of the facts evidenced by the papers, purporting to be the certificates of the votes of persons claiming to be electors, and to have cast constitutionally votes for a person as President of the United States.

Has A or B or C received any vote for President?

A paper purporting to be a certificate avers that John Doe voted for A. Shall his vote be put down for A?

That depends on the answer to several questions:

First. Was John Doe qualified to be an elector?

Second. Was he legally elected an elector?

Third. Did he legally vote as such for A?

Fourth. Did he legally sign, certify, and seal the list on which his vote is set down for A?

Fifth. Is his vote for A valid, by reason of being cast for an eligible person?

Sixth. Has the certificate in which all this appears been opened in the constitutional presence, so as to exclude the idea of its falsity, and to establish the conclusion of its genuineness?

These, and other like questions, stand as challengers to the counting of that vote. If all are answered in the affirmative, it must be counted. If any one be answered in the negative, it cannot be counted. The power to count or not to count is as complete in the two Houses as the duty is imperative. The power and duty are correlative, and are connected indissolubly.

Suppose these questions are propounded in order to the two Houses. The House answers the first in the affirmative; the Senate, in the negative. How then can John Doe, who is not held by the determinant tribunal to be qualified to vote, be permitted to vote, and be counted for A? And so, without going into detail, as to the whole series.

The Houses cannot, dare not in view of their sworn duty, exercise the power to count such a vote, and then declare that A, having the greatest number of such *spurious* votes, shall be President, when B has a larger number than A of true and legal votes for President; unless upon the principle that the House which affirms must be held paramount to that which denies!

But it may be, and has been, argued that the questions submitted to the Houses are these:

Was John Doe *disqualified* to be an elector, or *illegally* elected, and so on, putting the question at issue in such a form as to require the Houses to vote on a *negation* rather than an *affirmation* of legality of an electoral vote; or in other words, to pronounce a man to be President not on the affirmance of his title, but on the ground that he is *not disentitled!*

In support of this view, it is argued, that the certificate is *prima facie* evidence of validity, and the votes must be rejected which are therein listed, or they will be counted. In other words, that on the *prima facie* case the question will be put, Shall this vote be rejected?

Conceding the premise, that the certificate is *prima facie* evidence of validity, the conclusion does not follow. It may be *evidence* of validity, but it is not conclusive. It is evidence on which judgment is to pass, but it does not *per se* establish a judgment in its favor. It is a material part of the evidence, from which with any other facts judgment must be formed, but in itself it does not command a decision until other evidence to rebut the *prima facie* case is heard. No judge upon the production of an obligation enters judgment for a plaintiff, and then considers the question whether it shall set it aside. He hears the whole case, and then decides affirmatively whether or not to render judgment; and where two equal judges hold a court, it was never heard, because a plaintiff makes a good presumptive case, on *prima facie* evidence, that on hearing the whole case the plaintiff will have judgment because the court are divided; and because on such division the court do not *reject* the plaintiff's claim to judgment. In such a case the defendant succeeds, because on the affirmative question, Shall judgment be rendered? the divided court cannot say it shall be entered. In Durand *vs.* Essex County, 7 Wall., this question is well discussed, and the conclusion I have stated is fully sustained.

If therefore the premise involved in the argument be true, the conclusion claimed is a *non sequitur*.

But the premise is false.

It is not true that the claim that John Doe was a qualified elector, or was legally elected, or legally voted, or legally signed, certified, and transmitted his lists, or that the person voted for by him is eligible, is *prima facie* valid. There is no legal or rational presumption in its favor. *It is a thing to be proved.* The Constitution requires the affirmative proof to be satisfactory before a vote shall count to make any person President of the people of a great union of commonwealths. To say that every package which any man may direct to the President of the Senate, purporting to be and clad in the garb of an official paper, is to be received until pronounced against, is to invert the forms of legal procedure and give efficacy to every ingenious fraud and forgery because there is a failure of proof that it is *not* corrupt and is *not* genuine.

But this argument is sought further to be enforced by a deprecation of the effect of the contrary doctrine upon the rights of the States to be heard in a presidential election. I am not insensible to such an appeal; but it is vicious in its logic, however commendable the impulse with which it originates. It involves the *petitio principii*. It claims that the vote of the State must be counted unless both Houses reject it. But the point involved in the discussion is that which is here assumed. Is the thing offered, as a vote, a legal vote? *Is the vote offered the vote of the State?* That is the question to be answered affirmatively. The opposite argument really claims that whatever is offered as the vote of the State must be so held, until it is so *disproved* as to obtain a concurrence of both Houses in its rejection.

Whether it be worse to stifle the voice of a State, or to attribute to it a false utterance; whether it be not more unjust to make a State vote against its real wishes than to refuse to let it vote at all—these are the real questions. The Constitution proposes to protect the vote of the State from fraud and forgery by refusing to give weight to her will unless it is satisfactorily shown that those who speak for her speak truly, and do not simulate her tone in order to despoil her of her right. Better refuse to count a vote in her name, where there is a reasonable doubt of its genuineness, than to cast her weight and influence against the true interests and genuine judgment of her people. Better stifle than falsify her voice—better forbid her to speak truth, than make her utter a lie.

These arguments do not avail, therefore, against the conclusions already stated, that no vote can be counted except upon the concurrent judgment of the two Houses; but those conclusions are sustained by other considerations which will now be advanced.

I have shown in an early part of this discussion that the great purpose of the convention was sedulously to guard the executive department from a usurper who might seek to win the Presidency by a violation of the Constitution and the laws or by the practice of fraud and forgery. It was intended that none should hold that high office whose title to it was either stained with fraud or wrested from an unwilling people by force, or was even clouded by a doubt of its legality or fairness.

Two guards were placed before the door of the executive department, the two branches of the legislative department; the one speaking for the equipollent State organisms, the other for the States according to their relative popular weight. The one is the sentinel of the States, the other of the people. This was the great self-protection devised by our fathers against a spurious title to the Presidency. No person could be admitted upon a title which did not prove its undoubted goodness, or merely because its badness was not proved beyond question. To doubt was to damn such a title to the Presidency.

What a vicious principle in respect to the peace of the country and the purity of its government, to the due obedience to law and submission to authority, would that be which permitted a President to enter office against the protest and judgment of the Senate, representing the majesty of the States, or of the House, speaking for the people of the Union? What a power would be given to faction, to fraud, and to violence, if one of the Houses could give a valid title to the Presidency despite the solemn dissent of the other?

Peace, subordination to lawful authority, public confidence and a true co-operation of all parts and interests in the country for its progress and prosperity, and respect and affection for its Chief Magistrate, have always followed and will ever follow the person whose legal and fair election is assured by the concurrent voices of both Houses of Congress; but these can never result when a cloud of lawlessness or fraud is attested by the divided judgment of the Senate and the House.

It will be perceived at a glance that if the Senate may by its voice adjudge a person elected against that of the House, the calling for the presence of the latter is nugatory, and, *e converso*, if that of the House in favor prevails over the dissent of the Senate, the retention of its presence was useless. It would result that neither House can ever avail to prevent the success of a claimant under a doubtful title. In other words, with two guards constituted against fraud and illegality, the sturdy challenger is paralyzed that the intruder may enter on the passport of the other. For it is clear that if both must concur to reject a vote, and one may count it against the voice of the other, then the two guards were constituted not to prevent a fraudulent intrusion upon the office, but really to facilitate it; for with the permission of one only to be let in and a requirement of both to be kept out, fraud and wickedness are at a premium in a strife for the Presidency. In a word, the effect of calling in the House as a guardian would be that the House might admit where the Senate would, if alone, have rejected, but could never reject where the Senate admitted; and thus, so far from both Houses being a double and effective guard against intrusion, they increase the chance of the intruder and decrease the hope of defeating a fraud upon the executive office.

And this becomes more striking when the historic fact is again

recurred to, that the presence of the House was made requisite because the Senate might be ruled by an oligarchy, a majority of States being possible with a popular vote of eight millions against thirty-two millions, (or as one to four,) and it was designed to check its power by the popular majority represented in the House. But if the Senate may vote in one, whom the House would exclude, an oligarchy—which the convention meant to check by the power of the people—will triumph over the popular will and trample upon the rights of the people.

I repeat, the purpose was that none should enter the Presidency on any title not certified by the concurrent sanction of both Houses of Congress.

This will be made more conclusive by recurring to the second cause for the presence of the two Houses, to which reference has been made. That cause was the prerogative vested in the respective Houses to elect a President and Vice-President if an election by the colleges failed.

Nothing is more reasonable or better sustained by all the analogies of the Constitution, and of all law for the distribution and balance of powers than that, where a power is vested in a body coupled with a duty, there is an implied power in that body to assume its exercise without let or hinderance from any other authority. There must be autonomy, or there will be such a dependence as will make the required power nugatory.

In the original Constitution, as I have already shown, the House was authorized to elect a President if certain contingencies happened, the Senate to elect a Vice-President if certain more remote contingencies happened. It is, therefore, obvious that if the determination of whether the contingency had arisen in either case depended upon the absolute will of either body, other than that which is required to assume the elective function, a paralysis of its power and a defeat of its duty might result from the caprice of one not vested with the power nor charged with the duty.

Hence, if the Senate had continued, as first proposed, to be the sole arbiter of the electoral procedure, after the elective power was given to the House in case of a failure of the colleges to make an election of President, the Senate might have defeated at its arbitrary will this power in the House. And so as to the Senate power to elect a Vice-President, had the House been made sole arbiter of the electoral procedure. But the presence of both served and was intended to furnish to each House a self-protective guardianship of its own resultant elective function, and to enable it freely and without being subject to the capricious will of the other to enter upon the discharge of its constitutional duty by the exercise of its constitutional power.

For it is very clear that the power to decide whether or not an election has been made by electors may by unscrupulous men become equivalent to the power to elect, and that the power to count votes may be made superior to that of voting. The question who elects in such a state of things may be less important than who counts. The men who manipulate the poll-books or the ballot-boxes, and render a final decision on the result, if dishonest, may usurp the power of suffrage and turn a result favorable to T into an election of H.

To avoid this, in the case under discussion, the presence of each House as the guard of its own power, as the ultimate determinant of its own duty, was required. But all this would be unavailing if the power of either body to elect depended upon the counting of certain electoral votes at the sole will of the other House; for as the contingency on which the power of the House under the original Constitution depended is the failure of some person to get a majority of the electors, all that the Senate would have to do to defeat the power of the House would be to decide to count spurious votes for its own favorite, which, *ex hypothesi*, would avail to count them, despite the dissent of the House.

To a small extent, the same power might have been exerted by the House to the detriment of the power of the Senate; but not to an equal extent, prior to the twelfth amendment, for the contingent power of the Senate only vested, when there were two persons having equal electoral votes, after the person having the greatest number for President. It is true that now the contingent power of the two Houses stands on the same basis precisely, but we may reason of the motives to this clause, unchanged by the twelfth amendment, from the context to its terms in the original Constitution.

The objection (prior to the twelfth amendment) to the theory that either House could decide to count a vote, *non obstante* the dissent of the other, is therefore very strong, for it would involve the complete dependence of the contingent elective function of the House on the will of the Senate without a correlative dependence of that of the Senate on the will of the House. The Senate by its absolute fiat might thus wrest from the House this important power, which the House would have no constitutional means of defeating.

And as the Constitution now stands, since the twelfth amendment, each House would have the power to *defeat* the contingent elective function of the *other*, and yet have no power to *protect its own*, which is a result bordering on the absurd.

On the other hand, if, as we insist, either House may reject an electoral vote and both must concur to count, neither can defeat the other's elective power by *counting improper votes*, for thereby it equally defeats itself, while each is interested to reject a false vote in favor of its own power.

But it may be said that the House might, in order to get the power of election in its own hands, decide against a vote; and so the Senate.

This is more plausible than sound. The great function is electing the President; the Vice-President is of inferior consequence

If the House, representing population, and in which the populous States *per capita* should decide to reject a vote, in order to gratify an ambitious desire to elect a President, it would at once occur to its members that in its *elective* action the large States shrink to the size of the small; that on the procrustean bed of equal sovereignties the giant New York stands *in equali jure* with the dwarf Delaware, and thus the interests which decide on the count are dissimilar from those which would elect.

And besides, the populations so potential in the House would be the same which are so potential in the colleges; and it would be rare that to defeat a fair and legal choice by electors so likely to be in unison with their own views, the same interests would seek to take it to themselves when their power as populous States would be decreased to an equality with that of the small States.

It might be contended with more plausibility that the Senate would be interested to throw the election into its rival House, in order to defeat the will of the large States, so great in the colleges, and give force to State equality in the election by the House.

But this seems to be too refined a suggestion to fit the condition of things, probably existing. While the equality of States is represented in the Senate and operates in an election by the House, this is a single feature of likeness with all others dissimilar.

The House is the direct representative of the people. The Senate is that of the State Legislatures. The House is immediately sensitive to popular sentiment; the Senate only mediately so. The House is also fresh from the people; less so, it is true, than the colleges; but the Senate has only one-third of its members who represent popular feeling through State Legislatures as freshly as the House; one other third four years, and another third six years remote from the people's influence. In the election, the House represents the mass of the *people* of each State, though by an equal vote with all others. The Senate in decision upon the election speak for the legislative organism of the State, with only a remote sympathy with its people.

Therefore it is not probable that for sinister purposes the Senate would be tempted to defeat an election by electors to secure a President who would be dependent on its great rival for his election or to secure to itself the empty honor of electing its own presiding officer with the title of Vice-President.

Looking, then, to the reasons for the presence of the two Houses as a self-protection to each of its own resultant elective power and to the effects of the two theories upon the motives to their action, there is everything to sustain and nothing to impair the strength of the conclusion that no vote can be counted but by a concurrent sanction of the two Houses, and that any vote wanting this concurrence must be rejected.

It is singular that two apt cases have occurred in our history for the illustration of this branch of the subject.

In 1825 the colleges elected a Vice-President by a large majority, but failed to elect a President. In 1837 they elected a President, but not the Vice-President. In the former the Senate might be interested, as it could not possibly have any elective functions to defeat the contingent right of the House by a count favorable to one of the candidates. In the latter the House might have the same interest against the right of the Senate, and on the theory we are combating either could have destroyed the other's right by a count of false or illegal votes. But on the theory we sustain this would have been impossible in either case, for it is *spurious counts* which defeat the contingent elective rights spoken of; and, as no count can be made but by concurrence of both Houses, the House, whose right was jeopardized by the jealousy of the other, could fully protect itself by voting to reject where the other voted to count.

DOES THE REQUISITION OF A CONCURRENCE OF BOTH HOUSES IN ORDER TO COUNTING A VOTE IMPAIR STATE RIGHTS?

There has been some opposition to this doctrine on the ground that the effect will be to give to the two Houses of Congress an undue control of the State power in the election of President. This idea is the result of misapprehension.

Nothing is more essential to the preservation of the reserved rights of the States than the strict maintenance of the well-defined boundary between them and the Federal power. They are imperiled when indiscreet friends claim for them an abridgment of the Federal authority contrary to the Constitution. The fence between these should be kept up, so that neither can trespass upon the other, for the States may be well assured that the breach they make to filch from Federal power for their own interests will be enlarged for a more fatal breach by the latter on them.

Now, while the Constitution vests in the States the substantial power over the presidential election, the right of judgment in order to Federal self-protection is left to the two Houses. I would not trench in any degree upon the large discretion given to the States; but the right to judge whether State laws have been observed, and the elections authorized under their authority have been fairly or fraudulently conducted, has been and should be left to the Federal guardians of the executive department. To make the officials of each State the final arbiters of the validity of an election to be held and

directed by State law is to put the election of the Federal Executive at the mercy of the officials of the States; and it is therefore entirely reasonable, while giving to the State the lawful control and direction of the election, to vest in the Houses of Congress the right to see that it was fair and legal.

And it must be noted that there is a a subtle vice in the argument which regards the Federal right of judgment as an invasion of the State right of election. This begs the question. The question is: Are the persons claiming to be electors appointed by the State in such manner as its Legislature has directed? This is assumed by the objector. Whoever claims to speak as an elector for the State must be tested by some determinant power. If not, he may falsely speak for her, and without her authority. The Federal power challenges his claim and protects the State thereby from his false claim. The spurious elector exclaims that we strike down the State by the blow which only feils him; but, if we silence one who speaks without authority, we not only do her no wrong, but defend her right against misrepresentation. It is better she should be silent than that her opinions be falsified by an unauthorized representative.

But another view is proper. This power of the States is federative in its nature and extraterritorial in its operation. As long as a State exercises its powers over its own interests, those which belong to its own people exclusively, Federal interference with the State is not only intrusive and dangerous to liberty, but unconstitutional. The convention rejected with emphatic reprobation the proposal that the governor of a State should be appointed by the General Government and that its laws should thus be subject to Federal veto, because the State autonomy would thus be destroyed and Federal power assume the management of all its local concerns.—*2 Mad. Pap.*, 892; *3 Id.*, 1411.

But when a State by its legislation may affect the coinage, or the commerce, or the peace of the States with which it is united, or the obligation of its own to the citizens of sister States, when State authority reaches out to control interests beyond its own territorial boundary, compact limitations were placed upon State authority in order to protect the federative rights to be influenced by its legislation. And while its State governments are left to its people's will exclusively, yet when State action operates to mold Federal organism in its legislative department, a self-protection was furnished to the latter against the injurious action of the former; so that, though it was wise without Federal interference to leave each State to select its own rulers, yet, when it was admitted to the exercise of a power over the choice of the President for all the other States as well as for itself, it was just and indispensable that their rights should not be left to the uncontrolled caprice of a single State or the loose and dangerous action of its officials. Its rights could not be preserved at the expense of the equal rights of thirty-seven other co-equal partners in the Federal system, and especially when this right it claims is to a power exercised through the electoral colleges, which is no part of its reserved authority, but a power conferred upon it by the other States through the Federal Constitution.

We do not propose to impair the elective power vested in the States operating through the colleges. We only claim a right of judgment whether the power has been legally and fairly exercised and whether the free and true votes of the State have been cast or been tampered with or substituted by others through the frauds and illegal action of the officers whom the State has appointed to certify the results of the election.

This sudden zeal for the rights of the States by the republican party occasions us a surprise as real as that it feigns at our supposed abandonment of them.

In the defense of the local government of each State by its own people, the democratic party is unified in sentiment. But how is it with the gentlemen of the republican party? They have a zeal, but not according to knowledge. It is misplaced. When the local concerns of the States are in question they sanction the use of Federal power; but when the State's action affects Federal affairs they claim exclusive power for the State.

Their chief has placed his soldiers at the doors of the capitol of Louisiana and of South Carolina. His military subordinates have decided on the returns, elections, and qualifications of the members of State Legislatures. By the Federal bayonet the governments of the States are set up or put down at the will of the President.

But when the returns of one State would elect a President for the Union, and we assert our power to inquire whether they respond to or falsify the will of the people of that State, the republican party, with the iron heel of military power trampling in the dust the autonomy of the prostrate pelican State, withholds from our scrutiny the returns of an infamous board of oligarchs, reeking with fraud, as the evidence of its devotion to State rights and the love of a fair count, felt by itself as well as by its distinguished leader. We would exclude Federal interference in the local affairs of a State and protect the Federal organism against State control. But the State rights of our opponents are reversed. They increase State power where it should be diminished and paralyze it where it should be supreme.

IS THE PRESIDENT OF THE SENATE UNITED WITH THE HOUSES IN THE COUNT OR AN UMPIRE BETWEEN THEM?

But a new theory is broached, which I pause for a moment to notice in order to refute it.

It is that the counting power is in the President of the Senate and the two Houses; that he is the intermediary, or umpire, between disagreeing arbitrators.

This theory may be ingenious, but is untenable.

First. I will show hereafter it has never been broached in the twenty-two presidential elections which have occurred.

Second. All the reasoning already adopted as conclusive against his power, had the Senate's presence alone, (as at first proposed,) without that of the House, been required, is equally strong, and even stronger, as both Houses must be present under the clause adopted.

Third. But suppose he and the Senate—the Senate and its creature appointed, it might be, to enforce its power and make it paramount over that of this House—concur in counting a vote against the dissent of this House. Did the Constitution intend the oligarchy to become sole judge by giving it two votes by its own will against the one vote of this body? Did it intend to create an arbitration by the two Houses, with power in one arbitrator to appoint the umpire between them in case of disagreement? Was ever such an umpirage heard of?

This view must be condemned as vicious in theory, as it would be destructive in practice to the power of the whole people, in favor of the oligarchic authority of the Senate. It is but another mode of giving force to the exploded dogma of the exclusive power of the President of the Senate or to the paramount power of the senatorial oligarchy over the will of the people.

ON WHAT CONTINGENCIES DOES THE ELECTIVE RIGHT RESULT TO EITHER OF THE HOUSES?

One other question remains to be considered: the nature of the contingency upon which the right to elect a President results to the House and that of choosing a Vice-President results to the Senate.

The twelfth amendment provides that—

> The person having the greatest number of votes for President shall be the President, *if such number be a majority of the whole number of electors appointed*; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President.

Each State shall have one vote, "and a majority of all the States shall be necessary to a choice."

WHAT IS THE MAJORITY REQUIRED TO ELECT?

What is the meaning of the words "if such number be a majority of the whole number of electors appointed?" We have spoken of throwing out votes for illegality, fraud, or inability to decide who is really appointed. Must these be counted as among that whole number of electors appointed of which the successful candidate must secure a majority?

The word "appointed" indicates an affirmative answer to this question, and the history of the clause, as well as the context, confirms it. If it had intended to make a majority of the less number the word "appointed" would not have been added, and the word "voting" or some such word would have been used.

But the history is conclusive on this question. At first the clause read "if such number be a majority of that of the electors." This was at best equivocal.

It was thought, that as then the Senate was to elect, if no such majority was obtained, the election would most usually be thrown into the Senate. Many were very averse to this.

To prevent the eventual election by the Senate as far as possible, Mr. Madison proposed to insert "one-third" in place of "majority" in the clause. It was lost. (3 Mad. Pap., 1501.) He then moved to insert after electors, "*who shall have balloted*," saying, "so that the non-voting electors, not being counted, might not increase the number necessary as a majority of the whole to decide the choice without the agency of the Senate." It was lost. (*Id.*, 1502.) Then "Mr. Dickinson moved in order to remove ambiguity from the intention of the clause, as explained by the vote, to add after the words 'if such number be a majority of the electors,' the word, 'appointed.'" It was adopted, nine States to two. (*Id.*, 1502-3.) A change was proposed by adding, "and who shall have given their votes" after the word appointed. It was lost. (*Id.*, 1509.)

This meaning derived from the debates seems to leave no doubt of the intention. But the context is equally conducive to the same conclusion.

The power to reject votes, of which we have spoken, would have enabled the Houses to reduce the number necessary to elect to a small minority. If a State attempts to elect and certify, and does elect some one, but owing to defective returns it cannot be decided whom, it would be unfair to count her out from all influence in an election from which her vote may be properly excluded. She would therefore be counted as of the electoral body, though her voice be not heard.

Again, when the election is thrown into the House, the person elected must have a majority of *all* the States, whether there or not, and a majority of the *whole* number of the Senate is needed to the election of a Vice-President. And by article 1, section 5, a majority of each House constitutes a quorum, but "one-fifth of *those present*" may demand the yeas and nays.

The distinction between a majority of the whole and of those present and acting is thus clearly manifest, and the words and context show that in this case the President-elect must have a clear majority of the electors whom the States have appointed.

But suppose an ineligible person be voted for. Is he appointed? Clearly not. He therefore cannot be counted among the electors appointed. The State has not appointed. Her act was null.